

COUNTY COUNSEL OFFICE MEMORANDUM



Date: December 2, 2003
To: Chair and Honorable Members of the Board of Supervisors
From: Mary Ann Slutzky
Re: Rice Ranch Project Development Agreement

County Counsel staff met with representatives of the Rice Ranch project to review the Rice Ranch Development Agreement. As a result of those meetings, staff and applicant have revised the Development Agreement originally presented to the Planning Commission. This Agreement is to be adopted by ordinance 03 ORD-00008. A copy of the Ordinance and revised Development Agreement recommended by the applicant and staff is attached. This memorandum highlights key provisions of the attached Development Agreement.

- Section 3.1.1 - Obligations of Parties. Provides that the Rice Ranch Project vests to the policies, rules and regulations and Conditions of Project Approval for 15 years from the date of the agreement, subject to the following exceptions: (1) with respect to the Community Facilities District No. 2002-01, the effective date is the date the District became effective and, (2) the Project vests to the types of fees which are in effect as of the Applicable Rules effective date, but the amount of fees shall be that in effect at the time the relevant fee ordinances specify payment. The reference to types of fees means all types of fees including, but not limited to, mitigation fees, processing fees and impact monitoring fees.
- Section 4.5 - Moratorium/Initiatives. Provides that no County imposed moratorium shall apply to the Project, with the exception that water or sewer moratoria or other limitations shall apply to the Project if they apply to property within the Orcutt Planning area. Thus, if a moratorium were approved county-wide to address a county-wide health and safety issue, it would also include the Orcutt Planning area and, therefore, would also apply to the Project.

- Section 5.3 - Processing During Litigation. Provides that in the event of a third party lawsuit, the County would not delay or stop the Project unless a third party obtained a court order enjoining or otherwise preventing the activity. It also provides that the County shall not stipulate to the issuance of any such restraining order. While this latter provision may be viewed as a proper subject of a Development Agreement, we highlight it because it does commit the future exercise of the Board's discretion in litigation.
- Section 5.4 - Defense of Agreement. Provides for indemnification and defense of the Agreement by the applicant. The applicant has requested terms that provide that if Owner's lawyers defend the County in a future lawsuit challenging the Agreement, Owner's lawyers will not divulge confidential information learned from representation of the County in defense of the Agreement. On the other hand, to ensure Owner's lawyers will not be prevented from representing other land owners in administrative proceedings before the County as a result of any such defense, the requested language also provides that the County irrevocably commits "...not to assert any representation in such defense by Owner's counsel as a potential conflict of interest in any future quasi-judicial, administrative proceeding, where County is a permitting agency, not related to the Rice Ranch Project" and that County "irrevocably waives any actual or potential conflict of interest under such circumstances." The Board would retain the discretion to assert a conflict of interest in any future judicial proceedings arising from representation by Owner's attorneys in defense of the Agreement.
- Section 5.5 - Cooperation of County When County Body Also Serves as Other Agency Body. The attached Agreement includes language that provides that the County, its Board of Supervisors, the Laguna County Sanitation District, the Water Agency and the Flood Control and Water Conservation District shall not take any action which conflict with the County's obligations under this Agreement.

- Section 5.6 – Compliance with changes in state and federal law. Requires modification or suspension of the Agreement as may be necessary to comply with later enacted State or federal laws or regulations.
- Section 5.7 – Retention of Discretion. Provides that the County retains its discretion in future discretionary actions applied for by Owners, but that the discretion exercised will be guided by the Applicable Rules to which applicant vests (e.g., the Orcutt Community Plan and Article III Zoning Ordinance provisions) subject to changes in state and federal law.
- Section 6.2 - Transfer and assignment. Provides that the applicant can transfer or assign his interest in the property, but not be released from its obligations and liabilities until, among other things, the County agrees to such a release.
- Section 6.3 - Statement of Compliance. Provides procedures for the County Administrator to execute a Statement of Compliance requested by the Owner within 60 days following the request.

