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RECEIVED

APR 18 2017

San Joaquin County
Community Development

April 13, 2017

Via Email and U.S. Mail

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Kerry Sullivan, Director
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San Joaquin County
1810 E. Hazelton Avenue
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Email: ksullivan@sjgov.org

Via Email Only

Kirsten Hegge, khegge@sjgov.org
Stephanie Stowers, sstowers@sjgov.org

Re: Failure to Comply with California Public Records Act and California Environmental Quality Act Regarding the Initial Study/Negative Declaration for the Proposed Delicato Vineyards Project: Use Permit # PA-1700032, SCH # 2017032056

Dear Ms. Merrill, Ms. Sullivan, Ms. Duzenski, Ms. Hegge and Ms. Stowers:

We are writing on behalf of San Joaquin County Residents for Responsible Development ("San Joaquin Residents") to provide comments on the Initial Study/Negative Declaration ("IS/ND") prepared by San Joaquin County (the

“County”), pursuant to the California Environmental Quality Act (“CEQA”),¹ for the Delicato Vineyards Project, Use Permit #PA-1700032 (UP), (“Project”). The Project seeks a Use Permit to expand an existing winery in three phases over fifteen years. The County issued an Initial Study and proposed Negative Declaration for the Use Permit application. The Project site is located on the west side of South State Route 99 West Frontage Road, 378 feet south of East French Camp Road, north of Manteca.

San Joaquin Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. San Joaquin Residents includes Plumbers & Pipefitters Local 442, International Brotherhood of Electrical Workers Local 595, and Sheet Metal Workers Local 104, and their members and their families who live and/or work in San Joaquin County. San Joaquin Residents have a strong interest in enforcing the State’s environmental laws that encourage sustainable development and ensure a safe working environment for its members.

As explained in detail below, the County has failed to comply with its legal obligations under both the California Public Records Act and the California Environmental Quality Act. Additionally, the County has yet to provide us with written confirmation that it has no other public records, materials or information that it has not provided to us related to the Project and/or the County’s evaluation of the Project pursuant to CEQA.

I. TIMELINE

On March 29, 2017, we requested immediate access to any and all documents related to the Project.² On March 30, 2017, Janet Laurain, on behalf of San Joaquin Residents, followed up with Ms. Stowers on our immediate access request. After a series of communications in which Ms. Stowers indicated alternative means of providing the documents, Ms. Laurain informed Ms. Stowers that we would prefer to receive the documents in the manner that would allow for the quickest turnaround time.³

On April 4, 2017, we received an electronic link to download certain materials for the Delicato expansion, PA-1700032 Project. Upon review of the files, we found

¹ Pub. Resources Code, §§ 21000 et seq.

² Letter from N. Thimmayya to the County (Mar. 29, 2017).

³ **Attachment A**, Correspondence between J. Laurain and S. Stowers (Mar. 30 - Apr. 4, 2017).

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that the Project materials and Initial Study/Negative Declaration referenced Use Permit Application #PA-1100224, which the Planning Commission approved on July 19, 2012.⁴

Use Permit #PA-1100224 set Conditions of Approval, which are incorporated by reference for this Project.⁵ Moreover, some of the equipment included in Exhibit “1” of the Project Description indicate that the items were previously approved in “2011 Phase 2 on Application PA-1100224” or “2011 Phase 3 on Application PA-1100224.”⁶ Without Use Permit #PA-1100224 and its supporting environmental review document, it is impossible for the public to understand the nature and scope of the current Project and to meaningfully or fully evaluate the environmental impacts of the Project.

On April 7, 2017, we sent a letter to the County requesting an extension of the public comment period on the basis that all documents referenced and relied upon in conducting the Initial Study and proposing a Negative Declaration have not been provided to the public.⁷ On April 10, 2017, our request was denied on the basis that comments on the IS/ND would be received for an additional two days.⁸

On April 10, 2017, I spoke with Ms. Stowers regarding the outstanding Use Permit No. PA-1100224 and its supporting environmental review document. Ms. Stowers provided by email the 2011 IS/ND supporting Use Permit Application PA-1100224.⁹ That night, I brought to Ms. Stowers’s attention that the document she provided me was still missing the critical Use Permit PA-1100224 — it contained only the 2011 IS/ND, not the actual project Use Permit.¹⁰ I asked her to send the 2011 Use Permit.¹¹

The following day, on April 11, 2017, Ms. Laurain corresponded with Ms. Stowers regarding the method of transmittal for the outstanding Use Permit.¹² We

⁴ PRA Response, pdf. p. 15.

