



North County Watch

Looking Out Today For Tomorrow

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December 18, 2006

Board of Supervisors
County of San Luis Obispo
New County Government Center
1055 Monterey Street, Suite D-430
San Luis Obispo, CA 93408

Re: Advisory Committee's responses
Proposed Rural Planned Development (RPD) Ordinance
Hearing Date: December 19, 2006
Agenda item: C-6

Honorable Supervisors:

North County Watch supports the staff recommendation, agency recommendations, and advisory committee opinion to stop processing this proposed ordinance and to refer the issue of "Existing Underlying Legal Lots of Record" to the newly formed Transfer of Development Credit (TDC) Committee.

North County Watch (formerly PasoWatch) is a local non-profit, non-partisan organization committed to balanced and responsible development in and around the northern portion of San Luis Obispo County. Its purpose is to promote economic and environmental policies that maintain and enhance the uniqueness of our community.

The countywide problem of antique or underlying lots is serious. The new TDC Blue Ribbon Committee is staffed and underway. They currently are considering the issue of antiquated subdivisions and have obtained a county document titled "A Study of Non-Conforming Subdivisions in Rural Areas" (incorporated here by reference but not attached as it is a county

document) which includes recommendations not considered in the RPD proposal.

The proposed ordinance would encourage development in rural areas and therefore is in conflict with the TDC program and Smart Growth principles.

We believe that the TDC Blue Ribbon Committee is in the ideal position to consider coordinated solutions in order to avoid the current conflict whereby TDC projects are designed to move development into more urban areas and the proposed RPD projects would encourage development in rural areas.

If there were two committees, they would be working at cross purposes with each other resulting in inconsistent recommendations. Two committees would not only be a waste of resources, but would dilute the focus that this serious problem deserves.

Our previous letters and testimony join County Planning Staff, the County Agriculture Department, CDF, Air Pollution Control District, the State Department of Conservation, Land Conservancy of SLO County, County Farm Bureau, Santa Lucia Chapter of the Sierra Club, ECOSLO, Environment in the Public Interest, Templeton Area Advisory Group, Santa Margarita Area Advisory Council, Shandon Area Advisory Group, San Miguel Advisory Council, Agricultural Liaison Board, Agricultural Preserve Review Committee, Nipomo Community Services District and the Water Resources Advisory Committee in pointing out the serious problems and potential legal actions this ordinance would cause our county if adopted.

The record also contains testimony and letters from numerous county residents and citizen groups asking that you not adopt this ordinance and not authorize an Environmental Impact Report (EIR).

Even removing the provision that would enable development for land under Williamson Act contracts and/or removing the proposal for doubling the number of lots in some rural areas would not make RPD an acceptable ordinance.

The proposed RPD ordinance is inconsistent with all current rural development policies established by the County and has not been considered or planned for in the County General Plan, Framework for Inland Planning or the Resource Management System.

The proposed ordinance would significantly conflict with the goals and policies cited in the Clean Air Plan and appears to be a way to avoid the State law, SB 497, which limits lot line adjustments.

The Ag Commissioner has pointed out conflict and inconsistencies with the Ag and Open Space Element. The Resource Protection Division of the State Department of Conservation has pointed out violation of the intent of the Williamson Act.

The following sections contain more detailed information from our research.

Additionally, many of the environmental impacts identified in the initial study, some of which we have listed below, have potential impacts which are individually limited but considerable and significant when the potential cumulative impact is evaluated. In the case of water resources in rural areas, this impact is identified as potentially irreversible.

NEGATIVE IMPACTS ON WORKING FARMS AND RANCHES

Public testimony at the recent hearings regarding county trails policy made very clear the problems of development near production agriculture. This ordinance does not contain any specific protections for agriculture.

It is not apparent that the concerns raised when this ordinance was authorized for processing were taken into account. (See attached authorization dated February 4, 2003.)

Our ag cluster ordinances appear to be more protective of ag land in that they do not recognize a base density of underlying lots and require a defined size for the open space parcel and parcel sizes that support ag viability. (See remarks by Kami Griffin, page 3 attached minutes of Agricultural Liaison Board July 12, 2004.)

From the June 28, 2005 staff report, page 30: Implementation of the proposed ordinance would directly and indirectly affect agricultural resources in the rural areas of the County by increasing the potential for incompatible development, converting agricultural and rural land to non-rural uses, and increasing the potential for fire hazards and interference with agricultural operations. Cumulatively, these effects are significant, and can not be mitigated.

INCREASED RISK OF RURAL WILDFIRES

Public testimony from retired and current fire officials at the June 28, 2005 hearing pointed out the serious potential for increased risk of wildfires and the financial burden of staffing rural fire stations even if funds were available to build the fire stations. We would be creating rural pockets of indefensible development.

From the staff report, page 36: One of the existing tests for determining the minimum parcel size on a standard subdivision within the Rural Lands and Residential Rural land use category is the "Fire hazard/Response Time Test". Based on this test, the minimum parcel size would be determined by both the potential fire hazard rating (moderate or high), and the average response time (More than 15 minutes or 15 minutes or less)....

