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Via Email

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RE: Appeal of the Planning Commission's denial of the Las Pilitas Quarry

Dear Mr. Fitzroy,

On behalf of Margarita Proud, I submit this letter in opposition to the Project Applicant's appeal of the Planning Commission's denial of the above-referenced project. The Applicant's April 9, 2015 letter to the Planning Director, Jim Bergman, was typically misleading and inaccurate. The Applicant's letter purportedly demonstrates that the Planning Commission's denial of the Project is not based on substantial evidence in the record or is otherwise inconsistent with the law. Contrary to these contentions and as the Planning Staff ably demonstrated in its reports to the Planning Commission, the denial findings are supported by the evidence and consistent with the County regulation and the applicable laws. Moreover, the evidence in the record does not support the findings necessary to approve the project.

The Project must be consistent with aspects of the General Plan, including the COSE

The Applicant argues the Planning Commission erred when it denied the project in part because it is inconsistent with important Visual Resource goals of the Conservation and Open Space Element (COSE). The Applicant claims the Project must be consistent with the Land Use Element (LUE), but not with the COSE. The Applicant's argument ignores the well-settled "consistency doctrine" according to which a discretionary land use decision – such as the approval of a conditional use permit (CUP) for quarry—must be consistent with all elements of the general plan.

All land use decisions must be consistent with the general plan and any specific plan adopted to further the objectives of the general plan, which functions as the "constitution for all future developments." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 570. ("Citizens of Goleta"). According to the "consistency doctrine", the regulatory controls and development approvals of all cities and counties, including zoning and subdivision approvals,

must be consistent with the agency's adopted general plan. Longtin's California Land Use, 2nd Ed., at §2.40. "The requirement of consistency is the linchpin of California's land use and development laws. It is the principle which infused the concept of planned growth with the force of law." De Battori v. City of Norco (1985) 171 Cal.App.3d 1204.

The Applicant seems to understand this basic principle, but nevertheless claims consistency with the LUE is all that is required because the LUE strives to achieve consistency among various elements that make up the General Plan, and "complements the other elements by incorporating and implementing their land use concerns and recommendations." Citing, LUE Part I, p. 1-10. The Applicant's argument is inconsistent with California law.

If the Applicant were correct, the County would not be required to consider a project's consistency with the COSE. Conservation of open space and associated resources through the implementation of the COSE, however, is a fundamental policy of the State:

The Legislature expressed the importance of the open space elements in the following terms. "It is the intent of the Legislature in enacting this article: [para.] (a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible. [para.] (b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program." (§ 65562.)

Sierra Club v. Bd. of Supervisors, 126 Cal. App. 3d 698, 704, 179 Cal. Rptr. 261, 264 (1981)

The Sierra Club court established the principle that the conservation and open space element is not sub-ordinate to other elements of the general plan, including the land use elements. The Court set aside Kern County's so-called "precedent clause" according to which, in the event of a conflict between the land use plan and the open space element, the land use element would take precedence because it found that the conservation and open space element was on a par with the land use element.

Accordingly, the Applicant's argument that the Project need not be consistent with the COSE must be rejected. Regardless of whether the County's own land use ordinance requires it, State law provides that all discretionary approvals must be consistent with the General Plan, including the COSE. Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App. 3d 1176, 1184.

The Project is inconsistent with scenic values of the SR 58 corridor

The Applicant contends the project's inconsistency with the scenic values of the project area, particularly the SR 58 corridor should not be a basis for denial. The Applicant's argument is largely based on the false claim that because of historic mining, this corridor should not be considered scenic. This claim ignores the fact that the limited existing mining has not and will

not likely significantly impact the scenic and rural qualities of this viewshed. Recent grading activity on the project site has demonstrated that the Las Pilitas quarry would significantly degrade the existing scenic quality of this viewshed.

Moreover, the fact that this corridor is not currently designated a scenic highway is not determinative. The County is well within its authority to conclude that this stretch of SR 58 possesses outstanding scenic and rural qualities even if this stretch has yet to be formally designated. Pursuant to COSE Goal MN-1 and the corresponding Policy, the Planning Commission appropriately concluded the project site has outstanding open space and scenic value. This determination was based on substantial evidence and should not be disturbed.

