

May 29, 2015

Board of Supervisors
County of San Luis Obispo
976 Osos Street, Room 200
San Luis Obispo, CA, 93408

**Re: Board of Supervisors Appeal Hearing re Willow Creek NewCo, LLC Project
Minor Use Permit DRC2013-00028 Request for Compliance with CEQA and
County Planning and Zoning Rules**

Dear Members of the Board:

This office represents Wilton Webster and Helen Webster (hereinafter Webster), with respect to the above referenced project. Webster continues to raise serious concerns regarding the scope of the project proposed in the Minor Use Permit (“MUP”) and the vacation rental.¹ Webster believes the MUP and vacation rentals require further environmental review and that an Environmental Impact Report (“EIR”) is required to evaluate the whole of the project. Webster’s concerns include, but are not limited to:

- The MUP and vacation rentals will convert the property zoned Agriculture to commercial in violation of San Luis Obispo zoning laws and the Williamson Act;
- The Modifications and Setbacks proposed by the MUP, in conjunction with the MUP development and vacation rentals violates San Luis Obispo zoning laws and the Williamson Act;
- The MUP fails to sufficiently analyze traffic issues by failing to perform a Road Safety Analysis (RSA), failing to require road widening, failing to charge a Developer’s Fee for Roadway improvements;
- The MUP fails to sufficiently analyze wastewater and water issues and the MND acknowledges, “[t]o achieve compliance with the Central Coast Basin Plan, additional information will be needed prior to issuance of a building permit that can show that the leach area can adequately percolate to achieve this threshold” (MND, p. 21) Further analysis is deferred in violation of CEQA;
- The MUP fails to sufficiently analyze the historical significance of the agricultural barn;

¹ Webster contends that building permit PMT2013-02460 is in fact for an illegal remodel of a single family residence to a vacation rental. As noted below, the original County Plan Checker indicated the plans were consistent with that of a motel. Furthermore, as also noted below, owner Brian Dirk has proclaimed his plans to convert the residence into vacation rentals for short and long term stays. As a result, Webster filed case 15CVP-0093 which is presently set for a hearing on a Preliminary Injunction June 3, 2015. Webster further believes that the vacation rental will be used in conjunction with the event center proposed in the MUP and therefore the County is engaging in illegal piecemealing of the whole of the project.

- By authorizing a building permit for the vacation rentals separate and apart from the MUP, the County is engaging piecemealing in violation of CEQA.

An EIR should be required and the MUP should be denied.

This appeal now before the Board of Supervisors is premised upon a second Planning Department hearing regarding the MUP on April 17, 2015. At that hearing, Hearing Officer Matt Janssen reduced the number of events from twenty-five (25) to twenty (20) and changed the curfew for amplified music from 10 p.m. to 9 p.m. Webster immediately appealed, attaching their Letter to the Planning Department dated April 15, 2015, along with exhibits, to the appeal form.

Websters grounds for denial of the project as proposed remain valid and compelling. The MND is legally and practically inadequate because it fails to analyze the full scope of the project (omitting entirely the “remodel” into what is effectively a seven bedroom, six-and-a-half bathroom vacation rental building) and it fails to inform the County or the affected public of the significant real life environmental impacts. An Environmental Impact Report is necessary to evaluate the environmental impacts of the entirety of the project including, but not limited to, noise levels that exceed County Standards, unsafe traffic conditions, demolition of the historic barn, the segmentation of the seven bedroom, six and-a-half bathroom vacation rental, wastewater and water supply issues, and the change in nature of the use of the property from agricultural to commercial. There is nothing minor about this project and a MUP is not the appropriate avenue for legal environmental analysis of the whole of the project. An Environmental Impact Report is legally required to be completed for the whole of the project pursuant to CEQA

A) The Approval of this Permit Would Change the Entire Adelaida Area

The Agricultural zoned area of Adelaida is a quiet neighborhood, filled with sloping hills, beautiful vistas and farming. Authorizing the above MUP would change the entire nature and scope of the neighborhood. The MUP seeks twenty (20) temporary events (such as wedding and corporate events) with 200 guests and amplified music until 9 p.m. Furthermore, rehearsal dinners are permitted up to fifty (50) guests. Unlimited events by non-profit corporations are sought. The MUP also seeks multiple modifications and setbacks to the present Land Use Ordinance requirements (discussed further below).

Also, the ten (10) year duration of the permit (which had been reduced from fifteen (15) years) is excessive given this is the first event center of its kind in the Agricultural zoned area of Adelaida. Similar future projects are reasonably foreseeable and the cumulative impacts will be significant.

Furthermore, this project seeks to stretch the County’s requirement that these event center uses be secondary to the primary use of agriculture on agriculturally-zoned property. It is highly dubious that twenty (20) events with 200 guests each (some apparently staying overnight) can be considered a “secondary use” to agriculture.

Arbitrary parameters in the MND and MUP are not founded in thorough environmental analysis and are therefore legally inadequate. Instead of “Playing with Project Conditions” (April 17, 2015 Appeal, Ex. B), the true extent of environmental impacts, mitigation measures and alternatives would have been “fully explored” had an Environmental Impact Report been done. “One function of an EIR is to address the adequacy of proposed mitigation measures. (Guidelines, § 15126.4.) Another function is to consider alternatives to the project. (Guidelines § 15126.4.)” *Architectural Heritage Association v. County of Monterey* (2001) 122 Cal.App.4th 1095, 1122.

The extent of the impacts from Willow Creek’s effort to convert agricultural zoning into commercial zoning can be seen at Exhibit B which shows lined out provisions eliminating the limitations that are derived from the County’s definition of “Special Events” in agricultural zoning under Land Use Ordinance Code Section 22.30.070.D.i.1-6 (which applies to wineries). (April 17, 2015 Appeal, Exhibit B.) The lined out provisions are far more limited in scope, *i.e.* fewer events, fewer guests, and limited hours of amplified music and sound from 10 a.m. to 5 p.m.²

A previous Minor Use Permit (DRC2006-00061) granted to the previous owners of this very property in 2006 allowed for only six (6) Special Events with up to eighty (80) guests and amplified music permitted from 10 a.m. to 5 p.m.. This is consistent with Land Use Ordinance Code Section 22.30.070.D.i.1-6 (again which applies to wineries). It is of note that the present MUP requests approval of wine manufacture and a wine tasting room. Also, the MUP is requesting a winery setback modification under Section 22.30.070.D.2.d.1. Why should Pasolivo be permitted to bypass this Land Use Ordinance Section while requesting wine processing, a wine tasting room and a winery set back modification? Pasolivo should be limited to the parameters as outlined in Land Use Ordinance Code Section 22.30.70.D.i.1-6. According to the California Supreme Court, the principle which underlies the entire legal basis for zoning and requires this equal treatment is described in the law as “critical reciprocity.” “A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citation].” *Topanga Ass’n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518.

