

Attachment 3: Appeal Application



PLANNING & DEVELOPMENT
APPEAL FORM

SITE ADDRESS: Santa Barbara Ranch (SBR), Gaviota Coast

ASSESSOR PARCEL NUMBER: 079-140-022 and adjacent lots comprising the SBR Inland Project

Are there previous permits/applications? []no [x]yes numbers: 08DVP-00000-00024 etc.
(include permit# & lot # if tract)

Is this appeal (potentially) related to cannabis activities? [x]no []yes

Are there previous environmental (CEQA) documents? []no [x]yes numbers: 04EIR-00000-000014

1. Appellant: EDC, SB Surfrider Phone: (805) 963-1622 FAX:

Mailing Address: 906 Garden St., Santa Barbara CA 93101 E-mail: lkrop@environmentaldefensecenter.org
Street City State Zip

2. Appl.: GCC, represented by Law Office of Marc Chytilo Phone: (805) 682-0585 FAX:

Mailing Address: PO Box 92233, Santa Barbara CA 93190 E-mail: marc@lomcsb.com
Street City State Zip

3. Agent: (for SBR) Stanley Lamport, Cox, Castle & Nicholson LLP Phone: FAX:

Mailing Address: 2029 Century Park East, Suite 2100, Los Angeles, CA 90067 E-mail:
Street City State Zip

4. Attorney: (for SBR), see Agent Phone: FAX:

Mailing Address: E-mail
Street City State Zip

COUNTY USE ONLY

Case Number: Companion Case Number:
Supervisorial District: Submittal Date:
Applicable Zoning Ordinance: Receipt Number:
Project Planner: Accepted for Processing
Zoning Designation: Comp. Plan Designation

COUNTY OF SANTA BARBARA APPEAL TO THE:

BOARD OF SUPERVISORS

PLANNING COMMISSION: COUNTY MONTECITO

RE: Project Title _____

Case No. _____

Date of Action _____

I hereby appeal the approval approval w/conditions denial of the:

Board of Architectural Review – Which Board? _____

Coastal Development Permit decision

Land Use Permit decision

Planning Commission decision – Which Commission? _____

Planning & Development Director decision

Zoning Administrator decision

Is the appellant the applicant or an aggrieved party?

Applicant

Aggrieved party – if you are not the applicant, provide an explanation of how you are and “aggrieved party” as defined on page two of this appeal form:

See attached

Reason of grounds for the appeal – Write the reason for the appeal below or submit 8 copies of your appeal letter that addresses the appeal requirements listed on page two of this appeal form:

- A clear, complete and concise statement of the reasons why the decision or determination is inconsistent with the provisions and purposes of the County’s Zoning Ordinances or other applicable law; and
- Grounds shall be specifically stated if it is claimed that there was error or abuse of discretion, or lack of a fair and impartial hearing, or that the decision is not supported by the evidence presented for consideration, or that there is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

See attached

Specific conditions imposed which I wish to appeal are (if applicable):

- a. _____
- b. _____
- c. _____
- d. _____

Please include any other information you feel is relevant to this application.

CERTIFICATION OF ACCURACY AND COMPLETENESS Signatures must be completed for each line. If one or more of the parties are the same, please re-sign the applicable line.


Applicant's signature authorizes County staff to enter the property described above for the purposes of inspection.

I hereby declare under penalty of perjury that the information contained in this application and all attached materials are correct, true and complete. I acknowledge and agree that the County of Santa Barbara is relying on the accuracy of this information and my representations in order to process this application and that any permits issued by the County may be rescinded if it is determined that the information and materials submitted are not true and correct. I further acknowledge that I may be liable for any costs associated with rescission of such permits.

Linda Krop  4/9/21

Print name and sign – Firm

Date

Marc Chytilo  4/9/21

Print name and sign – Preparer of this form

Date

Print name and sign – Applicant Date

Print name and sign – Agent Date

Print name and sign - Landowner Date

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LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

April 9, 2021

Santa Barbara County Board of Supervisors
123 E. Anapamu Street
Santa Barbara, California 93101
By Hand Delivery and email to sbcob@co.santa-barbara.ca.us

RE: Appeal of Director Determination re: Santa Barbara Ranch Inland Development Agreement Periodic Review

Dear Chair Nelson and Honorable Supervisors:

Please accept this appeal of Planning & Development Director Lisa Plowman'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") ("Determination"). This appeal is filed on behalf of the Environmental Defense Center ("EDC"), the Surfrider Foundation, by and through the Santa Barbara Chapter ("Surfrider Foundation"), and the Gaviota Coast Conservancy ("GCC") (collectively "Appellants").

