



LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

February 25, 2009

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

By email to sbcob@co.santa-barbara.ca.us

RE: Santa Barbara Ranch Memorandum of Understanding (MOU)

Dear Chair Centeno and Members of the Board,

This letter is submitted by the Environmental Defense Center (EDC) on behalf of EDC and the Santa Barbara Chapter of the Surfrider Foundation, and by the Law Office of Marc Chytilo on behalf of the Naples Coalition. This letter addresses the Board's decision to reconsider the Santa Barbara Ranch MOU Amendment that was approved in closed session on October 7, 2008. On January 5, 2009, our offices notified the Board that the closed session action constituted a violation of the Brown Act. On January 27, 2009, the Board voted to cure the Brown Act violation and to schedule a hearing on March 3. This decision had several branching effects, which are discussed below.

We urge the Board to consider entering into a new MOU for Santa Barbara Ranch. However, the Board should not accept or include those MOU amendments that were considered in closed session on October 7, 2008.

We also look forward to at least two more hearings before the Board regarding a February 5, 2009, MOU termination letter from the Project applicants and regarding several issues outstanding before the California Coastal Commission. The need for these hearings is also discussed below.

I. Background

In 2000, the County entered into an MOU with the Santa Barbara Ranch Project (Project) applicants (hereinafter referred to as the Santa Barbara Ranch Related Interest or "SBRI"). The 2000 MOU governed processing of the proposed Project, which at that time did not include development on Santa Barbara Ranch south of Highway 101. In addition, the 2000 MOU

contemplated public acquisition of the area between Highway 101 and the coastal bluff. The 2000 MOU was terminated when the Project applicants defaulted on its terms.

A new Project MOU was entered into in 2002. The 2002 MOU provided a framework for concurrent processing for the “Coastal” and “Inland” portions of the proposed Santa Barbara Ranch Project, and ensured that any rezone for the Inland Project could not proceed before Coastal Project approvals are perfected by the California Coastal Commission. (2002 MOU, § 5.1.6.) This MOU did not include a provision for acquisition of the coastal area south of Highway 101. Then, on October 7, 2008, the Board of Supervisors made the closed session decision to amend the 2002 MOU. This amendment allowed for sequenced processing of the “Coastal” and “Inland” phases.

Our January 5, 2009, letter described how the October 7, 2008, closed session decision violated open government provisions of the Brown Act. In particular, the Board impermissibly made non-litigation-oriented policy decisions that should have been made in an open forum.

On January 27, 2009, the Board voted to cure this Brown Act violation by rehearing the October 7, 2008, closed session decision in an open, public forum. This rehearing will take place on March 3, 2009.

A. The October 7, 2008, MOU Amendment Is Rescinded

The Board’s decision to rehear its October 7, 2008, closed session action effectively rescinded the MOU Amendment approved that day. The 2002 MOU, as it existed before October 7, 2008, was then reinstated as valid and enforceable, including provisions that tied coastal and inland components of the Project together for processing purposes.

B. The 2002 MOU Has Been Terminated

Section 10.2 of the MOU states: “SBRI may voluntarily and unilaterally withdraw the Coastal Project Applications or reject and relinquish any rights to or in the County Approvals ... at any time during the term of the MOU and by so doing terminate [the] MOU.”

On February 5, 2009, the County received a letter from SBRI which states that the MOU has been unilaterally terminated under Section 10.2 of the MOU. This obviates the Board’s decision to rehear any proposed amendments to the 2002 MOU, because there is no longer any MOU to amend. The Board may, instead, consider entering into a new “2009” MOU with SBRI. If the County does enter into another MOU with SBRI, we urge the Board to ensure that it is functionally similar to the 2000 MOU, including public acquisition of the coastal area on Santa Barbara Ranch south of Highway 101, and that it meets Project Objectives related to a comprehensive and global resolution of land use conflicts on 85% or more of the Naples Townsite.

C. The Coastal Project Has Been Withdrawn

The February 5 letter states that SBRI has withdrawn the applications for the “Coastal Property” or “Coastal Project” under Section 10.2 of the MOU. The letter further states: “All references to the terms Coastal Project and Coastal Project approvals refer only to those terms as defined in the MOU.”

MOU Section 5.2 defines the “Coastal Project” as “consisting of 39 single-family dwellings and accessory uses and structures on 39 Lots on the Coastal Property, 23 of those Lots located north of U.S. 101 and 16 located south of U.S. 101.” This definition is confirmed in the Project’s Conditions of Approval. They state on page 14: “For purposes of the MOU and the Conditions of Approval, the terms “Inland Property,” “DRP Property” and “Coastal Property” shall mean and include those portions of the Project shown in Exhibit 16.” Exhibit 16 is found on page 44 of Attachment C-3, and defines the Coastal Property as extending north of Highway 101 to the boundary of the coastal zone.

Despite referencing the above MOU provisions, the February 5 letter purports to withdraw applications for a “Coastal Project” that is different from what is defined in the MOU and Conditions of Approval. SBRI is attempting to only withdraw the applications for that portion of the Coastal Project “on Santa Barbara Ranch located south of Highway 101.”

This division is not described nor allowed for by the MOU or various Project approvals. If SBRI wishes to withdraw or reject Project applications or approvals, SBRI must withdraw the entire “Coastal Project,” including that portion north of Highway 101 and described in Exhibit 11.2 of the Conditions of Approval (page 18), including Coastal Development Permits (CDPs) for infrastructure necessary to serve the Inland Project. The Inland approvals, including the subdivision and rezoning of inland agricultural lands on Dos Pueblos Ranch, are inextricably connected to the Coastal Project, such that rejection of the Coastal Project undermines the purposes and foundation for the Inland approvals, precluding piecemealed or partial approvals as detailed on our letter of February 16. By withdrawing this application, SBRI has compromised the Inland Project and rendered it infeasible without further necessary approvals.

II. Requested Action

A. Deny the MOU Amendment

The County should reject the MOU amendment that was proposed on October 7, 2008. Because of SBRI’s February 5, 2009, letter and action, there is no MOU to amend. Further, the changes proposed in October 2008 are inappropriate from a planning and policy perspective, and they are discordant with the Coastal Commission’s ongoing review process. Infrastructure that is necessary to serve the Inland Project is located in the Coastal Zone and is subject to Coastal

Commission jurisdiction. (See attached letter from the Coastal Commission dated January 23, 2008, regarding the Revised Draft EIR and proposed sequencing of approvals.)

All dispute resolution processes with the Coastal Commission should be exhausted before any component of the Project is allowed to proceed. The County should not be concerned about the “looming threat” of development according to the Official Naples Map “grid.” This development pattern is speculative, and any individual lots will still be subject to discretionary permitting and constrained by infrastructure needs and other significant hurdles.

B. Hold a Hearing Regarding the February 5, 2009 MOU Termination Letter

The Board of Supervisors should schedule a hearing regarding the effect of the applicant’s MOU Termination letter. As noted above, the Board must consider the fact that the applicant may not terminate the MOU for only a portion of the Coastal Project. Because the letter is inconsistent with the terms of the MOU, the Board must determine whether the applicant has in fact terminated the MOU for the entire Coastal Project (as provided in section 10.2) and how such termination affects the Project approvals granted on October 21, 2008.

As noted in our February 16, 2009 letter (attached), termination of the Coastal Project as defined in the MOU renders the Project approval invalid, because the County’s findings and conditions of approval depend upon the Inland and Coastal Projects proceeding together.

Therefore, if SBRI wishes to proceed, only two options remain: (1) SBRI must rescind its attempted withdrawal of the Coastal Project and proceed with the entire Project as it was approved on October 21, 2008, and under the 2002 MOU as it existed before October 7, 2008; or (2) SBRI must apply for a revision to the Project pursuant to Land Use Development Code (LUDC) Section 35.84.040(E) and Coastal Zoning Ordinance (CZO) Section 35-174.10(3).

If SBRI withdraws the Coastal Project, there will be a significant change to the Project that was described in October 21, 2008, approvals. LUDC Section 35.84.040 and CZO Section 35-174.10(3) address “changes to an approved project.” Subsection 35.84.040(C) describes changes where the new project is in substantial conformity with an approved project. Negating half of the Santa Barbara Ranch Project, along with purported benefits and a “global resolution” of land use planning conflicts at Naples, would render a new Project *not* in substantial conformity with the approved Project. Subsection 35.84.040(D), regarding amendments, does not apply here because the Project findings made on October 21, 2008, would be rendered inaccurate and incomplete by deletion of the Coastal Project.

LUDC Subsection 35.84.040(E) describes a process for revisions to an approved project; it states:

1. A revised Conditional Use Permit or Final Development Plan shall be required for changes to an approved permit where the findings identified in Subsection D. (Amendments) above cannot be made and substantial conformity cannot be determined.
2. A revised permit shall be processed in the same manner as a new Conditional Use Permit or Final Development Plan...
3. The approval by the review authority of a revised Conditional Use Permit or Final Development Plan shall automatically supersede any previously approved Conditional Use Permit or Final Development Plan upon the effective date of the revised permit.

Similarly, CZO Section 35-174.10(3) requires a Revised Development Plan in the coastal zone when there are significant changes to an approved Final Development Plan. Revision is required under the CZO as it is under the LUDC, because substantial conformity cannot be found, and necessary Project findings have been rendered inaccurate and/or inapplicable.

LUDC Section 35.84.040(E) and CZO Section 35-174.10(3) do not require the County to vacate or rescind any Project approvals. Rather, because SBRI has changed the Project Description so significantly, SBRI must apply for new permits and approvals.

C. Hold a Hearing Regarding the Coastal Commission Notices of Deficiency

The County's Notice of Final Action (NOFA) for the Project was rejected three times by Commission staff for being incomplete. In particular, staff has noted that the Project involves lot mergers in the coastal zone which are necessary for lot line adjustments elsewhere on the Project site; these mergers require Coastal Development Permits (CDPs) which are reviewable by the Coastal Commission. (See attached Coastal Commission Deficiency Notices.)

Coastal Commission staff has also rejected the County's proposed Local Coastal Plan (LCP) Amendment. Staff's primary concerns include: a lack of adequate biological studies, including wetlands delineations and grassland surveys; a failure to adequately evaluate development constraints on the "grid" project; questions about necessary Certificates of Compliance; and an inadequate analysis and implementation of a transfer of development rights program. (See attached Coastal Commission Incomplete Letter.)

We request that the Board hold a public hearing on these matters, and that the Board invite Coastal Commission staff to present their concerns about the NOFA and the LCP Amendment. The Board must then provide direction to County staff to cure remaining deficiencies in the NOFA and LCP Amendment.

Conclusion

While there are a number of questions that must be answered before the Project may proceed in any configuration, it must be noted that there are specific processes and outcomes that are predetermined by law. SBRI has opted to go down a path with expansive repercussions, and the County must carefully consider the present situation and the way forward.

Please do not hesitate to contact us with any questions about this letter. Thank you for your consideration.

Sincerely,

/s/

Nathan G. Alley, Staff Attorney
Linda Krop, Chief Counsel
Brian Trautwein, Environmental Analyst
Environmental Defense Center

/s/

Ana Citrin
Marc Chytilo
Law Office of Marc Chytilo

Attachments: Coastal Commission Jan. 23, 2008, Letter re Revised Draft EIR
Coastal Commission Oct. 31, 2008, Deficiency Notice re: Notice of Final Action
Coastal Commission Dec. 19, 2008, Deficiency Notice re: Notice of Final Action
Coastal Commission Feb. 4, 2009, Deficiency Notice re: Notice of Final Action
Coastal Commission Jan. 6, 2009, Incomplete Letter re: LCP Amendment
EDC & LOMC Feb. 16, 2009, Letter re: MOU Termination

Cc: California Coastal Commission
Naples Coalition
Surfrider Foundation

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



January 23, 2008

Tom Figg
Planning and Development
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101-2058

RE: Revised Draft Environmental Impact Report (DEIR) for Santa Barbara Ranch

Dear Mr. Figg:

On November 13, 2007 our office received the recently released three-volume Revised Draft Environmental Impact Report for the Santa Barbara Ranch Project. The volumes have been separated out, wherein Volume 1 provides the full analysis for the MOU Project, Volume 2 provides the full analysis of the *Alternative 1* project, and Volume 3 includes various appendices.

Commission staff has reviewed the above referenced Draft EIR and are providing the following comments for your consideration. As proposed, the project will require an amendment to the Land Use Plan (LUP) and Implementation Plan portions of the County's certified Local Coastal Program (LCP) to designate the Santa Barbara Ranch, and Dos Pueblos Ranch (if Alt. 1) properties as the Naples Planned Development District; revise existing LUP Policies related to the Naples Township (2-13); add associated goals, policies, and development standards to the LUP; and adopt a new zoning district and overlay maps within the Coastal Zoning Ordinance. The Naples Planned Development is located on the Gaviota Coast along U.S. Highway 101 in the rural, unincorporated area of Santa Barbara County approximately two miles west of the City of Goleta's western boundary.

Two projects were the focus of the EIR at project level detail, the MOU Project and Alternative 1, the landowners preferred alternative.

Santa Barbara Ranch MOU Project: The Naples Planned Development will apply to 219 parcels of the of the Naples townsite Official Map adopted by the County (not certified by the Coastal Commission), covering 485 acres. The MOU Project consists of a large lot residential development and associated land use changes on Santa Barbara Ranch (SBR) totaling 485 acres and encompassing 80% of the lots comprising the Official Map. The MOU Project would result in 54 new large lot single family residences and includes an equestrian center, agricultural support facilities, a worker duplex, public amenities (including access road, parking and restroom, hiking, biking, equestrian trails near the coastal bluff, an educational kiosk and a coastal access stair structure), and creation of conservation easements permanently protecting 163 acres for agricultural uses and 176 acres for open space. The project would also require 116,400 cu. yds. of grading (62,800 cu. yds cut, 53,600 cu. yds. fill).

3. *Transfer of Development Rights*

Concerning the Naples Town Site, existing Local Coastal Program-Land Use Plan Policy 2-13, which was adopted when the County's LCP was certified in 1982, provides, in part: "The County shall encourage and assist the property owner(s) in transferring development rights from the Naples Town Site to an appropriate site within a designated urban area which is suitable for residential development. If the County determines that transferring development rights is not feasible, the land use designation of AG-II-100 should be re-evaluated."

Although no additional implementation measures were adopted to carry out Policy 2-13, the strength and value of a Naples TDR program relative to its ability to transfer development rights and carry out P2-13 rests in the effort put forth to not only determine feasibility, but also to develop an effective program to carry out the objective of P2-13 prior to approving any development at Naples. Such a program involves taking pro-active measures to locate receiver sites and to work with other County local governments, land trusts, citizens groups etc. to achieve both the political will and financial ability to carry out the program. Commission staff believes that the feasibility study undertaken by the County is insufficient in that respect. The lack of an effective program to carry out the transfer of development rights as a component of a proposed project results in development approvals and actual development proceeding in advance of completion of TDRs. Approval of a TDR implementing program should precede any project approvals. This would, in effect, allow the process for implementing a TDR program to be in place and thus, the program could be implemented upon approval of a Development Plan. Consequently, there wouldn't be a lag-time, or opportunities lost which ultimately could result in failure of the program to be initiated and adversely impact coastal resources.

Another concern raised by the TDR feasibility analysis is that the study is based on analyzing the potential for a TDR program based on the Santa Barbara Ranch MOU proposal (54 units) and Alternative 1 (72 units) only. Both projects will require lot mergers and/or lot line adjustments and land use and zoning changes which will require future CDP and LCP Amendment approvals. This study assumes development potential that has received no approvals or entitlements and which may not receive approvals. Further, neither the MOU Project nor Alternative 1 (based on the landowners desired rate of return) is the appropriate basis of determining the economic value of development for TDR expected returns. A reasonable rate of return on investment is the appropriate standard for economic feasibility of development. No other development scenarios were considered such as a project based on the existing "official map" (recognizing that only a percentage of the existing lots could be developed due to small lot size, environmental and other constraints) or a project containing more lots located inland, lots clustered away from the bluff and outside of viewsheds or a reduced density project. At minimum, the TDR study should have addressed the feasibility of implementing a TDR program under all of the alternatives considered in the DEIR.

As indicated, a TDR feasibility analysis was completed for the MOU project and Alternative 1 proposed by the landowner. Potential receiver sites were identified and

project. Both projects propose development of large homes on 9 bluff-top lots that would provide approximately 60 per cent of the overall property value or income from development. As previously mentioned, no consideration was given to reduced development alternatives including alternatives which include no development or reduced development seaward of Highway 101. The total value of development rights would be considerably less under these reduced or relocated development scenarios. The TDR study should be revised to include analysis of such alternatives as part of the EIR.

In summary, Commission staff believes that the TDR Feasibility Analysis and, thereby, the DEIR are inadequate in that the study is flawed because it is based on assumed development rights of the MOU Project and Alternative 1 only. Neither project has been authorized by LCP Amendment or CDPs both of which will be required for project approval. Further, no other alternatives were considered based on the existing County recognized "Official Map" or reduced density, clustered development, and elimination of blufftop development by transferring development rights to inland areas. In addition, Commission staff believes that the TDR study and DEIR should include an implementation program that would precede project approvals. Required LCP Amendments should precede (be approved by the Coastal Commission) before approval of any CDPs. Staff recommends that a detailed TDR Program to carry out Policy 2-13 be developed and included within project related LCP Amendments.

