



Appeal Application

2023 MAY 19 A 11:37

County Use Only	Appeal Case No.:
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STEP 1: SUBJECT PROPERTY

147-020-045

ASSESSOR'S PARCEL NUMBER(S)

7400 Highway 166

PROPERTY ADDRESS (IF APPLICABLE)

North Fork Ranch

BUSINESS/ESTABLISHMENT NAME (IF APPLICABLE)

STEP 2: PROJECT DETAILS

North Fork Frost Ponds CUP

PROJECT TITLE

16CUP-00000-00005

CASE NO(S).

County Planning Commission 05/10/23

DECISION MAKER DATE OF ACTION

Is the appeal related to cannabis activities? Yes No

STEP 3: APPEAL CONTACTS

APPELLANT

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CITY, STATE ZIP

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PHONE EMAIL

AGENT

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PHONE EMAIL

ATTORNEY

Steve Herum - Herum\Crabtree\Suntag

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PHONE EMAIL

STEP 4: APPEAL DETAILS

Is the Appellant the project Applicant? Yes No

If not, please provide an explanation of how you are an "aggrieved party", as defined in Step 5 on page 2 of this application form:

Please provide a clear, complete, and concise statement of the reasons or ground for appeal:

- Why the decision or determination is consistent/inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law;
- There was error or abuse of discretion;
- The decision is not supported by the evidence presented for consideration;
- There was a lack of a fair and impartial hearing; or
- There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.
- Coastal Zone – Accessory Dwelling Unit appeals: Appellant must demonstrate that the project is inconsistent with the applicable provisions and policies of the certified Local Coastal Program or that the development does not conform to the public access policies set forth in the Coastal Act.

The County Planning Commission erred in making findings for denial contrary to facts in the record. Please see attached detailed appeal letter.



COUNTY OF SANTA BARBARA X 2175183

COB Department

Date 5/19/23

Received from UPC (Urban Planning Concepts)

In Payment of Appeal of Case No. 16CUP-0005

Seven Hundred nine dollars and 06 Dollars \$ 709.06

CREDIT CARD	
CASH	
CHECK	X

Received original of the above numbered receipt

M. G. [Signature]

[Signature]

SIGNATURE OF PAYOR

AUTHORIZED SIGNATURE

20250



May 19, 2023

Honorable Das Williams, Chair
County of Santa Barbara Board of Supervisors
105 E. Anapamu Street Ste 407
Santa Barbara, CA 93101

**RE: North Fork Ranch Frost Ponds Minor Conditional Use Permit; 16CUP-00000-00005
Appeal of Santa Barbara County CPC Denial**

Dear Chairman Williams:

On behalf of the Applicant, Brodiaea Inc., we are respectfully submitting this request to appeal the May 10, 2023, CPC decision to deny the North Forks Frost Pond Minor Conditional Use Permit (MCUP) 16CUP-00000-00005. This application was for three ponds designed to provide frost protection to an existing vineyard.

BACKGROUND

February 17, 2016 - The North Fork Ranch Frost Ponds MCUP was submitted to County Planning & Development (P&D) for permit processing on It has been in the County process for over seven years. Here are the key dates in this process.

February 10, 2017 - P&D determined that the project was Complete for purposes of initiation of Environmental Review pursuant to the California Environmental Quality Act (CEQA).

May 9, 2017 - P&D completed the CEQA Initial Study and recommended a Mitigated Negative Declaration (MND) be prepared for the project.

September 25, 2017 - The CEQA Draft MND was completed along with the Staff Report recommending approval as heard and approved by the County Zoning Administrator (ZA).

After 20 months of permit processing for this ‘minor’ CUP, the application was APPROVED.

October 2, 2017 - The ZA approval was appealed by Roberta Jaffe and Stephen Gliessman on the basis that an EIR was required. Over the next year the P&D staff worked on updating the information in the Approved ND. Additional delays involved the appellant being unavailable for hearing dates.

