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File No. 36550

VIA PERSONAL DELIVERY

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



Re: March 3, 2009 Hearing To Consider Adoption of Amendment to Santa Barbara Ranch Memorandum of Understanding

Dear Chair Centeno and Members of the Board:

On behalf of the Santa Barbara Ranch Related Interest ("SBRI") this letter is in response to the February 16, 2009 letter from the Environmental Defense Center, the Santa Barbara Chapter of the Surfrider Foundation and the Naples Coalition (collectively, "Coalition"). The Coalition's letter asserts that your Board must reconsider its approvals.

We understand that the Board has agendized only consideration of the MOU Amendment. As a result, your Board cannot consider the Coalition's demands at this hearing. Nevertheless, SBRI would like to respond to the allegations in the Coalition's February 16th letter. As explained below, all of the Coalition's claims are without merit.

This letter makes the following points:

- The Inland Development Agreement remains in full force and effect and prevents the County from taking the action the Coalition suggests.
- SBRI's rejection of the Coastal Approvals under the MOU does not include approvals for development of the Inland Project or approvals for development on Dos Pueblos Ranch.
- There is no basis for the Board to reconsider the project approvals.
- The County's findings and conditions of approval are not obsolete.

I The County Is Obligated Under the Development Agreement to Proceed with the Inland Approvals

Underscoring the fact that the coastal approvals and the inland approvals are separate and independent projects, the Board approved and the County executed two separate and independent development agreements. The Inland Development Agreement, specifically applies to the development of the residences the Board approved that will be constructed outside of the coastal zone. Under that agreement, SBRI has a vested right to develop the Inland Project. Furthermore, the Inland Development Agreement requires the County to reapprove the inland project in the event the approvals are set aside or otherwise made ineffective by any administrative proceeding. (Section 9.02.) SBRI has rights to enforce the Inland Development Agreement in the event that the County fails to fulfill its obligations under that agreement, including, recovery of damages and attorney fees from the County.

The Coalition asserts that SBRI breached the Inland Development Agreement by terminating the MOU. The grounds for that claim are set forth in the attachment to the Coalition's letter. Distilled to its essence, the Coalition's claim is based on the untenable assertion that because the Inland Development Agreement makes reference to the MOU, SBRI's termination of the MOU under the terms of the MOU is a breach of the Inland Development Agreement.

However, the Inland Development Agreement references the MOU only to provide that, with one exception, the Development Agreement does not supercede the MOU (Recital D) and that in developing the Inland Project SBRI shall proceed in accordance with the project approval, subject to the requirements of the MOU (Section 2.01). By its terms, the MOU allowed SBRI to reject the Coastal Approvals, as that term is defined in the MOU. The Inland Development Agreement expressly stated that it was not amending the MOU. In rejecting the Coastal Approvals and thereby terminating the MOU, SBRI acted in accordance with the MOU's terms. The termination has no effect on the continuing validity of the Inland Development Agreement.

The Coalition cannot point to any provision of the Inland Development Agreement that is violated as a result of SBRI rejecting the Coastal Approvals under the terms of the MOU. The Inland Development Agreement does not prevent SBRI from rejecting the Coastal Approvals under the terms of the MOU.

There is no question that the Development Agreement is now in full force and effect. Section 3 of Ordinance No. 4694, which was adopted by the Board on October 21, 2008, provides that the Inland Development Agreement went into effect when (1) the Inland Development Agreement is fully executed, (2) 30 days have passed since the adoption of the ordinance, and (3) "the effective date of approval of WA-ACE Easement Exchange Case No. 05-AGP-00000-00011, General Plan Amendment Case No. 03GPA-00000-00005, Vesting Tentative Map Case No. 08TRM-00000-00006/TM 14, 755 and Final Development Plan Case No. 08DVP-0000-00024."

All of these conditions have been satisfied. The Inland Development Agreement was fully executed on October 21, 2008. The 30-day period ran on November 12, 2008. All of the approvals referenced in the ordinance occurred on October 13, 2008 and took effect that day.

The Inland Development Agreement is one of several limitations that prevent the County from seeking to vacate the entitlements that SBRI did not reject under the MOU. The County has no basis to take the action the Coalition suggests and would be assuming a liability to SBRI under the Inland Development Agreement if it did so.