Attachments

Ordinance 03 ORD-00008

Rice Ranch Project Development Agreement

RICE RANCH DEVELOPMENT AGREEMENT

1.0 Recitals

- 1.1 Legal Authority for a Development Agreement. Pursuant to California Government Code sections 65864-65869.5 (the “Development Agreement Statute”) the County of Santa Barbara (“County”) hereby enters into this binding Development Agreement with McCadden, LLC (“Owner”), which has a legal or equitable interest in certain real property located in the unincorporated area of the County, consisting of approximately 626 acres, as more particularly described in Exhibit “A” (“Rice Ranch Property”). Owner proposes to develop Rice Ranch as a large-scale phased master planned community (the “Rice Ranch Project”) in accordance with the Project Approvals, as defined below.
- 1.2 Project Approvals. Owner made a completed application on April 17, 1998 for County approvals to develop the Rice Ranch Project, including a Specific Plan, a Tentative Tract Map, Development Plans, a Large Lot Conveyance Map, and a Development Agreement (collectively, the “Project Approvals”), which were approved by the County on _____, 2003. The Project Approvals are attached and incorporated hereto as Exhibits ____.
- 1.3 Offers to Dedicate. Owner has agreed to offer for dedication the following: 343 acres of open space to the County; 32.7 acres of parkland to the County; and two parcels of land, 1.4 acres and 10.6 acres, respectively to the Orcutt Union School District (“School District”) (collectively, “Offers to Dedicate”).

2.0 Benefits

- 2.1 County. Under existing policies, ordinances and regulations:
- 2.1.1 The County and the School District would not receive certain of the Offers to Dedicate until final maps are recorded on the Rice Ranch Project, which in the County’s experience may occur years after the project approval or, in some rare cases, not at all. County acknowledges that it will benefit if the Offers to Dedicate are made simultaneously with the initial Project Approvals, so such Dedications will be assured and immediate to the public.

- 2.1.2 The County would not be able to require and would not receive the amount of affordable housing provided by the Rice Ranch Project. The County will benefit by the additional amount of affordable housing provided by the Rice Ranch Project above that obtainable under existing County policies, ordinances and regulations.
- 2.1.3 The County would not receive the amount of park space that will be provided by the Rice Ranch Project. The County will benefit from the amount of parkland provided by, and developed by, the Rice Ranch Project above that obtainable under existing County policies, ordinances, and regulations.
- 2.2 Owner. Under existing ordinances and regulations Owner's right to proceed under the Project Approvals may not be fully vested until recordation of final maps and commencement of substantial construction, and:
 - 2.2.1 Owner would be unwilling to make certain of the Offers to Dedicate until that time, except as otherwise required, since such Dedications are based on development of the Rice Ranch Project according to the Project Approvals. Owner would benefit if such Project Approvals could be immediately vested, and would be willing to make the Offers to Dedicate upon such vesting.
 - 2.2.2 Owner would be unwilling to provide affordable housing, as defined in section 3.2, except as otherwise required, since the provision of such housing is based on development of the Rice Ranch Project according to the Project Approvals. Owner would benefit if such Project Approvals could be immediately vested, and would be willing to provide such housing upon such vesting.

3.0 Obligations of Parties

- 3.1 County. The County agrees that:
 - 3.1.1 Owner has a vested right to develop the Rice Ranch Project in accordance with the policies, rules and regulations of the County ("Applicable Rules") in effect on _____, ("Applicable Rules Effective Date"), and in accordance with the Project Approvals, for fifteen (15) years from the date

of this Agreement (“Term”), except that (i) with respect to Community Facilities District No. 2002-01, the Applicable Rules Effective Date shall be the date in which the District became effective; and (ii) with respect to types of fees which were in effect as of the Applicable Rules Effective Date, the amount of such fees shall be that in effect at the time the relevant fee ordinance specifies payment. This section shall not operate to exempt the Developer from payment of uniform property taxes and assessments. The Applicable Rules are attached hereto as Exhibit ____.

3.1.2 The County and Owner intend that Owner shall have such rights to develop the Rice Ranch Project in accordance with the Applicable Rules and Project Approvals to the full extent provided for in the Development Agreement Statute and case law construing or interpreting Development Agreements.

3.1.3 This Agreement shall be subject to all the requirements and obligations of a Development Agreement under the Development Agreement Statute.

3.2 Owner. The Owner agrees that:

3.2.1 It will formally make the Offers to Dedicate, as provided in the Project Approvals, prior to or concurrent with recordation of Master Tract Map 14,636. The County and the School District reserve their discretion whether and when to accept such Offers to Dedicate.

3.2.2 It will provide, as part of the Rice Ranch Project, Offers to Dedicate in fee three hundred forty-three (343) acres of open space to the County. County acknowledges that this Offer to Dedicate is more than can be required of the Rice Ranch Project under the Applicable Rules and the conditions for rezoning the Rice Ranch Property in 1997.