The MUP is contrary to County land use laws and calls for a **serious change in the nature of the neighborhood, violates the principle of “critical reciprocity” and should not be permitted. This is particularly the case when the true “whole of the action” Willow Creek has in mind is taken into account and includes seven unit and six and-a-half bathroom vacation rentals being newly created by a “remodel” and not considered as part of the “project” evaluated in the Mitigated Negative Declaration.**

² The Staff Report refers to three venues as comparison to the proposed MUP. Such comparisons are not valid in this case. Both Halter Ranch and Adelaida Cellars have limits on amplified music consistent with 22.30.070. Opolo is set further back from Vineyard Drive. Also, it is understood that Opolo hires valets to park vehicles back onto Vineyard Drive, which is a traffic safety hazard.

B) Approval of the MUP Would Violate County Zoning and Williamson Act Rules

The County Land Use Ordinance expressly states that if a use is not listed as being allowed within the zoned area, then it is not allowed. Section 22.06.030.C of the Land Use Ordinance states, “[a] land use not listed...or is not shown in a particular land use category is not allowed.” The uses proposed in the MUP and building permit PMT2013-02460 (“remodel” creating a seven bedroom and six-and-a-half bathroom vacation rental) are in clear violation of the County zoning laws.

This MUP, in conjunction with the building permit for the “remodel” (which was only revealed as a result of a Public Records Act request), is squarely in violation of the Agricultural zoning laws. The Initial Study/MND erroneously informs the public and the Board of Supervisors that there is an “Insignificant Impact” in terms of conflict with existing zoning for agricultural use or the Williamson Act program. The Initial Study/MND checklist only addresses the Williamson Act with one “X” of a box. Under Agricultural Resources, “Will the project d) conflict with existing zoning for agricultural use, or Williamson Act program?” Answer, “Insignificant Impact.” (MND, p. 6.) The MND engages in no further evaluation in its determination, directly violating CEQA. The scope of the MUP allowing for 200 guests at each of the twenty (20) events fundamentally changes the primary use of the Pasolivo property from agricultural to commercial in nature.

Furthermore, the Applicant’s Williamson Act Landowners’ Statement (Landowners’ Statement, Ex. A), states “[a]ll uses on the site are related to on-site agriculture, single family residences provide for onsite family management of farming operations.” *Id.* at p. 3. And yet a seven (7) bedroom, six and-a-half (6.5) bathroom vacation rental has been created.. When the separate application for this conversion was originally reviewed by County staff, it was determined to be a motel. A Plan Checker determined that, based on the plans provided, the use appeared to be that of a motel. When asked about the Plan Checker’s determination she stated, “[w]hen I made that judgment, and before we sent this out, I shared it with my supervisor, Steve Hicks. He reviewed that with me. He also agreed that that was reasonable, and then that initial plan check was sent out.” (Deposition of Elizabeth Szwabowski, Ex. B, pp. 30-31.) In reviewing the plans, Plan Checker said, “I was seeing a motel.” *Id.* at p. 35. An email dated June 3, 2014, from a County Plan Checker to the County Planner in charge of this MUP, referred to a discussion between the two, and confirmed the conclusion of the County Planner. “As you said, they will need to revise their land use permit [the MUP] to include the motel use (Bed& Breakfast).” (April 17, 2015 Appeal, Ex. C.) This building permit was ultimately processed as a single family residence by Chief Building Official Cheryl Journey. The plans that had been originally viewed by Elizabeth Szwabowski and determined to be a motel essentially remained the same. “Was the basic floor plan of the structure revised? Not to my knowledge. I think there was an interior door added and one point and whatnot, but the basic configuration I think remained essentially the same.” (Deposition of Cheryl Journey, Ex. C, p. 14.) Cheryl Journey made the executive decision to process the permit as a single family residence based on a single conversation with Willow Creek NewCo LLC representative Jaime Kirk. *Id.* at pp. 37-38, 46. When asked if she was concerned the residence would be used as a bed and breakfast, Cheryl Journey said, “No....It’s not my position to be concerned.” *Id.* at 38-39. Yet not only the

planning regulations, but also the building regulations, treat a motel-like use very differently from a single-family dwelling.

The Landowners' Statement further says in the acknowledgements,

- 1) I acknowledge that the activity, use or structures as proposed will be conducted in such a way as to maintain the agricultural viability of the parcel and **ensure that agriculture is the primary use of the property**;
- 4) I acknowledge that the Department of Conservation has indicated that: **"Residences not incidental to an agricultural use are prohibited**, and may trigger AB 1492 penalties. These may include residences for family members not involved with the agricultural use, or residences constructed on contracted parcels with no commercial-agricultural use";
- 5) I acknowledge that the activity, use or structures as proposed are of a size and type that would not adversely affect the on-site or adjacent farming operations and **would be incidental** to or in support of the primary agricultural use of the property.

(Ex. A, p. 4). This document is signed by Brian Dirk on November 19, 2013.

Webster contends that the remodel should have been incorporated into the Minor User Permit evaluation and an EIR should be performed. Just **five days** after Brian Dirk signed the Williamson Act contract on November 19, 2013, a newspaper article reported that Brian Dirk/Willow Creek NewCo LLC plans to have the property become a vacation destination. As one article states, "[p]lans are currently underway for the **conversion** of three existing buildings with magnificent sweeping views of the area's orchards and fields **into vacation rentals** for short and long term stays on the property so that guests may witness first hand the charm and splendor of living on a real working olive ranch." (November 14, 2012 Article, Reuters.com, Ex. D.) Brian Dirk further states in a different article, "[t]his is a project we are going to invest in and grow over time." (Article, sanluisobispo.com, Ex. E.). The article continues, "Dirk will also **transform** the homes on the property – one 3,000 square feet, another 5,000 square feet, and a 600-square foot - 'casita' – **into upscale vacation rentals.**" *Id.*

The Staff Report for the June 2, 2015 Board of Supervisors hearing repeatedly states there is no motel or Bed and Breakfast (Staff Report, pp. 4, 9, 10) and that the remodel is for a single family residence only. The Staff Report further states that a Bed and Breakfast is permitted under Title 22 of the San Luis Obispo Land Use Ordinance Code, as well as Table 2 of the Rule of Procedure to Implement the California Land Conservation Act of 1965. However, Land Use Ordinance Code Section 22.30.260.A.1.a states, "[w]here the bed and breakfast is located on a site in the Agriculture....it may be established in one structure...built **expressly** for a bed and breakfast inn where the facility is approved with a Conditional Use Permit." Had the remodel been applied for as a bed and breakfast, it would have been part of the Minor Use Permit. Using technical statements that the vacation rental is not a motel or bed and breakfast is merely attempting to obscure the fact that the vacation rental is part of the overall project as Dirk has admitted to the press.

The assertions made by Willow Creek representative Jaime Kirk (as further explained below) proclaiming the residence as a single family residence only to both Chief Building Official Cheryl Journey and Planning Department Hearing Officer is directly contrary to what the owner is asserting to the press. Permitting use of the remodel as a vacation rental, motel or bed and breakfast is in clear violation of the Williamson Act and zoning laws, as any such use would not be incidental to agriculture use.

