



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: P&D  
Department No.: 053  
For Agenda Of: 4/21/09  
Placement: Set Hearing  
Estimated Tme: 2 hours on 5/5/09  
Continued Item: Yes (3/3/09)  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Planning and Development John Baker, Director  
Contact Info: Dianne Black, Development Services Director, P&D 568-2086  
**SUBJECT: Santa Barbara Ranch Development**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: NA

**Other Concurrence:** NA

As to form: NA

**Recommended Actions:** That the Board set a hearing for May 5, 2009 to consider the following:

- A. Receive a report on the status of the Santa Barbara Ranch Project approved by the Board of Supervisors on October 21, 2008 and December 9, 2008 and responses to issues raised in the letters from Stanley Lamport on behalf of Santa Barbara Ranch Interests (SBRI) dated February 5 and 27, 2009 and from the Environmental Defense Center and Law Office of Marc Chytilo dated February 16 and 25, 2009.
- B. Direct staff to respond to the Coastal Commission's incomplete letter dated January 6, 2009 related to the Local Coastal Program Amendments for the Santa Barbara Ranch Project and Transfer of Development Rights Ordinance.
- C. Direct staff to respond to the Coastal Commission's deficiency notice dated February 4, 2009 related to the County's Notice of Final Action for the Project by 1) submitting Notices of Final Action for the Vesting Tentative Map and Conditional Certificates of Compliance; 2) agreeing to the dispute resolution process related to the lot mergers as appealable actions; and, 3) filing separate Notices of Final Actions for separate components of the Santa Barbara Ranch Project as outlined in this Board Agenda Letter.

**Summary Text:**

On March 3, 2009, your Board declined to approve the MOU Amendment for the Santa Barbara Ranch Project (“Project”) previously approved by the Board of Supervisors in Closed Session on October 7, 2008. The MOU Amendment was rendered void by the Board of Supervisors’ decision on January 27, 2009 to cure an alleged Brown Act violation. At the March 3, 2009 hearing, your Board directed Planning and Development to return to the Board of Supervisors on May 5, 2009 to respond to the issues raised in letters submitted on behalf of the Project applicant and on behalf of the project opponents (See Attachments A-D).

Since the Board’s hearing on March 3, 2009 hearing, the applicant submitted an additional letter. Applicant SBRI’s letter of March 25, 2009 (See Attachment E) alleges that the Board of Supervisors violated the Brown Act. Specifically, SBRI’s letter asserts that the Brown Act prohibited the County from “rescinding” the MOU Amendment when the County cured the separate Brown Act violation that was asserted by the Naples Coalition, the Environmental Defense Center and the Santa Barbara Chapter of the Surfrider Foundation. (SBRI’s letter of March 25, 2009 appears to be referring to the separate letter dated January 5, 2009 from the Naples Coalition, the Environmental Defense Center and the Santa Barbara Chapter of the Surfrider Foundation, which asserted that the County violated the Brown Act on October 7, 2008 by approving the MOU Amendment in Closed Session.) As of April 9, 2009, when this Board Agenda Letter is being docketed, the County of Santa Barbara has not yet informed SBRI of its decision to cure or not cure the Brown Act violation that SBRI asserted in SBRI’s letter of March 25, 2009. California Government Code Section 54960.1(c)(3) provides that if the Board of Supervisors does not act on SBRI’s asserted Brown Act violation within 30 days of receiving SBRI’s demand, then the expiration of that 30-day period shall be deemed a decision not to cure or correct the challenged action.

Staff’s analysis of the issues raised in the four letters from the March 3, 2009 hearing, along with recommendations regarding next steps in the process, follows.

**A. Linkage between Coastal and Inland Projects:**

One of the central issues raised in both sets of letters is whether development of the Project in the inland area of the County is dependent on the Coastal Commission’s approval of the Coastal Land Use Plan Amendment (CLUP) and rezoning to establish the Naples Town Site District for the project area in the Coastal Zone. Staff believes that the Inland and Coastal portions of the Project are not linked by either the provisions of the Memorandum of Understanding or the project findings and conditions.