⁵ *Id.*, pdf. p. 18 (“These Conditions of Approval are in addition to the Conditions of Approval for Use Permit application No. PA-1100224 (UP).”)

⁶ *Id.*, pdf. p. 60.

⁷ Letter Requesting Comment Letter Extension to County from L. Sobczynski (Apr. 7, 2017).

⁸ Letter to L. Sobczynski from K. Hegge (Apr. 10, 2017).

⁹ Initial Study/Negative Declaration for Use Permit Application No. PA-1100224.

¹⁰ Correspondence between L. Sobczynski and S. Stowers (Apr. 10, 2017).

¹¹ *Id.*

¹² Correspondence among J. Laurain, L. Sobczynski and S. Stowers (Apr. 11, 2017).

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agreed that an electronic link for download, the same process followed for providing PA-1700032, would be appropriate for the Use Permit PA-1100224 file.¹³

Also on April 11, 2017, we responded to the letter denying our request indicating that we were still missing the 2011 Use Permit and other essential materials regarding the current Project and its relationship to the project approved in 2011.¹⁴

We sent a separate letter, on April 11, 2017, to request written confirmation from the County that all documents and materials related to the current Project have been provided to us and that the County has no other public records related to the Project in its possession.¹⁵

On April 12, 2017, I received a voicemail from Ms. Zayante (Zoey) P. Merrill informing us that records have been made available to us and that the comment period would not be extended.

On April 12, 2017, Ms. Stowers indicated by email that she is still working to provide the 2011 Use Permit No. PA-1100224. We replied informing Ms. Stowers that we have hired a copy service to scan the requested document on April 13, 2017.¹⁶

On April 13, 2017, the County provided us with records referenced in the IS/ND for the proposed Project.

II. USE PERMIT NO. PA-1100224

The 2011 Use Permit No. PA-1100224 is critical for analyzing the currently proposed Project. In a letter from Ms. Stowers to the Development Committee, regarding Use Permit Application No. PA-1700032, she writes:

Upon the completion and circulation of the Initial Study, the Community Development Department will schedule the project to be heard at the Planning Commission and recommend approval subject to the following conditions. If any issues surface from the environmental

¹³ *Id.*

¹⁴ Response Letter to County Counsel from L. Sobczynski (Apr. 11, 2017).

¹⁵ Letter Seeking Confirmation of All Records to County from L. Sobczynski (Apr. 11, 2017).

¹⁶ **Attachment B**, Correspondence between J. Laurain and S. Stowers (Apr. 12, 2017).

review or other issues arise, the Community Development Department may schedule another Development Committee meeting to discuss all issues prior to attending a Planning Commission meeting.

[. . .]

APPROVED USE: This approval is to expand an existing large winery in three phases over fifteen years as shown on the site plan dated February 10, 2017. Phase 1 to include the construction of 731,128 square feet of buildings, including bottling, warehouse, and administration buildings. Phase 2, to be completed in ten years, includes the relocation of existing buildings, multiple tank farm, hopper, and fermenter expansions, the construction of 40,000 square feet of buildings to be utilized for maintenance, refrigeration plants, and wine processing cellars, and ancillary expansion. Phase 3, to be completed in 15 years, includes the construction of 80 additional wine storage tanks. (Use Type: Wineries and Wine Cellars - Winery, Large)

These Conditions of Approval are in addition to the *Conditions of Approval for Use Permit application No. PA-1100224 (UP)*.¹⁷

Use Permit No. PA-1100224 set Conditions of Approval, which are incorporated by reference for *this proposed Project's* Conditions of Approval.¹⁸

The very purpose of this Project's Initial Study/Negative Declaration is to review "A Use Permit application to expand an existing large winery in three phases over fifteen years. . . ." ¹⁹ The Use Permit application provides the following description of the proposed project: "Refer to Exhibit "1" and Use Permit Site Plan for detailed project description."²⁰ In referring to Exhibit "1" the Project Description states that certain items were "APPROVED IN 2011 PHASE 2 ON *APPLICATION PA-1100224*" and "APPROVED IN 2011 PHASE 3 ON *APPLICATION PA-1100224*."²¹

In this proposed Project's Initial Study, the section on Utilities and Public Services once again *references* Use Permit Application No. PA-1100224.