The only logical conclusion is that the approval of the MUP in which Willow Creek NewCo, LLC seeks 200 guests at each of the twenty (20) wedding or corporate events on the site would also utilize the vacation rentals (such as the 7BR/6.5BA project currently under construction), thus changing the primary use of the Pasolivo property from agricultural to commercial in nature. The law expressly prohibits such use and the single family residence should never be used as a motel, vacation rental or bed and breakfast. All uses are in violation of the Williamson Act and San Luis Obispo County zoning laws.

The actual intent of Willow Creek is to turn the Agricultural zoned property into a commercial property by having vacation rentals, in violation of Acknowledgment 1 and 4, and an events center with twenty (20) events of up to 200 people each, in violation of Acknowledgment 5. Willow Creek plans to convert an Agricultural zoned property into a commercial property with an event center and vacation rental in violation of the Williamson Act, all the while illegally reaping the tax benefits of having property under a Williamson Act contract. The MUP and vacation rentals subvert the whole purpose of the Williamson Act, which is to preserve agricultural and open space lands and abate pressures from population growth and new commercial enterprises.
(http://www.conservation.ca.gov/dlrp/lca/basic_contract_provisions/Pages/wa_overview.aspx).

It is the obligation of the County to enforce contracts under the Williamson Act. As the County of San Luis Obispo Rules of Procedure to Implement the California Land Conservation Act of 1965 states, "The county shall monitor the agricultural preserve program for contract violations and take necessary actions to restrain breach of contracts or compel compliance with the terms of contracts. Two major types of enforcement problems are: ... (2) **changes in use that violate the contract provisions (either in intensity or noncompliance).**" (County of San Luis Obispo Rules of Procedure to Implement the California Land Conservation Act of 1965, Amended January 2012, p. 23.) It is the role of the County to exercise due diligence to determine whether a proposed project is in compliance with the Williamson Act. The County must do this through a thorough analysis. Yet, no analysis was conducted for either the MND or the building permit for the vacation rentals. The MND is inadequate and further environmental review is required. Without a legally compliant CEQA document, the MUP must be denied.

C) The Mitigated Negative Declaration Fails to Sufficiently Address Traffic and Safety Issues in Violation of CEQA

The MND does not sufficiently address traffic issues in violation of CEQA. For example, the sight distances do not comply with safety standards. The MND does not accurately evaluate peak hour trips for the whole of the project. The MND minimizes traffic impacts. The faulty analysis in the MND therefore allows Willow Creek to evade roadway improvements and

the County to illegally evade conducting a Road Safety Analysis (RSA). The MND also does not address the issue of overflow parking. Furthermore, the MND does not evaluate the impact of increased traffic on cyclists who are encouraged by the County to use Vineyard Drive. Rather than err on the side of caution and protection of the citizens using Vineyard Drive in personal vehicles, agricultural equipment such as tractors and trailers, and citizens cycling on Vineyard Drive, the MND evades traffic analysis in clear violation of CEQA.

A peer review of the MND was conducted by Gay Lawrence Pang. (Pang Peer Review, Ex. F). Pang states,

there are potentially significant deficiencies, omissions, and inaccuracies within the MND...It is our opinion that the deficiencies, omissions, and inaccuracies would require revisions and amplifications to arrive at an acceptable and complete evaluation of the Traffic and Transportation and Parking issues with reasonable, appropriate, and updated potential mitigation measures, and with appropriate findings and conclusions.

Id. at p. 10.

First, there are inconsistencies in the MND. The square footage totals in the project description do not add up. The precise amount of square footage must be known for proper evaluation of parking requirements. *Id.* at p. 2. “[T]he reason for the discrepancies are unknown but will have a bearing on the parking requirements.” *Id.* Furthermore, expansions of buildings, such as the retail sales expansion from 500 feet to 1,900 will have an impact on traffic, but is not analyzed in the MND. “[T]hat number has an impact on the estimated trip generation for the project expansion and has not been included in the MND.” *Id.*

There was no traffic analysis conducted for the MND, and if there was one, Webster has not received such an analysis. Referring to pp. 19-20 of the MND, “this segment indicates that there were some analyses performed; the access locations were reviewed by a Traffic Engineer, who was not named, and indicated that ‘input was implemented into the project site design’; unfortunately, that preliminary design is not attached.” *Id.* at p. 3. The MND is silent on the safety component of corner sight distance as well. “[W]ith the rolling terrain on Vineyard Drive, the requisite corner sight distance does not appear to be satisfied.” *Id.* Furthermore, “the southerly driveway should be verified that its existing corner sight distance satisfies the CalTrans and American Association of State Highway and Transportation Officials Association (AASHTO) requirements.” *Id.* The MND is silent on this matter and is therefore insufficient. . . “They have conveniently left out that the corner sight distance at the driveway does not satisfy the CalTrans and AASHTO requirements, and said sight distance should be provided.” (May 29, 2015 Email from Mr. Pang, Ex. G.) Furthermore, “[i]n a review of photos taken from the existing Pasolivo driveway, the existing Pasolivo sign may block a drivers view when exiting onto Vineyard Drive.” (Pang Peer Review, Ex. F.)

Further the MND blatantly avoids the requirements established under County Resolution 2008-152: Revising Policies Regarding Land Development Improvements on County Maintained Streets and Roads (April 17, 2015 Appeal, Exh. E.) The County found that “the rate of vehicle collisions in the rural areas of San Luis Obispo County have had an increasing trend for several years, indicating a need to revise development policies.” *Id.* The Resolution requires that:

Land development projects in rural areas which are not subdivisions, and which will attract general public traffic (e.g., wine tasting, ag tourism, events, etc.) on County-maintained roads, shall be approved with a condition to widen to complete the project side of an A-1 (rural) standard according to the criteria in Table 2 below, prior to occupancy of any new structure, or initiation of the use, if no structure is proposed.

Id. The Resolution further states, “to limit exposure of increasing the number of collisions on the road, all developments in rural areas which attract the general public (e.g., wine tasting, ag tourism, events, etc.) **shall be required** to perform a Roadway Safety Analysis (RSA).” *Id.* The Initial Study/MND is legally inadequate for failing to identify the potential impact of this project on the rate of increasing vehicle collisions in this rural area and the requirement for a RSA, the MND is legally inadequate for failing to include as mitigations any recommendations of the RSA once completed, and the MUP cannot be approved without the foregoing.