**MOU:** The applicant and the County entered into a Memorandum of Understanding (MOU) in 2002 to specify how project applications for development would be processed, to hold litigation and potential litigation in abeyance while applications were considered by the County and Coastal Commission, and to provide for release of litigation in the event project approvals occurred in a mutually acceptable manner. The MOU Amendment entered into in October 2008 modified the processing structure of the original MOU by providing a process to commence development of the Inland Project independent of the Coastal Project. Under the MOU Amendment, the applicant was allowed to begin construction of

the Inland Project in exchange for sequential merger of lots within the Coastal Zone in advance of final approval of the Coastal Project. Consistent with Board direction, the intent of the MOU Amendment was embodied in the project approvals that followed in October and December 2008. When the Board of Supervisors cured the alleged Brown Act violation and later did not agree to reenter into the MOU Amendment, the conditions of approval for the various components of the project adopted in October and December 2008 remained unchanged. Without the MOU Amendment, there is no requirement for merger of lots in the Coastal Zone if the Inland Project proceeds in advance of the Coastal Project. The Coastal Project is contingent on mergers of lots in the Coastal Zone and the Inland Project is contingent upon mergers and resubdivision of lots in the inland area.

Primarily, the MOU is a processing agreement which set protocols for the County's review of the Project. The County of Santa Barbara has performed its obligations under the relevant provisions of the MOU, by processing and ultimately approving development within the Santa Barbara Ranch area. The MOU, particularly Section 5.1.6 which arguably links the Coastal and Inland Projects, has been overtaken by the project approvals. Whether or not the MOU is currently in effect or has been properly rejected by the applicant, the project approvals now govern the required conditions and timing of the development. The conditions of approval allow the inland development to occur in advance of the actions on the Local Coastal Program amendments by the Coastal Commission, consistent with Board direction in October of 2008.

Reconsideration of the Project: The Project opponents/litigants assert that the Board approved findings and conditions inextricably link the project approvals, and that the applicant's stated rejection of the Coastal Project and MOU require that the County reconsider its action on the Project. Staff does not agree with the assertion. As to the project conditions, each component of the Project must satisfy the stated conditions before proceeding with development of that project component. The requirements and contingencies for different portions of the Project are outlined below under *C. Status of the Project Approvals*. As to the findings required under CEQA, local ordinances and the Government Code, these findings were made for the project as a whole, and for each individual permit or action. The project findings are supported by substantial evidence. Substantial evidence still exists for each of the findings whether or not the applicant's attempt to reject the Coastal Project was effective. The Land Use Development Code does not provide a procedure by which the County can reconsider a project if the applicant chooses to pursue only a portion of the project, except where a condition of approval specifically requires reconsideration. In short, the Board does not have a vehicle by which to require the applicant to unilaterally amend the Project or conditions of approval, nor is there a procedure by which the County can unilaterally require the applicant to enter into a new or amended MOU, without the applicant's consent. To date, the applicant has verbally expressed his intent to continue to pursue both the coastal and inland project approvals, absent a requirement that the inland project be conditioned on the Coastal Commission's action on the CLUP Amendment.

Conditions: The Project opponents assert that the conditions of approval link the Coastal and Inland Projects. The example cited is the CalTrans improvements of the ramp and interchange with Highway 101. The findings adopted by the Board of Supervisors tie the CalTrans improvements to the development of the lots in the Coastal Zone south of Highway 101. The mitigation monitoring and reporting program, on the other hand, requires that the final design plans for the interchange

improvements be approved by CalTrans prior to inland development. A review of the record shows that the disconnect between findings and mitigation are the result of an editorial error; the Planning Commission's recommendation was to align the findings and mitigation with the requirement that ramp improvement be connected to development of lots south of Hwy 101. The documents presented to the Board did not fully reflect this recommendation. As a consequence, the Board has one of two options: (i) leave the approvals as is, which requires that final design plans for the interchange improvements be completed to the satisfaction of CalTrans prior to inland development; or (ii) modify the mitigation monitoring and reporting program to reflect the Planning Commission recommendation, which would tie the CalTrans improvements to the development of the lots in the Coastal Zone south of Highway 101. Staff believes that the latter of these two options is what record intended. Either way, the Inland Project is *not* dependent on Coastal Commission approval of the Coastal Project. Should the Board choose to consider amending the approvals to reflect the Planning Commission recommendation, this should be agendaized for consideration at a future hearing

In regard to other general claims that the Coastal and Inland Projects remain interconnected, Paragraph B.10 of the project conditions acknowledges the Board's direction to decouple the project components. In view of the limited time that staff had to implement the Board's directive by amending the project approval documents, Paragraph B.10. was expressly added to override any conflicts that might arise. The specific language of Paragraph B.10 reads: "In the event that any of the Conditions of Approval are inconsistent or conflict with the processing provisions of the MOU (*most notably, allowing development of the Inland and DPR Property in advance of obtaining all governmental approvals for the Coastal Property*), the terms of the MOU shall prevail." While the MOU Amendment is no longer in effect, the intent of the Amendment is, nonetheless, embodied in the conditions of approval and reflected in Paragraph B.10.

