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b) The Vesting Statutes Grant The Applicant A Vested Right To Proceed Under The Ordinances, Policies and Standards In Effect On February 5, 2004

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Once an application for a vesting tentative tract map is "complete," the applicant has a vested right to proceed under the ordinances, policies and standards in effect at that time. This

vested right is granted pursuant to the "Vesting Statutes" (Gov. Code §§ 66489.1- 66498.9). The Vesting Statutes comprise a chapter of the Government Code entitled "Development Rights." The objectives of the Vesting Statutes are as follows (Gov. Code § 66498.9.):

- (a) To establish a procedure for the approval of tentative maps that will provide certain statutorily vested rights to a subdivider.
- (b) To ensure that local requirements governing the development of a proposed subdivision are established in accordance with Section 66498.1 when a local agency approves or conditionally approves a vesting tentative map. The private sector should be able to rely upon an approved vesting tentative map prior to expending resources and incurring liabilities without the risk of having the project frustrated by subsequent action by the approving local agency, provided the time periods established by this article have not elapsed.
- (c) To ensure that local agencies have maximum discretion, consistent with Section 66498.1, in the imposition of conditions on any approvals occurring subsequent to the approval or conditional approval of the vesting tentative map, so long as that discretion is not exercised in a manner which precludes a subdivider from proceeding with the proposed subdivision.

The objectives of the Vesting Statutes are thus three-fold: 1) to provide a subdivider with certain statutorily vested rights; 2) to allow a subdivider to rely upon an approved vesting tentative map; and 3) to ensure that local agencies retain discretion to impose conditions on subsequent approvals, consistent with the Vesting Statutes.

The key "vesting" provision of the Vesting Statutes is section 66498.1(b), which provides: "[w]hen a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2. . . ." (Gov. Code § 66498.1(b).) This provision provides that a local agency's approval of a vesting tentative map confers a "vested right" to proceed with the proposed development in substantial compliance with the "ordinances, policies and standards" described in Section 66474.2. Government Code section 66474.2(a) in turn provides:

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[e]xcept as otherwise provided in subdivision (b) or (c),¹ in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code.

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(Gov. Code § 66474.2(a), underline added.)

Together, sections 66498.1(b), 66474.2(a) and 65493(a) provide that a local agency’s approval of an application for a vesting tentative map confers a vested right to proceed with development in substantial compliance with the “ordinances, policies, and standards” in effect on the date the application was complete, and that in determining whether to approve an application for a tentative map, the local agency can only apply those same ordinances, policies and standards. (*Charles A. Pratt Const. Co, Inc. v. Cal. Coastal Com’n* (2008) 162 Cal.App.4th 1068, 1072 (“Government Code section 66498.1 confers a vested right to proceed with a development that complies with *local ordinances* in effect when a local agency approves a vesting tentative map”).) Therefore, the key time period for the purposes of the Vesting Statutes is the date that the application for the tentative map was accepted as complete. The date that the application is complete is critical because if and when the local agency later approves the vesting tentative map, the “ordinances, policies, and standards in effect” when the application was complete will be the applicable ordinances, policies and standards that the developer has a vested right to develop under. In other words, the Vesting Statutes effectively “freeze” the ordinances, policies and standards in effect on the date when the application is complete. (*Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 793 (Legislature enacted the Vesting Statutes to “freeze in place those ‘ordinances, policies and standards in effect’ at the time the vesting tentative map application is deemed complete”).)

- c) To Fulfill The Purposes Of The Vesting Statutes, This Project Applicant Must Be Able To Rely On The County’s Ordinances, Policies And Standards, As Applied By The County In Approving Other Cluster Residential Projects Before This Applicant’s Application Was Accepted As Complete

LV13-4

The courts have described the Vesting Statutes as “enabl[ing] the private sector to rely on vesting maps to plan and budget development projects” and as offering “developers a degree of assurance, not previously available, against changes in regulations.” [Citations.]”

¹ Subdivisions (b) and (c) of section 66474.2 provide exceptions to the general rule that the local agency shall only apply the ordinances, policies and standards in effect at the time the application is deemed complete. Subdivision (b) provides an exception where the local agency has initiated proceedings and given notice of proposed changes to its ordinances, standards or policies, prior to the application for a tentative map being deemed complete. Subdivision (c) provides an exception where the applicant requests changes in applicable ordinances, policies or standards. Neither of which exceptions apply to this application.

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(*Bright Development*, 20 Cal.App.4th at 793.) Thus, the fundamental objective of the Vesting Statutes is to protect the expectation interests of the private sector by providing assurance that a project will be able to proceed under the ordinances, policies and standards in effect at the early stages of the development process. (See *Kaufman & Broad Central Valley, Inc. v. City of Modesto* (“Kaufman”) (1994) 25 Cal.App.4th 1577, 1588 (Vesting Statutes “were intended to create a vested right affording greater protection and arising earlier in the development process than the right available under the common law doctrine”).)

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To fulfill the purposes of the Vesting Statutes, a project applicant must be able to rely on the written “policies, ordinances and standards” in effect when the project application was accepted as complete. (Gov. Code, §§ 66498.1(b), 66474.2(a).) This begs the question: what are the applicable “policies, ordinances and standards?” Under the rules of statutory construction, a statute must be interpreted “to give independent meaning and significance to each word, phrase, and sentence in a statute and to avoid an interpretation that makes any part of a statute meaningless.” (*San Diego Police Officers Assn. v. City of San Diego Civil Service Com.* (2002) 104 Cal.App.4th 275, 284.) Therefore, to give independent meaning to the words “ordinances, policies, and standards,” these words must be interpreted as referring to different sources of local regulation. The term “local ordinance” is statutorily defined, as follows: “a local ordinance regulating the design and improvement of subdivisions, enacted by the legislative body of any local agency” (Gov. Code § 66421.) The Government Code does not provide statutory definitions for the terms “policies” or “standards.” However, “policies” are often found in General Plans. “Standards,” in contrast, may be the applicable standards that are found outside of the applicable General Plan or local ordinances. For example, the “standards” applied by the County Board of Supervisor’s in their formal written resolutions approving other agricultural cluster residential development projects, and the findings therein, would be the same standards that this Applicant would be allowed to rely on for its agricultural cluster residential application under the Vesting Statutes.

At a minimum, the Vesting Statutes require that a project applicant have constructive notice of the ordinances, policies and standards that the project will be subject to. The “legislative objective [of the Vesting Statutes] would be frustrated” if “developers had no knowledge or reasonable means of acquiring knowledge . . . of the ordinances, policies and standards to which they were subject.” (*Bright Development*, 25 Cal.App.4th at p. 798.) Therefore, the Vesting Statutes “require[] prior notice, either actual or constructive, as a condition of imposing ordinances, policies and standards upon an applicant who is entitled to rely on a complete vesting tentative map.” (*Id.*) An “ordinance, policy or standard of a public agency which is *written and accessible* is reasonably calculated to apprise interested parties of their responsibilities and would suffice to supply constructive notice.” (*Id.*, italics added.)

Since vesting applies to those ordinances, policies and standards that a project applicant had constructive notice of, one court held that the local public agency cannot seek to impose alleged unwritten and informal “policies” and practices that exist only in the minds of

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County employees. (See *Bright Development*, 20 Cal.App.4th at 796-800 (city abused its discretion by imposing alleged “long-standing” unwritten policy of requiring undergrounding of off-site utility services as condition on final subdivision map, because any such “informal practice” could only be found “in the minds of City employees”).) In addition, the written ordinances, policies and standards in effect must provide reasonable notice of the *nature* of the applicable standards and the *manner* that such standards will be calculated. (See *Kaufman* 25 Cal.App.4th at 1587-1589 (concluding that city’s “open-ended fee policy” conflicted with the intent of the Vesting Statutes because although it contemplated future increases, it did not provide reasonable notice of the “comprehensive reevaluation” of the fee calculation later made by the city).) The County Board of Supervisor’s written resolutions approving prior agricultural cluster projects provided written notice to the Laetitia Applicant of the standards and policies applicable to agricultural cluster projects. Such resolutions are *written* and *accessible* and are reasonably calculated to apprise interested parties of the standards the County will apply to agricultural cluster projects, under the then-existing ordinances and policies, and consequently, provide “the stability and certainty of local agency ordinances, policies and standards” that “the private sector must be able to rely on . . .” (*Bright Development*, 25 Cal.App.4th at p. 799.)

LV13-4
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d) The Project Is Vested Under The 2003 Land Use Ordinance, Including The Agriculture Category Ordinance, Which Provides A Minimum Parcel Size Of 20 Acres For Agricultural Land Planted In Irrigated Row Crops

LV13-5

As the 2013 DEIR acknowledges: “The [Project’s] submitted tract map is vested based on the date of submittal to the County; therefore, the San Luis Obispo County Land Use Ordinance dated January 2003 applies.” (2013 DEIR, at I-1.)² Thus, the County can only apply the standards and policies in effect on February 5, 2004, along with the provisions of the 2003 Land Use Ordinance, in deciding whether to approve the tentative and final maps for the Project.

The 2003 Agriculture Category Ordinance (22.22.040) provides three methods for determining the minimum parcel size in the Agriculture Land use category, one of which is the “use test.” Under the “use test,” the minimum parcel size for designated Agriculture lands that are planted in irrigated crops, orchards and vineyards is 20 acres. (22.22.040.A.1.a.) The Project application applied this use test in calculating the base number of parcels allowed for Project lands designated as Agriculture lands, prior to applying the double-parcel bonus allowed for agricultural lands clustering projects.

LV13-6

The 2013 DEIR discusses a project alternative entitled “Reduced Project A – Ordinance and General Plan Consistency Alternative,” which presents alternative calculations for the number of Project parcels under the Agriculture and Open Space Element Policy 22 (“AGP 22”) of the General Plan. (2013 DEIR, pp. VI-19 to VI-20.) The 2013 DEIR states that the minimum parcel size standard provided in AGP 22, which is based on soil classifications rather than land

LV13-7

² The 2013 DEIR’s Reference Section, which refers to the 2002 L.U.O., should be changed to the 2003 L.U.O.

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use, is “inconsistent” with the Land Use Ordinance (“LUO”), which allows a 20-acre minimum parcel size for land used for row crops. (*Id.* at VI-19.) The 2013 DEIR then goes on to calculate the number of Project parcels based on a 40-acre minimum parcel size. (*Id.* at VI-20.) The calculations presented in this project alternative are misleading because the alternative is called “General Plan Consistency Alternative,” which could be interpreted as implying that the Project’s parcel calculations are inconsistent with the General Plan. For the reasons articulated below, that interpretation is wrong

LV13-7
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The 20-acre minimum parcel size provided in the 2003 Agriculture Category Ordinance and the proposed Project’s parcel calculations are consistent with the General Plan. A proposed subdivision is consistent with a general plan if it is “compatible with the objectives, policies, general land uses, and programs specified in such a plan.” (Gov. Code § 66473.5.) Thus, consistency is measured by the general objectives, policies, land uses, and programs identified in a general plan. The basic policy and objective of AGP 22 is to preserve lands that are currently in agricultural production through agricultural cluster projects. The General Plan identifies a method for calculating the minimum parcel size for lands designated as Agriculture lands, based on soil classification. The 2003 Agriculture Category Ordinance includes the soil classification method, and also provides an alternative method based on existing land use. (22.22.040.) The LUO’s alternative method for calculating minimum parcel size is not “inconsistent” with the General Plan, despite the 2013 DEIR’s assertion to the contrary. (2013 DEIR, at VI-19; *see Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815-817 (upholding city’s determination that proposed development project was consistent with the general plan’s goals, policies and objectives despite the project deviating from the square footage for a business park and number of residential units identified in the general plan and specific plan); *see also City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 878 (a zoning ordinance is consistent with the general plan where, “considering all of its aspects, the ordinance furthers the objectives and policies of the general plan and does not obstruct their attainment”).) The County necessarily found that the 2003 Agriculture Category Ordinance’s alternative methods for calculating minimum parcel size were consistent with the General Plan when it adopted that Ordinance. In addition, the County has previously approved agricultural cluster projects that utilized the use test’s 20-acre minimum, and necessarily found that those projects were consistent with the General Plan. (*See* Gov. Code § 66473.5 (no local agency shall approve a tentative map unless the agency finds that the proposed subdivision is consistent with the general plan); [Cite to prior project that used 20-acre minimum parcel size based on irrigated row crops.] Therefore, there is no “inconsistency” between the Agriculture Category Ordinance and the General Plan.

LV13-8

The Project is vested under the 2003 Agriculture Category Ordinance, which allows the minimum parcel size for lands designated as Agriculture to be calculated based on existing agricultural production. In 2004, when the County amended the Agriculture Category Ordinance and revised the “use test,” project applications including Laetitia submitted prior to August 10, 2004 were expressly grandfathered in under the 2003 Agriculture Category

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Ordinance. (See Ordinance No. 3036 (grandfathering existing applications under 2003 Agriculture Category Ordinance).) Therefore, the 2013 DEIR is contrary to the Applicant’s vested development rights, to the extent it suggests that the Project’s parcel calculations based on a 20-acre minimum parcel size are inconsistent with the General Plan because: 1) the 2003 LUO’s use test furthers the policies and objectives of the General Plan, and is therefore consistent with the General Plan; 2) the Project application was expressly grandfathered under the 2003 LUO; 3) the County found the 2003 ordinance consistent with the General Plan when it was enacted.; and 4) the County approved cluster projects using the 20 acre minimum under the 2003 ordinance.

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2. The Project Alternatives and Mitigation Measures Analyzed Pursuant To The California Environmental Quality Act Must Be Legally Feasible, Meaning They Must Be Consistent With The County’s Legal Authority, As Limited By The Vesting Statutes

LV13-10

The California Environmental Quality Act (Public Resources Code §§ 21000-21189.3) (“CEQA”) contains a “substantive mandate” that public agencies refrain from approving projects with significant environmental effects if “there are *feasible* alternatives or mitigation measures” that can substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal.4th 105, 134, italics added; Pub. Resources Code §§ 21002, 21081.) “Feasible” is a defined term under CEQA and the CEQA Guidelines (14 C.C.R. §§ 15000-15387) and means: “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, *legal*, social, and technological factors.” (14 C.C.R. § 15364, italics added; Pub. Resources Code § 21061.1.) Thus, to be “feasible” and therefore, appropriately included in the CEQA environmental review process, project alternatives and mitigation measures must be those that the County could legally impose.

a) An Environmental Impact Report’s Mitigation Measures And Project Alternatives Must Be Consistent With The County’s Legal Authority, Because CEQA Is Not An Independent Source Of Authority

LV13-11

The CEQA environmental review process does not provide a basis for the County to impose mitigation measures or project alternatives that exceed the limits of the County’s legal authority. CEQA provides:

[i]n mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law *other than [CEQA]*. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment *subject to the express or implied constraints or limitations that may be provided by law.*

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(Pub. Resources Code § 21004, italics added.) The purpose of this CEQA provision was described by the California Supreme Court as follows:

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“clarification” of CEQA’s “scope and meaning” had become “necessary because of contentions that” its provisions, “by themselves, confer on public agencies independent authority to ... take ... actions in order to comply with [CEQA’s] general requirement ... that significant effects on the environment be mitigated or avoided whenever it is feasible....” [Citation.] The Legislature went on to explain that section 21004 “clarif[ies]” that CEQA “confer[s] no such independent authority. Rather, [its] provisions ... are intended to be used in conjunction with discretionary powers granted to a public agency *by other law* in order to achieve the objective of mitigating or avoiding significant effects on the environment when it is feasible to do so.... In order to fulfill [CEQA’s] requirement [that feasible mitigating actions be taken], a public agency is required to select from the various powers which have been conferred upon it *by other law*, those which it determines may be appropriately and legally exercised....” ([Citation] italics added.)

(*Sierra Club v. California Coastal Com’n* (2005) 35 Cal.4th 839, 859, italics in original.)

The CEQA Guidelines reiterate the limitation provided in Public Resources Code section 21004. The Guidelines provide that “CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.” (14 C.C.R. § 15040(b).) In addition, the Guidelines provide that “[t]he exercise of discretionary powers for environmental protection shall be consistent with express or implied limitations provided by other laws.” (14 C.C.R. § 15040(e).) Thus, an agency’s authority to impose mitigation measures or project alternatives must be based on legal authority other than CEQA and must be consistent with the limitations imposed by those other laws.

- b) Project Alternatives Or Mitigation Measures That Seek To Reduce The Allowed Residential Density Are Legally Infeasible Because They Are Contrary To The Vesting Statutes And Exceed The County’s Authority

LV13-12

Other laws, such as the Subdivision Map Act (Gov. Code, § 66410 *et seq.*), must provide the legal authority for the County to impose CEQA mitigation measures on the Project or to select project alternatives that attempt to mitigate Project impacts. Such laws may limit the agency’s power to impose mitigation measures or select a mitigating project alternative, even if such mitigation measures are “necessary” to avoid significant environmental effects. For example, a leading CEQA treatise identifies Government Code section 66474.2 as providing a

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statutory restriction on the mitigation measures that can be imposed on a housing project by an agency. (Remy et al., Guide to CEQA (11th ed. 2006), at p. 530.) The treatise describes section Government Code section 66474.2 as follows:

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The Subdivision Map Act (Gov. Code, § 66410 *et seq.*) contains a provision intended to require cities and counties, in considering whether to approve or deny a proposed tentative subdivision map, to apply density standards found in the “ordinances, policies, and standards” in effect “at the date the local agency has determined that the application is complete[.]” Gov. Code, § 66474.2, subd. (a).

(*Ibid.*, underline added.) This treatise interprets Government Code section 66474.2 as limiting the mitigation measures that an agency may impose under CEQA to those measures that are found in the ordinances, policies, and standards in effect on the date the application for the project was complete. In particular, the treatise identifies density standards as an example of the type of “ordinances, policies and standards” that must be applied by the local agency, and which cannot be undermined by imposing project alternatives or mitigation measures that reduce the densities allowed under the applicable ordinances, policies or standards. In other words, CEQA cannot provide an end-run around the protections and assurances provided by the Vesting Statutes. The basic purpose of the Vesting Statutes is provide security and stability, by ensuring that a development project can proceed under the standards in effect when the application for a tentative map is complete. Therefore, the County cannot impose project alternatives or mitigation measures that effectively require the Project applicant to reduce the residential densities allowed under the applicable ordinances, policies and standards. CEQA is neither a sword nor a shield against the prohibitions and protections provided in the Vesting Statutes.

Because the Vesting Statutes protect the Applicant against the County’s efforts to require lower densities than allowed under the applicable ordinance, project alternatives or mitigation measures that seek to reduce the Project’s density are legally “infeasible” and are inappropriate for inclusion in the CEQA review process. The project alternatives and mitigation measures considered under CEQA must be legally feasible, which means alternatives and mitigation measures that the County has the legal authority to require. The densities allowed under the applicable ordinance cannot be altered through the CEQA process. Thus, even if the County concluded that the proposed Project would have significant environmental effects, the County could not legally impose project alternatives or mitigation measures that require a density less than that allowed by the applicable ordinance.

LV13-13

CEQA and the CEQA Guidelines contemplate circumstances where a public agency may approve a project despite the fact that the agency has determined that the project will cause one or more significant environmental effects. Section 15091(a)(3) of the Guidelines provides that a local agency may approve a project with significant environmental effects if the agency makes a

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written finding that “[s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or project alternatives identified in the final EIR.” (14 C.C.R. § 15091(a)(3), underline added; Pub. Resources Code §§ 21002, 21002.1, 21081(a)(3).) Thus, CEQA recognizes that a public agency may be legally constrained from implementing the mitigation measures or project alternatives identified in an environmental impact report (“EIR”) and that the public agency may nonetheless approve the proposed project. Also, the Guidelines provide that an EIR does not need to analyze a mitigation measure if the lead agency “determines that a mitigation measure cannot be legally imposed” and an EIR is only required to describe “feasible” mitigation measures which could “minimize significant adverse impacts . . .” (14 C.C.R. § 15126.4(a)(5), (a)(1).) In addition, an “EIR is not required to consider alternatives which are infeasible.” (14 C.C.R. 15126.6(a).) Thus, the CEQA Guidelines clearly contemplate that the mitigation measures that can be imposed by a public agency are limited by the applicable legal authority. A local agency may approve a project, despite finding that the project will cause significant environmental effects, where legal considerations make certain mitigation measures or project alternatives infeasible.

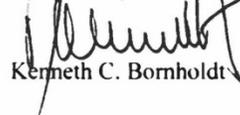
LV13-14
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For these reasons, we ask that the County eliminate the project alternatives and mitigation measures provided in the 2013 DEIR that seek to reduce the Project’s residential density below that allowed under the applicable Land Use Ordinance. In particular, the following project alternatives seek to reduce the residential density, and therefore, are legally infeasible: Reduced Project A (Ordinance and General Plan Consistency Alternative); Reduced Project B (Reduced Density Two-Cluster Alternative); Redesign Project A (Single Cluster Alternative); and Redesign Project B (Single Cluster Alternative, 93% Reduction).

LV13-15

If you have any questions, please do not hesitate to contact us.

Respectfully Submitted
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation


Kenneth C. Bornholdt

cc: John Janneck
Victor Montgomery

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LV-13



**Responses to Kronick Moskovitz Tiedemann & Girard's Comments
(Exhibit LV-13)**

Comment No.	Comment
LV13-1	Please refer to responses to specific comments, as noted.
LV13-2	The County concurs with the applicant's statements that the applicant has a vested right to proceed under the ordinances, policies, and standards in effect at the time the project application was complete.
LV13-3	The comment's summary of vesting regulations related to ordinances is noted.
LV13-4	The comment's summary of vesting statutes and case law is noted. Ordinances and standards applicable to the proposed project include the LUO and South County Planning Area Standards, which have been applied to the project.
LV13-5	The County concurs that the applicant has a vested right to proceed under the ordinances, policies, and standards in effect at the time the project application was complete.
LV13-6	The 20-acre minimum parcel size is correct. The double-parcel bonus is allowed for agricultural lands cluster projects for the Agriculture land use category. The parcel bonus is not applicable to the Rural Lands land use category.
LV13-7	The Ordinance and Consistency Alternative applies policies based on Agriculture and Open Space Element adopted at the time the project application was accepted, and notes density calculations may be inconsistent with the General Plan.
LV13-8	The inconsistency noted in the EIR relates to the LUO's determination that minimum parcel size based on use is 20 acres, and the Agriculture Element notes that minimum parcel size is based on soil classification, resulting in a 40-acre minimum.
LV13-9	The EIR specifically notes the inconsistency with the Agriculture Element relates to the difference in identified minimum parcel size. The EIR also recognizes the vesting status of the agricultural cluster subdivision, and the applicable standards identified in the 2003 LUO.
LV13-10	The County concurs with the commenter's quotes and summaries.
LV13-11	The commenter's quotes and summaries of law are noted.
LV13-12	Consideration of alternatives under CEQA does not conflict with the project's vesting status. The Subdivision Map Act requires the County decision makers to deny an application for a tentative map if proposed improvements are likely to cause substantial environmental damage and if overriding considerations cannot be made under Public Resources Code Section 21080. Full evaluation of the project's impacts must be made to enable the County to consider this finding, including consideration of mitigation measures that would reduce environmental impacts.
LV13-13	The intent of CEQA is to disclose environmental effects, and identify mitigation measures and alternatives that would avoid or reduce identified significant effects on the environment. If an alternative is identified, the County decision makers may deny the vesting tentative tract map or indicate a willingness to approve a revised map consistent with a selected alternative.
LV13-14	The commenter's quotes and summaries of law are noted. In the event a mitigation measure or alternative cannot be adopted, or is rejected by the applicant, a significant impact may occur, as noted in the EIR.
LV13-15	The County decision makers will consider the commenter's statements.



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805 786 4302
kbornholdt@kmtg.com

Kenneth Bornholdt

August 23, 2013

BY HAND DELIVERY

Brian Pedrotti, Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

**Re: Recirculated RDEIR (July 2013) for Laetitia Agricultural Cluster
Subdivision Tentative Tract Map and Conditional Use Permit SUB2003-00001
(Tract 2606) SCH# 2005041094**

Dear Mr. Pedrotti:

We represent the Applicant in the above-referenced project ("Project") described in the July 2013 Recirculated Draft Environmental Impact Report ("2013 DEIR"). The Applicant is submitting its comments to the Project, including the two attachments hereto, which are incorporated herein by reference. The comments in this letter are separate from and in addition to all other comment letters previously submitted by us regarding the Project.

LV14-1

1. The Mitigated Project Alternative Has Only One Class I Environmental Impact

LV14-2

a) The 2013 DEIR's Treatment Of Cumulative Impacts Is Contrary To CEQA And Improperly Double-Counts Environmental Impacts

In several instances, the 2013 DEIR counts the same alleged significant "project-specific" impact as a separate significant "cumulative" impact. Such an approach is contrary to CEQA and the CEQA Guidelines and misleads the public and decision-makers regarding the impacts associated with the project and the project alternatives.

An EIR must "identify and focus on the significant environmental effects of the proposed project." (14 C.C.R. § 15126.2(a).) In addition to the significant effects attributable to the project alone, an EIR must "discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable . . ." (14 C.C.R. § 15130(a).) "Cumulatively considerable" means that "the incremental effects of an individual project *are significant when viewed in connection with* the effects of past projects, the effects of other current projects, and the effects of probable future projects." (14 C.C.R. § 15065(a)(3), italics added.) Thus, EIR must discuss project-specific significant impacts and project impacts that alone may not be considered significant, but when viewed in connection with the effects of other projects, are cumulatively considerable.

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733 Marsh Street, Suite 210 San Luis Obispo, California 93401 Tel. 805 786 4302 Fax. 805 786 4319 www.kmtg.com
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The cumulative impacts analysis is not intended to be an opportunity to double-count a project-specific significant impact as an additional cumulative impact. CEQA makes it clear that an EIR’s cumulative impacts analysis is meant to capture possible effects of a project that “are individually limited but cumulatively considerable.” (Pub. Res. Code § 21083(b)(2).) In other words, the purpose of the cumulative impacts analysis is to capture project impacts that by themselves do not rise to the level of a significant impact, but when considered together with the impacts of other projects, are cumulatively significant.

LV14-2
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The 2013 DEIR improperly double-counts impacts attributed to the Project and Applicant’s Mitigated Project by treating the same impact as both a significant project-specific impact and a significant cumulative impact. For example, the 2013 DEIR treats changes to the visual character of the landscape as seen from Highway 101 as a separate Class 1 significant project-specific impact and a cumulative impact. (2013 DEIR, at VI-49 to -50, Table VI-3 (AES Impact 4 and AES Impact 18).) AES Impact 4 is identified as a project-specific impact to the rural visual character as seen from Highway 101 and AES Impact 18 treats this same impact as a separate cumulative impact. (See 2008 DEIR, at V-299 to -302, V-313 to -315.) However, if 2013 RDEIR concludes that the Project or Applicant’s Mitigated Project has a project-specific significant impact on the rural visual character as seen from Highway 101, then this impact has already been considered and analyzed and should not be double-counted as an additional significant cumulative impact. Cumulative impacts are intended to capture effects of the project that are “individually limited but cumulatively considerable” because they contribute to a significant effect *in combination* with other projects. (Pub. Res. Code § 21083(b)(2).) Instead, the 2013 RDEIR takes a project-specific impact found to be significant and re-labels it as a separate significant “cumulative” impact. Such an approach is not consistent with CEQA and misrepresents the effects of the project.

The 2013 DEIR uses the same improper double-counting approach for several other project-specific impacts attributed to the Project and the Applicant’s Mitigated Project:

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- AG Impact 1 and AG Impact 4 are the same alleged impact of farmland conversion but are treated as separate significant impacts (VI-50);
- AQ Impact 9 and AQ Impact 10 are the same alleged impact of inconsistency with the Clean Air Plan but are treated as separate significant impacts (VI-51);
- TR Impact 4 and TR Impact 15 are the same alleged impact of deficient conditions at the Highway 101/Los Berros Road/North Thompson Road ramp junctions but are treated as separate significant impacts (VI-57, -58); and
- TR Impact 10 and TR Impact 13 are the same alleged impact of access control but are treated as separate significant impacts (VI-58).

LV14-4

LV14-5

LV14-6

For each set of impacts listed above, the 2013 DEIR counts the same impact as a significant project-specific impact and as a significant cumulative impact. This is contrary to CEQA, which makes it clear that the cumulative impacts analysis is meant to capture project

LV14-7

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impacts that are not significant by themselves but that are cumulatively significant when combined with the effects of other projects. The 2013 DEIR must be revised to correct this improper double-counting of impacts and to provide the public and decision-makers with an accurate representation of the effects of the project.

LV14-7
(cont'd)

b) The Environment's Effects On The Project Are Not "Environmental Effects" Of The Project For Purposes Of CEQA

LV14-8

The 2013 DEIR improperly concludes that the Project and the Applicant's Mitigated Project ("Mitigated Project") would result in a Class I impact due to residential parcels being exposed to stationary noise associated with the existing vineyard operations and processing facility (NS Impact 3). (2013 DEIR, at VI-55, Table VI-3.) The 2008 DEIR describes NS Impact 3 as follows:

Development of the proposed project would expose residential parcels of Sub-cluster C (Lots 46 through 65) to stationary noise levels associated with activities resulting from operations at the processing facility during harvest season estimated to exceed the hourly nighttime Leq threshold of 45 dBA and the hourly daytime 50 dBA Leq thresholds, resulting in a direct long-term noise impact. Development of the proposed project would expose residential parcels throughout the project site to equipment noise levels associated with vineyard operations estimated to exceed the hourly nighttime Leq threshold of 45 dBA and the hourly daytime 50 dBA Leq thresholds, resulting in a direct long-term noise impact.

(2008 DEIR, at V-276, underline added.) The noise "impacts" described for NS Impact 3 are noise levels associated with the existing vineyard operations and processing facilities already occurring on the project site, and therefore are not impacts of the *project on the environment* but rather, the effects of the *existing environment on the project*.

"The purpose of CEQA is to protect the environment from proposed projects, not to protect proposed projects from the existing environment." (*Baird v. County of Contra Costa* ("Baird") (1995) 32 Cal.App.4th 1464, 1468; see *Ballona Wetlands Land Trust v. City of Los Angeles* ("Ballona") (2011) 201 Cal.App.4th 455, 473 ("the purpose of an EIR is to identify the significant effects of a project on the environment, not the significant effects of the environment on the project").) Case law establishes that the effects of the existing environment on the proposed project are not "environmental effects" of the project for the purposes of CEQA review. (See *Ballona*, 201 Cal.App.4th at 473 (EIR was not required to discuss impact of sea level rise on the project); see also *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1614–1618 (impact of noxious odors from nearby sewage plant on future residents under proposed general plan and zoning amendments that allowed more intensive residential development was not a significant effect on the environment); *Baird*, 32 Cal.App.4th at 1469 (impacts of alleged contamination at project site on possible future project residents were "preexisting environmental conditions" that are not subject to CEQA review).) "[I]dentifying the effects on the project and its users of locating the project in a particular environmental setting is neither consistent with CEQA's legislative purpose nor required by the CEQA statutes." (*Ballona*, 201 Cal.App.4th at 474.) Thus, identifying the effects of locating the

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proposed project in an environmental setting that has noise associated with vineyard operations and a processing facility is contrary to CEQA. The 2008 DEIR and 2013 DEIR improperly attribute the noise of the vineyard environmental setting as a project impact, and therefore, NS Impact 3 should be eliminated in the final EIR. (See Applicant’s LV-8, at 4 (making same comment and request).)

