



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: December 14, 2021
Placement: Departmental Agenda
Estimated Time: 1.5 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning and Development
Director(s) (805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Development Review
(805) 568-2518

SUBJECT: Hearing to consider the appeal, Case No. 21APL-00000-00017, by the Environmental Defense Center, Surfrider, and the Gaviota Coast Conservancy, of the Director's Determination regarding the Santa Barbara Ranch Inland Development Agreement Periodic Review, Third Supervisorial District

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

Consider the appeal by Linda Krop, representing the Environmental Defense Center and Surfrider Foundation, and Marc Chytilo representing the Gaviota Coast Conservancy, of the Planning and Development Director's March 30, 2021 determination that the Santa Barbara Ranch Developer is in good faith compliance with the Santa Barbara Ranch Inland Development Agreement. Staff recommends that your Board take the following actions:

- a) Deny the appeal, Case No. 21APL-00000-00017;
- b) Make the required findings to affirm the Director's determination that the Developer is in good faith compliance with the terms of the Santa Barbara Ranch Inland Development Agreement, including CEQA findings, as specified in Attachment 1; and
- c) Determine that the IDA "Periodic Review" determination is exempt from CEQA pursuant to State CEQA Guidelines Section 15378(b)(5).

Summary Text:

On April 9, 2021, representatives of the Gaviota Coast Conservancy, Surfrider Foundation, and Environmental Defense Center filed an appeal (Attachment 3) of the Planning and Development (P&D) Director's March 30, 2021 determination that the Santa Barbara Ranch Developer is in good-faith compliance with the Santa Barbara Ranch Inland Development Agreement (IDA). Annual review of the Developer's good-faith compliance with the IDA is required in conformance with Section 10.04 (Periodic Review) of the IDA. Under Section 10.04, the annual Periodic Review is limited in scope to a review of the Developer's good faith compliance with the terms of the IDA. The IDA was approved by the County Board of Supervisors, together with the inland portions of the Santa Barbara Ranch project, on October 21, 2008. Due to tolling from litigation, the IDA became effective on April 8, 2014. Consistent with Section 10.04 of the IDA, Periodic Review has been conducted on an annual basis since 2015.

The IDA grants SBRHC Inc., represented by Standard Portfolios, LLC ("Developer"), the vested right to develop the inland portion of the Santa Barbara Ranch Project provided that the Developer complies with the terms of the IDA. Article II of the IDA sets forth the Developer's obligations under the IDA. Section 2.02(a) of the IDA requires the Developer to "provide the following":

- Pay \$100,000 to a non-profit organization *"to initiate planning to enhance area of natural, scenic, wildlife, biological, open space, and drainage corridors within the Dos Pueblos Creek drainage."* The IDA requires that the non-profit organization be fully independent from the Developer, fully qualified and experienced in conserving open space and/or natural resources, and use its best faith efforts to complete a Creek Restoration Plan within one year of the Effective Date (April 8, 2014) of the IDA;
- Offer all reasonable assistance to the nonprofit conservation organization to complete the Creek Restoration Plan described in Bullet 1, above;
- Pay \$300,000 to a nonprofit conservation organization to be used to implement the Creek Restoration Plan;
- Offer all reasonable assistance to the nonprofit to fully implement the Creek Restoration Plan within three years of the Effective Date of the IDA; and,
- Condition payment of the \$300,000 to require the non-profit organization to *"(i) expend the funds for creek restoration elsewhere on the Gaviota Coast in the event the Creek Restoration Plan is not implemented within five (5) years of the Effective Date for any reason, (ii) obtain the County's written consent as to the alternative creek restoration project prior to expending said funds, and (iii) complete the alternative creek restoration project within (7) seven years of the Effective Date."*

Section 2.02(a) states that the "expressed intent" of this subsection of the IDA "and the Developer's obligations hereunder is to initiate planning and restoration efforts with the expectation that the Developer's financial contribution will be used to attract other resources to complete the Creek Restoration Plan."

As discussed below, since 2015, the Developer has complied with these requirements of the IDA.

