



## LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

May 11, 2012

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

By email to [sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)

**RE: Santa Barbara Ranch Project**

*Dear Chair Farr and Members of the Board,*

This letter is submitted by the Environmental Defense Center (EDC) on behalf of EDC and the Santa Barbara Chapter of the Surfrider Foundation, and by the Law Office of Marc Chytilo on behalf of the Naples Coalition. Our comments below augment previous correspondence from our offices on this matter.

Your Board is asked to:

(1) receive and file a written request from SBRHC, Inc. for the county to consent to a proposed Transfer Agreement, between SBRHC, Inc. and CIP II/BR SBR, LLC, of respective interests, rights and obligations under the Inland Development Agreement, [etc.] for the Santa Barbara Ranch Project; [and]

(2) Pursuant to Section 8.02 of the Inland Development Agreement for the Santa Barbara Ranch Project . . . authorize the Chair of the Board to execute [a] Consent to Transfer Agreement. . . .

Section 8.02 of the Inland Development Agreement for the Santa Barbara Ranch Project requires the County to entertain a “request made by Developer [SBRHC] for such consent.” The Inland Development Agreement triggers various other obligations which flow between the County, SBRHC and CIP. None of these requirements are operative at this time, however, because the Inland Development Agreement is not effective, and the County is not currently bound by the conditions of Section 8.02.

We therefore urge your Board to refrain from approving a Transfer Agreement for Santa Barbara Ranch until such time as various pre-conditions on the Inland Development Agreement have been satisfied by SBRHC, CIP II/BR SBR and/or related parties. We also reiterate a request from 2010, when we requested that your Board: (a) adopt a finding that the Inland Development Agreement approved by Ordinance 4694 is not yet effective, and (b) rescind the Inland Development Agreement.

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**I. The Inland Development Agreement Is Not Effective**

**Ordinance 4694**

According to the Ordinance adopting the Inland Development Agreement, the Agreement “shall not become effective until . . . the effective date of approval of WA-ACE Easement Exchange Case No. 05AGP-00000-00011.” Board Development Agreements Adoption, Attachment B-6, at p. 1 (Oct. 21, 2008).

**Board Resolution For WA-ACE Easement Exchange**

The Board Resolution which would approve the WA-ACE Easement Exchange expressly states that approval of the WA-ACE Easement Exchange is “tentative” and will not become “final” until several conditions are met, including:

- a. The Applicant and landowner of Dos Pueblos Ranch shall finalize and *record* ACE documents encumbering the area described in Exhibit “2-B” . . . .
- b. The landowner of Dos Pueblos Ranch shall *execute and record* a replacement Williamson Act Contract covering the area described in Exhibit “2-C.”
- c. The Applicant and landowner of Dos Pueblos Ranch shall submit the Rescission Agreement . . . to the Department of Conservation for its approval pursuant to Government Code Section 51256.1 and *record* the Agreement upon its approval.

WA-ACE Easement Exchange, Attachment B-7, at p. 8 (Oct. 21, 2009) (emphasis added).

**As Of May 11, 2012, Certain Pre-Conditions Have Not Been Met**

There is no evidence that the landowner(s) of Dos Pueblos Ranch have: (1) finalized and recorded ACE documents; (2) executed and recorded a replacement Williamson Act Contract; or (3) recorded the Rescission Agreement. In fact, none of these documents have been recorded, and it is our belief that none have actually been executed by Dos Pueblos Ranch. Because the landowners of Dos Pueblos Ranch have not satisfied the above conditions precedent to the Board’s *final approval* of the WA-ACE Easement Exchange, the WA-ACE Easement Exchange Case No. 05AGP-00000-00011 is not yet effective.

Because the approval of WA-ACE Easement Exchange Case No. 05AGP-00000-00011 is not yet effective, the ordinance adopting the Inland Development Agreement is not yet effective. Because the Inland Development Agreement is not yet effective, the County is not bound by its terms, and it may be rescinded.<sup>1</sup>

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<sup>1</sup> Because the Inland Development Agreement is not yet effective, the County is not contractually bound by its provisions. The County is therefore not exposed to liability for breach of contract under, for example, *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes*, 191 Cal.App.4th 435 (2010).

## **Santa Barbara Ranch Project Conditions Of Approval**

The Santa Barbara Ranch Project Conditions of Approval state that, prior to or concurrent with recordation of the WA-ACE Easement Exchange: (1) the ACE “shall be submitted to and approved by the California Department of Conservation” (DOC); *and* (2) the Rescission Agreement “shall be executed *and recorded.*” Santa Barbara Ranch Project Conditions of Approval, Attachment C-1, p. 22 (Dec. 9, 2008) (emphasis added). SBRHC, CIP II or some other entity may argue that DOC’s approval represents “final approval” (for the County’s purposes) of the WA-ACE Easement Exchange. As described below, the DOC’s process is related to but separate from the County’s approval process. Therefore, DOC’s actions to date do not affect the arguments above regarding the efficacy of the Inland Development Agreement.

Government Code Section 51256.1 states that no Williamson Act agreement “shall take effect until it is approved by the [DOC].” Section 51256.1 does *not* state that DOC has “final approval” of a WA-ACE Easement Exchange, nor does it suggest that the DOC decision-making process supersedes the County’s processes. In fact, the Project Conditions of Approval clearly describe how “the WA-ACE easement exchange is the subject of a *concurrent* process through the County and State Department of Conservation.” Santa Barbara Ranch Project Conditions of Approval, Attachment C-1, p. 4 (Dec. 9, 2008) (emphasis added).