LV14-8
(cont’d)

c) Increased Demand For Public Services Is Not An “Environmental Impact” For Purposes Of CEQA

LV14-9

The 2013 DEIR improperly identifies the increased demand for emergency services personnel as a Class I impact of the Project and the Applicant’s Mitigated Project. (2013 DEIR, at VI-56 (PSU Impact 4).) The 2008 DEIR describes PSU Impact 4 as “an increased demand for emergency services personnel.” (2008 DEIR, at V-424.) The need for additional fire protection services and the increased demand for emergency personnel is not an *environmental* impact that CEQA requires a project proponent to mitigate. Under the CEQA Guidelines, a “significant effect on the environment” is defined as:

a substantial, or potentially substantial, adverse change in any of the *physical conditions* within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. *An economic or social change by itself shall not be considered a significant effect on the environment.* A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

(14 C.C.R. § 15382, italics added.) Under this definition, significant environmental effects are those that cause an adverse change in the physical environmental conditions. Therefore, a project’s effect on the demand for public services, such as fire protection or public education, is not an environmental impact for purposes of CEQA. (See *Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1033 (projected increases in student enrollment caused by proposed campus expansion do not constitute a significant physical impact on the environment under CEQA); see also *City of Hayward v. Trustees of Cal. State University*, (2012) 287 P.3d 71 (granting review of appellate court decision which held that the need for additional fire protection services is not an environmental impact for purposes of CEQA).)

It is the responsibility of the local government, not of the project proponent, to provide adequate fire and emergency medical services. (Cal. Const., art. XIII, § 35 (a)(2) (“The protection of the public safety is the first responsibility of local government and local officials have an obligation to give priority to the provision of adequate public safety services.”).) The local government has a constitutional obligation to provide adequate fire protection services and the responsibility to provide such services remains with the local government. CEQA does not shift the financial responsibility for providing adequate fire and emergency response services to a project sponsor. Nor is the increased demand for such services a change in the physical environment that could be considered an *environmental* impact for purposes of CEQA.

LV14-10

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d) As explained in the Applicant’s other comment letters submitted concurrent herewith, all but one of the other alleged Class I impacts for the Applicant’s Mitigated Plan are improper under CEQA. LV14-11

2. Table VI-4 statements that “burden” is on Applicant to demonstrate financial feasibility of two of the Project objectives in the Alternative Section of the 2013 RDEIR is inconsistent with the CEQA Guidelines. LV14-12

In Section VI.B of the 2013 RDEIR it states that “An alternative screening process was implemented as part of the EIR analysis” in accordance with the CEQA Guidelines using the rule of reason, feasibility (including “economic viability”) and whether the Project achieved “most” of it objectives. This section is in conflict with Table VI-4 which suggests no economic viability analysis was done as part of the alternative screening process and that it is the “burden” of the Applicant to do it. The Table is wrong and inconsistent with the CEQA Guidelines.

As explained in the Janneck comment letter filed concurrent herewith, none of the County Alternatives will meet the two economic objectives described in Table VI-4 based upon San Luis Obispo County Economic Vitality Corporation reports of the wine business in the County and how to economically promote it on existing vineyards and wineries.

Also absent from the RDEIR analysis is a comparison of the Alternatives to those Ag Cluster Residential projects (eg., Varian, Edna Valley, Biddle Ranch) which have succeeded. These cluster developments met the County’s standards that applied to this Application and did succeed. If those economically successful Ag Cluster projects are compared to the Alternatives, all of the County Alternatives are unreasonable and would not be feasible or meet most of the objectives of the County’s Ag Cluster Ordinance and General Plan policies. LV14-13

The Applicant does not have the burden of demonstrating that the County’s alternatives fail to meet the “most” of the project’s objectives. To the contrary, the County, as the Lead Agency, “is responsible for selecting a range of project alternatives for examination” which would “feasibly attain most of the basic objectives of the project . . .” (14 C.C.R. 15126.6(a); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 569 (“an EIR must discuss and analyze *feasible* alternatives. . .[t]he local agency, therefore, must make an initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not”); *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1503 (“it is the *public agency* that bears the responsibility for the decisions that must be made before the project can go forward, including the determinations of feasibility”)) LV14-14

3. All of the County Alternatives are financially infeasible on their face and fail to meet two of the Project objectives in Table IV-4. LV14-15

The EIR must consider alternatives that are potentially economically feasible that will “foster informed decision making and public participation.” (14 C.C.R. 15126.6(a).) The County’s alternatives are economically infeasible because a reasonably prudent property owner would not proceed with a development project under any of the County’s alternatives. (See

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Uphold Our Heritage v. Town of Woodside(2007) 147 Cal. App. 4th 587, 600 (critical question for economic feasibility is “whether the marginal costs of the alternative as compared to the cost of the proposed project are so great that a reasonably prudent property owner would not proceed”); see also *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 693–694 (applying prudent person standard to determine economic feasibility of proposed alternatives); *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 313 (concluding there was “no point” in EIR for Wal-Mart Supercenter to consider a reduced density alternative because “a developer would not undertake such a project because it was not economically viable.)

LV14-15
(cont'd)

4. The County’s Alternatives Are Unreasonable On Their Face Because They Fail To Meet “Most” Of The Project’s Objectives And Fail To Attain The Basic Policy Objectives Of The Agricultural Cluster Program

LV14-16

The 2013 DEIR asserts that during the scoping process, the County eliminated an alternative from further consideration if the alternative was “found to not obtain most of the basic objectives of the proposed project . . .” (2013 RDEIR, at VI-2.) Yet, the 2013 DEIR continues to analyze numerous project “alternatives” that fail to meet “most” of the Project’s objectives. The County should have eliminated such alternatives early in the CEQA process, rather than continuing to present the public and decision-makers with valueless “alternatives” that fail to meet the majority of the Project’s fundamental objectives.

The County correctly identified the Project’s basic objectives:

LV14-17

The applicant’s stated objective is to *use the incentives of the Agricultural Cluster Ordinance* combined with estate planning to enable future generations of the landowner’s families to continue to farm the project site as an economic unit by creating an economically feasible and successful cluster project through a three-phased development that would include the following provisions:

- Preclude future residential development within designated agricultural/open space easements;
- Protect the existing rural character by placing 95 percent of the property within the Agricultural land use category and 90 percent of the property within the Rural Lands land use category in permanent agricultural/open space easements;
- Provide for the expansion of the existing winery operations and continuation of the vineyard operation;
- Create places to live and enjoy in a scenic rural setting;
- Create a financially feasible project; and.

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- Enhance long-term agriculture viability.

(2013 RDEIR, at VI-2, italics added.) However, the County failed to apply these basic Project objectives to identify a “reasonable” range of project alternatives.

LV14-17
(cont'd)

The proposed project is an agricultural cluster project, consistent with the County’s agricultural cluster ordinances and policies in effect at the time the project application was accepted as complete. The basic policy objective of the County’s agricultural cluster program is to permanently preserve and protect agricultural lands and open space. This policy objective is accomplished through providing an incentive for property owners to place the majority of their lands in permanent open space/agricultural easements, by allowing increased residential density to be clustered on the remainder of the property. Thus, the fundamental characteristics of an agricultural cluster project are: 1) permanent preservation of open space and agricultural lands, on the majority of the property; and 2) increased residential density as compared to what the landowner would otherwise be allowed to develop under current zoning. These two characteristics are interdependent, meaning there is no incentive for a property owner to place the majority of his lands in a permanent easement that restricts future development unless the property owner receives, in exchange, an increased residential density on the remainder of the lands. This basic principle is not difficult to understand but it is essential that the County apply this principle in identifying and selecting “reasonable” project alternatives that attain “most” of the basic objectives of the proposed agricultural cluster project.

LV14-18

As stated in the project application and the 2013 DEIR, one of the basic objectives of the project is to “use the incentives of the Agricultural Cluster Ordinance . . .” (2013 RDEIR, at VI-2, italics added.) As described above, the incentives of the Agricultural Cluster Ordinance depend on two essential characteristics—1) permanent preservation of agricultural lands and open space on the majority of the property, and 2) increased, clustered, residential density on the remainder of the property. Without the increased residential density, there is no incentive for a landowner to permanently place the majority of his lands into an easement that prohibits future development. Therefore, the only “reasonable” project alternatives are alternatives that have the fundamental characteristics and incentives of an agricultural cluster project and therefore, meet “most” of the project’s basic objectives.

LV14-19

It is not useful to the public or decision-makers for an EIR to analyze in detail an alternative that “cannot achieve the project’s underlying fundamental purpose.” (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1165.) Here, the project’s underlying fundamental purpose is to develop an agricultural cluster project, with the essential characteristics of an agricultural cluster project. Because the fundamental objective of the proposed project is to develop an agricultural cluster project, that necessarily “limits the number of alternatives that are both feasible and would accomplish most of the goals of the project.” (*Jones v. Regents of University of California* (“Jones”) (2010) 183 Cal.App.4th 818, 827.) Unfortunately, the County’s alternatives fail to provide the incentives that are essential to an agricultural cluster project, and consequently, these alternatives fail to attain the basic objectives of the proposed project and of the County’s agricultural cluster program.

LV14-20



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No reasonable landowner would ever proceed with the development projects described in the County’s alternatives. The most absurd example is “Redesigned Project B: Single Cluster Alternative, 93 % Reduction.” (2013 DEIR, at VI-6.) It is impossible to understand how the County concluded that 93% reduction in the density allowed under the Agricultural Cluster Ordinance would provide an incentive to place of the majority of the property under a permanent open space easement or how such an alternative could attain “most” of the basic objectives of the agricultural cluster project. Similarly, “Reduced Project A: Ordinance and General Plan Consistency Alternative, Reduced Project B: Reduced Density Two-Cluster Alternative, and Redesigned Project A: Single Cluster Alternative” do not meet the basic objectives of an agricultural cluster project and are therefore unreasonable and unrealistic on their face. (See *Jones* 183 Cal.App.4th at 829 [EIR not required to analyze off-site alternative for research laboratory because alternative would not achieve project objectives of creating a more campus-like setting to enhance collaboration, productivity and efficiency]; see also *In re Bay-Delta*, 43 Cal.4th at 1166 [EIR for management plan for bay-delta water not required to analyze alternative of reducing exports from delta where project’s objectives were interrelated and reduced export alternative would have prevented implementation of other plan objective of water supply reliability].)

LV14-21
(cont'd)

5. Most Of The County’s Alternatives Are Legally Infeasible Because The County Cannot Require Reduced Density

LV14-22

Feasibility, including legal feasibility, is one of the criteria for selecting reasonable project alternatives. (14 C.C.R. §§ 15364, 15126.6(a).) For many housing development projects, it is legally infeasible for a local agency to require a reduction in the density of the project. The Housing Accountability Act prohibits a local agency from requiring a density reduction unless the agency finds that the project would have specific adverse public health and safety impacts that cannot be mitigated. (See Gov. Code § 65589.5.)

The Housing Accountability Act provides, in relevant part:

“When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on

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objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

LV14-22
(cont'd)

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density. (Gov. Code § 65589.5(j))”

This statutory provision prohibits a local agency from disapproving a housing development project, or approving a project on the condition that the project is developed at a lower density, unless the local agency makes written findings that 1) the proposed project will have a specific adverse health or safety impact, and 2) there is not feasible method to mitigate or avoid that impact. The purpose of the Housing Accountability Act was to address the “lack of housing” in California and “to assure that local governments did not ignore their own housing and development policies and general plans when reviewing housing development proposals.” (Gov. Code § 65589.5(a)(1); *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1075.)

Government Code section 65589.5 prevents a local agency from requiring a reduction in the density of a housing development project unless the local agency can make the necessary statutory findings. (*Sequoiah Hills Homeowners Assn. v. City of Oakland* (“Sequoiah Hills”) (1993) 23 Cal.App.4th 704, 717 (“Government Code section 65589.5 prevented the city council from requiring a reduction in the density of the project”).) Consequently, project alternatives that seek to reduce the density of a housing development are legally infeasible because the local agency cannot require a reduction in the project’s density unless it finds the project has specific and unavoidable health and safety impacts. In *Sequoiah Hills*, for example, the city council approved a housing development project, despite the project having a significant impact to visual resources, after concluding that “requiring a decrease in project density would be *legally* infeasible in that it would be prohibited by Government Code section 65589.5, subdivision (j).” (*Id.*, at 715.) In reviewing the city council’s approval of the project, the court concluded that consideration of decreased density alternatives “would have been an exercise in futility” because “any decreased density alternative would be legally infeasible . . .” (*Id.*, at 716.)

Like the city council in the *Sequoiah Hills* case, here, the County is prohibited from requiring the project Applicant to reduce the density of the proposed agricultural cluster housing development project, unless the County makes written findings that the project will have specific and unavoidable health and safety impacts. Absent such findings, any reduced density project alternative is legally infeasible, because the County cannot require or condition the project to reduce the permitted density. Despite the legal prohibition against requiring reduced density for a housing development project, the 2013 DEIR selects four reduced density project alternatives for further review. The 2013 DEIR considers the following reduced density project alternatives:

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• *Reduced Project A: Ordinance and General Plan Consistency Alternative.* This alternative considers a reduced density cluster division (56 to 84 residential lots), pursuant to the Land Use Ordinance and the Agriculture and Open Space Element. [The overall residential density would be reduced by approximately 17 to 40 percent.]

LV14-22
(cont'd)

• *Reduced Project B: Reduced Density Two-Cluster Alternative.* This alternative considers a two-cluster design, and lot size reduction to 10,000 square feet within the Agriculture land use category. The overall residential density would be reduced by approximately 26 percent, resulting in the development of 75 residential lots.

• *Redesigned Project A: Single Cluster Alternative.* This alternative considers a project that includes residential lots within a single cluster to concentrate development in one location on the project site. The overall residential density would be reduced by 40 percent, resulting in the development of 60 residential lots.

• *Redesigned Project B: Single Cluster Alternative, 93% Reduction.* This alternative considers a project that includes seven residential lots within a single cluster to concentrate development in one location on the project site. The overall residential density would be reduced by approximately 93 percent.

(2013 RDEIR, at VI-6, underline added.) The 2013 DEIR admits that each of these alternatives would reduce the number of residential lots as compared to the number permitted under the existing Land Use Ordinance (i.e. 102 residential lots), but fails to acknowledge that these alternatives are legally infeasible because the County cannot require the Applicant to reduce the project density. (*See Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587 (“an alternative is not feasible where there is no way to legally implement it”).) Consideration of these reduced density alternatives is “an exercise in futility” and fails to meet the basic objectives of CEQA, which include identifying the “feasible alternatives or feasible mitigation measures which will avoid or substantially lessen [the] significant effects” of the proposed project. (*Sequoiah Hills*, 23 Cal.App.4th at 716; Pub. Res. Code § 21002, italics added.)

6. The “Reduced Project A: Ordinance and General Plan Consistency Alternative” Is Purely Speculative And Should Have Been Rejected For Further Review

LV14-23

The County’s “Reduced Project A” Alternative ignores the existing zoning for the project site and instead “assumes that the standards to determine density are applied as if the entire project is within the Agriculture land use category.” (2013 DEIR, at VI-17.) The 2013 DEIR fails to explain the “rationale” for selecting this alternative for further consideration. (14 C.C.R. § 15126.6(c).) This alternative is purely “speculative” and fails to meet the basic purpose of the alternatives analysis, which is “to foster meaningful public participation and informed decision making.” (14 C.C.R. § 15126.6(f)(1), (3).)

There is simply “no point” in selecting for further consideration an alternative that is contrary to the project site’s existing zoning. (*See Citizens for Open Government v. City of Lodi*

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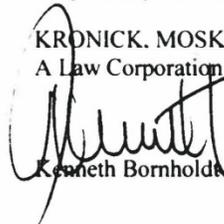
(2012) 205 Cal.App.4th 296, 313 (concluding there was “no point” in an EIR further discussing alternatives that were inconsistent with project site’s zoning.) The alternatives selected for further consideration should, at a minimum, have been those based in reality. Therefore, the speculative “Reduced Project A” Alternative should have been rejected early in the CEQA process, rather than presented as a “potentially feasible” alternative to the public and decision makers. (See 14 C.C.R. § 15126.6(a), (f)(3).)

LV14-24
(cont’d)

If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation



Kenneth Bornholdt

KB/clk

cc: John Janneck
Vic Montgomery

Attachments: RRM letter 8/23/13
Table 1 Alternative Screenings



LV-14



August 22, 2013

Kenneth C. Bornholdt, Esq.
Kronick, Moskowitz, Tiedemann & Girard
733 Marsh Street, Suite 210
San Luis Obispo, CA 93401

Re: RRM Design Group Review and Analysis of Alternatives Section of RRDEIR dated July 2013

Dear Ken,

As you requested, RRM Design Group (RRM) has reviewed the Alternatives section of the RRDEIR document dated July 2013. These comments are in addition to RRM comments previously submitted on the Alternatives Section of the RDEIR, (RRM comments dated 6/08/2012).

LV14-25

We have the following comments regarding the Alternative analysis:

LV14-26

1. **Alternative Considered and Rejected for Further Review (page VI-7) – Redesign Project Standard Subdivision Alternative:** Although rejected by the County for further review due to its potential to fragment the existing Agricultural Operations this alternative provides an excellent example of how density calculation could have been approached for the Laetitia Ag Cluster project. This approach would have yielded 118 dwellings (excluding the 388.5-acre parcel reserved for the future Dude Ranch). The Applicants Mitigated Project Alternative proposes only 102 dwellings.

LV14-27

2. **Mitigated Project (page VI-9) - Applicant Proposed Alternative:** We believe this Alternative is the Environmentally Superior Alternative when compared to all other reasonable Alternatives examined in the RRDEIR. See Exhibit LV-16-1, Table comparing Class I Impacts for the Reasonable Range of Alternatives.

LV14-28

3. **Reduced Project A (page VI-17) - Ordinance and General Plan Consistency Alternative:** This Alternative is in essence an analysis of two different methods for calculation of density. The first uses the Land Use Ordinance, (a) Agricultural Lands Clustering Ordinance. The second uses the Agriculture and Open Space Element (AOSE) of the County General Plan to calculate density. Both of these methodologies are incorrect for the following reasons.

1a. **Agricultural Lands Clustering Ordinance** – This method is incorrect as it is speculative. The description of this alternative methodology states, “The following discussion assumes that the standards to determine density are applied *as if* the entire project site is within the Agriculture

LV-14-1

San Luis Obispo
3765 S. Higuera St., Ste. 102
San Luis Obispo, CA 93401
P: (805) 543-1794 | F: (805) 543-4609

Santa Maria
1862 S. Broadway, Ste. 101
Santa Maria, CA 93454
P: (805) 349-7788 | F: (805) 354-7050

Santa Barbara
10 E. Figueroa St., Ste. 1
Santa Barbara, CA 93101
P: (805) 963-8283 | F: (805) 963-8184

San Clemente
232 Avenida Fabricante, Ste. 232
San Clemente, CA 92672
P: (949) 361-7950 | F: (949) 361-7955

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land use category.” (Emphasis added). The entire site is not designated Agriculture. Additionally the applicant spent considerable time with County staff before applying for the project discussing and reaching agreement with senior staff on the methodology to be used to calculate density. The methodology listed in this alternative is inconsistent with the methodology the applicant was directed to use and that was confirmed for use by Senior County staff (see Exhibit LV-15-2 Memorandum from Warren Hoag). It is not the method clearly described in the application that was deemed complete and vested by the County. The description of this alternative is too vague to allow any meaningful comparison as there is no information whatsoever given in regard to the placement of home sites. Forecasting impacts absent specification of the physical location is not possible on this complex site and it would be entirely speculative to do so.

LV14-28
(cont'd)

1b. Determining Density by Land Use Category – This approach ignores the provisions of LUO 22.22.150, B.3 (Lands eligible for Clustering – LUO 1/01/2003; see Exhibit LV-15-1 a flow chart showing the Laetitia Ag Cluster Rural Lands Density Determination) which specifically includes Agriculture or Rural lands. The description of this alternative is too vague to allow any meaningful comparison as there is no information whatsoever given in regard to the placement of home sites. Forecasting impacts absent specification of the physical location information is not possible and would be entirely speculative.

LV14-29

2. Agriculture and Open Space Element (AOSE) – This alternative improperly ignores a commonly held planning principle that the General Plan represents the overall Vision or Blueprint document for the County. This Vision document is implemented by the more detailed regulations of the County such as the Zoning Ordinance (LUO) which contains property development standards. Applicants do not look to the Vision/Blueprint for the entire County when determining how to calculate density for a specific project, located within a specific existing LUO land use category (zone). The discussion of this alternative points out the conflict that existed in 2003 between the General Plan Vision document and the LUO ordinance provisions. However, it ignores the specific discussions with County staff regarding this topic that formed the basis for the project density calculations. Furthermore, the Board of Supervisors in 2004 determined that the 20-acre minimum parcel size is applicable to Laetitia, based upon the application having been filed prior to August 10, 2004. The applicable LUO provisions for AG and RL designations allow more than one basis for determining density. Specifically, the LUO allows the use of the slope test in the Rural Lands designation (zone). The slope test methodology was utilized by the applicant as agreed to by Senior County staff. This RRDEIR methodology is also in conflict with LUO Section 22.22.150.B.3 (Lands Eligible for Clustering – LUO 1/01/2003).

LV14-30

2a. Applying Standard (Ag & Op Sp Element Policy 22) Regardless of Land Use category – This methodology ignores the direction clearly provided in the Agricultural Lands Clustering Section of the Land Use Ordinance. Ignoring the specific requirements and direction contained in the LUO is not appropriate in preparing a complete application for an Agriculture Cluster project. This alternative also ignores the direction agreed to by Senior County staff prior to preparation of the application and at the time the application was deemed complete and vested (see Exhibit LV-15-2 Memorandum from Warren Hoag). Furthermore, the Board of Supervisors in 2004 determined that the 20-acre minimum parcel size is applicable to Laetitia, based upon

LV14-31

LV-14-1

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the application having been filed prior to August 10, 2004. It simply highlights the difference between the provisions of the AOSE (40-acre parcel minimum for irrigated Ag lands) and the LUO standards (20-acre parcel minimum for irrigated Ag lands) that were present at the time of the application. It also demonstrates the reason that the applicant sought guidance and concurrence with staff regarding how to do the density calculations prior to completing the application.

LV14-31
(cont'd)

2b. Applying Policy Based on Land Use Category – This methodology applies the AOSE standard to the Agriculture designated lands while ignoring the applicable LUO standards and highlights the difference between the AOSE and the LUO at the time the application was complete and vested – similar to the discussion of 2(a) above. This approach ignores the Rural Lands portion of the site.

LV14-32

The discussion of this alternative then goes on to discuss impacts associated with Aesthetics, Agricultural Resources, Air Quality, Archaeology, Biology, Geology and Soils, Hazards and Hazardous Materials, Historic Resources, Paleontological Resources, Public Services and Utilities, Transportation and Circulation, Water Resources and finally, the Other Issue area – all without the benefit of a site plan or map. It is not possible, and therefore entirely speculative, to forecast and discuss potential impacts on Agriculture, Aesthetics, Biology, Archaeology, Paleontology, Geology and Soils, Hazards, and Noise without knowing the locations of the proposed home sites. Such issues are tied directly to location and it is speculative and unreasonable to forecast absence or reductions of impacts when home site locations are unknown. For example, the issue of aesthetics is discussed and apparently assumes some reconfiguration the project to avoid the SRA and Highway Corridor Design Standards – but no location for the relocation is shown or described. Similarly, Ag buffers are ignored in this discussion but they are an essential component of the Applicants Mitigated Project. Simply equating a reduction of in the number of dwellings to a reduction in impacts grossly over simplifies the effort, care and design factors that go into the proper planning of an Agriculture Cluster project. A meaningful evaluation and comparison of impacts of this Alternative is not possible given the limited information provided.

4. Reduced Project B (page VI-23) – Reduced Density Two-Cluster Alternative: The description of this alternative does not provide sufficient information to provide a meaningful evaluation of impacts and comparison to the project. For example:

LV14-33

- Access routes to this alternative and within the alternative are not identified. (Are we to assume they are the same as the Applicants Mitigated Project?),
- A portion of this alternative is located directly on top of identified archaeological sites 2523, 2526, 2527 and yet archaeological impacts are forecast to be reduced?
- Biological impacts of this alternative are forecast to be reduced, however a major portion of the developed area (within the RL lands) is located on steep slopes, and drains directly toward an adjacent creek,
- This alternative would not comply with CAL FIRE access standards thereby creating a significant hazard to project residents and facilities,
- The description of this alternative is silent in regard to sewage treatment although implementation of 10,000 sf lots would require a sewage treatment facility. The

LV14-34

LV14-35

LV14-36

LV14-37

LV-14-1

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economic feasibility of this alternative is questionable. How does a project with 26% fewer dwellings for sale afford these solutions?

LV14-37
 (cont'd)

In addition, this alternative fails to meet a major project objective:

- *Create places to live in a scenic rural setting* -- 10,000 sf lots within the Ag category and the attendant grading, retaining walls, site disturbance, subdivision improvements associated with small lots, etc, would not result in a scenic rural setting. It would result in an unappealing, inappropriate urban setting among the picturesque vineyards. A portion of this alternative, located within the Rural Lands designated property, is located directly under and/or adjacent to existing major power lines – again not a scenic setting.

LV14-38

5. **Redesigned Project A (page VI-28) – Single Cluster Alternative:** The location of this alternative is similar to portions of the Reduced Project B Alternative. The description of this alternative does not provide sufficient information to provide a meaningful comparison of impacts. For example:

LV14-39

- Access routes to this alternative and within the alternative are not identified, (particularly a second access point). The lack of a second access point is a serious and significant safety hazard associated with this alternative.
- The development area is located mostly in very steep, inaccessible terrain,
- A portion of the project is located directly on top of an identified archaeological site (2523), yet forecast impacts are reduced,
- Biological impacts are forecast to be reduced; however a major portion of the development area is located directly adjacent to an existing creek,
- The location of the sewage treatment and disposal sites are not specified although the location of these uses would likely significantly reduce the available development areas and would have potential safety issues in regard to a “perched” wet weather storage location.

LV14-40

LV14-41

LV14-42

LV14-43

This alternative occurs entirely within the RL designated portions of the property and yet the RRDEIR speculatively (and incorrectly) assumes that 95% Ag Open Space within the Ag Lands area would be a part of the alternative. Why would Open Space within the Ag designated portions of the property be proposed when density is being reduced by 40% and the alternative is located entirely on the RL designated lands? This alternative would produce 61 lots (see RRDEIR page VI-19, Rural Lands Cluster). The RL portion of the Laetitia property on a standalone cluster basis would yield 54 lots (assuming no Dude Ranch). It is an unreasonable and inaccurate conclusion to assume that an applicant would dedicate 95% of the Ag lands portion of the Laetitia property for permanent open space in order to gain 7 lots. It also fails to resolve the conflict of such proposal with LOU open space requirements for RL (90%) and AG (95%).

LV14-44

In addition this alternative fails to meet a majority of the project objectives:

- *Enhance long-term agricultural viability* – this alternative, as described, does not enhance long term Ag viability as under reasonable economic assumptions for the Cluster approach as it is unreasonable to assume the Ag lands portion of the Laetitia property would be included in the project description. Therefore, the Ag lands would not be protected as Open Space.