Periodic Review Determinations Issued from 2015 to 2020

From 2015 to 2020, the Director of P&D issued annual determinations that the Developer was in good-faith compliance with the IDA. Between 2015 and 2020, the Developer:

- Deposited \$100,000 with the California Rangeland Trust (CRT), a qualified and experienced non-profit conservation organization fully independent from the Developer (as cited in the letter from Cox, Castle, & Nicholson included as Attachment 6);
- Managed and funded preparation of the *Dos Pueblos Creek Restoration, Maintenance and Monitoring Plan* (Attachment 7);
- Submitted to Santa Barbara County the completed *Dos Pueblos Creek Restoration, Maintenance and Monitoring Plan* (Attachment 7);
- Received peer review by the County biological resources consultant, Storrer Environmental, which found the *Dos Pueblos Creek Restoration, Maintenance and Monitoring Plan* to be acceptable (Attachment 11);
- Deposited \$300,000 with the nonprofit California Association of Resource Conservation Districts (CARCD) (as confirmed in a letter from Cox Castle and Nicholson dated February 2, 2018, and in an email from CRCD dated February 18, 2018); and,
- Entered into an agreement with CARCD for CARCD to use the funds for creek restoration (as confirmed by the Implementation Funding Agreement), consistent with the requirements of Section 2.02(a) of the IDA. CARCD retained the Cachuma Resource Conservation District (CRCD) and South Coast Habitat Restoration (SCHR) for assistance with implementation of the Creek Restoration Plan.

The Developer also offered all reasonable assistance to aid in the implementation of the creek restoration. In conformance with this requirement, from 2015-2020, the Developer:

- Coordinated with property owners to ensure access to Dos Pueblos Creek and surrounding areas for purposes of preparing a creek restoration plan;
- Provided a tour of Dos Pueblos Creek and the water system;
- Funded peer review of the Dos Pueblos Creek Restoration Plan recommended by the County's consulting biologist;
- Coordinated with the Santa Barbara Land Trust regarding their potential involvement in the project;
- Hired Dudek Consultants to perform additional hydrologic, geomorphic, and aquatic resource field evaluations in Dos Pueblos Creek;

- Coordinated with the owners of Dos Pueblos Ranch north and south about obtaining their consent to implementation of the Creek Restoration Plan and recordation of the Agricultural Conservation Easements;
- Facilitated multiple meetings with CRCDD and SCHR and the owners of Dos Pueblos Ranch;
- Facilitated a meeting with CRCDD, SCHR and hydrogeological consultants;
- Arranged to have CRCDD and SCHR attend a meeting of the holder of the water rights in Dos Pueblos Creek to discuss implementing the Creek Restoration Plan;
- Coordinated meetings with the landowners and the restoration team to go over logistical issues and to assist the restoration team in securing grants to implement the Creek Restoration Plan (supporting the receipt of a grant in the amount of \$222,104 from the California Department of Fish and Wildlife’s Proposition 1 Watershed Restoration Grant Program); and,
- Facilitated meetings with the owners of Dos Pueblos Ranch North and Dos Pueblos Ranch South to go over the work that would occur under the grant and to secure agreements to carry out the work on those properties.

By 2020, the Developer satisfied its primary obligations under Section 2.02(a) of the IDA and was continuing to “offer all reasonable assistance” to aid in the implementation of the creek restoration work. No appeals were filed of the Periodic Review determinations issued from 2015-2020.

Periodic Review Determination Issued in 2021

The 2021 Periodic Review spanned from March 27, 2020 to March 29, 2021. As discussed above, from 2015-2020, prior to the start of the annual Periodic Review that ended in March 2021, the Developer satisfied its primary obligations under Section 2.02(a), leaving the continued requirement that the Developer “offer all reasonable assistance” to complete the creek restoration work. During the Periodic Review that ended in 2021, P&D staff reviewed previously submitted materials along with additional correspondence from the Developer. The Developer provided a letter (Attachment 8) describing how they were continuing to offer all reasonable assistance to implement the creek restoration, including assisting the nonprofit in efforts related to identifying an alternative restoration project and responding to requests for information from P&D. On March 30, 2021 the Director of P&D issued a Periodic Review Letter (Attachment 2) finding the Developer in good-faith compliance with the IDA. The determination was supported by substantial evidence in the record as described in detail in the 2021 Periodic Review Letter and as supported by the details included above.

Creek Restoration

In compliance with its obligations under the IDA, the Developer funded and assisted the completion of the Dos Pueblos Creek Restoration Plan. The Developer also paid \$300,000 to CARCD to implement the Plan, and conditioned that payment to require CARCD to comply with the requirements of the IDA, including that it “use its best faith efforts to fully implement” the Dos Pueblos Creek Restoration Plan and to expend the funds on an alternative creek restoration project if the Dos Pueblos Creek Restoration Plan is not implemented.