I. Aggrieved Parties

Appellants are aggrieved parties to this Determination. Appellant EDC is a non-profit public interest law firm which represents community organizations in environmental matters affecting California's Central Coast. Appellant Surfrider Foundation is a non-profit environmental organization dedicated to the protection and enjoyment of the world's waves, oceans and beaches for all people, through conservation, activism, research and education. Appellant GCC is a California non-profit organization dedicated to protecting the rural character and environmental integrity of the Gaviota Coast for present and future generations, as well as encouraging public access and recreation. Through their representatives, Appellants communicated with Director Plowman both orally and in writing, objecting to the Compliance Determination and explaining why substantial evidence does not support a finding of good-faith compliance under Section 10.04 of the IDA.

Director Plowman's Determination is appealable by Appellants under section 10.04(d) of the IDA and Land Use and Development Code section 35.102.020, as confirmed by Director Plowman in communications to Appellants (*see* Exhibit 1.)

II. Summary of Appeal

Planning and Development Director Lisa Plowman’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. Predictably, at present, the deadline has passed, leaving the County without the key public benefit of the IDA, while the property owner benefits from vested rights for the largest subdivision on the Gaviota Coast, based on rules that were in effect in 2008.

III. The Santa Barbara Ranch Developer Is Not in Compliance with the IDA

A. Overview of Applicable Law and the IDA

By Ordinance No. 4694, the Board of Supervisors approved the IDA, together with the Santa Barbara Ranch Project approvals, on October 21, 2008. Due to tolling from litigation, the IDA became effective on April 8, 2014, after the Court of Appeal issued the Remittitur. The IDA grants SBRHC, represented by Standard Portfolios, LLC (“Developer”), the vested right to develop the inland portion of the Santa Barbara Ranch Project under the County rules and regulations in effect on October 21, 2008. IDA § 3.01. Accordingly, the 49-unit Inland Santa Barbara Ranch Project – the largest subdivision ever approved on the Gaviota Coast – could be developed based on rules that predate the Gaviota Coast Plan.

In exchange, the Developer is required to provide two public benefits: creek restoration planning and implementation (described in more detail below), and an agreement to mitigate all impacts regardless of cost in the event any culturally significant resources are encountered during project construction. IDA § 2.02(a and b). The first benefit, identified as “Creek Corridor, Open Space and Watershed Protection,” requires that the Developer pay \$100,000 to a non-profit conservation organization to initiate planning “to enhance areas of natural, scenic, wildlife, biological, open space, and drainage corridors within Dos Pueblos Creek consistent with ongoing agricultural use on lands within the Dos Pueblos Creek drainage (“Creek Restoration Plan”).” IDA § 2.02(a). The Developer is also required to “offer all reasonable assistance” to the conservation organization to complete this Creek Restoration Plan within one year of the Effective Date. *Id.* When the Creek Restoration Plan is complete, the IDA then requires the Developer to choose a non-profit conservation organization who is to use its “best faith efforts” to implement the Creek Restoration Plan within three years of the Effective Date (April 8, 2014). *Id.* The IDA provides that the Developer shall pay a sum of \$300,000 toward that goal. *Id.* Recognizing that restoration of Dos Pueblos Creek is a formidable task, the IDA further expresses the intent that “the Developer's obligation 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.” *Id.*

The IDA also provides a contingency plan should restoration work on Dos Pueblos Creek prove infeasible, as follows:

Developer shall condition the payment of the foregoing sums [\$300,000] to the non-profit organization to require the non-profit organization to: (i) expend the funds for creek restoration elsewhere on the Gaviota Coast in the event that 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 with[in] seven (7) years of the Effective Date. *Id.* (underline added).

Annually, the Developer shall request that the County conduct a “Periodic Review” of its “good-faith compliance,” which documents the Developer’s progress in effectuating its obligations under Section 2.02(a) of the IDA. IDA § 10.04. The County is required to respond to that request within 60 days. IDA § 10.04 (f).

