



December 17, 2015

**VIA E-MAIL AND U.S. MAIL**

Mr. Brian Pedrotti  
County Planning and Building Department  
County of San Luis Obispo  
976 Osos Street, Room 300  
San Luis Obispo, CA 93408-2040  
E-mail: bpedrotti@slo.ca.gov

Re: **Laetitia Agricultural Cluster Project - Well 11**

Dear Mr. Pedrotti:

This letter provides additional information following the October 29th, 2015 Planning Commission hearing regarding the Laetitia Agricultural Cluster Project (“Project”). The purpose of this letter is to clarify and confirm information regarding Project Well 11, in response to questions raised and statements made at the October 29th hearing regarding the potential hydraulic relationship between Well 11 and Los Berros Creek. This letter supplements my testimony at the October 29th hearing and further responds to issues raised during the hearing regarding Well 11.

**1) Well 11 does not draw from the subterranean stream of Los Berros Creek.**

During the October 29th hearing, there may have been some confusion regarding the nature of the hydraulic relationship between Project Well 11 and Los Berros Creek. It is my understanding that this confusion was due, in part, to correspondence submitted to the County by the State Water Resources Control Board’s Division of Water Rights (“Division”).

In a letter dated July 22, 2015 (Attachment 1), the Division originally stated that the Project appears to include “at least one well that may be drawing from water in the subterranean stream of Los Berros Creek.” In a subsequent e-mail, dated August 28, 2015 (Attachment 2), the Division stated that “Information from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right.” In response, the Project applicant’s legal counsel provided a letter to the Division, dated September 4, 2015 (Attachment 3), confirming that Well 11 only withdraws percolating groundwater and that Well 11 does not divert from the subterranean stream of Los Berros Creek. In the most recent correspondence from the Division, dated September 14, 2015 (Attachment 4), the Division staff stated that “I agree that no action is currently necessary regarding Well 11.” In summary, although the Division initially stated that Well 11 may be drawing water from the subterranean stream of Los Berros Creek, and therefore may be subject to



the Division's regulatory jurisdiction, the Division is no longer taking the position that Well 11 may be drawing water from the subterranean stream of Los Berros Creek.

In addition, the Final Environmental Impact Report for the Project ("Final EIR") confirms that Well 11 draws water from percolating groundwater, rather than from the subterranean stream of Los Berros Creek. Well 11 is screened in the fractured resistant volcanic tuff of the Obispo Formation and is located a few hundred feet away from Los Berros Creek (Final EIR, at pp. V.P.-5, V.P.-6, V.P.-10, V.P.-24). Therefore, Project Well 11 does not draw water from the subterranean stream (i.e. underflow) of Los Berros Creek.

**2) The Final EIR mitigates potential project impacts on Los Berros Creek.**

The Final EIR evaluated the potential impacts of the Project wells on Los Berros Creek, and provided mitigation measures to prevent any potential significant impact to Los Berros Creek from pumping the Project wells (see Final EIR, at pp. V.P.-29 – V.P.-43). In particular, the Final EIR concluded that there is a hydraulic connection between the fractured rock aquifer tapped by that Well 11 and Los Berros Creek base flow, based on water level data showing rapid recharge correlated with precipitation events (Final EIR, at pp. V.P.-24, V.P.-26).

In other words, although Well 11 production does not draw water from the subterranean stream of Los Berros Creek, it can still impact base flow. The Final EIR concluded, based on an analysis of Los Berros Creek flow records, that substantial reduction in base flow could result from Well 11 operation during the months of August through November (Final EIR, at pp. V.P.-35 – V.P.-36).

The Final EIR recommends a mitigation measure that prohibits pumping of Well 11 during the dry season, from August through November each year (Final EIR, at pp. V.P.-40 [mitigation measure WAT/mm-1.c.1]). This mitigation measure was recommended by the County's independent expert, Geosyntec (Final EIR, at pp. V.P.-26). This recommended pumping schedule is specifically designed "to protect flows within Los Berros Creek" (Final EIR, at p. V.P.-38). The Final EIR concluded that with implementation of and compliance with the identified mitigation measures, the potential impact to Los Berros Creek would be less than significant (Final EIR, at pp. V.P.-38; V.P.-42).

**3) Any remaining concerns regarding Well 11's potential impact on Los Berros Creek are best addressed by modifying the existing mitigation measure.**

During the October 29th Planning Commission hearing, the Commission proposed eliminating Well 11 from the Project, based on concerns regarding Well 11's potential impact on Los Berros Creek. As explained above, the Final EIR already mitigates the



potential impacts on Los Berros Creek from pumping Well 11 by prohibiting the use of Well 11 during the dry season from August through November (Final EIR, at p. V.P.-40 [mitigation measure WAT/mm-1.c.1].)

Well 11 is an integral part of the Project's water supply, and should not be eliminated from the Project. To the extent that any of the Planning Commissioners have remaining concerns regarding Well 11's potential impacts on Los Berros Creek, those concerns can be addressed by modifying the existing mitigation measure (Final EIR, at p. V.P.-40 [mitigation measure WAT/mm-1.c.1]). The current mitigation measure prohibits use of Well 11 during the months of August through November. To further minimize potential impacts from Well 11 on Los Berros Creek, while still meeting the Project water supply requirements for the Final EIR, Cleath-Harris Geologists recommends extending the period when use of Well 11 is prohibited to July through December. This modification extends the pumping prohibition time by 50 percent, adding two months (July and December) with the greatest remaining potential for impact to base flow, and avoids any potential impacts to Los Berros Creek from pumping Well 11 during the mid-summer through early winter (see Attachment 5; Final EIR Appendix H, pp. 15 and Figure 19). It is my understanding that during your meeting with the applicant's team on December 8, 2015, the County's Environmental Consultant suggested extending the prohibition from June to November, rather than July to December. I am available to discuss potential modification to the existing mitigation measure with the County's independent expert, Geosyntec.