4. *Policy 2-13.* For the purposes of Commission review, staff is not interpreting LUP Policy 2-13 to require that all development be transferred from Naples under a TDR program in order for a TDR program to be considered [partially] feasible. That is, the County shall encourage and assist the property owners in transferring development rights from the Naples town site even if the program is only sufficient to transfer some of the development potential to other urban areas able to accommodate it.

5. *Sequence of Approvals*

The RDEIR states (pg. ES-11) that "the applicants propose to proceed with development of inland portions of the project that do not require Coastal Commission approval before the Coastal Commission acts on the approvals within the coastal zone." Both the MOU Project and Alternative 1 include land both within and outside of the Coastal Zone.

Commission staff urges caution with regard to this approach. If the Coastal Commission were to deny, or suggest significant modifications to, the LCP Amendment, what recourse would the County have once the (non-coastal zone) subdivision was approved, the Naples Planned Development zoning designation applied, and/or construction started? Would such an action intensify development over and above the Naples Town Site lots? Would infrastructure to these lots be within the coastal zone? If so, would a coastal development permit be necessary for infrastructure widening or new improvements (see item Land Use / Permit History for background information requirements during LCP Amendment process)?

The sequencing approach proposed in Alternative 1 is troubling for a number of reasons. Commencement of development inland of the Coastal Zone would result in

greater impacts on geology, hydrology and water quality due to relocation of development to steep slopes, greater ground disturbance from grading and runoff. The DEIR does note, however, that the implementation of Best Management Practices would minimize impacts. The DEIR also concludes that Alternative 2 would have less impact on biological resources and that, on balance, Alternative 2 would be more protective of coastal resources, coastal recreation and access, and visual resources than either the MOU Project or Alternative 1 because development would be avoided on the coastal bluff and south of Highway 101 and on viewshed lots.

The DEIR provides key project objectives relative to its alternatives analysis. Objectives include: 1) provide project that would have fewer environmental impacts than would result from development of all the existing Naples Town Site lots; 2) achieve a long-term solution that would resolve pending litigation and disputes; 3) achieve a comprehensive development concept for Naples; 4) maintained continued agricultural use that is compatible with low density residential development; 5) allow residential development that balances agricultural, open space, recreational, and residential uses consistent with the Coastal Act, LCP, and MOU; and 6) site and design development to reflect the rural and scenic character of Naples and the Gaviota Coast, minimize environmental impacts, and preserve and/or restore wildlife habitats and other coastal resources.

It is inappropriate to have a project objective (Objective 2 above) be the resolution of litigation. Such an objective summarily dismisses any alternative that is not proposed and/or supported by the applicant. The use of such an objective would give undue weight to the applicant's preferred alternative (Alternative 1) in contrast with the appropriate process of weighing the relevant environmental factors before determining the *actual* environmentally superior alternative.

Alternative 2 by itself or in combination with alternative 4 (reduced development), alternative 5 (clustered development) and a TDR program (alternative 6) revised as recommended above will provide an environmentally superior alternative based on protection of coastal resources pursuant to the requirements of the LCP.

7. *Alternative 3A.* Section 11.4.2 describes why the RDEIR considers the No Project Alternative to have greater impacts in comparison to the MOU Project. This is based upon the "grid" development pattern, the increase in the number of residences (114-125) that the RDEIR anticipates would be able to be developed on the existing parcels recognized by the Official Map, which appears to assume that the homes built under that development scenario would be designed similar to the homes the DEIR envisions under the proposed MOU or Alternative 1 alternatives. However, there would be a drastic difference between the extent and scale of the development approvable on the existing grid versus the proposed large-scale development under the proposed MOU or Alternative 1 project descriptions.

The description of the No Project Alternative in the EIR recognizes that development under the existing subdivision would be limited, stating that the No Project alternative "may influence the size of a house on a lot or otherwise affect the details of a proposed residential development but may not prevent a parcel from being developed." In this case there are many constraints (biological resources and sensitive habitat, visual resources, cultural resources, prime agricultural lands,

Though not explicitly stated in the project description, our assumption is that the beachfront between the bluff and the ocean will include lateral easement for public access. It is also our assumption that the proposed public access system would be recorded as a separate public access easement given that the trails and amenities will occur on multiple properties and would cross through portions of the open space conservation easement areas.

Drainages are generally not appropriate locations for vertical accessways and/or stairways. The trail would not be reliably passable and may require additional maintenance. The stairway at the end of the drainage would be particularly vulnerable to storm surges. In this case there are other, less environmentally damaging, locations where the trail and stairway could be located, thus it is not necessary to locate the accessway in a drainage.

The proposed beach stairway consists of a large, engineered stairway with viewing platforms and a wall. This level of engineering has impacts to visual resources and is not in character with the remote location. The stairway should be designed to minimize the profile and should conform to the coastal bluff topography. Additionally, the stairway should be re-sited upcoast to allow direct public access to an area with generally wider beach and therefore higher recreational value.

Mitigation Measure Bio-4 indicates that the beach access should be closed March through July for biological reasons and that other restrictions or closures may be approved by the County at any time in the future with supporting biological information. The stated purpose of the closures would be to minimize harassment and adverse effects to the harbor seal haul-out and to minimize the effects of visitor use on plants and animals found in the Naples Reef and adjacent beach habitat. This 5-month closure combined with the off-season, rainy months would result in the minimal effective beach access (though at least one beach user group, surfers, would be likely to continue use during winter months).

As a result of the constraints, the beach access point should be located further upcoast to maximize available beach width for beach goers as well as locate the beach access point as far from the seal haul-out and Naples Reef as feasible. In any event, even as proposed, it is not clear why the access point would need to be closed for 5 months since this would also result in the elimination of access to the upcoast beach areas (away from seal haul-out and reef). While there is a need to include certain restrictions (e.g., no pets), there are additional options such as specific exclosure areas identified by signage & fencing or other program. The final project description should specify that there are no timing restrictions: the parking area and trail and stairway must be open to the public 24 hours per day, year around.

12. *Biological Surveys*. The BIO Mitigation Measures include additional field studies and wetland delineations, and then further project design changes if warranted. However, in order to complete an adequate biological impact analysis, the RDEIR must be based upon an up-to-date, *comprehensive* biological inventory. The RDEIR should quantify all habitat to be removed or disturbed based on these comprehensive surveys and the associated proposed mitigation ratio. For the purposes of reviewing the LCP amendment, Commission will require recent

coastal terrace portion of the property south of Hwy 101. Presumably the reference should be to Figure 3.4-4, rather than Figure 3.4-3. Even so, a number of questions arise. For example, are all mapped wetland on Figure 3.4-2 that are outside of the area coastal terrace portion of the property south of Hwy 101, still recognized as wetlands in the RDEIR? If the purpose is to eliminate features that are clearly associated with intentional man-made discharges of water for the purposes of water livestock, why would SAIC labels 1, 2, 3, and 5 be eliminated since they are described as isolated seeps associated with coastal drainage or bluff areas? Table 3.4-5 should be updated to indicate the historic and present use of any man-made intentional watering ponds/structures. Were any formal wetland delineations undertaken during any of the surveys, either identifying the wetland or eliminating mapped wetlands? What is the status of all of the other areas designated as State wetlands on Figure 3.4-2 which do not have a numbered label? Are these still considered wetlands? How were they eliminated from Figure 3.4-4?

There appear to be several instances where development such as roads or building pad areas would be located within 100 feet of an identified wetland. These developments should be relocated outside of the buffer. Further, to ensure protection of these wetlands, it would be appropriate to include the wetland areas and buffers within an open space conservation easement, *not* an agricultural easement which occurs in some cases.

17. *Grasslands*. Note, for the purposes of Commission review, native grassland patches of any size should be mapped. The County's threshold standard of ¼-acre has not been certified by the Commission. The Commission reviews impacts to grasslands on a site-specific basis taking into consideration the landscape context. Further, to ensure protection of native grassland communities, it would be appropriate to include the native grassland areas and buffers within an open space conservation easement, *not* an agricultural easement which occurs in some cases.
18. *Creek Diversion*. Creek diversion associated with the MOU and Alternative 1 projects should be included as part of the project description. The impacts of any creek diversion related to the project (MOU or Alternative 1) need to address water quantity and quality, downstream and biological impacts.
19. *Zoning Interpretations*. There seems to be some confusion with regard to interpreting what would be required to be approved on parcels currently zoned for agriculture. Though a residence and guest house (or residential second unit (RSU)) may be listed as a permitted use in a particular zone district, the circumstances of the parcel dictate whether accessory structures such as guest houses, RSUs, artist studios, etc. can be feasibly located on a property. Where a property cannot physically accommodate an accessory structure (e.g, too small, geologic infeasibility for wells or septic, etc.), or where the placement of such a structure may adversely impact coastal resources (e.g., ESHA, water quality, public views, prime agriculture, etc.), then approval of the accessory structure cannot be reasonably assumed. Policy 1-2 of the certified LCP states that where policies within the land use plan overlap, the policy which is most protective of coastal resources shall take precedence.

MOU Project and Alternative 1 Project appears to be located on a creek bank. These developments should be re-located outside of the 100-ft buffer area.

28. *Bridge on Lot 167.* A road between Lot 167 and Lot 193 in both the MOU and Alternative 1 Project area requires a bridge across a drainage, in the area of a delineated wetland. The DEIR should address elimination of this stretch of roadway, with access to Lot 193 attained from the southeast. Also, there appears to be conflicting information because *Impact Geol-2: Erosion from Grading* indicates that a concrete box culvert and fill would be utilized to create creek crossing on Lot 167.
29. *Fuel Modification.* For both the MOU and Alternative 1 analysis, the project description indicates that a Conceptual Fire Safety and Fuels Management Plan was prepared that recommends fire safety strategies that are generally consistent with the Santa Barbara County Fire Dept guidelines for residential development in high fire areas (50-ft Zone A, 50-ft Thinning Zone B). The results of the Conceptual Fire Mgt Plan should be incorporated into the biological analysis of both projects, specifically referencing the fuel modification requirements necessary for each element of development (e.g., residential development, equestrian development, agricultural support facilities, etc) and illustrating the approximate fuel modification areas on an aerial photograph overlain with the proposed development footprint(s). Fuel modification is generally discussed within various sections of the biological analysis as impacting resources, however, it is not clear what level of impact would occur, whether there are alternative configurations would reduce fuel modification in ESH, and/or whether there are ways to minimize the fuel modification required by the fire department.
30. *Open Space Conservation Easement.* The RDEIR indicates that areas of each project that are not designated as a development envelope, an agricultural conservation easement, or shown as an access or utility service corridor would be dedicated as an open space conservation easement to a qualified non-profit land preservation organization. From the description, it appears that the OSCE's were designed to encompass lands that are not proposed for residential or equestrian development *and* which would not be feasible for agricultural uses. However, one objective of the OSCE should be to incorporate all environmentally sensitive habitat areas. The OSCE should include, at a minimum, all ESH and associated buffers, in addition to the drainage features which are currently included.

Within the OSCE, "lot owners would be allowed to make improvements for fire protection purposes, maintain previously existing unimproved agriculture and ranch roads, conduct flood control activities, and repair, maintain, or improve existing roads, utilities, facilities or other existing improvements." (pg 2-11) Additionally, the OSCE would allow public hiking and riding trails. The DEIR should identify the existing facilities that could be maintained and the necessity for their continued use/maintenance. It should also identify existing facilities which could be eliminated. Further, it is our understanding that the OSCE would be developed in a manner that would be irrevocable.

31. *Agricultural Conservation Easements.* The RDEIR indicates that the ACE is intended to prevent the splitting of agricultural lands into multiple small ranchettes which may be too small to be agriculturally viable if operated independently. Under the ACE,

Further, to avoid potential conflicts with agricultural areas and fully avoid spray drift from agricultural operations, residential development should be located 300 feet from the property line of properties zoned for agricultural activity and/or areas designated as an ACE.

33. *Hazards.* The RDEIR indicates that it is possible that past and/or ongoing agricultural practices at the site have resulted in agricultural chemical contamination in soil and/or groundwater. Additionally, abandoned oil wells have been identified within the project site. The RDEIR finds that there are potential impacts associated with these past activities, and concludes that these impacts would be significant but feasibly mitigated. Specific surveys have not been completed to understand the nature or extent of any contamination of the project site(s). Surveys, and thus, any understanding of the extent of the remediation, are deferred until an unknown time.

The RDEIR baseline conditions should be based on Phase II level surveys because the location of hazardous materials have a direct impact on the developability of each parcel and the corresponding ability to reconfigure lot lines to avoid such areas. Additionally, if soil or groundwater remediation is necessary, the level of remediation and area of impact must be fully defined, as it may impact resources and be a significant component of the project description.

The DEIR did not include baseline information for Dos Pueblos Ranch since not even a Phase I study was completed. If Alt. 1 is to be realistically considered, Phase I and Phase II assessments would also be necessary in this area to establish baseline conditions.

34. *Grading.* The geology analysis for the MOU Project indicates that the project would include 116,400 cu. yds. of grading (62,800 cu. yds. cut, 53,600 cu. yds. fill) for the proposed project. The geology analysis for the Alternative 1 project indicates that the project would include 117,000 cu. yds. of grading (63,000 cu. yds. cut, 54,000 cu. yds. fill) for the proposed project. Given that Alternative 1 includes additional areas for residential development, it does not seem feasible that both alternatives have such similar amounts of grading. Additionally, it is unclear whether these grading amounts represent the *total* amount of grading for each project, including new roads, road widening, equestrian facilities, and all other types of grading.

35. *Project Description, Lot 12 Road.* For both the MOU and Alternative 1 Projects, what is the purpose of the road crossing Lot 35 and Lot 12, ending at Dos Pueblos Ranch property? Is there a potential secondary access? If the adjacent "planted trees" harbor raptors or monarch butterflies, this road should be eliminated and restored.

Commission staff will also review the final County-approved project for Santa Barbara Ranch as a future LCP amendment. Commission staff will also review all potentially appealable CDPs approved by the County for the development. Depending on the particular details of the final approved project and LCP Amendment submittals there may be additional comments or issues to be addressed. Thank you for the opportunity to review the RDEIR at this time.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**DEFICIENCY NOTICE**

DATE: October 31, 2008

TO: Tom Figg
Santa Barbara County, Planning and Development
123 E. Anapamu Street
Santa Barbara, CA 93101

FROM: Steve Hudson; District Manager

RE: Notice of Final Action for "Santa Barbara Ranch Project" (*including all separate permits, actions, and other discretionary approvals as described in your cover letter dated October 27, 2008, and the attachments thereto, including, but not limited to, the document titled "Attachment C-1, Conditions of Approval, Final Adopted Santa Barbara County Santa Barbara Ranch Project", "Attachment C-2, Conditions of Approval, Preliminary Draft Santa Barbara County Santa Barbara Ranch Project Tables" and "Attachment C-3, Exhibit 13 (Project Scope)"*)

Pursuant to California Code of Regulations, Title 14 (14 CCR), section 13572 and 13572(b), please be advised of the following deficiencies in the above-referenced Notice of Final Approval/Action, which was received by our office on October 27, 2008, and which addresses multiple separate permits, actions, and other discretionary approvals collectively described in the notice as the "Santa Barbara Ranch Project" (hereinafter sometimes referred to simply as the "project").

Applicant(s): Santa Barbara Ranch, LLC

Description: The project entails the development of 71 new residential dwellings, an equestrian center, agricultural support facilities, a worker duplex, public amenities (including access roads, parking and restrooms, and coastal access trails), and creation of conservation easements for permanent protection of open space and agriculture. The project also includes: (i) text and map amendments to Comprehensive Plan, Coastal Land Use Plan, and Zoning Ordinance; (ii) subdivision approvals consisting of a vesting tentative tract map, lot mergers, lot line adjustments and conditional certificates of compliance; (iii) cancellation, modification and re-issuance of Williamson Act contracts; (iv) creation of new Agricultural Conservation and Open Space easements; (v) discretionary permit approvals encompassing development plans, conditional use permits and minor conditional use permits, land use permits and coastal development permits; and (vi) miscellaneous actions including approval of development agreements and removal of the Special Problems Area designation currently applicable to Naples.

Location: The project site encompasses the Santa Barbara Ranch and Dos Pueblos Ranch totaling approximately 3,249 acres and 85% of the lots comprising the Official Map of the Naples Townsite at Dos Pueblos Canyon Road, Santa Barbara County.

