

**SANTA BARBARA COUNTY  
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
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**Agenda Number:**  
**Prepared on:**  
**Department Name:** County Counsel  
**Department No.:** 013  
**Agenda Date:** 4/23/02  
**Placement:** Departmental  
**Estimate Time:** 3 hours  
**Continued Item:** YES  
**If Yes, date from:** 3/19/02

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**TO:** Board of Supervisors

**FROM:** Alan Seltzer, Chief Assistant County Counsel  
Dianne Meester, Assistant Director, P&D

**STAFF CONTACT:** Jackie Campbell, P&D

**SUBJECT:** Naples Memorandum of Understanding

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**Recommendation(s):** That the Board of Supervisors: (1) receive a staff report and public testimony on a proposed Memorandum of Understanding ("MOU") between Naples property owners and County (Third District); (2) authorize execution of the attached MOU.

**Alignment with Board Strategic Plan:** This recommendation is primarily aligned with actions required by law or business necessity and to respond effectively to the needs of the community.

**Executive Summary:**

The March 19, 2002 Board hearing on the Naples Memorandum of Understanding (MOU) was continued to April 23, 2002, to allow Board consideration of a revised MOU in light of eleventh-hour changes suggested by the Moreharts and their related interests (MRI), and to respond to Board questions regarding the MOU. In coordination with our outside counsel, Wilson Wendt of Miller, Starr & Regalia, staff has met with counsel for the Moreharts and the Osgood-Santa Barbara Ranch LLC related interests (SBRI) to consider revisions proposed by MRI. As a result of those discussions, staff recommends the attached draft MOU, which has been approved by both MRI and SBRI. Revisions to the previous draft MOU, presented to your Board at the March 19 hearing, are highlighted on the attached draft. In addition, this memorandum addresses questions that your Board directed to staff at the March 19 hearing.

**Discussion:**

Proposed MOU REVISIONS.

Deletions and additions to the MOU draft previously released to the public are indicated by strike-through and bold text on the attached MOU. Changes of note to the MOU are explained by reference to paragraph or section number below.

- MOU Identification of Parties. The identity of the parties to the MOU has been modified relatively extensively based on an Ownership Guarantee we have required MRI and SBRI to provide. This reflects recent transactions and additional title investigation as well as efforts to ensure reference to the correct names of the parties.
- Recital A: This recital has been modified to acknowledge that the Moreharts claim title to an undivided interest in a portion of Official Map lot 119B by adverse possession, and that the Moreharts will seek to quiet title in an action that has or will be filed. Upon judicial confirmation of title, this portion of the property will become subject to the requirements of the MOU.
- Recital B: In this recital and elsewhere in the MOU, we have clarified that the MOU applies to the property subject to acquisition by SBRI under the Option Agreement. This is accomplished by using the defined term “Option Property” appropriately throughout the document. (See e.g. §2.26.)
- Section 2.1- “Approvals”: A definition of “Approvals” has been added to provide certainty in identifying the Coastal Project Applications and Approvals required by the County and Coastal Commission in order to globally resolve pending and threatened litigation over Naples development as contemplated by the MOU.
- Section 2.3 – “Coastal Project Applications”: This definition has been modified in light of the addition of the term “Approvals” to the MOU. It provides added clarification that the coastal project applications are the legislative and quasi-adjudicative applications listed in Section 5.2 of the MOU, and that governmental approvals necessary for development beyond those applications are not required for the global resolution of pending and threatened litigation provided for by the MOU. (See also section 5.2.3.)
- Section 2.4 – “Coastal Property”: The definition has been modified by making reference to a new Exhibit D depicting the Coastal Property, rather than the Inland Property as before.
- Section 2.9 – “Development Envelopes”: This definition has been modified to make clear that development envelopes can be required by development standards of the proposed Naples Planned District, not simply by CC&Rs. This responds to a question asked by Supervisor Schwartz at the March 19 hearing. (See also the discussion of CC&Rs in Planning Issues, below.)
- Section 2.16 – “Inland Property”: The definition has been modified by making reference to a new Exhibit E, which is the same as the previous Exhibit D depicting the Inland Property.
- Section 5.2.1(b) – Legislative Approval Applications: This section has been amended to add a new last sentence to reiterate that the rezone application shall not apply to the Morehart retained property.
- Section 5.2.2 – Quasi-Adjudicative Approval Applications: This section has been revised to clarify that the quasi-adjudicative development applications required to receive “Final Approvals” before global settlement of all claims is accomplished under the MOU include the minor conditional use permits and any final development plan or plans required by the new Naples Planned District. CDPs have been removed from the enumerated quasi-adjudicative permit applications because they cannot be approved or issued concurrently with a final development plan. This is because CDP approvals must await the

