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February 1, 2023  
*VIA EMAIL*

Honorable Members of the Santa Barbara County Local Agency Formation Commission  
105 E. Anapamu Street  
Santa Barbara CA 93101  
Email: lafco@sblafco.org

**Re: Bailey Avenue Sphere of Influence Expansion, City of Lompoc, CA**

Honorable Commissioners:

We write today on behalf of our client Harridge Development Group, a partner in the groups that own the two Bailey Avenue properties ("**Bailey Avenue Properties**") subject to the City of Lompoc's ("**City**") Sphere of Influence ("**SOI**") adjustment application ("**City SOI Adjustment**"). We write today, in particular, to address the points raised by the Environmental Defense Center ("**EDC**") in their December 7, 2022 and January 31, 2023 letters.

**I. Introduction.**

When EDC's misrepresentations of the law and the facts in the record are set aside, there is full agreement between the parties that: (1) the potential loss of the prime agricultural land within the Bailey Avenue Properties is a foreseeable future consequence of the City SOI Adjustment being granted; (2) that loss would constitute a significant environmental impact; and (3) that significant environmental impact cannot be mitigated to a less than significant level, but is rather only partially mitigated by the 1:1 conservation easements committed to by the City. These are the exact conclusions reached by the City in its California Environmental Quality Act ("**CEQA**") analysis of the City SOI Adjustment, which fully complies with the requirements of CEQA.

Where a significant and unavoidable environmental impact exists, an agency is not prohibited by CEQA from approving a project. Rather, an agency is called upon to weigh the policy benefits of the project against the significant and unavoidable environmental impact. If, on balance, based on the evidence in the record, the agency finds the policy benefits outweigh the significant impact, it may approve the project by adopting a "Statement of Overriding Considerations" that states the basis of its policy decision.

This Commission's task in analyzing the appropriateness of the City SOI Adjustment is thus one of a balancing of competing policy interests, taking into account applicable statutory requirements, including LAFCO law and CEQA, as well as local LAFCO policies. For the reasons stated below, we believe strongly that the facts in the record and the policy interests promoted by the City SOI Adjustment strongly outweigh the "partially mitigated" impact of the loss of the prime agricultural land within the Bailey Street



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Properties. Such a determination would be well supported by facts in the record and the multiple important policy objectives advanced by the City SOI Adjustment.

**II. The Balancing Of Competing Policy Interests Called For By the LAFCO Law And Local LAFCO Policy Strongly Favors Granting The City SOI Adjustment.**

EDC asserts that the state LAFCO statute, the Cortese-Knox-Hertzberg Government Reorganization Act of 2000 (“**CKH Act**”) and Santa Barbara County Local Agency Formation Commission (“**LAFCO**”) written policy *prohibit* this Commission from approving the City’s SOI Adjustment. That is not so.

The CKH Act’s statement of purpose indicates that LAFCOs are meant to strike a balance between the competing interests of local governments in the orderly expansion of their boundaries and state interests in avoiding sprawl and protecting agricultural lands, with a particular focus on providing governmental services and housing for persons and families of all income levels in the most efficient manner possible.<sup>1</sup> The statutory factors this Commission is called upon to consider in rendering its decision listed in Government Code, Section 56668 are broad and multi-faceted, and include, among others, patterns of land uses, the likelihood of growth in the area, proximity to other populated areas, the availability of organized services, the effect of the action on relevant economic interests, the effect of the action on adjacent areas, the extent to which granting the proposal will help a city meet its Regional Housing Needs Assessment (“**RHNA**”) goals, comments from the landowners, agencies and the general public, and the extent to which the proposal will promote Environmental Justice and equity.<sup>2</sup>

And while this LAFCO’s written policies unquestionably *discourage* the conversion of prime agricultural lands, such written policies also state that “the loss of any prime agricultural soils should be balanced against LAFCO policies and a LAFCO goal of conserving such lands.”<sup>3</sup>

Here, the balance of policy considerations identified in the CKH Act, Government Code, Section 56668, strongly support granting the City SOI Adjustment. Among other supporting facts, information, and arguments in the record, the materials submitted to the Commission by Senator Robert M. Hertzberg, co-author of the CKH Act, in his January 30, 2023 Discussion Memorandum (“**Hertzberg Memo**”), and the letter dated January 31, 2023 by Jack Bodger, owner of the larger of the two properties within the City SOI Adjustment, the Bodger Ranch (“**Bodger Letter**”), amply demonstrate the relevant policy benefits supported by the City SOI Adjustment:

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<sup>1</sup> Gov’t Code, § 56001.

