

AGENDA DATE: July 11, 2006



RESOURCE MANAGEMENT AGENCY

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VISALIA, CA. 93277
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| | |
|------------------|-------------------------|
| Britt L. Fussell | Engineering |
| Deborah Kruse | Development Services |
| Jean P. Brou | Transportation |
| George Finney | Long Range Planning |
| Hal Cyfert | Support Services |
| Roger Hunt | Administrative Services |

HENRY HASH, DIRECTOR

THOMAS W. SHERRY, ASSOCIATE DIRECTOR

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 JULY 11, 2006, BY THE
FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

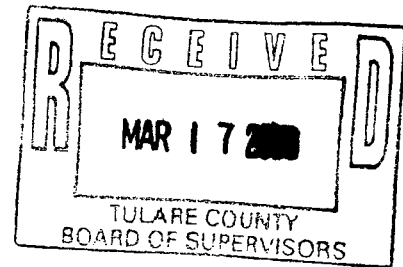
ATTEST: C. BRIAN HADDIX
COUNTY ADMINISTRATIVE OFFICER
CLERK, BOARD OF SUPERVISORS

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.

EXHIBIT A



To: Board of Supervisors
County of Tulare
Civic Center
Visalia, California 93291

Dated: This, the seventeenth day of the third month in the year of our Lord and Savior Jesus Christ two thousand six.

Re: Notice of Appeal and Appeal to the decision made by Tulare County Planning Commission, Western Milling, LLC/Phoenix Bio Industries, Inc.,
Special Use Permit PSP 03 -067 and Resolution No.8060.

Whereas, we appeal the Tulare County Planning Commission's decision of March 8,2006, including and not limited to, for the following reasons:

Whereas, at the Tulare County Planning Commission hearing of August 25, 2004, Doreen Caetano-Jungk reserved all her rights under CEQA law and that of the general public for Tulare County; and

Whereas, there exists violations of the California Environmental Quality Act, specifically, but not limited to, the existing overdraft of the aquifer and that any impacts placed upon it is significant; and,

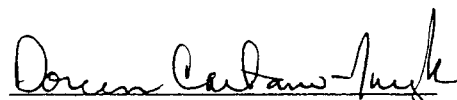
Whereas, a new water project, included in the Resource Management Staff Report on the groundwater study, was introduced, voted on and approved, by the Tulare Planning Commission, March 8, 2006, to wit: "An on-site well is available to provide emergency backup water supply in event of a disruption in service by the community water system, page 3, paragraph 2, Res. No.____(not provided). This new water project needs to be opened to public review in accordance with CEQA process; and

Whereas, the Tulare County Planning Commission approved the water study even though some issues remain unsolved; and,

Whereas, mitigation measures have not been introduced nor completed as agreed and contracted in writing between Western Milling,LLC/Phoenix Bio Industries,Inc. and Doreen Caetano-Jungk; and,

Therefore, Doreen Caetano-Jungk and Diana Gruber make this appeal to the Board of Supervisors, County of Tulare for a hearing, at such time these and other issues may be addressed, and

Wherefore, Doreen Caetano-Jungk and Diana Gruber pray for a hearing on the grounds set out above.


Doreen Caetano-Jungk

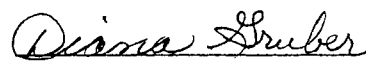

Diana Gruber

EXHIBIT B

BEFORE THE PLANNING COMMISSION

COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF SPECIAL USE PERMIT)

RESOLUTION NO. 8147

APPLICATION NO. PSP 03-067)

INTRODUCTION

Resolution of the Planning Commission of the County of Tulare certifying that it has 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 hereby finds Western Milling has complied with Condition 70, as required by Special Use Permit PSP 03-067 and Resolution No. 8060.

RESOLUTION AND FINDINGS

WHEREAS, an application was filed by Western Milling, LLC, P.O. Box 1029, Goshen, CA 93227 (Agent: Phoenix Bio Industries, Inc., P. O. Box 237, Fallbrook, CA 92088) to amend PSP 00-090 and expand 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, 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 ("Proposed Project"), and

WHEREAS, the Planning Commission gave notice of its intention to consider the granting of a Special Use Permit ("SUP") for the Proposed Project as provided in Section 18 of said Ordinance No. 352, as amended and as provided in Section 65905 of the Government Code of the State of California, and

WHEREAS, County staff performed necessary investigations and consultation, prepared a written report (made a part hereof and incorporated by reference as if fully set forth herein) and recommended approval of this application subject to conditions, and

WHEREAS, on August 25, 2004, a public hearing was held and an opportunity for public testimony was provided at a regular meeting of the Planning Commission, and

WHEREAS, on August 25, 2004, public testimony was received and recorded in support of the Proposed Project from Rick Eastman, Phoenix Bio Industries, Linda Douglas, Tulare County Economic Development Corporation and Chad Tafti, Goshen Planning Committee. Testimony was received and recorded from Caroline Farrel, Center on Race, Poverty & the

Environment (CRPE) representing Goshen Residents Against Polluting the Environment (GRAPE), Doreen Caetano-Jungk, Richard Gruber, and Tom Montalvo of GRAPE, who indicated they were not necessarily opposed to the project but had specific concerns. In addition, the applicant, Western Milling, LLC, entered into an Environmental Settlement Agreement with the UA Plumbers and Steamfitters Union, Local 246, and the International Brotherhood of Electrical Workers Union, Local 100. Bill Hayter, Community Development Specialist for Tulare County, addressed the Commission regarding the issues of water availability and traffic but was neither in favor of, nor opposed to, the project, and

WHEREAS, on August 25, 2004, the Planning Commission certified that it independently reviewed and considered the information contained in the Mitigated Negative Declaration for the Proposed Project together with any comments received during the public review process, in compliance with the California Environmental Quality Act ("CEQA (Pub. Resources Code, § 21000 et seq.) and the State Guidelines for the Implementation of CEQA prior to taking action on the project. Said Mitigated Negative Declaration is incorporated by reference herein, and

WHEREAS, the Planning Commission, after considering all of the evidence presented, adopted findings of fact, hereby incorporated by reference as if fully set forth herein, that the establishment, maintenance, and operation of the use of the Proposed Project applied for by Special Use Permit PSP 03-067 would not, under the circumstances of the particular case, be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County, and

WHEREAS, on August 25, 2004, the Planning Commission found there was no substantial evidence that the establishment, maintenance and operation of the use of the Proposed Project applied for by Special Use Permit PSP 03-067, as mitigated, could have a significant effect on the environment and determined that the Mitigated Negative Declaration (including responses to comments) for said Special Use Permit reflected the independent review, consideration and judgment of the County, and was completed in compliance with CEQA and the State Guidelines for the Implementation of CEQA, including Tulare County's Implementation Guidelines and the Planning Commission thereafter adopted Resolution No. 8060, and

WHEREAS, no individual or entity appealed the Planning Commission's decisions of August 25, 2004, to the Board of Supervisors and no individual or entity filed a legal challenge in a court of competent jurisdiction, the CEQA process became final 30 days after the notice of determination was filed by the agency, on or about September 24, 2004. (Pub. Res. Code section 21167(b); 14 Cal. Code Regs. section 15112(c)(1). If no notice of determination is filed, Public Resources Code section 21167 and CEQA Guidelines section 15112 provide that the action must be filed within 180 days after the agency decides to approve the project, and

WHEREAS, the Project will require on average approximately 250,000 gallons per day (gpd) of fresh water, consisting of about 170,000 gpd to make up evaporative losses from the cooling tower, 60,000 gpd for process make-up water, and 20,000 gpd for boiler make-up water.

Another approximately 50,000 gpd of water will be needed for boiler and cooling tower blowdown, but this will be supplied by water recycled from within the facility, and

WHEREAS, the total water demand of 250,000 gpd is equivalent to a continuous water supply rate of about 180 gallons per minute (gpm). This water will be supplied by connection to the community water supply system owned and operated by California Water Service Company. This connection became operational and fully capable of supplying the entire water demand of the facility, including fire flow, in September 2005. An on-site well is available to provide emergency backup water supply in event of a disruption in service by the community water system, and

WHEREAS, in the interest of cooperation with members of the community, the County formulated, and the applicant agreed to accepted a variety of performance standards to be implemented following completion of the CEQA process. Specifically, the Planning Commission approved Special Use Permit Application No. PSP 03-067, subject to the conditions stated in Resolution No. 8060, including the following condition:

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 consultant shall submit the study to the Resource Management Agency in the form of a written report as soon as reasonably practicable, but no later than six (6) months from the effective date of this special use permit (the Planning Commission may grant one or more extensions of said six months time, upon request by the applicant). The Resource Management Agency shall review the study for adequacy and completeness. If the Resource Management Agency determines that the report is inadequate or incomplete in any respect, Western Milling shall revise the report accordingly. After the report is deemed to be adequate and complete, Western Milling shall submit the report to the Planning Commission for consideration at a regular public meeting. Notice of such meeting shall be given in accordance with the State Planning and Zoning Law and copies of the report shall be made available for public review and comment at least ten (10) calendar days before the meeting. Western Milling shall comply with any direction given by the Planning Commission after consideration of the report, including but not limited to, filing an amendment to incorporate any feasible mitigation measures into the project as conditions of approval. Western Milling shall implement such measures determined to be feasible by the Planning Commission. Said amendment (which includes the groundwater resources report) shall be subject to public notice, hearing and comment as required by law.

WHEREAS, the experts of URS Corporation were chosen by the Tulare County Resource Management Agency with input from members of the public, the Planning Commission and Western Milling to conduct the further studies and respond to public comments pursuant to Condition 70 based on URS Corporation's extensive experience in all relevant disciplines, and

WHEREAS, the Tulare County Resource Management Agency considered the qualifications of other consultants and, based on the County's experiences with those consultants, determined the reliability, integrity, and qualifications of Stuart St. Clair/URS Corporation to perform this work to be superior to the others under consideration, and

WHEREAS, on February 23, 2005, the Tulare County Planning Commission, in response to Western Milling's written request dated February 16, 2005, adopted Resolution No. 8103 to extend the time period for complying with Condition 70 to August 25, 2005, and

WHEREAS, in fulfillment of Condition 70, the experts of URS Corporation prepared a Groundwater Resources Report (dated May 4, 2005) released for public review in May 2005 ("May 2005 Groundwater Resources Report"). The objective of the May 2005 Groundwater Resources Report was to verify, pursuant to the terms of Condition No. 70, whether use of groundwater to supply water for the ethanol facility would cause potentially significant impacts to groundwater resources either directly or cumulatively. The scope of May 2005 Groundwater Resources Report consisted of the following tasks:

1. Reviewing reports on regional geologic and hydrogeologic conditions published by the United States Department of the Interior Geological Survey (USGS), the California Department of Water Resources (DWR), and the Kaweah Delta Water Conservation District (KDWCD).
2. Reviewing files maintained by the California Regional Water Quality Control Board (RWQCB) regarding the Visalia Landfill.
3. Reviewing information provided by Western Milling regarding the on-site supply well and other nearby supply wells.
4. Reviewing information provided by California Water Service Company (CWS) regarding community water supply wells in the Goshen area.
5. Developing a computerized numerical groundwater flow model of the Goshen area to estimate predicted changes in groundwater elevations and flow pathlines due to the proposed use of the on-site well to supply water for the ethanol facility.
6. Preparing the May 2005 Groundwater Resources Report and responding to comments, and.