expiration of the appeal period of any previously required discretionary permit, which in this case would include a final development plan.

- Section 5.2.3 – Other Agency Approvals: This section has been modified to clarify that the failure or delay in obtaining other governmental approvals shall not affect the status of final approvals from the County and Coastal Commission. (See parallel changes in Section 2.3; Final Approvals are now limited to Final Approvals of the applications identified in Sections 5.2.1 and 5.2.2.)
- Section 5.5 – Agreement to Delay Applications: This section has been revised to set forth with specificity the events that relieve MRI/SBRI from the limitation imposed on their ability to apply for certificates of compliance or individual lot development, and to make clear that in entering into this MOU, MRI has reserved its rights to apply for permit approvals for development or use of the Morehart Retained Property under existing, applicable law, since that retained property is neither part of the Option Property nor the proposed Coastal Project. (See also similar addition to section 6.4.)
- Section 6.5 – Reactivation of Litigation: A clause identifying one of the trigger events allowing reactivation of litigation – “denial of the Coastal Project Applications” – was inadvertently omitted from the second sentence of this paragraph. It appears in the first sentence and has been added to the second sentence.
- Section 10.2 – Rejection of Approvals by MRI and SBRI; Withdrawal of application by MRI and SBRI: This section has been modified to provide that MRI’s right to accept or reject County or Coastal Commission approvals exists only so long as MRI continues to own some portion of the Option Property.

[Note: The following subsections track the potential processing paths an LCP amendment certification process may follow. Subsection 10.2.1 allows MRI and SBRI a 10-day period to reject County’s approvals sent to the Coastal Commission. If the Coastal Commission suggests modifications, MRI/SBRI have a 10-day period to reject the Coastal Commission’s conditional approval and suggested modifications (§10.2.2). Finally, if the County determines to respond to the Coastal Commission’s suggested modifications in a manner other than as suggested by the Commission, there is another 10-day period in which MRI/SBRI may reject the County’s response. (§10.2.3.) In the event of MOU termination in any of these cases, MRI/SBRI has the authority to withdraw only its quasi-adjudicative development applications. The MOU does not interfere with the County’s exercise of its police power. The County may, based on information obtained from processing the EIR, Coastal Project Applications, and alternatives, continue to pursue alternative legislative policies for Naples before the Coastal Commission if it so chooses notwithstanding termination of the MOU.]

- Section 10.5 – Notice of Breach of Option Agreement: This section has been revised to ensure the County is provided any notice of a claimed breach of the Option Agreement between MRI and Vintage/SBRI as well as notice of MRI’s termination of the Option Agreement if a breach is not cured.
- Section 10.7 – Notice of SBRI’s Failure to Purchase the Option Property: This section has been added to ensure the County is provided notice of SBRI’s failure to exercise its option to purchase or complete purchase of the Option Property.

## OTHER MOU ISSUES.

- HOW MAY THE MOU BE TERMINATED? HOW IS THE INLAND PROJECT RELATED TO SBRI'S RIGHT TO TERMINATE THE MOU?

