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THELEN REID & PRIEST LLP
ATTORNEYS AT LAW
SEVENTEENTH FLOOR
333 WEST SAN CARLOS STREET
SAN JOSE, CALIFORNIA 95110-2701
TEL (408) 292-5800 FAX (408) 287-8040
www.thelenreid.com

NEW YORK
SAN FRANCISCO
WASHINGTON, D.C.
LOS ANGELES
SAN JOSE

PAUL A. BRUNO

October 25, 1999

Via Hand Delivery

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Re: Stephenson Ranch
Horse Barn Application No. 97-0648

Dear Members of the Board:

This letter concerns the September 28, 1999 letter from Supervisor Mardi Wormhoudt seeking Special Consideration from the Board of Supervisors regarding Application No. 97-0648 the private Horse Barn application of John and Brenda Stephenson. The purpose of this correspondence is to provide the Board with the relevant factual background and governing case authority in support of the applicants' request that the Board uphold the decision by the Planning Commission to both approve the. Horse Barn and certify the related mitigated Negative Declaration.

Your Board specifically allowed the Stephensons to proceed with the Horse Barn permit process by Resolution 390-97 adopted on September 23, 1997. At that time, all "goat related" development was halted. However, your Board expressly authorized the continued processing of two pending applications: one the Stephensons' private residence; and two, the Stephensons' private horse barn. ***In reliance on the Board's specific direction, the Stephensons have satisfied each and every requirement of the County of Santa Cruz on the way to their successful certified Negative Declaration and permit approval for this horse barn application.*** The Horse Barn comes to you after over 2 years of review and over $23,000 of staff time studying every aspect of the horse barn and neighbor concerns. Three draft Negative Declarations were prepared and approved by the Environmental Coordinator, the most recent was certified by the Planning Commission. Each of these mitigated Negative Declarations had public comment periods; one was recirculated for public review and comment a second time. Three public hearings before the Zoning Administrator were scheduled, four public hearings before the Planning Commission were held, with the vote for approval occurring on September 22, 1999. After direction to proceed from your Board, years of public scrutiny,

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repeated public hearings, specific modification of the project as requested, the time to'uphold the approval and certified mitigated Negative Declaration is here.

Factual Background

On September 22, 1999, the Planning Commission approved the Horse Barn Application after a series of modifications were considered and adopted by the Planning Commission.

Going on three years ago, the applicants, John and Brenda Stephenson, first submitted an application to build a private horse barn on their 208 acre ranch. On September 23, 1997, your Board gave direction to proceed on this application and the Stephenson's house while stopping other development at the Ranch. The Board acknowledged that the unrelated development moratorium would be lifted upon Master Plan approval.

As required by CEQA, the Planning staff conducted an Environmental Review Initial Study. (In fact, Planning staff conducted **three** Environmental Review Initial Studies.) Each Initial Study, including the third on March 10, 1999, found that the proposed project will not cause any significant environmental impact effects in this case because the mitigation measures identified and added to the project will obviate any environmental impacts. The third and final mitigated-Negative Declaration was prepared by the County and circulated for public comment twice. The Negative Declaration and Notice of Determination, approved May 11, 1999 by Ken Hart, the Environmental Coordinator, found that the Horse Barn, if conditioned to comply with the required mitigation measures set forth by the Planning Department, would *not have a significant effect on the environment.* Moreover, the Negative Declaration indicated that the Horse Barn would not create any potential for adverse environmental effects on wildlife resources.

After a threat by the Stephenson's opposition to sue the County over a "notice" difficulty at the initial Planning Commission Hearing on November 12, 1998, the Planning Commission agreed to a project revision and continued the public hearing to June. On June 23, 1999, a public hearing was held and after considerate testimony, the Planning Commission again continued consideration of the Horse Barn Application to obtain more information regarding lighting and other visual impacts, the proposed Master Plan and the interior layout of the Horse Barn. The Stephensons subsequently both provided the Planning Commission with information that was requested and modified the project as requested. In a report dated August 3 1, 1999, in preparation for the Planning Commission meeting agenda on September 8, 1999 (which was again continued to September 22, 1999), Planning staff (and ultimately the Planning Commission) concluded that the revisions to the Horse Barn project, namely the withdrawal of the grain silo and the elimination of an irrigation line, made the project completely independent of the Master Plan. The staff report indicated, *"These two changes clearly make the project one which stands alone and apart from the proposed Master Plan application to expand biomedical live stock raisingfacilities on the ranch.* "(Emphasis supplied.)

