

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development

BOARD AGENDA # 9:15 a.m.

Urgent

Routine

AGENDA DATE June 5, 2007

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Appeal of the Planning Commission's Decision to Deny the Appeal of Staff Application No. 2007-09 and Lot Line Application No. 2006-45 - Cilion, Inc. Ethanol Facility

PLANNING COMMISSION ACTIONS AND STAFF RECOMMENDATIONS:

After a duly advertised public hearing on April 19, 2007, the Planning Commission, on a 6-0 vote, denied the appeal by Mr. Richard Harriman, and supported staff's original determination to approve Staff Approval Application No. 2007-09 and Lot Line Adjustment Application No. 2006-45 - Cilion, Inc. Ethanol Facility.

Staff recommends the Board deny the appeal of the Planning Commission's decision.

FISCAL IMPACT:

There are no fiscal impacts associated with this item.

BOARD ACTION AS FOLLOWS:

No. 2007- 447

On motion of Supervisor Mayfield, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) X Other:

MOTION: THE BOARD DENIED THE APPEAL AND ADOPTED THE FINDINGS ATTACHED HERETO

ATTEST:


ELIZABETH A. KING, Assistant Clerk

File No.

**APPEAL BY VALLEY ADVOCATES OF LOT LINE ADJUSTMENT (LLA 2006-45)
AND STAFF APPROVAL PERMIT (SSA 2007-09) RELATED TO CONSTRUCTION
OF CILION, INC. ETHANOL FACILITY**

FINDINGS

After holding a public hearing on the appeal by Valley Advocates of Lot Line Adjustment 2006-45 and Staff Approval Permit 2007-09 related to Construction of Cilion, Inc. Ethanol Facility (the "Project"), and based on the public testimony, the staff report, comments by staff and other written materials in the record and presented at the hearing, the Board denies the appeal of Planning Commission decision and finds and determines the following to be true and correct:

1. On April 19, 2007, the Stanislaus County Planning Commission, by 6-0 vote, denied the appeal of a staff determination to complete Lot Line Adjustment 2006-45 and to issue Staff Approval Permit 2007-09. The Board finds that based upon staff reports, documents received and testimony provided at the Planning Commission hearing that the Planning Commission properly determined that the staff determination and approval are ministerial and categorically exempt under CEQA, and that there is no substantial evidence on the record that the Project may cause a significant effect on the environment.

2. The Project consists of two separate, but related, staff approvals, namely approval for construction of two storm drain basins in the Industrial and Planned Development zoning districts, and approval of a lot line adjustment.

3. The lot line adjustment portion of the Project is categorically exempt under Section 15305 of the CEQA Guidelines in that it is a minor alteration in land use in an area with less than 20 percent slope, it does not change the land use from industrial types of uses, and it does not result in the creation of a new parcel.

4. The staff approval of storm drain basins for the Project is categorically exempt under Section 15304 of the CEQA Guidelines in that construction of the storm drains will require minor grading on land that does exceed 10 percent slope, and that does not involve removal of healthy, mature, scenic trees.

5. Discretionary permits such as Use Permits or Staff Approvals are not required when a use is specifically permitted within a zoning district.

6. The Cilion Ethanol Facility is located entirely within a pre-existing Industrial zoning district, and ethanol manufacturing is an industrial use that is specifically permitted in an Industrial zone pursuant to Section 21.60.020 B of the Stanislaus County Code.

7. Ethanol manufacturing is not one of the specifically listed uses under Section 21.60.030 that require a Use Permit as alleged by the Appellant. The Board specifically finds and determines that:

(a) Subdivision A of Section 21.60.030 refers to solid waste disposal facilities, and that distillation of alcohol during the Cilion ethanol manufacturing process is not the same as or included within the term "Distillation of bones" under that provision.

(b) Subdivision B of Section 21.60.030 includes manufacturing of compressed gasses, however, it is not economically feasible to capture and compress CO₂ produced as an incidental byproduct of ethanol manufacturing by the Cilion facility and, therefore, the Cilion facility will not manufacture compressed gasses.

(c) Subdivision E of Section 21.60.030 refers to refining of petroleum products, however, the manufacture of ethanol is not a petroleum product that requires refining.

8. The 75-foot height limitation under Subdivision A of Section 21.60.040 of the Stanislaus County Code is not applicable in that:

(a) Neither a paper lot line adjustment, nor two storm drainage basins would exceed the height limitation;

(b) By memo dated September 11, 2006, the Fire Marshall's Office determined that the ethanol manufacturing facility would be non-combustible or fireproof, and not intended for human occupancy; and

(c) Subdivision B of Section 21.60.040 provides that there is no height limitation for fireproof structures that are not used for human occupancy.

9. Staff approval of the lot line adjustment and issuance of a staff approval permit for two storm drainage basins in an industrial area for an industrial project is consistent with the development density established by existing zoning, community plan, and general plan policies for which an EIR was certified, and there are no project-specific significant effects which are peculiar to the project or its site.

10. The San Joaquin Valley Air Pollution Control District received Authority to Construct Applications for the Cilion Ethanol Plant, and, in accordance with CEQA Guidelines, the Air District assumed the role as lead agency under CEQA, and prepared an Initial Study and Proposed Mitigated Negative Declaration for the ethanol manufacturing project.

11. The Air District is a regulatory agency with resource matter expertise on air quality issues, and granted Authority to Construct Applications with substantial conditions to mitigate potential air quality impacts.

12. The County of Stanislaus, as a Responsible Agency reviewed and commented on the Air District's draft Negative Declaration for the Cilion project.

13. The Board of Supervisors, as a responsible agency, has independently reviewed and considered the information contained in the Mitigated Negative Declaration on the Cilion Ethanol Plant project adopted by the Air District, including the responses to comments.

14. All potentially significant impacts identified in the Air District's Mitigated Negative Declaration have been avoided or reduced to a level of non-significance with mitigation as identified in the Mitigated Negative Declaration, the Mitigation Monitoring Plan, and the Conditions of Approval.

15. The Cilion Ethanol Plant Project with the mitigation measures set forth in the Air District's Mitigated Negative Declaration will not have a substantial impact on the Environment.

16. The County adopted an Environmental Impact Report for the Keyes Community Plan, which considered the potential environmental impacts of land uses including industrial uses in the area of the project. The Keyes Community Plan EIR adopted mitigation measures relating to all types of land uses designated in the Community Plan, including measures to reduce traffic impacts to a level of non-significance. The Project does not have a substantial or significant effect on the roads within Stanislaus County or the surrounding road system in that:

(a) A lot line adjustment and construction of two storm drainage basins will not result in increased traffic; and

(b) the Cilion Ethanol Plant project will pay an impact fees that, in combination with other impact fees, will fund traffic improvements in the area.

17. After considering the comments from all interested parties, including the San Joaquin Valley Air Pollution Control District, and the testimony at the Public Hearing, the Board finds that there is no substantial evidence in light of the whole record that the Project will have a significant effect on the environment, including air resources.

18. Considering that all potentially significant effects have been avoided or reduced to a level of insignificance, and considering other projects including industrial projects in the past, present and future, the Board finds that the Project does not have a considerable incremental effect on the environment and thus there are no significant cumulative effects on the environment.

19. The Board finds the persons opposing the Project have only raised an issue that there may be a cumulative effect, but have not specified what the cumulative

effects are or explained how or why the Project may have a considerable incremental effect on the environment.

20. Considering the entire record, including comments from all interested parties, testimony at the Public Hearing, and the mitigated negative declaration adopted by the San Joaquin Air Pollution Control District, the Board finds that the Project approvals issued by the Department of Planning and Community Development are ministerial actions that are consistent with existing uses in the Industrial Zoning District where the Project is located.

21. The County correctly and timely followed all procedural steps as required by CEQA for the issuance of the requested lot line adjustment and staff approval, including but not limited to the following actions:

(a) Initiating early consultation with responsible agencies through the CEQA referral to the Environmental Review Committee;

(b) Determination of exemption;

(c) Publication, mailing and posting of Notice of Hearing for public hearings conducted by both the Planning Commission and the Board of Supervisors;

(d) Conducting a public hearing by the Planning Commission; and

(e) Conducting a public hearing by the Board of Supervisors.

22. The public was adequately notified of the intent to approve a lot line adjustment and issue a staff approval for project storm drains, and that a number of comments and letters about the Project were received from affected and interested persons and companies.

23. In reliance on the information contained in the record of proceedings, including but not limited to the Mitigated Negative Declaration adopted by the San Joaquin Air Pollution Control District, the Keyes Community Plan, and the Stanislaus County General Plan, the Board finds that the Project has been designed and located so as to avoid any significant environmental effects:

(a) The Project is required to comply with traffic mitigation requirements set forth in the Keyes Community Plan.

(b) There are no natural water features or wetlands located on the site.

(c) The Project is located in an area zoned for industrial uses and is surrounded by similar industrial uses.

(d) The San Joaquin Valley Air Pollution Control District has issued permits with substantial conditions to minimize or avoid impacts to air quality.

24. The Board finds that a public controversy does not exist solely because the appellant objects to the Project, and the Board further finds that even if the relatively few objections raised does constitute a public controversy, the existence of such a public controversy over the environmental effects of the Project shall not require preparation of an environmental impact report in that there is no substantial evidence before the agency that the Project may have a significant effect on the environment.

25. The Board finds that no evidence has been produced on the record to show that Mr. Richard Harriman possesses the qualifications of an expert on air quality, traffic, or other environmental resource topic, and that his statements are merely unsubstantiated opinions. The Board specifically finds that Mr. Harriman failed to comply with CEQA Guidelines section 15204 (b) in that he did not identify a specific environmental effect, explain why the effect would occur, or explain why the effect would be significant.

26. Mr. Harriman's testimony reflects narrative, anecdotal observations about generalized environmental effects, and did not explain the basis for his comments, did not submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments.

27. Mr. Harriman's testimony and letters are lay opinion without qualified technical expertise, and do not constitute substantial evidence supporting a fair argument that the lot line adjustment or construction of the storm drainage basins could result in a significant impact on the environment.

28. The Board has read and considered the written and oral comments of Mr. Richard Harriman and finds that the contentions set forth by him and his client have been adequately addressed by staff or by the applicants' representatives or have been controverted or countered with contrary evidence.

29. The Board considered contrary evidence to the points raised by Mr. Harriman in assessing the weight of the evidence supporting the asserted environmental impact, and the Board concludes that no substantial evidence was presented or exists in the record that the Project will have a significant effect on the environment. In reviewing the information presented by the appellant including the letter by Mr. Harriman, the Board further finds that for the following individual and collective facts that there is no substantial evidence contained in the record that the Project will have a significant effect on the environment:

(a) There is no evidence of legal significance, reasonable in nature, credible, and of solid value that the Project will have a significant effect on the environment.

(b) In accordance with Public Resources Code Section 21080 (e) the record contains evidence submitted by the appellants that does not constitute

substantial evidence as it is argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate.

(c) There is no substantial evidence in the record which include facts, reasonable assumptions predicated upon facts and expert opinion supported by facts that the Project will have a significant effect on the environment.

(d) There are no opinions contained in the record that the Project will have a significant effect on the environment that constitute substantial evidence which have been provided by a witness who is qualified to render such an opinion.

(e) There is no information contained in the record that constitutes substantial evidence that the Project will have a significant effect on the environment which has been demonstrated to have an adequate foundation in the witness's personal knowledge.

(f) The record contains evidence submitted by the appellants that does not constitute substantial evidence as it consists entirely of expressions of subjective concerns, personal beliefs, unfounded conclusions, inherently improbable or not credible.

(g) When considering the review of the entire record the information presented by the appellant is incorrect.

30. The Board finds that there was no evidence placed on the record that Mr. Harriman actually visited the site in question.

31. The Board finds that Mr. Harriman's letter did not provide substantial data or evidence but only made a vague unsubstantiated reference to potential environmental impacts.

32. The Board further finds that Mr. Harriman's letter offered no quantitative information.

33. The Board finds that while Mr. Harriman does not agree with the conclusion of the Planning staff that environmental impacts, including traffic and air quality impacts, would be less than significant, he does not support his opinion with substantial evidence and offers unsubstantiated opinion about environmental concerns. Mr. Harriman does not attempt to provide quantitative data to support his assertions. Accordingly, the Board does not give much weight to Mr. Harriman's opinion and conclusion.

34. The Board finds that certain statements provided by Mr. Harriman on behalf of his client were either in the form of an argument, speculation or unsubstantiated opinion or narrative that was either not credible or adequately addressed by applicant and does not overall constitute substantial evidence that there was any significant effect on the environment that would not be reduced through the

mitigation measures of the negative declaration adopted by the San Joaquin Air Pollution Control District.

35. The Board finds that County staff and representatives for Cilion presented sufficient evidence of no significant environmental impacts and the showing has not been countered with any contrary substantial evidence.

36. The Board finds that traffic impacts resulting from the Project are insignificant in that a lot line adjustment does not result in any physical impact on the environment and that construction of a storm drain basin is a minor grading project with minimal impact on the environment.

37. The Board finds that the proposed Project involves no substantial conflict with the General Plan designations or zoning applicable to the Project site or General Plan policies related to the location and development of an industrial use in an Industrial Zoning District.

38. The Board finds that there is neither an individual nor cumulative impact associated with the loss of farmland in that the area already is zoned Industrial.

39. The Board finds that based on the whole record of proceedings that there are no environmental effects that reach the level of being significant.

40. This Board has reviewed the entire record of the proceedings and makes a determination and finding that there is no substantial evidence in the record that supports a fair argument that there is a reasonable probability that the Project will result in a significant effect on the environment.

41. The Board finds that its decision is based both independently (individually) and collectively on the above findings.

DISCUSSION:

On April 19, 2007, the Planning Commission heard an appeal by Richard Harriman of staff's determination to complete a lot line adjustment (LLA 2006-45) and to issue a staff approval permit for two drainage basins (SAA 2007-09) related to construction of the Cilion, Inc. Ethanol Facility and existing A.L. Gilbert Feed facilities on approximately 40 acres located in the "Industrial" (M) and "Planned Development" (PD123) zoning districts at 4209 and 4431 Jessup Road, Keyes area. Unanimously, the Planning Commission denied the appeal and supported staff's original determination of approval of the two applications.

Mr. Harriman filed an appeal of the Planning Commission's determination, and it is that appeal that is before the Board of Supervisors today. Mr. Harriman's letter of appeal received April 30, 2007 is attached as Attachment 1 to this report.

Mr. Harriman's appeal is based on his belief that the County Staff Approval of the drainage basins and access violates the California Environmental Quality Act (CEQA) by abusing its discretion as the lead agency under CEQA due to its failure to proceed in a manner required by law, in violation of PRC Sections 21168 and 21168.5, based upon the following reasons:

1. Inadequate project description.
2. Lack of adequate analysis and consideration of Mitigation Measures regarding Traffic.
3. Lack of substantial evidence in the record to support the Traffic Mitigation Fee.
4. Conversion of agricultural land has not been adequately addressed.
5. Failure to consider, analyze, discuss, or mitigate compliance with AB 32 relative to "Green House Gas" emissions and extreme non-attainment status of the San Joaquin Valley Air Basin.
6. The County has abused its discretion by allowing a Staff Approval and by making a finding that the County has not exercised its discretion by not requiring a Use Permit and an Environmental Impact Report or a focused EIR.
7. Without the approval of the above-referenced approvals the project cannot proceed, therefore CEQA review is required.
8. The production of Ethanol Fuel and Haul Truck traffic requires readily available and feasible mitigation measures requiring alternate fuel vehicles to haul manufactured products, ethanol and CO₂.

Mr. Harriman further incorporated by reference all of the objections in its letter of December 29, 2006 to the District.

The attached Planning Commission Staff Report dated April 19, 2007 (Attachment 2), addresses Items 1 through 5 described above. The following provides a brief response to Items 6, 7 and 8. (The discussion regarding Item number 8 below, provides additional information useful in responding to Item number 5 as well.)

The County has abused its discretion by allowing a Staff Approval and by making a finding that the County has not exercised its discretion by not requiring a Use Permit and an Environmental Impact Report or a focused EIR.

Mr. Harriman suggests that staff and the Planning Commission have not considered the section of the Zoning Ordinance (21.60.030) which specifies which uses require use permits, and specifically identifies that the Ethanol facility should be considered equivalent to items listed as:

- A. Distillation of bones, disposal, dumping, sanitary landfill; incineration or reduction of dead animals, garbage, offal, refuse or sewage; and fat rendering;
- B. Manufacturing of acid, cement, compressed gases, fertilizer, fungicides, glue, gypsum, hides, insecticides, lime, paper pulp, pesticides, plaster of paris or poison gas;

and,

- E. Refining of petroleum products, smelter of copper, iron, tin, zinc or other ores and metals;

It should be noted that both Staff and the Commission believe that the Ethanol Facility falls within the permitted uses as defined in Section 21.60.020(B) which allows "All industrial uses other than those specified in Section 21.60.030." (Much like any other winery or distillery are currently allowed in the Industrial Zone.)

Neither Staff nor the Planning Commission believed that any portion of Section 21.60.030 applies. Paragraph "A" relates primarily to tallow or garbage facilities and does not relate to alcohol manufacturing. Paragraph "B" includes the manufacturing of "compressed gasses," and indeed one of the minor byproducts of the ethanol manufacturing is anticipated to be carbon dioxide (CO₂).

However, at this point Cilion does not propose to include commercial capture of CO₂ as a part of their processing. It is currently economically infeasible to do so, and CO₂ will be released as a by-product into the atmosphere in compliance with all applicable state and federal air quality rules and regulations. Specific permit conditions have been defined by the Air District to address this. Commercial capture was analyzed as part of the Air District's environmental review as an alternative, but again, it is not proposed at this time. Because commercial capture of CO₂ is not proposed, a use permit is not required.

Paragraph "E" includes refining of petroleum products and smelting of metals. Ethanol is not a petroleum product requiring refining, nor is it produced from metal ores. In summary, none of the uses described in Section 21.60.030 apply, and therefore no use permit is required.

Staff and the Commission consider this facility to be more similar to the existing distilleries, breweries, and wineries that are currently in operation in this County and others. In Stanislaus County, distillers and wineries are allowed uses within the Industrial Zone.

Ethanol manufacturing is a permitted use within the "Industrial" zone and the lot line adjustment was approved to consolidate ownership patterns consistent with the proposed site plans for both the existing A.L. Gilbert Facility and the proposed Cilion, Inc. Ethanol Facility. The Staff Approval was required in order for two drainage basins to be constructed on A.L. Gilbert property located in Planned Development 123. Staff Approval permits are required for all uses in compliance with Development Standards of PD123.

Mr. Harriman further indicates in his letter that the height limitation of 75-feet set forth in Section 21.60.040 is not addressed, and references 21.60.040(E) which states that "additional height may be granted for advertising signs, transmitting towers, storage towers, and structures not used for human occupancy, provided that a use permit is first secured in each case." Mr. Harriman did not identify this as an issue at the Planning Commission meeting, but a response by staff is provided below.

Mr. Harriman fails however to reference 21.60.040(B) which allows: "Fireproof structures (excluding advertising structures) not used for human occupancy, no height limit" Staff specifically considered this section of the ordinance when evaluating whether any height limitations would be applicable to this facility and specifically requested review of this issue by the Fire Marshal's Office. In a memo dated September 11, 2006, the Interim Fire Marshal concurred that each of the proposed structures would be non-combustible or fireproof and not intended for human occupancy. Therefore the Interim Fire Marshal concurred with Staff that all structures would be exempt from the 75-foot height limitation based on Section 21.60.040(B).

Without the approval of the above-referenced approvals the project cannot proceed, therefore CEQA review is required

The lot line adjustment was approved to consolidate ownership patterns consistent with the proposed site plans for both the existing A.L. Gilbert facility and the proposed Cilion, Inc. Ethanol Facility. A lot line adjustment is not, and was not, necessary for the construction of the ethanol facility. The facility site plan could have been modified easily to preclude the need for a lot line adjustment. The drainage basin similarly, did not need to be on the same parcel as the facility.

The Staff Approval was required in order for two drainage basins to be constructed on A.L. Gilbert property located in Planned Development 123. Staff Approval permits are required for all uses in compliance with Development Standards of PD123. Drainage facilities could have been constructed on the facility site within the "Industrial" zone as underground or above ground storage facilities or the proponents could have constructed improvements to tie into

other drainage facilities servicing the Keyes Community. Constructing drainage basins within PD 123 was simply one alternative solution requested by the applicants and not the only choice available. Construction of the Ethanol Facility was not, and is not dependent upon only a single solution to drainage management. Other solutions could have been proposed that did not require issuance of a Staff Approval Permit. Construction of the Ethanol Facility could have proceeded with a variety of different drainage management scenarios, and is not solely dependent upon one particular solution.

The production of Ethanol Fuel and Haul Truck traffic requires readily available and feasible mitigation measures requiring alternate fuel vehicles to haul manufactured products, ethanol and CO2.

Mr. Harriman suggests that the Air District and the Planning Commission should have imposed a mitigation measure to require all haul vehicles and employees' vehicles to use alternative fuels. Mr. Harriman's justification for this request focuses on his perceived cumulative air quality impacts related to automobile and truck trips generated by the facility. Mr. Harriman further concludes that staff did not consider "green house gasses" and "carbon footprint" pursuant to AB32.

The San Joaquin Valley Air Pollution Control District, in its Initial Study and Mitigated Negative Declaration dated February 6, 2007, analyzed and discussed impacts associated with emissions related to mobile sources, and required specific mitigation measures to offset these and other air quality impacts.

AB 32, or the California Global Warming Solutions Act of 2006 was signed into law in late 2006 and includes specific timelines for implementation. The State Air Resources Board (ARB) is required, no later than July 1, 2007, to adopt a list of discrete early action measures that can be adopted and implemented before January 1, 2010. The ARB has yet to implement any rules regarding AB32 and is not expected to complete their rulemaking activities until 2011.

Mr. Harriman suggested that a specific mitigation measure might be appropriate. In Air quality matters, staff relies on the San Joaquin Valley Air Pollution Control District staff experts to adequately analyze air quality impacts and impose appropriate mitigation measures related to their permits as they deem appropriate.

The Staff Approval issued by the County for the drainage basins and access includes a Condition of Approval that requires that "all activities comply with the Mitigation Monitoring Plan as adopted by the San Joaquin Valley Air Pollution Control District". Staff and the Planning Commission believed that the Air District adequately considered all impacts related to air quality, and that no additional mitigation for air quality impacts are required or necessary. Finally, staff considers that the construction of two drainage basins in the locations where they are proposed, would not have any significant contribution to global warming.

Appeal of the Planning Commission's Decision to Deny the Appeal of Staff Approval Application No. 2007-09 and Lot Line Adjustment Application No. 2006-45 - Cilion, Inc. Ethanol Facility
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POLICY ISSUES:

The Board should determine whether the Planning Commission's actions denying the appeal of Staff Approval Application No. 2007-09 and Lot Line Adjustment Application No. 2006-45 - Cilion, Inc. Ethanol Facility was appropriate.

STAFFING IMPACT:

None.

ATTACHMENT:

1. Appeal Letter from Richard L. Harriman, dated April 27, 2007
2. Planning Commission Staff Report, April 19, 2007
3. Planning Commission Minutes, April 19, 2007

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April 27, 2007

HAND DELIVERED

Mr. Kirk Ford
Assistant Director
Department of Planning and
Community Development
County of Stanislaus
1010 Tenth Street, Suite 3400
Modesto, CA 95354

BOARD OF SUPERVISORS
2007 APR 30 P 4: 27

Re: **APPEAL TO BOARD OF SUPERVISORS**
Valley Advocates/Stanislaus County
Cilion, Inc. Ethanol Facility/AL Gilbert Company, Inc
Keyes, California
Lot Line Adjustment 2006-45 AL Gilbert and
SAA2007-09
Environmental Review Determination
[Pursuant to Public Resources Code (PRC) Section 21151, subd. (c)
Objection to Issuance of Building Permit
Date of Action by Planning Commission: April 19, 2007

Gentlepersons:

Pursuant to my telephone conversation of Friday, April 27, 2007, with your very pleasant staff person, Michelle, this letter constitutes my clients' appeal of the Planning Commission's denial of their appeal, which was heard on Thursday, April 19, 2007, regarding the above-referenced proposed project and the proposed environmental review of the Cilion, Inc. project, pursuant to Public Resources Code (PRC) section 21151, subd. (c). Enclosed please find my office check, dated April 27, 2007, in the amount of \$580.00, made payable to "County of Stanislaus, as and for the filing fee that was indicated needed to be paid for this appeal.

On behalf of Valley Advocates ("VA"), a California non-profit public benefit corporation, having its principal place of business located in Fresno, California, I am hereby submitting this Appeal of the "Staff Approval" and of the Planning Commission's denial of my clients' appeal filed on March 12, 2007, and hereby request a public hearing by the Stanislaus County Board of Supervisors of this appeal and of my client's objections to proceeding with the

above-referenced project, based upon the objections set forth hereinbelow and in the letter transmitted to the San Joaquin Valley Air Pollution Control District, dated December 29, 2007, which was attached to my clients' appeal to the Planning Commission.

Failure to proceed in the manner required by law

The County Staff Approval of the proposed Project violates the California Environmental Quality Act ("CEQA") [Public Resources Code ("PRC"), section 21000 *et seq.*] by abusing its discretion as the lead agency under CEQA, due to its failure to proceed in the manner required by law, in violation of PRC sections 21168 and 21168.5, based upon the following reasons.

1. Inadequate Project Description

The project description is vague and ambiguous and is not accurate, stable, and finite. The Project Application materials in the record used for the Mitigated Negative Declaration ("MND") prepared by the San Joaquin Valley Air Pollution Control District ("District") and relied upon by County Staff for the proposed Project has failed to define the proposed Project accurately, because it has failed to include the "whole of the project," in that it does not include, analyze, discuss, or address the pre-existing operations of the AL Gilbert Company, Inc. ("ALGC") facility on Jessup Road, the expansion of the ALGC facility on Jessup Road, and the construction and operation of the proposed Cilion, Inc. facility on Jessup Road. In fact, there is never been a project specific environmental review of the ALGC facility or the recent expansion by the County or any other public agency. The General Plan Update for the Keyes Community Specific Plan was prepared as a programmatic environmental review and did not address the existing ALGC facility or the proposed Cilion facility at a project level.

2. Lack of adequate analysis and consideration of Mitigation Measures re Traffic

PRC section 21081.6, subd. (a)(1) provides that the lead agency "shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment."

The draft Mitigated Negative Declaration ("MND") approved and adopted by County Staff is inadequate, due to the fact that no Traffic Study has been prepared or circulated by the County.

Traffic safety and congestion on Keyes Road at its intersection with Jessup Road has not been adequately analyzed, considered, addressed, or mitigated. No project-specific Traffic Study has been prepared or circulated to the public which analyzes the cumulative adverse traffic circulation or safety impacts from the *combined* traffic generated by the existing ALGC facility operations, the **expansion** of the ALGC facility and operations, and the proposed Cilion Ethanol Facility operations.

In fact the Mitigation Monitoring Plan (MMP”) for the Keyes Community Plan Update (“KCPU”), which is attached to the proposed MND, provides, at Mitigation Measure 4.3-3(a) [page 9]:

“Individual projects within the Community Plan Area shall pay their fair share for roadway improvements based upon a **project-specific traffic study.**”
[emphasis added]

There is no evidence in the record of the MND prepared by the District or by the County of a traffic study prepared by the developer prior to project approval, as required by the MMG for the KCPU, for the “project as a whole.”

Therefore, since no Traffic Study of the project as a whole has been prepared by Staff which provides substantial evidence in support of the finding that potentially significant impacts to traffic circulation and public safety have been mitigated to a level of “clearly insignificant,” because there is no data or analysis provided in the Initial Study or MND. [Cal. Code Regs., tit. 14, sections 15063 and 15070]

3. Lack of substantial evidence in the record to support the Traffic Mitigation Fee

There is no written evidence in the record to support the County Staff’s finding that Condition No. 5.(e) is supported by substantial credible evidence that the traffic impacts on County roads from a multi-million dollar industrial project such as the proposed joint Cilion-ALGC Project are adequately mitigated by a Traffic Impact Fee in the amount of \$5,098.59 payable to the County.

Given the lack of the required Traffic Study and an Impact Fee Study in the record, the Planning Commission cannot make the finding that this Traffic Impact Fee mitigates the adverse traffic impacts to County roads to a level of “clearly insignificant.”

Therefore, the Planning Commission should remand this matter to County Staff to prepare and circulate a Traffic Study and a Traffic Impact Fee Analysis prior to bringing the matter back to the Planning Commission for review.

4. Conversion of agricultural land has not been adequately addressed

Conversion of agricultural land to urban development has not been analyzed or any mitigation measures discussed or analyzed, in order to demonstrate that the cumulative impacts from conversion of agricultural land to urban development is “clearly insignificant.” There is no Mitigation Measure required for the cumulative adverse impacts of the conversion of the land to urban development by the “project as a whole” has been considered, analyzed, or addressed.

Again, the MMP for the KCPU provides that “Conversion of additional Prime Farmland to non-agricultural use” shall be mitigated pursuant to Mitigation Measure 4.1-1, as follows:

“4.1-1 Replace Important Farmland at 1:1 ratio with agricultural land of equal quality and protect the land for agricultural use through long-term land use restrictions, such as agricultural conservation easements.”
[page 4]

The Initial Study/Negative Declaration prepared by County Staff provides no documentary evidence or other substantial evidence regarding the conversion of the prime agricultural land to urban use by the “project as a whole.” The land adjacent to and in close proximity to the proposed Project has been farmed for years in high-value crops, such as almonds, and there is no evidence in the record to support a finding that the conversion of this land to urban use is not subject to agricultural land conversion Mitigation Measure 4.1-1. There is no Condition of Approval (“CoA”) quantifying, analyzing, or addressing this adverse impact.

Therefore, the Planning Commission lacks substantial credible evidence in the record to support a finding of “clearly insignificant” adverse cumulative impact to agricultural land.

5. Failure to consider, analyze, discuss, or mitigate compliance with AB 32 relative to “Green House Gas” emissions and extreme non-attainment status of the San Joaquin Valley air basis

Mobile source emissions from urban development located in the San Joaquin Valley Unified Air Pollution Control District (“SJVUAPCD”) have been determined to have significant public health and safety impacts to public health and safety, due to a further increase in Ozone precursors and Ozone---in an area that has been found to be in “extreme non-attainment” under the Federal Clean Air Act (FCAA) and for which the Air District has been unable to adopt an Attainment Plan which will bring the District into compliance until 2023.

The District’s so-called “Thresholds of Significance” for Ozone precursors were adopted prior to the enactment of AB 32 by the State Legislature and signature by the Governor in 2006. Consequently, there has been no consideration, analysis, or discussion of the existing “Thresholds of Significance” adopted by the District prior to the enactment of AB 32. Given this significant new legislation and the legislative record which supports the legislative enactment of AB 32, the Planning Commission should not approve and adopt the proposed MND until the District has analyzed and updated its Threshold of Significance for Volatile Organic Compounds (“VOC”) and Reactive Organic Gasses (“ROG”) and has re-visited whether the Threshold of Significance standard meets the CEQA standard of “clearly insignificant,” due to the substantial number of new Ethanol Facilities which have been constructed and are proposed to be constructed.

In addition, County Staff has provided no substantial information regarding the number of such new Ethanol Plants which have already been permitted, have been applied for, and/or are proposed for development and construction in the San Joaquin Valley. Therefore, the Planning Commission can not make a finding of “clearly insignificant” without the consideration of such new and significant information, pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162.

6. The County Has Abused its Discretion by Allowing a Staff Approval and By Making a Finding that The County Has Not Exercised its Discretion By Not Requiring a Use Permit and an Environmental Impact Report (EIR) or a Focused EIR

The Planning Department's voluminous Staff Report addresses many issues raised in Appellant's appeal letter of March 12, 2007. [See Staff Report] However, the key foundational issue regarding the appeal raised in the Staff Report's summary of the basis for Staff's determination that the proposed Cilion, Inc. Ethanol Production Facility is glossed over.

Specifically, pursuant to Stanislaus County Code, Title 21, Zoning, Chapter 21.60, section 21.60.030 sets forth the uses in an Industrial District ("M" zoning designation) which require a Use Permit. Among the uses which require a Use Permit are:

- "A. *Distillation of bones...*
- B. *Manufacturing of...compressed gasses...*
- E. *Refining of petroleum products...*"

[Emphasis added]

The Staff Report for the Planning Commission meeting specifically stated that one of the proposed products to be manufactured in conjunction with the ethanol fuel is Carbon Dioxide (CO₂), which will be sold and transported off-site by truck. Subsection B referred to hereinabove makes specific reference to "Manufacturing of... compressed gasses..." In addition, although County Staff has chosen to exercise its discretion to interpret the proposed Ethanol Production Facility as unlike the uses set forth in Section 21.60.030 hereinabove, a fair reading of this section indicates that the proposed use identified as *manufacturing* or production of ethanol fuel and compressed CO₂ is more similar to the manufacturing and production uses described in subsections A, B, and E than it these uses are to the uses described in subsection 21.60.020 A. Among the factors not properly considered in Staff's exercise of its discretion is the potentially significant odor from the wet distiller's grain, which, if not properly handled and removed from on-site could potentially constitute a significant effect on the physical environment downwind from the project---thereby, affecting the residential developments in northwest Turlock, at Taylor Road, which is less than two (2) miles from the proposed Ethanol Production Facility.

Furthermore, if the uses identified in Section 21.50.030 are readily distinguishable from the uses identified in Section 21.60.020 as "Permitted Uses" by the fact that subsection A makes *no reference whatsoever* to manufacturing, production, or refining of fuels or compressed gasses. [See copies of Sections 21.60.020 and 21.60.030 attached hereto.]

In addition, the height limitation set forth in Section 21.60.040 is not addressed or discussed in the Staff Report. Based upon the Project Description, subsection E. would require a use permit for storage towers and structures not used for human occupancy, which would apply to both the expansion of the A L Gilbert Company facility connected by the conveyor system to the proposed Cilion, Inc. Ethanol Production Facility. [See copy of Section 21.60.040 attached hereto.]

Therefore, Appellant respectfully submits that the County Staff has abused its discretion in making the finding that the proposed Cilion, Inc. Ethanol Production Facility falls within the uses permitted under Section 21.60.020 A. and B. and that the proposed Ethanol Production Facility does not require a Use Permit, pursuant to Sections 21.60.030 and 21.60.040.

7. Without the Approval of the Above-Referenced Approvals the Project Cannot Proceed; Therefore CEQA Review is Required

A careful review of the Site Plan and the Lot Line Adjustment reveals that the proposed Cilion, Inc. Project is dependent upon the location of the drainage basin(s) being located away from the railroad spur and the conveyor system connecting the AL Gilbert Storage Facility to the proposed Project. In other words, the relocation of the drainage basins within the PD zoning is necessary, in order to facilitate or accommodate an essential feature of the proposed Project; to-wit: proximity to the AL Gilbert Storage Facility and conveyor system adjacent to the railroad spur. Thus, the County is exercising its land use discretion in approving these two (2) applications. Or, to state it another way, since there is no mandatory requirement that the County approve the proposed lot line adjustment and site plan modification within the PD zoning, the County is not granting a ministerial approval, which must be granted; and, therefore, CEQA review of the proposed Project is required. [See, *Kings County Farm Bureau v. City of Hanford* (1990) *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716-721; 270 Cal.Rptr. 650, holding that site plan review and approval in industrial zone requires CEQA review.]

8.

T

he Production of Ethanol Fuel and Haul Truck Traffic Requires Readily Available and Feasible Mitigation Measure of Requiring Alternate Fuel Vehicles to Haul Manufactured Products, Ethanol and CO2

Finally, since the proposed MND does not include a Traffic Study or cumulative impacts analysis for the cumulative adverse impacts from haul vehicles and employee's vehicles for the "project as a whole," there is no substantial credible evidence upon which the Planning Commission can make a finding of "clear insignificance" of the cumulative impacts from the cumulative impacts from all these vehicles. In fact, there are no mitigation measures proposed for haul vehicles and employees vehicles for the project as a whole, when it is clear that the proposed Project will be producing 55 million gallons per year of ethanol for use in passenger vehicles and trucks, along with compressed CO2 for commercial sale. Therefore, the Planning Commission should require a Mitigation Measure for the project as a whole that requires all

haul vehicles and employees' vehicles of Cilion, Inc. and A.L. Gilbert Company's Keyes facility to use alternative fuels, either ethanol, Compressed Natural Gas (CNG), or bio-diesel during the life of the proposed Project. This proposed mitigation measure is also necessary, in order to reduce the "Carbon Footprint" and Green House Gasses, pursuant to AB 32, for which no analysis, discussion, or consideration has been provided in Staff's environmental review documentation.

9. VA incorporates by reference all of the objections in its letter of December 29, 2006 to the District

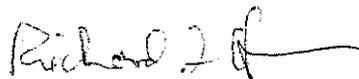
Rather than re-state the objections set forth in its letter of December 29, 2006 my client and I incorporate by reference all of the objections that it has lodged in the record in its opposition to the District's approval and issuance of its Authority to Construct (ATC) Permits. The responses to Comments prepared and submitted with the proposed MND do not adequately respond to VA's objections and comments filed with the District.

10. VA reserves the right to amend its Appeal and to present evidence in support of additional claims at the time of the public hearing, based upon the record

Conclusion

Based upon the foregoing reasons and others to be presented at the time of the hearing of these matters, VA hereby respectfully requests the Stanislaus County Board of Supervisors to reverse the Planning Commission's denial of the appeal of the Staff Approval of the above-referenced project entitlements, deny the proposed Lot Line Adjustments and Site Plan approval within the PD zoning with prejudice, rescind and overrule the Staff's determination that a Use Permit is not required for the proposed Project, grant Appellant's appeal of the Staff's environmental review documentation, and remand them to City Staff with instructions to prepare a revised and amended Initial Study and to prepare, publish, and circulate a Notice of Preparation notifying all responsible and trustee agencies and the general public of the County's intent to prepare an EIR or a Focused EIR for the proposed project as a whole and for any other project entitlements sought by Cilion, Inc. and/or AL Gilbert Company, Inc. for the proposed Project, based upon the fact that the approval of the above-referenced project entitlements will be *facilitating the development and construction of the proposed project* without an adequate environmental review under the California Environmental Quality Act.

Respectfully submitted,



RICHARD L. HARRIMAN

Enc.: Copies of Stanislaus County
Zoning Code
Check for Filing Fee [\$580.00]

cc: Clients

Stanislaus County Code

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[Title 21 ZONING](#)

[Chapter 21.60 INDUSTRIAL DISTRICT \(M\)](#)

21.60.020 Permitted uses.

Uses permitted in M districts:

- A. Wholesale and distribution establishments, service establishments, public and quasi-public buildings; junkyards, wrecking yards and auto dismantling yards; and all uses permitted in the C districts except dwelling units of any kind unless otherwise specifically permitted in this zone;
- B. All industrial uses except those specified in Section 21.60.030;
- C. Outdoor advertising signs which are non-flashing and nonanimated;
- D. One mobile home when appurtenant and secondary to a permitted use with substantial outside storage subject to provisions of Chapter 21.72;
- E. One identification or informational sign not more than twelve square feet in area nor more than six feet in height, may be permitted in the front yard or side yard adjacent to each street frontage in lieu of any other freestanding sign, provided that:
 1. It does not bear any advertising message,
 2. It is nonflashing, nonmoving and nonanimated,
 3. It is located wholly on private property on the premises to which it pertains,
 4. A plot plan and elevation of the sign is approved by the director of planning and community development prior to request for building or electrical permits and installation;
- F. Crop farming;
- G. Ballrooms, commercial clubs, dance halls, drive-in theaters, nightclubs, stadiums and tent or open-air churches. However, when located within two hundred feet of the boundary of an R district, a use permit shall first be secured;
- H. Single-family dwelling or one apartment if it is accessory to a permitted commercial or industrial use;
- I. Christmas tree sales lots provided they meet the required setbacks and provide at least ten accessible and usable off-street parking spaces in addition to one space per employee on a maximum shift. Such lots shall be limited to two double-faced signs not to exceed twelve square feet each. No off-site signs shall be permitted. Such lots may not be established prior to November 15th of any year and shall be removed and the property returned to its original condition prior to January 1st;
- J. Firework stands provided they meet all required setbacks and provide at least five usable and accessible off-street parking spaces in addition to one space per employee on a maximum shift. Such stands shall meet all the requirements of the department of fire safety and shall be erected and removed within the time period prescribed by that department.
- K. Adult businesses as allowed by the provisions of Chapter 21.68.
- L. All retail stores and wholesale retail stores which have a building and sales area less than sixty-five thousand square feet or greater. (Ord. CS 896 §§9, 10, 2004; Ord. CS 607 §3 (part), 1995; Ord. CS 106 §12 (part), 1984).

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[Chapter 21.60 INDUSTRIAL DISTRICT \(M\)](#)

21.60.030 Uses requiring a use permit.

Uses permitted, subject to first securing a use permit in each case:

A. Distillation of bones, disposal, dumping, sanitary landfill; incineration or reduction of dead animals, garbage, offal, refuse or sewage; and fat rendering;

B. Manufacturing of acid, cement, compressed gases, fertilizer, fungicides, glue, gypsum, hides, insecticides, lime, paper pulp, pesticides, plaster of paris or poison gas;

C. Manufacture of explosives, or fireworks, and storage of explosives;

D. Feed lots, stockyards, slaughter of animals or poultry;

E. Refining of petroleum products, smelter of copper, iron, tin, zinc or other ores and metals;

F. Drilling for or removal of gas, oil or commercial removal of minerals, earth or other materials;

G. Go-cart tracks, motor vehicle rides, race tracks, rifle ranges, skeet ranges, motorcycle tracks and motorcycle hill climbs.

H. All retail stores and wholesale retail stores with a gross building and/or sales area of sixty-five thousand square feet or greater. (Ord. CS 896 §11, 2004; Ord. CS 106 §12 (part), 1984).

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[Title 21 ZONING](#)

[Chapter 21.60 INDUSTRIAL DISTRICT \(M\)](#)

21.60.040 Height limit.

Height limit in M districts:

- A. Building and appurtenant structures, seventy-five feet;
- B. Fireproof structures (excluding advertising structures) not used for human occupancy, no height limit;
- C. Separate standing advertising structures, thirty-five feet;
- D. *No fence or screen planting in excess of three feet in height, shall be constructed or permitted to grow within any required front yard, or side yard of a corner lot unless the director determines that visibility will not be obstructed;*
- E. Additional height may be granted for advertising signs, transmitting towers, storage towers, and structures not used for human occupancy, provided that a use permit is first secured in each case. (Ord. CS 106 §12 (part), 1984).





April 19, 2007

MEMO TO: Stanislaus County Planning Commission

FROM: Department of Planning and Community Development

SUBJECT: APPEAL OF A STAFF DETERMINATION TO COMPLETE A LOT LINE ADJUSTMENT (LLA 2006-45) AND TO ISSUE A STAFF APPROVAL PERMIT FOR ACCESS AND TWO DRAINAGE BASINS (SAA 2007-09) RELATED TO CONSTRUCTION OF THE CILION, INC. ETHANOL FACILITY AND EXISTING A.L. GILBERT FEED FACILITIES ON APPROXIMATELY 40 ACRES LOCATED IN THE "INDUSTRIAL" (M) AND "PLANNED DEVELOPMENT" (PD123) ZONING DISTRICTS AT 4209 AND 4431 JESSUP ROAD, KEYES AREA (APN: 045-026-014, 035, 036, 037).

This memo provides background, discussion and recommendations regarding an appeal of a staff determination to issue a Staff Approval Permit and objections regarding a related Lot Line Adjustment and issuance of related building permits for the Cilion Ethanol Facility in Keyes (see Attachment 1 for the Appeal letter).

BACKGROUND

In May 2006, the Department was approached by Cilion (Ethanol West) and A.L Gilbert regarding the possibility of constructing an ethanol manufacturing facility adjacent to the existing A.L. Gilbert feed and seed plant in the Keyes area. The proposed project would be located on APNs 045-026-014, 035, 036, and 037. APNs 045-026-014 and 037 are zoned "Industrial" (M). APN 045-026-036 is primarily zoned "Industrial" with a narrow strip zoned "Planned Development" (PD123). The entirety of APN 045-026-035 is zone "Planned Development" (PD 123). Planned Development 123 allows for a variety of industrial uses as described below. See Attachment 2 for maps site plans and zoning designations.

The entirety of the Cilion Ethanol plant is located within the "Industrial" zone, while two drainage basins and access are located on the industrial PD. There are no structures or ethanol plant facilities, other than access and drainage basins located in PD 123.

Staff determined that an ethanol manufacturing facility is an industrial use specifically permitted within the "Industrial" zone, pursuant to Chapter 21.60 of County Code (Attachment 3). Discretionary permits such as Use Permits or Staff Approvals are not required when a use is specifically permitted within a zoning district.

On May 11, 2006, Planning Department staff sent a referral to the Stanislaus County Environmental Review Committee (ERC) to describe the proposed project and request any comments regarding processing of the proposals (see Attachment 4).

CalTrans responded requesting a site specific traffic study. The ERC had no other comments. (A site specific traffic study was not required because staff believes that traffic impacts are adequately addressed in other documents and an existing traffic mitigation program is in place. See below for further discussion.)

Following ERC review, the applicants requested that the existing drainage basin for the A.L. Gilbert facility and a new drainage basin to serve the Cilion facility be located on another adjacent property owned by A.L Gilbert (APN 045-026-035). They submitted applications for a Staff Approval Permit for the drainage basins and access to be located on PD123, and for a Lot Line Adjustment which would consolidate and separate ownerships based on facility locations.

The drainage basins and access to the facility were proposed to be located on property that is zoned "Planned Development" (PD123). This is an industrial PD approved in 1985 with allowable uses including building materials and sales yards, contractors yards and offices, machine shops, farm equipment sales, service and repair, mobile home manufacturer and repair, wholesale distribution warehouses, welding shops, ready mix plants, farm and garden supply, truck terminals, and those uses which the Planning Director may determine to be similar in nature to those listed. A Staff Approval Permit is required for each use.

Because grading and drainage plans would be required for all uses in PD123, and because drainage basins would be an integral part of any development on the site, the Director determined that drainage basins as proposed would be allowable subject to obtaining a Staff Approval.

In August 2006, Cilion applied to the San Joaquin Valley Air Pollution Control District for twenty-one (21) "Authority to Construct" permits. As there were no other agencies with discretionary authority over the project, the Air District became the "lead agency" pursuant to CEQA and prepared an initial study and ultimately adopted a Mitigated Negative Declaration for the issuance of their permits in February 2007 (see Attachment 5).

Once the Air Board completed its environmental review, the Department of Planning and Community Development finalized processing both the Staff Approval for the drainage basins and access, and the Lot Line Adjustment. The Staff Approval and Lot Line Adjustment application was once again forwarded to interested agencies for review. Based on that review, Conditions of Approval were placed on the Staff Approval Permit and these conditions were recorded on March 2, 2007. The Lot Line Adjustment was recorded on March 21, 2007. Attachment 6 provides the final Staff Approval Permit, Conditions of Approval, and the Certificate of Lot Line Adjustment.

On March 12, 2007, Richard Harriman, an attorney, on behalf of Valley Advocates (VA), a California non-profit public benefit corporation based in Fresno, submitted an appeal of the Staff Approval Permit and objected to the Lot Line Adjustment and issuing the related building permits. (It should be noted that Mr. Harriman was sent a copy of the agency referral described above.)

DISCUSSION

The appeal letter submitted by Mr. Harriman includes six (6) specific points wherein he contends that approval of the Staff Approval Permit violates the California Environmental Quality Act due to a failure to proceed in a manner required by law. These include:

1. Inadequate Project Description
2. Lack of adequate analysis and consideration of mitigation measures re traffic
3. Lack of substantial evidence in the record to support the Traffic Mitigation Fee
4. Conversion of agricultural land has not been adequately addressed
5. Failure to consider, analyze, discuss, or mitigate compliance with AB32 relative to "Green House Gas" emissions and extreme non-attainment status of the San Joaquin Valley air basin
6. VA incorporates by reference all of the objections in its letter of December 29, 2006 to the District

VA reserved the right to amend its appeal and to present evidence in support of additional claims at the time of the public hearing, based upon the record.

The following provides a brief response to each of these issues.

1. Inadequate Project Description

Prior to issuance of the Staff Approval Permit, as is often the case with Staff Approval Applications, a referral was sent to various agencies (and Mr. Harriman) for review and comment (Attachment 6). The project description provided with the referral was extensive and included not only County documentation but also the San Joaquin Valley Air Pollution Control District (SJVAPCD) Initial Study and adopted Mitigated Negative Declaration, as well as all supporting references.

This project description included background and zoning, a listing of proposed uses, maps and site plans, project application support documentation, the Keyes Community Plan Mitigation Plan, Development Standards for PD123, and the SJVAPCD environmental review.

Staff concludes that the project description provided was and is adequate in that it provided substantial detail and information regarding not only the actions proposed by the County, but also detailed descriptions of the construction and operations of the actual Cilion facility, as well as previously adopted plans and environmental review documents.

2. Lack of adequate analysis and consideration of mitigation measures re Traffic

A traffic analysis was conducted for the Keyes Community Plan Update in 1998. In addition, a comprehensive update of the Circulation Element of the General Plan was just completed in Spring, 2006. Both of these documents evaluated potential traffic impacts associated with development of this particular site based on existing zoning and general plan designations. Both the General Plan designations and zoning of the site are either "Industrial" or "Planned Development", and these analyses and subsequent mitigation requirements have all been based on full buildout of these parcels for industrial uses (similar in nature to the existing A.L. Gilbert facility and the proposed ethanol manufacturing facility).

The Keyes Community Plan, adopted in April 2000, specifically defines industrial and planned industrial uses on a total of 124 acres west of Highway 99 as being buffered from sensitive land uses to the east of the highway, and identifies thirty-two (32) acres of the industrial lands as being vacant at the time of adoption of the Community Plan (see pages 1-61 through 1-64 and Table 1 of the Land Use Element of the General Plan). The Draft and Final EIR completed for the Keyes

Community Plan update similarly identifies and evaluates the entire 84 acres between Jessup and Faith Home Roads and Highway 99 as "Industrial", including the parcels on which the Cilion facility is located (see Project Description, Figure 2-4, and Table 2-1 of the Draft EIR, and Figure 2-1 and Table 2-1 of the Final EIR). All impact analyses conducted for both the Draft and Final EIR, including the traffic analysis, assessed the impacts of full-buildout of these lands as "Industrial."

The final mitigation monitoring plan adopted at the time of approval of the Community Plan and related EIR included specific mitigations designed to reduce the various impacts identified, including those for traffic related impacts (see Section 4, *Mitigation Monitoring Plan*, in the Final EIR).

Staff believes that an adequate analysis of industrial uses such as an ethanol manufacturing facility and drainage basins has been completed and that implementation of the adopted Keyes Community Plan mitigation measures adequately addresses all potential impacts, including those for traffic.

3. Lack of substantial evidence in the record to support the Traffic Mitigation Fee

A Keyes Community Plan Mitigation Funding Program has been developed by the Department of Public Works based on specific traffic mitigation requirements and specific roadway improvements. Funding sources were identified for each improvement and proportional shares allocated to Public Facility Fees, Keyes Community Plan projects, and other sources.

The total assigned cost for traffic mitigation improvements for the Keyes Community Plan projects is \$2,029,320. This amount has been further broken down by the estimated trips generated by the various land use type, such as residential, commercial, industrial, etc. The Traffic Mitigation Fee is then based on a per dwelling, per square foot, or per acre basis. The mitigation fee for industrial uses is consistent throughout the Keyes Community Plan area and is charged at \$465.20 per acre for industrial uses. The fair share allotments for various uses are shown in Attachment 7 and have been available from the County for several years. In this case, the required fair share allotment for the traffic impacts related to the ethanol facility is \$5,098.59 (\$465.20 x 10.96 acres).

Staff concludes that there is substantial evidence on the record to support the traffic mitigation fee, and in accordance with the Keyes Community Plan Draft and Final EIR, no additional traffic mitigation fees are required or needed. Staff believes this because there has been no evidence presented that implementation of the Keyes Community Plan as adopted, and specifically construction of the Cilion Facility in the "Industrial" zone would result in impacts beyond those identified and mitigated through the original Keyes Community Plan Update and related EIR and Mitigation Monitoring Plan.

4. Conversion of agricultural land has not been adequately addressed

None of the property affected by the Staff Approval Permit is agricultural. The General Plan designation is either "Industrial" or "Planned Development", as is the zoning. The Keyes Community Plan also identifies the site as "Industrial." Staff believes because there is no agricultural land being converted, there is no reason to address that issue.

5. Failure to consider, analyze, discuss, or mitigate compliance with AB32 relative to "Green House Gas" emissions and extreme non-attainment status of the San Joaquin Valley air basin

The County referred the project to the SJVAPCD for review and comment, and in fact, relies upon analyses conducted by the District in relation to air quality since they are the regional experts. Because the District has issued its own "Authority to Construct" Permits, the County must assume that all potential air quality issues have been resolved to the satisfaction of the District.

6. VA incorporates by reference all of the objections in its letter of December 29, 2006 to the District

The letter referred to, dated December 29, 2006, is a letter from Mr. Harriman to the San Joaquin Valley Air Pollution Control District objecting to and commenting on the District's Initial Study and proposed Mitigated Negative Declaration. The County has no authority over the actions of the SJVAPCD, and many of the issues addressed by this letter are duplicates of those discussed above. However, the letter does question whether the Air District is the appropriate "lead agency" and states that the public has received incomplete information.

Lead Agency. The proposed ethanol plant is an allowed use in the "Industrial" zone and does not require discretionary approvals. Only the drainage basin for the proposed ethanol plant is located in Planned Development 123 and as such requires a Staff Approval Permit. Stanislaus County's General Plan Circulation Element was updated in April of 2006 and addresses the Keyes Community Plan. The Keyes Community Plan designates lands west of State Highway 99 for industrial use and residential expansion to the north and east of Keyes. The Keyes Community Plan itself was subject to extensive CEQA review in 1998 through 2000 which included an assessment of these properties built out for industrial uses. We believe that the current General Plan and Keyes Community Plan are sound, and the project as proposed, does not warrant a new EIR. An allowed use on a properly zoned site is a ministerial project and does not require a CEQA determination. As such, the County has no additional CEQA review to complete, and cannot be a lead agency.

Incomplete information. Staff believes that the public has received and has had access to complete information regarding this project. The Stanislaus County General Plan, Support Documentation, Keyes Community Plan, the Draft and Final EIRs for the Keyes Community Plan, Circulation Element Update and related EIR, and all relative County Planning documents are available for review at the County offices. The referral dated February 9, 2007, which was sent to Mr. Harriman directly, included a description of the proposed actions, numerous related attachments, the address and phone number of the County offices where the various documents could be reviewed, and a specific statement that asked for review and comment. Also, as is standard practice, the referral included the following statement:

"If you have any questions, or need additional information, please call me at (209)525-6330."

Staff provided all project related documentation and referrals requested by Mr. Harriman. Mr. Harriman also made no additional calls to the Department, made no additional requests for information, nor visited the County offices to review any of the related documents.

ENVIRONMENTAL REVIEW SUMMARY

Ethanol Manufacturing is a permitted use within the "Industrial" zone and as such requires no discretionary approvals. It is considered an industrial use which is specifically permitted under 21.060.020 B which provides as follows:

- B. All industrial uses except those specified in Section 21.60.030;

Section 21.60.030 requires the following:

Uses permitted, subject to first securing a use permit in each case:

- A. Distillation of bones, disposal, dumping, sanitary landfill; incineration or reduction of dead animals, garbage, offal, refuse or sewage; and fat rendering;
- B. Manufacturing of acid, cement, compressed gases, fertilizer, fungicides, glue, gypsum, hides, insecticides, lime, paper pulp, pesticides, plaster of paris or poison gas;
- C. Manufacture of explosives, or fireworks, and storage of explosives;
- D. Feed lots, stockyards, slaughter of animals or poultry;
- E. Refining of petroleum products, smelter of copper, iron, tin, zinc or other ores and metals;
- F. Drilling for, or removal of gas, oil or commercial removal of minerals, earth or other materials;
- G. Go-cart tracks, motor vehicle rides, race tracks, rifle ranges, skeet ranges, motorcycle tracks and motorcycle hill climbs. (Ord. CS 106 Sec. 12 (part), 1984).
- H. All retail stores and wholesale retail stores with a gross building and/or sales area of 65,000 square feet or greater. (Ord. CS 896, Sec. 11, 2004)

Staff believes that none of the above exceptions apply, and as such, a use permit for the Cilion facility at this location in the "Industrial" zone is not required.

The construction and operation of a permitted use within any zone is considered "ministerial" and requires only issuance of appropriate building permits. Issuance of building permits is considered a ministerial project and as such is statutorily exempt from CEQA pursuant to section 15268 of the CEQA Guidelines.

Development of the site for industrial uses was evaluated in the Keyes Community Plan Update and related EIR in 1998, and traffic related effects of industrial development were analyzed in the recently adopted Circulation Element Update. The San Joaquin Valley Air Pollution Control District completed an initial study, adopted a mitigated negative declaration, and issued their "Authority to Construct" permits for the ethanol facility in 2007. No additional analysis is required.

The Staff Approval Permit was required in order for two drainage basins and access to be constructed on adjacent property located in Planned Development 123. Staff Approval Permits are required for all uses in compliance with Development Standards of PD123, and because grading and drainage plans would be required for all uses in PD123, and because drainage basins and access would be an integral part of any development on the site, the Department determined that drainage basins as proposed would be allowable subject to obtaining a Staff Approval. No structures related to the Ethanol Facility are located in PD123.

The entire Planned Development 123 was evaluated when originally approved. Entitlements for construction of the various industrial and related uses (including drainage) were granted upon approval of the planned development. The use as a drainage basin and access is allowable within the zone, and as such, issuance of a grading or building permit for the drainage basins or access is considered ministerial. As a ministerial action, issuance of the grading permit would be considered statutorily exempt from CEQA pursuant to Section 15268 and minor grading on slopes of less than 10% is categorically exempt from CEQA pursuant to Section 15304 of the guidelines.

The Lot Line Adjustment was approved to consolidate ownership patterns consistent with the proposed site plans for both the existing A.L. Gilbert facility and the proposed Cilion, Inc. Ethanol Plant. Minor Lot Line Adjustments are exempt from CEQA pursuant to CEQA guidelines Section 15305.