II. SBRI's Rejection of the Coastal Project Approvals Does Not Include Coastal Permits for Infrastructure to Serve the Inland Development

The MOU is very clear about what constitutes the Coastal Project Approvals. It defines the Coastal Project Approvals as "all things necessary to allow consideration" of up to "39 single-family dwellings and accessory uses and structures . . . on the Coastal Property." The MOU defines the "Coastal Property" as the portion of Santa Barbara Ranch in the coastal zone. Read together, *the Coastal Approvals are the entitlements to build homes in the coastal zone on Santa Barbara Ranch and nothing more.* The term "Coastal Project Approvals" does not refer to or encompass approvals in the coastal zone for development of residences outside the coastal zone.

Of course, in the end, the Board approved only 16 single-family dwellings and accessory structures on the Coastal Property, all of which are located south of Highway 101. Since those are the only approvals that could be encompassed within the definition of a Coastal Project Approval, SBRI's February 5, 2009 rejection specifically referred to those approvals. It did not refer to approvals of houses on the Coastal Property north of Highway 101, because there are no such approvals.

The February 5, 2009 letter specifically called out the coastal development permits for infrastructure to serve the inland development because those permits are not "Coastal Project Approvals." They are not approvals for the development of dwellings and accessory uses and structures in the coastal zone.

The Coalition's claim that SBRI's rejection of the Coastal Approvals extends to the coastal permits for infrastructure to serve the inland approvals is based on a nonsensical reading of the MOU. The Coalition basically makes the following argument: (i) the MOU defines "Coastal Project Approvals" as the development of dwelling and accessory uses and structures on the Coastal Property, and (ii) both the MOU and the conditions of approval define the Coastal Property as extending to the coastal boundary north of Highway 101. From these premises the Coalition jumps to the illogical conclusion that the permits for inland infrastructure are Coastal Project Approvals (even though they are not approvals of dwellings and accessory uses and structures.).

The Coalition's argument does not make sense because the MOU does not define every approval in the coastal zone as a Coastal Project Approval. Indeed, the MOU specifically contemplated that there would be an Inland Project, which was separate and distinct from the Coastal Project. The MOU specifically provided for a process that would allow SBRI to reject the

Coastal Project Approval without invalidating the Inland Project Approvals. It was always contemplated that there would be some coastal development permits necessary for the infrastructure for the Inland Project because roads and utilities have to go through the coastal zone to reach the Inland Project houses. As a result, the MOU did not define Coastal Project Approvals to encompass every approval in the coastal zone.

For these reasons, the Coalition's assertion is simply wrong. SBRI's rejection of the Coastal Project Approvals did not encompass the coastal development permits for the Inland Project because those permits are not Coastal Project Approvals as defined in the MOU.

III. The Findings and Conditions Are Not Obsolete and There Is No Basis to Reconsider the Project Approvals

The Coalition claims that SBRI's rejection of the Coastal Project Approvals renders the County's findings and conditions of approval obsolete. The Coalition's letter includes an attachment, which primarily refers to findings that the Coalition claims support its argument.

The Coalition's claim in this regard is another flawed argument. The flaw in the Coalition's reasoning becomes apparent when viewed in light of what the Board's approvals meant at the time.

Last October the Board approved a series of land use entitlements. The entitlements that SBRI received were not a binding commitment on SBRI's part to construct what was approved, but a determination by the County that if SBRI chose to construct improvements covered by those entitlements it could do so on the terms and conditions specified in the approvals. If SBRI chose not to use some or all of the entitlements it received it could always come back to the County for approval to do something else. In rejecting the Coastal Project Approvals, SBRI is fully aware that it will be required to seek new approvals in the event that it seeks to develop something on the Coastal Property in the future.

Under CEQA the County analyzed the impacts of that would result from developing the project in accordance with the entitlements the County approved. The findings the Board made relate to the entitlements the Board approved and what could be developed under those entitlements. But CEQA does not require that an applicant use the entitlements. Nor does it prevent an applicant from choosing not to use those entitlements and applying for different entitlements in the future.