Deficiency Notice (Santa Barbara Ranch Project)
Page 2 of 3

Deficiencies noted below:

1. X Local action is not complete as described under 14 CCR Section 13570. That section states that a local decision on an application for development shall not be deemed complete until the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is, or is not, in conformity with the certified LCP. In this case, the final local action notice was submitted as a combined notice for multiple separate permits, actions, and other discretionary approvals generally described as the "Santa Barbara Ranch Project". However, the project descriptions for the individual actions on each component of the project, including a variety of different types of permits, coastal development permits, and other discretionary approvals did not contain adequate specificity to describe the development approved pursuant to each separate action. Without this basic project-level information, it is not possible to determine the scope of the approved development and; thus, whether specific factual findings have been included that support the legal conclusions of the notice that the development is in conformity with the certified LCP. Deficiencies include, but are not limited to, failure to describe the actual sizes and locations of residences, guest units, garages, grading, and infrastructure improvements associated with individual coastal permits (particularly in regard to several of the coastal permits approved for the portion of the project located in Santa Barbara Ranch, which describe only general ranges or maximum sizes allowable for structures and fail to describe or quantify grading amounts). In addition, the project descriptions do not describe the size (sq. ft. and height) and capacity of the water treatment facilities. Further, based on the attached exhibits, it is not clear based on the included project descriptions whether an appealable coastal permit was required for all wastewater treatment facilities, infrastructure improvements and subdivisions/mergers/lot line adjustments, or other redivisions of land approved within, or partially within, the Coastal Zone.
2. X Procedures for appeal of the decision to the Coastal Commission not included and/or inaccurate. The cover letter for your submittal included the statement "[p]lease be advised that portions of the Project are appealable to the Coastal Commission and applicable regulations setting forth the appeals process are also enclosed" and a photocopy of Chapter 35.102 (Appeals) of the County's LCP describing the appeals process in general terms. Although the submitted notice of final local action was intended as a combined notice for multiple separate permits, actions, and approvals generally described in the notice as the "Santa Barbara Ranch Project", no description was included describing which individual permits, actions, and approvals are appealable to the Commission. In order to provide adequate notice regarding "the procedures for appeal," pursuant to 14 CCR section 13571, such notice must explain which of the actions and permits included in the notice of final local action are subject to those appeals procedures. Specifically, it is necessary to provide adequate detail of which individual permits, actions, and approvals are appealable or not appealable for each separate, individual action or permit included as part of the notice including, but not limited to, subdivisions, vesting tentative tract maps, lot mergers, lot line adjustments, conditional certificates of compliance; development plans, conditional use permits, minor conditional use permits, land use permits, coastal development permits and development agreements which have been included as part of the "combined final local action notice" for this project.
3. _____ Final Local Action Notice was not received by the Coastal Commission consistent with 14 CCR Section 13571, which states that the local government shall notify the

Deficiency Notice (Santa Barbara Ranch Project)
Page 3 of 3

Commission, and any persons who specifically requested notice of such action, by first class mail.

4. ___ Written findings and conditions of Approval not included.
5. ___ Notice not given to those who requested it.

As a result of the deficiencies noted above:

Post-Certification LCP

XX The effective date of the local government action has been suspended, and the 10 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 CCR Sections 13570, 13572).

Post-Certification LUP

___ The effective date of the local government action has been suspended, and the 20 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 Cal. Admin. Code Sections 13330, 13332).

In addition, as previously discussed with County staff, the appealable coastal permits and any other appealable actions or approvals associated with this project do not appear to be consistent with the policies, provisions, land use plan designations, and zoning of the currently certified LCP. Although the Notice of Final Action submitted on October 27 included several references (including in the general project description) to a new proposed amendment to both the County's certified Coastal Land Use Plan and Zoning Ordinance, no information regarding proposed changes to the text, figures, or maps of the certified LCP was submitted (nor any of the other required items for submittal of an LCP Amendment pursuant 14 CCR Section 13552). Please note that a request by the County for an amendment to its LCP must be submitted to the Commission consistent with Section 13552 of the Commission's regulations and may not be included as part of a final local action notice for appealable development. It is our understanding that the County intends to submit a request for an amendment to the LCP related to this project; however, we have still not received any such submittal.

For the reasons discussed above, please submit a new revised Notice of Final Local Action for this project by first class mail, pursuant to the requirements of 14 CCR Section 13571. Commission staff is available to meet with County staff to discuss any of the issues raised in this letter. Please feel free to contact Amber Tysor or Steve Hudson at the South Central Coast Area office with any questions regarding this matter.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**DEFICIENCY NOTICE**

DATE: December 19, 2008

TO: Tom Figg
Santa Barbara County, Planning and Development
123 E. Anapamu Street
Santa Barbara, CA 93101

FROM: Steve Hudson, District Manager

RE: Notice of Final Action for "Santa Barbara Ranch Project" (*including all separate permits, actions, and other discretionary approvals as described in your cover letter dated December 12, 2008, and listed in the attached document titled "Table 4 - Inland and Coastal Approvals", Attachment C-2 of the Conditions of Approval and Exhibit 13 of the Conditions of Approval*).

Pursuant to California Code of Regulations, Title 14 (14 CCR), section 13572 and 13572(b), please be advised of the following deficiencies in the above-referenced Notice of Final Action, which was received by our office on December 15, 2008, and which addresses multiple separate permits, actions, and other discretionary approvals collectively described in the notice as the "Santa Barbara Ranch Project" (hereinafter sometimes referred to simply as the "project").

Applicant(s): Santa Barbara Ranch, LLC

Description: The project entails the development of 71 new residential dwellings, an equestrian center, agricultural support facilities, a worker duplex, public amenities (including access roads, parking and restroom, and coastal access trails), and creation of conservation easements for permanent protection of open space and agriculture. The project also includes: (i) text and map amendments to Comprehensive Plan, Coastal Land Use Plan, and Zoning Ordinance; (ii) subdivision approvals consisting of a vesting tentative tract map, lot mergers, lot line adjustments and conditional certificates of compliance; (iii) cancellation, modification and re-issuance of Williamson Act contracts; (iv) creation of new Agricultural Conservation and Open Space easements; (v) discretionary permit approvals encompassing development plans, conditional use permits and minor conditional use permits, land use permits and coastal development permits; and (vi) miscellaneous actions including approval of development agreements and removal of the Special Problems Area designation currently applicable to Naples.

Location: The project site encompasses the Santa Barbara Ranch and Dos Pueblos Ranch totaling approximately 3,249 acres and 85% of the lots comprising the Official Map of the Naples Townsite at Dos Pueblos Canyon Road, Santa Barbara County.

Deficiency Notice (Santa Barbara Ranch Project)
Page 2 of 3

Deficiencies noted below:

1. Local action is not complete as described under 14 CCR Section 13570. That section states that a local decision on an application for development shall not be deemed complete until the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is, or is not, in conformity with the certified LCP.

2. X Procedures for appeal of the decision to the Coastal Commission not included and/or inaccurate. The submitted Notice of Final Action constitutes a combined notice for multiple separate permits, actions, and approvals. In order to provide adequate notice regarding “the procedures for appeal,” pursuant to 14 CCR section 13571, such notice must accurately describe which of the actions and different components included in the notice of final local action are subject to those appeals procedures. However, several of the appealable actions and approvals included in the combined Final Action Notice for this project were incorrectly described as not appealable, including:
 - Lot Mergers. The Final Action Notice incorrectly states that “Lot mergers...are ministerial actions under the County’s development and subdivision regulations; therefore are not appealable.” However, lot mergers constitute “development” that require a coastal development permit and are not exempt from permit requirements pursuant to either the California Coastal Act or the County’s certified Local Coastal Program, regardless of whether the action is characterized as a ministerial or discretionary decision. Although some of the individual appealable coastal permits approved for new residences correctly include lot mergers as part of their proposed project descriptions, the Notice of Final Action also identifies several other approved lot mergers (which have been authorized as part of this project as non-appealable actions) without the required appealable coastal permits.
 - Designation of “Development Envelope” areas. Grading and designation of “development envelope” areas within the Coastal Zone appear to have been approved on Lots 104, 108, and 185 without the required coastal permits. The designation of these development areas authorizing various non-principle permitted uses on each site (pursuant to the County’s currently certified Local Coastal Program) requires an appealable coastal permit for the portions of the designated development areas located within the Coastal Zone.
 - Subdivision of land. In addition, the combined Notice of Final Action also incorrectly indicates that the subdivision of a parcel which is partially bisected by the Coastal Zone Boundary (pursuant to Vesting Tentative Tract Map 08TRM-00000-00006) and the subdivision/redivision of land related to the after-the-fact approval of three parcels (pursuant to Conditional Certificates of Compliance 08COC-00000-00001 through 00003) are not actions requiring appealable coastal development permits. Pursuant to the California Coastal Act and the County’s certified Local Coastal Program, the subdivision of land constitutes “development” requiring a coastal development permit. In addition, the above referenced subdivisions of land constitute non-principle permitted uses and would, therefore, be appealable actions regardless of whether they are located within the Commission’s mapped Geographic Appeals jurisdiction. Therefore, the above referenced actions require appealable coastal development permits.

Deficiency Notice (Santa Barbara Ranch Project)

Page 3 of 3

3. ___ Final Local Action Notice was not received by the Coastal Commission consistent with 14 CCR Section 13571, which states that the local government shall notify the Commission, and any persons who specifically requested notice of such action, by first class mail.
4. ___ Written findings and conditions of Approval not included.
5. ___ Notice not given to those who requested it.

As a result of the deficiencies noted above:

Post-Certification LCP

XX The effective date of the local government action has been suspended, and the 10 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 CCR Sections 13570, 13572).

Post-Certification LUP

___ The effective date of the local government action has been suspended, and the 20 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 Cal. Admin. Code Sections 13330, 13332).

Commission staff recommends the County identify the above referenced actions as requiring appealable coastal development permits by submitting a revised Notice of Final Local Action for this project by first class mail, pursuant to the requirements of 14 CCR Section 13571. However, if the County is not in agreement regarding the determination that the above development is appealable, then a dispute regarding the appealability of the County's action (or any components thereof) may be resolved by the Commission pursuant to CCR Title 14, Section 13569. Commission staff is available to meet with County staff to discuss any of the issues raised in this letter. Please feel free to contact Amber Tysor or Steve Hudson at the South Central Coast Area office with any questions regarding this matter.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

**DEFICIENCY NOTICE**

DATE: February 4, 2009

TO: John Baker
Assistant County Executive Officer
Santa Barbara County, Planning and Development
123 E. Anapamu Street
Santa Barbara, CA 93101

FROM: Steve Hudson, District Manager

RE: Notice of Final Action for "Santa Barbara Ranch Project" (*including all separate permits, actions, and other discretionary approvals as described in your cover letter dated December 12, 2008, and listed in the attached document titled "Table 4 - Inland and Coastal Approvals", Attachment C-2 of the Conditions of Approval and Exhibit 13 of the Conditions of Approval*).

Pursuant to California Code of Regulations, Title 14 (14 CCR), section 13572 and 13572(b), please be advised of the following deficiencies in the above-referenced Notice of Final Action, which was received by our office on February 2, 2009 (updating the previously submitted Notice of Final Action dated December 12, 2008), and which addresses multiple separate permits, actions, and other discretionary approvals collectively described in the notice as the "Santa Barbara Ranch Project" (hereinafter sometimes referred to simply as the "project").

Applicant(s): Santa Barbara Ranch, LLC

Description: The project entails the development of 71 new residential dwellings, an equestrian center, agricultural support facilities, a worker duplex, public amenities (including access roads, parking and restroom, and coastal access trails), and creation of conservation easements for permanent protection of open space and agriculture. The project also includes: (i) text and map amendments to Comprehensive Plan, Coastal Land Use Plan, and Zoning Ordinance; (ii) subdivision approvals consisting of a vesting tentative tract map, lot mergers, lot line adjustments and conditional certificates of compliance; (iii) cancellation, modification and re-issuance of Williamson Act contracts; (iv) creation of new Agricultural Conservation and Open Space easements; (v) discretionary permit approvals encompassing development plans, conditional use permits and minor conditional use permits, land use permits and coastal development permits; and (vi) miscellaneous actions including approval of development agreements and removal of the Special Problems Area designation currently applicable to Naples.

Location: The project site encompasses the Santa Barbara Ranch and Dos Pueblos Ranch totaling approximately 3,249 acres and 85% of the lots comprising the Official Map of the Naples Townsite at Dos Pueblos Canyon Road, Santa Barbara County.

Deficiency Notice (Santa Barbara Ranch Project)
Page 2 of 3

Deficiencies noted below:

1. Local action is not complete as described under 14 CCR Section 13570. That section states that a local decision on an application for development shall not be deemed complete until the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is, or is not, in conformity with the certified LCP.

2. X Procedures for appeal of the decision to the Coastal Commission not included and/or inaccurate. The submitted Notice of Final Action constitutes a combined notice for multiple separate permits, actions, and approvals. In order to provide adequate notice regarding “the procedures for appeal,” pursuant to 14 CCR section 13571, such notice must accurately describe which of the actions and different components included in the notice of final local action are subject to those appeals procedures. However, several of the appealable actions and approvals included in the combined Final Action Notice for this project were incorrectly described as not appealable, including:
 - **Lot Mergers.** The Final Action Notice incorrectly states that “Lot mergers...are ministerial actions under the County’s development and subdivision regulations; therefore are not appealable.” However, lot mergers constitute “development” that require a coastal development permit and are not exempt from permit requirements pursuant to either the California Coastal Act or the County’s certified Local Coastal Program, regardless of whether the action is characterized as a ministerial or discretionary decision. In response to the County’s letter dated January 28, 2009, please note that the both the California Coastal Act and the certified Local Coastal Program for the County of Santa Barbara define “development” requiring a coastal development permit, in relevant part, as any “change in the density or intensity of use of land including, but not limited to, subdivision pursuant to the Subdivision Map Act...and any other division of land, including lot splits...” As we have previously informed the County, a merger constitutes a redivision of land resulting in a change in the density or intensity of use of that land and requires a coastal development permit. In this case, although some of the individual appealable coastal permits approved for new residences correctly include lot mergers as part of their proposed project descriptions, the Notice of Final Action also identifies several other approved lot mergers (which have been authorized as part of this project as non-appealable actions) without the required appealable coastal permits.

 - **Subdivision of land.** In addition, the combined Notice of Final Action also incorrectly indicates that the subdivision of a parcel which is partially bisected by the Coastal Zone Boundary (pursuant to Vesting Tentative Tract Map 08TRM-00000-00006) and the subdivision/redivision of land related to the after-the-fact approval of three parcels (pursuant to Conditional Certificates of Compliance 08COC-00000-00001 through 00003) are not actions requiring appealable coastal development permits. Pursuant to the California Coastal Act and the County’s certified Local Coastal Program, the subdivision of land constitutes “development” requiring a coastal development permit. In addition, the above referenced subdivisions of land constitute non-principle permitted uses and would, therefore, be appealable actions regardless of whether they are located within the Commission’s mapped Geographic Appeals jurisdiction. In response to the County’s letter dated January 28, 2009, please note that unpermitted or

Deficiency Notice (Santa Barbara Ranch Project)

Page 3 of 3

illegal development that occurred prior to the effective date of the Coastal Act is not considered as “vested development” for the purpose of coastal development permit requirements. Thus, a coastal development permit is required for the after-the-fact authorization of a subdivision if such subdivision occurred prior to the effective date of the Coastal Act in non-compliance or violation of the applicable laws at the time of lot creation/subdivision. Therefore, the above referenced actions require appealable coastal development permits.

3. ___ Final Local Action Notice was not received by the Coastal Commission consistent with 14 CCR Section 13571, which states that the local government shall notify the Commission, and any persons who specifically requested notice of such action, by first class mail.
4. ___ Written findings and conditions of Approval not included.
5. ___ Notice not given to those who requested it.

As a result of the deficiencies noted above:

Post-Certification LCP

XX The effective date of the local government action has been suspended, and the 10 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 CCR Sections 13570, 13572).

Post-Certification LUP

___ The effective date of the local government action has been suspended, and the 20 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 Cal. Admin. Code Sections 13330, 13332).

In our previous letter dated December 19, 2008, Commission staff requested the County identify the above referenced actions as appealable to the Commission by submitting a revised Notice of Final Local Action. The letter received from County staff dated January 28, 2009, indicates that the County staff disagrees that the above referenced actions are appealable. Thus, it is clear that there is a dispute regarding the appealability of the above referenced actions; therefore, we are scheduling a dispute resolution hearing on this matter for the Commission’s April 2009 meeting, pursuant to CCR Title 14, Section 13569. However, in lieu of that hearing, the County may issue a revised Notice of Final Local Action identifying the above referenced actions as appealable to the Commission.