The stay of litigation and the limitation on applications for certificates of compliance and other development applications provided for by the MOU terminate if the Coastal Project Applications are denied or, if approved, ultimately reversed or nullified. (See Sections 6.1, 6.3, 6.5.) The MOU does not allow SBRI or MRI to terminate the MOU at will during its term. MRI and/or SBRI may terminate the MOU under the following circumstances:

- (1) Under Section 5.6.4, if the County fails to meet Coastal Project Applications review milestones, termination is authorized upon 30 days written notice unless the delay is occasioned by Coastal Project revisions or causes beyond the control of the parties.
- (2) Under Section 10.2, if the Coastal Project Applications are rejected, or if MRI (if it still retains an interest in the Option Property) or SBRI rejects County or Coastal Commission conditional approvals under the Subsections 10.2.1, .2, or .3.
- (3) Under Section 10.6, which allows SBRI to terminate the MOU if it determines: (a) that the Inland Project applications are not being processed within a reasonable time frame, taking into account the requirements for CEQA compliance and application processing, or (b) the applications are denied or not approved in a manner reasonably acceptable to SBRI, or (c) if approved, are ultimately reversed or nullified. The reason for this provision is as follows. The existing inland (Unlimited-"U") and coastal (AG-II-100) zone districts at Naples identify single family residences as a principal permitted use and allows residential development on substandard size legal lots if findings required for a development permit can be made. Naples property owners have the right to file applications for residential development on Naples lots under existing inland and coastal zoning and land use policies at any time, and staff has acknowledged that some number of Naples lots within the inland and coastal properties may be developed with single family residences consistent with existing agricultural zoning standards and land use plan policies encouraging the continuation of agriculture. The MOU, however, limits applications that may be filed by MRI and SBRI under current law to SBRI's Inland Project applications only. The County retains full authority to deny or limit approval of inland lot development based on, among other things, the EIR for the Inland Project and its cumulative impacts analysis. In return, section 10.6. allows SBRI to terminate the MOU and, consequently, the limitations it imposes on development applications that may be filed throughout the Option Property if the Inland Project Applications are denied or not approved in a manner reasonably acceptable to SBRI. Contrary to some public testimony at the last hearing, although the Inland Project applications are identified and limited by this MOU, the Inland Project is separate from and not dependent upon the Coastal Project, which alone is the basis upon which the proposed settlement of pending, threatened and potential litigation over Naples Townsite development may occur.

- DO MRI AND SBRI HAVE TITLE TO THE OPTION PROPERTY?

At the prior MOU hearing, there was testimony presented by representatives of the Barbareno Chumash Council regarding title claims to the Naples property. Your Board has requested that staff respond.

Staff understands that there is archaeological evidence and historic reference to the location of the two Chumash villages known as "Dos Pueblos" on the bluffs on either side of Dos Pueblos Creek. However, there is also evidence that the Dos Pueblos village was abandoned early in the Spanish era and that by the mid-1800's the Naples area was generally vacant. Notwithstanding the above, on October 3, 1845, Nicholas A. Den received a grant of land for the Dos Pueblos Rancho from the Governor of the Mexican Department of California. Pursuant to the Treaty of Guadalupe Hidalgo in 1848, Mexico ceded California to the United States, and Nicholas Den's land grant title was adjudicated in accordance with that treaty by the Board of Land Commissioners of the United States. The decision of the Board of Land Commissioners was appealed to the United States District Court, which rendered a decision in favor of Nicholas Den in 1858. Based upon that decision, the United States, under the signature of President Ulysses S. Grant, issued a Patent to Nicholas Den for the entirety of Rancho Dos Pueblos, of which the Naples property is a part.

The Den Patent was issued in fulfillment of the principles of an international treaty, and was adjudicated in federal court and resolved a century and a half ago. The County Surveyor and Senior Deputy County Counsel Kevin Ready have examined the chain of title since then and have concluded that the Naples owners are legal title owners of the property in question. They also advise that irrespective of any valid claims Native Americans may have against the federal government for the loss of their tribal lands, there is no precedent for a claim by a tribe to be held against private property, especially with as long and clear title history as exists in this case. In any event, the Chumash title claims at Naples are not required to be resolved in order for your Board to decide whether to approve the MOU.

