



#4

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

December 5, 2008

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: **December 9, 2008 Board of Supervisors Hearing on the Santa Barbara Ranch Project; Agenda Item # 4**



Dear Chair Carbajal and Members of the Board,

This letter is submitted by the Law Office of Marc Chytilo on behalf of the Naples Coalition and by the Environmental Defense Center (EDC) on behalf of the Santa Barbara Chapter of the Surfrider Foundation and EDC.

The Santa Barbara Ranch (SBR) Project (the Project) has changed considerably from the project analyzed in the Final Environmental Impact Report (FEIR) and discussed during substantive workshops held by the Planning Commission. From the introduction of "Alt. 1B" after the FEIR was complete, to the closed-session amendment of the MOU that sought to break up the project as a whole and allows inland portions of the Project to proceed prior to final Coastal Commission action on the coastal portions of the Project, project changes have introduced considerable inconsistencies and ambiguities regarding the scope and nature of the already-complex Project, and the proper procedures for processing the myriad interrelated Project components. As evidenced by the public hearing and Board deliberations on October 13th and 21st, and by the Coastal Commission's Deficiency Notice, the SBR Project is not well understood by *anyone*. We are deeply troubled that significant new changes to the Project are *again* proposed, without allowing the public or decisionmakers sufficient time to digest the materials and understand the implications of the proposed changes. We strongly urge the Board to continue this hearing for at least two weeks, to allow all interested parties sufficient time to review and comprehend the revised project documents.

As discussed in the Coastal Commission's October 31, 2008 Deficiency Notice, the County failed to provide enough specific information for the Commission to evaluate the Project. The public has experienced these same problems, as to both the coastal and the inland portions of the Project. The latest Project changes do little to clarify the specific nature of various Project components and entitlements. We urge the Board to direct Staff to develop a more comprehensive project description before resubmitting the project materials to the Commission.

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Certain changes proposed in the latest revision of the Conditions of Approval seek to further separate the inland and coastal approval processes. Due to characteristics of the site that require coastal zone infrastructure in order to serve the inland development, the County cannot issue final planning approval for coastal development permits (CDPs) or conditional use permits (CUPs) for this infrastructure or for the inland development plan and associated land use permits until the Coastal Commission approves the Local Coastal Plan (LCP) amendment and has concluded its appeal process for the coastal permits. To do otherwise would run afoul of County ordinance and the Coastal Act, and would be contrary to sound planning principles and potentially expose the County to considerable difficulty if the Coastal Commission denies certain CDPs on appeal. We therefore strongly urge the Board to impose conditions delaying inland development until the Commission completes review of the coastal component of the project.

1. More Time Is Required for the Public and Decisionmakers to Review and Comprehend the Proposed Changes and their Implications

The County only released the proposed revisions to the public late on Wednesday, December 3rd, leaving the public only one and a half business days to read, comprehend and craft comment letters in response. This short time-line is simply unacceptable, particularly given the extensive public interest in this project, demonstrated by large turn-outs at public hearings, the large number of written comments, Supervisor communications, and individuals testifying at public hearings on the Project at each level.

Exacerbating the impediment to public participation created by the late-release of the proposed revisions is the fact that the revisions include substantive changes with complex implications. Our attorneys and analysts, who have followed this Project since its inception still are having considerable difficulty ascertaining exactly what these revisions will achieve in this time period. Attempts by the Naples Coalition to obtain clarification from County staff were refused.¹ Interested members of the public are shut out of the process when such complex materials are released with insufficient time for laypeople as well as experts to puzzle through the condition modifications. We therefore strongly urge the Board to continue this matter for at least two weeks.

2. Errors and Inconsistencies in the Project Documents

There are typographical errors and misidentification of entitlements throughout the revised conditions. For example, two CDPs are mistakenly identified as CUPs on Table 1 of the Staff Memorandum, and the water treatment plant that will be replaced with an upgraded facility is located on lot 51 but the revised project scope identifies it as located on lot 47 (a non-existent lot), and the lots listed in the applicable CDP do not list lot 51 (or 47 for that matter) though it is

¹ Email communications between Marc Chytilo, Tom Figg, and Edward Yates, dated 12/5/08, attached hereto as Exhibit 1.

apparent from project maps that the treatment facility is in fact located on lot 51.² Further, Exhibit 10 misidentifies coastal zone infrastructure as “inland.”³

In addition, clarifications made in the revised conditions concerning the inland/coastal relationship and the Coastal Commission’s appeals jurisdiction are inconsistent with maps included in the unchanged portions of the Conditions of Approval. For example, Exhibit 14 (unchanged) misrepresents the Coastal Commission appeals jurisdiction over CUPs and associated CDPs identified in the revision.⁴

Given the already complex nature of the project and the numerous revisions to the Conditions, these errors severely interfere with the public and decisionmakers’ ability to understand the project. We urge the Board to direct Staff to undertake a comprehensive review of all extant project documents and correct any errors and inconsistencies, and ensure that lots and entitlements are correctly identified each time they are referenced. This is a good point to have “fresh eyes” from the Planning and Development Department’s planning staff review and assume responsibility for this process.