Commission staff is available to meet with County staff to discuss this matter or any of the issues raised in this letter. Please feel free to contact Amber Tysor or Steve Hudson at the South Central Coast Area office with any questions regarding this matter.

cc: Dianne Black, Director, SB County
Tom Figg, Project Manager, SB County
John Ainsworth, Deputy Director, CCC
Alex Helperin, Staff Counsel, CCC

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



January 6, 2009

Noel Langle
Planning and Development
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101-2058

RE: Local Coastal Program Amendment STB-MAJ-1-08-A through F

Dear Mr. Langle,

On December 19, 2008, our office received the County's submittal to amend the Zoning Ordinance components of the certified Local Coastal Program (LCP) for (A) Road Naming and Time Extension Procedures, Montecito; (B) Revised Procedures for Road Naming, Time Extension, and Septic System Special Problems Areas, Santa Barbara County (except Montecito); (C) Revised Procedures for Overall Sign Plans and Special Home Care Permitting, Santa Barbara County (except Montecito); (D) Revised Procedures for Overall Sign Plans and Special Home Care Permitting, Montecito; (E) Transfer Development Rights, Santa Barbara County; and (F) Santa Barbara Ranch Project, Gaviota Coast, Santa Barbara County. Our review indicates that the amendment submittal is incomplete at this time. Presently, we have identified some information requirements that must be addressed in order to enable the Coastal Commission (hereinafter, "Commission" or "CCC") to process the proposed LCP amendment in accordance with the provisions of the Coastal Act and with Sections 13551 through 13555 of the Commission's regulations¹. If we have overlooked any of the following items, due to the extensive nature of the submittal, please cite the location accordingly. All comments are intended to address the Coastal Zone only.

1 STB-MAJ-1-08-A (Ordinance No. 4672); STB-MAJ-1-08-B (Ordinance No. 4673); STB-MAJ-1-08-C (Ordinance No. 4680); STB-MAJ-1-08-D (Ordinance No. 4681) (THE FOLLOWING SUBMITTAL REQUIREMENTS ARE NECESSARY FOR THE ABOVE-NOTED, FOUR LCP AMENDMENT COMPONENTS, EXCEPT WHERE SPECIFICALLY IDENTIFIED FOR A PARTICULAR COMPONENT. ADDITIONAL INFORMATION REGARDING THESE COMPONENTS MAY BE REQUIRED AS PROVIDED IN "FILING REQUIREMENTS FOR COMPONENTS A THROUGH F" IN SECTION 4 BELOW.)

1.1 *Amendment Materials and Conformity (Section 13552(b))*. Section 13552(b) of the Commission regulations requires LCP amendment submittals to include all policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data, related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The following information regarding the proposed amendment description and materials is

¹ The Commission's regulations are codified in the California Code of Regulations, Title 14, sections 13,000 *et seq.* All further references to sections in the 13000s are to those regulations.

essential for staff to complete its review of the proposed amendment for conformity with Coastal Act requirements:

- 1.1.1 For each of the four LCP Amendment components identified above (STB-MAJ-1-08-A through –D), please provide a strike-out and underline copy of the proposed LCP amendment Zoning Ordinance / Implementation Plan changes in relation to the currently pending (non-certified) Land Use Development Code (LUDC; LCP Amendment 4-07) language for clarity. Alternatively, please provide a revised amendment utilizing the existing LCP, as currently certified by the Commission, showing a strike-out and underline format of the proposed changes to the existing LCP.
 - 1.1.2 STB-MAJ-1-08-A (Ordinance 4672). Proposed Sec. 35.474.030(D)(2)(b). Please define and describe the standards and procedures for extending the time limit of CUPs under circumstances of “discontinuance of use,” including the length of time CUPs would be extended under these circumstances.
 - 1.1.3 STB-MAJ-1-08-B (Ordinance 4573). Without a “strike-out and underline” version, as requested in 1.1.1 above, showing proposed changes that would be implemented by STB-MAJ-1-08-B, it is particularly unclear what changes are proposed in LUDC Section 35.2, Zones and Allowable Uses, especially relating to Sections 1 through 6 of Ordinance No. 4673. Do the changes in Sections 1-6 of the Ordinance apply only to septic systems in Special Problems Areas?
 - 1.1.4 STB-MAJ-1-08-C (Ordinance 4680). Please clarify the proposed amendment description to clearly explain which portions of this amendment will and will not apply in the coastal zone. This is necessary in order to clarify which portions are reviewable by the CCC and which portions are not intended to be certified by the CCC. The Summary and Discussion submitted with this amendment states that Section 1.3 Temporary Sales Offices in New Subdivisions, will not apply in the coastal zone. Please clarify whether this statement refers to Section 35.42.260, number 13, on page 17 of Ordinance No. 4680, and if so, please further clarify why this section references coastal development permits. Is this the only portion of this proposed amendment that will not apply in the coastal zone?
Without a “strike-out and underline” version, as requested in 1.1.1 above, showing proposed changes that would be effected by STB-MAJ-1-08-C, it is particularly unclear what changes have been made to the tables, listed in Sections 19-24 and 26 of Ordinance No. 4680. Please summarize/clarify.
- 1.2 *Public Noticing and Public Participation (Section 13552(a), 13515)*. Section 13515 requires that local governments have procedures in place to provide the public and affected agencies with maximum opportunity to participate in the amendment process, with certain minimum standards required for providing such opportunities specified further through that Section 13515. Section 13552(a) requires LCP amendment submittals to include a summary of the measures taken to provide those opportunities. The following information regarding public noticing and public participation is necessary for staff to complete its review of the proposed amendment submittal:

- 1.2.1 The copy of the hearing notice(s) provided for STB-MAJ-1-08-A, -B, and -D LCP Amendment components does not indicate the date of publication or the newspaper or other media where such notice was published, as required by subdivision (d) of Section 13515. In the case of STB-MAJ-1-08-C, no evidence of notification was found in the submittal. Please provide evidence of publication of these notices for all hearings regarding the LCP amendment, indicating where/when the notice was published.
- 1.2.2 Please provide a list of interested parties (and contact information) for each of the four LCP Amendment components identified above (STB-MAJ-1-08-A through -D), including any members of the public, organizations, or agencies appearing at any hearing or contacted for comment on the LCP amendment, as required by Section 13552(a). Please provide electronic copies in addition to the hard copies so that we may provide further notice of Commission hearings to the interested parties. Additionally, please provide any applicable hearing slips.

2 STB-MAJ-1-08-E – Transfer Development Rights (Ordinances No. 4686 and 4687)

- 2.1 *Amendment Materials and Conformity (Section 13552(b))*. Section 13552(b) of the Commission regulations requires LCP amendment submittals to include all policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data, related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The following information regarding the proposed amendment description and materials is essential for staff to complete its review of the proposed amendment for conformity with Coastal Act requirements:
 - 2.1.1 Please clarify the proposed amendment description in regards to the final TDR program. Please provide a full description of the stages and timelines to complete a transaction (assuming the TDR Authority is legally in place) including but not limited to: when the sender-site property owner would sell the development rights; whether the sender-site property owner would continue to own the property (albeit with conservation easement placed on it) and be entitled to other types of development over the property (e.g., agricultural process plants, equestrian facilities, etc.) or whether the property would be bought outright by the TDR Authority; how and when the sender-site would be assessed a value; when the conservation easement would be imposed on the sender-site; how the TDR Authority would recruit sender-sites; the stage of the process wherein the County would determine the priorities for purchasing sender-sites; and the timeline for use of TDR purchase funds, amenity funds, etc.
 - 2.1.2 Exhibit E, Page 2. The submitted Summary and Discussion indicates that it might be possible to transfer TDRs to “other rural properties”; however, this ability does not appear to be provided for in the text of the ordinance. Please clarify whether the ordinance does provide for transfer of TDRs to rural properties, and if so, please explain where this provision may be found in the proposed ordinance(s).
 - 2.1.3 Exhibit E, Page 3. The discussion indicates that “on the basis of substantial evidence in the record, the Board of Supervisors has declared that a full

extinguishment of development potential at Naples through TDR is not feasible.” Please clarify which documents comprise the record of substantial evidence. Does this refer to the TDR Study and TDR Study update only, or were there other documents, experts, testimonies, etc. that were relied upon to make this determination? If so, please provide a list so that we may also review the complete record.

- 2.1.4 Please confirm whether the TDR Study update, dated August 30, 2007, is the final / most recent information provided regarding the creation of a TDR bank and valuation of the lots, and if it is not, what other information exists, and please provide it.
- 2.1.5 Please provide an analysis and all relevant background documents as to how it was estimated that 125 lots would be buildable under the Official Map grid-lot configuration. Please indicate how many of these 125 lots are located within the coastal zone.
- 2.1.6 Please clarify the rationale for limiting potential receiver-sites to the South Coast area. Also, please provide a black-and-white, reproducible 8.5 x 11” graphic of the potential South Coast receiver-site area.
- 2.1.7 Please overlay the Official Naples Town Site parcels onto a full-size aerial photograph, with Assessor Parcel Numbers noted.
- 2.1.8 Please provide all lot legality information for the underlying Official Map Lots including, but not limited to, history and evidence of lot creation, all applicable Certificates of Compliance, the associated record of the determinations regarding lot legality (associated with the Certificate of Compliance or other type of County determination), and the permit history (e.g., Coastal Development Permit) for all such determinations.
- 2.1.9 Section 35.64.010(C)(1)(a). Please define “preservation” as used in this Section.
- 2.1.10 Section 35.64.030. Development Rights. Please provide an analysis and comparison of development rights of Official Map Lots, comparing (a) current development rights under the existing LCP (Article II) as allowed under the existing agricultural zoning and any other applicable law to (b) the proposed development rights in the NTS zone. Also, please clarify why agricultural crop production is specifically excluded as a development right under the proposed definition.
- 2.1.11 Section 35.64.030. Transfer Development Rights (TDRs). Please clarify the definition of Transfer Development Rights in this section; there appear to be typographical errors within the definition. Also, please clarify the use of the term “initiation.” Please clarify whether use of this term precludes the TDR Authority from actively recruiting sender-sites.
- 2.1.12 Section 35.64.050(C)(1) incorrectly references 35.64.040(A). Same issue in Ordinance 4687. Please clarify.

- 2.1.13 Section 35.64.050(C)(3) incorrectly references 35.64.030(B). Same issue in Ordinance 4687. Please clarify.
- 2.1.14 Section 35.64.060 references the County's Housing Element. Please clarify if the Housing Element is intended to be incorporated by reference into the LCP. If so, please provide a copy of the County's Housing Element; if not, please remove the reference or clarify how it is not a part of the LCP.
- 2.1.15 Section 35.64.060(B)(2) incorrectly references 35.64.050(A). Same issue in Ordinance 4687. Please clarify.
- 2.1.16 Section 35.64.060(B)(4)(c) incorrectly references 35.64.050(B)(3)(b). Same issue in Ordinance 4687. Please clarify.
- 2.1.17 Section 35.54.090(J) appears to defer the establishment of a valuation methodology for sender-sites until such time as TDR Authority creates bylaws and rules. Given that the valuation of individual parcels is a critical element in determining the feasibility of the TDR Program (including both full and partial implementation of the TDR Program), please develop and provide a proposed methodology as part of your LCP amendment STB-MAJ-1-08-E.
- 2.1.18 Section 35.64.090(D). Please define agricultural crop production as used in this Section.
- 2.1.19 Section 35.64.090 (G)(4). Please clarify the types of investment contract obligations that may be included in item four of this section.
- 2.1.20 Section 35.64.090(I). Please clarify whether inter-jurisdictional agreements would require a coastal development permit and/or be appealable actions to the Coastal Commission.
- 2.2 *Public Noticing and Public Participation (Section 13552(a), 13515)*. Section 13515 requires that local governments have procedures in place to provide the public and affected agencies with maximum opportunity to participate in the amendment process, with certain minimum standards required for providing such opportunities specified further through that Section 13515. Section 13552(a) requires LCP amendment submittals to include a summary of the measures taken to provide those opportunities. The following information regarding public noticing and public participation is necessary for staff to complete its review of the proposed amendment submittal:
 - 2.2.1 The copy of the hearing notice(s) provided for this component did not indicate the date of publication or the newspaper or other media where such notice was published, as required by subdivision (d) of Section 13515. Please provide evidence of publication of these notices for all hearings regarding the LCP amendment, indicating where/when the notice was published.
 - 2.2.2 Please confirm that all correspondence received regarding LCP Amendment component STB-MAJ-1-08-E (TDRs) was provided for our records or provide any additional comments that were not provided previously. Presently we have on file

letters from Marc Chyttilo / Naples Coalition and the Environmental Defense Center. Were other comments received during the LCP amendment hearings?

3 STB-MAJ-1-08-F – Naples Town Site (Ordinances No. 4692 and 4693)

3.1 *Amendment Materials and Conformity (Section 13552(b))*. Section 13552(b) of the Commission regulations requires LCP amendment submittals to include all policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data, related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The following information regarding the proposed amendment description and materials is essential for staff to complete its review of the proposed amendment for conformity with Coastal Act requirements:

- 3.1.1 Ordinance 4692 Table 2-22. The following terms are not defined in the certified LCP: agricultural accessory structures; agricultural processing; public park or playground; residential accessory use or structure; agricultural product sales; flood control project < 20,000 s.f.; water treatment system, individual; water treatment system, individual, alternative; water system; water diversion; agricultural product transportation facility; wastewater treatment facility less than 200 connections. Please define how these terms are to be used as provided in the subject amendment. For instance, could agricultural crop production include structures? Under the proposed zoning, can private equestrian facilities be considered agricultural structures under any circumstances?
- 3.1.2 Ordinance 4692 Table 2-22. Please clarify why there are regulations listed for drive-through facilities, day / child care, mortuary, greenhouse, mining, etc. since they are not identified as permitted or conditional uses for this zone district.
- 3.1.3 Ordinance 4692 Table 2-24. Please update reference to “35.26.XXX.”
- 3.1.4 Ordinance 4692 references and modifies Section 35.26.040 of the LUDC (an uncertified, proposed section of the LCP, proposed in LCPA 4-07) regarding Special Purpose Zone Development Standards. Please explain the intent of these “special purpose” standards, and how the modified version of 35.26.040 modifies the existing, certified LCP (Article II). For instance, why is NTS a special purpose area rather than defined through a separate zone district reference.
- 3.1.5 Ordinance 4692. 35.26.060.B. We were unable to find any standards in the Ordinances regarding the sizing or configuration of “development envelopes.” Please describe how a development envelope would be determined for NTS parcels. Also, since there are no minimum lot sizes, are there any provisions in the ordinance that would prohibit further subdivision of a lot if both lots were able to utilize a delineated development envelope?
- 3.1.6 Ordinance 4692. 35.26.060.A. Please describe the design review process.
- 3.1.7 Ordinance 4692. 35.26.060.D. The list of factors to consider in siting structures does not include sensitive habitat or setbacks from existing agricultural operations to avoid spray drift. Are these considered under a different section?

- 3.1.8 Ordinance 4692. 35.26.060.G.4.b. Please clarify what is meant in this section with regard to: “adequate grassland buffer between structures and scrub and oak woodland habitats.”
- 3.1.9 Ordinance 4692. 35.26.060.G.4.h. We were unable to locate any specific standards for when and how open space easement areas would be delineated (or the specific objective/purpose of the open space easement areas). Section 35.26.060.G.4.h prohibits row-crop agriculture in some open space areas. This implies that there are open space easements that are not intended for the protection of ESHA that would allow agriculture. Please clarify the intent of the open space areas, and provide any background documentation or references that would explain the purpose, intent, and guidelines for the open space areas to be designated within NTS zones.
- 3.1.10 Ordinance 4692. 35.26.060.G.5. Please clarify what is meant by “specificity... of the Open Space and Habitat Management Plan ... appropriate to the environmental setting of the property.” Also, what is meant by “the final content shall be determined in connection with the environmental review process for the project.”
- 3.1.11 Ordinance 4692. 35.26.060.G.8. This section implies that there are forms of development that are allowed in open space (if approved in the Development Plan). Please clarify the types of development that would be allowed in the designated open space and cite references in the ordinance.
- 3.1.12 Ordinance 4692. 35.26.060.H.6. Please clarify whether all three of these items are required in order to alter existing vegetative screens or if only one of the criteria would allow for such alteration.
- 3.1.13 Ordinance 4692. 35.26.060.H.8.a.2. Please clarify whether the fences are to be *visually* permeable, *wildlife* permeable, or both.
- 3.1.14 Ordinance 4692. 35.26.060.H.8.c.1. Please clarify whether installation of fencing outside of the development envelope would be exempt, pursuant to Table 3-1. (Note 2 of Table 1 only indicates additional height cannot be requested.)
- 3.1.15 Ordinance 4692. 35.26.060.H.10.a. Please clarify what is meant by a protective device “that would alter the natural landforms of bluffs or cliffs.” Please clarify the types of protective devices that would be allowed under the ordinance.
- 3.1.16 Ordinance 4692. 35.30.070.C.5. Please provide a comparison of development standards regarding fences, comparing (a) current standards under the existing LCP (Article II) as allowed under the existing agricultural zoning to (b) the proposed development standards for fences in the NTS zone.
- 3.1.17 Ordinance 4692. 35.42.050.C.4. This section addresses agricultural sales; However, it is unclear whether any associated *structures* for agricultural sales would be exempt. Please clarify whether structures for agricultural sales would be exempt and whether there are any other development standards for such structures in the NTS zone.