WHEREAS, using computer models based on regional information, the May 2005 Groundwater Resources Report again looked at whether supplying the Western Milling facility with groundwater from an on-site well would cause any potentially significant "draw down"

impacts to neighbors on either an incremental or cumulative basis. Six primary scenarios that were modeled:

- Scenario A – Pre-Ethanol-Facility Baseline Average Pumping Condition
- Scenario B – Direct Impacts (Planned Average Pumping Condition)
- Scenario C – Direct Impacts (Short-Term Emergency Pumping of the On-Site Well)
- Scenario D – Direct Impacts (Hypothetical Agricultural Well Between the Visalia Landfill and the Ethanol Facility)
- Scenario E – Cumulative Impacts (List Method)
- Scenario F – Cumulative Impacts (2020 Build-out per 2002 Draft Goshen Community Plan), and

WHEREAS, the May 2005 Groundwater Resources Report also analyzed the potential for contaminants to be drawn into domestic supply wells near the Western Milling ethanol facility from the Visalia landfill located approximately three miles northeast. The May 2005 Groundwater Resources Report demonstrated that the use of the on-site well would not cause significant incremental migration of dissolved groundwater contaminants from the Visalia landfill to domestic supply wells or cause potentially significant groundwater elevation decreases at domestic supply wells, and

WHEREAS, in further compliance with Condition 70, URS prepared a “Revised Addendum to Groundwater Study Report,” dated June 1, 2005, (“June 2005 Groundwater Resources Report”) providing additional technical information (superseding the “Addendum to Groundwater Study Report,” dated May 25, 2005 in its entirety). The June 2005 Groundwater Resources Report analyzed whether any significant cumulative impacts to groundwater resources may be caused by the use of wells for the Project in combination with other existing and planned supply wells. Two significant existing supply wells were identified and analyzed: one operated by Western Milling and another operated by California Water Service Company. In addition, one future significant well need from the proposed meat packing plant by Western Pacific Meat Packing Company was analyzed. Using groundwater modeling simulations of various groundwater well scenarios, the Groundwater Resources Report concluded that the foreseeable cumulative impact to groundwater resources caused by the use of the on-site supply well for the Project in combination with other existing and identifiable planned supply wells is not significant, and

WHEREAS, to encourage public participation a public hearing was held before the Planning Commission on June 8, 2005, to discuss the Groundwater Resources Report, and

WHEREAS, to encourage public participation a public hearing was held before the Planning Commission on June 22, 2005, to discuss the Groundwater Resources Report, and

WHEREAS, to encourage public participation a public hearing was held before the Planning Commission on July 13, 2005, to discuss the Groundwater Resources Report, and

WHEREAS, to encourage public participation a public hearing was held before the Planning Commission on December 14, 2005, to discuss the project and the Groundwater Resources Report. At the at the Planning Commission hearing on December 12, 2005, URS released a compilation of the previous reports, comments and analyses ("December 2005 Groundwater Resources Report"), and

WHEREAS, the December 2005 Groundwater Resources Report, along with responses to comments received to date, was circulated for a 30-day public review period, which closed on January 19, 2006, and

WHEREAS, the December 2005 Groundwater Resources Report provided responses to oral and written comments submitted concerning the December 2005 Groundwater Resources Report, and

WHEREAS, to encourage public participation, the fifth public hearing was held before the Planning Commission on February 8, 2006, to discuss the Groundwater Resources Report, and

WHEREAS, in an effort to ensure public participation, the Planning Commission held no less than five (5) public hearings, well in excess of any and all statutory requirements, and

WHEREAS, the Planning Commission was not presented with any evidence, much less any evidence meeting any applicable standards of substantiality and credibility, that would suggest that the Project might result in a significant adverse impact requiring additional mitigation, and

WHEREAS, the May 2005 Groundwater Resources Report, the June 2005 Groundwater Resources Report, the December 2005 Groundwater Resources Report, including all comments (oral and written) and all responses to comments, demonstrate to the satisfaction of the Planning Commission that no additional mitigation measures are warranted because the use of groundwater to supply water for the ethanol facility and other potential development projects in the Goshen area: (a) will not induce potentially significant migration of dissolved groundwater contaminants from the Visalia Landfill to domestic supply wells that are near the ethanol facility, and (b) will not cause potentially significant groundwater elevation decreases at such domestic or agricultural wells.

NOW, THEREFORE, BE IT RESOLVED as follows:

- A. This Planning Commission hereby certifies that it has independently reviewed and considered the information contained in the administrative record, including information submitted in compliance with Condition 70, including but not limited to the information contained in the May 2005 Groundwater Resources Report, the June 2005

Groundwater Resources Report, the December 2005 Groundwater Resources Report, and all staff reports, public comments (oral and written), and all responses to comments.

- B. This Planning Commission hereby adopts the following findings of fact as the bases for affirming Western Milling's compliance with Condition 70:

Impact No. 1: Public comments on the Groundwater Resources Reports focused on questions related to whether supplying the Project with groundwater would cause any potentially significant "draw down" impacts on either an incremental or cumulative basis.

Finding: The experts of URS prepared three separate Groundwater Resources Reports and responded to public comments following 5 public comment periods. The Groundwater Resources Reports and responses to comments demonstrated that the direct and cumulative impacts related to supplying the Project with groundwater would not cause any potentially significant "draw down" impacts on either an incremental or cumulative basis.

Mitigation required: None. Based upon the evidence and analysis provided, no potentially significant "draw down" impacts, either incrementally or cumulatively, were identified.

Impact No. 2: Public comments on the Groundwater Resources Reports focused on questions related to whether supplying the Project with groundwater would cause significant incremental migration of dissolved groundwater contaminants from the Visalia landfill to domestic supply wells on either an incremental or cumulative basis.

Finding: The experts of URS prepared three separate Groundwater Resources Reports and responded to public comments following 5 public comment periods. The Groundwater Resources Reports and responses to comments demonstrated that the direct and cumulative impacts related to supplying the Project with groundwater would not cause any potentially significant incremental migration of dissolved groundwater contaminants from the Visalia landfill to domestic supply wells on either an incremental or cumulative basis.

Mitigation required: None. Based upon the evidence and analysis provided, no potentially significant impacts due to incremental migration of dissolved groundwater contaminants from the Visalia landfill to domestic supply wells, either on an incremental or cumulative basis, were identified.

Impact No. 3: Public comments on the Groundwater Resources Reports focused on questions related to whether supplying the Project with groundwater would cause significant impacts to private or agricultural wells, including, but not limited to, impacts on a project-specific or cumulative basis.

Finding: Based upon the independent review, consideration and judgment of the Planning Commission, this Planning Commission hereby finds that the evidence in the record demonstrates

that Western Milling has complied with Condition 70 as required by Special Use Permit PSP 03-067, and that there is no substantial evidence that the Project may have a significant effect on the environment; and further finds the administrative record contains no substantial evidence in support of any alleged impact to groundwater resources including private or agricultural wells, on either a project-specific or cumulative basis.

Mitigation required: None. Based upon the evidence and analysis provided, no potentially significant impacts on groundwater resources including private or agricultural wells, on either a project-specific or cumulative basis, were identified.

- C. The Planning Commission hereby determines that Western Milling has complied with Condition 70 of Planning Commission Resolution No. 8060 and finds that no further action is required of Western Milling at this time, including but not limited to, filing an amendment to incorporate any feasible mitigation measures into the project as conditions of approval.

This decision by the Tulare County Planning Commission shall be final unless appealed to the Tulare County Board of Supervisors within ten (10) calendar days. Any appeal must be filed in writing and an appeals fee is required.

The foregoing resolution was adopted upon motion of Commissioner Kirkpatrick, seconded by Commissioner Millwee, at a regular meeting of the Planning Commission on the 8th day of March 2006, by the following roll call vote:

AYES: Millwee, Dias, Kirkpatrick, Whitlatch

NOES: None

ABSTAIN: Gong, Elliott, Pitigliano

ABSENT: None

TULARE COUNTY PLANNING COMMISSION

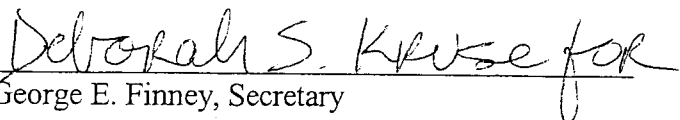

George E. Finney, Secretary

EXHIBIT C

BEFORE THE PLANNING COMMISSION

COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF SPECIAL USE PERMIT)

RESOLUTION NO. 8060

APPLICATION NO. PSP 03-067)

Resolution of the Planning Commission of the County of Tulare conditionally approving 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) to amend PSP 00-090 and expand 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, 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.

WHEREAS, an application has been filed pursuant to the regulations contained in Section 16 of Ordinance No. 352, the Zoning Ordinance of Tulare County, and

WHEREAS, the Planning Commission has given notice of its intention to consider the granting of a Special Use Permit as provided in Section 18 of said Ordinance No. 352, as amended and as provided in Section 65905 of the Government Code of the State of California, and

WHEREAS, Staff has performed necessary investigations, prepared a written report (made a part hereof) and recommended approval of this application subject to conditions, and

WHEREAS, a public hearing was held and an opportunity for public testimony was provided at a regular meeting of the Planning Commission on August 25, 2004, and

WHEREAS, at that meeting of the Planning Commission public testimony was received and recorded in support of the proposal from Rick Eastman, Phoenix Bio Industries, Linda Douglas, Tulare County Economic Development Corporation and Chad Tafti, Goshen Planning Committee. Testimony was received and recorded from Caroline Farrel, Center on Race, Poverty & the Environment (CRPE) representing Goshen Residents Against Polluting the Environment (GRAPE), Doreen Caetano-Jungk, Richard Gruber, and Tom Montalvo of GRAPE, who indicated they were not necessarily opposed to the project but had specific concerns. In addition, the applicant, Western Milling, LLC, entered into an Environmental Settlement Agreement with the UA Plumbers and Steamfitters Union, Local 246, and the International Brotherhood of Electrical Workers Union, Local 100. Bill Hayter, Community Development Specialist for Tulare County, addressed the Commission regarding the issues of water availability and traffic but was neither in favor of, nor opposed to, the project.

NOW, THEREFORE, BE IT RESOLVED as follows:

A. This Planning Commission hereby certifies that it has independently reviewed and considered the information contained in the Mitigated Negative Declaration for the proposed project together with any comments received during the public review process, in compliance with the California Environmental Quality Act and the State Guidelines for the Implementation of the California Environmental Quality Act of 1970 prior to taking action on the project. Said Mitigated Negative Declaration is incorporated by reference herein.

B. This Planning Commission hereby adopts the following findings of fact as to the reasons for approval of this application:

1. The proposal is consistent with land use and circulation plans as set forth in the Goshen Community Plan, the Goshen Redevelopment Plan and other applicable elements of the Tulare County General Plan, as discussed in the staff report prepared for this project, which is incorporated herein by reference. The proposed use is consistent with the land use designation of "Industrial", as indicated in the Goshen Community Plan. The AE-40 Zone (Exclusive Agricultural-40 acre minimum) is intended for extensive agricultural uses and for those uses, which are a necessary and integral part of agricultural operations. With special use permit approval, the manufacture of commercial biomass fuel is allowed in the AE-40 Zone, along with feed mills and establishments for the curing, processing, packaging, storage and shipping of agricultural products. Biomass, as considered in the Tulare County Ordinance, includes those materials, which can be used directly as a fuel or can be converted to a variety of clean, useful fuels such as alcohol, methane, hydrogen and low-BTU gas. Directly, or after conversion, biomass is used to produce electricity, heat and combustible fuels. The manufacture of commercial biomass fuel is defined in Section 2, page 2 (of the Tulare County Zoning Ordinance) as "the manufacture of alcohol or gases derived from the conversion of biomass feedstocks through the process of fermentation and/or distillation, the product of which is intended for sale or trade for use as a fuel or fuel mixture, including the production of anhydrous alcohol, ethanol, methanol, ethane, methane, and other similar derivatives". The existing feed mill is an integral part of the ethanol production process.
2. Section 16. II. B. of the Tulare County Zoning Ordinance requires a special use permit in the AE-40 Zone for the establishment of a commercial biomass fuel manufacturing facility.
3. The subject site is within the Urban Development Boundary of Goshen and subject to the plans, standards and policies of the Goshen Community Plan and the Goshen Redevelopment Plan.