3. More Specificity in the Project Description Is Required

In its deficiency notice the Coastal Commission states, on page 2:

the project descriptions for the individual actions on each component of the project, including a variety of different types of permits, coastal development permits, and other discretionary approvals did not contain adequate specificity to describe the development approved pursuant to each separate action...Deficiencies include, but are not limited to, failure to describe ...infrastructure improvements associated with individual coastal permits...[including the] fail[ure] to describe or quantify grading amounts. In addition, the project descriptions do not describe the size (sq. ft. and height) and capacity of the water treatment facilities. Further, based on the attached exhibits, it is not clear based on the included project descriptions whether an appealable coastal permit was required for all wastewater treatment facilities, infrastructure improvements and subdivisions/mergers/lot line adjustments or other redivisions of land approved within, or partially within, the Coastal Zone.

The Memorandum accompanying the proposed conditions lists the modifications that addressed the Coastal Commission’s deficiency notice.⁵ However the modifications proposed in this paragraph titled “Definitive Scope of Development” provide a mere fraction of the detail requested by the Commission.

² Revised Conditions (Attachment B to the Staff Memorandum to the Board dated 11/20/08), dated 12/9/08 (“Revised Conditions”), page 24.

³ Revised Conditions, page 20.

⁴ Cf. Final Conditions of Approval, dated 10/21/08, Exhibit 14 and Revised Conditions, Table 4, page 18.

⁵ Staff Memorandum to the Board (“Memorandum”), dated 11/20/08, page 2.

a. Insufficient information about the existing potable water treatment plant upgrade

Although the Commission specifically identified the County's failure to describe the size and capacity of the water treatment facilities, the revision does not provide the capacity of the existing potable water treatment facility, and it does not describe the height of the existing or new facility. The location of the seepage pits and lift stations and nature of required permits for those facilities remains a mystery. Moreover, the County failed to characterize treatment plant operations, including the location of any discharges and whether the treatment plant will intensify water usage within the coastal zone. Any such discharges or intensification of use within the coastal zone must be included in the CDP covering such treatment plants.

b. Failure to describe the sewage treatment facility and water treatment facility that will serve the coastal portions of the project

The revised conditions are still woefully inadequate in describing the coastal zone infrastructure that will serve the coastal zone. The project documents identify a sewage treatment facility and water treatment facility upgrade that will serve the coastal development, but the revision provides no additional information whatsoever concerning the details of this facility, related accessory facilities such as seepage pits and lift stations, and discharge locations, despite the Commission specifically requesting such details and the need for such details to understand what developments are included in permits.

c. Failure to define the timing of DPR development south of Hwy 101

The proposed revision includes a project map illustrating the three stages of development anticipated for the project.⁶ This map conspicuously omits the DPR coastal development as well as DP-11 from the staged development scheme. To understand the different potential development scenarios and review processes, it is necessary to include all project development within the staged development scheme.

d. Specific grading quantities still lacking for inland lots

The proposed revision provides specific grading quantities for development within the coastal zone, but fails to provide any specificity whatsoever regarding the inland development. While not specifically demanded by the Coastal Commission, bringing the Project again before the Board presents an opportunity to disclose the specific grading quantities for *all* lots to concerned Board members and the public. At the public hearing on October 13th, we articulated a series of concerns regarding the gross grading estimate, including that the evidence included in the record suggests excessive grading, and does not explain how the grading estimate increased so substantially in the final iterations of the Project. The revision clarifies specific grading quantities for the coastal zone only, and accounts for only 6.1 percent of total Project grading. Moreover it appears the grading quantities exclude the stockpile, road grading/construction and water line trenching zoning violations' grading volumes. The ability to specifically quantify grading amounts for the coastal zone lots illustrates that it is possible to do likewise for the

⁶ Revised Conditions, Exhibit 16, page 25.

inland lots: the Board should insist on similar specifics for the inland development as well as coastal development.

d. Insufficient specificity regarding project entitlements

Despite the fact the Coastal Commission requested additional specificity regarding the CDPs and their appealability to the Commission, the revisions fail to comply with this request.