Respectfully submitted,  
CLEATH-HARRIS GEOLOGISTS

Spencer J. Harris, HG 633  
Senior Hydrogeologist

attachments

# **ATTACHMENT 1**



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

**JUL 22 2015**

In Reply Refer to:  
MJM:UN000882

Laetitia Vineyard and Winery, Inc  
453 Laetitia Vineyard Dr  
Arroyo Grande, CA 93420

To Whom It May Concern:

**POTENTIAL UNAUTHORIZED DIVERSION OF WATER RELATED TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE LAETITIA AGRICULTURAL CLUSTER TRACT MAP AND CONDITIONAL USE PERMIT (SCH # 2005041094) IN SAN LUIS OBISPO COUNTY**

Staff from the State Water Resources Control Board, Division of Water Rights (Division) has determined that you may be diverting water in such a manner that may require a water right approval. The project appears to include the diversion of water in two 25 acre-foot reservoirs and at least one well that may be drawing from water in the subterranean stream of Los Berros Creek.

You should contact the Division to determine whether a water right permit or other water right approval is needed. Information on water rights and the permitting process is available at:

<http://www.waterboards.ca.gov/waterrights/>

If a water right approval is needed, the State Water Board will act as a Responsible Agency for this project. Accordingly, the State Water Board may need to rely on the Lead Agency's California Environmental Quality Act (CEQA) document to support the Division's evaluation of the requested approval. The Lead Agency should therefore ensure that any CEQA document prepared for the project considers all potential direct and indirect environmental impacts associated with the diversion and use of water.

Unauthorized diversion and use of water is considered a trespass and subject to enforcement action under Water Code sections 1052 and 1831. Pursuant to Water Code section 1052, any diversion of water not covered by a valid basis of right may be subject to Administrative Civil Liability of up to \$500 per day without further notice. The State Water Board also may issue a Cease and Desist Order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

Some diverters claim rights to divert independent of a permit, license, registration or certification issued by the State Water Board, such as diversions under riparian or pre-1914 rights. With limited exceptions, Water Code section 5101 requires that a Statement of Water Diversion and Use be filed for these diversions. Water Code section 5107 (c)(1) provides that the State Water

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

**JUL 22 2015**

Laetitia Vineyard and Winery, Inc

-2-

Board may impose a civil liability of \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a statement within 30 days after the board has called the violation to the attention of that person. These penalties are in addition to any penalties that may be imposed if the diverter does not hold a valid right or diverts in excess of what is authorized under that right. This letter serves as your notice of the statement requirement and potential penalty.

Please contact me at (916) 341-5310 or [matthew.mccarthy@waterboards.ca.gov](mailto:matthew.mccarthy@waterboards.ca.gov) if you have any questions or require additional information. Written correspondence or inquiries should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Matt McCarthy, P.O. Box 2000, Sacramento, CA, 95812-2000.

Sincerely,



Matt McCarthy, Senior  
Coastal Lahontan Unit  
Division of Water Rights

cc: Janneck Limited  
c/o John Janneck  
116 Cory Ave  
Los Angeles, CA 90069

RRM Design Group  
c/o Allison Donatello  
3765 S Higuera St, Ste 102  
San Luis Obispo, CA 93401

County of San Luis Obispo  
c/o Brian Pedrotti  
Department of Planning and Building  
976 Osos St, Rm 200  
San Luis Obispo, CA 93408

County of San Luis Obispo  
c/o Brian Pedrotti  
[bpedrotti@co.slo.ca.us](mailto:bpedrotti@co.slo.ca.us)

## **ATTACHMENT 2**

## Leeper, Elizabeth

---

**From:** McCarthy, Matthew@Waterboards <Matthew.McCarthy@waterboards.ca.gov>  
**Sent:** Friday, August 28, 2015 11:14 AM  
**To:** Leeper, Elizabeth  
**Cc:** bpedrotti@co.sio.ca.us; Moody, Mitchell@Waterboards  
**Subject:** RE: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)  
**Attachments:** Map.pdf

Ms. Leeper,

Thank you for the quick response to our letter.

Here is the information you requested:

Reservoirs. Information from the EIR indicates that there is at least one onstream reservoir on the property that are being used for irrigation. The reservoir appears to collect (divert) surface water, and a valid basis of water right is required for such a diversion. In addition, while a second reservoir appears to be offstream, it is not clear how water is diverted into the reservoir. If percolating groundwater is the only source of water for the reservoir, then a valid basis of water right is not needed. The following is an excerpt from Page V.P.-5 of the Final EIR (emphasis added): *The agricultural irrigation system included Wells 1, 4, 5, and 9 (F&T 2, F.V. Wells 3, F.V. Wells 1, and F&T 1) and two reservoirs each with storage capacity of 25 acre-feet (af).*

Well. Information from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right. Absent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream. The following is an excerpt from Page V.P.-24 of the Final EIR (emphasis added): *During the well pumping tests, full recovery of water levels occurred only at Well 11, which is within a few hundred feet of Los Berros Creek. The hydrograph for Well 11 shows strong correlation between rainfall and groundwater levels in the vicinity of Well 11, which indicates that groundwater levels in the vicinity of Well 11 are influenced by the base flow of Los Berros Creek (refer to Appendix H to review hydrographs and detailed data). Conversely, pumping from Well 11 likely influences base flow of Los Berros Creek.*

I've included a topographic map from the EIR with notes regarding the location of the reservoirs and the well.

Mitchell and I would be happy to discuss this further with you, however we will both be out of the office next week. Are you available to meet or discuss by phone at 1pm on Thursday, 9/10 or Friday, 9/11?

Thanks,  
Matt

Matt McCarthy  
Division of Water Rights  
State Water Resources Control Board  
916-341-5310



**From:** Leeper, Elizabeth [<mailto:ELeeper@kmtg.com>]  
**Sent:** Thursday, August 27, 2015 4:19 PM  
**To:** McCarthy, Matthew@Waterboards  
**Cc:** [bpedrotti@co.slo.ca.us](mailto:bpedrotti@co.slo.ca.us)  
**Subject:** Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Dear Mr. McCarthy,

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. The attached letter responds to the July 22, 2015 letter from the Division of Water Rights to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. A hard-copy of the attached letter is also being delivered to you by mail.