LV-14-1

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- *Provide for expansion of the existing winery operations and continuation of the vineyard operation* – the alternative, as proposed, removes 10 acres of vineyards without replacement. LV14-45
 - *Create places to live in a scenic rural setting* – A portion of this alternative located within the Rural Lands designated property is located directly under and/or directly adjacent to existing major power lines - not a scenic setting. Portions of the project in the RL lands would be located directly adjacent to Upper Los Berros Road. The description of 61 one acre lots located on 70 gross acres of steeply sloped existing terrain is unlikely to yield a rural setting as this alternative fails to account for necessary roads, power line setbacks, slopes, creek setbacks, Ag buffers, historic resources and oak tree protection areas. LV14-46
 - *Create a financially feasible project* – The alternative includes the provision of community sewer and community water as project features. It is unreasonable to assume that a project 40% smaller could reasonably support the costs of infrastructure associated with the loss of 60% of the lot sales, especially as the configuration of this Alternative dramatically extends the length of the service lines to serve fewer residents. Similarly, the need for a second access point at a far distance from the development location will significantly reduce economic feasibility of this alternative. LV14-47
- 6. Redesigned Project B – Single Cluster Alternative, 93% Reduction (page VI-33):** This Alternative is unreasonable and no meaningful comparison is possible. It should never have been considered, even in initial screening. It is unreasonable to assume that a rational person would:
- Give up 95% of the Laetitia Ag designated lands (787 acres) as permanent Open Space in exchange for 7 clustered lots, located entirely within the Rural lands designated portion of the Laetitia property, when there are already 10 existing parcels within the Ag lands.
 - Give up 90% of the Laetitia RL designated lands (974 acres) as permanent Open Space in exchange for 7 lots in the RL designation when there are already 11 existing parcels within the RL lands.
 - Propose a Major Ag cluster project for 7 lots.
- In addition, this alternative fails to meet a majority of the project objectives:**
- *Preclude future residential development within designated agricultural/open space easements* – This alternative could not be reasonably expected to create any agricultural/open space easements on the portion of the property within the Agriculture land use designation and could not, therefore, preclude development on the 10 existing parcels within that portion of the property. LV14-49
 - *Protect the existing rural character by placing 95% of the property within the Agricultural land use category and 90% of the property within the Rural Lands land use category in permanent agricultural/open space easements* – It is unreasonable to expect that the Ag lands portion of the property would be included in the project description when the cluster is located entirely within the RL lands category and yields only 7 home sites. The number of existing parcels within the RL designated area exceeds 7. LV14-50
 - *Enhance long-term agricultural viability* – the alternative would not enhance long term Ag viability. Under reasonable assumptions for the Cluster approach there would be no reason to include the Ag lands portion of the Laetitia property in the project description, they would remain available for development of the 10 existing lots. LV14-51

LV-14-1

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- *Create a financially feasible project* – It is unreasonable to assume that a project 93% smaller (7 total home sites) could reasonably support the costs of infrastructure associated with the CAL FIRE required second access and Upper Los Berros Road improvements. LV14-52

- 7. Redesigned Project C – Effluent Disposal Alternative (page VI-38):** This is not an Alternative “Project”. It is merely a mitigation measure for the proposed location for effluent disposal (while retaining the same method and location of sewer treatment). No meaningful project comparison can be made based upon the information provided. LV14-53

- 8. Alternative Project Location (page VI-39):** Based upon the information provided, no comparative analysis is possible. This alternative is unreasonable as it cannot meet basic requirements for a feasible development that would be an appropriate alternative to the project. Absent information regarding the number and location of home sites that would be created, no meaningful forecast or comparison of impacts is possible. The discussion/assessment of impacts of this Alternative is ripe with speculation and unreasonable/infeasible project design issues: LV14-54

 - *Aesthetics* – Visual impacts from Upper Los Berros Road are ignored even though the most useable portion of this site is adjacent to the road. LV14-55
 - *Agricultural Resources* – “No access roads would be required to traverse the vineyards” is incorrect. How would a CAL FIRE required second access be addressed without traversing through the vineyards? LV14-56
 - *Air Quality* – How can a reduction in Air Quality impacts be reasonably forecast “by reducing ground disturbance” when the number, and location of home sites are unknown, especially given the topography of this location? LV14-57
 - *Biological Impacts* – Given the physical constraints of the site and location of development along tributaries flowing only a short distance directly into Los Berros Creek. Biological impacts are likely to exceed the Applicant’s Mitigated Project. LV14-58
 - *Hazards and hazardous Materials* – No second access to this location is identified so how can impacts be forecast? LV14-59
 - *Noise* – absent a plan showing the location of residence how can noise be reasonably forecast? LV14-60
 - *Transportation & Circulation* – How can impacts be forecast when no second access route is identified? LV14-61
 - *Wastewater* – The potential location of a wastewater treatment facility including required wet weather storage facilities on a steep slope directly above Los Berros creek is an unreasonable/infeasible solution. Likewise effluent disposal on a vineyard located only a very short distance from Los Berros Creek with a drainage pattern flowing to the creek is unreasonable. LV14-62

Additionally it is unreasonable to assume that a rational person would give up 95% of the Laetitia Ag designated lands as permanent Open Space in exchange for a few clustered lots (no indication of the number is provided) located entirely within the Rural lands designated portion of the Laetitia property. LV14-63

LV-14-1

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9. Proposed Project with Tract Design Mitigation (page VI-43): This is not an alternative to the project. It is a series of additional mitigation measures, as indicated in the name of the Alternative. LV14-64

10. Alternative Access Alternative (page VI-45): This is not an alternative to the project. It is solely an alternative access scheme. Review of an aerial photograph showing existing site conditions on affected properties located between the southern boundary of the Laetitia property and Thompson Road indicates that due to significant existing factors such as lack of access, presence of Class I agriculture lands, topography, creeks, oak trees, existing residences, lack of existing rights of way, etc. A reasonable, comparable project is not identified – the alternative is not described in sufficient detail to allow an evaluation. Impacts are likely to be more significant than the Applicant's Mitigated Project. This Alternative should not have passed the initial screening test. There is little or no information provided other than speculation about alignments, rights of way, intervening land forms, geology topography, etc, etc. Any discussion of actual individual impacts from this "alternative" is speculative given the lack of information. LV14-65

In summary, we find that several of the alternatives are unreasonable in their approach and conclusions. Some are clearly infeasible. Some are not alternatives to the project but rather are alternatives to mitigation measures that are better addressed in the Applicant's Mitigated Project. RRM has worked hard, based on our detailed knowledge of the site, and extensive experience with previous Agriculture Clusters, to reduce each impact identified by the County as Class I. Once all the factors (as required by CEQA) are taken in to consideration, the Applicant's Mitigated Project is clearly identifiable as the Environmentally Superior Alternative. LV14-66

Ken, if you have any questions concerning our comments, please let me know. We are also available to provide technical information to the County regarding the Applicant's Mitigated Project or any of the above.

Sincerely,
RRM DESIGN GROUP

Victor Montgomery, AIA
Principal

cc: John Janneck

LV-14-1

TABLE 1: ALTERNATIVE SCREENING UNREASONABLE/INFEASIBLE/FAILURE TO MEET PROJECT OBJECTIVES ALTERNATIVES - REASONS TO SCREEN OUT PRIOR TO ANALYSIS

Reasons to Eliminate	Ordinance and GP Consistency	93% Reduction	Alternative Location	Effluent Disposal	Alternative Access	Single Cluster	Reduced Two Cluster
Unreasonable. Reasonable landowner would not pursue conditional use permit that allows less than the 31 lots that could be developed without conditional use permit.	Yes. This alternative includes 4 options. 1A rezones the property. 1B misapplies Cluster Division to Rural lands; 2A and 2B include 2004 ordinance, which is inapplicable to vested application.	Yes. Alternative would only allow development of 7 lots in RI. zone, as compared to 11 lots in RI. that could be developed without conditional use permit.	Yes. Alternative would have one lot in RI. (slope, no agricultural production), as compared to 11 lots in RI. without conditional use permit.	Yes. Not an alternative under CEQA.	Yes. Not an alternative under CEQA. Requires acquisition of land.	Yes. Unreasonable for the reasons listed below.	Yes. Unreasonable for the reasons listed below.
Legally infeasible. County cannot require reductions in density for proposed 102-lot housing project that is consistent with applicable general plan and zoning standards.	Yes. Alternative would only allow development of 36 to 81 lots. Plus speculative assumptions regarding changes to zoning. In conflict with County requirements given to Applicant.	Yes. Alternative would only allow development of 7 lots.	Yes. Alternative would only allow development of a single lot. Speculative to consider more than one lot in RI. zone.	See above.	See above.	Yes. Alternative would only allow development of 60 lots.	Yes. Alternative would only allow development of 75 lots.
Agricultural Cluster Definition. Does not meet most of the six project objectives of an Agricultural Cluster project at Laetitia	Yes. Inconsistent with County requirements given to Applicant regarding density calculations (Warren Hoag).	Yes. There would be no permanent open space in Ag zoned land. This is also equivalent to the no project alternative.	Yes. There would be no permanent open space in AG zoned land. This is also equivalent to the no project alternative.	See above.	See above.	Yes. Only in RI. Doesn't protect OS in AG, doesn't protect agricultural lands.	Yes. Does not enhance long-term agriculture viability nor provide for expansion of the existing winery and would be inconsistent with scenic rural setting.
Preservation of Open Space. Does not provide for maximum preservation of Open Space on AG and RI lands (i.e. 1-414.26 acres provided in Applicant's Mitigated Project) 5% AG or 10% RI developed; 95% or 90% OS.	Yes. Multiple options, and assumptions, cannot calculate.	Yes. Alternative would only preserve 70 acres, all within the RI. lands, and none in AG lands.	Yes. Alternative would not preserve any lands, because not Agriculture Cluster.	See above.	See above.	Yes. Alternative would only preserve 700 acres, all within the RI. lands and none in AG lands.	Not enough information to calculate. Less than Mitigated Plan.
Constraints to Development. Site Constraints that make Alternative infeasible or unreasonable.	Yes. Unable to determine due to lack of site plan.	Yes. See undefined conditions below, which would constrain development.	Yes. Developable area too small, slopes are too steep and lacks secondary access to be a reasonable	See above.	See undefined conditions below, which would constrain development.	Yes. Power line easement. See also undefined conditions below which would constrain	Yes. Power line easement. Reduced lot size (from 43,560 sq. ft. to 10,000 sq. ft.) within Agricultural land use category causes

LV14-67

I.V-14-2

**TABLE 1: ALTERNATIVE SCREENING
UNREASONABLE/INFEASIBLE/FAILURE TO MEET PROJECT OBJECTIVES ALTERNATIVES -
REASONS TO SCREEN OUT PRIOR TO ANALYSIS**

Reasons to Eliminate	Ordinance and GP Consistency	93% Reduction	Alternative Location	Effluent Disposal	Alternative Access	Single Cluster	Reduced Two Cluster
Additional Class I Impacts. Undefined Conditions that may cause additional Class I impacts.	Yes. Site plan undefined, unable to identify impacts.	Yes. No secondary access. Biological impacts not eliminated due to proximity to creek. US 101 impacts (one trip)? Feasibility of traffic mitigation? Dude Ranch included?	Alternative to project. See also undefined conditions below which would constrain development. Yes. Number of lots, lot sizes, grading, drainage, oak woodland impacts, and total acreage, all undefined and therefore unable to identify impacts. Slopes over 30% over majority of site.	See above.	Yes. Impacts to wetlands, biological resources, existing residences, oak trees, and existing Class I agricultural land located south of project site.	development. Yes. Second access not defined. Site contains steep slopes. Wastewater treatment and disposal not defined. On top of archaeological site impact from Los Berros Road. Is Dude Ranch included?	incompatible urban development, which results in associated impacts. See also undefined conditions below which would constrain development. Yes. 17.3 acres of vineyard removed, no replacement. Reduced lot size (from 43,560 sq. ft. to 10,000 sq. ft.) within Agricultural land use category causes incompatible urban development, which results in associated impacts. Secondary access not defined. Wastewater treatment plant and disposal undefined. Is Dude Ranch included? Agricultural buffers not identified. Located on top of archaeological sites 2523, 2526, 2527. Impact to riparian area? Visual impact from Los Berros Road. Not applicable.
Alternative vs. Mitigation. Not an Alternative, is it only Mitigation Measure.	Not applicable.	Not applicable.	Not applicable.	Yes. Does not address a Class I impact. The Applicant's Mitigated Project better addresses effluent in a feasible manner.	Yes. Applicant's Mitigated Project addresses access. This alternative requires acquisition of land that may not be feasible. Speculative.	Not applicable.	Not applicable.

LV14-67
(cont'd)

I.V-14-2

**Responses to Kronick Moskovitz Tiedemann & Girard's Comments
(Exhibit LV-14)**

Comment No.	Comment
LV14-1	Responses to specific comments are presented below.
LV14-2	<p>Pursuant to CEQA cumulatively considerable means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects” (CEQA Guidelines Section 15064(h)(1)). Please refer to Final EIR Section V.A. Aesthetic Resources, project-specific AES Impact 4, which states the following: “Visibility of development and associated earthwork related to Main Road 2, residential development of Sub-cluster E (Lots 87 through 105), Roads A, B, E, and F, residential development on Lot 46, the water storage tank, associated cut slope and access road, would adversely affect the rural visual character and increase noticeability of the project as seen from Highway 101 resulting in a direct long-term impact.” Cumulative impact AES Impact 18 states the following: “The visibility of individual project elements in the context of emerging development along the Highway 101 corridor would result in direct and indirect long term adverse cumulative impacts.” There is a clear distinction between the project project-specific and cumulative effects, and the impact determination under cumulative effects notes the cumulative “context of emerging development”.</p>
LV14-3	<p>Please refer to Final EIR Section V.B. Agricultural Resources, project-specific AG Impact 1, which states the following: “Implementation of the proposed project would result in the permanent loss of 2.5 acres of Farmland of Statewide Importance, 3.0 acres of Farmland of Local Importance, 153 acres of Unique Farmland, including 103 acres of productive vineyard, and 61.9 acres of Grazing Land. Implementation of the proposed project would set an adverse precedent in the county by resulting in the permanent conversion and loss of 103 acres of existing productive vineyard.” Cumulative AG Impact 4 states: “Implementation of the proposed project would significantly contribute to the cumulative loss of productive Farmland.” The discussion of cumulative impacts due to loss and conversion of Important Farmland has been expanded to clarify the following: “According to the Department of Conservation, San Luis Obispo County lost 2,695 acres of Important Farmland between 2002-2004, 5,959 acres of Important Farmland between 2004-2006, 440 acres of Important Farmland between 2006-2008, and 810 acres of Important Farmland between 2008-2010 (California Department of Conservation, 2004, 2008, 2011, 2014). The loss of approximately 158.5 acres of Important Farmland as a result of the proposed project would represent approximately 20 percent of the County-wide loss of agricultural land between 2008-2010.” This section also includes additional language clarifying the following: “Establishment of an agricultural/open space conservation easement as required by the LUO, and replanting of vineyards within the project site (as proposed by the applicant) would partially mitigate this loss; however, when combined with impacts from past, present, and reasonably foreseeable projects, the potential impacts to agricultural resources resulting from the proposed project, and the precedent-setting nature of the proposed project would be considered cumulatively significant and adverse.”</p>
LV14-4	<p>Please refer to Final EIR Section V.C. Air Quality, project-specific AQ Impact 9, which states: “The proposed project is inconsistent with the general land use and planning policies identified in the Clean Air Plan, resulting in air pollutants generated by increased traffic trips, resulting in a long-term, significant, and unavoidable impact.” The discussion of this project-specific impact is clarified in the Final EIR as follows: “As a result, the proposed project is considered inconsistent with the CAP, and would impair the County's ability to achieve the attainment goals identified in the CAP, resulting in a significant, adverse impact to air quality”. Final EIR Cumulative AQ Impact 10 has been clarified to state: “The proposed project is inconsistent with the regional land use and planning policies identified in the Clean Air Plan, and would impair the County's ability to achieve attainment status for</p>

Comment No.	Comment
	<p>ozone, resulting in a cumulative, significant, adverse, and unavoidable impact.” The discussion above the impact statement (Cumulative Emissions and Consistency with the Clean Air Plan) notes that “While cumulative impacts to air quality was identified in the South County Area Plan Update EIR as potentially significant and unavoidable, the findings recognized that the existing cumulative air quality mitigation program, combined with a slight improvement over the previous Area Plan build-out would offset some of these impacts”. The EIR also states that the proposed project would increase the total number of vehicle trips when compared to the General Plan buildout projections, and would potentially be inconsistent with the CAP’s land use and planning goals and policies, and long-term regional air quality planning strategies for the County. The Final EIR has been amended to clarify the following: “<i>The cumulative development of residential subdivisions outside of urban areas, including development proximate to the project site between the community of Nipomo and city of Arroyo Grande, has contributed to the County’s current non-attainment status for ozone. Residents living in these subdivisions are not within walking distance of transit stops or commercial, retail, and service areas, and typically access these areas via private vehicles. The proposed project would result in a cumulatively considerable adverse effect to regional air quality and the County’s ability to attain ozone standards because it is inconsistent with the CAP’s land use and planning goals and policies, and long-term regional air quality planning strategies</i>”.</p>
LV14-5	<p>As noted in Final EIR Section V.N. Transportation and Circulation TR Impact 4: “The proposed project would add traffic to southbound Highway 101 during the p.m. peak hour and exacerbate an existing deficient condition according to Caltrans standards. Congestion under LOS D conditions would be limited. The proposed project would exacerbate existing deficient conditions at the Highway 101/Los Berros Road/North Thompson Road ramp junctions during the p.m. peak hour.” This determination was made based on an analysis of the project’s effect on the environmental baseline. Cumulative TR Impact 15 states the following: “The proposed project would exacerbate projected deficient operations along Highway 101 during the a.m. and p.m. peak hours under Cumulative Conditions. The proposed project would exacerbate existing deficient conditions at the Highway 101/Los Berros Road/North Thompson Road ramp junctions during the p.m. peak hour under Cumulative Conditions.” This determination is based on an analysis of the project’s effect under cumulative conditions.</p>
LV14-6	<p>As noted in Final EIR Section V.N. Transportation and Circulation TR Impact 10: “The proposed control of the emergency vehicle access at Laetitia Vineyard Drive does not guarantee emergency-only access, because residents could open and close the gate for non-emergency use.” Cumulative TR Impact 13 states: “The proposed control of the emergency vehicle access at Laetitia Vineyard Drive does not guarantee emergency-only access, because residents could open and close the gate for non-emergency use, significantly contributing to the cumulative degradation of this intersection.” As documented in the EIR, the intersection would operate at LOS F under cumulative conditions (both with and without the proposed project), and the addition of trips would be cumulatively considerable.</p>
LV14-7	<p>Cumulatively considerable means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects” (CEQA Guidelines Section 15064(h)(1)). The EIR does not double-count the impacts. The EIR identifies project-specific impacts, and also addresses potentially significant cumulative effects when the incremental effect is cumulatively considerable.</p>
LV14-8	<p>The County is aware of the cited <i>Ballona Wetlands</i> (2011) case. Currently the County and CEQA Guidelines Appendix G have not removed the relevant threshold of significance: “Would the project expose people to noise levels in excess of standards established in local noise ordinances or general plan noise elements?” Therefore, this threshold and identified impact remains in the Final EIR.</p>

Comment No.	Comment
LV14-9	Please refer to EIR Section V.L. Public Services and Utilities, cumulative impact PSU Impact 4 discussion, which states that “Based on consultation with CAL FIRE, a new fire station within the proximity of Los Berros Road and Highway 101 is necessary to provide life safety response to emergencies, and to mitigate the cumulative impact on fire protection services (Robert Lewin, 2004, 2007).” PSU Impact 4 has been clarified to note: “...and facilities. The project would require a new fire station to provide life safety response in the immediate area.” The construction of a new facility may result in significant effects on the environment.
LV14-10	As noted above (LV14-9) and in EIR Section V.L. Public Services and Utilities, 6. Cumulative Impacts, a. Emergency Services, a new fire station is necessary to address the project’s cumulative effect on fire protection services. The construction of a new fire station may result in significant effects on the environment.
LV14-11	Please refer to responses to specific comments as noted.
LV14-12	The EIR analyzes the alternatives that the Department of Planning and Building believes will achieve most project objectives and are feasible. To the extent that the applicant believes any particular alternative or mitigation measure is financially infeasible, the applicant is in the best position to provide evidence of such infeasibility. That evidence will be considered by the County decision makers and reflected in the findings adopted for the project. This approach is consistent with applicable case law, which places the burden of establishing financial infeasibility of an alternative or mitigation measure on the person claiming the infeasibility.
LV14-13	CEQA does not require comparison of project alternatives to other approved projects. Each project site and development, including its alternatives, must be considered independently based on the environmental baseline and the project’s effects on the environment.
LV14-14	The EIR analyzes the alternatives that the Department of Planning and Building believes will achieve most project objectives and are feasible. To the extent that the applicant believes any particular alternative or mitigation measure is financially infeasible, the applicant is in the best position to provide evidence of such infeasibility. That evidence will be considered by the County decision makers and reflected in the findings adopted for the project. This approach is consistent with applicable case law, which places the burden of establishing financial infeasibility of an alternative or mitigation measure on the person claiming the infeasibility.
LV14-15	As noted in the CEQA Guidelines, “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly” (Section 15126.6 Consideration and Discussion of Alternatives to the Proposed Project). A reduced project may be less profitable, but development of fewer dwelling units would not be financially infeasible.
LV14-16	The Department of Planning and Building asserts that the alternatives included in the EIR will meet most project objectives and are appropriately presented (please refer to EIR Chapter VI Alternatives Analysis). In response to the commenter’s statements regarding project objectives, additional information has been added to the Final EIR to clarify how each identified alternative meets most of the identified objectives. Please refer to the additional language added after each description of each proposed alternative (EIR Section VI.C. Alternatives Analysis, Alternatives Analysis).
LV14-17	The project’s objectives are included in the EIR and were considered during development and review of alternatives. There is no substantial evidence that without the development of the agricultural cluster, the existing vineyard and winery operation would not be financially supported.
LV14-18	The intent of CEQA is to disclose the effects of the project on the environment, and identify measures and alternatives that would avoid or reduce noted effects. Consideration of project objectives must also be considered during alternatives development and review, as noted by the commenter. Based on the County’s review of the project alternatives, a cluster subdivision would be

Comment No.	Comment
	<p>developed that would achieve many of the project objectives, including establishment of agricultural easements that would preclude further non-agricultural development of the project site, protection of rural character, and creation of residences in a scenic rural setting. It is understood that an applicant would want to take advantage of incentives offered under the Agriculture Cluster Ordinance; however, based on the significant adverse effects identified in the EIR, particularly related to the conversion and loss of productive Farmland, the County has considered reduced density alternatives that may have an effect on the profitability of the project.</p>
LV14-19	<p>Please refer to responses to comments LV14-15 through LV14-18 above.</p>
LV14-20	<p>The County concurs that it is the purpose of the project to develop an agricultural cluster. Therefore, the alternatives analysis includes alternatives that appear consistent with the findings required to approve an agricultural cluster, including locating development to avoid and buffer prime agricultural soils and agricultural production areas onsite, clustering new development close to existing roads, avoidance of environmentally sensitive habitat areas, minimizing impacts on public views, clustering residential structures to the maximum extent feasible so as to not interfere with agricultural production and to be consistent with the goal of maintaining the rural character of the area, and minimizing risks due to geologic, flood, and fire hazard and soil erosion. Incentives encourage development of agricultural clusters; however, the purpose of the alternatives analysis is to identify alternatives that would avoid or reduce identified significant impacts on the environment and maintain most of the project objectives.</p>
LV14-21	<p>Please refer to responses to comments LV14-16 through LV14-20 above.</p>
LV14-22	<p>The Housing Accountability Act does not preclude a lead agency from analyzing a full range of alternatives as required by CEQA. Rather, the Housing Accountability Act comes into play when the County decision-makers determine that the project complies with all general plan and zoning standards and criteria and then wishes to consider either a reduced-density project or to deny the project. If the decision-makers wish to either deny the project or approve an alternative that includes a lower number of residential units than what the applicant has proposed, they can do so, but only after adopting the findings required by Government Code section 65589.5(j), which states:</p> <p style="padding-left: 40px;">(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:</p> <p style="padding-left: 40px;">(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.</p> <p style="padding-left: 40px;">(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.</p> <p>The full range of alternatives included in the EIR is not inconsistent with this section.</p>

Comment No.	Comment
LV14-23	Please refer to Final EIR Section VI.C.3 Alternatives Analysis, Alternatives Analysis, Reduced Project A – Ordinance and General Plan Consistency. The description of this alternative has been clarified to only include density calculations based on the actual land use categories within the project site, and the density calculations applicable to each actual land use category. Therefore, this alternative is not speculative, and it presents County Staff's recommended interpretation of the 2003 LUO.
LV14-24	Please refer to Final EIR Section VI.C.3 Alternatives Analysis, Alternatives Analysis, Reduced Project A – Ordinance and General Plan Consistency. The description of this alternative has been clarified to only include County Staff's recommended density calculations based on the actual land use categories within the project site, and the density calculations applicable to each actual land use category.
LV14-1 RRM Design Group (August 22, 2013)	
LV14-25	Please refer to responses to specific comments below .
LV14-26	The commenter's statement is noted and will be considered by the County decision makers.
LV14-27	The commenter's statement is noted and will be considered by the County decision makers.
LV14-28	Please refer to responses to LV14-23 and LV14-24 above.
LV14-29	Please refer to response to comment LV14-23 above. Lands eligible for clustering do include Agriculture and Rural Lands, provided the land is in agricultural use at the time of project application (LUO Section 22.22.150). Regarding density: "The number of parcels allowed in an agricultural cluster division shall be equivalent to the number of dwellings normally allowed in the Agriculture land use category in compliance with Sections 22.22.040 (Parcel Size - Agriculture Category) and 22.30.420.A (Residential Uses in the Agriculture Category); except that where Section 22.22.040 would allow 20 acre parcels on the basis of SCS Class I soils, the number of parcels shall be based on a ratio of one per 40 acres." LUO Section 22.22.150.B.3 states: "For sites that overlay a line five miles from an Urban Reserve Line, the entire ownership will be eligible to use the provisions of this Section, provided the cluster development occurs on that portion of the site that is within five miles of the urban reserve line". The following additional clarification regarding this alternative has been added to the Final EIR: " <i>This alternative has been clarified to only include analysis of allowable densities based on the existing land use categories within the project site. This alternative assumes a similar design as the Mitigated Project – Applicant Proposed Alternative; however, with a reduction in the total number of residential lots as identified below</i> ". Therefore, this alternative is not speculative.
LV14-30	Please refer to response to comment LV14-23 above. The Ordinance and General Plan Consistency Alternative applies a 20-acre minimum parcel size to determine the allowable number of residential lots.
LV14-31	Please refer to responses to comments LV14-23 and LV14-30 above.
LV14-32	Please refer to responses to comments LV14-23 and LV14-29 above. The qualitative analysis of potential impacts as a result of this alternative is not speculative, because this alternative assumes a similar tract map design as the Applicant's Mitigated Project, with the reduction of overall lots by approximately 26 percent to further reduce potential impacts on the environment.
LV14-33	Please refer to revised Figure VI-2 (Reduced Project B – Reduced Density Alternative), which clarifies access routes.
LV14-34	As noted in the EIR, implementation of mitigation measures would be required to reduce adverse effects to archaeological sites. In addition, the Final EIR includes a conceptual access road and lot

Comment No.	Comment
	layout plan for this alternative, which excludes the equestrian facility and avoids significant archaeological sites.
LV14-35	The biological resource impacts are reduced based on a significant decrease in direct disturbance of wetland and riparian habitat, individual oak trees, and oak woodland. Mitigation would be required to address noted impacts.
LV14-36	The maximum dead-end road length would not comply with CAL FIRE standards, similar to the proposed project, due to the potential infeasibility of the use of Laetitia Vineyard Drive as secondary access.
LV14-37	The EIR has been clarified to note that a wastewater treatment facility would be required, similar to the proposed project. The County is currently unaware of the tipping point where development of the site would not generate enough profit to develop and operate a treatment facility.
LV14-38	Please refer to revised Figure VI-2 (Reduced Project B – Reduced Density Alternative), which clarifies location of identified lots relative to the noted transmission towers and lines. The County decision makers will consider the commenter’s statements regarding the resulting setting of the 10,000-square foot parcels.
LV14-39	Please refer to revised Figure VI-3 (Redesigned Project A – Single Cluster Alternative), which clarifies access routes.
LV14-40	Implementation of Reduced Project B would require grading and site disturbance, which would require implementation of mitigation measures to address potential impacts related to erosion and down-gradient sedimentation.
LV14-41	Please refer to revised Figure VI-2 (Reduced Project B – Reduced Density Alternative), which clarifies the location of potential structures, and avoidance of known archaeological sites.
LV14-42	Please refer to revised Figure VI-3 (Redesigned Project A – Single Cluster Alternative), which clarifies access routes and potential lots relative to the creek habitat.
LV14-43	The EIR has been clarified to note that a wastewater treatment facility would be required, similar to the proposed project. The facility and ponds would be located in a similar location as the proposed project.
LV14-44	The single cluster alternative located in the Rural Lands portion of the site would require 90 percent of the site to be designated open space, within one open space parcel. An easement on the Agricultural portion of the property would not be required, pursuant to the 2003 LUO. Please note that based on County Staff’s interpretation of the 2003 LUO, a density bonus would not apply to the Rural Lands land use category and approximately 37 residential lots would be allowed (refer to clarifications in the Final EIR, Section VI.C.5). As noted in Section 22.22.140 of the LUO: “The open space parcel may be used for any of the following: Crop production or range land; historic, archaeological, or wildlife preserves, water storage or recharge; leach field or spray disposal area; scenic areas; protection from hazardous areas; public outdoor recreation; or other similar open space use.” As noted in the EIR, removal of vineyards would be required under this alternative; however, no vineyards would be removed within the Agriculture land use category. Based on location of this alternative, which generally avoids productive Farmland, establishment of an open space parcel on 90 percent of the project site, continued operation of the vineyards and winery while avoiding potential land use conflicts, and the surrounding scenic rural setting, this alternative would meet most of the project objectives (refer to Final EIR Section VI.C.5, which includes additional discussion of each alternatives potential consistency with project alternatives).
LV14-45	This alternative would require the removal of vineyards, as noted. This action would not prevent the vineyard manager from planting vines in other areas on the project site or continued operation of the winery, and would include an easement over 90 percent of the Rural Lands portion of the property. Refer to Final EIR Section VI.C.5, which includes additional discussion of each alternatives potential consistency with project alternatives.

Comment No.	Comment
LV14-46	Please refer to revised Figure VI-3 (Redesigned Project A – Single Cluster Alternative), which clarifies location of identified lots relative to the noted transmission towers and lines, creeks/drainages, oak woodland, and cultural resources. The County decision makers will consider the commenter's statements regarding the resulting setting of the residential parcels.
LV14-47	The intent of CEQA is to disclose the effects of the project on the environment, and identify measures and alternatives that would avoid or reduce noted effects. Based on the significant adverse effects identified in the EIR, particularly related to the conversion and loss of productive Farmland, the County has considered reduced density alternatives. Evidence regarding potential financial infeasibility of any identified alternative will be considered by the County decision makers and reflected in the findings adopted for the project.
LV14-48	The proposed Single Cluster Alternative (93% Reduction) was identified by County Staff in order to consider a project that would not require the removal of vineyards, result in potentially significant land use inconsistencies with existing agricultural uses, that would avoid significant visual impacts, substantially reduce air quality impacts, avoid archaeological and significant biological resources, avoid off-site road improvements that would result in potentially significant impacts, and significantly reduce water demand. The commenter's statements regarding the feasibility of this alternative will be considered by the County decision makers.
LV14-49	Based on the limited area of development, this alternative would require a smaller easement area, and would preclude future development within the easement area. The alternative is located within the Rural Lands land use category; therefore, an easement on the Agriculture portion of the project site would not be required.
LV14-50	Please refer to EIR Section VI.C.6 Alternatives Analysis, Alternatives Analysis, Redesigned Project B – Single Cluster Alternative, which includes further clarification regarding project objectives. In addition, additional language has been added to clarify that: <i>"The actual area within the open space easement would be limited to the Rural Lands land use category, and would be less than what is required for the proposed project; however, based on the required compliance with the 2003 LUO this alternative would generally meet this objective considering the substantially reduced development area"</i> .
LV14-51	Please refer to EIR Section VI.C.6 Alternatives Analysis, Alternatives Analysis, Redesigned Project B – Single Cluster Alternative, which includes further clarification regarding project objectives. In addition, additional language has been added to clarify that the alternative would: <i>"Enhance long-term agriculture viability, because the alternative project would result in the creation of an open space easement (as required by the 2003 LUO) and would result in a reduced number of residential lots and a corresponding avoidance of the conversion of agricultural land to non-agricultural use and potential land use conflicts that could affect the production of the existing vineyard"</i> .
LV14-52	As noted in the EIR, implementation of a seven-lot cluster subdivision would not require offsite road improvements (refer to EIR Section VI.C.6.I Alternatives Analysis, Alternatives Analysis, Redesigned Project B – Single Cluster Alternative, Transportation and Circulation. Additional correspondence from Caltrans (May 9, 2014) states that use of Laetitia Vineyard Drive for secondary access "would constitute an unapproved use" because the existing encroachment permit for the driveway access onto Highway 101 is identified for use as a winery and tasting room. In addition, use of this driveway for secondary access would "create its own set of public safety and traffic operations problems" (Caltrans 2014). This issue is applicable to the project, and all identified project alternatives.
LV14-53	The County recognizes that the applicant has incorporated the effluent disposal alternative into the Applicant's Mitigated Project Alternative. The commenter presents a valid point; therefore the Final EIR identifies this as an <i>"Option"</i> , which can be incorporated into the proposed project and any of the project alternatives.

