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BY FAX AND MAIL

Napa County Board of Supervisors
County Administration Building
1195 Third Street, Suite 310
Napa, CA 94559

Re: General Plan Session for Angwin on January 27, 2009

Dear Chairman Luce and Members of the Board:

This firm represents Save Rural Angwin (“SRA”) regarding the General Plan update process for the Angwin “urban bubble” and the development proposed by Pacific Union College (“PUC” or “College”) and Triad for portions of PUC’s property. SRA believes the existing urban bubble must be redesignated now in order to ensure that PUC may construct housing and other facilities needed for college purposes while also preserving the rural character of Angwin and preventing environmental degradation and associated costs to the community that would result from commercial development of PUC’s property, as currently proposed. To that end, SRA submits herewith its proposal for the Angwin bubble.

Limiting development in the PUC portion of the urban bubble to educational purposes and student and faculty housing, as SRA proposes, is consistent with the long-standing treatment of this area in Napa County’s General Plan. Further, the application for the Triad project is far from complete, meaning that neither Triad nor PUC has any entitlements to build the project. Given this, and the fact that the Triad project as proposed is grossly inconsistent with the rural character of Angwin and would cause a wide range of environmental harm and associated costs to the greater area, the Board should act now to define the desired land uses for Angwin, and thereby permit the project proponents to redesign the project accordingly if desired. Conversely, delaying such action would lead to the expenditure of more public and private resources in furtherance of a fundamentally inappropriate project. Finally, PUC’s status as a religious institution does not impede the Board from enacting land use legislation restricting the

commercial development of PUC's property. Accordingly, SRA respectfully requests that the Board direct Planning staff to prepare a new land use map for Angwin and an "institutional" designation to be applied to PUC's property within the bubble permitting student and faculty housing and educational facilities.

1. Proposed General Plan Designations for Angwin's Urban Bubble.

SRA's proposed map for Angwin is attached hereto as Exhibit A. SRA's proposal includes five land use categories to be applied to the Angwin bubble:

- **Agriculture, Watershed, and Open Space (AWOS) (pictured in green on the map at Exhibit A).** Areas where the predominant use is and historically has been agriculturally oriented.
- **Institutional (pictured in yellow).** A modification of the "Public-Institutional" (P-I) category to include the College lands. The February 2007 General Plan Update Draft included an expanded definition of "Institutional Uses" which could be used as a starting point for defining the new "Institutional" designation. Planning staff could fine-tune the definition as necessary to encompass College facilities and student and faculty housing. Such a definition would be consistent with the General Plan's discussion of the PUC lands, which notes that the "*college's Planned Development zoning was created in order for the college to provide necessary services to its students and ensure that the college would be able to grow should the student body increase in size.*" (General Plan, AG/LU-31, emphasis added.)
- **Urban Residential (PD: AH) (pictured in light blue).** Permitting the development of 191 units pursuant to the Affordable Housing overlay.
- **Urban Residential (PD: CN/CL) (pictured in dark blue).** Recognizing the local commercial services for day-to-day needs of the College and community at Angwin Plaza.
- **Rural Residential (RR) (pictured in pink).** Recognizing the existing residential uses in this area.

SRA's proposal of an "institutional" category applicable to PUC's lands would allow College facilities and associated housing but prohibit the kind of commercial real estate development represented by the proposed

Triad project. Such a limitation is consistent with critical elements of the General Plan and the draft Housing Element, particularly Goals and Policies regarding fighting sprawl, such as Goal H-2: “direct growth to urbanized areas, preserve agricultural land, and maintain a County-wide jobs/housing balance.” It is also consistent with AB 32 and SB 375—recently adopted legislation advancing the State’s goals of coordinating land use and transportation policies, reducing vehicle miles travelled and combating climate change. To that end, the draft Housing Element “incorporates a number of policies and programs aimed at reducing vehicle miles traveled and greenhouse gas emissions” including “directing new housing development to urbanized areas, thus preserving open space and agriculture and placing homes close to existing job centers, transit, and services.” (Draft Housing Element at H-2-3.) Prohibiting commercial development of PUC’s property would further that purpose.

Also attached for the Board’s convenience and information are SRA’s proposal submitted to the PLUMA process in August 2007 (Exhibit B) including additional maps providing the existing zoning, designations and land uses for the Angwin bubble, as well as SRA’s original proposal which includes further discussion of the historical underpinnings of the proposed “institutional” designation (Exhibit C).

2. PUC and Triad Have No Entitlements to the Proposed Project.

When a property owner has performed substantial work and incurred substantial liabilities in good faith reliance on a permit issued by the government, he or she acquires a vested right to complete construction of the project in accordance with the terms of the permit, regardless of later changes in general plan designation or zoning. Until that vested right is secured, the property owner must comply with all laws applicable at the time a building permit is issued. *Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791.