## **B. Obligation to Pursue an Approved Project**

In the February 5, 2009 letter from the applicant's attorney, Stanley Lamport, the applicant rejects the Coastal Project approvals. While the applicant does not have an obligation to pursue the approved Project, the rejection would have consequences on the litigation release provisions of the MOU. The County would also have to decide whether to continue to process the CLUP Amendments submitted to the Coastal Commission. The same holds true for the Transfer of Development Rights Ordinance. The County may continue processing these elements of the Project, but absent a willing property owner, the County would be required to fund the effort.

## **C. Status of the Project Approvals**

Land Use and Zoning: The timing of land use and zoning changes to implement the new Naples Townsite District (NTS) is contingent upon various actions both within and outside the Coastal Zone. For areas within the Coastal Zone, the new NTS designation encompasses all of Santa Barbara Ranch south of Hwy 101 and portions of the Ranch north of the freeway. For these areas, the new NTS designation with associated policies and regulations will not become effective until after the Coastal Commission certifies corresponding amendments to the County Local Coastal Program (discussed more fully under *D. Coastal Commission Status*). For inland areas, the NTS designation includes the balance of Santa Barbara Ranch (consisting of 10 Naples lots) plus the area of Dos Pueblos Ranch to be subdivided into 40 additional lots under a Vesting Tentative Map. Paragraph 5 of Board Resolution No.

08-362 provides for a staged designation of land use and zoning: for Santa Barbara Ranch Inland, the redesignation is effective immediately, while redesignation of Dos Pueblos Ranch Inland is subject to effectuation of the Williamson Act Cancellation and Exchange for Agricultural Conservation Easement (WA-ACE). Pursuant to Paragraph B.2, the NTS designation for the Dos Pueblos Ranch Inland area is also subject to recordation of the final map.

Project Components: The timing and contingencies for various entitlements and permit approvals result in four discrete project components. The only project component that can proceed prior to action by the Coastal Commission under the conditions of approval is the Santa Barbara Ranch inland area.

Santa Barbara Ranch Coastal Zone: Sixteen merged lots are approved for development in the Coastal Zone of the Santa Barbara Ranch portion of the Project. Development is contingent upon the following:

- Coastal Land Use Plan Amendment certification by the California Coastal Commission, including NTS designation and zone district.
- Resolution of any appeals of the Development Plan, Conditional Use Permits (for infrastructure) and Coastal Development Permits (for residential development and associated lot mergers).
- Compliance with conditions of approval.

Santa Barbara Ranch Inland: Ten lots are approved for development in the Inland portion of the Santa Barbara Ranch portion of the Project. Development is contingent upon the following:

- Compliance with conditions of approval.
  - Resolution of any appeals on Conditional Use Permits and Coastal Development Permits for infrastructure in the Coastal Zone that serves the inland development (water treatment facility retrofit/upgrade serving all 10 lots; utilities and road improvements serving 4 lots).
- NTS designation and zone district are in effect.

Dos Pueblos Ranch Coastal Zone: Five lots are approved for development in the coastal portion of the Dos Pueblos Ranch/Schulte portion of the Project. Development is contingent upon the following:

- Resolution of any appeals of Conditional Certificates of Compliance, Lot Line Adjustment, Conditional Use Permits (for infrastructure) and Coastal Development Permits (for residential development and associated infrastructure).
- Voluntary merger of 10 Naples lots located on DRP Ranch south of Hwy 101.
- Compliance with conditions of approval.

Dos Pueblos Ranch Inland: Forty lots are approved for development in the Inland portion of the Dos Pueblos Ranch portion of the Project. Development is contingent upon the following:

- Final approval by the Department of Conservation of the Williamson Act Cancellation and Exchange for Agricultural Conservation Easement (WA-ACE).
- Effectiveness of the NTS designation and zone district (contingent on final approval the WA-ACE).

- Resolution of any appeals on the Tentative Tract Map (a small portion of the map not proposed for development is in the Coastal Zone); resolution of any appeals on Conditional Use Permits for infrastructure in the Coastal Zone that serves the inland development.
- Recordation of the final map and compliance with conditions of approval.