Comment No.	Comment
LV14-54	The EIR recognizes the conceptual nature of this alternative, and limitation on comprehensive analysis. The assessment is noted to be qualitative, based on limited information known about the alternative site.
LV14-55	As noted above, further study of this area would be necessary, including consideration of views from Upper Los Berros Road. The site would not be visible from Highway 101.
LV14-56	The EIR notes that development of secondary access would be required in order to approve this alternative. The Class I impact related to secondary access would not be avoided under this alternative, as noted in the EIR.
LV14-57	Considering a qualitative assessment, an overall reduction in project area and access road improvements would result in less disturbance and subsequently reduced construction-related emissions. An assumed reduction in residential lots would result in a reduction in long-term emissions due to fewer traffic trips.
LV14-58	The EIR recognizes the limitations on available information related to biological resources, and further study would be required, in addition to site specific identification of potential lots and access roads.
LV14-59	The EIR identifies a Class I impact related to lack of secondary access under this alternative.
LV14-60	Based on the alternative site's distance from noise generating uses, and low traffic generated on Upper Los Berros Road, it is anticipated that noise impacts would be reduced.
LV14-61	The alternative site would gain access from Upper Los Berros Road, and would not connect to Laetitia Vineyard Drive and Highway 101; therefore, it is unlikely that any non-residential trips would affect the at-grade intersection. As noted in the EIR, the Class I impact related to lack of secondary access would remain significant, adverse, and unavoidable.
LV14-62	The EIR notes that this alternative is conceptual, and further assessment would be required to site development, including wastewater treatment. It is anticipated that similar protection and contingency measures identified for the project's treatment facility would also be applicable.
LV14-63	A cluster alternative located in the Rural Lands portion of the site would require 90 percent of the area used to qualify for the lots to be designated open space, within one open space parcel.
LV14-64	As noted in the EIR, the Proposed Project with Tract Design Mitigation incorporates removal and relocation of residential lots, as noted. This is included as an alternative because the County cannot adopt mitigation measures that would modify the design of a vesting tentative tract map.
LV14-65	The Alternative Access Alternative has been clarified as an "Option" in the Final EIR because it could be incorporated into the project or any identified alternative. This option includes a strategy to create secondary access for the project while avoiding the Laetitia Vineyard Drive/U.S. 101 intersection. This alternative was suggested by County Public Works, and as noted, has limitations including requirements for easements and further study of identified affected environmental resources. The assessment is qualitative.
LV14-66	County Staff recognizes the commenter's efforts to address and minimize potentially significant impacts, as presented in the Applicant Proposed Alternative. However, potentially significant and unavoidable impacts remain; therefore the EIR presents potential alternatives that would avoid or further reduce noted significant impacts. Specific comments regarding alternative feasibility are addressed above, and will be considered by the County decision makers.
LV14-67	The intent of CEQA is to disclose the effects of the project on the environment, and identify measures and alternatives that would avoid or reduce noted effects. Consideration of project objectives must also be considered during alternatives development and review, as noted by the commenter. Based on the County's review of the project alternatives, a cluster subdivision would be developed that would achieve most of the project objectives. It is understood that an applicant would want to take advantage of incentives offered under the Agriculture Cluster Ordinance; however, based on the significant adverse effects identified in the EIR, particularly related to the conversion

Comment No.	Comment
	<p>and loss of productive Farmland, the County has considered reduced density alternatives that would result in a reduction in residential density compared to the proposed project. Each alternative would include an agricultural and/or open space easement based on the size of the development area. Figures presented in Final EIR Chapter VI Alternatives Analysis include conceptual locations of access roads and possible residential lots, which avoid identified environmental resources and physical constraints. Final EIR Chapter VI Alternatives Analysis has been clarified to note that the identified alternatives focus on the development to be considered by the County decision makers (the agricultural cluster).</p> <p>Please refer to responses to comments: LV14-23, LV14-24, and LV-29 through LV14-32 regarding the Ordinance and General Plan Consistency Alternative; LV14-48 through LV14-50, and LV14-52 regarding the 93% Reduction Alternative; LV14-54 through LV14-63 regarding the Alternative Location; LV14-53 regarding the Effluent Disposal Option; LV14-39 and LV14-42 through LV14- 47; regarding the Single Cluster Alternative; and LV14-33 through LV14-38, LV14-41, and LV14-51 regarding the Two-Cluster Alternative.</p>



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PLANNING/BUILDING
DEPT
2013 AUG 23 PM 3:06
805 786 4302
kbornholdt@kmtg.com

Kenneth Bornholdt

August 23, 2013

BY HAND DELIVERY

Brian Pedrotti, Project Manager
County of San Luis Obispo
Dept. of Planning & Building
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

**RE: Recirculated RDEIR (July 2013) Laetitia Agricultural Cluster Subdivision
Tentative Tract Map and Conditional Use Permit SUB2003-00001 (Tract 2606) SCH
2005041094**

Dear Mr. Pedrotti:

We represent the Applicant in the above-referenced project ("Project"). The Applicant is submitting this comment letter in response to the July 2013 Recirculated Draft Environmental Impact Report ("2013 DEIR"), to specifically address the issue of a lot density bonus in calculating the number of parcels allowed under the 2003 Agricultural Lands Clustering Ordinance ("ALCO") (22.22.150) for lands designated as Rural Lands in agricultural use. The Project consists of lands located in both the Agriculture and Rural land use designations in agricultural use at the time the Application was filed. The Project lands therefore qualify for an agricultural lands cluster under the ALCO. (22.22.150.B.) For the reasons given below, the attached flow chart shows the decision tree for how Rural Lands are to be treated under the ALCO, including the lot density bonus. As you know, only the number of lots increase and not the number of allowable dwellings.

LV15-1

1. The 2003 ALCO Provides A 100 Percent Density Bonus For Lands Designated As Rural Lands In Agricultural Use At The Time of Application

LV15-2

As the 2013 DEIR acknowledges: "The [Project's] submitted tract map is vested based on the date of submittal to the County; therefore, the San Luis Obispo County Land Use Ordinance dated January 2003 applies." (2013 DEIR, at 1-1). ALCO Section 22.22.150.B is entitled "Lands eligible for clustering," and states that the "use of clustering in the Agriculture *and Rural Lands* categories may be considered only for ownerships that are in agricultural use at the time of application." (22.22.150.B, emphasis added.)

LV-15

733 Marsh Street, Suite 210 San Luis Obispo, California 93401 Tel: 805 786 4302 Fax: 805 786 4319 www.kmtg.com
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It is County’s clear policy to “*encourage*” the use of clustering by allowing the number of clustered parcels to equal the number of dwelling units normally permitted on a standard agricultural land division.” (ALCO 22.22.150, emphasis added.). This policy is implemented through Section I of the ALCO which provides that the “number of parcels allowed in an agricultural cluster division shall be equivalent to the number of dwellings normally allowed in the Agriculture land use category in compliance with Sections 22.22.040 (Parcel Size – Agriculture Category) and 22.30.420.A (Residential Uses in the Agriculture Category) . . .” (22.22.150.I.1.) Under this section, the base number of parcels is calculated and then doubled, because two dwellings per parcel are normally allowed in the Agriculture land use category. Since the lands in the Rural Lands category are to be treated the same as those lands in the Agriculture Land category, then the same lot density bonus applies to both land use categories. We also note that two dwellings per parcel are normally allowed on lands designated as Rural Lands. (County LUO 22.10.130.A.1.) Thus, the Agricultural Lands Clustering Ordinance provides a lot density bonus for an agricultural lands cluster project, regardless of whether the lands that are in agricultural use are designated as Agriculture or Rural Lands.

LV15-2
(cont’d)

2. The County Instructed The Project Applicant To Use The Rural Lands Category For Calculating The Base Number Of Parcels Only

LV15-3

Prior to submitting the Project application, the Applicant sought confirmation from the County regarding the methodology for calculating the number of parcels allowed for the Project. The County instructed the Applicant that it must calculate the *base* number of parcels for the lands within the Rural Lands and Agriculture categories separately, as a starting point. [See Attached County/Hoag email.] After calculating the base number of parcels for each land use category, the Applicant then applied the 100 percent lot density bonus applicable to agricultural lands cluster projects in Agriculture and Rural Lands categories. The lot density bonus calculation for the Rural Lands parcels was in the Project application filed and accepted by the County in 2004.

3. The 2013 DEIR, Like The Prior DEIRs, Misinterpreted And Misapplied The ALCO In Calculating The Number Of Parcels Allowed For Designated Rural Lands In Agricultural Use

LV15-4

The 2013 DEIR discusses a project alternative entitled “Reduced Project A – Ordinance and General Plan Consistency Alternative.” which presents two alternative calculations for the number of Project parcels allowed under the Land Use Ordinance. (VI-17 to VI-19.) The 2013 DEIR states that under the first calculation, it “*assumes* that the standards to determine density are applied as if the *entire* project site is within the Agriculture land use category.” (VI-17, bold emphasis added.) After calculating the base density with the assumption that the entire Project is in the Agriculture land use category, the 2013 DEIR applies the lot density bonus to calculate the total number of parcels allowed. (*Id.*) This approach of treating the entire Project site as located with the Agriculture land use category is inconsistent with the County staff’s instructions to the

LV-15



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Applicant, to calculate the base number of parcels for each land use category separately. [See attached County/Hoag email.] Contrary to the CEQA Guidelines, it is also speculative since the Laetitia Project site also contains lands in the Rural Lands category with requiring a different methodology to calculate base density.

LV15-4
(cont'd)

Under the second Land Use Ordinance Alternative calculation, the 2013 DEIR incorrectly calculates the number of parcels by applying the ALCO only to the lands within the Agriculture land use category and by applying the Cluster Division Ordinance to the lands within the Rural Lands land use category. (VI-18 to -19.) The 2013 DEIR correctly states that the "Cluster Division Ordinance does not identify a density bonus for clusters with the Rural Lands land use category." Also the Laetitia Project Application did not exercise the Applicant's option to Apply for a Cluster Division. The County cannot force the Application to proceed under th Cluster Division Ordinance. (VI-19.) However, the Laetitia Project is proceeding under the 100 percent lot density bonus for Rural Lands and Agriculture lands contained in the *Agricultural Lands Clustering Ordinance* (22.22.150.B.) to protect lands in agricultural cultivation; not the Cluster Division Ordinance.

LV15-5

The 2013 DEIR's interpretation of the ALCO ignores the fact that the Project's Rural Lands base number of parcels are in agricultural use, and thus are eligible for the lot density bonus provided in that Ordinance. Such an approach is inconsistent with the ALCO and frustrates the County's policy to provide the intended incentives of the lot density bonus to the base number of parcels for all agriculture cluster projects in Agriculture and Rural Lands categories in exchange for 90% to 95% of the project area being put into permanent open space to preserve existing agricultural cultivation. In prior comment letters to the 2008 DEIR and 2012 RDEIR, the Project Applicant identified this issue and directed the County to the ALCO.

LV15-6

4. It Has Always Been The County's Policy To Encourage Agricultural Cluster Projects By Allowing A 100 Percent Lot Density Bonus For Lands Designated As Either Agriculture Or Rural Lands

LV15-7

This policy objective is reflected in the current 2004 ALCO (22.22.150), which contains the same lot density bonus as the 2003 ALCO. In the 2011 Draft Environmental Impact Report for the Agricultural Cluster Subdivision Program ("Program DEIR"), the County stated that under the 2004 Ordinance major agricultural cluster projects "qualify for a residential parcel bonus of 100%." (2-24.). The Program DEIR also stated that under the 2004 Ordinance, agricultural cluster subdivisions may occur in Rural Lands. (6-11.)

Further, it clearly stated that owners of Rural Lands designated parcels may subdivide through the agricultural cluster subdivision program and that major agricultural cluster subdivisions "allow a 100 percent density bonus, essentially equating the number of residential cluster parcels with the potential number of primary residences that could be generated

LV-15



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Page 4

through a standard subdivision (assuming 100 percent of standard parcels would be developed with two primary residences). (Emphasis Added)” (6-10.)

LV15-7
(cont'd)

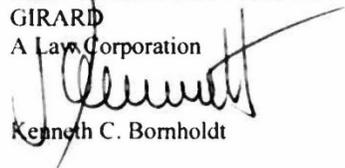
Thus, Rural Lands base number of parcels is to be treated the same as Agriculture designated lands for the lot density bonus incentive. Thus, the Program DEIR provides confirmation of the County’s interpretation of the 100 percent lot density bonus, which is that the agricultural cluster lot density bonus applies to Rural Lands that are in agricultural use. In other words, the 100 percent lot density bonus is triggered by the fact that the proposed project is an agricultural cluster project, regardless of whether the lands in agricultural use are designated Agriculture or Rural Lands, even though the methodologies of determining base densities of parcels are different for each category.

In summary, the Project is vested under the 2003 Agricultural Lands Clustering Ordinance, which provides a 100 percent lot density bonus for agricultural cluster projects. (22.22.150.I.1.) Agricultural cluster projects may be comprised of lands designated as either Agriculture or Rural Lands that are currently in agricultural use. (22.22.150.B.) The County’s stated policy under the 2003 ALCO is to provide a 100 percent lot density bonus for agricultural cluster projects, to encourage the preservation of agricultural lands in cultivation. (22.22.150.). The County has implemented this policy by consistently concluding that this lot density bonus applies to lands within the Rural Lands land use category, if the lands are in agricultural use. (See Program EIR, at 6-10, 6-11.) The Project is vested under the County’s policy and the 2003 ALCO’s lot density bonus for agricultural cluster projects. Therefore, the 2013 DEIR’s alternative Land Use Ordinance parcel calculations are inconsistent with the Applicant’s vested rights, because they do not apply the lot density bonus to the Project lands located within the Rural Lands land use category using the applicable base density.

LV15-8

If you have any questions, please do not hesitate to contact us.

Respectfully submitted,
KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Law Corporation



Kenneth C. Bornholdt

cc: John Janneck
Victor Montgomery

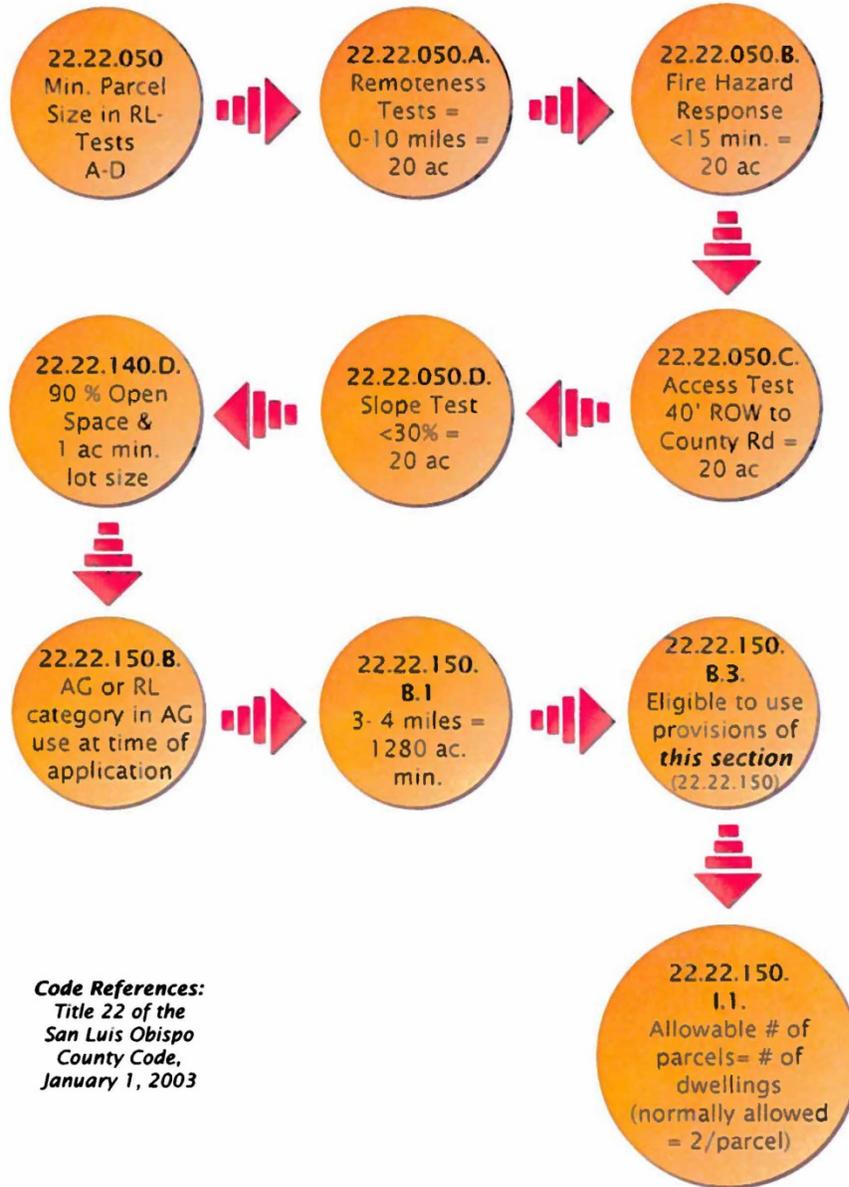
Attachments: Flow Chart
Hoag Memorandum

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LV-15



Laetitia Ag Cluster Rural Lands Density Determination

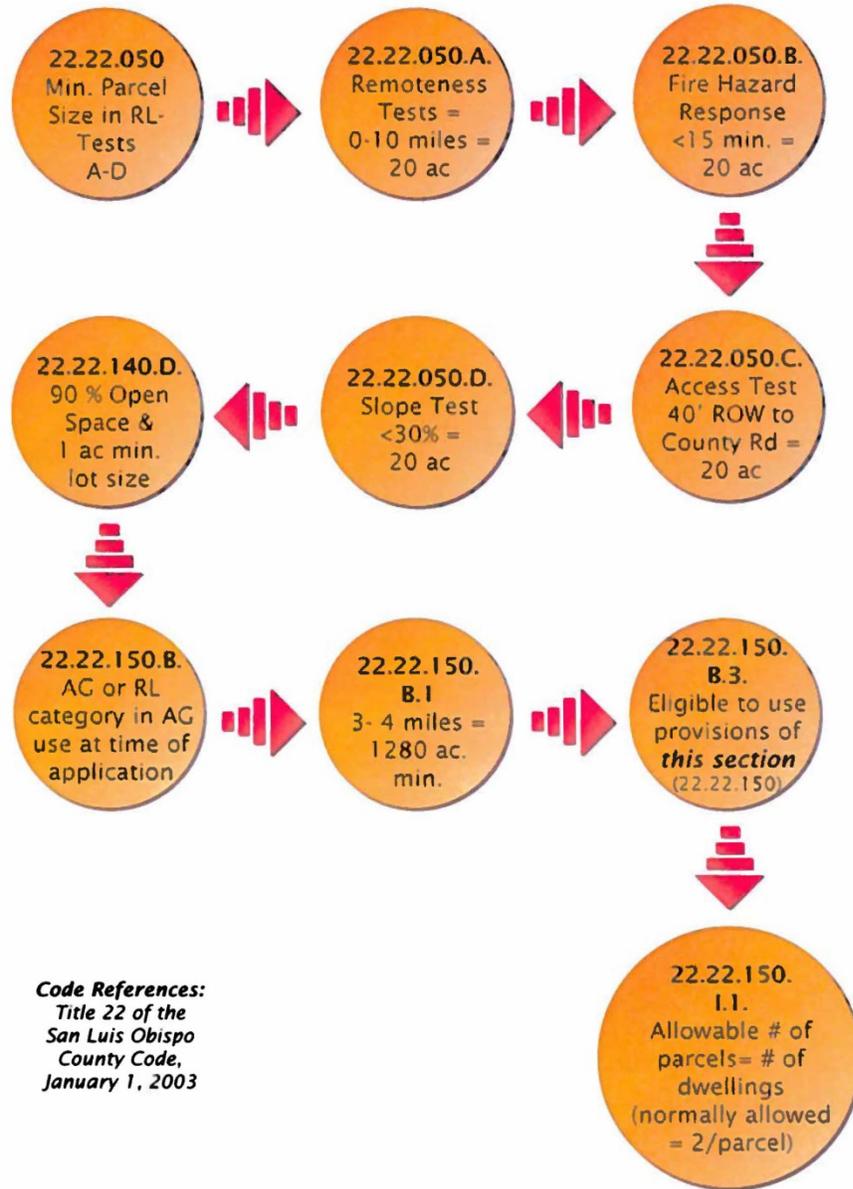


Code References:
Title 22 of the
San Luis Obispo
County Code,
January 1, 2003

LV-15-1

Laetitia Ag Cluster Rural Lands Density Determination

LV15-9
(cont'd)



LV-15-1

Montgomery, Victor

LV15-10

From: Montgomery, Victor
Sent: Friday, April 02, 2004 11:35 AM
To: 'whoag@co.slo.ca.us'
Cc: 'sun9155@aol.com'; 'bornlawyers@aol.com'; Donatello, Allison R.
Subject: Laetitia Cluster project

Warren, based upon our meeting/discussion on **4/01/2004** I have updated the prior e-mail to be the final version (see below) by adding comments in bold. If you have comments, edits or corrections let me know.

1. Dude Ranch

The dude ranch parcel needs to be - 160ac. minimum, building coverage is limited to 2% of the site area. dude ranch parcel is not counted for purposes of calculating density or open space in the cluster project.

4/01/2004 action = #1 above is confirmed.

2. Open space requirement on the agriculture designated area shall be a minimum of 95%. Open space requirement on the rural lands designated area shall be a minimum of 90%. The remainder area(s) are available for the cluster development in the portions of the property in each respective land use category (i.e. 5% in Ag and 10% in RL).

4/01/2004 action = #2 above is confirmed.

3. Density attributable to the rural lands designated area may be calculated as an example situation by the "ghost map" method or the average slope/parcel size method (<30% = 20ac; >30% = 80 ac equivalents). Alternatively we discussed changing the dude ranch parcel configuration and size to the steeper part of the RL area as a means of reducing the average slopes within the remaining rural lands designated area.

4/01/2004 action = #3 above is confirmed. Applicant will pursue slope averaging the remaining Rural Lands area after adjusting the size and location of the dude ranch parcel. If the dude ranch is moved, the "ghost" subdivision is no longer necessary.

4. Density for the agricultural designation is calculated based upon existing use.

4/01/2004 action = #4 above is confirmed.

5. Roads - You will confirm the methodology for roads - i.e. only "new" roads or road widening serving residential exclusively are counted as part of the cluster area. Existing ag roads are not counted. (We have reviewed this issue and can now confirm this methodology as being correct.)

4/01/2004 action = #5 above is confirmed.

6. Home sites may be transferred from one land use designation to the other, however the open space requirement for each land use designation must be maintained individually in each land use category applicable to the site (AG = 95% & RL = 90%). The issue of actually how many homes can be put in each category's remainder area will be addressed through staff's review and analysis of the project based on site and environmental constraints and will be ultimately decided upon by the Planning Commission.

4/01/2004 action = #6 above confirmed. Staff advised caution in regard to residential waste water disposal system design & the potential need for community/shared systems if percolation rates are slow and parcels are less than 1 acre. Moving RL units into the AG may be difficult.

7. As County staff reads and has implemented the ordinance for other ag cluster projects, all LUO criteria for each land use designation must be met separately. (It is correct that this is the staff position, even if the property meets the ordinance definition of a single "site," each land use category's requirements must be met for the portion of the site in that

particular category.) However, you indicated stated/understood that you could see how the ordinance this is not could be misinterpreted clearly articulated as the definition for "site" from the LUO clearly states that the "site" is the "contiguous ownership". RRM used the entire site supplemented by the rural lands slope test (in the rural lands area) as the basis for calculations. You agreed acknowledged that you could see how we reached our conclusion is not an unreasonable logic/approach based upon the LUO definitions. You indicated that you would need to caucus with other staff and get back to us on this issue at our next meeting. (I will do so, but it should be understood that no decision to change staff's position on this issue has been made yet.)

LV15-10
(cont'd)

4/01/2004 action = Staff confirmed its' position that criteria for each separate land use designation (AG & RL) must be met separately within that land use designation area. If applicant wishes to appeal this interpretation he should request a formal interpretation letter from staff and then follow with an appeal to the Planning Commission of the staff interpretation.

8. The site is not located in a County "GSA".

4/01/2004 action = #8 above confirmed.

Next step - Based upon the above LUO clarifications & interpretations by staff the applicant will review the project design/description, make modifications as necessary and provide revised copies to staff for continuing project processing. No new application is required.

We appreciated the guidance, recollection of experiences and advice provided by you and James in regard to the other topics we discussed at the 4/01/2004 meeting.

Thank you Warren & James.

Victor Montgomery
RRM Design Group
3765 South Higuera Suite 102
San Luis Obispo, CA 93401
805-343-1794
www.rrmdesign.com

**Responses to Kronick Moskovitz Tiedemann & Girard’s Comments
(Exhibit LV-15)**

Comment No.	Comment
LV15-1	Please refer to responses to specific comments below.
LV15-2	Based on County Staff’s review of the 2003 LUO and the Agricultural Lands Clustering Ordinance, it is Staff’s interpretation that the density bonus is not applicable for parcels qualifying under the Rural Lands criteria. The County decision makers will consider both County Staff’s and the commenter’s interpretation of the 2003 LUO.
LV15-3	The applicant’s calculation of the base number of parcels using the Rural Lands criteria is correct; however, County Staff’s interpretation of the Agricultural Lands Clustering Ordinance does not include a density bonus for these base parcels. The County decision makers will consider both County Staff’s and the commenter’s interpretation of the 2003 LUO.
LV15-4	Please refer to Final EIR Section VI.C.3 Alternatives Analysis, Alternatives Analysis, Reduced Project A – Ordinance and General Plan Consistency. The description of this alternative has been clarified to only include density calculations based on the actual land use categories within the project site, and the density calculations applicable to each actual land use category. Therefore, this alternative is not speculative, and it presents County Staff’s recommended interpretation of the 2003 LUO.
LV15-5	Please refer to response to comments LV15-2 and LV15-3 above. The purpose of the alternatives analysis in the EIR is to identify alternatives to the project that would avoid or reduce potentially significant impacts. The Ordinance and General Plan Consistency Alternative includes a reduced number of lots based on County Staff’s interpretation of the 2003 LUO, which would further reduce potential impacts. The project site includes land in both the Agriculture and Rural Lands land use categories; therefore, this alternative may be considered by the County decision makers.
LV15-6	The EIR does not ignore the fact that the project’s Rural Lands base number of parcels are in agricultural use. Based on County Staff’s interpretation of the 2003 LUO, there is not a provision for a density bonus when qualifying parcels are within the Rural Lands land use category. The County decision makers will consider both County Staff’s and the commenter’s interpretation of the 2003 LUO.
LV15-7	The applicable ordinance is the 2003 LUO, which does allow agricultural clusters on Rural Lands. The 2003 LUO does not state that a density bonus is applicable to parcels qualifying under the Rural Lands parcel size tests. The County decision makers will consider both County Staff’s and the commenter’s interpretation of the 2003 LUO. The referenced Program EIR is not applicable to the proposed project, because the tract map is vested and only the 2003 LUO applies.
LV15-8	Please refer to responses to comments LV15-2 through LV15-7 above.
LV15-9	The presented flow chart does not present the language identified in Section 22.22.150.1.1 of the 2003 LUO, which states that: “The number of parcels allowed in an agricultural cluster division shall be equivalent to the number of dwellings normally allowed in the Agricultural land use category in compliance with Sections 22.22.040 (Parcel Size – Agriculture Category) and 22.30.420.A (Residential Uses in the Agriculture Category); except that where Section 22.22.040 would allow 20 acre parcels on the basis of a SCS Class I soils, the number of parcels shall be based on a ratio of one per 40 acres”. The 2003 LUO does not include language addressing the number of parcels/number of dwellings allowed in the Rural Lands land use category, except under Section 22.22.140.B Cluster Subdivision, which applies to Rural Lands and states that “the number of lots to be clustered shall be determined by dividing the total site area by the minimum parcel size specified in the planning area standard”. Based on County Staff’s interpretation of the 2003 LUO, the density bonus is not applicable to number of base lots determined through the Rural Lands tests. The

Comment No.	Comment
	County decision makers will consider both County Staff's and the commenter's interpretation of the 2003 LUO.
LV15-10	Based on review of previous documentation provided by County Staff to the applicant and his consultant team, County Staff does not identify a statement that directs the applicant to apply a density bonus to the base parcels qualifying under the Rural Lands tests. The documentation does confirm a 90% open space easement on Rural Lands, which is identified in 2003 LUO Section 22.22.140 (Cluster Division). The documentation also states that: "The issue of actually how many homes can be put in each [land use] category's remainder area will be addressed through staff's review and analysis of the project based on site and environmental constraints and will ultimately be decided upon by the Planning Commission".

JOHN JANNECK

Laetitia Vineyard & Winery
453 Laetitia Vineyard Drive
Arroyo Grande, CA 93420
Telephone 310-351-1555
sun9155@aol.com

August 23, 2013

Mr. Brian Pedrotti
Department of Planning and Building
San Luis Obispo County
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

**Re: Comments on Revised Recirculated DEIR, Laetitia Agricultural Cluster Subdivision
SUB2003-00001 (Tract 2606), SCH#2005041094**

Dear Brian,

As we have discussed at length, two themes dominate the environmental review of the Laetitia Agricultural Cluster Project: 1) the **precedent** set by previous agricultural clusters and pipeline projects both in terms of application of agricultural cluster regulations and level of significance of environmental impacts; and 2) the **vesting rules** and the **vested application** that was deemed complete and freezes ordinances, policies and standards applicable to the project and limits the alternatives that can be appropriately considered as feasible and reasonable.

