

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

March 16, 2012

Santa Barbara County
Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101

By email to sbcob@co.santa-barbara.ca.us
and by hand delivery

RE: March 20, 2012 Board of Supervisors Hearing on the Santa Barbara Ranch Project – Development Agreement Transfer; Agenda Item # 5

Dear Chair Farr and Members of the Board,

Please accept this letter on behalf of the Naples Coalition. The importance of the Naples property and the Santa Barbara Ranch Project on the character and resources of the Gaviota Coast is undisputed, and the extraordinary community concern over the future of the Naples property mandates that your Board must carefully consider each request regarding Santa Barbara Ranch, even if it appears minor or innocuous.

We agree with Staff that “the determination of Inland Development Agreement rights and obligations remains the subject of ongoing “quiet title” litigation in Santa Barbara Superior Court Case No. 1379764, between the Original Developers and SBHRC, Inc, the County reasonably cannot at this time certify those respective rights because SBRHC, Inc.’s rights under the Inland Development Agreement that it would transfer to CIP II is the subject of pending litigation.” (Board Letter, p. 1, Recommended Action No. 2). However we disagree that merely mentioning this fact in the County’s Consent to the Transfer Agreement is adequate or appropriate.

Moreover, the Santa Barbara Ranch (SBR) Project (the Project) has changed considerably from the project analyzed in the FEIR and approved by the Board in 2008, both in terms of ownership and control issues, but also in terms of the environmental conditions on the ground, and the viability of key project components and mitigation measures. Accordingly, Staff’s CEQA recommendation must be rejected or deferred until additional information is provided to the Board.

1. Consent to the Transfer Is Premature

The County providing its consent to the Transfer Agreement is premature, and should be deferred until the pending litigation between SBRHC, Inc. and the Osgood Entities is resolved. Section 8.02 (b) of the Inland Development Agreement provides that the “Developer shall seek County’s prior written consent to any Transfer Agreement, which consent shall not be unreasonably withheld or delayed.” The proposed Transfer Agreement that SBRHC, Inc. has asked the County to consent to includes numerous statements respecting SBRHC’s acquiring the

rights and obligations under the Inland Development Agreement and the release of the Osgood Entities from their rights and obligations under that agreement. The Board Letter acknowledges the following:

That Consent to Transfer Agreement includes a statement that since the determination of Inland Development Agreement rights and obligations remains the subject of ongoing “quiet title” litigation in Santa Barbara Superior Court Case No. 1379764, between the Original Developers and SBHRC, Inc., the County reasonably cannot at this time certify those respective rights because SBRHC, Inc.’s rights under the Inland Development Agreement that it would transfer to CIP II is the subject of pending litigation.

Because the rights and obligations of SBRHC, Inc. that would be transferred to CIP II through the proposed Transfer Agreement will not be known until the above referenced lawsuit is resolved, the County cannot reasonably consent to that Transfer Agreement while simultaneously noting that they cannot certify anything with respect to the rights to be transferred.

Pursuant to section 8.02 (b) of the Development Agreement the “County may refuse to give its consent only if, in light of the proposed transferee’s reputation and financial resources, such transferee would not in County’s reasonable opinion be able to perform the obligations proposed to be assumed by such transferee.” It is our position that County is not obliged pursuant to section 8.02 (b) of the Development Agreement to consent to the Transfer Agreement because it is not known whether, in light of circumstances existing on the ground and the legal relationship between the parties, CIP II is able to perform the obligations proposed to be assumed.

2. Inadequate Details on Developer’s Approach and Capacity

Scant information is available at this time on who these developers are, whether they intend to seek to modify the development proposal, and their capacity for managing highly sensitive coastal lands that experience extensive public use. The County processed the Santa Barbara Ranch development through a Memorandum of Understanding that purported to resolve certain legal claims, some of which predated Matt Osgood. The Board should know whether all such legal claims have been dismissed and abandoned, and if not, where the proposed transferee will stand vis a vis the prior approvals. The County’s preliminary approvals have been challenged on a number of grounds, including inadequate environmental review that seeks to invalidate all approvals and send the project back to perform proper environmental review. This case is noticed for closed session discussion, and a hearing has been set for this matter in April. Given the impending hearing, the Board should consider the status of this litigation and acknowledge the potential for the impending judgment to affect transfer issues. With Judge Anderle’s decision only five weeks off, and the potential for a complete vacatur of the County’s

approvals, the Board should refrain from any action in considering whether to exercise its one-time consent to transfer.

It is unclear whether the proposed transferees are capable of creating a development that is consistent with LCP and California Coastal Act policy constraints and the community's demand for protection of the site's rural character. There is no comparison to experience developing hotels in Las Vegas and Dallas to attempting to develop agricultural lands on the Gaviota Coast in Santa Barbara County. There is no place, or zoning, for a "lifestyle resort" on the Gaviota Coast. Reports from Monterey County environmentalists indicate a terrible ecological loss caused by one of the partners who subdivided an historic rancho parcel, introducing suburban sprawl deep into undisturbed, pristine habitat. The private equity funders may well be lured in by the absurd expenditures at Bixby Ranch, which similarly fuels an intensive development vision that is inconsistent with the pastoral Gaviota Coast. Unreasonable expectations can drive efforts for bigger and more inappropriate developments, and may translate to absurd takings claims that provided a foundation for the mess the County is in now at Naples. Santa Barbara County has gone to extraordinary lengths to preserve its agricultural economy as well as protect the irreplaceable resources on the Gaviota Coast. Any proposed owner of Santa Barbara Ranch who seeks to enjoy privileges bestowed on predecessors that sought to protect local agriculture and the Gaviota Coast must themselves demonstrate capacity and experience in preserving agricultural resources and the multi-faceted treasure that is the Gaviota Coast.