However, CARCD is not a party to the IDA, and the County is not a party to the funding agreement between the Developer and CARCD. As such, CARCD's obligation to implement the creek restoration work is beyond the scope of the County's annual Periodic Review of the Developer's good faith compliance with the IDA. Instead, the IDA requires the Developer to provide "all reasonable assistance" to complete the creek restoration work. As detailed above, the Developer has provided all reasonable assistance to CARCD to implement the creek restoration work, and the evidence indicates that CARCD has been unable to implement the creek restoration work notwithstanding the Developer's assistance.

The nonprofit completed the Dos Pueblos Creek Restoration Plan in 2015. The effected property owners (known as Dos Pueblos North and Dos Pueblos South) worked with the nonprofit to support preparation of the plan (through site access tours, etc.) (March 19, 2015 letter from Cox Castle and Nicholson, Attachment 6). In 2019, property owners indicated that they would no longer participate in implementation of the plan as described in the February 7, 2020 letter from Cox Castle, & Nicholson (Attachment 10), which led to the nonprofit to seek out other restoration opportunities.

The nonprofit then sought out options for implementation of an alternative creek restoration plan. The nonprofit looked for opportunities for restoration on the Gaviota coast with private landowners, nonprofits, and governmental entities (oral communications and emails between nonprofit staff and P&D staff). By August 2020, the nonprofit had established a tentative agreement with a property owner. However, that owner ultimately informed the nonprofit that they were no longer interested in allowing restoration on their property. Subsequent efforts to establish agreements with other property owners (including the Santa Barbara County Resource Recovery and Waste Management Department for use at Baron Ranch) were unsuccessful. The nonprofit is continuing to explore options for use of the remaining funds to support restoration on the Gaviota Coast.

Appellant Issues and Staff Responses:

The appellant's arguments are structured into two main categories: 1) That the Developer is not in good-faith compliance with the Inland Development Agreement (IDA), and; 2) That P&D's periodic review determination was not supported by substantial evidence. Staff responds to each argument below, organized under the two categories of arguments:

I. Arguments that the Developer is not in good faith compliance with the IDA

Staff Response Overview: The Developer remains in good-faith compliance with the terms of the IDA as described in detail in the 2021 Periodic Review Letter (Attachment 2) and in the Summary Text section of this Board Letter (above). As required under Section 2.02(a) of the IDA, the Developer deposited \$100,000 with a non-profit organization to prepare the creek restoration plan, deposited \$300,000 with a non-profit to implement the creek restoration plan, conditioned payment of the \$300,000 to require the nonprofit to use the funds consistent with the requirements of the IDA, and offered all reasonable assistance to the non-profit to prepare and implement the plan. Because the Developer has fulfilled its primary obligations under Section 2.02(a) of the IDA and continues to "*offer all reasonable assistance*" to the non-profit organization to implement the creek restoration work, the Developer is in good faith compliance.

- 1. Appeal Issue 1:** The appellant asserts that, “There is no evidence cited in the March 30, 2021 letter, nor in the other documents the County used to complete the Periodic Review for the period of March 27, 2020 to March 29, 2021, that the County has approved an alternative project, nor that any on-the ground restoration work has taken place. Nevertheless, the Director acknowledged that this is required, stating: *‘Because the Dos Pueblos Creek Restoration, Maintenance and Monitoring Plan was not fully implemented within five years of the Effective Date of the Agreement, under the terms of the agreement between the Developer and CARCD, CARCD is required to implement an alternative creek restoration project. The Developer is required to offer all reasonable assistance to accomplish this outcome.’* Moreover, Ms. Plowman’s letter indicates that CARCD, CRCD, and SCHR had already expended \$268,000 of the \$300,000 funding slated for creek restoration by the time of her letter. The organizations spent those funds on site visits and communication with team members and interested parties, landowners/managers, grant research and writing, surveying, mapping, modeling, and concept-level planning. There is no evidence to suggest that any on-the-ground restoration work has been done to date.”