B. Creek Restoration Is the Key Public Benefit of the IDA

The primary purpose of development agreements, from a municipality’s point of view, is to obtain benefits for the public. *N. Murrieta Cmty., LLC v. City of Murrieta*, 50 Cal. App. 5th 31, 36 (2020); also see *Santa Margarita Area Residents Together v. San Luis Obispo Cty.*, 84 Cal. App. 4th 221, 231 (2000). The plain language of the IDA shows that the primary benefit of the bargain to the County and the public, beyond what was already required by the California Environmental Quality Act, was the creation and implementation of the Creek Restoration Plan.¹ IDA § 2.02. The heading for Section 2.02 of the IDA, which discusses the restoration of Dos Pueblos Creek, is “*Public Benefits*” with subsection (a) titled “Creek Corridor, Open Space and Watershed Protection.” *Id.* (emphasis added).

The Board of Supervisors’ Agenda Letter prior to the vote on the IDA in 2008 shows that the restoration of Dos Pueblos Creek was very important:

“Most notable among the concessions recommended by the Planning Commission are the Developer’s obligations to: (i) *institute restoration of Dos Pueblos Creek with a minimum contribution of \$400,000...*” (Board of Supervisors’ Agenda Letter on Santa Barbara Ranch Project Deliberation, Santa Barbara County, at 18 (Sept. 23, 2008) (italics and underline added)).

Moreover, subsection 2.02(a) of the IDA indicates that *both* individual components of the creek restoration held importance by calling for two separate payments, one for planning and one for restoration. See IDA § 2.02(a). Here, the Board of Supervisors clearly expected that the

¹ When County Supervisors and County staff considered the IDA, they made several references to anticipated public benefits of the IDA. The IDA itself outlines how the agreement confers public benefits such as a reduction of the overall development potential of legal lots, configuration of development to make it less visible from the highway, sewage treatment instead of individual septic units, long term preservation of agricultural land, among others. IDA Recitals § I at 4. However, these benefits flow from California Environmental Quality Act requirements and land use consistency review, and were already required.

second payment of \$300,000 would be spent on creek *restoration* on Dos Pueblos Creek or at an appropriate alternate site, not on planning, nor on overhead of the contracted non-profit. Both the creation of a restoration plan and restoration implementation were clearly important and “essential” to the bargain from the County’s perspective. The Board even contemplated what would occur if restoration of Dos Pueblos Creek became infeasible, by providing an alternative site to be approved, and providing an additional two years in which to complete the project. *Id.*

C. Developer Actions under Section 2.02(a) of the Inland Development Agreement

1. Dos Pueblos Creek Restoration Plan

Since the IDA became effective in April 2014, the Developer successfully contracted with an independent non-profit organization, and it completed the Creek Restoration Plan for Dos Pueblos Creek required by IDA § 2.02(a) several years ago. The Developer hired the California Rangeland Trust (“CRT”) to conduct restoration planning. CRT completed the *Dos Pueblos Creek Restoration, Maintenance and Monitoring Plan* in 2015, submitted the plan to the County, and received peer review by the County biological resources consultant who found the plan acceptable. (Letter from Glenn Russell, Ph.D., Director of Planning and Development, to Stanley Lamport (February 26, 2016)).

2. Dos Pueblos Creek Restoration

The Developer entered into an agreement with the California Association of Resource Conservation Districts (“CARCD”) to carry out creek restoration on Dos Pueblos Creek, consistent with the terms of IDA Section 2.02(a). (Letter from Glenn Russell, Ph.D., Director of Planning and Development, to Stanley Lamport (March 1, 2018)). CARCD then retained Cachuma Resource Conservation District (“CRCD”) and South Coast Habitat Restoration (“SCHR”) for assistance with implementation of the restoration. (Letter from Dianne Black for Lisa Plowman, Director of Planning and Development, to Stanley Lamport (March 28, 2019)).

