D. GENERAL PUBLIC

Commenter and Address	Code	Letter Date	Page
Hollister & Brace 1126 Santa Barbara Street P.O. Box 630 Santa Barbara, CA 93102 Contact: Peter Candy, Attorney for the Nipomo Hills Alliance *Via: Jay Hardy* 550 Sycamore Creek Lane Nipomo, CA 93444	H&B JH(a)	June 11, 2012 August 22, 2013	XI.D.-5
Mike and Lorene Murphy 1261 Haven Hill Way P.O. Box 1997 Nipomo, CA 93444	MLM	July 23, 2013	XI.D.-28
David and Linda Richards 225 Broken Arrow Road Nipomo, CA 93444	DLR	July 23, 2013	XI.D.-30
M. Karl and Barbara L. Hartwig *(address not provided)*	KBH	July 31, 2013	XI.D.-56
Eldon Grimes 240 White Dove Court Nipomo, CA 93444	EG	August 2, 2013	XI.D.-58
Vern and Carol Garcia 545 Camino Encanto Nipomo, CA 93444	VCG	August 5, 2013	XI.D.-60
Mike and Ann McClure 235 Cimarron Way Arroyo Grande, CA 93420	MAM	August 5, 2013	XI.D.-62
Aldo and Bonni Pellicciotti *(address not provided)*	ABP	August 5, 2013	XI.D.-66
Geraldine Dana 1245 North Dana Foothill Road Nipomo, CA 93444	GD	August 6, 2013	XI.D.-68
Louise Frye 1277 Haven Hill Way P.O. Box 1167 Nipomo CA 93444	LF	August 10, 2013	XI.D.-71

Commenter and Address	Code	Letter Date	Page
David and Marjorie Dilworth 3811 SE 76th Avenue Portland, OR 97206	DMD	August 11,2013	XI.D.-73
Gary P. Vavrina 530 Sycamore Creek Lane Nipomo, CA 93444	GPV	August 12, 2013	XI.D.-77
Bernard Horton 120 La Joya Drive Nipomo, CA 93444	BH	August 13, 2013	XI.D.-81
James T. Toomey 161 Jovita Place Nipomo, CA 93444	JTT	August 16, 2013	XI.D.-90
Mark Fugate 620 Spring Canyon Lane Nipomo, CA 93444	MF	August 19, 2013	XI.D.-133
Roberta H. Gehring 540 Sycamore Creek Lane Nipomo, CA 93444	RHG	August 19, 2013	XI.D.-136
Marc Barnum Rancho Nipomo HOA 1225 Ramal Lane Nipomo, CA 93444	MB	August 20, 2013	XI.D.-140
John and Barbara Anderson P.O. Box 240 Arroyo Grande, CA 93421	JBA	August 21, 2013	XI.D.-143
Tom Beckenhauer and Marysia Ochej 1500 Rocky Oak Lane Nipomo, CA. 93444	TBMO	August 21, 2013	XI.D.-146
Tina Grietens P.O. Box 12 Nipomo, CA 93444	TG	August 21, 2013	XI.D.-148
James and Betty Jamison 1584 Los Berros Road Arroyo Grande, CA 93420	JBJ	August 21, 2013	XI.D.-152
Judith Auckland 1548 Los Berros Road Arroyo Grande, CA 93420	JA	August 22, 2013	XI.D.-154

Commenter and Address	Code	Letter Date	Page
Harold and Susan Case 535 Sheehy Road P.O. Box 1162 Nipomo, CA 93444	HSC	August 22, 2013	XI.D.-156
Jay Hardy 550 Sycamore Creek Lane Nipomo, CA 93444	JH(b)	August 22, 2013	XI.D.-158
Laurie Laughlin and Charles Andree 1012 Upper Los Berros Road Nipomo, CA 93444	LLCA	August 22, 2013	XI.D.-166
Rick London 707 Highland Hills Road Nipomo, CA 93444	RL	August 22,2013	XI.D.-168
Ronald and Carol Lyons 1550 Tiffany Ranch Road Arroyo Grande, CA 93420	RCL	August 22, 2013	XI.D.-176
Kelly and Vicky Newlander 671 Riata Lane Nipomo, CA 93444	KVN	August 22, 2013	XI.D.-179
Patrick and Mary O'Connor 156 Sheehy Road Nipomo, CA 93444	PMO	August 22, 2013	XI.D.-182
Jens Pohl, Ph.D. 650 Highland Hills Road Nipomo, CA 93444	JP	August 22, 2013	XI.D.-184
Murel Toomey 170 Sheehy Rd P.O. Box 123 Nipomo, CA 93444	MT	August 22, 2013	XI.D.-186
Robert Odom 1548 Los Berros Road Arroyo Grande, CA 93420	RO	August 23, 2013	XI.D.-188
Natalie Sawyer *(address not provided)*	NS	August 23, 2013	XI.D.-191
Raymond M. Toomey 1150 North Thompson Avenue Nipomo, CA 93444	RMT	August 23, 2013 November 8, 2008 June 8, 2012	XI.D.-194

Commenter and Address	Code	Letter Date	Page
Brian Sawyer *(address not provided)*	BS	August 24, 2013	XI.D.-252
Cherie A. Fitz-Gerald 380 Rim Rock Road Nipomo, CA 93444	CFG	August 25, 2013	XI.D.-254
Gordon and Anne Gill 428 Rim Rock Road Nipomo, CA 93444	GAG	(undated) Received: August 26, 2013	XI.D.-257
Kathy Hilstein 1564 Los Berros Road Arroyo Grande, CA 93420	HK	August 26, 2013	XI.D.-260
Jerry and Julie Kuras 427 Rim Rock Road Nipomo, CA 93444	JJK	(undated) Received: August 26, 2013	XI.D.-262
Marilee Mahoney-Statom and Kevin Statom *(address not provided)*	MMS	August 26, 2013	XI.D.-264
Kem and Robin Weber 445 Rim Rock Road Nipomo, CA 93444	KRW	August 26, 2013	XI.D.-266

Jay Hardy
550 Sycamore Creek Lane
Nipomo, CA 03444
JayRayHardy@SBDGlobal.net

August 22, 2013

Brian Pedrotti
County Planning Department
976 Osos Street, Rm 300
San Luis Obispo, CA 93408-2040

Dear Mr. Pedrotti,

Regarding the Recirculated and Revised Draft Environmental Impact Report for the proposed Laetitia housing development in Nipomo, I am enclosing a letter from the land use attorney, Peter Candy. Mr. Candy had conducted a thorough evaluation of the Laetitia project, which needs to be considered with the new RRDEIR. Mr. Candy was hired by the Nipomo Hills Alliance to study this issue. Please include this with your comments for this project. **JH(a)-1**

Sincerely,

Jay Hardy

Jay Hardy

Enclosed: Letter to SLO County from Peter Candy, dated June 6, 2011

RECEIVED
AUG 23 2013
SLO CO PLAN & BLDG DEPT

HOLLISTER & BRACE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

RICHARD C. MONK
STEVEN EVANS KIRBY
BRADFORD F. GINDER
PAUL A. ROBERTS
JOHN G. BUSBY
SUSAN H. McCOLLUM
ROBERT L. BRACE
MARCUS S. BIRD
PETER L. CANDY
MICHAEL P. DENVER
KEVIN R. NIMMONS
SARAH J. BERKUS

Of Counsel
JOHN S. POUCHER
JOHN B. GALVIN

SANTA BARBARA OFFICE
1126 SANTA BARBARA STREET
P.O. BOX 630
SANTA BARBARA, CA 93102

805.963.6711
FAX: 805.965.0329

SANTA YNEZ VALLEY OFFICE
2933 SAN MARCOS AVENUE
SUITE 201
P.O. BOX 206
LOS OLIVOS, CA 93441

805.688.6711
FAX: 805.688.3587

www.hbsb.com

June 11, 2012

Mr. Brian Pedrotti
Project Manager
Planning & Building Department
County of San Luis Obispo
970 Osos Street
San Luis Obispo, CA 93408-2040

RE: Recirculated Draft Environmental Impact Report (RDEIR)
Laetitia Agricultural Cluster Tract Map and CUP

Dear Mr. Pedrotti:

This office is legal counsel to the Nipomo Hills Alliance (NiHA). NiHA is an organization made up of residents of the Dana Foothill and Upper Los Berros communities, who are concerned about overdevelopment of the Nipomo Hills. NiHA's goal is to protect and preserve not only the rural beauty of the Nipomo Hills, but also its limited water supply. This letter is submitted on behalf of NiHA in response to the RDEIR prepared for the Laetitia Agricultural Cluster Tract Map and CUP. **H&B-1**

I. INTRODUCTION

In recent years, water supply planning has received increasing attention in the California Legislature and in Court of Appeal decisions interpreting CEQA. The clear message of recent legislation and case law is that lead agencies and preparers of environmental documents must be fully transparent when evaluating the availability of long-term water supplies intended to serve new development. Transparency is impossible without a clear and complete explanation of the circumstances surrounding the reliability of a proposed water supply. If any uncertainties exist, transparency requires lead agencies to be forthright in the disclosure of these uncertainties, and provide substantial evidence supporting a conclusion that new water will be available to serve the proposed growth. **H&B-2**

In *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal. App. 4th 1219, the court invalidated an EIR for a proposed development project, finding that it was not sufficiently transparent, because it did not adequately inform decision-makers and the public of the circumstances surrounding the reliability of the project's proposed water supply. In particular, the EIR failed to disclose several key uncertainties associated with obtaining the proposed water supply, failed to describe the nature and extent of these uncertainties, and, perhaps most importantly, failed to realistically analyze the availability of water to serve the project in light of the uncertainties. H&B-2 (cont'd)

As the following comments indicate, the RDEIR prepared for the Laetitia Agricultural Cluster suffers similar inadequacies, because it fails to disclose key uncertainties associated with obtaining water from the fractured bedrock formations that underlie the Nipomo Hills. These fractured-rock aquifers are the project's exclusive proposed source of water supply. Decision-makers and the public must be made aware of the uncertainties surrounding reliance on these aquifers, in order to understand the project's potential for environmental effects, and to make informed decisions on whether, or under what conditions, to approve new growth in the area. H&B-3

II. DISCUSSION

Comment 1: The RDEIR fails to disclose the uncertainty inherent in relying on fractured-rock aquifers as an exclusive source of water supply to serve new development.

In a fractured-rock aquifer, groundwater is stored in the fractures, joints, bedding planes, and cavities of the rock mass. These features exist as a result of the folding and faulting that occurs in the rock over time. Because almost no water can pass through the rock itself, water can only be transmitted through the cracks, fissures and fractures existing between the rock. The hydrologic interconnection of these features comprise the aquifer system. H&B-4

Fractured-rock aquifers are commonly known to have a much lower capacity to transmit water (permeability) than aquifers found in sediments. As a consequence, fractured-rock aquifers tend to be less predictable and less reliable than other wells. This lower capacity results from both a smaller amount of open space (the size of the fracture), and a smaller lateral extent of the aquifer (fracture zones are not consistent throughout the rock), as compared to aquifers found in sediments. Because of this, many rock wells are limited in the amount of water that they can reliably produce in the long term. Typically, these wells can have an apparent production during short-term testing that is higher than the actual amount that can be supported by the surrounding fractured-rock aquifer in the long-term. As a result, the incidence of "well failure" is much higher in fractured rock wells than in other settings. (See generally, H&B-5

white paper discussion on *Fractured-Rock Wells in the Pacific Northwest Foothills*, authored by F. Michael Krautkramer, Robinson Noble, Inc., 2004, attached hereto as Exhibit A.)[1] H&B-5

In addition to poor transmissivity, fractured-rock aquifers typically have less ability to collect and store water to transmit. This is because an appreciably lower percentage of the precipitation over the area ends up getting into the fractured-rock groundwater system. As a result, a smaller volume of water is available annually throughout the region served by such an aquifer. This concept is known as the aquifer water budget. When more water is being removed through the wells in a region than is recharged from the precipitation (and other sources), the water levels in the wells of that region fall through time. If this is a chronic problem, eventually some or all of the wells become unable to produce water at the rate necessary to meet their demand. (Id., Krautkramer, attached.)

While the RDEIR mentions some of these concerns, it stops short of providing a fully transparent discussion of the vulnerabilities associated with relying on fractured-rock wells as an exclusive source of water supply for new development. The RDEIR briefly mentions that yields from wells in fractured bedrock aquifers are often not representative of longer-term yields, which are typically lower. The RDEIR also mentions that, as groundwater is released from storage in fractures, the hydraulic gradient toward the well becomes progressively lower over time, which causes the well yield to decline. However, the RDEIR does not mention the critically important fact that, due to the generally lower permeability of fractured-rock, and the inherent water budget constraints associated with fractured-rock aquifers, wells completed in such formations result in a much higher incident of "well failure" than wells completed in sediments. The importance of this for the Nipomo Foothills area is underscored by multiple documented incidents of well problems and even failures experienced by residents of the Dana Foothill and Upper Los Berros communities. H&B-6

Since each fractured-rock aquifer system is unique, caution must be exercised when attempting to predict a long-term sustainable production rate for newly developed wells. Short-term pump testing is not a reliable method for determining a production rate that can be sustained over the long-term. (Id., Krautkramer, attached.) Monitoring of the water levels and production from rock wells over longer periods is essential, as is being aware of regional changes occurring in the area during the monitoring period, such as variations between different water years, and whether neighboring wells are experiencing similar patterns of drawdown and change. (Id., Krautkramer, attached.) The RDEIR fails to disclose these important considerations in an H&B-7

[1] Although Mr. Krautkramer's white paper is focused on the fractured-rock groundwater environment found in the mountain foothills located west of the Cascades, his discussion has equal applicability to the fractured-rock aquifers found in the Obispo and Monterey Formations located beneath the foothills of the Central California Coast.

F:\MATTER\WK4\7554.001 - NIHA\Letters\RDEIR Comment Letter 6-11-12.dotx

apparent effort to gloss over uncertainties and reach a finding that the water supply impacts of the project are Class II. H&B-7 (cont'd)

Comment 2: The RDEIR fails to disclose uncertainty associated with relying on short-term well production rates as the basis for estimating long-term sustainable yield.

The RDEIR estimates that 62.4 AFY is a viable long-term groundwater production rate (sustainable yield) for the four "project" Wells 10, 11, 14 and 15. This estimate is based on the evaluation of water levels recorded in the four wells for the period from October 2009 to March 2011. The wells were pumped according to a three-phase cyclic pumping schedule running from October 2009 to December 2010. For each phase, the pumping alternated between two pairs of wells: simultaneous pumping at Wells 10 and 11 (completed in the tuffaceous rocks of the Obispo Formation), alternating with simultaneous pumping at Wells 14 and 15 (completed in the siliceous shales of the Monterey Formation). H&B-8

During the first phase of pumping (October 16, 2009 to January 16, 2010), the wells were pumped for 2 to 5 days and then shut off for 4 to 15 days. During the second phase of pumping (January 16 to May 10, 2010), the wells were pumped for 3 to 8 days and then shut off for 2 to 9 days. During the third phase of pumping (September 27 to December 31, 2010), the wells were pumped for 2 to 3 days and then shut off for 4 to 5 days. As such, during the entire three-phase pumping period, Wells 10, 11, 14 and 15 were pumped a maximum of only a few months total.

The hydrographs from the pump tests illustrate that water levels in Wells 10, 14, and 15 never stabilized, but instead exhibited continuing drawdown throughout the course of the three phases of pumping. The hydrographs also illustrate that recovery of water levels was incomplete at Wells 14 and 15 between the pumping phases. Full recovery of water levels occurred only at Well 11, which is within a few hundred feet of Los Berros Creek. The hydrograph for Well 11 shows a strong correlation between rainfall and groundwater levels in the vicinity of Well 11, which indicates that groundwater levels in the vicinity of Well 11 are influenced by the base flow of Los Berros Creek.

The general decline of water levels observed in Wells 10, 14, and 15 during the three phases of pumping suggested that stable groundwater equilibrium could not be achieved at a pumping rate of 87 AFY (the rate estimated by the Draft EIR (2008) to be sustainable). As a result, the RDEIR revised the estimated long-term groundwater production rate downward to 62.4 AFY for purposes of arriving at a new "sustainable" production rate. The downward revision was arrived at by extrapolation. No pumping tests or other observations, short-term or long-term, were conducted to confirm that a production rate of 62.4 AFY is sustainable and will avoid long-term depletion of the groundwater supply. H&B-9 H&B-10

F:\MATTER\WK4\7554.001 - NIHA\Letters\RDEIR Comment Letter 6-11-12.dotx

In an effort to corroborate the 62.4 AFY revised sustainable yield estimate, the RDEIR relies on production data from two irrigation wells operated by the applicant elsewhere on the property. The RDEIR states that these two irrigation wells produce at 21 AFY each. However, the RDEIR does not identify these wells, where they are located, the formation in which they are completed, or whether they draw from one or more of the fractured-rock aquifers that feed Wells 10, 11, 14 and 15. In sum, the RDEIR provides no information or analysis enabling the reader to determine whether these wells are appropriate reference points to rely upon for purposes of corroborating the revised sustainable yield estimate. H&B-10 (cont'd) H&B-11

An examination of the peer review documents prepared by Geosyntec reveals limited information regarding the two irrigations wells in a single footnote. (See *Baseline Water Demand* (April 2012), footnote 6, page 6; see also *Review of Well Testing and Sustainable Yield Estimate* (October 2011), footnote 16, page 23.) The footnote indicates that the two irrigation wells are Wells 5 and 9, both screened in the Obispo Formation. This suggests at least a theoretical correlation with "project" Wells 10 and 11, also completed in the Obispo Formation. However, Wells 5 and 9 have no correlation, theoretical or otherwise, with "project" Wells 14 and 15, both of which are completed in the Monterey Formation.

As for Wells 10 and 11, although they are completed in the same formation as reference Wells 5 and 9, there is no evidence to suggest that they draw from the same hydrologically connected fractured-rock aquifer system that feeds either Wells 5 or 9. Reference Well 5 is located over a mile away from Wells 10 and 11. Reference Well 9 is located over 0.5 miles away from the two "project" wells. In the absence of substantial evidence demonstrating that either Wells 5 or 9 draw from the same fractured-rock aquifer system that feeds either Wells 10 or 11, there is no basis to conclude that the long-term yields from any of these wells will be similar. The most the RDEIR can do is suggest that, given the 0.5 mile proximity between Well 9 and Wells 10 and 11, there may be the possibility of a subsurface hydrologic connection. However, in the RDEIR's discussion of well interference, the statement is made that cyclic pump testing conducted on the "project" wells did not show any correlation with either Well 5 or 9. Thus, as it stands, neither the RDEIR, nor the Geosyntec documents, provide any evidence, let alone substantial evidence, indicating that either Well 5 or 9 are appropriate reference points to rely upon for purposes of corroborating the revised sustainable yield estimate of 62.4 AFY.

An adequate discussion in the RDEIR requires full disclosure of all uncertainties surrounding use of the proposed water supply. A key uncertainty in this case is the RDEIR's reliance on short-term pump tests as a basis for estimating long-term sustainable yield. This is especially true given multiple documented incidents of well problems and even well failures experienced with other wells completed in the fractured-rock formations of the surrounding Nipomo Hills. The estimate of sustainable yield provided in the RDEIR is based on observations made over the course of a matter of a few months. During this period, stable groundwater equilibrium was H&B-12

never achieved, despite conditions of above average rainfall. The reality is that without actually pumping the wells over the long-term to document the rate of decline that is experienced, there is no way to know with certainty the rate at which the wells can be reliably produced. CEQA's fundamental policy of promoting transparency and informed government decision-making requires disclosure of these important facts. H&B-12 (cont'd)

Comment 3: The RDEIR fails to disclose uncertainty associated with the applicant's legal right to pump up to 62.4 AFY.

The applicant's legal right to produce water from Wells 10, 11, 14 and 15 depends on the location of the wells within the watershed or drainage basin of origin, whether the water pumped from the wells is being used on a portion of the applicant's land located within the same watershed or drainage basin, and whether other water users located within the same watershed or drainage basin are drawing from the same source supply. Simply stated, groundwater is a shared resource, the rights to which can only be determined in relation to other users of the same resource. The owner of a well has no right to pump more than his or her correlative share of the resource and, in order to maintain the priority of his or her correlative share, the owner can only use the pumped water on that portion of his or her land located within the watershed or drainage basin of origin. H&B-13

A basic understanding of the correlative nature of the riparian and overlying right, including how priority of the right is defeated when the watershed limitation is exceeded, is useful to understanding the complexities associated with the applicant's legal right to produce up to 62.4 AFY for project. With respect to the correlative nature of the right, the California Supreme Court explained it best: H&B-14

> "A riparian owner [and by analogy an overlying owner] has no right to any mathematical or specific amount of the water of a stream [or basin] as against other like owners. He has only a right in common with the owners to take a proportional share from the stream [or basin] — a correlative right which he shares reciprocally with the other riparian [and overlying] owners. No mathematical rule has been formulated to determine such a right, for what is a reasonable amount varies not only with the circumstances of each case but also varies from year to year and season to season."

Prather v. Hoberg (1944) 24 Cal. 2d 549, 559-560.

As indicated above, the applicant's legal right to produce up to 62.4 AFY can only be determined in relation to other potential users of the same resource. This requires identification of other landowners capable of drawing from the same fractured-rock aquifers which feed Wells 10, 11, 14 and 15. This, in turn, requires an examination of the physical H&B-15

location and/or geologic extent of the aquifers. It also requires an understanding of the capacity of the aquifers to store and transmit water, so that landowners know the amount they can sustainably withdraw without causing overdraft and injury to other users.[2] H&B-15 (cont'd)

To further complicate matters, the correlative right of a riparian or overlying owner is inchoate, which means that a landowner's present right to use water in the future is preserved. *Peabody v. City of Vallejo* (1935) 2 Cal. 2d 351, 374-375. Thus, not only must the project applicant identify other landowners who are presently using the same fractured-rock aquifers, but he must also try to identify those that are likely to initiate use of the aquifers in the future. H&B-16

Superimposed on the correlative right is the watershed limitation, which states that a person who owns real property abutting or contiguous to a watercourse (riparian owner), or overlying a groundwater basin (overlying owner), has a corresponding right to divert or extract water for use only on riparian or overlying land. *City of Los Angeles v. Aitken* (1935) 10 Cal. App. 2d 460. Riparian and overlying land is limited to land located within the natural watershed of the stream or basin, or the area of land within which precipitation drains into the water source. This means that a riparian user can divert water from the flow of a stream and use the water anywhere on his or her parcel that is within the watershed of the stream. *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 528, 533. Similarly, an overlying owner has the right to extract ground water from one point on the property and export it for use anywhere on the same parcel that is within the watershed or drainage area of the basin. *See,* Schneider, *Groundwater Rights in California, The Governor's Commission to Review California Water Law* (1978) at p. 7.

If a landowner transports water over a ridgeline for use on a portion of his or her parcel that is non-riparian or non-overlying, i.e., on a portion located outside the watershed or drainage area of the basin, the use is converted to an appropriation, which defeats the priority afforded the riparian or overlying right. Thus, without an examination of the watersheds and drainage areas which feed the aquifers supplying Wells 10, 11, 14 and 15, there is no way to determine whether the applicant's proposed use of water is consistent with his riparian and/or overlying rights. Water pumped from Wells 10, 11, 14 and 15 will be commingled in the project's water system and exported over multiple ridgelines forming the various subareas of the larger Los Berros watershed. An analysis is necessary to determine those areas of the applicant's property that are riparian and/or overlying versus the areas that are not. As to any water used on non- H&B-17

[2] In *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal. App. 4th 74, the court struck down an EIR for a landfill project on the ground that the document did not adequately quantify the amount of groundwater in the aquifer underlying the project site. Although the court in *Cadiz* was concerned about groundwater contamination, the reasoning of the decision is analogous to a situation involving potential groundwater overdraft. Unless the lead agency knows approximately how much water exists in an affected basin, the agency cannot possibly know what levels of withdrawals would trigger significant impacts.

riparian or non-overlying land, the priority of the applicant's use is lost vis a vis other correlative users. In such a case, the applicant's legal right to access the resource must yield to the reasonable needs of other landowners drawing from the same source. **H&B-17 (cont'd)**

Well 11 presents a unique situation in that the well may be drawing from the underflow of Los Berros Creek. Well 11 is located within a few hundred feet of Los Berros Creek, and the hydrograph for the well demonstrates a strong correlation between the well and the base flow of the creek. If Well 11 is in fact drawing underflow from the creek, the applicant's use of the water is riparian, and subject to the limitations imposed on riparian use. Under circumstances where the applicant proposes to commingle the water and use it on other areas of the property that are non-riparian, use of the water would be by appropriation. Appropriation of the underflow of a surface stream is subject to the permitting jurisdiction of the State Water Resources Control Board (SWRCB). (Water Code § 1201; *In the Matter of Application 29664 of Garrapata Water Company* (1999) D-1639.) Thus, before the applicant could lawfully pump and use the underflow of Los Berros Creek in any manner inconsistent with the riparian right, the applicant would need to apply for and obtain a permit to appropriate from the SWRCB.

The RDEIR provides only brief mention of groundwater rights without any substantive discussion. The RDEIR states that: "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." (RDEIR p. V-49.) This is certainly a true statement from the standpoint of correlative rights. However, it ignores the numerous other issues that must be examined before one can determine with certainty the applicant's legal right to pump up to 62.4 AFY. **H&B-18**

The RDEIR avoids any effort to discuss, let alone resolve, the uncertainty which surrounds the applicant's legal right to draw up to 62.4 AFY from Wells 10, 11, 14 and 15. The RDEIR provides no discussion of the physical location and/or geologic extent of the fractured-rock aquifers from which the wells draw. It does not attempt to identify other landowners capable of drawing from the same fractured-rock aquifers, nor to quantify the amount of water that can be safely withdrawn without adversely affecting other legal users. There is no discussion regarding the location of the wells within the watershed or drainage areas of origin, nor whether use of the water pumped will be confined to riparian or overlying land. A comprehensive understanding of these issues and possibly others is necessary to determine whether and to what extent the applicant has the legal right to pump 62.4 AFY from the wells. At the very least, full disclosure and transparency regarding the uncertainty surrounding these issues is necessary in order for the public and government decision-makers to make informed decisions regarding the availability of a long-term water supply for the project.

F:\MATTER\WK4\7554.001 - NIHA\Letters\RDEIR Comment Letter 6-11-12.dotx

Brian Pedrotti, Project Manager
Planning & Building Department
June 11, 2012
Page 9

Comment 4: The RDEIR fails to disclose uncertainty regarding the project's revised water demand estimate.