September 12, 2018 - The County Planning Commission (CPC) finally heard the project one year later. As a result of the hearing, the CPC directed the applicant to prepare a focused

Environmental Impact Report (EIR) to analyze three areas of potential significant environmental impacts: water use, biological resources, and potential flooding.

September 21, 2018 - The applicant appealed this EIR requirement to the Board of Supervisors. The issue was the precedent of requiring an EIR for the first time for agricultural frost ponds, a standard method of frost protection in the County.

March 5, 2019 - The BOS voted to agree with the CPC that preparation of a focused EIR was required and directed that the project return to the CPC for review once the EIR was completed.

The EIR took 4.5 years to prepare. The EIR preparation and review process turned out to be a tedious and protracted process with analyses never before performed for a frost pond. After EIR consultant selection, completion of the Draft EIR, and a number of EIR revisions, the Final EIR was readied for CPC review.

In **2021**, due to the redistricting subsequent to the 2020 Census, the project site was reassigned from the 5th Supervisorial District to the 1st Supervisorial District.

March 29, 2023 - The CPC reviewed the staff recommendation for approval. However, their final action was a 3-1 vote for denial. The CPC directed staff to return with findings for denial after a full seven years since the permit application was first submitted.

May 10, 2023 – The CPC reviewed the new set of findings for denial of the reservoirs contrary to facts in the record, and voted 3-1 to deny the project. The CPC also denied, in a tie 2-2 vote, to deny the applicant’s request for a continuance in order to bolster the analysis for the project EIR in order to answer some Commissioner’s concerns.

The following is our analysis of the CPC findings for denial and our rationale of why these findings are incorrect and, therefore, why the project should be approved as originally recommended by P&D staff and the ZA. It should be noted that the staff has consistently recommended approval for the project as it meets all required development standards and environmental thresholds of significance of the County.

GROUNDINGS FOR APPEAL BASED ON FINDINGS

2.1.1 *The site for the proposed project is adequate in terms of location, physical characteristics, shape, and size to accommodate the type of use and level of development proposed.*

The CPC finds that the site is not adequate for the size and level of development proposed due to the critical groundwater overdraft conditions that have been documented in the Cuyama Groundwater Basin. As described in the staff report, dated March 15, 2023, and incorporated herein by reference, the project is located within the Cuyama Valley Groundwater Basin, which is listed as a “high” priority and “critically overdrafted” basin by the California Department of Water Resources (DWR).

Each reservoir would have a water storage capacity of approximately 44-acre-feet, a maximum depth of 27-28 feet, and in total the three reservoirs would occupy an area of approximately 15.6 acres. Additionally, the

total project would require approximately 257,945 cubic yards grading. With regard to Reservoir No. 3, the location is not adequate for the proposed development because it is not possible to position the reservoir to avoid significant impacts to native grassland resources. Finally, because the size of the proposed Project, and the location of the Project site within the Cuyama Valley Groundwater Basin, the CPC finds that the Project site is not adequate in terms of accommodating the level of development proposed.

Response: The PC did not consider the size of the ponds relative to the size of the vineyard being protected, as there are approximately 840 acres of vineyard installed. The use of frost ponds is a widely accepted agricultural practice for vineyards and the method of choice throughout the County. No frost pond has received so much scrutiny in the County and the precedent could have profound impacts on the agriculture industry.

The finding that Reservoir 3 cannot be positioned to avoid impact to the grassland is without factual support. The issue of grassland and reservoir location was brought up at the CPC 03/29/23 hearing but only in the context of an item needing further clarification. No evidence was presented that any impacts were unavoidable (Class I), nor that they were significant under County adopted thresholds. One of the reasons for seeking a continuance was to address the additional questions and appropriately address any impacts to the grasslands but the CPC denied the applicant the opportunity to do so.