4. The applicant has requested a Special Use Permit to allow the expansion of 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. The proposal to construct the ethanol facility is subject to conditions of approval and building permit requirements
5. The proposed expansion is to process ground corn, delivered via enclosed conveyor from the current Western Milling operation. The plant will produce 25 to 30 million gallons of fuel grade ethanol alcohol, 265,000 – 325,000 tons of wet distillers' grain (cattle feed) and 88,300 – 108,000 tons of CO₂ per year. Southern California Edison will provide the electricity and a SJVAPCD previously - permitted boiler will provide thermal needs. Process water shall be obtained by connection to California Water Company.
6. Regarding the potential for objectionable odors that may be generated from the proposed ethanol production facility, an onsite Air Quality Analysis (AQA) determined the following: "Any minimal 'fence line' odors from dry grain handling, milling and processing would be considered normal agricultural odors and not objectionable. The other possible sources of odor in fuel ethanol plants are the wet cake pad where wet distillers grains with solubles (WDGS) is stored prior to load out into trucks. Further, [at an existing ethanol plant located in South Dakota] "the only objectionable odors were noticeable at the edge of the WDGS storage area; however, such odors were not noticeable at approximately 100 yards from that area." RMA staff notes that the nearest offsite residence not associated with the proposed ethanol facility is located approximately ¼ mile southeast of the project site's southeastern property line, Thus this potentially affected residence will be at least 1,500 feet from the nearest potential source of objectionable odor on the ethanol plant site, although within a prevailing wind direction (which would be from the northwest or north in this area).
7. Given the lack of data or standard methods for testing wet cake emissions Wet Distiller's Grain (WDG) Western Milling has agreed to perform a study of the actual plant Volatile Organic Compound (VOC) emission after startup. The methods employed will be mutually agreed upon by both the environmental consultant(s) for Western Milling and the environmental consultant(s) for the International Brotherhood of Electrical Workers (IBEW) or other concerned parties. Should the wet cake emissions exceed two (2) pounds per day VOC's, Western Milling agrees to implement mitigation measures mutually agreed upon by the aforementioned consultants (see IBEW Environmental settlement agreement attached to environmental document)
8. The facility is subject to the California State Hazardous Materials Laws. Applicants must contact the CUPA at the Tulare County Environmental Health Services Division (TCEHSD) to update the existing Hazardous Material Business Plan.

9. Caroline Farrell of CRPE submitted written comments prior to, and at, the public hearing. Chad Tafti of the Goshen Planning Committee also submitted written comments at the hearing. These written comments reflected the verbal comments of the authors. CPRE requested a total of 12 additional conditions of approval for the project in their written comments. The applicant agreed to these conditions. Said conditions have been incorporated into the conditions of approval listed below and the applicant is committed to comply with said conditions. Accordingly, CRPE did not have any objections to this project. In addition, Western Milling entered into an Environmental Settlement Agreement with the UA Plumbers and Steamfitters Union, Local 246, and the International Brotherhood of Electrical Workers Union, Local 100. The provisions of Parts A and B of said Agreement are included as conditions of approval herein; and as such, the Unions do not have any objections to this project. The comments of the other speakers were addressed at the public hearing (a) by the applicant's willingness to be committed to the requested conditions of approval by the Unions and CRPE, and (b) by the responses from RMA Staff and County Counsel. In particular, Conditions Nos. 1 through 15 and 58 through 72 address the concerns expressed at the hearing.
10. The Environmental Assessment Officer approved the Mitigated Negative Declaration for public review for the project, indicating that the project will have less than significant environmental impacts with mitigation measures implemented, including innovative measures applying Best Available Control Technology (BACT).

C. This Planning Commission, after considering all of the evidence presented, found that the establishment, maintenance, and operation of the use of building or land applied for by PSP 03-067 would not, under the circumstances of the particular case, be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

AND, BE IT FURTHER RESOLVED as follows:

A. This Planning Commission hereby finds there is no substantial evidence that said Special Use Permit will have a significant effect on the environment and determines that the Mitigated Negative Declaration (including responses to comments) for said Special Use Permit reflects the independent review, consideration and judgment of the County, and has been completed in compliance with the California Environmental Quality Act and the State Guidelines for the Implementation of the California Environmental Quality Act of 1970, including Tulare County's Implementation Guidelines.

B. This Planning Commission hereby approves Special Use Permit Application No. PSP 03-067, subject to the following conditions:

1. During cut and fill activities, prewater with sprinklers or wobblers to allow time for penetration and apply water or dust palliative to form crust on soil following fill and compaction.
2. Install gravel pads at all access points to prevent trackout.
3. Western Milling shall retain a consultant(s) ("Protocol Consultant") to draft a testing protocol ("Draft Test Protocol") to accurately calculate emissions of volatile organic compounds ("VOCs") released by the wet distillers grain ("wetcake") generated by the project. The methodology shall take into account VOC emissions from wetcake off-loading from the conveyer system to the wetcake pile, emissions from the wetcake pile itself, and emissions generated from loading wetcake onto trucks or other vehicles. The methodology shall also take into account varying VOC emissions that may occur over the course of a day as wetcake cools and ambient temperatures vary.
4. Western Milling will provide its Draft Test Protocol to a consultant retained by the Unions. ("Unions' Consultant"). The Unions' Consultant shall review the Test Protocol and shall make any recommendations for revision to the Protocol Consultant. The Unions' Consultant and the Protocol Consultant shall make a good faith effort to develop a mutually agreeable and accurate Test Protocol and shall be encouraged to communicate directly with each other. The Protocol Consultant shall publish a Final Test Protocol after consultation with the Unions' Consultant and shall provide the document to all Parties.
5. Within one month of the commencement of regular ethanol production operations at the project, Western Milling shall retain an independent consultant(s) to perform the Test Protocol ("Test Consultant").
6. The Test Consultant shall calculate the VOC emissions generated by the wetcake pile in accordance to the Final Test Protocol procedures. The Test Consultant shall report its results in writing ("Draft Test Report") simultaneously to counsel all Parties, together with supporting calculations and all raw data collected in performing to the Test Protocol. All data shall be provided in a common computer-readable format such as Microsoft Excel.
7. The Unions' Consultant shall review the Draft Test Report and provide any comments to the Test Consultant. The Test Consultant shall review any comments provided by the Union's Consultant and shall revise the Test Report if appropriate. The Test Consultant and the Unions' Consultant shall make a good faith effort to agree on a reasonably accurate calculation of the VOC emissions generated by the

wetcake and shall be encouraged to communicate directly with each other. The Test Consultant shall incorporate any revisions in a written document after consultation with the Unions' Consultant ("Final Test Report").

8. If the Final Test Report indicates that emissions from the wetcake exceed two pounds per day (2ppd), then Western Milling agrees to retain a consultant ("Control Technology Consultant") to propose emission control technology capable of reducing wetcake VOC emissions to below 2 ppd ("Draft Control Technology Plan").
9. The Control Technology Consultant shall provide its Draft Control Technology Plan in writing to the Unions' Consultant, who shall review the Plan and provide any comments to the Control Technology Consultant. The Control Technology Consultant and the Union's Consultant shall make a good faith effort to agree on a feasible and effective VOC control technology plan, taking into account technology and economic feasibility. The Control Technology Consultant shall make any appropriate revisions after conferring with the Unions' Consultant and shall publish a Final Control Technology Plan which shall be provided to counsel for all Parties.
10. Western Milling agrees to fully implement the Final Control Technology Plan within six months of the publication of the Final Plan. Western Milling further agrees to maintain and operate the Final Control Technology Plan for the duration of the Project, unless Western Milling identifies alternate control technology that is equally or more effective and unless such alternate technology is approved in writing by a consultant retained by the Unions.
11. Western Milling may use the same Consultant(s) to perform any or all of the above-referenced tasks.
12. Western Milling shall provide reports to Counsel for the Unions every three months on the progress made in implementing this Agreement.
13. Western Milling agrees to pay the reasonable costs of the Unions' Consultant up to a maximum cost not to exceed \$10,000. The Unions shall bear any costs of the Unions' Consultant above this amount.
14. If a dispute arises between a Consultant retained by the Unions and a Consultant retained by Western Milling, and it is not resolved despite good faith efforts, the two Consultants shall agree to the retention by Western Milling of a mutually agreeable third Consultant who shall make a final binding decision with which all Parties agreed to comply.
15. The Parties agree to comply with all of the provisions of the Environmental Settlement Agreement referred to above in a reasonably expeditious manner.

16. A Grading and Drainage Plan shall be prepared by a licensed Civil Engineer or licensed Architect and shall be submitted to and approved by the Resource Management Agency – Engineering Branch prior to issuance of any building permits or commencement of the use on the subject site. The Plan shall include existing and proposed contours and detail the means of disposal of storm water runoff from the site in such a manner that all such runoff shall be collected and disposed of on-site. The Plan shall specify a means of disposal such that runoff is not diverted to adjacent property or road frontage.
17. A Letter of Certification shall be prepared by a licensed Civil Engineer or licensed Architect. The Engineer or Architect shall affix their stamp and seal to the Letter. The Letter shall serve as the means to notify the County that construction was completed according to the approved Grading and Drainage Plan. The Letter shall be submitted to the Tulare County Resource Management Agency – Engineering Branch prior to the issuance of final occupancy permits.
18. The property owner shall sign and record a Right to Farm Notice along with the Resolution approving this project (Attachment No. 2).
19. 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.
20. All on-site parking areas and drive roads shall be surfaced for all weather conditions and maintained so that dust and mud do not create conditions detrimental to surrounding property and roadways.
21. All interior access drives shall be designed so that trucks and cars enter and leave the facility by moving forward.
22. A pro-rata share of the State Route 99/Betty Drive interchange improvement shall be paid to Caltrans prior to issuance of building permits. The share amount has been calculated to be \$1,382.00.
23. All non-hazardous solid waste shall be disposed of at an approved County landfill site or recycled. No solid waste shall be allowed to accumulate on the subject site (i.e., non-operable vehicles, oil drums, discarded tires). Hazardous waste shall be discharged only at a Class I waste management unit. The Tulare County Environmental Health Services Division shall verify compliance with said condition.
24. The facility is subject to the California State Hazardous Materials Laws. The applicant is required to contact the CUPA at the Tulare County Environmental

Health Services Division (TCEHSD) to update the existing Hazardous Material Business Plan.