Staff Response to Issue 1: Per Section 10.04(b) of the IDA, the annual Periodic Review is limited in scope to a review of the Developer’s good faith compliance with the terms of the IDA. As summarized above, the Developer has completed its primary obligations under Section 2.02(a) of the IDA. The IDA does not require the Developer to obtain approval of an alternative creek restoration project from P&D nor to assure “on the ground restoration work has taken place” in order to remain in compliance with the IDA. As stated by the Director of P&D in the portion of the 2021 Periodic Review letter quoted by the appellant, the nonprofit organization (CARCD) that received the Developer’s \$300,000 payment is required to implement the creek restoration work, and the Developer is required to provide “all reasonable assistance” to complete that work. CARCD is not a party of the IDA, and its implementation of the creek restoration work is beyond the scope of the annual Periodic Review of the Developer’s good faith compliance with the terms of the IDA. As stated above, to-date, the Developer has offered all reasonable assistance to CARCD to implement the creek restoration work. Notwithstanding that assistance, CARCD has been unable to implement the creek restoration work because the Dos Pueblos property owners withdrew their consent to implement the Dos Pueblos Creek Restoration Plan after substantial funds had been expended in preparation for that work, and CARCD has been unable, despite its ongoing efforts, to identify an alternative project for use of the remaining funds.

- 2. Appeal Issue 2:** The appellant asserts, “There is simply no evidence upon which the Director could base a determination that the Developer and the non-profits it hired to complete the work would complete the requirements of the IDA on time by April 8, 2021. Any assertion that the Developer and the non-profits it hired were on track to complete a project nine days later, and therefore, were in compliance with the IDA, was purely speculative on the part of the Director. Instead, her Determination completely ignores the impending deadline. There is simply no evidence that an alternative creek restoration project could be approved and completed by April 8, 2021.”

Staff Response Issue 2: The Director of P&D appropriately found the Developer in good faith compliance with the terms of the IDA. The appellant’s argument is based on the

incorrect assumption that the Developer is responsible for on-the-ground completion of an alternative creek restoration project and states that the Developer “hired” the nonprofit. As discussed in detail in the Summary portion of this Board Letter, the Developer is not required to complete the creek restoration work in order to be in compliance with the IDA. In addition, the Developer did not “hire” the nonprofit. Instead, the Developer’s obligation under the terms of the IDA was to “pay” the nonprofit the sum of \$300,000, and to condition that payment to require the nonprofit to implement creek restoration work subject to the terms of the IDA. Please see Attachment 9 for a copy of the Implementation Funding Agreement between the Developer and the nonprofit, which satisfied this requirement of the IDA. As summarized above, the Developer continues to provide “all reasonable assistance” to CARCD to implement the creek restoration work consistent with the requirements of the IDA.

II. Arguments that the P&D Director’s periodic review determination was not supported by substantial evidence

Staff Response Overview: The Director’s determination of the Developer’s good-faith compliance with the IDA is based on substantial evidence as cited in the Periodic Review Findings Letter dated March 30, 2021 (Attachment 2) and also summarized in the Summary Text section of this Board Letter. Documents supporting the Director’s determination of good-faith compliance include the Santa Barbara Ranch Inland Development Agreement (Attachment 5), letters from Cox, Castle & Nicholson on behalf of the Developer (Attachments 6, and 8), the Creek Restoration Funding Agreement between the Developer and the CARCD (Attachment 9), a Storrer Environmental Services Peer Review Letter, dated May 31, 2015 (Attachment 11), accounting information from the Cachuma Resource Conservation District dated January 2021, and a February 7, 2020 Cox, Castle, & Nicholson IDA Review Request letter (Attachment 10) as well as communications between the Developer, nonprofit staff, and P&D staff summarized above. These documents were used during the Periodic Review cycle that ended on March 29, 2021, to make the determination that the Developer remains in good-faith compliance with the terms of the IDA.

- 3. Appeal Issue 3:** The appellant asserts that the Director’s “finding of good-faith compliance is not supported by substantial evidence under Section 10.04 of the IDA because the agreement required County approval and completion of an alternative creek restoration project by April 8, 2021 (see IDA § 2.02(a)). By March 30, 2021, with only approximately 10% of the original \$300,000 in funds slated for creek restoration remaining, and no County-approved project proposal in place, there was no evidence upon which the Director could base a determination that the terms of the agreement could be fulfilled on time by April 8, 2021.”

Staff Response to Issue 3: As stated above, the Director’s finding of good-faith compliance is supported by substantial evidence. The IDA does not require the Developer to complete an alternative creek restoration project by April 8, 2021 to remain in good faith compliance with the terms of the IDA.