The Development Agreements are also contingent on certain actions occurring prior to their effective date. The following summarizes the requirements necessary prior to effectiveness of the Development Agreements:

Coastal Development Agreement: The Development Agreement for the Coastal area of the Project will become effective when all of the following occur:

- Development Agreement is fully executed by all parties (completed).
- Thirty calendar days following passage of the ordinance adopting the agreement (completed).
- Effective date of final approval by the Board of Supervisors and California Department of Conservation of WA-ACE Easement Exchange (pending).
- Final approval by the Board of Supervisors Local Coastal Program Amendment and Development Plans (completed).
- Coastal Commission Certification of the Coastal Plan Amendments (pending).

Inland Development Agreement: The Development Agreement for the Inland area of the Project will become effective when all of the following occur:

- Development Agreement is fully executed by all parties (completed).
- Thirty calendar days following passage of the ordinance adopting the agreement (completed).
- The effective date of approval of WA-ACE Easement Exchange, General Plan Amendment, Vesting Tentative Tract Map and Final Development Plan. (pending – General Plan Amendment and Vesting Tentative Map do not become effective on the Dos Pueblos Ranch property until the approval and effective date for the Williamson Act Contract Modifications and Agricultural Easement Exchange. The DOC-ACE is pending with the Department of Conservation.)

#### **D. Coastal Commission Status**

As the Board is aware, the County of Santa Barbara is not the final decision maker on certain aspects of the Project. The legislative actions in the Coastal Zone require review and certification by the Coastal Commission. There are also a number of actions that are appealable to the Coastal Commission. The status of the review process with the Coastal Commission, including a discussion of recommended next steps follows:

Local Coastal Program Amendments:

On December 19, 2008, staff submitted the Local Coastal Program Amendments for the Santa Barbara Ranch Project and Transfer of Development Rights Ordinance to the Coastal Commission for their review. On January 6, 2009, staff received a letter from the Coastal Commission staff (See Attachment

F) indicating that the submittals are incomplete and requesting additional information submittals. The request for information is extensive and is summarized below along with a recommended approach to the response.

Transfer of Development Rights Ordinance: The Coastal Commission staff identified a number of deficiencies which require clarification in the language of the ordinance or process that does not raise any particular issue of concern and staff is prepared to respond to the requests. However, two requests do raise some concern, for very different reasons. The first is the request (refer to 2.1.8 in the CCC letter) which requests all lot legality information for the underlying Official Map Lots. Staff recommends that the County's response be limited basic information on the Board's approval of the Official Map and the basis for that approval, rather than providing the level of information requested which would be extensive and unnecessary. The second concern is the request that the County establish a valuation methodology for sender sites now rather than defer this to the TDR Authority (refer to 2.1.17 in the CCC letter). This would likely require further action by your Board, action which you explicitly deferred to the TDR Authority which would be more knowledgeable to develop a methodology. Staff recommends that the County's response include the reasoning behind deferral of the valuation methodology rather than developing the methodology.

Naples Town Site Land Use and Zoning: Deficiencies identified by Coastal Commission staff can be grouped into two categories: (i) miscellaneous clarifications and supplemental information; and (ii) additional baseline environmental data beyond that which is provided in the Final Environmental Impact Report ("FEIR"). Policy and ordinance clarifications constitute the overwhelming majority of Coastal Commission staff comments and do not raise any particular issue of concern. The most problematic aspect of the deficiency letter entails baseline biological studies, wetland delineations and grassland surveys. The deficiency letter notes for each: "As mentioned in our previous comment letters on the DEIR and RDEIR, for purposes of reviewing the LCP amendment, the Commission requires recent (completed within 1-2 years of application submittal) biological surveys, including data sheets and routes for each site visit. If underlying biological surveys are not up-to-date and comprehensive, then focused, protocol-level surveys will be necessary..." This potential requirement for additional biological surveys far exceed what staff believes is reasonable or necessary for the Coastal Commission to consider the proposed NTS designation. According to URS Corporation (author of the FEIR), the cost of complying with Coastal staff requests could range between \$10,000 and \$50,000. Staff recommends that the County's response be limited to information of record rather than undertake new or expanded studies to determine if existing background data will be acceptable to Commission staff.

#### Notice of Final Action:

For development that is appealable to the California Coastal Commission, the County is required to submit a Notice of Final Action to the Coastal Commission. The Commission reviews the Notices and informs local jurisdictions if there are any deficiencies in the notice. Once any deficiencies are remedied, the Notice of Final Action is accepted by the Coastal Commission, commencing a ten working day appeal to the Commission. On October 27, 2008, staff submitted a single Notice of Final Action for all the appealable development within the Santa Barbara Ranch Project. A deficiency notice was received on October 31, 2008. This deficiency notice was responded to by letter dated December 15, 2008. A second deficiency notice dated December 19, 2008 was responded to on January 28, 2009.