- 3.1.18 Ordinance 4692. 35.42.060.F.3. Under the NTS, the landowner may have up to 5 horses and this is listed as “no permit required.” Please clarify how structures associated with horse or other animal-keeping uses would be processed. Please provide applicable references back to the proposed amendment and/or LUDC.
- 3.1.19 Ordinance 4692. 35.42.260, Table 4-15. Please define the terms: “public property;” “public assembly events in facilities; event consistent;” and “trailer (storage as accessory to dwelling)” as used in this table. Please clarify whether there is any limit on the maximum number of storage trailers that may be considered exempt.
- 3.1.20 Ordinance 4692. 35.104.090.D.1. Please clarify whether there are any circumstances in which parcels contiguous to the Official Map would be allowed to request a rezone.
- 3.1.21 Ordinance 4692. 35.104.090.D.3.a. This section requires a TDR feasibility study. How will it be determined whether such study is adequate?
- 3.1.22 Ordinance 4693. Please provide a large-size map of Exhibit A and a more legible 8.5 x 11” size graphic. Please note APN numbers.
- 3.1.23 Ordinance 4693. Please quantify the acreage of lots (individually and cumulatively) to be zoned to NTS in the Coastal Zone.
- 3.1.24 Ordinance 4693. Please list the APN for each lot proposed for rezoning, its associated acreage, and the existing zone designation.
- 3.1.25 Resolution 08-363. Please confirm that the Assessor Parcel Numbers (APNs) listed in Section B.2 of the Resolution correspond to existing grid lots. Please quantify the total acreage of these lots in the coastal zone.
- 3.1.26 Resolution 08-363, Policy 2-28. Please clarify what it is meant by “best-suited” for existing agriculture.
- 3.1.27 Resolution 08-363. Please provide a large-size map of Exhibit A and a more legible 8.5 x 11” size graphic. Please note APN numbers on map and graphic.
- 3.1.28 Resolution 08-363. Please quantify the acreage of lots to be designated NTS (land use designation) in the Coastal Zone.
- 3.1.29 Resolution 08-363. Please list the APN for each lot to be re-designated, its total acreage, and the existing land use designation.
- 3.1.30 Biological Studies. Please provide all underlying biological surveys (including general vegetation mapping as well as resource specific surveys for monarch butterfly habitat, raptor habitat, wetland delineations, and grasslands) for the proposed Naples Official Map areas and a graphic showing the official survey areas for each biological survey superimposed onto an aerial photograph or map. As mentioned in our previous comment letters on the DEIR and RDEIR, for the purposes of reviewing the LCP amendment, the Commission requires recent (completed within 1-2 years of application submittal) biological surveys, including

datasheets and routes for each site visit. If the underlying biological surveys are not up-to-date and comprehensive, then focused, protocol-level surveys will be necessary for the purposes of the Commission's review in order to evaluate the proposed amendment's conformity with the provisions of the Coastal Act.

3.1.31 *Wetlands*. Please provide all underlying wetland delineations and studies for the proposed Naples Official Map areas and a graphic showing the official survey area for each wetland survey superimposed onto an aerial photograph or map. With regard to wetlands, the Draft, Revised Draft, and Final EIR have not been clear as to whether all wetlands that meet the Commission's criteria have been mapped or that surveys were conducted in order to identify and delineate all wetlands in the subject area in the Coastal Zone. Within the Coastal Zone, wetlands are delineated based on areas that meet any one of the three wetland indicators (soils, hydrology, vegetation). For the purposes of reviewing the LCP amendment, the Commission requires recent (completed within 1-2 years of application submittal) wetland surveys, including datasheets and routes for each site visit. If the underlying wetland surveys are not up-to-date and comprehensive, then focused, protocol-level surveys will be necessary for the purposes of the Commission's review in order to evaluate the proposed amendment's conformity with the provisions of the Coastal Act.

3.1.32 *Grasslands*. Please provide all underlying grassland surveys for the proposed Naples Official Map areas and a graphic showing the official survey area for each grassland survey superimposed onto an aerial photograph or map. As mentioned in our previous comment letters on the DEIR and RDEIR, for the purposes of reviewing the LCP amendment, the Commission requires recent (completed within 1-2 years of application submittal) biological information, including datasheets and routes for each site visit. Additionally, as mentioned in the DEIR and RDEIR comment letters, for the purposes of Commission review, native grassland patches of any size should be mapped. The County's threshold standard of ¼-acre has not been certified by the Commission. Therefore, please include a map of all native grassland patches identified during the surveys (not the grassland map provided in the FEIR). If the underlying biological surveys are not up-to-date and comprehensive, then focused, protocol-level surveys will be necessary for the purposes of the Commission's review in order to evaluate the proposed amendment's conformity with the provisions of the Coastal Act.

3.1.33 Please provide full-size copies and reduced 8.5 x 11-inch copies of the existing and proposed zoning and overlay maps (including all applicable overlays such as ESH, flood hazard, and view corridor overlays) applicable to the project area within the coastal zone.

3.1.34 Please provide one copy of the FEIR & TDR Studies.

3.2 *Public Noticing and Public Participation (Section 13552(a), 13515)*. Section 13515 requires that local governments have procedures in place to provide the public and affected agencies with maximum opportunity to participate in the amendment process, with certain minimum standards required for providing such opportunities specified further through that Section 13515. Section 13552(a) requires LCP amendment submittals to include a summary of the measures taken to provide

those opportunities. The following information regarding public noticing and public participation is necessary for staff to complete its review of the proposed amendment submittal:

- 3.2.1 The copy of the hearing notice(s) provided for this component did not indicate the date of publication or the newspaper or other media where such notice was published, as required by subdivision (d) of Section 13515. Please provide evidence of publication of these notices for all hearings regarding the LCP amendment, indicating where/when the notice was published.
- 3.2.2 Please provide a list of public hearings where the LCP Amendment was heard, not including any hearings that only covered the project-related information.
- 3.2.3 Please confirm whether the interested parties list includes all people who spoke at the hearing (and provided speaker slips with their contact information). If not, please update the interested parties list with that information.

4 Filing Requirements for Parts A through F

- 4.1 Amendment Materials and Conformity (Section 13552(b)). Section 13552(b) of the Commission regulations requires LCP amendment submittals to include all policies, plans, standards, objectives, diagrams, drawings, maps, photographs, and supplementary data, related to the amendment in sufficient detail to allow review for conformity with the requirements of the Coastal Act. The following information regarding the proposed amendment description and materials is essential for staff to complete its review of the proposed amendment for conformity with Coastal Act requirements:

- 4.1.1 *LCP Amendment Processing.* The subject amendments do not propose modifications to the certified Article II component of the LCP; instead, the subject amendments propose modifications to the language/format of the Land Use and Development Code (LUDC), which is *not* currently certified as part of the County's LCP. Given that the LUDC is a pending (non-certified) LCP amendment (STB-MAJ-4-07) that has not yet been certified by the CCC, **this amendment will not be deemed submitted until LCP Amendment 4-07 is certified by the Coastal Commission.** Alternately, the County may provide a revised amendment utilizing, as its baseline, the existing language/format of the LCP, as currently certified by the Commission.

After the Commission has approved the pending LCP amendment (STB-MAJ-4-07), the County will need to provide revised strikeout and underline versions of the subject amendment if changes to the baseline LUDC are made by the Coastal Commission through the certification process of LCP Amendment 4-07. Commission staff may request more information regarding this proposed LCP amendment after the pending amendment to the Coastal Zoning Ordinance has been approved by the CCC, given that it is not feasible to review the proposed amendments in context of the existing LCP since the amendments are in LUDC form.

- 4.1.2 Please confirm that all portions of the LCP amendments, as submitted, will apply in the coastal zone. Alternately, clarify which portions are not intended to be certified by the CCC.
- 4.2 *Internal Consistency Analysis (Section 13552(c)).* Please submit a consistency analysis of the proposed amendment and its relationship to, and effect on, the other sections of the certified LCP consistent with Section 13552(c) of the Commission's regulations.
- 4.3 *Coastal Act Policy Analysis (Section 13552(d), 13511(a)).* Pursuant to Section 13552(d)/13511(a), please provide an analysis that demonstrates conformity of the proposed modifications with the provisions of the Coastal Act, including Chapter 3 policies, along with a determination of potential significant adverse cumulative impacts on coastal resources (e.g., visual impacts, ESHA impacts etc.) including public access (Sections 13552, 13511). The general consistency analyses that were included within the LCP Amendment components were primarily focused on the overall project approved as CUPs, Development Plans, Coastal Development Permits. For the purposes of this LCP Amendment, please provide a consistency analysis specific to the modifications proposed pursuant to the Ordinance(s) and Policy changes. Chapter 3 policy topics are provided below to provide a framework in preparing the conformity analysis.
- Article 2: Public Access (Coastal Act Sections 30210-30214).
 - Article 3: Recreation (Coastal Act Sections 30220-30224).
 - Article 4: Marine Environment (Coastal Act Sections 30230-30237).
 - Article 5: Land Resources (Coastal Act Sections 30240-30244).
 - Article 6: Development (Coastal Act Sections 30250-30255).
 - Article 7: Industrial Development (Coastal Act Sections 30260-30265).
- 4.4 *Additional Copies.* Further, please note that prior to completion of our staff recommendation, 35 copies of all proposed language showing existing and proposed changes along with any referenced sections of the ordinance will be necessary for distribution to the Commission for review. This is not a filing requirement for the amendment to be deemed "submitted" pursuant to the Section 13553 Filing Review.
- 4.5 *Public Noticing.* Please be advised that the County will be required to publish a meeting notification in the Santa Barbara News Press and/or other major newspaper in affected parts of the County to announce applicable Commission hearing, in lieu of individual noticing requirements.
- 4.6 *Development Agreement.* Government Code section 65867.5(a) says that Development Agreements are legislative acts that "shall be approved by ordinance." The Development Agreement associated with this amendment is an ordinance that affects development at least partially in the Coastal Zone. Please clarify why the Development Agreement would not be reviewable as part of this LCP amendment, why it should not be treated as part of the LCP.

January 5, 2009

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We are requesting the above information in order to process this amendment to the certified LCP. Upon receipt of the necessary supporting information, the amendment will be scheduled for a Commission hearing pursuant to Section 13553 of the Regulations. Should you have any questions regarding the filing or review of the proposed amendment, please do not hesitate to contact me.

Sincerely,

Shana Gray
Supervisor, Planning and Regulation



LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

February 16, 2009

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

By email to sbcob@co.santa-barbara.ca.us

RE: February 5, 2009, Termination of MOU and Coastal Project by Santa Barbara Ranch Project Applicant

Dear Chair Centeno and Members of the Board,

This letter is submitted by the Environmental Defense Center (EDC) on behalf of EDC and the Santa Barbara Chapter of the Surfrider Foundation, and by the Law Office of Marc Chytilo on behalf of the Naples Coalition. On February 5, 2009, the Santa Barbara Ranch Project (Project) applicant (hereinafter referred to as the Santa Barbara Ranch Related Interest or "SBRI"): (1) formally terminated a Memorandum of Understanding (MOU) between SBRI and the County of Santa Barbara; and (2) withdrew its applications for that portion of the Project described as the "Coastal Property" or "Coastal Project."

This action has serious implications for the remainder of SBRI's proposed development (referred to as the "Inland Property" or "Inland Project" and including development on Dos Pueblos Ranch south of Highway 101). By operation of law, the Board of Supervisors must reconsider its October 21, 2008, decision to approve the entire Project and then deny approval of the Inland Project and development on Dos Pueblos Ranch.

We hereby urge the Santa Barbara County Board of Supervisors to take up these matters in a public hearing on March 3, 2009.

February 5, 2009, Letter re: Termination of Santa Barbara Ranch MOU

The letter that SBRI transmitted to the County on February 5, 2009, states:

SBRI is formally notifying the County pursuant to MOU Section 10.2.1 that they reject the Approvals of the Coastal Project and, as a result, elect to terminate the MOU.

Environmental Defense Center
906 Garden Street, Santa Barbara, CA 93101
Phone (805) 963-1622 FAX (805) 962-3152
www.edcnet.org

LAW OFFICE OF MARC CHYTILO
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email: airlaw5@cox.net

This notification applies only to the Coastal Project Approvals, which the MOU defines as “all things necessary to allow consideration” of up to “39 single-family dwellings and accessory uses and structures ... on the Coastal Property,” which consists only of that portion of Santa Barbara Ranch located in the coastal zone [sic] All references to the terms Coastal Project and Coastal Project Approvals refer only to those terms as defined in the MOU and do not refer to any other property or approval in the coastal zone. This rejection, therefore, extends only to the approvals for the residential development on the portion of Santa Barbara Ranch located in the coastal zone, which consists of the 16 residences and related approvals on Santa Barbara Ranch located south of Highway 101. Under MOU Section 10.2.1, as a result of this notification, the applications for the approval of the Coastal Project are withdraw [sic] and shall not be submitted to the Coastal Commission for consideration.

This notification does not apply to the Inland Project, which the MOU defines to include the County’s approval of the ten single family residences and related improvements on the portion of Santa Barbara Ranch that is located outside the coastal zone, including all coastal development permits for infrastructure to serve the Inland Project and the highway off ramps. It does not apply to the subdivision and other approvals for development on land located immediately north of Santa Barbara Ranch on Dos Pueblos Ranch. It does not include the approvals for development on Dos Pueblos Ranch south of Highway 101. All of these approvals remain in full force and effect. The County remains obligated to continue processing these entitlements under the terms of the Development Agreement for the Inland Project, which the Board of Supervisors approved on October 21, 2008.

This letter renders the County’s Findings and Conditions of Approval obsolete and constitutes a breach of the Development Agreements for the Coastal and Inland portions of the Santa Barbara Ranch Project.

I. The MOU Termination Letter Inaccurately Defines the Coastal Project

The above letter purports to divide the Coastal and Inland Projects/Properties in a manner that runs counter to the plain language of the MOU and various Project approvals. As the February 5 letter states: “All references to the terms Coastal Project and Coastal Project approvals refer only to those terms as defined in the MOU.”

MOU Section 5.2 defines the “Coastal Project” as “consisting of 39 single-family dwellings and accessory uses and structures on 39 Lots on the Coastal Property, 23 of those Lots located north of U.S. 101 and 16 located south of U.S. 101.” This definition is confirmed in the

Project's Conditions of Approval. They state on page 14: "For purposes of the MOU and the Conditions of Approval, the terms "Inland Property," "DRP Property" and "Coastal Property" shall mean and include those portions of the Project shown in Exhibit 16." Exhibit 16 is found on page 44 of Attachment C-3, and it defines the Coastal Property as extending north of Highway 101 to the boundary of the coastal zone.

MOU Section 10.2 provides a mechanism for SBRI to withdraw its applications for the Coastal Project as defined in the MOU and elsewhere. Therefore, SBRI, through its February 5, 2009, letter, has actually withdrawn its applications for the entire Coastal Project on both sides of Highway 101. The MOU does not provide a mechanism for SBRI to withdraw only a portion of its Coastal Project applications.

Accordingly, SBRI has now withdrawn its applications for that portion of the Project described in Exhibit 11.2 of the Conditions of Approval (page 18). Exhibit 11.2 describes an area subject to Coastal Development Permits (CDPs) for infrastructure necessary to serve the Inland Project. By withdrawing this application, SBRI has compromised the Inland Project and rendered it unable to proceed.

II. The MOU Terminal Letter Renders the County's Findings and Conditions of Approval Obsolete.

Please see attached memos which detail how the MOU termination letter renders the County's Findings and Conditions of Approval obsolete and invalid.

Conditions of Approval

The Project's Conditions of Approval inextricably link the Coastal and Inland Projects. For example, Final Development Plan (FDP) Case No. 03DVP-00000-00025 refers to CalTrans improvements that are necessary to serve the Inland Project. The Conditions of Approval state that final approval of the CalTrans FDP is contingent on development of the Coastal Project. Without the Coastal Project, the CalTrans FDP cannot be approved, and the Inland Project may not proceed. Other conditions for development of the Inland Project require infrastructure and lot mergers that are part of the Coastal Project.

CEQA Findings

The California Environmental Quality Act (CEQA) required the County to make certain findings that are supported by substantial evidence before it could approve the Project. SBRI's termination of the MOU and Coastal Project renders many of the County's CEQA findings inaccurate and/or inadequate.

For example, once the County certified a Final Environmental Impact Report (EIR) that identifies multiple Class I, significant and unavoidable impacts, the County was required to issue a Statement of Overriding Considerations before Project approval. The Statement of Overriding Considerations is necessary to explain how the Project's impacts will be outweighed by the public benefits of the Project. The Statement must be accompanied by findings that are based on substantial evidence. The Statement of Overriding Considerations for the Santa Barbara Ranch Project described four purported public benefits, including a comprehensive resolution of messy land use planning at the Naples Townsite and a reduction in development potential on the Coastal Property. Three of the four purported benefits have been nullified by SBRI's February 5 letter. The County should accordingly revisit its Statement of Overriding Considerations and determine if the remaining "benefit" balances the Project's impacts.

Policies and Findings

The attached memo on "Findings Regarding Policy Consistency" explains how termination of the MOU and the Coastal Project results in the invalidation of many other findings required for Project approval. The findings discussed therein relate to approval of General Plan and Coastal Land Use Plan amendments, Zoning Ordinance amendment, Development Agreement, Subdivision Map Act, CDPs and Land Use Permits.