Such is the case here. The Board approved two separate sets of entitlements last October that were expressly conditioned on the basis the each could proceed independently of the other. The entitlements were expressly made subject to the terms of the MOU and the amendment to the MOU, which, in turn, specifically allowed SBRI to disapprove the Coastal Project Approvals. The Board was explicitly made aware of the fact that SBRI could reject the Coastal Project Approvals at the October 13, 2008 public hearing and that SBRI would exercise its rights to do so if the MOU amendment was not in place.

What has occurred to date has occurred under the terms of the entitlements the Board approved last October and again last December. The Coalition asked the Board to repeal the MOU amendment, which was the only document that provided the linkage the Coalition now complains is missing. The Board chose to accept the Coalition's invitation and invalidated the amendment, thereby terminating the linkage. In response, SBRI did exactly what it told the Board and the Coalition it would do if the MOU amendment was not in place and rejected the Coastal Project Approvals.

SBRI's action was taken within the terms of the entitlements the Board approved. There are no changes to the project that would justify a reexamination of the Board's approvals.

A. The Board Was Fully Aware that SBRI Could Reject the Coastal Approval Under the MOU.

When SBRI exercised its right under the MOU to reject to Coastal Project Approvals and terminate the MOU, it exercised a right that the Board was well aware of before it approved the entitlements. The Board issued its findings and approvals after being expressly advised by County Counsel and counsel for SBRI at its October 13, 2008 public hearing that there was no requirement that SBRI proceed with development of the Coastal Project Approvals or remain in the MOU. At that hearing I testified before the Board that: "*the MOU has a window period after the final Board action here, where we can reject entitlements and stick with the existing lot pattern. So that's an automatic termination provision on the part of Santa Barbara Ranch.*" (Transcript of the Santa Barbara Board of Supervisors October 13, 2008 hearing, Departmental Item #1 ("Transcript") at pp. 137-138.)

Following my statement, Supervisor Carbajal asked County Counsel "[i]f this Board was to exercise its desire to get out of the MOU, what would transpire at that point?" (Transcript at p. 138.) County Counsel advised:

"Mr. Chair, the termination provision would apply in this situation, and there's a certain notice that either party has to make in regarding the termination provision. The factors required for termination are not exceedingly complex or demanding. So the applicant or the applicant's position, if they would like to terminate, they would have to make certain notice, make certain findings and at that point, they can terminate . . ." (*Id.*)

Supervisor Carbajal then asked County Counsel, "can the MOU be terminated in the near future? Despite whatever decision this Board makes now, can the MOU be terminated that could affect the entitlements that are provided by the rendering of a decision by this Board?" (*Id.* at pp. 138-139 [emphasis added].) County Counsel advised:

"Mr. Chair, actually, it -- my understanding is that if the project is approved, that signals the -- basically the end of the MOU. But any time before that, the applicant can initiate the termination provision. However, as Mr. Lamport said, *the applicant is not forced to go ahead*

with any project approval that's made by the Board. It can withdraw their application at a certain point in time and pursue other development projects on the property." (*Id.* at p. 139 [emphasis added].)

Not only was the Board advised by County Counsel in an open, public meeting that SBRI could cancel the MOU and thereby not pursue the entitlements in the coastal zone, but I specifically advised the Board in that same public hearing that SBRI would exercise its rights to cancel the MOU if the amendment was not in place. In that 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 NTS 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 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.)

The Board was clearly on notice that were it to rescind the MOU Amendment, as it ultimately did on January 27, 2009, SBRI would immediately terminate the MOU. Nothing in SBRI's rejection of the Coastal Project Approvals or its termination of the MOU altered the conditions under which the Board issued its findings in support of approval of the entitlements.

As a result, the Board has no basis to reexamine the approvals. The findings the Board made in approving the entitlements were correct at the time they were made. Nothing that SBRI has done since that time changed the validity of those findings as of the time they were made. The Board's action to rescind the MOU amendment in response to the Coalition's invitation triggered a response from SBRI that was specifically contemplated under the terms of the approval.