The RDEIR's discussion of revised water demand is confusing, lacks transparency, and is inadequate. The estimated total water demand of the project reported in the Draft EIR (2008) was 143 AFY. This original demand factor assumed up to 30,500 square feet of on-site irrigated landscaping, with up to 7,000 square feet of turf per residential lot, and an equestrian center. Water usage estimates were revised following circulation of the Draft EIR (2008) based on modifications to certain project components, including elimination of the equestrian center and incorporation of outdoor landscaping limitations (Cleath-Harris Geologists, 2010). The revised estimated total water demand of the project reported in the RDEIR is now 46.3 AFY. The revised estimate represents a 96.7 AFY reduction in water demand. However, apart from eliminating the equestrian center, all that is known about the revised estimate is that it assumes certain identified limitations on allowable landscaping (i.e., 1,500 square feet of irrigated landscaping, with up to 300 square feet of warm-season turf (maximum), and the remaining landscaping as drought-tolerant, low-water use plants per residential lot). If additional assumptions were made for purposes of arriving at the 46.3 AFY estimate, they are not disclosed. **H&B-19**

The RDEIR does not explain, nor provide any documentation to support, how the revised indoor and outdoor water duty factors of 0.381 and 0.0626 respectively were calculated. While the RDEIR does mention water conservation measures, such as the use of low-flush and low-flow appliances; insulation and circulation of hot water systems; minimized use of water for outdoor cleaning; use of drought-tolerant landscape plant species; use of automatic irrigation systems; use of water-conserving pumps and filters for swimming pools and spas; and regular maintenance of all appliances, systems, and facilities, it is unclear exactly how these measures convert quantitatively into the revised water duty factors identified. Absent any substantive discussion regarding specific project modifications, including how these modifications result in changes to the water duty factors, the reader lacks important information regarding the assumptions relied upon to estimate project water demand. Without this important information, the reader is not able to understand the basis for the revised demand estimate of 46.3 AFY, let alone draw a conclusion regarding the reasonableness of the revised estimate. **H&B-20**

In addition, the RDEIR proposes development of a Water Master Plan as a mitigation measure to ensure that over-pumping and inefficient use of domestic water resources does not occur. However, there is nothing proposed in the RDEIR, nor specifically in the requirements applicable to the Water Master Plan, which make the revised indoor and outdoor water duty factors enforceable. The requirements of the Water Master Plan are entirely qualitative as opposed to quantitative. In other words, compliance with the Water Master Plan can be achieved through implementation of the identified conservation measures, but there is nothing **H&B-21**

F:\MATTER\WK4\7554.001 - NIHA\Letters\RDEIR Comment Letter 6-11-12.dotx

in the RDEIR which indicates that compliance will result in an actual per lot water demand closely approximating that assumed in the water duty factors. In order to effectively mitigate the project's potential for water supply impacts, the Water Master Plan must incorporate quantitatively enforceable water demand requirements which ensure the water duty factors are achieved. Without quantitative, enforceable limits on water use, there is no basis for decision makers or the public to conclude the revised demand estimate of 46.3 AFY is realistic. H&B-21 (cont'd)

Comment 5: The RDEIR fails to disclose uncertainty associated with supplying water to the project in single dry and multiple dry water years.

The RDEIR makes note of the fact that rainfall during the cyclic pump testing program was documented to be 138 percent of average. Despite this period of above average rainfall, a downward trend in water levels was observed in all wells except Well 11, with equilibrium pumping conditions never being achieved. As it stands, the time frame needed to achieve equilibrium groundwater conditions remains unknown. Furthermore, as the RDEIR notes, climate change is predicted to result in rainfall occurring in fewer and more intense periods (DWR, 2002), which would likely result in more runoff, perhaps less recharge to groundwater, and possibly long-term decrease in base flow of creeks. H&B-22

Despite these admissions, the RDEIR makes no effort to discuss the reliability of the 62.4 AFY safe yield estimate in water years that are not 138 percent of average. What happens if the project is approved and the sustainable yield predictions set forth in the RDEIR turn out to be wrong? The RDEIR avoids this topic by instead glossing over key uncertainties and giving the reader a false sense of security regarding the availability of water supply. As it stands, it appears the applicant would have to shift pumping demand to other wells located on the property. However, there is no evidence in RDEIR or elsewhere to support a conclusion that other wells can support the increased demand. H&B-23

California Water Code § 10910 requires lead agencies to incorporate, in the CEQA documents they prepare, assessments of total projected water supplies available to serve new growth during normal, single dry, and multiple dry water years, over a 20-year projection horizon. While Water Code § 10910 do not apply directly to the Laetitia Agricultural Cluster, the policy rationale underlying the statute does apply. In this regard, an adequate environmental document requires at least some analysis of drought conditions, and the possible effects that drought conditions could have on the project's intended water supply. No such analysis is provided in the RDEIR, nor is any effort made to discuss reasonably foreseeable water shortage contingencies, such as what would happen if well yields decline substantially below the 62.4 AFY safe yield estimate in single dry or multiple dry water years. H&B-24

F:\MATTER\WK4\7554.001 - NIHA\Letters\RDEIR Comment Letter 6-11-12.dotx

Brian Pedrotti, Project Manager
Planning & Building Department
June 11, 2012
Page 11

Comment 6: The RDEIR fails to analyze the impacts of project withdrawals on reduced flows to the Santa Maria Groundwater Basin.

The project site is located to the immediate east of the Santa Maria Groundwater Basin ("Santa Maria Basin"), as defined by the Santa Clara Superior Court (Case CV 770214). The Tri-Cities Mesa Arroyo Grande Plain and Nipomo Mesa HSA are portions of the Santa Maria Basin located to the west and southwest of the project site. The rights to extract water from the Santa Maria Basin have been in litigation since the late 1990s. By stipulation and Court action, three separate management areas of the Basin were established, the Northern Cities Management Area, the Nipomo Mesa Management Area (NMMA), and the Santa Maria Valley Management Area. The boundaries of the NMMA are located to the immediate west of the project site. **H&B-25**

The NMMA covers approximately 33 square miles or 21,100 acres. Approximately 13,000 acres of the NMMA, or 60 percent, is developed land requiring that water be pumped from the underground aquifers to sustain agricultural and urban development. Land uses include agricultural, urban (residential/commercial), and native or undeveloped areas. There are also three golf courses and one oil-processing facility. In 2009, the crop types grown in the order of largest acreage were strawberries, nursery, avocado, and rotational vegetables (broccoli, lettuce, etc.). (See generally, *Nipomo Mesa Management Area, 4th Annual Report*, Calendar Year 2011, prepared by the NMMA Technical Group.)

Total estimated groundwater production within the NMMA for the calendar year 2011 was 10,538 acre-feet. According to the 4th Annual Report, there are a number of direct measurements indicating that demand within the management area exceeds the ability of the supply to replace the water pumped from the aquifers. (Id., Section 7.1.2 Hydrologic Inventory.) The report finds that "Potentially Severe Water Shortage Conditions" (as defined by the court stipulation) continue to exist in the NMMA, as indicated by the Key Wells Index. (Id., Section 7.2 Water Shortage Conditions.)

Los Berros Creek is thought to be a significant source of water supply to the NMMA (base flow and surface flow combined). Although not much is known about the actual amount the creek contributes, even modest withdrawals from the Los Berros watershed could have potentially significant impacts on the NMMA groundwater budget. As indicated previously, Well 11 is known to have direct hydrologic connectivity with the base flow of Los Berros Creek, such that pumping the well reduces base flow of the creek. Wells 12 and 13 are similarly situated, and although they are not being proposed as "project" wells, they are influenced by, and influence in turn, flow within Los Berros Creek. While the RDEIR proposes mitigation to limit operation of Well 11 in the dry season, nothing is being proposed to prohibit the use of Wells 12 and 13. These wells will likely become important, and perhaps even critical, in the event well problems **H&B-26**

F:\MATTER\WK4\7554.001 - NIHA\Letters\RDEIR Comment Letter 6-11-12.dotx

similar to those experienced by the Dana Foothill and Upper Los Berros communities are experienced by the applicant with Wells 10, 14 or 15. H&B-26 (cont'd)

III. CONCLUSION

As the court in *California Oak Foundation* explained, "[T]o be adequate, the EIR must include sufficient detail to enable those who did not participate in its preparation to understand and 'meaningfully' consider the issues raised by the project." *California Oak Foundation, supra*, 133 Cal. App. 4th at p. 1237 (quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2d Dist. 2003) 106 Cal. App. 4th 715, 721). "This standard is not met in the absence of a forthright discussion of a significant factor that could affect water supplies." *California Oak Foundation, supra*, 133 Cal. App. 4th at p. 1237. "The EIR is intended to serve as an informative document to make government action transparent. Transparency is impossible without a clear and complete explanation of the circumstances surrounding the reliability of the water supply." *Id.* at pp. 1237-1238. H&B-27

In view of the foregoing, and for the reasons articulated in comments 1-6 above, it is our legal opinion that the RDEIR is presently inadequate, lacks the required transparency, and cannot be used to support a finding that water supply impacts of the proposed project are Class II.

Respectfully submitted,

HOLLISTER & BRACE
A Professional Corporation

By_____
Peter L. Candy
Attorneys for the Nipomo Hills Alliance

F:\MATTER\WK4\7554.001 - NIHA\Letters\RDEIR Comment Letter 6-11-12.dotx

H&B-28

EXHIBIT A

H&B-28 (cont'd)

Robinson Noble

Geologists, Engineers, Scientists

- About Us
- Publications
- Contact Us
- News

- **Services**

Your Business Water Resources Business & Property Government

Your Needs Hydrogeologic Geotechnical Environmental

Newsletters

- Current

Presentations

- 2012 NGWA Pacific Northwest Expo
- 2011 Salish Sea Ecosystem Conference

White Papers

- Water Well Drilling
- Fractured Rock Aquifers
- Instream Flows and Exempt Wells

Fractured-rock Wells in the Pacific Northwest Foothills: Not Your Average Water Source

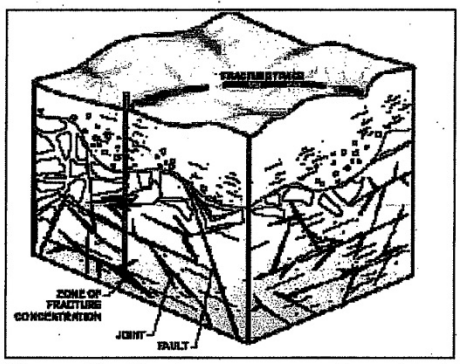
By: F. Michael Krautkramer, Robinson Noble, Inc.

Very generally, there are three different geologic settings that support water wells in the Pacific Northwest. The most common setting is unconsolidated sediments laid down by glaciers and rivers (or other erosional processes). While the aquifers formed in these sediments can vary, this setting is clearly the most successful in providing ground water. The next major setting, mostly found east of the Cascade Mountains, is the regionally extensive basalts like those of the Columbia Plateau. Wells completed in the basalts (or more accurately between the basalt flows) can also be highly variable, but the current understanding of the geometry and hydrogeology of the basalt layers provides some certainty to water development projects. The final geologic setting is much more enigmatic: the fractured-rock groundwater environment of the mountain foothills (particularly the CoastRanges or

H&B-28 (cont'd)

Cascades). While wells completed in fractured rock are invaluable in many areas as a source for domestic wells, and occasionally serve as a reliable source for higher production, they tend to be less predictable and less reliable than other wells. The reason lies in the fundamental difference in the way fractured-rock aquifers transmit water.

The ability to transmit water (permeability) in an unconsolidated aquifer is a result of the interstitial spaces (pore spaces) between each individual clast of sediment and the degree to which these spaces are connected to one another. As such, there is a significant amount of open area through which water can flow (typically 10% to 30%). What is more, these characteristics are usually found consistently over a significant lateral extent. Similar characteristics can be found in some rock settings, such as sandstone, where significant amounts of water can flow through the spaces inherent in those types of rock. In hydrogeology, this is called the "primary permeability" of the material.



In a fractured-rock environment, such as found in the foothills of the Cascades and the Coast Ranges (and below the sediment cover elsewhere in the Pacific Northwest), the primary permeability is extremely low. Almost no water at all can pass through the rock itself, so water can only be transmitted through cracks and fractures that result from the folding and faulting of the rock over time. Fractures create "secondary" permeability. Aquifers which rely on secondary permeability generally have a much lower capacity to transmit water. This lower capacity results from both a smaller amount of open space (the size of the fracture) and a smaller lateral extent of the aquifer (fracture zones are not consistent throughout the rock), as compared to the primary permeability found in sediments. As a consequence, many rock wells are limited in the amount of water that they can reliably produce in the long term. Typically, these wells can have an apparent production during short-term testing that is higher than the actual amount that can be supported by the surrounding fractured-rock aquifer. As a result, the incidence of "well failure" is much higher in fractured rock wells than in other settings.

As if the poor ability to transmit water isn't enough, such settings also usually have difficulty collecting and storing water to transmit. In fractured-rock environments, an appreciably lower percentage of the precipitation over the area ends up getting into the groundwater system. This means that a smaller volume of water is available annually throughout the region served by an aquifer. This concept is known as the aquifer water budget. When more water is being removed through the wells in a region than is recharged from the precipitation (and other sources), the water levels in the wells of that region fall through time. If this is a chronic problem, eventually some or all of the wells become unable to produce water at the rate necessary to meet their demand.

Between the production constraints imposed by permeability issues in fractured-rock and the inherent water budget issues, caution must be used in the use of fractured-rock wells. Monitoring of the water levels and production of a rock well is essential, as is being aware of the regional level changes (such as: is it a low water year? are neighboring wells experiencing similar patterns of change?). It is easy to be fooled into thinking a fractured-rock well will have a sustainable level of water production based on the initial (short-term) testing. Since these aquifer systems are unique, predicting a long-term production rate takes more care and often cannot be determined just from the testing done when the well is completed. Clearly, when dealing with this type of rockwell, forewarned is forearmed-more than one vacation dream property has lost its value when the well gave out. Whether operating a water

system or a single well for a home in the hills, keeping records of water levels and production will provide key information in defining a sustainable yield for fractured-rock wells.

H&B-28 (cont'd)

The Washington State Ground Water Association is dedicated to technical and professional leadership in the advancement of the drilling and ground water industry. The Association produces these informational flyers to educate the public and its membership on the proper protection and use of ground water resources. The Association can be contacted at: (360) 757-1551 or online at www.wsgwa.org.

Robinson Noble, Inc. is a hydrogeologic, environmental, and geotechnical consulting firm specializing in environmental property assessments and the development and protection of groundwater resources. The company has supported the well-drilling industry for over 20 years as a Technical Division member of the Washington State Ground Water Association. The author may be contacted at: (253) 475-7711 or by email at mkrautkramer@robinson-noble.com.

© 2004 Robinson, Noble & Saltbush, Inc. Tacoma, Washington. Permission is granted to the Washington State Ground Water Association and its membership to reproduce this article (in its entirety only) for distribution to customers or perspective customers. All other rights reserved.

Tacoma
3011 South Huson Street, Suite A
Tacoma, Washington 98409
253.475.7711
Woodinville
17625 130th Avenue NE, Suite 102
Woodinville, Washington 98072
425.488.0599

- Site Map
- Privacy Policy
- Careers
- Case Studies
- News

Copyright © 2007-2012 - Robinson Noble, Inc. - All rights reserved.

Responses to Hollister & Brace's Comments

Comment No.	Comment
JH(a)-1	Please refer to responses to specific comments below. The enclosed letter is dated June 11, 2012; the County assumes this is the letter the commenter is referring to.
H&B-1	Please refer to responses to specific comments below.
H&B-2	Comments noted as introduction to specific comments, addressed below. In addition, note that regarding the California Oak Foundation v. City of Santa Clarita, (2005) 133 Cal.App.4th 1219, the Second District, Division Eight, ruled the EIR was inadequate because the water supply assessment prepared by the Newhall County Water District failed to fully explain the uncertainty over future water deliveries. Specifically, the court found that the water supply assessment erroneously assumed that a contested transfer of 41,000 acre-feet of State Water Project water from Kern County to the Newhall district was a certainty. The EIR and supporting documents for the proposed Laetitia project clearly indicate (1) that the source of water supply for the project would be local groundwater, (2) that several months of testing of four wells indicate that the production of groundwater can meet the project needs for years, and (3) that the long-term production potential from bedrock aquifers is uncertain.
H&B-3	Please refer to responses to specific comments H&B-4 through H&B-27 below.
H&B-4	Regarding the "fractured-rock" and "sediments" terminology used in this comment, the fractured rock can also be sedimentary; therefore, we presume the use of the term "sediments" refers to unconsolidated sediments. Consolidated sedimentary rock commonly contains primary connected porosity including space between sand grains and space between bedding planes (parting), in addition to connected secondary porosity such as fractures and joints (e.g., pg 2-3, Heath, 1989). The water bearing portions of the Monterey and Obispo Formations typically occur in the relatively resistant and brittle beds, such as fractures in zeolitized resistant tuff in the Obispo Formation, and fractures and parting in siliceous thinly-bedded shales in the Monterey Formation (pg. 2, CHG, July 2010).
H&B-5	Greater amounts of groundwater are stored in more porous unconsolidated sediments than in fractured bedrock. Reported porosity of unconsolidated sand ranges from 25 to 50%, while porosities of sandstone and shale range from 5 to 30% and 0 to 10%, respectively (Freeze and Cherry, 1979). As noted by the commenter, short-term pumping tests conducted commonly are not representative of long term production capacity of wells, particularly for fractured bedrock aquifers. The combined duration of the three phases of cyclic pumping conducted at the four project wells was approximately 9 months, which provided a reasonable assessment of the long-term groundwater production capability of the wells and indicates that a combined production rate in the range of 65 to 75 AF/Y from the four wells (Wells 10, 11, 14 and 15) is sustainable for many decades. Please refer to Final EIR Section V.P. Water Resources, 4. Impact Assessment and Methodology, 3) Aquifer Properties for a discussion of transmissivity. Please refer to Final EIR Section V.P. Water Resources, 4. Impact Assessment and Methodology, 2) Sustainable Yield and 5. Project-specific Impacts and Mitigation Measures, a. Project-wide, 2) Impact Summary regarding groundwater and well recharge.
H&B-6	Please refer to response to comment WRAC(b)-31 regarding decrease in well production at the project site. Regarding regional issues, documentation of locations, well construction details, and pumping history is needed to respond adequately to the general comment that there are problems and failures of wells in the Dana Foothill and Upper Los Berros communities. The County recognizes that well failures have occurred in the area; a condition that has been exacerbated by the drought. For this reason, long-term testing was conducted, and strict water conservation measures, well yield limitations, metering, and monitoring are recommended as mitigation (WAT/mm-1). Moreover, as stated in the Geosyntec Report (2011), 11-year and 26-year records of

<table>
<tr><th>Comment No.</th><th>Comment</th></tr>
<tr><td></td><td>groundwater production rates of 21 AF/Y reported by CHG (July 2010) for each of two irrigation wells (Wells 5 and 9) at the Project Site supports that long-term groundwater production from wells completed the fractured bedrock at the site is possible.</td></tr>
<tr><td>H&B-7</td><td>Please refer to responses to comment H&B-5 and H&B-6 above. The Final EIR and supporting technical reports (Appendix H) disclose all known information and uncertainties, and provides analysis and conclusions based on substantial evidence including three phases of well testing. In addition, please refer to mitigation measure WAT/mm-7, which requires long-term monitoring of streamflow, and submittal of well production data from the domestic wells (as required by mitigation measure WAT/mm-1). This monitoring program will protect groundwater resources and riparian ecosystems.</td></tr>
<tr><td>H&B-8</td><td>The County concurs that short-term pumping tests commonly conducted are not representative of long term production capacity of wells, particularly for fractured bedrock aquifers. Therefore, as documented in the EIR (Section V.P. Water Resources) and supporting technical reports (refer to Final EIR Appendix H, Geosyntec 2011), the estimates of production capability of the four wells is based on equivalent continuous pumping rates, not the short-term operational pumping rates during the cyclic pumping schedules utilized for each of the three phases of testing.</td></tr>
<tr><td>H&B-9</td><td>As documented in the Recirculated EIR (2013) and Final EIR, additional well testing and analysis was conducted by the County's consultants to address deficiencies noted in the 2008 Draft EIR. Based on this additional analysis, water levels did not reach equilibrium levels in three of the wells even during the Phase 3 of testing. Therefore, the estimated values of sustainable yield documented in the EIR are compensated accordingly, and are less than the rates identified by the applicant's consultant.</td></tr>
<tr><td>H&B-10</td><td>The combined duration of the three phases of cyclic pumping conducted at the four project wells was approximately 9 months, which typically would not be considered short-term testing. The three phases of testing provided a reasonable assessment of the long-term groundwater production capability and indicate that a combined production rate in the range of 65 to 75 AF/Y from the four wells (Wells 10, 11, 14 and 15) is sustainable for many decades.
As documented by the table below, the initial estimated yields for each of the four wells based on 72-hour tests conducted after the wells were installed were indeed much higher (8.5 to 50 times higher) than the estimated sustainable yields based on 9 months of pump testing.
<table>
<tr><th></th><th>Well 10</th><th>Well 11</th><th>Well 14</th><th>Well 15</th></tr>
<tr><td>Initial Estimated Yield*</td><td>200 gpm</td><td>200+ gpm</td><td>235 gpm</td><td>150 gpm</td></tr>
<tr><td>Approximate Estimated Sustainable Yield based on prolonged testing**</td><td>4 gpm#
(6.5 AF/Y)</td><td>23.6 gpm
(38 AF/Y)</td><td>6.2 gpm
(10 AF/Y)</td><td>12.4 gpm
(20 AF/Y)</td></tr>
</table>
*Initial estimated yield based on ~72-hr test following well installation as reported on DWR Well Completion Report (Geosyntec 2011, Appendix A)
**Updated estimate based on three Phases of testing (~9 months) (refer to Table V.P.-5 Estimates of Sustainable Yields for Domestic Wells 10, 11, 14 and 15, EIR Section V.P. Water Resources)
Note that gpm value for long-term production rate is an equivalent annualized rate as if the well pumped continuously. Actual operation rate is typically much higher and well would be operated in a cyclic pumping schedule.</td></tr>
<tr><td>H&B-11</td><td>Refer to response to comment H&B-10 above. The geologic map and cross-section (Geosyntec 2011, Figures 7 and 8), shows that Wells 5, 9, and 11 are all completed in the same water-bearing resistant cemented tuff layer in the Obispo Formation, and Well 10 is in a stratigraphically higher water-bearing resistant cemented tuff layer.
The reported long-term production rate of 21 afy each from Wells 5 and 9 provides available data</td></tr>
</table>

Comment No.	Comment
	regarding reasonable potential groundwater production rates from the Obispo tuff, not substantial evidence that production from Wells 10 and 11 will be the same.
H&B-12	Please refer to responses to comments H&B-6 through H&B-11. Please refer to responses to comments WRAC(b)-13 through WRAC(b)-16 regarding consideration of rainfall occurring during the testing program.
H&B-13	All the wells on the project site are within the Los Berros Creek watershed (refer to Geosyntec 2011, Figure 4). With the exception of Well 8 and a six-foot deep well, which are located in shallow alluvium along Los Berros Creek and may be subject to riparian rights, the wells are all completed with bedrock and pump percolating groundwater, which typically is not subject to water rights permitting requirements. Water rights issues are discussed further in response to comment SCSLC-10.
H&B-14	Comment noted.
H&B-15	Please refer to responses to comments H&B-13 and SCSLC-10. The EIR considers potential effects due to interference (refer to Final EIR Section V.P.5.a.1.c Water Resources, Project-specific Impacts and Mitigation Measures, Project-wide, Sustainable Water Supply, Interference). In addition, the EIR includes mitigation (WAT/mm-1) to avoid well production that would have an adverse effect on base flow in Los Berros Creek (due to evidence of hydrologic connectivity) and subsequently other wells along the Los Berros Creek corridor.
H&B-16	Please refer to responses to comments H&B-13 and SCSLC-10.
H&B-17	Please refer to responses to comments H&B-13 and SCSLC-10.
H&B-18	Please refer to responses to comments H&B-13, H&B-15, and SCSLC-10.
H&B-19	Please refer to Final EIR Section V.P. Water Resources, 5. Project-specific Impacts and Mitigation Measures, a. Project-side, 1) Sustainable Water Supply: "The previous outdoor water demand estimate per lot (including 30,500 square feet of landscaping) was estimated at 0.882 afy per lot. Based on the 95 percent reduction in irrigated area (down to 1,500 square feet), the outdoor water demand estimate per lot is reduced to 0.0626 afy (92 percent reduction in outdoor water use). The estimate for indoor water use, 0.38 afy per lot, remains the same, resulting in a total water demand rate of 0.44 afy per residential lot". The project water demand calculations are provided in the Laetitia Well Testing and Sustainable Yield Assessment (CHG 2010, Appendix A). Outdoor water demand was calculated per month, per lot using the Landscape Coefficient Method UCCE and DWR, August 2000. This information is cited and incorporated into the EIR (Section V.P.4 Water Resources, Impact Assessment and Methodology).
H&B-20	The water duty factor of 0.44 afy per residential unit that is assigned to calculate residential demand for the proposed development is greater than the range of 0.21 to 0.36 afy per unit calculated by Geosyntec (April 2013) (refer to Final EIR Appendix H) based on current references and guidelines for residential water usage in California, including incorporation of water conservation measures adapted from the County Land Use Ordinance and Plumbing Code (relative to the Nipomo Mesa Management Area).
H&B-21	Limitations on overall project water use identified in mitigation measure WAT/mm-1 will be enforced through interior and outdoor meters on each residential lot, and through monitoring of domestic production wells and submittal of monitoring reports to the County. The requirements of the Water Master Plan are qualitative; however, compliance with identified measures will result in quantifiable water demand, and actual metered water use will be quantified, as well. Water conservation measures are identified in the EIR and the County Code (relative to the Nipomo Mesa Management Area) because these measures are known to reduce water demand. The following sentence has been added to WAT/mm-1 to ensure future homeowners are clearly aware of water restrictions: "The program shall identify maximum water use of 0.44 acre feet per year, per lot."

