



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:** 07/07/15  
**Placement:** Departmental  
**Estimated Time:** 50 minutes  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors

**FROM:** Department Glenn Russell, Ph.D. Director, Planning and Development  
Director(s) (805) 568-2085  
Contact Info: Alice McCurdy, Deputy Director, Development Review  
(805) 568-2518

**SUBJECT:** Appeal (Case No. 14APL-00000-00029) of Planning and Development Department's Denial of the Request for Consent to Transfer the Santa Barbara Ranch Inland Development Agreement

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**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** N/A

As to form: No

**Auditor-Controller Concurrence**

As to form: N/A

**Recommended Actions:**

That the Board of Supervisors:

1. Consider the appeal, including the original appeal in Attachment 1 and the subsequent information submittal in Attachment-2, of SBRHC, Inc. of the Planning and Development Department's Denial of the consent to a proposed Transfer Agreement, between and SBRHC, Inc. and Standard Portfolios Asset Management Co. LLC ("Standard Portfolios"), of respective interests, rights, and obligations under the Inland Development Agreement, Inland Project Approvals and Subsequent Inland Approvals for the Santa Barbara Ranch Project;

AND EITHER:

2. Pursuant to Section 8.02 of the Inland Development Agreement for the Santa Barbara Ranch Project (Attachment-3), authorize the Chair of the Board to execute the attached written Consent to Transfer Agreement (Attachment-4);
3. Determine the action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) and 15378(b)(5) because it can be seen with certainty that there is no possibility of a significant effect on the environment due to the Board's consent to a Transfer Agreement which transfers ownership of the

previously approved Santa Barbara Ranch project (CEQA Notice of Exemption included as Attachment-5); and,

4. Grant the appeal, Case No. 14APL-00000-00029.

OR:

5. In light of Standard Portfolio's reputation and financial resources, determine that the County cannot reasonably and presently consent to the proposed Transfer Agreement because the proposed Transferee has not provided adequate evidence of its own reputation and financial resources to be able to perform the obligations proposed to be assumed; and,

6. Determine the action is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) and 15378(b)(5) because it can be seen with certainty that there is no possibility of a significant effect on the environment due to the Board's denial of consent to a Transfer Agreement which transfers ownership of the previously approved Santa Barbara Ranch project (CEQA Notice of Exemption included as Attachment-6); and,

7. Deny the appeal, Case No. 14APL-00000-00029.

### **Summary Text:**

The Santa Barbara Ranch Project was approved by the Board of Supervisors on October 21 and December 9, 2008. Included in the Board's approval were two separate Development Agreements, one for the coastal portion of the project located on Santa Barbara Ranch ("Coastal Project") and one for the inland portion of the project ("Inland Project"). The Coastal Development Agreement was rescinded by the Board of Supervisors on November 3, 2009. The Inland Development Agreement remains effective.

On November 20, 2008, the Naples Coalition, Environmental Defense Center and Surfrider Foundation filed a Verified Petition for Writ of Mandamus in Santa Barbara Superior Court (Case #1304044) challenging the County's approval of the Santa Barbara Ranch Project Inland and Coastal Projects and the County's certification of an Environmental Impact Report for the project. That Petition was replaced by a First Amended Verified Petition on January 20, 2009 and by a Second Amended Verified Petition on August 3, 2010. On November 16, 2010, the parties agreed to sever the litigation of the Coastal Project from the Inland Project and claims related to coastal approvals were dismissed without prejudice by the court. Ultimately, on January 28, 2014, the court affirmed the adequacy of the Environmental Impact Report and held that the County acted properly in finding the Inland Project consistent with the County's General Plan policies.

In pertinent part, Section 1.01 of the Inland Development Agreement states, "*This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the 'Effective Date').*" Section 10.06 of the Inland Development Agreement addresses "*Enforced Delay; Extension of Time of Performance*" and includes that litigation "*shall be deemed to create an excusable delay as to Developer.*"

In May of 2010, First Bank foreclosed on part or all of the Inland Project property. Also during May

2010, First Bank transferred its interest in the Inland Project Site to SBRHC, Inc. (“SBRHC”), which appears to be an affiliated entity of First Bank. SBRHC, Inc. submitted a letter on January 3, 2012, requesting that the County issue a Notice of Compliance pursuant to Section 8.04 of the Inland Development Agreement. On February 7, 2012 the Board of Supervisors approved and authorized the Chair to execute and deliver to SBRHC, Inc. a Notice of Compliance pursuant to Section 8.04 of the Inland Development Agreement.

SBRHC, Inc. submitted a letter on December 1, 2014 requesting that the County consent to a proposed Transfer Agreement, pursuant to Section 8.02 of the Inland Development Agreement, from SBRHC, Inc. to Standard Portfolios, LLC, of the Inland Project and the Inland Development Agreement. On December 5, 2014, the Planning and Development Department refused to consent to the Transfer Agreement because no information was submitted with the letter from SBRHC, Inc. that would allow the County to make a determination as to the reputation and financial resources of the transferee (Standard Portfolios, LLC.) and the transferee’s ability to perform the assumed obligations (as required by Section 8.02(b) if the Inland Development Agreement).

