

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into as of the _____ day of _____, 2000 (the "Effective Date") by the County of Santa Barbara ("County"), a political subdivision of the State of California, the Orcutt Area Advisory Group ("OAAG"), a California Non-profit Public Benefit Corporation, the Citizen's Planning Association of Santa Barbara ("CPA"), a California Non-profit Public Benefit Corporation, McCadden Development L.L.C., ("McCadden"), a California Limited Liability Company, and the Orcutt Union School District ("School District").

RECITALS

- A. WHEREAS, the Santa Barbara County Board of Supervisors, on July 22, 1997, adopted the Orcutt Community Plan ("OCP");
- B. WHEREAS, the Santa Barbara County Board of Supervisors intended that the Orcutt Community Plan (1) update the Comprehensive Plan for the Orcutt Area, and (2) provide for the health, safety and general welfare of the Community of Orcutt and its residents through planning for various land uses within the Orcutt Planning Area, in accordance with California's general planning and zoning laws and regulations adopted thereunder;
- C. WHEREAS, the Santa Barbara County Board of Supervisors, on July 22, 1997, pursuant to the California Environmental Quality Act ("CEQA"), certified the Final Environmental Impact Report ("95-EIR-01") and Addendum thereto prepared for the Orcutt Community Plan, made findings regarding mitigation measures, project alternatives, and unavoidable impacts, and adopted a statement of overriding considerations stating why the project was approved despite certain unavoidable significant impacts;
- D. WHEREAS, OAAG and CPA (collectively "Petitioners"), on October 2, 1997, filed civil action number 221244 ("petition" or "the action") in the Santa Barbara County Superior Court against the County of Santa Barbara challenging the internal consistency of the OCP, the consistency of the OCP with other elements of the General Plan, the legal sufficiency of the Final Environmental Impact Report, the legal sufficiency of the Board of Supervisors' CEQA findings, and the legal sufficiency of the Board of Supervisors' statement of overriding considerations;
- E. WHEREAS, McCadden and the School District (collectively "Intervenors") were granted leave to intervene in action number 221244, on April 17, 1998, for the purpose of protecting their respective legal and economic interests under the OCP;

- F. WHEREAS, Petitioners contend that (1) the OCP is internally inconsistent, (2) the OCP is inconsistent with other elements of the County's Comprehensive Plan, and (3) the County, in approving the OCP and certifying 95-EIR-01, failed to satisfy the requirements of CEQA;
- G. WHEREAS, the County, McCadden and the School District dispute the aforesaid contentions, and in response contend that (1) the Board of Supervisors' adoption of the OCP was a legally valid legislative act, and (2) the OCP is an internally consistent planning document, (3) the OCP is consistent with other elements of the County's Comprehensive Plan, (4) the Board of Supervisors' certification of 95-EIR-01, findings of approval, and statement of overriding considerations complied with all substantive and procedural requirements of CEQA;
- H. WHEREAS, the parties hereto intend, through this Memorandum of Understanding ("MOU"), to terminate lengthy and costly litigation regarding the validity of the OCP and the legal sufficiency of the CEQA process underlying OCP approval, in a manner which will provide the greatest possible benefit to the public, while protecting the legitimate legal, economic, environmental and equitable interests of the parties;
- I. WHEREAS, the parties hereto wish to provide a protocol and structure for the consideration of amendments to the OCP identified in Exhibit A hereto, in furtherance of the objectives identified above; and
- J. WHEREAS, the parties hereto desire to dismiss this action without prejudice while the County considers various amendments to the OCP, and which, if adopted in substantial conformity with Exhibit A hereto, shall support the completion of this litigation and a waiver of any rights thereunder.

NOW, THEREFORE, the parties agree as follows:

1.0 Reservation of Police Power

This MOU is entered into by the parties only to provide a protocol and structure for the consideration of amendments to the OCP identified in Exhibit A hereto. This MOU does not create in the parties any expectations, entitlements, rights or approvals for the proposed OCP amendments or use of any property within the Orcutt Planning Area. The processing of the OCP amendments will be separate and apart from the approval of this MOU and will require complete and legally sufficient environmental analysis as well as compliance with all applicable planning and zoning laws. The County cannot and does not preclude or make any commitments regarding ultimate approval of the OCP amendments, which shall be processed in accordance with all applicable ordinances, resolutions, policies and statutes. Nothing herein shall be deemed to be a waiver or infringement of the County's police power, nor shall any part or all of this MOU be

construed on the part of the County as an obligation to adopt any amendments or revisions to the OCP or grant any permits, entitlements or approvals.

2.0 Schedule for Processing and Consideration of OCP Amendments

The Board shall consider the amendments to the OCP identified in Exhibit A hereto through either the adoption of the exact language proposed in Exhibit A hereto or by the adoption of modified language which substantially fulfils the intent of Exhibit A.

The Board shall also consider the amendments to the OCP identified in Exhibit B hereto, however, the Board need not adopt the exact language proposed in Exhibit B, nor must it adopt modified language which substantially fulfils the intent of Exhibit B. The Board's duty with regard to Exhibit B is satisfied solely by initiation and good faith consideration of the amendments proposed therein and not by adoption, and no further action beyond said initiation and consideration is required by this MOU.