Comment No.	Comment
H&B-22	Please refer to responses to comments WRAC(b)-13 through WRAC(b)-16 regarding consideration of rainfall occurring during the testing program.
H&B-23	Groundwater production rates of 21 afy have been sustained from each of Wells 5 and 9 for 11 to 26 years, respectively, based on available data (CHG 2010; Geosyntec 2011). Records of water levels and pumping for Well 5 include a multiple-year period of drought from 1987 to 1991. Although water level data are not available during the 1987-1991 drought, the water levels in Well 5 were only approximately 40 feet lower than the initial water level in 1983 when it was installed (the total depth of the well is nearly 400 feet). Thus, if groundwater levels dropped substantially during the drought in the late 1980s, they recovered since that time. Three years of below average rainfall also occurred from 2002 through 2004, and from 2007 through 2009. Phase 1 of the pumping tests of the project wells began in October 2009 at the end of a drought period. Thus the calculations based on the Phase 1 testing reflect drought conditions. Because the project wells are deep and have long screened intervals, large amounts of drawdown and utilization of large amounts of groundwater in storage is possible, which can help sustain production during times of drought. In addition, the County recognizes that drought conditions have and will likely continue to occur; therefore, mitigation measures include a requirement for a Drought Water Management Program (WAT/mm-1) to further reduce project demand and well yields. Mitigation measure WAT/mm-1(d) includes a provision to restrict development of future phases, and to restrict issuance of building permits, operational permits, and business licenses that require use of water supply after Phase Three.
H&B-24	Please refer to response to comment H&B-23 above regarding consideration of drought conditions. In addition, projection of log-linear, time versus water level trends based on the Phase 3 pumping data indicate that the Phase 3 pumping rates can be sustained for at least several decades (Geosyntec 2011, Figures 1 – 3). If the production capacity of one of the wells were to markedly decline, the other three wells have more than adequate capacity to meet water demands in the short term and a new well could be installed.
H&B-25	Comment noted.
H&B-26	Please refer to response to comments WRAC(b)-11 through WRAC(b)-13, NCMATG-2, an NCMATG-3. Los Berros Creek and groundwater flows from the project area to the Northern Cities Management Area of the Arroyo Grande Plain – Tri Cities Mesa portion of the Santa Maria Groundwater Basin (DWR 2002). The Technical Group for the Nipomo Mesa Management Area (NMMA) includes the Arroyo Grande Plain and Tri-Cities Mesa, as part of the NMMA. Maps showing the DWR (2002) and NMMA (2011) divisions within the Santa Maria Basin are shown in Figure 1-1 Santa Maria Groundwater Basin and Management Areas of the Nipomo Mesa Management Area 4th Annual Report (NMMA 2012); a copy of this figure is presented below. The same groundwater influx of 1,600 afy calculated by DWR (2002) from the inland bedrock aquifers into the NMMA of Santa Maria Groundwater Basin applies (DWR 2002, Table 25, page 135). The project site portion of inflow constitutes approximately 27% of the groundwater influx from inland bedrock into the NMMA. The NMMA 4th Annual Report (2011) reports total annual groundwater production within the NMMA portion of the Santa Maria Groundwater Basin of 10,538 afy. The groundwater influx from bedrock comprises approximately 15% including outflow from the project area. Taken alone, the groundwater inflow from the project area compromises approximately 4% of the reported groundwater production budget for NMMA portion of the Santa Maria Groundwater Basin. The NNMA Annual Report (2011) states that although recharge to alluvium along Los Berros Creek may be significant, "any groundwater flow from these [bedrock] formations to the NMMA is likely negligible" (NMMA 2011, page 12). Therefore, use of the proposed domestic wells would not have a project specific or cumulatively considerable adverse effect on the Santa Maria Groundwater Basin. In addition, the recommended pumping schedule (Geosyntec 2011 and mitigation measure WAT/mm-1) for the proposed domestic wells includes mitigation measures to protect flows in Los

Comment No.	Comment
	Berros Creek, including limitations on yield and monitoring for the life of the project.

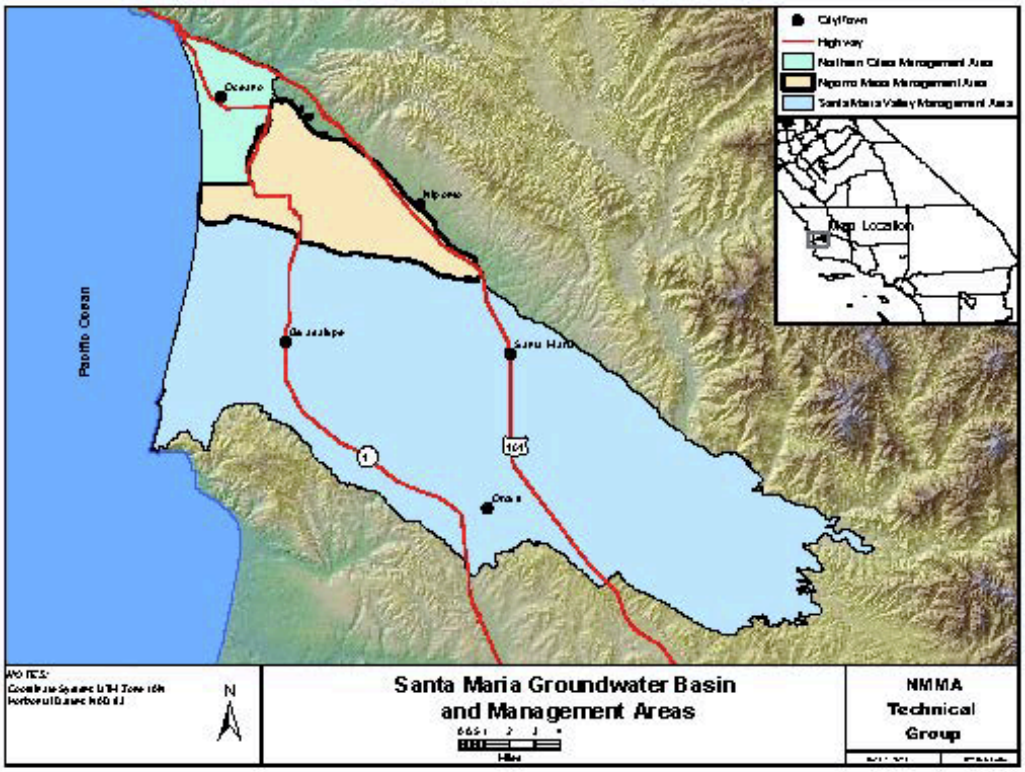


Figure 1-1. Santa Maria Groundwater Basin and Management Areas

Page 6 *Nipomo Mesa Management Area*
4th Annual Report: Calendar Year 2011 (Submitted April 2012)

Comment No.	Comment
H&B-27	Please refer to responses to comments H&B-1 through H&B-26 above. The EIR and supporting technical reports appended to the EIR (Appendix H) and available at the County of San Luis Obispo, include or summarize all available information.
H&B-28	The attached information titled *Fractured-rock Wells in the Pacific Northwest Foothills: Not Your Average Source* was reviewed. Specific comments related to fractured rock are responded to above (refer to H&B-4, H&B-5, and H&B-8).

MIKE & LORENE MURPHY
1261 HAVEN HILL WAY
P O BOX 1997
NIPOMO, CA 93444

RECEIVED

AUG 5 2013

PLANNING & BUILDING

July 23, 2013

Brian Pedrotti
County Planning & Building Dept
976 Osos Street, Room 300
San Luis Obispo, CA 93408-2040

Dear Brian,

There is no way there is enough water in Upper Los Berros Canyon to handle the increase in housing, dude ranch, pool, etc. Since the vineyards went in years ago we have had a decrease in the water supply in our well already. **MLM-1**

We share the property line with Laetitia. We strongly oppose having a dude ranch as our neighbor. We have lived here for over 50 years enjoying the serenity of the starry nights, quiet surroundings of living in the country. We want it to stay that way. **MLM-2**

We strongly disagree to the development of the Laetitia project. They have taken enough water from us already. **MLM-3**

Sincerely,

Lorene Murphy

Responses to Mike and Lorene Murphy's Comments

Comment No.	Comment
MLM-1	Please refer to responses to comments WRAC(b)-15 and WRAC(b)-17 regarding existing water use and effects on Los Berros Creek.
MLM-2	The commenter's concerns regarding the dude ranch will be considered by the County decision makers. Please note that the applicant is not currently requesting a use permit for the dude ranch at this time.
MLM-3	The commenter's concerns regarding the project will be considered by the County decision makers. Please refer to Final EIR Chapter V.P. regarding Water Resources.

DAVID & LINDA RICHARDS

225 BROKEN ARROW ROAD
NIPOMO, CA 93444

July 23, 2013

BRIAN PEDROTTI
Project Manager
COUNTY PLANNING AND BLDG. DEPT.
COUNTY GOVERNMENT CENTER
Room 200
San Luis Obispo, CA 93408

Re: RDEIR--Laetitia Winery
Our Property--225 Broken Arrow Road, Nipomo CA 93444

Dear Mr Pedrotti:

Please be advised that my wife, Linda, and I own the property located at 225 Broken Arrow Road, Nipomo, CA 93444 which is located within approximately 600 feet south of the Latitia property line. I am writing you this letter to comment upon the RDEIR report concerning the proposed Laetitia project. **DLR-1**

We purchased our 8.66 acre property in 1989, primarily due to it's rural nature, it's designation as being rural-residential, and the fact that it was surrounded by land zoned agricultural. Now it appears that our reliance upon those designations was subverted by Transfer Development Credits and/or the Agriculture Cluster Ordinance as a proposed 102 house tract project, 77 Cabin Dude Ranch and Sewer Treatment plant with large Effluent Holding Ponds is being contemplated. This project will negatively impact us--and all of our neighbors that pre-date this project --tremendously.

We are beyond concerned about road work for the huge increase in traffic, increased water consumption and new wells, the attendant problems with a large Commercial Enterprise/Dude Ranch, and a Sewage Treatment Plant with large Effluent Holding Ponds. *This project is fatally flawed..*

TRAFFIC

The proposed density of this project will simply overwhelm the roads from US 101 to the project site. One-hundred-two houses will more than likely generate over a thousand vehicle trips every day. The contemplated roads--Thompson, Sheehy and Dana Foothill cannot handle this increase in traffic. Further, Rim Rock Road connects to Sheehy and Dana foothill and meanders. The "loop" created is used daily by scores of people from the surrounding community to walk, bicycle, etc. The increased traffic and the very nature of Rim Rock Road will make this road extremely dangerous and an absolute tragedy waiting to happen. **DLR-2**

WATER/WELLS

All of the people living in the Foothill/Rim Rock area rely on wells for their domestic and agricultural water. It is generally accepted that our water supply is in an over-draft situation. Many of the existing wells in the area have run dry, and many new potential wells have not produced. The absurd proposal for a 77 cabin Dude Ranch aside, allowing 102, 1 acre parcels to landscape with water gulping lawns and further domestic water use would be irresponsible. Mandating individual water use would be impossible and ultimately futile. **DLR-3**

The water studies indicating adequate water for the project are based on inadequate data. Further, subsequent studies indicating adequate water based their findings on the original flawed data. To coin a phrase: Garbage in, garbage out. **DLR-4**

GEOSYNTEC has voiced CONCERN FOR THE LACK OF WATER given the fractured rock formations (See section 4.7, Geosyntec report) The consequences of lack of water for the EXISTING properties would be devistating on multiple levels. **DLR-5**

Further, Laetitia appears to want to make a "hit and run" regarding water issues by passing their responsibility to a mutual water company. Query: If Laetitia truly believes there is enough water, why would they divest themselves of responsibility. The answer is obvious--THERE SIMPLY IS NOT ENOUGH WATER. **DLR-6**

DUDE RANCH/COMMERCIAL ENTERPRISE

A commercial enterprise and Dude ranch with the density of the instant project is TOTALLY out of character with the surrounding community. Many of our community enjoy being outside during the evening to enjoy the stars and heavens which are enhanced by the attendant darkness. We are thrilled to view the Milky Way and Constellations. Is this to be replaced by 102 parcels with flood lights and a Dude Ranch with travellers with no connection to the land nor appropriate conservation? Will the quiet that we use to recharge our minds and souls be replaced with a blaring rendition of "Cadillac Ranch"? **DLR-7**

The project description indicates that the winery needs to be developed to maintain a "family vineyard". Not so. The owner of the vineyard is, according to Forbes magazine, a billionaire who made his money in Oil and now resides in Beverly Hills/Bel Aire. The proposed project is a money making venture--plain and simple. **DLR-8**

SEWAGE TREATMENT PLANT/EFFLUENT HOLDING PONDS

THE LOCATION OF THE EFFLUENT HOLDING PONDS WOULD BE A DISASTER, AND WE ARE ADAMANTLY OPPOSED TO THEM. **DLR-9**

We have attached under exhibit A a copy of the actual map existing in the DEIR. We have "roughed up" a location of many of the surrounding neighbors houses. *The prevailing wind will blow the smell from the effluent holding ponds directly into these existing houses.* This is unacceptable. **DLR-10**

The proximity to Los Berros Creek is an additional problem with the proposed location of the effluent ponds. In the DEIR at WW 1-4 system failures are described in terms such as **"WHEN THEY OCCUR", NOT "IF".** When a failure of these ponds occur, they will spill directly into the creek and spread, contaminating our groundwater. **DLR-11**

The effluent holding ponds pose other dangers as well. Clearly, mosquitos will be drawn to the water, and the County of San Luis Obispo has reported the presence on the West Nile Virus. Additional potential risks from the water include, without limitation, 1. Pathogens 2. Viruses 3. Bacteria 4. Protozoa 5. Helminths (tape worms) 6.Trace organics and Heavy Metals 7. Endocrine disrupting Chemicals and 8. Pharmaceutically-Active Compounds. **DLR-12**

We have attached as exhibit B photographs of the location of the proposed effluent holding ponds in respect to the proximity to our home. We have worked hard to make this property attractive, with gardens and orchards. We spend a great deal of time outside enjoying the work and the fruits of our labor. To view these holding ponds and more importantly and significantly to smell them will constitute a nuisance and undermine our well-being. We believe that our property value along with the property values of our neighbors in the vicinity will be negatively impacted. **DLR-13**

We have attached as exhibit C the California Supreme Court Case styled Michael C. Varjabedian v. City of Madera, 20 Cal 3d 285. Plaintiffs sued alleging that their property values had been diminshed by the construction and operation of a waste water treatment plant. Specifically, the Varjabedians noticed septic smells which were significant eminating from the waste water some 600 feet away. (The plant emitted odors which were blown onto the plaintiff's property by the prevailing winds.) Recovery was sought for permanent diminution in the value of their property caused by the nuisance, as well as compensation for personal discomfort. **THE CALIFORNIA SUPREME COURT FOUND FOR PLAINTIFF.** This case is solid precedent for the State of California, and incredibly on point with the Laetitia project. Liability herein could attach to many defendants including the Developers, Proposed Homeowners Association and to the homeowners personally. It should be noted that the houses in the proximity of Laetitia's proposed effluent holding ponds are all up-scale million dollar + homes. **DLR-14**

We are not suggesting litigation, nor threatening it, but merely point out it's potential.

It is clear that the developers have placed these holding ponds as far away from their homes as possible. This, in order to obviate any problems **for them** regarding sight and smell. Clearly, if a burden arises from the placement of the sewage treatment plant and effluent holding ponds, the burden should be shouldered by the development and not placed on innocent third parties. **DLR-15**

We believe that ANY Sewage Treatment Plant should be denied.

CONCLUSION

In conclusion, we believe that the Laetitia project should be denied in total. The many aggravating factors are simply too great to mitigate. Assuming arguendo that some portion is allowed to proceed, the project as proposed should not be approved. It is far too large and out of character with it's surroundings. Additionally, the sewage treatment and effluent ponds should be eliminated. Rather, any prospective plan for this project should be *significantly* scaled back and require individual septic tanks (See the alternative for 7 parcels). Such action would mitigate traffic and water concerns as well. **DLR-16**

very truly yours,

DAVID & LINDA RICHARDS

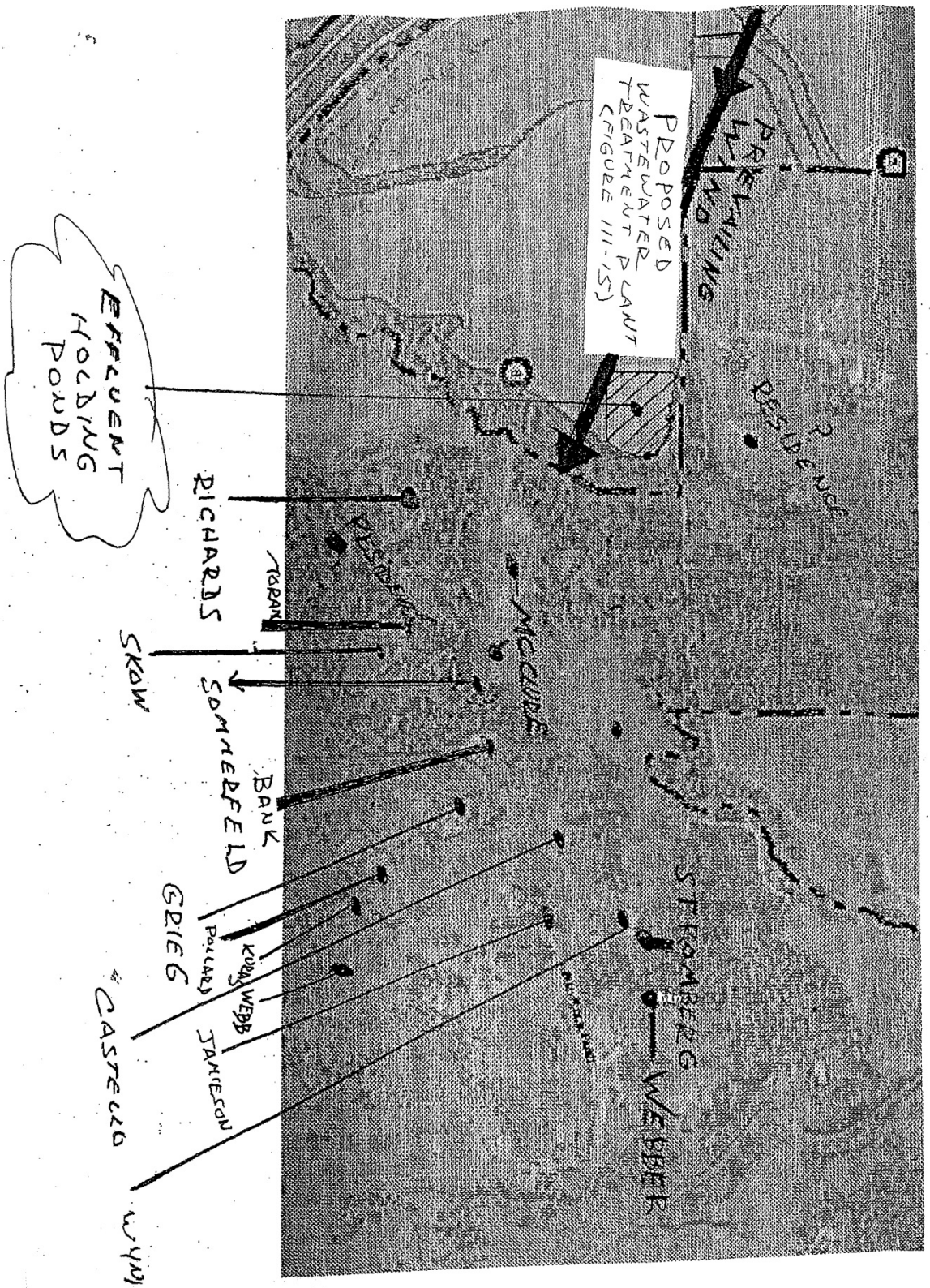
DLR-17

Legal Tabs Co. 1-800-322-3022

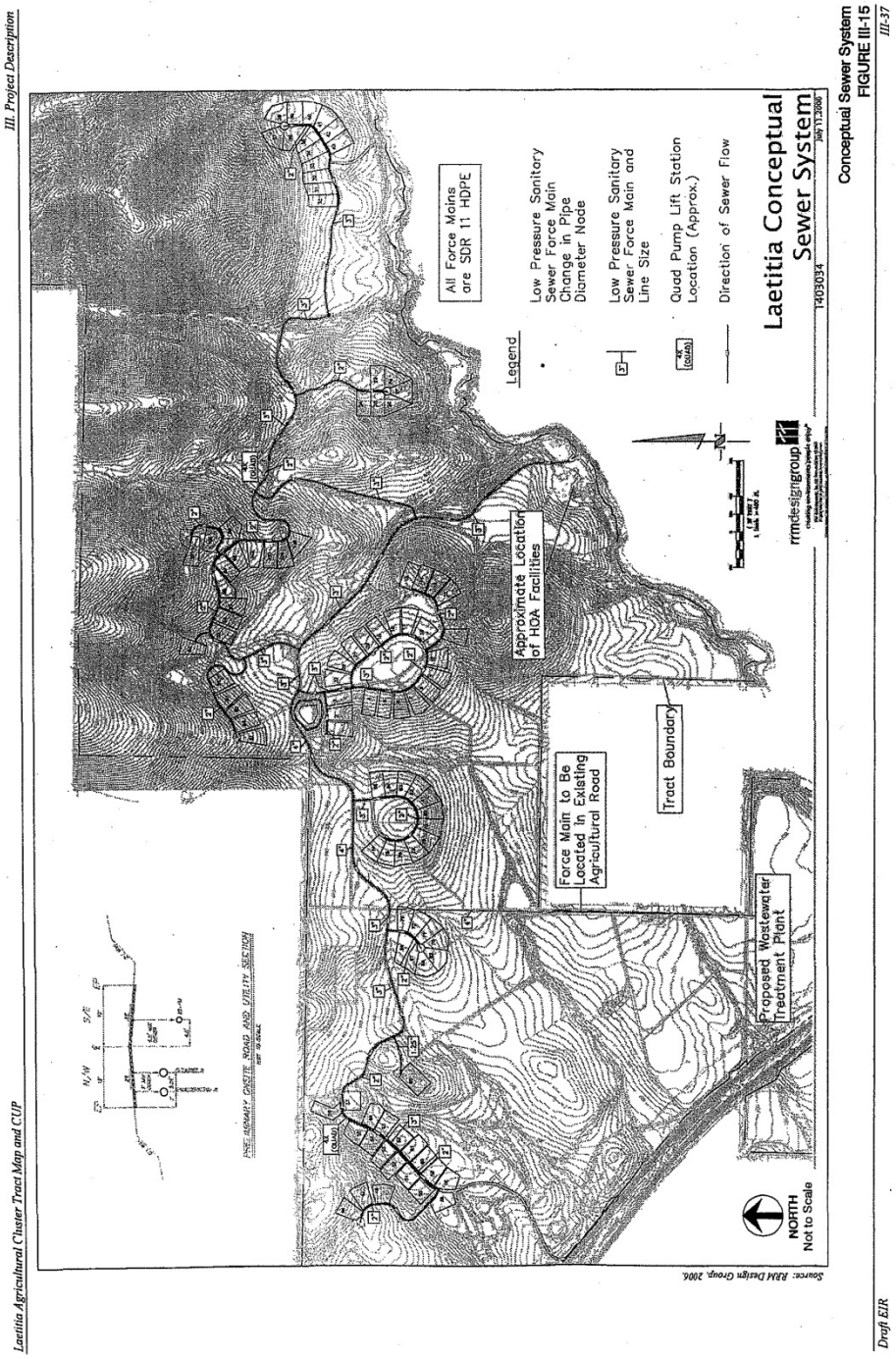
Stock # EXA-5-B

EXHIBIT A

DLR-17 (cont'd)


PROPOSED WASTEWATER TREATMENT PLANT (FIGURE III-15)
PARKLAWING
RESIDENCE
RESIDENCE
MCCLURE
STROMBERG
WEBER
EFFLUENT HOLDING PONDS
RICHARDS
TORAN
SKOW
SOMMERFELD
BANK
GRIEG
POLLARD
KUNZ/WEBB
JAMESON
CASTELLO
WYNN

DLR-17 (cont'd)



Conceptual Sewer System
FIGURE III-15

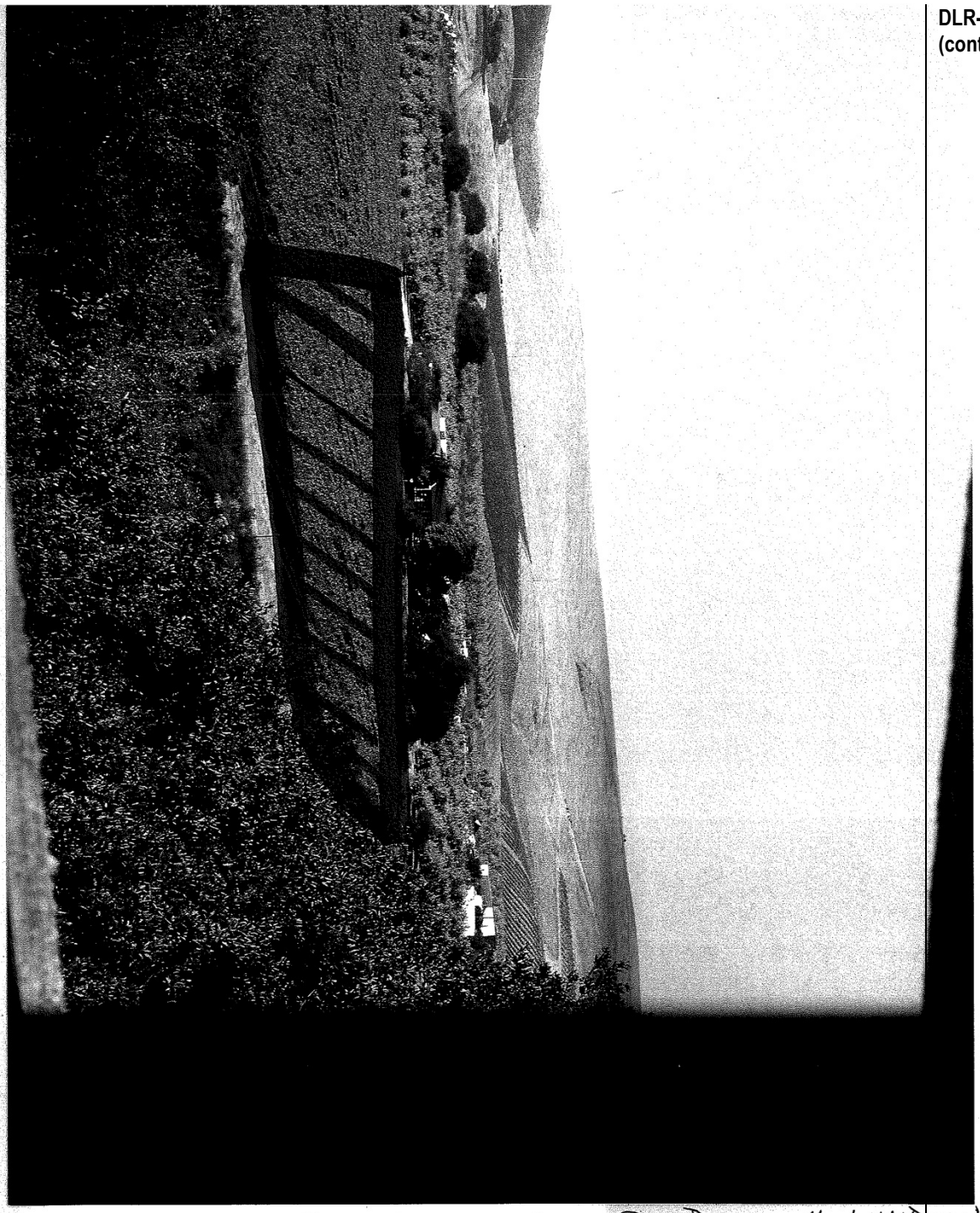
DLR-18

Legal Tabs Co. 1-800-322-3022

Stock # EXA-5-B

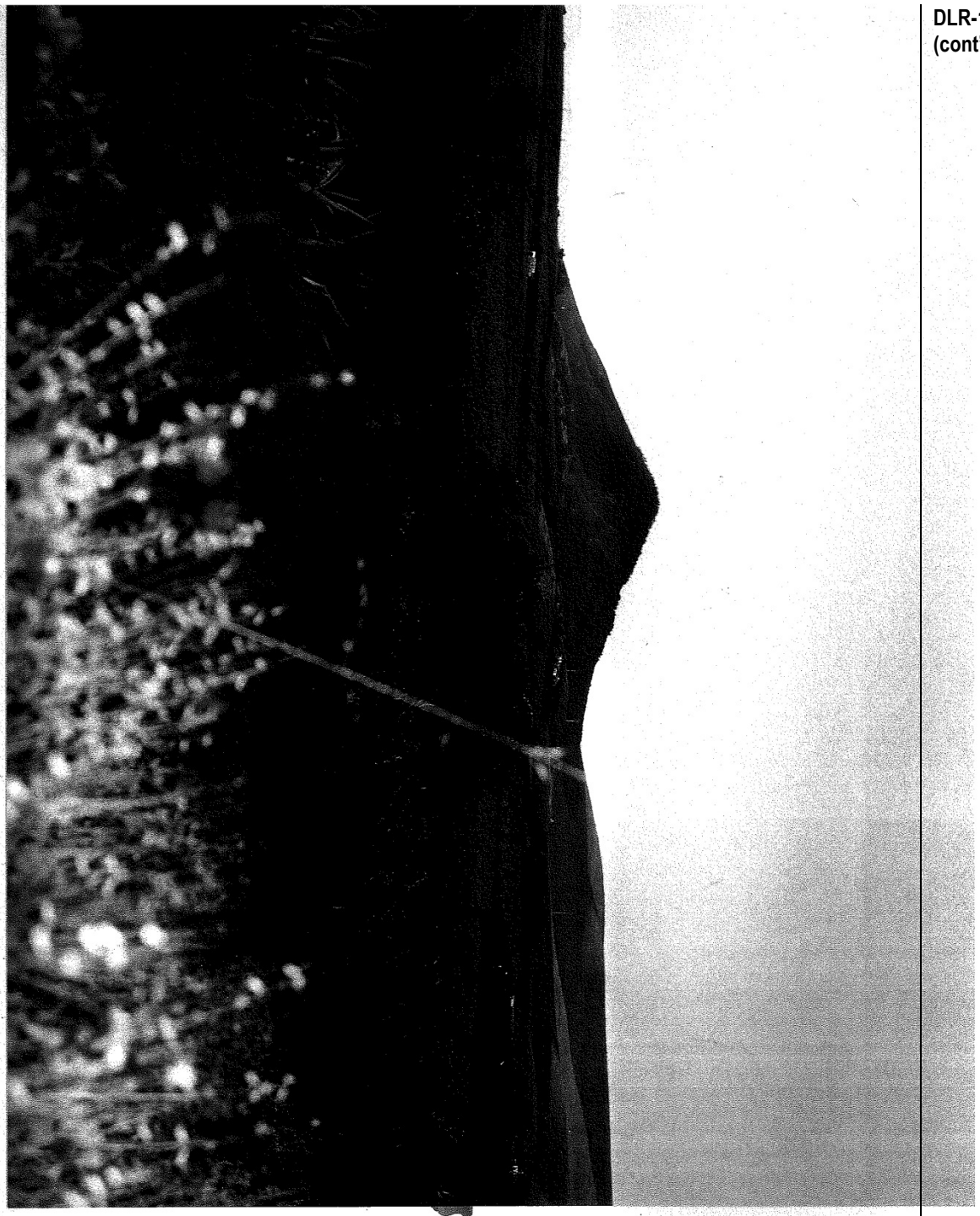
EXHIBIT B

DLR-18 (cont'd)



VIEW FROM OUR BEDROOM WINDOW
← EFFLUENT HOLDING POND.

