

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

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| (1) DEPARTMENT Planning and Building | (2) MEETING DATE 8/23/2016 | (3) CONTACT/PHONE Brian Pedrotti, Project Planner / (805) 788-2788 | |
| (4) SUBJECT Continued hearing to consider an appeal by Janneck Limited and RRM Design Group of the Planning Commission's denial of a request for a Vesting Tentative Tract Map and Conditional Use Permit to allow an agricultural cluster subdivision of twenty-one parcels (totaling 1,910 acres) into one hundred and two (102) residential lots and four (4) open space lots, located approximately two miles south of the City of Arroyo Grande and two miles north of the community of Nipomo, on both the eastern and western sides of Highway 101. District 4. | | | |
| (5) RECOMMENDED ACTION It is recommended that the Board adopt the resolution denying the appeal and affirming the Planning Commission's denial of the project. | | | |
| (6) FUNDING SOURCE(S) Appeal fees | (7) CURRENT YEAR FINANCIAL IMPACT \$0.00 | (8) ANNUAL FINANCIAL IMPACT \$0.00 | (9) BUDGETED? Yes |
| (10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>180 minutes</u>) <input type="checkbox"/> Board Business (Time Est. <u> </u>) | | | |
| (11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A | | | |
| (12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A | | (13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A | |
| (14) LOCATION MAP Attached | (15) BUSINESS IMPACT STATEMENT? Yes | (16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>July 26, 2016</u> | |
| (17) ADMINISTRATIVE OFFICE REVIEW Lisa M. Howe | | | |
| (18) SUPERVISOR DISTRICT(S) District 4 | | | |

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Brian Pedrotti, Project Planner

VIA: Ellen Carroll, Planning Manager/Environmental Coordinator

DATE: 8/23/2016

SUBJECT: Continued hearing to consider an appeal by Janneck Limited and RRM Design Group of the Planning Commission's denial of a request for a Vesting Tentative Tract Map and Conditional Use Permit to allow an agricultural cluster subdivision of twenty-one parcels (totaling 1,910 acres) into one hundred and two (102) residential lots and four (4) open space lots, located approximately two miles south of the City of Arroyo Grande and two miles north of the community of Nipomo, on both the eastern and western sides of Highway 101. District 4.

RECOMMENDATION

It is recommended that the Board adopt the resolution denying the appeal and affirming the Planning Commission's denial of the project.

DISCUSSION

Background and History

On February 11, 2016, following five hearings beginning in July 2015, the Planning Commission denied a request by Janneck Limited (Laetitia) for a Vesting Tentative Tract Map and Conditional Use Permit to allow an agricultural cluster subdivision of twenty-one parcels (totaling 1,910 acres) into one hundred and two (102) residential lots and four (4) open space lots.

The agricultural cluster subdivision was originally submitted in 2003 and has a long history of processing due to multiple project design changes, the preparation of a Draft Environmental Impact Report (Draft EIR), extensive for additional water supply testing and evaluation, and two re-circulations of the Draft EIR. It is important to note, following release of the Draft EIR in 2008, the applicant submitted a revised project description that was intended to include much of the recommended mitigation measures of the Draft EIR. The Draft EIR, therefore, analyzed the original project description as "the project", and analyzed the revised project description as an EIR Alternative named "Applicant Proposed Alternative 2." The attached Planning Commission staff report dated August 13, 2015 (Attachment 4) chronicles the history of the project from the application submittal in 2003 to the Final Environmental Impact Report (Final EIR) in 2015 and the resulting applicant-proposed changes to the project description. As detailed in the August 13, 2015 staff report, staff recommended denial of the project based, in part, on inconsistencies with the General Plan and environmental impacts identified in the Final EIR as significant.

Central to staff's recommended denial of the project was the lack of a secondary access for the project's 101 new residential units. The primary access to the project site is via the Los Berros/ Thompson Road interchange to Sheehy Road to North Dana Foothill Road to Upper Los Berros Road. Secondary access is proposed to be via a connection to the existing Laetitia Vineyard Drive, which intersects with Highway 101 at an at-grade crossing. Caltrans representatives have identified concerns with the increased safety risk associated with additional vehicles using the at-grade driveway

intersection with Highway 101, and that they will not accept any additional traffic introduced onto the freeway at that intersection.

