



city of san luis obispo

990 Palm Street, San Luis Obispo, CA 93401-3249

June 22, 2006

David Edge, County Administrator
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

Dear David:

As you know, in 2004 the City Council of San Luis Obispo approved a project on the Dalidio Ranch. However, the general plan amendment, zone change and a development agreement related to the project were placed on the ballot in 2005 and rejected by voters. The City Council's position in the aftermath of that vote was to continue to support a project on the Dalidio property, but to work with the developer to modify the general plan amendment, zone change and development agreement to make the project more acceptable to the community. The developer, however, has chosen to pursue a project using the initiative process, which raises for the City, the County and other agencies a number of significant issues.

Attached is an analysis the Dalidio Ranch initiative prepared by City staff. The analysis covers seven major areas of interest identified by our City Council that warrant further fact-finding, as outlined in a letter to Supervisor Lenthall on April 20, 2006. The analysis is not intended to provide a comprehensive "impact review" of the project itself, as would an EIR. However, we have cited several studies related to the earlier Marketplace project which may also shed light on the Dalidio Ranch proposal, given some parallels between the projects.

We ask that you share the enclosed review with appropriate County staff and with Board of Supervisor members. However one may feel about the history of the Dalidio property, there are significant governance and "good planning" issues that must be surfaced and understood before voters can make the most informed decision possible. Therefore, we also hope this analysis will contribute to the work of Supervisor Lenthall's fact-finding committee when that committee gets underway later this summer.

Sincerely,

Ken Hampian
City Administrative Officer

cc: City Council
Staff Distribution



City of San Luis Obispo Assessment of Certain Issues and Impacts Associated with the Dalidio Ranch Initiative (June 2006)

I. Legal Framework – What can be legally accomplished through the initiative process and what steps and procedures (such as permits from other agencies) will still remain if the vote is affirmative?

Under the California Environmental Quality Act (CEQA), initiative measures of the voters that are not sponsored by a public agency are specifically exempted from that law's requirements. The CEQA Guidelines provide that a "project," for CEQA purposes, does not include "the submittal of proposals to a vote of the people of the state or of a particular community." (14 CCR section 15378.) Thus, the Dalidio Ranch initiative measure is not subject to the requirements of CEQA.

The initiative process applies to legislative acts, that is, general rules that apply in future cases. Legislative acts include general plan amendments and zoning amendments, as future development proposals must conform to them. The Dalidio Ranch initiative measure contains both amendments to the County general plan and the County zoning regulations. The proposed Dalidio Ranch land use category amendment to the Land Use Element of the County's General Plan sets forth quite specific land uses contemplated for different sub areas of the Dalidio Ranch area: retail commercial, conservation open space/recreational/organic agricultural, residential, business park and community facilities.

The initiative includes technical conforming amendments to the County general plan in an attempt to ensure consistency with County goals, policies, objectives and implementation measures. The proposed zoning amendments are very detailed and also attempt to carefully track the proposed general plan amendments such that there will be no discretionary review by the County – or any other agency – for the project to proceed.

The idea is that future County approvals will simply involve several ministerial actions confirming that the plans comport with zoning requirements and the conditions of approval included in the initiative measure. Thus, there will be no exercise of discretion that might provide an opportunity for further public or public agency (such as the County, other local government agencies or the City) input into the project, and thereby reducing the opportunity for a potential legal challenge on abuse of discretion grounds. Still, there may be instances where the initiative measure may be inconsistent with the general plan. County staff is most familiar with the County's general plan and thus is in a better position to identify any potential inconsistencies.

Approvals will be needed from various state agencies, and an initiative may not regulate matters that have been regulated by the State. Thus, the initiative cannot take away regulatory authority of state agencies with regard to water quality and wastewater disposal, air pollution, state highways, and other impacts under state jurisdiction. For example, the Regional Water Quality Control Board will have jurisdiction over water and wastewater services to the site; and CalTrans will have jurisdiction over adjacent state highways. Obviously, a county initiative measure cannot preempt federal regulation, either. For this reason, the Air Pollution Control District (a local agency charged with ensuring compliance with state and federal laws and regulations) will have jurisdiction over air quality issues. Flood control matters fall within the jurisdiction of the Army Corps of Engineers and possibly the Federal Emergency Management Agency (FEMA).

3. Service Issues – What are the facility and service impacts of building a large urban project on land surrounded by an incorporated city, such as the impact on streets, fire and paramedic service, police response, water and wastewater service? What policy guidance is offered regarding County development near City boundaries by the Memorandum of Understanding recently agreed to between the County and the City?

The impacts of building a large urban project on land surrounded by an incorporated city are profound. A discussion of the likely impacts to three specific City services resulting from the development of the Dalidio Ranch, as proposed to voters, illustrates this point.

Public Safety Service: Fire, Paramedic and Police. The delivery of public safety services is ideally based on utilizing the closest resources rather than being restricted by arbitrary jurisdictional lines. With this in mind, like public safety agencies everywhere, police and fire agencies within the County of San Luis Obispo have worked closely together in reaching a series of agreements to share resources and assist one another without "charging back" for services. The idea is that all agencies benefit equally from such mutually supportive relationships, and the public safety of citizens are better served.