Implementation of the proposed ordinance would permit landowners to subdivide the parcel into lots 2.5 acres in size, and the number of parcels would be based on the number of underlying lots, regardless of the fire hazard rating, fire and emergency services response time, and quality and length of access roads.

NEGATIVE IMPACTS ON AIR QUALITY

Citizens expect County government to make decisions in the public interest that protect the natural resources of the County from pollution, impairment or destruction. Our local APCD and the State Attorney General consider an increase in vehicular miles traveled to have severe impacts on the level of greenhouse gas emissions. (See attached letter from Attorney General Bill Lockyer to Orange County Transportation Authority dated March 30, 2006.) An increase in vehicle miles traveled is a certain result should this ordinance be adopted.

NO MEASURABLE GOALS - VAGUE LANGUAGE

This ordinance has no clear goals. How then would we ever be able to evaluate or measure its performance?

Nothing in the ordinance assures us that its intent and purpose will be accomplished. The language and standards are vague and open to misinterpretation and abuse.

Section F, Required Findings are vague and insupportable, open to broad and subjective interpretation. Planning and design standards, current development subdivision standards, and Smart Growth standards offer options for creativity and already provide the promise of true protections for our agricultural lands, our county's agricultural heritage and our rural natural resources.

POTENTIALLY IRREVERSIBLE IMPACTS ON WATER RESOURCES

From the staff report, page 44-45: Increased potential for construction of new development in rural areas would increase the demand for water resources, and may affect the availability of water for natural resources, agriculture, and existing development.

It is likely that most properties affected by the proposed ordinance would rely on groundwater, and the use of water would not be regulated, contributing to substantial overdraft in areas currently in deficit.

Cumulative impacts resulting from the increased use of water may be potentially significant and irreversible, and difficult to mitigate in rural areas where onsite wells are utilized. The county is currently updating its Conservation Element and Water Master Plan. Any EIR or consideration of the potential impacts of the RPD ordinance is premature until these studies are completed.

POTENTIALLY IRREVERSIBLE IMPACTS ON BIOLOGICAL RESOURCES

From staff report, page 32: ... the potential increase in development within habitat for special-status species including San Joaquin kit fox, special-status plants species, and oak woodland would reduce the overall available habitat for these species. In addition, increased potential for development within rural areas would result in indirect impacts to habitat areas, sources of surface water, riparian and wetland habitat, and wildlife migration corridors as a result of increased human activity in unpopulated areas, air, light and noise pollution, and erosion and sedimentation.

In addition, implementation of the ordinance may compromise efforts to establish large habitat conservation areas within the County for oak woodland, San Joaquin kit fox, vernal pool habitat areas, and other species and habitat types. The cumulative loss of habitat, interference with wildlife activities, and indirect impacts of future development would result in potentially significant and irreversible impacts to biological resources.

NEGATIVE IMPACTS ON RURAL ROADS AND TRAFFIC

Our rural roads are not designed for high speed commuter traffic. This proposal will increase the potential for dangerous congestion on two lane roads and the potential for unsafe conditions on

public roadways from among other things, limited access, unsafe design features, inadequate sight distances, slow vehicles and construction traffic.

We understand the county budget for maintenance of our rural roads is underfunded by about \$100 million. This proposal will clearly increase vehicle trips thus impacting evacuation planning and reducing existing levels of service within our area-wide circulation system.

From staff report, page 41: The cumulative effects of future development within rural areas may exceed the capability of rural roads, and require improvements at a regional level.

Funding is not readily available for regional road improvements within rural areas, and the potential for a reduction of level of service, substandard roads, inadequate emergency access, and traffic hazards due to the increased number of access driveways may be significant.

INCREASED NEED FOR PUBLIC SERVICES

From staff report, page 38: Implementation of the proposed project would increase the potential for land subdivisions and development, and induce growth and urban sprawl in rural areas of the county. Future development would likely result in the expansion of public services, utilities, and emergency response station into rural areas. In addition, roadways may have to be extended or improved to meet the standards required to support additional development.

VIOLATION OF INTENT OF WILLIAMSON ACT

The Williamson Act provisions in the proposed ordinance, especially given the currently used definition of "site", could have a significant impact upon agriculture and tourism in the county.

The provision to move development from land under Williamson Act contract to contiguous non-contracted land appears to facilitate violation of the intent of the Williamson Act and the Laird Bill. This issue is not addressed in the June 28, 2005 staff report, but was reviewed by the Ag Preserve Review Committee.

The Williamson Act has been instrumental in preserving our working farms and ranches and has helped us retain our rural ambiance. Over 40% of land in the county is protected by the Williamson Act.

One of the main purposes of the Act is to prevent premature conversion of ag land into residential use. This proposal would allow that premature conversion by moving the underlying lots to an adjacent parcel.

The attached State Department of Conservation (DOC) letter states that subdivision on contracted land for a primary purpose that does not appear to be agricultural production, but creation of home sites, would violate the intent of the Williamson Act. In addition the letter states that it is the County's responsibility to ensure that subdivision of Williamson Act land for residential purposes not occur. (See attached Letter to John Nall from State Department of Conservation dated June 23, 2005.)