¹⁷ PRA Response, pdf. pp. 17-18 (emphasis added).

¹⁸ *Id.*

¹⁹ *Id.* pdf p. 32.

²⁰ *Id.* pdf. p. 52.

²¹ *Id.* pdf. p. 60.

The winery process water for the proposed project will drain to three sumps located in various areas of the cellar tank farms and pumped to a holding pond located on the northwest portion of the winery. The process water is aerated in the holding pond and pumped through a series of pipes to the land application areas on premise as approved on *Use Permit application no. PA- 1100224*.²²

Use Permit No. PA-1100224 is irrefutably referenced — multiple times — in this proposed Project's Initial Study/Negative Declaration. Yet we still do not have this document. The 2011 Permit's Initial Study/Negative Declaration does not include sufficient information about what items were approved or what Conditions of Approval were included.

III. VIOLATIONS: CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CALIFORNIA PUBLIC RECORDS ACT

First, CEQA requires that all documents referenced in an environmental review document be made available to the public for the entire comment period.²³ *Once the documents are made available* CEQA requires a minimum of 30 days for public review and comment on a negative declaration that is submitted to the State Clearinghouse.²⁴

After repeated requests, we received the essential Use Permit No. PA-1100224 around noon on April 13th. The comment deadline is April 18 and comments will be accepted through April 20, 2017. Without access to all documents referenced in the IS/ND, the public cannot meaningfully review and comment on the IS/ND's analyses or conclusions. Failure to provide this critical document until today further reinforces our need for an extension. Therefore, we reiterate our request that the April 18 comment deadline be extended 30 days from the date that all documents referenced in the IS/ND are made available for public review.

Second, the Public Records Act provides the public the right to request copies of public records.²⁵ Separately, the Public Records Act provides the public the right

²² *Id.* pdf p. 40.

²³ Public Resources Code, § 21092(b)(1); 14 Cal. Code Regs, § 15072(g)(4).

²⁴ 14 Cal. Code Regs., § 15073(a).

²⁵ Gov. Code, § 6253(a).

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to inspect public records during an agency's office hours.²⁶ Our request was for *immediate access* to inspect records. If there are any other records related to this Project, we seek immediate access.

Please let us know whether the County will comply with CEQA and the Public Records Act by making Project records immediately available to the public, and by extending the April 18 comment deadline 30 days from the date that all documents referenced in the IS/ND are made available for public review.

IV. WRITTEN CONFIRMATION REGARDING RECORDS PROVIDED

Finally, we once again reiterate our request that the County provide written confirmation that it has no other records related to the current proposed Project approval (Use Permit Application No. PA-1700032). If any such documents or materials exist, we seek immediate access to these records. If it is the County's position that all documents and materials related to the current Project have been provided to us and that it has no other public records related to the Project in its possession, we request such confirmation in writing.

Sincerely,



Linda Sobczynski

LTS:lj1

Attachments

²⁶ *Id.*

ATTACHMENT A

Re: CPRA Request - Delicato Vineyards Project PRA response documents

Stephanie Stowers [sstowers@sjgov.org]

Sent: Tuesday, April 04, 2017 10:03 AM**To:** Janet M. Laurain

The file is fairly thin in size, and is being scanned now. As soon as it is scanned, we can get the link processed. It should be ready for your download later today.

Stephanie Stowers
Associate Planner
San Joaquin County
Community Development Department
(209) 468-9653

From: "Janet M. Laurain" <jlaurain@adamsbroadwell.com>**To:** "Stephanie Stowers" <sstowers@sjgov.org>**Sent:** Monday, April 3, 2017 5:11:32 PM**Subject:** RE: CPRA Request - Delicato Vineyards Project PRA response documents

Stephanie,

The most expedient manner for getting the documents is what we would like to pursue, given that a Negative Declaration is out for comment and the Planning Commission will consider the project on April 20, 2017. It sounds like working with IT might not be the most expedient route. Do you think you can get back to us with a timeframe by tomorrow? If not, do you have an approximate page count for the documents? I will look into a local copy service to see if they can scan the documents for us.

