

BY ELECTRONIC MAIL AND FAX

November 3, 2008

Hon. James R. Patterson, Chair  
Hon. Harry Ovitt, Vice Chair  
Hon. K. H. Katcho Achadjian  
Hon. Jerry Lenthall  
Hon. Bruce Gibson  
Clerk of the Board of Supervisors  
County of San Luis Obispo  
Room D-430, County Government Center  
San Luis Obispo, California 93408

RE: Santa Margarita Ranch Agricultural Residential Cluster Subdivision Project EIR  
and Future Development Program EIR

Dear Supervisors:

The Endangered Habitats League (EHL) respectfully submits the following comments on the above Final Environmental Impact Report (FEIR) and the Santa Margarita Ranch Agricultural Residential Cluster Subdivision Project (Project) and Future Development Program (Program). EHL is a nonprofit organization dedicated to the conservation of California's unique native ecosystems and to sustainable land use planning. EHL urges the Board to uphold the Planning Commission's denial of the requested entitlements and not to certify the FEIR for the agricultural subdivision and to take no action on the Future Development Program EIR. In the alternative, EHL urges that the matter be continued and remanded to the County staff for resolution of the issues described below.

The proposed subdivision project is a poster child for the type of faux-rural large-lot development that should not go forward given the challenges we face in the 21<sup>st</sup> century. It would consume lots of land, but accommodate little growth. The dispersed nature of the agriculturally unsustainable parcels and the project's remoteness from job centers would perpetuate commuter auto-dependence and exacerbate global warming and air pollution. It would unnecessarily burden transportation infrastructure. It would harm natural resources, including prime farmland and habitat, again vastly out of proportion to the housing benefits

provided. It would put tremendous stress on water resources, also vastly out of proportion to the number of individuals benefited, at well over an acre-foot per household.

While there are many developments that create legitimate tradeoffs between the accommodation of needed growth and harm to agricultural economies and the environment, this one is not even close. It would destroy the potential for agricultural production, while perpetuating commuter-based auto dependent sprawl.

It is thus no wonder that the project was determined by staff to be in violation of so many tenets of the County's adopted General Plan, as well as the implementing Salinas Area Plan standards and Land Use Ordinance. These County planning tools were designed to *protect* agricultural economies and the environment while accommodating growth. If planning is to play *any* legitimate role in overcoming what are now indisputable challenges to the protection of California's resources and environment, the Board must use its power to ensure that this project--and others like it--become a relic of an unsustainable past.

For these reasons, as well as for the reasons stated by staff and in other comments, including those of North County Watch, the applicant's appeal should be denied.

### **Impacts to Water Resources Are Not Properly Addressed.**

Approving the Project is not only bad policy, but it also would be illegal. As but one example, the FEIR's analysis of the project's impacts on water resources serves more to obfuscate than to inform the decision-maker of the project's true impacts.

For example, the water analysis lacks any description of baseline conditions, thereby precluding any accurate analysis of impacts. In *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal. App. 4th 99 (2001), the court invalidated an EIR that failed to accurately describe the "baseline" condition of an aquifer relied on to serve the proposed project. The FEIR here similarly provides virtually no discussion of groundwater conditions. Indeed, the FEIR acknowledges that "the safe yield of the aquifer system has not been determined in the vicinity of the Santa Margarita Ranch." (FEIR at 4.14-2.) The EIR thus provides no basis for any conclusion regarding the extent of demands placed upon it by the development proposed. The EIR thus lacks the analysis of water supply *reliability* required by the case law.

The FEIR also fails to analyze impacts to oak trees from lowering the Groundwater Table. Oaks require moisture in the critical root zone. As discussed above, the project will result in reduced groundwater levels that the EIR has failed to analyze or adequately mitigate. Over-pumping of the aquifer will deprive mature trees of moisture in the root zone and will result in a decline in woodland health. The FEIR must be revised to analyze impacts to oak trees from anticipated levels of groundwater pumping.

In addition, the FEIR notes that imported water may be needed to service the development and further notes that one of the potential sources, the Nacimiento Water Project, consists of untreated surface water. No mention is made, however, of the environmental impacts of on-site treatment of this water, again in violation of CEQA.