LV16-1

The Laetitia Project Team has reviewed the RRDEIR in detail and we have a number of technical comments. I want to highlight some of our remaining concerns (most of which we have raised in comments on the 2008 Draft EIR and the 2012 Recirculated Draft EIR):

1. We would like to point out that all the impacts that remain identified as Class I in the RRDEIR are based on subjective judgments where in similar situations like-minded professionals have called similar impacts Class II or even III. Our detailed comments provide examples of these situations and findings. In every case where this EIR has an opportunity to make a subjective judgment it comes down on the side of Class I unmitigable impact. We have employed our own professionals to look at each case where the EIR employs subjective judgment to decide on Class I vs. II (or III) – see previous correspondence, attachments to this letter and correspondence from our attorney Ken Bornholdt. In each case we believe that the County has taken an unusually harsh position in calling each of these impacts Class I. One explanation may be that the County has assumed worst-case conditions in each instance. As you know, CEQA does not require that an EIR evaluate the worst possible case on the worst day of the year, but rather impacts that could result from reasonably foreseeable operation of the project. We request that you take another look at the Class I impacts with this perspective, and at a minimum acknowledge for the decisionmakers that the Class I determinations are subjective and that if the project operates as planned and mitigation measures are implemented and are as successful as reasonably can be expected, impacts would be Class II.

LV16-2

The Laetitia Project Team has worked hard to mitigate each of the Class I impacts identified in the RRDEIR and believe that each of them could be reasonably identified as Class II. The RRDEIR identifies 10 separate Class I impacts that we believe are addressed by the Applicant’s Mitigated Project Alternative and/or other factors. Here is a summary of the remaining Class I impacts and the reasons we believe they could be identified as Class II:

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- | | |
|--|---------------|
| <p>i. Farmland Conversion and cumulative impact (AG 1 and AG 4) – The Applicant’s Mitigated Project Alternative would bring at least the same amount of land in to agricultural production compared to what would be lost. This increase in agricultural acreage on the property is consistent with the Agricultural Policies in the General Plan to preserve long-term agriculture in Agriculture Cluster Residential Developments. Replacement of the agricultural land as proposed would mitigate the anticipated impact to land in agricultural production (see letter from George Donati).</p> | <p>LV16-3</p> |
| <p>ii. Land Use Conflicts (AG 2) – The Applicant’s Mitigated Project Alternative includes buffers designed for each lot that can reasonably be expected to be acceptable to homeowners and not impede agricultural operations. The proposed buffers are consistent with the Buffer Guidelines when the Application was vested early in 2004 and buffers used in other similar cluster projects previously approved by the County using the same Guidelines. The Applicant’s Mitigated Project includes buffers of 125 feet (down wind side) to 400 feet (up wind side). (Even smaller buffers -- down to 70 feet -- have been successfully used in other agricultural clusters, see letter from George Donati.)</p> | <p>LV16-4</p> |
| <p>iii. Highway Operations and cumulative impact (TR 4 and TR 15) – The EIR identifies the impact to US 101 as significant based on one new trip. The addition of one trip is not an appropriate threshold under CEQA and is not one that has been used by the County in the past. There would be no technical traffic impact according to the usual method for determining significance.</p> | <p>LV16-5</p> |
| <p>iv. Secondary Access and cumulative impact (TR 10 and TR 13) – The guard would ensure no unauthorized use of the secondary access. Emergency use of this access/egress would be unusual. Typical operations would not result in any new traffic and therefore no new impact at this location.</p> | <p>LV16-6</p> |
| <p>v. Aesthetics from 101 and cumulative impact (AES 4 and AES 18) – The Applicant’s Mitigated Project Alternative relocates lots and roads, includes a height limit and vegetative screening consistent with the applicable South County Area Plan. Homes that could be visible from the roadway are over a mile away and would be screened. It is unlikely that they would be visible given the high speed of traffic and existing vegetation. Even if visible, the homes would not substantially change the views because of distance and the proposed vegetative screening. The classification of these impacts as Class I is inconsistent with the County standards applied in other Agriculture Cluster projects prior to vesting of this Application. Further, the Applicant’s Mitigated Project Alternative would be consistent with County standards in the County Viewshed Ordinance adopted after the Application became vested. (See letter from ESA dated August 23, 2013.)</p> | <p>LV16-7</p> |
| <p>vi. SRA/HCD (AES 5) – The Applicant’s Mitigated Project Alternative is consistent with HCD design. The project would be substantially screened from view and would not be out of character with other projects along the 101 Corridor using County standards in the South County Area Plan when this Application was vested in 2004 and the County’s Viewshed Ordinance adopted after this Application was vested. (See letter from ESA dated August 23, 2013.)</p> | <p>LV16-8</p> |

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- vii. Dead end roads (HM 2) -- CALFIRE has indicated that a guard gate would ensure acceptable access by CALFIRE and acceptable emergency egress and that they believe this to be a Class II impact. | LV16-9
 - viii. Service personnel (PSU 4) -- CALFIRE has indicated that providing land for a new fire station would free up resources to pay for additional personnel and that they consider this impact to be mitigated to a less than significant level. In addition annual training would ensure that project occupants know what to do in the event of a fire. Not to mention that demand for public services is not a potential impact under CEQA (see letter from Ken Bornholdt dated August 23, 2013). | LV16-10
 - ix. Loss of 94 oaks and 16 sycamores as a result of the mitigation measure to widen Upper Los Berros Road. Loss of these trees would be mitigated through planting new trees. We understand the County's contention that trees require some time to grow, but most agencies find that replacement of trees is sufficient mitigation to make this a Class II impact. (See letter from ESA dated August 23, 2013.) The applicant has met with CALFIRE and the results of the meeting would eliminate this impact (see letter from RRM attached). | LV16-11
- We understand why it may be appropriate for air quality to be identified as a Class I impact: | LV16-12
- i. Clean Air Plan and cumulative impact (AQ 9 and AQ 10) – While the project would be consistent with the General Plan and policies that encourage agricultural clusters, would include maximum mitigation to reduce emissions (including GHG), and would likely include non-commuting occupants, we understand that it would not be entirely consistent with all policies and strategies in the 2010 Preliminary Sustainable Communities Strategy (SCS), and therefore a Class I impact may be appropriate. | LV16-13
- 2. The RRDEIR continues to count some impacts twice (six for the project, five for the Applicant's Mitigated Project Alternative). As explained further in the letter from our attorney Ken Bornholdt, and ESA, for any given issue, a project either causes a significant impact by itself or makes an incremental, cumulatively considerable contribution to a significant impact. The same impact should not be identified as both a project impact and a cumulatively considerable contribution. | LV16-14
 - 3. As explained more fully by our attorney (see letter from Ken Bornholdt dated August 23, 2013), most of the alternatives are legally infeasible as they seek to reduce the number of housing units below the number allowable by ordinance at the time our application was vested. CEQA does not confer independent authority to subvert vesting requirements for a project that meets applicable standards. | LV16-15
 - 4. In addition, we are surprised and alarmed by the unreasonableness of some of the alternatives that continue to be presented in the EIR. As indicated in the EIR itself, the primary requirement of CEQA and its Guidelines is that an EIR present first and foremost a *reasonable* range of alternatives. Some of the current range of alternatives are misleading at best because they do not represent *reasonable* (or technically feasible given the legal vesting requirements) alternatives to the Laetitia Agricultural Cluster project, since they do not meet the ordinance standards for such projects. | LV16-15

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As indicated in the name of the project, the project is an Agricultural Cluster; any reasonable alternative to the project must meet County requirements for an Agricultural Cluster. Before undertaking detailed planning for the project we undertook extensive discussions with County staff. In particular Warren Hoag provided detailed guidance on how the project should be configured and densities calculated (e-mail from Warren Hoag dated April 6, 2004). We do not want to bog the process down with detailed pro-forma of our finances (as suggested by the RREIR in Table IV-4 where the table indicates that it was our burden to demonstrate the financial feasibility). We believe such information to be unnecessary in this EIR process (not to mention it is of course proprietary). Rather we would point to other successful Agricultural Clusters in this and other counties where homes have successfully been located within vineyards consistent with the Agricultural Cluster ordinance requirements.

LV16-16

I would say this about economics: In 2007 the Economic Vitality Corporation retained MKF Research LLC to prepare the study entitled, *2007 Economic Impact of Wine and Grapes in the Paso Robles AVA and Greater San Luis Obispo County*. The study indicates that the wine industry has a \$1.8 billion impact on the local and state economy and employs more than 8,000 people, representing 7.5% of County employment. It indicates that the County has 29,000 acres of vineyards, with only 3,000 acres planted in South County. The study points to the need for growth and increased wine making from grapes grown in the area. The study emphasizes the importance of high-end wineries with tasting rooms (such as Laetitia) that provide opportunities for memorable experiences and turn tourists in to “Brand Ambassadors.” The study indicates the need for more wineries indicating that, “such development is more likely to enhance the county’s quality of life rather than undermine it, by attracting higher end tourism, quality consumer services and retail hospitality facilities, while creating demand for highly skilled winery professionals in such areas as sales, marketing, finance, winemaking and general management.” Laetitia is a major component of South County wine production. The continued success of our winery is in the best interests of the County. The cluster agricultural division program is one of the ways to ensure that the vineyard and winery continue in perpetuity; which is consistent with the desires of the current owners.

LV16-17

More recently a study prepared by Agriculture Associates, and submitted to the Board of Supervisors August 13, 2013, reaffirmed the principles laid out in the 2007 report.

LV16-18

Incredibly the EIR identifies a 7-residential-lot (93% reduction) alternative as the environmentally superior alternative that meets most of the project objectives. To say the least, I am at a loss to understand how the EIR preparers can even suggest that 7 residential lots is a reasonable alternative to the 102 lots proposed, let alone identify it as the environmentally superior alternative. Table VI-4 purports to compare this 7-lot alternative (i.e. less than is allowed by right on the project site) to our project objectives. Ridiculously, the table finds that the 7-unit alternative is “potentially consistent” with four objectives. Interestingly the table finds the alternative “potentially inconsistent” with two objectives, one of which being to create a financially feasible project. Obviously a financially infeasible project will not meet any project objectives. To put it in the simplest terms, a 7-unit project would not be undertaken as an agricultural cluster because 7 lots can be built without committing to preservation of the agricultural land. By definition, the proposed project is an Agricultural Cluster. Therefore, all alternatives must, at a minimum, *reasonably* meet the guidelines for an Agricultural Cluster.

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In addition, as explained in more detail in comments from the Project Architect RRM, other EIR alternatives are not sufficiently developed to allow complete analysis and/or continue to ignore topographical and physical/environmental constraints. Site plans for several of the alternatives appear to have been plopped down willy-nilly with no regard for site conditions. Several of the alternatives would be more appropriately presented as mitigation measures rather than whole project alternatives since they affect one small part of the project only (effluent disposal, alternative access), with these issues having been addressed in the Applicant's Mitigated Plan.

LV16-19

Brian, if you or the consultants have any questions regarding our comments please let me know. The Laetitia Project Team remains available to provide technical support to the County and consultants. Our goal is the same as yours at this point – to have an EIR that fully meets the requirements of CEQA and its Guidelines.

LV16-20

Sincerely,



John Janneck
Laetitia Vineyard & Winery

Attachments:

- LV-16-1: Table 1: Reasonable Range of Alternatives, Comparison of Class I Impacts
- LV-16-2: Letter from ESA, dated August 23, 2013
- LV-16-3: Letter from RRM, dated August 22, 2013

LV-16

LV16-21

TABLE 1: REASONABLE RANGE OF ALTERNATIVES COMPARISON OF CLASS I IMPACTS				
Class I Impacts	Proposed Project	No Project	Applicant's Mitigated Project	Tract Redesign with 102 Lots
Farmland Conversion (AG 1 and AG 4)	Less than significant. No net loss of cultivated agricultural land.	No impact.	Less than significant. No net loss of cultivated agricultural land.	Significant. Increased loss of cultivated agricultural land impact. (No map provided.)
Land Use Conflicts (AG 2)	Potentially significant.	No impact.	Less than significant. Buffers individually designed. Successful in past projects.	Significant. Lot and roadway locations not defined. (No map provided.)
Highway Operations and Cumulative Impact (TR 4 and TR 15)	Less than significant. Not technically an impact based on County precedent.	No impact.	Less than significant. Not technically an impact based on County precedent.	Less than significant. Not technically an impact based on County precedent.
Secondary Access and cumulative impact (TR 10 and TR 13)	Potentially significant.	No impact.	Less than significant. Guard gate ensures access in emergency only. Emergency use is not Class I impact under CEQA.	Potentially significant. Access not defined.
Clean Air Plan (including GHGs) and Cumulative Impact (AQ 9 and AQ 10)	Significant.	No impact.	Significant.	Significant.
Aesthetics – 101 Corridor (AES 4 and AES 18)	Potentially significant.	No impact.	Less than significant. No requirement that lots be below 660 feet. Relocated lots and roads, height limit, vegetative screening. Consistent with South County Area Plan.	Less than significant. Relocated lots.
Aesthetics – Hwy 101 SRA/HCD, sub-cluster A (AES 5)	Potentially significant.	No impact.	Less than significant. No requirement that lots be below 660 feet. Design complies with HCD guidelines. Not in SRA.	Less than significant.
Dead End Roads (HM 2)	Less than significant as Vineyard access would provide secondary access but lack of vehicle control could lead to significant traffic impact (TR 10 and TR 13).	No impact.	Less than significant. Guard gate allows fire access. Acceptable to CALFIRE.	Potentially significant. Access not defined.
Agricultural Noise (NS 3) [Assuming it is an environmental impact, since it's an impact on the Project Site.]	Potentially significant.	No impact.	Less than significant.	Potentially significant. Lot locations not defined.
Fire Service Personnel (PSU 4) [Assuming it is an environmental impact under CEQA.]	Potentially significant.	No impact.	Less than significant. In lieu mitigation measure preliminarily identified with CALFIRE.	Potentially significant. No mitigation identified.
Loss of Trees on Upper Los Berros Road. (Secondary Impact of Mitigation Measure for Impact TR 9)	Less than significant. Replacement trees would mitigate impact to Class II.	No impact.	Less than significant. CALFIRE requested improvements mitigates tree impact to less than significant.	Less than significant. Replacement trees would mitigate impact to Class II.

LV-16-1



9191 Towne Centre Drive
Suite 340
San Diego, CA 92122
858.638.0900 phone
858.638.0910 fax

www.esassoc.com

August 23, 2013

Mr. John Janneck
Janneck, Ltd
1116 Cory Avenue
Los Angeles, CA 90069

Subject: Laetitia Agricultural Cluster Subdivision Revised Recirculated Draft Environmental Impact Report (RRDEIR)

Dear Mr. Janneck:

ESA has reviewed the alternatives analysis contained in the Revised Recirculated Draft Environmental Impact Report (RRDEIR) for the Laetitia Agricultural Cluster Tract Map and CUP, specifically with reference to the Applicant’s Mitigated Plan Alternative. Previously, we have provided comments on the Draft EIR and Recirculated Draft EIRs. We see that a number of changes have been made to the EIR conclusions that reflect our comments, particularly related to noise and air quality. However, a number of issue areas remain identified as Class I impact where we believe, given County regulation and the extent of proposed mitigation, the impact would more appropriately be identified as Class II. We recognize the remaining impacts that are identified as Class I are based on subjective judgment, and that the judgment is based on the professional expertise of the report writers. As you know, ESA has considerable expertise in the issues analyzed in this EIR and have prepared numerous high-profile EIRs including several important EIRs for the County of San Luis Obispo. We also have extensive expertise in mitigation monitoring. We have applied our expertise and judgment to the issues identified as Class I for the Applicant’s Mitigated Plan in the RRDEIR. We have taken the following in to account:

LV16-22

1. Reasonably expected operational characteristics of the project
2. Reasonably anticipated effectiveness of mitigation measures
3. Past precedents of other similar projects in San Luis Obispo County (particularly Edna Ranch and Biddle Ranch Agricultural Cluster EIRs)

This letter summarizes our conclusions regarding several of the identified Class I impacts of the Applicant’s Mitigated Plan (additional details may be found in our previous comments on the DEIR and RDEIR).

We would also note that the EIR double counts several Class I impacts. Impacts are either project specific or a project makes a cumulatively considerable contribution to an impact and, therefore, the impact is identified as a cumulative impact.

Farmland Conversion (AG 1 and AG 4)

LV16-23

The Applicant’s Mitigated Plan proposes to remove 113 acres of land that is currently in agricultural production. There are no prime soils at the project site; the land is productive as a result of the best management practices

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historically employed by Laetitia. The project would not convert prime agricultural soils. The agricultural soils impacted by the project are generally poorer soils representing a minor contribution to the County’s total agricultural resource base. During the original creation of the vineyards, the soil was heavily amended to create conditions suitable for grapes. The Applicant’s Mitigated Plan includes replacement (at a ratio of at least 1:1) of all agricultural soils. The land to be newly placed in agricultural production would be amended and made suitable for grapes as has occurred in the current vineyards. Consistent with the 2003 Agricultural Lands Clustering Ordinance (22.22.150), this project will provide the long-term protection of 1,414 acres of agricultural land and open space to mitigate the conversion of approximately 113 acres of agricultural and rural land. Therefore, we conclude that the project’s consistency with the Agricultural Lands Clustering Ordinance combined with replacement of (non-prime) agricultural land would reduce this impact to Class II.

LV16-23
(cont’d)

Agricultural Buffers (AG 2)

The project’s agricultural buffers have been specifically designed for each lot. A detailed engineering analysis that considered wind direction, topography, existing and proposed agricultural use, and vegetative screening was completed for each lot. These buffers are completely protective of both agricultural and residential uses. At the same time, the project has adopted best management practices to further reduce potential conflicts such as a homeowner’s association that will be responsible for addressing all complaints and 500-foot zones around all lots where additional best management practices will be employed. This project will not cause potentially significant land use conflicts between the future residences and the project’s productive agriculture.

LV16-24

The length of the agricultural buffers, or the space between the vineyard and each homesite envelope, is based on the predominate wind direction of the central coast. A reduction in the buffer is made if the elevation at the base of the development envelope is 20 feet or greater above vineyard elevation. This reduction is given at a one to one basis. The width of the buffers was tailored to each homesite, and designed to account for elevation of the homesite in relation to the vineyard and prevailing wind direction. The buffer widths would be adequate to avoid pesticide drift. Nevertheless, there would be no Class 1 pesticides sprayed within 500 feet of any residence. The buffers would also be sufficiently large to minimize noise and dust associated with normal farming activities.

The Biddle Ranch Agricultural Cluster project has buffers as small as 75 feet. The size of the buffers was not identified as a significant impact in their 2003 Final EIR. Nor have these buffers resulted in problems during operation of the project (George Donati letter, August 22, 2013).

Therefore, we conclude that, based on precedent and experience, this impact should be identified as Class II.

Loss of Trees on Upper Los Berros Road (Secondary Impact of Mitigation for Impact TR-9)

LV16-25

Mitigation of traffic impacts could result in widening Los Berros Road, which could result in the loss of oak and sycamore trees. The applicant has committed to replacing all lost trees. As required by State law, such mitigation would reduce impacts below a level of significance; monitoring and follow up would ensure that tree

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replacement would be successful. The Biddle Ranch EIR did not even identify the number of native coast live oak trees that would be removed (“unknown number” and “[r]emoval of large areas of Coastal Oak Woodland habitat”), but counted on the mitigation to reduce impacts to Class II. Therefore, we conclude that this impact would appropriately be identified as Class II similar to the Biddle Ranch EIR.

LV16-25
 (cont’d)

Aesthetics (AES 4, AES 5, AES 18)

The RRDEIR indicates that the Applicant’s Mitigated Plan would adversely affect the rural character of the area due to the visibility of the proposed project from Highway 101, including associated earthwork related to roads, residential sub-cluster development, the water storage tank, associated cut slope, and an access road.

LV16-26

While the project site can be seen from certain locations on Highway 101, the highway is not a designated scenic highway or a scenic corridor. Also, contrary to statements in the DEIR, the project is not located in a designated Sensitive Resource Area (SRA). Nor is the project located in a designated viewshed area. Therefore, the County policies do not require a finding of significance merely because a portion of a new residence at the project site may be visible from a public road.

While a portion of the project is located within the Highway 101 Corridor Design Standards, these standards do not require a mandatory finding of significance when a project simply can be seen from Highway 101, rather they are standards for minimizing the visual impacts of a project. As a means to preserve the rural character of the area, the Highway 101 standards encourage agricultural clustering projects ((LUO22.112.040)(A)(3)(f); see also, LUO 22.112.020(D)). As this project is a cluster development encouraged by the Highway 101 Corridor Design Standards, the project is designed to be more aesthetically pleasing than traditional residential construction and the potential visual impacts of the project have already been minimized.

LV16-27

The public space from which the project would be seen is Highway 101, which means that the project site will only be viewed from cars moving at high speeds (see Edna Ranch FEIR and Morabito Initial Study and Negative Declaration). There are few opportunities, if any, for the public to view the project while standing beside the road or at some other public space. We previously calculated the visibility of this project from Highway 101 in a moving vehicle in a manner similar to that applied to the Edna Ranch and Morabito projects. We determined that the project’s 7,000 feet perimeter along Highway 101 could only be seen for a little more than 60 seconds if a motorist is passing the site at approximately 60 miles per hour (ESA Technical Study, p. 27, fn. 4). Further complicating the ability of the public to view the project is the fact that Highway 101 in the project area has rolling topography and screening vegetation, as does the project site itself. Therefore, the project is only visible momentarily as motorists speed by over the rolling topography.

The DEIR applies a threshold to Highway 101, which is not a designated scenic highway, that is more restrictive than the standards applied to Highway 1, which is designated a “State Scenic Highway and ‘All American Road’ in the National Scenic Byway Program (LUO 22.92.020(c)(1)). The restrictions applicable to Highway 1 are limited to activities that are “visible from and within one mile of Highway 1” (LUO 22.92.020(c)(2)). The

LV16-28

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Highway 1 standards define “visible” as “...the ability to see 50 percent or more of the entire structure when viewed from a line of sight that is directly perpendicular from Highway 1 to the structure at the shortest distance from Highway 1” (LUO 22.92.020(c)(3)(a)). The DEIR finds significant impacts when the structures are less than 50 percent visible and located more than a mile away. As Highway 101 is not designated a scenic highway, the limitations on aesthetics should be less restrictive, not more, than those applied to Highway 1.

LV16-28
 (cont'd)

The Edna Ranch EIR also applied the visual thresholds established by the US Forest Service, and an adaptation of criteria for urban design used in *Fundamentals of Urban Design* by Hedman and Jaszewski (1984) (ESA Technical Study, p. 4). The US Forest Service assumes “a greater sensitivity by those driving, walking, and bicycling for pleasure and those engaged in recreation activities than those commuting for work-related purposes (ESA Technical Study, p. 5). Highway 101 in the project area is not safe for bicycling or walking. It is also a major road artery, used heavily by commuters and by large commercial trucks. The commercial nature and the use by commuters should be factored into the determination of how sensitive the public would be to minor changes in the aesthetics of the area.

LV16-29

There is another threshold or rating system that has been used by San Luis Obispo County and other counties in the state: the modified US Fish and Wildlife Service/ Lawrence Headley guideline (ESA Technical Study, p. 5). Under this rating system, the project site would generally be considered to have only “common” views. The combination of “common” views, the commuter and trucking traffic on Highway 101, and the number of already existing residences throughout the area surrounding the project, strongly suggests that the test for measuring aesthetic impacts should not be particularly sensitive to changes in the landscape or “rural character.”

LV16-30

The Applicant’s Mitigated Plan was designed specifically to reduce the visual impacts of the proposed project; the site plan was adjusted to relocate lots and roads. In addition, project features were adjusted to provide limitations on building heights and envelopes, and modify the location of other project features in order to reduce the visibility of the project site from Highway 101 and respect the intent of policies aimed at maintaining a rural character in the area.

LV16-31

The adjustments proposed in the Mitigated Project Alternative would reduce the visibility of the proposed project from Highway 101 when the rolling topography of both the highway and the project site are taken into consideration as well as the speeds at which motorists would pass the project area, which would result in punctuated glimpses, as opposed to sustained views, of the project site from Highway 101.

There are five reasons why we conclude that the Applicant’s Mitigated Plan would not have Class I Aesthetic impacts:

LV16-32

- (1) Agricultural cluster projects are encouraged by the Highway 101 Corridor standards for minimizing visual impacts – the project is a cluster project that complies with all corridor standards.
- (2) Most of the project is more than 1 mile from Highway 101 – which would even satisfy the standards for a scenic corridor like Highway 1.

LV-16-2



Mr. Janneck
August 23, 2013
Page 5

- (3) The project would be viewed from high speeds from rolling topography (as a major transportation route in the state, much of the traffic on Highway 101 is commuters and truck traffic); thus the public would only see the project site momentarily and many drivers would not be particularly sensitive to changes in the landscape.
- (4) There is existing development throughout the area surrounding the project, and the views could generally be classified as “common,” therefore, the area is not particularly sensitive to changes to the landscape or “rural character.”
- (5) Past precedent in the analysis of similar aesthetic impacts (Edna Valley Ranch and Moabito).

LV16-32
(cont'd)

Air Quality (AQ 9 and AQ 10)

As indicated in our previous comment letter, the Applicant’s Mitigated Plan would result in an increase in population consistent with the area-wide land use and growth assumptions in the Clean Air Plan. However, even though the Applicant’s Mitigated Plan would include many sustainable features, would maximize mitigation and would not be targeted at commuters, in light of the Sustainable Communities Strategy and GHG policies, our view has changed and we believe that this impact is properly identified as Class I.

LV16-33

Thank you for the opportunity to provide our input on the RRDEIR. Please do not hesitate to contact me if you have any questions or need further clarification.

Sincerely,

Kelly M. Ross, AICP
Managing Associate

LV-16-2



August 22, 2013

John Janneck
 Laetitia Vineyard & Winery
 453 Laetitia Vineyard Drive
 Arroyo Grande, CA 93420

RE: Laetitia Project, Upper Los Berros Road – Site Visit with CAL FIRE

Dear John,

On August 22, 2013, I met with Laurie Donnelly and Dennis Byrnes of CAL FIRE at the intersection of Dana Foothill and Upper Los Berros Road to discuss road improvements for Upper Los Berros Road to serve the Laetitia project. Laurie, Dennis and I walked the existing roadway from the existing bridge to the proposed main entry of the project and drove over the entire length to review the road conditions beyond the main entry over the remaining portion of the existing roadway.

LV16-34

It was determined that paving the road from the main entry to the existing bridge at the intersection of Dana Foothill and Upper Los Berros Road would be acceptable and that the balance of the road would remain in its existing condition. It was agreed that the paved portion of the road as stated above would be two (2), 10 foot lanes with two (2) foot shoulders on each side except where existing trees or creek banks necessitated narrowing of the improvements to eliminate any impacts to the existing trees or top of creek bank.

Sincerely,

RRM DESIGN GROUP

A handwritten signature in black ink that reads "Tim Walters". The signature is fluid and cursive, written over the printed name and title.

Tim J. Walters
 Principal

tw-jj Upper Los Berros site visit with Cal Fire 082213.docx1403034

LV-16-3

San Luis Obispo
 3765 S. Higuera St., Ste. 102
 San Luis Obispo, CA 93401
 P: (805) 543-1794 | F: (805) 543-4609

Santa Maria
 1862 S. Broadway, Ste. 101
 Santa Maria, CA 93454
 P: (805) 349-7788 | F: (805) 354-7050

Santa Barbara
 10 E. Figueroa St., Ste. 1
 Santa Barbara, CA 93101
 P: (805) 963-8283 | F: (805) 963-8184

San Clemente
 232 Avenida Fabricante, Ste. 232
 San Clemente, CA 92672
 P: (949) 361-7950 | F: (949) 361-7955

www.rrmdesign.com

ARCHITECTS | ENGINEERS | LANDSCAPE ARCHITECTS | PLANNERS | SURVEYORS
 A California Corporation | Victor Montgomery, Architect #C11090 | Jerry Michael, PE #36895, LS #6276 | Jeff Ferber, LA #2844

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**Responses to Laetitia Vineyard and Winery's Comments
(Exhibit LV-16)**

Comment No.	Comment
LV16-1	Please refer to responses to specific comments below.
LV16-2	Please refer to responses to specific comments below.
LV16-3	Based on review by the County Agriculture Department, the permanent conversion and loss of existing productive Farmland would result in a significant adverse impact, as documented in EIR Section V.B. Agricultural Resources. The applicant's proposal to replace removed vineyards would reduce the identified impact, but would not fully mitigate the permanent loss of productive Farmland because there is no guarantee that the replacement vineyards would be equitable, and the County cannot mandate agricultural production in the long-term.
LV16-4	At the time the proposed project was vested, the recommended buffers for vineyards ranged from 400 to 800 feet (San Luis Obispo County, 2002). The Applicant's Mitigated Project includes buffers ranging from 125 to 400 feet. Based on review by the County Agricultural Commissioner's Office, reduced buffers may result in land use conflicts, changes in agricultural practices to accommodate residential development, and lowered production yields (refer to Final EIR Section V.B. Agricultural Resources, AG Impact 2).
LV16-5	Implementation of the Applicant's Mitigated Alternative would result in the same number of trips as the proposed project. Please refer to Final EIR Section V.N. Transportation and Circulation, Figure V.N.-5 Project Trip Assignment. During the p.m. peak hour, implementation of the project would add 29 trips to the northbound Highway 101 off-ramp, 34 trips to the northbound 101 on-ramp, 46 trips to the southbound Highway 101 off-ramp, and 21 trips to the southbound Highway 101 on-ramp. These additional trips would add one additional passenger car per mile per lane on the affected ramp junctions. Based on review by County Public Works and Caltrans, the effect would be significant, and mitigation is recommended.
LV16-6	Based on review by Caltrans, the use of the guarded gate would not sufficiently inhibit persons from using the Laetitia Vineyard Drive/Highway 101 intersection.
LV16-7	Implementation of the Applicant's Mitigated Project Alternative would result in an overall reduction in significant visual impacts; however, as seen from Highway 101, the development of Main Road 2 and Sub-cluster E (Lots 87 through 105), including Lots 87 through 91 that are located within a designated Sensitive Resource Area, would result in unavoidable visual impacts. Landscape screening and architectural design would not reduce noticeability of the structures. The EIR recommendation to relocate the structures and roadway below the 660-foot elevation would allow for natural screening by existing topography.
LV16-8	As noted in the EIR, implementation of the Applicant's Mitigated Project Alternative and compliance with identified mitigation measures would reduce potentially significant impact AES Impact 5 to less than significant (refer to EIR Chapter VI Alternatives Analysis, C. Alternatives Analysis, 2. Mitigated Project).
LV16-9	Based on continued review of the project by Caltrans and CAL FIRE, use of Laetitia Vineyard Drive for secondary access would meet CAL FIRE's standards; however, as noted in the EIR, and in further correspondence from Caltrans (May 9, 2014), use of this driveway for secondary access "would constitute an unapproved use". The existing encroachment permit for the driveway access onto Highway 101 is identified for use as a winery and tasting room. In addition, use of this driveway for secondary access would "create its own set of public safety and traffic operations problems" (Caltrans 2014). Therefore, the Class I (significant and unavoidable) impact determination is appropriate because designation of this driveway for secondary access as required by the LUO and CAL FIRE standards may not be feasibly implemented.