25. Signs shall not exceed a total of 320 sq. ft.
26. Fencing shall not exceed six feet in height, unless a variance is approved.
27. The developer shall install and maintain portable fire extinguishers in compliance with NFPA Pamphlet #10.
28. Provisions for fire and life safety are to be completed by Western Milling or other responsible parties and inspected by the Fire Warden prior to use or occupancy of facilities.
29. The proposed ethanol facility will be connected to the community wastewater collection system for domestic and industrial wastewater.
30. Water for boiler "blow down" will be treated with an R/O process and used in the supply waters. A bypass of the R/O unit will connect "blow down" [i.e., water remaining in the boilers] to the community sewer system in the event the boilers are "offline".
31. The cooling tower waters will be either disposed of in the community sewer or recycled in a closed loop.
32. A storm water permit may be required for construction, i.e., compliance with the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Discharges of Storm Water Associated With Construction Activity and NPDES General Permit No. CAS000001 for Discharge of Storm Water Associated with Industrial.
33. The onsite storage of corn and grain mash and other waste materials shall not cause insect vectors, harborage for rodents, or other nuisances.
34. All exterior lighting shall be so adjusted as to deflect direct rays away from public roadways and adjacent properties.
35. Onsite fire protection systems are to comply with standards of the Fire Code and as designated by the Fire Warden. A permit by RMA will be required for all fire systems.
36. Onsite buildings and structures are to comply with fire and life safety requirements set forth in the Uniform Building Code and Uniform Fire Code and other applicable recognized Fire and Life Safety Codes and Standards.

37. All storage and handling of hazardous materials are to be labeled in compliance with Article 79 and 80, Uniform Fire Code and NFPA Pamphlet 30, and NFPA Pamphlet #101.
38. Handling and storage of Ethanol are to comply with Article 79 and 80, Uniform Fire Code and NFPA Pamphlet #30 and 54.
39. Storage and handling of ammonia is to comply with Article 80, Uniform Fire Code.
40. Storage and handling of CO₂ is to comply with applicable standards of the Fire Code.
41. The applicant shall comply with the San Joaquin Valley Air Pollution Control District, Fugitive Dust Rules (Regulation VIII). The operation may also be subject to Rule 4102 with regard to odor.
42. The following measures should be incorporated into the project to reduce the overall project's level of emission, to the extent possible:
43. Limit engine idling by construction/earth moving equipment and trucks operating at the project site;
44. Off-road mobile equipment shall be equipped with catalysts/particulate traps to reduce particulate and NO_x emissions. These catalysts/traps require the use of ultra-low sulfur diesel fuel (15 ppm). The device(s) to be used to reduce particulate emissions shall be one that is verified by the California Air Resources Board.
45. Exits onto adjoining streets should be carefully designed to reduce time required to re-enter traffic from the project site.
46. Deciduous trees planted on the southern and western exposures of any structures help to provide shade in the summer and allow the sun to reach the structures during the winter.
47. Energy efficient design including but not limited to automated control system for heating/air conditioning and energy efficiency beyond Title 24 requirements, lighting controls, and energy-efficient lighting in buildings, increased insulation beyond Title 24 requirements, and light-colored roof materials to reflect heat shall be utilized wherever possible.
48. Implement the SJVAPCD's rules and regulations for "Fugitive Dust Control at Construction Sites" as set forth in the Compliance Assistance Bulletin dated September 2002.

49. Electrify truck-parking areas to allow trucks with sleeper cabs to use electric heating and cooling to eliminate the need to idle their diesel engines overnight.
50. Any unpaved roads and parking areas be effectively stabilized or paved.
51. A contact for odor complaints shall be provided.
52. Install truck wheel washers to prevent track-out from the facility from any unpaved areas. (completed)
53. If any human remains or resources of archaeological or historical nature are encountered during project grading, all work around the encounter area shall temporarily be halted and the Resource Management Agency be immediately contacted in accordance with Section 15064.5 of CEQA, Section 7050.5 of the Health and Safety Code, and Section 5097.98 of the Public Resources Code.
54. Standardized conditions as set forth-in Planning Commission Resolution No. 5976 as amended by Resolution Nos. 6013, 6334 and 6702 shall apply to this application (Attachment No. 1).
55. If there are conditions set down herein which require the construction of improvements, they shall be complied with before the premises shall be used for the purposes applied for, in order that the safety and general welfare of the persons using said premises, and the traveling public, shall be protected. The Planning Director may approve minor modifications to these conditions of approval upon request of the applicant.
56. Unless otherwise indicated herein, development shall be in accordance with the plans submitted for this Special Use Permit.
57. All standard conditions and all special conditions of approval of this Special Use Permit must be complied with at all times in order to continue the use or uses allowed. Compliance with all conditions is subject to review at any time.
58. The applicant shall ensure that wetcake is stored in an enclosed area or pole barn until picked up.
59. The load points shall be covered.
60. Forklifts used at the plant will run only on propane.
61. All bulk loaders shall run on biodiesel or oxygenated diesel or comparable alternative fuel.

62. The applicant shall commit to measure and mitigate possible Volatile Organic Compound (VOC) emissions from wetcake.
63. The transport trucks shall be covered.
64. An odor abatement plan shall be instituted prior to operation and mutually agreed upon by interested parties and revised based on the facility's operation.
65. After one month of operation at the plant, an additional odor survey shall be conducted based on monitoring and modeling methods mutually agreed upon by interested parties. The survey shall also set mutually agreed upon odor limits based on odor units for each odor source at the facility. The parties shall also set up a mutually agreed upon monitoring schedule to ensure compliance with the odor limits. If problems occur, a solution that is mutually agreed upon shall be implemented.
66. Wetcake shall be deposited in silage bags if pick-up will be delayed beyond seven hours.
67. In addition to the Hazardous Materials Safety Plan, the applicant shall prepare an Emergency Response Plan and ensure employees are trained in response procedures prior to operation of the plant.
68. The applicant shall commit to working with C-Set to develop worker training programs for residents from Goshen.
69. The applicant shall operate the sweeper to control PM-10 emissions twice a week subject to revision once the plant starts operating.
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 consultant shall submit the study to the Resource Management Agency in the form of a written report as soon as reasonably practicable, but no later than six (6) months from the effective date of this special use permit (the Planning Commission may grant one or more extensions of said six months time, upon request by the applicant). The Resource Management Agency shall review the study for adequacy and completeness. If the Resource Management Agency determines that the report is inadequate or incomplete in any respect, Western Milling shall revise the report accordingly. After the report is deemed to be adequate and complete, Western Milling shall submit the report to the Planning Commission for consideration at a regular public meeting. Notice of such meeting shall be given in accordance with the State Planning and Zoning Law and copies of the report shall be made available for public review and comment at least ten (10) calendar days before

the meeting. Western Milling shall comply with any direction given by the Planning Commission after consideration of the report, including but not limited to, filing an amendment to incorporate any feasible mitigation measures into the project as conditions of approval. Western Milling shall implement such measures determined to be feasible by the Planning Commission. Said amendment (which includes the groundwater resources report) shall be subject to public notice, hearing and comment as required by law.

71. Mitigation measures for this project shall be monitored and enforced, as necessary, by the Tulare County Resource Management Agency. All conditions of PSP 00-090 remain in effect except as modified herein.

The foregoing resolution was adopted upon motion of Commissioner Fernandes, seconded by Commissioner Whitlatch, at a regular meeting of the Planning Commission on the 25th day of August 2004, by the following roll call vote:

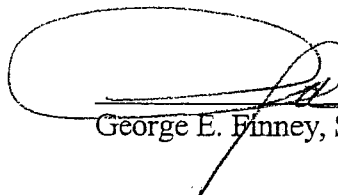
AYES: Kapheim, Wheeler, Fernandes, Dias, Kirkpatrick, Whitlatch

NOES: None

ABSTAIN: None

ABSENT: Millwee

TULARE COUNTY PLANNING COMMISSION



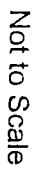
George E. Finney, Secretary

ATTACHMENT NO. 1

STANDARD CONDITIONS OF APPROVAL FOR SPECIAL USE PERMITS

Planning Commission Resolution No. 5976 as amended by 6013, 6334 and 6702)

1. Development shall be in accordance with the plan(s) as submitted by the applicant and/or as modified by the Planning Commission (P.C. Exhibit "A") and with the Site Plan Development Standards pertaining to a use of this type adopted by the Planning Commission on February 20, 1970.
2. Regardless of Condition No. 1 above, the Planning and Development Director is authorized to approve minor modifications in the approved plans upon a request by the applicant, or his successors, as long as said modifications do not materially affect the determination of the Planning Commission. Such modification shall be noted on the approved plans and shall be initialed by the Planning and Development Director.
3. All exterior lighting shall be so adjusted as to deflect direct rays away from public roadways and adjacent properties.
4. The proposed facility shall be maintained and operated in accordance with all State and County health regulations.
5. Any structures built shall conform to the building regulations and the building line setbacks of the Ordinance Code of Tulare County insofar as said regulations and setbacks are applicable to such structures.
6. If there are conditions set down herein which require construction of improvements, they shall be complied with before the premises shall be used for the purposes applied for, in order that the safety and general welfare of the persons using said premises, and the traveling public, shall be protected. The Planning Commission may grant exceptions to this condition upon request by the applicant.
7. This use permit shall automatically be null and void two (2) years after the date upon which it is granted by the Planning Commission, unless the applicant, or his successor, has actually commenced the use authorized by the permit within said two year period. The Planning Commission may grant one or more extensions of said two year time, upon request by the applicant.
8. This use permit will not be effective until ten (10) days after the date upon which it is granted by the Planning Commission and until the applicant, at his own expense, has executed and filed with the County Recorder, a certified copy of the resolution of the Planning Commission granting said permit with a duly authorized acceptance, in the form approved by the County Counsel, endorsed thereon.
9. All standard conditions and all special conditions of approval of this Special Use Permit must be complied with at all times in order to continue the use or uses allowed. Compliance with such conditions is subject to review at any time. Unless a sooner review is required, an initial review of compliance shall be conducted by the Tulare County Planning Commission twelve months after the granting of the Special Use Permit. Additional reviews may be undertaken at the discretion of the Planning Commission.
10. This Special Use Permit shall automatically expire and become null and void two (2) years after the use for which it was granted is discontinued or abandoned. However, upon application by the applicant, or his/her successor, the Planning Commission may extend the expiration date in accordance with the procedures set forth in the Zoning Ordinance.



PSP 03-067

PC Exhibit "A"

EXHIBIT D

TULARE COUNTY RESOURCE MANAGEMENT AGENCY

Staff Report/Environmental Assessment Initial Study

Special Use Permit No. PSP 03-067

I. GENERAL:

1. Applicant: Western Milling, LLC
P. O. Box 1029
Goshen, CA 93227
2. Owner: Same
3. Agent: Phoenix Bio Industries, Inc.
P. O. Box 237
Fall Brook, CA 92088
4. Requested Action: Special Use Permit to expand 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.
5. Location: 31120 West Avenue, adjacent to State Highway 99, on the east side, approximately 1,600 feet north of Betty Drive in Goshen.

APN 072-050-02 and 075-060-05
Section 13, Township 18 South, Range 23 East MDB&M
6. Applicant's Proposal: To expand an existing grain mill to allow the establishment of an ethanol production facility. The proposal is to use ground corn to produce 25 - 30 million gallons of ethanol and 265,000 – 325,000 tons of wet distiller's grain (cattle feed) per year.

II. COMPATIBILITY WITH EXISTING ZONING, PLANS AND POLICIES:

1. Zoning and Land Use:

Project Site – AE-40; storage area for feed mill and an office trailer

Balance of Site –AE-40, M-1 (Light Manufacturing) and A-1 (Agricultural); 150,000 sq. ft. of building utilized in the animal feed manufacturing and milling operation and storage silos.