<sup>2</sup> Gov’t Code, § 56668 (Factors to be considered in review of reorganization proposal).

<sup>3</sup> See, Santa Barbara LAFCO Commissioner Handbook, Policy Guidelines and Standards, Section 7.V, Policies Encouraging Conservation of Prime Agricultural Lands and Open Space Areas, Page 6, Policy 4.



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- Granting the City SOI Adjustment would not enable the immediate redevelopment of the Bailey Avenue Properties with residential uses. Rather, it would enable the City to return to the Commission at a future date with a fully developed annexation proposal with environmental and other analysis that would enable the Commission to make a fully informed annexation determination. (**Hertzberg Memo**, at pp. 2-7.)
- The state is now in a severe, legislatively declared housing crisis and infill housing production in the City has stagnated over the last decade, despite the longstanding existence of underutilized infill sites within existing City limits. The City's upcoming RHNA goals are over four times greater for the next eight years than the last eight years, and the City only produced 35 percent of its much-lower RHNA goals in the last 8 years using an infill-only approach, including virtually no affordable housing. Granting the City SOI Adjustment would enable the City to address the housing crisis, the lack of infill housing production in the City, and its RHNA obligations by seeking to annex the Bailey Avenue Properties in the future, which are owned in part by my client, a housing developer looking to develop housing. (**Hertzberg Memo**, at pp. 2-3.)
- Environmental Justice ("EJ") considerations warrant granting the City SOI Adjustment to allow the City to analyze and consider the future implementation of larger and more effective buffers and other protections between existing farmland and two majority Latino elementary schools and a majority-Latino community, the racial group that continues to be the most negatively impacted by "pesticide drift" from farms. Better protecting this community is an EJ imperative. (**Hertzberg Memo**, at pp. 4-5.)
- "Sustainable Communities" principles support granting the City SOI Adjustment because it would: (1) promote sustainable land use patterns that would place new housing in the closest location available in the County to the likely future "Space Port" gate at Vandenberg Space Force Base ("VSFB"), thus reducing VMT and GHG emissions by placing housing and jobs in the closest available proximity to each other; and (2) lead to plans for new housing and infrastructure needed to support the projected future growth of VSFB as a public and private hub for the international space industry, which is critical to the region's future economy and is expected to produce more than 16,000 new high-quality jobs in the next decade for employees *who will need housing*. (**Hertzberg Memo**, at pp. 5-6.)
- Equity and social justice principles warrant allowing the City to expand and take equal advantage of the VSFB "Space Base" as compared to other, more affluent and growing communities in North County. Compared to the rest of North County, the City has the lowest median income, the lowest median home values, the highest percentage of poverty, the second highest percentage of Latino population, stagnating growth in new housing production, and is the only City or



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community in North County reported to have recently experienced negative population growth. (**Hertzberg Memo**, at pp. 6-7.)

- Due to their close proximity to residences and elementary schools, the Bailey Avenue Properties cannot be safely operated as intensive farming operations due to the dangers presented by pesticide drift to adjacent elementary schools and residents in Lompoc. As a result, as stated by Jack Bodger, the Bodger Ranch “is not functionally maintained as, and does not produce yields and income consistent with, prime agricultural land.” (**Bodger Letter**, at pp. 1-3.)
- The City has already expanded urban infrastructure to Bailey Avenue, building an urban sewer line in the 1960s at significant cost to the landowners on the east side of Bailey Avenue. By its nature, this infrastructure has already expanded the City’s “probable future boundary” and service area<sup>4</sup> to the east side of Bailey Avenue, services the City can and would efficiently provide to the Bailey Avenue Properties, if annexed in the future. (**Bodger Letter**, at pp. 1-3.)
- Granting the City SOI Adjustment would allow the City to protect current and future residents by planning the creation of a new western municipal border that is more appropriately designed to buffer and otherwise mitigate agricultural impacts in line with the current knowledge and technology, allowing a safer and more functional co-existence of adjacent urban and farmland uses where the interface at the western edge of the City. (**Bodger Letter**, at pp. 1-3.)