3.2.3 It will provide, as part of the Rice Ranch Project, fifty units of housing affordable to households with an annual income of up to 120% of the applicable median income as determined by the County and twenty-three units of housing affordable to households of up to 150% of the applicable median income as determined by the County. Owner will provide this housing in addition to providing seventy-three units of housing affordable to households earning 75% of the applicable median income as determined

by the County. County acknowledges that the latter seventy-three units is all that can be required of the Rice Ranch Project under the Applicable Rules.

- 3.2.4 It will price restrict all affordable housing units for a period of thirty years from the date of sale of each respective unit. County acknowledges that this price restriction is more restrictive than can be required under the Applicable Rules.
- 3.2.5 It will provide, as part of the Rice Ranch Project, a twenty-six (26) acre community park and six and seven-tenths (6.7) acres of neighborhood parks, for a total of thirty-two and seven-tenths (32.7) acres of parkland to be offered for dedication in fee to the County. County acknowledges that this parkland provided by the Rice Ranch Project is a substantial increase above the acreage of the total parkland that the County can require of the Rice Ranch Project under the Applicable Rules and the conditions for rezoning the Rice Ranch Property in 1997.
- 3.2.6 It will provide, as part of the Rice Ranch Project, signalization or funds , including the costs of engineering, sufficient to signalize the intersection of Bradley Road and Rice Ranch Road. County acknowledges that this signalization could not be required of the Rice Ranch Project the Applicable Rules.

4.0 Project Development

- 4.1 Conflicting enactments. Except as otherwise provided herein, any change in the Applicable Rules, including, without limitation, any change in any applicable general, area or specific plan, zoning, subdivision or building regulation, adopted or becoming effective after the Applicable Rules Effective Date, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the County Board of Supervisors, the Planning Commission or any other board, commission or department of County, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Rice Ranch Project

and which would conflict in any way with, be more restrictive, or impose greater obligations or burdens on Owner, than the Applicable Rules (“Subsequent Rules”), shall not be applied by County within the Rice Ranch Project unless both Owner and County consent in writing.

- 4.2 Expiration. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except as to actions arising from enforcement of its terms during the Term; provided, however, such termination shall not affect any right or duty arising from County approvals, including, without limitation, the Project Approvals; and provided that any ongoing construction work being performed pursuant to the Project Approvals shall be allowed to be completed pursuant to the Applicable Rules notwithstanding the termination of this Agreement.
- 4.3 Term of Maps and Other Project Approvals. Pursuant to California Government Code Sections 66452.6(a) and 65863.9, the term of any subdivision or parcel map that may be processed on all or any portion of the Rice Ranch Project, and the term of each of the Project Approvals shall be extended for a period of time through the scheduled termination date of this Agreement as set forth in Section 3.1.1 above.
- 4.4 Timing of Development. Because the California Supreme Court held in Pardee Construction Co. v. County of Camarillo (1984), 37 Cal.3d 465, that failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the parties’ intent to cure that deficiency by acknowledging and providing that Owner shall have the right (without obligation) to develop portions of the Rice Ranch Project in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment provided that affordable housing shall always constitute at least 10% of the the units built throughout the Rice Ranch Property. The community park and adjoining trails shall be constructed with the first phase of development, as conditioned in the Project Approvals.
- 4.5 Moratoria/Initiatives. No County-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or

construction of all or any part of the Rice Ranch Project, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the County Board of Supervisors, the Planning Commission, an agency of County, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer unless such water or sewer moratoria or other limitations apply to property within the Orcutt Planning Area) approved, issued or granted within County, or portions of County, shall apply to the Rice Ranch Project.

- 4.6 Vesting of Owner's/Developer's Rights. The rights to the Applicable Rules and entitlements pursuant to Project Approvals granted to Owner pursuant to this Agreement shall be and constitute "vested rights" or the equivalent of "vested rights" applicable to the development of land and property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights to land use permits, building permits and certificates of occupancy consistent therewith, unless the County determines that failure to apply a new ordinance or regulation would place the residents of Rice Ranch or other residents of the County in a condition of substantial danger to their health or safety, or both. The county may condition or deny an entitlement, permit, extension or approval as may be necessary to comply with later enacted State or Federal laws or regulations.