During the time period of 2017-2019, communications took place between owners of Dos Pueblos Ranch North and South and representatives of the non-profits and the Developer; however, in mid-2019, the Developer determined that the owners of Dos Pueblos Ranch would not agree to allow restoration work to be conducted on their property. (Letter from Stanley Lamport to Lisa Plowman, Director (Feb. 7, 2020)). While the five-year deadline to complete a restoration project on Dos Pueblos Creek had already passed on April 8, 2019, it was not until February 7, 2020 that the Developer’s representative notified the County that restoration there was no longer feasible, as follows:

At the time of last year’s compliance review, the Developer informed the County that discussions were continuing between Standard Portfolios, on behalf of the Developer, and Dos Pueblos Creek Owners regarding items i through iv under Section 2.02(a) of the IDA that are required to occur prior [sic] implementation of the Creek Restoration... the owners of Dos Pueblos Ranch North informed Standard Portfolios that it does not consent to the implementation of the Dos Pueblos Creek Restoration, Maintenance and

Monitoring Plan on its property... accordingly due to the requirement of Section 2.02(a) that implementation shall not occur without Dos Pueblos Ranch consent with respect to activities occurring on Dos Pueblos Ranch, and as a result CARCD has been unable to implement the *Dos Pueblos Creek Restoration, Maintenance and Monitoring Plan* at this time. *Id.*

Standard Portfolios then requested the County's "consent to use the remaining funds for alternative restoration in accordance with the terms of IDA Section 2.02(a) and the Creek Restoration Implementation Funding Agreement." *Id.* The request identified four alternative locations on the Gaviota Coast where the funds could be expended for alternative creek restoration:

- (i) Jalama Creek - Fish passage & Riparian Restoration
- (ii) Gaviota Creek- Fish passage work in collaboration with CalTrans (currently ongoing),
- (iii) El Capitan Creek- Riparian Restoration, and
- (iv) Arroyo Hondo – Riparian Restoration. *Id.*

3. Alternative Creek Restoration Project Implementation

One year later, on January 29, 2021, the Developer requested the County's Periodic Review for 2020. (Letter from Stanley Lamport to Lisa Plowman, Director (January 29, 2021)). This letter does not report actual progress on an alternative creek restoration project on the Gaviota Coast, mentioned in Mr. Lamport's letter of the year before, nor does it acknowledge the upcoming deadline of April 8, 2021 for completion of that project, only a little more than two months from the date of his letter. *Id.* The Developer's letter indicates only that it had "assisted CARCD to formalize a request for the County's consent to use the remaining funds for alternative restoration in accordance with terms of the IDA Section 2.02(a) and the Creek Restoration Implementation Funding Agreement" and vaguely refers to CARCD working with the County since that time. *Id.* This letter reports no County approval of an alternative restoration project, nor does it report completion or progress on such a project. *Id.*

The County's latest written determination of good-faith compliance dated March 30, 2021, which we appeal today, determined that the Developer had offered reasonable assistance to implement the Creek Restoration Plan and provided a list of Developer actions as support for that assertion. (Letter from Lisa Plowman, Director, to Stanley Lamport (March 30, 2021)). However, we note that with perhaps one exception regarding Santa Barbara Land Trust, that list contains items pertaining solely to restoration on Dos Pueblos Creek, which was determined to be infeasible in mid-2019.² *Id.* There is no evidence cited in the March 30, 2021 letter, nor in the

² 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 by the County's consulting biologist;
- Helped to coordinate updates to 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;

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. *Id.* at 3 (underline added).

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. *Id.* at 2. 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. *Id.* at 2. There is no evidence to suggest that any on-the-ground restoration work has been done to date.

D. The Determination Is Not Supported by Evidence in the Record

The IDA requires that “[a]t the conclusion of the Periodic Review, the Director of Planning and Development shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement.” IDA § 10.04 (d). Moreover, California law requires administrative agencies, like planning and zoning bodies, to issue findings in support of their adjudicatory decisions and requires that substantial evidence exists in the record to support those findings. *Topanga Assn. for a Scenic Cmty. v. Cty. of Los Angeles*, 11 Cal. 3d 506, 515 (1974); *also see* Cal. Civ. Proc. Code § 1094.5. A court's inquiry will look to whether there was a prejudicial abuse of discretion. *Id.* An administrative order or decision that “is not supported by the findings, *or* the findings are not supported by the evidence” is an example of “abuse of

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- 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 CRCD and SCHR and the owners of Dos Pueblos Ranch;
 - Facilitated a meetings with CRCD, SCHR and hydrogeological consultants;
 - Arranged to have CRCD and SCHR attend a meeting of the holders 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.

discretion.” *Topanga Assn.* at 515 (emphasis in original) (internal citations omitted). The *Topanga* court went on to state: “abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.” *Id.*, citing *Zakessian v. City of Sausalito*, 28 Cal.App.3d 794, 798 (1972).