North – AE-40 and M-2-SR (Heavy Manufacturing-Site Plan Review Overlay); Union Pacific Railroad, row, field and truck crops

East – M-2-SR; Union Pacific Railroad, feed mill, bulk grain sales and storage, vacant land (approved Special Use Permit No. PSP 01-064/Western Pacific Meat Packers), an idled pre-cast concrete pipe facility and rural residential development

West – AE-40; State Highway 99, row and field crops

South – M-1 and C-2 (General Commercial); Union Pacific Railroad, vacant land, gas station, grocery store, RV sales and service, the Community of Goshen and the Betty Drive/SR 99 interchange.

2. Zoning, Entitlement, and Other Ordinance Characteristics: The AE-40 Zone is an exclusive zone for extensive agricultural uses and for those uses, which are a necessary and integral part of agricultural operations. Feed mills and establishments for the curing, processing, packaging, storage and shipping of agricultural products are allowed upon approval of a Special Use Permit.

3. Access/Circulation: Access to the site is by way of the recently constructed industrial road, West Avenue, which extends (running parallel to the Union Pacific Railroad tracks) from Road 67 north of Betty Drive, a major arterial running east/west. Note; access to Western Milling from Betty Drive was previously by way of Nutmeg Road, which has since been abandoned by the County, due to congestion at the Betty Drive/SR 99 interchange.

4. General Plan Elements:

Land Use Element: Goshen Community Plan, as amended by GPA 87-007, designates the site as “Industrial”.

Urban Boundaries Element: Within the Urban Development Boundary of Goshen and the Urban Area Boundary of Visalia.

Noise Element: State Highway 99 is a noise-impacted corridor with levels in excess of 60 dB at 1930 feet from the centerline. The proposed use is not a noise sensitive use. Interior noise levels for industrial uses are normally acceptable up to 75 dB and conditionally acceptable with noise levels up to 80 dB.

Other Applicable Policies and Elements: None

5. Planning Commission Policies and Precedents: The Planning Commission has normally approved requests for the expansion of agricultural establishments when it can be shown that the approval of said expansion will not adversely affect nearby residents or properties.

6. Planning Commission Development Standards: The Tulare County Development Standards (Standards) have been adopted by the Planning Commission and utilized by the

Board of Supervisors as policy to guide the development of property in Tulare County to provide safeguards for health, safety and general welfare. For a use not specified, the same standards shall be provided as are required for the most similar specified use. The development standards that most closely apply to this type of use are as follows:

Parking: Industries, wholesale, warehousing – 1 space per employee per work shift, in addition to 1 truck space per truck of the maximum contemplated number and size that will be stored upon the premises at one time.

The expanded operation will employ an additional three people per shift (3 shifts per day) plus 3-5 admin personnel and 3-5 transport personnel. The application indicates 3 deliveries and 11 shipments are anticipated per day. Customers will not come to the site on a regular basis. The application states there are five standard parking spaces available. Five truck spaces are proposed at the north end of the facility in the loading dock area. Additional parking area is available between the truck wash area and entrance to the ethanol plant. The proposed parking complies with Tulare County Standards.

Landscaping: Please note; landscaping is not required for agricultural uses, however, the project applicant plans to construct landscaping along the west side of the property, abutting Highway 99.

Screening/Fencing: Solid walls or fences are required when property abuts a residential zone. A property must be fenced when there is a use of a hazardous nature.

This site does not abut any residential zones. The storage of agricultural products is not considered a use of a hazardous nature. Outside storage of materials will be in storage tanks onsite. No fencing is proposed

Signage: One sign or two signs with an aggregate area not exceeding one sq. ft. for each lineal foot of street frontage not exceeding 320 sq. ft. per face is recommended for “Valley Agricultural Areas – Commercial and Industrial Uses”.

Based on Tulare County Standards, a 320 sq. ft. sign would be allowed for this project site, however, no signage is proposed

III. ENVIRONMENTAL SETTING:

1. **Topographical Setting:** Level, typical of most valley lands

2. Flooding Potential: Zone A, 100-year flood hazard area according to the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Flood Insurance Rate Map (FIRM) (See memorandum from Mike Whitlock dated 12-8-2003). Elevation certificate and associated flood hazard avoidance measures will be required on all proposed buildings.

3. Soils:

| Type | Capability Class | Shrink/Swell Potential | Septic Tank Absorption | Prime |
|---------------------------|---|---------------------------|---------------------------|-------|
| Calgro-Calgro | III-8, irrigated VIs, non-irrigated | Low | Severe | No |
| Grangeville sandy loam | I, irrigated IVc, non irrigated | Low | Moderate | Yes |
| Soil Survey Maps 1997 | | | | |

4. Biotic Conditions:

Vegetation Characteristics: Valley annual grassland

Wildlife Habitats: The 1974 Environmental Resources Management Element of the Tulare County General Plan shows the site is within the historic ranges of the San Joaquin kit fox and the blunt-nosed leopard lizard, both of which are federal and state listed endangered species. According to the 2004 California Department of Fish and Game's Natural Diversity Data Base, there were sightings of two listed plant species, *Atriplex subtilis* (subtle orache) and *Artiplex cordulata* (heartscale), California Native Plant Society List 1B, within the larger geographic area near the subject property. There is no evidence that these plant species are located on the subject property.

In addition, the 2004 California Department of Fish and Game's Natural Diversity Data Base, lists no occurrence reports for listed, endangered, or threatened animal species of special concern on or near the project site. However, recent studies by the Tulare County Redevelopment Agency cite areas to the east of the subject property as potential forage areas for the San Joaquin Kit Fox (Preconstruction Survey results for San Joaquin Kit Fox on the Betty Dr. /Ave. 312 Realignment & Improvement project, Tulare County CA. - George Visger & Associates, August 11, 2003). Therefore, due to the high level of disturbance activities on the subject property, it is unlikely that any suitable habitat remains leading to the presence of any listed species.

5. Water Table: The most recent high water table depth (spring 2000 study by Boyle Engineering for California Water Service Co.) was approximately 100 feet.

6. Agricultural Preserves: Not within an agricultural preserve.

IV. HISTORY AND PROJECT FACTS:

1. History: On December 8, 1982, by Planning Commission Resolution No. 5873, the Planning Commission conditionally approved Special Use Permit No. PSP 82-63 allowing the establishment of bulk poultry feed mill on the subject site.

On August 18, 1994, by Zoning Administrator Decision No. 1731, the Zoning Administrator conditionally approved Special Use Permit No. PSP 94-008 (ZA), an amendment, allowing the expansion and modification of an existing poultry feed mill by establishing a pellet production facility on the subject site. A Negative Declaration was prepared as a part of this approved special use permit.

On June 27, 2000, the TCRMA Code Compliance Division filed Violation Case No. V100-045 for discharge of food waste and creating a nuisance.

On January 23, 2001, by Zoning Administrator Decision No. 2386, the Zoning Administrator conditionally approved Special Use Permit PSP 00-090 (ZA) allowing the further expansion of an existing feed mill, dairy and poultry feed manufacturing facility with more processing facilities and the establishment of a trucking operation for shipping and receiving on the subject site.

The Planning Director has approved two minor modifications to the project.

2. Project Description: Special Use Permit to expand an established feed mill 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.

The proposed expansion is to process ground corn, delivered via enclosed conveyor from the current Western Milling operation. The plant will produce 25 to 30 million gallons of fuel grade ethanol alcohol, 265,000 – 325,000 tons of wet distillers' grain (cattle feed) and 88,300 – 108,000 tons of CO₂ per year. Southern California Edison will provide the electricity and a SJVAPCD previously - permitted boiler will provide thermal needs.

Corn is delivered to the site by rail and stored in existing storage at Western Milling. After the grinding process in the existing facilities, it will be delivered by enclosed conveyor at the rate of 30.56 (at 25MM) – 36.68 (at 30MM) tons per hour will deliver it. Ground corn is combined with approximately 20,000 gallons per hour of water to form a slurry (water is 12% made-up from connection to Cal Water Service Co., the local domestic water utility provider and 82% is process recycle water). Liquefaction enzymes are added at this point. The slurry or mash is then passed through a steam jet cooker where the temperature is elevated to 220° and pumped to agitated liquefaction tanks. As the material cools, it is pumped to an additional series of agitated tanks when a saccharification enzyme is added converting the starch to sugar.

The mash is then pumped to one of three 600,000 gallon fermentation tanks. Active yeast is added to the fermenters converting the sugars to alcohol. Following a 48 to 60 hour fermentation, distilling material containing 15% alcohol is pumped to a 900,000 gallon beer well.

Distilling material is fed from the beer well at the rate of 20,000 gallons per hour to a stripping column that is 96" in diameter by 50 feet high, coupled by an 18" vapor line to a rectifying column that is 102" in diameter by 80' high. Steam is fed to the distillation system causing the DM to boil, alcohol to vaporize and be concentrated 95% by volume or 190 proof. 190 proof alcohol is condensed and pumped to the 190 proof alcohol storage tank. 190 proof alcohol is passed through a molecular sieve where the remaining 5% water is removed. Anhydrous alcohol is pumped from the molecular sieve to product storage, where it is denatured with 2% hydrocarbon and shipped to customers for blending with gasoline.

Regarding the potential for objectionable odors that may be generated from the proposed ethanol production facility, an onsite Air Quality Analysis (AQA) determined the following: "Any minimal 'fence line' odors from dry grain handling, milling and processing would be considered normal agricultural odors and not objectionable. The other possible sources of odor in fuel ethanol plants are the wet cake pad where wet distillers grains with solubles (WDGS) is stored prior to loadout into trucks. Further, [at an existing ethanol plant located in South Dakota] "the only objectionable odors were noticeable at the edge of the WDGS storage area; however, such odors were not noticeable at approximately 100 yards from that area. " RMA staff notes that the nearest offsite residence not associated with the proposed ethanol facility is located approximately ¼ mile southeast of the project site's southeastern property line, Thus this potentially affected residence will be at least 1,500 feet from the nearest potential source of objectionable odor on the ethanol plant site, although within a prevailing wind direction (which would be from the northwest or north in this area). Therefore, given the distance, air quality impacts related to potential odors from the proposed ethanol production facility, would be less than significant.

Given the lack of data or standard methods for testing wet cake emissions Wet Distiller's Grain (WDG) Western Milling has agreed to perform a study of the actual plant Volatile Organic Compound (VOC) emission after startup. The methods employed will be mutually agreed upon by both the environmental consultant(s) for Western Milling and the environmental consultant(s) for the International Brotherhood of Electrical Workers (IBEW) or other concerned parties. Should the wet cake emissions exceed two (2) pounds per day VOC's, Western Milling agrees to implement mitigation measures mutually agreed upon by the aforementioned consultants (see IBEW Environmental settlement agreement attached to environmental document)

3. Other Facts:

a. Fire Protection: Within the five-mile response perimeter of the California Department of Forestry fire station located in Goshen.

b. Police Protection: Within the service area of the Tulare County Sheriff's Department Headquarters located in Visalia.

c. Sewer and Water Service: Wastewater volume is estimated at 25,000 gallons per day (from cooling tower and employee domestic waste) and will be discharged to the Goshen Community Services District, Community Wastewater Collection System.

Applicants are planning to acquire an EPA PM-10 Certified Street Sweeper to keep paved areas clean of debris and dust. They will have sweeper by the end of August 2004 and will use a minimum of twice a week. Applicants also have installed truck wheel washers to prevent track-out of unpaved areas and remove dust from feed trucks.