Specifically, the revisions still include large generalized CDPs covering all infrastructure, roads and utilities, only separated according to whether the infrastructure serves inland or coastal development. Moreover, the CDP for the coastal zone infrastructure that will serve the coastal development does not identify the location of the package treatment plant, lift stations, seepage pits or discharge points associated with that plant or water treatment facility upgrade.⁷

Specifically, the CDP only includes lots south of Highway 101, and we are unaware of any treatment facilities south of the highway. If the same water and sewage treatment facilities identified as serving only the inland areas will also serve coastal development, this must be indicated; the County cannot issue separate CDPs for the exact same development.

4. Failure to issue required CDPs for mergers and lot line adjustments within the Coastal Zone

Mergers or lot line adjustments of coastal lots undertaken to create or transfer development potential inland or offsite are subject to CDPs that can be appealed to the Commission. The mergers and lot line adjustments at issue move development from constrained sites to less constrained sites and therefore create more development potential than currently exists on the ground. Further, these actions facilitate the development of a higher number of total units than contemplated under the MOU, increasing development potential. The County is thus required to issue CDPs for the mergers and lot line adjustments within the Coastal Zone.

5. Failure to Require Permits for Development within the Coastal Zone

The large generalized CDPs and CUPs for all infrastructure, utilities and roads serving either the inland or coastal portions of the project still do not cover development within the coastal zone that requires CDPs and/or CUPs. Specifically, the road that would serve the western side of the inland development was widened from 16 feet to an average of 30 feet over its entire 1300 foot length - including a segment in the CZ - without permits.⁸ The County issued CDP-00000-00080 purportedly to cover this zoning violation, but failed to issue a CUP explicitly covering the road, grading and utility zoning violations as noted below.

Furthermore, prior grading and construction of the loop road beyond and above the driveway to the existing residence on lot 132 was under taken to serve inland development including Phase I lots but was never permitted.⁹ CDP-00000-00080 permits improvements to this road below Lot 132 to "connect the existing loop road with improvements on the eastern side of the project," but

⁷ Revised Conditions, Exhibit 16, p. 24

⁸ Letter from Jackie Campbell, Supervising County Planner, to Mark Lloyd dated November 7, 2002, page 1.

⁹ Campbell letter, page 1.

no CDP appears to include the as-built unpermitted road improvements above Lot 132 in the CZ. The improvements above Lot 132 in the CZ serve Phase I. Therefore Phase I must not proceed before the CCC acts on permits / appeals of coastal development serving Phase I, including the improvements to the loop road above Lot 132.

Moreover, water lines were trenched and upgraded triggering a requirement for issuance of appealable permits. These permits have not been specifically issued for this completed project-related work, and the water line upgrade and trenching was not exempt from permitting requirements.¹⁰ The County issued LUP-00000-00739 for the stockpile, and CDP 00000-00080 for some of the coastal development serving inland lots but failed to issue a CUP “for of these all activities taken together.”¹¹

Furthermore, the County issued CDP-00000-00080 for a number of developments including the 2-foot wide permeable stone gutters and storm water pipes. These stone gutters and/or associated pipes located in the coastal zone will convey runoff from inland portions of the project site, *including the Phase I lots*. Therefore the Phase I lots must not proceed until the CCC acts on permits for utilities and infrastructure serving Phase I lots. The County must process appropriate permits for these improvements before any of this infrastructure may be used to serve any portion of the new development.

6. Proposed Condition Revisions Jeopardize the Enforceability of All Project Conditions

Proposed Project Condition revisions to General Provision B.10 provide that:

In the event that any of the Conditions of Approval are inconsistent or conflict with the processing terms 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.

This provision threatens to undermine the enforceability of any and all other conditions of the Board’s approval, including conditions necessary to implement mitigation measures recommended by the EIR, conditions required by the Planning Commission and conditions otherwise included to achieve policy consistency. The potential scope of this exemption, based on a subjective ‘conflict’ with very general MOU terms, could be very broad. Virtually every Project condition is vulnerable, if it can be characterized as in some way conflicting with allowing development of the Inland and DPR property in advance of the Coastal Property. Other amorphous MOU terms could be used to nullify Project Conditions under this language. As proposed, this revised condition undermines the integrity of the County’s land use permitting and approval process.