The fact that mining may be an allowable use does not in itself mean the project is consistent with all elements of the General Plan

The Applicant's appeal letter continues to perpetuate the fiction that owing to the existence of the EX-1 overlay, the project site is somehow "zoned for mining." In her January 2015 letter to the Planning Commission, the Applicant's attorney, Sophie Treder, made a similar argument, claiming that SMARA was enacted to "shift the traditional balance in favor quarrying, at least in classified/designated areas, and to protect those areas from future NIMBYism which prevent extraction of the rock."

There is only a shred of truth to Ms. Treder's otherwise false claim. As set forth below, while SMARA requires lead agencies --such as the County-- to consider the potential impact of non-mining project's on mineral resources in designated areas, the main emphasis of the law is on protecting existing mineral resource operations from potentially incompatible future land uses and projects. This concern is irrelevant in the present context because the application is for a mine, not for a project that could affect present or future mineral extraction.

Contrary to the Applicant's claim, SMARA does not contain any specific requirements or suggestions that proposed new mining projects must be approved even where, as here, the operation of the mine would cause significant disruption of existing communities such as Santa Margarita and threatens the public's health and safety. Contrary to the Applicant's contention, there is no public policy preferring new mines to existing communities. California law leaves the discretion to strike a balance between mineral extraction and health and welfare of citizens to the Cities and counties.

The mere fact that the project is within an area that contains mineral resources does not mean the County should value a new mine above an existing community. As explained above, SMARA's mineral designation process, which culminated in the mineral resource overlay (EX-1), is primarily concerned with identification of areas that contain significant mineral resources in order to protect those resources and existing mining operations from future development that could jeopardize. The overlay is descriptive in the sense that it identifies areas that contain resources. It does not mean, however, that the County has determined that mining is an appropriate land use through-out the 7000 acre EX-1 area.

Cal Pub Resources Code § 2762 provides that

(a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, a lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan that will:

- (1) Recognize mineral information classified by the State Geologist and transmitted by the board.
- (2) Assist in the management of land use that affects access to areas of statewide and regional significance.
- (3) Emphasize the conservation and development of identified mineral deposits.

Thus, Pub Res Code §2762 asks the County to develop policies recognize the information supplied by the State Geologist regarding the existence of mineral resources, “manage” land uses that could affect access to said resources, and assist in the development of said resources. This law does not require or even encourage the County to approve a mine that is incompatible with an established community.

Consistent with §2762, the County’s Land Use Ordinance (Title 22) explains that

The Extractive Resource Area (EX1) combining designation is used to identify areas of the county which the California Department of Conservation's Division of Mines and Geology has classified as containing or being highly likely to contain significant mineral deposits.

The purpose of this combining designation is to protect existing resource extraction operations from encroachment by incompatible land uses that could hinder resource extraction. In addition, Framework for Planning- Inland Portion, Part I of the Land Use Element contains guidelines which call for proposed land use category amendments to give priority to maintaining land use categories which allow and are compatible with resource extraction. (San Luis Obispo County Code 22.14.050) (Emphasis added.)

§22.14.050 does not purport to designate the entire over 7000 acre area of the EX-1 overlay as a “mining zone” or suggest that that the overlay creates anything resembling a mining zone or a right to mine. After evaluating the environmental impacts of each proposed mine pursuant to CEQA, the County must consider its compatibility with the surrounding community. A new mine can be approved if, and only if, the County determines that the mine would be consistent with all applicable code and General Plan policies, as well as adjacent uses, and the project’s benefits outweigh its harm.

COSE Goal 3 requires the County to balance the interest in mineral extraction against the County’s strong interest in protection of “sensitive natural resources” and “existing adjacent

uses.” Thus, the Applicant’s argument that the County must approve new mineral extraction projects at the expense of the health, welfare and safety of an existing community must be rejected.