4. Correspondence:

| <u>Agencies Notified</u> | <u>Replies Received (date)</u> |
|---|--------------------------------|
| Tulare Co. HHSA, Environmental Health Div | 12-8-03 |
| Tulare Co. RMA, Engineering Div | |
| Building Div. | 12-3-03 |
| Code Compliance Div. | |
| Solid Waste Div. | |
| Airport Land Use Commission | 1-14-04 |
| Tulare Co. Fire Dept. | |
| San Joaquin Valley Unified APCD | 12-1-03 |
| Delta Vector Control District | |
| City of Visalia | |
| Calif. Dept. of Fish and Game | |
| Calif. Regional Water Quality Control Board | 12-8-03; 6-24-04 |
| Calif. Dept. of Transportation (Caltrans) | 12-16-03 |
| State Integrated Waste Management Board | |
| State Energy Commission | |
| Edison | |
| Goshen Planning Committee | |

V. **ENVIRONMENTAL IMPACTS CHECKLIST/DISCUSSION FORM:** (See attached documents)

VI. **ENVIRONMENTAL DETERMINATION:**

The Environmental Assessment Officer has approved a Mitigated Negative Declaration for public review for the project, indicating that the project will not have any significant environmental impacts.

VII. **SUBSEQUENT ACTIONS:**

1. Appeals: All Planning Commission actions on Special Use Permits are final unless appealed, in writing, to the Board of Supervisors, 2800 W. Burrel, Visalia, CA 93291-4582 within 10 calendar days after the date on which the decision is made. The written appeal shall specifically set forth the grounds for the appeal and shall be accompanied by the appropriate appeals fee.

2. Fish and Game Fee: (ND & CoFE) A State Department of Fish and Game Certificate of Fee Exemption has been approved for this project by the Environmental Assessment Officer, indicating the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code. As such, the Fish and Game Code requires the applicant pay to the Tulare County Clerk's Office a \$45 document handling fee for the required filing of the Certificate of Fee Exemption. The fee shall be paid at the time the Tulare County Resource Management Agency files the Notice of Determination. The Notice of Determination is required to be filed within five (5) days of project approval (after the 10 day appeal period has run) providing no appeal has been filed. If an appeal is filed within the 10 day appeal period, the Notice of Determination cannot be filed until the Board of Supervisors makes a decision on the appeal. The applicant shall pay the fee to the Tulare County Clerk's Office, Room 103, Tulare County Courthouse, Visalia, CA 93291-4593. Checks shall be made payable to: "County of Tulare." Applicants cannot avoid payment of the required \$45 Department of Fish and Game fee, since a provision of AB 3158 declares that decisions on private projects are not "operative, vested, or final" until the fee is paid to the County Clerk. No building permits shall be issued until the fee is paid.

3. School Impact Fees: The subject site is located within the Visalia Unified School District which has implemented developer's fees for all assessable space for new residences and expansions to existing residences; and for chargeable covered and enclosed space for new commercial and industrial development pursuant to Government Code Section 53080. These fees are required to be paid prior to the issuance of any permit for the construction of new commercial or industrial structures, and/or installation or construction of new or expanded residential structures. [Please contact the TCRMA-Permits Center or the applicable school district(s) for the most current school fee amounts.]

NOTICE: Pursuant to Government Code Section 66020(d)(1), this will serve to notify you that the 90-day approval period, in which you may protest to the school district the imposition of fees or other payment identified above, will begin to run from the date on which they are paid to the school district(s) or to another public entity authorized to collect them on the district(s) behalf, or on which the building or installation permit for this project is issued, whichever is earlier.

4. Compliance Reporting and Monitoring Schedule Fees: A Compliance Reporting and Monitoring Schedule has been established for this project pursuant to Section 22 of the Tulare County Zoning Ordinance. Fees, required to defray the expenses incidental to the compliance reporting and monitoring, will be required to be deposited into a Compliance Reporting and Monitoring Account prior to issuance of a building permit or other grant of approval required to carry out an approved project. (See Exhibit No.1)

5. Right to Farm Notice: In accordance with Section 7-29-1070(a) of the Tulare County Ordinance Code, and as a condition of approval of the special use permit, a Right to Farm Notice shall be recorded with the resolution approving the special use permit. (See Attachment No. 2)

6. Storm Water Permit: A General Construction Activity Storm Water Permit CAS000002 shall be required (prior to commencement of the construction) for all storm water discharges associated with a construction activity where clearing, grading and excavation results in a land disturbance of more than five acres or which is less than five acres but is part of a larger common plan of development or sale. And, depending on the Standard Industrial Classification (SIC) Code of the final project, a General Permit No. CAS000001 for Discharges of Storm Water Associated With Industrial Activities may be required. A Notice of Intent (NOI) shall be obtained from and returned to: State Water Resources Control Board, Division of Water Quality, ATTN: Storm Water Permit Unit, P. O. Box 1977, Sacramento, CA 95812-1977 along with the appropriate annual fee. Permits shall be required until the construction is completed.

VIII. CREDITS:

This Staff Report prepared by:

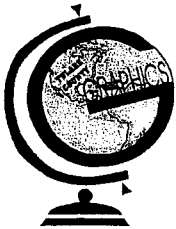
Loretta Feldstein
Loretta Feldstein, Community Development Specialist
Tulare County Redevelopment Agency

7-13-04
Date

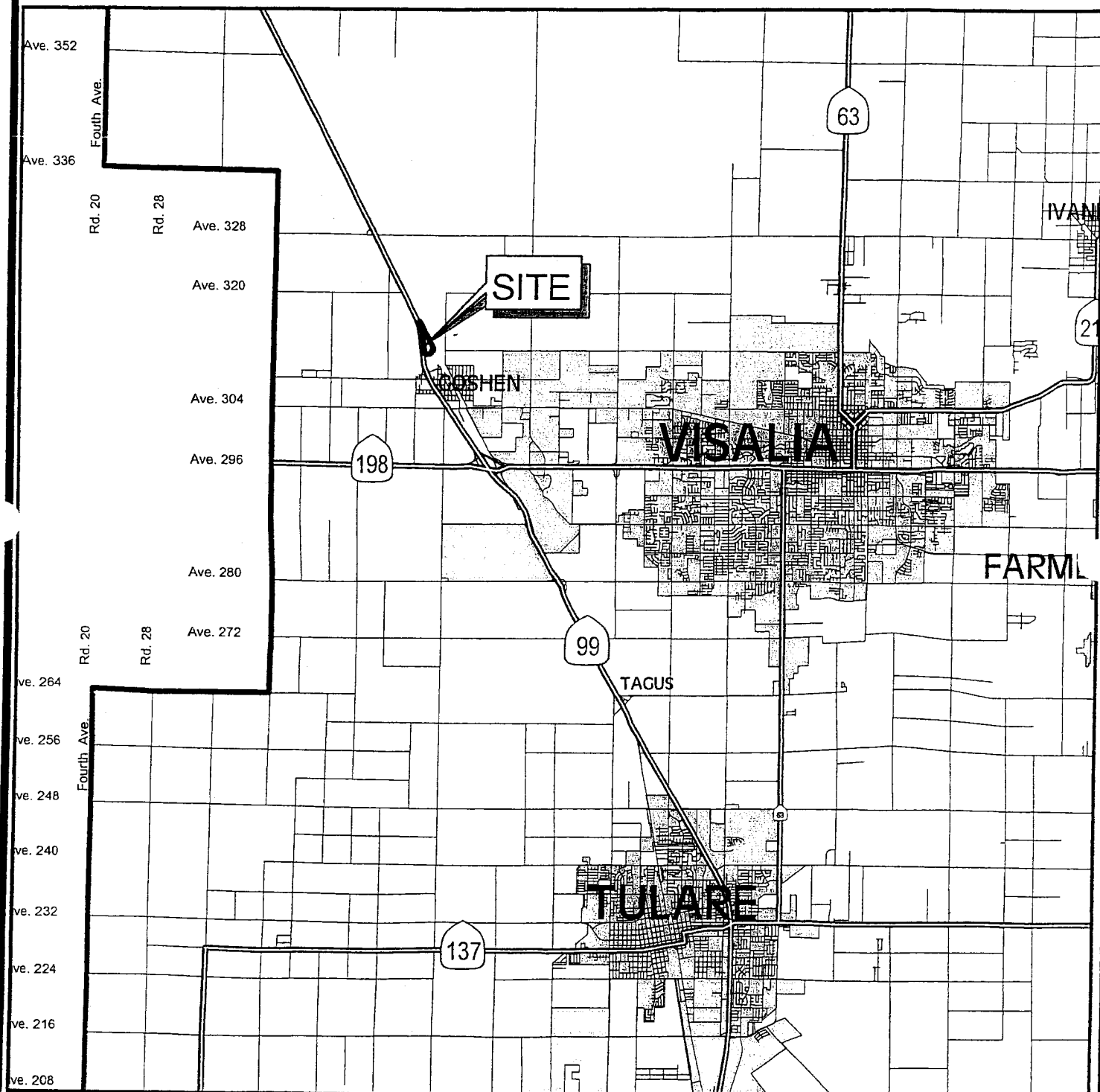
This Staff Report approved by:

William L. Hayter
William L. Hayter, Capital Projects Coordinator
Tulare County Redevelopment Agency

7-13-04
Date



Vicinity Map for PSP 03-067



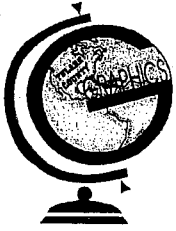
Owner: WESTERN MILLING LLC
Address: P O BOX 1029
City, State ZIP: GOSHEN CA 93227

Applicant: Western Milling, Inc.
Agent: Phoenix Bio Industries, Inc.

Assessors Parcel # 072050002, 075060005

3 0 3 Miles





Flood Map for PSP 03-067



Owner: WESTERN MILLING LLC
Address: P O BOX 1029
City, State ZIP: GOSHEN CA 93227

Applicant: Western Milling, Inc.
Agent: Phoenix Bio Industries, Inc.

