

Sheila de la Guerra **Public Comment Group #13**

From: Cody Anderson <codyanderson71@gmail.com>
Sent: Tuesday, December 10, 2024 8:00 AM
To: sbcob
Subject: AG-2 properties not in overlay zone



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Hi,

What will the process be for properties that are in AG-2 but not in the overlay zone? Will they have to obtain conditional use permits or will there be an accelerated process to get commercial business permits?

I'm unclear why the overlay zone is only in Lompoc and Santa Maria, why not Buellton, Solvang or Santa Ynez?

Cody Anderson

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Sheila de la Guerra

From: Ballard Adobes <ballardadobes@gmail.com>
Sent: Tuesday, December 10, 2024 8:09 AM
To: sbcob
Subject: Public Comment on Dept. Agenda Item #3: Agricultural Enterprise Ordinance
Attachments: PMR Nov5 AEO ltr to SBC BOS.pdf

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

As a reminder, the following issue is among those raised in Paul Rohrer's November letter to the Board re deficiencies in the EIR:

Land Use & Planning

The EIR purports to analyze the potential effects of the AEO on the County's existing land use regulatory framework and concludes that it is insignificant. That conclusion is erroneous for several reasons, including that it fails to recognize that nothing on the face of the AEO ensures that it will only "involve[] development on rural agricultural lands, away from urban centers." Final EIR at 3.10-41.

By its own terms, the AEO applies to "agricultural lands zoned AG-II" in **proposed Sections 35.42.035(A) and 35.42.035(B)(1)**. This statutory language both creates unnecessary ambiguity and impermissibly conflicts with the County's Land Use and Development Code and the Comprehensive Plan. See Cal. Gov't Code § 65860.

The County Land Use and Development Code reserves AG-II zoning to areas appropriate for agricultural uses "**within the Rural Area as shown on the Comprehensive Plan maps.**" Land Use & Dev. C. § 35.21.010(B)(emphasis added); see also *Id.* at § 35.21.020, *Id.* at 35-69.1 ("The purpose of the Agriculture II district is to establish agricultural land use for large prime and non-prime agricultural lands in **the rural areas** of the County (minimum 40 to 320 acre lots) and to preserve prime and non-prime soils for long-term agricultural use.") (emphasis added); [SB County Agricultural Element](#) (explaining on page 11 that the AG-II "designation applies to acreages of farm lands and agricultural uses located **outside Urban, Inner Rural and Rural Neighborhood areas.**") (emphasis added).

This error could be easily correct by adding the following **bolded text** to the following sections of the AEO:

"The intent is to provide for flexibility in the development of uses . . . while promoting orderly development of these uses on agricultural lands zoned AG-II **within the Rural Area as shown on the Comprehensive Plan maps.**" -- Proposed Section 35.42.035(A)

"AG-II Zone. The requirements of this Section 35.42.035 (Agricultural Enterprises) apply to agricultural enterprise land uses that are proposed to be located on lands zoned AG-II **within the Rural Area as shown on the Comprehensive Plan maps.**" --- Proposed Section 35.42.035(B)(1).

While this error is easily fixable, the current language of the AEO impermissibly does not conform to the County Land Use and Development Code. Consequently, this nonconformance should be remedied.

Here is the entire letter, which is also attached as a pdf:

November 4, 2024

Recording Secretary
Santa Barbara County Board of Commissioners
c/o Planning and Development, Hearing Support
123 East Anapamu Street
Santa Barbara, CA 93101
VIA EMAIL TO: sbcob@co.santa-barbara.ca.us

RE: 11/04/24 Departmental Agenda Item 7. Agricultural Enterprise Ordinance

Dear Honorable Commissioners:

While, in general, an expansion of winery uses, artisanal onsite processing, and small-scale farm stays is a great idea with wide community support among agriculturalists, the particular Agricultural Enterprise Ordinance (“AEO”) puts hospitality enterprise before farmers and agriculture.

As this letter will demonstrate, both the Environmental Impact Report (“EIR”) supporting the proposed AEO and the Statement of Overriding Consideration (“SOC”) are legally deficient and cannot be adopted or certified as drafted.

Consequently, we respectfully request that the Board vote to both (a) return the proposed ordinance to Staff and the Planning Commission for further consideration, and (b) revise the EIR as legally mandated. Finally, even if the Board elects not to revise the proposed ordinance and the EIR (which we do not recommend), we strongly urge the Board to recirculate the revised EIR, because its revisions require recirculation under state law (see, Cal. Code of Regs. §§ 15088.5(a)(3) and (g)).

RECIRCULATE THE EIR

As the Lead Agency, the County must recirculate an EIR when changes are made to a project, in order not to deprive the public of a meaningful opportunity to comment upon:

- “a substantial adverse environmental effect of the project,” or
- “a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement.”

Cal. Code of Regs. § 15088.5(a). Moreover, “[a] decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.” CEQA Guidelines § 15088.5(e).

Here, October 2024 revisions (Revision Document (“RV01”)) to the EIR (23EIR-0003) for the AEO project introduce both of the foregoing circumstances, but the revisions in **RV01 were not circulated to the public for consideration or comment**. Such re-circulation is necessary and required.

A. Substantial Adverse Environmental Effect

First, RV01 reflects an **increase in the allowances for AEO campgrounds, farmstays, and daily attendees of small-scale events** on all AG-II parcels in unincorporated Santa Barbara County. In February 2024, the EIR found that the environmental impacts from the increased traffic generated by the level of AEO activities allowed under the program limits that existed in February 2024 would be **significant and unavoidable**.

Now, the RV01 shows that the “revised intensity levels” for AEO campgrounds, farmstays, and daily attendees of small-scale events **will result in an estimated 12.3% increase in traffic** (referred to as “vehicle miles traveled” or “VMT”) **over and above the increase already determined to be “significant and unavoidable” in the February 2024 EIR**, and:

[O]perational mobile-source **air pollutant emissions and operational greenhouse gas (GHG) emissions would proportionally increase by 12.3 percent across all pollutants**, including nitrogen oxides (NO_x), reactive organic carbon (ROC), carbon dioxide equivalents (CO₂e), among others.

The original, February 2024 EIR for the AEO expressly admits that all of the foregoing polluting impacts are **“significant and unavoidable,”** and the CEQA Guidelines require recirculation whenever a significant increase in environmental effects arises in a revision to the previously circulated EIR.

