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June 5, 2012

via e-mail and U.S. mail

Brian Pedrotti, AICP
San Luis Obispo County
Department of Planning & Building
970 Osos Street
San Luis Obispo, CA 93408-2040

RE: Laetita Agricultural Cluster, recirculated Draft Environmental Impact Report, Tentative Tract Map and Conditional Use Permit: SUB2003-00001 (Tract 2606), SCH#2005041094

Dear Mr. Pedrotti,

The proposed project consists of the agricultural cluster subdivision of 21 parcels (totaling approximately 1,910 acres) into 106 lots, including 102 residential lots of one acre each; four build-able open space lots totaling approximately 1,787 acres; and approximately 25 acres of internal residential roads. Approximately 6.6 percent of the 1,910-acre project site would be developed by residential lots and internal access roads.

Riparian water from Los Berros Creek is available for use only to the original underlying parcels that are contiguous with Los Berros creek. It is impossible to determine the original parcelization from the mapping information in the RDEIR. This is of particular importance in regards to wells #11, #12, and #13. The output from these wells is connected into the general water infrastructure for the vineyard and the proposed subdivision. The underflow from these wells cannot be utilized on adjacent parcels. Riparian water rights cannot be transferred to non-riparian owners. It appears that no analysis or determination has been made of the legality of using water from wells #11, #12, #13 for the vineyard or the residential subdivision. It would appear that the water from these wells cannot be legally utilized for the proposed agricultural subdivision. We recommend that as a condition of permitting, these wells be shut down and legally abandoned and no further permits issued for wells tapping riparian water, including any newly created or remnant parcels contiguous with Los Berros Creek.

In addition, water taken by riparian right cannot be impounded for deferred use, as in water storage tanks or reservoirs. This would seem to prohibit the subdivision from pumping water from wells #11, #12, and #13 for storage in the proposed water storage tank¹ and distribution in a water delivery system.

All water uses in California are subject to the standard of “reasonable and beneficial” use by virtue of amendment of the California Constitution, Article X, Section 2. The standard of reasonable and beneficial use extends protection of water resources to include protection of public trust assets such as fish and wildlife². Los Berros Creek has been designated as critical habitat for steelhead. We have concerns that expansion of irrigated farming operations (from 70 to 700 acres) has resulted in the de-watering of Los Berros Creek to the detriment of wildlife and the endangered salmonid population as evidenced by the failure of the creek to flow year round, as it has historically. The resources of Los Berros Creek are subject to the public trust doctrine, i.e. the property of all citizens and under the continued jurisdiction of the state. As such, the uses and appropriation of riparian waters are subject to “reconsideration and reallocation.”³ The RDEIR fails to consider the legal disposition of the riparian waters or to consider competing water rights of fish and wildlife. As the courts give increased consideration to protecting instream water uses, this failure opens the door to future court action to curtail the use of wells #11, #12, and #13, if not other wells that may be drawing from underflow.

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.

The RDEIR fails to make assess the impacts of further withdrawals from Los Berros Creek on sea water intrusion on coastal monitoring wells in the Oceano area. Los Berros Creek drainage is part of this recharge basin (Figure VB-1).

We take issue with the claims regarding the annual water use of each residence, which is set at .44 afy. Annual water use of .44 afy is not consistent with other analyses of water use on larger residential parcels⁴. To certify a water use estimate premised on a per household use of .44 afy (a reduction from the more believable original estimate of over 1.5 afy), the lead agency must include verifiable, enforceable conditions that will limit water use. Otherwise, water remains a Class 1 unmitigable impact.

¹ ” A riparian right entitles the landowner to use a correlative share of the water flowing past his or her property. Riparian rights do not require permits, licenses, or government approval, but they apply only to the water which would naturally flow in the stream. Riparian rights do not entitle a water use to divert water to storage in a reservoir for use in the dry season or to use water on land outside of the watershed. Riparian rights remain with the property when it changes hands, although parcels severed from the adjacent water source generally lose their right to the water.” http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml

² http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml

³ http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml

⁴ Varian Ranch 1.50; Woodlands 1.50; Santa Margarita Ranch 1.44; County Master Water Plan 1.44; Initial Laetitia Proposal 1.12

We question the assessment of vineyard water use of .34 afy per acre. The water use assessment of 34 AF/Y per acre appears to rely on optimal conditions and the best case scenario rather than the clear information in the County's current Draft Master Water Plan and reasonable expectations of water use in the water planning area (WPA) for the project. According to Geosyntec's letter included in "B 2 Laetitia Baseline Water Demand (April 2012)," the water use demand relies on existing vineyards in WPA 2 (Cambria) and WPA 3 (Cayucos) rather than WPA 7 (South Coast), which includes the Laetitia project. WPA 7 has a middle value of 1.0 AF/Y per acre. Laetitia claims it does not use any water for frost protection. Even if 0.25 AF/Y per acre is subtracted from the 1.0 AF/Y per acre, the use would be 0.75 AF/Y per acre. We do not see a justification for using numbers from WPA 2 or 3, and using those water planning area calculations does not account for a worst-case scenario or even a plausible scenario considering that the project is located in WPA 7. We also did not see any corroborating basis for discarding the frost protection adjustment of 0.25 AF/Y per acre for WPA 7 or the project site. We are concerned that vineyard water use is drastically underestimated⁵.