2.1.2 Within the Inland area significant environmental impacts will be mitigated to the maximum extent feasible.

The CPC finds that the proposed Project's significant adverse environmental impacts will not be mitigated to the maximum extent feasible. The Final Environmental Impact Report (21EIR-00000-00002) identifies significant environmental impacts to Biological Resources, Cultural and Tribal Resources, Geologic Processes, Groundwater Use, Flooding, and Water Quality. These impacts can be minimized with the implementation of identified mitigation measures; however, the mitigation measures do not reduce the Project's environmental impacts to the extent feasible. A redesigned project that is smaller in size and/or that utilizes alternative frost protection measures such as the use of wind machines could meet the objective of providing frost protection and would result in less disturbance of the project site, would reduce impacts to native grassland resources and other biological resources, and would reduce Project-related water loss to evaporation.

Response: This Finding is in direct conflict with the County adopted Environmental Thresholds that state impacts to native grasslands are normally considered significant only if the area of impact is larger than 0.25 acre. The project would result in less than 0.1 acre of disturbance and the applicant is open to voluntarily adjusting the footprint of Reservoir 3 to ensure no impact occurs. Irrespective of this, the CPC did not adhere to the thresholds which were set by the BOS and are the basis of environmental review set forth by CEQA.

The finding admits that potential impacts are minimized and the EIR determined those impacts are less than significant. The finding errs in claiming the impacts were not mitigated, however, to the maximum extent feasible. Mitigating an impact to less than significant levels is the accepted standard and is based on the findings the P&D staff recommended for approval. Following the CPC's reasoning however, the only acceptable outcome is the "no project" alternative, which is in direct opposition to the project objectives (*Association of Irrigated Residents v. County of Madera* 04/2003, 107 Cal.App.4th 1383). The CPC (and subsequently the BOS) did not initially deny the project but directed staff to prepare an EIR, which staff did. The CPC then rejected both the results

of the EIR (which determined impacts could be mitigated to less than significant levels) and staff recommendation for approval, denying the project.

2.1.4 There will be adequate public services, including fire protection, police protection, sewage disposal, and water supply to serve the proposed project.

The CPC finds that the Project will not be adequately served by public and private services, specifically the production and use of groundwater from existing private agricultural wells. The Project proposes the creation of three reservoirs, with a storage capacity of 44-acre-feet each and occupying a total area of approximately 15.6 acres. Water stored in the proposed reservoirs would be from the Cuyama Groundwater Basin, which is in a critical state of overdraft. Although the Project's annual evaporative losses could potentially be reduced to below the adopted significance threshold of 31-acre-feet per year with the adoption of mitigation measures, due to the critical groundwater overdraft conditions affecting the basin, the CPC finds that the Project's loss of up to 31-acre-feet per year is a long-term water supply impact that will adversely affect the Project area. Therefore, adequate water supply resources are not available to serve the proposed Project.

Response: As with native grasslands, the adopted Groundwater Threshold for the Cuyama Groundwater basin is set at 31 AFY set by the BOS. The Groundwater Threshold was established by detailed scientific and engineering protocols developed by qualified professionals in the field, whom the County rely on for accurate information. The EIR evaluated the groundwater threshold and recognized it as the controlling standard. The project was then designed so as to minimize the amount of groundwater due to evaporative loss. The mitigation measures were developed after an exhaustive review including covering the reservoirs and limiting the amount of groundwater utilized for frost events to ensure the groundwater used did not exceed County thresholds.

Members of the CPC voiced objection to the County's BOS-adopted Threshold of Significance for the Cuyama Groundwater Basin, preferring to base the determination on activist public speakers as their determining factor instead of the County's CEQA process. Utilizing a subjective process sets a precedent that could impact future projects no matter how well they are designed to meet all the County development standards and policies.

The CPC erred further in finding a significant impact due to loss of groundwater by ignoring the role of the Groundwater Sustainability Plan (GSP) prepared by the Cuyama Basin Groundwater Sustainability Area (CBGSA). The Plan recommends no pumping restrictions for the Northwestern Threshold Region, which includes the subject property. Pumping restrictions are proposed to be implemented only within the identified Central Management Area, well to the east of the project site (GSP p. ES-13). The technical analyses conclude that '...available information did not indicate a projected overdraft in [the Northwestern] region.' Moreover, the analyses show that 'the available evidence indicates that management actions are not required in this region at this time.' This demonstrates the relative health of the Northwestern Threshold Region portion of the aquifer that this project relies upon (GSP p. ES-13, Woodard & Curran Technical Memorandum p. 27). The role of managing groundwater in the Cuyama Groundwater Basin now falls under the jurisdiction of the CBGSA which is the ultimate arbiter of groundwater allocations within the basin. Should the need to lessen the amount of water used by the applicant be determined by the CBGSA, that ruling would be made and enforced through the SGMA, not the County land use review process.