#### PLANNING ISSUES.

- GAVIOTA COAST RESOURCE STUDY

The Gaviota coastline encompasses significant natural, cultural, recreational and scenic resources, and represents one of the last remaining stretches of unprotected and undeveloped coastline in southern California. The Gaviota Coast Resource Study is designed to inventory the variety of resources located on the Gaviota Coast and assist in the long-term planning effort for the Gaviota Coast. The study catalogues a baseline of resource and planning information, identifies general preservation techniques, discusses transfer of development credits (TDC) programs and their potential to succeed on the Gaviota Coast and summarizes recommended preservation techniques and general site and/or resource priorities. Some of the preservation techniques discussed in the document include: acquisition of property, conservation and open space easements dedications, purchase of development rights, the agricultural preserve program, agricultural clustered development program, and a transfer of development credits (TDC) Program. The report will serve as an informational document for the public, decision-makers, and county staff. The study is intended to inform the community of the vast diversity of resources, their importance, and the development pressures facing the Gaviota Coast. The study does not provide all the answers, but is intended as a reference document to solicit discussion and future direction for land use on the Gaviota Coast.

The study will be ready for public release in May 2002. An informative briefing on the document will be held before the Planning Commission in June. This study is not a precursor to a Gaviota Coast Plan. Planning and Development's Comprehensive Planning Division five-year work program does not include funding for such an effort at this time. However, the National Seashore Feasibility Study being prepared by the National Park Service will include additional information about the Gaviota Coast, its historic, current and potential future land uses. That Study is expected to be available in January 2003. All available information will be considered as reference material should the application process for the Naples project continue.

- TIMELINES FOR INLAND PROJECT

The MOU does not contain any requirements for the date of submittal of the inland project applications, nor does it set any milestones for the inland project processing. Once the applications are determined to be complete, we estimate the following schedule to bring the applications to the Zoning Administrator. An appeal to the Board of Supervisors could follow.

Initial Study	30 days
Notice of Preparation and Scoping Meeting	30 days
Prepare Draft EIR	180 days
Public Review of Draft EIR	45 days
Prepare Proposed Final EIR and Staff Report	60 days
<u>Notice for Zoning Administrator Hearing</u>	<u>15 days</u>
Total Time to ZA Hearing	360 days (12 months)

- TIMELINES FOR COASTAL PROJECT

The MOU does not contain any requirements for the date of submittal of the coastal project applications, nor does it set a specific time by which the County must determine that the applications are complete for processing. We anticipate that the Coastal Project Applications will be filed after the Inland Project Applications and, therefore, they will be processed on different, but overlapping schedules. [Note: Section 5.2 of the MOU requires SBRI to provide evidence that MRI has consented to the submittal of the Coastal Project Applications within 60 days of MOU execution.] Once the applications are determined to be complete, the following 18-month EIR and County hearing schedule is contemplated by section 5.6 et seq. of the MOU:

Initial Study	30 days
Notice of Preparation and Scoping Meeting	30 days
Prepare Draft EIR	180 days
Public Review of Draft EIR	45 days
Prepare Proposed Final EIR and Staff Report	60 days
<u>Notice for Planning Commission Hearing</u>	<u>15 days</u>
Total Time to Planning Commission Hearing	360 days (12 months)
<u>Planning Commission Deliberations</u>	<u>60 days (2 months)</u>
Set Hearing for Board of Supervisors	20 days
Prepare Staff Report	30 days
<u>Notice for Board of Supervisors Hearing</u>	<u>10 days</u>
Total Time to Board of Supervisors Hearing	60 days (2 months)
<u>Board of Supervisors Deliberations</u>	<u>60 days (2 months)</u>
Total County Processing Time	18 months

Separate proceedings before the Coastal Commission will be required before Final Approvals can be obtained. The MOU does not provide for termination based on the duration of Coastal Project proceedings before the Coastal Commission.

