



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and
Development
Department No.: 053
For Agenda Of: December 11, 2018
Placement: Set hearing on
December 11, 2018 for
January 15, 2019
Estimated Tme: 1.0 hour on January 15,
2019
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Dianne M. Black, Director, Planning & Development
Director(s) (805) 568-2086
Contact Info: Jeff Wilson, Deputy Director, Development Review Division
(805) 568-2518

SUBJECT: Set a hearing to consider an Applicant appeal of the County Planning
Commission's action to require a focused Environmental Impact Report for the
North Fork Ranch Frost Ponds Minor Conditional Use Permit, Fifth Supervisorial
District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

On December 11, 2018, set a hearing for January 15, 2019, to consider appeal case number 18APL-00000-00019, filed by Mr. Matt Turrentine of Brodiaea, Inc., the project applicant, of the County Planning Commission's, September 12, 2018, determination that the proposed Final Mitigated Negative Declaration (MND), case number 16NGD-00000-00004 prepared for the North Fork Ranch Frost Ponds project, case number 16CUP-00000-00005, is inadequate and that a focused Environmental Impact Report (EIR) to evaluate issues associated with evaporative water loss from the reservoirs and biological resources is required. The project site is located at 7400 Highway 166, approximately nine miles west of the community of New Cuyama, Fifth Supervisorial District. The application involves Assessor's Parcel No. 147-010-045.

On January 15, 2019, your Board can take either of the two following options:

Option 1

- a) Conceptually determine that the Mitigated Negative Declaration, case no. 17NGD-000-00004, is inadequate and that an EIR is required because there is substantial evidence in the record supporting a fair argument that the project may have a significant effect on the environment;
- b) Conceptually deny the appeal, case no. 18APL-00000-00019, thereby affirming the Planning Commission's action;
- c) Conceptually direct staff to prepare an EIR focused on issues associated with evaporative water losses resulting from the proposed project, potential biological resource impacts, and potential flooding impacts to State Highway 166; and to bring the project back to the Planning Commission for further consideration upon completion of the EIR; and
- d) Continue the hearing in order to adopt findings that an EIR is required to evaluate the environmental impacts of the proposed project.

Option 2

- a) Conceptually determine that an EIR is not required at this time because the current evidence in the record does not support that there is substantial evidence of a fair argument that the project as analyzed in the Mitigated Negative Declaration, case no. 17NGD-00000-00004 may have significant effect on the environment;
- b) Conceptually approve the appeal, case no. 18APL-00000-00019, thereby reversing the County Planning Commission's action;
- c) Conceptually direct staff to bring the project back to the County Planning Commission for full consideration of the project; and
- d) Continue the hearing in order to adopt findings that an EIR is not required at this time.

Summary Text:

On September 12, 2018, the County Planning Commission reviewed the North Fork Ranch Frost Ponds project, (16CUP-00000-00005), which involves the construction of three water storage reservoirs (ponds) for frost control and irrigation of existing vineyards in the New Cuyama area. The Planning Commission considered the proposed project's potential water use impacts resulting from the use of water stored in the reservoirs for spray irrigation to provide frost protection for existing vineyards, crop irrigation, and the evaporative losses of water stored in the reservoirs. The Commission also considered the proposed project's potential impacts to biological resources, and potential flooding impacts to State Highway 166 that could result from a structural failure of a proposed reservoir. After substantial discussion, the Planning Commission (on a 3 to 2 vote) concluded that the Mitigated Negative Declaration for the project is inadequate and directed staff to prepare a focused EIR evaluating water use

impacts resulting from the use of the vineyard's entire frost protection system, potential impacts to biological resources, and potential flooding impacts to State Highway 166.

The Planning Commission's decision was based on its review of the staff report and supporting information, the Mitigated Negative Declaration, comment letters from agencies, organizations and individuals as well as public testimony. A copy of the Planning Commission's action letter is included as Attachment 1 to this Board letter.

The proposed Final MND prepared for the project, dated August 1, 2018, (included in Attachment 2: Planning Commission Staff Report dated September 4, 2018, Attachment D) evaluated the potential environmental impacts that may result from the construction and operation of the proposed reservoirs. Potentially significant impacts identified by the proposed Final MND include short-term construction-related impacts to biological and cultural resources, and construction-related erosion and water quality impacts. The proposed Final MND identified mitigation measures that would reduce the potentially significant environmental impacts of the project to a less than significant level, and those mitigation measures were included as conditions of approval for the proposed project (Attachment 2: Planning Commission Staff Report dated September 4, 2018, Attachment B). The proposed Final MND determined that estimated evaporation losses from the three proposed reservoirs would not result in a significant water use impact because the combined water losses from the three proposed reservoirs would be less than the 31 acre feet per year groundwater use threshold of significance adopted for the Cuyama Valley Groundwater Basin. Since the construction and operation of the discretionary reservoir project would not result in any significant environmental impacts after the implementation of proposed mitigation measures/conditions of approval, an MND was prepared for the project.