This MUP also requires road improvements as set forth in the language indented and quoted above from County Resolution 2008-152. This fact was acknowledged by Development Services in a memo to County Planner, “[t]he proposed project may trigger road improvements per Resolution 2008-152. Events that attract the general public and generate between 101 and 200 PEAK hour trips, will trigger upgrading a ¼ mile of Vineyard Drive to current standard.” (April 17, 2015 Appeal, Ex. F.) The Initial Study/MND is legally inadequate for failing to address the impact of this project, which will attract general public traffic (e.g., wine tasting, ag tourism, events, etc.), to an existing narrow and windy rural road.. The MND is legally inadequate for failing to include as a mitigation measure the requirement for road widening. The MUP cannot be approved without a condition of approval requiring such road widening and without a full RSA.

Per Resolution 2008-152, at the very minimum, the County was required to evaluate collisions within a half mile of the entrance to Pasolivo. The County determined there was one (known) collision “right at the half mile.” (Statement of Glenn Marshall, County of San Luis Obispo Public Works, at April 17, 2015 Planning Department Hearing.) It was determined this collision was a run off the road caused by one driver avoiding another driver on the “very narrow road” that is Vineyard Drive. *Id.* Rather than err on the side of caution for the citizens driving on Vineyard Drive, the County determined that an RSA was not necessary. Rather than conduct an evaluation at the half mile, based on actual peak hour trips (as described below) and Resolution 2008-152 “the study [is mandated to extend for 1 mile from the entrance toward the nearest intersection.” (Pang Peer Review, Ex. F, p. 8.) Last March, 2014, there was a collision within one mile of the Pasolivo entrance. The driver was coming from Halter Ranch (one of the projects used in the Staff Report as a comparable project.) The driver crashed into the wall of a residence. (Photos, Ex. H.) This collision would have to be considered in an RSA per Resolution 2008-152 based on the actual amount of peak hour trips.

Furthermore, the estimated 80 peak hour trips as stated in the MND is wholly defective. While the number is derived from a vehicle occupancy of 2.5 persons per vehicle, this is “not verified by any source.” (Pang Peer Review, Ex. F, p. 3.) “[T]hat is how San Luis Obispo County estimated the trip generation; however there is no backup provided for that number.” *Id.* at p. 8. Furthermore, this estimate does not account for additional traffic resulting from events. “[T]his estimate may not have included the employees that are expected to work at the

weddings/events, the delivery trucks, the immediate families of the wedding parties, etc.; additionally the directional split with some vehicles leaving the site during the peak hour is missing.” *Id.* at p. 3. “[A]ssociated impacts were not addressed in the MND.” *Id.*

The Staff Report states that “Public Works reviewed the proposed project and determined that the project did not trigger either a road safety analysis (RSA) or any road improvements per Resolution 2008-152. Webster has requested a traffic analysis and none has been provided. (Email dated May 13, 2015, Ex. I.) Because Webster and its experts can only assume that there was in fact no actual traffic analysis conducted, Mr. Pang created his own comparison estimates including the trips generated by not only guests of events, but also the additional traffic the MND did not account for. Based on Alternative A, the estimated peak hour trips is 130. (Pang Peer Review, Ex. F.) Based on Alternative B, the estimated peak hour trips is 116. *Id.* “Since the alternative trip generation estimates exceeds 100 peak hour trips, a more complete Traffic Impact Study (TIS) may be required to satisfy the Congestion Management Agency Guidelines.” *Id.* It is abundantly clear that, when conducting an appropriate traffic analysis, the amount of peak hour trips triggers an RSA and roadway improvements under Resolution 2008-152. Ironically, Mr. Pang, without knowing about Land Use Ordinance Section 22.30.070, recommended a mitigation measure limiting the number of guests to 75 guests per event and not 200. *Id.* at p. 5.

In addition, contrary to the MND, the Staff Report indicates the LOS at A. However, “San Luis Obispo County should provide the backup information for the LOS calculation.” (May 29, 2015 Email from Mr. Pang, Ex. G.)³ The County has not performed the requisite LOS analysis. Such an analysis would require data such as: highway type; lane widths; shoulder widths; access point density (one-side); Terrain e.g. rolling; Percent No passing zone; Speed limit e.g. 45 mph; Base design speed e.g. speed limit plus either 5mph or 10mph; Length of passing lane e.g. none; Pavement Condition; hourly automobile volume; Length of analysis period; peak hour factor; directional split; heavy vehicle percentage e.g. trucks; percent occupied on-highway parking e.g. 0%.” *Id.*

Furthermore, “the existing residential housing units were not considered when evaluating the site plan and the accompanying estimated trip generation.” (Pang Peer Review, Ex. F.). Thus, the MND’s calculation of estimated peak hour trips is once again deficient. This inadequacy is further exacerbated by the failure of the project description to even include the creation of vacation rentals under construction, not to mention others apparently planned for the future.

An RSA is additionally necessary to factor in the impacts of the project on local uses of Vineyard Drive such as the road being used by Cyclists. The San Luis Obispo Bike plan and County’s Traffic Code (Section 15.92.149 of the Traffic Code) encourage the use of bicycles and bike lanes on Vineyard Drive. The MND does not analyze how the proposed MUP would comply with the San Luis Obispo Bike Plan, which must be considered in any environmental review. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 929 (“The CEQA Initial Study Checklist, used to determine whether a project may have significant environmental impacts, includes the question whether a project may “[c]onflict with any applicable land use

³ Given Mr. Pang was provided the MND which only states the LOS is C or better at p. 20, Mr. Pang makes some corrections to his original report in the email.

plan, policy, or regulation ... adopted for the purpose of avoiding or mitigating an environmental effect.” (Guidelines, appen. G, § IX, subd. (b).)”)

“[T]he traffic safety levels were also not addressed, *e.g.* existing accidents on the Vineyard Drive segment in front of the project site, and the accident/collision rates over the last five years were not contained in the MND.” (Pang Peer Review, Ex. F, p. 5.) Such collision rates would not even account for those alcohol related collisions not likely reported to police. An RSA is further necessary to account for alcohol consumption at these large events. With people celebrating and wine flowing, the increased number of alcohol related accidents must be factored into a safety evaluation of Vineyard Drive and the citizens using Vineyard Drive.

As Aleah Koury said in their letter to this Board,

“the next issue which directly deals with human deaths and injuries on or near our road in recent months. Because of its scenic beauty Vineyard Drive is used more and more by groups of cyclists, collector car enthusiasts and clubs, wine tasters, tourists and of course residents. I have personally witnessed accidents but have witnessed near misses too.”

Case law clearly states that “[r]elevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence.” *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928. “For example, an adjacent property owner **may testify to traffic conditions based upon personal knowledge.**” *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173. “[F]actual testimony about existing environmental conditions can form the basis for substantial evidence.” *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 2015 Cal.App. LEXIS 387, *1 (Cal.App.6th Dist. May 7, 2015) There is more than sufficient substantial evidence that an RSA is absolutely crucial for further evaluation of traffic impacts and for the safety of those citizens and tourists using Vineyard Drive.