¹⁰ Campbell letter, page 2.

¹¹ Campbell letter, page 3.

7. Changes to the Conditions Protecting Water Quality Weaken Protections

Proposed changes to Condition D.7.c appear to allow development on DPR lots that may use septic systems. If this is indeed the case, we urge the Board to reject this revision because the DPR lots may need to be served by STP if septic is expected to cause water quality impacts¹², in which case the development of these lots should not be allowed to proceed in advance of the Applicant preparing final construction plans for the STPs. Table 1 lacks reference to the need to apply Conditions D.7 a-e in the event DPR's septic cannot meet the ROWD requirements. Condition D.7.e requires DPR STPs to be maintained and financed in accordance with Condition D.6.e, a non-existent recreational condition.

8. Changes Allowing Inland Development to Proceed Independently of the Coastal Commission Process Are Inconsistent with County Ordinance, the California Coastal Act, and Sound Planning Principles

When the Board voted in closed session to amend the MOU and allow inland development to proceed before resolution of the Coastal Commission process concerning the coastal portion of the Project, it opened a veritable Pandora's Box of planning problems. The Commission must first approve the amendments to the County's LCP before any CDPs can be found consistent with the certified LCP as required by the Coastal Act. The County therefore cannot issue final approvals for the CDPs until the Commission has reviewed and certified the proposed LCP amendments.

Further, access roads and utility infrastructure must all traverse the coastal zone to reach the inland portions of the site. Under these circumstances it is simply not possible to divorce the inland development from the coastal infrastructure required to serve it. Moreover the County's approval of inland development is contingent upon Coastal Commission approval of coastal zone infrastructure serving inland areas because the County must find that adequate public or private facilities exist to serve all new development and this finding cannot be made, discussed further below.

Staff attempts to "remedy this situation [where all infrastructure within the Coastal Zone is conditioned upon final CCC approval of legislative actions] and implement the Board's direction of October 7, 200[8], the proposed corrections would: remove provisions that interconnect inland infrastructure and that which only serves coastal development, replacing them with language that allows the inland and coastal portions to proceed independently."¹³ The proposed revisions do not remedy the situation, and further confuse the roles of the County and Commission in reviewing key project components.

To ensure compliance with the Coastal Act and County ordinance, and to enable the County to control the entitlement process and assure that infrastructure and utilities are available as contemplated in the EIR and no additional impacts result, we strongly urge the Board to delay all

¹² Condition D.7.e, Final Conditions of Approval, page 28.

¹³ Memorandum at page 2.

final approvals until the Commission has completed its review of the LCP amendment and any permit appeals.

a. LCP Consistency

The Staff Memorandum states that the approved appealable CDPs will be submitted to the Coastal Commission at the same time as the Coastal Land Use Plan (CLUP) amendment package.¹⁴ The CLUP is a critical part of the County's LCP that sets the standards for the CDPs and thus must be amended before the project CDPs can move forward. Most notably, the CLUP amendment includes the new Naples Town Site that provides the new land use and zoning designations required to allow the proposed development. The Staff Memorandum does not, however, address the fact that the LCP amendment will not be final until reviewed and certified by the Coastal Commission. Hence, any permits that rely on the LCP amendment are premature and invalid.

The Coastal Act and its regulations do not permit the County to issue CDPs that are inconsistent with its certified LCP. According to the Coastal Act,

After certification of the local coastal program, a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that proposed development is in conformity with the certified local coastal program.¹⁵

In fact, the County's issuance of a CDP "that does not conform to the standards set forth in the certified local coastal plan" are grounds for appeal to the CCC.¹⁶ The County erroneously presumes that it may concurrently issue the CDPs and amend the LCP at the same time. However, the Coastal Act regulations clearly state that "no development inconsistent with the [LCP] certification order may take place unless the order is amended."¹⁷ Thus, the LCP must be amended and certified by the CCC *before* CDPs that are inconsistent with the current LCP can be issued.

As discussed in detail in previous comments submitted to the County, the CDPs at issue are inconsistent with numerous policies of the County's approved LCP. As the Commission itself noted in its Deficiency Notice, "as previously discussed with County staff, the appealable coastal permits and any other appealable actions or approvals associated with this project do not appear to be consistent with the policies, provisions, land use plan designations, and zoning of the currently certified LCP."¹⁸

Issuing CDPs that are inconsistent with the existing certified LCP violates the Coastal Act. One of the fatal flaws of the County's action is that the CDPs were measured for consistency with the

¹⁴ Memorandum at page 3.