Kim Tschantz, CEP, also noted that certain members of the Planning Commission were concerned that a "cumulative impact" analysis was not provided in the report. Mr. Tschantz correctly identified that CEQA only requires a cumulative impact analysis when an EIR is prepared for a project.. Initial studies substantiating negative declarations do not include such analyses. When analyzing the cumulative impacts of a project in an EIR, lead agencies are only required to discuss other nearby or related projects approved and under construction, as well as those projects undergoing environmental review during the time the main project is being analyzed that will collectively impact the environment. Since the proposed Master Plan had not commenced environmental review at the time of the certification of the Negative Declaration, Mr. Tschantz noted that it would be inappropriate to include a cumulative impact analysis even if an EIR had been prepared for the subject project.

In sum, the Planning Commission correctly determined that the Horse Barn would cause no significant adverse impacts on the environment after mitigation. Consequently, the Negative Declaration certified by the Planning Commission was extensively reviewed, appropriate, and consistent with California law.

Legal Analysis

Initially, a mitigation measure is that which is designed to minimize a significant environmental impact. P.R.C. Sections 21002.1(a) and 21100(b)(3). If an activity is a project as defined by CEQA and the possibility exists that it may have a significant effect on the environment, the local agency must undertake an initial threshold study. Black Property Owners Association v. City of Berkeley (1994) 22 Cal.App.4d 974, 984. Here, the Planning Department undertook three extensive Initial Studies of a single Horse Barn on a 208-acre ranch.

The Planning Commission's decision to approve and certify the mitigated Negative Declaration is fully in accord with California law. Without substantial evidence[1] in the record showing that significant adverse impacts[2] will remain after mitigation, a court must *presume* that the conditions adopted by the agency in a mitigated negative declaration will be effective and will ensure that impacts are mitigated to an acceptable level. Perley v. Board of Supervisors

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[1] In the **CEQA** context, substantial evidence is 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence.' Leonoff v. Monterey County Board of Supervisors (1990) 222 Cal.App.3d 1337, 1348.

[2] The term "significant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment." Lucas Valley Homeowners Association, Inc. v. County of Marin (1991) 233 Cal.App.3d 130,163.

(1982) 137 Cal.App.3d 424, 434; Running Fence Corporation v. Superior Court (1975) 5 1 Cal.App.3d 400, 423. In other words, the burden is on the Stephenson's opposition to demonstrate that there is substantial evidence in the record supporting that the proposed project (the Horse Barn) may have a significant effect even after mitigation measures are considered. *If the petitioner does not meet this burden, the mitigated negative declaration must be upheld.* Citizens for Responsible Development v. City of West Hollywood (1995) 39 Cal.App.4d 490. [Emphasis added.]

Here, the County set forth a detailed mitigation monitoring program which has been incorporated into the conditions of approval for the Horse Barn project in order to mitigate or avoid significant effects on the environment. These measures relate to:

1. outdoor lighting plan;
2. drainage and erosion control plan;
3. water valve on emergency fire line;
4. independent portable water system and tank size limitation;
5. protection of the red-legged frog;
6. bacterial levels in the well water;
7. landscape screening of barn;
8. earth tone roofing;
9. demolition of existing stable; and
10. manure management plan

A mitigated negative declaration may be set aside *only if* the conditions attached to its adoption are insufficient to mitigate project impacts. Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296. However, as the County has set forth in detail the sufficiency of these measures, the Negative Declaration should be upheld.

Moreover, a mitigated negative declaration cannot be attacked successfully on the theory that the conditions will not be enforced; *compliance with the conditions will be presumed.* When a court reviews a mitigated negative declaration, "the focus must be the use as approved, and not the feared or anticipated abuse." Lucas Valley Homeowners Association v. County of Marin (1991) 233 Cal.App.3d 130, 164. [Emphasis added.] Consequently, we can presume that the Stephensons will comply with all conditions imposed by the County.