Laetitia reported that 208 AF were pumped during 2011 for vineyard irrigation. This equates to 0.34 AF/Y per acre use⁶, the claimed annual usage in the RDEIR. Rainfall from July 2009 through March 2011 was 138% of average (RDEIR V.35). While the RDEIR gives a mean annual rainfall number, we do not know what the "average rainfall" number might be. In any case, we are presented with two problems: 1) Average rainfall numbers are not a good indicator of probable rainfall. Mean annual rainfall is a much better indicator. 2) The basis for the 0.34 AF/Y per acre vineyard use is derived from a year that presumably had 138% of average rainfall. More rainfall means less water applied to the vineyard. The claim of 0.34 AF/Y per acre cannot be supported and underestimates the annual water use.

⁵ "If water is not used for frost protection at the Laetitia vineyards, then subtracting 0.25 AF/Y per acre from the low end of vineyard water demand numbers (Tables A1 and A2), results in adjusted water demand values of 0.45 AF/Y per acre of vineyards for existing or future vineyards in WPA 7, which is still substantially more than reported values at Laetitia of 0.26 and 0.34 AF/Y per acre of vineyards. Note, however, that adjusted *middle* water demand values for existing vineyards in WPA 2 (Cambria) and WPA 3 (Cayucos) are 0.15 and 0.25 AF/Y per acre after subtraction of 0.25 AF/Y per acre that is assigned for frost protection (Table A1). Furthermore, subtracting the assigned 0.25 AF/Y per acre of water for frost protection from *low* demand values in Table A1, which are all 0.5 AF/Y per acre for existing vineyards in WPA 1 (San Simeon), WPA 4 (Morro Bay), WPA 5 (Los Osos), and WPA 6 (San Luis Obispo/Avila), result in adjusted water demand values of 0.25 AF/Y per acre of vineyards. Thus, although the reported vineyard water demand values of 0.26 to 0.34 AF/Y per acre for the Laetitia vineyards are substantially lower than predicted for WPA 7 based on calculated water demands (ESA, 2010) presented in Appendix D of the County MWP (Carollo, 2012), the Laetitia vineyard reported values are similar to predicted values for other WPAs in the County if indeed no water is used for frost protection." RDEIR *B2 Laetitia Baseline Water Demand (April 2012)*

⁶ *Ibid.* P. 2 Mean annual rainfall within the Arroyo Grande-Nipomo area ranges from 12 to 35 inches, with 75 percent occurring between December and March (DWR, 2002). Based on a contour map of equal mean precipitation for the period of record from 1870 to 1995, the expected mean annual rainfall for the project site is approximately 17 inches. Beginning in January 2010, rainfall was recorded at three rain gauges installed at the project site. Based on correlation of the on-site data with a private gauge in east Arroyo Grande Valley, the rainfall record was extended back to July 2009. Based on a comparison of current and historic data, the total rainfall in the project area between July 2009 and March 2011 was 138 percent of average.

The RDEIR fails to address the problems of increased runoff from the development and impacts downstream in Los Berros Creek after the completion of the homes. There are no provisions for retention and recharge basins.

The RDEIR states: "Initial yield from wells in fractured bedrock aquifers is often not representative of longer term yields, which are typically lower. As groundwater is released from storage in fractures, the hydraulic gradient toward the well becomes progressively lower, which causes the well yield to decline (p. v-54)." We point out that a dependence on yield based on rainwater that has collected in fractures in the underlying rock is a manageable scenario for agricultural use, where, in the event of a shortfall, a vineyard can sacrifice one year's crop and use just water enough to keep the vines alive. The same shortfall/declining yield scenario when the water is needed for a residential subdivision, however, would be a disaster.

Finally, allowing the vineyard owners to form (and then divest themselves of) a mutual water company for the proposed homes would be problematic. The owners are not allowed to reduce farming to serve homes, but they could allow the homeowners to go dry if there was no liability for what happened to their water supply. The owners should be required to retain ownership and liability for serving any homes that are built, and they should be required to truck water in, not divert ag water, if the system fails.

Thank you for your attention to these concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sue Harvey", written in black ink.

Sue Harvey, Conservation Chair
Santa Lucia Chapter