If you have any questions regarding the attached letter or would like to discuss this matter, please feel free to contact me. Please copy me on any future communications from the Division to the County regarding the Project.

Thank you,

Elizabeth Leeper

**Elizabeth Leeper**  
Attorney at Law



MOSKOVITZ TIEDEMANN & GIRARD

400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814

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# **ATTACHMENT 3**



400 Capitol Mall, 27th Floor  
Sacramento, CA 95814

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Elizabeth Leeper  
eleeper@kmtg.com

September 4, 2015

**VIA E-MAIL AND U.S. MAIL**

State Water Resources Control Board,  
Division of Water Rights  
Attn: Matt McCarthy  
P.O. Box 2000  
Sacramento, CA 95812-2000  
E-Mail:  
matthew.mccarthy@waterboards.ca.gov

Re: Response to August 28, 2015 E-Mail Re Potential Unauthorized Diversion of Water  
(MJM:UN000882)

Dear Mr. McCarthy:

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. By letter dated August 27, 2015, I provided a response to the July 22, 2015 letter from the Division of Water Rights ("Division") to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. My letter requested additional information from the Division regarding the alleged potential unauthorized diversion of water.

You responded to my letter, by e-mail, on August 28, 2015 ("Response"). Your Response addresses two issues: (1) an alleged onstream reservoir; and (2) a well that allegedly may be withdrawing from the subterranean stream of Los Berros Creek. I appreciate your quick Response and the additional information that you provided. A copy of your Response is attached, for your convenience. Below, I address the reservoir and well issues.

**Reservoirs:** Your Response states, in relevant part, that "[i]nformation from the EIR indicates that there is at least one onstream reservoir on the property that are being used for irrigation. The reservoir appears to collect (divert) surface water, and a valid basis of water right is required for such a diversion. . . .The following is an excerpt from Page V.P.-5 of the Final EIR (emphasis added): *The agricultural irrigation system included Wells 1, 4, 5, and 9 (F&T 2, F.V. Wells 3, F.V. Wells 1, and F&T 1) and two reservoirs each with storage capacity of 25 acre-feet (af).*" Your Response does not identify the "information" from the EIR that indicates that there is an onstream reservoir on the property, or that indicates that the reservoir is collecting diverted surface water. The sentence that your Response quotes from the EIR simply states that the agricultural irrigation system includes two reservoirs; it says nothing about an onstream reservoir or about diversions of surface water.

This letter clarifies and confirms that the two reservoirs on the Laetitia property are reservoirs used for the existing agriculture on the property, and are not part of the proposed

Project that is before the County for its consideration and approval. Nor are the irrigation reservoirs part of the proposed Project that is being analyzed under the California Environmental Quality Act ("CEQA"). Therefore, potential issues regarding the existing reservoirs are irrelevant to the County's consideration of the proposed Project and the County's analysis of the proposed Project under CEQA. It is the Project applicant's position that the County's CEQA review of the proposed Project is not the appropriate forum for addressing the Division's concerns regarding the existing irrigation reservoirs.

**Well 11:** Your Response states, in relevant part, that "[i]nformation from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right." However, your Response also acknowledges that "[a]bsent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream."

This letter confirms that it is the position of the Project applicant that Well 11 only withdraws percolating groundwater, and that Well 11 does not divert from a subterranean stream. Well 11 is screened in the fractured resistant volcanic tuff of the Obispo Formation and is located several hundred feet away from Los Berros Creek. (See Final EIR, at pp. V.P.-5, V.P.-6, V.P.-10, V.P.-24.) As you know, the State Water Resources Control Board ("State Water Board") has applied a four-part test for determining whether groundwater should be classified as a subterranean stream. "[F]or groundwater to be classified as a subterranean stream flowing through a known and definite channel, the following physical conditions must exist: [¶] 1. A subsurface channel must be present; [¶] 2. The channel must have a relatively impermeable bed and banks; [¶] 3. The course of the channel must be known or capable of being determined by reasonable inference; and [¶] 4. Groundwater must be flowing in the channel." (*In re Garrapata Water Co.* (June 17, 1999) State Wat. Resources Control Bd. Dec. No. 1639; see *N. Gualala Water Co. v. State Water Res. Control Bd.* (2006), 139 Cal. App. 4th 1577, 1585.) The Division has not identified evidence with respect to this four-part test, nor has the Division identified evidence to support the conclusion that Well 11 diverts from a subterranean stream. I maintain the position that Well 11 diverts from percolating groundwater and therefore, those diversions are not subject to the State Water Board's jurisdiction over surface waters and subterranean streams.

In conclusion, I request that you provide written communication confirming that, based on the available information and the Division's review of that information, the Division rescinds its July 22, 2015 letter regarding alleged unauthorized diversions of water related to the Laetitia project. In the alternative, if the Division concludes that is appropriate to continue its review of the available information, I request that you provide written communication confirming that the Division's review is on-going and that the Division has not made any determination regarding the Project's water diversions at this time.



State Water Resources Control Board,  
Division of Water Rights  
September 4, 2015  
Page 3

Thank you for your attention to this matter.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation



MONA G. EBRAHIMI  
ELIZABETH LEEPER

EL  
Attachment

cc: County of San Luis Obispo  
c/o Brian Pedrotti  
Department of Planning and Building  
976 Osos Street, Room 200  
San Luis Obispo, CA 93408

County of San Luis Obispo  
c/o Brian Pedrotti  
bpedrotti@co.slo.ca.us



# **ATTACHMENT 4**

## **Leeper, Elizabeth**

---

**From:** McCarthy, Matthew@Waterboards <Matthew.McCarthy@waterboards.ca.gov>  
**Sent:** Monday, September 14, 2015 4:24 PM  
**To:** Leeper, Elizabeth  
**Cc:** Moody, Mitchell@Waterboards; bpedrotti@co.slo.ca.us  
**Subject:** FW: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)  
**Attachments:** Letter.pdf; Map.pdf

Ms. Leeper,

Thank you for your letter dated September 4, 2015 (attached). In your letter responding to my August 28, 2015 email message, you assert that Well 11 draws from percolating groundwater rather than the subterranean stream of Los Berros Creek and you request that I provide confirmation that the Division of Water Rights either (1) rescinds the July 22, 2015 letter or (2) provides communication that the Division has not made any determination regarding the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project (Project).