Nor does the FEIR address the growth-inducing impacts of bringing imported water into the Ranch area for the first time, even though a commitment to obtain imported water is a mitigation measure is part of the project. There is no mention in the FEIR of the size of the putative imported entitlement the applicant seeks, its relation to project needs, and what additional development may be facilitated if the future entitlement significantly exceeds what is needed for the project. Again, a revised document should explore the potentially profound implications of bringing imported water into this part of the County for the first time.

Most fundamentally, the FEIR does not forthrightly confront the real water impacts of the project at the entitlement stage, deferring analysis of impacts to the parcel development stage *after the subdivision entitlements are irrevocably granted*. Only at the grading permit stage for each individual subdivided parcel will the determination be made by the County as to whether the parcel will be imported water-dependent, groundwater dependent, or some combination of the two. (See Mitigation Measures W-1(a), (b), (c).)<sup>1</sup> And, to make matters worse, there is no mitigation standard imposed on the subsequent parcel-level determination that will guarantee protection of aquifers; instead, the FEIR retreats to the untenable position that impacts on groundwater resources will be significant and not subject to feasible mitigation.

This arrangement does not comport with CEQA. In *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4<sup>th</sup> 182, the Court invalidated an EIR for not forthrightly addressing the long term consequences of obtaining a water supply at the entitlement stage. As the FEIR did here, the EIR in *Stanislaus* identified water supply impacts as significant and unavoidable, and identified as “mitigation” a commitment that ultimate construction could not occur unless adequate water supplies could be found. (*Id* at p. 195.) Stressing that impacts must be addressed *before* entitlements are granted, the court observed that “[t]o defer any analysis whatsoever of the impacts of supplying water to this project until after adoption [of the project] would appear to be putting the cart before the horse.” (*Id.* at p. 200.) Instead, CEQA requires that the environmental impacts of the project *as built out* must be identified before entitlements are granted. (*Id* at p. 205-206.)

Just as in *Stanislaus Natural Heritage Project*, the FEIR for the Project contains no analysis of the impacts of project build-out on water resources, adopting instead an approach that

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<sup>1</sup> “The applicant shall provide proof of adequate water supply to serve the proposed Agricultural Residential Cluster Subdivision *prior to issuance of grading permits*.” (See Mitigation Measures W-1(b) & (c).)

grants entitlements now, but defers analysis and response to any water issues until the grading permit stage. This approach violates CEQA.

The FIER and associated Project cannot be approved until these issues have been properly addressed.

**The FEIR For The Future Planning Area Program Has No Legal Consequence.**

Although the question of whether to certify the FEIR prepared for the Future Planning Area Program is not properly before the Board because the applicant did not appeal the Planning Commission's decision to take no action on the FEIR for the Program, the Board should do likewise because an FEIR for the Program is a legal nullity.

It is not in dispute that there is no pending discretionary action to be taken by the County relating to the Future Planning Area. In essence, it is an EIR without a "project," i.e., an underlying discretionary action or decision, attached to it. The question therefore is, in the absence of an underlying decision, can the Board take any legally significant action with respect to the EIR for the Future Planning Area under CEQA?

The answer is "no," because what drives the CEQA process from inception to conclusion--and what triggers the statute of limitations governing judicial review of the adequacy of an agency's compliance with CEQA--is the lead agency's "carrying out" or "approval" of a "project." (Pub. Res. Code § 21080, subd. (a).) Under CEQA, a "project" must encompass some discretionary *action* by a public agency with the potential to cause an environmental consequence. (Pub. Res. Code § 21065, Guidelines § 15357, 15377, 15378.) Here, there is no such action.

Because there is no action which must be "carried out" or "approved" by the County with respect to the Future Planning Area, the statute of limitations is not triggered as a matter of law. The County concedes that it is not making any decision with respect to the Future Planning Area or committing to a definite course of action. (See Guidelines § 15352, subd. (a).) As a result, the County is precluded from preparing and posting a legally adequate Notice of Determination (NOD) with respect to the Future Planning Area FEIR, since an NOD *requires* a description of the project being approved or to be carried out. (Pub. Res. Code § 21108, subd. (a); Guidelines § 15094, subd. (b)(2).) Without the posting of a legally adequate NOD, there can be no running of the statute of limitations. (Guidelines § 15094, subd. (g).)

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The Board therefore may only “receive and file” the FEIR for the Future Planning Area.

Thank you for considering EHL’s views.

Very truly yours,

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Staff Attorney

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