For example, the finding that addresses County Land Use Development Code Section 35.82.080.E.1.g can no longer be made. This finding describes a Coastal Project that reduces density from the "Grid" development scenario. SBRI's February 5, 2009, letter indicates that the Coastal Property will now be developed according to the Grid. Thus, the finding is no longer accurate or valid.

Williamson Act Findings

The findings made in support of a Williamson Act contract cancellation are similarly no longer accurate or valid. For example, the Williamson Act and the County's Uniform Rules allow for cancellation of the contract that is currently in effect on portions of the Project site *only* if the Board makes a finding that "other public concerns substantially outweigh the objectives of" the Williamson Act. (Government Code § 51282(c); Rule 6-1.2.A.1.) In approving the Project, the Board made a finding that the Project would resolve a long-standing dispute over the appropriate development of 85% of the lots encompassed by the Official Map of Naples. According to the February 5 letter, a substantial portion of that 85% has been excised from the comprehensive planning process. This invalidates Project Finding D.1.b.1.

Breach of Development Agreements

Termination of the MOU constitutes a breach of the Coastal and Inland Development Agreements. Accordingly, SBRI has no right to proceed with development of the Inland Project.

Conclusion

Because of those deficiencies noted above and in the attached memorandums, the County has a duty to reconsider the approval of SBRI's Inland Project and any other Project approvals that remain in place after the February 5, 2009, letter terminating the MOU and the Coastal Project.

We look forward to a public hearing on this matter. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

Nathan G. Alley
Staff Attorney
Environmental Defense Center

Marc Chytilo
Law Office of Marc Chytilo

Atts: Memos re Conditions of Approval, CEQA Findings, Policy Consistency,
Williamson Act, and Breach of Development Agreements

Cc: California Coastal Commission
Naples Coalition
Surfrider Foundation

CEQA FINDINGS¹

I.A. Overview - Project Description

1. Overall Scope: the findings address all project components, including the development of 71 new residential dwellings, equestrian center, agricultural support facilities, a worker duplex, public amenities (including access road, parking and restroom, and coastal access trails), and creation of conservation easements for permanent protection of open space and agriculture. The project site is described as including both the Santa Barbara Ranch and the Dos Pueblos Ranch, together totaling 3,254 acres and 85% of the lots comprising the Official Map of the Town Of Naples (Naples Townsite).

III. CEQA Findings

B. Findings Related to Significant and Unavoidable (Class I Impacts)

1. Cumulative Loss of Coastal and Foothill Habitats (Impact Bio-22)

The findings state that “Several design and mitigation measures have been incorporated into Alternative 1B that serve to reduce its impacts to habitat fragmentation and wildlife movement on-site.” These include “measures within the Open Space and Habitat Management Plan designed to improve the extent and quality of the grassland community in open space areas.” [CEQA Findings, p. 10] Although the impacts will remain with the termination of the MOU, 68 acres of the Open Space Conservation Easement (OSCE) will no longer be available for mitigation. In addition, one of the mitigation measures to reduce Impact Bio-22 was the requirement that driveways be combined south of the railroad tracks to minimize grassland fragmentation. Now that the MOU has been terminated and individual lots will be sold for development, this mitigation measure is no longer relevant.

2. Change in Visual Character (Impact Vis-0)

The findings state that “The project design minimizes the effect to the extent feasible by directing new development towards inland portions of the site, which are less visible from the highway.” [CEQA Findings, p. 11] This Finding is no longer valid because the MOU termination letter expresses the Applicant’s intent to sell individual lots for development within the view corridor.

C. Findings Related to Potentially Significant but Mitigable (Class II) Impacts

¹ This memo pertains to the MMRP as well as to the CEQA Findings.

3. *Biological Resources*

- f. Mitigation Measure Bio-4 relies on the requirement that the CDP for the public coastal access trail shall require the Applicant to post signs informing visitors that no pets are allowed on the trail or the beach. [CEQA Findings, p. 17] This Finding is no longer valid because the Applicant has terminated the MOU and there will be no public access trail. If there is no CDP for the public access trail, there will be no prohibitions on pets on the trail or at the beach.

6. *Visual Resources*

Although not expressly stated in the Findings, the fact that the development south of Highway 101 is limited to 16 units likely contributed to the finding that view impacts are less than significant. [CEQA Findings, p. 22] This finding cannot be supported now that the Applicant intends to sell grid lots for development.

7. *Recreation*

- a. Mitigation Measure Rec-1 incorporates a new segment of the Coastal (De Anza) Trail across the property, as well as a vertical access trail. [CEQA Findings, p. 24] With the termination of the MOU, and the elimination of the public access provisions of the Project, this Finding cannot be made.

8. *Cultural Resources*

Similar to Visual Resources, the proposal to sell grid lots south of Highway 101 may increase potential impacts to cultural resources. [CEQA Findings, p. 25]

D. Findings Related to Less Than Significant (Class III) Impacts

The fact that the Applicant has now stated an intention to sell the grid lots south of Highway 101 for development renders these Findings questionable. Such development could result in additional significant impacts relating to biological resources, water quality, agricultural resources, land use, traffic, air quality, visual resources, geology (erosion) cultural resources, and hazards.

15. *Cumulative Effects*

a. Cumulative Effects that are Less than Significant (Class III)

Impact Land-3: This Finding states that the project “reduces the development potential within much of the Naples Town Site.” [CEQA Findings, p. 40] The termination of the MOU and potential sale of grid lots south of Highway 101 obviates this finding.

E. Findings Related to Beneficial (Class IV) Effects

Bio-21: The Findings state that the project will result in a beneficial impact due to the Open Space Conservation Easement areas. [CEQA Findings, p. 43] However, some of these areas (e.g. along the bluff) will no longer be part of the Project. The MOU termination letter also states that the County will no longer receive the benefit of native grassland enhancement.

Rec-2: The Findings state that this measure will improve public access to the Gaviota Coast by providing for a public parking area, restrooms, trails and vertical beach access. [CEQA Findings, p. 43] However, the withdrawal of the Coastal Project eliminates these measures; in fact, the MOU termination letter itself points out that “Our clients will not be providing any of the benefits the County was to receive under the Development Agreement for the Coastal Project, including, coastal trail and public access dedications and improvements...”

H. Project Alternatives

1. *Project Objectives*

The MOU termination letter results in a failure to meet all eight of the stated Project Objectives, as follows:

- a. “Provide for a project that would result in few environmental impacts than would otherwise result from development of all of the existing Naples Townsite lots”: with the termination of the MOU, the Applicant has restored the possibility of development of more of the Naples Townsite lots; in fact, the Applicant has expressed the intent to sell the individual lots for development. [CEQA Findings, p. 45]
- b. “Achieve a long-term solution to the potential development of the existing Naples Townsite lots that would result [sic] pending litigation and future dispute over the potential development of the property between the landowners and

the County”: the termination of the MOU re-opens the dispute and dissolves the long-term solution to the Naples Townsite development issue. [CEQA Findings, p. 45]

- c. “Achieve a comprehensive development concept for Naples that would afford the County the opportunity to control land-use planning for the entire Naples Townsite that would not leave the County to address development at Naples on an ad hoc, fragmented basis”: the termination of the MOU destroys the comprehensive development concept for Naples and restores the ad hoc, fragmented approach to development at the site. [CEQA Findings, p. 45]
- d. “Maintain long-term continued agricultural use within the Project site and on adjacent properties that is compatible with a low-density residential development on the Naples Townsite”: terminating the MOU and restoring the grid lot development approach threatens continued agricultural use within the Project site and contemplates higher density residential development. [CEQA Findings, p. 45]
- e. “Allow residential development with [sic] the Naples Townsite that balances agricultural, open space, recreational, and residential uses consistent with the California Coastal Act, the CLUP, Comprehensive Plan and the MOU (the 2002 Memorandum of Understanding between the County and landowners representing approximately 80 percent of the Naples Townsite lots setting forth a protocol and structure for the submittal of Project applications as part of a potential global resolution of pending and threatened litigation.)” The termination of the MOU obviously conflicts with this Project Objective, by not only dissolving the MOU itself, but also by creating conflicts with the Coastal Act, CLUP and Comprehensive Plan. [CEQA Findings, p. 45]
- f. “Incorporate a site layout, design and architectural style that reflects the scenic and rural character of the Naples Townsite and Gaviota areas, minimize environmental impacts, and preserve and/or restore wildlife habitats and other coastal resources.” The termination of the MOU and contemplation of the sale and development of the grid lots threatens the scenic and rural character of the Naples Townsite and Gaviota areas, and increases impacts to the environment, including impacts to wildlife habitats and other coastal resources. [CEQA Findings, p. 46]

- g. “Seek a suitable balance between preservation of rural, coastal resource values; the ownership and use of legal lots within the property area, and density allowing for agricultural and open space.” The termination of the MOU disrupts this balance in favor of development of individual grid lots, and diminishes the preservation of rural, coastal resource values and open space. [CEQA Findings, p. 46]
- h. “Achieve within the Coastal Land Use Plan (CLUP) a reduction in development density through a design that project landowners are willing to develop in lieu of the possible density of existing lots.” The termination of the MOU reverses the plan to reduce development density and restores the possibility of developing existing lots at the Naples Townsite. [CEQA Findings, p. 46]

Clearly, the termination of the MOU results in a Project that fails to meet *any* of the Project objectives, warranting denial of the Project.

2. *Findings that Certain Project Alternatives Are Not Feasible*

The Finding that other alternatives should be rejected because they too fail to meet certain Project objectives thus becomes invalid.

- a. Alternative 2 – Offsite Dos Pueblos Ranch Alternative
 - (i) Fails to Meet Project Objectives: the Findings state that this Alternative is not consistent with Agricultural Preservation Policies and fails to achieve a reduced density that landowners will develop in lieu of grid development. [CEQA Findings, pp. 46-47] Now that the Applicant has terminated the MOU, this Alternative is no worse than, and in fact is better than, the proposed Project because it will preserve more agricultural land and will achieve a reduced density in lieu of grid development. The proposed Project will now result in increased density and grid development.
- b. Alternatives 3 (3A and 3B) – No Project Alternatives
 - (i) Alternative 3A – No Project Alternative with Grid Development: the Findings state that this Alternative fails to meet any Project objectives and does not reduce any of the environmental impacts of

the Project. [CEQA Findings, p. 48] Now that the MOU has been terminated, the proposed Project also fails to meet any of the Project objectives, and does not reduce the environmental impacts of the Project. In fact, the Project may now increase impacts by allowing both grid development south of 101 and inland subdivisions.

- (ii) Alternative 3B – No Project Alternative – Retention of Existing Condition: the Findings state that this Alternative fails to meet most of the Project objectives because it would not resolve the pending litigation and future disputes over potential development of the property. [CEQA Findings, p. 49] Now that the MOU has been terminated, the disputes over development potential south of Highway 101 are restored and the pending litigation may continue. In addition, the termination of the MOU results in a Project that is also inconsistent with the stated Project objectives.

c. Alternative 4 – Reduced Development Alternative

The Findings state that this Alternative fails to meet Project objectives because it would not reduce impacts, achieve a reduced density in lieu of grid development, or achieve a long-term solution at Naples. [CEQA Findings, pp. 49-50] Similarly, with the termination of the MOU, the proposed Project will not reduce impacts, achieve a reduced density in lieu of grid development, or achieve a long-term solution. In fact, now that the MOU has been terminated, the proposed Project (with 55 known units plus potential grid development on SBR south of Highway 101) will likely result in more development, and greater impact, than Alternative 4.

d. Alternative 5 – Clustered Development Alternative

The Findings state that this Alternative fails to meet Project objectives because it is inconsistent with the rural and agricultural nature of the Gaviota Coast, fails to achieve a reduced density, fails to reduce environmental impacts from development of all of the existing Naples town site lots, and fails to achieve a long-term solution. [CEQA Findings, pp. 51-52] With the termination of the MOU, the proposed Project similar fails to meet these Project

objectives. In fact, now that the MOU has been terminated, the proposed Project will likely result in more development, and greater impact, than Alternative 5.

3. Findings that Alternative 1B is Found to be Environmentally Superior and Feasible and is Recommended for Adoption

The Findings state that Alternative 1B meets all of the Project objectives. [CEQA Findings, p. 53] However, now that the MOU has been terminated, the approved Project does not meet *any* of the Project objectives, and may increase impacts as explained above.

IV. Statement of Overriding Considerations

- A. **Project Benefits:** the Findings include a determination that the unavoidable impacts of the Project are acceptable in light of its benefits. [CEQA Findings, p. 54] However, as noted herein, three of the four benefits don't exist anymore, now that the MOU has been terminated.
1. **Issue Resolution:** The Findings state that Alternative 1B (the Project) would resolve a long-standing dispute over the appropriate development of 85% of the lots encompassed by the Official Map of Naples. [CEQA Findings, p. 54] With the termination of the MOU, the dispute is no longer resolved, and the Applicant is asserting the right to sell and develop the grid lots.
 3. **Resource Protection:** The Findings rely on the net reduction of 195 Official Map lots within the California Coastal Zone. [CEQA Findings, p. 55] However, with the termination of the MOU, this reduction will no longer occur.
 4. **Comprehensive Planning:** This Finding is based on the fact that the Project would “provide a means for resolving an inherent conflict between legal residential lot densities and underlying land use designations at Naples,” “enable the County to control land use planning for Naples as opposed to a situation where individual lot owners could seek development permits for single family homes under the current “Grid” configuration of the Official Map,” “allow for continued agricultural operations, restoration of sensitive habitats, and improved recreational and coastal access opportunities for County residents,” and “provide for a project that would result in fewer environmental impacts than would otherwise result from development of all of the existing Naples Townsite lots.” [CEQA Findings, p. 55] Now that the MOU has been terminated, none of these benefits will accrue to the County.

FINDINGS REGARDING POLICY CONSISTENCY

The following memo explains how the applicant's termination of the MOU and rejection of the County's coastal approvals results in the invalidation of many of the Findings made in support of Project approval. These Findings relate to approval of the General Plan and CLUP Amendments, Zoning Ordinance Amendment, Development Agreement, Land Divisions (Subdivision Map Act), Coastal Development Permits, and Land Use Permits.

III. Project Findings

A. General Plan Amendment (Comprehensive Plan and CLUP)

1. Requirement (Government Code §65358). Comprehensive Plan Amendments must be in the public interest. **Finding:** The Project includes amendments to the Comprehensive Plan and component CLUP to create a new Naples Townsite land use and zoning designation, with concurrent revisions to the land use maps specific to the Project site. These amendments are in the public interest insofar as they: (i) are consistent with and affirmatively further the objectives of CLUP Policy 2-13 for the reasons described in the Policy Consistency Analysis attached hereto, and by this reference, incorporated herein; (ii) provide a means for resolving an inherent conflict between legal residential lot densities and underlying land use designations at Naples; (iii) are uniquely applicable to the Naples Townsite and are not transportable to areas further removed from this geographic area of the Gaviota Coast; (iv) facilitate resolution of long standing disputes over the potential development of over 80 percent of the Naples Townsite lots; (v) enable the County to control land use planning for Naples as opposed to a situation where individual lot owners could seek development permits for single family homes under the current "Grid" configuration of the Official Map; (v) allow for continued agricultural operations, restoration of sensitive habitats, and improved recreational and coastal access opportunities for County residents; (vi) provide for a project that would result in fewer environmental impacts than would otherwise result from development of all of the existing Naples Townsite lots; (vii) are part of global solution of long standing land use disputes by balancing residential development agricultural, open space, recreational, and residential uses consistent with the California Coastal Act, the CLUP and Comprehensive Plan.

Comment: This finding can no longer be made because amendments to the Comprehensive Plan and component CLUP are not in the public interest because they (i) are not consistent with Policy 2-13, in that the Project does not discourage residential development; (ii) no longer provide a means for resolving an inherent conflict over land use at Naples; (iv) no longer facilitate resolution of long-standing disputes over development potential of Naples lots; (v) create uncertainties regarding County control over land use planning at Naples; (vi) no longer allow for improved recreation and access opportunities, (vii) may not allow for a project with fewer environmental impacts than would result from grid development, and (viii) no longer facilitate a global resolution that

balances uses and resources or which is consistent with the Comp Plan, CLUP or Coastal Act.

B. Zoning Ordinance Amendment

1. Requirement (County LUDC, §35.104.060.A.1). The rezoning request is in the interests of the general community welfare. **Finding:** The Project includes amendments to the LUDC to create a new Naples Townsite zone district, with concurrent revision of the official Zoning Map to institute the designation specific to the Project site. These amendments are in the public interest insofar as they implement the Comprehensive Plan amendments which, on their own right, are in the public interest for the reasons described in Paragraph A.2 above.

Comment: The rezoning request is not in the interest of the general community welfare for the reasons outlined above.