I agree that no action is currently necessary regarding Well 11. However, it is still not clear to me how water enters the two reservoirs on the property, therefore I cannot make a determination whether further action is necessary for the two reservoirs. However, information available to me at this time indicates that the unauthorized diversion of water is occurring in the reservoir located at 35.0911, -120.5241 and labeled 'Onstream Reservoir' on the attached map, which was also included in my August 28, 2015 email.

### **California Environmental Quality Act**

In your letter, you note that the reservoirs are not part of the Project that is being analyzed by the County of San Luis Obispo (County) under the California Environmental Quality Act (CEQA). You also indicate that your position is that the County's CEQA review is not the appropriate forum for addressing the Division's concerns regarding the reservoirs.

State Water Resources Control Board (State Water Board) staff first became aware of the presence of the reservoirs through the CEQA noticing process, therefore the County was included in the State Water Board's contact letter indicating that the unauthorized diversion of water may be occurring. Regardless of whether the reservoirs are part of the Project for the purposes of the County's Environmental Impact Report (EIR), the State Water Board has authority over the diversion and use of surface water. Since the reservoirs are not being removed as part of the Project under CEQA, the unauthorized diversion of water that has occurred will likely continue to occur.

State Water Board staff are willing to continue this correspondence without including the County, if that is what you would prefer.

However, if a water right approval by the State Water Board is necessary, additional CEQA analysis may be required. If that analysis is required and it is not contained in the County's EIR, then another CEQA document will need to be prepared.

### **Information Request**

Please provide the following:

1. Information describing the sources of water for the two reservoirs on the property. The 'Onstream Reservoir' is located at 35.0911, -120.5241 and the 'Offstream Reservoir' is located at 35.1016, -120.5202. The locations of the two reservoirs are indicated on the attached map, which was also included in my August 28, 2015 email.

- Information describing the methods and infrastructure used to divert or store water in, and withdraw water from, the two reservoirs on the property. See above for the locations of the two reservoirs.

### **Potential for Enforcement Action**

As I mentioned in my letter dated July 22, 2015, the unauthorized diversion and use of water is considered a trespass and is subject to enforcement action. That same letter served as your notice of the statement requirement and potential penalty. According to the County's EIR for the Project, Los Berros Creek is designated steelhead critical habitat (page V.E.-15 of the County's Final EIR). Because at least one of the reservoirs appears to divert water in an unauthorized manner that may have an adverse effect on south-central California coast steelhead (*Oncorhynchus mykiss irideus*), the State Water Board may choose to give enforcement priority to this apparent unauthorized diversion and failure to file a statement. Therefore, your prompt attention to this matter is appreciated. I encourage you to provide the information requested above as soon as possible, and if you choose to not file a statement for the reservoir located at 35.0911, -120.5241 and labeled 'Onstream Reservoir' on the attached map in a timely fashion, please contact me immediately by phone so we can discuss the matter.

As I mentioned in my August 28, 2015 email message, we are available to discuss this with you on the phone. Please contact me if you would like to do so.

Sincerely,  
Matt McCarthy  
Division of Water Rights  
State Water Resources Control Board  
916-341-5310



---

**From:** McCarthy, Matthew@Waterboards  
**Sent:** Friday, August 28, 2015 11:14 AM  
**To:** Leeper, e@KMTG  
**Cc:** bpedrotti@co.slo.ca.us; Moody, Mitchell  
**Subject:** RE: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Ms. Leeper,

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Well. Information from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right. Absent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream. The following is an excerpt from Page V.P.-24 of the Final EIR (emphasis added): *During the well pumping tests, full recovery of water levels occurred only at Well 11, which is within a few hundred feet of Los Berros Creek. The hydrograph for Well 11 shows strong correlation between rainfall and groundwater levels in the vicinity of Well 11, which indicates that groundwater levels in the vicinity of Well 11 are influenced by the base flow of Los Berros Creek (refer to Appendix H to review hydrographs and detailed data). Conversely, pumping from Well 11 likely influences base flow of Los Berros Creek.*

I've included a topographic map from the EIR with notes regarding the location of the reservoirs and the well.

Mitchell and I would be happy to discuss this further with you, however we will both be out of the office next week. Are you available to meet or discuss by phone at 1pm on Thursday, 9/10 or Friday, 9/11?

Thanks,  
Matt

Matt McCarthy  
Division of Water Rights  
State Water Resources Control Board  
916-341-5310



---

**From:** Leeper, Elizabeth [<mailto:ELeeper@kmtg.com>]  
**Sent:** Thursday, August 27, 2015 4:19 PM  
**To:** McCarthy, Matthew@Waterboards  
**Cc:** [bpedrotti@co.slo.ca.us](mailto:bpedrotti@co.slo.ca.us)  
**Subject:** Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Dear Mr. McCarthy,

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. The attached letter responds to the July 22, 2015 letter from the Division of Water Rights to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. A hard-copy of the attached letter is also being delivered to you by mail.

If you have any questions regarding the attached letter or would like to discuss this matter, please feel free to contact me. Please copy me on any future communications from the Division to the County regarding the Project.

Thank you,

Elizabeth Leeper

**Elizabeth Leeper**  
Attorney at Law



400 Capitol Mall, 27<sup>th</sup> Floor  
Sacramento, CA 95814

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# **ATTACHMENT 5**

not calculated from the Phase 3 testing data recorded at Well 11 because the prominent recharge influence on water levels at this well occurred that was independent of pumping and complicates interpretation of the aquifer response to pumping.

