

# ATTACHMENT

B



**environmental**  
DEFENSE CENTER

## 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](mailto: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](http://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](mailto: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 FINDINGS<sup>1</sup>

### **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**

---

<sup>1</sup> 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.