The MND fails to adequately analyze the need for overflow parking. “Event overflow parking shall be located at least 100 feet from the southern property line to reduce impacts to adjacent agricultural operations.” (MND Initial Study, Exhibit B – Mitigation Summary Table, p. B-1.) Events will need between 98 and 110 parking stalls “based on the estimated trip generation estimates for inbound trips only.” (Pang Peer Review, Ex. F, p. 6.) “The parking shortage issue was not addressed in the MND.” *Id.* On Tuesday, May 12, 2015, an event took place on Vineyard Drive at a winery less than two miles from Pasolivo causing cars to overflow onto Vineyard Drive and creating a hazardous situation for those driving the narrow rural road, thus exemplifying the dire need for overflow parking to be sufficiently analyzed. (Photo of overflow parking, Ex. J.)

The MUP and vacation rentals segmented from this project and approved by a building permit also create serious issues with respect to fire and police response, schools and roads. Cal Fire San Luis Obispo states in their letter (attached to the MND), “[t]he cumulative effects of large scale special events and increased commercial operations within areas such as this continue to place challenges upon CAL Fire/County Fire’s ability to provide efficient and effective emergency services within rural areas.” This cannot be mitigated through fees. Any proposed mitigation through fees is **not** an attempt to garner greater safety for guests of Pasolivo. “A

commitment to pay fees without any evidence that mitigation will actually occur is inadequate.” *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 140.

The County is further failing to require a Developer’s Fee for Roadway Improvements. According to the San Luis Obispo County Current Road Fee Schedule, Willow Creek NewCo, LLC shall be required to pay a Road Fee. “[T]he MND should have included that calculation and condition a payment of \$518,240 (\$6,478 x 80); with the revised trip generation the calculation would result in a \$842,140 (\$6,478 x 130) payment for the worst case condition.” (Pang Peer Review, Ex. F, p. 5.)

The MND derives conclusions, but “unfortunately, there is not a reference to any Traffic Report nor Traffic Study and Analysis with backup information.” *Id.* Furthermore, there is no Mitigation Summary Table for traffic impacts. *Id.* The peer review concludes that there are multiple items which “may have ‘significant’ traffic and transportation and parking impacts.” *Id.* at p. 8. The MND is clearly legally inadequate in its review of traffic impacts.

Here, expert Mr. Pang clearly disagrees with the determination in the MND. “In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: ‘If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an environmental impact report’.” *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 2015 Cal.App. LEXIS 387, *1 (Cal.App.6th Dist. May 7, 2015); CEQA Guidelines 15064(g).

Vineyard Drive is a windy, two way, narrow rural road. Glenn Marshall from Santa Cruz County Public Works called Vineyard Drive “a very narrow road” at the April 17, 2015 Planning Department Hearing. Therefore the MND is also legally inadequate because the County failed to conduct any traffic environmental analysis, either through an RSA or any other means. Though an inquiry was made to the County, none was provided. (Ex. I.) An EIR is required.

D) The MND Fails to Sufficiently Analyze Wastewater and Water Supply Issues in Violation of CEQA

The Initial Study/MND makes a conclusory statement that the increase in septic needs will be met. “Based on the proposed project, adequate area appears available for an on-site system. To achieve compliance with the Central Coast Basin Plan, *additional information* will be needed prior to issuance of a building permit that can show that the leach area can adequately percolate to achieve this threshold.” (MND, p. 21.) The MND states there are “potential septic constraints due to: steep slopes, shallow depth to bedrock, [and] slow percolation (MND, p. 6). However the MND goes no further in its analysis. Instead, the MND illegally defers environmental analysis to a future date. The MND states under “Mitigation/Conclusion”, “[p]rior to building permit issuance, the standard septic systems will be evaluated in greater detail to insure compliance with the Central Coast Basin Plan for any constraints listed above, and will not be approved if Basin Plan criteria cannot be met.” *Id.*

Expanding olive oil production from 100 tons to 200 tons would double the amount of waste water from 109 gallons per day to 218 gallons per day alone. Expanding the tasting room would generate 250 gallons per day (gpd), or 91,250 gallons annually. *Id.* Twenty (20) events with 200 guests will generate about 46,200 gallons of wastewater annually (which averages to about 127 gpd). *Id.* At Phase III of the project, there will be a 218 gpd (79,570 gallons annually) increase. *Id.* at p. 24. 109 gpd (present agricultural use) plus 250 gpd (expansion of tasting room) plus 127 gpd (average for the events) plus 218 (from Phase III) equals 704 gallons per day or 256,960 gallons of wastewater water per year. Based on the numbers in the MND, this is an increase of 217,175 gallons annually. If going by Staff Report calculations, the water consumption would increase from 109 gallons per day to 481 gallons per day. This is almost a 450% increase in water consumption. Furthermore, the MND does not address the water consumed at the vacation rental with 7 bedrooms and six and-a-half bathrooms. The MND shows no data as to how it came to the above numbers, nor does it further analyze the impacts on such a dramatic increase in waste water.

The MND also fails to thoroughly discuss the issue of water supply. The MND states, “[t]he project proposes to obtain its water needs from an on-site well. The Environmental Health Division has reviewed the project for water availability and has determined that there is **preliminary evidence** that there will be sufficient water available to serve the proposed project. Based on available information, the proposed water source is not known to have any significant availability or quality problems.” (*Id.* at p. 22.) Webster has not seen this “available information” or any report from the Environmental Health Division. The water is set to come from a single well on the property. The public has no information as to what the preliminary information relied upon in the MND is, what the evidence is based on, what data was collected and what the results are. It appears there has been one pumping test of the well. But there is no documentation provided to the public from the Environmental Health Division. It is unclear and unknown as to what the conclusory statement in the MND is based upon. Furthermore, the County again defers analysis of water resources. “As specified above for water quality, existing regulations and/or required plans will adequately address surface water quality impacts during construction and permanent use of the project.” *Id.* at 24.

Furthermore, the MND fails to take into account that the olive trees are drip irrigated (Photo of olive trees at Pasolivo taken from Vineyard Drive, Ex. K), rather than “dry farmed” as stated by Willow Creek representative, Jaime Kirk, to Hearing Officer Matt Janssen at the April 17, 2015 Hearing. No doubt, the drip irrigation of the olive orchards will use a great deal of water. However, this was not analyzed in the MND.

CEQA requires analysis of environmental impacts prior to approval of a project. The MND here fails to meet that requirement. *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307. Just as the MND defers environmental review of both wastewater and water use, the *Sundstrom* court held that the County improperly delegated responsibility to assess environmental impacts by directing the applicant to conduct hydrological studies subject to the approval of planning commission staff. Furthermore, an EIR in this case would “provide public and governmental decisionmakers with detailed information on the project’s likely effect on the environment, describe ways of minimizing any significant impacts, point out mitigation measures, and identify any alternatives that are less environmentally destructive.” *County of Santa Cruz v. State Board of Forestry* (1998) 64 Cal. App. 4th 826, 830.