Notwithstanding the CEQA Guidelines, RV01 takes the position that recirculation is not required because “[n]o new significant impacts or substantive changes in the severity of the impacts would occur as a result of the proposed revisions to the intensity of campgrounds, farmstays, and small-scale events” and the increase would simply **“remain significant and unavoidable and similar to the impacts described under . . . the Final [February 2024] EIR.”**

That is not an accurate statement of the law or the underlying public policy. Here, there has unquestionably been a significant increase in a significant environmental effect – and the CEQA Guidelines require recirculation – because they do not contain a carve out excepting recirculation when a statement of overriding consideration is being made. The purpose of CEQA is to provide the public, other agencies, and the Board with information; and **failure to recirculate as mandated deprives everyone of such information and the ability to comment**. If the law were as RV01 for the AEO assumes, once a detrimental environmental impact was determined to be significant and unavoidable by a staff member or consultant, an agency would have a blank check to continue altering program limits – permitting environmental impacts to grow ever more dangerous and detrimental – without ever giving the public another opportunity to weigh in on when enough is enough.

Instead, under CEQA, recirculation is required because **the public must have a meaningful opportunity to comment** before substantial environmental impacts are introduced into their communities. This is why, where, as here, a change is made to the project prior to certification – including the introduction of additional data or other information – the updated EIR must be recirculated to provide to allow the public an opportunity to review and comment on “a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.” Cal. Code of Regs. § 15088.5(a).

B. Feasible Mitigation Measure or Project Alternative

Second, RV01 briefly introduces and explains the newly created Limited Agricultural Enterprise (“LAE”) Overlay Zone, which will be applied to “historic row/food crop growing regions located east and west of the cities of Santa Maria and Lompoc” to ensure that AEO hospitality uses “do[] not conflict with or result in significant impacts to the surrounding row/food crop agriculture.”

These LEA Overlay zones represent a new and previously unconsidered mitigation measure. While the mitigation measure in and of itself might be beneficial, it opens up questions as to why these specific areas and crops, and not others, were selected for protection. For example, there appears to be no evidence in the administrative record that such LAE Overlay Zones were considered for other historic crops such as flowers, grape vines, and orchards. Moreover, there is no justification for which locations are included and excluded.

This type of new mitigation measure is expressly identified as an example of “[s]ignificant new information” that triggers the recirculation requirement:

A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the proponents decline to adopt it.

Cal. Code of Regs. § 15088.5(a)(3).

Here, the public has not had an opportunity to comment on the applicability of this newly devised mitigation measure (LEA Overlay Zones) to other areas and crops for which an overlay zone has not been adopted.

Recirculation is required because the public must have a meaningful opportunity to comment both on the above-referenced substantial environmental impacts and these newly introduced, substantially different mitigation measures.

STATEMENT OF OVERRIDING CONSIDERATIONS IS LEGALLY DEFICIENT

A SOC is a written explanation of specific reasons, supported by substantial evidence in the record, that:

- social,
- economic,
- legal,
- technical, or
- other beneficial aspects

of a proposed project outweigh the project’s unavoidable adverse environmental impacts. Cal. Code of Regs. § 15093(b) (“The Statement of Overriding Considerations shall be supported by substantial evidence in the record.”)).

Here, the SOC is premised entirely on unsubstantiated **theories and ideas**, not on any identifiable benefits supported by substantial evidence in the record.

For example, **nothing in the AEO limits its application to farmers or ranchers**. Rather, **any** owner of AG-II land can use the AEO to develop hospitality uses on AG-II parcels in unincorporated Santa Barbara County.

The text of the “overriding considerations” listed at 1.7 in the County’s Statement of Overriding Considerations is set forth below in **bold font** and is followed by our comments highlighting deficiencies.

A. The Project . . . gives farmers and ranchers opportunities to supplement their agricultural income which, in turn, supports the continuation of agriculture as the additional income can be returned to the agricultural operation and buffer the economic pressures that may contribute to a decline in agriculture. This finding is deficient for many reasons apparent in its own language. The statement that additional income “can,” (i.e. could or might be) returned to the agricultural operation is speculative rather than evidentiary. This speculation is not supported by substantial (or, in fact, any) evidence of how or to what extent AEO tourism operations will support farmland protection and viability, and there is no requirement that any resulting supplemental income be reinvested into agriculture. Nor is there any requirement that significant agricultural uses be maintained on the AEO AG-II property because the AEO does not set forth definitions of “primary” or “secondary” as they relate to the agricultural land on which AEO uses will be allowed.

Again, it cannot be overstated that **nothing in the AEO limits its application to farmers or ranchers.** Any owner of AG-II land can use the AEO to develop AEO hospitality uses on AG-II parcels in unincorporated Santa Barbara County.

The SOC further relies on the speculative reference to unarticulated “economic pressures” that “may,” (i.e. might or might not) contribute to a decline in agriculture – when no such decline is supported by any evidence in the record. This is speculation layered on speculation without the assistance of any substantial evidence. Moreover, to the extent agricultural uses are in decline, the most common cause is land value pressure favoring uses other than farming, e.g., hospitality. Further, in the west, water is a necessary component of agriculture, and the AOE increases pressure on the aquifer by introducing thousands of additional visitors to the region.

The Project also offers opportunities for farmers and ranchers to bring visitors to agricultural lands and educate them regarding the need for, and benefits of, agricultural lands and where their food comes from. This is speculation of what might occur rather than a statement of what will occur backed by substantial evidence. As stated above, the AEO sets forth no requirement that agricultural uses be maintained on the property because there is no statutory definition of “primary” or “secondary” as they relate to agriculture.

B. The Project (as modified by incorporation of EIR mitigation measures) promotes the orderly development of supplemental agricultural uses and rural recreational and agritourism uses by incorporating development standards that require appropriate siting, setbacks, buffers, hours of operation, and other standards, thereby protecting public health and safety in addition to the natural environment. This finding is tautological and states nothing more than that the AEO attempts to mitigate its harmful effects on the environment as required by law. This is a statement of mitigation measures, not a finding of a public benefit capable of counterbalancing the admitted environmental harm.

C. The Project (as modified by incorporation of EIR mitigation measures) promotes continued agricultural production as an integral part of the region’s economy by providing farmers and ranchers with opportunities to supplement existing agricultural operations and income. In turn, the additional income from these supplemental uses would provide relief to those farmers and ranchers impacted by competition from foreign markets, rising costs of water supply, and other farm production expenses that could contribute to a decline in agricultural production. The first sentence of this “finding” is the same as finding “A” above, and it contains the same analytical flaw (depends on a use of funds that may or may not occur and is not required). The threats hypothesized in the second sentence are not supported by

substantial evidence in the record. In fact, California is a net exporter of agricultural products. Much farming is done from well water (rather than purchased), and the references to “farm production expenses” and to “a decline in agricultural production” are speculative.