5.0 Cooperation & Implementation.

- 5.1 Further Assurances: Covenants to Sign Documents. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement.
- 5.2 Processing by County. Upon satisfactory completion by Owner of all required preliminary actions and payments of appropriate processing fees, if any, County shall, subject to all legal requirements, initiate process, complete at a reasonable time all required steps, and grant ministerial approvals or permits necessary for the development by Owner of the Rice Ranch Project in accordance with this

Agreement, including but not limited to, the processing of applications for and issuing of all ministerial approvals required for the implementation of and the determination of conformance with the Project Approvals, this Agreement, and Applicable Rules. as necessary for the completion of the development of the Rice Ranch Project (“Ministerial Approvals”).

- 5.3 Processing during litigation. The filing of any third party lawsuit(s) against County or Owner relating to this Agreement or to other development issues affecting the Rice Ranch Project shall not delay or stop the development, processing or construction of the individual Planning Areas, approval of the Future Approvals, or issuance of Ministerial Approvals, unless the third party obtains a court order enjoining or otherwise preventing the activity. County shall not stipulate to the issuance of any such order.
- 5.4 Defense of Agreement. Owner shall indemnify, and offer to defend (with counsel jointly selected by Owner and County,) and hold harmless County and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting from, County’s approval of this Agreement or either party’s performance pursuant to this Agreement. Owner agrees that Owner’s counsel will not disclose any information confidential to the County, gained during such defense, in any future proceedings where County may be adverse to Owner or Owner’s counsel, including quasi-judicial, administrative proceedings. County further irrevocably agrees not to assert any representation in such defense by Owner’s counsel as a potential conflict of interest in any future quasi-judicial, administrative proceeding, where County is a permitting agency, not related to the Rice Ranch Project and hereby irrevocably waives any actual or potential conflict of interest under such circumstances. If this Agreement is adjudicated or determined to be invalid or unenforceable, County agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by applicable law.
- 5.5 Cooperation when County body also serves as other agency body. The County, its Board of Supervisors, the Laguna County Sanitation District, Santa Barbara Flood Control and Water Conservation District, and Santa Barbara County Water

Agency shall not take any action that conflicts with County's obligations under this Agreement. In addition, County agrees to cooperate with Developer in obtaining the approval of other public agencies and Departments by providing any documents or certificates reasonably required to process and obtain such permits and approvals from other governmental agencies.

- 5.6 In the event that state or federal laws or regulations, enacted after the Agreement has been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such later enacted State or Federal laws or regulations.
- 5.7 County retains full discretion in any future discretionary actions with respect to the Project consistent with the Applicable Rules and section 5.6 herein.

6.0 General Provisions

- 6.1 Covenants Run with the land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Rice Ranch Project, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with the land.
- 6.2 Transfer and Assignment. Right to Assign. Owner shall have the right to sell, assign or transfer all or portions of the real property comprising the Rice Ranch Project to any person at any time during the term of this Agreement.
- 6.2.1 Liabilities Upon Transfer. Upon the delegation of all duties and obligations and the sale, transfer or assignment of all or any portion of the Rice Ranch Property, Owner shall be released from its obligations under this Agreement with respect to the Rice Ranch Property, or portion thereof, so transferred arising subsequent to the effective date of such transfer if (i) Owner has provided to County fifteen (15) business days'

written notice of such transfer and (ii) the transferee has agreed in writing to be subject to all of the provisions hereof applicable to the portion of the Rice Ranch Property so transferred and (iii) owner is not in default of this Agreement and (iv) the Board of Supervisors agrees to release the Owner from its duties and obligations under this agreement, which release shall not be unreasonably withheld. As to item (iv) above, County's failure to respond within 30 days of the receipt of notice shall be deemed an agreement to release the Owner. Upon any transfer of any portion of the Rice Ranch Property and the express assumption of Owner's obligations under this Agreement by such transferee, County agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Rice Ranch Property acquired by such transferee. A default by any transferee shall only affect that portion of the Rice Ranch Property owned by such transferee and shall not cancel or diminish in any way Owner's rights hereunder with respect to any portion of the Rice Ranch Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Rice Ranch Property owned by such transferee, and any amendment to this Agreement between County and a transferee shall only affect the portion of the Rice Ranch Property owned by such transferee.