The resulting revised estimate of sustainable yield from the four wells is approximately 65 AF/Y, which equates to an average pumping rate of 42 gpm. Table 4 lists the estimated sustainable pumping rates calculated by CHG using the Phase 1 and 2 data, the actual Phase 3 pumping rates, and the revised estimates of viable long-term pumping rates based on the water levels recorded in the four wells during the Phase 3 pumping and subsequent recovery.

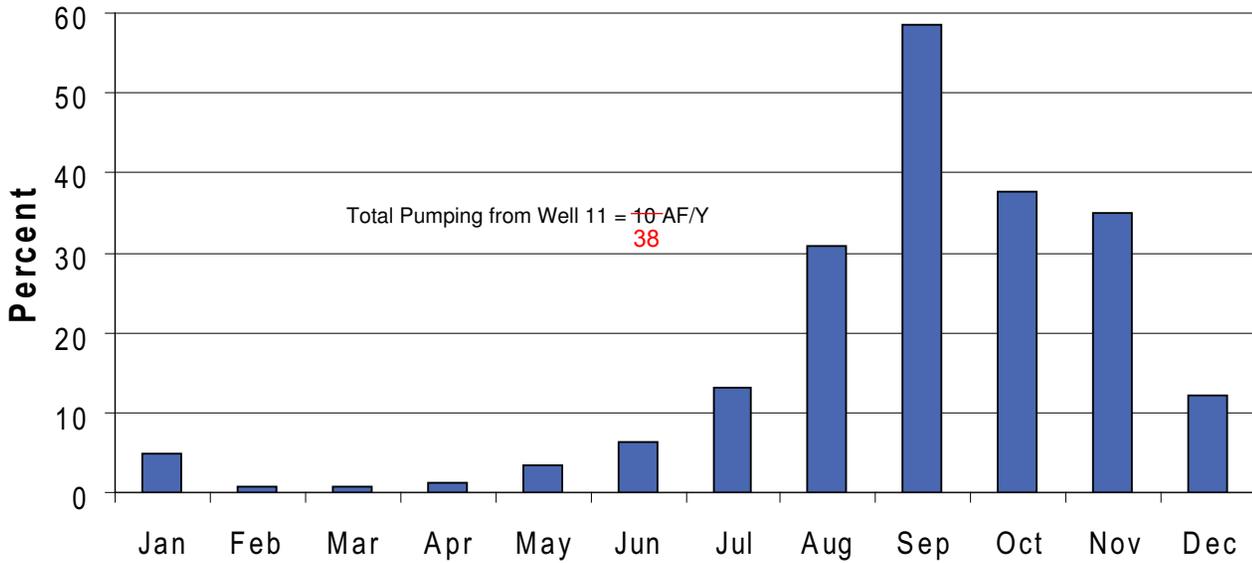
#### **4.4.3 Potential Impact of Well 11 on Los Berros Creek**

Although the production capacity of Well 11 was substantially higher than the other wells, the rapid recharge response, close proximity to the creek, and dropping water level beginning in June even without pumping indicates that the production capacity of Well 11 is dependent on base flow in Los Berros Creek and will likely decrease during summer and drought conditions. Moreover, pumping from Well 11 during late summer and autumn would likely substantially reduce base flow in the Los Berros Creek channel. Figure 19a shows the pumping rate proposed by CHG (July 2010) for Well 11 (38.2 AF/Y = 23.7 gpm) compared to average monthly flow rate in Los Berros Creek based on available data for the period from 1981 to 2001. During the months of August through November, the proposed pumping rate from Well 11 exceeds 30 percent of the average flow in Los Berros Creek.

An alternative to help preserve base flows in the creek and decrease impact to the Los Berros Creek riparian corridor would be to not operate Well 11 during the months of August, September, October, and November. However, a higher pumping rate than that used for the Phase 3 testing can likely be sustained at Well 11 the rest of the year (December through July) with insignificant impact to Los Berros Creek. Accordingly, the suggested optimized pumping scheme includes a 10 percent increase to the pumping rate at Well 11 from December through July. Based on average conditions for the period from 1981 to 200, with the proposed 10 percent increase in pumping from Well 11 from December through July, the pumping rate is less than 15 percent of the creek flow. Figure 19b shows the recommended revised pumping schedule for Well 11 compared to average monthly flow rate in Los Berros Creek.