D. The uses enabled and streamlined by the Project (as modified by incorporation of EIR mitigation measures) provide additional revenue sources for participating farms and ranches, helping sustain long-term agricultural production and incrementally decreasing pressure for conversion of agricultural lands to non-agricultural uses. The substance of this “finding” is the same as “A” and “C” above. To the extent it is different, the idea that the AEO is “incrementally decreasing pressure for conversion of agricultural lands to non-agricultural uses” is not supported by substantial evidence. **To the contrary, the AEO itself provides for the conversion of some agricultural land to non-agricultural uses.** The expected secondary effect of such conversion will be to increase land values to reflect hospitality uses – preventing new agricultural uses and encouraging conversion of existing agricultural uses. See [*As Investors Pay Top-dollar for Land, Farmers Are Often Priced Out*](#), Investigate Midwest (Aug. 19, 2024).

E. To the extent that the Project’s supplemental rural recreational and agritourism uses benefit ongoing agricultural operations by providing supplemental income to farms and ranches, the significant and unavoidable impacts to air quality (criteria air pollutants NOX and ROC), GHG emissions, and transportation (VMT) that would result from these uses are acceptable as these uses would further the goals and policies to preserve agriculture. This is a conclusory statement unsupported by substantial evidence. Further, it is speculative. The SOC concedes its own inadequacy when stating, that “**to the extent**” that it benefits agriculture (which from the record, it may or may not do), such benefits might make the conceded significant impacts acceptable. The SOC’s statement is a truism supporting nothing. The SOC is required to provide substantial evidence of the AEO’s counter-balancing benefits – not to speculate tautologically that if the AEO had such benefits, such benefits would provide such a balance.

F. The Project (as modified by incorporation of EIR mitigation measures) provides an efficient and clear permit process for the uses enabled and streamlined by the Project, which will increase compliance with the regulations and standards included as mitigation measures. Again, this statement is tautological rather than helpful. The assertion that the AEO contains measures to mitigate its harm, does not provide substantial evidence of its counterbalancing public benefit.

G. The Project (as modified by incorporation of EIR mitigation measures) establishes land use requirements and development standards for agricultural enterprise uses to minimize potential adverse effects to the natural environmental, natural resources, and wildlife, including riparian corridors, wetlands, sensitive habitats, and water resources. This finding is the same as that in “F” above. While it is commendable that mitigation measures are included to reduce the AEO’s admitted significant environmental impacts, that does not in itself provide substantial evidence of a public benefit capable of counterbalancing the AEO’s unmitigated substantial environmental effects.

H. No feasible mitigation measures were identified to reduce the project impacts related to criteria air pollutants, GHG emissions, and transportation. Two project alternatives were identified to reduce these impacts; however, neither alternative would result in reduction of these impacts to insignificance or achieve all of the identified objectives of the Project. This assertion misstates the applicable standard. There is no requirement that alternatives reduce impacts to “insignificant.” The findings above do not provide substantial evidence of any economic, legal, social, technological or other benefits, including regionwide or statewide environmental benefits, to be used in balancing the unavoidable environmental risks. Cal. Code of Regs. § 15093(a).

In conclusion, the SOCs are deficient because they fail to provide substantial evidence of any economic, legal, social, technological benefits (including regionwide or statewide environmental benefits) to be used in balancing the unavoidable environmental risks. Cal. Code of Regs. § 15093(a). Consequently, the Board's adoption of the proposed SOCs will not be compliant with California law, so the EIR should be returned to staff and consultants for revisions as explained here and as otherwise needed.

PROJECT ALTERNATIVES ARE INADEQUATE

As shown on the map below, the AEO applies to, and constitutes a re-zoning of, the vast majority of the unincorporated portion of Santa Barbara County (that is not state or federal land).

The project alternatives analyzed in the EIR are inadequate. The EIR sets forth the "no project" alternative together with two other project alternatives, neither of which reduces the acreage covered by the AEO.

It defies reason, in such a vast area, not to include an alternative that would reduce the geographic area affected by the ordinance. It strains credulity to believe that, in an AEO Project area encompassing hundreds of thousands of acres, that an alternative with a few less acres in sensitive areas might not reduce the Project's significant environmental impacts while satisfying project objectives. For example, an obvious project alternative would be to limit the area of the AEO only to rural parcels zoned AG-II-100 or larger. This would not only reduce the environmental impacts of the AEO hospitality uses, it would also remove pressure from the County's urban-ag boundaries.

EVALUATION OF ENVIRONMENTAL IMPACTS

The EIR, as written, cannot properly be certified by the Board because the analysis of environmental impacts is statutorily deficient and, in many cases, fails to analyze the potential cumulative effects allowed by the AEO. Although there are many potential categories for dispute, for brevity, this letter focuses on aesthetics, land use and planning, public services, and wildfire.

The AEO area covers hundreds of thousands of acres and, in the name of "streamlining," permits many hundreds, and possibly thousands, of potential development projects containing many thousands of potential hospitality units. Such projects and hospitality units will be permitted by a ministerial process without additional environmental review of their cumulative effects. Consequently, if their cumulative significant environmental impacts are not studied now, they will evade future review. This is often referred to as "piecemealing" and is unpermitted under CEQA. Therefore, it is imperative that the EIR for the AEO grapples with the AEO's potential cumulative, significant environmental impacts – which, as currently written, it does not

Aesthetic & Visual Resources

The AEO allows for the ministerial permitting (without additional environmental review) of 500 square foot hospitality cottages and campsites (collectively "Hospitality Units") together with related infrastructure buildings, 2,500 square foot event structures and related lighting. Moreover, depending on circumstances, individual projects not subject to environmental review could serve up to 500 hundred guests at a single event. Given the hundreds of thousands of acres included in the geographic area of the AEO, cumulatively, thousands of Hospitality Units together with hundreds of event facilities may be constructed – without further environmental review.

Despite the breathtaking scope of the AEO, the EIR systematically fails to grapple with the obvious cumulative aesthetic effects of such projects. No mitigation measures are imposed for any of the foregoing because the EIR concludes that each project will, in and of itself, be insignificant.