¹⁵ Public Resources Code §30604(b).

¹⁶ Public Resources Code §30603(b)(1).

¹⁷ Title 14 California Code of Regulations §13545.

¹⁸ California Coastal Commission, *Deficiency Notice (Santa Barbara Ranch)*, October 31, 2008; attached hereto as Exhibit 2.

County's *proposed LCP amendment* instead of the County's *approved LCP*. Thus, the County failed to make any findings that the CDPs were consistent with the current LCP as required by law.

There is no authority for a "conditional approval" of CDPs pending LCP review and certification. The CDP approvals are void and without effect.

Not only are the CDPs inconsistent with the County's current, certified LCP, but the County's approval of the CDPs prior to Commission consideration of the LCP amendment is premature. The CDPs at issue are intrinsically dependent on the approval of the LCP amendment. Therefore, until the LCP amendment is certified by the Coastal Commission, the County lacks the authority to approve the CDPs.

b. Appeals Process

Condition F.4.b, formulated after the Board effectively bifurcated the project in closed session, seemed to address the obvious planning dilemma associated with approving LUPs for homes with no access or utilities. The Condition states:

No Final Planning Approval shall be granted for any Coastal Development or Land Use Permit approved in connection with Final Development Plan Case Nos. 03DVP-00000-00041 [coastal FDP], 08DVP-00000-00024 [inland FDP] or 08DVVP-00000-00025 [CalTrans FDP] until: (i) all required applications have been filed and accepted by the Department as necessary to undertake development pursuant to each such Permit, including the consent of all Property owners (e.g., Dos Pueblos Ranch and Santa Barbara Ranch, as appropriate); (ii) concurrent approval is granted and becomes effective for all other discretionary land use entitlements to which the Coastal Development and Land Use Permits pertain (e.g., Development Plans and Conditional Use Permits); and (iii) all other applicable conditions specified herein has been fully satisfied (e.g., Condition No. F.4.d.). In addition, the following requirements shall apply:

(1) No Final Planning Approval shall be granted for any Coastal Development Permit approved in connection with Final Development Plan Case Nos. 03DVP-00000-00041 [coastal] or 08DVP-00000-00025 [CalTrans] until: (i) the Applicant has offered to dedicate the frontage of land which is owns from the edge of bluff seaward to the Property line in a form acceptable to the Department and County Counsel; (ii) all voluntary lot mergers have been recorded in order to achieve the final Project configuration for the Coastal Property.

(2) No Final Planning Approval shall be granted for any Land Use Permit approved in connection with the Final Development Case No. 08DVP-000-00024 [inland] for the Inland Property until: (i) final approval has been granted for 03-CUP-00000-00083, 08CUP-00000-00043 and 08CDP-00000-00080 *as necessary to provide supporting infrastructure for the Inland Property* (to the extent that any or all such permits are necessary to serve the affected lot), including appeals to

the Coastal Commission, if any; (ii) all voluntary lot mergers specified in the MOU in regard to the Inland Property have been duly recorded. [emphasis added]

(3) No Final Planning Approval shall be granted for any Land Use Permit approved in connection with the Final Development Plan Case No. 08DVP-00000-00024 [inland] for the DPR Property until: (i) final approval has been granted for 03CUP-00000-00083, 08CUP-00000-00043 and 08CDP-00000-00080 as necessary to provide supporting infrastructure for the DPR Property (to the extent that any or all such permits are necessary to serve the affected lot), including appeals to the Coastal Commission if any; (ii) all voluntary lot mergers in the MOU in regard to the DPR Property have been duly recorded; (iii) concurrent approval is granted and becomes effective for the Williamson Act Contract Modifications and Agricultural Easement Exchange (Case No. 05AGP-00000-00011).

Table 1 of the Conditions make clear that this Condition does not apply to the inland final development plan, or to any Land Use Permits. The latest revision to Table 1 now renders Condition F.4.b inapplicable to the CDP for coastal zone infrastructure that will serve the inland development. This revision utterly emasculates Condition F.4.b because it allows the County to issue final planning approval for the CDP for coastal zone infrastructure serving inland development, and to approve the inland final development plan, and LUPs associated with it, without complying with the specific conditions articulated in F.4.b including waiting for the Coastal Commission to review the CDP for coastal zone infrastructure that would serve this inland development. If the County approves this latest revision, it could find itself in a position where it approves all necessary permits for the inland development and coastal zone infrastructure to serve it, only to have the Coastal Commission modify or reject the CDP for the infrastructure. Allowing this potential outcome evinces that the Project Conditions are inconsistent with sound planning principles, jeopardizing the County's ability to control development of this uniquely valued stretch of coastline.

i. County Ordinance

Prior to Section 35.30.100 of the County's Land Use and Development Code provides:

Issuance of a Coastal Development Permit or Land Use Permit shall require that the review authority first find, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (e.g. water, sewer, roads) are available to serve a proposed development.