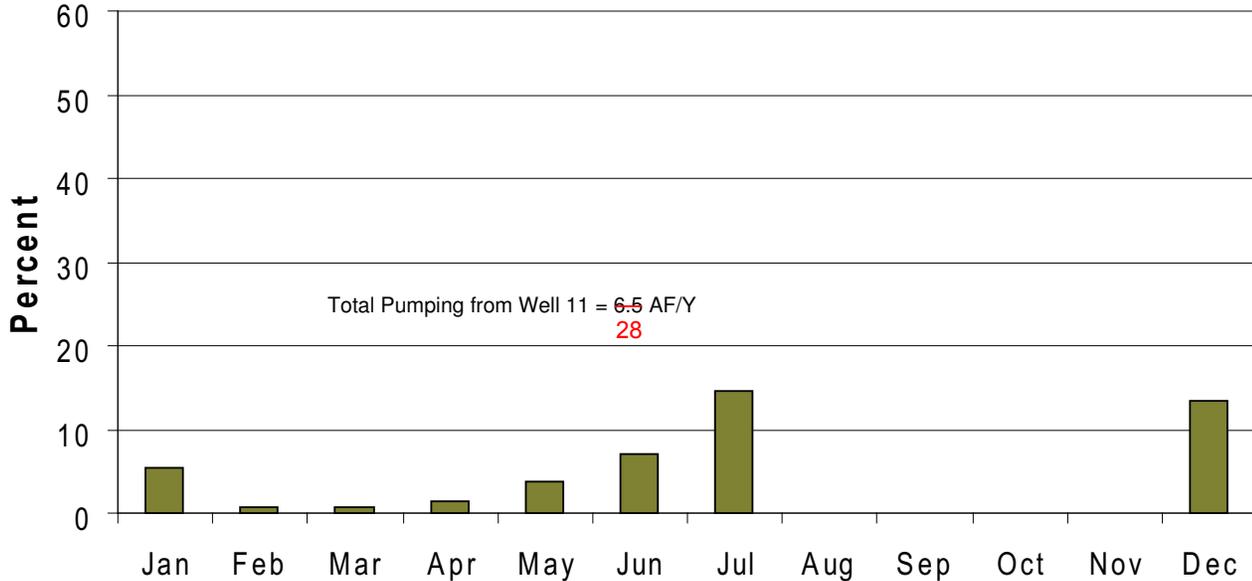
19a

### Phase 3 Production Rate at Well 11 Compared to Average Monthly Stream Flow (1981-2001)



19b

### Recommend Production at Well 11 Compared to Average Monthly Stream Flow (1981-2001)



Notes:

Curtailment of pumping from Well 11 from August through November is recommended to help preserve base flow in Los Berros Creek.

Corrections to Total Pumping from Well 11 by CHG (listed values were for Well 10).

**Proposed Pumping at Well 11 Compared to Average Monthly Flow in Los Berros Creek**

Review of Well Testing and Sustainable Yield Assessment  
Proposed Laetitia Agricultural Cluster Subdivision  
San Luis Obispo, California



Oakland

May 2011

Figure  
**19**



**Fw: RE 1/14/16 meeting, Item #10 - Laetitia Agricultural Cluster Tentative Tract Map, CUP, FEIR**

**Brian Pedrotti** to: Ramona Hedges

01/13/2016 02:50 PM

Ramona - some correspondence on Laetitia for the website.

-Brian

----- Forwarded by Brian Pedrotti/Planning/COSLO on 01/13/2016 02:46 PM -----

From: Jocelyn Brennan/BOS/COSLO  
To: Brian Pedrotti/Planning/COSLO@Wings,  
Date: 01/13/2016 02:33 PM  
Subject: Fw: RE 1/14/16 meeting, Item #10 - Laetitia Agricultural Cluster Tentative Tract Map, CUP, FEIR

---

Already went to clerk and board. just fyi

Sincerely,  
Jocelyn Brennan  
Legislative Assistant to Supervisor Lynn Compton  
San Luis Obispo County, District 4  
(805) 781-4337  
(800) 834-4636 x 4337

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 01/13/2016 02:33 PM -----

From: Board of Supervisors/BOS/COSLO  
To: BOS\_Legislative Assistants, cr\_board\_clerk Clerk Recorder/ClerkRec/COSLO@Wings  
Date: 01/12/2016 04:19 PM  
Subject: Fw: RE 1/14/16 meeting, Item #10 - Laetitia Agricultural Cluster Tentative Tract Map, CUP, FEIR  
Sent by: Juliane Hendricks

---

Forwarding this on to everyone.

Thank you

Juliane D Hendricks

----- Forwarded by Juliane Hendricks/BOS/COSLO on 01/12/2016 04:19 PM -----

From: "Santa Lucia Chapter of the Sierra Club" <sierraclub8@gmail.com>  
To: <boardofsups@co.slo.ca.us>,  
Date: 01/12/2016 03:33 PM  
Subject: RE 1/14/16 meeting, Item #10 - Laetitia Agricultural Cluster Tentative Tract Map, CUP, FEIR

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Santa Lucia Chapter  
P.O. Box 15755  
San Luis Obispo, CA 93406  
(805) 543-8717

---

January 12, 2016

**RE: 1/14/16 meeting, Item #10 - Laetitia Agricultural Cluster Tentative Tract Map, CUP, FEIR**

Dear Commissioners,

We are concerned by the stated intention of the Commission to approve the application for the Laetitia ag cluster subdivision on the basis of the reduction of the proposed number of homes and the elimination of a well, as these modifications do not cure the project's multiple inconsistencies with the General Plan and Framework for Planning, the problematic sustainability of its water source, or its fifteen Class 1 significant and unmitigable environmental impacts, all of which were present on the multiple occasions when the project was reviewed by the WRAC and the South County Advisory Council, with both recommending denial.

Even reduced by 19 units, the number of houses claimed to be allowed under the ordinance is greatly inflated. It is not permissible for the County to essentially borrow the density bonus from the Ag Cluster Ordinance and graft it onto the Rural Cluster Ordinance so as to grant a density bonus that otherwise would not be allowed, as has been done here.

The disagreement of experts on the sustainability of the water supply should be viewed in the context of the most recent tests, showing a barely adequate supply and a declining trend. The rigorous well tests mandated by the source capacity testing requirement of Title 22 have not been performed nor been made a condition of approval. The permit condition requiring proof of supplemental water prior to approval of each phase of development is based on the assumption that the water conservation devices included in new homes will remain in place as voluntary measures. In other words, this condition relies on the belief that the purchasers of million-dollar homes will be satisfied with a light spray coming out of their shower heads.

No supply/demand calculation can produce the water necessary to water the vineyards in addition to providing a supply for residences. This indicates that the vineyards will fail. No shortfall in supply can be allowed for the residential area, which will always take what is needed to supply the water requirements for the homes regardless of any resulting shortfall in water for agricultural use, again leading to the likely the failure of the vineyards,

The configuration of the proposed site of the wastewater treatment plant is below the minimum parcel size, as are the lots that would be created for the home owners association's recreational center. The proposed swimming pool, game room, etc. are not an allowed use, per the EIR. The proposed disposal of wastewater in the vineyards requires the use of land the homeowners will not own and over which they will have no control. The proposal to treat wastewater to "regional water standards" is not

equivalent to agricultural standards and therefore will permit a level of salinity which, in addition to the inferior soil proposed for the new vines, is likely to cause the vineyards to fail.