On the other hand, boiled down to the facts, EDC’s ultimate position is that high-intensity prime agricultural uses *must* be maintained in a location that is immediately adjacent to an elementary school and single-and-multi-family residential uses with no – or otherwise insufficient – buffers or other protections for students and residents. Beyond that, significant portions of the Bailey Avenue Properties are not fully utilized as prime agricultural land in the first place due to legitimate safety concerns for those same adjacent students and residents. (See **Bodger Letter**, at pp. 1-3.) In actual practice, the land is “sub-prime.” The true facts thus do not support EDC’s arguments, which focus on demonstrating the “prime” intensive agricultural use of nearby properties that are not part of the City SOI Adjustment. (See EDC 12/7/2022 Letter at p. 3, and 1/31/2023 Letter at pp. 2-3, discussing the Wineman property that is not part of the Bailey Avenue Properties in the City SOI Adjustment.)

As a *general* policy matter, there is no dispute that maintaining prime agricultural land is a critically important policy objective. But in this case, as Senator Hertzberg aptly put it, “multiple relevant policy objectives advanced by the state in the last 20 years militate heavily toward allowing the City to expand its Sphere of Influence to include the Bailey Avenue properties, notwithstanding their designation as

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<sup>4</sup> See CKH Act, Gov’t Code, § 56076, defining a Sphere of Influence as a “plan for the probable physical boundaries and service area of a local agency.” See also, Gov’t Code, § 56668(b)



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prime agricultural land.” (**Hertzberg Memo**, at p. 7.) While it may not be an easy policy decision, we believe the applicable relevant policies and facts demonstrate it is the best policy decision here.

**III. The City’s CEQA Analysis is Valid And Calls Upon This Commission To Make “Overriding Consideration” Policy Findings To Approve The City SOI Adjustment.**

**a. The City’s CEQA Analysis Fully Analyzes the Impacts Associated With The Potential Future Transition of the Bailey Avenue Properties to Residential Uses.**

EDC misrepresents the analysis and conclusions of the City in its CEQA analysis for its SOI proposal. These include a 2009 Environmental Impact Report (“**2009 EIR**”) for the City’s “2030 General Plan Update,” and two CEQA Addenda, the Third and the Seventh Addenda to the 2009 EIR. The Seventh Addendum fully analyzes the reasonably foreseeable impacts associated with the current SOI proposal in accordance with the requirements of CEQA, including with respect to the key issue here, the conversion of the Bailey Avenue Properties from designated prime agricultural land to a future residential use.<sup>5</sup>

Far from ignoring the issue as falsely claimed by EDC,<sup>6</sup> in line with controlling CEQA case law, the City’s 2009 EIR and Third and Seventh Addenda fully analyze the conversion of the entirety of the Bailey

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<sup>5</sup> See Lompoc General Plan Update Final Environmental Impact Report, Addendum #7, December 2021, at pp. 4-8.

<sup>6</sup> EDC misrepresents the record and misstates CEQA in asserting that, because the City did not analyze “a specific development plan” for the Bailey Avenue Properties, it conducted “piecemeal” environmental review under the *Laurel Heights* case. (EDC 12/7/22 Letter, at p. 8, citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396-99.) That case and the piecemealing issue have no application here. The *Laurel Heights* case addressed a situation where a university did not analyze a planned future *expansion* of operations into a temporarily unused *portion* of a leased building. (*Laurel Heights* 47 Cal.3d at 396-99.) Here, the City did not analyze a specific development plan in 2009 because there was no specific development plan to analyze, which is still the case today. However, the City did fully analyze the question presented here, which is, what are the impacts associated with the potential future loss of the entire Bailey Avenue Properties as agricultural land to an unspecified future residential development. There is no future unanalyzed expansion being proposed, as was the critical fact in *Laurel Heights*. The City’s analysis is just as relevant and comprehensive today as it was in 2009 and covers the conversion of the entirety of the Bailey Avenue Properties. CEQA does not demand greater specificity or “crystal ball” speculation about as-yet-unplanned future development for higher-level planning decisions such as General Plan amendments and SOI adjustments, particularly where, as is the case here, future specific development proposals will be subject to project-level CEQA analysis. (CEQA Guidelines, § 15146(a); *San Diego Citizenry Group v County of San Diego* (2013) 219 Cal.App.4th 1, 21; *Environmental Council of Sacramento v City of Sacramento* (2006) 142 Cal.App.4th 1018, 1032; *In re Bay-Delta Programmatic Evt'l Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1172, 1174.)