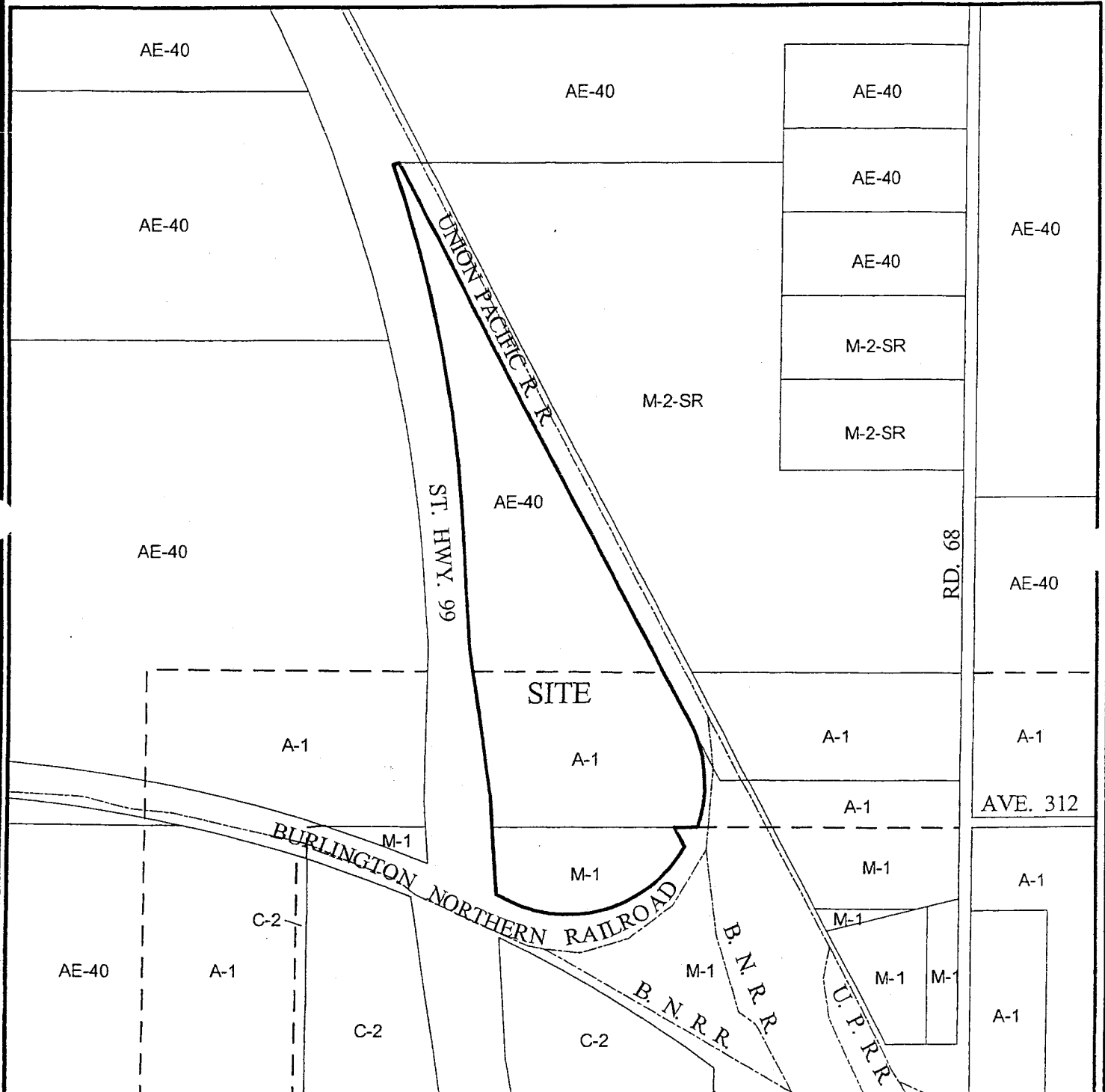
Assessors Parcel # 072050002, 075060005

300 0 300 600 Feet





Zoning Map for PSP 03-067



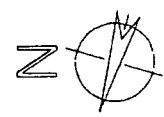
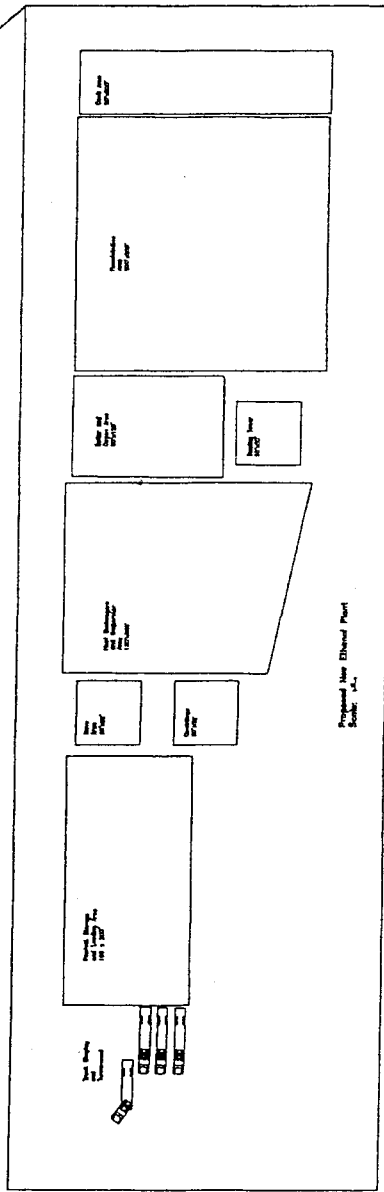
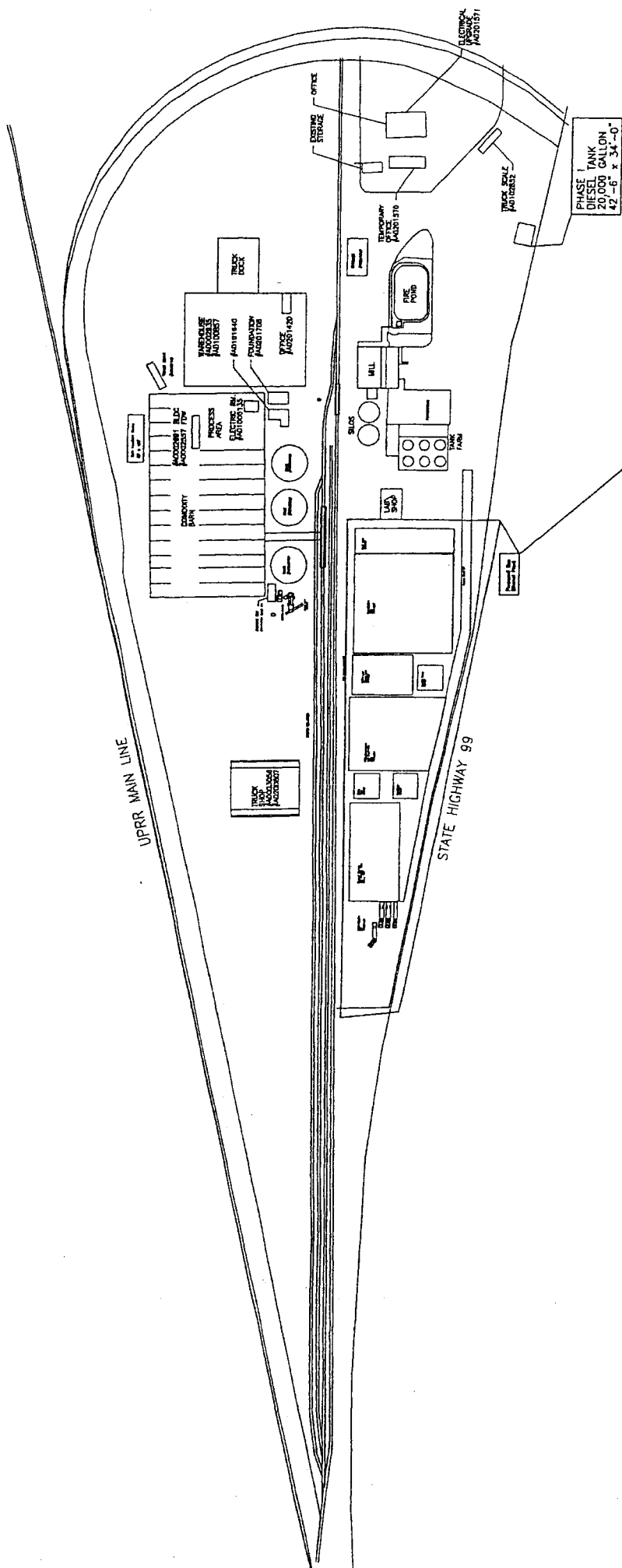
Owner: WESTERN MILLING LLC
Address: P O BOX 1029
City, State ZIP: GOSHEN CA 93227

Applicant: Western Milling, Inc.
Agent: Phoenix Bio Industries, Inc.

Assessors Parcel # 072050002, 075060005

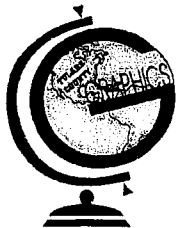
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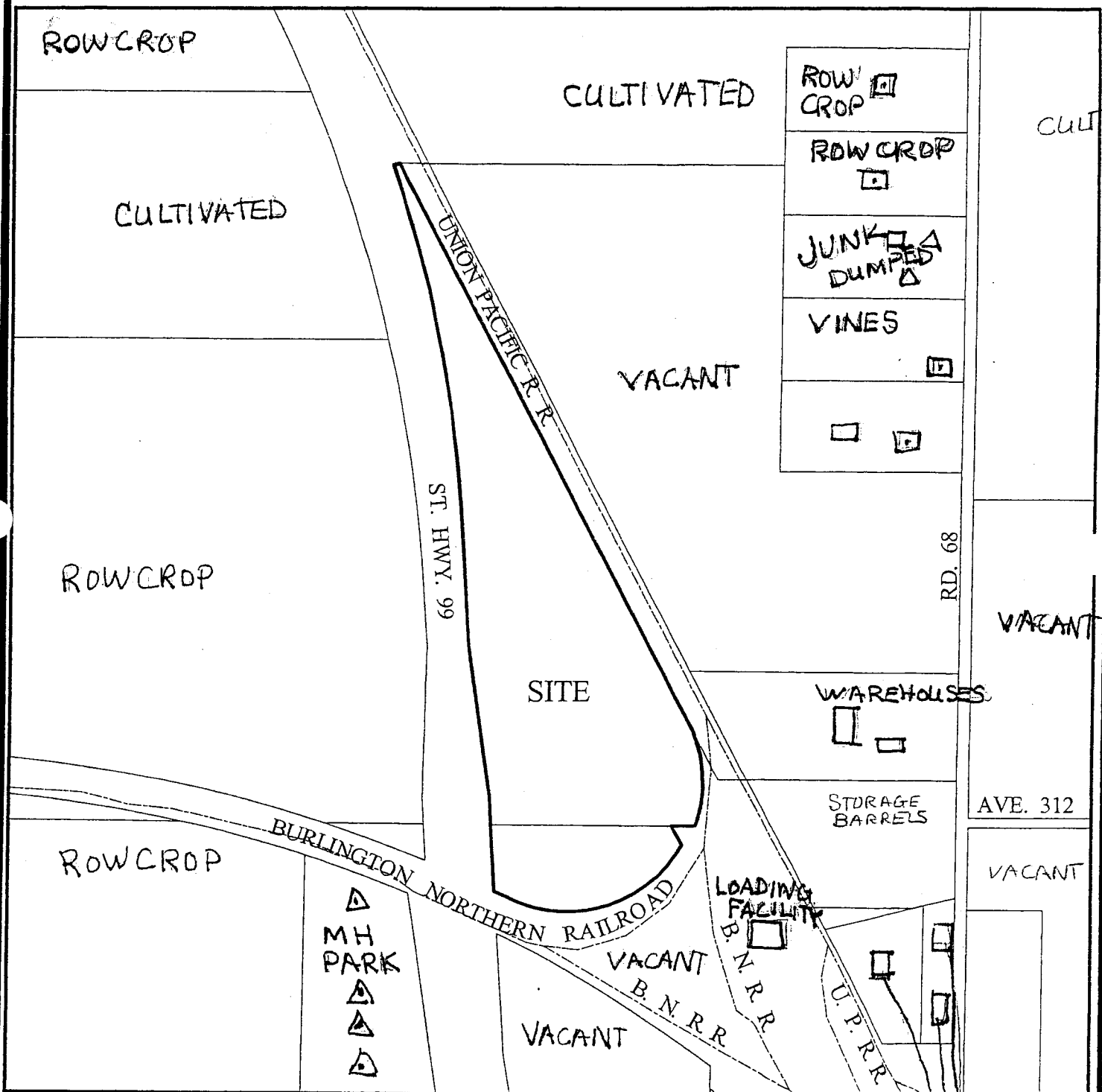