- AGRICULTURAL VIABILITY

Agricultural production in the Gaviota Coast Resource Study Area includes cattle grazing and specialty crops, such as avocado, citrus and cherimoya orchards, and flowers. Almost 94% (97,200 acres) of the land within the study area is designated for agriculture, with approximately 400 Agricultural Preserve contracts encompassing 57% of the area (59,000 acres). The minimum lot sizes for agricultural use start at ten acres, but the majority of the coast is zoned for 100 to 320 acres as a minimum lot size.

The agricultural viability of the Option Property will be evaluated as part of the EIRs prepared for both the Inland and Coastal Projects. The analysis will include a discussion of historic and current agricultural operations on the property and in the Gaviota region. Project specific as well as cumulative impacts to agriculture will be evaluated. In the Inland Project EIR analysis, staff will consider the project specific impacts to agriculture from the proposed project and project alternatives, as well as the cumulative impacts to the agricultural viability of the Option Property given the proposed inland project and the future coastal project. A full cumulative analysis of the agricultural impacts will also include an evaluation of the impacts of the Inland and Coastal Projects along with any other pending projects on agriculturally zoned or used property in the region. Staff will also evaluate the project's consistency with the Agricultural Element and the applicable Coastal Plan policies regarding the preservation of agriculture in the coastal zone.

- OPEN SPACE AREA COMPARISON

At the last hearing, Supervisor Rose requested an analysis of the amount of open space in the current plan as compared to the amount of open space in the previous MOU proposal reviewed in 2000. The current plan provides:

160 acres of Agricultural Conservation Easements  
86 acres of Open Space Conservation Easements  
20 acres of Public Open Space/Recreation Amenities

The 2000 MOU proposal contemplated:

150 to 175 acres Agricultural or Open Space Easements (north of Highway 101)  
222 acres Public Open Space (south of Highway 101)

While it is clear from these numbers that the previous MOU provided a significantly larger area of open space (particularly public open space) than is currently envisioned, it also required acquisition by a public agency or land trust organization of this land for public use or conservation. Staff understands that more than \$10 Million was needed for such an acquisition; no public funds are necessary in the current proposal. The EIR for the Coastal Project Applications will include project alternatives that provide for a larger area of public open space if public acquisition monies are available.

- AFFORDABLE HOUSING

Under current zoning and Comprehensive Plan Housing Element policies, the County's inclusionary affordable housing policy would not apply to the inland project as there is no requirement for subdivision of property nor any overall development plan. However, staff would apply the policies to the coastal project and require either the provision of affordable units on the site or payment of in lieu fees.

As reflected in the Affordable Housing Overlay (AHO) Program in Goleta, in order to entice developers to provide affordable units on their sites, the County has offered increased density levels over what would be allowed by the base zone district. In choosing properties to designate as appropriate for affordable housing, the County considered properties close to or in the urban areas, with urban services, along major transportation corridors with public transit service. In the case of the Naples property, given its location in a rural area and the physical site constraints (septic capacity, visual resource impacts, cultural resources, geologic processes, biological resources, etc.), this property is not suitable for high density development without significant infrastructure improvements (e.g., sewer service). Coastal Policy 2-10 specifically limits the extension of sewer service to rural areas except in a relatively few instances. For these reasons, the Naples property is not a good candidate for the development of affordable housing.

- GROWTH INDUCING EFFECTS - CUMULATIVE IMPACTS – PROJECT SEGMENTATION

Pursuant to CEQA, an EIR is required to discuss the ways in which a proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. CEQA defines "project" to mean "the whole of an action" that may result in either a direct or reasonably foreseeable indirect physical change in the environment. While it is true that a truncated environmental review process could underestimate a project's growth inducing effects, staff will perform a comprehensive environmental review that fully evaluates all cumulative effects of the inland and coastal projects, with consideration of other pending projects in the region. Moreover, as mentioned in the previous hearing and further clarified by County Counsel, the separation of the inland and coastal projects does not segment the environmental review, as neither project is dependent upon the other. That is, if the inland project were approved and constructed, it would not necessitate any additional infrastructure or other physical improvement in the coastal project area and could stand alone regardless of whether the coastal project is ever approved or constructed. And, likewise, if the inland project is denied or not constructed, the Coastal project could go forward independently. The two projects do not rely on each other, and either project could stand alone as a whole and separate project. As we have previously explained, staff does not believe that the processing of the Inland and Coastal Projects separately constitutes a piecemeal approach to CEQA review, as project alternatives and a comprehensive analysis of all cumulative effects will be evaluated in each EIR. (*See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners.*)