A letter from Marc Chytilo dated September 10, 2018, submitted to the Planning Commission (Attachment 3), and testimony provided at the September 12, 2018 hearing, states that the project's proposed Final MND did not adequately evaluate the proposed project's groundwater use impacts because the consumptive water use of the frost protection system must be considered in the environmental analysis, not only the evaporation from the three frost ponds themselves. Public comments have also raised the issue that the County's significance threshold for the Cuyama Valley Groundwater Basin is out of date because groundwater overdraft in the basin has increased since the threshold was adopted by the Board of Supervisors in 1992. The significance of the proposed project's water use impacts was evaluated based on the adopted groundwater use significance threshold of 31 acre feet per year.

The project applicant's appeal pertains only to the Planning Commission's determination that an EIR should be prepared for the proposed reservoir project. Your Board's action regarding the appeal should only address the adequacy of the project's environmental review and not the merits of the project.

Standard of Review of Mitigated Negative Declarations

As the appeal authority, the Board is guided by CEQA Guidelines section 15064 (f) (1) which states: "If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (Friends of B Street v. City of Hayward (1980) 106 Cal. App. 3d 988). Said another way, if a lead agency is presented with substantial evidence of a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (No Oil, Inc. v. City of Los Angeles (1974) 13

Cal. 3d 68)." Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts (CEQA Guidelines section 15384(b).)

The project applicant is appealing the County Planning Commission's action based on the contention that there is no justification for requiring the preparation of an EIR for the project and that no substantial evidence has been presented to support a fair argument that the project's impacts would be significant after mitigation. A copy of the appeal letter, which describes the appellant's appeal issues, is included as Attachment 4 to this Board letter.

If your Board determines that based on the criteria in CEQA Guidelines Section 15064 (f)(1) presented above that there is substantial evidence of a fair argument the proposed project may have a significant effect on the environment, then staff recommends that your Board take the action presented in Option No. 1.

Alternatively, if your Board determines that there is no substantial evidence of a fair argument that the project may have a significant effect on the environment, and then staff recommends that your Board take the action outlined in Option No. 2.

Background

The project that is subject to the appeal is the North Fork Ranch Frost Ponds project, which involves the construction and operation of three water storage reservoirs for frost control and irrigation of existing vineyards located on a 6,565-acre parcel that is zoned AG-II. Each reservoir would have the capacity to store up to 49 acre feet of water that would be used to protect the vineyards from frost damage during the months of February, March and April. The existing agricultural uses have been in operation for approximately three-years—the water wells, water pipelines and the irrigation system were installed in 2014 and 2015, and the vineyards planted in early 2016.

On September 25, 2018, the Zoning Administrator approved a Minor Conditional Use Permit (16CUP-00000-00005) and MND for the North Fork Ranch Frost Ponds project. The approved MND addressed biological resources, cultural resources, geologic processes, and water resources/flooding. The Zoning Administrator Action Letter dated October 2, 2017, is included as Attachment 5.

On October 2, 2018, the Zoning Administrator's decision was appealed by Roberta Jaffe and Stephen Gliessman (17APL-00000-00017) citing concerns with the conclusions of the mitigated negative declaration and project water usage. The Jaffee/Gliessman appeal letter is Attachment 6.

On September 12, 2018, the Planning Commission conducted a public hearing on the appeal. The Planning Commission staff report for the appeal is included as Attachment 2.

On September 21, 2018, the project applicant appealed the Planning Commission action to require a focused EIR for the North Fork Ranch Frost Ponds Minor Use Permit. The Commission action is discussed in the Summary Text section of this report. The issues raised by the appellant are discussed below.

Appellants Issues:

Appeal Issue No. 1: Vineyards and cultivated agriculture are exempt from County permits and CEQA, and the MND prepared for the project adequately evaluated evaporative water losses from the proposed reservoirs.

The Appellant states that the cultivation of crops, the drilling of agricultural wells, and spray irrigation for frost protection in the Inland area of the County is exempt from permits. Therefore, these normal agricultural activities are not considered a “project” under CEQA and are exempt from environmental review. The Appellant believes that the proposed project’s evaporative water losses were adequately evaluated by the MND.

