



**Resource Management
Agency
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: October 25, 2011

Public Hearing Required	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Published Notice Required	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Advertised Published Notice	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>

CONTACT PERSON: Celeste Perez PHONE: 559/624-7107

SUBJECT: Findings in Regard to Tentative Denial of Appeal of Planning Commission Resolution No. 8590 certifying the Negative Declaration and Resolution No. 8591 approving Special Use Permit No. PSP 10-020 (Sierra Packaging Solutions)

REQUEST(S):

That the Board of Supervisors:

1. Adopt resolution and findings supporting denial of appeal of Planning Commission Resolution No. 8590 certifying the Negative Declaration and Resolution No. 8591 approving Special Use Permit No. PSP 10-020 (Sierra Packaging Solutions).
2. Deny the appeal filed by Kenneth J. Price of Baker Manock & Jensen, PC, Attorneys for Bryan Tahmazian and Jeff Bortolussi, adversely affected parties, and uphold the Planning Commission's certification of the Negative Declaration and conditional approval of Special Use Permit No. PSP 10-020 (Sierra Packaging Solutions) to allow an agricultural service operation on a 6-acre portion of a 20-acre site located on the southeast corner of Avenue 400 (State Route 201) and Road 24 east of Kingsburg.
3. Direct the Clerk of the Board of Supervisors to return the Notice of Determination to the Resource Management Agency for future filing with the County Clerk.

SUMMARY:

Clyde and Tiffany Ulrich (Sierra Packaging Solutions) requested approval of a special use permit to allow an agricultural service operation on a 6-acre portion of a 20-acre site located on the southeast corner of Avenue 400 (State Route 201) and Road 24, east of Kingsburg. The proposal is designed to allow the establishment of

SUBJECT: Findings in Regard to Tentative Denial of Appeal of Planning Commission Resolution No. 8590 certifying the Negative Declaration and Resolution No. 8591 approving Special Use Permit No. PSP 10-020 (Sierra Packaging Solutions)

DATE: October 25, 2011

an agricultural packaging, storage and sales facility to include a warehouse and distribution center for the sale of farm packaging products. Sierra Packaging provides a wide variety of packaging options and supplies to the grower, packer, and shippers of fresh fruit in the Central Valley. The proposal includes two Phases: Phase one consists of a 37,500 sq. ft. storage and sales area to include a 3,500 sq. ft. office, a 1,000 sq. ft. sales/display area, and also includes 14,850 sq. ft. of loading and unloading aprons along the length of the structure. Phase two consists of an 11,250 sq. ft. expansion to the storage building.

The proposal was first considered by the Planning Commission on October 20, 2010. At that meeting, staff presented a summary of the project and recommended approval based on findings of compatibility with the General Plan and zoning Ordinance. Several persons spoke in favor of and in opposition to the proposal.

Issues of concern raised by local property owners and representatives of adjacent property owners included the following:

- Increased traffic and the condition of Road 24 respecting deterioration, turning radii, and road width;
- On-site drainage and water issues;
- Size of the proposed structure;
- Future uses on site and the height of the building;
- Compatibility with Uniform Rules;
- Groundwater contamination;
- Impact on surrounding farming operations; and
- Air quality impacts.

As a result of these issues, a Traffic Analysis was prepared and a revised staff report and environmental document were prepared and re-circulated for public review.

The proposal was again considered by the Planning Commission on July 27, 2011. At that hearing, a reiteration of the previous issues of concerns was raised by the project opponents (Kenneth Price, John Smith, Bryan Tahmazian, Jeff Bortolussi, Orland Boyd, and Paul Buxman). Several persons also spoke in support of the proposal (Clyde Ulrich, Charles Clouse, Gerald Mele, William Brewer, Walter Jones, Donald Strand, Daniel Walters, Rick Carsey). The supporting documentation prepared by staff demonstrated that the approval of Special Use Permit No. 10-020 met all of the criteria and findings that support approval. The Planning Commission Certified the Negative Declaration (Resolution No. 8590) and approved the proposed special use permit (Resolution No. 8591).