First, without the inclusion of any mitigation measures (of which there are **none**) the unsupported statement that even one project could not have an effect on aesthetics is obviously erroneous. For a simple example, even a dozen Hospitality Units placed along a scenic ridgeline has an obvious aesthetic effect – and such projects could (depending on circumstances) have up to 60 Hospitality Units, together with a 2,500 square foot event center.

More importantly, though, is that the EIR contains absolutely no analysis of the cumulative effects of such projects. The EIR states confidently (if incorrectly) that, because each Hospitality Unit (or each AEO use) would have an insignificant effect, there cannot be a cumulative effect. Again, this is facially erroneous. While the EIR (deficiently) does not articulate the potential number or impact envelope of Hospitality Units and event facilities, such facilities would be available to **all AG-II lots of at least 40 acres in an area encompassing hundreds of thousands of acres.**^[1] Consequently, it is reasonable to presume the existence potentiality of thousands of Hospitality Units, hundreds of event centers serving many thousands of guests, all of which would be exempt from further (meaning **any**) discretionary environmental review.

Night Sky & Lighting: The EIR acknowledges the aesthetically desirability of the existing dark sky in rural Santa Barbar County. It also admits the impact of development on dark sky conditions, including the cumulative glow of artificial lights. However, nowhere does the EIR analyze the cumulative effects of lighting for thousands of new Hospitality Units and hundreds of event spaces with their requisite supporting facilities. This follows from the same fallacy: assuming (incorrectly) that no individual Hospitality Unit (or, perhaps, though not articulated: individual project) will have a significant effect and that, therefore, the sum of all such effects must be insignificant – which, of course, defies both mathematical law and reason.

For the reasons set forth above, the analysis of aesthetic and visual resources is deficient.

Land Use & Planning

The EIR purports to analyze the potential effects of the AEO on the County's existing land use regulatory framework and concludes that it is insignificant. That conclusion is erroneous for several reasons, including that it fails to recognize that nothing on the face of the AEO ensures that it will only "involve[] development on rural agricultural lands, away from urban centers." Final EIR at 3.10-41.

By its own terms, the **AEO applies to "agricultural lands zoned AG-II"** in proposed AEO Sections 35.42.035(A) and 35.42.035(B)(1). This statutory language both creates unnecessary ambiguity and impermissibly conflicts with the County's Land Use and Development Code and the Comprehensive Plan. See Cal. Gov't Code § 65860.

The County Land Use and Development Code reserves AG-II zoning to areas appropriate for agricultural uses **"within the Rural Area as shown on the Comprehensive Plan maps."** Land Use & Dev. C. § 35.21.010(B)(emphasis added); see also *Id.* at § 35.21.020, *Id.* at 35-69.1 ("The purpose of the Agriculture II

district is to establish agricultural land use for large prime and non-prime agricultural lands **in the rural areas** of the County (minimum 40 to 320 acre lots) and to preserve prime and non-prime soils for long-term agricultural use.”) (emphasis added); [SB County Agricultural Element](#) (explaining on page 11 that the AG-II “designation applies to acreages of farm lands and agricultural uses located **outside Urban, Inner Rural and Rural Neighborhood areas.**”) (emphasis added).

This error could be easily corrected by adding the following **bolded text** to the following sections of the AEO:

“The intent is to provide for flexibility in the development of uses . . . while promoting orderly development of these uses on agricultural lands zoned AG-II **within the Rural Area as shown on the Comprehensive Plan maps.**” -- Proposed Section 35.42.035(A)

“AG-II Zone. The requirements of this Section 35.42.035 (Agricultural Enterprises) apply to agricultural enterprise land uses that are proposed to be located on lands zoned AG-II **within the Rural Area as shown on the Comprehensive Plan maps.**” --- Proposed Section 35.42.035(B)(1).

While this error is easily fixed, the current language of the AEO impermissibly does not conform to the County Land Use and Development Code. Consequently, this nonconformance should be remedied.

Public Services, Utilities, and Recreation

Similar to the EIR’s deficient analysis of aesthetics, there is an absolute failure to analyze the cumulative effects of all public services, including fire and police. The EIR states that because “there would be no new permanent residential populations that would affect personnel-to-population ratio, response times, or otherwise result in additional demand for fire protection or police services,” there can be no significant effects to public safety services. This assumption is erroneous.

Fire Protection Services: The analysis assumes that the only driver of needed fire services, which include fire and paramedic, is permanent residents. It then assumes away any significant cumulative impacts by saying each individual project will have an insignificant impact. Such analysis **fails to contemplate the cumulative impact of thousands of Hospitality Units and hundreds of event facilities serving a temporary population of thousands, which in many rural areas will well outnumber the number of permanent residents on any given day.** The idea that only permanent residents require fire and paramedic services is facially specious. We know this by the number of additional sirens we hear on summer weekends, and we can be sure that the County could know it from its own records. It is inarguable that thousands of added hospitality guests – many enjoying a glass or two of wine, a horseback ride or a bicycle ride, or some combination thereof, will require additional services. Further, as discussed below in the Wildfire section, the presence of more development and guest activities in rural areas will necessarily increase fire risks and events. Finally, the location of hospitality guests in rural areas – away from the more urbanized towns and townships, will increase drive times so that not only will there necessarily be more calls with more people, the fire staff time spent on those calls will statistically be increased.

Police Protection Services: As with fire protection, the EIR assumes away any potential effects by assuming that only permanent residents use police services. Though, the EIR’s analysis of police services at least vaguely

contemplates that educational opportunities and farm stays might possibly introduce additional temporary population to rural areas. However, the EIR then summarily dismisses any concern stating that such uses “are not anticipated to result in a measurable increase in calls for services related to crime, injury, or disputes due to the strict limitations in their size. As a result, impacts to police protection would be insignificant.”

First, it is glaring that the EIR’s analysis was limited to considering educational opportunities and farm stays rather than say weddings, wine tastings, and athletic events with up to 500 participants, when assuming away any need for additional policing. Obviously, it is indisputable that such events increase the need for police services. For example, our local police were just called upon to resolve a potentially deadly standoff at a local winery’s wedding venue. Further, the idea that wine tasters and partiers do not require police services or that a bicycle event for 500 participants would not require policing is not reasonable.

The EIR’s election to only consider the most benign subset of potential activities, and then summarily dismiss the need for any additional police services because there would not be any increase in police calls related to crime, injury, or disputes is fundamentally misguided. As in the other cases addressed above, there is a complete failure to contemplate the cumulative effects of each of these activities and venues that are defined as “insignificant” individually but would have obvious cumulative significance.