The expressed intent of the Developer’s “financial contribution” of \$300,000 was to initiate planning and restoration efforts with the expectation that those funds would be used to attract other resources to complete the Dos Pueblos Creek Restoration Plan. As

summarized above, between 2014-2020, CARDC expended a substantial portion of the \$300,000 on planning efforts to implement the Dos Pueblos Creek Restoration Plan, including securing a grant in the amount of \$222,104 from the California Department of Fish and Wildlife. However, the Dos Pueblos property owners withdrew their consent for implementation of the Dos Pueblos Creek Restoration Plan, which was a necessary condition for its implementation under the IDA.

Consistent with the requirements of Section 2.02(a) of the IDA, the Developer has continued to provide all reasonable assistance to CARDC to implement an alternative creek restoration project, and these efforts are substantiated through the evidence cited above.

4. **Appeal Issue 4:** The appellant asserts that, “The Planning and Development Director’s decision to issue a Compliance Determination on March 30, 2021 is not supported by the findings in her letter, nor are the findings supported by substantial evidence in the record. (See Letter from Lisa Plowman, Director, to Stanley Lamport (March 30, 2021)). As outlined supra, there is no evidence cited in the March 30, 2021 letter, nor in the other documents the County used to complete the Periodic Review for the period of March 27, 2020 to March 29, 2021, that the County has approved an alternative project, nor that any on-the-ground restoration work has taken place. Nevertheless, the Director acknowledged that this is still required, stating: *‘Because the Dos Pueblos Creek Restoration, Maintenance and Monitoring Plan was not fully implemented within five years of the Effective Date of the Agreement, under the terms of the agreement between the Developer and CARCD, CARCD is required to implement an alternative creek restoration project.’*”

Staff Response to Issue 4: As discussed under the Summary portion of this Board Letter, the Director’s finding that the Developer is in good faith compliance with the IDA is supported by substantial evidence. The plain language of the IDA does not require the Developer to obtain approval of an alternative creek restoration plan or to implement the restoration plan. The Developer’s obligation per the IDA, is to “*provide all reasonable assistance.*” To-date, the Developer offered all reasonable assistance to the nonprofit as required by the IDA.

5. **Appeal Issue 5:** The appellant asserts, “The Director’s Compliance Determination of March 30, 2021, just nine days prior to the deadline required by the IDA, was not based on findings supported by substantial evidence and was an abuse of discretion. There was simply no evidence to support a conclusion that the Developer/non-profit would receive both County approval for an alternative creek restoration project and complete that project by April 8, 2021. In fact, neither has occurred.”

Staff Response to Issue 5: As discussed in Section II above, and in the Summary portion of this Board Letter, the Director’s compliance determination is based on substantial evidence. The IDA does not require the Developer to obtain approval of an alternative creek restoration plan or to implement the restoration plan to remain in good faith compliance with the terms of the IDA.

In summary, the Director correctly determined that the Developer remains in good-faith compliance with the IDA because the Developer has met its primary obligations as required under Section 2.02(a) of the

IDA and continues to offer all reasonable assistance to the non-profit conservation organizations that are tasked with implementing the creek restoration work.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$8,855.00 (35 hours of staff time). The costs for processing appeals are partially offset by a General Fund subsidy in Planning and Development's adopted budget. Funding for processing this appeal is budgeted in the Planning and Development Department's Permitting Budget Program, as shown on page D-301 of the County of Santa Barbara Fiscal Year (FY) 2021-2022 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on December 14, 2021. The notice shall appear in the Santa Barbara News Press. The Clerk of the Board shall also fulfill mailed noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos. A second minute order of the hearing shall be returned to Planning and Development, attention Chris Schmuckal.

Attachments:

1. Findings Supporting a Determination of Compliance with the IDA
2. Periodic Review Letter dated March 30, 2021
3. Appeal Application
4. County Counsel Facilitation Report
5. Santa Barbara Ranch Inland Development Agreement
6. Letter from Cox Castle & Nicholson dated March 19, 2015
7. Dos Pueblos Creek Restoration Maintenance and Monitoring Plan
8. Letter from Cox Castle & Nicholson dated January 29, 2021
9. Creek Restoration Funding Agreement
10. Letter from Cox Castle & Nicholson dated February 7, 2020
11. Storrer Peer Review

Authored by:

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