On August 4, 2011, an appeal of the Planning Commission's action was filed by Kenneth J. Price of Baker Manock & Jensen on behalf of Bryan Tahmazian and Jeff

SUBJECT: Findings in Regard to Tentative Denial of Appeal of Planning Commission Resolution No. 8590 certifying the Negative Declaration and Resolution No. 8591 approving Special Use Permit No. PSP 10-020 (Sierra Packaging Solutions)

DATE: October 25, 2011

Bortolussi. The appeal document stated the following concerns and issues:

- Planning Commission's approval of the Negative Declaration was in violation of the Brown Act
- The approval of the Negative Declaration did not meet the requirements of the California Environmental Quality Act (CEQA)
- The Initial Study failed to review the full scope of the project
- That approval of the Negative Declaration was contrary to law
- The Initial Study failed to review the impacts on surrounding agricultural uses and groundwater
- Air quality review was inadequate

Again, supporting documentation prepared by staff and a rebuttal of these comments at the October 4, 2011 Board of Supervisors meeting demonstrated that the approval of Special Use Permit No. 10-020 met all of the criteria and findings that support approval. In addition, several persons spoke in support of the proposal.

At the October 4, 2011 Board of Supervisors meeting, the Board tentatively denied the appeal filed by Kenneth J. Price of Baker Manock & Jensen, and continued the matter to October 25, 2011, for the purpose of allowing the preparation of proposed findings to be submitted to the Board of supervisors.

FISCAL IMPACT/FINANCING:

No net County costs to the General Fund. The appeal filing fee of \$300 was paid by persons opposing the Planning Commission approval. The filing fee for the special use permit application was paid for by Clyde Ulrich plus \$100 per hour for staff time.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Denying the appeal and upholding the approval of Special Use Permit No. PSP 10-020 promotes the quality of life and economic well-being within Tulare County. These are expressed are goals the Tulare County's Strategic Business Plan (2006).

ADMINISTRATIVE SIGN-OFF:



Michael C. Spata, Assistant Director, Planning
Resource Management Agency

cc: Auditor-Controller
County Counsel
County Administrative Office (2)

Attachment(s) Findings Supporting Denial of Appeal

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

**IN THE MATTER OF DENYING THE APPEAL OF)Resolution No. _____
PLANNING COMMISSION RESOLUTION NO. 8590)
CERTIFYING THE NEGATIVE DECLARATION AND)
RESOLUTION NO. 8591 APPROVING SPECIAL)
USE PERMIT NO. PSP 10-020 REGARDING THE)
APPLICANT, SIERRA PACKAGING SOLUTIONS)**

WHEREAS, on August 4, 2011, an appeal was filed by Kenneth J. Price of Baker Manock & Jensen, PC, Attorneys for Bryan Tahmazian and Jeff Bortolussi, adversely affected parties, challenging the Tulare County Planning Commission's decision rendered on July 27, 2011, certifying the Negative Declaration (Resolution No. 8590) and conditionally approving Special Use Permit No. PSP 10-020 (Resolution No. 8591) pertaining to Sierra Packaging Solutions; and,

WHEREAS, the project approved by the Planning Commission constitutes a special use permit to allow development of an agricultural packaging, storage and sales facility on a 6.25 acre portion of a 20-acre site in the AE-20 (Exclusive Agricultural – 20 acre minimum) Zone, located on the southeast corner of Avenue 400 and Road 24, between the City of Kingsburg and the Kings River, generally described as a portion of Section 30, Township 16 South, Range 23 East, MDB&M; APN 028-100-16; and,

WHEREAS, on October 4, 2011, a public hearing was duly conducted by the Tulare County Board of Supervisors ("Board"), with oral and documentary evidence submitted by staff, the applicant, the applicants' representatives, the appellants, the appellants' representatives, and members of the public; and,

WHEREAS, after duly considering the evidence submitted at the public hearing, the Board (a) closed the public hearing, (b) moved unanimously to tentatively deny the appeal, and (c) continued the matter to October 25, 2011, for the purpose of considering written findings with respect to its tentative decision; and,

WHEREAS, this resolution and findings contained herein are submitted to the Board for its consideration and action.

NOW, THEREFORE, the Board hereby finds, determines, declares, and concludes as follows:

1. The Board finds that the above recitals are deemed to be true, correct and made a part hereof.

2. The Board hereby certifies that the Negative Declaration applicable to the project described therein and referred to hereinabove has been completed in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and Tulare County's Procedures for Implementing CEQA.