The Planning Commission heard and considered the project over a series of five hearings in 2015 and 2016 on August 13, September 10, October 29, January 14, and February 11. At the September 10 hearing, the Commission requested additional water information, including updated records of water levels and production data for the four project wells (10, 11, 14, and 15) and vineyard irrigation wells (5 and 9), and current pump tests for the project wells. Following the third public hearing on October 29, 2015, the Planning Commission conducted a straw vote, the results of which were to direct staff to return with findings and conditions for approval of a reduced agricultural cluster subdivision of 83 residential parcels consistent with the Applicant Proposed Alternative 2. Specifically, the Commission directed that the project be revised to eliminate 19 residential parcels within Sub-Cluster E and eliminate Well 11 for domestic use. On January 14, 2016, the Planning Commission reviewed the proposed findings and conditions of the 83-lot project, and directed staff to return with a final set of findings and conditions.

At the February 11, 2016 hearing, the Planning Commission heard additional testimony from representatives for Cal Fire and Caltrans on the issues of emergency and secondary access. The Commission expressed the following concerns: 1) that the project did not meet the secondary access requirements of the California Fire Code; 2) that the accident history at Laetitia interchanges suggested safety issues if secondary access was granted unrestricted; and 3) regarding the long-term viability of the fractured bedrock water source. The Commission directed staff to prepare findings for denial and denied the project on a 3-1 vote based on these concerns.

The attached Planning Commission staff report goes into greater detail on other issues addressed in the Final EIR, including aesthetics, biological resources, and cultural resources, as well as the General Plan and other County Element policy discussion. This report will focus on the findings for which the Planning Commission denied the project, which are the basis of the applicant's appeal.

Appeal

The applicant filed an appeal of the Planning Commission's decision on February 23, 2016. The appeal (Attachment 2) states that the reasons for the Planning Commission's denial of the application for a Vesting Tentative Tract Map and Conditional Use Permit "are not supported by the administrative record or the environmental impact report for the project." The appeal goes on to specifically address two primary issues of water supply and emergency access. In a supplemental letter dated May 2, 2016, the appellant provides further detail on the appeal issues, grouping the appeal issues into three primary topics: "Water Supply", "Secondary Access Requirements and Cal Fire", and "Use of Laetitia Vineyard Drive for Secondary Access Limited to Emergency Use Only and Caltrans". As the May 2, 2016 supplemental letter encompasses the appeal issues described in the original appeal letter, staff will address the appeal issues based on the supplemental letter.

Appeal Issue #1: Water Supply. The appellant argues that Planning Commission's denial of the project "due to uncertainty regarding the fractured bedrock water source, particularly during long-term drought conditions, the proposed map is not consistent" (with a number of policies and regulations related to the County Agriculture Element and Land Use Ordinance) is not supported by the record because A) water experts agree water supply is more than adequate, and B) 2015 testing confirmed more than adequate water supply even in long-term drought. This appeal issue includes:

- 1) an excerpt of Planning Commission hearing testimony from February 11, 2016;
- 2) an excerpt of the Water Resource section of the Final EIR; and
- 3) a Cleath-Harris Geologists letter dated October 15, 2015 regarding a Water Resources Update with an attached technical memorandum and Appendices A and B.

Staff Response:

Appeal Sub-Issue 1.A: "Experts Agree and EIR Concludes There Is Sufficient Water Supply for the Project": While both the applicant's hydrogeologist and the County's hydrogeologist agreed that the proposed water source was adequate to serve the project because the estimated project water demand was less than the estimated sustainable yield for the project as reflected in the conclusions of the Final EIR, uncertainty in the long term viability has always existed for the proposed fractured rock water source.

The Final EIR recognized this in Water Resources Section 4.A.3 (Aquifer Properties), which stated that "initial yield from

wells in fractured bedrock aquifers is often not representative of longer-term yields, which are typically lower”, and that “based on the available data, groundwater production needed for the proposed project is feasible, but will result in long-term average declines in groundwater levels associated with each proposed domestic well. Additional depletion of groundwater storage is necessary to sustain long-term water production to meet project demands. With continued pumping, equilibrium water levels for each well may be attained in time.”