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Avenue Properties from designated prime agricultural land to up to 2,718 units of residential development and associated ancillary uses and infrastructure.<sup>7</sup>

The City's analysis concludes such a conversion would constitute a "significant and unavoidable" environmental impact, despite a commitment to mitigation.<sup>8</sup> That mitigation consists of the 1:1 purchase of conservation easements for prime agricultural land elsewhere in the County, which the City has fully committed to provide *at minimum* as a condition of the City SOI Adjustment.<sup>9</sup> The City's finding on this point is well supported by the case law cited by EDC in its December 7<sup>th</sup> letter. These cases conclude that no measures are sufficient to mitigate the loss of prime agricultural land to a less than significant level, but conservation easements act as valid partial mitigation.<sup>10</sup>

**b. Projects With Significant And Unavoidable Environmental Impacts Can Be Approved With A Statement Of Overriding Considerations.**

Notably, CEQA does not require the denial of a project when it causes a significant and unavoidable impact. Instead, a lead or responsible agency is authorized to approve a project despite significant and unavoidable environmental impacts when its decision is supported by a valid "Statement of Overriding Considerations."<sup>11</sup>

A Statement of Overriding Considerations is a policy judgment vested in the broad discretion of a land use authority where it finds that the "economic, legal, social, technological or other" policy benefits of a project outweigh its significant and unavoidable environmental impacts.<sup>12</sup> Courts do not second-guess

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<sup>7</sup> See discussion in Lompoc General Plan Update Final Environmental Impact Report, Addendum #7, December 2021, at pp. 4-8; Initial Study, September 2016, at pp. 2, 9-10. Notably, the City's prior analysis covers a proposed Specific Plan area that is larger than the two current Bailey Avenue Properties included in the City SOI Adjustment.

<sup>8</sup> See Lompoc General Plan Update Final Environmental Impact Report, Addendum #7, December 2021, at p. 4; Initial Study, September 2016, at pp. 2, 9-10.

<sup>9</sup> See Lompoc General Plan Update Final Environmental Impact Report, Comments and Responses, December 2009, at p. 12.

<sup>10</sup> See *Citizens for Open Government v City of Lodi* (2012) 205 Cal.App.4th 296, 321 (EIR validly concluded that constructing a shopping center on 40 acres of prime farmland would contribute to a significant cumulative impact, and that no mitigation could eliminate the impact, because lost farmland cannot be recreated elsewhere. The EIR also validly found that the that permanent protection of an equivalent amount of farmland off-site could help curtail farmland conversions over time); *King & Gardiner Farms, LLC v County of Kern* (2020) 45 Cal.App.5th 814, 875,

<sup>11</sup> CEQA Guidelines, § 15043; Pub. Res. Code, 21080(b).

<sup>12</sup> Pub Res C §21081(b); CEQA Guidelines, §15093(a). A statement of overriding considerations expresses the "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like." *Concerned Citizens of S. Cent. L.A. v Los Angeles Unified Sch. Dist.* (1994) 24 Cal.App.4th 826, 847.



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these policy decisions, but instead uphold them so long as they are supported by substantial evidence in the record.<sup>13</sup>

The City found that the conversion of the Bailey Avenue Properties to a residential use were supported by overriding policy considerations, namely: (1) the economic benefits to the City of expansion; (2) the provision of much-needed new housing; and (3) the annexation of unincorporated areas into the City “to create logical and orderly urban boundaries for planned development that are contiguous to existing urban development and all necessary public services and utilities.”<sup>14</sup> These findings are well supported by substantial evidence in the record.