3. The Board certifies further that the Negative Declaration reflects the Board's independent judgment and analysis. In making this determination, the Board submits that it independently considered the administrative record applicable to this appeal. Such record includes the evidence (oral and documentary) submitted at the Planning Commission and the Board. Specifically, the administrative record includes, but is not limited to, the Negative Declaration, Special Use Permit, agenda items, staff reports, resolutions, exhibits, studies, photographs, maps, power point slides, correspondence, and other documents, materials and testimony submitted by staff, the project applicant and its representatives, the appellants and their representatives, other public agencies, and members of the public. Such record is incorporated herein by this reference and is relied upon in making the decision with respect to this appeal.

4. The Board certifies further that the Board independently reviewed and considered the information in the Negative Declaration before denying the appeal and approving the project.

5. Accordingly, based on the Board's independent review, consideration, judgment and analysis concerning the administrative record pertaining to this appeal, and as set forth hereinafter in more detail, the Board hereby (a) denies the appeal filed by Kenneth J. Price of Baker Manock & Jensen, PC, Attorneys for Bryan Tahmazian and Jeff Bortolussi, adversely affected parties, and (b) upholds the Planning Commission's decision approving Resolution No. 8590 (certification and approval of Negative Declaration) and Resolution No. 8591 (conditional approval of Special Use Permit No. PSP 10-020) applicable to Sierra Packaging Solutions.

6. In connection with the Negative Declaration, the Board hereby finds and concludes that there is no substantial evidence in light of the whole record before it that the project may have a significant effect on the environment. (Public Resources Code, § 21080, subd. (c)(1); 14 Cal. Code Regs., §§15064, subd. (a)(1), 15070, subd. (a).) Stated differently, the Board finds and concludes that the Board was not presented with a "fair argument" that the project may have a significant effect on the environment. (14 Cal Code Regs., § 15064, subd. (f)(1); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885.) In making this finding, the Board concludes that the appellants have not offered substantial evidence to support their objections to the Negative Declaration. Instead, the Board concludes that the appeal is based on argument, speculation or unsubstantiated opinion which do not rise to the level of substantial evidence under CEQA. (Public Resources

Code, § 21080, subd. (e)(2); 14 Cal. Code Regs., §§15064, subd. (f) (5), 15384, subd. (a). In support hereof, and in response to the issues raised in this appeal, the Board further finds and concludes as follows:

(a) Traffic: There is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to traffic, nor was a “fair argument” presented that the project may have a significant effect on the environment with respect to traffic. This finding is based on the following:

After considering the matter regarding traffic, the originally proposed access to the subject site occurred from two driveways off Road 24. Owing to specific concerns raised at the meeting of October 20, 2010 before the Planning Commission regarding Road 24, a Traffic Analysis was prepared by TPG Consulting to evaluate potential impacts to State Route (SR) 201 and Road 24. As set forth in the analysis, standard traffic engineering trip estimation methodology (based on the Institute of Transportation Engineers (ITE) Trip Generation manual) was utilized to provide an overall assessment. According to the traffic analysis, there are no existing levels of service problems at the intersection of SR 201 and Road 24, and based on this expert analysis, no significantly adverse impacts are projected with the addition of the Sierra Packaging project.

Additionally, based on the Peak Hour Signal Warrant, volumes at the study intersection were not sufficient to meet the warrant for a traffic signal in either the existing or existing plus project scenarios. However, stemming from the poor condition of Road 24, the applicant agreed to change the access drive from Road 24 to the SR 201.

In this regard, revised plans were reviewed by Caltrans; and after due consideration by Caltrans, the proposed new drive access was acceptable, subject to encroachment permit approval.

Moreover, Caltrans did not require left-hand turning lanes or other highway improvements, nor did Caltrans require a revised traffic analysis on the basis that the traffic counts and level of service would remain the same -- as also indicated in the traffic analysis prepared in support of the Negative Declaration.

Concerning the potential funneling effect at the bridges, the environmental and planning documents demonstrate that such effect will not be caused by the proposed project. After evaluating the matter, neither the County, Caltrans nor the engineering consultants retained to analyze this project concluded that there would be a funneling effect at the bridge. In fact, the traffic analysis for this project concludes that there will not be any significantly adverse impacts associated with traffic.