Water storage reservoirs greater than 50,000 square feet are a conditionally permitted use in the AG-II zone and require the approval of a Minor Conditional Use Permit (LUDC Section 35.21.030). Vineyards in the AG-II zone are exempt from the County’s land use permitting requirements (LUDC Section 35.21.030). Vineyards located in the AG-II zone are also exempt from CEQA review requirements because no permit approvals are required.

The proposed Final MND prepared for the project, dated August 1, 2018, (Attachment 2: Planning Commission Staff Report dated September 4, 2018, Attachment D) evaluated the potential environmental impacts that may result from the construction and operation of the proposed reservoirs. Potentially significant impacts that were identified include short-term construction-related impacts to biological and cultural resources, and construction-related erosion and water quality impacts. The proposed Final MND identified mitigation measures that would reduce potentially significant environmental impacts of the project to a less than significant level, and those mitigation measures were included as conditions of approval for the proposed project (Attachment 2: Planning Commission Staff Report dated September 4, 2018, Attachment B). The proposed Final MND also evaluated the water usage impacts of the proposed project. That analysis determined that estimated evaporation losses from the three proposed reservoirs would not result in a significant groundwater resource impact because the combined water losses would be less than the 31 acre feet per year groundwater use threshold of significance adopted for the Cuyama Valley Groundwater Basin. Since the construction and operation of the discretionary reservoir project would not result in any significant environmental impacts after the implementation of proposed mitigation measures/conditions of approval, an MND was prepared for the project.

The Planning Commission concluded that the subsequent use of the water stored in the reservoirs for frost protection or crop irrigation should be considered to be a water use impact of the proposed reservoir project. The Commission also determined that the MND did not adequately address this issue and that this potential impact should be analyzed in a focused EIR. The Board should determine if comments on the adequacy of the analysis of the project’s water use impacts have presented substantial evidence of a fair argument supported by substantial evidence that an EIR must be prepared to evaluate the project’s potential water use impacts.

Appeal Issue No. 2: The project MND includes an adequate evaluation of the project's impacts to biological resources.

The Appellant believes that the proposed Final MND prepared for the proposed project adequately evaluated the project's potential impacts to biological resources and that no additional analysis is required.

Comments submitted to the Planning Commission hearing by Dr. Stephen Gliessman in a letter dated September 6, 2018 (Attachment 3), and testimony provided at the hearing state that the floristic surveys of the project site were conducted after four years of drought, which may have influenced the validity of the surveys. A similar comment was provided by a peer review of the proposed project's 2016 biological resource impact assessment report prepared by Kevin Merk Associates. In response to these comments, the Planning Commission requested additional evaluation of the project's potential biological resource impacts because rainfall conditions will influence plant growth in the project area. The proposed project's 2016 biological resource impact assessment report, peer review comments on the assessment report, and responses to the peer review comments are provided as attachments to the proposed Final MND prepared for the project (Attachment 2 to this Board letter: Planning Commission Staff Report dated September 4, 2018; Attachment D to the Planning Commission staff report is the proposed Final MND dated August 1, 2018, Attachments 2a, 2b and 2c to the proposed Final MND are the referenced documents).

According to the February 2016 biological resource impact assessment report, the general botanical and biological surveys of the North Fork Ranch were conducted in April, May, June, July, September and October of 2015 prior to the initiation of on-site agricultural activities. The assessment report concluded that the ranch has been used to graze cattle for many years, and as a result the gently-sloped and flat areas of the ranch (i.e., the types of areas where the proposed reservoirs would be located) were dominated by non-native weeds. Surveys of the proposed reservoir sites were also conducted on January 4, 2016. Areas adjacent to the disturbed reservoir sites were also surveyed and vegetation in those areas was dominated by non-native weeds. Further, at the proposed Reservoir No. 1 site, sparse occurrences of annual grasses were beginning to sprout in response to recent rains. The 2016 impact assessment report concluded that no special status biological resources (i.e., plant communities, plants or animals) were observed on the proposed project sites, and given the long-term disturbance of the sites due to cattle grazing, it is unlikely that any are present. In addition to the conclusions of the 2016 assessment report, responses to the report's peer review indicate that additional surveys of the project sites were conducted in the spring of 2016. Those surveys provided additional field observations confirming that special status plants were not present.