**c. The LAFCO Role As “Responsible Agency” Ultimately Entails A Policy Decision Regarding “Overriding Considerations” Here.**

Under CEQA, where a city proposes an annexation or sphere of influence adjustment, it must fill the role of “lead agency” for CEQA purposes; the LAFCO then acts as a “responsible agency” when it approves a proposed reorganization.<sup>15</sup> Responsible agencies are generally required to rely on the information in the EIR prepared by the lead agency and are not allowed to prepare a separate EIR unless specific findings and circumstances are found to exist by the LAFCO that do not exist here.<sup>16</sup> While the lead agency is

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<sup>13</sup> CEQA Guidelines, §15093(b); *Cherry Valley Pass Acres & Neighbors v City of Beaumont* (2010) 190 Cal.App.4th 316, 357; *Sierra Club v Contra Costa County* (1992) 10 Cal.App.4th 1212, 1223 (statement of overriding considerations should be treated like agency factual findings within the sound discretion of the agency that only need be supported by substantial evidence).

<sup>14</sup> City Council Review, Lompoc General Plan Update EIR - CEQA Findings, September 7, 2010, Findings of Fact and Statement of Overriding Considerations, at pp. 59-61.

<sup>15</sup> CEQA Guidelines, §15051(b)(2); see also, CEQA Guidelines, §15051(a); *County Sanitation Dist. No. 2 v County of Kern* (2005) 127 Cal.App.4th 1544, 1633.

<sup>16</sup> 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality, Project Alternatives, §§ 3.18, 3.21; *Bakman v Department of Transp.* (1979) 99 Cal.App.3d 665, 678; CEQA Guidelines, §15096(a). If the responsible agency believes that the EIR prepared by the lead agency is not adequate for its use, the responsible agency **must** do one of the following: **(1)** take the issue to court within 30 days after the lead agency files a notice of determination or be deemed to have waived any objection to the adequacy of the document; **(2)** prepare a subsequent EIR, but only if permissible under CEQA Guidelines, §15162, which can only be done where there are changes to the project or surrounding circumstances, or “substantial” new information *that show a new significant impact or an increase in the severity of a significant impact would occur*, which is not the case here; or **(3)** assume the lead agency role if allowed by CEQA Guidelines, §15052(a)(3), which requires findings that the responsible agency was not consulted in the preparation of the EIR, the lead agency EIR is fundamentally inadequate, and the statute of limitations to challenge the EIR in court has passed. (CEQA Guidelines, §15096(e).)



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responsible for considering all environmental impacts of the project before approving it, a responsible agency only considers the aspects of a project that are subject to the responsible agency's jurisdiction.<sup>17</sup>

Where, as here, an EIR has been prepared for a project, if a responsible agency finds that any alternatives or mitigation measures within the scope of its jurisdiction are feasible and would substantially lessen or avoid a significant effect of the project, the responsible agency must adopt those mitigation measures or alternatives.<sup>18</sup> Importantly here, where the lead agency determines an impact is significant and unavoidable and adopts a Statement of Overriding Considerations, the responsible agency must also conduct an analysis of the relevant significant impact and the proposed mitigation, and, if it concurs and seeks to approve the project, it must make its own Statement of Overriding Considerations findings.<sup>19</sup> So long as those policy findings are supported by substantial evidence in the record – and such evidence is ample here – the responsible agency's decision will be upheld if challenged in court.<sup>20</sup>

As noted at pages 4-6, above, the City's 2009 EIR and its Third and Seventh Addenda fully analyze the key disputed issue here, the potential future conversion of the Bailey Avenue Properties from prime agricultural land to residential uses, in accordance with the requirements of CEQA. The City determined that, per controlling case law EDC itself relies on, such impacts would be "significant and unavoidable," even with the implementation of mitigation consisting of the 1:1 conservation of prime agricultural land elsewhere.<sup>21</sup> Thus, EDC, the City's CEQA analysis, and controlling caselaw all agree that the loss of prime agricultural land that might occur as a foreseeable future consequence of the approval of the City SOI Adjustment is a significant and unavoidable impact that cannot be fully mitigated.