Therefore, there is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to traffic, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to traffic.

(b) Impacts to Surrounding Farm Operations: There is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to surrounding farm operations, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to surrounding farming operations. This finding is based on the following:

After considering this matter relating to surrounding farming operations, there is no evidence that the project as proposed will impact surrounding farming operations, as these types of agricultural facilities developed throughout Tulare County are intended to support the farming community; and in this case, the proposed use is considered an integral and necessary part of the area's farming community. In addition, commercial agricultural service facilities -- such as cold storage facilities, packing houses, agricultural repair shops, suppliers of packing materials for use in the field, etc. -- are considered an integral and necessary part of the area's farming community. The balance of the subject property will be replanted as an almond orchard to buffer views from the surrounding property and will be further consistent with surrounding farming operations.

Additionally, from a land use, zoning and agricultural perspective, the proposed location of the project is a permissible and compatible use as authorized by Tulare County's General Plan, Zoning Ordinance and Uniform Rules for Agricultural Preserves. For further support relating to the permissibility and compatibility of the proposed use, see paragraph 8 herein.

Moreover, based on the analysis in the Negative Declaration and corresponding staff reports, there are no significant environmental effects that would be suffered by surrounding farming operations. In particular, the Board has concluded in this paragraph that that there would not be any significant impacts relating to traffic, groundwater, water usage, and air quality. Thus, there is no evidence of any significant impacts on surrounding farming operations.

Notably, as part of the requirements of the special use permit for the project, and as further protection to the surrounding community, a "Right to Farm" notice is required to be signed by the applicant, which --

according to Tulare County Ordinance Code Section 7-29-1055 -- protects the surrounding community by insuring that the agricultural operation is conducted in a manner consistent with the proper and accepted customs and standards established and followed by similar operations in the same locality. Otherwise, the applicant loses the Right to Farm defense in any nuisance action.

Therefore, there is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to surrounding farm operations, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to surrounding farming operations.

(c) Groundwater: There is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to groundwater, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to groundwater. This finding is based on the following:

After considering this matter regarding groundwater, there is an existing septic tank-leach line system which serves the on-site residence. Only one additional septic system is proposed to serve the new operation and is required to be engineered designed and installed in accordance with Tulare County's Environmental Health Division requirements.

There is no evidence to support that any new septic system, if designed and installed pursuant to existing and well-established engineering and public health regulations, will contribute to groundwater contamination. For example, approximately five feet or less of soil and/or rock is required to dissipate the liquid from leach lines. The depth-to-ground water level is approximately 30 feet. There will be little or no run-off from the project. A swale would be located on-site to capture any water runoff and any overage will drain to the existing on-site vineyards.

Therefore, there is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to groundwater, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to groundwater.

(d) Water Usage: There is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to water usage, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to water usage. This finding is based on the

following:

After considering this matter concerning water usage, one office will utilize a minimal amount of water compared to a residence or an agricultural use. For example, one acre of agriculturally-producing property is basically equivalent to one acre of urban uses (4 residences per acre) in terms of water usage. The proposal with one office will use the smallest amount of water. No truck washing will be allowed on site, per condition of approval.

Therefore, there is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to water usage, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to water usage.

(e) Air Quality: There is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment with respect to air quality, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to air quality. This finding is based on the following:

After considering this matter with respect to air quality, responses from the San Joaquin Valley Air Pollution Control District stated that -- in the response to staff's consultation -- "the District concludes that project specific criteria pollutant emissions would have no significant adverse impact on air quality."

Moreover, the proposed agricultural service operation is presently operating from a facility located just north of Kingsburg (on old State Hwy. 99 in Fresno County). Relocating the operation from Fresno County to a new facility in Tulare County will not cause an increase in air pollutants since the operation is basically the same with the same number of employees and trucking operations.