Wildfire

As in the above discussion, the wildfire analysis assumes away the cumulative effects of constructing and operating thousands of Hospitality Units and hundreds of event facilities serving thousands of users in high-fire risk rural areas lacking safety infrastructure for high-density occupancy. It is inarguable that construction and operation of guest activities in high-fire hazard rural areas served by narrow and winding roads (some unpaved) necessarily and inevitably increases wildfire fire risks. It does so by increasing the number of human-caused fires and by increasing the potential losses from such fires. **The conclusion that allowing potentially thousands of Hospitality Units and hundreds of event facilities in remote, high-fire areas will not result cumulatively in an increased number of fires and fire risk is not reasonable.**

In closing, for the reasons set forth above, the EIR needs to be further revised and recirculated, and the AEO needs to be revised prior to certification and adoption by the Board.

Sincerely,

Paul Rohrer

^[1] The failure to establish the outside limit of the development envelope the AEO allows without further environmental review constitutes a fatal flaw in the analysis because, without that number, it is impossible to fully analyze the cumulative effects of any one or more (or all) of the new AEO uses. We have attempted to make some suppositions, but our efforts (as well as the efforts in the EIR) are frustrated by the lack of any hard data regarding the total extent of the development envelope.

The Rohrer Family



ROHRER

2411 Santa Barbara Avenue, Los Olivos, CA

November 4, 2024

Recording Secretary
Santa Barbara County Board of Commissioners
c/o Planning and Development, Hearing Support
123 East Anapamu Street
Santa Barbara, CA 93101
VIA EMAIL TO: sbcob@co.santa-barbara.ca.us

RE: 11/04/24 Departmental Agenda Item 7. Agricultural Enterprise Ordinance

Dear Honorable Commissioners:

While, in general, an expansion of winery uses, artisanal onsite processing, and small-scale farm stays is a great idea with wide community support among agriculturalists, the particular Agricultural Enterprise Ordinance (“**AEO**”) puts hospitality enterprise before farmers and agriculture.

As this letter will demonstrate, both the Environmental Impact Report (“**EIR**”) supporting the proposed AEO and the Statement of Overriding Consideration (“**SOC**”) are legally deficient and cannot be adopted or certified as drafted.

Consequently, we respectfully request that the Board vote to both (a) return the proposed ordinance to Staff and the Planning Commission for further consideration, and (b) revise the EIR as legally mandated. Finally, even if the Board elects not to revise the proposed ordinance and the EIR (which we do not recommend), we strongly urge the Board to recirculate the revised EIR, because its revisions require recirculation under state law (see, Cal. Code of Regs. §§ 15088.5(a)(3) and (g)).

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Cal. Code of Regs. § 15088.5(a). Moreover, “[a] decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.” CEQA Guidelines § 15088.5(e).

ROHRER

2411 Santa Barbara Avenue, Los Olivos, CA

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[O]perational mobile-source **air pollutant emissions and operational greenhouse gas (GHG) emissions** would **proportionally increase by 12.3 percent across all pollutants**, including nitrogen oxides (NO_x), reactive organic carbon (ROC), carbon dioxide equivalents (CO_{2e}), among others.

The original, February 2024 EIR for the AEO expressly admits that all of the foregoing polluting impacts are “**significant and unavoidable**,” and the CEQA Guidelines require recirculation whenever a significant increase in environmental effects arises in a revision to the previously circulated EIR.

Notwithstanding the CEQA Guidelines, RV01 takes the position that recirculation is not required because “[n]o new significant impacts or substantive changes in the severity of the impacts would occur as a result of the proposed revisions to the intensity of campgrounds, farmstays, and small-scale events” and the increase would simply “**remain significant and unavoidable and similar to the impacts described under . . . the Final [February 2024] EIR**.”

That is not an accurate statement of the law or the underlying public policy. Here, there has unquestionably been a significant increase in a significant environmental effect – and the CEQA Guidelines require recirculation – because they do not contain a carve out excepting recirculation when a statement of overriding consideration is being made. The purpose of CEQA is to provide the public, other agencies, and the Board with information; and **failure to recirculate as mandated deprives everyone of such information and the ability to comment**. If the law were as RV01 for the AEO assumes, once a detrimental environmental impact was determined to be significant and unavoidable by a staff member

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or consultant, an agency would have a blank check to continue altering program limits – permitting environmental impacts to grow ever more dangerous and detrimental – without ever giving the public another opportunity to weigh in on when enough is enough.

Instead, under CEQA, recirculation is required because **the public must have a meaningful opportunity to comment** before substantial environmental impacts are introduced into their communities. This is why, where, as here, a change is made to the project prior to certification – including the introduction of additional data or other information – the updated EIR must be recirculated to provide to allow the public an opportunity to review and comment on “a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.” Cal. Code of Regs. § 15088.5(a).

B. Feasible Mitigation Measure or Project Alternative

Second, RV01 briefly introduces and explains the newly created Limited Agricultural Enterprise (“**LAE**”) Overlay Zone, which will be applied to “historic row/food crop growing regions located east and west of the cities of Santa Maria and Lompoc” to ensure that AEO hospitality uses “do[] not conflict with or result in significant impacts to the surrounding row/food crop agriculture.”

These LEA Overlay zones represent a new and previously unconsidered mitigation measure. While the mitigation measure in and of itself might be beneficial, it opens up questions as to why these specific areas and crops, and not others, were selected for protection. For example, there appears to be no evidence in the administrative record that such LAE Overlay Zones were considered for other historic crops such as flowers, grape vines, and orchards. Moreover, there is no justification for which locations are included and excluded.

This type of new mitigation measure is expressly identified as an example of “[s]ignificant new information” that triggers the recirculation requirement:

A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the proponents decline to adopt it.

Cal. Code of Regs. § 15088.5(a)(3).

Here, the public has not had an opportunity to comment on the applicability of this newly devised mitigation measure (LEA Overlay Zones) to other areas and crops for which an overlay zone has not been adopted.

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Recirculation is required because the public must have a meaningful opportunity to comment both on the above-referenced substantial environmental impacts and these newly introduced, substantially different mitigation measures.

STATEMENT OF OVERRIDING CONSIDERATIONS IS LEGALLY DEFICIENT

A SOC is a written explanation of specific reasons, supported by substantial evidence in the record, that:

- social,
- economic,
- legal,
- technical, or
- other beneficial aspects

of a proposed project outweigh the project's unavoidable adverse environmental impacts. Cal. Code of Regs. § 15093(b) ("The Statement of Overriding Considerations shall be supported by substantial evidence in the record.")).