The project site conditions described by the 2016 biological resource impact assessment report and the proposed Final MND are the "baseline" conditions from which the potential impacts of the project are to be evaluated. Due to the disturbed character of the project sites and the results of numerous site surveys for sensitive plants and animals, the proposed Final MND concluded that the project would not result in significant impacts to sensitive vegetation. The proposed Final MND also concluded that although unlikely, potential construction-related impacts of the project to sensitive animal species (e.g., San Joaquin kit fox and American badger) would be reduced to less than significant level with the implementation of identified mitigation measures that were also included as conditions of approval. Since the construction and operation of the proposed reservoirs would not result in significant impacts to sensitive biological resources after the implementation of proposed mitigation measures/conditions of approval, an MND was prepared for the project.

The Santa Barbara County Flood Control District's *Santa Barbara County Hydrology Report, Precipitation, Rivers/Streams & Reservoirs, Water-Year 2016* report indicates that for the 2016 water year, 7.85 inches of rain was measured at the Cuyama fire station, which is 102 percent of the normal Cuyama area rainfall. An excerpt from the hydrology report depicting measured rainfall in the Cuyama area during the 2016 water year is included as Attachment 7. This information verifies that the sensitive plant surveys of the project sites were conducted after a year with normal rainfall conditions.

The Planning Commission concluded that below normal rainfall may have resulted in conditions that affected the validity of plant surveys conducted for the project, and that project-related plant surveys should be conducted after a normal rainfall year. Based on the above information and comments received at the Planning Commission hearing, the Board should determine if comments on the adequacy of the biological surveys conducted for the project have presented substantial evidence of a fair argument supported by substantial evidence that additional surveys are required and that an EIR must be prepared to evaluate potential impacts to sensitive plants.

Appeal Issue No. 3: No additional evaluation of the proposed reservoir's potential slope failure impacts to State Highway 166 should be required.

The Planning Commission expressed concerns with the potential for impacts to State Highway 166 due to flooding due to reservoir slope failure and determined that this issue should be analyzed in a focused EIR. The potential for project-related impacts to State Highway 166 were raised by a comment letter on the Draft MND submitted by Caltrans (Attachment 2 to this Board letter: Planning Commission Staff Report dated September 4, 2018; Attachment D to the Planning Commission staff report is the proposed Final MND dated August 1, 2018, Attachment 5 includes the Caltrans comment letter). In their letter, Caltrans stated that a catastrophic failure of a reservoir berm could result in flooding impacts to State Highway 166, and that the County's Grading Ordinance may not adequately address this potential impact. The Appellant believes that if a proposed reservoir were to experience a structural failure, potential impacts to State Highway 166 would be minor and temporary due to the size of the reservoirs and distance from SR 166.

The proposed Final MND concludes that the proposed reservoirs would not result in potential flooding-related impacts because they must comply with County Grading Ordinance requirements, which would ensure that the reservoir's water containment berms are structurally adequate to contain impounded water. The Grading Ordinance requires the proposed reservoirs to be designed by a licensed civil engineer. In addition, the interior slopes of the reservoirs would be lined with an impermeable material that would prevent stored water from infiltrating and saturating the reservoir's containment berms, the exterior slopes of the reservoirs would be vegetated, and runoff from upslope areas be diverted around the reservoirs.

The Planning Commission determined that the proposed MND did not adequately address this issue and that further analysis was warranted in a focused EIR. The Board should determine if substantial evidence of a fair argument has been presented that the proposed reservoirs would have the potential to result in significant flooding-related impacts to State Highway 166 and that an EIR must be prepared for the project.

Fiscal and Facilities Impacts:

Budgeted: Yes

The costs for processing appeals are provided through a fixed appeal fee and funds in Planning and Development's adopted budget. Total costs for processing the appeal are approximately \$9,040 (40 hours). The costs are partially offset by the appeal fee of \$610.06. Funding for processing this appeal is budgeted in the Permitting Budget Program, as shown on page D-272 of the adopted FY 2018-19 budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on January 15, 2019. The notice shall appear in the Santa Maria Times. The Clerk of the Board shall fulfill noticing requirements. Mailing labels for the mailed notices are attached. A minute order of the hearing and copy of the notice and proof of publication shall be forwarded to the Planning and Development Department, Hearing Support, Attention: David Villalobos.

Attachments:

1. Planning Commission Hearing Action Letter for 17APL-00000-00017
2. Planning Commission Staff Report for 17APL-00000-00017 dated September 4, 2018
3. Comments submitted to the Planning Commission regarding 17APL-00000-00017
4. Project Applicant's Board of Supervisors appeal letter
5. Zoning Administrator Action Letter
6. Jaffe/Gliessman Planning Commission appeal letter
7. 2016 Cuyama area rainfall data

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