Additionally, the record reflects that staff evaluated the project's potential to emit toxic air contaminants (TAC), hazardous materials and odor. Specifically, staff considered TAC from diesel trucks, and, based on this review, in the preliminary screening it was found that owing to the number of diesel trucks and the area the diesel trucks will enter and be parked, the project will not exceed the air district's thresholds for health risk screening. The closest receptor is 260 feet from the truck entry and over 450 feet from the proposed truck doc area. A mobilehome is located on site but is owned by the applicant. The project qualified under the small project analysis level (SPAL). Analysis requirements include examining the area surrounding project site for sources of toxic air contaminants (TAC),

hazardous materials and odors. Thus, the project is not a sensitive receptor, and as such, a health risk assessment was not needed to analyze impacts to the project from surrounding land uses. As indicated by the air district in determining health risk from TACs, the proposed project is not a type B project (land use project with receptors that are impacted by nearby, existing toxics sources.)

In this regard, existing federal, state and local requirements prohibit surrounding owners and operators from improperly spraying pesticides and the like, and as such, existing law also protects the surrounding community from adverse effects of pesticide spraying. The record reflects that these requirements are in existence and must be followed.

Therefore, there is no substantial evidence in light of the whole record before the Board that the project may have a significant effect on the environment on air quality, nor was a "fair argument" presented that the project may have a significant effect on the environment with respect to air quality.

7. In connection with the Scope of the Project applicable to the Negative Declaration, the Board hereby finds and concludes as follows:

(a) Any future expansion or action with respect to this agricultural service establishment will not be significant in that it will not likely change the scope or nature of the initial project or its environmental effects. (*Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal.3d 376.)

(b) According to the Negative Declaration, corresponding reports and resolutions, the project is approved in two phases. The first phase allows the construction of a 37,550 square foot building and the second phase allows additional construction of 11,250 square feet. Condition No. 32 of the Special Use Permit prohibits expansion to or modification of the uses as approved and no new uses shall occur without first obtaining approval of an amendment to the use permit; and since an amendment of a use permit is considered a discretionary act, CEQA must apply to any amendment encompassing a change of use or expansion.

(c) Based on a review of the Negative Declaration, corresponding reports and resolutions, the expansion to the second phase is substantially less than the first phase. In addition, the nature of the initial project will not change. Importantly, the environmental effects of the project will not likely change since the traffic, groundwater, water usage, and air quality effects will not be exacerbated by any expansion. Based on the current scope of the first phase, it is not likely that there will be a substantial increase in traffic, water usage or air quality effects resulting from a possible

expansion to the second phase. For example, the road improvements are being addressed to accommodate the full scope of the project. Water usage is not expected to increase measurably. Water quality will be handled properly since the septic system is designed to accommodate any future use.

(d) To insure that any possibly significant environmental impacts are addressed properly, any amendment or modification of use (which are not guaranteed) will be subject to environmental review under CEQA since a use permit amendment is a discretionary act.

Therefore, the Board finds and concludes that the Scope of the Project was described and defined properly; there is substantial evidence to support this finding and conclusion; and there is no substantial evidence to the contrary, nor can a "fair argument" be made that there is substantial evidence that the Scope of the Project should be any different from how it was addressed in the Negative Declaration.

8. In connection with the Special Use Permit, the Board hereby finds and concludes as follows:

(a) The proposed location of the project is a permissible and compatible use pursuant to Tulare County's General Plan, Zoning Ordinance and Uniform Rules for Agricultural Preserves.

(b) Specifically, according to the Kings River Plan (which is part of the Tulare County General Plan applicable to the subject property), and after reviewing applicable maps, photographs and other information in the record, the subject property falls within the agricultural designation of the Kings River Plan.

(c) According to Ordinance No. 352 (Tulare County Zoning Ordinance), the proposed project is located within the AE – 20 Zone (Exclusive Agriculture – 20 Acre Minimum). Specifically, Section 9.6.E (21) of the Zoning Ordinance allows "*Establishments for the curing, processing, packaging, packing, storage and shipping of agricultural products.*" (Emphasis added.) Additionally, Section 9.6.E (22) allows "*Agricultural service establishments primarily engaged in performing agricultural animal husbandry services or horticultural services to farmers, and services to farmers or farm-related activities in planting, harvesting, storage, hauling and equipment repair and maintenance.*" (Emphasis added.)