Here, the SOC is premised entirely on unsubstantiated **theories and ideas**, not on any identifiable benefits supported by substantial evidence in the record.

For example, **nothing in the AEO limits its application to farmers or ranchers**. Rather, **any** owner of AG-II land can use the AEO to develop hospitality uses on AG-II parcels in unincorporated Santa Barbara County.

The text of the "overriding considerations" listed at 1.7 in the County's Statement of Overriding Considerations is set forth below in **bold font** and is followed by our comments highlighting deficiencies.

A. The Project . . . gives farmers and ranchers opportunities to supplement their agricultural income which, in turn, supports the continuation of agriculture as the additional income can be returned to the agricultural operation and buffer the economic pressures that may contribute to a decline in agriculture. This finding is deficient for many reasons apparent in its own language. The statement that additional income "can," (i.e. could or might be) returned to the agricultural operation is speculative rather than evidentiary. This speculation is not supported by substantial (or, in fact, any) evidence of how or to what extent AEO tourism operations will support farmland protection and viability, and there is no requirement that any resulting supplemental income be reinvested into agriculture. Nor is there any requirement that significant agricultural uses be maintained on the AEO AG-II property because the AEO does not set forth definitions of "primary" or "secondary" as they relate to the agricultural land on which AEO uses will be allowed.

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Again, it cannot be overstated that **nothing in the AEO limits its application to farmers or ranchers**. Any owner of AG-II land can use the AEO to develop AEO hospitality uses on AG-II parcels in unincorporated Santa Barbara County. The SOC further relies on the speculative reference to unarticulated “economic pressures” that “may,” (i.e. might or might not) contribute to a decline in agriculture – when no such decline is supported by any evidence in the record. This is speculation layered on speculation without the assistance of any substantial evidence. Moreover, to the extent agricultural uses are in decline, the most common cause is land value pressure favoring uses other than farming, e.g., hospitality. Further, in the west, water is a necessary component of agriculture, and the AOE increases pressure on the aquifer by introducing thousands of additional visitors to the region.

The Project also offers opportunities for farmers and ranchers to bring visitors to agricultural lands and educate them regarding the need for, and benefits of, agricultural lands and where their food comes from. This is speculation of what might occur rather than a statement of what will occur backed by substantial evidence. As stated above, the AEO sets forth no requirement that agricultural uses be maintained on the property because there is no statutory definition of “primary” or “secondary” as they relate to agriculture.

- B. The Project (as modified by incorporation of EIR mitigation measures) promotes the orderly development of supplemental agricultural uses and rural recreational and agritourism uses by incorporating development standards that require appropriate siting, setbacks, buffers, hours of operation, and other standards, thereby protecting public health and safety in addition to the natural environment.** This finding is tautological and states nothing more than that the AEO attempts to mitigate its harmful effects on the environment as required by law. This is a statement of mitigation measures, not a finding of a public benefit capable of counterbalancing the admitted environmental harm.
- C. The Project (as modified by incorporation of EIR mitigation measures) promotes continued agricultural production as an integral part of the region’s economy by providing farmers and ranchers with opportunities to supplement existing agricultural operations and income. In turn, the additional income from these supplemental uses would provide relief to those farmers and ranchers impacted by competition from foreign markets, rising costs of water supply, and other farm production expenses that could contribute to a decline in agricultural production.** The first sentence of this “finding” is the same as finding “A” above, and it contains the same analytical flaw (depends on a use of funds that may or may not occur and is not required). The threats hypothesized in the second sentence are not supported by substantial evidence in the record. In fact, California is a net exporter of agricultural products. Much farming is done from well water (rather than purchased), and the

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references to “farm production expenses” and to “a decline in agricultural production” are speculative.

- D. The uses enabled and streamlined by the Project (as modified by incorporation of EIR mitigation measures) provide additional revenue sources for participating farms and ranches, helping sustain long-term agricultural production and incrementally decreasing pressure for conversion of agricultural lands to non-agricultural uses.** The substance of this “finding” is the same as “A” and “C” above. To the extent it is different, the idea that the AEO is “incrementally decreasing pressure for conversion of agricultural lands to non-agricultural uses” is not supported by substantial evidence. **To the contrary, the AEO itself provides for the conversion of some agricultural land to non-agricultural uses.** The expected secondary effect of such conversion will be to increase land values to reflect hospitality uses – preventing new agricultural uses and encouraging conversion of existing agricultural uses. See [As Investors Pay Top-dollar for Land, Farmers Are Often Priced Out](#), Investigate Midwest (Aug. 19, 2024).
- E. To the extent that the Project’s supplemental rural recreational and agritourism uses benefit ongoing agricultural operations by providing supplemental income to farms and ranches, the significant and unavoidable impacts to air quality (criteria air pollutants NOX and ROC), GHG emissions, and transportation (VMT) that would result from these uses are acceptable as these uses would further the goals and policies to preserve agriculture.** This is a conclusory statement unsupported by substantial evidence. Further, it is speculative. The SOC concedes its own inadequacy when stating, that “**to the extent**” that it benefits agriculture (which from the record, it may or may not do), such benefits might make the conceded significant impacts acceptable. The SOC’s statement is a truism supporting nothing. The SOC is required to provide substantial evidence of the AEO’s counter-balancing benefits – not to speculate tautologically that if the AEO had such benefits, such benefits would provide such a balance.
- F. The Project (as modified by incorporation of EIR mitigation measures) provides an efficient and clear permit process for the uses enabled and streamlined by the Project, which will increase compliance with the regulations and standards included as mitigation measures.** Again, this statement is tautological rather than helpful. The assertion that the AEO contains measures to mitigate its harm, does not provide substantial evidence of its counterbalancing public benefit.
- G. The Project (as modified by incorporation of EIR mitigation measures) establishes land use requirements and development standards for agricultural enterprise uses to minimize potential adverse effects to the natural environmental, natural resources, and wildlife, including riparian corridors, wetlands, sensitive habitats, and water resources.** This finding is the same as that in “F” above. While it is