The County cannot defer environmental review by relying upon future compliance with other agencies or laws. Furthermore, the Staff Report defers environmental review for wastewater and concerns regarding the importation of olives. Regarding wastewater, the Staff Report indicates that “there is no information that indicated that a system that meets Basin Plan requirements cannot be installed appropriately,” and that the proposed project must obtain a waste discharge permit. (Staff Report, p. 9.) The Staff Report further relies upon other laws to ensure compliance as it applies to the environmental impact of importing olives. “This business and its facilities would be subject to any applicable laws and regulations regarding pest species.” (*Id.* at p. 10.) This is prohibited by CEQA and a full EIR should be performed.

The MND is legally insufficient and an EIR should be required. This inadequacy is further exacerbated by the failure of the project description to even include the creation vacation rentals under construction, not to mention others apparently planned for the future. These units will generate substantially more wastewater and greater water supply demand. **E) The Mitigated Negative Declaration Fails to Properly Identify the Significance of the Agricultural Barn and Address its Preservation**

Case law is indisputable that an EIR is required to demolish an historic resource such as the King Vidor Barn that is slated for demolition in this MUP. Webster has filed suit against the County and Real Party (Willow Creek NewCo LLC) (15CVP-0093, Ex. L)⁴ for issuing a demolition permit while the present MUP is pending and before the Board of Supervisors has had the opportunity to either grant, deny or require further environmental review of the Minor Use Permit. Willow Creek should be prohibited from demolition of the barn and further evaluation of the barn is mandated by law because there is “substantial evidence in the record that supports a fair argument that significant impacts may occur.” *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1421. An EIR is required to fully evaluate the historical significance of the King Vidor Barn.

Unlike the Phase I Archaeological Survey and Historical Assessment for the Pasolivo Project done by LSA Associates assertion that the barn is from 1925 (April 17, 2015 Appeal, Ex. P), County records show that the agricultural barn was built around the 1900’s and located on the King Vidor property (now Willow Creek property). (*Id.* at Ex. J). The Staff Report continues to ignore its own County records indicating the barn was built in 1900.

Furthermore, experts disagree with the Phase I Archeological Survey and Historical Assessment for the Pasolivo Project produced by LSA Associates (*Id.* at Ex. P). Case law discussed below makes clear that the barn can qualify as an historic resource even if it is not on the California Register of Historical Resources (CRHR), but here Webster has produced credible expert evidence that the barn has the potential to be eligible for the CRHR.

“[T]here appears to be some potential that the barn embodies distinctive characteristic for a type, period, region, or method of construction, such that it would be eligible under

⁴ First Amended Complaint and Petition for Writ of Mandamus, Petitioner’s Points and Authorities in Support of Application for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction/Stay; Declaration of Alison N. Norton in Support of Application for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction/Stay; Decl. of Jack Hanauer; Supplemental Points and Authorities in Support of Preliminary Injunction; Decl. of Christopher McMorris; Decl. of Carole Denardo; Second Decl. of Jack Hanauer.

CRHR Criterion 3, and it may retain sufficient historic integrity to convey its significance. While additional survey and research is necessary to reach that conclusion, information and evidence exists that illustrate the barn's possible significance as a transverse crib barn with association and importance within the context of dairy barns at the local level of significance."

(Decl. of Christopher McMorris, Ex. L, p. 6.)

Experts have further determined that the LSA Archeological Report is inadequate in its evaluation of the barn. First, the LSA Archeological Report states, "this barn was constructed circa 1925 based on information from the San Luis County Assessor Records." (April 17, 2015 Appeal, Ex. P, p. 20.) And yet, County records clearly indicate the barn was constructed in the 1900's. (*Id.* at Ex. J). Furthermore, a map provided by the County to Petitioners on May 20, 2015 and pursuant to a *Subpoena Duces Tecum* request shows the barn labeled, "Barn built in 1900 (from Assessors records)." (Ex. M). The LSA Archeological Report "makes multiple uncited statements that are used to support conclusions, and the noted sources for the building's date of construction, ca. 1925, do not clearly support this estimated date." (Decl. of Christopher McMorris, Ex. L, p. 3.) There are two County records and multiple statements that the barn was built in the 1900's (Ex. L, Petitioners' RJN, Exhibits D and E), not 1925. Thus, the LSA Archeological Report does not even accurately state the correct date of the barn's construction.

The LSA Archeological Report is also inadequate because its evaluation of the damage caused by the San Simeon Earthquake in December 2002 is false. "The report states that the barn was heavily damaged during the San Simeon Earthquake in December 2002, *but* does not state what the damage was or explain details of repairs to the building in response." (Decl. of Christopher McMorris, Exh. L, p. 3; Declaration of Carole Denardo, Exh. L, p. 1.) And yet, while "the earthquake did millions of dollars of damage to numerous high-end homes in this area and these homes were less than 15 years old and here....this old barn stood tall and straight before me." (Second Declaration of Jack Hanauer, Exh. L, p. 2.) Jack Hanauer, a contractor for over 40 years and hired to restore the barn, stated "[w]hat first struck me regarding the condition of the barn, was how well it had stood the test of time." *Id.* Not only is Mr. Hanauer impressed by how well the barn "stood the test of time," he also notes that the barn is unique due to its construction on a natural slope and that the posts are made out of debarked trees. *Id.* This barn is only "one of two barns in the area that have been preserved by their owners." (April 17, 2015 Appeal, Ex. R). This barn is "one of a kind." (Second Decl. of Jack Hanauer, Exh. L, p. 2.)

The LSA Archaeological Report failed to sufficiently evaluate the barn to determine if it is eligible for the California Register of Historical Resources (CRHR).

"The evaluation does not sufficiently address the barn's potential significance for embodying distinctive characteristics of a type, period, region, and method of construction, and the report lacks adequate substantial evidence to support this aspect of the evaluation. Please note, a resource can be eligible if it is found to embody distinctive characteristics of a type, period, region, and method of construction, without being the work of a master or possession high artistic value."

(Decl. of Christopher McMorris, Ex. L, p. 2.)

As CEQA Guidelines clearly state, “[i]f there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an environmental impact report.” CEQA Guidelines §15064(g). Here, experts have determined that this barn has “potential significance under CRHR.” (Decl. of Christopher McMorris, Exh. L, p. 3.) The statements and analysis of Christopher McMorris, Carole Denardo and Jack Hanauer provide “substantial evidence in the record [that] supports a fair argument that significant impacts or effects may occur.” *City of Arcadia, supra*, 135 Cal. App. 4th at p. 1421. Thus, the County is required to mandate an EIR to determine the historical significance of the barn.