- 6.3 Statement of Compliance. Within sixty days following any written request which either County or Owner may make from time to time, the other shall execute and deliver to the requesting party a statement certifying that: (1) this Agreement is unmodified and in full force and effect or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (2) there are no current known uncured defaults under this Agreement or specifying the dates and nature of any such defaults; and (3) any other reasonable information requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modification and that there are no uncured known defaults in the performance of

the requesting party. The County Administrative Officer shall be authorized to execute any certificate. County and Owner may make only one request for a Statement of Compliance, respectively, within any twelve month period beginning at the Applicable Rules Effective Date or the date of an immediate past request by the requesting party, whichever occurred last. County shall not be bound by a statement of compliance if a default existed at the time of execution, but was concealed from the County.

- 6.4 Default. Failure by County or Owner to perform any term or provision of this Agreement for a period of sixty days, subject to extensions to time by mutual consent in writing, from the receipt of written notice thereof from the other shall constitute a default under this Agreement. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 60-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the 60-day period without cure, the notifying party, at its option, may institute legal proceedings pursuant to this Agreement and subject to Section 7.8 hereof, and/or give notice of intent to terminate this Agreement, in the manner provided by Government Code Section 65867 for adoption of a development agreement. Following public hearing before the Board of Supervisors as provided in Section 65867, the party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

- 6.5 Default Remedies. In addition to that provided for in Section 6.4, in the event either party defaults (as defined in Section 6.4) under the terms of this Agreement, the other party shall have all rights and remedies provided herein or under applicable law, including the specific performance of this Agreement.
- 6.6 Legal Action. Any party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or

enforce by specific performance the obligations and rights of the parties hereto. Venue in any legal action instituted in the Superior Court of the State of California shall be Santa Barbara County. Venue in any legal action instituted in United States District Courts shall be in the Central District of California.

- 6.7 Waiver & Remedies. Failure by County or Owner to insist upon the strict performance of any of the provisions of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future. No waiver by County or Owner of a default or breach of any other party shall be effective or binding upon it unless made in writing, and no such waiver shall be implied from any omission by County or Owner to take any action with respect to such default or breach. No express written waiver of any defaults or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified in such express waiver. One or more written waivers of a particular default or breach under any provision of this Agreement shall not be a waiver of any subsequent default or breach of that provision or the performance of the same or any other term or provision contained in this Agreement. Subject to notice of default and opportunity to cure under Section 7.5, all of the remedies permitted or available under this Agreement, at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.
- 6.8 Non-Recourse. The obligations of Owner under this Agreement shall be without recourse to the assets of the general partners or of any general partner, officer, shareholder, director, unit holder or employee of Owner or any general partner of Owner. The sole recourse of County for any obligation of Owner under this Agreement shall be limited solely to the value of the Rice Ranch Property and Project Approvals.
- 6.9 Permitted Delays & Supersedure by Subsequent Laws.
- 6.9.1 Permitted Delays. In addition to any specific provisions of this Agreement, performance of obligations hereunder shall be excused and the Term of this Agreement shall be similarly extended during any period of

delay caused at any time by reason of: acts of God, such as floods, earthquakes, fires, or similar catastrophes; wars, riots or similar hostilities; strikes and other labor difficulties beyond the party's control (including the party's employment force); the enactment of new laws or restrictions imposed or mandated by other governmental or quasi-governmental entities preventing this Agreement from being implemented; litigation involving this Agreement, the Project Approvals, the Future Approvals or the Ministerial Approvals, which directly or indirectly delays any activity contemplated hereunder or other causes beyond the party's control. County and Owner shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

6.9.2 Supersedure by Subsequent Laws. If any federal or state law, made or enacted after the Effective Date prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new law. Immediately after enactment or promulgation of any such new law, County and Owner shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. Owner and County shall have the right to challenge the new law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. Owner and County, by mutual consent, may elect to extend the term of this Agreement for the duration of the period during which such new law precludes compliance with the provisions of this Agreement.

6.10 Amendments. This Agreement may be amended from time to time by mutual consent of the parties to this Agreement, in accordance with the provisions of Government Code sections 65867 and 65868.