This response resulted in the latest deficiency notice dated February 4, 2009. (See Attachment G for the February 4, 2009 letter). The notice raises three deficiencies, all related to what development is appealable to the Coastal Commission. The Commission staff asserts that the County's action on the Vesting Tentative Tract Map, the Conditional Certificates of Compliance and the Lot Mergers in the Coastal Zone are all appealable development and must be included in the County's Notice of Final Action. Staff has not yet responded to this notice, and suggests the following response:

**Vesting Tentative Map:** A portion of the Vesting Tentative Tract Map is bisected by the Coastal Zone and therefore, the Coastal Commission staff asserts it is appealable to the Coastal Commission. Staff recommends that the County include the Vesting Tentative Tract Map as appealable development in the Notice of Final Action. Although the Vesting Tentative Map does not raise any coastal issues, as only a very small portion of the map is in the Coastal Zone and the area in the Coastal Zone is not proposed for development, the Coastal Commission should make that determination.

**Conditional Certificates of Compliance:** Similarly, the Coastal Commission staff asserts that the Conditional Certificates of Compliance are appealable to the Coastal Commission. Staff recommends that the County include the Conditional Certificates of Compliance as appealable development in the Notice of Final Action. The Coastal Development Permits for development of the lots essentially provides the Coastal Commission with the ability to review the Conditional Certificates of Compliance. The Coastal Commission, like the County, must issue the Conditional Certificates of Compliance; all that is at issue are the conditions that should be applied to development. Since the Coastal Commission already has the Coastal Development Permits for development of the lots as part of the Notice of Final Action, they have the authority to condition development of the lots.

**Lot Mergers:** The Coastal Commission staff asserts that lot mergers constitute development and therefore are appealable actions. County staff disagrees. Under the County's Coastal Zoning Ordinance, which was certified by the Coastal Commission, voluntary lot mergers do not require Coastal Development Permits. Further, the Subdivision Map Act provides that lot mergers of legal lots are a ministerial action of the County Surveyor. The County has never submitted a lot merger in the Coastal Zone to the Coastal Commission as appealable development. To do so in this instance would set a precedent in the County and require a substantially new process by the County Surveyor for lot mergers in the coastal zone. The County can choose either to participate in the dispute resolution process prescribed by in the Coastal Commission Regulations or it can accept the claim and submit the mergers to the Coastal Commission as appealable development. Staff recommends that the County participate in the dispute resolution process.

**Separate Notices of Final Action:** To assist the Coastal Commission staff in their review of the various components of the Project and consistent with the approvals by the Board of Supervisors, staff recommends that separate notices of final action be submitted for separate components of the Project. With concurrence of the Board, staff will submit separate Notices of Final Action for the following:

- Vesting Tentative Tract Map
- Conditional Certificates of Compliance, Lot Line Adjustment, Conditional Use Permits and Coastal Development Permits for Dos Pueblos Ranch Coastal Zone development



- Conditional Use Permits and Coastal Development Permits for infrastructure supporting Inland development
- Development Plan, Conditional Use Permits, Coastal Development Permits for the Santa Barbara Ranch Coastal Zone development

**Fiscal and Facilities Impacts:**

All costs to date associated with processing the Project and related land use and zoning changes are funded by the applicant, budgeted in the Permitting & Compliance Program of the Development Review, South Division on Page D-301 of the adopted 2008-2009 fiscal year budget. Funding for future work, including responding to the Coastal Commission's deficiency notice for appealable development and incomplete letter related to the Local Coastal Program Amendments for the NTS designation and zone district, and TDR program is unknown.

**Special Instructions:**

Planning and Development will complete required noticing.