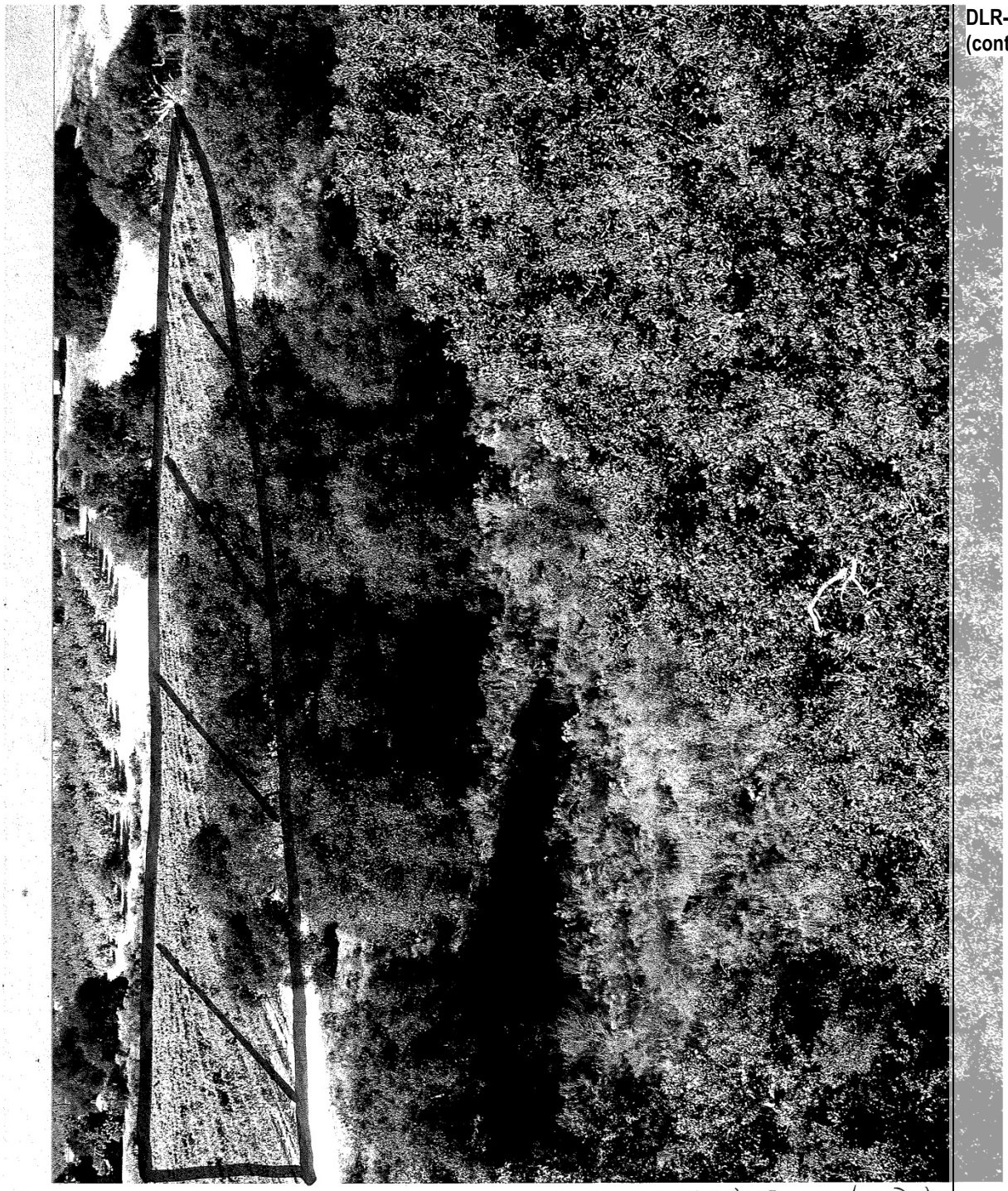
DLR-18 (cont'd)



VIEW FROM OUR FAR-SIDE BACK YARD

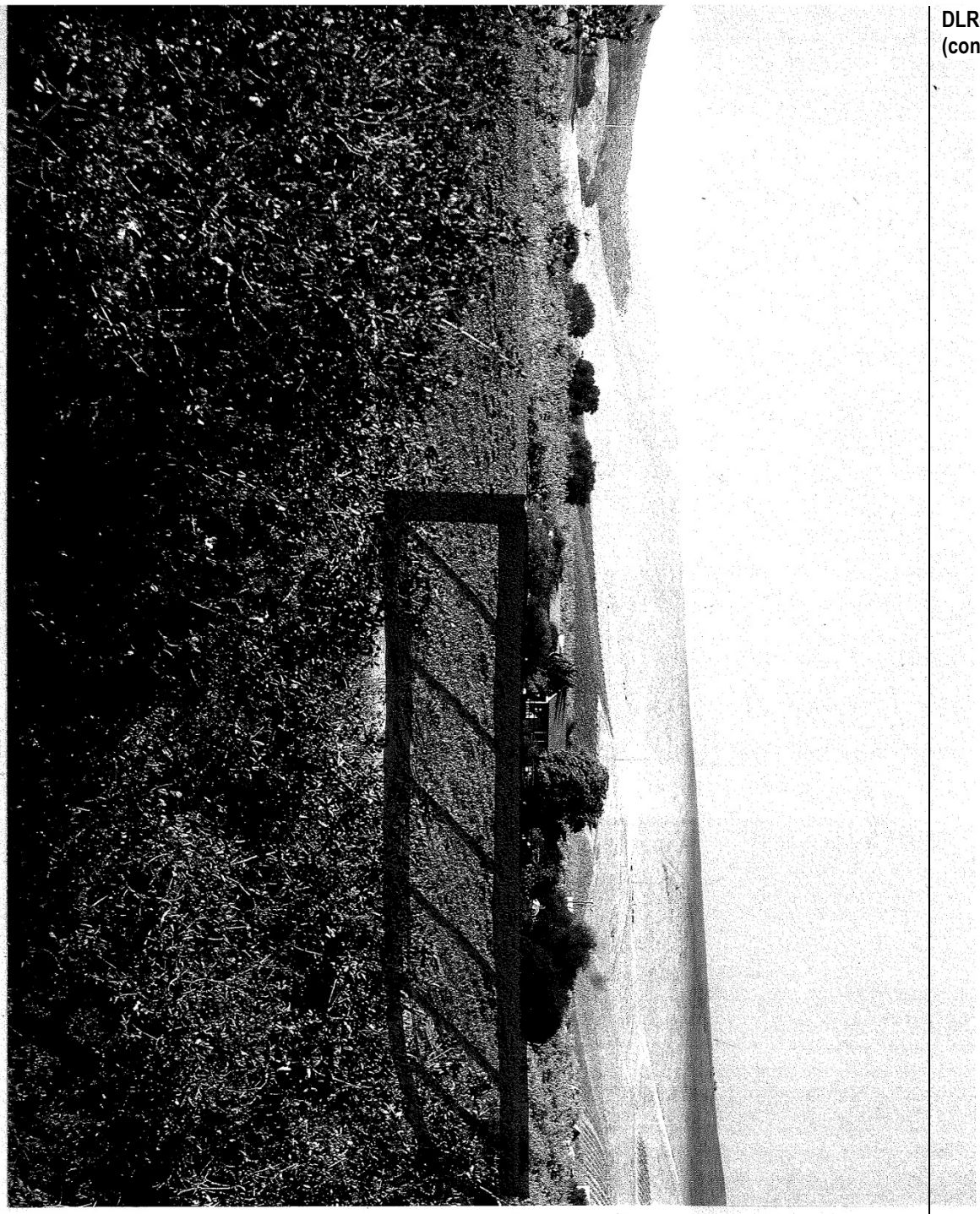
← EFFLUENT HOLDING PONDS

DLR-18 (cont'd)



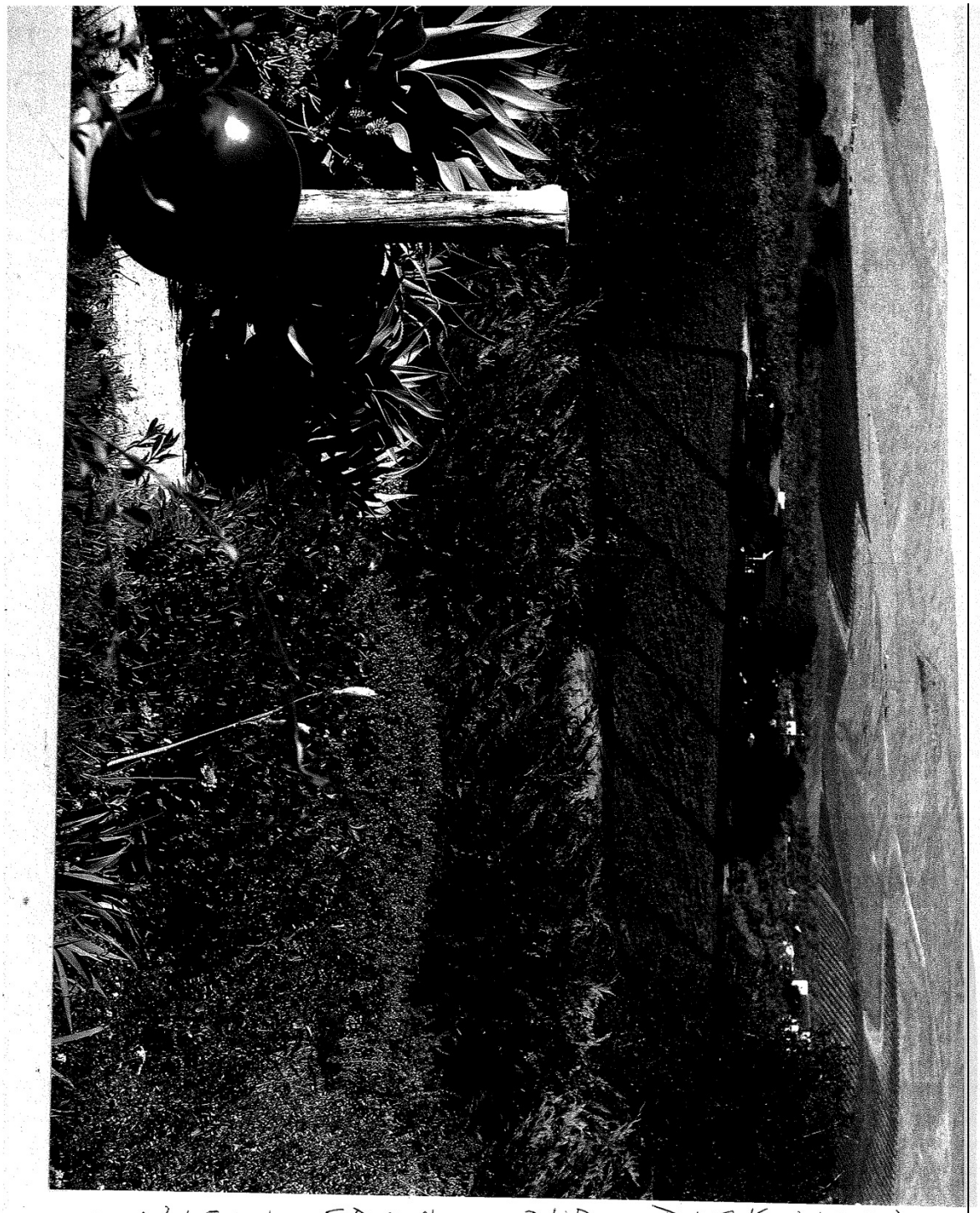
VIEW FROM OUR SIDE YARD
EFFLUENT HOLDING POND

DLR-18 (cont'd)



VIEW FROM OUR PORCH
← EFFLUENT HOLDING POND

DLR-18 (cont'd)



VIEW FROM OUR BACK YARD

← EFFLUENT HOLDING POND

DLR-19

Legal Tabs Co. 1-800-322-3022

Stock # EXA-5-B

EXHIBIT C

DLR-19 (cont'd)

20 Cal.3d 285, 23592, Varjabedian v. City of Madera

CheckMate Case History

Page 285

20 Cal.3d 285

142 Cal.Rptr. 429, 572 P.2d 43

Michael C. VARJABEDIAN et al., Plaintiffs and Appellants,

v.

CITY OF MADERA, Defendant and Appellant.

S.F. 23592.

Supreme Court of California

Dec. 9, 1977.

In Bank

Rehearing Denied Jan. 5, 1978.

Superior Court of Madera County, No. 18659, Dean C. Lauritzen, Judge. [*]

Page 286

[Copyrighted Material Omitted]

Page 287

[Copyrighted Material Omitted]

Page 288

Sherwood, Denslow & Green, Madera, for plaintiffs and appellants.

Axel E. Christiansen, City Atty., Parichan, Krebs, Renberg & Eldridge, Parichan, Renberg & Crossman, Fresno, and Bartow & Christiansen, Madera, for defendant and appellant.

MOSK, Justice.

Defendant City of Madera appeals from a judgment awarding plaintiffs approximately $73,000 for damages caused by the city's operation of a sewage treatment plant near plaintiffs' property. Recovery was on a nuisance theory. Plaintiffs cross-appeal from a

http://www.jurisearch.com/newroot/Case.asp?prnt=1& 7/29/2013

Page 289

judgment on the pleadings for defendant on plaintiffs' cause of action in inverse condemnation.

DLR-19 (cont'd)

We conclude that the court erred in its instructions on the measure of nuisance damages, but the error was not prejudicial. Defendant's other allegations of error are not meritorious, and thus the judgment on the nuisance theory must be affirmed. However, defendant's motion for judgment on the pleadings on the inverse condemnation claim should have been denied, and therefore the judgment on that count must be reversed. [1]

Plaintiffs Michael and Judith Ann Varjabedian acquired a vineyard of approximately 80 acres in Madera County, and in 1971 moved onto the property with their three children. In 1972 defendant city began operation of a new waste water treatment plant on land located some 600 feet from plaintiffs' residence. The plant emits odors which are blown onto plaintiffs' property by the prevailing winds.

The Varjabedians noticed septic smells on their property as soon as sewage was delivered to the new plant in June 1972. There followed a lengthy period during which they repeatedly complained of the odors to city officials and were told that corrective efforts were being made and assured that the plant would eventually be odor-free. On advice of counsel, Michael Varjabedian began to keep a log of the occurrence and intensity of the smells, and of his attempts to persuade the city to remedy the situation. Finally, in July 1973 the instant lawsuit was filed against the city by all five family members.

In their complaint, plaintiffs set forth four theories of recovery: negligence in the design, construction and operation of the plant; maintenance of a nuisance; maintenance of a dangerous and defective condition; and inverse condemnation. When the case came to trial in June 1974, plaintiffs voluntarily dismissed the causes of action for

Page 290

negligence and maintenance of a defective condition. [2] The remaining two counts were the object of defendant's motion for judgment on the pleadings. The trial judge granted the motion as to the inverse condemnation theory, stating his belief that recovery on that cause required "physical damage to the property."

As to the nuisance cause of action the motion was denied, and the case went to trial on that theory. Plaintiffs sought recovery for permanent diminution in the value of their property caused by the nuisance, as well as compensation for personal discomfort. (Kornoff v. Kingsburg Cotton Oil Co. (1955) 45 Cal.2d 265, 271-275.) They further sought special damages for the anticipated loss of a Cal-Vet loan (Mil. & Vet. Code, § 984 et seq.) which financed the purchase of the bulk of the vineyard. In support of this claim, plaintiffs contended they would be compelled to move off the property and would therefore forfeit their loan under Military and Veterans Code section 987.2. [3] Damages were requested to cover the cost of refinancing the land purchase at a higher rate.

The jury returned a verdict for plaintiffs awarding damages as follows: $32,000 to the Varjabedians for the loss in value of their real property; $30,000 special damages for loss of the Cal-Vet loan; and $11,000 other damages distributed among the five named plaintiffs.

I

Defendant relies upon alleged error in the instructions to the jury regarding the measure of property

damage for which the city could be liable in nuisance. [4] The challenged instruction read: "In determining the compensation, if any, to be awarded Plaintiffs for damage to their property proximately caused by a permanent nuisance, in addition to

DLR-19 (cont'd)

Page 291

other damage as to which I have instructed you or will instruct you, they are entitled to recover the difference, if any, in the present fair market value of the property as the same would have been without the construction of the sewage treatment plant by the City of Madera, and the present fair market value after said plant was constructed and put into operation."

This instruction, defendant urges, allowed the jury to include in its calculation of damages a loss of real property value caused by city operations which by statute do not constitute a nuisance. Civil Code section 3482 provides that "Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance," and the construction of sewage treatment plants by cities such as Madera is admittedly authorized by statute. (See Gov. Code, §§ 39040, [5] 40404, 43601, 43602, 54301, 54309, 54309.1, and 54341.)

However, the exculpatory effect of Civil Code section 3482 has been circumscribed by decisions of this court. In Hassell v. San Francisco (1938) 11 Cal.2d 168, 171, 1022, we said: " 'A statutory sanction cannot be pleaded in justification of acts which by the general rules of law constitute a nuisance, unless the acts complained of are authorized by the express terms of the statute under which the justification is made, or by the plainest and most necessary implication from the powers expressly conferred, so that it can be fairly stated that the legislature contemplated the doing of the very act which occasions the injury.' " This interpretation was reiterated in Nestle v. City of Santa Monica (1972) 6 Cal.3d 920, 938, 101 Cal.Rptr. 568, and we adhere to it in the case at bar. A requirement of "express" authorization embodied in the statute itself insures that an unequivocal legislative intent to sanction a nuisance will be effectuated, while avoiding the uncertainty that would result were every generally worded statute a source of undetermined immunity from nuisance liability. [6]

Page 292

Applying the foregoing standard, we reject defendant's theory that the general authorization of municipal construction of sewage plants "expressly" sanctions the production of any particular level of odors within the meaning of section 3482. None of the Government Code statutes under which the city claims to act mentions the possibility of noxious emanations from such facilities. Nor can we find that such odors were authorized by the "plainest and most necessary implication" from the general powers there conferred, or that it can be fairly said that the Legislature contemplated, to any extent, the creation of a malodorous nuisance when it authorized sewage plant construction. Indeed, one object of such plants is to remove harmful and obnoxious effluents from the environment.

Defendant argues, however, that the instruction also allowed the jury to consider effects of the sewage plant on the market value of the Varjabedians' property caused by aspects of the plant other than its production of odors. It is true that under the instruction, which simply calls for a comparison of the market value of the Varjabedians' land before and after the construction of the plant, the jury could have considered decreases in market value provoked by such considerations as the unappealing aesthetic qualities of the sewer plant or anxiety caused by mere knowledge of its proximity. Undoubtedly, not all of such factors fall within the definition of nuisance (fn. 4, ante); in those respects, therefore, the instruction failed to satisfy the requirements of the law of nuisance quite apart from any issue of statutory authorization under Civil Code section 3482. [7] To the extent that any of the factors did

constitute a nuisance but were expressly authorized by statute, the instruction erred in allowing their inclusion in the measure of damages.

DLR-19 (cont'd)

We decline to speculate, however, on which of the potentially depressive effects of sewer plant construction on property values other than odors constitute nuisances, or if nuisances, which are expressly authorized, because of our belief that any error in the instruction in this case was not prejudicial to defendant. (Cal.Const., art. VI, § 13; Code Civ.Proc., § 475.) There was no evidence of negative impact on plaintiffs' property value, to which the jury was exposed, which did not

Page 293

relate directly to the odors. The only testimony regarding the nonolfactory impact of the sewer plant was that of defendant's expert, one Freeman, who estimated that in the absence of constant foul odors there was no depreciation of the farmland. The testimony of plaintiff's expert, one Salaberry, that the sewage plant had caused a depreciation of $56,000 was based solely on the existence of the smells. Indeed, the court kept Salaberry's written report from the jury because it contained language which might have misled the jury into estimating damages before and after the construction of the plant rather than before and after the emission of odors. And although the challenged instruction gave some sanction to the jury's consideration of precisely the same erroneous comparison, this tendency was minimized by other instructions which tied damages to those proximately caused by a permanent nuisance. [8] In the light of the evidence and the totality of the court's instructions, the potential for prejudice contained in the erroneous instruction on damages was minimal. We do not believe the error was "likely to mislead the jury and thus to become a factor in its verdict." (Henderson v. Harnischfeger Corp. (1974) 12 Cal.3d 663, 670, 117 Cal.Rptr. 1, 5, 357.)

II

Defendant further contends that the awards of damages for loss in value of the Varjabedians' real property and for the personal discomfort of the individual plaintiffs were unsupported by the evidence. To the contrary, the record reveals substantial evidence to sustain the verdict in this regard. (Crawford v. Southern Pacific Co. (1935) 3 Cal.2d 427, 429.) The testimony of each of the plaintiffs as to the discomfort caused by the smells was corroborated by several witnesses, while the continuing occurrence of the stench was documented in tedious detail by Michael Varjabedian's recollection fortified by his log. The intensity of the odors found reflection in log notations ranging from "smell" to "very bad" to "horrible." Even when classified as mere "smell," plaintiff testified that the aroma was offensive enough to destroy the comfort and enjoyment of his home and property. At other times "it

Page 294

was about as much as a person could stand, you could not be in it too long. You would have to go somewhere for relief." [9] Physical reactions of plaintiffs included burning of the eyes and nausea. From this evidence the jury could have concluded that a nuisance existed which was permanent in nature. (Kornoff v. Kingsburg Cotton Oil Co. (1952) supra, 45 Cal.2d 265, 268-271.)

As for the depreciation in the value of the land, plaintiffs' expert estimated the decline at $56,000, nearly twice the jury's ultimate award. While defendant objects to the inclusion in this figure of the loss incurred if the premises were uninhabitable and hence salable only to an absentee farmer, it appears this factor would appropriately be considered by a prospective purchaser and could properly be included in the estimated decline in market value.

Defendant accompanies its claim of evidentiary insufficiency with an allegation of excessive damages. This contention was initially presented to the trial court and rejected, in connection with defendant's motion for a new trial. The judge's decision in this respect is entitled to great weight. (Bertero v. National General Corp. (1974) 13 Cal.3d 43, 64, 118 Cal.Rptr. 184.) Upon review of the record, we do not find the awards for either the loss of real property value or the personal discomfort of plaintiffs to be excessive.

DLR-19 (cont'd)

III

Defendant next asserts that plaintiffs' recovery for the anticipated loss of their Cal-Vet loan was speculative and therefore improper (Civ.Code, § 3283). [10] The trial court treated the certainty of the future loss of the loan as a question of fact for the jury, and instructed as follows: "If, under the evidence you should find that there is a permanent nuisance,

Page 295

and if you further find that it is reasonably certain that plaintifFs michaEL c. and Judith Ann Varjabedian will by reason thereof move from their property, then you may consider any damages that it is reasonably certain they will suffer from the loss of their Cal Vet loan." The submission of the issue to the jury as a question of fact was proper (Zerbo v. Electrical Products Corp. (1931) 212 Cal. 733, 735-736), and the instruction requirement of "reasonable certainty" satisfied Civil Code section 3283. (Cf. Bellman v. San Francisco H.S. Dist. (1938) 11 Cal.2d 576, 588.)

