

# ATTACHMENT

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March 25, 2009

File No. 36550

VIA PERSONAL DELIVERY

Board of Supervisors  
County of Santa Barbara  
123 E. Anapamu Street  
Santa Barbara, California 93101

Re: NOTICE TO CURE BROWN ACT VIOLATION: Gov't Code Section  
54960.1(b); Rescission of Amendment to Memorandum of Understanding Regarding  
Santa Barbara Ranch Project

Dear Chair Centeno and Members of the Board:

On January 27, 2009, the Board of Supervisors, in closed session, elected to "cure" alleged Brown Act violations asserted by the Naples Coalition, Surfrider Foundation and Environmental Defense Center. The Board rescinded its October 7, 2008 approval of the First Amendment to the MOU ("MOU Amendment"). That amendment allowed for a protocol that would result in the reduction of Naples townsite lots on Santa Barbara Ranch in the coastal zone as our clients moved forward with the development outside the coastal zone.

As the Board is aware, in response to the Board's January 27, 2009 action, on February 5, 2009, our clients rejected the Coastal Project Approvals, as defined in the MOU, and terminated the MOU pursuant to Section 10.2.1 of the MOU. At the hearing before the Board on March 3, 2009, the County Counsel asserted that our clients were not entitled to reject the Coastal Project Approvals and that the MOU remained in effect. In light of County Counsel's contention, and without waiving their position that they were entitled to, and have properly rejected, the Coastal Project Approvals and terminated the MOU, our clients submit this Notice to Cure.

Pursuant to Government Code section 54960.1(b), Vintage Communities, Inc., Santa Barbara Ranch, LLC, Vintage Vineyards, LLC, Osgood Farms, LLC, Matthew K. Osgood, DLC Ranch, LLC, and TW Family Farm, LLC, which are referred to as the Santa Barbara Ranch Related Interests ("SBRI") in the 2002 Memorandum of Understanding between SBRI and the County ("MOU"), hereby request that the Board of Supervisors cure or correct the following violation of the Brown Act. (Gov't Code § 54950, *et. al.*)

I. The Brown Act Prohibited The County From Rescinding the MOU Amendment

Operating under County Counsel's theory that SBRI was not entitled to reject the Coastal Project Approvals under the terms of the MOU, leaving the MOU still in effect, the Board

was without authority to rescind its approval of the MOU Amendment. This is because our clients relied on the MOU Amendment in accepting the Coastal and Inland approvals and entering into two development agreements last October. Specifically, the Brown Act, Government Code section 54960.1(d)(3), states that "an action taken that is alleged to have been taken in violation of [the Brown Act] *shall not be determined to be null and void* if . . . the action gave rise to a contractual obligation . . . upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied." (Emphasis added.)

Further, on March 3, 2009, after being advised by SBRI that its January 27, 2009 rescission of the MOU Amendment was in violation of Government Code section 54960.1(d)(3), the Board held a public hearing on the MOU Amendment and, in reversal of its decision of October 7, 2008, voted to not to approve the MOU Amendment. Based on County Counsel's position that SBRI was not entitled to reject the Coastal Project Approvals under the terms of the MOU, leaving the MOU still in effect, the Board was prohibited by the Brown Act from rescinding the MOU Amendment.

## II. SBRI Detrimentially Relied on the MOU Amendment

The Board was advised that, without the MOU Amendment, SBRI would exercise its rights to cancel the MOU. At its October 13, 2008 hearing Supervisor Wolf discussed a construction of a provision in the MOU that preclude the development of the Inland Project until the Coastal Commission approved the Naples Town Site zoning for both the Coastal and Inland Projects. When I explained that the clause did not mean that, Supervisor Wolf responded that people could differ over its meaning. (Transcript of the Santa Barbara Board of Supervisors October 13, 2008 hearing, Departmental Item #1 ("Transcript") at pp. 136-137.) I responded:

*If we think that it's ambiguous, it should be deleted because it would trigger Santa Barbara Ranch stepping out of the MOU. It would trigger us going back to the grid immediately. So, you know, that was not the construction. And if the County were in the place where that was going to be, their construction we would be in a place where we would be out of the MOU." (Id. at p. 137, emphasis added.)*

Subsequently, at Board hearings on October 21, 2008 and December 9, 2008, and after being fully advised as to the essential nature of the MOU Amendment in SBRI's continued processing of the Inland and Coastal Project applications, the terms of the MOU, *as amended*, were incorporated in the Coastal and Inland Project conditions of approval.

### A. In Reliance on the MOU Amendment, SBRI Allowed Its Option to Terminate the MOU to Expire.

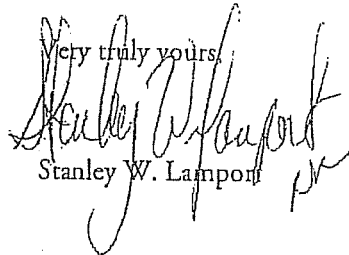
Under Section 10.2.1 of the MOU, our clients had ten days from the Board's approval of the Coastal Project on October 21, 2008 and December 9, 2009 to notify the County in writing of their rejection of the Coastal Project Approvals and, thereby, terminate the MOU. Our clients relied on the MOU Amendment and chose not to exercise their rights under the MOU, as

amended, to reject the Coastal Project Approvals at those times. At no time prior to the expiration of those time periods did the County notify SBRI that it was considering rescinding the MOU Amendment, nor was there a pending request before the County to cure or correct any alleged Brown Act violation.

B. In Reliance on the MOU Amendment, SBRI Entered Into Two Development Agreements.

Our clients also executed two Development Agreements in reliance on the MOU Amendment. Each Development Agreement required our clients to provide the County with public benefits far beyond that which could have otherwise been required by the County as conditions of approval of the Coastal and Inland Projects. For instance, with regard to the Inland Development Agreement, our clients committed to funding a \$400,000 Creek Restoration Plan for Dos Pueblos Creek. With regard to the Coastal Development Agreement, our clients committed to offering to dedicate easements to locate and construct additional segments of the Coastal Trail. These substantial commitments were made in reliance on the MOU Amendment. At no time prior to SBRI's execution of these Development Agreements did the County provide notice to SBRI that it was considering rescinding the MOU Amendment.

Accordingly, SBRI hereby demands that, pursuant to Government Code section 54960.1, the County act within 30 days of receipt of this demand letter to cure its violation of the Brown Act.

Very truly yours,  
  
Stanley W. Lamport

SWL/rsl

cc: Dennis Marshall, Esq.  
Mr. Matthew K. Osgood