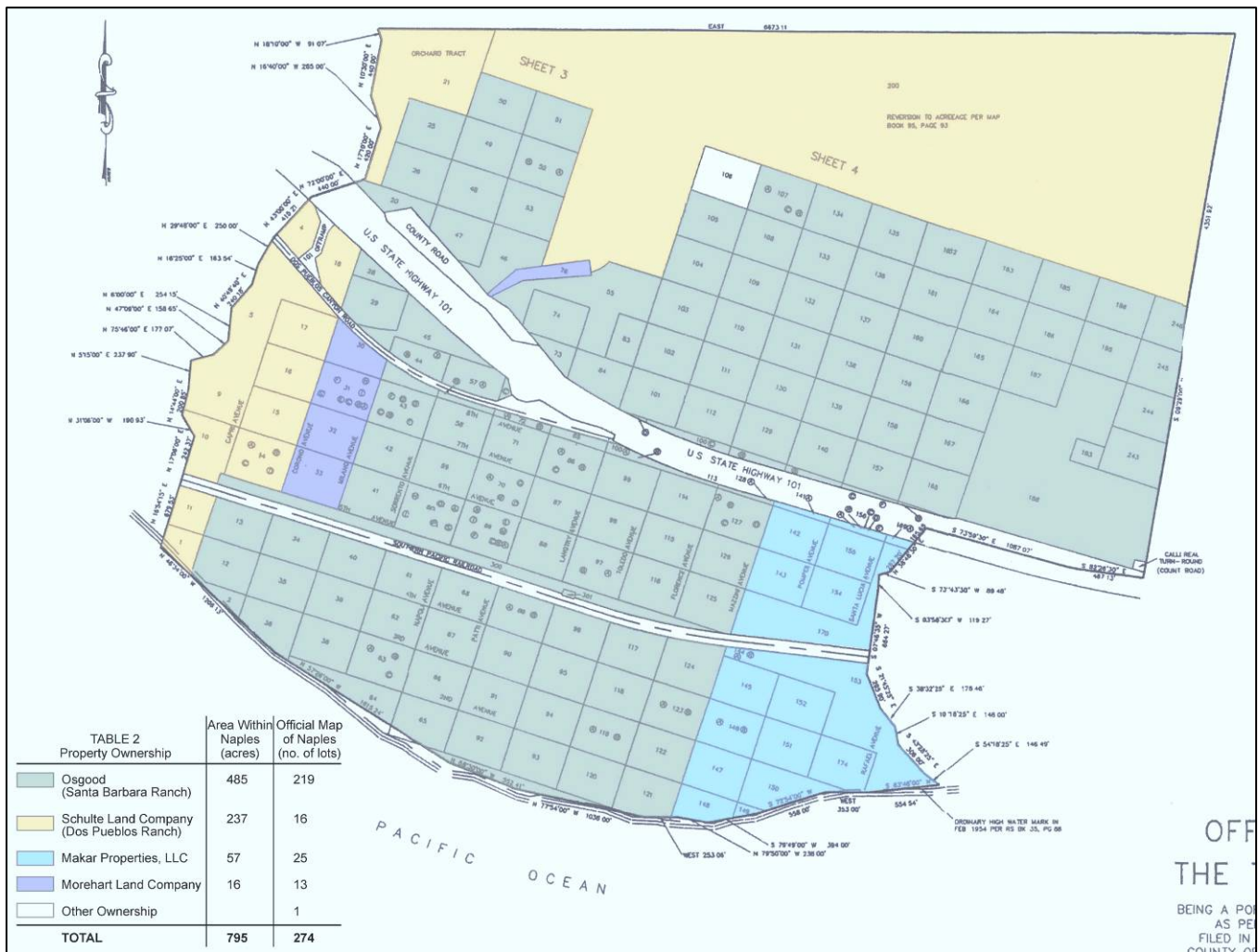
**Attachments:** Figure 1: Official Map of Naples (with Ownership)

Figure 2: Geographic Orientation (Showing all of Alt 1 B and the Ownerships)

Attachment A:	Letter from Stanley Lamport dated 2/5/09
Attachment B:	Letter from EDC and Marc Chytilo dated 2/16/09
Attachment C:	Letter from Stanley Lamport dated 2/27/09
Attachment D:	Letter from EDC and Marc Chytilo dated 2/25/09
Attachment E:	Letter from Stanley Lamport dated 3/25/09
Attachment F:	Coastal Commission Letter dated 1/6/09 - Local Coastal Program Amendment
Attachment G:	Coastal Commission Letter dated 2/4/09 – Deficiency Notice

**Authored by:** Dianne Black, Development Services Director, Planning and Development 568-2086

**Figure 1: Official Map of Naples (with Ownership)**



**Figure 2: Geographic Orientation (Showing all of Alt 1 B and the Ownerships)**



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|---|----------------------------|---|----------------------------------|
|  | Dos Pueblos Ranch Inland   |  | Santa Barbara Ranch Coastal Zone |
|  | Santa Barbara Ranch Inland |  | Dos Pueblos Ranch Coastal Zone   |