This was summarized by the County hydrogeologist, Gordon Thrupp, at the first Planning Commission hearing and reiterated at subsequent hearings. Despite the amount of extensive testing performed on the wells and conclusion that the estimated project water demand was less than the estimated sustainable yield for the project, Dr. Thrupp included a number of “cautionary notes” during the hearing, including that:

- Rainfall during the testing program was 138% of normal.
- Favorable long-term production records are available for wells in the Obispo Formation, but no long term data are available for wells in the Monterey Formation at the property.
- Long-term yields from wells producing from bedrock aquifers commonly are less than short-term yields.
- Precise prediction of sustainable yield is not possible, particularly for fractured bedrock wells.

This is further reflected in the EIR and the Planning Commission’s denial findings, which noted the applicant’s original proposal to limit irrigation of agricultural crops during prolonged drought condition was inconsistent with Agricultural Policy 11 (Agricultural Water Supplies). As identified in the Agricultural Cluster Subdivision findings in the County Land Use Ordinance, water resources and all necessary services must be adequate to serve the proposed development, including residential uses, as well as existing and proposed agricultural operations on the subject site and in the site vicinity.

Appeal Sub-Issue 1.B: “2015 Testing Confirms More Than Adequate Water Supply Even in Long-Term Drought”: The Planning Commission, at the October 29, 2015 hearing, expressed concern with the use of Well 11, citing its close proximity to Los Berros Creek and the well level dependence on the base flow of the creek. Well 11 was also cited in a letter from Regional Water Quality Control Board dated August 28, 2015 (see Attachment 11) as potentially withdrawing from the subterranean stream of Los Berros Creek and being influenced by the base flow of the creek. They directed staff to return with a reduced project of 83 parcels and elimination of Well 11 for domestic use. Staff performed a review of the 2015 updated records of water levels and production data for the site wells and found that eliminating Well 11 for domestic use would not meet the project demand at 83 parcels. The Planning Commission cited this new information in their lack of confidence that the proposed fractured bedrock water source was sustainable in the long term. The County hydrogeologist noted that the elimination of Well 11 would reduce the available water supply to meet the demand for a maximum of 55 parcels.

Appeal Issue #2: Secondary Access Requirements & Cal Fire: The appellant argues that the Planning Commission’s denial finding stating that the project does “not meet the requirements of Public Resources Code 4290 (California Fire Code) because they do not provide unimpeded secondary access for the subdivision” is not supported by the record because 1) appropriate access is provided pursuant to State Law and Cal Fire Standards, and 2) the EIR and record show that the proposed secondary access for emergency purposes is acceptable. This appeal issue includes:

- 1) an excerpt of Planning Commission hearing testimony from August 13, 2015;
- 2) Public Resources Code Chapter 2, Sections 4251 – 4290;
- 3) California Board of Forestry and Fire Protection SRA Fire Safe Regulations; and
- 4) An excerpt of the Hazards and Hazardous Materials section of the Final EIR.

Staff Response:

Appeal Sub-Issue 2.A: “Appropriate Access Provided Pursuant to State Law and Cal Fire Standards”:

Since the original submittal, the primary access to the project site is via the Los Berros/Thompson Road interchange to Sheehy Road to North Dana Foothill Road to Upper Los Berros Road. Secondary access is proposed to be via a connection to the existing Laetitia Vineyard Drive, which intersects with Highway 101 at an at-grade crossing. Per discussions with the Fire Marshall, Public Resources Code 4290 requires that projects provide unimpeded secondary access in case of emergencies. Access needs to be available both for ingress and egress and should be commonly known by potential users in case of an emergency. Although the Fire Safe Regulations state “during a wildfire emergency”, the Fire Marshall has noted that Cal Fire has not historically limited secondary access narrowly to just wildfire emergencies. For instance, the intent of secondary access is to provide emergency access and evacuation in the case of an earthquake. Further, the access would also function as ingress for use by emergency vehicles into the project

site in case of medical emergencies.

Appeal Sub-Issue 2.B: "EIR And Record Evidence Show Proposed Secondary Access for Emergency Purposes is Acceptable":

Staff is in agreement that the EIR and record evidence show that the proposed secondary access with a guard gate is acceptable to Cal Fire. Following a meeting between Cal Fire and Caltrans representatives, Cal Fire submitted a letter dated July 7, 2016 (Attachment 9) that they would support an egress gate with a pressure pad for exiting, and a "Knox" key for ingress for emergency vehicles only, with the condition that all three proposed access points from the project from Upper Los Berros Road are constructed prior to issuance of building permits. However, Caltrans continues to state that the access gate specified by Cal Fire in and of itself does not provide sufficient assurances that the gate would only be used for emergency access, and that the potential for unrestricted access onto US 101 from Laetitia Vineyard Drive is the primary safety concern (Attachment 10).