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.” *Id.* at 3 (underline added).

Moreover, Ms. Plowman’s letter indicates that CARCD, CRCD, and SCHR had already expended \$268,000 of the \$300,000 (90% of the funding slated for creek restoration) by the time of her letter, leaving insufficient funds for any kind of creek restoration project. *Id.* at 2.

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.

Discussed above, creek restoration is the primary benefit the County and public receive in exchange for substantial benefits received by the Developer. If the Board does not enforce the terms of the IDA, the public, by and through the County, receives *no* benefit from the agreement with the Developer whatsoever. Meanwhile, the Developer will continue to enjoy vested rights to build the largest residential development project ever on the Gaviota Coast, under the land use rules in place in 2008 and without complying with the Gaviota Coast Plan.

IV. Remedies under Law and IDA Available to the Board

A development agreement is an enforceable contract between a municipality and a developer. *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes*, 191 Cal. App. 4th 435, 442 (2010). Accordingly, general contract principles, including “material breach” and “substantial performance” govern the IDA. For a breach of contract to be material, it must “go to the root” or “essence” of the agreement between the parties or defeat the “fundamental purpose of the contract.” See 23 Williston on Contracts § 63:3 (4th ed.) (2020); also see *Karz v. Department of Professional and Vocational Standards*, 11 Cal.App.2d 554, 557 (1936); also see

Wylar v. Feuer, 85 Cal.App.3d 392, 404 (1978). Using the contract law test for material breach, the creek restoration project was clearly the “essential” and “fundamental” benefit to the public and the County in the IDA. Without a completed restoration project by the deadline, as described in the IDA, that sole benefit of the bargain to the public fails, and the Developer and its contractor are in breach of the agreement.

In addition to general contract principles that apply to development agreements, California Government Code Section 65864 lays out the procedures for modifying, terminating, or canceling a development agreement. Cal. Gov’t Code § 65864 *et seq.* Under that law, the Board may modify or terminate an agreement if it finds, “on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement.” Cal. Gov’t Code § 65865.1. The Board must provide notice in order to amend or cancel any portion, and must hold a public hearing. Cal. Gov. Code §§ 65868, 65867.

Mirroring that law, the IDA itself contains procedures for declaring a default (breach) or terminating the agreement. It provides that any failure by a party to perform a duty under the IDA, if it remains uncured for thirty days after notice of such failure from the other party, is a default. IDA § 10.01. When a default occurs, the non-defaulting party may institute legal proceedings to enforce the agreement or, if there is a material default, terminate the agreement. *Id.*; see also IDA §10.02.

The remedy we seek on appeal is that the Board of Supervisors find that the Director’s Determination is not supported by evidence. Consequently, the Board should find that the Developer has failed to comply with the IDA and should give notice of its intent to terminate the IDA. IDA § 10.04(d). The Board should then hold a hearing to review the performance under the IDA to determine whether there is substantial evidence that a material default has occurred, and if so, the Board should terminate the agreement. IDA § 10.02.

V. Conclusion and Request for Relief

The October 21, 2008 IDA clearly contemplated that the public would benefit from a creek restoration on the Gaviota Coast in exchange for vesting of development rights for the Developer. Indeed, that was the central benefit of the agreement to the County and public. The IDA included firm deadlines for completion of a creek restoration project, whether at Dos Pueblos Creek or an alternative site, and it also provided extra time for restoration at an alternative site, if restoration on Dos Pueblos Creek proved infeasible. The deadline for that project was April 8, 2021, which has now passed.

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.

It would set a deleterious precedent if the Board were to do nothing to challenge the failure of the Developer to fulfill its duty in the bargain. Parties seeking development agreements in the future would understand that they may make illusory promises in exchange for valuable, long-term vested rights. In addition, because the Developer failed to perform this aspect of the contract, the Board should also have serious questions about this Developer's ability to perform future duties under the IDA. Most importantly, failing to raise serious concerns now will erode public confidence and diminish support for development agreements, if the public sees them as benefitting only private developers, with little to no public benefits. And, doing nothing at this stage will result in the County and public failing to realize the *only* public benefit provided in the IDA – creek restoration.

Therefore, we appeal the Director's determination of compliance with the IDA and request the Board of Supervisors find there is no evidence to support a determination of compliance, and direct staff to seek to terminate the agreement with the Developer.

