

AGENDA DATE: May 9, 2006



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Planning

Services

Services

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AGENDA ITEM

ITEM NO. _____
District 4

SUBJECT:

Public hearing to consider an appeal of the Planning Commission's decision of March 8, 2006 regarding Special Use Permit No. PSP03-067 (see Appeal Request, Exhibit A).

REQUEST(S):

Deny the appeal by Doreen Caetano-Jungk and Diana Gruber and uphold Resolution No. 8147 (Exhibit B) of the Planning Commission finding that Western Milling has complied with Condition 70, as required by Special Use Permit No. PSP03-067 and Resolution No. 8060.

SUMMARY:

On August 25, 2004 the Planning Commission approved Special Use Permit PSP 03-067, requested by Western Milling, LLC, PO Box 1029, Goshen, CA 93227 (Agent: Phoenix Bio Industries, Inc., P. O. Box 237, Fallbrook, CA 92088). The project amended PSP 00-090 and expanded a feed mill establishment to include production of ethanol and wet distillers grain (cattle feed) on a 4.2-acre portion of a 33-acre site in the AE-40 (Exclusive Agricultural-40 acre minimum) Zone (see Exhibit C - PSP03-067 Staff Report, Maps and Photographs and Exhibit D - Resolution No. 8060). The project is located at 31120 West (Nutmeg) Avenue, adjacent to State Highway 99, on the east side, approximately 1,600 feet north of Betty Drive in Goshen.

The Planning Commission approved PSP 03-067 after adopting an Initial Study / Mitigated Negative Declaration for the project, subject to numerous conditions of approval. Resolution No. 8060, which contains the adopted findings and conditions of approval (Exhibit D) is attached. Condition No. 70 of the approval resolution, reads in part as follows:

70. Western Milling shall hire a qualified consultant, to be approved by the Resource Management Agency, to study further any possible impacts to groundwater resources and to determine the feasibility of implementing additional mitigation measures, if needed, to reduce any potentially significant impacts identified in the study.

The condition also required that the Planning Commission consider the report at a publicly noticed regular meeting. The complete text of Condition No. 70 can be found on page 3 of Resolution No. 8147 and on pages 11-12 of Resolution No. 8060.

A Groundwater Resources Report for the Western Milling project was first presented to the Planning Commission in June 2005. Additional topics and alternatives for review were subsequently researched and incorporated into the report, as well as comments and responses to comments concerning groundwater issues. The Groundwater Resources Report was discussed at Planning Commission hearings held on June 8, 2005, June 22, 2005, July 13, 2005, December 14, 2005, February 8, 2006 and March 8, 2006. More complete information on the groundwater report and its review process can be found in the Resolution and Findings of Resolution 8147 and in the Groundwater Resources Report (see Exhibit G - Groundwater Study Report, 4 volumes, bound separately).

On March 8, 2006, Resolution 8147 of the Planning Commission of the County of Tulare certified that the Planning Commission had independently reviewed and considered the administrative record including all documentary evidence, staff reports, oral testimony and other evidence presented by qualified consultants and other experts, Western Milling, and the public, and based thereon the Planning Commission found that Western Milling had complied with Condition 70, as required by Special Use Permit PSP 03-067 and Resolution No. 8060.

The Notice of Appeal was received on March 17, 2006. On March 28, 2006 a Notice of Brown Act Violation was received (see Exhibit E) from Doreen Caetano-Jungk. In order to respond to this Notice, the appeal to the Board was postponed until a response could be prepared, and a letter from Planning Commission Chairman Bill Whitlatch responding to the Notice of Brown Act Violation was sent on April 26, 2006 (see Exhibit F).

The Appeal and the Notice of Brown Act Violation both refer to “a new water project” approved by Resolution No. 8147 in conjunction with the Groundwater Resources Report. In this regard, there was no intent to change the project description or any condition of approval of the original project. Staff has reviewed the Staff Report/Environmental Assessment Initial Study and the associated Resolution No. 8060 (approved August 25, 2004) and has determined that the approved project involved both California Water Service water to be used for processing ethanol, and that an approved method for providing a reliable back-up water source for fire fighting purposes would also be included in the project.

Resolution No. 8060 indicates that the project description referenced an on-site well to provide emergency backup water in the event of a disruption in service by the community water system, while water to supply the plant would be provided by California Water Company. Specific references to the project water supply and the backup well are as follows:

1. Resolution No. 8060, page 3, Finding B.4 - ... The proposal to construct the ethanol facility is subject to conditions of approval and building permit requirements.
2. Resolution No. 8060, page 3, Finding B.5 - ... Process water shall be obtained by connection to California Water Company.
3. Resolution No. 8060, page 7, Condition No. 9 – Connection to Cal Water Service and an approved method for providing a reliable back-up water source for fire fighting purposes shall be installed. System shall be reviewed and approved by the fire department prior to installation.

RMA staff also reviewed the Western Milling Ethanol Facility Groundwater Resources report, and found the following references to emergency backup water in Volume I, URS Groundwater Resources Report and Summary. Footnote 5 on page 1 of 20 states: An on-site well is available to provide emergency backup water supply in the event of a disruption in service by the Community Water System (URS Groundwater Resources Report, December 2005, page 1). The December 2005 document states the same information, so this specific wording was contained in the information distributed late last year.

FINANCING:

Not applicable.

ALTERNATIVES:

Approve the appeal.

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

See list of agencies consulted in the Staff Report (Exhibit C)

SIGNATURE REQUIREMENTS:

The County Administrative Officer/Clerk of the Board of Supervisors or authorized Deputy to attest to the Resolution.

ADMINISTRATIVE SIGN OFF:

RESOURCE MANAGEMENT AGENCY

Deborah S. Kruse, Assistant Director
Development Services Branch

Henry Hash, Director

cc: Doreen Caetano-Jungk
Diana Gruber
Western Milling, LCC
Phoenix Bio Industries, Inc.

Exhibits:

- A. Notice of Appeal (March 17, 2006)
- B. Planning Commission Resolution No. 8147 approving Groundwater Resources Report (March 8, 2006)
- C. PSP03-067 – Staff Report, Maps and Photographs
- D. Planning Commission Resolution No. 8060 approving PSP03-067 (August 25, 2004)
- E. Notice of Brown Act Violation (March 28, 2006)
- F. Letter responding to Notice of Brown Act Violation (April 26, 2006)
- G. Western Milling Ethanol Facility Groundwater Resources Report (4 volumes, bound separately)

BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF APPEAL OF)
THE PLANNING COMMISSION) RESOLUTION NO.
DECISION OF MARCH 8, 2006)
REGARDING SPECIAL USE)
PERMIT NO. PSP 03-067)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE BOARD OF
SUPERVISORS, AT AN OFFICIAL MEETING HELD ON MAY 9, 2006, BY THE
FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: C. BRIAN HADDIX
COUNTY ADMINISTRATIVE OFFICER
CLERK, BOARD OF SUPERVISORS

BY: _____

* * * * *

1. Denied the appeal by Doreen Caetano-Jungk and Diana Gruber and uphold Resolution No. 8147 (Exhibit B) of the Planning Commission finding that Western Milling has complied with Condition 70, as required by Special Use Permit No. PSP03-067 and Resolution No. 8060.