In this case, neither PUC nor Triad has anything close to a vested right to develop the proposed project. The subject property is zoned PD. Residential development of PD property is permitted only with approval of a use permit including a development plan. (Napa County Code §§ 18.48.030, 18.48.060.) PUC’s application to the County for a use permit and development plan to build the Triad project *is not yet complete*. Further, the

existing PD zoning and 1975 Master Plan for the property do not confer any entitlements. *Avco*, 17 Cal.3d at 796 (“the approval of [a planned unit development] merely imposes a special zoning on the property. It is beyond question that a landowner has no vested right in existing or anticipated zoning.”).

Without even an application on file for the required permit, much less an approval and substantial expenditures pursuant to it, Triad and PUC have no claim to entitlement to build the project. Accordingly, the Board may, and should, exercise its authority now to plan appropriate land uses for Angwin.

The General Plan sits at the top of the hierarchy of local government law regulating land use and is often analogized to “a constitution for all future developments.” *O’loane v. O’Rourke* (1965) 231 Cal.App.2d 774, 782. The Board’s first task is to define the uses permissible for Angwin by way of General Plan designations. The zoning—and particularly project-specific decisions—should follow, not the other way around.

3. Redesignation of PUC’s Property Does Not Infringe On Religious Freedom.

The College has suggested that if the Board were to impose zoning or other land use restrictions on any of its property, the Board would violate the Religious Land Use and Institutionalized Person Act (“RLUIPA”), 42 U.S.C. §§ 2000cc, *et seq.* The College has no justification under the law for making this argument.

Pursuant to the RLUIPA, the Board cannot “impose or implement a land use regulation in a manner that *imposes a substantial burden on the religious exercise* of a person, including a religious assembly or institution.” But nothing the Board has been considering regarding the Angwin “urban bubble” imposes a “substantial burden” on the “religious exercise” of the College or its students.

In a February 21, 2008 letter to the County Counsel, the College’s legal advocates cited several cases in support of its religious discrimination argument. But every one of those cases involved land use restrictions that burdened the construction or expansion of a *place of worship*. *See Guru*

Nanak Sikh Soc. Of Yuba City v. County of Sutter, 456 F.3d 978 (9th Cir. 2006) (denial of permit to construct a temple); *Lighthouse Institution for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253 (3d Cir. 2007) (denial of permit to construct a church); *Konikov v. Orange County, Florida*, 410 F.3d 1317 (11th Cir. 2005) (challenging prohibition against operation of a synagogue in residential neighborhood); *Digrugilliers v. Consolidated City of Indianapolis*, 506 F.3d 612 (7th Cir. 2007) (challenging requirement to obtain variance to operate a church); *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295 (11th Cir. 2006) (denial of variance to permit operation of a church); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (3d Cir. 2007) (denial of permit to operate a synagogue).

Not a single case the College cited involves the situation here: neutral land use restrictions on land a religious institution wants to develop *not for worship or related activities*, but to generate income for the religious institution. In fact, the courts that have considered arguments like the College's have criticized them. For example, in *Westchester Day School v. Village of Mamaroneck*, 386 F.3d 183 (2d Cir. 2004), the United States Court of Appeals expressed doubt as to whether buildings housing secular activities of a religious school could be protected by the RLUIPA. As the Court pointed out, the RLUIPA could not require a local government to grant a variance from zoning restrictions for a gymnasium built by a religious school while not requiring the same treatment of a secular school's gymnasium. *Id.* at 189; *see also, Mintz v. Roman Catholic Bishop of Springfield*, 424 F.Supp.2d 309, 318 (D. Mass. 2006) ("Buildings used by religious organizations for secular activities or to generate revenue to finance religious activities are not automatically protected.")

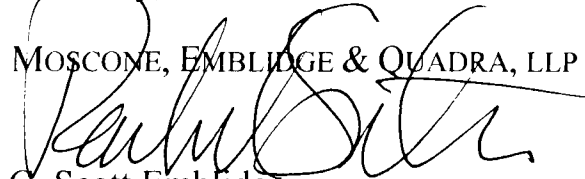
Here, the College is arguing for a reading of the RLUIPA far more problematic than the reading rejected in *Westchester Day School*. The College is arguing the RLUIPA prevents the Board from adopting land use restrictions that interfere not with the construction of a place of worship, and not with the expansion of religious school facilities, but with the development of property to build private housing unconnected to the College or its religious mission. The legislative history of the RLUIPA demonstrates that Congress never intended it to protect development of property that would simply fund an adjacent religious institution. *See Westchester*, 386 F.3d at 190, n.4 (quoting Senators Hatch and Kennedy).

The RLUIPA protects religious institutions from being unfairly treated by burdensome land use regulations. It does not give religious institutions any sort of favored treatment when the religious institution is acting as a real estate developer, like the College is here.

Thoughtful land use planning is long overdue in Angwin. Anything short of fully replacing the UR and RR bubbles with sound land use designations would only continue the confusion and inappropriate expectations. The Board should not allow the incomplete application for the Triad project to hold up the GPA process any longer. Rather, the Board should take this opportunity to define permissible land uses in Angwin's bubble to ensure development that is consistent with Angwin's rural character, remote location, and limited services.

Sincerely,

MOSCONE, EMBLIDGE & QUADRA, LLP



G. Scott Emblidge

Rachel J. Sater

Enclosures
cc w/enc: client