The concerned members of the Santa Barbara County environmental community will expect to see an unequivocal commitment by any prospective purchaser to preserving the rural character of the Gaviota Coast without the scar of McMansions and hobby corrals. Many out of town developers have broken their picks at Naples, and we expect many more to follow. The prospective purchasers do not even appear to have purchased the land, and appear to be on a fishing expedition, seeking approval in advance without disclosing their plans. The Board's consent to transfer in this unique situation is premature until such time as the prospective purchaser completes their purchase and tangibly demonstrates their plan to protect and preserve the agricultural and natural resources on these special lands. Those plans should be reviewed by the GavPac and considered by the public before any consent to transfer is considered.

3. Substantial Change in CEQA Circumstances

The Recommended Actions in the Board Letter includes that the Board determine that no substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions to the 2008 Final EIR, and no new information of substantial importance concerning the project's significant effects or mitigation measures has been received that requires a subsequent EIR or Negative Declaration. In fact several substantial changes have occurred that must be considered and evaluated in the CEQA context.

On January 5, 2009, California Coastal Commission (“CCC”) staff responded to the County regarding the deficiency in the County’s Local Coastal Plan (“LCP”) Amendment submittal, which included the LCP amendments the Board approved for Santa Barbara Ranch. In this letter CCC staff requested additional information regarding a host of topics including the need for updated biological studies and resource specific surveys for monarch butterfly habitat, raptor habitat, wetland delineations, and grasslands for the proposed Naples Official Map areas. Over three years have passed since CCC staff requested this information, and to our knowledge no one has provided this information regarding Santa Barbara Ranch to the CCC or County. The majority of the biological surveys performed for the Santa Barbara Ranch Project and included in the Final EIR were conducted in 2005 or before, meaning that seven years have passed since the project area was surveyed for biological resources. Biological conditions onsite have likely changed substantially since biological surveys were completed for the Santa Barbara Ranch Project, necessitating major revisions to the 2008 Final EIR. Given drought conditions this year, biological resources present on the site will likely not express itself, necessitating a multi-year survey process by qualified, independent scientists to ensure identification of all sensitive resources on this imperiled site.

Since the Board certified the FEIR, considerable uncertainty has emerged regarding the status and viability of the Agricultural Conservation Easement (“ACE”) Exchange, perhaps the most critical mitigation measure incorporated into the Santa Barbara Ranch Project. By its terms, the DPR agreement regarding the ACE is due to expire shortly, and yet there is no written confirmation of its extension from either SBRHC, Inc., CIP II, Dos Pueblos Ranch, or the Osgood Entities. The viability of this key mitigation measure, necessary to mitigate the Project’s significant adverse impacts to agriculture, must be determined before the Board can determine that no substantial changes have occurred with respect to the circumstances under which the project is undertaken and that no new information of substantial importance concerning the project’s significant effects or mitigation measures has been received (*see* CEQA Guidelines § 15162(a)). At a minimum, we respectfully request that the Board require the Santa Barbara Ranch proponents to provide written confirmation of the future availability of DPR’s or other comparable lands to ensure the ACE’s continued viability before the Board acts on this transfer request.

Another vital component of the Santa Barbara Ranch Project that has not been confirmed or addressed, is whether SBRHC, Inc. possesses the State Water Project allotment necessary for the residential component of the Project to avoid effecting surface diversions from Dos Pueblos Creek as required by Santa Barbara Ranch Condition of Approval #7(b) . The Board should confirm that SBRHC, Inc. and the proposed transferee CIP II, have control over these water rights and possess the actual capacity to realize this and other components and mitigation measures included in the Santa Barbara Ranch Project.

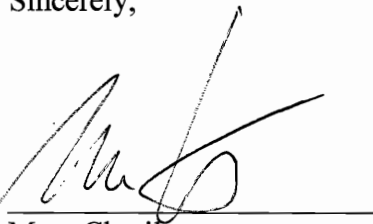
Further, SBRHC, Inc. filed a Notice of Consent to allow public use of the property to defeat further maturation of an implied dedication claim to protect the public’s historical right of

use of the coastal Santa Barbara Ranch lands. That use has increased, and construction and operation of residences in the coastal portion will adversely affect this long-standing, but recently recognized historical public use.

On January 1 of 2012 the Naples reef was given MPA status, both reflecting the extraordinary value of the 18 square mile intertidal wetland at Naples Reef and underscoring the enhanced significance of the sensitive marine resources. Comparable to a terrestrial wilderness designation, the California Department of Fish and Game's recognition of Naples' marine resources through MPA designation increases the sensitivity of marine biological resources that will be most directly impacted by the project, and in particular by any changes in the project, such as the creation of a lifestyle resort. While any specific changes to the Project Description would be addressed in future environmental review, such changes are reasonably foreseeable in light of the limited information provided by the prospective purchaser, and their impacts at other projects.

Due to the substantial uncertainty surrounding this Project and the likely need for additional CEQA review, we respectfully urge the Board not to consent to the proposed Transfer Agreement at this time.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Chytilo', is written over a horizontal line. The signature is stylized and cursive.

Marc Chytilo

Ana Citrin

Law Office of Marc Chytilo