The revision concerning the applicability of Condition F.4.b undermines the County's prior finding of adequate services, because the Conditions now allow for final planning approval of land use permits for the inland development before adequate water, sewer, and road infrastructure is available to serve the development. Prior to the revision striking Condition F.4.b as applied to the CDP for coastal infrastructure serving the inland development, the County would have been required to wait until the Coastal Commission completed its appeal process on

these permits. As now structured, the County has no assurances that adequate services to serve the inland development will be forthcoming. Further, the County may find itself severely compromised if it allows the developer to make arguments of vesting before the final determination of infrastructure availability.

ii. The California Coastal Act

The proposed revision clarifies that "Conditional Use Permits (and associated Coastal Development Permits) are located within the Coastal Zone and are appealable to the CCC by operation of the LUDC, regardless of their geographic location."¹⁹ As such, the County cannot issue its own 'Final Planning Approval' for the concededly appealable CDP²⁰ in the event that it is appealed to the Coastal Commission.

Section 30603(c) of the California Coastal Act specifically delineates when and under what circumstances a local government's approval of an appealable CDP or CUP becomes final:

Any action described in subdivision (a) [developments appealable to the Commission after certification of a local coastal program] shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, *unless an appeal is submitted within that time.* Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed. [emphasis added]

Changing the conditions such that Condition F.4.b no longer applies to the CDP for coastal zone infrastructure serving the inland development is inconsistent with this section of the Coastal Act.

9. Conclusion

Although the Applicant clearly wishes to begin developing the inland portion of the site prior to the conclusion of the Coastal Commission's appeal process, the County simply cannot accommodate this wish without violating County Ordinance and the Coastal Act. We strongly urge the Board to reject the proposed revision to Table 1 of the Conditions and reinstate Condition F.4.b as it applies to the coastal infrastructure CUP/CDP that will serve the inland areas. Furthermore, we urge the Board to make Condition F.4.b applicable to all development plans and LUPs, in order to ensure that no portion of the project will proceed before required coastal permits and mitigation measures are in place.

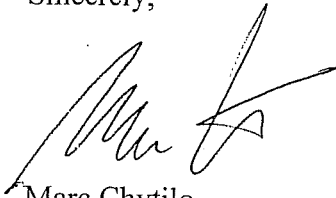
Furthermore, the project details demanded by the Coastal Commission echo those demands of the public and inquisitive Board members who actually want to understand the environmental and other consequences of this unprecedented subdivision on the Gaviota Coast. We urge the Board to direct staff to fully disclose all project details prior to resubmitting the Notice of Final Action to the Coastal Commission.

¹⁹ Revised Conditions, Table 4, page 18.

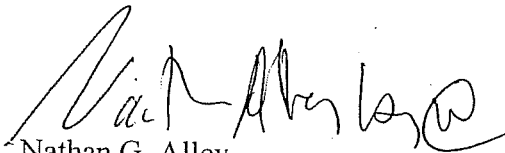
²⁰ This CDP is also appealable to the Commission by virtue of the location of development within 100 feet from ESHA.

We appreciate your careful consideration of these comments.

Sincerely,



Marc Chytilo
Law Office of Marc Chytilo



Nathan G. Alley
Environmental Defense Center

Exhibit 1: Email communications between Marc Chytilo and Tom Figg and Edward Yates,
December 5, 2008

Exhibit 2: California Coastal Commission, *Deficiency Notice (Santa Barbara Ranch)*,
October 31, 2008

Cc: California Coastal Commission
Naples Coalition
Surfrider Foundation

Marc Chytilo

From: Marc Chytilo [airlaw5@cox.net]
Sent: Friday, December 05, 2008 11:23 AM
To: 'Yates, Edward'
Subject: RE: Materials for 12-9 Board hearing

Ed – you will recall that we spoke on Wednesday afternoon 12/3 about my desire to confer with the County planner on the Santa Barbara Ranch Project to ask several questions about the revisions to the conditions and thereby to understand and respond to the proposed changes. My initial inquiry to Mr. Figg was returned with the direction to contact you, and I immediately forwarded to you his email, as shown below. Later, we talked, and you had promised to review this with your colleagues and respond. I have not heard back from you.