The proposed amendments/revisions contained in Exhibits A and B to this MOU shall be processed and considered as a group. The parties intend that these OCP amendments shall be processed expeditiously and completed no later than 8 months after the execution of the MOU. The parties acknowledge that the processing of the amendments to the OCP identified in Exhibits A and B involves some uncertainty regarding the amount of public interest, demands for extraordinary environmental review, scheduling conflicts and other unknown factors that may delay County's completion of these policy changes. County shall use its best efforts to meet the 8 month timeline; however, in the event of the occurrence of circumstances beyond the control of the parties, the time may be reasonably extended by County as necessary. County agrees to consult with the parties and to provide written notice of any necessary extension, and to make every effort to secure necessary funding, allocate adequate resources, and dedicate adequate hearing time to accomplish this goal.

3.0 Dismissal/Reactivation of Action

A. Dismissal Without Prejudice

Upon the execution of this MOU by each party and the County's initiation of amendments to the OCP as described herein, Petitioners shall file with the clerk of the Santa Barbara County Superior Court a notice of stipulated dismissal of SBSC Case No. 221244 (the "action") without prejudice.

B. Statutes of Limitation and Tolling

All statutes of limitation which may apply to bar the reactivation of SBSC Case No. 221244, including the periods of limitation provided for in C.C.P. §1094.6(b) and Government Code §65009, are hereby tolled during the period that the Board of

Supervisors is considering amendments to the OCP as described herein. Said tolling period ends upon final action by the Board of Supervisors in accordance with this MOU. In the event the Board fails to take final action as contemplated herein, said tolling period ends at expiration of the eight month processing period described in Section 2.0, or at the expiration of any extension thereof, so long as the County has taken no final action prior to the expiration of said period.

In the event the Board of Supervisors adopts the exact language proposed in Exhibit A hereto, or upon the adoption of modified language which substantially fulfils the intent of Exhibit A, all statutes of limitation which apply to Petitioners' claims are deemed expired by operation of this MOU, and Petitioners hereby waive any further claim for relief through reactivation of their action as provided for in Subsection C below.

C. Reactivation of the Action

Petitioners shall have the right to reactivate the action if:

1) The Board of Supervisors has failed to make a final decision on the proposed OCP amendments in Exhibit A hereto within eight months of the execution of this MOU, or as said time may be extended by the County pursuant to Section 2.0;

2) The Board of Supervisors has disapproved the proposed OCP amendments in Exhibit A hereto or adopted OCP amendments substantially inconsistent with those proposed amendments.

The proposed amendments in Exhibit B hereto shall not provide grounds upon which Petitioners have the right to reactivate the action. In the event the Board fails to make a final decision on the amendments proposed in Exhibit B, disapproves the amendments proposed in Exhibit B, or adopts amendments substantially inconsistent with the amendments proposed in Exhibit B, no right to reactivation shall exist.

In the event circumstances arise which provide Petitioners with the right to reactivate this action, Petitioners shall have 30 days from expiration of the tolling period described in Subparagraph B above to effect such reactivation. If Petitioners fail to reactivate within the 30 day time frame, their action shall be forever barred by operation of the applicable statute of limitation.

4.0 Complete Disposition Upon Final Adoption by County

Petitioners agree that if the OCP revisions/amendments proposed by this MOU are adopted by the County in accordance with this MOU, those OCP revisions/amendments shall adequately and completely resolve all claimed OCP deficiency issues raised in the Petition. Petitioners therefore agree that, upon adoption by the Board of Supervisors of the exact language proposed in Exhibit A hereto, or upon the

adoption of modified language which substantially fulfils the intent of Exhibit A, any and all claims to judicial review of defects concerning the OCP, as adopted in July 1997, shall be waived. Said waiver expressly applies to any and all rights or benefits conferred by the provisions of Section 1542 of the California Civil Code. The parties understand the significance and consequence of such specific waiver, and intend this consequence, even as to claims which are not known to exist and which, if known, would materially affect the decision to execute this MOU. Said waiver applies specifically to petitioners, their assigns, agents, employees, partners, representatives, attorneys, predecessors, successors, and all persons or entities acting by, through, under, or in concert with them.

5.0 Effect of Settlement on Pipeline Projects

Applications for development deemed complete before the effective date of this MOU on Key Sites 5, 8, 12 and 17 shall be considered "pipeline projects" for the purpose of this MOU. Pipeline projects are subject to and shall be processed pursuant to the existing rules, regulations and official policies of the OCP, as adopted in July 1997. However, in the event implementation of this MOU results in revisions and/or amendments to the OCP, the revised OCP provisions shall control any subsequent project approvals for pipeline projects, but only to the extent the revisions/amendments are substantially consistent with those specifically proposed herein. In the event that the revised/amended OCP provisions are substantially inconsistent with the revisions/amendments proposed herein, the inconsistent revised/amended OCP provisions shall be inapplicable to pipeline projects. In cases of inconsistency, the original rules, regulations and policies set forth in the OCP, as adopted in July 1997, will control.