2.1.5 The proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will be compatible with the surrounding area.

The CPC finds that the proposed Project is not compatible with the surrounding area, and the Project would be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood. The Project's groundwater use that is subject to discretionary review will contribute to declining groundwater levels in the project region, which have declined substantially since a vineyard was planted on the project property. The CPC finds that Project-related groundwater loss to evaporation of up to 31-acre-feet per year is a long-term water supply impact that will detrimentally affect the general welfare of Project area.

Additionally, the CPC finds that the proposed Project may have a detrimental effect on the general welfare, health and safety of the neighborhood due to the potential for slope failure or scouring of reservoir slopes due to the size of the proposed Project.

Response: The County's analysis in the EIR found the property in question is not located near, nor is supplied by water drawn from, a water source in critical overdraft conditions. The EIR disclosed the wells are located in the Northwestern Threshold Region of the aquifer which is characterized as remaining fairly stable throughout and projected to remain stable (FEIR pp 2-14), a fact corroborated by the CBGSA. Members of the CPC, however, were persuaded by appellant's select data that is relevant not to the Northwestern Threshold Region but to the most overdrafted portions of the basin.

Additionally, the finding of potential slope failure or scouring of reservoir slopes is unfounded, with no data to make such a case. The project engineering was reviewed by multiple local and state agencies and found to be structurally sound. Conditions of approval are associated with the project to ensure thorough review and inspection of the design and construction of the reservoirs. Likewise, there are no sensitive receptors within two miles of the nearest reservoir and Highway 166 is more than ½ mile from the nearest reservoir, so there is no nexus to claim there is an effect on general welfare, health, and safety.

2.1.6 The proposed project will comply with all applicable requirements of this Development Code and the Comprehensive Plan, including any applicable community or area plan.

The CPC finds that the proposed Project will not comply with all applicable requirements of the Comprehensive Plan, specifically Land Use Development Policy 4, which requires that "adequate public or private services and resources (i.e., water, sewer, roads, etc) are available to serve the proposed development." As described in the staff report, dated March 15, 2023, and incorporated herein by reference, the project is located within the Cuyama Valley Groundwater Basin, which is listed as a "high" priority and "critically over drafted" basin by DWR.

Due to the critical groundwater overdraft conditions affecting the basin, the CPC finds that Project-related groundwater losses of 31-acre-feet per year is a long-term water supply impact that will adversely affect the Cuyama area. The CPC finds that due to the size of the proposed Project, it does not comply with Conservation Element Policies 3.5 and 3.6, which prevent land use decisions that would result in basins becoming seriously over drafted on a prolonged basis. Similarly, the scale of the project could potentially impact the long-term viability of agriculture within the basin and the proposed Project is therefore not consistent with Agricultural Element Policy 1.B. Therefore, adequate water supply resources are not available to serve the proposed Project.

Response: The decision is precedent setting, as it misinterprets Agricultural Element Policy 1B and interferes with the long-standing County policy to not direct choice of agricultural crop and agricultural land management practices, in order to promote the intensification of agriculture. To be clear, the CPC's findings that the scale of the project could impact agricultural viability is in direct conflict with County policy. The County does not choose which type or what scale of agriculture is to be cultivated. Statements made during the hearing by members of the CPC stating the vineyard developed was not the right crop for the area go directly against the Agricultural Element Policy and set a precedent under which the County can dictate the type and acreage of crop allowed on an agriculturally zoned parcel.