A case cited by your County Counsel's office is both instructive and controlling. In Leonoff v. Monterey County Board of Supervisors (1990) 222 Cal.App.3d 1337, 1345-1346, the objectors asserted that the negative declaration was invalid because the initial study was deficient; the county " 'admitted' doing 'no site specific analysis of obnoxious odors, traffic impacts, noise impacts, and air quality' and there was no cumulative impact analysis considering the proposed adjoining mini-storage project." There was no site specific traffic study, no attempt

to analyze or quantify the odors, no attempt to quantify the noise that would be generated from the project site, and no attempt to quantify the degradation of air quality. Id. Moreover, objectors asserted that the mitigation measures suggested by the initial study to curb impacts on surface and ground water indicate that these items were of significance. Id. at 1356. The initial study required grease and pollutant traps to protect surface water and leak-proof storage for gas and diesel to protect groundwater. Id. The objectors' real challenge to the initial study was not that the county completely ignored these impacts, but that it did not study them enough. In upholding the negative declaration, the court stated, "We are aware of no authority supporting objectors' unstated premise than an initial study is inadequate unless it amounts to a full-blown EIR based on expert studies of all potential environmental impacts. If this were. true, the Legislature would not have provided in CEQA for negative declarations." Id. at 1347. Thus, the three-year battle for the Horse Barn should be over and the Planning Commission's decision and certification upheld.

a. Cumulative Effects

This case cited above is significant for yet another reason – to eliminate any argument that the Horse Barn must be stopped to study imagined "cumulative effects of the Horse Barn and the. Master Plan. In Leonoff v. Monterey County Board of Supervisors (1990) 222 Cal.App.3d 1337, a planning commission filed a negative declaration under CEQA for the development of a contractor's service center. The objectors contended that the county should have analyzed the cumulative impacts of the project together with the proposed adjoining mini-storage complex. Id. at 1357. *There, as here, the county was aware that the project would share a driveway and a drainage easement with the proposed mini-storage complex. The initial study determined there would be no significant adverse cumulative effect.* Id. The court held that there was no evidence at all that these projects would have cumulative effects or that any such effects would be considerable. Id. at 1358. The time to approve the Horse Barn is long past. Please proceed to uphold the decision of the Planning Commission.

Here, similarly, the Planning Commission has extensively analyzed many aspects including but not limited to, the viability of the red-legged frog, water, light, drainage, water quality, and visual impacts related to the Horse Barn project, and has set forth mitigating factors for preservation of same. Specifically, the Stephensons, in conjunction with a biologist, county planner and area building inspector, will be put on a close monitoring program to identify and resolve any problems within twenty-four (24) hours or a stop work notice will be issued.

b. Segmentation

The County staff and Planning Commission (again with direct guidance from County Counsel's office) also correctly determined that the Horse Barn does not constitute illegal

segmentation. In the conclusion and recommendation portion of the Commission's consideration of the Horse Barn Application, Planning staff noted and the Planning Commission agreed:

> The project has been revised substantially from that which your Commission originally reviewed in November 1998. Major changes since the Commission's June 23 meeting consist of the applicants' withdrawal of the grain silo from the project and planning staffs recommendation for denial of the water line to irrigate pasture for goats and horses. These *two changes clearly make the project one which stands alone and apart from the proposed Master Plan application to expand biomedical livestock raising facilities on the ranch.* (Emphasis supplied.)

The Planning Commission evaluated whether the equestrian facility project at issue is part of a larger project which includes the biomedical livestock operations, and answered that in the negative. Applying the test in Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376, the Horse Barn is not a reasonably foreseeable consequence of the biomedical livestock operations (the 'Master Plan'), nor will the development proposed by the Master Plan likely change the scope or nature of the Horse Barn or its environmental effects. Id. at 396-397. Consequently, the Horse Barn does not constitute illegal segmentation of a larger project.