Comment No.	Comment
LV16-10	Please refer to EIR Section V.L. Public Services and Utilities, cumulative impact PSU Impact 4 discussion, which states that “Based on consultation with CAL FIRE, a new fire station within the proximity of Los Berros Road and Highway 101 is necessary to provide life safety response to emergencies, and to mitigate the cumulative impact on fire protection services (Robert Lewin, 2004, 2007). ” PSU Impact 4 has been clarified to note: “...and facilities. The project would require a new fire station to provide life safety response in the immediate area.” The construction of a new facility may result in significant effects on the environment.
LV16-11	The loss and/or impacts to 94 trees and oak woodland would be offset by identified mitigation including oak tree replacement and conservation pursuant to the Kuehl Bill; however, the length of time required to establish equitable oak woodland habitat would result in a significant short and long-term adverse effect.
LV16-12	The commenter’s statement is noted.
LV16-13	Please refer to responses to comments LV14-2 through LV-14-7 regarding project-specific and cumulative impacts.
LV16-14	Please refer to responses to specific comments LV14-15 through LV14-24 regarding alternatives.
LV16-15	Please refer to responses to specific comments LV14-15 through LV14-24 regarding alternatives.
LV16-16	The identified alternatives meet the standards of an agricultural cluster. In other cases noted by the commenter, the County has not approved an agricultural cluster that would result in the direct removal of productive crops in order to accommodate residential development, and noted clusters include land use buffers based that are incorporated into the residential development, and do not require removal of productive farmland. Due to the extent of vineyards located on the project site, identifying alternatives that would avoid direct loss of productive farmland results in fewer units. Additional constraints related to biological, cultural, and visual resources further limit identification of alternatives that would avoid or substantially reduce identified significant effects.
LV16-17	The applicant’s statements, that the agricultural cluster is necessary to continue grape and wine production, will be considered by the County decision makers.
LV16-18	The proposed Single Cluster Alternative (93% Reduction) was identified by County Staff in order to consider a project that would not require the removal of vineyards, result in potentially significant land use inconsistencies with existing agricultural uses, that would avoid significant visual impacts, substantially reduce air quality impacts, avoid archaeological and significant biological resources, avoid off-site road improvements that would result in potentially significant impacts, and significantly reduce water demand. The intent of CEQA is to disclose the effects of the project on the environment, and identify measures and alternatives that would avoid or reduce noted effects. Consideration of project objectives must also be considered during alternatives development and review, as noted by the commenter. Based on the County’s review of the project alternatives, a cluster subdivision would be developed that would achieve most of the project objectives. It is understood that an applicant would want to take advantage of incentives offered under the Agriculture Cluster Ordinance; however, based on the significant adverse effects identified in the EIR, particularly related to the conversion and loss of productive Farmland, the County has considered reduced density alternatives that would result in a reduction in residential density compared to the proposed project. Each alternative would include an agricultural and/or open space easement based on the size of the development area. The commenter’s statements regarding the feasibility of this alternative will be considered by the County decision makers.
LV16-19	Please refer to Final EIR Chapter VI Alternatives Analysis, which provides clarifying descriptions, adjustments, and information regarding the alternatives.
LV16-20	The commenter’s statement is noted.

Comment No.	Comment
LV16-21	Please refer to EIR Chapter VI Alternatives Analysis and Table VI-3 Impact Comparison of Project Tract Design Alternatives, which identifies each impact and level of significance for each alternative. Disagreements between the County's and the commenter's conclusions are responded to under the response to comment table LV9-2 (Table VI-1 from RDEIR) and responses to comments LV14-3 through LV14-6.
ESA Letter (August 23, 2013)	
LV16-22	Please refer to responses to specific comments below.
LV16-23	Based on review by the County Agriculture Department, the permanent conversion and loss of existing productive Farmland would result in a significant adverse impact, as documented in EIR Section V.B. Agricultural Resources. The applicant's proposal to replace removed vineyards would reduce the identified impact, but would not fully mitigate the permanent loss of productive Farmland because there is no guarantee that the replacement vineyards would be equitable, and the County cannot mandate agricultural production in the long-term. In addition, the cumulative loss of Farmland in the County has resulted in a significant impact, and the project's incremental effect (loss of Farmland) would be cumulatively considerable and would set a precedent for removal of productive Farmland to accommodate residential (non-agricultural) development and buffer zones. These adverse effects remain significant and unavoidable.
LV16-24	Based on review by the County Agricultural Commissioner's Office, reduced buffers may result in land use conflicts, changes in agricultural practices to accommodate residential development, and lowered production yields. These actions would have an adverse effect on agricultural resources and would result in the conversion of productive farmland to non-agricultural use. In addition, as noted by the commenter, changes to agricultural practices are identified to reduce the potential for land use conflicts. The intent of the buffer policy is to allow for agricultural production to occur freely, and allow for enough distance between the uses to minimize the potential for complaints, trespass, and potential reductions in productivity. Based on review of the Biddle Ranch Final EIR, the County Department of Agriculture recommended a buffer distance of 300 feet between residential development and orchards (refer to page 4.11-5 of the Biddle Ranch Agricultural Cluster Subdivision Project Final EIR). The Final EIR also notes that residential development is not proposed in the Talley Vineyards area. The EIR notes that proposed residences would not be located within the buffer distances recommended by the County, and ongoing agricultural activities could result in nuisances and a potentially significant impact. The EIR recommended disclose of nuisance, and maintenance of a minimum 300-foot landscaped buffer between residential lots and orchards (mitigation measure AG-3(b)). Based on implementation of identified mitigation, including a 300-foot landscaped buffer, potential impacts were considered less than significant.
LV16-25	While the loss of these trees would be offset by identified mitigation including oak tree replacement and conservation pursuant to the Kuehl Bill, the length of time required to establish equitable oak woodland habitat would result in a significant short and long-term adverse effect. Comparison of the proposed project to the Biddle Ranch Final EIR is not an appropriate comparison, because the Biddle Ranch Final EIR identifies a different threshold of significance related to the loss of individual oak trees. The Biddle Ranch Final EIR notes that "Removal of individual oak trees is not considered significant from a biological resources perspective unless those trees contain active nests of raptors or other migratory birds or their removal would significantly alter the nature of the habitat in which they occur" (Biddle Ranch Final EIR page 4.1-25). This threshold is not applicable for the Laetitia Final EIR because at the time of the NOP, and throughout environmental analysis, removal and impacts to individual oak trees is considered a significant impact.

Comment No.	Comment
LV16-26	Based on review of the South County Area Plan, the western edge of the project site is located within an area subject to Highway 101 Corridor Design Standards, and the ridgeline extending through the central/eastern portion of the site is designated a Sensitive Resource Area (SRA-47) in the Agriculture and Open Space Element. This is shown in Final EIR Figure V.A.-1 (Sensitive Resource Area and Highway Corridor Design Boundary Map). The significance determination is not based on visibility alone, it is based on the context of the project site. The site is currently under agricultural production, and presents a highly scenic and undeveloped rural character. The upper elevation of the hillsides is generally undeveloped, highly scenic, and visible from long distances.
LV16-27	As documented in the EIR, compliance with the Highway Corridor Design Standards and incorporation of recommended mitigation would reduce potentially significant impacts, including an adverse effect on visual character (change from rural/agricultural to residential). Based on the location of the residences in Sub-Cluster E, the elevation does not allow for natural screening, and would result in a significant change in visual character. Lowering the location of the structures below existing intervening topography would reduce the noted adverse effect.
LV16-28	Visual impact analysis is site specific and project specific. Highway 1 and Highway 101 are different roadways, with different landscapes, vegetation, and scenic features. The County LUO (South County Area Plan) identifies areas subject to Highway Corridor Design Standards due to visual sensitivity more than one mile from Highway 101 (refer to Figure 112-8). The Cayucos Fringe Viewshed Ordinance (deleted from the County LUO in 2010) provided standards for projects that would typically require a Zoning Clearance. Many of these types of standards, in addition to Highway Corridor Design Standards required by the LUO, are incorporated as mitigation in the EIR (Section V.A. Aesthetics). These standards may address a single residence, but are not adequate to fully mitigate the adverse effects of a row of development located in the upper elevations of the ridgeline.
LV16-29	As noted in EIR Section V.A. Aesthetic Resources, the project site makes up a portion of the last remaining visible open space east of the highway between the urban areas of Nipomo and Arroyo Grande, and Newsome Ridge is identified as a Sensitive Resource Area (SRA-47) in the County Agriculture and Open Space Element. The County Open Space Element includes policies to identify and protect open space, prevent urban sprawl, and reduce visibility of structures as seen from Highway 101. The identification of visual protection standards within the greenspace areas between urban areas along the Highway 101 corridor in San Luis Obispo County (including the project site) is a clear indicator of visual sensitivity. Although Highway 101 is used by commuters and commercial truckers, it is also used by tourists, visitors, and residents and the change in visual character from agricultural/rural to residential use would be noticeable, even at high vehicle speeds.
LV16-30	Please refer to response to LV16-29 above.
LV16-31	As noted in EIR Chapter VI Alternatives Analysis, the Applicant's Mitigated Project would avoid or reduce most potentially significant visual impacts. The Applicant's Mitigated Project includes Sub-Cluster E, which would be partially located within SRA-47 (Newsome Ridge) and within the upper elevations of the ridgeline. The construction of a row of residences in the upper elevations of Los Berros Canyon would substantially increase overall awareness of the project and would result in a noticeable change in visual character, even at high vehicle speeds. Modifying Sub-Cluster E by locating it below the 660-foot elevation would provide natural topographic screening, and is recommended to fully mitigate this significant, adverse effect.
LV16-32	The proposed project, and Applicant's Mitigated Project includes five sub-clusters, which extend over two miles throughout the project site. The Applicant's Mitigated Project incorporates identified Highway Corridor Design Standards, which would reduce most visual impacts to less than significant. As noted above, the County has identified an SRA over one mile from Highway 101 along Newsome Ridge, indicating visual sensitivity. The County disagrees with the commenter that

Comment No.	Comment
	<p>the drivers would not be particularly sensitive to changes in the landscape within the greenbelt between Nipomo and Arroyo Grande. The County disagrees with the commenter that the views are “common” because the character of the site is dominated by the vineyards and undeveloped upper elevations of the hillsides and ridgelines to the east, which have high scenic value as evidenced by identified Highway Corridor Design Standard and SRA designations. Past precedent when conducting visual analysis is limited due to specific conditions and context of a project site. An impact that may not be significant in one location may be significant in another due to the differences in the environmental setting and other factors.</p>
LV16-33	<p>The commenter’s statement is noted.</p>
LV16-34	<p>In addition to CAL FIRE approval, County Public Works approval is also necessary to determine required road improvements. Based on consultation with Public Works, road improvements extending only to the main road may be permissible if other roads connecting to Upper Los Berros Road are not used by the project (County Public Works, 2013).</p>

Cleath-Harris Geologists, Inc.
11545 Los Osos Valley Road, Suite C-3
San Luis Obispo, California 93405
(805) 543-1413



July 18, 2013

Mr. Brian Pedrotti
Project Manager
County Planning and Building Department
976 Osos Street, Room 300
San Luis Obispo, CA 93408-2040

Subject: Comments on Section V.P. (Water Resources) of Laetitia RRDEIR

Dear Mr. Pedrotti:

As requested by John Janneck, Cleath-Harris Geologists (CHG) has reviewed the water resources portion of the July 2013 Revised Recirculated Draft Environmental Impact Report (RRDEIR) for Laetitia prepared by SWCA Environmental Consultants, including the Geosyntec Consultants reports in Appendix H. CHG's comments on Section V.P. (Water Resources) of the RRDEIR are presented below.

LV17-1

COMMENTS ON PREVIOUSLY CIRCULATED MATERIAL

CHG provided comments dated June 7, 2012, on the April 2012 Recirculated Draft Environmental Impact Report (RDEIR). Most of those comments, including major comments related to the project wells sustainable yield estimates, also apply to the RRDEIR and are attached for submittal herein. Upon review of the RRDEIR, the reduction in sustainable yield assigned to project wells (from 87 to 62 acre-feet per year; AFY) remains based on incorrect assumptions and procedures. A sustainable yield of 87 AFY was validated by Phase 3 testing and should be used for project determinations.

LV17-2

New comments on portions of the RRDEIR that were not previously circulated are discussed below, organized based on order of appearance in the RRDEIR text (Section V.P.). As noted above, the major comments relating to sustainable yield estimates are resubmitted as an attachment to this letter.

LV17-3

COMMENTS ON NEW MATERIAL

#1) Sustainable Yield - Phase 3 Methodology

LV17-4

The production capability of the proposed domestic wells is based on equivalent pumping rates, not the short-term operational pumping rates. (page V.P.-32)

LV-17

July 18, 2013



Geosyntec should define "equivalent pumping rate". If the equivalent pumping rate is the average water production rate over intermittent pumping periods, then the equivalent pumping rate for Phase 3 totaled 54 gpm (87AFY). At this pumping rate, water levels had stabilized, which is the basis for the CHG production capability estimate.

LV17-4
(cont'd)

Geosyntec's production capability calculation (Table V.P.-5), however, averages Phase 3 water production over both the intermittent pumping period *and* the post-production recovery period, which results in an average pumping rate of 40 gpm (65 AFY, adjusted to 62 AFY for other considerations).

If Geosyntec's production capability estimate of 62 AFY had been the "equivalent pumping rate" used during Phase 3 intermittent pumping, a calculation of production averaged over both intermittent pumping and post-pumping recovery periods would have produced a new production capability estimate that is lower than 62 AFY. In fact, no matter what production rate is selected for testing, the Geosyntec methodology will calculate a lower production capability estimate.

Water level recovery between intermittent pumping periods is the primary indicator of whether the equivalent pumping rate is sustainable, rather than post-production recovery. The post-production recoveries should be reviewed for any potential problems, but they should not be part of the calculations as performed by Geosyntec. The Phase 3 post-production recoveries at Laetitia project wells were satisfactory and complete.

#2) Sustainable Yield - Phase 3 Methodology

Change in water level in an aquifer in response to pumping is approximately proportional to the log of time; therefore, lines fitted to graphs of elapsed time vs. drawdown of water level data plotted on semi-log graphs are commonly used to analyze aquifer properties. Fitting lines to the entire set of water level data recorded during the Phase 3 testing and projection of these trends is reasonable and consistent with standard practice for analysis of aquifer testing data. (page V.P.-32)

LV17-5

Standard practice for the analysis of aquifer properties would typically involve a constant-discharge or step-discharge test, not the Phase 3 pumping schedule. Analysis of an aquifer test for physical parameters (properties) such as storativity, transmissivity, and hydraulic conductivity is not a sustainable yield analysis. Plotting an average drawdown trend beginning at a static level through an intermittent pumping data set will never indicate water level stabilization, therefore using this methodology to identify water level stabilization is not appropriate.



#3) Vineyard Water Use

Regarding vineyard water use, available data from the County’s Water Master Plan indicates that standard rates range from 0.7 afy per acre to 1.3 afy per acre (County of San Luis Obispo, 2012). This estimate includes 0.25 afy per acre for frost protection. If an assumption is made that drought conditions would require a higher irrigation rate, up to 1.3 afy per acre, then the total demand for existing vineyards would be approximately 812 afy, and the total demand for existing plus additional proposed vineyards (652 acres) would be 847.6 afy. Based on calculations for water demand, vineyard irrigation could range from 277.75 afy (using applicant provided historical rates during a non-drought year), to 456.4 afy (low factor standard), to 847.6 afy (high factor standard). Therefore, total water demand would range from 277.75 afy (assuming incorporation of applicant-proposed water conservation measures and continued vineyard irrigation/water conservation practices), to 494.09 afy, up to 938.33 afy. (page V.P.-36)

LV17-6

The assumption should not be made that water use at the vineyard may double or triple during drought. CHG has documented vineyard water use at Laetitia over several years, including a drought year, where water use was *less* than the current rate (1994; 13.37 inches of precipitation at County gage #38; 0.25 acre-feet per acre of vineyard). Furthermore, the irrigation rate used in the RRDEIR for Laetitia (0.34 acre-feet per acre) is based on water use during the 2011 calendar year, which only received 15.67 inches of precipitation at Station #38. Historical average annual water use in the vineyard (seven years of data, including dry growing seasons) has ranged from 0.25 to 0.34 acre-feet per acre, which is much more realistic for future Laetitia water demand than the RRDEIR figures. Comparison with County applied irrigation factors illustrates that Laetitia has lower than average water use, rather than the potential for higher water use.

#4) Supplemental Water Level Information

Supplemental information provided by the applicant for agricultural Wells 1, 4, 5, and 9 show downward trends of water level for each well during the testing period, despite the increased rainfall in 2010 and 2011. Declining groundwater levels do not indicate that Phase 3 pumping rates are not sustainable, but rather that the system did not reach equilibrium. (page V.P.-38)

LV17-7

CHG provided supplemental water information, but that information showed rising trends (not downward trends) in the agricultural well water levels during the testing period. CHG provided a hydrograph of these four wells which is part of the attached June 7, 2012 comments to the RDEIR (Figure 7, attached). Detailed water level hydrographs for Well 5 and Well 9 are also shown in Figure 16 of Geosyntec's 2011 report and also show rising water levels during testing.



#5) Well 9 Interference

The relatively close proximity of Well 9 (agricultural) to Wells 10 and 11 (proposed domestic supply), and the fact these wells all tap groundwater within fractures in the Obispo Tuff, is cause for concern that the long-term production rate of Well 9 may decrease with operation of Wells 10 and 11. Testing indicated hydraulic connection between Wells 9 and 11, but small influence of pumping from one on the other. However, Well 9 is close to a north-south trending drainage, which is also close to Well 10. If pumping from Well 10 induces increased recharge from this drainage to the fractured tuff unit in which Well 10 is located, less water may be available downstream for recharge to lower fractured tuff unit in which Well 9 is completed. Therefore, compliance with the sustainable pumping rates identified for each proposed domestic well is recommended to avoid adverse effects to on- and offsite wells. (page V.P.-41)

LV17-8

The north-south trending drainage that is close to Well 9 is not the same drainage that is close to Well 10. These two drainages are 1,000 feet apart. Well 10 operations will not significantly interfere or impact Well 9.

Sincerely,

CLEATH-HARRIS GEOLOGISTS, INC.

Spencer J. Harris, CHG 633
Associate Hydrogeologist

Timothy S. Cleath, CHG 81
Principal Hydrogeologist

attachment

LV17-9



ATTACHMENT

June 7, 2012 Comments on Laetitia RDEIR

Cleath-Harris Geologists, Inc.
11545 Los Osos Valley Road, Suite C-3
San Luis Obispo, California 93405
(805) 543-1413



June 7, 2012

APPLICABLE RRDEIR PAGE REFERENCES ADDED

Mr. John Janneck
1116 Cory Avenue
Los Angeles, CA 90069

Subject: Comments on Section V, Chapter B (Water Resources) of Laetitia RDEIR

Dear Mr. Janneck:

Cleath-Harris Geologists (CHG) has reviewed the water resources portion of the April 2012 Recirculated Draft Environmental Impact Report (RDEIR) for Laetitia prepared by SWCA Environmental Consultants, including the Geosyntec Consultants report in Appendix B. The RDEIR reduction in sustainable yield assigned to project wells (from 87 to 62 acre-feet per year) is based on incorrect assumptions and procedures. A sustainable yield of 87 acre-feet per year was validated by Phase 3 testing and should be used for project determinations.

LV17-10

Problems with the RDEIR sustainable yield interpretation are discussed under Major Comments below. General comments follow, organized based on order of appearance in the RDEIR text (Section V, Chapter B). Supporting figures are attached.

MAJOR COMMENTS

#1) Sustainable Yield - Phase 3 Water Level Stability

LV17-11

Based on the fact that water levels in three of the four wells (Wells 10, 14, and 15) were still generally dropping during the Phase 3 pumping, and groundwater in the aquifers near these wells did not reach equilibrium levels, continued pumping at the Phase 3 rates (54 gpm) will continue to deplete aquifer storage. (page V-51) V.P.-29 to 30

The Phase 3 testing established that water levels continued to drop at three of the four wells with pumping at the estimated sustainable yield rates; thus, equilibrium groundwater conditions were not attained with the Phase 3 production rates and depletion of groundwater storage continued. (page V-52) V.P.-31

According to the report, Phase 3 testing established that water levels continued to drop at three of the four project wells, which is the primary reason given for discounting the sustainable yield values estimated by CHG. Geosyntec used trend lines to conclude that water levels in Well 10, 14, and 15 did not stabilize during the Phase 3 testing. These trend lines were incorrectly



projected over the entire Phase 3 data set (from the onset of pumping), rather than data from the end of Phase 3, when stability was evident.

LV17-11

Stability implies zero net water level drawdown over time. In order for water levels to stabilize at a pumping well, a cone of depression (drawdown cone) needs to develop and expand sufficiently to capture local recharge, which takes time. It is not appropriate to include the static water level and early drawdown data at a well when evaluating trends for water level stability.

The attached Figures 1 through 3 show Phase 3 hydrographs for the three wells in question. Water levels at all three wells stabilized during the last month of testing, as evident by the projected trend lines. Well 10 is stable (no net decline) over the last three cycles of pumping. Wells 14 and 15 are stable over the last five cycles of pumping.

#2) Sustainable Yield - Phase 3 Methodology

LV17-12

The "equilibrium discharge rate" approach used for the Phase 1 and 2 data was also used to calculate the revised estimates of "equilibrium interval" sustainable pumping rates by accounting for the time required for water levels to recover to pre-Phase 3 "operational static" elevations and scaling the Phase 3 pumping rates accordingly. (page V-52) V.P.-31

The approach does not estimate the *maximum* sustainable yield, but will always result in a yield estimate *less* than the actual pumping rate during testing, since recovery time is factored into the average production rate. Phase 3 was effectively a continuous pumping cycle at a sustainable yield rate determined from the analysis of the Phase 1-2 baseline period data. Water level stability was achieved during Phase 3 at the project wells following the development and expansion of the cones of depression, validating the yield estimates. Despite evidence that the wells were responding as anticipated to sustainable yield production, Geosyntec repeated the "equilibrium discharge rate" approach using Phase 3 data, which unnecessarily and significantly reduced the sustainable yield estimate.

#3) Sustainable Yield - Well 11

LV17-13

Although the production capacity of Well 11 was substantially higher than the other wells, water level data in this well show rapid recharge likely due to good hydraulic connection between the aquifer and base flow in Los Berros Creek. Based on a review of this data, Geosyntec recommends a modified production schedule, which includes curtailment of pumping from Well 11 from August through November each year to help preserve base flow in Los Berros Creek during the dry season, but a slight increase in Well 11 pumping from December through July. (page V-52) V.P.-31



Geosyntec reduced the estimated yield for Well 11 from 38 acre-feet per year to 28.1 acre-feet per year by first distributing the sustainable yield evenly throughout the year, then eliminating pumping during four months (as a stream flow impacts mitigation measure) and finally by increasing production “slightly” (10 percent) during the remaining eight months. No rationale is given for why Well 11 would not be able to pump the estimated sustainable yield of 38 acre-feet, from December through July of each year. The well is capable of pumping in excess of 100 gallons per minute (gpm), a rate which would produce 38 acre feet in less than three months.

LV17-13
(cont'd)

GENERAL COMMENTS

#4) Rainfall

LV17-14

Based on a contour map of equal mean precipitation for the period of record from 1870 to 1995, the expected mean annual rainfall for the project site is approximately 17 inches. Beginning in January 2010, rainfall was recorded at three rain gauges installed at the project site. Based on a correlation of the on-site data with a private guage in east Arroyo Grande Valley, the rainfall was extended back to July 2009. Based on a comparison of current and historic data, the total rainfall in the project area between July 2009 and March 2011 was 138 percent of average. (page V-35) V.P.-3

The referenced isohyetal map (from DWR, 2002) does not include rain stations (such as Station 175.1) that would reflect the effects of orographic lift on precipitation in upper Los Berros Canyon. Station 175.1, active from 1965 to 1998, registered 22.53 inches average precipitation approximately 1/4 mile east of Laetitia and at a similar elevation. Station 38, which was the closest gage used for the DWR contour map and which was also used by Geosyntec for site characterization, is two miles south of Laetitia and at a lower elevation in the Nipomo Valley.

The location and elevation of Station 175.1, along with close to 30 years of records, makes this upper Los Barros Canyon station the best available choice to represent on-site precipitation in the vicinity of the project wells. Based on a comparison of on-site data with historical monthly averages at Station 175.1, total rainfall in the project area between July 2009 and March 2011 was 116 percent of average, with rainfall during Phase 1 and Phase 2 (used for the sustainable yield baseline period) approximately 105 percent of average.

#5) Hydrogeology description

LV17-15

The project site is underlain by Early Miocene age rocks of the Obispo and Monterey Formations, Pliocene-Pleistocene are rocks of the Paso Robles Formation, and localized shallow unconsolidated alluvial deposits along Los Berros Creek, Adobe Creek, and other drainages. The location of onsite wells and underlying geology is shown in Figures V.B.-3 and



V.B.-4. The majority of wells in the vicinity of the project site are completed within fractured bedrock aquifers in the Obispo and Monterey Formations. (page V-36) **V.P.-4**

LV17-15
(cont'd)

It would be informative to add that, in the site vicinity, the Paso Robles Formation is largely unsaturated and above the regional water table, as this unit commonly has productive aquifers in other areas of the county. The alluvium along Los Berros Creek is a water-supply aquifer, unlike the alluvial deposits of Adobe Creek or other drainages in the upper canyon. The location of the Wilmar Avenue fault is incorrect on the western side of Figure V.B.-3 (DWR, 2002).

#6) Groundwater Rights

LV17-16

The amount of groundwater that can be used by an overlying groundwater rights holder is not defined by law. An overlying property owner is entitled to all of the water the owner can pump and beneficially use on his property until it adversely affects another neighboring property owner's ability to adequately produce water for use on their property. Groundwater can be produced by the project applicant for use on their properties on the basis of this right (Summit Station Final EIR, 2004). (page V-49) **V.P-23 This comment has been addressed**

Referencing a prior EIR to support water rights statements is not adequate. The State Water Resources Control Board web site provides specific language that may be quoted verbatim, with the proper referenced authority.

#7) Project Water Supply and Quality - Sustainable Yield Definition

LV17-17

Sustainable yield does not have a "correct" value, but is a subjective concept, and its evaluation an interdisciplinary issue. The concept of sustainable yield has been broadly defined as the amount of water that can be pumped indefinitely without unacceptable environmental, economic, or social consequences (e.g., Alley et al., 1999). According to the World Commission on Environmental and Development (1987), sustainable development must meet the needs of the present without compromising the ability of future generations to also meet their needs. Typically, however, sustainable yield must also allow for sufficient natural discharge of groundwater to preserve streams, springs, wetlands, and riparian corridor ecosystems (e.g., Sophocleous, 1977, 2000). (page V-51) **V.P.-30**

According to Alley, it is the definition of "unacceptable consequences" that is subjective, not the concept of sustainable yield (Alley et al., 1999). In the context of consequences from Laetitia's project, this is where the California Environmental Quality Act (CEQA) should be referenced. CEQA Appendix G provides the required determinations for evaluating unacceptable consequences and should replace the above references.



#8) Project Water Supply and Quality - Achieving Equilibrium

With continued pumping, the water level in an aquifer near a well can continue to drop ("drawdown") until it reaches the bottom of the well screen or pump intake, or the water levels may stabilize if capture expands to equal the pumping rate and a new equilibrium groundwater condition is attained. If a new equilibrium condition is attained the pumping rate theoretically may be sustainable with no further decline in water level (i.e. no additional depletion of groundwater in storage). However, the time to achieve equilibrium pumping conditions can take decades or centuries. And if the groundwater pumping exceeds the potential for capture, new equilibrium conditions are not possible (e.g. Bredehoeft and Durbin, 2009; Walton, 2011; Alley and Leake, 2004). (page V-51) V.P.-31

LV17-18

The above statement is incomplete and misleading. The time to achieve equilibrium conditions can also take a few hours (Driscoll, 1989). As quoted in one of the above references, "Available literature indicates that response time can range from days to centuries or more (Bredehoeft et al. 1982; Sophocleous 2000; Alley et al. 2002; Bredehoeft and Kendy 2008)" (Walton, 2011). If decades or centuries were necessary, as implied by Geosyntec, then there would be no basis for requiring equilibrium be achieved during project testing to support the sustainable yield evaluation.

#9) Estimated Project Water Demand

V.P.-36 this comment has been addressed

The project includes the use of approximately 37 afy of tertiary treated water for agricultural irrigation, which would contribute to groundwater recharge. (Page V-64)

LV17-19

Treated wastewater may also be used for residential landscaping. Up to 37 acre-feet of project water demand could be offset through wastewater reuse, which should be listed as a credit in Table V.B.-5.

#10) Effects on Groundwater - Operational Static

Continuing general decline of water levels in Wells 10, 14, and 15 during the three phases of pumping indicates that stable equilibrium groundwater conditions were not attained, and continued decline in water levels at three of the four wells during the Phase 3 pumping indicates that the 87 afy sustainable yield estimated by Cleath-Harris Geologists (2010) will not result in full recovery to "the Phase 1 operational static water levels", but will cause additional depletion of groundwater storage. (page V-66) V.P.-38

LV17-20



Water levels did not continue to decline during the three phases of pumping (see attached Figures 4 through 6). Water level drawdown at Wells 10, 14 and 15 during Phase 3 was less than during Phase 2 (i.e. water levels were higher), as anticipated, and also equilibrated in all wells prior to the end of testing (CHG 2011; see comment #1).

LV17-20
(cont'd)

The basis for the sustainable yield estimate was the baseline interval, beginning and ending at the Phase 1 operational static water level, during which an equivalent of 87 AFY was produced. The Phase 1, Phase 2, and Phase 3 operational static levels are all different, and relate to the well production and pumping schedules for each Phase. In order for water levels to return to the Phase 1 operational static under an 87 AFY production rate, the pumping schedule would need to be similar to the baseline interval.

The pumping schedule for Phase 3 was effectively a continuous production rate of 87 AFY (on a weekly basis), and a new operational static was established, as can be seen in Figures 1 through 3. Water levels would return to the Phase 1 operational static if the distribution of pumping was shifted back to the baseline interval schedule (and still provide 87 AFY).

#11) Effects on Groundwater - Time Frame and Climate Change

LV17-21

The projections of downward water level trends exhibited during testing and the unknown time to possibly achieve equilibrium pumping conditions underscores that time frame is an important issue with respect to long-term viability of the wells to meet the proposed project demands. Climate change is predicted to result in rainfall occurring in fewer and more intense periods (DWR, 2002), which would likely results in more runoff, perhaps less recharge to groundwater, and possibly long-term decrease in base flow of creeks. (page V-66) V.P.-38

As previously mentioned (see comment #8), Geosyntec appears to be using a double standard, evaluating water level trends for equilibrium (required for sustainable yield verification), while at the same time saying the time required to "possibly achieve" equilibrium is unknown, and may take decades or centuries.