(d) According to the Uniform Rules for Agricultural Preserves (Williamson Act), Section A.1.h of Resolution No. 89-1257 adopted by the Board in 1989 expressly permits "*Services to farmers or farm-related activities in*

planting, harvesting, storage, hauling and equipment and repair maintenance.” (Emphasis added.)

(e) With respect to alternative sites, the following is established in the administrative record:

- (i) The evidence in this case shows that the proposed location is appropriate, is designed effectively, and is conditioned adequately and extensively; and thus, there is no rational basis to require that the proposed use be located on another site.
- (ii) The applicant owns the subject property and it would be unreasonable to require relocation to another site.
- (iii) Since the subject environmental document is a Negative Declaration, there is no duty under CEQA to engage in an alternative site analysis.
- (iv) Based on testimony and evidence presented at the public hearing (conducted on October 4, 2011) by the applicant’s representatives, there is substantial evidence of compatible agricultural / development interfacing, and equally important, the Vicinity Map provided in this presentation discloses that the proposed use is not incompatible with surrounding uses.
- (v) The proposed project is consistent with the long-established policy allowing agricultural service establishments within Tulare County; and as such, approval of this project will not create a dangerous precedent. To demonstrate further consistency with agricultural use, a substantial portion of the subject property will re-active beneficial farming operations in the nature of an almond orchard.

(f) The proposed project is described in the subject environmental and planning documents as an “establishment of an agricultural packaging, storage and sales facility on a 6.25 acre parcel of a 20-acre site to include a warehouse, sales, and distribution center.” The balance of the subject property will be replanted as an almond orchard to buffer views from the surrounding property and will be further consistent with surrounding farming operations.

(g) There will be no manufacturing of products on the subject site. The agricultural use is designated a commercial use, not a manufacturing or industrial use. Only uses allowed in the zone would be allowed on the subject site in the future. Future uses are speculative and cannot be

analyzed if the uses are unknown. Any change in the use, as approved, would require County review and analysis. Only uses that are allowed in the agricultural zone and are compatible with the Williamson Act Preserve Uniform Rules would be considered. Condition No. 32 of the Special Use Permit provides adequate regulatory control to insure that no other uses are allowed and that additional environmental review is required if an amendment is proposed to the use permit.

(h) After considering all of the evidence presented, the Board finds and concludes that the establishment, maintenance, and operation of the use of building or land applied for will not, under the circumstances of this 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. More specifically, the environmental analysis -- contained in the Negative Declaration, corresponding reports and Planning Commission resolutions -- reflects that there are no significant environmental effects associated with public health, safety and welfare. In addition, the conditions of approval required in the Special Use Permit insure that the public health, safety and welfare are not adversely affected. To insure that no adverse or detrimental impacts will occur to the public health, safety and welfare, extensive interdisciplinary conditions of approval were required and imposed in the subject Special Use Permit by Tulare County's Engineering Division, Planning Department, Fire Department, and Environmental Health Division; the Delta Vector Control District; the San Joaquin Valley Unified Air Pollution Control District; and Caltrans. Furthermore, as indicated in paragraph 6(b) above, the record reflects that there will not be significant impacts to surrounding farming operations.

Therefore, in light of the whole record, the proposed use in the proposed location is a permissible and compatible use according to the land use, zoning and agricultural requirements of Tulare County.

9. In connection with the request to have the Tulare County Agricultural Advisory Committee (TCAAC) consider this project, the Board hereby finds and concludes as follows:

(a) Insofar as the Planning Commission's approval of the project is concerned, counsel for the appellants states that the County's failure to refer the proposal to the TCAAC prior to approval was an abuse of discretion, and that approval of the project was contrary to law and an abuse of discretion on the ground that the initial study and negative declaration do not comply with CEQA.

(b) In connection with the non-referral of the project to the Tulare County Agricultural Advisory Committee (TCAAC), it is determined that the TCAAC is an advisory committee to the Board of Supervisors and the

Planning Commission; and as such, it is not within the purview of staff to forward any application to the TCAAC. Pursuant to Resolution No. 94-0917, it is the current policy of Tulare County that a referral to the TCAAC requires express direction either from the Planning Commission or the Board of Supervisors.

(c) Neither the Commission nor the Board were under any duty to refer the matter to the TCAAC and were vested with sufficient jurisdiction by law to decide this matter without referral to the TCAAC. In further support hereof, the Board notes respectfully that the law defers to a county regarding the interpretation of its policies affecting its own General Plan and Zoning Ordinance.