The Stephensons followed the direction of your 'Board on September 23, 1997 and proceeded with this application over two years ago. The Stephensons followed the rules at each step and repeatedly modified the project in accordance with County direction and suggestion. The Stephensons complied with every request of the Zoning Administrator and Planning Commission that led to the approval of the Horse Barn and certification of the mitigated Negative Declaration. In sum, the Stephensons respectfully request that Board of Supervisors adhere to the state of the law in California governing their Horse Barn Application and uphold the decision by the Planning Commission to certify the Negative Declaration related thereto.

Very truly yours,

Paul A. Bruno

PAB/gm/73519
cc: John and Brenda Stephenson
Dwight L. Herr, Esq., County Counsel

Celia Scott, A.I.C.P
ATTORNEY AT LAW
1520 *Escalona Drive*
Santa Cruz, California 95060
Telephone and FAX: 831·429·6166

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October 26, 1999

Board of Supervisors
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: Special Consideration of Application No. 97-0648
Santa Cruz Biotechnology (Barn and Water Tanks)

Members of the Board:

On behalf of Friends of the North Coast, I am writing to request the Board of Supervisors not to approve the above-referenced application to construct a "private equestrian facility': by Santa Cruz Biotechnology on the north coast separately from environmental review and consideration of the Master Plan application for expansion of biomedical livestock' operations-an the same property.

As your Board is aware, the Master Plan application is admittedly in the environmental review process now (staff report, p. 5). This fact alone is sufficient grounds to reject the Initial Study and Negative Declaration for Application No. 97-1648 as legally inadequate under the requirements of the California Environmental Quality Act. We request the Board not to certify the Initial Study/Negative Declaration and return the matter to the Environmental Coordinator for further review within the context of the Master Plan process.

County Counsel's memorandum of September 20, 1999 acknowledges that a cumulative impact analysis is required in an Initial Study in order to determine whether a' project may have possible environmental effects which, though individually limited, are cumulatively considerable due to "past projects, the effects of other current projects, and the effects of probable future projects." Public Resources Code §21083(b) and 14 C.C.R. §15065(c).

While a cumulative impact analysis in an Initial Study need not include the level of detail included in an EIR (14 C.C.R. §15063(a)(3), it cannot be entirely omitted from the Initial Study. While the use of a checklist is permissible, the checklist without supporting factual data and/or explanation of its conclusions disclosed in the document is an inadequate basis for deciding to prepare a Negative Declaration, and providesnovehicle for judicial review. Citizens Association for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151; Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d at 171.

If a determination is made that the contribution of a project will

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not be cumulatively considerable through mitigation measures in the negative declaration, "the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable." 14 C.C.R. 15064(i)(Z). A determination that a project makes a "de minimus" contribution to cumulative impacts means "that the environmental conditions would essentially be the same whether or not the proposed project is implemented." 14 C.C.R.15064(i)(4). This application is not de minimus.

County Counsel's memorandum also acknowledges that projects which are subject to environmental review at the time that the lead agency considers approval of a Negative Declaration must be included in the cumulative impact evaluation of an Initial Study. San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal. App.3d 61.

The Initial Study before the Board for Application No. 97-1648 did not include a cumulative impact discussion with supporting factual data and explanation, but. merely put a check in a box on a checklist (p. 75 of the Initial Study dated March 8, 1999). Furthermore, while the text of the Negative Declaration acknowledges potential for cumulative impacts in two areas (visual impacts and loss of farmland), it fails even to mention other potential cumulative impacts relating to water supply, water quality, wildlife habitat, wildlife corridors, grazing capacity,geology, let alone provide an adequate discussion with supporting factual data.

The Initial Study also failed to consider fully the effects of past, current and probable future projects on the subject property. There is no longer any question that the Master Plan is a "probable future project" whose impacts must be considered. And there is no question that past projects, namely, the entire biomedical livestock operation begun without permits in 1997, the large private residence on the site, and any other past or current projects by the applicant, on the site, must be considered and discussed in a cumulative impact evaluation. None of this was included in the Initial Study.