The conclusion that the proposed project would result in a seriously over drafted basin is in conflict with the facts in the record. In addition to the project meeting the water use threshold requirements, the GSP prepared by the CBGSA recommends no pumping restrictions for the subject property or nearby lands. Pumping restrictions are proposed only within the identified Central Management Area, well to the east of the project site (GSP p. ES-13). The technical analyses conclude that "...available information did not indicate a projected overdraft in that region." Moreover, the analyses show that "...the available evidence indicates that management actions are not required in this region at this time." This demonstrates the relative health of the Northwestern Threshold Region of the aquifer, upon which this project relies (GSP p. ES-13, Woodard & Curran Technical Memorandum p. 27). The CPC did not take into account the CBGSA oversight which is a separate process that has jurisdiction in this area.

The EIR was explicit that all impacts were mitigated to less than significant impacts (Class II), so Policy 1B language regarding conservation of resources is met and any findings to state otherwise ignore the conclusions of the EIR, staff recommendations, and the CEQA process.

2.1.7 *Within Rural areas as designated on the Comprehensive Plan maps, the proposed use will be compatible with and subordinate to the rural and scenic character of the area.*

The CPC finds that the proposed Project is not compatible and subordinate to the agricultural character of the project area due to the size and number of reservoirs proposed. Each reservoir would have a water storage capacity of approximately 44-acre-feet, a maximum depth of 27-28 feet, and in total the three reservoirs would occupy an area of approximately 15.6 acres. Additionally, the total project would require approximately 257,945 cubic yards grading. The Project's groundwater use that is subject to discretionary review will contribute to declining groundwater levels in the project area, which have declined substantially since a vineyard was planted on the project property. The CPC finds that Project-related groundwater losses of 31-acre-feet per year is a long-term water supply impact that will detrimentally affect the general welfare and future agricultural operations conducted in the project area.

Response: It is in conflict with both the Land Use Development Code and the Agriculture Element to make a finding that an agricultural use, such as that proposed, is not subordinate to the agricultural character in an agriculturally zoned portion of the County. The County does not dictate the types of crops are installed or their support uses in compliance with the Agricultural Element. Water storage for agricultural use is extremely common throughout the Cuyama Valley and the County more broadly, and reservoirs are commonly built close to the threshold of 50 acre-feet to maximize the base capital costs of the reservoir and pump plant (that is, it is much cheaper to

have one 48 ac-ft reservoir than two 24 ac-ft reservoirs). Additionally, the reservoirs were designed for the specific footprint of the North Fork Vineyard by engineers with substantial and frequent experience in agriculture and vineyard frost protection. Similar designs exist throughout the County and the entire Central Coast region, and to argue, as the CPC does, that the size and number are not compatible with the agricultural character of the project area runs contrary to decades of continuous agricultural operation. Similarly, the CPC draws attention to the 257,945 cubic yards of grading as being contrary to the agricultural characteristics, yet the basic field leveling associated with the sort of vegetable growing located throughout the region moves many multiples of this volume of soil. Soil movement and grading is not only not contrary to the agricultural character of the region – it is essential to it. Finally, as noted previously, despite vocal claims to the contrary, water levels in the Northwestern Threshold Region of the Cuyama Valley Groundwater Basin have not declined substantially, nor are they projected to do so into the future.

OTHER APPEAL ISSUE

At the March 29, 2023, CPC hearing, several Commissioners voiced their opinions that the EIR did not adequately assess other alternative forms of frost protection and whether they would be sufficient in doing the same level of protection. Another Commissioner voiced the opinion the project could potentially avoid impacts to native grasslands and asked for that to be assessed in a revised EIR. The CPC then asked staff to return with findings for denial at the hearing.

The Applicant requested a continuance at the May 10, 2023 hearing to allow for the EIR to be revised in order to provide more additional updated water data, a thorough analysis of all potential frost protection methods, feasibility, and their level of protection, and to add more detail on the native grasslands in the area and develop sufficient mitigation. This request was technically denied on a 2-2 vote and the findings for denial approved, denying the applicant's right for a fair review of all the pertinent information.

Thank you for your assistance in this matter and we look forward to presenting our project at a future BOS hearing.

Sincerely,



David Swenk
Principal Planner