For all of the above reasons and the lack of overriding considerations as required by CEQA to certify the EIR despite the project's significant and unavoidable environmental impacts, we urge the Commission to deny the project.

Thank you for your attention to these issues,

A handwritten signature in black ink, appearing to read "Andrew Christie".

Andrew Christie, Chapter Director



image001.png



400 Capitol Mall, 27th Floor  
Sacramento, CA 95814

T | 916.321.4500  
F | 916.321.4555

**Mona G. Ebrahimi**  
mebrahimi@kmtg.com

December 30, 2015

**VIA HAND DELIVERY AND E-MAIL**

Chief Steve Reeder  
CAL FIRE/San Luis Obispo County Fire  
635 North Santa Rosa Street  
San Luis Obispo, CA 93405

**Re: Laetitia Vineyard Drive: Secondary Access**

Dear Chief Reeder:

This office represents the applicant for the Laetitia Agricultural Cluster Project. County staff has recently informed us of Cal Fire's concerns about the use of Laetitia Vineyard Drive (the "Drive") as a secondary emergency access for the project. Specifically, it is my understanding that your department is looking for assurance that the California Department of Transportation (CalTrans) will not block or prohibit Cal Fire from utilizing the Drive for emergency access. This letter is intended to provide you with this additional assurance by detailing Laetitia's unrestricted legal rights to use the Drive.

Access to the Drive off Highway 101 to the current Laetitia winery and property is under a 1955 deed to the State of California when Highway 101 was originally constructed, a copy of which is attached to this letter. This access point onto 101 is unrestricted and has been in constant use since 1955. When the winery and adjacent buildings were built in 1984, Laetitia obtained an encroachment permit from the State to improve the deceleration lane on the southbound portion of 101 and improve the driveway into the property for the winery operations. Those improvements were built and accepted by Caltrans. That permit is not at issue.

The Laetitia development project has located the primary entrance for the future residences to access their properties via Upper Los Berros Road and not the winery access road off of Highway 101 secured by the 1955 deed. Cal Fire requires two entrances to the residential project in case of emergencies, one primary and one secondary. The primary entrance will be off of Upper Los Berros Road. The secondary entrance will be the Drive access road off of Highway 101 under the 1955 deed. The applicant will ensure easy emergency access to Cal Fire, while prohibiting non-emergency vehicles by utilizing a gate with 24-hour guards blocking access.

Caltrans has objected to the use of the Winery access by the future residents on two grounds. One objection is on alleged safety concerns, although Caltrans offers no evidence to support the objection. The other objection is that the 1984 encroachment permit would be

Members of the Planning Commission  
December 30, 2015  
Page 2

violated in the event of an emergency because such emergency use would exceed "historical use." However, Laetitia has recorded unrestricted access rights to the Drive through its 1955 deed. At the August 13, 2015 Planning Commission hearing, the Caltrans representative agreed that the applicant's access to the Drive over 101 is legally owned by Laetitia. At that hearing, Mr. Newall stated, in part, "our plan is to incrementally over time upgrade 101 to full freeway status. This will be decades. It will be sort of opportunistically. And that means consolidating points of access onto an off of the highway at grade separated locations like Los Berros or -- that's an interchange where there's actual separation. Currently, we have a lot of at-grade driveways. *Those were grandfathered in back in the 1950's; one of the consultants indicated that's an entitlement that they have. They do have access.*" (Emphasis added.)

Furthermore, Caltrans ignores the importance of utilizing the Drive as a secondary access for emergency vehicles for existing residences located within the canyon. Without this access, existing property owners have no recourse to evacuate their homes in the case of an emergency when their only escape is through bridges which may or may not be viable options for them.

Given these facts, Caltrans' objections are without merit and wholly unsubstantiated. Consequently, there are no impacts associated with emergency access to the project and Caltrans has no jurisdiction to prevent Cal Fire from providing emergency services off of 101 through the Drive access. Since Cal Fire is able to use the 101 access through the Drive anytime as emergency access the applicant is able to fully mitigate this impact. We trust that this information satisfies your concerns.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation



MONA G. EBRAHIMI

cc: Brian Pedrotti, Planner (via email)  
Whitney G. McDonald, County Counsel (via email)

Enclosures



VOL 812 PAGE 22  
"A"

9335

Form RW-6

DISTRICT	COUNTY	ROUTE	SECTION
V	SLO	2	P #112

Sta. 457+30+ to Sta. 562+70+

### GRANT DEED (INDIVIDUAL)

GRANT to PETER GIUGIA and DOMENICA GIUGIA, Husband and wife

GRANT to the STATE OF CALIFORNIA, all that real property in the \_\_\_\_\_ County  
of San Luis Obispo, State of California, described as:

\* That part of the South half of the Southeast quarter of Section 26,  
Township 12 North, Range 35 West, San Bernardino Base and Meridian, in  
the County of San Luis Obispo, described as follows:

#### PARCEL ONE

Commencing at the northwesterly terminus of the course described as  
"S. 38° 23' E., 470.00 feet" in the deed to the State of California, recorded  
June 22, 1931 in Volume 108 of Official Records at page 359, records of said  
county; thence, along the above mentioned course, S. 36° 57' 08" E. (bear-  
ings based on the grid meridian of the California Coordinate System, Zone 5),  
a distance of 287.54 feet to the true point of beginning of the parcel of  
land herein described; thence, (1) along the northeasterly right of way line  
of the State Highway (60 feet wide) as described in the deed to the State  
of California, dated November 5, 1917 in Book 123 of Deeds at page 102, records  
of said county; S. 48° 44' 48" E., 57.23 feet; thence, (2) N. 23° 47' 56"  
W., 112.04 feet; thence, (3) S. 89° 05' 19" W., 73.00 feet to the true  
point of beginning.