CEQA also prohibits splitting a project into two or more segments. 14 C.C.R.§15378(a). The "horse barn" is clearly the initial footprint on the upper terrace of the site for the proposed fourth building cluster in the Master Plan application. The proposed location of the "horse barn" on the upper terrace prejudices and prejudges a critical Master Plan issue: should there be any new cluster of buildings on the upper terrace, or should any new buildings be located on the lower terraces where visual impacts, wildlife impacts, potential for ground water contamination might be reduced? The June 23 staff report to the Planning Commission in fact stated that "action on the project before you will set the stage for the number and locations of building clusters to occur on the ranch in the near future when the master plan is considered."

It is blindingly obvious that the applicants' original-and ongoing intent through the "horse barn" application has been to get a footprint on the upper terrace for master plan purposes. Planning staff has labored to try to separate the "horse barn" application from the Master Plan, a task which is not possible given that the two projects are geographically and physically intertwined on the upper terrace. Alternative locations for the 'horse barn" on the site which could minimize or eliminate this issue were not discussed in the Negative Declaration, despite being repeatedly raised in the public review process.

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In addition to the legal deficiencies in the Initial Study/Negative Declaration set forth above, the proposed application presents other significant environmental issues which have been inadequately addressed.

The Santa Cruz Biotechnology operation depends, in part, on water (treated and untreated) provided by the City of Santa Cruz. Planning staff has represented to the Planning Commission (June 23 staff report) that water from the City's untreated water line can be used to fill the five water storage tanks proposed in the project for emergency fire protection purposes so long as the total volume of untreated water used on the site as a whole is within the 224,000 gallons per month limitation imposed by the City of Santa Cruz. However, in a recent conversation with the director of the City Water Department, I was informed that even with no new facilities in operation, the use of city water on the site as a whole is pushing the limits of what Santa Cruz Biotechnology is allowed to take. City regulations do not allow for an upgrade or increase in the water service to the property. And environmental limitation or other restrictions, as outlined in the staff report, do not allow increased diversions from on site water sources such as Laguna Creek. Why was Condition IX.H. deleted from the permit conditions? (See Attachment 4, Revised Exhibit B).

Adequacy of water supply is clearly crucial for the current application andforthe expansion of the biomedical livestock operation proposed in the Master Plan. The two applications should not be segmented under CEQA, and neither should go forward until the water supply issues on the entire property are fully evaluated.

Mitigation measures to protect the on-site habitat of the Federally endangered California red-legged frog do not adequately reflect the requirements specified in correspondence from the U.S. Fish and Wildlife Service (letter dated April 22, 1998, Attachment 4, Exhibit C).

In their letter, USF&WS clearly states all project construction, including the barn, the water tanks and the new water lines should not occur during the winter months. Condition V. of the permit conditions does not clearly state 'that ALL project construction is prohibited between October 15 and April 15 pursuant to that requirement.

Condition V.2 and V.3 also do not provide for any public review of wildlife preconstruction wildlife surveys, and only require "appropriate action" to avoid impacts on red-legged frogs located in the surveys. Furthermore, there is no clear requirement that the surveys be conducted according to the protocol specified by the USF&WS.

In conclusion, once again Friends of the North Coast urges the County to deny this application or continue it for environmental review and consideration within the context of the proposed Master Plan.

The Board of Supervisors is the final decision-maker on the adequacy of the Initial Study/Negative Declaration. CEQA mandates that the Master Plan project must be considered in the Initial Study's cumulative impact evaluation when the approving body takes action on the Negative Declaration for the application now before the Board. (County Counsel's 9/20/99 memo, p.6). The current application is inextricably intertwined with the Master

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Plan with respect to geographical location and water supply, at aminimum. The Initial Declaration/Initial Study should not be certified; and the project should not be approved.

Many people in this communityhave worked long and hard to ensure that the north coast of Santa Cruz County is protected in a manner that respects its extraordinary natural beauty and biological resources. The Board of Supervisors, we are sure, shares that goal. Friends of the North Coast asks that you act on this application in a manner that respects our common goal, and protects this particular place on the north coast from further degredation.

Yours truly,

Celia Scott

Celia Scott

Attachments: Letters of
June 22, 1999; Sept. 8, 1999