Although climate change is a potential concern for water supplies in California, there is considerable uncertainty and a wide range of predictions by global circulation models for future precipitation trends. As summarized on the Cal-Adapt web site (<http://cal-adapt.org/>):

On average, the projections show little change in total annual precipitation in California. Furthermore, among several models, precipitation projections do not show a consistent trend during the next century.

The concept that fewer, more intense rainfall events would result in less groundwater recharge is predicated on the assumption that the increased runoff will flow out of the "basin" areas. In



some situations this would be correct, but where alluvial storage is available to capture runoff, such as along the lower reaches of Los Berros Creek, the increased runoff from the upper canyon watershed may be beneficial, rather than detrimental, to the local water supply.

LV17-21
(cont'd)

#12) Effects on Los Berros Creek

LV17-22

During the months of August through November, the proposed pumping rate from Well 11 exceeds 30 percent of the average flow in Los Berros Creek. (page V-66) V.P.-40

There is no "proposed pumping rate" for Well 11 during specific months. The well has been assigned an estimated sustainable yield rate that is expressed as an annual average of 38 acre feet. The well is capable of pumping in excess of 100 gpm, a rate which would produce 38 acre feet in less than three months.

#13) Interference - Agricultural Well History

LV17-23

Although there are only a few data points for Wells F&T-1, F&T-2, FVW-1, and FWV-3, over periods of several years, the data show a general decline in groundwater elevation at these wells over 30 years. (page V-67) V.P.-41

The RDEIR updates agricultural well production for 2011 but for some reason does not update Figure 18 (water levels), which only includes measurements through September 2009 (drought). CHG has attached an updated figure to reflect spring 2011 measurements (within the time frame of RDEIR analysis). As shown in the updated figure, water levels have recovered following the recent drought (attached Figure 7).

#14) Interference - Wells 9, 10, and 11

LV17-24

The relatively close proximity of Well 9 (agricultural) to Wells 10 and 11 (proposed domestic supply), and the fact that these wells all tap groundwater within fractures in Obispo Tuff, is cause for concern that the long-term production rate of Well 9 may decrease with operation of Wells 10 and 11. Therefore, compliance with the sustainable pumping rates identified for each proposed domestic well is recommended to avoid adverse effects to on and offsite wells. (page V-68) V.P.-41

Well 10 is completed within a resistant Obispo Formation tuff aquifer zone that is a distinct mapped unit which is hydraulically isolated by non-water bearing rocks from both the Monterey Formation and the Obispo Formation aquifers tapped by Wells 9 and 11 (CHG, 2010). There is



no physical connection between Well 10 and other wells that could results in interference due to pumping.

LV17-24
(cont'd)

Wells 9 and 11 are located approximately 2,000 feet apart, within a relatively thick sequence of resistant tuff (close to 1,000 feet thick). Interference testing was conducted from March 29 to 31, 2010, which indicated potential water level drawdown of up to a few tenths of a foot at Well 11 when operating Well 9. This magnitude of interference from Well 9 will not affect production at Well 11. Data interpreted from Phase 1 production testing, which evaluated Well 9 water levels for interference, concluded that project well production had no significant effect on Well 9 (CHG, 2010).

#15) WAT/mm-1.c

LV17-25

The Water Master Plan shall incorporate the following restrictions:

1. *Use of Well 11 shall be prohibited during the months of August through November.*
2. *Maximum yield for Well 10 shall not exceed 4.0 gpm (6.5 afy).*
3. *Maximum yield for Well 11 (during the months of December through July) shall not exceed 26.1 gpm (28.1 afy)*
4. *Maximum yield for Well 14 shall not exceed 5.6 gpm (9.1 afy)*
5. *Total maximum yield for Well 15 shall not exceed 11.6 gpm (18.8 afy).*
6. *Total maximum yield (including Wells 10,11,14, and 15) shall not exceed 38.7 gpm (62.4 afy). (page V-69)*

V.P. 44 The maximum yield gpm concern has been addressed.

The above restrictions on well yield are misleading when reported in gpm, since the wells will not be operated continuously. Pumping schedules accommodate facilities maintenance, meet peak demand flows, and may take advantage of off-peak energy costs. References to maximum yield gpm should be removed from the mitigation measure because they ignore the operational requirements of the water system. In addition, the maximum annual well yields should not be less than the sustainable yield estimates provided by CHG (2010) and supported by Phase 3 testing. These sustainable yields are as follows:

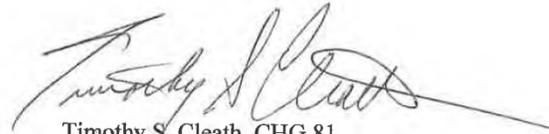
- Well 10: 10 acre-feet per year
- Well 11: 38 acre-feet per year
- Well 14: 19 acre-feet per year
- Well 15: 20 acre-feet per year
- TOTAL: 87 acre-feet per year



Sincerely,

CLEATH-HARRIS GEOLOGISTS, INC.


Spencer J. Harris, CHG 633
Associate Hydrogeologist


Timothy S. Cleath, CHG 81
Principal Hydrogeologist

attachments



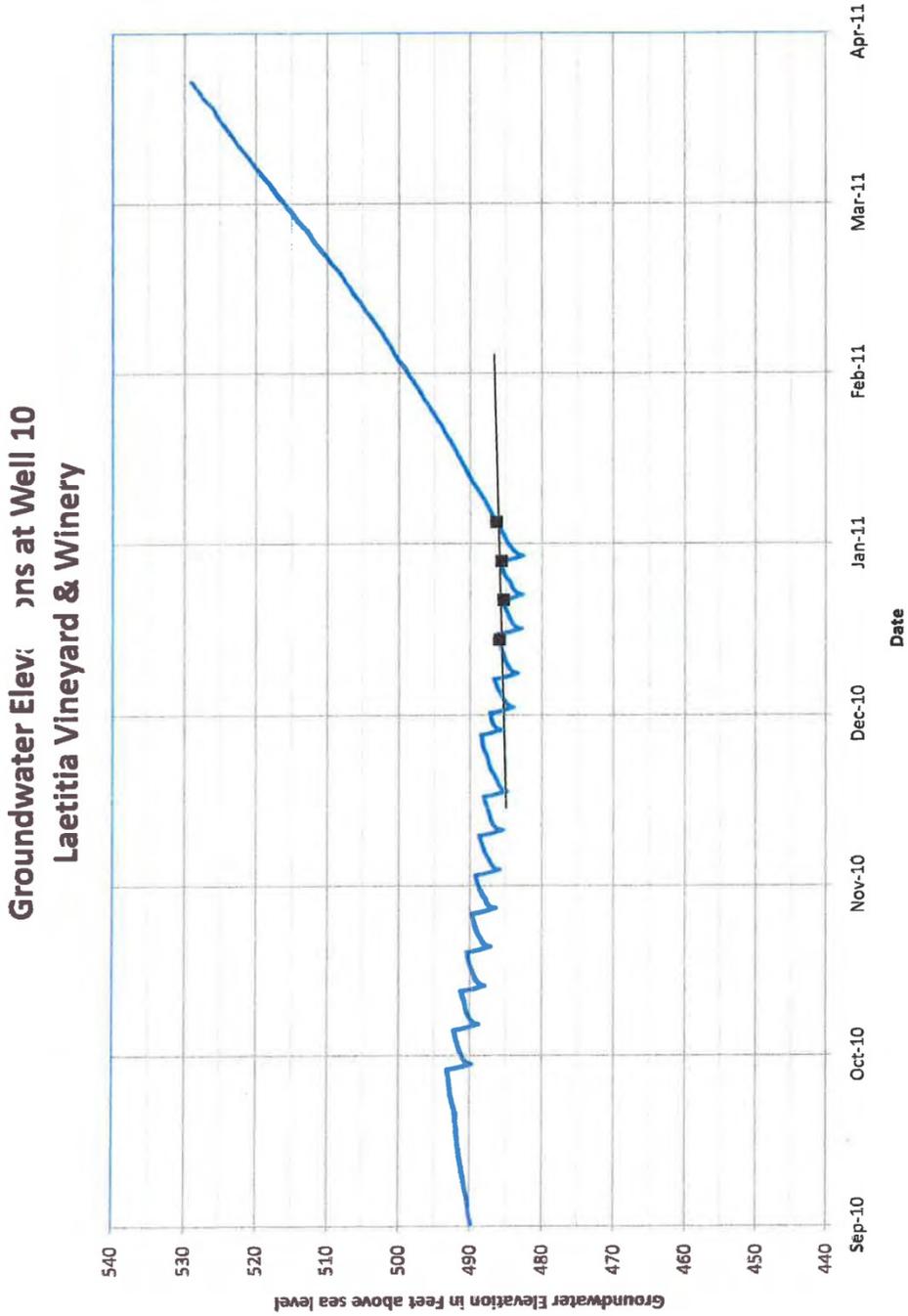
REFERENCES

- Alley, William M., Thomas E. Reilly, and O. Lehn Franke, 1999, Sustainability of Ground-Water Resources, U.S.G.S. Circular 1186.
- California Department of Water Resources (DWR), 2002, Water Resources of the Arroyo Grande - Nipomo Mesa Area, Southern District Report.
- Cleath-Harris Geologists, 2010, Laetitia Well Testing and Sustainable Yield Assessment, Los Berros Canyon, San Luis Obispo County, July 2010.
- Cleath-Harris Geologists, 2011, Phase 3 Addendum - Laetitia Well Testing and Sustainable Yield Assessment, Los Berros Canyon, San Luis Obispo County, March 2011
- Driscoll, Fletcher G., 1989, Groundwater and Wells - Second Edition, Johnson Filtration Systems, 1089 pp.
- Geosyntec, 2011, Review of Well Testing and Sustainable Yield Assessment, Proposed Laetitia Agricultural Subdivision, San Luis Obispo, California, October 2011.
- Walton, William C., 2011, Aquifer System Response Time and Groundwater Supply Management, Ground Water, vol. 49, No 2, p. 126-127.



ATTACHMENTS

- Figure 1 - Well 10 Hydrograph, Phase 3
- Figure 2 - Well 14 Hydrograph, Phase 3
- Figure 3 - Well 15 Hydrograph, Phase 3
- Figure 4 - Well 10 Hydrograph (all phases)
- Figure 5 - Well 14 Hydrograph (all phases)
- Figure 6 - Well 15 hydrograph (all phases)
- Figure 7 - Updated Geosyntec Figure 18



**Groundwater Elevations at Well 10
Laetitia Vineyard & Winery**

Figure 1
Well 10 Hydrograph - Phase 3
Laetitia Agricultural Cluster

LV17-26
(cont'd)

Cleath-Harris Geologists

Groundwater Elevations at Well 14 Laetitia Vineyard & Winery

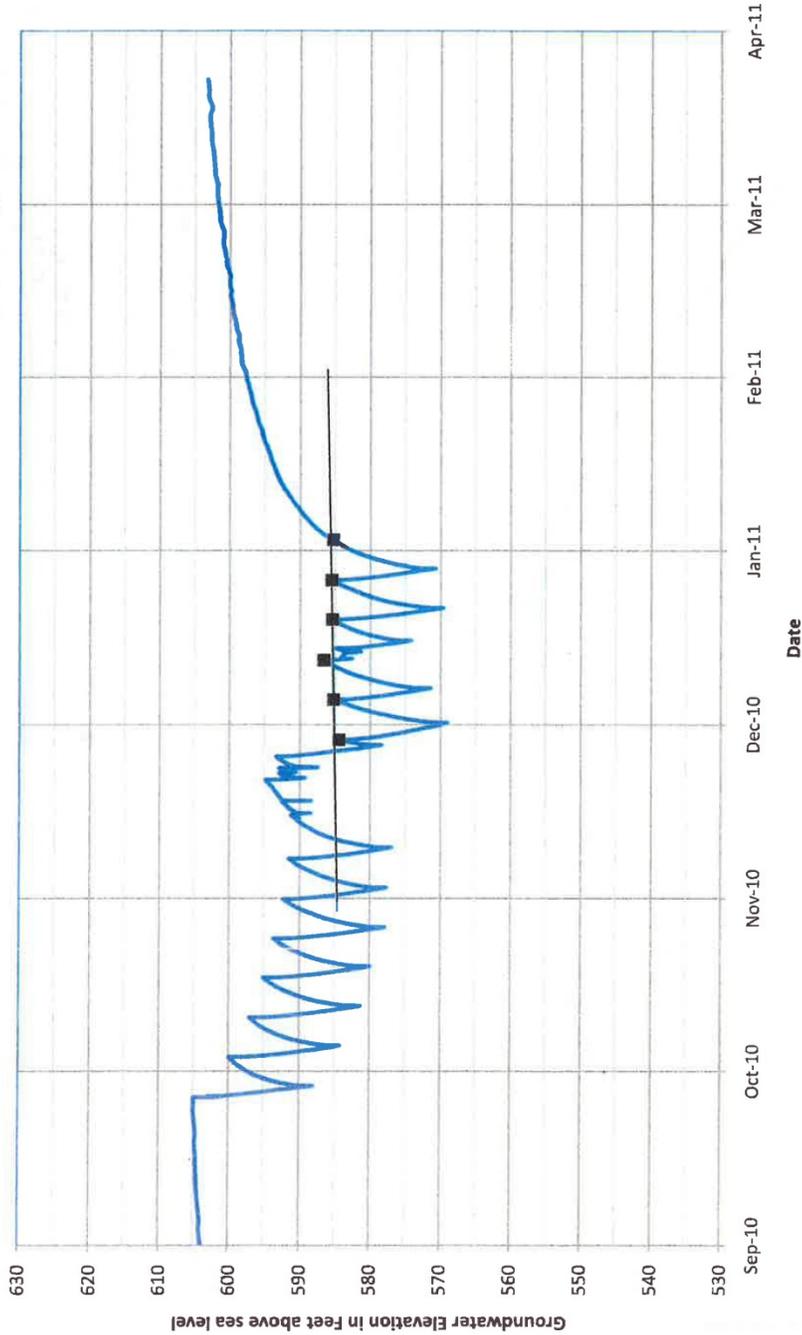
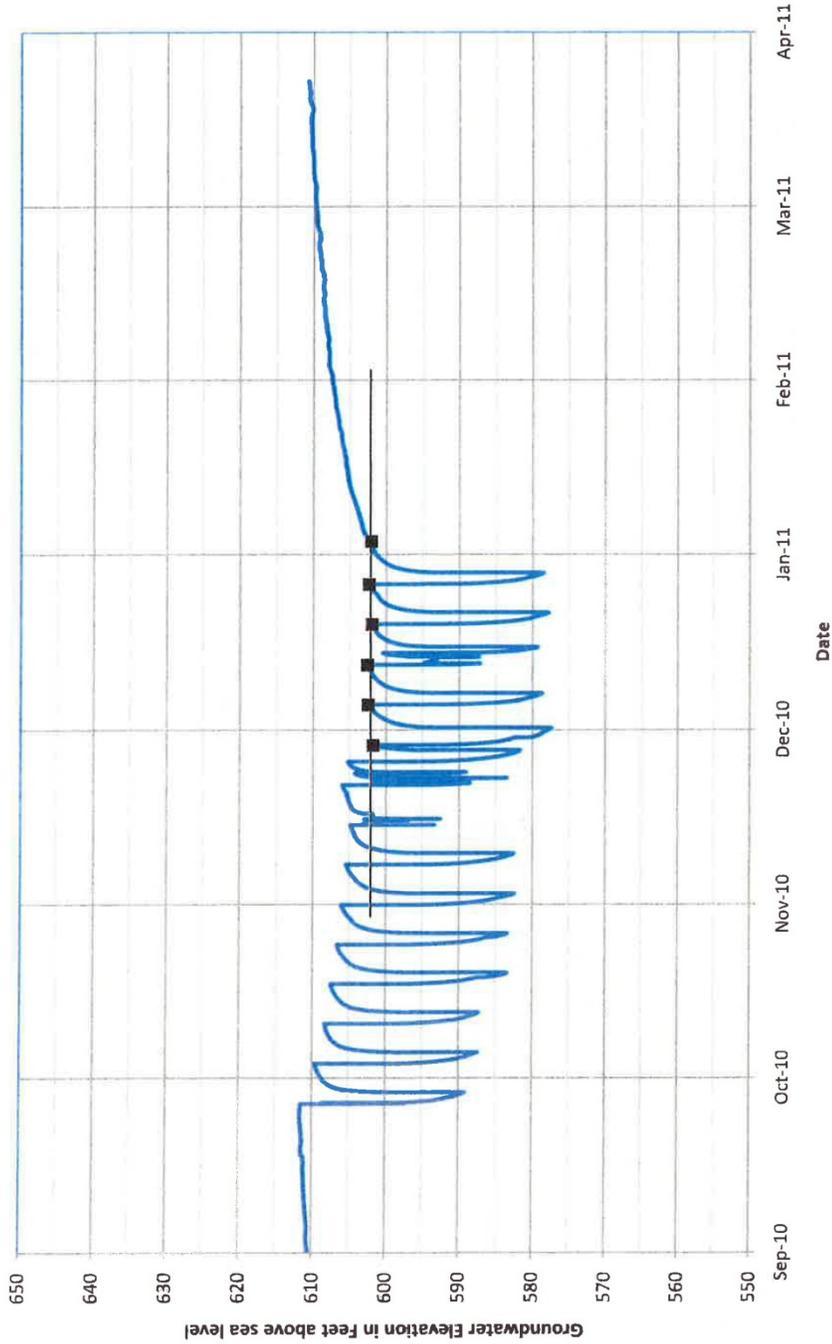


Figure 2
Well 14 Hydrograph - Phase 3
Laetitia Agricultural Cluster

LV17-26
(cont'd)

Cleath-Harris Geologist

**Groundwater Elevations at Well 15
Laetitia Vineyard & Winery**



**Figure 3
Well 15 Hydrograph - Phase 3
Laetitia Agricultural Cluster**

LV17-26
(cont'd)

Cleath-Harris Geologists

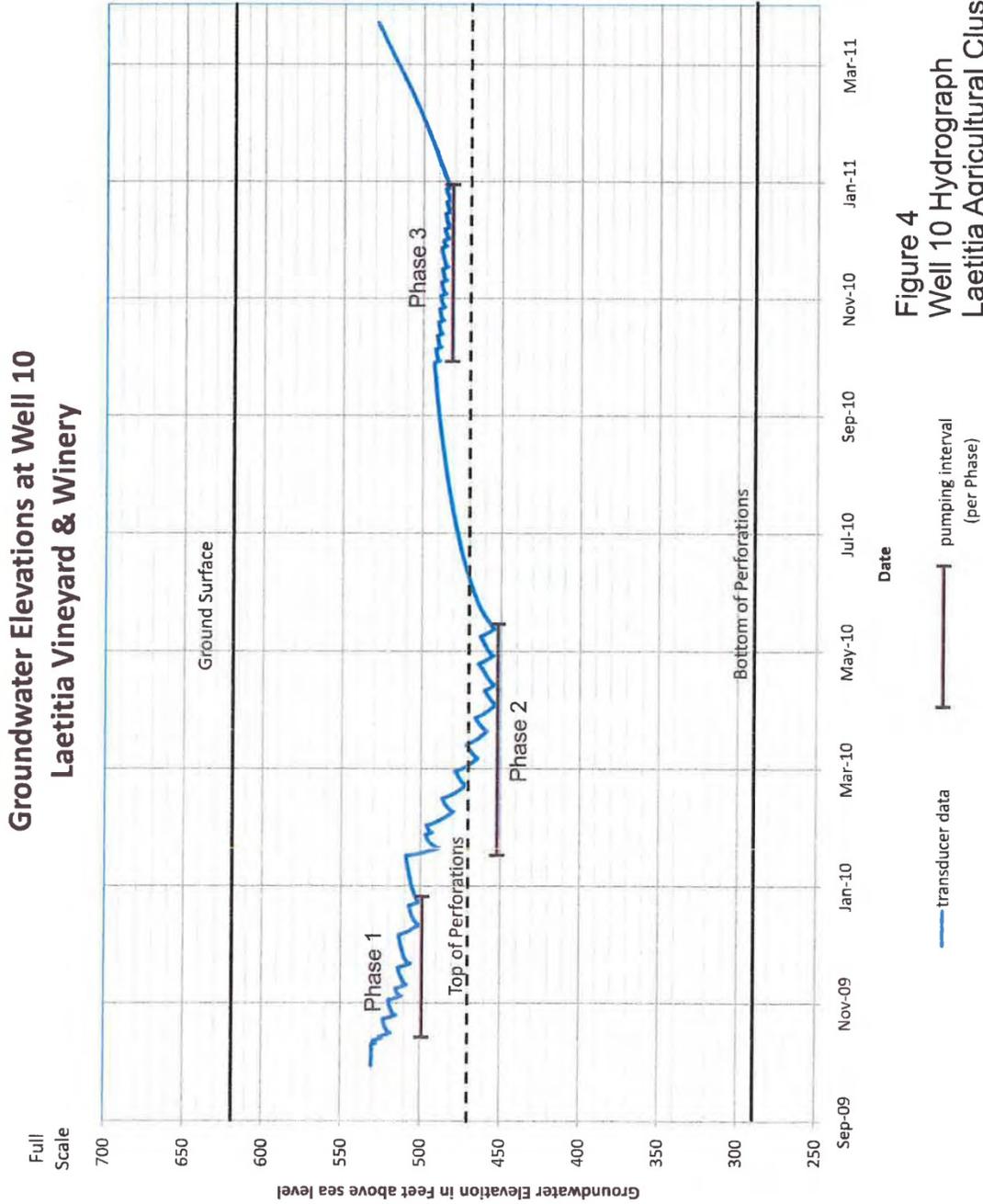
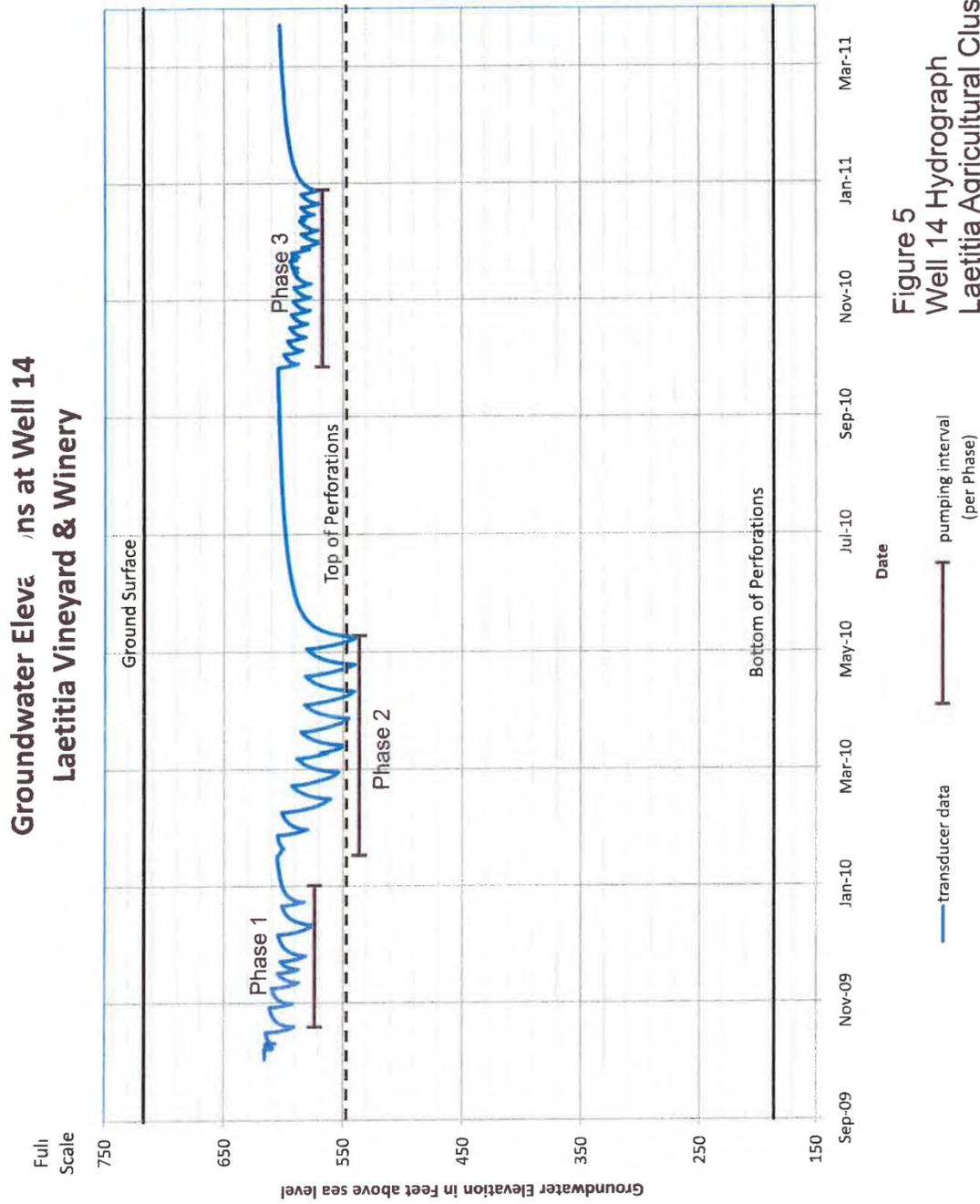


Figure 4
Well 10 Hydrograph
Laetitia Agricultural Cluster

LV17-26
(cont'd)

Cleath-Harris Geologis



**Figure 5
Well 14 Hydrograph
Laetitia Agricultural Cluster**

LV17-26
(cont'd)

Cleath-Harris Geologists

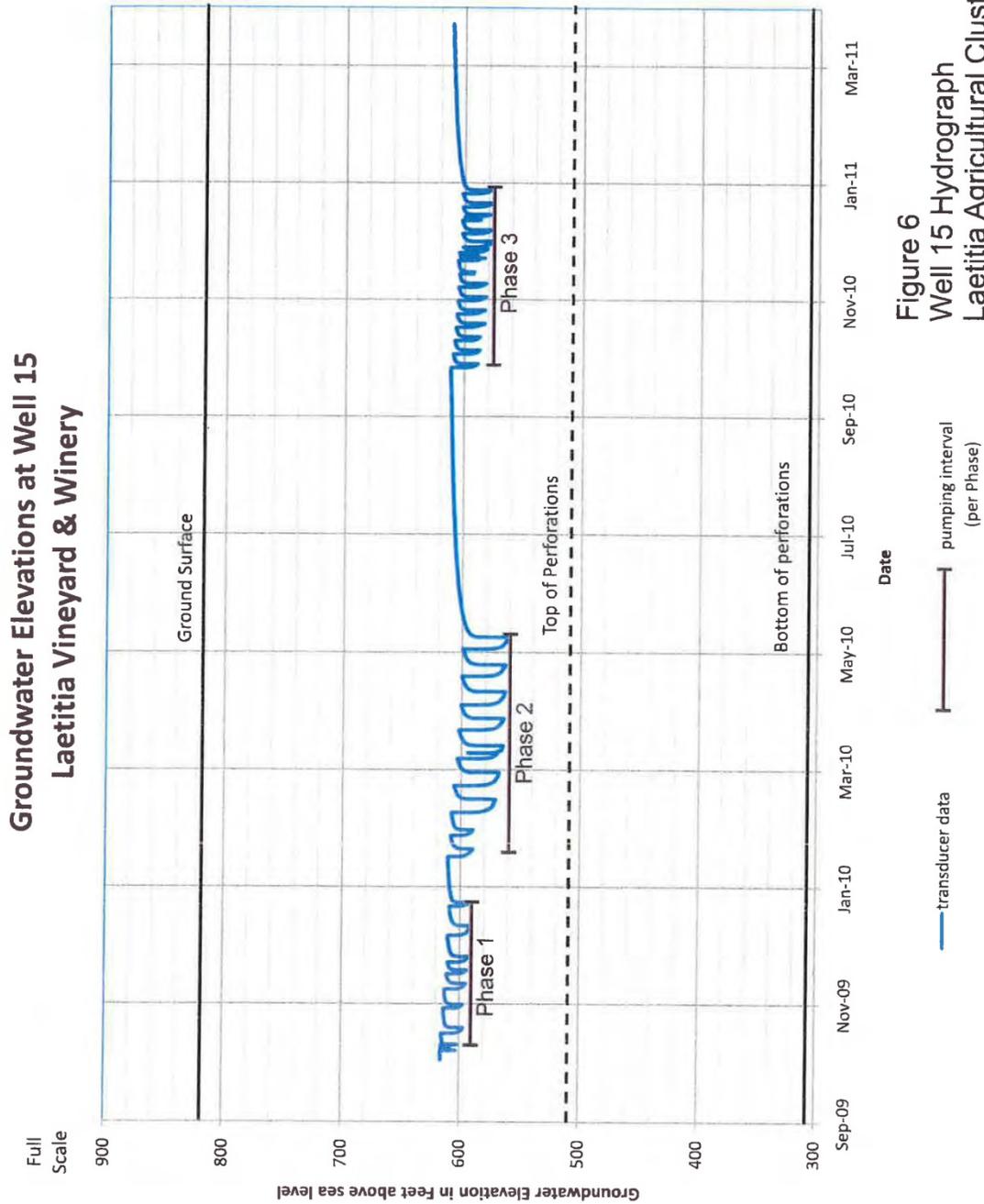


Figure 6
Well 15 Hydrograph
Laetitia Agricultural Cluster

LV17-26
(cont'd)

