

Attachment 4

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ATTORNEYS

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September 21, 2018

Santa Barbara County Board of Supervisors
c/o Clerk of the Board
105 East Anapamu Street
Santa Barbara, CA 93101

RE: Appeal of September 12, 2018 County Planning Commission Action on the Northfork Ranch Frost Ponds Project 16CUP-00000-00005

Honorable Members of the Board of Supervisors:

On September 12, 2018, the County Planning Commission (Commission) voted 3-2 to not support the Zoning Administrator's (ZA) approval of this Minor Conditional Use Permit (MCUP). This MCUP was evaluated through a Mitigated Negative Declaration (MND). The Commission acted to direct staff to prepare a "focused EIR that evaluates potential water use and biological impacts that may result from the **operation of the proposed reservoirs for frost protection and associated frost protection systems**" (emphasis added). The Commission also "directed staff to determine if an evaluation of potential reservoir failure impacts to State Route 166 should be included in the focused EIR." County staff continues to recommend approval of the project, and believes the existing MND is adequate to comply with the California Environmental Quality Act (CEQA).

Applicant submits an appeal to this Commission action requiring additional environmental review on the following bases:

1. The Commission inappropriately extended the required environmental review into the arena of exempt agricultural water use. The cultivation of crops, the drilling of agricultural wells, and spray irrigation for frost protection purposes of said crops 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 source of the water, whether from wells, reservoirs, water towers, bladders, or any other conceivable storage or production method, has no bearing on whether the water usage is agricultural, and thus exempt. County staff had it correct when they determined that water use thresholds do not apply to normal agricultural activities.

County staff complied with CEQA, only counting the change in water use related to the proposed activity under the MCUP – construction of the frost ponds. In this case, the proposed frost ponds that hold water in the winter for necessary frost-protection for the established vineyards are subject to water loss through evaporation. Staff determined the water loss from evaporation would be less than the established County threshold for groundwater use in the

Cuyama basin. Therefore, there is no potential for significant impacts due to groundwater use, and an MND is the appropriate CEQA document.

2. The MCUP application was accompanied by a Biological Resources Assessment (BRA) prepared by a professional biologist. The field surveys for the BRA included springtime surveys when flowering plants are most visible. The BRA was peer-reviewed by a third-party consultant. The BRA was deemed adequate after some minor revisions. The BRA determined that significant impacts to sensitive species are not anticipated from the project. Mitigation measures were proposed, and included as part of project approval, that would provide for pre-construction surveys and other measures necessary to ensure that impacts would not occur during construction of the project.

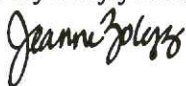
Testimony from the appellant during the Commission asserted that because the biological field surveys were conducted during drought years, they are not adequate to analyze potential biological impacts. The lack of significance findings is more likely due to the areas in question having been utilized for agricultural purposes in the past through grazing, ground preparations, discing, and other farming activities. All established protocols for biological resources reporting were strictly followed, and the Planning Commission should have upheld the staff conclusions that the existing BRA and environmental review is adequate for the project under CEQA.

3. In the event of a catastrophic event resulting in a failed or breached frost pond, up to 49 acre-feet of water could be released. Our analysis of the amount of water potentially released, the size of the property, and the numerous existing natural drainage features indicates that any impacts to highway 166 would be minor and temporary.

With a seemingly innocuous vote, the Commission has potentially created a dangerous precedent that would, if upheld, allow the regulation of agricultural water usage, an exempt activity in Santa Barbara County. If this sort of regulation does come, it should be imposed by Groundwater Sustainability Agencies empowered by the Sustainable Groundwater Management Act, not from the Commission, which, simply put, does not have the administrative powers to do so.

We therefore urge the Board to: (1) approve the appeal, affirming the decision of the Zoning Administrator, (2) adopt findings for approval of the project, including CEQA findings, (3) adopt the Final Mitigated Negative Declaration 17NGD-00000-00004, dated August 1, 2018 along with the mitigation monitoring program contained in the conditions of approval, and (4) grant *de novo* approval of the project 16CUP-00000-00005, subject to the conditions of approval.

Very truly yours,



JEANNE M. ZOLEZZI
Attorney-at-Law

cc: Mr. Matthew Newhall
Mr. Brian A. Tetley
Santa Barbara County Planning Commission