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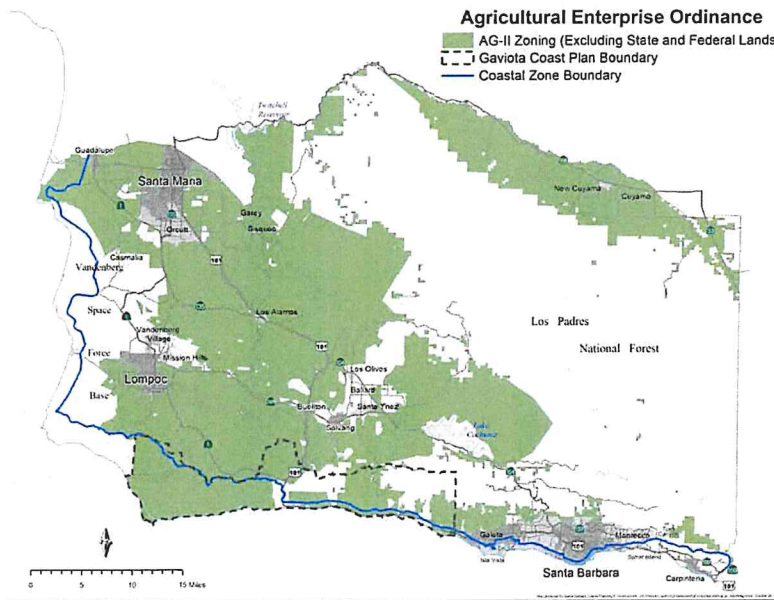
commendable that mitigation measures are included to reduce the AOE's admitted significant environmental impacts, that does not in itself provide substantial evidence of a public benefit capable of counterbalancing the AEO's unmitigated substantial environmental effects.

H. No feasible mitigation measures were identified to reduce the project impacts related to criteria air pollutants, GHG emissions, and transportation. Two project alternatives were identified to reduce these impacts; however, neither alternative would result in reduction of these impacts to insignificance or achieve all of the identified objectives of the Project. This assertion misstates the applicable standard. There is no requirement that alternatives reduce impacts to "insignificant." The findings above do not provide substantial evidence of any economic, legal, social, technological or other benefits, including regionwide or statewide environmental benefits, to be used in balancing the unavoidable environmental risks. Cal. Code of Regs. § 15093(a).

In conclusion, the SOCs are deficient because they fail to provide substantial evidence of any economic, legal, social, technological benefits (including regionwide or statewide environmental benefits) to be used in balancing the unavoidable environmental risks. Cal. Code of Regs. § 15093(a). Consequently, the Board's adoption of the proposed SOCs will not be compliant with California law, so the EIR should be returned to staff and consultants for revisions as explained here and as otherwise needed.

PROJECT ALTERNATIVES ARE INADEQUATE

As shown on the map below, the AEO applies to, and constitutes a re-zoning of, the vast majority of the unincorporated portion of Santa Barbara County (that is not state or federal land).



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The project alternatives analyzed in the EIR are inadequate. The EIR sets forth the “no project” alternative together with two other project alternatives, neither of which reduces the acreage covered by the AEO.

It defies reason, in such a vast area, not to include an alternative that would reduce the geographic area affected by the ordinance. It strains credulity to believe that, in an AEO Project area encompassing hundreds of thousands of acres, that an alternative with a few less acres in sensitive areas might not reduce the Project’s significant environmental impacts while satisfying project objectives. For example, an obvious project alternative would be to limit the area of the AEO only to rural parcels zoned AG-II-100 or larger. This would not only reduce the environmental impacts of the AEO hospitality uses, it would also remove pressure from the County’s urban-ag boundaries.

EVALUATION OF ENVIRONMENTAL IMPACTS

The EIR, as written, cannot properly be certified by the Board because the analysis of environmental impacts is statutorily deficient and, in many cases, fails to analyze the potential cumulative effects allowed by the AEO. Although there are many potential categories for dispute, for brevity, this letter focuses on aesthetics, land use and planning, public services, and wildfire.

The AEO area covers hundreds of thousands of acres and, in the name of “streamlining,” permits many hundreds, and possibly thousands, of potential development projects containing many thousands of potential hospitality units. Such projects and hospitality units will be permitted by a ministerial process without additional environmental review of their cumulative effects. Consequently, if their cumulative significant environmental impacts are not studied now, they will evade future review. This is often referred to as “piecemealing” and is unpermitted under CEQA. Therefore, it is imperative that the EIR for the AEO grapples with the AEO’s potential cumulative, significant environmental impacts – which, as currently written, it does not

Aesthetic & Visual Resources

The AEO allows for the ministerial permitting (without additional environmental review) of 500 square foot hospitality cottages and campsites (collectively “**Hospitality Units**”) together with related infrastructure buildings, 2,500 square foot event structures and related lighting. Moreover, depending on circumstances, individual projects not subject to environmental review could serve up to 500 hundred guests at a single event. Given the hundreds of thousands of acres included in the geographic area of the AEO, cumulatively, thousands of Hospitality Units together with hundreds of event facilities may be constructed – without further environmental review.

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Despite the breathtaking scope of the AEO, the EIR systematically fails to grapple with the obvious cumulative aesthetic effects of such projects. No mitigation measures are imposed for any of the foregoing because the EIR concludes that each project will, in and of itself, be insignificant.

First, without the inclusion of any mitigation measures (of which there are **none**) the unsupported statement that even one project could not have an effect on aesthetics is obviously erroneous. For a simple example, even a dozen Hospitality Units placed along a scenic ridgeline has an obvious aesthetic effect – and such projects could (depending on circumstances) have up to 60 Hospitality Units, together with a 2,500 square foot event center.

More importantly, though, is that the EIR contains absolutely no analysis of the cumulative effects of such projects. The EIR states confidently (if incorrectly) that, because each Hospitality Unit (or each AEO use) would have an insignificant effect, there cannot be a cumulative effect. Again, this is facially erroneous. While the EIR (deficiently) does not articulate the potential number or impact envelope of Hospitality Units and event facilities, such facilities would be available to **all AG-II lots of at least 40 acres in an area encompassing hundreds of thousands of acres.**¹ Consequently, it is reasonable to presume the existence potentiality of thousands of Hospitality Units, hundreds of event centers serving many thousands of guests, all of which would be exempt from further (meaning **any**) discretionary environmental review.

Night Sky & Lighting: The EIR acknowledges the aesthetically desirability of the existing dark sky in rural Santa Barbar County. It also admits the impact of development on dark sky conditions, including the cumulative glow of artificial lights. However, nowhere does the EIR analyze the cumulative effects of lighting for thousands of new Hospitality Units and hundreds of event spaces with their requisite supporting facilities. This follows from the same fallacy: assuming (incorrectly) that no individual Hospitality Unit (or, perhaps, though not articulated: individual project) will have a significant effect and that, therefore, the sum of all such effects must be insignificant – which, of course, defies both mathematical law and reason.