Not to Scale

Site Plan for PSP 03-067 P.C. Exhibit "A"



Land Use Map for PSP 03-067



Owner: WESTERN MILLING LLC
Address: P O BOX 1029
City, State ZIP: GOSHEN CA 93227
Applicant: Western Milling, Inc.
Agent: Phoenix Bio Industries, Inc.
Assessors Parcel # 072050002, 075060005

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LAND USE

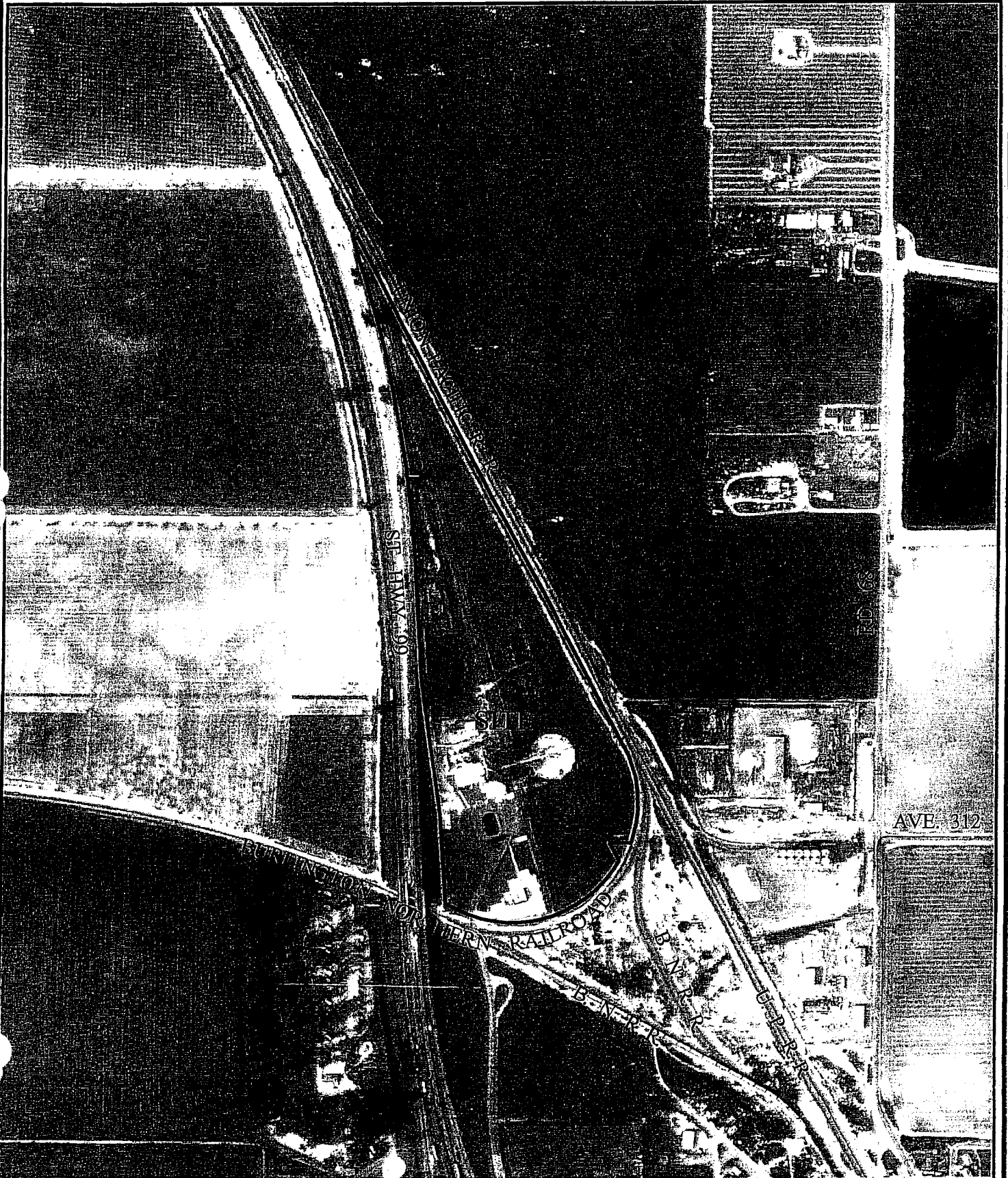
- ☒ OCCUPIED DWELLING
- ☐ VACANT DWELLING
- ☒ OCCUPIED MOBILE HOME
- ☐ VACANT MOBILE HOME
- ☐ TRAVEL TRAILER
- ☐ (AS LABELED)

WAREHOUSE
OFFICES





Aerial Photograph
for
PSP 03-067



PSP 03-067

Western Milling Proposed Ethanol Facility

North View showing State Hwy 99/Union Pacific Tracks and proposed Facility site.



EXHIBIT E

Notice of Brown Act Violation

To: Tulare County Planning Commission
From: Doreen Castano-Jungk, 31652 Road 68, Visalia, CA 93291 *DC*
Re: Violation of 3/8/06
Date: March 28, 2006

I am notifying you of a Brown Act violation that occurred at the Planning Commission's March 8th meeting. The March 8th meeting did not follow the actions and statements made at the February 8th meeting. At the February 8th meeting, the Planning Commission moved/approved to close public testimony on Western Milling and stated that at the next meeting they would not take additional comments. According to the February 8th meeting, the staff was to develop a resolution of findings for approval from the groundwater report in regards to Condition 70.

At the March 8th meeting, the resolution that was prepared by staff was presented. Since I was told that there would be no public testimony accepted and that part of the process had been closed, I did not need to attend. Sometime between the February 8th meeting and the March 8th meeting there were changes. These types of changes needed to take place at a meeting so there must have been a secret or unknown meeting. I was not made aware of the unknown meeting. I was not contacted about the meeting or the changes. This constitutes a meeting in secret. I was not made aware of these changes until after the March 8th meeting. Violation #1

The public present at the meeting only had a few minutes to review the resolution. The passing of this resolution changed the on-site water well's function from the original project and the original Condition 70 (page 7 of the March 8th resolution: "An on-site well is available to provide emergency backup water in the event of a disruption in service by the community water system."). According to what was reported at the February 8th meeting, the Cal Water connection was providing all the water needed including fire protection. Which groundwater well are they talking about that will provide emergency back-up water? Is the resolution referred to the Western Milling's well or the Phoenix Bio Industries Well (which was installed in June 2004), prior to project's approval? Why change the project? In the resolution, no need or problems were stated as the reason for the change. No change or amendment was proposed or voted on by the Commission prior to March 8th. The public had no notice of this proposed change from the original project. It was not part of the original Condition 70. This constitutes a new project. This new project only had a 5 minute public review without any public notice. This is not an example of government operating transparently. This is not an acceptable way of conducting business under the Brown Act. Violation #2

This unjustified change to the project constitutes piece-mealing. I feel this action was taken as a means to getting around mitigating the impacts to water resources.

If this was the staff's plan of action right along, I feel that I was purposely and willfully misinformed at the February meeting and have been denied my right to comment on the action by the Planning Commission at the March 8th meeting (whose action approved what constitutes a new project). This is possibly another violation, Violation #3. If this change took place after the February 8th meeting, the change needed to happen at a public meeting and this meeting was held in secret without public knowledge. This does not meet the standard of a meaningful public review.

I have appealed the Planning Commission's decision on Condition 70 as well as the change to the original project. As required by law, I have made you aware of the violation and am providing you with an opportunity to correct the mistake. This statement will serve as my notice to you. You have 30 days to correct your actions. I need to make you aware that the Appeals Hearing at the Board of Supervisors will be conducted before the 30 day period is over. I think that this Brown Act Violation should be corrected before the Appeals Hearing is conducted at the Board of Supervisors. You may need to get the date for the Appeal moved until after the 30 day timeline. Please let me know if you need any additional information. You can reach me at the above address.



RESOURCE MANAGEMENT AGENCY

5961 SOUTH MOONEY BLVD.
VISALIA, CA 93277
PHONE (559) 733-6291
FAX (559) 730-2653

| | |
|-----------------|-------------------------|
| Britt L. Fussel | Engineering |
| Deborah Kruse | Development Services |
| Jean P. Brou | Transportation |
| George Finney | Long Range Planning |
| Hal Cypert | Support Services |
| Roger Hunt | Administrative Services |

HENRY HASH, DIRECTOR

THOMAS W. SHERRY, ASSOCIATE DIRECTOR

April 26, 2006

Doreen Caetano-Jungk
Rondo Ranch
31652 Road 68
Visalia, CA 93291

Dear Ms. Caetano-Jungk:

Thank you for your letter of March 28, 2006. Staff has reviewed the tapes of the February 8, 2006, and March 8, 2006, public hearings on the Western Milling Ethanol Plant hearings and, based upon the information provided, we have concluded that there was no violation of the Brown Act. We believe the allegations in your letter which you refer to as Violation #1 and Violation #3 stem from confusion regarding the processes involved.

Two separate processes were involved in this matter: 1) the Planning Commission hearing process needed to review applicant compliance with Condition 70 of Planning Commission Resolution No. 8060, and 2) the Brown Act public comment process.

The Planning Commission hearing process needed to review applicant compliance with Condition 70 of Planning Commission Resolution No. 8060 involved taking public testimony and evidence during the public hearing. The Planning Commission's decision was based only upon the testimony and evidence taken during this public hearing process.

Each Planning Commission meeting is also subject to the Brown Act which requires that the Planning Commission allow public comment on any item on its agenda at any regular meeting, whether or not there is a public hearing scheduled on the matter. These Brown Act comments are not evidence or part of the due process public hearing process for the purpose of the Planning Commission making a discretionary decision, such as a decision on compliance with condition 70. It was made clear at the March 8, 2006 hearing that public comment was allowed only on the proposed resolution for purposes of complying with the Brown Act public comment requirements.

There was no intent to mislead anyone regarding these two processes. The Brown Act public comment process is clearly stated on each Planning Commission agenda and, at the February 8th hearing, we clearly stated when the public testimony portion of the hearing process was closed for purposes of the Planning Commission's decision on compliance with condition 70. No changes regarding public testimony in the public hearing process and no changes in the Brown Act public comment process were made between the February 8, 2006, and March 8, 2006, meetings of the Planning Commission.

Ms. Caetano-Jung
April 26, 2006
Page 2

As to the allegations in your letter which you refer to as Violation #2, these allegations do not constitute any violation of the Brown Act but go to a question of whether or not the finding of the Planning Commission was supported by information provided during the public hearing process. 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.

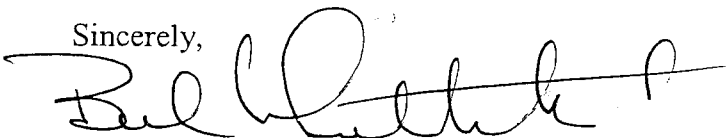
~~Resolution No. 8060 indicates that the project description referenced an on-site well to provide emergency backup water in the event of a disruption in service by the community water system, while water to supply the plant would be provided by California Water Company. Specific references to the project 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. If you take issue with the Planning Commission's position on this point, your recourse is to appeal to the Tulare County Board of Supervisors. According to our understanding, you have already done so and an appeal hearing is set for May 9, 2006.

Again, thank you for your letter of March 28, 2006. I hope that we have addressed all of your issues and answered your questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Whitlatch", with a stylized flourish at the end.

Bill Whitlatch, Chairman
Tulare County Planning Commission