On December 15, 2014, SBRHC, Inc. submitted an appeal of the Planning and Development Department’s refusal to consent to the Transfer Agreement. The appeal application (included as Attachment-1) indicates that the appeal was filed in order to preserve the appellants right to challenge the Department’s refusal to consent to the Transfer Agreement, but also indicates that information pertaining to the reputation and financial resources of Standard Portfolios would be forthcoming. Information pertaining to the reputation and financial resources of Standard Portfolios and its ability to perform the assumed obligations (as required by Section 8.02(b) of the Inland Development Agreement), dated April 30, 2015, was submitted on May 4, 2015. That information is included as Attachment 2 to this Board Letter.

Separately, on December 11, 2014, SBRHC, Inc. submitted a request for initiation of the “periodic review” pursuant to Section 10.04 of the Inland Development Agreement. On April 1, 2015, the Planning and Development Department completed the periodic review and issued a letter finding SBRHC Inc. to be in good-faith compliance with the Inland Development Agreement.

### **Analysis**

As to the County’s authority to give or refuse consent to the proposed Transfer Agreement, Section 8.02 of the Inland Development Agreement states, *“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.”*

A package supplementing the appeal, dated April 30, 2015, detailing information with regard to the reputation and financial resources of Standard Portfolios, LLC. was provided to Planning and Development on May 4, 2015. The package (included as Attachment-2) includes a summary of the qualifications of the development team and a “Standard Portfolios and Affiliated Entities” financial statement. The financial statement indicates that Standard Portfolios and its Affiliated Entities hold \$589,766,285 in assets and \$301,312,642 in liabilities, for a net worth of \$288,453,642.

Further, page 2 of the submittal package notes that Standard Portfolios, LLC. is currently carrying out SBRHC’s obligations as the Developer under the Inland Development Agreement and has placed

\$2,000,000 in an escrow account to be used exclusively to fund the Developers obligations under the Inland Development Agreement.

Section 2.02 (a) of the Inland Development Agreement requires the Developer to:

- Within 60 days of the effective date of the Agreement, 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. The non-profit conservation organization shall use its best faith efforts to complete a Creek Restoration Plan within one (1) year after the Effective Date of this Agreement and the Developer shall offer all reasonable assistance to accomplish this outcome.
- Within 1 year of the effective date of the Agreement, offer all reasonable assistance in completing a Creek Restoration Plan.
- Prior to commencement of Grading or construction of the Inland Project, pay \$300,000 to the non-profit to implement the Creek Restoration Plan.
- Within 3 years of the effective date of the Agreement, offer all reasonable assistance to implement the Creek Restoration Plan.

To-date, a number of the developer's obligations under the Inland Development Agreement have been completed. SBRHC, Inc. deposited \$100,000 with the California Rangeland Trust (CRT), a non-profit conservation organization fully independent from the developer. In addition, Standard Portfolios, LLC. (acting as the agent for SBRHC, Inc.) partnered with CRT to hire Dudek & Associates to complete a creek restoration plan for the Dos Pueblos Creek drainage. The restoration plan was completed by Dudek & Associates and submitted to Planning and Development in April 2015.

Regardless of the consent to transfer, entitlements for the Santa Barbara Ranch project exist and will continue to exist whether or not the transfer is approved. Those entitlements are supported by a Final Environmental Impact Report (State Clearinghouse #2005011049) certified by the County Board of Supervisors on October 21, 2008. A change in the Developer identified in the Inland Development Agreement does not result in a change in the Santa Barbara Ranch Project entitlements, or in the conditions and mitigation measures applied to the Santa Barbara Ranch Project. No modifications have occurred or are proposed to the Santa Barbara Ranch Project approved in 2008. The 2008 approved Santa Barbara Ranch Project and conditions of approval remain the same and there has not been a change in circumstances surrounding the project. Furthermore, the 2008 Santa Barbara Ranch Project approval and Final Environmental Impact Report contemplated a change in ownership/developer since the Development Agreement includes a specific section (Section 8.02) on Transfer Agreements.

### **Fiscal and Facilities Impacts:**

Budgeted: Yes

The fee for an appeal to the board of Supervisors is \$648.26. The estimated staff cost to process the appeal is approximately \$3,397.68 (17 planner hours). This work is funded in the Planning and Development Permitting Budget Program on page 212 of the adopted 2014-2016 fiscal year budget.

**Attachments:**

1. Appeal Letter, dated December 15, 2014
2. Submittal Package from Standard Portfolios, dated April 30, 2015
3. Excerpt of Inland Development Agreement, Section 8.02
4. Draft Notice of Consent to Transfer Agreement prepared by County Staff and County Counsel
5. CEQA Notice of Exemption for Approval of Consent to Transfer Agreement
6. CEQA Notice of Exemption for Denial of Consent to Transfer Agreement
7. Request for Consent to Transfer (with attached Transfer Agreement) dated December 1, 2014
8. P&D Denial of Consent to Transfer, dated December 5, 2014

**Authored by:**

Nicole Lieu, Senior Planner, Planning and Development, Development Review Division