As you know, the deadline for submitting public comment to the Tuesday 12/9 Board of Supervisors hearing is noon on Friday, about 45 minutes from now. I regret that you did not respond to me in a timely manner and as a result we have had to expend considerable resources to attempt to dissect the proposed changes and offer our written comments, which will be submitted to the Clerk of the board shortly.

Please respond immediately if I have mischaracterized our conversation and understanding.

Cordially, Marc

* * * * *

If you believe you have received this message in error, please notify sender immediately.

* * * * *

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From: Marc Chytilo [mailto:airlaw5@cox.net]
Sent: Wednesday, December 03, 2008 12:13 PM
To: 'Yates, Edward'
Subject: FW: Materials for 12-9 Board hearing

From: Figg, Tom [mailto:Tfigg@co.santa-barbara.ca.us]
Sent: Wednesday, December 03, 2008 10:53 AM
To: Marc Chytilo
Cc: Black, Dianne; Baker, John; 'Ana Citrin'; 'Brian Trautwein'; Nathan Alley; Linda Krop EDC
Subject: RE: Materials for 12-9 Board hearing

Marc.....in view of the litigation, you'll need to speak with Ed Yates (568-2950).

Tom

From: Marc Chytilo [airlaw5@cox.net]
Sent: Wednesday, December 03, 2008 9:42 AM

To: Figg, Tom

Cc: Black, Dianne; Baker, John; 'Ana Citrin'; 'Brian Trautwein'; Nathan Alley; Linda Krop EDC

Subject: RE: Materials for 12-9 Board hearing

Tom – We have made a preliminary review of the proposed revisions and have some questions to better understand what is being attempted here. We would like to set up a conference call for this afternoon to discuss the materials – are you available between 2-3 today?

Thanks

Marc

* * * * *

If you believe you have received this message in error, please notify sender immediately.

* * * * *

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CALIFORNIA COASTAL COMMISSION

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DEFICIENCY NOTICE

DATE: October 31, 2008

TO: Tom Figg
Santa Barbara County, Planning and Development
123 E. Anapamu Street
Santa Barbara, CA 93101

FROM: Steve Hudson; District Manager

RE: Notice of Final Action for "Santa Barbara Ranch Project" (including all separate permits, actions, and other discretionary approvals as described in your cover letter dated October 27, 2008, and the attachments thereto, including, but not limited to, the document titled "Attachment C-1, Conditions of Approval, Final Adopted Santa Barbara County Santa Barbara Ranch Project", "Attachment C-2, Conditions of Approval, Preliminary Draft Santa Barbara County Santa Barbara Ranch Project Tables" and "Attachment C-3, Exhibit 13 (Project Scope)")

Pursuant to California Code of Regulations, Title 14 (14 CCR), section 13572 and 13572(b), please be advised of the following deficiencies in the above-referenced Notice of Final Approval/Action, which was received by our office on October 27, 2008, and which addresses multiple separate permits, actions, and other discretionary approvals collectively described in the notice as the "Santa Barbara Ranch Project" (hereinafter sometimes referred to simply as the "project").

Applicant(s): Santa Barbara Ranch, LLC

Description: The project entails the development of 71 new residential dwellings, an equestrian center, agricultural support facilities, a worker duplex, public amenities (including access roads, parking and restrooms, and coastal access trails), and creation of conservation easements for permanent protection of open space and agriculture. The project also includes: (i) text and map amendments to Comprehensive Plan, Coastal Land Use Plan, and Zoning Ordinance; (ii) subdivision approvals consisting of a vesting tentative tract map, lot mergers, lot line adjustments and conditional certificates of compliance; (iii) cancellation, modification and re-issuance of Williamson Act contracts; (iv) creation of new Agricultural Conservation and Open Space easements; (v) discretionary permit approvals encompassing development plans, conditional use permits and minor conditional use permits, land use permits and coastal development permits; and (vi) miscellaneous actions including approval of development agreements and removal of the Special Problems Area designation currently applicable to Naples.

Location: The project site encompasses the Santa Barbara Ranch and Dos Pueblos Ranch totaling approximately 3,249 acres and 85% of the lots comprising the Official Map of the Naples Townsite at Dos Pueblos Canyon Road, Santa Barbara County.