Section B of the ordinance speaks of clustering parcels on adjacent non-Williamson Act lands. There is a real question as to whether Williamson Act contracted lands are legally allowed to sell

off their development potential in any manner. While a stated purpose of the ordinance is to preserve and "...enhance(s) significant natural resources.", how will that be accomplished if this ordinance allows contiguous non-contracted lands to be converted to one or 2 ½ acre residential parcels?

INCREASED BURDEN TO ALL COUNTY TAXPAYERS

How is it sensible or responsible to expose the taxpaying public to the expense of litigation, Williamson Act violations and either substandard service or unknown expenses for public services and roads, schools, parks, solid waste, libraries, and especially for law enforcement and fire safety?

In addition, we respectfully request that the cost of processing this ordinance and the justification for allocation of staff time to process it instead of other planning department priorities be made public.

INCENTIVES TO CREATE SMALLER PARCELS

The problem for inland North County identified by the Land Conservancy's Rural Settlement Pattern Strategy reports, the 1977 Planning Department Study of Non-Conforming Subdivisions in Rural Areas and more recently by LAFCO intern Craig Baracco is the existing inventory of too many small substandard parcels in rural areas. This problem is especially severe in inland North County. The El Pomar-Estrella planning area contains about half of the antiquated subdivisions in the County.

This area is already exceeding growth limits. The TDC program created to solve that problem has instead created even more lots.

This ordinance would essentially eliminate minimum parcel size policies and allow parcels as small as one acre in rural areas.

From the staff report, page 27: Compared to current regulations, the proposed RPD in Rural Lands has the potential to create more residential clusters out in the rural areas. Creating more residential clusters means also creating more small lots than currently exist.

An environmental analysis will only confirm what these studies, the staff report, and common sense have already made clear. Small parcels will sell faster. Incentives to create more small parcels will only make the existing problem worse.

NOT ALL UNDERLYING LEGAL LOTS ARE BUILDABLE

The initial study states on page 17 that "these underlying legal lots of record can be built on now". Recent developments denying access for all but two of the lots in an antiquated subdivision near Highway 46 identified as Sheid Rancho and now called Vineyard Hill Ranch Properties illustrate the problems with that assumption. (See attached: Letter from State Department of Transportation to Kelly Gearhart dated November 20, 2006 and Letter from County Department of Planning and Building to Jamie Kirk dated November 30, 2006.)

There is the risk that changing the parcel sizes and redrawing the lot lines of underlying lots could

convert unbuildable lots into buildable lots thus making worse the problem that this ordinance proposes to solve.

During the public review of this ordinance, claims were made that any legal lot can pull a permit at anytime and start building. This is an oversimplification and disregards the reality that many of these lots have impediments to development that are not easily overcome as shown by the Vineyard Hill Ranch example.

There is a coastal ordinance which allows substandard lots to merge.

INVESTMENT-BACKED EXPECTATIONS OF LANDOWNERS

Landowners who believe their opinions and goals based upon community needs and concerns are clearly set out and protected in area plan standards will find that this proposal disregards and would override carefully crafted area plans.

Citizens have the right to rely upon orderly development guided by county planning documents and area plan standards when they purchase property. This ordinance could change surrounding land uses in dramatic and incompatible ways and alter the character of communities which could in turn reduce property values.

LAND USE PLANNING SHOULD BE DONE BY PLANNING DEPARTMENT

Orderly long range land use planning is the responsibility of the county planning department. This proposed ordinance was developed in private by a small group which invited developers and their representatives to participate in its creation. (See attached minutes of the Agricultural Liaison Board meeting July 12, 2004.)

CREATION OF A WAY TO AVOID SB 497 - THE STATE LOT LINE LAW

This 2001 Amendment to the Subdivision Map Act should allow local government more control over the reconfiguration and build-out of antiquated subdivisions. This ordinance creates a way to reconfigure an unlimited number of parcels and appears to avoid the intent and requirements of SB 497.

SUMMARY

In summary, based upon our research into the issues and the evidence in the record, we believe that this ordinance is not in the best interest of our county and should not be adopted.

We have not found any facts or studies that advise rewriting and reversing our rural land use and Smart Growth policies along with years of careful long range planning at this time of increasing pressure for development.

We ask you to stop processing this ordinance and refer the problem of underlying lots to the new TDC Blue Ribbon Committee.

Respectfully,

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List of Attachments

Minutes of the Agricultural Liaison Board meeting July 12, 2004

Letter to John Nall from State Department of Conservation, dated June 23, 2005

Letter from State Department of Transportation to Kelly Gearhart, dated November 20, 2006

Letter from County Department of Planning and Building to Jamie Kirk, dated November 30, 2006

San Luis Obispo County Board of Supervisors authorization to process amendments to the Land Use Ordinance regarding a rural planned development ordinance February 4, 2003

“A Study of Non-Conforming Subdivisions in Rural Areas”, San Luis Obispo County Planning Department document dated November 1977, incorporated by reference but not attached

Letter from California Attorney General Bill Lockyer to Orange County Transportation Authority, dated March 30, 2006