The parties to this MOU recognize that certain time frames have been established for implementation of the MOU, and they do not intend for implementation to in any way disrupt "permit processing" procedures for pipeline projects. The County agrees that implementation of the MOU shall not result in disruption or delay of "permit processing" for pipeline project applications. For the purposes of this MOU, "permit processing" shall mean the ordinary steps and procedures necessary to bring a project from the application stage to the discretionary approval stage.

6.0 Intervenors' Abstention From Actions Which Potentially Affect Non-Participants

Intervenors opine that certain actions proposed in this MOU and Exhibits A and B hereto, to varying degrees, could affect the interests of persons who are not parties to the lawsuit and not participants in these settlement proceedings. Intervenor, McCadden's, involvement in decisions made during the course of these settlement proceedings has focused only on properties under its ownership and control. Intervenors have taken no part and specifically abstain from any actions which affect, either directly or indirectly, the interests of non-participants.

7.0 Statement of Opposition to Proposed New Action WAT-O-1.4

Intervenors declare their opposition to proposed *New Action WAT-O-1.4: Supplemental Water Supply Report*, set forth in Exhibit B to this MOU. Intervenors urge the Board of Supervisors to reject said proposed New Action in its entirety.

8.0 Cooperation To Defend Third Party Challenges to MOU

All parties pledge cooperation in defense against any challenge or litigation threatened or filed which is hostile, detrimental or contrary to the MOU. All parties pledge to support, uphold and assist in defense of the MOU, as each party determines is strategically appropriate. Each party to this MOU shall bear its own costs of defense of the MOU.

9.0 Assignment

Any party to this MOU which conveys a fee or development interest in property subject to the OCP shall advise all subsequent purchasers of the obligations under the MOU. To the extent that elements of this MOU touch and concern such real property, those elements of the MOU shall run with such land. All obligations under the MOU run with any entitlements parties or their successors receive from the County.

10.0 Authority of Signatories

Each person signing the MOU attests that they have been advised by counsel and are duly authorized to sign for and bind the party that they represent.

11.0 Unforeseen Circumstances

All parties intend that this MOU shall be binding against all parties affected thereby and in all future conditions unless modified in a writing signed by all parties. Conditions which should not affect the validity, effectiveness and enforceability of this agreement include but are not limited to changes to the composition and membership of the Board of Supervisors, changed county governmental structure, annexation, incorporation of Goleta, changed economic conditions and/or other unforeseen circumstances which may affect the policies and actions required under this settlement agreement.

12.0 Severability

If any portion of the MOU is deemed illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in effect.

13.0 Effect of MOU on Mitigation Agreements with School District

It is the belief of the parties that the OCP revisions/amendments proposed by the MOU, and any action by the County resulting therefrom to the OCP, do not nullify the basis on which mitigation agreements were entered into by developers with school districts prior to this litigation. Therefore, all such mitigation agreements with school districts are not affected in any way by this MOU. Further, in the case of a transfer of development credits, if a receiver site does not already have a mitigation agreement with the applicable school district, mitigation agreement obligations will be transferred along with development credits.

14.0 Costs and Attorney's Fees

The parties hereto shall each pay their own attorney's fees, costs and expenses incurred in connection with SBSC Case No. 221244, including the negotiation and preparation of this MOU, except as may be provided by separate agreement.

15.0 General Provisions

California law shall govern the construction and interpretation and enforcement of this agreement.

A. Captions. The captions of the sections of this agreement are for convenience and reference only, and shall not effect in any way the meaning or interpretation of this MOU.

B. Further Assurances. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this agreement.

C. Entire Agreement. This writing constitutes the entire understanding of the parties as to the matter set forth herein. No modification of this agreement shall be valid or binding unless executed in writing by the parties and none of the parties shall be bound by any representations, warranties, provisions and statements as to the matter set forth herein unless such matters are specifically set forth.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the Effective Date.

COUNTY OF SANTA BARBARA

By: _____
Chairperson

Date: _____

ATTEST:
MICHAEL B. BROWN
CLERK OF THE BOARD

By: _____
Deputy

Dated: _____

Citizen's Planning Association of
Santa Barbara County, Inc.

Orcutt Area Advisory Group, Inc.

By: Ms. Louise Boucher
President

By: Ms. Olga Howard
President

Dated:

Dated:

Orcutt Union School District

McCadden Development, LLC

By:

By:

Dated:

Dated:

Approved as to form:

STEPHEN SHANE STARK
COUNTY COUNSEL

ENVIRONMENTAL DEFENSE
CENTER

COUNTY OF SANTA BARBARA

For Petitioners Orcutt Area Advisory
Group, Inc., and Citizen's Planning
Association Of Santa Barbara
County, Inc.

By: _____
Alan Seltzer
Chief Deputy County Counsel

By: _____
Marc Chytilo

Dated:

Dated:

HAMILTON AND YOUNG
For Intervenor Orcutt Union School
District

HOLLISTER AND BRACE
For McCadden Development, LLC

By:
Lisa Corr

By:
Richard C. Monk

Dated:

Dated: