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COUNTY COUNSEL

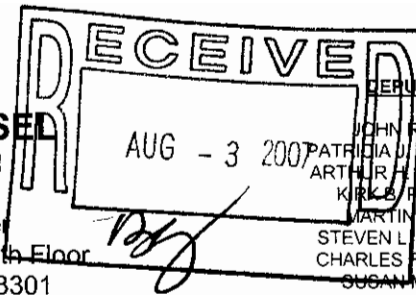
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DAVID T. UNGAR

\*Certified Appellate Specialist

August 2, 2007

Mr. Scott Kuney, Esq.  
The Law Offices of Young Wooldridge  
1800 30<sup>th</sup> Street  
Bakersfield, CA 93301

RE: September 12, 2006 Antelope Valley Water Bank Approval

Dear Mr.Kuney:

I have been asked by the Planning Department to respond to your recent request for confirmation of the present status of the September 12, 2006 action of the Kern County Board of Supervisors, wherein they conditionally approved Specific Plan Amendment (SPA) 13, Map 232, and SPA 2, Map 233. I concur with the conclusions in Lorelei Oviatt's November 2, 2006 letter, a copy of which is attached for your reference.

This project approval was subject to a condition that "approvals not to become effective unless a memorandum of understanding approved as to form by County Counsel is executed by close of business on Thursday, November 30, 2006". I am informed and believe that it has been the longstanding practice and view of County staff that such a condition is fully satisfied upon the property owner executing and filing an original agreement document , in acceptable form, with the Planning Department staff prior to the deadline. In the present case, the required document was properly executed and filed on November 1, 2006, and following the filing, I confirmed that the document and its execution were acceptable as to form when filed.

Based on the foregoing, it is this office's opinion that the condition on the approval was fully satisfied on November 1, 2006, notwithstanding that the actual agreement document was not executed by the Board of Supervisors until April 17, 2007. That April 17 Board action confirmed staff's view that the project condition had been timely satisfied. I attach

August 2, 2007  
Page 2

a copy of the April 17, 2007 staff board letter and related official summary of proceedings for your file.

I hope you find this information useful in advising your client.

Very truly yours,

Bernard C. Barmann, Sr. County Counsel

By   
Bruce Divelbiss, Chief Deputy County Counsel

CC: Lorelei Oviatt, Planning Division Chief  
Ted James, Planning Director

BD:bd  
#154585  
07.2625

**PLANNING DEPARTMENT**

**TED JAMES, AICP, Director**

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**RESOURCES MANAGEMENT AGENCY**

**DAVID PRICE III, RMA DIRECTOR**  
Community & Economic Development Department  
Engineering & Survey Services Department  
Environmental Health Services Department  
Planning Department  
Roads Department

November 2, 2006

File: SPA # 13, Map # 232  
SPA # 2, Map # 233,  
Ag Pres # 24 - Incl

Western Development and Storage, LLC  
Attn: Andrew Werner  
5700 Wilshire Blvd, Suite 330  
Los Angeles, CA 90036

**RE: Confirmation – Antelope Valley Water Bank  
Planning Approvals Effective**

Dear Mr. Werner,

On September 12, 2006 the Kern County Board of Supervisor approved your project with one condition that was required to be satisfied before close of business on November 30, 2006 for the approvals to become effective. The required submittal was made on November 1, 2006 of the executed Memorandum of Understanding and Agreement for Performance of Zoning Ordinance and Mitigation Measures as Environmental Restrictions in a form approved by County Counsel. This submittal satisfies this condition. Your project approvals are effective as of November 2, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorelei H. Oviatt".

Lorelei H. Oviatt  
Supervising Planner

PLANNING DEPARTMENT

TED JAMES, AICP, Director  
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RESOURCE MANAGEMENT AGENCY

DAVID PRICE III, RMA DIRECTOR  
Community & Economic Development Department  
Engineering & Survey Services Department  
Environmental Health Services Department  
Planning Department  
Roads Department

April 17, 2007

S.D. #2

Board of Supervisors  
Kern County Administrative Center  
1115 Truxtun Avenue  
Bakersfield, CA 93301

**Proposed Memorandum of Understanding and Agreement for Performance of Zoning Ordinance and Mitigation Measures as Environmental Restrictions (MOU) with the Van Dam Farms and Western Development and Storage, LLC for the Antelope Valley Water Bank by Western Development and Storage, LLC in Eastern Kern (Fiscal Impact: None)**

On September 12, 2006 your Board approved requests for Specific Plan Amendments (SPA 13, Map 232, SPA 2, Map 233) and Alteration of the Boundaries of Agricultural Preserve No. 24 – Inclusion necessary for the construction and operation Antelope Valley Water Bank by Western Development and Storage, LLC. This project will develop a facility and related pipelines to store imported surface water underground beneath approximately 1,500 acres of agricultural land. Upon completion of construction the project could be owned and operated by a public agency.