The evidence supported the jury's conclusion as to the certainty of the future damages. Michael Varjabedian testified there was "no way" his family could stay on the farm, and the unsuitability of the premises for human habitation was confirmed by the testimony of Salaberry and at least one other witness. Furthermore, Military and Veterans Code section 987.2 (fn. 3, ante) was properly introduced as evidence that, if forced to move, the Varjabedians would lose the Cal-Vet loan. For the first time on its motion for new trial defendant offered an affidavit from an official of the Department of Veterans Affairs, which, while affirming that the Varjabedians would forfeit their loan if forced to move, also stated in part that "it is possible that a veteran's application for a new and different loan upon a different property would be favorably considered and granted." Whatever the probative value of this evidence on the issue of future damages, it should have been presented at trial.

The total amount of damages awarded for loss of the loan was adequately supported by testimony of plaintiff's expert, a banker, that this was the present value of the additional obligations the Varjabedians would incur if forced to refinance their farm. We do not find the amount excessive. [11]

For the above reasons, we affirm in its entirety that portion of the judgment which awards plaintiffs damages in nuisance.

Page 296

IV

We turn now to plaintiffs' appeal from the judgment on the pleadings entered against their claim in inverse condemnation. Despite plaintiffs' successful nuisance recovery, we cannot say on the basis of the record before us that the challenged ruling, if erroneous, was necessarily harmless. (See, e.g., Holtz v. San Francisco Bay Area Rapid Transit Dist. (1976) 17 Cal.3d 648, 657, 131 Cal.Rptr. 646 (prejudgment interest); see also id. at pp. 651-656, 131 Cal.Rptr. 646, and Code Civ.Proc., § 1036 (formerly § 1246.3)

(recovery of certain litigation expenses).) We therefore reach the issue whether the court erred in denying plaintiffs' claim in inverse condemnation. **DLR-19 (cont'd)**

Article I, section 19 (formerly art. I, § 14) of the California Constitution requires that "just compensation" be paid when "private property" is "taken or damaged for public use." In this case, the trial judge gave as his reason for denying compensation under this provision plaintiffs' failure to allege "physical damage to the property" or a "trespass." Defendant urges no other grounds in support of the judgment, and we consider none.

In assessing whether plaintiffs' allegations may serve as a basis for inverse liability, we note that physical damage to property is not invariably a prerequisite to compensation. (See Breidert v. Southern Pac. Co. (1964) 61 Cal.2d 659, 39 Cal.Rptr. 903; Southern Cal. Edison Co. v. Bourgerie (1973) 9 Cal.3d 169, 107 Cal.Rptr. 76.) Rather, the determination of the scope of the just compensation clause rests on its construction " 'as a matter of interpretation and policy.' " (Holtz v. Superior Court (1970) 3 Cal.3d 296, 303, 90 Cal.Rptr. 345, 349, 445 (hereinafter Holtz I).) The contending policies which guide that construction have often been described as follows: " 'on the one hand the policy underlying the eminent domain provision in the Constitution is to distribute throughout the community the loss inflicted upon the individual by the making of the public improvements. . . . On the other hand, fears have been expressed that compensation allowed too liberally will seriously impede, if not stop, beneficial public improvements because of the greatly increased cost.' " (Albers v. County of Los Angeles (1965) 62 Cal.2d 250, 263, 42 Cal.Rptr. 89, 96, 136, quoting from Bacich v. Board of Control (1943) 23 Cal.2d 343, 350.)

Several factors present militate in favor of a distribution throughout the relevant community of the type of loss involved here.

Page 297

Plaintiffs' claim stems from the recurring violation of their property by a gaseous effluent. As such, the injury is not far removed from those core cases of direct physical invasion which indisputably require compensation. (See, e.g., Frustuck v. City of Fairfax (1963) supra, 212 Cal.App.2d 345, 369-370, 28 Cal.Rptr. 357; Podesta v. Linden Irr. Dist. (1956) 141 Cal.App.2d 38; United States v. Causby (1946) 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206; Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law (1967) 80 Harv.L.Rev. 1165, 1226-1229.) Thus, damage from invasions of water or other liquid effluents often provides the basis for inverse liability. (See, e.g., Bauer v. County of Ventura (1955) 45 Cal.2d 276; Clement v. State Reclamation Board (1950) 35 Cal.2d 628; Sheffet v. County of Los Angeles (1970) 3 Cal.App.3d 720, 84 Cal.Rptr. 11; Ambrosini v. Alisal Sanitary Dist. (1957) 154 Cal.App.2d 720.) [12] Moreover, plaintiffs' complaint which includes, inter alia, the claim that their land was made "untenantable for residential purposes" is clearly sufficient to depict a permanent and "substantial impairment" in their use of the land. (Cf. Breidert v. Southern Pac. Co. (1964) supra, 61 Cal.2d 659, 39 Cal.Rptr. 903.)

At the same time, fears that "compensation . . . will seriously impede, if not stop" the beneficial construction of sewage treatment plants might be realized if courts were to award compensation for every objectionable odor, however insubstantial or widely dispersed, produced by such facilities. But the problem of reconciling this consideration with the competing policy of loss-distribution is not presented in its most difficult form by the appeal of the present judgment, since it appears from the Varjabedians' allegations that their property may have been peculiarly burdened by the odors so as to bring the case within the doctrine of Richards v. Washington Terminal Co. (1914) 233 U.S. 546, 34 S.Ct. 654, 58 L.Ed. 1088. In Richards the plaintiff complained of "inconvenience . . . in the occupation of his

property" caused by "gases and smoke" emanating from a nearby railroad. (Id. at p. 549, 34 S.Ct. at p. 655.) The United States Supreme Court ruled that under the "taking" clause of the Fifth Amendment to the federal Constitution, the plaintiff could not recover for "those consequential damages that are necessarily incident to proximity to the railroad . . . ." (Id. at p. 554, 34 S.Ct. at p. 657.)

DLR-19 (cont'd)

Page 298

Yet the landowner was entitled to compensation for "gases and smoke emitted from locomotive engines while in (a) tunnel, and forced out of it by means of (a) fanning system through a portal located so near to plaintiff's property that these gases and smoke materially contribute to injure the furniture and to render the house less habitable than otherwise . . . ." (Id. at p. 551, 34 S.Ct. at p. 656.) Construing federal statutes immunizing the railroad from nuisance liability "in light of the Fifth Amendment" the court concluded "they do not authorize the imposition of so direct and peculiar and substantial a burden upon plaintiff's property without compensation to him." (Id. at p. 557, 34 S.Ct. at p. 658; see generally Stoebuck, Nontrespassory Takings in Eminent Domain (1977) pp. 156-158.)

Of course, Richards may be distinguished from this case with respect to the nature of the public facility involved, or on the ground that there is no device here which directs the noxious gases onto plaintiffs' property. However, such factual differences do not render the underlying principle of Richards inapplicable to the problem at hand, particularly when it is considered together with the California Constitution, which protects a somewhat broader range of property values from government destruction than does the analogous federal provision. (See Reardon v. San Francisco (1885) 66 Cal. 492, 501; Bacich, supra, 23 Cal.2d at p. 350; Van Alstyne, Statutory Modification of Inverse Condemnation: The Scope of Legislative Power (1967) 19 Stan.L.Rev. 727, 768-776.) If a plaintiff can establish that his property has suffered a "direct and peculiar and substantial" burden as a result of recurring odors produced by a sewage facility that he has, as in Richards, been in effect "singled out" to suffer the detrimental environmental effects of the enterprise then the policy favoring distribution of the resulting loss of market value is strong (Holtz I, supra, 3 Cal.3d at pp. 303-304, 90 Cal.Rptr. 345) and the likelihood that compensation will impede necessary public construction is relatively slight. In these circumstances, the necessity of breathing noxious sewage fumes may be a burden unfairly and unconstitutionally imposed on the individual landowner. [13]

Page 299

Here plaintiffs allege their farm was directly in the path of the odors as they were blown from defendant's facility by the prevailing winds. Plaintiffs should have been given the opportunity through amendment of their pleadings if necessary (cf. MacIsaac v. Pozzo (1945) 26 Cal.2d 809, 815) to demonstrate that the burden on their farm was sufficiently direct, substantial, and peculiar to come within the principle of Richards, as applied above. On that showing the Varjabedians can base a claim in inverse condemnation. [14] It follows that the trial court's judgment on that count must be reversed. (See Dragna v. White (1955) 45 Cal.2d 469, 470; Chas. L. Harney, Inc. v. Contractors' Bd. (1952) 39 Cal.2d 561, 565.)

The judgment is amended by adding thereto a paragraph dismissing the fourth cause of action of the complaint (inverse condemnation) and awarding judgment thereon to defendant. The portion of the judgment thus added is reversed. The remainder of the judgment is affirmed. Plaintiffs shall recover their costs on appeal.

BIRD, C. J., and TOBRINER, CLARK, RICHARDSON, MANUEL and THOMPSON (HOMER B.) (Assigned by the Chairperson of the Judicial Council), JJ., concur.

Rehearing denied; BIRD, C.J., did not participate.

DLR-19 (cont'd)

NOTES:

[*]Assigned by Chairman of the Judicial Council.

[1]The motion for judgment on the pleadings was orally granted at the outset of trial. A minute order to this effect was entered, but the ruling was not carried over into the formal judgment recorded in the judgment book. Although the minute order was not appealable (Old Town Dev. Corp. v. Urban Renewal Agency (1967) 249 Cal.App.2d 313, 317, 57 Cal.Rptr. 426), the court's failure to include a dismissal of the cause of action in inverse condemnation in the judgment on the verdict was inadvertent. In addition, the issues presented by the challenged ruling are briefed and ready for decision. In these circumstances it is appropriate to preserve the appeal by amending the judgment to reflect the manifest intent of the trial court, and we shall so order. (Tenhet v. Boswell (1976) 18 Cal.3d 150, 153-155, 133 Cal.Rptr. 10, and cases cited.)

[2]A cross-complaint by the city against the designers and builders of the plant, as well as cross-complaints between those cross-defendants, were severed for purposes of trial and are not before us on this appeal.

[3]Military and Veterans Code section 987.2 reads, in relevant part, "The contract made between the department and purchaser shall provide that the purchaser maintain the farm or home as his place of residence . . . ." A waiver of the occupancy requirement "for a period not to exceed four years on a showing of good cause" is provided in section 986.35.

[4]Civil Code section 3479 provides in pertinent part, "Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property . . . is a nuisance."

[5]Section 39040 of the Government Code was repealed by Statutes 1974, chapter 426, section 3, page 1023. (See Cal. Law Revision Com. com. to Gov. Code, §§ 39040-39374, 35 West's Annot. Gov. Code (1977 Supp.) p. 69.)

[6]In support of its interpretation of section 3482, the city relies on Lombardy v. Peter Kiewit Sons' Co. (1968) 266 Cal.App.2d 599, 605, 72 Cal.Rptr. 240. In Lombardy, the plaintiff complained inter alia of the fumes from a nearby freeway, for which he sought nuisance damages. The court sustained a judgment on demurrer for the defendants, citing section 3482. However, the test of authorization stated in Hassell requires a particularized assessment of each authorizing statute in relation to the act which constitutes the nuisance. Accordingly, generalizations drawn from statutes authorizing highway construction may not be applicable to municipal waste water treatment operations. We need not determine here whether Lombardy errs in applying the standard adopted in Hassell.

[7]To avoid this error, the instruction should have directed a comparison of the market value of the property before and after the creation of the nuisance, rather than before and after the construction of the plant.

[8]Thus the general instructions read to the jury on the issue of damages contained the statement, "If, under the Court's instructions you find that Plaintiffs, or any of them, are entitled to a verdict against Defendant, City of Madera, you must award such Plaintiff damages in an amount that will reasonably compensate him or her for each of the following elements of claimed loss or harm, provided that you find that it was, or will be suffered by him or her and proximately caused by the Defendant by the maintenance of a permanent nuisance as hereinbefore defined." (Italics added.)

[9]The testimony is reminiscent of Shakespeare's description in The Merry Wives of Windsor: "The rankest compound of villanous smell that ever offended nostril."

[10]Defendant relies on Frustuck v. City of Fairfax (1963) 212 Cal.App.2d 345, 367-368, 28 Cal.Rptr. 357, and Engle v. City of Oroville (1965) 238 Cal.App.2d 266, 47 Cal.Rptr. 630. Frustuck indeed states the rule on speculative damages, but presents an inapposite factual situation in that the appellate court found no evidence of damage to the plaintiff's property resulting from increased flowage of water across that property. In Engle, the plaintiffs claimed damages for loss of prospective profits from a motel which had yet to be built and for which they had no contractual arrangement or financial backing damages considerably more speculative than those the Varjabedians face regarding loss of their loan.

DLR-19 (cont'd)

[11]Defendant, for the first time in its reply brief, raises the argument that plaintiffs should have been required to minimize the damages involved in refinancing the Cal-Vet loan, either by selling their farm and purchasing another on which a Cal-Vet loan could be obtained, or by applying for a temporary waiver of the residency requirement as provided in Military and Veterans Code section 986.35. Obvious reasons of fairness militate against consideration of an issue raised initially in the reply brief of an appellant. (Hibernia Sav. and Loan Soc. v. Farnham (1908) 153 Cal. 578, 584; Kahn v. Wilson (1898) 120 Cal. 643, 644.) We therefore do not consider the issue here.

[12]While many of these cases involve permanent changes in the physical contours of land or physical damage to crops not present here these factors have not been regarded as indispensable in other cases in which recurring invasions of waters impair the use and thereby the value of property. (See Dunbar v. Humboldt Bay Mun. Wat. Dist. (1967) 254 Cal.App.2d 480, 62 Cal.Rptr. 358.)

[13]Defendant relies on two cases in which inverse compensation was denied landowners who claimed damage from the construction of nearby freeways, including damage from fumes: People v. Symons (1960) 54 Cal.2d 855, 9 Cal.Rptr. 363, and Lombardy v. Peter Kiewit Sons' Co. (1968) supra, 266 Cal.App.2d 599, 72 Cal.Rptr. 240. (Lombardy was disapproved in Southern Cal. Edison Co. v. Bourgerie (1973) supra, 9 Cal.3d 169, 175, 107 Cal.Rptr. 76, to the extent inconsistent with that opinion.) However, in neither Symons nor Lombardy did the landowners' allegations reveal the possibility of "direct and peculiar and substantial" damage from fumes within the meaning of Richards. (See Symons, supra, at p. 860, 9 Cal.Rptr. 363, discussed in Breidert v. Southern Pac. Co. (1964) supra, 61 Cal.2d at p. 666, 39 Cal.Rptr. 903; Lombardy, supra, at pp. 602-603, 605, 72 Cal.Rptr. 240.) Symons (at p. 860, 9 Cal.Rptr. at p. 366) specifically denied recovery for "the general diminished property values due to the construction of the freeway . . . ." (Italics added.)

[14]Indeed, we note that evidence was taken at the trial on the nuisance theory which tended to show that the stench of which the Varjabedians complain did not affect other surrounding properties.

Responses to David and Linda Richards's Comments

Comment No.	Comment
DLR-1	Please refer to responses to specific comments below.
DLR-2	As noted in the Final EIR (Section V.N. Transportation and Circulation), the project would generate 1,049 new trips (residential development). The EIR includes an analysis of the project's effect on local roads and Highway 101, and mitigation is identified that would ensure the roads are constructed to meet County Road Standards (refer to TR/mm-1, TR/mm-2, TR/mm-3, TR/mm-4, TR/mm-8, TR/mm-9, TR/mm-10, and TR/mm-12). These standards include road widening, shoulders, and traffic controls, which are triggered by average daily trip (ADT) estimates and to provide safe County roads.
DLR-3	Please refer to responses to comments WRAC(b)-15 and WRAC(b)-17 regarding existing water conditions. Please refer to Final EIR Section V.P. Water Resources, 5. Project-specific Impact and Mitigation Measures, 1. Project-wide, 1) Sustainable Water Supply: "In response to the Draft EIR (2008), the applicant proposed the following limitations on allowable landscaping per residential lot: a total of 1,500 square feet of irrigated landscaping, including up to 300 square feet of warm-season turf (maximum), and the remaining 1,200 square feet of landscaped area consisting of drought-tolerant, low-water use plants. A dual-meter system would be installed at each residence to monitor indoor and outdoor water use separately". Also note mitigation measure WAT/mm-1, which requires monitoring of wells to ensure production yields are not exceeded beyond identified limits, and long-term monitoring of streamflow in Los Berros Creek.
DLR-4	The EIR analysis of water resources included peer reviews of reports provided by the applicant, additional recommendations for further well testing, which were reviewed by the County's hydrogeological consultant, as documented in the Final EIR (refer to Section V.P. Water Resources, introductory paragraphs and document lists).
DLR-5	Please refer to the conclusion of the Geosyntec report (2011) (included in Appendix H of the EIR), which states that "based on the evaluation of the hydrogeologic setting and pumping test data, including the Phase 3 recovery data, the estimated total long-term viable production rate from the four wells is 62.4 AF/Y". The report includes additional yield recommendations per well to maintain baseflow within Los Berros Creek, and subsequently other properties, which is carried forward in mitigation measure WAT/mm-1.
DLR-6	Please refer to Final EIR Section V.P. Water Resources regarding water supply. The County has considered the commenters statement that the vineyard owners should maintain ownership of the mutual water company. At this time, this requirement is not included in the Final EIR, because the agricultural and domestic wells and infrastructure are proposed to be separate to allow the vineyard operator to manage the agricultural water system, and to allow the mutual water company and homeowners association to manage, meter and monitor domestic water use. The County decision makers will consider this issue and may require an alternative management structure.
DLR-7	The EIR considered potential impacts due to light and glare (refer to Final EIR Section V.A. Aesthetics, 5. Project-specific Impacts and Mitigation Measures, a. Project-wide, 3) Night Lighting) and includes mitigation (AES/mm-7 and AES/mm-8), which would reduce the identified impact (AES Impact 3) to less than significant. These measures include shielding, maximum 4-foot tall roadway lighting, no post lighting except at the ranch headquarters (light must be shielded), and residential lighting must be shielded. The commenter's concerns regarding the dude ranch will be considered by the County decision makers; please note the applicant is not requesting approval of the dude ranch at this time.
DLR-8	The applicant's objectives include "provide for the expansion of the existing winery operations and continuation of the vineyard operation" (refer to EIR Chapter III, B. Project Objectives). The commenter's statement regarding this objective will be considered by the County decision makers.

Comment No.	Comment
DLR-9	As noted in Final EIR Section V.O. Wastewater, the applicant is required to comply with water quality regulations mandated by the County and Regional Water Quality Control Board. In addition, mitigation is required to prevent incidental release of effluent that does not meet standards, including ongoing inspection and maintenance, provisions for a back-up energy source, automatic shut-off valve, and other protections (WW/mm-1). Implementation of these measures would mitigate potential impacts to the maximum extent feasible to protect ground and surface water quality.
DLR-10	As described in Final Section V.O. Wastewater, the residential wastewater would be treated inside an enclosed and partially underground wastewater treatment facility. Winery wastewater would continue to be treated before transfer to the irrigation pond (Pond 3). Any potential anaerobic conditions (resulting in odors) would be limited to the treatment process, inside the enclosed facility. The tertiary-treated effluent stored in the treatment ponds would not emit offensive odors, provided the wastewater is treated as proposed and conditioned, and pursuant to Regional Water Quality Control Board regulations.
DLR-11	As noted in the Final EIR (Section V.E.5.b.1.d Biological Resources, Project-specific Impacts and Mitigation Measures, Phase One, Residential Development, Wastewater Treatment and Disposal), and as discussed in Section V.O. Wastewater, there is a potential for accidental spill, mechanical failure, or other unforeseen event that could cause release of raw sewage (from collection pipes) or improperly treated effluent into surface waters, including the storage ponds. In addition to measures proposed by the applicant (i.e., alarms, emergency generators, contained treatment plant) and compliance with existing regulations, mitigation is identified (refer to WW/mm-1), requiring an emergency contingency plan to avoid accidental discharge into surface waters. Implementation of these measures would minimize the likelihood of accidental harm to special-status species potentially within and down-gradient of the reservoirs.
DLR-12	Aside from standing water, the effluent holding ponds would not present other characteristics, such as emergent vegetation or sediments that would attract and feed mosquito larvae. Any additional risk of West Nile Virus would not be substantially greater than exiting conditions, and use of existing agricultural ponds. Regarding other risks identified by the commenter, the water in the ponds would meet RWQCB and DWR standards of safety for tertiary treated water, and would therefore not pose a substantial health risk.
DLR-13	As noted in Final EIR Section A.E. Aesthetics (Final EIR AES Impact 9 [Draft EIR AES Impact 10]), construction of the wastewater treatment facility would have an adverse, but mitigable impact on visual resources, including rural visual character. Design measures are proposed reduce visibility and glare (refer to Final EIR AES/mm-22 and AES/mm-23). The treatment facility would be enclosed, and biofiltration of odors would prevent release of offensive odors outside the structure. The proposed ponds would appear similar to agricultural reservoirs on the project site, and would be used in the same capacity for irrigation. CEQA requires analysis of potential aesthetic impacts on public views; however, the commenter's concern regarding private views will be considered by the County decision makers when reviewing the proposed permit request. Regarding odors, refer to response to comment DLR-10 above.
DLR-14	As noted in response to comment DLR-10, wastewater treatment processes with the potential to create odor would be located within an enclosed structure. As described in EIR Chapter III Project Description, 6. Domestic Wastewater Treatment and Disposal System, c. Domestic Wastewater Treatment Odor and Noise Control: "The proposed 10,000-square foot building would be equipped with an odor control biofilter. The biofilter would consist of compost media and a forced air distribution system. The system will be equipped with a stand-by generator and automatic transfer switch, and redundant backup equipment will be provided for each critical process".
DLR-15	Please refer to responses to comments DLR-10 and DLR-13 regarding odors and aesthetics. The comment's concern regarding management of the wastewater treatment system will be considered by the County decision makers.

Comment No.	Comment
DLR-16	Please refer to responses to specific comments DLR-2 through DLR-15. The commenter's recommendations regarding the project will be considered by the County decision makers.
DLR-17	The commenter's submitted Exhibit A, referenced and responded to under comment DLR-10, will be considered by the County decision makers.
DLR-18	The commenter's submitted Exhibit B, referenced and responded to under comment DLR-13, will be considered by the County decision makers.
DLR-19	The commenter's submitted Exhibit C, referenced and responded to under comment DLR-14, will be considered by the County decision makers.

July 31, 2013

RECEIVED

AUG 5 2013

PLANNING & BUILDING

Brian Pedrotti
County Planning Dept.
976 Osos St., Room 300
San Luis Obispo, CA 93408-2040

RE: Laetitia Housing and Dude Ranch Projects

As property owners of the last remaining vacant lot in the Rim Rock water district, the proposed Laetitia projects gives us great concern. There are various potential problems with the projects, i.e. traffic and safety concerns regarding our existing roadways, environmental concerns, but the overriding problem deals with the water supply. KBH-1

1. Fractured shale, which makes up the rock formations in this area, is noted as an unpredictable and unreliable when considering sources of water. KBH-2
2. There are currently documented cases of wells surrounding the proposed area going dry, or that require further depths, due to the reduced output. This is the current situation, before any further burdens of additional housing and recreation are placed on the demand. KBH-3
3. Current documented biological damage to Los Berros Creek has brought forth letters from both the Santa Lucia Chapter of the Sierra Club, and the Dept. of Fish and Game strongly discouraging these projects. KBH-4
4. The Laetitia projects and their sales company would transfer all liability to homeowners association upon sale of their land. They would not be held responsible for damages to the environment caused by their actions. This is not an acceptable result. KBH-5
5. The first Laetitia DEIR was presented in 2008, and then was deemed not acceptable. The primary water problems have not improved, but instead gotten worse since then. KBH-6
6. The hydrogeological survey commissioned and paid for by the developer and done by CCH differs significantly from the subsequent peer reviews in their conclusions drawn. This should be a giant red flag and needs to be clarified. KBH-7
7. The arbitrary reduction of the estimated amount of water these projects would use from the figure of 143 acre ft./yr. in 2008 to 46.3 acre feet/yr. in 2010 leads to the conclusion that the real use of water required is a guess to them with no accurate figures available. This is a real concern, considering our unpredictable and unreliable sources of water. KBH-8

Whether we decide to build or sell our property, the values will be affected by these projects. Due to the above present conditions, my wife and I voice our opinion as being strongly AGAINST the Laetitia proposed projects. KBH-9

M. Karl Hartwig Barbara L. Hartwig

M. Karl Hartwig Barbara L. Hartwig

Responses to M. Karl and Barbara L. Hartwig's Comments

Comment No.	Comment
KBH-1	Please refer to responses to individual comments below.
KBH-2	Please refer to responses to comments WRAC(b)-31, H&B-4, H&B-5, H&B-6, and H&B-8 regarding fractured bedrock and determinations related to production.
KBH-3	Please refer to responses to comments WRAC(b)-15 and WRAC(b)-17 regarding existing conditions.
KBH-4	Please refer to responses to comment letters SCSLC (Sierra Club) and CDFW (California Department of Fish and Wildlife).
KBH-5	The commenter's concern will be considered by the County decision makers.
KBH-6	The environmental setting (baseline) is defined in the EIR, and as noted in Final EIR Section V.P. Water Resources, the analysis considers the potential for long-term drought; accordingly, mitigation is identified (WAT/mm-1). The commenter's concern will be considered by the County decision makers.
KBH-7	As noted in Final EIR Section V.P. Water Resources, the County's hydrogeological consultant conducted a peer review of the applicants submitted reports, and presented a stand-alone report, which is included Appendix H (Geosyntec 2011). The conclusions and findings of the Geosyntec report are carried forward in the EIR analysis.
KBH-8	Please refer to responses to comments H&B-19 and H&B-20.
KBH-9	The commenter's concerns will be considered by the County decision makers.

RECEIVED

AUG 5 2013

PLANNING & BUILDING

Brian, since this hasn't been noticed yet it can go in your Staff Rpt

FM Ramona

August 2, 2013

Planning Commissioner
San Luis Obispo Commission
976 Osos Street Room 300
San Luis Obispo, CA 93408

Attention: Eugene Mehlschau

RE: Laetitia Development

Dear Mr. Mehlschau

I am a homeowner in the Rimrock development. My purpose for writing this letter is to state my objection to any additional development being approved and developed in the Los Berros Creek watershed area. Due to the fact that our water supply comes from fractured shale bedrock aquifer which has been determined unreliable, any additional draw from this source should not be approved. During the past two years or so, our water company, Rimrock Water, has had to drill an additional well to supply the needed water for the homes in our development. **EG-1**

If Laetitia Development would obtain an outside source of water and provide for improved access to their purposed development, then I would not object. **EG-2**
Thank you for your consideration into this matter.

Sincerely,

Eldon Grimes

Eldon Grimes
240 White Dove Ct.
Nipomo, CA 93444

Responses to Eldon Grimes's Comments

Comment No.	Comment
EG-1	Please refer to responses to comments WRAC(b)-31, H&B-4, H&B-5, H&B-6, and H&B-8 regarding the fractured shale aquifers.
EG-2	The commenter's statement will be considered by the County decision makers.

Vern and Carol Garcia
545 Camino Encanto
Nipomo, Ca 93444

August 5, 2013

Mr. Brian Pedrotti
County Planning and Building Dept.
976 Osos Street, Rm 300
San Luis Obispo, Ca 93408-2040

RE: Recirculated DEIR-Latitia Project

Dear Mr. Pedrotti;

After reading the recirculated DEIR regarding Latitia, We have the following concerns: VCG-1

1. Once again, I remind you that our water comes from fractured shale rock formations and not an aquifer. Laetitia already uses 14 wells. VCG-2
2. Many of us in the area have already had to lower our wells since Laetitia planted their grapes. Now they want to add 102 homes, a dude ranch and more grapes. VCG-3
3. The usage figures don't match up with other planned developments in the county. The DEIR states water usage of 42 acre feet, when other developments average 62.4 acre feet. VCG-4
4. We feel the developer should be responsible for maintaining the Waste Disposal system for at least 20 years, as there is no way to mitigate compliance once the developer withdraws from the project. VCG-5
5. We would like the county to take into consideration the 70 to 100 lots in Rim Rock, Rancho Nipomo, and Highland Hills, which are already approved, but have not been developed yet. Also, the additional Citrus trees approved for the Fitzgerald Ranch. VCG-6

We have been in this area for 22 years, and sincerely enjoy walking around the "Rim Rock Loop", however, if you approve this large project, there will be 1000 more cars going up and down Dana Foothill and Sheehy road daily. Walking these roads will become too dangerous. It would be so sad to lose our quality of life. VCG-7

Thank you for your consideration,

Carol Garcia Vern Garcia

Vern and Carol Garcia

Responses to Vern and Carol Garcia's Comments

Comment No.	Comment
VCG-1	Responses to specific comments are addressed below, or as referenced.
VCG-2	Please refer to Final EIR Section V.P. Water Resources, 4. Impact Assessment and Methodology, 3) Aquifer Properties.
VCG-3	Please refer to responses to comments WRAC(b)-15 and WRAC(b)-17 regarding existing conditions.
VCG-4	Please refer to responses to comments H&B-19 and H&B-20 regarding water demand calculations.
VCG-5	Mitigation compliance is bound to the project, and following the developer, the mutual water company, which would be owned by the residential land owners. Compliance with regulations, mitigation measures, and conditions of approval would be required, regardless, and would include submittal of monitoring reports for the life of the project.
VCG-6	Final EIR Section V.P.6 Water Resources, Cumulative Impacts, has been clarified to note that: "*Existing subdivisions in the region, including Rim Rock, Rancho Nipomo, and Highland Hills, contain currently undeveloped lots that may be developed in the future. These residential lots rely on underlying groundwater for water supply. Existing and future use of groundwater wells may affect flows in Los Berros Creek and underlying supply in fractured rock and tuff, depending on the depth, location, and pumping yield of the well.* Agricultural uses onsite *and* in the area, *such as orchards on the Fitzgerald Ranch and other crops within Los Berros Canyon and surrounding areas,* fluctuate at the discretion of the landowners, and are anticipated to vary in crop type and production, which affect water demand from private wells". The Final EIR notes a potentially significant cumulative effect on water resources as a result of cumulative water use. The proposed project's contribution to this cumulative impact was determined to be less than significant based on implementation of mitigation measures WAT/mm-1 through WAT/mm-8.
VCG-7	The EIR identifies potential impacts on the environment including the generation of additional traffic trips on local roadways (refer to Final EIR Section V.N. Transportation and Circulation. Mitigation identified for impacts to local roadways include road improvements to Sheehy Road (TR/mm-8), North Dana Foothill Road (TR/mm-9), including roadway striping and shoulders to bring these roadways up to County Standards based on total average daily trips. Please refer to EIR Table IV-3 Consistency with Land Use Element, which notes that the project may be potentially inconsistent with South County (Inland) Land Use Element, Primary Goal 5: "Promote a social, educational, recreational, cultural, and historical quality of life for its citizens in a manner that is affordable to its residents".

August 5, 2013

Brian Pedrotti, Project Manager
County Planning Department
976 Osos St, room 300
San Luis Obispo, Ca 93408-2040

Dear Mr. Pedrotti,

The purpose of this letter is to voice my concerns regarding portions of the Laetitia Agricultural Cluster Subdivision Draft Environmental Impact Report. I own two contiguous parcels (APN 090,042,001 and 002) that are adjacent to Los Berros Creek and therefore adjacent to the proposed Laetitia project. My property is vegetable farm and the residence for my wife and I, plus our children and their families. Our primary concern is the location of the project's wastewater treatment facility. **MAM-1**

From the DEIR it is obvious the designers of this project have expended a great deal of engineering and expense to locate this utility as far as possible from their proposed housing element, thus making it out of sight and out of smelling range from their subdivisions. At issue for me is their selected location puts the treatment plant and ponds directly next to my home, within 200 feet in my case and directly upwind. The prevailing winds in our canyon are upstream 25 out of 30 days of a typical month. Our three families find this totally unacceptable, and I can assure you my neighbors behind us share our concerns for this unnecessary and drastic reduction in our viewscape and quality of life. **MAM-2**

Another serious issue for us is the possible contamination of our ground water supply. My property is a certified organic vegetable farm, and has been a certified organic farm for more than 30 years, which is longer than Laetitia has had their vineyard and winery operation. If you will refer to sheet 2 of tract parcel map no. 77-173 (copy enclosed) you will note the location of one of my water well sites. This site is I believe right at or closer than the 100 foot minimum required distance from such a utility. Next I will refer you to the DEIR WW-1 thru 4 which details potential systems failure scenarios described in terms such as "when they occur", not "if" they occur. These small wastewater systems that are privately owned and operated have consistently been prone to failure, Cypress Ridge, Avilla Beach and California Men's Colony to name a few in our community. Any one of these failures would be a threat to permanently contaminate my groundwater for organic farming purposes. My water is tested twice a year for the presence of nitrates, coloform, salts (such as sodium hypochlorate) and other foreign matter any one of which would permanently disqualify me for an organic farming certificate. I do wish to continue with certified organic farming. **MAM-3** **MAM-4**

I am currently responsible to the California Regional Water Control Board to monthly monitor any water in the Los Berros Creek from the upper portion of my property line to **MAM-5**

the bottom. I am to monitor for nitrates and other chemicals. I do not wish to monitor the accidental runoff from a wastewater treatment system. **MAM-5 (cont'd)**

I was very impressed with the thoroughness of the Laetitia DEIR and its photos of properties as far away as Los Berros, Upper Los Berros and Thompson Road etc. and the visual effects this development will have on their viewscape, traffic, noise and other issues. The Laetitia DEIR totally left out of its report any mention of impacts this project will have to their nearest neighbor, me, and to our neighbors behind us. They cannot say this is an oversight; I had a long discussion with their representative, at their request, concerning other project issues earlier in my living room. **MAM-6**

I am asking that they find a more suitable location within their 1000 plus acre project site to build this utility, whose sole function is to serve their own development. The proposed location of the wastewater site is clearly a serious threat to my financial security. **MAM-7**

Sincerely,

Mike and Ann McClure

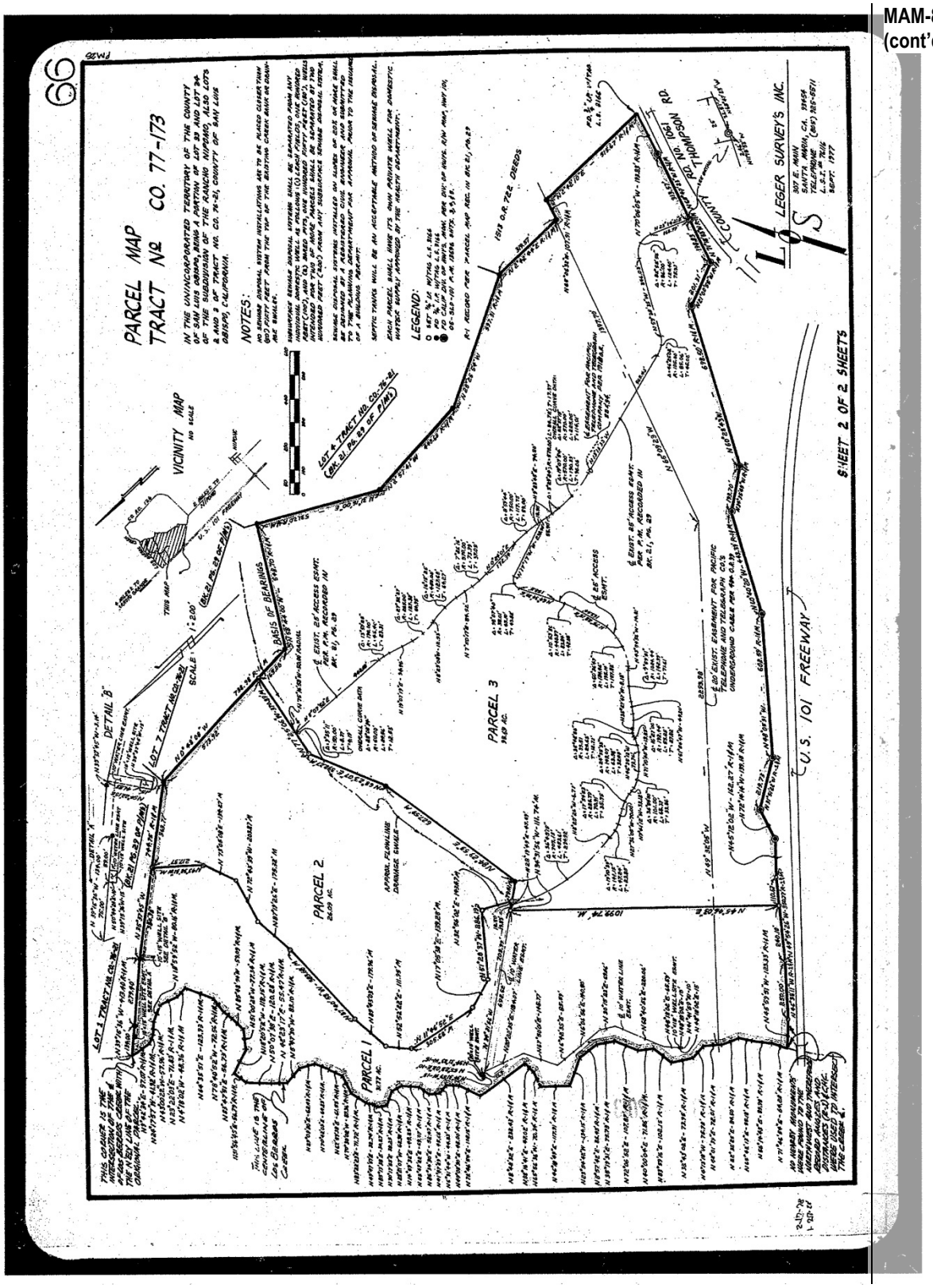
235 Cimarron Way
Arroyo Grande, Ca 93420

Ph: (805) 481-0530
Fax: (805) 481-7484
Makomc@msn.com

MAM-8

Enc: tract map co. 77-173

MAM-8 (cont'd)


PARCEL MAP
TRACT № CO. 77-173
IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF SAN LUIS OBISPO, BEING A PORTION OF LOT 33 AND LOT 34 OF THE SUBDIVISION OF THE RANCHO NIPOMO, ALSO LOTS 2 AND 3 OF TRACT NO. CO. 74-21, COUNTY OF SAN LUIS OBISPO, CALIFORNIA.
NOTES:
LEGEND:
VICINITY MAP
NO SCALE
SCALE: 1:200
BASIS OF BEARINGS
DETAIL "B"
PARCEL 1
PARCEL 2
PARCEL 3
U.S. 101 FREEWAY
LEGER SURVEY'S INC.
SHEET 2 OF 2 SHEETS

Responses to Mike and Ann McClure's Comments

Comment No.	Comment
MAM-1	Please refer to responses to specific comments below.
MAM-2	Please refer to responses to comments DLR-10 regarding pond odor, DRL-14 regarding facility odor, and DLR-13 regarding visual impacts.
MAM-3	The applicant is required to comply with all local, state, and federal regulations, including setbacks and buffer zones; based on review of project plans, the project would comply with regulations in place to protect water quality. Please note the water that would be stored in the ponds would be treated to a tertiary level, suitable for agricultural irrigation.
MAM-4	Please refer to response to comment DLR-11 and DLR-12 regarding the regulated use of tertiary treated water and safe guards to minimize the potential for accidental leaks or discharges.
MAM-5	As noted in Section V.L. Wastewater, the applicant is required to comply with water quality regulations mandated by the County and RWQCB. In addition, mitigation will be necessary to prevent incidental release of effluent that does not meet standards, including ongoing inspection and maintenance, provisions for a back-up energy source, automatic shut-off valve, and other protections (WW/mm-1). Implementation of these measures would mitigate potential impacts to the maximum extent feasible to protect ground and surface water quality. It will be the responsibility of the proposed Homeowner's Association and mutual water company to ensure compliance with water quality standards.
MAM-6	Pursuant to CEQA, the EIR identifies potential impacts to public resources (i.e., public viewsheds), and does identify significant impacts related to the change in visual character (Section V.A. Aesthetic Resources). The commenter's concern regarding private views will be considered by the County decision makers. Please note that the referenced representative was not a County staff person or County consultant (the County assumes one of the developer's representatives met with the commenter).
MAM-7	The commenter's concern will be considered by the County decision makers.
MAM-8	The map attached by the commenter is referenced and responded to under comment MAM-3.

To: Brian Pedrotti

County Planning Dept.

976 Osos Street, Rm 300

San Luis Obispo, CA 93408-2040

August 5, 2013

Re: Laetitia Housing Project

We would like to go on record as against the Project due to: ABP-1

Increased traffic on rural/residential roads.

Unpredictable water source in the area. ABP-2

Wells in the vicinity already have gone dry.

Laetitia is not qualified to enforce limited water use by residents.

Los Berros Creek has basically gone dry already.

Dude Ranch that is proposed will use too much water, also.

There is no retention basin to capture water run-off, nor is one proposed. ABP-3

Well testing should be done over time, not just in a relatively wet year (2011). ABP-4

Lots already approved for building exist in the area, there is no need of more. ABP-5

Affordable housing is needed in Nipomo, not million dollar estates.

Oceano depends on the water from this aquifer, which is already over-taxed. ABP-6

Please vote against this ill-planned debacle. ABP-7

Sincerely,

Aldo and Bonni Pellicciotti

Responses to Aldo and Bonni Pellicciotti's Comments

Comment No.	Comment
ABP-1	Please refer to EIR Section V.N. Transportation and Circulation. The commenter's concern regarding traffic will be considered by the County decision makers.
ABP-2	Please refer to EIR Section V.P. Water Resources, and responses to comments WRAC(b)-15, WRAC(b)-16, and WRAC(b)-17 regarding existing conditions and WRAC(b)-31 regarding the reliability of wells in fractured bedrock. Limited water use would be enforced by the mutual water company, and by the County through review of monitoring reports provided by the mutual water company.
ABP-3	Please refer to responses to comment CSLRCD-2 regarding concerns about the retention basin.
ABP-4	Please refer to responses to comment NCMATG-2 regarding the effects of rainfall during the pumping tests.
ABP-5	The commenter's concerns will be considered by the County decision makers.
ABP-6	Please refer to responses to the letter from the Oceano Community Services District (OCSD).
ABP-7	The commenter's statement will be considered by the County decision makers.

Geraldine Dana
1245 N. Dana Foothill Rd.
Nipomo, CA 93444

8-6-13

Brian Pedrotti
County Planning and Building Dept.
976 Osos St., Rm. 300
San Luis Obispo, CA 93408-2040

Re: Laetitia Housing Project-Nipomo

Dear Mr. Pedrotti:

As a rural resident and neighbor to the proposed Laetitia Housing Development, I want to submit my concerns regarding the project and some suggestions. **GD-1**

#1. TRAFFIC

We built our home on North Dana Foothill Rd. 24 years ago. We have enjoyed a wonderful peaceful country road. Our family and all our neighbors were able to ride horseback, bicycles, jog and walk the "loop" of Sheehy Rd., Dana Foothill Rd. and Rimrock Rd. We could safely walk our pets on leashes and our push our children and grandchildren in strollers. Our children were able to have roadside lemonade stands on Sheehy Rd.. HOWEVER, in the past year, we have observed a huge increase in traffic on our Roads. Our peaceful roads have now become dangerous. We have witnessed 2 recent incidents of speeding drivers coming out of Los Berros Canyon plowing into our mailboxes, shearing off posts and damaging fences. Both were hit & run events that could have turned tragic. We notice that once drivers leave Los Berros Canyon and top the hill at Rimrock Rd., they accelerate down the long narrow Dana Foothill Rd. all the way to Sheehy Rd.. It has turned into a "speed zone". **GD-2**

If the Laetitia project is approved, our narrow roads will no longer be able to handle the additional estimated 1000 vehicle trips per day. Not only is this a neighborhood disaster, it is a public safety issue.

Although the County recently did a "patching" project, filling numerous potholes, our present roads are crumbling. We are concerned where the funds will come from to do the needed improvements. And, how will the increased traffic affect our property values? **GD-3**

SUGGESTION #1: The Laetitia developers should continue to pursue access to their development from the 101 Freeway and through their OWN PROPERTY. PLEASE DO NOT DESTROY OUR NEIGHBORHOOD!! **GD-4**

SUGGESTION #2: If the Laetitia project is approved, the roads may need to be widened and jogging paths installed. Dana Foothill Rd. may need to have speed bumps or speed controls installed. This may not be possible or feasible. **GD-5**

#2. WATER

Of course, water is a huge issue. Our personal well water has been stressed these past few years, due to the drought. We are diligently conservative with our water use, but because the water tables are so low, our water quality continues to deteriorate. Our well water is now being treated for increased sulfur and iron. This has been an additional expensive monthly treatment fee. Without the treatment process, our water is extremely murky and smelly. **GD-6**

In addition to these specific items, we support the efforts of the Nipomo Hills Alliance in opposing the Laetitia Housing Development Project. The Nipomo Hills Alliance are our neighbors and friends who share our vision of quiet country living. **GD-7**

Thank you for addressing our concerns to save our neighborhood and preserve our country life style. **GD-8**

Sincerely,

Geraldine Dana

Responses to Geraldine Dana's Comments

Comment No.	Comment
GD-1	Please refer to responses to specific comments below.
GD-2	Please refer to Final EIR Section V.N. Transportation and Circulation, and response to comment DRL-2 regarding the current condition of affected roadways and identified mitigation measures for improvements to meet County road standards.
GD-3	Please refer to response to comment DLR-2. If approved, the applicant would be required to implement road improvements as noted in identified mitigation measures. It is beyond the scope of the EIR to evaluate any changes to property values as a result of a project; however, the commenter's concern will be considered by the County decision makers.
GD-4	Please refer to Final EIR Section V.N. Transportation and Circulation, 6. Project-specific Impacts and Mitigation Measures, b. Intersection and Roadway Impacts, 2(a) Highway 101/Laetitia Vineyard Drive Intersection. As noted: "The minor street approach to the Highway 101/Laetitia Vineyard Drive intersection is anticipated to operate at LOS F with and without the project during the a.m. and p.m. peak hours. The project would increase delay (but not traffic) to the minor street approach, assuming Laetitia Vineyard Drive is not used by the proposed project for non-emergency ingress or egress. This intersection does not meet peak hour signal warrants. Caltrans staff has indicated that this intersection is deficient, and any additional trips using the driveway would worsen the existing deficient condition. Caltrans has also stated that 'no new vehicle trips, either for commercial or residential development, be added or granted access' (James Kilmer, 2006)". For this reason, the project's daily access would not occur via Laetitia Vineyard Drive and Highway 101.
GD-5	Please refer to response to comments GD-2, GD-3, and DLR-2. Widening, shoulders, and traffic controls are recommended to meet County standards.
GD-6	The commenter's statements will be considered by the County decision makers.
GD-7	Please refer to responses to the comment letter H&B (attorney representing Nipomo Hills Alliance).
GD-8	The commenter's concerns are addressed above and as referenced, and will be considered by the County decision makers.

August 10 2013

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

Dear Mr. Pedrotti:

I am writing in response to a recent letter I received involving the Laetitia Agricultural Cluster Subdivision. I did attempt to look up the draft online, and though there is a lot of technical material I do not understand, I did pick up on the fact that the development is being seriously considered. **LF-1**

My main concerns are that I have been a resident off of Upper Los Berros Rd. for 27 years, and up to this point have managed with enough water supply for residential use. I do not have farm animals or other agricultural plants. However, I would be most upset if I lose my existing water supply to accommodate 102 homes as well as the growing vineyard in the canyon. I am not in any position to have water delivered up to my home. It would be way too expensive and a major inconvenience to say the least. I also have grave concerns about the traffic flow which would develop because of such a large development. I do not want to be forced to move out of my home because of some possible looming problems. **LF-2** **LF-3**

The information I need to know is how will this development affect myself as well as the existing homeowners in the Los Berros Canyon, and the surrounding area around Dana Foothill. You have a public hearing scheduled for November 2013, but there is no actual date listed or a time. I am interested in attending if I can work it around my work schedule. **LF-4**

My contact information is
Louise Frye
E-Mail: lyfpianist@gmail.com
Phone: 805-481-7561
Residence: 1277 Haven Hill Way, Nipomo CA 93444
Mailing Address: P.O. Box 1167 Nipomo CA 93444

Yours truly,

Louise Frye

Louise Frye

Responses to Louise Frye's Comments

Comment No.	Comment
LF-1	Comment noted.
LF-2	Please refer to Final EIR Section V.P. Water Resources for additional information regarding this concern.
LF-3	Please refer to Final EIR Section V.N. Transportation and Circulation for additional information regarding this concern.
LF-4	Please refer to the Draft EIR (2008), Recirculated EIR (sections) (2013), and Final EIR (2014). The EIR discloses the effects of the project on the environment. A public notice of the Planning Commission Hearing will be posted and mailed pursuant to standard requirements.

David & Marjorie Dilworth
3811 SE 76th Ave
Portland, OR 97206

August 11, 2013

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

RE: The Laetitia RRDEIR

Dear Mr. Pedrotti,

As owners of property that uses a well and includes Los Berros Creek, we have been following the "Laetitia" project for the last several years. **We are highly alarmed over the possibility that this project will continue to be approved!** Over the 39 years we've owned the property at 1704 Los Berros Road, we only "went dry" at the very beginning when our well pump wasn't deep enough. Only by going down to 80 feet where the underground "river" ran were we assured a continuous supply of water. I can only imagine what will happen if Laetitia, or any other large project, is allowed to pump such large quantities of water! **We will be DRY!** DMD-1

In addition, there are historical records that document that the creek did flow all year long and provided a habitat for trout and many other species. Our "across the creek" neighbors, who had lived there for decades, told how they had fished for salmon along our property. Abalone shells can still be found along the banks, five miles from the ocean. DMD-2

In the 39 years we have owned this property, only when an abundance of rain occurred did an overflow of water exist to create a creek that lasted from a few days to several weeks. The demand for water in the last 39 years has increased! The fact that the valley's water level is scarcely enough to sustain the existing residences only further promulgate environmental extinction and water accessibility to all existing families that depend on the resources of the valley.

There are many other reasons against approving the Laetitia project: DMD-3

- **Increased Traffic** – estimated to be about 1,000 per day to the housing project
- **Wells Going Dry** – there are already documented cases
- **Unreliability of Fractured Shale** – an unpredictable & unreliable source
- **Biological Damage** – numerous species have already disappeared from the creek

- **Who is going to enforce the "Solutions"** to mitigate the water problems? – Laetitia will be absolved of any and all responsibility once the lots are sold. The vested interests of the Homeowners' Association, CC&R's and/or Mutual Water Company will not be concerned with protecting the rights of others in the area, only themselves **DMD-4**
- **The Addition of a Dude Ranch** to the Laetitia Project – an addition that hasn't gone through the required CEQA environmental approval process **DMD-5**
- **Lack of Retention** – retention basins are not included to catch water runoff **DMD-6**
- **Testing was done in a "Wet Year"** – most of the well testing was done during the wet winter of 2011, not during a "normal" year **DMD-7**
- **Lack of Responsibility** – Laetitia will cause damage and then divest itself of liability once the lots are sold **DMD-8**
- **Failure of Small Water Districts** – past history has shown that small water companies do not have the knowledge and expertise that it takes to run a successful water operation **DMD-9**
- **Class One Impact** – the original EIR listed water consumption as a Class 1, but the Recirculated DEIR of 2013 does not. The water issue is important; it is NOT Class II. **DMD-10**
- **Many Already Approved Lots** – there will not be enough water to go around as these additional houses are built **DMD-11**
- **Wells Number 12 and 13** – Laetitia says they will not be using these wells for the housing project, but they will still be used for vineyard irrigation **DMD-12**
- **Affordable Housing** – million dollar estates are not "affordable" for the average SLO family **DMD-13**
- **Waste of Time and Taxpayer Money** – the original 2008 DEIR was not acceptable and neither is this current one **DMD-14**
- **Caution from the Experts** – 3 peer reviews have been preformed, all of which significantly differ with the conclusions of Cleath Harris Consultants **DMD-15**
- **Water Storage in Shale** – fractured shale typically does not "store water" **DMD-16**
- **Laetitia's Numbers CANNOT be Trusted** – Laetitia continually reduces the estimated amount of water the housing project will use: originally set at 143 acre feet/yr, now set at 46.3 acre feet/yr **DMD-17**
- **Dry Wells Downstream** – Los Berros Creek charges the aquifer which supplies Oceano (within the Northern Cities Management Area). Already the wells close to Los Berros Creek that Falcon Ridge in the El Campo area once used are not adequate and other sources had to be implemented. The county of San Luis Obispo is responsible for ensuring the reliability of this water source. **DMD-18**

For these reasons and more, this overreaching and unjustified project proposed by Laetitia MUST be rejected! **DMD-19**

Sincerely,

David C. Dilworth

David C Dilworth

Sincerely,

Marjorie M Dilworth

Marjorie M Dilworth

Responses to David and Marjorie Dilworth's Comments

Comment No.	Comment
DMD-1	Please refer to Final EIR Section V.P. Water Resources and Appendix H for additional information regarding the project's effect on water supply.
DMD-2	Please refer to responses to comments WRAC(b)-15 through WRAC(b)-17 regarding existing conditions.
DMD-3	Please refer to Final EIR Sections V.N. Transportation and Circulation, V.P. Water Resources, and V.E Biological Resources regarding these comments, in addition to responses to specific comments below.
DMD-4	Mitigation compliance is bound to the project, and compliance with regulations, mitigation measures, and conditions of approval would be required, and would include submittal of monitoring reports for the life of the project. As noted in the EIR: "Operation of the water system will be monitored in accordance with all applicable standards and regulations using a certified operator to oversee well pumping, storage, distribution, maintenance of the system, and overall water quality in accordance with all State and County requirements". Mitigation WAT/mm-1, which requires a Water Master Plan states that: "The Water Master Plan shall include provisions that operations of the domestic water system would be monitored in accordance with all applicable standards and regulations using a certified operator(s) to oversee well pumping, storage, distribution, maintenance of the system, and overall water quality in accordance with all State and County requirements". The County is required to ensure compliance with identified mitigation, and pursuant to mitigation measures WAT/mm-1: "Water Company and Homeowners Association are out of compliance with the Water Master Plan, no additional building permit, operational permit, or business license will be issued for any lot within the project until any identified remedial work has been completed". These measures, in addition to the full list of water mitigation measures identified in the EIR, are in place to ensure the project does not exceed allowable sustainable yield, and includes additional provisions in the event of a severe drought. These measures are required, and will be included (as referenced) in the CC&Rs, regardless of the vested interests of the homeowners association and mutual water company.
DMD-5	Please refer to EIR Chapter III.D.11.a Project Description, Project Components, Future Development Proposal, Dude Ranch. The applicant has not submitted an application for the dude ranch, and is not requesting approval at this time. The EIR addresses the Dude Ranch based on limited information provided by the applicant, and subsequent CEQA review would be required if the dude ranch is pursued for development.
DMD-6	Please refer to response to comment CSLRCD-2 regarding the retention basin.
DMD-7	Please refer to responses to comments NCMATG-2, WRAC(b)-13 and WRAC(b)-14 regarding the noted rainfall and effects on testing results and analysis, and how this condition was addressed when determining individual well yield.
DMD-8	The subsequent homeowners, including the Homeowners Association and mutual water company will be responsible for compliance with project conditions and CC&Rs. Please refer to DMD-4 above regarding compliance with mitigation measures.
DMD-9	The commenter's concern will be considered by the County decision makers.
DMD-10	As noted in Final EIR Section V.P. Water Resources, the applicant provided changes to the project, including modification of proposed domestic wells and incorporation of additional water conservation measures. Additional well testing was conducted and all information was reviewed by the County's hydrogeological consultant. Based on the results of these changes and additional analysis, substantial evidence is presented that supports the EIR's conclusion that the potentially significant, adverse, unavoidable impact can be mitigated to less than significant with incorporation of identified mitigation measures. These measures will require monitoring and submittal of annual reports for the life of the project.

Comment No.	Comment
DMD-11	Please refer to response to comment VCG-6 regarding the cumulative development scenario.
DMD-12	The applicant is not currently restricted from using Wells 12 and 13 for agricultural use.
DMD-13	The commenter's statement will be considered by the County decision makers.
DMD-14	The commenter's statement will be considered by the County decision makers.
DMD-15	Please note the analysis in the Recirculated EIR (2013) and Final incorporates the results of substantial peer review of documentation and water testing data (refer to Appendix H, Geosyntec [2011]). The conclusions and findings are based on the results of the peer review, and the disagreement among experts is noted by the County.
DMD-16	Please refer to Final EIR Section V.P.4.a.3 Water Resources, Impact Assessment and Methodology, Water Supply and Infrastructure, Aquifer Properties regarding transmissivity and hydraulic conductivity of fractured bedrock underlying the project site.
DMD-17	Please refer to responses to comments H&B-19 and H&B-20 for additional information regarding calculation of water demand.
DMD-18	Please refer to responses to comment letters from the Oceano Community Services District (OCSD), Water Resources Advisory Committee (WRAC), and Northern Cities Management Area Technical Group (NCMATG).
DMD-19	The commenter's concerns will be considered by the County decision makers.

12 August, 2013

Mr. Brian Pedrotti
County Planning Dept.
976 Osos Street, Rm 300
San Luis Obispo, CA 93408-2040

Re: proposed Laetitia Housing Project

Mr. Pedrotti:
I am a relatively new resident of California as my wife and I moved to the Rancho Nipomo area from Nebraska in November 2012. A primary enticement in moving to this particular area was its beautiful natural surroundings, however, water availability, which we knew was on-going concern throughout the state of California, was the number one issue of ours as we needed some comfort in knowing the property we were interested in purchasing, that ultimately being, 530 Sycamore Creek Lane, had a sustainable water source for years to come. After researching through and visiting with several local hydrologists, we felt relatively secure in moving forward with our purchase. Unbeknown to us after moving here, we were told that Laetitia was proposing a large residential development that is directly across from our residence/property. Not only would this development totally negate the aesthetics of the natural surroundings of the Nipomo hills, it could dramatically depreciate the value of our property due to lack of water availability. GPV-1
Beyond the personal issues related to the adverse affects of the proposed Laetitia residential development, I wish to include the following points, as they not only affect me personally, but likely all current residents living in and around the proposed development project area:

UNRELIABILITY OF FRACTURED SHALE – All of the water needed for the Laetitia project would be provide from wells located on the property. Well water in the Nipomo Hills comes from the fractured shale rock formations, not a sand aquifer as if found on the Nipomo Mesa. Fractured shale is noted for being a very unpredictable and unreliable source of water. Many well sin the Nipomo Hills have suddenly gone dry. Laetitia cannot adequately guarantee that is has a reliable water source, nor can it guarantee that it will not dry up the surrounding wells of its neighbors. **GPV-2**

WELL GOING DRY – There have already been documented cases of numerous wells surrounding Laetitia that have either gone dry or had to be dug deeper due to reduced output. This is typical of wells located above fractured shale. **GPV-3**

DRY WELLS DOWNSTREAM – Los Berros Creek is critical to charging the aquifer which supplies Oceano (within the Northern Cities Management Area) with its water. The County is responsible for the ensuring the reliability of this water source. Already, the wells close to Los Berros Creek that Falcon Ridge(El Campo area) once used are not adequate, and other sources had to be implemented. **GPV-4**

WATER STORAGE IN SHALE – Cleath and Associates proposed to utilize water storage within the fractured shale as a component of "safe yield". Tow of the peer reviews indicate that this is a violation of CEQA and should not be allowed. Fractured shale does not typically "store water". **GPV-5**

FAILURE OF SMALL WATER DISTRICTS – The Laetitia development project calls for the creation of a small water district and wastewater disposal system. These small water companies have posed many problems in the past for the County and often times require a bail-out or merger with a larger system (as with Cypress Ridge). **GPV-6**

THE WELL SHELL GAME – Laetitia's new DEIR claims to solve the problem of depleting the water in Los Berros Creek by not using wells number 12 and 13 for the housing project, due to their close proximity to the creek. However, these two wells would still be used for the irrigation of the vineyard, which will be increased by 27 acres according to the plan. Letitia's water "shell game" is making a mockery of the CEQA process! **GPV-7**

CAUTION FROM THE EXPERTS – The developer hired an dpaid CCH (Cleath Harris Consultants) to do the initial hydrogeological study for Laetitia. Because of our concers to the initial DEIR 3 peer reviews have been performed of CCH's work, all of which differed significantly with many of CCH's conclusions. The hydrogeology company Geosyntec states in the October 2011 letter. "This indicates that the long term capacities of the fractured bedrock aquifers to transmit groundwater are lower than previously estimated and sustainable production potential of the Project Site wells based on the short term tests were unrealistically high. Initial yields from wells in fractured bedrock aquifers often are not representative of longer term yields, which are typically lower". **GPV-8**

MANY APPROVED LOTS – There are already many vacant lots in the immediate area to the south of Laetitia. These lots have already been approved for building. For example, there are about 20 unimproved lots within the Rancho Nipomo tract, 10 lots within the Fitz-Gerald Ranch, 3 lots in the Wittsrom minor ag cluster, and about 3 lots on Rim Rock Raod. All of these approved lots, when homes are built, will be obtaining their water from the same freactured shale that Laetitia is proposing for their water source. Additionally, most of these lots are approved for two home sites. There will simply not be enough water to go around for everyone as additional house are built in this area on approved lots. **GPV-9**

In conclusion, it would seem apparent from the above listed issues that WATER is not a sustainable resource for the proposed Laetitia residential development project and if approved, would likely cause hardships for the many residents currently living in and around the proposed development. I strongly ask and recommend the San Luis Obispo County Planning Committee to reject the proposed Laetitia development project. **GPV-10**

Respectfully,

Gary P. Vavrina

Responses to Gary P. Vavrina's Comments

Comment No.	Comment
GPV-1	Please refer to responses to specific comments below.
GPV-2	Please refer to responses to comments WRAC(b)-31, H&B-4, H&B-5, H&B-6, and H&B-8 regarding concerns related to fractured shale, well production and reliability, and effects on neighboring properties.
GPV-3	Please refer to responses to comments WRAC(b)-15 through WRAC(b)-17 regarding existing conditions.
GPV-4	Please refer to responses to comment letters from the Oceano Community Services District (OCSD), Water Resources Advisory Committee (WRAC), and Northern Cities Management Area Technical Group (NCMATG).
GPV-5	Please refer to responses to comments WRAC(b)-31, H&B-4, H&B-5, H&B-6, and H&B-8 regarding fractured shale and determination of safe yield.
GPV-6	The commenter's concern will be considered by the County decision makers.
GPV-7	At this time, the County is not restricting use of wells for agricultural use; however, this concern will be considered by the County decision makers.
GPV-8	Please note the analysis in the Recirculated EIR (2013) and Final EIR incorporates the results of substantial peer review of documentation and water testing data (refer to Appendix H, Geosyntec [2011]). Based on the peer review and analysis, the yield calculation is less than what was recommended by Cleath & Associates, and further restriction on use of wells demonstrating connection to Los Berros Creek is recommended. The conclusions and findings are based on the results of the peer review, and the disagreement among experts is noted by the County.
GPV-9	Please refer to response to comment VCG-6 regarding the cumulative development scenario.
GPV-10	Please refer to responses above regarding water. The commenter's concerns will be considered by the County decision makers.

THE HORTONS

BERNIE AND LENNETTE HORTON

August 13, 2013

Brian Pedrotti
County Planning Dept
976 Osos St, Rm 300
San Luis Obispo, CA 93408-2040

Re: Laetitia planned development.

Mr. Pedrotti:

I understand once again the billionaire land owner is trying to get approval to develop his vinyard property and once again I and my Nipomo neighbors oppose this project because there is insufficient water to support it. The reports submitted do not provide proof that they can draw water and sustain this kind of development . You know their assumptions have been challenged by the reports submitted by the Nipomo Hills Alliance. Seriously, how much more proof do we need then the impact we have already seen on Los Berros creek from just their vineyard operation wells. **BH-1**

I see no need for this kind of expensive residential property proposed or the other development they propose. The impact of their drawing water has already impacted many wells in the Eastern Nipomo foothill area I know for fact. I was the president of Rim Rock Water Company the last time I wrote your office and commented a few years back, and though I no longer serve I still know many who live in the area and certainly you and the county know we do not have some great pool to draw on in the proposed area. **BH-2**

The attached 19 reasons to deny their apply supports why I request that the proposal be denied. If approved, I fear many of our tax dollars will be spent as the county becomes a party to litigation I am sure will follow. We have scarce water in this county and a tight budget so lets just say "NO". **BH-3**

Sincerely,

Bernard Horton

120 LA JOYA DR. • NIPOMO, CA 93444
HOME 805-929-5960 • CELL 805-441-2603 • EMAIL: BERNIEHORTON@GMAIL.COM
FAX 815-550-2879

19 reasons to not approve the Laetitia housing project!

BH-4

1. **INCREASED TRAFFIC** - The number of vehicle trips to the housing project are estimated to be about **1,000 per day**. The access to the houses will be from Thompson, to Sheehy, to Dana Foothill, to Upper Los Berros Road. Our small country roads are simply not designed, nor are they capable of, handling this heavy traffic. This overuse of our narrow curving roads will present many **dangerous safety issues**, putting all the residents of our community at risk.

BH-5

2. **UNRELIABILITY OF FRACTURED SHALE** - All of the water needed for the Laetitia project would be provided from wells located on the property. Well water in the Nipomo Hills comes from the fractured shale rock formations, *not* a sandy aquifer as is found on the Nipomo Mesa. Fractured shale is noted for being a very **unpredictable and unreliable source** of water. Many wells in the Nipomo Hills have suddenly gone dry. Laetitia cannot adequately guarantee that it has a reliable water source, nor can it guarantee that it will not dry up the surrounding wells of its neighbors. The Central Coast is listed by NOAA as currently being in a "severe drought." Laetitia will only aggravate this dire situation.

BH-5 (cont'd)

BH-6

3. **WELLS GOING DRY** – There have already been documented cases of numerous wells surrounding Laetitia that have either gone dry or had to be dug deeper due to reduced output. This is typical of wells located above fractured shale.

BH-7

4. **WHO WILL ENFORCE?** - The new DEIR offers several "solutions" to mitigating the water problem, like restricting the residents from planting lawns over a certain size and engineered water saving devices. That may be fine, but who will enforce these regulations? The developer (Laetitia) will be absolved of any and all responsibility once the lots are sold. Laetitia has not provided any answers on what agency will effectively be policing these water conservation methods by the new residents. Laetitia proposes to enforce thru CC&R's, the Homeowners' Association and/or Mutual Water Company. **None of**

Page **1** of **5**

BH-7 (cont'd) **these vested interests are interested in protecting our rights.**

BH-8 5. **BIOLOGICAL DAMAGE** - Due to Laetitia's increased pumping of ground water for its vineyards, Los Berros Creek has all but dried up. This winter (2012-13) the creek did not flow at all next to the Laetitia property, even though there was flow in the creek upstream of Laetitia. Los Berros creek was once teeming with wildlife, including distressed species such as steelhead trout, southwestern pond turtles, coast range newt, and red legged frogs. Laetitia has now rendered it a dry wasteland in comparison. The Santa Lucia chapter of the Sierra Club in its letter has stated, *"The real possibility that the expansion of irrigated ag has resulted in the de-watering of Los Berros Creek, as evidenced by substantially less flow, demonstrates that* ***there is no "excess water" for residential use*** *and the project represents a violation of Ag Policy 11 and the Ag Cluster ordinance"* Laetitia, by it

BH-9 reckless and insensitive disregard for our ecosystem, has historically proven themselves to be of great danger to our environment in Nipomo. The Department of Fish and Game has stated in their 2009 letter that "*The Department* ***strongly discourages approving projects*** *which would reduce Los Berros Creek surface flows*." This proposed project is just one more way in which they intend to do more damage to biological diversity of this beautiful riparian watershed. BH-9 (cont'd)

6. **NEW DUDE RANCH** - The new DEIR mentions the building of a seven acre Dude Ranch that will require at least 13 acre feet of water per year. However, no details are provided. Is this Laetitia's sly way of slipping in the Dude Ranch without having to go through the required CEQA environmental approval process? BH-10

7. **LACK OF RETENTION** - Laetitia has not proposed any retention basin to capture water runoff; another example of their reckless disregard for our environment. BH-11

8. **TESTING IN A WET YEAR** - Most of the well testing performed by the hydrogeology consulting companies was done during a relatively wet winter (2011). In fact the rainfall was **138% above the average** (Geosyntec report Oct., 2011). It is presumed that their studies would have been substantially different had they been done in dryer years that are the norm in Nipomo. BH-12

BH-13

9. **LACK OF RESPONSIBILITY -** The plan calls for Laetitia divesting itself of liability once the lots are sold. **Liability would then be transferred to the homeowners' association.** This means that Laetitia can do as much damage as they like to the environment (including ground water depletion) and the residents, as owners of the HOA, will be left holding the bag. Laetitia must be required to maintain ownership and responsibility for the project for at least 20 years, if not in perpetuity as recommended by the WRAC.

BH-14

10. **FAILURE OF SMALL WATER DISTRICTS -** The Laetitia development project calls for the creation of a small water district and wastewater disposal system. These small water companies have posed many problems in the past for the County and often times require a bail-out or merger with a larger system (as with Cypress Ridge). **Small water companies do not have the knowledge and expertise that it takes to run a successful water operation.** Let's not repeat past mistakes!

BH-15

11. **CLASS ONE IMPACT -** The consumption of water should be a Class 1 Impact, which means that it cannot be mitigated if this project should come to fruition. The original EIR listed water consumption as a Class 1, but the new Recirculated DEIR of 2013 does not. An attorney who is an expert on land and water use matters concluded in his letter to the County that "*It is our legal opinion that the RDEIR is presently inadequate, lacks the required transparency, and cannot be used to support a finding that water supply impacts of the proposed project are Class II.*" Is Laetitia attempting to fool us into thinking that water is not an important issue anymore?

BH-15 (cont'd)

BH-16

12. **MANY APPOVED LOTS -** There are already many vacant lots in the immediate area to the south of Laetitia. These lots have already been approved for building. For example; there are about 20 unimproved lots in the Rancho Nipomo tract, 10 lots within the Fitz-Gerald Ranch, 3 lots in the Wittsrom minor ag cluster, and about 3 lots on Rim Rock Road. All of these approved lots, when homes are built, will be obtaining their water from the same fractured shale that Laetitia is proposing for their water source. Additionally, most of these lots are approved for two home sites. There will simply **not be enough water to go around for everyone** as additional houses are built in this area on approved lots.

BH-17 13. **THE WELL SHELL GAME -** Laetitia's new DEIR claims to solve the problem of depleting the water in Los Berros Creek by not using wells number 12 and 13 for the housing project, due to their close proximity to the creek. **However, these two wells would still be used for the irrigation of the vineyard**, which will be increased by 27 acres according to the plan. Laetitia's water "shell game" is making a mockery of the CEQA process!

BH-18 14. **AFFORDABLE HOUSING? -** The proposed 102 one acre lots will be turned into million dollar estates. Is this needed in Nipomo? Isn't affordable housing for the working class more important to SLO County at this time?

BH-19 15. **WASTING OUR TIME AND MONEY** - The first Laetitia DEIR was presented to the County in 2008. It was not acceptable then, and it is still not acceptable now. **Why is the County allowing this to go on for five years,** while wasting the time and resources of the planning department and ultimately wasting taxpayer dollars?

BH-20 16. **CAUTION FROM THE EXPERTS** – The developer hired and paid CCH (Cleath Harris Consultants) to do the initial hydrogeological study for Laetitia. Because of our concerns to the initial DEIR 3 peer reviews have been performed of CCH's work, all of which differed significantly with many of CCH's conclusions. The hydrogeology company Geosyntec states in their October 2011 letter, "*This indicates that the long term capacities of the fractured bedrock aquifers to transmit groundwater are* ***lower than previously estimated*** *and sustainable production potential of the Project Site wells based on the short term tests were* ***unrealistically high****. Initial yields from wells in fractured bedrock aquifers often are not representative of longer term yields, which are typically lower.*" BH-20 (cont'd)

BH-21 17. **WATER STORAGE IN SHALE?** - Cleath and Associates (the hydrogeology company hired by Laetitia) proposes to utilize water in storage within the fractured shale as a component of "safe yield". Two of the peer reviews indicate that this is a **violation of CEQA and should not be allowed**. Fractured shale does not typically "store water." The Fugro hydrogeology report states that *"It should be noted also that the annual recharge estimates provided by Cleath are* ***misleading*** *in that they imply a component of available aquifer storage as recharge during a*

Page **4** of **5**

BH-21 (cont'd)

critical drought. The volume of ***groundwater in storage is very small*** *given the limited extent of available the bedrock aquifers and that the amount cannot be used as a component of sustainable supply"*

BH-22

18. **CAN YOU TRUST THE NUMBERS?** - As the protests against this project mount, Laetitia continually reduces the estimated amount of the water that the housing project will use.
    a. 143 acre feet/yr (Cleath and Morro report, 2008)
    b. 73.7 acre feet/yr (Cleath, Nov. 2008)
    c. 46.3 acre feet/yr (Cleath, 2010)

    Is the County so gullible that they will believe *any* of these numbers?

BH-23

The hydrogeologist, Paul Sorenson of Fugro West, Inc. after thoroughly studying the Laetitia-Cleath report, stated in his letter to the County that "A worst case total project water demand estimate on the order of **168.6 acre ft/yr to 175.3 acre ft/yr is considered reasonable**."

BH-24

Laetitia now claims that each one acre lot will use 0.44 acre ft/yr of water. The WRAC brings up the point that The Woodlands and Varian Ranch were estimated to use 1.50 acre ft/yr per residence. Laetitia's numbers are maybe more appropriate for an apartment?

BH-25

19. **DRY WELLS DOWNSTREAM** - Los Berros Creek is critical to charging the aquifer which supplies Oceano (within the Northern Cities Management Area) with its water. **The County is responsible for ensuring the reliability of this water source.** Already, the wells close to Los Berros Creek that Falcon Ridge (El Campo area) once used are not adequate, and other sources had to be implemented.

Responses to Bernard Horton's Comments

Comment No.	Comment
BH-1	Please refer to Final EIR Section V.P. Water Resources, and referenced technical reports provided in Appendix H to the EIR. These documents include substantial evidence for sustainable yield of water, noting strict water conservation measures and monitoring for the life of the project to ensure compliance. Please refer to responses to the comment letter provided by the Nipomo Hills Alliance legal representation (H&B) and responses to comments BH-4 through BH-25 below. Please refer to responses to comments WRAC(b)-15 through WRAC(b)-17 regarding existing conditions.
BH-2	Please refer to responses to comments WRAC(b)-15 through WRAC(b)-17 regarding existing conditions.
BH-3	Please refer to responses to specific comments BH-4 through BH-25 below.
BH-4	As noted in the Final EIR (Section V.N. Transportation and Circulation), the project would generate 1,049 new trips (residential development). The EIR includes an analysis of the project's effect on local roads and Highway 101, and mitigation is identified that would ensure the roads are constructed to meet County Road Standards (refer to TR/mm-1, TR/mm-2, TR/mm-3, TR/mm-4, TR/mm-8, TR/mm-9, TR/mm-10, and TR/mm-12). These standards include road widening, shoulders, and traffic controls, which are triggered by average daily trip (ADT) estimates and to provide safe County roads.
BH-5	Please refer to responses to comments WRAC(b)-31, H&B-4, H&B-5, H&B-6, and H&B-8 regarding concerns related to fractured shale. Long-term testing was conducted pursuant to California Water Code (Section 64554) to specifically identify well yields from fractured shale; results are documented in EIR Section V.P. Water Resources and Appendix H (Geosyntec 2011). The EIR considers potential effects due to interference (refer to Final EIR Section V.P.5.a.1.c. Water Resources, Project-specific Impacts and Mitigation Measures, Project-wide, Sustainable Water Supply, Interference), and there is no evidence that use of the proposed domestic wells would result in lower production or well failure of other wells in the area. In addition, the EIR includes mitigation (WAT/mm-1) to avoid well production that would have an adverse effect on base flow in Los Berros Creek (due to evidence of hydrologic connectivity) and subsequently other wells along the Los Berros Creek corridor. The County recognizes that well failures have occurred in the area; a condition that has been exacerbated by the drought. For this reason, long-term testing was conducted, and strict water conservation measures, well yield limitations, metering, and monitoring are recommended as mitigation (WAT/mm-1).
BH-6	Please refer to response to comment BH-5 above and response to comment H&B-6.
BH-7	Mitigation compliance is bound to the project, and compliance with regulations, mitigation measures, and conditions of approval would be required, and would include submittal of monitoring reports for the life of the project. The County is required to ensure compliance with identified mitigation, and pursuant to mitigation measure WAT/mm-1: "Water Company and Homeowners Association are out of compliance with the Water Master Plan, no additional building permit, operational permit, or business license *that requires use of domestic potable water supply* will be issued for any lot within the project until any identified remedial work has been completed".
BH-8	Please refer to WRAC(b)-15 through WRAC(b)-17 regarding historical conditions. As documented in EIR Section V.P. Water Resources, where long-term well testing data showed that use of proposed domestic wells (wells 11, 12, and 13) would significantly effect baseflow in Los Berros Creek, project changes proposed by the applicant and mitigation measures (WAT/mm-1) were identified to avoid significant, unavoidable, adverse impacts on aquatic species as a result of project implementation. Please refer to response to comment letter SCSLC (Sierra Club, Santa Lucia Chapter).

Comment No.	Comment
BH-9	Please refer to response to comment letter CDFG (California Department of Fish and Game). Please note that mitigation is identified (WAT/mm-1), which includes a well pumping schedule and yield limitations to maintain baseflow in Los Berros Creek; in addition stream flow monitoring is required (WAT/mm-7). As noted by the commenter, there will be times of drought when there is no surface base flow in the creek (with or without the project).
BH-10	Please refer to EIR Chapter III.D.11.a (Project Description, Project Components, Future Development Proposal, Dude Ranch). The applicant has not submitted an application for the dude ranch, and is not requesting approval at this time. The EIR addresses the Dude Ranch based on limited information provided by the applicant, and subsequent CEQA review would be required if the dude ranch is pursued for development.
BH-11	Please refer to response to comment CSLRCD-2. Although retention of stormwater is not proposed by the applicant, compliance with the County Land Use Ordinance (Section 22.52.110) will likely require construction of a basin to ensure runoff does not exceed the estimated pre-development rate (refer to mitigation measures WAT/mm-9).
BH-12	Please refer to responses to comments H&B-23 and WRAC(b)-13, WRAC(b)-14, and NCMATG-2 regarding consideration of rainfall occurring during the testing program.
BH-13	As noted above (BH-7), the mitigation measures are bound to the project, including all requirements regarding well yields and individual lot water use. The concerns regarding liability will be considered by the County decision makers.
BH-14	The commenter's concern regarding small water districts will be considered by the County decision makers.
BH-15	A Class I impact was identified in the 2008 Draft EIR. As a result, the applicant modified the project and extensive testing, peer reviews, and studies were conducted to analyze the project's effect on water resources, and water remains an important issue. This information is fully disclosed in the EIR; additional technical information is provided in the EIR Appendix and County file.
BH-16	Please refer to response to comment VCG-6.
BH-17	The County does not currently restrict use of agricultural wells in this area. The commenter's concern will be considered by the County decision makers.
BH-18	The commenter's concern regarding affordable housing will be considered by the County decision makers.
BH-19	The commenter's concern will be considered by the County decision makers.
BH-20	Please note the analysis in the EIR incorporates the results of substantial peer review of documentation and water testing data (refer to Final EIR Appendix H, Geosyntec [2011]). Based on the peer review and analysis, the yield calculation is less than what was recommended by Cleath & Associates, and further restriction on use of wells demonstrating connection to Los Berros Creek is recommended. The conclusions and findings are based on the results of the peer review, and the disagreement among experts is noted by the County.
BH-21	Please refer to responses to comments WRAC(b)-31, H&B-4, H&B-5, H&B-6, and H&B-8 regarding fractured shale and determination of safe yield. As documented in the EIR, the County's hydrogeological consultant (Geosyntec) conducted a peer review and the information presented in the EIR reflect this third party review, including determination of sustainable yield estimates which differ from, and are less than, the determination by the applicant's consultant (CHG).
BH-22	Please refer to responses to comments H&B-19 and H&B-20 regarding determination of water demand. The EIR documents how the substantial reduction in outdoor landscaping significantly reduces estimated water demand.

Comment No.	Comment
BH-23	Please refer to response to comments BH-22, H&B-19, and H&B-20. The estimate by Fugro does not include changes to the project (refer to Chapter III Project Description and Section V.P. Water Resources).
BH-24	Please refer to BH-22, H&B-19, and H&B-20 regarding determination of residential water demand.
BH-25	Please refer to responses to comment letters from the Oceano Community Services District (OCSD), Water Resources Advisory Committee (WRAC), and Northern Cities Management Area Technical Group (NCMATG). The proposed project would not result in a direct or cumulatively considerable reduction in available water supply in the noted basins and management areas.

SLO CNTY
PLANNING/BUILDING
DEPT

2013 AUG 20 AM 11:28

James T. Toomey
161 Jovita Place
Nipomo, CA 93444

August 16, 2013

Mr. Brain Pedrotti, Project Manager
County Planning & Building Dept.
County Government Center, Rm 300
San Luis Obispo, CA 93408-2040

Re: Laetitia Agricultural Cluster Development Revised Recirculated Draft Environmental Impact Report

Dear Mr. Pedrotti:

Enclosed (Enclosure #1) with this letter is a copy of my previous letter of November 1, 2008 submitted in response to the RDEIR. This slightly modified letter is being resubmitted in accordance with my understanding of the instructions accompanying the RRDEIR. JTT-1

I concur with the Water Resources Advisory Committee comments regarding the RRDEIR. Said comments are incorporated herein by reference to avoid the necessity of responding to repeat comments in the FEIR. In addition I offer the following questions, comments and suggestions regarding the proposed Laetitia Project. JTT-2

Mitigation measure AQ/mm-5 (Enclosure #2) is intended to prevent airborne dust from leaving the project site by applying water for dust control, spraying dirt stockpile areas daily, and irrigating graded areas until vegetation is established. Given that the proposed project estimates 819,000 cubic yards of earthwork over a wide area, what is the amount and source of this water? Where in the RRDEIR is this use built into the water demand numbers? JTT-3

Appendix H of the RRDEIR purports to justify the .44 AFY/Unit water duty factor by incorporating assumptions utilized in the Department of Water Resources (DWR) Model Water Efficiency Ordinance and the 2011 California Green Buildings Standard Code (CGBSC). Although the mathematics supporting the GeoSync assumptions "pencil out", the real question is are the underlying assumptions correct? The CGBSC cited homes are described as 3 bedroom with 4 occupants without reference as to size of home or lot. Laetitia is proposing 3000 to 5000 square foot homes on 1 acre lots. The low end of the GeoSync estimate of 46,849 gallons per year for four occupants provided by CGBSC equates to 32 gallons per capita per day (gpcd). The 1998 County Master Water Plan Update estimates the average indoor water use for rural residential properties at 350 gallons per day per residence. DWR and EPA estimates for JTT-4

1

indoor usage are 55 gpcd and 45 gpcd respectively. It should be noted the DWR number of 55 gpcd is but a provisional standard only to set a target. However, no one is actually required to demonstrate this indoor residential requirement has actually been met. It is but a goal. **JTT-4 (cont'd)**

Regardless of the engineered standards employed in the various water savings devices it should be kept in mind that it is one thing to implement water savings devices; it is another to change human behavior to use them in the way they were intended. Certain household functions require a water quantity based on personal comfort level and habit. These standards are relatively new and little if any data exists to demonstrate they can actually be attained. A useful comparison is enclosure #3 from the USGS reporting per capita water use for San Luis Obispo County of 147 gpcd. Although the 147 gpcd includes exterior use as well it is nonetheless a meaningful comparison even assuming 50% exterior use. According to the Municipal Service Review (MSR) of July 2010 for the Nipomo Community Services District the average water usage per connection for the year 2009 was .65 AFY or 145 gpcd using the same 4 occupant assumption. This .65 AFY number includes many multi-family and high density developments which tend to underestimate what an average single family detached residence uses. For example the same MSR for the Golden State Water Company, consisting primarily of detached SFR's, shows a 9 year average water consumption of 0.94 AFY (210 gpcd) per connection. Understating water requirements and using unrealistic assumptions makes meaningful CEQA analysis difficult. Even GeoSync cautions that in order to meet these goals the Laetitia project should incorporate a water management plan with a well-defined process to monitor and enforce the plan. **JTT-5** **JTT-6**

Why is no allowance provided for distribution system loss (leakage)? The California Home Building Association, the same organization whose assumptions are being utilized to support the frugal water duty factor, cites an allowance of 6% for leaks for the average home (page 6) in their publication entitled Water Use in the California Residential Home (Enclosure #4). Page V-B14 of the Price Canyon General Plan Update and Spanish Springs Specific Plan EIR depicts a loss allowance of 2 percent. (Enclosure #5). **JTT-7**

Conditions of approval, if granted, must include timely, verifiable and enforceable conditions that limit water use specified by the RRDEIR. Utilizing remote read-only water meters featuring leak detection should be employed throughout the proposed project. Another suggestion to enforce the .44 AFY per unit water duty factor would be to maintain a twelve month moving average of usage per residence. Those exceeding the .44 amount should be required to pay a significant fine to the HOA or MWC to help defray future maintenance and capital expenditures. **JTT-8**

Please provide the clear and unambiguous meaning of the terms "equilibrium interval" and "operational static" used in the third paragraph of page V.P.-31. **JTT-9**

Please help reconcile the statement found on V.P.-39 "Based on available data, groundwater production needed for the proposed project is feasible, but will result in long term average declines in groundwater associated with each proposed domestic well."; with the following statement found on V.P. 42 "As noted above, implementation of the project would not result in a reduction in available groundwater associated with other on-and-offsite wells." On their face these statements seem diametrically opposed to one another. **JTT-10**

2

The following comments are in response to the June 7, 2012 letter submitted to the WRAC via Mr. John Janneck by Cleath Harris Consultants (CHC) with the subject "Comments on Section V, Chapter 8 (Water Resources) of Laetitia RDEIR." Under General Comments #4 CHC asserts that close to 30 years of data from Guage #175.1 registered 22.53 inches of average precipitation from 1965 to 1998. A closer look at the actual data (Enclosure #5) shows a gap in the data from 1968-1969 to 1977-1978 and two sets of data for the very high rainfall year 1977-1978 thereby skewing the average higher. Apparently Cleath looked only at the summary data which is very misleading. The 2002 DWR Report on the Nipomo Mesa (Table 14 Precipitation Stations) also used the Mehlschau #38 guage and the Penny #175.1 guage. These two gauges show a long-term average to 1995 of 16.29 inches for #38 and 19 for 175.1. GeoSyntec's extrapolation of approximately 17 inches average precipitation may be a little low but is certainly more accurate than CCH's alleged 22.53 inches. **JTT-11**

A factor influencing the quantity of water for this proposed project and the alternatives analysis is its density. Following is a listing of existing approved Agricultural Clusters listing the total area of each cluster and the number of homes compared to Laetitia (Enclosure #6) **JTT-12**

Subdivision	Units	Site Area	Location
Varian Ranch	48	3250 acres (68 ac/unit)	Edna Valley
Edna Ranch	51	1651 acres (32 ac/unit)	Edna Valley
Talley Farms	84	5000 acres (60 ac/unit)	Arroyo Grande Valley
Santa Margarita Ranch	111	3778 acres (34 ac/unit)	Rural Santa Margarita
Laetitia Proposal	102	1900 acres (19 ac/unit)	South County

It is obvious Laetitia has optimized or exceeded the convoluted algorithm governing density of homes in the Ag Cluster Ordinance applicable to this proposal. A significantly reduced proposal as outlined in the Alternatives Analysis Section of the RRDEIR might be justified.

How will measures regarding pumping limitations noted in the last paragraph of page V.P.-41 be implemented to ensure compliance both initially and on an on-going basis? **JTT-13**

During the course of this long running proposed project 3 peer reviews have been conducted of the work product of the Hydrogeologist hired and paid by the developer. Each of these peer reviews disagreed with many of CHC's conclusions. For some reason 2 of these peer reviews by Paul Sorenson of Fugro West are not included in the RRDEIR appendices but are only cited as references. The duty of the decision makers is to consider **all** of the data and sort out what actually represents the "Truth". Therefore the missing peer reviews are enclosed. (Enclosures #7 and #8). **JTT-14**

Have the provisions of Title 17 and 22 of the California Code of Regulations pertaining to New & Existing Source Capacity been met? Specifically, has Article 2, Permit Requirements, Section 64552 and Section 64554 (e), (g), and (h) regarding New and Existing Source Capacity been met? If so, should not the report be included in the FEIR? If not, these requirements should be among the conditions of approval, if granted, and subject to public scrutiny. **JTT-15**

3

Page V.P.-24 states a policy in the Central Coast RWQCB that "Groundwater recharge with high quality water shall be encouraged." Why are there no retention basins to retain runoff to replenish the aquifer? **JTT-16**

Vineyard water demand of 0.34 AFY as outlined in the GeoSync letter to Shawna Scott dated 18 April 2012 appears extremely low. The use of WPA 2 data for estimating water use for WPA 7 is totally inappropriate as manifested in their significantly different evapotranspiration rates, which are 38.1 and 52.1 respectively (Enclosure #9). There is a small error in Table V.P.-6 Estimated Project Water Demand (Page V.P.-36) regarding vineyards and orchards (existing), i.e. 0.34 * 624.9 = 212.5, not 208. This changes the existing water use to 226.7 AFY and total water use (existing plus proposed demand) to 282.2 AFY. The values reflected on Table V.P.-1 also need to be changed accordingly. **JTT-17**

In my opinion the appropriate water duty factor would be the middle value for WPA 7 of 1 AFY less .25 AFY for frost protection or .75 AFY. This would change total water use to 587.1 AFY. If one assumed a very conservative .75 less .25 for frost protection or .50 AFY the total water use would be 398.6 AFY. As can be seen small changes in the water duty factor can have significant changes in the total water needed. To use a niggardly water duty factor form another WPA with dissimilar growing conditions is absurd! **JTT-18**

What is the source for the following statement "Typically, approximately 32 percent of agricultural water use results in groundwater recharge....." **JTT-19**

The last sentence of page 8 of the above referenced letter states "....curtailment of pumping from Well 11 during the months off August through November (Table 4 and Figure 19, GeoSync 2011) will **help** to mitigate potential impacts to Los Berros Creek of groundwater pumping for the proposed residential development." One can infer it will not totally mitigate thus supporting the fact this dewatering of the creek should remain a Class I impact. **JTT-20**

CEQA requires an accurate description of the existing environment (baseline) in order to assess environmental impacts of this proposed project and determine appropriate mitigation measures. Unless the lead agency knows how much water exists in the area one cannot possibly know what level of withdrawal would trigger significant impacts. An attempt has been made to establish current and proposed baseline water needs within the boundaries of this proposed project. However, no baseline exists for the surrounding area. An environmental document should look at both direct and indirect impacts. As noted in the RRDEIR no data was provided for nearby neighboring wells such as the Tremper and Fitzgerald wells. Was this data requested? Was it considered in the cumulative water availability impacts? The RRDEIR must take into consideration the approximately 40 acres of new citrus plantings going in on a portion of the former Fitzgerald Ranch recently purchased by BeeSweet Citrus. There are also many legally approved mostly rural residential vacant lots in the Rancho Nipomo (20), RimRock (3), Fitzgerald (10) and Wittstrom (4) properties all of which are solely dependent on groundwater. Most of these lots are entitled to build secondary units as well. Has the RRDEIR considered the effect this proposed project will have on these properties? The Dude Ranch is listed as a proposed future development project and should be considered in the cumulative impacts. The **JTT-21** **JTT-22** **JTT-23** **JTT-24**

4

evidence and documentation suggests that there is insufficient water supply to support cumulative demand. **JTT-24 (cont'd)**

I also question the conversion of some existing producing vineyard to residential parcels. What is being proposed is to replace these building sites, located on relatively good and level soil, with new non-producing plantings on less desirable soils on hillsides. This proposal, while reducing home construction costs, is not in concert with the stated intent of protecting agriculture by tightly clustering homes in areas not affecting production agriculture. **JTT-25**

In summary I continue to have grave doubts about the adequacy and sustainability of water for this project sole sourced from unreliable and unpredictable hard rock aquifers. The long-term sustainability of this water resource is uncertain at best. For example there have been 8 wells drilled on our family's property near this proposed development. Of these 8 wells only 3 are currently producing. The other 5 are dry. As noted in the NCSD Sphere of Influence Municipal Service Review by SLOLAFCO dated May 2004, "The simulation done as part of this report shows that the existing distribution of agricultural pumping in Los Berros Creek demonstrates that there would be a major impact on water availability with a recurrence of the dry cycle of the 20's and early 30's. This potential impact could be the result of increased agricultural pumping from the fractured tuff reservoir in upper Los Berros Creek, and probably to some extent the increased pumping from this reservoir in the upper Nipomo Valley." Are we entering such a dry cycle? As seen from the opinions of the hydrogeologists concerning this project, their views vary widely and reinforce the difficult and somewhat subjective nature of their multidisciplinary work. The prediction of the future behavior of an aquifer system is an imprecise undertaking. If we error shouldn't it be on the side of caution? **JTT-26** **JTT-27**

I respectively request these comments, questions, and concerns be considered in the development of minimization and mitigation measures and conditions of approval (if applicable) for this proposed project. **JTT-28**

James T. Toomey

James T. Toomey

Enclosures

5

ENCLOSURE # 1

James T. Toomey

161 Jovita Place

Nipomo, CA 93444

Mr. Brian Pedrotti, Project Manager

County Planning & Building Department

976 Osos Street, Room 300

San Luis Obispo, CA 93408-2040

June 4, 2012

Re: Laetitia Revised Draft Environmental Impact Report

Dear Mr. Pedrotti:

I continue to have doubts about the adequacy and sustainability of the water supply of the proposed Laetitia Project. In my letter responding to the initial DEIR I documented how my well, which had been pumped for 12 hours producing 60 gpm, had declined in productivity to where it could barely meet the needs of a single residence consisting of two adults. Subsequent to that initial letter the well went dry and I had to drill a new well. Enclosed are copies of the well driller's report and invoice to verify. I have also enclosed a copy of an e-mail regarding water problems at the Speedling Nursery. **JTT-29**

Attempting to understand the proposed project's water needs has been a moving target with numerous iterations. The only consistency in the many water studies conducted by the applicant's hydrogeologist has been the overestimation of the water supply while repeatedly revising estimates of project water demand downward. Water needed by the project per the applicant has gone from a high of 142.9 AFY to the current 46.3 AFY. Most interesting is the fact that while proposed water demand has shrunk by over sixty percent, the number of proposed residences remains constant at 102. **JTT-30**

The work done by GeoSync on analyzing the pump test data appears to be very thorough. However, it should be noted that this analysis was based on review of the testing data provided by the applicant's hydrogeologist. As can be seen from the enclosed letter from GeoSync to Shawna Scott of SWCA dated 13 September 2010, it appears the testing plan and data were not submitted from CHC to GeoSync on a timely basis. What was supposed to be an independent testing program conducted by a neutral 3rd party became one dependent on the data submitted by CHC without oversight by GeoSync . **JTT-31**

1

The assumption of a water duty factor for each residence of .44 AFY appears to be ultra conservative when compared to other comparable developments such as Varian Ranch, Santa Margarita Ranch and the Woodlands, whose duty factors range from 1.44 to 1.5 AFY. The proposed water duty factor is more suitable to small lot urban developments than to 1 acre rural properties. A relatively small but realistic increase in the Laetitia water duty factor from .44 to .60 AFY plus the ranch headquarters plus a conservative distribution system loss allowance (leaks) of 1.5% (102 x .60 = 61.20 + 1 + .93 = 63.13) exceeds the estimated sustainable safe yield of 62.4 AFY. The Dude ranch would consume an additional 13 AFY. Considering rainfall was 138% of normal during the testing period in conjunction with the size of the project, the range of water demand estimates, the limited water supply and the very small, if any, margin between demand and supply, I urge you to error on the side of caution. It appears obvious there is not sufficient water to meet project demands. Even if one accepts these unrealistically low demand estimates, adequate measures to implement and enforce the proposed water conservation methods are lacking. **JTT-32** **JTT-33**

Reduced flow to Los Berros Creek was correctly identified as a Class I impact in the initial DEIR. The RDEIR proposal is to mitigate this impact by the use of wells 14 & 15 in lieu of wells 12 & 13. Allegedly wells number 14 and 15 are further from the creek and replenished by a different drainage. This is but a "shell game" by the developer to appease this Class I impact "on paper only". There is no prohibition put in place to preclude use of wells numbered 8, 11, 12 & 13 all of which are close to the creek and likely draw from the riparian underflow. What purpose does it serve to deny use of wells 12 & 13 for the proposed project then turn around and use them for irrigation which still results in the further de-watering of Los Berros Creek and the resultant Class I impact? Prohibitions against the use of these wells must be implemented as a condition of approval. If the county maintains they cannot prohibit their use under existing authority, then project approval must be denied. Approval is a discretionary decision retained by the Reviewing Authorities. **JTT-34**

Underflow is regulated as surface water by the State Water Resources Control Board. There is a need to better understand the status of the water that is being used and/or proposed to be used. A diversion of underflow requires a water right (appropriative or riparian) for that water. The EIR needs to address this issue in depth. **JTT-35**

The applicant's hydrogeologist continues to use groundwater in storage as a component of "safe yield" in violation of CEQA guidelines regarding depletion of groundwater. As acknowledged in the RDEIR significant dewatering of Los Berros Creek has taken place since the 1970's and there has been a general decline in groundwater elevation as well. What was once a perennial stream is now dry much of the year. As Gordon Thrupp of GeoSync states in his analysis "...sustainable yield must allow for sufficient natural recharge of groundwater to preserve streams, springs, wetlands and riparian corridor ecosystems (e.g. Sophocleous, 1997, 2000)." Obviously we are already mining the aquifer. Allowing the extraction of an additional 58 AFY (26% increase) will result in irreparable harm to the creek and its' ecosystem. **JTT-36**

The agricultural cluster subdivision ordinance requires the Review Authority to make the following finding prior to approval of an agricultural cluster subdivision. *The water resources and all necessary* **JTT-37**

2

services are adequate to serve the proposed development including residential uses, as well as existing and proposed agricultural operations on the proposed site. The Review Authority must essentially find there is a sufficient, long- term sustainable water source. As local residents will attest, and I can substantiate, the amount of water in storage in hard rock aquifers is very limited. Wells drilled in hard rock often produce abundantly initially then decline over time and occasionally run completely dry. **JTT-37 (cont'd)**

The California Supreme Court has stated "the ultimate question under CEQA is not whether an EIR establishes the likely source of water, but whether the EIR has examined the reasonable foreseeable impacts of supplying water to this project." This proposed development, if approved, results in our current and future water supply being mortgaged for the present gain of the developer. **JTT-38**

Sincerely

James T. Toomey

James T. Toomey

Enclosures

3

JTT-39

YAHOO! MAIL Classic
Copyright © 1994-2009 Yahoo! Inc. All rights reserved. Terms of Service - Copyright/IP Policy - Guidelines
NOTICE: We collect personal information on this site.
To learn more about how we use your information, see our Privacy Policy

FW: well data Monday, February 2, 2009 10:15 AM
From: "Jay Hardy" <hardyj@hardydiagnostics.com>
To: "Tim Toomey" <yemoot2002@yahoo.com>

Here you go, Tim.
Jay

From: Johnny R [mailto:johnny.r@earthlink.net]
Sent: Monday, February 02, 2009 9:30 AM
To: Jay Hardy
Subject: RE: well data

Jay,

Here is our current well situation.

Speedling originally drilled 6 wells. 3 of which have never produced any water. The forth well is a seasonal well, which, on normal rainfall years, produces for about 3-4 months. This year and last it has been dry. Our fifth well produces some water but is located near Toomey's well and if we use it heavily, Toomey's well will run dry, so we are forced to use it sparingly. Our sixth well is our only consistent well. Our pump is set at 320 ft. Last year the water level came close to "breaking suction" as it was measured at 285 ft. Historically our water level fluctuates around 180 ft-220ft. The last few years are level has dropped 30-40 ft and has maintained around 250-265 ft. During the driest parts of the year (late summer/ fall), our water level drops even further.

Hope this helps,

Johnny Rosecrans
Nursery Manager
Speedling, Inc.

—— Original Message ——
From: Jay Hardy
To: Johnny Rosecrans
Sent: 1/31/2009 5:40:41 PM
Subject: well data

Johnny,
I was wondering if you have reached a decision about helping the Nipomo Hills Alliance in stopping the Laetitia development. We still need more data on the □problem wells□. Your assistance would sure be appreciated!
Jay

~~~
~~~

JTT-39 (cont'd)

TRIPLICATE
Owner's Copy
Page 1 of 1
Owner's Well No. 1
Date Work Began 7-20-09, Ended 8-5-09
Local Permit Agency SAN LUIS OBISPO COUNTY PUBLIC HEALTH
Permit No. 2009-102 Permit Date 7-8-09

STATE OF CALIFORNIA
WELL COMPLETION REPORT
Refer to Instruction Pamphlet
No. 1097987

DWR USE ONLY — DO NOT FILL IN
STATE WELL NO./STATION NO.
LATITUDE LONGITUDE
APN/TRS/OTHER

GEOLOGIC LOG

ORIENTATION (✓) ✓ VERTICAL ___ HORIZONTAL ___ ANGLE ___ (SPECIFY)
DRILLING METHOD ROTARY FLUID BENTONITE

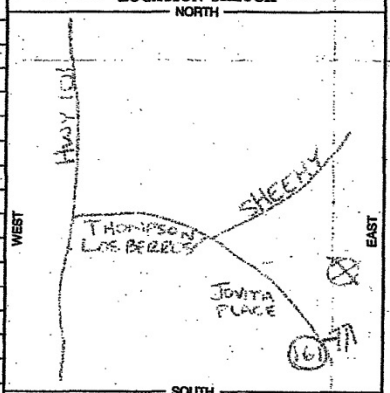
DEPTH FROM SURFACE Ft.	to Ft.	DESCRIPTION *Describe material, grain size, color, etc.*
0	60	LIGHT BROWN CLAY
60	110	BROWN CLAY
110	210	GREY SHALE
210	385	BLUE SANDSTONE
385	400	GREY SOFT SHALE

TOTAL DEPTH OF BORING 400 (Feet)
TOTAL DEPTH OF COMPLETED WELL 390 (Feet)

WELL OWNER
Name JAMES TOOMEY
Mailing Address 161 JOVITA PLACE
CITY NIPOMO STATE CA ZIP 9344

WELL LOCATION
Address 161 JOVITA PLACE
City NIPOMO
County SAN LUIS OBISPO
APN Book 090 Page 041 Parcel 078
Township — Range — Section —
Lat 35° 04' 7.58" N (DEG. MIN. SEC.) Long 120° 30' 17" (DEG. MIN. SEC.)

LOCATION SKETCH



Illustrate or Describe Distance of Well from Roads, Buildings, Fences, Rivers, etc. and attach a map. Use additional paper if necessary. PLEASE BE ACCURATE & COMPLETE.

ACTIVITY (✓)
✓ NEW WELL
MODIFICATION/REPAIR
___ Deepen
___ Other (Spec
___ DESTROY (Desc Procedures and I Under "GEOLOG

USES (✓)
WATER SUPPLY
✓ Domestic ___ I
___ Irrigation ___ I
MONITORIN
TEST WE
CATHODIC PROTECTIC
HEAT EXCHANG
DIRECT PUS
INJECTIC
VAPOR EXTRACTIC
SPARGIN
REMEDIATIC
OTHER (SPECIF

WATER LEVEL & YIELD OF COMPLETED WELL
DEPTH TO FIRST WATER ___ (Ft.) BELOW SURFACE
DEPTH OF STATIC WATER LEVEL 215 (Ft.) & DATE MEASURED 8-5-09
ESTIMATED YIELD * 10 (GPM) & TEST TYPE AIRLIFT
TEST LENGTH ___ (Hrs.) TOTAL DRAWDOWN ___ (Ft.)
** May not be representative of a well's long-term yield.*

CASING (S)

DEPTH FROM SURFACE Ft.	to Ft.	BORE-HOLE DIA. (Inches)	TYPE (✓) BLANK	SCREEN	CON-DUCTOR	FILL PIPE	MATERIAL / GRADE	INTERNAL DIAMETER (Inches)	GAUGE OR WALL THICKNESS	SLOT SIZE IF ANY (Inches)
0	190		✓				PVC	5"	SDR21	—
190	390			✓			PVC	5"	SDR21	0.032

ANNULAR MATERIAL

DEPTH FROM SURFACE Ft.	to Ft.	TYPE CEMENT (✓)	BENTONITE (✓)	FILL (✓)	FILTER PA (TYPE/SI
0	50	✓			
50	390			✓	MONTEREY

ATTACHMENTS (✓)
___ Geologic Log
___ Well Construction Diagram
___ Geophysical Log(s)
___ Soil/Water Chemical Analyses
___ Other ___
ATTACH ADDITIONAL INFORMATION, IF IT EXISTS.

CERTIFICATION STATEMENT
I, the undersigned, certify that this report is complete and accurate to the best of my knowledge and belief
NAME CHAD MAZZI MAZZI WELL DRILLING (PERSON, FIRM, OR CORPORATION) (TYPED OR PRINTED)
ADDRESS 4948 S. EL POMAR CITY TEMPLETON STATE CA ZIP 9345
Signed ___ C-57 LICENSED WATER WELL CONTRACTOR DATE SIGNED 8-7-09 C-57 LICENSE NUM 881710

NOT OFFICIAL RECORD CONFIDENTIAL WATER CODE

JTT-39 (cont'd)

4/2009 09:53 8052268985 MAZZI WELL DRILLING PAGE 02/02

MAZZI WELL DRILLING
4948 South El Pomar
Templeton, CA 93465
(805)226-8985
226-8726

INVOICE

Bill Date:	8/5/2009
Invoice #:	1081

Bill To: Tim Toomey
161 Jovita Place
Nipomo, CA 93444
(805)489-1043

Date:	Description:	Amount:
6/24/2009	Down Payment Check #3696	(-$2,000.00)
7/28/2009	Partial Payment	(-$1,000.00)
7/29/2009	Drilled 390' Cased 5" Well @ $28.00/ft	$10,920.00
8/5/2009	County Permit #2009-102 & 50' Sanitary Seal	$1,600.00

Balance Due: $9,520.00

Total balance is due upon job completion.