Sincerely,



Linda Krop
Chief Counsel
Environmental Defense Center



Marc Chytilo
Law Office of Marc Chytilo

Exhibit 1: Plowman email confirming appealability of Director Determination of IDA Compliance (April 5, 2021)

EXHIBIT 1

From: [Plowman, Lisa](#)
To: [Linda Krop](#); [Ghizzoni, Michael](#)
Cc: [Seawards, Travis](#); [Rachel Kondor](#); [Marc Chytilo](#); [Ana Citrin \(ana@lomcsb.com\)](#); [Pettit, Brian](#); [Lieu, Nicole](#)
Subject: RE: Santa Barbara Ranch IDA
Date: Monday, April 5, 2021 5:36:00 PM
Attachments: [image001.png](#)

Dear Linda,

Please see my response to your questions below.

Please confirm whether the Director will issue another determination on or after April 8, 2021, regarding final compliance with section 2.02(a) of the Agreement.

I have found the Developer to be in good faith compliance with the Santa Barbara Ranch IDA for the 2020 Review Period. The consistency determination is based on the Developer's compliance with the IDA and is not based on an evaluation of the non-profit organization's performance under its separate agreement with the Developer. As you noted in your email, the Developer is required to "offer all reasonable assistance" to the non-profit as they work to find an alternative project. At this time, I do not intend to issue another Periodic Review Determination under Section 10.04 of the IDA until the next review cycle.

Please also confirm that the Director's determination will be appealable (including by the public) to the Board of Supervisors pursuant to section 10.04(d) of the Agreement, as stated by Ms. Plowman and Mr. Seawards during our March 25, 2021 meeting.

My Determination that the Developer is in good faith compliance with the Santa Barbara Ranch IDA for the 2020 Review Period is appealable to the County Board of Supervisors under Section 10.04(d) of the IDA. An appeal of that Determination would need to be submitted within 10 days of issuance of the Determination along with the inland appeal fee of \$556.00. Please confirm the appeal fee with Nicole Lieu before submitting the appeal.

Also, based on our review of the materials we are in agreement that the effective date of the agreement is April 8, 2014.

Please let me know if you have any additional question.

Best,
Lisa



Lisa Plowman
Director
Planning & Development
123 E. Anapamu St.
Santa Barbara, CA 93101
805-568-2086

lpowman@countyofsb.org
<http://www.countyofsb.org/plndev/home.sbc>

From: Linda Krop <lkrop@environmentaldefensecenter.org>
Sent: Friday, April 2, 2021 12:16 PM
To: Ghizzoni, Michael <Mghizzoni@co.santa-barbara.ca.us>; Plowman, Lisa <lplowman@co.santa-barbara.ca.us>
Cc: Seawards, Travis <tseawards@co.santa-barbara.ca.us>; Rachel Kondor <RKondor@environmentaldefensecenter.org>; Marc Chytilo <marc@lomcsb.com>; Ana Citrin (ana@lomcsb.com) <ana@lomcsb.com>
Subject: Santa Barbara Ranch IDA

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

“Dear Mr. Ghizzoni and Ms. Plowman,

The Environmental Defense Center and Law Office of Marc Chytilo have reviewed the County’s response to Mr. Lamport regarding the Periodic Review of the Developer’s compliance with the Santa Barbara Ranch Inland Development Agreement (“Agreement”). The County’s response states: “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.” (Letter from Lisa Plowman to Stanley Lamport, March 30, 2021, at page 4). (Note: although the County’s letter identifies April 18, 2014 as the Effective Date of the Agreement, we believe – as does Mr. Lamport – that the Effective Date is April 8, 2014.)

Please confirm whether the Director will issue another determination on or after April 8, 2021, regarding final compliance with section 2.02(a) of the Agreement.

Please also confirm that the Director’s determination will be appealable (including by the public) to the Board of Supervisors pursuant to section 10.04(d) of the Agreement, as stated by Ms. Plowman and Mr. Seawards during our March 25, 2021 meeting.

Finally, please note that we are waiting for documentation pursuant to our Public Records Act request of March 23, 2021, as well as a follow-up request submitted on March 30, 2021.

Thank you for your response.

Sincerely,
Linda Krop

LINDA KROP (she/her/hers)

CHIEF COUNSEL

906 Garden Street

Santa Barbara, CA 93101

805.963.1622 x 106

www.EnvironmentalDefenseCenter.org

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