2. Requirement (County LUDC, §35.104.060.A.2). The rezoning request is consistent with the Comprehensive Plan, the requirements of State planning and zoning laws, and the LUDC. **Finding:** State law requires zoning ordinances to be consistent with a community's general plan. The Project includes the creation of a new land use designation and concurrent change in Comprehensive Plan and CLUP Land Use Maps. Companion amendments to the LUDC would achieve consistency with concurrent land use changes, and therefore, comply with State planning and zoning laws.

Comment: The rezoning request is inconsistent with the Comprehensive Plan as stated below.

3. Requirement (County LUDC, §35.104.060.A.3). The request is consistent with good zoning and planning practices. **Finding:** The zoning amendments are consistent with good zoning and planning practices insofar as they: (i) provide development standards, performance measures and review procedures that exceed those that exist under present agricultural zoning; (ii) restrict permitted and conditional uses to a less intense and overall number than those which are currently allowed; (iii) impose measures that protect agriculture, open space and visual resources while accommodating residential uses in furtherance of the companion Comprehensive Plan amendments; and (iv) reinforce geographic limitations by linking the proposed Zoning Map change to the Project-specific proposal.

Comment: The request is not consistent with good planning because by excluding SBR south of Highway 101 it allows the Project to be planned in a piecemeal rather than coordinated and comprehensive fashion. In addition, the applicant now intends to sell individual lots south of Highway 101, thereby lifting the restrictions on the intensity and overall amount of development that may occur along the coast.

C. Development Agreement

1. Requirement (LUDC §35.86.040.A.1). The Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the Comprehensive Plan and any applicable Specific Plan. **Finding:** The Project includes two sets of a Development Agreements; one governing areas inland of the Coastal Zone Boundary and the other governing areas within the Coastal Zone. In both cases, the Development Agreements obligate the Applicant to develop the Project in accordance with the permits and conditions issued for the Project. As noted in Paragraph F.2., the Project is compliant with all applicable standards of the new NTS zone district. In addition, approval of the Project plans is subject to, and contingent upon, adoption of concurrent amendments to the Comprehensive Plan, CLUP and LUDC to institute the new NTS designation. Furthermore, on the basis of evidence presented, and for the reasons discussed in Policy Consistency Analysis attached hereto, the Project is deemed consistent with all relevant policies of the County.

Comment: This finding cannot be made because the Development Agreement is not consistent with the Comprehensive Plan policies as described below. The termination of the MOU and rejection of the coastal approvals results in new policy inconsistencies. In addition, the MOU termination letter appears to sever the Project approvals in a manner inconsistent with the Development Agreements. The MOU termination letter attempts to withdraw coastal project approvals south of Highway 101, whereas the Coastal Development Agreement includes areas north of Highway 101 that are within the coastal zone.

E. Land Divisions

1. *Subdivision Map Act*

b. Requirement (State Government Code §66473.5). No local agency shall approve a tentative map, or a parcel map for which a tentative map was not required, unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement is consistent with the general plan required by Article 5 (commencing with (commencing with §65450) of Chapter 3 of Division 1. **Finding:** The Vesting Tentative Tract Map provides for a residential lot density is not presently allowed under current agricultural land use and zoning designations. As such, the Map is subject to, and contingent upon, amendments to the Comprehensive Plan, CLUP and LUDC that would accommodate the number of lots that are proposed. In addition, Conditions of Approval impose standard Map requirements in compliance with Comprehensive Plan policies. The Map is deemed consistent with relevant comprehensive Plan policies based the assessment of the Project's consistency with applicable County policies as set forth in that certain document entitled "Policy Consistency Analysis" attached hereto, and by this reference, incorporated herein.

Comment: As noted below, the termination of the MOU and rejection of the coastal approvals result in new policy inconsistencies.

c. Requirement (State Government Code §66474). The following findings shall be caused for disapproval of a Vesting Tentative Tract Map: (i) the proposed map is not consistent with applicable general and specific plans as specified in §66451; (ii) the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans; (iii) the site is not physically suitable for the type of development proposed; (iv) the site is not physically suited for the proposed density of development; (v) the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; (vi) the design of the subdivision or type of improvements is likely to cause serious public health problems; (vii) the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. **Finding:** Conformity with the Comprehensive Plan and CLUP is linked with concurrent amendment of these policy documents. Conditions of Approval, in turn, link design and development of the subdivision to Final Development Plans that implement agricultural preservation measures, open space and habitat conservation requirements, visual resource protections, and similar policies embodied in the amended policy documents. The subdivision avoids (to the maximum extent feasible) sensitive plant and animal species, vegetative disturbances will be mitigated at a ratio of 3:1, development envelopes occur on relatively flat terraces where land alteration can be minimized, buildings are designed and sited to minimize their visibility from prominent public viewing places, and overall density is less than one half of what the Official Map of Naples would otherwise yield (i.e., VTTM: 40 lots/274 acres = 0.18 du/ac; Total Official Map: 274 lots/800 acres = 0.34 du/ac; SBR Official Map: 125 buildable lots/485 acres = 0.26 du/ac). The subdivision is far removed any public roads and would not conflict with any known easements. For these reasons, and as articulated in the Policy Consistency Analysis attached hereto, the Project is consistent with the provisions of Government Code Section 66474.

Comment: As noted below, the termination of the MOU and rejection of the coastal approvals result in new policy inconsistencies.

f. Requirement (State Government Code §66456.1). Multiple final maps relating to an approved or conditionally approved tentative map may be filed prior to the expiration of the tentative map if: (a) the subdivider, at the time the tentative map is filed, informs the advisory agency of the local agency of the subdivider's intention to file multiple final maps on such tentative map, or (b) after filing of the tentative map, the local agency and the subdivider concur in the filing of multiple final maps. In providing such notice, the subdivider shall not be required to define the number or configuration of the proposed multiple final maps. The filing of a final map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of such tentative map. The right of the subdivider to file multiple final maps shall not limit the authority of the local agency to impose reasonable conditions relating to the filing of multiple final maps. **Finding:** It is the Applicant's declared intent to process and develop the Vesting Tentative Tract Map in phases and the County concurred with this request in conjunction with public hearings on the Project. Conditions of Approval require that the Vesting

Tentative Tract Map be amended to indicate that development is to be phased as provided in the Subdivision Map Act.

Comment: This finding can not be made because the MOU which may have allowed phasing was terminated by the applicant.

2. County Subdivision Regulations

a. Requirement (Vesting Tentative Tract Map, County Code,

Chapter 21, §21-8(c): The following findings shall be cause for disapproval of a tentative map or lot split map, but the tentative map or lot split may nevertheless be approved in spite of the existence of such conditions where circumstances warrant: (i) easements or rights-of-way along or across proposed county streets must be expressly subordinated to street widening, however the road commissioner may approve such easements or rights-of-way without such subordinations; (ii) lack of adequate width or improvement of access roads to the property; creation of a landlocked lot or parcel without frontage on a street or other approved ingress and egress from the street; (iii) cuts or fills having such steep slopes or great heights as to be unsafe under the circumstances or unattractive to view; (iv) grading or construction may not be performed prior to the approval of the final map; (v) potential creation of hazard to life or property from floods, fire, or other catastrophe; (vi) nonconformance with any adopted general plan of the County or with any alignment of a state highway officially approved or adopted by the state highway commission; (vii) creation of a lot or lots which have a ratio depth to width in excess of 3 to 1; and/or (viii) Subdivision designs with lots backing up to watercourses.

Finding: The Project does not propose any easements or right-of-ways along or across County public streets that are not for street dedication or widening purposes. Conditions of Approval specify the size of roads necessary to serve the Project and incorporate recommendations of Cal Trans to improve the configuration of the north bound Hwy 101 offramps. Development envelopes are located outside of areas having slopes greater than 20%, no lots would have a ratio depth to width in excess of 3:1, and roads predominately follow existing ranch roads. No grading has occurred nor is any proposed for any street or lot prior to recordation of the final map, except for any allowed structures under existing zoning regulations. Conditions of Approval embody appropriate conditions recommended by the County's Flood Control and Fire Prevention Departments to avoid the creation of hazards associated with flooding and fires. As indicated in the Policy Consistency Analysis attached hereto, the Project deemed consistent with the County's Comprehensive Plan and component CLUP. Compliance with the Conditions of Approval assures that the design and improvements of the proposed subdivision and future development are consistent with the County's Comprehensive Plan. The Project does not conflict with or impact the alignment of any state highway and incorporates improvements to north bound Hwy 101 offramps recommended by Cal Trans. The proposed subdivision does not back up to a watercourse and Conditions of Approval impose erosion control measures (temporary and permanent) would be required prior to future development of the site.

Comment: As noted below, the termination of the MOU and rejection of the coastal approvals result in new policy inconsistencies.

2. Requirement (County LUDC, §35.82.080.E.1.b). Adverse impacts are mitigated to the maximum extent feasible. **Finding:** On the basis of evidence in the record, and for the reasons discussed in the CEQA Findings, potentially significant and adverse environmental impacts are mitigated to the maximum extent feasible. Residual adverse and unavoidable impacts are justified based on overriding considerations.

Comment: See comments regarding CEQA Findings.

6. Requirement (County LUDC, §35.82.080.E.1.f). The project is in conformance with the applicable provisions of the Development Code and the Comprehensive Plan, including any applicable community or area plan. **Finding:** The Final Development Plans for the Project are expressly required under the new NTS land use and zoning designation and comply with applicable standards as follows: (i) lot sizes, setbacks and building footprints are established by the Plans and are not dictated by zoning requirements; (ii) structural setbacks from public trails exceed the minimum requirement of 35 feet; (iii) building height north and south of Hwy 101 are limited to 16 and 25 feet, respectively, and a site-specific visual analysis has been performed in compliance with ordinance standards; (iv) an Open Space and Habitat Management Plan, schematic hardscape plan, schematic fencing concept, schematic lighting plan and schematic landscape plan have been submitted in compliance with NTS requirements; and (iv) Conditions of Approval require these documents to be finalized, utilities to be placed underground and provisions be made for preservation of vegetative hedgerows. In addition, approval of the Plans is subject to, and contingent upon, adoption of concurrent amendments to the Comprehensive Plan, CLUP and LUDC to institute the new NTS designation. Furthermore, on the basis of evidence presented, and for the reasons discussed in Policy Consistency Analysis attached hereto, the Project is deemed consistent with all relevant policies of the County.

Comment: As noted below, the termination of the MOU and rejection of the coastal approvals result in new policy inconsistencies.

7. Requirement (County LUDC, §35.82.080.E.1.g). In designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area. **Finding:** Although the overall change in visual character caused by the development of the Project would not be consistent with the existing rural agricultural land on and adjacent to the property, its design has been modified to minimize the potential conflict. Specific changes include reducing the number and bulk of buildings visible from Highway 101, avoiding the massing effect of overlapping buildings when viewed from the highway, and avoiding impairment of views towards the ocean and towards the Santa Ynez Mountains. Furthermore, the Project would greatly reduce the development potential of the property when compared with the existing pattern of legal lots. Development under a “Grid” scenario would be far more detrimental and visually obtrusive than the Project itself. Several mitigation measures are also recommended that would ensure that the

development would be visually compatible with the surrounding area including detailed design review; the use of muted colors; restrictions on night lighting; landscaping to integrate development envelopes with the surrounding area; and reduced building heights. Furthermore, Conditions of Approval require the application of Design Guidelines and impose specific standards on lots within public view of the Hwy 101 corridor (i.e., limits on the size of dwellings, use of intervening landscaping and exploration of siting options). The Project design, coupled with NTS policies and mitigation measures, harmonize competing land use and visual resource objectives, allowing the Project to be consistent with visual resource policies.

Comment: Given the applicant's position that grid lots may be developed or sold, the finding that the Project is compatible with the site's scenic and rural character cannot be made.

6. Requirement (County LUDC, § 35.82.060.E.1.f). The proposed project will comply with all applicable requirements of this Development Code and the Comprehensive Plan, including any applicable community or area plan. **Finding:** The Conditional Use Permits (both major and minor) for the Project are expressly required under the new NTS land use and zoning designation. Approval of the Permits are subject to, and contingent upon, adoption of concurrent amendments to the Comprehensive Plan, CLUP and LUDC to institute the new NTS designation, as well as approval of Final Development Plans. Furthermore, on the basis of evidence presented, and for the reasons discussed in Policy Consistency Analysis attached hereto, the Project is deemed consistent with all relevant policies of the County.

Comment: As noted below, the termination of the MOU and rejection of the coastal approvals result in new policy inconsistencies.

7. Requirement (County LUDC, § 35.82.060.E.1.g). Within Rural areas as designated on the Comprehensive Plan maps, the proposed use will be compatible with and subordinate to the rural and scenic character of the area. **Finding:** In compliance with NTS policies, roads, utilities and associated infrastructure for which Conditional Use Permits are required are sized to the minimum necessary to serve only the development as permitted in the approved Final Development Plans, and all new utilities are required to be placed underground. The equestrian facility (for which a separate CUP is required) has been relocated from a visually obtrusive location (Lot 57) to a site deemed most suitable by the BAR. Other items requiring conditional uses are of a minor inconsequential nature (i.e., coastal access trails, employee duplex, etc.). Limitations on sizing and location of CUP facilities achieves consistency with the scenic policies.

Comment: Given the applicant's position that grid lots may be developed or sold, the finding that the Project is compatible with the site's scenic and rural character cannot be made.

H. Coastal Development Permits

1. Requirement (County LUDC/Article II, § 35.82.050.E.1.a). The proposed development conforms to: (i) the applicable provisions of the Comprehensive Plan, including the CLUP and any applicable community or area plan; and (ii) the applicable provisions of this Development Code [*Article II*] or the project falls within the limited exception allowed in compliance with Chapter 35.101 (Nonconforming Uses, Structures, and Lots). **Finding:** Coastal Development Permits are subject to, and contingent upon: (i) adoption of concurrent amendments to the Comprehensive Plan, CLUP and LUDC/Article II to institute the new NTS designation; and (ii) adoption and conformance with applicable Final Development Plans and Conditional Use Permits. Potential non-conforming uses and buildings existing on portions of the Project site shall be remedied prior to issuance of zoning clearance or final approval of the Coastal Development Permit for corresponding lots on which such non-conforming conditions may exist. Furthermore, on the basis of evidence presented, and for the reasons discussed in Policy Consistency Analysis attached hereto, the Project is deemed consistent with all relevant policies of the County.

Comment: As noted below, the termination of the MOU and rejection of the coastal approvals result in new policy inconsistencies.

I. Land Use Permits

1. Requirement (County LUDC, § 35.82.110.E.1.a). The proposed development conforms to: (i) the applicable provisions of the Comprehensive Plan, including the CLUP and any applicable community or area plan; and (ii) the applicable provisions of this Development Code or the project falls within the limited exception allowed in compliance with Chapter 35.101 (Nonconforming Uses, Structures, and Lots). **Finding:** Land Use Permits are subject to, and contingent upon: (i) adoption of concurrent amendments to the Comprehensive Plan, CLUP and LUDC to institute the new NTS designation; and (ii) adoption and conformance with applicable Final Development Plans and Conditional Use Permits. Potential non-conforming uses and buildings existing on portions of the Project site shall be remedied prior to issuance of zoning clearance or final approval of the Land Use Permit for corresponding lots on which such nonconforming conditions may exist. Furthermore, on the basis of evidence presented, and for the reasons discussed in Policy Consistency Analysis attached hereto, the Project is deemed consistent with all relevant policies of the County.

Comment: As noted below, the termination of the MOU and rejection of the coastal approvals result in new policy inconsistencies.

IV. Policy Consistency Analysis

Findings of Consistency with specific General Plan and CLUP policies

LUDP 2

This policy notes that the “densities specified in the Land Use Plan are maximums and may be reduced if it is determined that such a reduction is warranted by conditions specifically applicable to a site, such as topography, geologic or flood hazards, habitat areas, or steep slopes.”

The Findings of consistency for Alt 1B are based on the unique circumstances present, policy 2-13 and grid lot mergers which purportedly would have reduced development potential of the project site. This reduction can no longer be claimed, because the MOU termination letter states that the Applicant may sell and/or develop the grid lots on SBR south of Highway 101.

LUDP 3

This policy prohibits urban development outside the urban boundary and rural neighborhoods. The original finding of consistency relied upon resolving the Naples land use issue on SBR and DPR, including the coastal grid lot land use issue. The new project, as modified by the termination of the MOU, does not resolve coastal grid lot land use planning issues on SBR and therefore this argument is not available to support a finding of consistency with Policy 3.

LU: Parks and Recreation Policies 1 and 4; Circulation Element; Energy Element Policy 3.1

These Parks and Recreation and Energy Element policies and the Circulation Element recommend inclusion of bike trails in developments and call for provision of equestrian and hiking opportunities where appropriate. Findings of Alt 1B’s consistency rely on construction of the bike, hiking and equestrian trails located primarily south of HWY 101. As set forth in the MOU termination letter, the coastal trails are no longer proposed as part of the Project. Therefore findings of consistency with these policies and goals can no longer be made.

Ag Element Goal V and Policies

Due to the termination of the MOU, the Project no longer includes the agricultural support facility on Lot 97 which justified the finding of consistency with Ag Element Goal V and related policies. Therefore, this finding of consistency can no longer be made.