This "quid pro quo" approach can be strained, however, when substantial urban-like development is built at the edges of cities, requiring cities to disproportionately serve unincorporated areas. To reduce this problem in our County, the County and several cities recently adopted a Memorandum of Agreement that requires a degree of greater coordination between the County and cities when considering development adjacent to a city, or within its "Sphere of Influence" (SOI). Specific issues to be addressed on a case-by-case basis include impact mitigation, urban services and development requirements for projects within the SOI.

However, existing County and City agreements do not contemplate a project like the Dalidio Ranch: very large in scale and intensity, built in the County but surrounded by a city, and approved outside the established processes of either agency. Thus, from a legal and regulatory standpoint, the agreements are not relevant.

From a practical standpoint, however, public safety professionals will always make public safety the highest priority. Therefore, if "911" is called for a problem at the Dalidio Ranch, such as a medical emergency, a robbery or a fire – the closest agency is going to respond. This means that the City police and fire departments will most likely be responding to all significant emergency police and fire calls to the Dalidio Ranch, regardless of jurisdictional issues, and even though there will be no offsetting revenue to the City from the development.

An additional concern from a fire service perspective is the use of onsite water for firefighting purposes; it may be inadequate given the high density of commercial spaces. Large quantities of water would need to be stored and provisions made for adequate pressure for firefighting use. Another firefighting concern is the incorporation of fire sprinklers into the commercial buildings, which is a City requirement, but not necessarily a County one.

With regard to police calls, a development of this magnitude would generate additional calls that are urgent in nature (such as robberies, burglar alarms and assaults) as well as less urgent (shoplifting and thefts). Currently, Sheriff Patrol deputies do not police the Dalidio Ranch area

milestones and deadlines are not met, the mitigation fees are to be returned to the developer – except for the Prado Road Interchange Mitigation Fee, which will be returned to the County of San Luis Obispo for use on area roads if the fee is not used within 10 years of the date the escrow account is created. The proposed mitigation strategies don't actually build anything, nor is the County of San Luis Obispo the agency responsible for actually assuring that these projects are completed. The most significant project that won't be physically built by the proposed mitigation is the Prado Road Interchange.

Outlined below is a more thorough discussion of the proposed traffic mitigations, followed by a discussion of the interchange.

Traffic Mitigations and Mitigation “Conditions.” Attachment F of the Petition/Initiative sets forth the proposed project's traffic mitigation strategy. There are four traffic mitigations proposed:

1. Prado Road/Highway 101 Interchange “Fair Share” Fee Payment and Right of Way Dedication
2. Calle Joaquin Extension “Fair Share” Fee Payment
3. Calle Joaquin/Los Osos Valley Road “Fair Share” Fee Payment
4. Los Osos Valley Road/Madonna Road “Fair Share” Fee Payment

Traffic Mitigation #1: Prado Road/Highway 101 Interchange. Prior to the first occupancy permit, the project will dedicate approximately 13 acres to Caltrans for the right of way (ROW) of the Prado Road/Highway 101 Interchange.

Prior to the first occupancy permit, the project will establish an escrow account with Caltrans that will pay \$4,000,000 towards the Interchange project. Of that amount, no more than \$750,000 can be used to complete design and environmental review of the Interchange project. The remaining \$3,250,000 can only be accessed by Caltrans when a fully executed construction contract for the Interchange has been obtained. If these milestones are not met within 10 years of the escrow account creation, the monies in escrow will revert to the County of San Luis Obispo for use on area streets and roads that benefit the project.

The \$4 million amount is far below the project's actual “fair share” for this needed interchange improvement. Based on the detailed analysis prepared as part of the original “Marketplace” proposal, its “fair share” is 52% of a \$22 million project, or \$11.4 million. This is far short of its “fair share.”

Traffic Mitigation #2: Calle Joaquin Extension “Fair Share” Fee Payment. Prior to the first occupancy permit, the project will establish an escrow account with the City of San Luis Obispo that will pay \$150,000 towards the extension of Calle Joaquin from Los Osos Valley Road to the Marketplace project (note: the petition actually says \$150 but that is assumed to be a typographic error). The City will have no more than 12 months from the date of the escrow to complete environmental review and design and award a construction contract for the project. If the milestone deadline is not met, all monies in escrow will revert to the developer.

project and the likelihood that no mitigation will be built as part of the project. Without the interchange being built (at least in the foreseeable future), the situation is substantially worse, as discussed further.

The previously approved (2004) Marketplace project was determined to cause Class I significant and un-avoidable traffic impacts, even though it included the Prado Road Interchange as part of the project. The proposed initiative does not include the Prado Road Interchange, and as such, it is easy to conclude that upon occupation of the project, even worse traffic impacts will occur along the City streets of Madonna, Los Osos Valley Road, Higuera, Oceanaire, El Mercado and Dalidio Drive. Similarly, we can expect significant impacts along Highway 101 mainline and ramp locations.