The project was approved with a condition that was included to ensure that any public agency that might acquire and operate the completed water bank would be bound by all the requirements of the A (Exclusive Agriculture) Zoning Ordinance, the Final Environmental Impact Report and Mitigation Measure Monitoring Program regardless of any exemption a City, County or Special District could legally claim under State Law. This condition was satisfied on November 1, 2006 with the submittal to staff of fully executed originals of the attached MOU.

The attached MOU has been approved by the Planning Director for content and County Counsel as to form and has been executed by the property owners and project applicants.

Therefore, IT IS RECOMMENDED that your Board Approve the Memorandum of Understanding and Agreement and authorize the Chairman to sign.

Sincerely,

Handwritten signature of Ted James in black ink.

TED JAMES, AICP, Director  
Kern County Planning Department

TJ:jb  
Attachment  
I:\adm\jvb\board.ltr\AVWB MOU 4-17-07.doc  
cc County Administrative Office  
County Counsel  
Van Dam Farms  
Western Development and Storage, LLC

Young, Woolridge, LLP  
Resource Management Agency  
Grand Jury

DEPARTMENTAL REQUESTS

RESOURCE MANAGEMENT AGENCY

Planning Department

Land Use

S.D. #4

- CA-10) Proposed Notice of Nonrenewal Petition No. 07-1 Bolthouse Properties, LLC, by Clifford and Brown, for approximately 831 acres within Agricultural Preserve No. 13 (Fiscal Impact: None) - DIRECTED CLERK OF THE BOARD TO RECORD

**Watson-Maggard: All Ayes**

- CA-11) Proposed Notice of Nonrenewal Petition No. 07-2, Bolthouse Properties, LLC, by Clifford and Brown, for approximately 199 acres within Agricultural Preserve No. 9 (Fiscal Impact: None) - DIRECTED CLERK OF THE BOARD TO RECORD

**Watson-Maggard: All Ayes**

- CA-12) Proposed Notice of Nonrenewal Petition No. 07-5, Lloyd and Barbara Unruh, for approximately 105 acres within Agricultural Preserve No. 9 (Fiscal Impact: None) - DIRECTED CLERK OF THE BOARD TO RECORD

**Watson-Maggard: All Ayes**

- CA-13) Proposed Notice of Nonrenewal Petition No. 07-6, Mario and Erma Buoni, by D. R. Horton, for approximately 82 acres within Agricultural Preserve No. 10 (Fiscal Impact: None) - DIRECTED CLERK OF THE BOARD TO RECORD

**Watson-Maggard: All Ayes**

- CA-14) Proposed Notice of Nonrenewal Petition No. 07-7, Mario and Erma Buoni, by D. R. Horton, for approximately 321 acres within Agricultural Preserve No. 10 (Fiscal Impact: None) - DIRECTED CLERK OF THE BOARD TO RECORD

**Watson-Maggard: All Ayes**

Miscellaneous

S.D. #2

- CA-15) Proposed Memorandum of Understanding and Agreement for performance of Zoning Ordinance and Mitigation Measures as Environmental Restrictions (MOU) with the Van Dam Farms and Western Development and Storage, LLC, for the Antelope Valley Water Bank by Western Development and Storage, LLC, in Eastern Kern (Fiscal Impact: None) - APPROVED; AUTHORIZED CHAIRMAN TO SIGN AGREEMENT 218-2007

**Watson-Maggard: All Ayes**

S.D. #5

- CA-16) Request from Davinder Khokhar and Surjit Singh for Determination of Public Convenience for the issuance of an off-sale beer and wine license at 900 Sterling Avenue, Bakersfield, pursuant to the Alcohol Beverage Control Act, Section 23958 of the Business and Professions Code (Fiscal Impact: None) - APPROVED; ADOPTED RESOLUTION 2007-119

**Watson-Maggard: All Ayes**