Appeal Issue #3: Use of Laetitia Vineyard Drive for Secondary Access Limited to Emergency Use Only &

Caltrans: The Planning Commission's denial of the project included the finding that, "if unimpeded secondary access were allowed at Laetitia Vineyard Drive, for travel directly onto Highway 101 at the existing at-grade driveway, or the proposed guard gate did not operate as intended in perpetuity, the project would contribute additional vehicle trips to an intersection with an accident history greater than the statewide average (0.86 vs 0.76) thus creating an increased safety risk. According to the California Department of Transportation (Caltrans), which owns and maintains Highway 101 and is responsible for ensuring its safe operation, use of Laetitia Vineyard Drive for unimpeded secondary access is not allowed." The appellant argues that this finding is not supported by record evidence and the EIR because they argue that there will be no increased safety risk from emergency use of Laetitia Vineyard Drive and that the Laetitia property has a deeded right to unlimited use of Laetitia Vineyard Drive and Caltrans does not have jurisdiction. This appeal issue includes a grant deed from Peter and Domenica Guggia (previous owners of the project site) to the State of California for access to the freeway.

Staff Response:

Appeal Sub-Issue 3.A: "No Increased Safety Risk from Emergency Use of Laetitia Vineyard Drive":

Since the initial project submittal in 2003, Caltrans representatives have identified concerns with the increased safety risk associated with additional vehicles using the at-grade driveway intersection with Highway 101, and have stated that they will not accept any additional traffic introduced onto the freeway at that intersection. These statements have come in numerous letters (Attachment 10), including:

- Caltrans Response letter to the Draft EIR dated November 7, 2008
- Caltrans Response letter to the Draft Revised EIR dated May 16, 2012
- Caltrans Response letter to the Draft Revised and Recirculated EIR dated August 26, 2013
- Caltrans additional comments in a letter dated May 9, 2014
- Caltrans comments at Planning Commission hearings held between August 2015 and February 2016.

Over time, through pressure from residents or change in operators, the potential for use of the secondary access from residents as a "short-cut" to Highway 101 could increase, eliminating the need to travel much longer distances to the freeway via Upper Los Berros Road to North Dana Foothill Road to Sheehy Road to Thompson Road. Caltrans has stated that although the applicant has proposed a guard gate, they "cannot 'assume' voluntary compliance whereby non-emergency traffic will not be traveling onto US 101 unless a 'crash gate' type emergency access will be required instead of the 'gate restricting access' promoted by Cal Fire." Caltrans has stated they would accept a "crash gate" or other physical barrier to limit access. Caltrans has expressed concern that in the absence of a physical barrier such as a crash gate, the introduction of a guard gate would have the potential to result in non-emergency vehicles exiting onto the freeway, either through human error or permission. The "crash gate" type barrier is not acceptable to Cal Fire and does not meet the Public Resource Code requirement for secondary access.

Other factors have been discussed regarding this concern including that some residences proposed in the project will be located very close to the guard gate. Instead of being able to drive a few hundred feet to access Laetitia Vineyard Drive directly onto Highway 101, these residents would be required to drive an extra 5-6 miles south to the Los Berros interchange and north on Highway 101. Similarly, residents in the project would have to drive the same distance to get to the winery and tasting room of Laetitia instead of driving a few hundred feet through the guard gate. Caltrans is concerned that this additional pressure will erode the purpose of the guard gate to limit access to emergencies only. The

Planning Commission's findings for denial reflect this concern over increased safety risk from vehicles entering Highway 101.

The appellant has also noted that the 21 existing legal parcels that make up the Laetitia site would have unlimited access and use of Laetitia Vineyard Drive, and that future potential subdivisions could result in additional trips on this drive. However, all subdivisions are subject to Public Resources Code 4290 and would also be required to provide secondary access. Given the safety concerns at the Laetitia Vineyard Drive intersection with Highway 101, it is likely that primary access would be provided elsewhere and that secondary access issues would still need to be addressed. Moreover, it is unlikely that each of the existing 21 parcels could be subdivided or developed with residences in the manner appellant suggests given site constraints and the same access concerns.