221 23 48

#### PARCEL TWO

That part of Government Lot 3 in the above mentioned Section 26, described  
as follows:

Commencing at the northwesterly terminus of the course described as  
"S. 50° 49' E., 1500.00 feet" in the first above mentioned deed; thence,  
along the above mentioned course, S. 49° 26' 43" E. (bearings based on said  
Zone 5) a distance of 222.97 feet to the true point of beginning; thence,  
(A) S. 70° 49' 15" E., 36.71 feet; thence, (B) S. 50° 13' 39" E., 20.02  
feet; thence, (C) S. 10° 33' 39" W., 36.92 feet to a point on the above

62228

9335

said course described in the first above mentioned deed; thence, (D) along said course, N. 49° 26' 43" W., 56.97 feet to the true point of beginning.

Containing 0.82 of an acre of land, more or less, as to PARCELS ONE and TWO, described above.

This conveyance is made for the purposes of a freeway and adjacent frontage road and the grantor hereby releases and relinquishes to the grantees any and all abutter's rights including access rights appurtenant to grantor's remaining property in and to said freeway, provided however, that such remaining property shall have access to said freeway over the above described course designated, (B) in said PARCEL TWO and also have access to said frontage road over and across the above described course numbered (2) and over the course described as "N. 89° 36' E., 66.49 feet; thence, N. 50° 10' 40" W., 297.57 feet" in the Resolution of Abandonment by the State Highway Commission dated March 24, 1933 and recorded in Volume 134 of Official Records at page 118; records of said county, said frontage road will be connected to the freeway only at such points as may be established by public authority.

Also the underlying fee interest appurtenant to the property of which the above described parcels are a part, in the adjoining public ways.

RECORDED

JUL 22 1955

9335

INDEXED

The grantee further understands that the public character of the grant is to be used and maintained as public highway on the lands hereby conveyed in fee and the grantee, for himself, his successors and assigns, hereby waives any claim

VOL 812 PAGE 24

for say and all damages to grantor's remaining property contiguous to the property hereby conveyed by reason of the location, construction, landscaping or maintenance of said highway.  
(As used above, the term "grantor" shall include the heirs as well as the decedent and the words "himself" and "he" shall include the females gender in the case may be.)

Dated this 29th day of April 1955

Signed and delivered in the presence of

*Peter Guggia*  
*Domenica Guggia*

ACKNOWLEDGMENT OF GRANTEE

STATE OF CALIFORNIA County of Santa Barbara  
On this 29th day of April 1955 in the year one thousand nine hundred and fifty-five  
before me, Donothy V. Bisson, A Notary Public in and for said county and State, residing therein, duly commissioned and sworn, personally appeared PETER GUGGIA and DOMENICA GUGGIA,

known to me to be the persons described in and whose names are set forth in the instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and official seal this day and year in this certificate first above written.

My commission expires March 26, 1958

*Donothy V. Bisson*  
Notary Public in and for the County of Santa Barbara, State of California



ACKNOWLEDGMENT OF SUBSCRIBING WITNESS

STATE OF CALIFORNIA County of \_\_\_\_\_  
On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the year one thousand nine hundred and \_\_\_\_\_  
before me, \_\_\_\_\_, A Notary Public in and for said county and State, residing therein, duly commissioned and sworn, personally appeared \_\_\_\_\_

known to me to be the person whose name is subscribed to the within instrument as a subscribing witness thereto, who, being by me duly sworn, affirmed and said that he resides in the County of \_\_\_\_\_, State of California that he was present and saw \_\_\_\_\_

personally known to him to be the person described in, and who executed the said within instrument as part \_\_\_\_\_ thereto, who and whose the name that he, the official, signs and above, at the request of said person, subscribed his name as a witness thereto.

In Witness Whereof, I have hereunto set my hand and official seal this day and year in this certificate first above written.

Notary Public in and for the County of \_\_\_\_\_, State of California

JUL 22 1955 9:35

BOOK 812 PAGE 25

Dist.	County	Blk.	Sec.	No.

Section \_\_\_\_\_

C. O. Schedule No. \_\_\_\_\_

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
DIVISION OF HIGHWAYS

**GRANT DEED**  
(INDIVIDUAL)

To  
**STATE OF CALIFORNIA**

Recorded at request of \_\_\_\_\_

at \_\_\_\_\_ 19\_\_\_\_

of \_\_\_\_\_

County of \_\_\_\_\_

By \_\_\_\_\_  
Deputy Recorder  
Official Records Code, Sec. 41107

When recorded return to Division of Highways  
P. O. Box 600, San Luis Obispo, Calif.

Filed \_\_\_\_\_

(CERTIFICATE OF ACCEPTANCE, GOVERNMENT CODE, SEC. 27261)

That in To Certify, That the State of California, grantee herein, acting by and through the Department of Public Works, Division of Highways, hereby accepts for public purposes the real property, or interest therein, conveyed by the within deed and consents to the recordation thereof.

In Witness Whereof, I have hereunto set my hand this JUN 22 1955 day of \_\_\_\_\_, 19\_\_\_\_

FRANK B. DURKEE  
Director of Public Works  
By Fred L. Moore

District Right of Way Agent and Attorney in Fact

Document No. **9335**

RECORDED AT REQUEST OF  
SAN LUIS OBISPO COUNTY

AT - 21 MIN. PAST 6:00 PM  
JUL 22 1955

Official Records Dept.  
SAN LUIS OBISPO COUNTY, CALIF.

J. M. ...  
County Recorder

Indexed



120 179

178

121

195

122

195 189

115

123

197

196

199

203

Laetitia Vineyard & Winery

PARCEL 2 DOC  
NO 812 OR 22  
ACCESS FOR  
LAETITIA

Parcel 1 Doc No  
812 OR 22 & 134  
OR 118  
ACCESS TO  
LAETITIA &  
ADJOINING  
PARCELS

20' WIDE ACCESS  
EASEMENT FROM  
ROW EAST PER  
1566 OR 96

Google earth

Imagery Date: 4/10/2015 Lat: 35.0601563 Lon: -120.3322377 Elev: 614 ft. 01/23/17