7.0 Miscellaneous Provisions

- 7.1 Incorporation of Recitals and Exhibits. *Exhibits A through ____* attached hereto and referred to herein are incorporated in this Attachment as though fully set forth in the body hereof.
- 7.2 Negation of Partnership. The Specific Plan Project constitutes private development, neither County nor Owner is acting as the agent of the other in any respect hereunder, and County and Owner are independent entities with respect to the terms and conditions of this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Owner, the affairs of County, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.
- 7.3 No Third party beneficiary. This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in any person who is not a party, unless expressly otherwise provided.
- 7.4 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.
- 7.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement and the rights and obligations of the parties hereto.
- 7.6 Construction. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against Owner or County and consistent with the provisions hereof, in order to achieve the objectives and purposes. Wherever required by the context, the

singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa.

- 7.7 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 7.8 Applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the parties hereto and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.
- 7.9 Notice. Any notice shall be in writing and given by delivering the same in person or by sending the same by registered, or certified mail, return receipt requested, with postage prepaid, by overnight delivery, or by facsimile to the respective mailing addresses, as follows:
- County: Mr. Michael F. Brown
County Administrator
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101
- Copy to: Stephen S. Stark, Esq.
County Counsel
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101
- Owner: McCadden Development, LLC
Attn: Mr. James R. Wheeler

Senior Vice President/Chief Operating Officer
3010 Old Ranch Road, Suite 330
Seal Beach, CA 90740

Copy to: Robert I. McMurry, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
445 S. Figueroa Street, Suite 3100
Los Angeles, CA 90071

Either County or Owner may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

- 7.10 Time is of the essence. Time is of the essence of this Agreement and of each and every term and condition hereof.
- 7.11 Recordation. In order to comply with section 65868.5 of the Government Code, the parties do hereby direct the County Clerk to record a copy of this Agreement against the Rice Ranch Property with the County Recorder of Santa Barbara County within ten (10) days after the Effective Date.
- 7.12 Successors and Assigns.

The provisions of this Agreement shall be binding of the parties hereto, and subsequent owner of all or any portion of the property and their respective successors and assigns. Any successors in interest to the County shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the California Government Code.

IN WITNESS WHEREOF, Owner and County have executed this Agreement as of the date first hereinabove written.

“County”
COUNTY OF SANTA BARBARA,

By: _____
Chair

LAGUNA COUNTY SANITATION DISTRICT

By: _____
Chair

SANTA BARBARA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By: _____
Chair

SANTA BARBARA COUNTY WATER AGENCY

By: _____
Chair

ATTEST: _____
Mr. Michael F. Brown
Clerk of the Board

Approved as to Form:

BY: _____
Stephen S. Stark, Esq.
County Counsel

“Owner”
McCADDEN DEVELOPMENT, LLC

By: _____
Name: Mr. James R. Wheeler
Title: Senior Vice President/Chief Operating Officer

Approved as to Form:
Nossaman, Guthner, Knox & Elliott, LLP

By: _____
Robert I. McMurry, Esq., Partner

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA APPROVING A DEVELOPMENT AGREEMENT FOR THE RICE RANCH SPECIFIC PLAN PROJECT SET OUT IN THE DEVELOPMENT AGREEMENT FOR THE RICE RANCH PROJECT, APNs 101-010-013, 101-020-004, 105-140-016, LOCATED ON THE SOUTH SIDE OF STUBBLEFIELD ROAD AND RICE RANCH ROAD, IN THE ORCUTT AREA, FOURTH SUPERVISORIAL DISTRICT.

Case No. 03ORD-00000-00008

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1

Pursuant to Sections 65864 through 65869.5, inclusive of the Government Code, the Board of Supervisors of the County of Santa Barbara, California hereby approves Development Agreement, including the exhibits thereto, between the County of Santa Barbara and McCadden Development LLC, which Development Agreement is attached hereto and incorporated herein by reference.

SECTION 2

The Board of Supervisors is authorized and directed to execute said Development Agreement on behalf of the County of Santa Barbara. No later than ten (10) days of execution by the County of Santa Barbara, the Clerk of the Board of Supervisors shall record a copy of the Development Agreement with the County Recorder of Santa Barbara County.

SECTION 3

This ordinance shall take effect and be in force upon the date that the related Amendments to the Article III inland Zoning Ordinance (03RZN-00000-00003, 97-SP-001) are in effect and in force and before the expiration of fifteen (15) days after its passage by the Board of Supervisors, this ordinance, or a summary of it, shall be published once, together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ___ day of _____, 2003, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

MICHAEL F. BROWN
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Chair, Board of Supervisors
County of Santa Barbara
State of California

STEPHEN SHANE STARK
County Counsel

By: _____
Deputy County Counsel