B. The Inland Project Approval Conditions Allow That Project to Proceed Independently of the Coastal Project Approvals.

Contrary to the Coalition's empty assertion, the conditions of approval do not "inextricably link the Coastal and Inland Projects." In fact, last December, the Board approved amendments to the conditions of approval, that assured that there would be no linkage between the Coastal Project and the Inland Project except through the MOU amendment, which the Board, at the Coalition's insistence, how now rescinded. The Board adopted Condition B.10, which states:

The MOU expressly includes that certain amendment approved by the Board of Supervisors on October 7, 2008, which provides a process whereby *development of the Inland and DPR Property, as shown on Exhibit 16, may proceed in advance of obtaining all governmental approvals for the Coastal Property.* In the event that any of the Conditions of Approval are inconsistent or in conflict with

the processing provisions of the MOU (most notably, allowing development of the Inland and DPR Property in advance of obtaining all government approvals for the Coastal Property) the terms of the MOU shall prevail. (Emphasis added.)

The Condition makes clear that the Inland Project could proceed independently of the Coastal Project and that the MOU amendment would be the only document that would govern the relationship between the Coastal and Inland Projects. Of course the MOU amendment was part of the MOU, which, in turn, allowed for either the County or SBRI to terminate the effect of its terms on the basis specified in the MOU. In other words, under Condition B.10 the MOU as amendment contained the only terms that link the two projects and those terms could be terminated in specified circumstances, which, if terminated, would mean there would be no terms linking the projects.

By rescinding the MOU amendment, the Board, at the Coalitions behest, terminated the only terms that linked the two projects. The Board's action, in turn, caused SBRI to reject the Coastal Project Approvals and thereby terminate any the effect of provisions that could be construed to link the two projects.

As a result, there is now no linkage between the two projects. Nor are there any conditions that impose such a linkage. Even if there were conditions that imposed a linkage, Condition B.10 makes clear that those conditions would not apply.

The only linkage the Coalitions asserts in its letter relates to reconstruction of the off-ramp and interchange improvements at Highway 101 and Dos Pueblos Canyon Road in the Caltrans right-of-way. In the first instance, the Final EIR states that development of the Inland and Coastal Projects "would not degrade operations at the [Highway 101 and Dos Pueblos Canyon Road] interchange during peak hour periods and would not significantly impact the interchange based on Santa Barbara County and Caltrans standards" (Final EIR at 9.12-7). There is a "mitigation measure" calling for reconstruction of the off-ramp, but it is not tied to any impact resulting from the Inland Project.

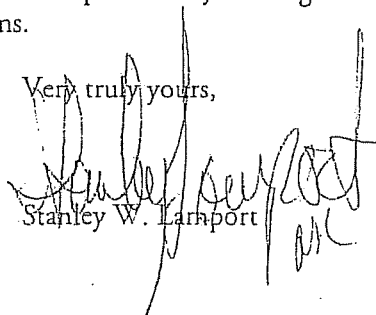
Furthermore, the mitigation measure states that the timing of the interchange improvements may be "in accordance with an alternative timing as agreed by Caltrans." So even if there was a linkage, which is not the case, the conditions do not restrict construction of the improvement to any action on the Inland Project entitlements.

In the end, Condition B.10 makes clear that the Inland Project was to proceed independently of the Coastal Project and that any linkage would be governed by the MOU, as amended. The Condition is abundantly clear that in the event of any inconsistency the terms of the MOU would prevail. The fact that the Board chose to rescind the MOU amendment and the fact that the Board's action triggered SBRI's rejection of the Coastal Project Approvals simply mean that there is now no linkage under the terms of the MOU. Under Condition B.10 those terms prevail over anything to the contrary in the conditions of approval.

IV. Conclusion

There is no basis for the Board to take any action to reconsider the approvals, let alone a duty to do so as the Coalition asserts. Indeed, under the Inland Development Agreement, the County has a contractual duty to allow SBRI to develop the Inland Project as a stand alone project that is separate and distinct from the Coastal Project Approvals. There is no merit to any of the Coalition's claims, just as there was no merit to the Coalition's alleged Brown Act violations. The events of the last month have shown that it was a mistake for the Board to follow the Coalition's lead. The Board should not compound the problem by once again relying on the Coalition's latest unfounded and ill-advised claims.

Very truly yours,



Stanley W. Larnport

SWL:rsf

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