- THE ROLE OF CC&RS

In the event that a project is approved in the future, a Declaration of Covenants, Conditions and Restrictions (CC&Rs) would be required to be reviewed and approved by P&D and County Counsel prior to issuance of any permits for development. A homeowners association would implement the CC&Rs. The CC&Rs would include many requirements regarding the property, including the requirement that all property owners maintain the subject property in compliance with all conditions of approval for the project. These requirements would implement development standards designed to preserve the agricultural, open space and visual character of any approved development.



These requirements in the CC&Rs would result from the new Naples Planned District zone district regulations, the applicable development standards or design guidelines for future development of the property included in them, and the conditions of a future project approval imposed pursuant to them. Conditions of any project approval can be written such that amendments to the County-required conditions shall be reviewed and approved by the County. For example, a requirement was included in the Sandpiper Residences CC&Rs requiring County review and approval of changes to certain provisions of the CC&Rs that could affect aspects of the project essential to the County's adopted findings of approval. In the Sandpiper Residences case, this included findings of consistency with the Comprehensive Plan and CEQA findings that impacts had been mitigated to the maximum extent feasible.

- PROPOSITION 40 - \$2.6 BILLION

Under the Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002, Santa Barbara County will receive \$1.2 million. These grants are for the acquisition, development, improvement, rehabilitation, restoration, enhancement and interpretation of local park and recreational lands and facilities. In addition to the \$1.2 million earmarked for the county, opportunities to compete for additional funds will be available for specific target programs, such as habitat preservation, watershed protection, agricultural land conservation, etc. For example, the State Coastal Conservancy will have \$200 million available through a competitive process to grant for projects that further the Conservancy's goals. Competition for these funds would come from other projects on the Gaviota Coast, in the county and in the state. Funds from sources such as these could be used for public acquisition of all or a portion of the Naples property. Public acquisition scenarios would be included in the alternatives analysis of the EIRs for the projects envisioned in the proposed MOU.

- WORKLOAD/STAFF RESOURCES

Naples development applications will impose significant workload and resource requirements on P&D and County Counsel whether or not the proposed MOU review process goes forward. Without execution of the proposed MOU, SBRI and MRI will each likely submit individual parcel development applications at Naples for their respective holdings north and south of Highway 101, either serially, or in a package of applications. The staffing implications would be equally demanding if not greater than the MOU review process, given the fact that individual projects from numerous applicants would be subject to similar planning and CEQA processes without the benefits of a more comprehensive analysis from a consolidated in-house planning team. In this scenario, P&D staff would also be involved in supporting County Counsel in pending and threatened litigation matters related to the Naples property.

Under the review process contemplated by the MOU, the proposed processing timelines of both the inland and coastal projects will require an estimated 2.0-2.5 FTE (full time equivalent) of planner hours during the entirety of the process. Approximately 0.75 FTE of a Supervising Planner from the Development Review Division – South County would be necessary, with an additional 1.25 to 1.75 FTE of senior level staff (Planner III) from Development Review and to a lesser extent, the Comprehensive Planning Division. This workload will require assessment of current assignments by selected staff and may require some reassignments, in order to have a consolidated team. All staff costs will be offset by applicant reimbursed fees. Therefore, P&D could hire additional planners to meet the workload at the applicant's expense.

One other workload issue may significantly offset the staff resources assigned to these projects. Projects currently processed by Development Review within the City of Goleta will transfer to city staff or their consultants within a few months (starting July 1), relieving some current case assignments.

**Attachment:** Revised MOU (with highlighted deletions and additions to the previous MOU that was distributed to the Board of Supervisors and the public before the March 19, 2002 Board hearing).

Naples/4-23BoardAgendaLetter.doc