The *Merriam-Webster* dictionary defines “concurrent” as “running parallel” or “exercised over the same matter or area by two different authorities.” *Black’s Legal Dictionary* defines “concurrent” as “operating at the same time; covering the same matters” and “having authority on the same matters.” (8th Ed., at p. 309.) In other words, the effective date of approval of the WA-ACE Easement Exchange is contingent on related but *separate* decision-making processes at both the County and State levels, and the WA-ACE Easement Exchange may not be considered final or effective until *both* processes culminate in final approvals.

The tenets of statutory construction demand that the conditions described in the WA-ACE Easement Exchange Resolution be given proper weight. Courts “look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance if possible, to every word, phrase and sentence in pursuance of the legislative purpose.” (*Dyna-Med, Inc. v. Fair Employment & Housing Comm.* (1987) 43 Cal.3d 1379, 1386-1387.) The “actual words” of a statute must be given their “plain and commonsense meaning.” (*Mercer v. Dept. of Motor Vehicles* (1991) 53 Cal.3d 753, 763.) Courts “decline to construe a statute in a way that makes meaningless the words chosen by the legislature.” (*People v. Western Air Lines, Inc.* (1954) 42 Ca.2d 621, 638.)

Consequently, the procedures described in the Project Conditions of Approval do not supersede or conflict with the conditions described in the WA-ACE Easement Exchange Resolution. First, the County granted tentative approval of the WA-ACE Easement Exchange. Then DOC approved the Williamson Act contract cancellation and replacement. Now it is incumbent upon the owners of Santa Barbara Ranch and the owners of Dos Pueblos Ranch to execute and record the ACE documents, the replacement contract and the Rescission Agreement *before* the County’s tentative approval of the WA-ACE Easement Exchange becomes final.

The requirement of recordation prior to finality is also a logical and practical feature of WA-ACE Easement Exchange and subsequent Development Agreement approvals. Recordation reflects a commitment by the Dos Pueblos Ranch interests to both give and receive the benefits of the Development Agreement, which provides an immediate vesting benefit to the applicant. Allowing Dos Pueblos Ranch and Santa Barbara Ranch to enjoy the benefits of the Board's approval of the Development Agreement without being subject to the burdens that were relied on to justify approval of the Agreement places the County and the public in an uneven and unfair position.

## **II. Rescind The Inland Development Agreement**

In general, development agreements bind the hands of future Boards of Supervisors and severely limit County discretion in responding to changed circumstances. In this case, the Inland Development Agreement prohibits the County from applying new rules or policies, and severely limits the County's ability to respond to changed circumstances, such as a changed Project, the discovery of new biological resources on-site, or the withdrawal of one of the key Project partners such as Dos Pueblos Ranch.

Three years after the execution of the Inland Development Agreement, it is clear that unanticipated changes in circumstances have substantially affected the Santa Barbara Ranch Project. The Transfer Agreement itself is evidence of just one of these many changes. Moving forward, the County must preserve its ability to respond to further changes. Since many of the Project's purported public benefits are of limited actual value, and because the Inland Development Agreement has not yet become effective, rescission is appropriate at this time.

For the above reasons, and in order to facilitate a more appropriate planning process at Naples on the Gaviota Coast (including participation by the Gaviota Coast Planning Advisory Committee), the Inland Development Agreement should be rescinded.

## **III. Continue Your Consideration Of The Transfer Agreement**

In the alternative, if the Board decides not to rescind the Inland Development Agreement, the matter should be continued. It is premature to consider the Transfer Agreement at this time, until more information is presented to the County by SBRHC and/or CIP II, and until other outstanding issues are resolved. For example, the County is party to the *Naples Coalition, et al.* litigation (Santa Barbara Superior Court Case No. 1304044), which specifically attacks the underlying Inland Development Agreement and alleges the following:

Because the Development Agreement is inconsistent with the general plan, most notably with the Land Use Element's establishment of defined urban boundaries, the County was without legal authority to approve the Development Agreement, and the Agreement is "wholly void." *Midway Orchards v. County of Butte* (1990) 220 Cal. App. 3d 765, 783.

**IV. Conclusion**

We urge you to adopt a finding that the Inland Development Agreement is not yet effective, and to subsequently rescind the Inland Development Agreement.

Should your Board opt to forgo rescinding the Inland Development Agreement, we urge you to at least proceed with the utmost caution. Make entirely sure that CIP II can commit to the necessary tasks at hand. Direct staff to initiate additional environmental review of those Project components which have changed over more than three years.

Only then, and after litigation relating to the Santa Barbara Ranch Project has been resolved, and the Project applicants and associated entities have satisfied all necessary pre-conditions under the Inland Development Agreement, may it be appropriate for your Board to revisit this matter. Until that time, however, we urge you to table this discussion and return your attention to the purported goal of the Santa Barbara Ranch Project, to resolve long-standing land use conflicts at Naples on the Gaviota Coast and to protect that landscape for the future of our County's citizens.

Thank you for your time and consideration.

Sincerely,

/s/

Nathan G. Alley  
Environmental Defense Center

/s/

Marc Chytilo  
Law Office of Marc Chytilo

Cc: Naples Coalition  
Surfrider Foundation