Energy Element Goal 3

Goal 3 encourages measures to reduce traffic. Alt 1B was found consistent in part for providing an onsite employee duplex. This duplex is no longer included in the project, thus undermining the finding of consistency.

Housing Element Goal 1

The HE recommends that a diversity of housing opportunities for all economic segments be provided in new developments. The consistency finding relies in part on the employee duplex, which is no longer proposed.

Coastal Act § 30252

This law requires that new development maintain and enhance access to the coast. Alt 1B was found consistent because it offered a public trail towards the coast. The project still includes coastal zone residential development on DPR and coastal infrastructure development on SBR, but now lacks the trail used to justify Alt 1B's consistency with Coastal Act § 30252.

Policy 2-13

With the termination of the MOU, the Project fails to discourage residential development and actually encourages more development at Naples than Alt 1B (i.e. 55 units on inland SBR and coastal DPR plus an unknown quantity within SBR south of Highway 101).

Policy 7-1; Coastal Act § 30210

Policy 7-1 and the Coastal Act require the County to take all necessary steps to protect and defend the public's right to access the coast. Alt 1B was found consistent based on the coastal trail and vertical access to the bluff. The termination of the MOU results in elimination of coastal access and trails and is therefore inconsistent with Policy 7-1. Based on existing information, findings cannot be made that the Project complies with Policy 7-1 and the Coastal Act.

Coastal Act §§ 30211, 30212 and 30214

Alt 1B was found consistent with these Coastal Act provisions because Alt 1B provided parking, trails and access to the bluff. With the termination of the MOU, the Project does not provide parking, trails or access to the bluff. Therefore there is no evidence to support findings that the Project complies with the Coastal Act provisions.

Policy 7-2

Policy 7-2 requires vertical access to the mean high tide line unless it would cause unmitigable adverse impacts or unless an alternative route exists. Alt 1B was found consistent with Policy 7-2 based on its vertical access to the bluff. According to the MOU termination letter, the Project no longer provides access to the bluff and is therefore inconsistent with Policy 7-2.

Policy 7-3

For new developments between the first public road and ocean, Policy 7-3 requires lateral access - passable during high tide - along the bluff. Alt 1B was found consistent for providing the Coastal Trail near Highway 101. The proposed Project still includes development on DPR between the ocean and first public road yet lacks any lateral access along the shoreline (or along Highway 101) on DPR and SBR. The Project is therefore inconsistent with Policy 7-3.

Policy 7-18

Policy 7-18 requires the County to obtain easements for vertical access at Dos Pueblos Canyon. Alt 1B was found consistent because the trail system generally enhanced public opportunities for recreation on the Gaviota Coast. The Project includes most of Dos

Pueblos Canyon yet, according to the MOU termination letter, includes no vertical access whatsoever and no public trails and is therefore inconsistent with Policy 7-18.

Policy 7-25

Policy 7-25 requires easements for public trails crossing through private development sites. Alt 1B was found consistent because the trails had easements, but the Project no longer includes easements or trails and is inconsistent with Policy 7-25.

BREACH OF DEVELOPMENT AGREEMENTS

The termination of the MOU constitutes a breach of the Coastal and Inland Development Agreements. Accordingly, the Applicant has no right to proceed with development of the Inland Project. In addition, the termination letter creates confusion, as it only seeks to terminate a portion of the Coastal Project.

The Applicant has Breached the Coastal and Inland Development Agreements.

A. The Coastal Development Agreement has been Breached by the Withdrawal of the Coastal Project.

The Developer has clearly breached the Coastal Development Agreement, which never took effect as it was conditioned upon LCP modification approval which requires Coastal Commission approval since the certified LCP in place at time of approval did not allow the Project. Gov. Code § 65869. The applicant has instructed the County that he is withdrawing all coastal entitlements except those necessary for the Inland Project. In light of this action, the applicant has breached the Coastal Development Agreement.

Although the applicant is attempting to limit his withdrawal to the portion of the Coastal Project south of Highway 101, this action nevertheless is inconsistent with the Coastal Development Agreement, which includes benefits and responsibilities south of the Highway. Therefore, the entire Agreement has been breached.

B. The Inland Development Agreement has been Breached by the Termination of the MOU and the Rejection of Coastal Approvals that are Necessary to Support Inland Development.

1. The Termination of the MOU Constitutes a Breach of the Inland Development Agreement.

The applicant has breached the Inland Development Agreement by terminating the MOU, which was part of the inducement to enter into the Development Agreements in the first place (global resolution of the issues), and governs the entitlement and requirements of the parties. Approval of inland development relied expressly upon the existence and transfer of coastal lots. Not only has the Coastal Commission contended such merger of coastal lots requires CDPs and thus inland approvals predicated on such mergers is premature, but the landowner has indicated that he may seek to develop coastal lots individually. With termination of the MOU, conditions fundamental to and underlying the Inland Development Agreement and the inland subdivision and approvals are absent, and these actions should be vacated.

The MOU is referenced extensively in the Inland Development Agreement, and is attached as Exhibit B to the Development Agreement with the recitation that “[n]othing in this Agreement shall supercede the MOU, or any amendment thereto, except as expressly set forth herein.” Recital D. The Developer’s obligations and the development itself are “subject to the requirements of the MOU.” § 2.01. The FEIR supporting the Inland Development Agreement

approval, the findings and Staff Reports all reference the interrelationship between the package of approvals - inland and coastal - as a foundation for any of the approvals. As noted elsewhere, the findings, CEQA Project Objectives, and virtually all elements of the approvals rely upon the MOU as the “glue” keeping the all Project approvals linked together and codifying the benefits that were relied upon to justify any approvals at all.

2. *The Rejection of the Coastal Approvals Removes the Ability to Develop the Inland Project.*

As noted in the MOU termination letter, the Inland Project subdivision includes lands within the coastal zone, and requires road and utility access through coastal lands. Additionally, a number of “inland lots” straddle the coastal border with housing inland but with necessary infrastructure (access roads, utility corridors) on the coastal portions of those lots or adjacent lots. Thus the Inland Project is inextricably linked to the coastal project and coastal approvals, and rejection of the coastal approvals undermines and makes inappropriate development of the Inland Project alone.

WILLIAMSON ACT FINDINGS

I. The MOU termination letter withdraws the ‘other public concerns’ that must substantially outweigh Williamson Act objectives in order to cancel a contract.

The Williamson Act (WA) and the County’s Uniform Rules only allow for cancellation of the WA contract currently in effect on portions of the Project site if the Board makes a finding that “other public concerns substantially outweigh the objectives of” the WA. (Government Code § 51282(c); Rule 6-1.2.A.1). In approving the Project, the Board made the following finding pursuant to this requirement:

CLUP Policy 2-13 provides a means to resolve the inherent conflict between legal residential lot densities and underlying land use designations and zoning at Naples. Alternative 1B would implement Policy 2-13 and resolve a long-standing dispute over the appropriate development of 85% of the lots encompassed by the Official Map of Naples. Achieving this outcome must take into consideration both the unique property configuration that resulted from the Official Map as well as site-specific environmental and policy constraints that apply to the area. Although Alternative 1B entails a density and scale of development that is considerably different than what exists today, it also allows for continued agricultural operations in perpetuity; allows for restoration of sensitive habitats; and improves recreational and coastal access opportunities for County residents. Moreover, the intensification of land use at Naples is uniquely applicable to this area by virtue of Policy 2-13 and is not transferable to other areas further removed from existing urban development in the South Coast than the Naples Townsite. Potential policy conflicts raised by the scope of development proposed under Alternative 1B can be reconciled through application of this policy. The WA-ACE Easement Exchange will not set a precedent; rather it is expressly part of a global solution of planning and land use issues that are specific to Naples, and more particularly, are intertwined with CLUP Policy 2-13.

(Project Finding D.1.b.1 (emphasis added)).

This finding sets forth 5 ‘other public concerns’ that purportedly outweigh the objectives of the WA: 1) implementation of Policy 2-13, 2) resolution of the long-standing dispute over the appropriate development of 85% of the Naples lots, 3) continuation of agricultural operations in perpetuity, 4) restoration of sensitive habitats, 5) improvement of recreational and coastal access opportunities for County residents.

The February 5, 2009 letter from the applicant’s attorney to Planning and Development Director John Baker provides that four of these five ‘other public concerns’ will no longer take effect. The letter states “[t]he practical effect of this notification is that the development of up to 55 lots on the non-coastal portions of Santa Barbara Ranch and on the coastal and non-coastal portions of Dos Pueblos Ranch remain in effect, but there will be no corresponding reduction in the number of Naples lots on Santa Barbara Ranch south of Highway 101. Our clients will reconsider their plans for those lots...which may include the individual sale and development of those lots.” P. 2 (emphasis added). The vast majority of the Naples lots lie within the Coastal

Zone south of 101. Policy 2-13 requires that the County ‘discourage’ residential development at Naples. In opening the door for development of the majority of the Naples lots, the February 5 letter alters the Project in such a way that the Project will no longer implement Policy 2-13. For the same reason, the February 5 letter also prevents the resolution of the long-standing dispute over 85% of the Naples lots. The February 5 letter also defeats two other ‘public concerns’ when it states “[o]ur clients will not be providing any of the benefits the County was to receive under the Development Agreement for the Coastal Project, including, coastal trail and public access dedication and improvements, affordable housing fees, native grassland enhancement and additional cultural resource mitigation.” P. 3.

Without these public benefits, the Project simply does not offer sufficient benefits to outweigh the objectives of the WA.

II. The MOU termination letter may reduce the acreage and quality of land protected by the Agricultural Conservation Easement (ACE).

The Board can only utilize the WA-ACE Easement Exchange process if it makes a finding that “the parcel proposed for conservation is expected to continue to be used for, is large enough to sustain, commercial agricultural production and is in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.” (Public Resources Code §10251). In approving the Project, the Board stated the following with respect to this required finding: “[u]nder the proposed WA-ACE Easement Exchange...less productive land would be replaced by more acreage than is lost, and more significantly, by land that is superior both in soil quality and agricultural productivity.” (Project Finding D.2.a.1 (emphasis added)). Pursuant to Public Resources Code § 10252 (i) (and Rule 6-1.3), the easement must also make a beneficial contribution to the conservation of agricultural land in the area based on criteria including “the quality of agricultural land, based on land capability, farmland mapping and monitoring program definitions, productivity indices, and other soil, climate and vegetative factors”. The Board’s finding regarding land quality states “the proposed ACE would add 393 acres beyond what is currently covered under WA Contract...resulting in a net gain of 96 acres of protected land overall. More significantly, the WA-ACE Easement Exchange would add 99 acres of protected prime agricultural land above the existing baseline and increase the amount of protected Class IIe soils by an additional 75 acres.” (Project Findings D.2.b.1 (emphasis added)). The Board made similar findings with respect to Public Resources Code § 10252 (xiii). (Project Findings D.2.b.13).

The MOU termination letter purports to reject all “Approvals of the Coastal Project”, which it then appears, without meaningful explanation, to limit to only that portion of Santa Barbara Ranch located in the coastal zone south of Highway 101.” (p. 2). It is unclear whether the applicant proposes to withhold the land proposed for the ACE located south of Highway 101 from being encumbered by the ACE. (See p. 3: “[o]ur clients will continue to provide the benefits the County is to receive under the non-Coastal Project Approvals and Inland Development Agreement including contributions for creek restorations and placement of over 2,600 acres of land in permanent agricultural conservation.”)

Assuming that the applicant withdraws all SBR land south of Highway 101 from the ACE, the following points are relevant. 12.41 acres of land on SBR south of Highway 101 was proposed as part of the ACE. (FEIR Figure 9.7-2). This land 1) is part of the “additional” land preserved (e.g. not already under contract) and 2) contains prime agricultural land (class II e soils) (see FEIR Figure 9.7-2). The removal of these 12.41 acres then both reduces the amount of additional land preserved through the WA-ACE exchange, and reduces the quality of lands protected by the ACE. This in turn undermines the basis for Board’s findings required by Public Resources Code §10251 and §10252(i) and (xiii).

III. The WA-ACE exchange no longer provides an example for land conservation.

Public Resources Code §10252(ix) requires that the easement proposal “demonstrates an innovative approach to agricultural land conservation with a potential for wide application in the state.” The finding required pursuant to this subsection relies on the WA-ACE easement exchange as being part of the “global solution of planning issues resulting from the underlying conflict between agricultural and use designations and the density of the legal lots already present at Naples.” Discussed above, there is no longer any global solution to planning issues at Naples because most of the Naples lots can now be individually developed. Meanwhile previously unthinkable levels of development are now allowed on agricultural lands, enabled by the WA contract cancellation and easement exchange. Contrary to what is required by Public Resources Code §10252(ix), the scenario envisioned in the MOU termination letter demonstrates to the state how the WA-ACE program can be manipulated by developers to achieve much greater levels of development on agricultural lands than previously thinkable. The Board’s basis for finding that the easement proposal demonstrates an innovative approach to agricultural land conservation to serve as an example state-wide no longer exists.

CONDITIONS OF APPROVAL

A. PROJECT DESCRIPTION

As with other, related documents, the project description here includes development of 71 homes and a 3,249 acre project, including 85% of the lots comprising the Official Map of Naples Townsite.

B. GENERAL PROVISIONS

1. **Project Scope.** The approval granted herein is based upon and limited to compliance with the Project Description, the application filed on November 4, 2003, and Applicant's Alternative 1B Project description dated June 8, 2008.... Any deviations from the Project Description, exhibits or conditions must be reviewed and approved by the County for conformity with this approval. Deviations may require formal modification of the approval and/or further environmental review. Deviations without the above-described authorization will constitute a violation of this approval.

2. **Terminology.**

q. "MOU" means the MOU dated December 3, 2002.... For purposes of the MOU and the Conditions of Approval, the terms "Inland Property," "DPR Property" and "Coastal Property" shall mean and include those portions of the Project shown in Exhibit 16. Exhibit 16 defines the Coastal Property as extending north of Highway 101 and encompassing infrastructure necessary to serve the Inland Property and that is described in Exhibit 11.2 "CDPs for Infrastructure Serving Inland Development." This suggests that the Project cannot be bifurcated as described in SBRI's Feb. 5 letter, which cuts the Coastal Property off at Highway 101.

C. ENVIRONMENTAL MITIGATION MEASURES

1. **Incorporation by Reference.** In the event that the scope, nature, extent, method, timing or location of construction changes from that of the Project Description in the Final EIR (including Confirming Analysis of Alternative 1B), such construction shall not proceed until or unless: (i) the change is evaluated for environmental impacts; and (ii) appropriate measures are instituted that mitigate the impacts to a level of insignificance.

E. DEPARTMENTAL CONDITIONS

5. **Recreation** (County Park Department; "PD")

a. Prior to Final Planning Approval for any Coastal Development Permit approved in connection with Final Development Plan Case No. 08DVP-00000-00025 (Cal. Trans. ROW, etc.), the Applicant shall: (i) make an offer to dedicate an easement (or multiple easements) that provide for completion of the public access improvements described in Condition No. D.6.a.; (ii) make an offer to dedicate an easement for lateral beach access on all beach areas of SBR as measured from the edge of bluffs seaward to the southerly edge of legal parcels; and (iii) enter into an agreement with PD for maintenance of all public access improvements (by the Applicant and successor HOA) in perpetuity.

c. As a condition prerequisite to granting final Building Inspection clearance for any Coastal Development Permit approved in connection with Final Development Plan Case Nos. 08DVP-00000-00025 and 03DVP-00000-00041, the Applicant shall complete the construction of coastal access improvements consisting of the coastal trail, public parking, restrooms and trail terminus or pay of in-lieu funds as provided in Condition No. D.6.a.), as determined by PD with the concurrence of the Board.

[Final Development Plan Case No. 08DVP-00000-00025 refers to Cal.Trans. improvements that should be necessary for the Inland Property. Also see below.]

F. PERMIT SPECIFIC CONDITIONS

4. Coastal Development and Land Use Permits

b. **(1)** No Final Planning Approval shall be granted for any Coastal Development Permit approved in connection with Final Development Plan Case Nos. 03DVP-00000-0004 or 08DVP-00000-00025 until: (i) the Applicant has offered to dedicate the frontage of land which is owns from the edge of bluff seaward to the Property line in a form acceptable to the Department and County Counsel; (ii) all voluntary lot mergers have been recorded in order to achieve the final Project configuration for the Coastal Property. **(2)** No Final Planning Approval shall be granted for any Land Use Permit approved in connection with the Final Development Plan Case No. 08DVP-00000-00024 for the Inland Property until: (i) final approval has been granted for 03CUP-00000-00083, 08CUP-00000-00043 and 08CDP-00000-00080 as necessary to provide supporting infrastructure for the Inland Property (to the extent that any or all such permits are necessary to serve the affected lot), Santa Barbara Ranch Project Page 45 Attachment C-1: Conditions Adopted October 21, 2008 Revised December 9, 2008 including appeals to the Coastal Commission, if any; (ii) all voluntary lot mergers specified in the MOU in regard to the Inland Property have been duly recorded.