Therefore, neither the law nor the evidence supports the proposition that the County abused its discretion by not referring the matter to the TCAAC.

10. In connection with the alleged Brown act violation, the Board finds and concludes -- in light of the record as a whole -- the following:

(a) The project was adequately described and properly noticed as a matter of law in the Planning Commission's and Board's public hearing notices (including newspaper notices) and public meeting agendas (Government Code, § 54954.2(a)(1); staff letter dated September 7, 2011 to appellants' counsel);

(b) No prejudice was suffered by anyone (including appellants) with respect to the alleged violation that the Negative Declaration was not described in the Planning Commission's agenda of July 27, 2011, especially since the Negative Declaration was adequately described in the Commission's public hearing notice, including newspaper notice for that public meeting;

(c) Both the appellants and the public were afforded adequate notice and opportunity to be heard with respect to the Negative Declaration and Special Use Permit relating to this project as evidenced by their repeated, extensive and timely appearances in this matter; and

(d) In any case, such objection was waived at the public hearing before the Board since the matter proceeded without further objection by the appellants or any member of the public.

11. In connection with the alleged failure to comply with requests for public information, the Board finds and concludes that -- in light of the record as a whole (including without limitation correspondence from staff to appellants' counsel) -- there is no merit to this objection on the ground that all requests for public information by appellants or the public were met properly with respect to this

matter; and in any case, such objection was waived at the public hearing since the matter proceeded without further objection by the appellants or any member of the public.

12. The documents and other materials that constitute the record of proceedings on which the Board's decision is based are located at the Tulare County Resource Management Agency, 5961 South Mooney Boulevard, Visalia, California 93277, and the custodian of such record is Jake Raper, Jr., AICP, Director.

13. In light of the whole record pertaining to this project, the Board hereby approves the Negative Declaration (Resolution No. 8590) and the Special Use Permit (Resolution No. 8591; PSP 10-020) for Sierra Packaging Solutions.

14. Based on the decision made hereinabove, the Board hereby directs the Clerk of the Board of Supervisors to return the Notice of Determination to the Resource Management Agency for future filing with the County Clerk.

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

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____

Deputy Clerk

NOTICE OF DETERMINATION

TO: Tulare County Clerk
Room 105, Courthouse
Visalia, CA 93291

FROM: Tulare Co. Board of Supervisors
5961 S. Mooney Blvd.
Visalia, CA 93277-9394

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resource Code.

Project Title/Case File No. PSP 10-020 **Applicant:** Sierra Packaging Solution, Clyde & Tiffany Ulrich
P.O. Box 264, Kingsburg, CA 93631

State Clearinghouse No. (if any):

Lead Agency: Tulare County Resource Management Agency

Staff Contact Person: Charlotte Brusuelas

Telephone Number: 624-7000

Project Location: The site is located at the southeast corner of Avenue 400 and Road 24, between the City of Kingsburg and the Kings River.

Project Description: Special Use Permit to allow development of an agricultural packaging, storage and sales facility on a 6.25-acre portion of a 20-acre site in the AE-20 (Exclusive Agriculture-20 acre minimum) Zone.

This is to advise that the TULARE COUNTY BOARD OF SUPERVISORS has approved the above described project on October 25, 2011 and has made the following determinations regarding the above described project:

1. The project () will (x) will not have a significant effect on the environment
2. () An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
(X) A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

The EIR or Negative Declaration and record of project approval may be examined at:
5961 S. Mooney Blvd., Visalia, California 93277-9394

3. Mitigation measures (X) were, () were not, made a condition of the approval of the project.
4. A Statement of Overriding Considerations () was, (x) was not, adopted for the project.

() D.F.& G. Fees Req'd
() E.I.R.
() N.D.

By: _____
Chairman, Tulare County Board of Supervisors

Filed with the Tulare County Clerk on _____, 2011.

cc: Calif. Dept. of Fish & Game, 1416 Ninth Street, 12th Floor, Sacramento, CA 95814

Note: Authority cited: Section 21083, Public Resource Code; Reference: Sections 21108, 21152 and 21167, Public Resource Code.