Cleath-Harris Geologist

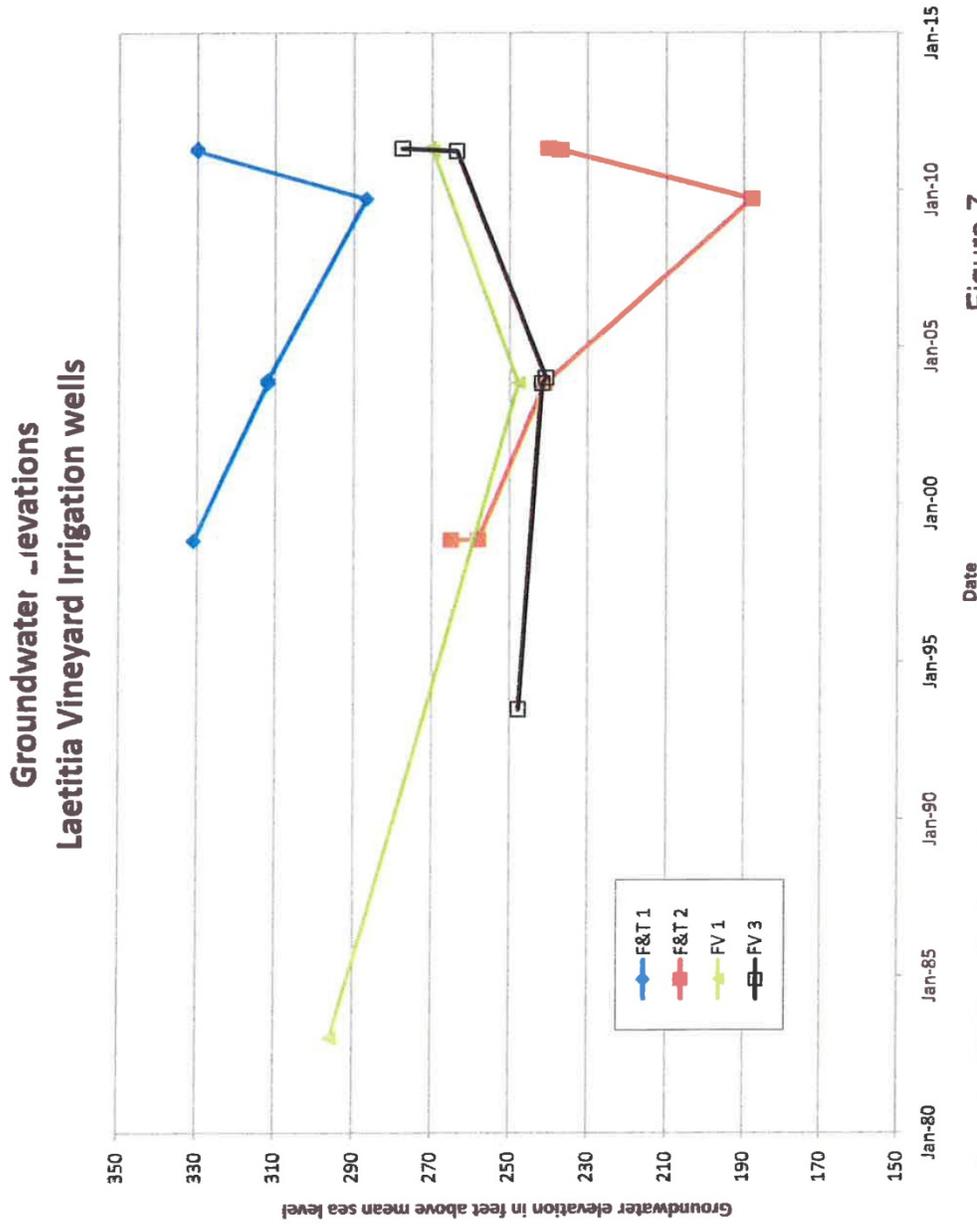


Figure 7
Updated Geosyntec Figure 18
Laetitia Agricultural Cluster

Geosyntec 2011 Figure 18 with available water level data through reporting date (May 2011)

LV17-26
(cont'd)

Cleath-Harris Geologists

**Responses to Cleath-Harris Geologists, Inc.’s Comments
(Exhibit LV-17)**

Comment No.	Comment
LV17-1	Please refer to responses to specific comments below.
LV17-2	Please refer to responses to specific comments below.
LV17-3	Please refer to responses to specific comments below.
LV17-4	<p>Although each phase of testing consisted of cyclic pumping, one approach to analyzing the water levels and aquifer properties is to approximate each phase of testing by an equivalent constant rate of pumping (equivalent pumping rate). Because change in water level in an aquifer in response to pumping is approximately proportional to the log of time (e.g. Cooper and Jacob, 1946), lines fitted to graphs of elapsed time versus drawdown of water level data plotted on semi-log graphs of are commonly used to analyze aquifer properties. Thus fitting lines to the entire set of water level data recorded during the Phase 3 testing and projection of these trends is reasonable and consistent with standard practice for analysis of aquifer testing data (e.g. Kruseman and de Ridder, 1991; Heath, 1989). Geosyntec (2011) estimated trends of water levels in Wells 10, 14, and 15 with computer fitted lines to the entire set of water level data recorded during the Phase 3 testing (Figures 13 – 15). The semi-log graphs of water level data during the Phase 3 testing (lowermost graph from each of Figures 13 – 15) are also provided as Figures 1 to 3 with this document. The straight lines on these semi-log plots of time versus water level is the trend that is consistent with the Jacob approximation of the Theis aquifer solution (infinite, homogeneous, isotropic aquifer of uniform thickness, unsteady flow conditions with water is derived from storage). Examples of deviations of the water level data from this straight line Jacob-solution that might occur include:</p> <ol style="list-style-type: none"> 1. greater drawdown (change in water level) at late time if the pumping influence reaches a low permeability boundary, and 2. less drawdown at late time if the pumping influence results in “capture” or recharge that lessens the withdrawal from aquifer storage. <p>The more steeply downward trending curved line, which is a linear trend on the semi-log graph, is an example of significant deviation from the Theis ideal aquifer. The linear trend line (steeper downward trend) is potentially more typical of fractured bedrock aquifers in which storage and permeability may not be radially uniform about the pumping well, but instead can occur in discrete isolated planar features. The logarithmic and linear trend lines serve as reasonable end-member cases for the projection of hypothetical depletion of storage in the bedrock aquifers at Laetitia. Fitting lines to the entire Phase 3 data set provides a robust assessment of water level trend. And if indeed the trend near the end of the Phase 3 testing reached equilibrium, deviation from the general trend line should be evident.</p> <p>Because of irregularities in the cyclic pumping schedule implemented for the Laetitia testing, estimated trends of water levels can be faulty when based on only single water level points before pumping begins for a subset of only pumping few cycles. This is because the amount of pumping and recovery that occurred for each pumping cycle is not identical. Figures 1 – 3 provided by CHG (June 2012), which are included with Figures 4 – 6 of this document, show lines fitted to a few selected water level data points near the end of the Phase 3 testing for Wells 10, 14 and 15. CHG claim that the lines they fitted to the selected data are evidence that the water levels stabilized during the Phase 3 testing. However, irregularities in the Phase 3 pumping cycles, cause variability in water levels that are independent of the overall trend in water level during the Phase 3 testing.</p>

Comment No.	Comment
	<p>As shown by Figures 4 – 6, computer-calculated trend lines fitted systematically to just the last three high and low points at the end of the Phase 3 testing all show decreasing trends (negative slopes) in water level versus time. So, although the rate in drop of water level may have lessened at the end of Phase 3 (as is evident particularly for Well 15), the water levels in Wells 10, 14, and 15 continued to drop and equilibrium conditions were not attained. Moreover, the groundwater levels may have been influence by the exceptional amount rainfall in December 2010 during end of the Phase 3 testing: 11.32 inches in December 2010, of which 8.4 inches occurred in five days (12/17-12/23). In addition, note that interpretation of the hydrographs during the testing program is complicated by the fact that the previous phase of pumping influences the water level response during the subsequent phases of pumping. For example, as is evident on the hydrographs (Figures 11 and 12 of Geosyntec, October 2011), recovery from the Phase 2 pumping is still occurring when the Phase 3 pumping started. Consequently the drop of water level during the Phase 3 pumping is lessened.</p>
LV17-5	<p>Based on the Phase 1 and 2 pumping and recovery data, CHG calculated an estimated long-term sustainable yield totaling 87 AF/Y (CHG Table 7, July 2010) “with full recovery of water levels during average years to operational static water levels established during Phase 1” pumping. CHG also calculated “equilibrium discharge rates” for the four wells from the Phase 2 data, which sum to 12.1 AF per month (CHG Table 5, July 2010), and were reported to “approximate sustainable rates of discharge ... during the wet season of average precipitation years, without long-term declines to groundwater in storage.” In their sustainable yield calculations (Appendix F, July 2010), CHG reported an “operational static water level” for each of the four wells based on the Phase 1 testing. CHG objects to scaling the Phase 3 pumping rate to allow for recovery to initial water levels at the beginning of the Phase 3 testing. However, as a consequence of the Phase 1 and Phase 2 pumping, the initial water levels in Wells 10, 14 and 15 at the beginning of the Phase 3 testing were lower or similar to the “operational static water level based on the Phase 1 testing, so there was already a residual cone of depression and thus flow toward each well caused by prior pumping. Based on the hydrograph data and adopting the “operational static water levels promulgated by CHG”, scaling of the Phase 3 pumping rates to allow for recovery to the “operational static water levels” is necessary to prevent additional depletion of aquifer storage. Drawdown of water levels during the Phase 3 testing was lessened by very heavy rainfall and residual recovery from Phase 2 pumping. Accordingly reliability of the Phase 3 water level data are questionable and application of a reasonable margin of safety to estimated sustainable pumping rates is prudent.</p>
LV17-6	<p>The commenter’s statements regarding vineyard water use are noted. The EIR clearly identifies the actual vineyard irrigation rate based on information provided by the applicant, and includes standard irrigation rates based on cited sources. The disclosure is provided to inform the public and decision makers of the range of irrigation rates that may occur for the life of the vineyard.</p>
LV17-7	<p>As described in Section 4.3 of our report (Geosyntec 2011) (page 13), Figure 18 shows hydrographs for four other irrigation wells at the project site based on water level data provided in Table 4 of C&A January 2004). We have added additional data provided by CHG during the testing program for Wells FV-1 (Well 5) and F&T 1 (Well 9) and estimated data points for Wells F&T 2 (Well 1) and FV-3 (Well 4) from the graph provided with the comments (Figure 7, CHG June 2012). As shown by Figure 8, F&T 2 (Well 1) and FV-1 (Well 5) still show clear downward trends of water level despite increase in rainfall in 2010 and 2011. Evaluation of the water levels in context with pumping history and rainfall would be more meaningful.</p>

Comment No.	Comment
LV17-8	<p>If the fractured tuff unit in which Well 10 is completed is hydraulically isolated from the other wells, then the recharge to this unit should be limited to the outcrop area of the specific fractured tuff unit¹ and not a watershed-based area of hundreds of acres.</p> <p>Wells 9 and 11 are separated by a distance of approximately 2000 feet, but are completed in the same fractured tuff unit. Testing indicated hydraulic connection between Wells 9 and 11, but small influence of pumping from one on the other (CHG, July 2010). However, Well 9 is close the local north-south trending drainage which is also close to Well 10. If pumping from Well 10 induces increased recharge from this drainage to the fractured tuff unit in which Well 10 is completed, less water may be available downstream for recharge to lower fractured tuff unit in which Well 9 is completed (e.g. Figures 1 & 2 CHG, July 2010).</p>
LV17-9	The attached comments (CHG 2012) were reviewed prior to preparation of Recirculated EIR Section V.P. Water Resources.
LV17-10	Please refer to responses to specific comments below.
LV17-11	Please refer to response to comment LV17-4 above.
LV17-12	Please refer to response to comment LV17-5 above.
LV17-13	As noted in EIR Section V.P. Water Resources, a reduction in Well 11 production yield is recommended to reduce adverse effects to streamflow in Los Berros Creek. A higher rate may be sustainable during average or wet years, but may not be during prolonged periods of drought.
LV17-14	<p>The DWR maps of rainfall data stations and contours of mean precipitation (isohyetal map) for the region (Plate 7 & 8, DWR, 2002), which are provided as Attachment 1, cover a large area of San Luis Obispo County that includes substantial topographic relief and therefore reflect increases in precipitation associated with orographic lift. Moreover, one of the stations on the DWR map is in the upper portion of the Los Berros Canyon (Station 20).</p> <p>As explained in Section 2.1 of the Geosyntec (2011) report, Geosyntec scaled up the long-term rainfall record available from 1920 for the Nipomo Mehlschau Station by 15% based on correlation between the Nipomo Station and the Laetitia rainfall data, which as available for July 2009 to June 2010, to provide a surrogate long-term record for Laetitia. We were unaware of 1965 to 1998 rainfall record for Station 175.1 discussed by CHG, which perhaps is more appropriate as a baseline reference for Laetitia rainfall. However without contemporaneous data for Station 175.1 and the Laetitia stations monitored during the testing, there is no basis for comparison of the data. The contemporaneous data for the Nipomo Station and Laetitia Stations provide a well-defined correlation that justifies comparison of rainfall at Laetitia during the testing to a record of rainfall that began in 1920. The data establish that rainfall at Laetitia was 138 % of normal during the period from July 2009 to March 2011, which includes the three Phases of testing. Figure 3 of the Geosyntec (2011) report shows the correlation between the Nipomo and Laetitia rainfall data and the comparison of the Laetitia rainfall during testing to long term average rainfall.</p>
LV17-15	EIR Section V.P. Water Resources, 1. Existing Conditions, 3) Hydrogeology, has been clarified to note the additional informative information regarding hydrogeological conditions. Final EIR Figure V.P.-3 has been corrected.
LV17-16	As noted by the commenter, this comment was addressed in Recirculated Section V.P. Water Resources (2013).
LV17-17	The sustainable yield analysis is used to support a determination under CEQA, and thresholds of significance are identified in the EIR (Section V.P. Water Resources).

¹ CHG report that the outcrop area of the fractured tuff unit, in which Well 10 is screened, between Adobe Canyon and the drainage upstream of Well 9 (F&T #1) is approximately 55 acres. However, based on CHG Fig 2 the outcrop area is ~1800 ft by 300 ft, which equals 540,000 sq ft or 12.4 acres.

Comment No.	Comment																				
LV17-18	<p>Please refer to Recirculated EIR Section V.P. Water Resources, 5. Project-specific Impacts and Mitigation Measures, which addresses attainment of equilibrium. Time to achieve equilibrium conditions with groundwater pumping can indeed vary from hours to centuries (e.g. Walton, 2011), and in groundwater basins in overdraft equilibrium has not been reached. Time to reach equilibrium is also a function of pumping rate. In many groundwater basins in overdraft, groundwater production can be maintained for many decades. But on average, water levels will continue to drop because water is partly derived from depletion of aquifer storage. The Phase 3 testing data demonstrate that water levels in Wells 10, 14 and 15 continued to drop and did not achieve equilibrium levels during the 14 weeks of testing. However, based on projection of trends of the gradual drop of water levels during the Phase 3 testing, these pumping rates can be sustained for decades because of the large available drawdowns provided by the long well screens. Declining groundwater levels do not indicate that the Phase 3 pumping rates are not sustainable, but rather that the system did not reach equilibrium, as noted in the EIR. Based on the available data, groundwater production needed for the proposed Laetitia project is feasible, but will result in long-term average declines in groundwater levels. Additional depletion of groundwater storage appears to be necessary to sustain long-term water production to meet the project demands. However with continued pumping equilibrium water levels may be attained in time.</p>																				
LV17-19	<p>As noted by the commenter, his comment was addressed in Recirculated Section V.P. Water Resources (2013).</p>																				
LV17-20	<p>Based on the Phase 1 and 2 pumping and recovery data, CHG calculated an estimated long-term sustainable yield totaling to 87 AF/Y from the four wells “with adjustments for full recovery to the Phase 1 operational static water levels” in each of the wells (pages 13-14, Table 7, Figs 12-15, of CHG, July 2010).</p> <p>The Phase 3 testing was conducted from 27 September to 30 December 2010 to test the sustainability of pumping from the four wells at total equivalent rate of approximately 87 AF/Y. However, as discussed above and illustrated by Figures 4-6, systematic trend analysis shows that of water levels continued to decline in Wells 10, 14, and 15 during the Phase 3 testing. The table below provides the water levels at the start and end of the Phase 3 testing and the “Phase 1 operational static water levels” promulgated by CHG.</p> <p>CHG’s comments that “for the water levels to return to the Phase 1 operational static under an 87 AFY production rate, the pumping schedule would need to be similar to the baseline trend.” And that water “levels would return to the Phase 1 operational static if the distribution of pumping was shifted back to the baseline interval schedule”. However, the Phase 3 production schedule applied by CHG was based on their sustainable yield calculation based on the Phase 1 and 2 testing, and their Phase 1 operational static level with “adjustments for full recovery to the Phase 1 operational static water level”. As shown by the table below, the Phase 3 testing began at water level conditions similar to or slightly lower to the “Phase 1 operational static levels” for Wells 10, 14, and 15. However since the water levels did not return to the Phase 1 or initial Phase 3 water levels, further adjustment of the pumping rates to allow for recovery is appropriate and consistent with the approach applied by CHG for calculating sustainable yield “with full recovery to Phase 1 operational static water levels.”</p> <table border="1" data-bbox="375 1644 1393 1885"> <thead> <tr> <th></th> <th>“Phase 1 operational static water level” *</th> <th>Water Level at beginning of Phase 3 Testing</th> <th>Water Level at End of Phase 3 Testing</th> </tr> </thead> <tbody> <tr> <td>Well 10</td> <td>507</td> <td>493</td> <td>485</td> </tr> <tr> <td>Well 11**</td> <td>294</td> <td>~310</td> <td>~307</td> </tr> <tr> <td>Well 14</td> <td>605</td> <td>605</td> <td>585</td> </tr> <tr> <td>Well 15</td> <td>610</td> <td>611</td> <td>603</td> </tr> </tbody> </table> <p>* Table 6 CHG, July 2010</p>		“Phase 1 operational static water level” *	Water Level at beginning of Phase 3 Testing	Water Level at End of Phase 3 Testing	Well 10	507	493	485	Well 11**	294	~310	~307	Well 14	605	605	585	Well 15	610	611	603
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Comment No.	Comment
	<p><i>** Water levels and production capacity for Well 11 is strongly influenced by flow in Los Berros Creek.</i></p>
<p>LV17-21</p>	<p>CHG states that the last few weeks of Phase 3 testing data show that equilibrium conditions were achieved at a pumping rate of 87 AF/Y. However, a systematic computer tend analysis to last three pumping cycles of the Phase 3 testing shows water levels were still dropping. And, the entire water level data-set during the Phase 3 pumping clearly show a downward trend (Figs 1-3).</p> <p>Although the water level data recorded near the end of the Phase 3 testing do appear to show a decreasing rate of drawdown and may be approaching an equilibrium level, as discussed above, interpretation of the data is complicated by irregularities in the cyclic pumping schedule. Moreover, drawdown of water levels during the Phase 3 testing was lessened by very heavy rainfall and residual recovery from Phase 2 pumping. Accordingly the Phase 3 water level data may not provide a reliable indication of long-term conditions, and achieving equilibrium conditions at the proposed pumping rates could take many years.</p> <p>We agree that climate change research and models generally indicate little change in the total annual precipitation in California. However, most Global Climate Models (GCMs) show a net increase in the intensity of storms for California. Accordingly, rainfall is predicted to occur in fewer and more intense events, which would likely result in more runoff occurring over a shorter periods of time and thus less recharge to groundwater and possible long-term decrease in base flow of creeks (e.g. DWR, 2003; Ralph and Dettinger, 2011; Dettinger, 2011).</p> <p>We agree that the concept of fewer more intense rainfall events resulting in less groundwater recharge and less base flow of creeks is predicated on the assumption that more of the rainfall will flow out of the basin areas. The alluvium aquifer in the project area that is available to capture runoff is limited to the lower reaches of Los Berros Creek, thousands of feet away from the proposed project wells. Moreover, because the depth and extent of the alluvial aquifer along the lower reaches of Los Berros Creek is small, the capacity for storage is minor. The geologic map, the boring log, and hydrograph for Well 8, also called Enloe 1 (Appendix A and Figure 16 of Geosyntec 2011), illustrate the limited capacity of the shallow alluvial along Los Berros Creek:</p> <ul style="list-style-type: none"> • the alluvium along the lower portion of Los Berros Creek is only a few hundred feet wide; • at Well 8 the depth from the ground surface to the bottom of the alluvium is approximately 65 feet (the well is screened from 25 to 65 feet); • water level in Well 8 rises quickly to within 10 to 20 feet of the ground surface in response to large rainfall events. <p>The rapid response of water level in Well 8 to rainfall events is a consequence of the small storage capacity of the alluvial aquifer along Los Berros Creek.</p>
<p>LV17-22</p>	<p>To help mitigate potential impacts of pumping from Well 11 on base flow of Los Berros Creek, as discussed in response to comment LV17-12 above and re-iterated here, no pumping from Well 11 from August through November is recommended. The recommended annual operation for Well 11 is based on 8 months of operation (December – July) at a 10% higher monthly rate than proposed by CHG. The resulting recommended annual pumping rate is 28.1 AF/Y.</p> <p>We agree that a greater pumping rate than our proposed rate 3.51 AF/month (December – July) may be possible at Well 11. However, because Well 11 is strongly influenced by recharge from Los Berros Creek, higher rates may not be sustainable during times of drought. Moreover, during the Phase 1 and Phase 3 testing, water levels in Well 11 were drawn down below the top of the well</p>

Comment No.	Comment
	<p>screen. Therefore, the mitigation is conservative.</p> <p>From December through July during wet years, a higher rate of production from Well 11 is feasible, such as pumping 38.3 AF in 8 months (4.8 AF/month). Figure 7 shows this production schedule at Well 11 compared to the average creek flow². Note however, that this increase in Well 11 during December through July provides little direct benefit to offset project demands during the dry summer and autumn months. But, perhaps pumping could be decreased in one or more of Wells 10, 14, 15 from December through July, which would facilitate an increase in pumping from these wells when Well 11 is shut down from August through November.</p>
LV17-23	<p>As described in Section 4.3 of the Geosyntec report (2011) (page 13), Figure 18 shows hydrographs for four other irrigation wells at the project site based on water level data provided in Table 4 of C&A January 2004). We have added additional data provided by CHG during the testing program for Wells FV-1 (Well 5) and F&T 1 (Well 9) and estimated data points for Wells F&T 2 (Well 1) and FV-3 (Well 4) from the graph provided with the comments (Figure 7, CHG June 2012). As shown by Figure 8, F&T 2 (Well 1) and FV-1 (Well 5) still show clear downward trends of water level despite increase in rainfall in 2010 and 2011.</p>
LV17-24	<p>If the fractured tuff unit in which Well 10 is completed is hydraulically isolated from the other wells, then the recharge to this unit should be limited to the outcrop area of the specific fractured tuff unit³ and not a watershed-based area of hundreds of acres. Wells 9 and 11 are separated by a distance of approximately 2,000 feet, but are completed in the same fractured tuff unit. Testing indicated hydraulic connection between Wells 9 and 11, but small influence of pumping from one on the other (CHG, July 2010). However, Well 9 is close the local north-south trending drainage which is also close to Well 10. If pumping from Well 10 induces increased recharge from this drainage to the fractured tuff unit in which Well 10 is completed, less water may be available downstream for recharge to lower fractured tuff unit in which Well 9 is completed (e.g. Figures 1 & 2 CHG, July 2010).</p>
LV17-25	<p>As noted by the commenter, the maximum yield gpm concern has been addressed in the Recirculated EIR Section V.P. Water Resources, mitigation measure WAT/mm-1. Higher yields may not be sustainable during periods of sustained drought; therefore, the EIR provides a conservative estimate.</p>
LV17-26	<p>Attachments were reviewed and considered during review of comments and preparation of responses.</p>

² The Monthly Mean Values for 1968-2001 at the bottom of Table 1 of the Geosyntec Oct 2011 report are incorrect. The correct mean values are provided on the Revised Table 1 provided as an attachment to this document. The notes indicating total pumping values for Well 11 are incorrect on the two charts in Figure 19 of the Geosyntec Oct 2011 report. For Chart 19a the total pumping from Well 11 is 38.3 AF/Y and for Chart 19b the total pumping from Well 11 is 28.1 AF/Y. The correct values are also indicated on the Charts with Figure 7 provided with this document.

³ CHG report that the outcrop area of the fractured tuff unit, in which Well 10 is screened, between Adobe Canyon and the drainage upstream of Well 9 (F&T #1) is approximately 55 acres. However, based on CHG Fig 2 the outcrop area is ~1800 ft by 300 ft, which equals 540,000 sq ft or 12.4 acres.



5878 EDNA ROAD • SAN LUIS OBISPO, CA 93401 • (805) 597-8700

August 22, 2013

Mr. Brian Pedrotti
 Department of Planning and Building
 San Luis Obispo County
 976 Osos Street, Room 200
 San Luis Obispo, CA 93408-2040

RE: Laetitia Agricultural Cluster, Impact to Agriculture/Viticulture

Dear Mr. Pedrotti,

As requested by John Janneck I have reviewed the Laetitia Revised Recirculated Draft EIR (RRDEIR). Below are my thoughts on issues related to agricultural operations.

LV18-1

As you know I managed the Edna Ranch Agricultural Cluster for 14 years. I am a fourth-generation agriculturalist on the Central Coast, and I am the general manager of Pacific Vineyard Co. We manage a large percentage of the vineyards in Edna Valley. In 2012, the company received the San Luis Obispo Chamber of Commerce Green Award for our environmental stewardship. I was also recently named Wine Grape Grower of the Year at the California Mid-State Fair.

The RRDEIR Alternatives Chapter identifies the following as unmitigated significant adverse impacts of the project and Applicant's Mitigated Project:

LV18-2

AG Impact 1: Implementation of the proposed project would result in the permanent loss of 12.5 acres of Farmland of Statewide Importance; 3.0 acres of Farmland of Local Importance; 153 acres of Unique Farmland, including 113 acres of productive vineyard; and 61.9 acres of Grazing Land. Implementation of the proposed project would set an adverse precedent in the county by resulting in the permanent conversion and loss of 113 acres of existing productive vineyard.

AG Impact 2: The non-contiguous nature of the proposed project and inadequate buffers between the existing agricultural use and proposed residential use and access roads would create land use conflicts, which would compromise the productivity of the existing agricultural operation.

Regarding AG Impact 1: While it is true that the Applicant's Mitigated Project would remove 113.5 acres of currently productive vineyard, it would bring 118.6 acres of unused land in to agricultural production and productive vineyard use.

LV18-3

LV-18

Brian Pedrotti
August 22, 2013
Page 2

Before soils in this area can be used to grow grapes, intensive amendment of the soil is needed. Grapes would not grow on the project site without aggressive intervention by expert horticulturists. Such measures were undertaken on the site in order to bring the current vineyards in to grape production and they will be undertaken to bring the proposed 118.6 acres to the same standard of production. Development and maintenance of vineyards is the primary business of the Laetitia Vineyard and Winery that the project seeks to protect. The fact that the project will replace lost productive vineyard with a similar acreage of newly productive vineyard will result in zero net loss of productive vineyards on the project site and in the County. As with other clusters the project would set a precedent for responsible preservation of agricultural land consistent with County policy.

LV18-3
(cont'd)

Regarding Impact AG 2: As you know, I am more than familiar with the use and effectiveness of buffers between vineyards and homes. I have carefully reviewed the proposed layout of the home sites, the vineyards and proposed buffers. In my expert opinion the site-specific considerations used to design each buffer (topographic considerations, vineyard locations with respect to the homes and climactic factors including wind patterns) combined with the professional operation of the vineyard by expert viticulturists will ensure that there are no impacts to homes and therefore no impacts to operations of the vineyard as a result of proximity to homes.

LV18-4

The RRDEIR also indicates potential impacts to agricultural operations as a result of non-contiguous residential clusters, vineyards located in independent blocks as well as impacts from the proposed access roads. My experience is that non-contiguous vineyard operations are no different than contiguous operations, other than that equipment may travel a little further. There is no additional potential impact to vineyard production. Homeowner traffic does not interfere with farm vehicles, as farm vehicles are mainly on farm roads and fields. The project design is similar to that of other successful agricultural clusters.

LV18-5

Farms, especially vineyards are sophisticated operations run by experts. The family who operates Laetitia Vineyards are experts in growing grapes. The project is designed to ensure the on-going operations of this vineyard. Not only that, but through the open space easements in perpetuity, the project would meet the County goal for long-term preservation of agriculture on thousands of acres.

LV18-6

LV-14-1

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Page 3

The homes will be an integral part of the vineyard. Tremendous effort and expertise has gone in to the project design. Similar projects with vineyard operations adjacent to homes (e.g. the Edna Ranch Agricultural Cluster where buffers are as narrow as 75 feet) have achieved a successful balance between vineyard operations and high-end home occupancy. As indicated above, based on my experience with the Edna Ranch Agricultural Cluster, I believe there is no potential for an adverse impact to agricultural operations as a result of the proposed buffers.

LV18-7

Sincerely,



George Donati
General Manager
Pacific Vineyard Company

LV-14-1

**Responses to Pacific Vineyard Company's Comments
(Exhibit LV-18)**

Comment No.	Comment
LV18-1	The commenter's statements are noted.
LV18-2	Please refer to responses to specific comments below.
LV18-3	The commenter's statements are noted; however, this action could occur with or without the project, and the County currently does not mandate or regulate crop production in the project area. The applicant's proposal to plant new vineyards would offset but not fully mitigate the loss of Farmland because it would not create new Farmland in areas that would not reasonably be used for crop production.
LV18-4	The commenter's statement regarding the adequacy of the agricultural buffers will be considered by the County decision makers. It is currently the position of the County that greater buffers are necessary, and such buffers should be placed on the residential development, and not require removal of productive vineyards or modifications in agricultural practices within buffer zones.
LV18-5	Non-contiguous residential clusters may result in increased conflicts due to the presence of residents through-out the operation. The residential development is not separate from the agricultural areas, and in many cases, the clusters would be surrounded by vineyards, and residents would be required to drive through vineyard blocks to reach their home. Persons may also use access roads and agricultural roads for recreational purposes, potentially conflicting with operations. Creation of dust, noise generated by equipment use during day and night hours, and use of night lighting may create a nuisance for residents, and as noted by the applicant, agricultural operations may be modified to address potential complaints. These actions may reduce productivity of the vineyard.
LV18-6	The commenter's statements will be considered by the County decision makers.
LV18-7	Please note that the Edna Ranch agricultural cluster consists of 51 home sites on 1,600 acres. The residential lots are not surrounded on all sides by productive Farmland, therefore, the context does not appear to be directly applicable. The commenter's statements will be considered by the County decision makers.

JOHN JANNECK

Laetitia Vineyard & Winery
453 Laetitia Vineyard Drive
Arroyo Grande, CA 93420
Telephone 310-351-1555
sun9155@aol.com

August 23, 2013

Mr. Brian Pedrotti
Department of Planning and Building
San Luis Obispo County
976 Osos Street, Room 200
San Luis Obispo, CA 93408-2040

*Re: Traffic Comments on Revised Recirculated DEIR, Laetitia Agricultural Cluster
Subdivision, SUB2003-00001 (Tract 2606), SCH#2005041094*

Dear Brian,

As we discussed, ATE is working on preparing a letter regarding traffic impacts of the Applicant's Mitigated Plan. We plan on submitting that letter the week of September 2, 2013. If you have any questions please do not hesitate to call.

LV19-1

Sincerely,



John Janneck
Laetitia Vineyard & Winery

LV-19