Furthermore, this situation is similar to that of *Architectural Heritage Assn. v. County of Monterey, supra*, 122 Cal.App.4th 1095. In *Architectural Heritage*, the County adopted a Mitigated Negative Declaration for the demolition of an old jail. *Id.* at 1106. The Appellate Court determined that the County of Monterey was required to do an EIR for the demolition of the old jail because there was substantial evidence supporting a fair argument that the jail was in fact a historical resource even though it was not on the CRHR or National Register. *Id.* at 1105. The Court in took into account expert testimony and additional evidence of the jail’s historic value and concluded that a fair argument supported the jails’ status as a historic resource. *Id.* at 1118. The old jail was associated with Cesar Chavez (a historic figure) who was incarcerated at the jail. *Id.* at 1113. Like the jail housing Cesar Chavez (a historic figure), the historic barn once belonged to King Vidor, a famous film director and movie producer. (As the Staff Report says, “[r]esearch did indicate that the barn is located on a portion of the larger rancheh that was once owned by King Vidor, an early Holywood producer, director, and screenwriter.” (Staff Report, p. 7.)) The Court *Architectural Heritage* held the jail’s association with an historic figure alone was sufficient for a fair argument that the jail was historic. *Id.* While the old jail did not meet all of the criteria, it “qualifies as potentially eligible for listing on both the CRHR and the National Register.” *Id.* at 1105. “The language of sections 20184.1 and 5020 does not demand formal listing of a resource in a national, state or local register as a prerequisite to ‘historical’ status. The Statutory language is more expansive and flexible.” *League for Protection of Oakland’s etc., supra*, 52 Cal.App.4th at 907. The *Architectural Heritage* Court thus concluded demolition of the jail would have a significant environmental impact. *Architectural Heritage, supra*, 122 Cal.App.4th at 1118.

In this case, two experts state the barn could have historical significance and may be eligible under CRHR. (Decl. of Christopher McMorris and Carole Denardo, Ex. L.) “[t]here appears to be some potential that the barn embodies distinctive characteristic for a type, period, region, or method of construction, such that it would be eligible under CRHR Criterion 3, and it may retain sufficient historic integrity to convey its significance.” (Decl. of Christopher McMorris, Exh. L, p. 6.) In addition, Jack Hanauer, who actually worked on the barn restoration deems the barn as “one of a kind.” (Second Decl. of Jack Hanauer, Exh. L, p. 2.) “A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.” (CEQA Guidelines § 15064.5.) The proposed barn demolition of a historical resource will thus have a significant effect on the environment and therefore an EIR shall be required

Willow Creek and its representatives have tried to portray the barn as unsafe. “The current barn is not structurally sound for employees and public and is not efficient for ag

equipment storage.” Willow Creek and its representatives also stated to County Planner in a letter dated April 1, 2014, “[n]othing can be stored and or secured in the current barn given its condition so the owners are using the houses and general property to store things currently uncovered.” And yet Real Party hosts events within the barn as is shown on the Pasolivo Facebook page. The Pasolivo Facebook page shows a Pasolivo hosting a party inside the barn on February 27, 2014 (April 17, 2015 appeal, Ex. Q). The barn is in fact safe and suitable for use.

“The barn is in good condition” according to the LSA Archeological Report. William Hurley says the barn “appears to be in decent shape” based on the photographs and his expertise. The photographs taken a year later in February, 2015, clearly show that the barn is currently being used for storage. (April 17, 2015 appeal, Ex. K. .) Mr. Hanauer hopes “the new owners of this barn would consider the historical and unique qualities of this barn and use them to their advantage to attract tourists to their ranch.” ((Second Decl. Jack Hanauer, Ex. L.) “With the restoration and preservation work that we did that ‘old barn’ was given a new life....it’s a shame the new owners can’t find some way to keep her intact.” (Second Decl. of Jack Hanauer, Ex. L.)

The barn is unique in its construction, it was once part of King Vidor’s property, and it is “one of a kind.” Furthermore, the LSA Archaeological Report is incorrect in its evaluation as to whether the barn is eligible for CRHR. This matter should be resolved first and an EIR should be conducted to determine the barn’s true historical significance. The demolition of the barn at this juncture violates CEQA because there is sufficient evidence supporting a fair argument standard thus triggering an EIR in this case. Destruction of the barn will cause irreparable harm to Webster and the Adelaida community.

Willow Creek and its representatives have been untruthful about the condition of the barn. The barn is in good shape. The barn is unique in its construction, it is unique because it was once part of King Vidor’s property and it is unique because it is one of two barns left of its kind in the Adelaida area. LSA Associates did not correctly date the barn and the County records and barn experts clearly indicate the barn was circa 1900’s. The evaluation of the barn is legally inadequate and a full Environmental Impact Report is required.

F) Modifications / Setbacks

The MUP requests, and the MND authorizes, ordinance modifications regarding agricultural retail sales space and winery tasting room setbacks. Land Use Ordinance Section 22.30.075.B.1 allows for modifications to the amount of floor area that is devoted to agricultural retail sales. The Ordinance allows for a floor space of up to 500 square feet unless otherwise authorized by a MUP. The MUP asks to expand the retail sales area to 1,900 square feet – almost three times larger than that authorized by the Land Use Ordinance. In addition, the MUP requests a modification to the setbacks required under Land Use Ordinance Section 22.30.075.B.4, from a required set back of 400 feet to 307 feet from existing residences.

In addition, Land Use Ordinance Section 22.30.075.D.3 requires, “[a] fire plan that sets forth adequate fire safety measures for the proposed Agricultural Retail Sales facility.” Apart from a letter from Cal Fire indicating that, “[t]he cumulative effects of large scale special events and increased commercial operations within areas such as this continue to place challenges upon

CAL Fire/County Fire's ability to provide efficient and effective emergency services within rural areas, the MND does not discuss a fire plan. This is a violation of Section 22.30.075.D.3.

The MUP also requests setback modifications of Land Use Ordinance Section 22.30.070.D.2.d.1, which states, "[w]here a winery has public tours, tasting, retail sales, or special event (in compliance with D.2.i.), the setback shall be increased from 200 feet from each property line and no closer than 400 feet to any existing residence outside the ownership of the applicant." This can be modified by a MUP if the property fronts an arterial or collector street. The MUP seeks to modify the setbacks from 200 feet to 159 feet at the side, and from 400 feet to 300 feet to the nearby residence.

While such modifications to the Ordinance are permitted through Minor Use Permit, Hearing Officer Matt Janssen stated at the April 17, 2015 hearing, he was "uncomfortable with the number of setback adjustments" and "it's a lot of adjustments." When addressing the modifications and setbacks in light of the entire project (MUP and vacation rentals), the setbacks and ordinance modifications are an attempt to alter zoning, in violation of the San Luis Obispo County Land Use Ordinance.

G) The MUP and Vacation Rentals Approved Through Building Permit Violates CEQA by Illegal Piecemealing

A case has previously been filed against the County for illegal piecemealing the MUP and building permit PMT2013-02460 for demolition of the barn. The Staff Report states, "there is no B&B/motel component of the project. The remodel of an existing residence is a ministerial project and is not subject to a land use permit." (Staff Report, p. 10.)