EXHIBIT 2

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Deficiencies noted below:

1. X Local action is not complete as described under 14 CCR Section 13570. That section states that a local decision on an application for development shall not be deemed complete until the local decision on the application has been made and all required findings have been adopted, including specific factual findings supporting the legal conclusions that the proposed development is, or is not, in conformity with the certified LCP. In this case, the final local action notice was submitted as a combined notice for multiple separate permits, actions, and other discretionary approvals generally described as the "Santa Barbara Ranch Project". However, the project descriptions for the individual actions on each component of the project, including a variety of different types of permits, coastal development permits, and other discretionary approvals did not contain adequate specificity to describe the development approved pursuant to each separate action. Without this basic project-level information, it is not possible to determine the scope of the approved development and; thus, whether specific factual findings have been included that support the legal conclusions of the notice that the development is in conformity with the certified LCP. Deficiencies include, but are not limited to, failure to describe the actual sizes and locations of residences, guest units, garages, grading, and infrastructure improvements associated with individual coastal permits (particularly in regard to several of the coastal permits approved for the portion of the project located in Santa Barbara Ranch, which describe only general ranges or maximum sizes allowable for structures and fail to describe or quantify grading amounts). In addition, the project descriptions do not describe the size (sq. ft. and height) and capacity of the water treatment facilities. Further, based on the attached exhibits, it is not clear based on the included project descriptions whether an appealable coastal permit was required for all wastewater treatment facilities, infrastructure improvements and subdivisions/mergers/lot line adjustments, or other redivisions of land approved within, or partially within, the Coastal Zone.
2. X Procedures for appeal of the decision to the Coastal Commission not included and/or inaccurate. The cover letter for your submittal included the statement "[p]lease be advised that portions of the Project are appealable to the Coastal Commission and applicable regulations setting forth the appeals process are also enclosed" and a photocopy of Chapter 35.102 (Appeals) of the County's LCP describing the appeals process in general terms. Although the submitted notice of final local action was intended as a combined notice for multiple separate permits, actions, and approvals generally described in the notice as the "Santa Barbara Ranch Project", no description was included describing which individual permits, actions, and approvals are appealable to the Commission. In order to provide adequate notice regarding "the procedures for appeal," pursuant to 14 CCR section 13571, such notice must explain which of the actions and permits included in the notice of final local action are subject to those appeals procedures. Specifically, it is necessary to provide adequate detail of which individual permits, actions, and approvals are appealable or not appealable for each separate, individual action or permit included as part of the notice including, but not limited to, subdivisions, vesting tentative tract maps, lot mergers, lot line adjustments, conditional certificates of compliance; development plans, conditional use permits, minor conditional use permits, land use permits, coastal development permits and development agreements which have been included as part of the "combined final local action notice" for this project.
3. _____ Final Local Action Notice was not received by the Coastal Commission consistent with 14 CCR Section 13571, which states that the local government shall notify the

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Commission, and any persons who specifically requested notice of such action, by first class mail.

4. ___ Written findings and conditions of Approval not included.
5. ___ Notice not given to those who requested it.

As a result of the deficiencies noted above:

Post-Certification LCP

XX The effective date of the local government action has been suspended, and the 10 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 CCR Sections 13570, 13572).

Post-Certification LUP

___ The effective date of the local government action has been suspended, and the 20 working day Commission appeal period will not commence until a sufficient notice of action is received in this office. (14 Cal. Admin. Code Sections 13330, 13332).

In addition, as previously discussed with County staff, the appealable coastal permits and any other appealable actions or approvals associated with this project do not appear to be consistent with the policies, provisions, land use plan designations, and zoning of the currently certified LCP. Although the Notice of Final Action submitted on October 27 included several references (including in the general project description) to a new proposed amendment to both the County's certified Coastal Land Use Plan and Zoning Ordinance, no information regarding proposed changes to the text, figures, or maps of the certified LCP was submitted (nor any of the other required items for submittal of an LCP Amendment pursuant 14 CCR Section 13552). Please note that a request by the County for an amendment to its LCP must be submitted to the Commission consistent with Section 13552 of the Commission's regulations and may not be included as part of a final local action notice for appealable development. It is our understanding that the County intends to submit a request for an amendment to the LCP related to this project; however, we have still not received any such submittal.

For the reasons discussed above, please submit a new revised Notice of Final Local Action for this project by first class mail, pursuant to the requirements of 14 CCR Section 13571. Commission staff is available to meet with County staff to discuss any of the issues raised in this letter. Please feel free to contact Amber Tysor or Steve Hudson at the South Central Coast Area office with any questions regarding this matter.

