

LAW OFFICES OF
MICHAEL R. JENCKS
ATTORNEYS AND COUNSELORS AT LAW
4349 OLD SANTA FE ROAD, BOX 5
SAN LUIS OBISPO, CALIFORNIA 93401
TELEPHONE 805.548.0600 FACSIMILE 805.548.0601

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By E-Mail and Hand Delivery

COUNTY OF SAN LUIS OBISPO
PLANNING COMMISSION

- Mr. Bob Roos, 1st District
- Ms. Anne Wyatt, 2nd District
- Ms. Penny Rappa, 3rd District
- Mr. Eugene Mehlschau, 4th District
- Ms. Sarah Christie, 5th District

County Government Center
1055 Monterey Street, Room D170
San Luis Obispo, California 93408

Subject: **10.09.08 Regular Planning Commission Meeting
Santa Margarita Ranch ARCS**

Dear Chairman Roos and Honorable Commissioners:

I represent and submit these comments on behalf of North County Watch in connection with the scheduled agenda item today on the Santa Margarita Ranch Agricultural Cluster Subdivision ("SMR"). This letter, which complements my client's ten (10) page letter under date of October 8, 2008 to the Commission, underscores my client's grave concern that the Commission's unseemly haste to conclude its review and vetting of the project, to abandon its prior publicly announced plan and schedule for public hearings, and to settle for a very incomplete and piecemeal review of the project, far from serving Deputy County Counsel Orton's publicly broadcast opinions that an immediate decision will somehow limit the County's "exposure" for the SMR Project, will instead make the Commission's decision, and almost any Board of Supervisor decision based on the Commission's incomplete and partial record and limited findings, more vulnerable to legal challenge and render the proceedings a travesty of public process. Impaired process helps no one and disenfranchises the public, the trustee and responsible agencies who are participating in and preparing comments and testimony, and the applicant, ignores important state laws and policies, and serves as a dangerous precedent for the processing of other major pending County projects such as the Leticia agricultural residential cluster subdivision and San Miguel Ranch.

REQUESTED ACTION: For these reasons and others discussed below, North County Watch respectfully urges the Planning Commission to reconsider and rescind its tentative motion to deny the project based on the limited record and set of findings, and instead to resume and, to the maximum extent feasible, expedite its previously announced and agreed upon schedule to hold and complete public hearings on all identified Class 1 impacts.

While North County Watch cannot support an Agricultural Residential Cluster Subdivision (ARCS) with multiple General Plan inconsistencies and no less than nine Class I impacts, it also cannot support a flawed process which results in the precipitous and premature truncating of the public discussion of the Santa Margarita Ranch ARCS at the Planning Commission. The unwarranted and, we submit, ill-considered rush to end the deliberations has left many issues unexamined and without identifying adequate mitigations that are the normal and deliberative result of a full planning commission hearing. Directly due to this flawed process, the record is incomplete, the opportunity for public review and participation seriously compromised, fairness abrogated, and seeds of delay and uncertainty from possible litigation sown.

The EIR identifies significant environmental impacts from the project and, we submit, CEQA requires that the lead agency respond to each significant effect by making appropriate findings. At a minimum the Commission should consider all Class 1 impacts as it had planned to do and make appropriate findings. Here, the Commission's abrupt change of plans frustrates not only CEQA but also the right of the public to provide testimony on the whole project protected by the Brown Act. Indeed, the Commission has, by changing its course mid-stream, denied members of the public, trustee and responsible agencies, non-profits like NCW, and numerous other members of the public their right to be heard, including on such critical issues as agricultural conversion, sensitive habitat, public services, public safety, recreation, cultural and historic resources, and greenhouse gas emissions. For example, NCW was assuming, based on the Planning Commission's earlier actions and statements, that focused hearings on biological/habitat impacts, water, agricultural resources and global warming would be scheduled and held. We were in the process of preparing our questions and testimony to attend and participate at those hearings. NCW was afforded three minutes of public comment at the initial hearing, but the scope and complexity of the project demands a greater degree of scrutiny and discussion. To effectively disenfranchise the public, including North County Watch and our members, by precipitously canceling previously announced hearings and opportunities to address all major impacts of this Project, is at odds with both existing law and policy.

Similarly, discussion of written comments submitted as part of the record to date was being delayed until hearings were held on the specific topics mentioned above. The result is that whole bodies of information and analysis contained in the EIR and letters submitted by the public are being acted on with no public discussion or input whatsoever. To hold hearings and provide the opportunity for public participation are responsibilities of the Planning Commission. Dumping such a complex, environmentally sensitive, and controversial project on the Board of Supervisors with minimal, if any, discussion of the relevant issues does a disservice to the Board as well as to the applicant and the general public.

The Planning Commission's abrupt about-face has been attributed, at least in part, to an interpretation of case law cited by the applicant's attorney. We have reviewed the case of *Sunset Drive Corp. v. City of Redlands* (1999) 73, Cal.App.4th 215 cited by the applicant and find its facts so distinguishable from those present here as to render the case's holding inapplicable to the SMR circumstances. The plaintiff in *Sunset* challenged the City of Redlands over its failure to complete an EIR, not its failure to take action over the completed document. In *Sunset*, the city refused to either circulate the draft EIR or advise the applicant what additional information was needed to complete the document, leaving the applicant in an administrative no-man's-land.

That is not the case with the Santa Margarita Ranch: the EIR has been circulated, and the Planning Commission is engaged in the process of holding public hearings and is proceeding at a pace that is accommodating the applicant's project, trustee and responsible agencies travel and appearances at hearings, and the Commission's existing workload. Other facts present in SMR include the existence of contradictory information and interpretations as to when the project application was complete, several applicant-caused delays re staffing and consultant issues, tolling of the limitation period recognized in state law and in the *Sunset* opinion itself for multiple applicant-initiated changes in the project description and alternatives, even requiring recirculation of the EIR, carry-over issues of scope and procedure from binding terms of a settlement of prior litigation, and early applicant correspondence laying out a proposed timeline for hearings that is facially inconsistent with the applicant's current interpretation of the legal timeline. The Commission did not even commence consideration of this expansive project until three months ago. These factual differences are significant, all the more so because the Judge in *Sunset* stressed the fact that his opinion is strictly and narrowly "limited to the facts in the petition."

It is more than a little ironic that not only does the Commission appear to have allowed itself to have been painted into a corner where the context of its disapproval of the project, in light of the remarks of its attorney, could be construed as being a disapproval motivated by the Commission's perceived need to comply with the Permit Streamlining Act's limitation periods, something that is expressly prohibited by the Government Code, but also that the Commission's proposed remedy, to only do part of its job, could result in a much less sympathetic fact situation, where the entire matter must be reheard *ab initio* by the new Commission to be seated in January, a circumstance more analogous to the *Sunset* case's administrative limbo.

North County Watch respectfully submits that the appropriate course of action for the Planning Commission to take at this juncture is to reconsider and rescind its tentative motion to deny the project based on a limited set of findings and resume its previously agreed upon schedule to hold hearings on specific Class I impacts. This will allow the public the opportunity to participate in and contribute to an informed and comprehensive decision on the part of the Planning Commission and would serve to greatly enhance the

Board of Supervisor's understanding of the issues when the Project reaches that body. Because a month has effectively already been wasted, we recommend the Commission expedite resumption of the hearings so that the Commission can discharge its responsibility and take action on the project as a whole before this Commission's term expires.

Sincerely,

MICHAEL R. JENCKS

MRJ:hr

cc: "Ramona Hedges" rhedges@co.slo.ca.us
"Ellie Porter" <eporter@co.slo.ca.us>