Thank you.

Janet Laurain

Janet M. Laurain, Paralegal
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From: Stephanie Stowers [mailto:sstowers@sjgov.org]**Sent:** Monday, April 03, 2017 4:31 PM**To:** Janet M. Laurain**Subject:** Re: CPRA Request - Delicato Vineyards Project PRA response documents

I will work with our IT to get a time frame for you.

Stephanie Stowers
Associate Planner
San Joaquin County

Community Development Department
(209) 468-9653

From: "Janet M. Laurain" <jlaurain@adamsbroadwell.com>
To: "Stephanie Stowers" <ssowers@sjgov.org>
Sent: Friday, March 31, 2017 4:58:32 PM
Subject: RE: CPRA Request - Delicato Vineyards Project PRA response documents

That would be great. Do you have an idea as to when that can be done?

Janet M. Laurain, Paralegal
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660
jlaurain@adamsbroadwell.com

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From: Stephanie Stowers [<mailto:ssowers@sjgov.org>]
Sent: Friday, March 31, 2017 4:56 PM
To: Janet M. Laurain
Subject: Re: CPRA Request - Delicato Vineyards Project PRA response documents

Janet,

We may be able to scan the file and send you a download link. Would this be the preferred method? I can probably work with my IT department to make that happen. If we do it this way, I do not believe there is a fee.

Thank you,

Stephanie Stowers
Associate Planner
San Joaquin County
Community Development Department
(209) 468-9653

From: "Janet M. Laurain" <jlaurain@adamsbroadwell.com>
To: ssowers@sjgov.org
Sent: Thursday, March 30, 2017 3:51:36 PM
Subject: CPRA Request - Delicato Vineyards Project PRA response documents

Hi Stefanie,

I just left you a message and am following up with this email.

Can you please tell me the approximate number of pages of responsive documents to our PRA request and the turnaround time if the County copies the documents for us? Does the County need

a check from us beforehand or will you take a credit card? Would you be scanning the documents and sending them via email or a file hosting service (such as Dropbox) or copying them for delivery in hardcopy to us?

Janet Laurain

Janet M. Laurain, Paralegal
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ATTACHMENT B

RE: Immediate Access - Delicato Vineyards project

Janet M. Laurain

Sent: Wednesday, April 12, 2017 6:14 PM**To:** Stephanie Stowers [sstowers@sjgov.org]**Cc:** Linda T. Sobczynski

Stephanie,

We have hired a copy service to go to the County offices tomorrow to scan the requested documents:

- 1) The 2011 Use Permit No. PA-1100224; and
- 2) The 2017 Use Permit Site Plan.

Please confirm that these document are available. Are there any blocks of time tomorrow that the copy service would be prevented from accessing the documents (e.g. lunch times)?

Thank you.

Janet Laurain

Janet M. Laurain, Paralegal
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601 Gateway Boulevard, Suite 1000
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jlaurain@adamsbroadwell.com

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From: Stephanie Stowers [mailto:sstowers@sjgov.org]
Sent: Wednesday, April 12, 2017 5:03 PM
To: Janet M. Laurain
Subject: Re: Immediate Access - Delicato Vineyards project

Janet,

I am working to get this over to you in a timely manner.

Thank you,

Stephanie Stowers
Associate Planner
San Joaquin County
Community Development Department
(209) 468-9653

From: "Janet M. Laurain" <jlaurain@adamsbroadwell.com>
To: "Stephanie Stowers" <sstowers@sjgov.org>
Sent: Tuesday, April 11, 2017 4:43:03 PM
Subject: Immediate Access - Delicato Vineyards project

Stephanie,

I'm sending this email on behalf of Linda Sobczynski. The method you describe below is the route we would like to take.

Thank you.

Janet Laurain

From: Stephanie Stowers [mailto:ssowers@sigov.org]

Sent: Tuesday, April 11, 2017 3:39 PM

To: Linda T. Sobczynski

Subject: Re: Linda Sobczynski Email

Linda,

With the last request (for PA-1700032), we scanned our hard file in and provided a link to download. If this is the route you would like to take, I can organize that process again with my clerical and IT staff. I will work to get it to you as soon as possible.

Stephanie Stowers
Associate Planner
San Joaquin County
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(209) 468-9653