"These formal and informal administrative policies do not convert discretionary decisions into ministerial ones at least within the meaning of CEQA. To be ministerial, a decision must be on the administrative agency itself is **forced to follow**....It cannot be a standard the administrative agency itself exercised its own discretion to create and therefore which possess the discretion to modify or ignore should an environmental assessment reveal the standard would cause adverse environmental consequences if the agency continued to apply it."

Friends of Westwood v. City of Los Angeles (1987) 191 Cal.App.3d 259, 280. When work is part of the whole of the action which has environmental impacts, the County cannot treat it as a separate ministerial act. The vacation rentals are indeed part of the whole of the action and should have been evaluated in the MUP.

"A project may not be divided into smaller projects to qualify for one or more exemptions or to avoid the responsibility of considering the environmental impact of the project as a whole." Title 14 Cal. Code Regs. §21159.27 ("CEQA Guidelines").

CEQA clearly states that a project may not be divided into smaller projects in order to evade environmental review. Here, Willow Creek NewCo, LLC not only segmented the vacation rentals, but also obtained a demolition permit for demolition of the barn prematurely and in an attempt to evade the present appeal process and prevent this Board of Supervisors from making a ruling on the **whole of the project**.

For all the reasons stated above, this Project violates CEQA's rule against piecemealing/segmentation. The County is chopping up this project into smaller projects in a piecemeal fashion in violation of CEQA. The MND should be rejected and the Minor Use Permit should be denied at this time. Going forward, the project description should also include the vacation rentals .

H) Other Concerns

Other concerns regarding this project are as follows:

- What is the full impact of the projects (the MUP vacation rentals) on biological resources?;

What is the environmental impact of the importing of olives from off-site to onsite?

I) The Fair Argument Standard is Met and an EIR Shall be Required

CEQA Guidelines Section 15384, subd. (a) state that there is substantial evidence of significant impacts when there is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might be reached." CEQA Guidelines § 15384, subd. (a). An EIR is required whenever "substantial evidence in the record supports a fair argument that significant impacts or effects may occur." *City of Arcadia*, supra, 135 Cal. App. 4th at 1421.

Under the fair argument standard, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld *only when* there is no credible evidence to the contrary." *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318; see also, *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597. Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted. *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402. Instead, substantial evidence to support a fair argument simply means "information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." 14 Cal. Code Regs § 15384; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 927-928; *League for Protection v. City of Oakland* (1997) 52 Cal. App. 4th 896, 905. Evidence supporting a fair argument triggers preparation of an EIR regardless of whether the record contains evidence in support of an agency's decision. See, *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310; *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1110.

Expert testimony that a project *may* have a significant impact is generally dispositive, and under such circumstances, an EIR must be prepared. *City of Livermore v. Local Agency Formation Commission* (1996) 184 Cal. App. 3d 531, 541-542. An EIR is required when there is a factual dispute among experts. *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal. App. 3d 229 (where Monterey County's negative declaration was inadequate when

opponent produced experts that disagreed with the size of wetlands). A conflict in expert opinion over the significance of an environmental impact requires the preparation of an EIR. *See*, Title 14 Cal. Code Regs (“CEQA Guidelines”) 15064(g). “In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: ‘If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency shall treat the effect as significant and shall prepare an environmental impact report.’” *Keep Our Mountains Quiet v. County of Santa Clara* (2015), *supra*, 2015 Cal.App. LEXIS 387, *1 (Cal.App.6th Dist. May 7, 2015); CEQA Guidelines 15064(g).

CEQA expresses “a preference for resolving doubts in favor of environmental review when the question is whether such review is warranted. [Citations] For example, if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR. [Citations].” *Sierra Club v. County of Sonoma, supra*, 6 Cal. App.4th at 1316-1317; *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1049.

Webster has met the fair argument standard and an EIR should be required. Firstly, there is clear evidence of a Williamson Act contract violation by Willow Creek NewCo. LLC. The County has a duty to further investigate this violation. Secondly, the Pang Peer Review clearly shows evidence that an RSA and Traffic Road Improvements are required for the MUP project. Third, there is sufficient evidence that the barn may be of historical significance and should thus be further analyzed. Any one of these three issues alone should trigger an EIR.

J) The Board of Supervisors Hearing Should Be Continued to Provide a Fair Hearing as is Legally Required

Code of Civil Procedure Section 1094.5(b) requires that in an administrative proceeding such as consideration of the use permit sought here, there be a fair trial (hearing). Here, Webster (as well as the public) is being denied a fair proceeding. That is because despite a Public Records Act request back in February, with repeated follow ups, Webster was deluged this week with nearly 5000 pages of documents related to this administrative proceeding. This office submitted a Public Records Act request on February 20, 2015. Some documents were provided electronically via dropbox.com on March 11, 2015. On March 20, 2015, Webster received more (but not all) of the requested documents by mail. We persistently engaged in continual follow up regarding a plethora of missing documents on the following dates:

- February 23, 2015
- February 25, 2015
- February 26, 2015
- March 2, 2015
- March 9, 2015
- March 13, 2015
- March 14, 2015
- March 16, 2015
- March 22, 2015 (documents missing from package sent)

- March 23, 2015
- March 24, 2015
- March 25, 2015
- March 26, 2015
- April 14, 2015
- May 13, 2015
- May 14, 2015
- May 18, 2015

(Emails, Ex. N.)

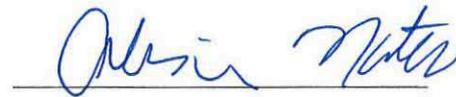
In addition, Webster issued a *Subpoena Duces Tecum* for documents along with a Notice of Deposition for two individuals to turn over documents on May 20, 2015. The Depositions, originally scheduled for May 15, 2015, were continued at the request of the County. On May 20, 2015, the County produced thousands of **additional** pages of documents missing from the initial documents provided under the Public Records Act Request. (*Subpoena Duces Tecum* documents, Ex. O.) We received these documents on a CD via mail on May 26, 2015 and only as a result of Webster paying for expedited service for such documents. The County further produced approximately 600 pages of additional emails on May 26, 2015. Lastly, the County refused to allow us to make copies of plans related to this matter.

Despite numerous attempts to work with the County to obtain documents pursuant to our Public Records Act request, the County failed to comply and excluded turning over thousands of pages of material that should have been turned over pursuant to the Public Records Act request. Providing Webster with thousands of pages of documents one week before the Board of Supervisors hearing deprives them of a Fair Hearing and this matter should be continued until Webster has had time to review all documents from the County to engage in meaningful participation at the Board of Supervisors hearing.

Thank you for your consideration of these comments. For all of the above reasons, we respectfully request you reject the MND, **deny** Minor Use Permit DRC2013-00028 and require an EIR.

Very Truly Yours,

WITTWER PARKIN LLP



Alison Norton

The file size to this document is too large to post the entire document to the web with the staff report.

**The exhibits to this document are available in the
County Clerk-Recorders Office**

If you would like a copy of the exhibits, please submit your request to: cr_board_clerk@co.slo.ca.us