As a result, the key decision for the Commission is whether you believe the balance of policy considerations supports the adoption of a Statement of Overriding Considerations. This, consistent with LACFOs' general balancing role under the CKH Act and LACFO policy, requires you to balance the relevant policy interests involved here. Based on that balancing and the facts and evidence in the record, the key question is whether you will find that the *numerous* identified policy benefits of the City SOI

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<sup>17</sup> See Pub Res Code, §§21104, 21153(c), 21069; *RiverWatch v Olivenhain Mun. Water Dist.* (2009) 170 Cal.App.4th 1186, 1201.

<sup>18</sup> CEQA Guidelines, §15096(g)(2).

<sup>19</sup> CEQA Guidelines, §§ 15043, 15091, 15093, 15096(h); *Communities for a Better Env't*, 103 Cal.App.4th at 124.

<sup>20</sup> CEQA Guidelines, §15093(b); *Cherry Valley Pass Acres & Neighbors v City of Beaumont* (2010) 190 Cal.App.4th 316, 357; *Sierra Club v Contra Costa County* (1992) 10 Cal.App.4th 1212, 1223 (statement of overriding considerations should be treated like agency factual findings within the sound discretion of the agency that only need be supported by substantial evidence).

<sup>21</sup> See discussion in Lompoc General Plan Update Final Environmental Impact Report, Addendum #7, December 2021, at pp. 4-8; Initial Study, September 2016, at pp. 2, 9-10; *Citizens for Open Government v City of Lodi*, 205 Cal.App.4th at 321; *King & Gardiner Farms*, 45 Cal.App.5th at 875.





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Adjustment outweigh the key environmental impact that cannot be avoided or fully mitigated if approval occurs here, the loss of designated prime agricultural land within the Bailey Street Properties.

While there is no dispute that the maintenance of prime agricultural land and rural character are important policy interests, the *variety* of important competing policy interests and relevant facts set out in the Hertzberg Memo, the Bodger Letter, and in other evidence before the Commission in the record would fully support the Commission's approval of the City's SOI Adjustment with the adoption of a Statement of Overriding Considerations.

#### **IV. Response to EDC's January 31st Letter and Conclusion.**

Finally, we wish to address the points raised by EDC in its letter submitted yesterday, January 31, 2023. In it, EDC argues that granting the City SOI Adjustment would interfere with the operation of the "Wineman farm" property and create an improper crosscut, irregular boundary between agricultural County land and the urban City. (See 1/31/23 EDC Letter.) These arguments lack merit and otherwise support the City SOI Adjustment.

As to the potential future impacts of an annexation on the Wineman farmland: (1) such assertions are mere speculation about theoretical impacts of a future annexation proposal not being decided now, and speculation is not valid substantial evidence<sup>22</sup>; (2) the argument by EDC that buffers would be required in the future is an admission that the buffers are necessary between agricultural and urban uses, which is a central policy reason for granting the City SOI Adjustment, as it will implement buffers and potentially other mitigations to protect residential and school uses; and (3) all of the discussion about buffers in the record relate to buffers *within* the Bailey Avenue Properties – even if the City SOI Adjustment and a future annexation are granted, the City would not have jurisdiction to impose mitigation requirements on the Wineman property, which would remain on County land.

As to a crosscut, irregular boundary between residential and agricultural interests, *that is exactly what currently exists*.<sup>23</sup> Thus, the true choice highlighted by EDCs January 31st letter is between, on the one hand, the current crosscut irregular boundary without sufficient buffers and a lack of thoughtful planning, layouts and mitigation, as promoted by EDC. Or, on the other hand, a crosscut, irregular boundary with designed buffers and other layouts and mitigations that more effectively facilitates the safe and peaceful co-existence of urban and agricultural uses, as promoted by the City SOI Adjustment. We believe that choice is clear and supports approving the City SOI Adjustment.

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<sup>22</sup> "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible" do not constitute substantial evidence." *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 777; CEQA Guidelines, §§ 15064 (f)(5), 15384(a).

<sup>23</sup> See Lompoc General Plan Update Final Environmental Impact Report, Addendum #7, December 2021, at p. 6.



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We thank for you for your time and attention and are happy to answer any questions or address any issues you would like to discuss with us.

Best regards,

A handwritten signature in blue ink, appearing to be 'AB', with a long horizontal stroke extending to the right.

Andrew Brady

AB: