

MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY



Carl P. Holm, AICP, Director
John Guertin, Acting Deputy Director
Daniel Dobrilovic, Acting Building Official
Mike Novo, AICP, Director of Planning
Benny J. Young, Interim Director of Public Works & Facilities

168 W. Alisal Street, 2nd Floor
Salinas, California 93901
(831)755-4800
www.co.monterey.ca.us/rma

February 4, 2016

Mr. Don Campbell, Chair
San Luis Obispo County Planning Commission
976 Osos Street, Room 200
San Luis Obispo, CA 93401

Mr. James Bergman, Director
San Luis Obispo County Planning and Building Department
976 Osos Street, Room 200
San Luis Obispo, CA 93401

Dear Chair Campbell and Planning Director Bergman:

We have provided comments in an earlier letter and would like to briefly respond to the Alston and Bird letter submitted to you on February 1, 2016. We have not rigorously analyzed their points, due to the short time frame, but have some instant responses to their comments for your consideration. We support your staff's recommendation and encourage you to listen to their responses related to this letter or the project applicant's testimony.

On page 1, they state that the Reduced Rail Deliveries Alternative will "reduce all impacts associated with on-site Project activities to less than significant." However on-site impacts are not the only impacts that should be considered. Off-site impacts remain significant and unavoidable.

Over several pages, they try to convince you that you are "...precluded from "regulating the railroads directly..." or "...attempting to regulate rail operations indirectly..." While we will leave that analysis to your legal experts, you are not precluded from regulating land use. Denying the land use would not "deny a rail carrier's ability to conduct rail operations." They cite, on page 9, an ordinance that was struck down by a court. Again, due to the short time, we have not researched the case. However, from the explanation in this letter, it appears that ordinance did affect the rail carrier. What is before you is completely different. Taking their arguments to an illogical extreme, and land use application tied to using a rail line could not be denied. We defer to your County Counsel guidance on these preemption arguments.

The arguments in the letter regarding ESHA are interesting but are not the standard the County should use to determine if ESHA exists. Stating that the only time ESHA can be determined is early in the process (prior to determining the application “complete”) completely discounts, if not ignores, the CEQA public review process and the public hearing process. To state that your staff only has one opportunity to identify the ESHA areas, because of an ordinance requirement, and completely ignore whether there actually is ESHA on the ground is a legal or bureaucratic shield. If ESHA exists, it does not matter if it was not identified at some step in the process. What is on the ground is what should be considered by the County.

On page 13 of the letter, they argue that some Mitigation Measures are infeasible due to preemption. If so, does that change the impact conclusions? Does the EIR need to be recirculated pursuant to CEQA Guidelines section 15088.5(a)? On pages 16 and 17, they discuss approving an alternative. We agree that the County could approve a project with less environmental impact. However they are trying to persuade you that recirculation would not be required for that action; however, eliminating mitigation measures is a key difference from the court cases they cited.

On pages 34 and 35, the letter states that General Plan consistency is not required for every individual policy. We agree with that statement. However, the project must be found consistent with foundational policies. In addition, it is up to the County to determine if the project is consistent, as they cite in their letter on page 35, with an excerpt from the *San Franciscans Upholding the Downtown Plan v. the City and County of San Francisco* case (the agency “has broad discretion to construe its policies in light of the plan’s purpose.”).

The letter also cites concerns relating to a denial causing a constitutional taking of property. We are sure your staff is always cognizant of that issue. Your staff will provide you good guidance on whether the denial constitutes denying the property of all economically viable uses.

As stated earlier, we support your staff’s recommendation to deny this proposal. You have been provided, in the Alston and Bird letter, with a lot of legal argument. Your staff will provide you with good guidance on ensuring that your actions comply with the legal requirements. Should you have any questions related to these comments, please feel free to contact me at novom@co.monterey.ca.us or by phone at (831) 755-5192.

Sincerely,



Mike Novo, AICP
Planning Director

cc: Monterey County Board of Supervisors