Here, the evidence shows the Project is inconsistent with the General Plan and Santa Margarita Design Plan, will have a significant and disruptive impact on the town of Santa Margarita, and its benefits do not outweigh its harms.

There is no evidence or credible argument supporting the Applicant’s contention that there is an unmet need for aggregate in Santa Barbara/Santa Margarita Region

Both the PlanningStaff and the PlanningCommission agree with Margarita Proud’s contention that there is no significant unmet need for aggregate in San Luis Obispo County. Yet, the Applicant continues to insist that there is a “critical” need for more aggregate in this region. The Applicant relies on the 2011 California Geological Special Report-215 (SR-215) to argue that there is a shortfall of 188 million tons of aggregate in the next 50 years. This claim is demonstrably false because the “need” identified in SR-215 is based solely on the amount of aggregate that is subject to approved permits. The record shows, however, that currently permitted “reserves” in addition to proven resources associated with existing operations are more than enough to meet the region’s potential needs. Much of the existing resources have already been considered and evaluated in approved Specific Plans, such as the approved plan for Rocky Canyon. A renewed permit for the operation of the Hanson quarry is currently under review by the County without significant opposition from the public or the agencies. Accordingly, a new mine is not needed to meet any unmet demand for aggregate.

In any event, the proposed Las Pilitas quarry is unable to meet the need for Portland Cement (PC) grade aggregate, which according to SR-215, is the type of aggregate in demand in our region. PC aggregate must be washed, which the Las Pilitas quarry would be unable to do as the project description was revised to eliminate the option of washing of aggregate, essentially precluding this project from producing concrete-grade aggregate.¹ Consequently, the Project would be able to make zero contribution towards meeting the estimated 137 million tons of concrete-grade aggregate the region will use in the next 50 years.

The Project cannot be approved because the required findings cannot be made

The Applicant contends that because the project’s impacts are “small” and the need for aggregate is “great”, the Board should ignore the Planning staff and the Planning Commission’s judgment and grant the appeal. The Applicant’s argument must be rejected because the findings required for project approval cannot be made on this record. Moreover, as set forth above, (1) there is no demonstrable need for the aggregate that would be produced by this mine, and (2) the heavy-truck traffic and noise generated by the project would be detrimental to Santa Margarita residents and incompatible with the community. Accordingly, the balance of equities tips sharply in favor of denying the appeal.

¹ Oster/Las Pilitas FEIR, Project Description and Project Objectives

To begin with, those of the Applicant's arguments that are strictly based on the EIR's conclusions about the severity of project impacts must largely be rejected because the County has not approved and certified the EIR. The Board is required to consider the EIR's information and analysis (CEQA Guideline §15090(a)(2)), but is not required to accept all of its conclusions. Accordingly, the conclusions of the EIR are not binding on the Board.

The Applicant seems to assume, without any discussion, that the only basis on which the Board may deny the project is a conclusion that the Project will result in one or more significant, unavoidable environmental impacts. This is false. Native Sun/Lyon Comm. v. City of Escondido (1993) 15 Cal.App.4th 892. While the Board can certainly deny the project on the basis of its significant environmental impacts, the Board must deny the project also if it concludes that the project is inconsistent with other laws and regulations. See, Pub. Res. Code §21002.1(c) ("... the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.")

The County could conclude, for example, that the significant number of heavy-trucks the Project would put through the town of Santa Margarita would be significantly disruptive and wholly incompatible with the character of the community. The County could reach this conclusion on the basis of the noise, dust, vibration and traffic generated by the heavy trucks that would drive through the middle of town. Accordingly, despite the EIR's conclusion that project-related traffic would not cause a significant traffic impact by degrading the level of service (LOS), the Board has the discretion to conclude project-traffic would be incompatible with the community and Margarita

To approve the project, the Board must be able to make the following findings:

- c. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and
- d. That the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development; and
- e. That the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project.
- f. Any additional findings required by Planningarea standards in Article 9 (Community PlanningStandards), combining designation (Chapter 22.14), or special use (Article 4).