The following summarizes traffic studies that have been performed at this site for previous development applications. While the specifics of these projects are different from the proposed Dalidio Ranch project, they are similar enough that the findings from these prior reviews are highly instructive in assessing the impacts of this one.

November 1999 Administrative Draft Final Environmental Impact Report (EIR). The City Administrative Draft Final EIR for the *Dalidio Property Annexation*, dated November 1999, was the last document that analyzed impacts of a major project at this site that did not include Prado Road interchange as part of the project scope. That project was significantly smaller than the proposed one before the voters in this initiative measure.

The EIR concluded that the project proposed at that time, *without the Prado Road interchange*, would significantly impact five (5) intersections along Madonna Road and LOVR and would *drop speeds of traffic on these roads to less than 10 miles per hour*. Significant delays to side streets and residential streets in the Oceanaire neighborhoods were also forecast. Building the Prado Road interchange as a mitigation measure for the project was identified in the “existing plus project” scenario analyzed in this EIR. Based upon this information, the EIR consultant and the City determined that the Prado Road interchange should be considered part of the “project.” The EIR also concluded that the project should pair fair share mitigation of the future improvements to the LOVR/Highway 101 interchange improvement project.

April 2000 Revised Draft EIR Dalidio Property Annexation. The 1999 Final EIR was revised to amend the project description and include the interchange as part of the project. Many of the impacts were the same as the November 1999 EIR. A sensitivity analysis was conducted for Year 2000 conditions that said up to 150,000 square feet of commercial could possibly be built without significant street mitigation or completion of the interchange project. Any additional development would need significant roadway mitigation to be constructed to mitigate impacts. For context, the proposed Dalidio Ranch project is over 500,000 square feet in size, far in excess of this 150,000 threshold.

January 2004 Final EIR Dalidio/San Luis Marketplace Property Annexation and Development Project. The 2004 Final EIR for the most recent development proposal at this site was for a much a larger project than the one reviewed in 1999 and 2000. The “project” studied under that EIR included the Prado Road interchange. Significant Class I un-mitigatable impacts were identified as part of the 2004 process. Similar to the 2000 Draft EIR, a sensitivity analysis was

would normally be the case if the project developed in the City, like sales tax, property tax and transient occupancy tax (TOT) revenues from visitors staying in hotels and motels).

In fact, not only will there be no new revenues to service these added costs – year in and year out – but we will lose revenues due to the transfer effect of the new retail and hotel uses on existing businesses. For example, the economic analysis prepared as part of the review process projected that 33% of the new sales tax revenue from the project would be transfers from existing businesses, and about 20% of the TOT revenues. However, even with these transfers, we would still see “net” increases of 67% from the sales tax and 80% of the TOT revenues generated by the project – if the project is built in the City. However, if the project is built in the County, San Luis Obispo will experience all of the transfers, but none of the added revenues.

In conclusions, assuming that this project generates similar revenues as the previous proposal, City revenue losses alone will be about \$700,000 each and every year. Combined with added service costs, this is likely to result in a net “takeaway” of about \$1 million annually.

And this does not include funding for the so-called amenities of the project, like a sports field or senior center. While land may be set aside for these, there is no funding mechanism for building, operating or maintaining these facilities.

7. Other Stakeholder Agencies – Which other agencies should be invited to participate in a task force fact-finding dialogue?

Stakeholders would seem to include Caltrans, the Regional Water Quality Control Board, the Air Pollution Control District, LAFCo and other cities subject to the policy and precedent implications of the initiative, as discussed throughout this review.

MARKETPLACE PROJECT STUDIES

- Air Quality technical data prepared by Rincon Consultants, November 2003.
- Noise analysis prepared by Rincon Consultants, November 2003.
- Historical Resources Inventory and Evaluation, San Luis Marketplace Annexation prepared by Bertrando and Bertrando Research Consultants, May 1999.
- Phase-1 Archaeological Survey of the Proposed Prado Road/Highway 101 Interchange prepared by Applied EarthWorks, Inc., March 2000.
- Traffic and Circulation technical studies and data prepared by Fehr & Peers, October 2003.
- Drainage and Flood Analysis for San Luis Obispo Marketplace Area Annexation, Phase I prepared by Cannon Associates, May 2003.
- Local & Cumulative Hydrologic & Hydraulic Impacts Analysis, prepared by Questa Engineering Corp., October 2003, and report update, March 2004.
- Route 101/Prado Road Interchange Preliminary Bridge and Retaining Wall Report and Type Selection Recommendations prepared by Mark Thomas & Company, Inc., April 2003.
- Various technical studies prepared by PAR Environmental Services, Inc. dated October 2000 evaluating impacts of the proposed Highway 101/Prado Road interchange, including: Noise Analysis; Socioeconomic Report; Air Quality Technical Report; Natural Environment Study; Limited Level I Preliminary Site Assessment; Visual Resources Assessment Report; and Historic Property Survey Report.