Appeal Sub-Issue 3.B: "Laetitia Property Has Deeded Right to Unlimited Use of Laetitia Vineyard Drive and Caltrans Does Not Have Jurisdiction Over Project":

Representatives of Caltrans have confirmed that the subject property has access to Highway 101 through the at-grade driveway. Caltrans representatives, however, have stated that this access right is not unlimited, and that this right does not extend to the discretionary request of a Vesting Tentative Tract Map and Conditional Use Permit to add 101 new residential units to the property.

In their letter dated November 7, 2008, Caltrans states that an encroachment permit shall be required for the project, which may be denied if additional, non-emergency traffic will use the driveway. Further, in a letter to the Planning Commission dated June 8, 2015, Caltrans states that, "the historic access at this location has been to support agricultural uses. The subsequent Caltrans encroachment permit granted to this site (March 1984, Pressoir-Deutz Winery) was for a winery and tasting room, an ancillary agricultural use. Any change or intensification of use, as with the proposed development, is inconsistent with the historic use and the 1984 permit". Caltrans continues to be unsupportive of the proposed secondary access directly to the at-grade driveway at Highway 101.

Staff received a subsequent letter from Cal Fire on July 8, 2016 regarding additional access/egress requirements (see discussion under Appeal Issue #2 above). Staff also received letters from Caltrans on July 11, 2016 and July 15, 2016 that generally reiterated their concern that the access gate specified in the Cal Fire letter dated July 8, 2016 did not provide sufficient assurances that the gate would only be used for emergencies, and that they continue to support discussion to find an acceptable solution.

OTHER AGENCY INVOLVEMENT/IMPACT

The project was referred to: Public Works, Environmental Health, Ag Commissioner, County Parks, South County Advisory Council, Regional Water Quality Control Board, Cal Fire, Air Pollution Control District, Department of Fish and Game, Caltrans, Water Resources Advisory Council, Native American Heritage Commission, and US Fish and Wildlife. The Environmental Impact Report was referred to numerous agencies and entities listed on the EIR Mailing List.

BUSINESS IMPACT STATEMENT

Denial of this appeal would mean that the Planning Commission denial of the application would stand. The project is located in the Agriculture land use category, and is an agricultural cluster subdivision, which is a project that allows residential development within an Agriculture land use category subject to a series of specific criteria designed to protect the long-term sustainability of the agricultural operation. The Planning Commission found that the project would negatively affect the continuation, enhancement, and long-term preservation of both on and off site agricultural operations and existing agriculture due to potential conflicts with residential uses in close proximity to commercial agriculture, and for competition for limited groundwater resources. Denial of the appeal and project protects the existing opportunities in the Uniquely SLO County cluster (Wine, Agriculture, Recreation, Accommodation Cluster) identified in the San Luis Obispo County Clusters of Opportunity Economic Strategy (November 2010). Secondly, denial of the appeal and project would not provide opportunities to the Building Design and Construction cluster, which is comprised of architectural and engineering services and various building construction services.

FINANCIAL CONSIDERATIONS

The appeal was processed using the appellant's appeal fees.

RESULTS

Denying the appeal and affirming the decision of the Planning Commission would be a denial of the Vesting Tentative Tract Map and Conditional Use Permit and would not allow for the agricultural cluster subdivision of twenty-one parcels (totaling 1,910 acres) into one hundred and two (102) residential lots and four (4) open space lots. Upholding the appeal would mean the Applicant Proposed Alternative 2 would be approved. In this case, the Board of Supervisors would direct staff to return at a future meeting with findings and conditions of approval for consideration and approval.

ATTACHMENTS

1. Attachment 1 - Resolution and PC Denial Findings
2. Attachment 2 - Appeal Documents
3. Attachment 3 - Correspondence Received for the Board
4. Attachment 4 - August 13, 2015 PC Staff Report and Graphics
5. Attachment 5 - Correspondence PC_Aug 2015 - Feb 2016 (Clerk's File)
6. Attachment 6 - Planning Commission Minutes
7. Attachment 7 - Final EIR (Clerk's File)
8. Attachment 8 - Applicant Proposed Project Plans
9. Attachment 9 - Cal Fire correspondence
10. Attachment 10 - Caltrans correspondence
11. Attachment 11 - RWQCB letter
12. Attachment 12 - Planning Commission Powerpoint Presentations
13. Attachment 13 - Full Record File (Clerk's File)