SLO Ordinance 22.62.060 (C)(4)

The facts do not support these findings. The Planning Commission concurred with the Planning Staff's conclusion that finding (c) cannot be made because the noise, dust, vibration and heavy-truck traffic generated by the blasting and other project operations would be detrimental to the health, safety or welfare of the "sensitive receptors" near the project and in the community of Santa Margarita. The Planning Commission also correctly determined that the truck traffic generated by the Project would be fundamentally incompatible and conflict with the community of Santa Margarita and cause significant health concerns. See, Denial Finding 3(a) (b) & (c). It should be noted that the EIR also recognized that the operation of the quarry could result in this kind of conflict and incompatibility.

The Planning Commission also correctly determined that Finding 22.62.060 (C)(4)(e) cannot be made because the traffic generated by the Project is beyond the levels the area roadways can safely handle. In particular, the Planning Commission found that the 35 truck trips per hour (or more) through Santa Margarita poses a safety hazard to pedestrians, including school children who attend the Santa Margarita Elementary School and local residents and tourists who patronize businesses in down-town Santa Margarita.

The Applicant's argument that the County cannot deny the Project on the basis of impacts on SR 58 is without merit

The Applicant rejects the idea that the County could deny the project in part because of the traffic impact on SR58. According to the Applicant's novel theory, the County is entirely powerless to address project impacts on the main road through Santa Margarita because SR 58 is a state highway. The Applicant's theory is inconsistent with CEQA.

Pursuant to Pub Res. Code §21081, before approving a project that has one or more impacts on the environment, the lead agency must make one or more of the following findings with respect to each significant effect:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

Accordingly, if the County determines that the Project will result in a significant impact on traffic, it cannot approve the Project unless it adopts a statement of over-riding considerations. It

is immaterial whether the traffic impact occurs on a federal highway, state freeway or County road.

The Planning Commission appropriately concluded that the Project impacts are significant and that mitigation is not feasible because it is uncertain

The Applicant takes issue with the Planning Commission's finding that the Project's significant cumulative impacts on traffic (intersection of Estrada and El Camino in the heart of Santa Margarita) would be unavoidable because mitigation is infeasible. The EIR and the Planning Commission concluded that because of (1) the lack of funding sources, (2) the number of different agencies that must agree on the project design, and (3) the uncertainty associated with the acquisition of a right-of-way, it is not reasonably certain that appropriate mitigation project would ever be implemented.

The Applicant takes issue with this finding, arguing that the County must assume that the necessary improvements will be timely implemented. The Applicant's argument ignores the law, which requires the County not to ignore the reality that funding shortfalls and the complexity associated with projects requiring multi-agency approval are often significantly delayed. CEQA defines feasible as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guideline § 15364. Here, it is reasonable to conclude that the given the complexity of multi-agency decision-making, and the cost and difficulty of obtaining the necessary right-of-way, the required mitigation is infeasible in light of the legal, social and technological obstacles involved. On these facts, the County could not conclude the required mitigation is feasible.

The Applicant contends the County must accept its offer of paying a fair share towards the needed improvements, and presumably consider the project's traffic impact mitigated. It is well-settled, however, that a commitment to pay fees without any evidence that mitigation will actually occur is inadequate. City of Marina v. Bd. of Trs. of Cal. State Univ., (2006) 39 Cal. 4th 341, 365.

The Applicant also claims it would be "unfair" to deny the project because of something that is not the Applicant's "fault." The Applicant clearly does not understand the nature of the County's obligations under CEQA, pursuant to which, the County must deny a project that would result in significant unavoidable impacts unless it concludes the Project's "are acceptable due to overriding concerns as described in Section 15093." Pub Res Code §21081(a)(3); CEQA Guideline §15092(b)(2)(B). Accordingly, "fairness" to the project Applicant is not an issue that the County can properly consider in evaluating whether to approve the project. As the facts here simply do not support an over-ride, the Project must be denied.

San Luis Obispo Board of Supervisors

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In conclusion, I urge you to deny the appeal and deny the project.

Sincerely,

Babak Naficy

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