For the reasons set forth above, the analysis of aesthetic and visual resources is deficient.

¹ The failure to establish the outside limit of the development envelope the AEO allows without further environmental review constitutes a fatal flaw in the analysis because, without that number, it is impossible to fully analyze the cumulative effects of any one or more (or all) of the new AEO uses. We have attempted to make some suppositions, but our efforts (as well as the efforts in the EIR) are frustrated by the lack of any hard data regarding the total extent of the development envelope.

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Land Use & Planning

The EIR purports to analyze the potential effects of the AEO on the County's existing land use regulatory framework and concludes that it is insignificant. That conclusion is erroneous for several reasons, including that it fails to recognize that nothing on the face of the AEO ensures that it will only "involve[] development on rural agricultural lands, away from urban centers." Final EIR at 3.10-41.

By its own terms, the **AEO applies to "agricultural lands zoned AG-II"** in proposed AEO Sections 35.42.035(A) and 35.42.035(B)(1). This statutory language both creates unnecessary ambiguity and impermissibly conflicts with the County's Land Use and Development Code and the Comprehensive Plan. See Cal. Gov't Code § 65860.

The County Land Use and Development Code reserves AG-II zoning to areas appropriate for agricultural uses "**within the Rural Area as shown on the Comprehensive Plan maps.**" Land Use & Dev. C. § 35.21.010(B)(emphasis added); see also *Id.* at § 35.21.020, *Id.* at 35-69.1 ("The purpose of the Agriculture II district is to establish agricultural land use for large prime and non-prime agricultural lands **in the rural areas** of the County (minimum 40 to 320 acre lots) and to preserve prime and non-prime soils for long-term agricultural use.") (emphasis added); [SB County Agricultural Element](#) (explaining on page 11 that the AG-II "designation applies to acreages of farm lands and agricultural uses located **outside Urban, Inner Rural and Rural Neighborhood areas.**") (emphasis added).

This error could be easily correct by adding the following **bolded text** to the following sections of the AEO:

"The intent is to provide for flexibility in the development of uses . . . while promoting orderly development of these uses on agricultural lands zoned AG-II **within the Rural Area as shown on the Comprehensive Plan maps.**" -- Proposed Section 35.42.035(A)

"AG-II Zone. The requirements of this Section 35.42.035 (Agricultural Enterprises) apply to agricultural enterprise land uses that are proposed to be located on lands zoned AG-II **within the Rural Area as shown on the Comprehensive Plan maps.**" -- Proposed Section 35.42.035(B)(1).

While this error is easily fixed, the current language of the AEO impermissibly does not conform to the County Land Use and Development Code. Consequently, this nonconformance should be remedied.

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Public Services, Utilities, and Recreation

Similar to the EIR's deficient analysis of aesthetics, there is an absolute failure to analyze the cumulative effects of all public services, including fire and police. The EIR states that because "there would be no new permanent residential populations that would affect personnel-to-population ratio, response times, or otherwise result in additional demand for fire protection or police services," there can be no significant effects to publicly safety services. This assumption is erroneous.

Fire Protection Services: The analysis assumes that the only driver of needed fire services, which include fire and paramedic, is permanent residents. It then assumes away any significant cumulative impacts by saying each individual project will have an insignificant impact. Such analysis **fails to contemplate the cumulative impact of thousands of Hospitality Units and hundreds of event facilities serving a temporary population of thousands, which in many rural areas will well outnumber the number of permanent residents on any given day.** The idea that only permanent residents require fire and paramedic services is facially specious. We know this by the number of additional sirens we hear on summer weekends, and we can be sure that the County could know it from its own records. It is inarguable that thousands of added hospitality guests – many enjoying a glass or two of wine, a horseback ride or a bicycle ride, or some combination thereof, will require additional services. Further, as discussed below in the Wildfire section, the presence of more development and guest activities in rural areas will necessarily increase fires risks and events. Finally, the location of hospitality guests in rural areas – away from the more urbanized towns and townships, will increase drive times so that not only will there necessarily be more calls with more people, the fire staff time spent on those calls will statistically be increased.

Police Protection Services: As with fire protection, the EIR assumes away any potential effects by assuming that only permanent residents use police services. Though, the EIR's analysis of police services at least vaguely contemplates that educational opportunities and farm stays might possibly introduce additional temporary population to rural areas. However, the EIR then summarily dismisses any concern stating that such uses "are not anticipated to result in a measurable increase in calls for services related to crime, injury, or disputes due to the strict limitations in their size. As a result, impacts to police protection would be insignificant."

First, it is glaring that the **EIR's analysis was limited to considering educational opportunities and farm stays rather than say weddings, wine tastings, and athletic events with up to 500 participants**, when assuming away any need for additional policing. Obviously, it is indisputable that such events increase the need for police services. **For example, our local police were just called upon to resolve a potentially deadly standoff at a local winery's wedding venue.** Further, the idea that wine tasters and

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partiers do not require police services or that a bicycle event for 500 participants would not require policing is not reasonable.

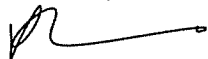
The EIR's election to only consider the most benign subset of potential activities, and then summarily dismiss the need for any additional police services because there would not be any increase in police calls related to crime, injury, or disputes is fundamentally misguided. As in the other cases addressed above, there is a complete failure to contemplate the cumulative effects of each of these activities and venues that are defined as "insignificant" individually but would have obvious cumulative significance.

Wildfire

As in the above discussion, the wildfire analysis assumes away the cumulative effects of constructing and operating thousands of Hospitality Units and hundreds of event facilities serving thousands of users in high-fire risk rural areas lacking safety infrastructure for high-density occupancy. It is inarguable that construction and operation of guest activities in high-fire hazard rural areas served by narrow and winding roads (some unpaved) necessarily and inevitably increases wildfire fire risks. It does so by increasing the number of human-caused fires and by increasing the potential losses from such fires. **The conclusion that allowing potentially thousands of Hospitality Units and hundreds of event facilities in remote, high-fire areas will not result cumulatively in an increased number of fires and fire risk is not reasonable.**

In closing, for the reasons set forth above, the EIR needs to be further revised and recirculated, and the AEO needs to be revised prior to certification and adoption by the Board.

Sincerely,



Paul Rohrer