CEQA guidelines are specific as to what types of activities are exempt from CEQA (see Sections 15061, Sections 15260 to 15285, and Sections 15300 to 15332 of the CEQA Guidelines). As stated above, staff has concluded that the construction of the ethanol facility and issuance of the related building permits, issuance of a Staff Approval Permit for drainage basins, and approval of a minor Lot Line Adjustment are exempt from CEQA.

Section 15300.2 defines exceptions to the exemptions as follows:

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Staff does not believe that any of the exceptions listed above apply. The project is not located in a sensitive area, but rather on lands that have been designated and evaluated for industrial uses in the General Plan and Keyes Community Plan and is zoned for industrial and planned industrial uses. There are similarly no cumulative impacts other than those previously identified in the Keyes Community Plan Draft and Final EIR and in the Circulation Element Update EIR.

Further, there are no unusual circumstances associated with this facility. A manufacturing facility, distillery or a drainage basin are normal and acceptable uses within an industrial zone locally, regional, and statewide. These are the kinds of uses that are considered allowable within the industrial and planned development zones, and are not dissimilar to other industrial uses in the area. Although complex in nature, the ethanol facility and related drainage basin is not outside the scope of what was contemplated for this area or for similar areas within the County. For example, the ethanol facility is located adjacent to a grain and feed facility, which also has tall silos and storage and manufacturing components. The site is serviced by rail, which is common in heavy industrial areas. Other similar Industrial zones in unincorporated Stanislaus County include the Beard Tract, the North 9th Street/Woodland Avenue area, South 7th Street, and southern Turlock area (all of which are served by railroad). These industrial zones include facilities such as: food packaging and processing, seed and feed manufacturers, gasoline distributors, warehouses, distribution facilities, wineries and bottling plants, and various other manufacturers.

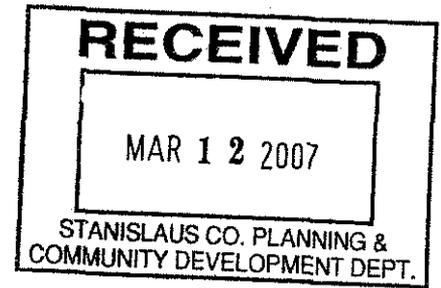
The project site is not located near a scenic highway, or on a hazardous waste site, nor will it cause a substantial adverse change in the significance of a historical resource.

RECOMMENDATION

Staff recommends that the Commission find that staff has proceeded in the manner required by law, that construction and operation of the Cilion Ethanol Facility is a permitted use within the "Industrial" zone pursuant to Chapter 21. 60 of the County Code, that the issuance of the Staff Approval for the two drainage basins in Planned Development 123 was in conformance with the Development Standards for PD123, and deny the subject appeal.

- Attachments:
1. Appeal Letter dated March 12, 2007
 2. Maps and Site Plan
 3. Chapter 21.60, Industrial
 4. ERC Letter and referral (sans attachments)
 5. SJVAPCD Initial Study and Mitigated Negative Declaration
 6. Staff Approval and Lot Line Adjustment Referral Letter (sans attachments - provided in Exhibit 1 and 7)
 7. Staff Approval Permit and Certificate of Lot Line Adjustment
 8. Keyes Community Plan Traffic Mitigation Funding Program

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March 12, 2007

HAND DELIVERED

Mr. Kirk Ford
Assistant Director
Department of Planning and
Community Development
County of Stanislaus
1010 Tenth Street, Suite 3400
Modesto, CA 95354

Re: Valley Advocates/Stanislaus County
Cilion, Inc. Ethanol Facility/AL Gilbert Company, Inc
Keyes, California
Appeal of Lot Line Adjustment 2006-45 AL Gilbert and
SAA2007-09
Objection to Issuance of Building Permit
Date of Notice: March 2, 2007

Gentlepersons:

This letter acknowledges the receipt of your notice dated March 2, 2007, regarding the above-referenced proposed project.

On behalf of Valley Advocates ("VA"), a California non-profit public benefit corporation, having its principal place of business located in Fresno, California, I am hereby submitting this Appeal of the "Staff Approval" and requesting a public hearing of this appeal and of my client's objections to proceeding with the above-referenced project, based upon the objections set forth hereinbelow and in the attached letter transmitted to the San Joaquin Valley Air Pollution Control District, dated December 29, 2007.

Failure to proceed in the manner required by law

The County Staff Approval of the proposed Project violates the California Environmental Quality Act ("CEQA") [Public Resources Code ("PRC"), section 21000 *et seq.*] by abusing its discretion as the lead agency under CEQA, due to its failure to proceed in the manner required by law, in violation of PRC sections 21168 and 21168.5, based upon the following reasons.

1. Inadequate Project Description

The project description is vague and ambiguous and is not accurate, stable, and finite. The Project Application materials in the record used for the Mitigated Negative Declaration (“MND”) prepared by the San Joaquin Valley Air Pollution Control District (“District”) and relied upon by County Staff for the proposed Project has failed to define the proposed Project accurately, because it has failed to include the “whole of the project,” in that it does not include, analyze, discuss, or address the pre-existing operations of the AL Gilbert Company, Inc. (“ALGC”) facility on Jessup Road, the expansion of the ALGC facility on Jessup Road, and the construction and operation of the proposed Cilion, Inc. facility on Jessup Road. In fact, there is never been a project specific environmental review of the ALGC facility or the recent expansion by the County or any other public agency. The General Plan Update for the Keyes Community Specific Plan was prepared as a programmatic environmental review and did not address the existing ALGC facility or the proposed Cilion facility at a project level.

2. Lack of adequate analysis and consideration of Mitigation Measures re Traffic

PRC section 21081.6, subd. (a)(1) provides that the lead agency “shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.”

The draft Mitigated Negative Declaration (“MND”) approved and adopted by County Staff is inadequate, due to the fact that no Traffic Study has been prepared or circulated by the County.

Traffic safety and congestion on Keyes Road at its intersection with Jessup Road has not been adequately analyzed, considered, addressed, or mitigated. No project-specific Traffic Study has been prepared or circulated to the public which analyzes the cumulative adverse traffic circulation or safety impacts from the *combined* traffic generated by the existing ALGC facility operations, the **expansion** of the ALGC facility and operations, and the proposed Cilion Ethanol Facility operations.

In fact the Mitigation Monitoring Plan (MMP”) for the Keyes Community Plan Update (“KCPU”), which is attached to the proposed MND, provides, at Mitigation Measure 4.3-3(a) [page 9]:

“Individual projects within the Community Plan Area shall pay their fair share for roadway improvements based upon a **project-specific traffic study.**”
[emphasis added]

There is no evidence in the record of the MND prepared by the District or by the County of a traffic study prepared by the developer prior to project approval, as required by the MMG for the KCPU, for the “project as a whole.”

Therefore, since no Traffic Study of the project as a whole has been prepared by Staff which provides substantial evidence in support of the finding that potentially significant impacts to traffic circulation and public safety have been mitigated to a level of “clearly insignificant,” because there is no data or analysis provided in the Initial Study or MND. [Cal. Code Regs., tit. 14, sections 15063 and 15070]

3. Lack of substantial evidence in the record to support the Traffic Mitigation Fee

There is no written evidence in the record to support the County Staff’s finding that Condition No. 5.(e) is supported by substantial credible evidence that the traffic impacts on County roads from a multi-million dollar industrial project such as the proposed joint Cilion-ALGC Project are adequately mitigated by a Traffic Impact Fee in the amount of \$5,098.59 payable to the County.

Given the lack of the required Traffic Study and an Impact Fee Study in the record, the Planning Commission cannot make the finding that this Traffic Impact Fee mitigates the adverse traffic impacts to County roads to a level of “clearly insignificant.”

Therefore, the Planning Commission should remand this matter to County Staff to prepare and circulate a Traffic Study and a Traffic Impact Fee Analysis prior to bringing the matter back to the Planning Commission for review.

4. Conversion of agricultural land has not been adequately addressed

Conversion of agricultural land to urban development has not been analyzed or any mitigation measures discussed or analyzed, in order to demonstrate that the cumulative impacts from conversion of agricultural land to urban development is “clearly insignificant.” There is no Mitigation Measure required for the cumulative adverse impacts of the conversion of the land to urban development by the “project as a whole” has been considered, analyzed, or addressed.

Again, the MMP for the KCPU provides that “Conversion of additional Prime Farmland to non-agricultural use” shall be mitigated pursuant to Mitigation Measure 4.1-1, as follows:

- “4.1-1 Replace Important Farmland at 1:1 ratio with agricultural land of equal quality and protect the land for agricultural use through long-term land use restrictions, such as agricultural conservation easements.”
[page 4]

The Initial Study/Negative Declaration prepared by County Staff provides no documentary evidence or other substantial evidence regarding the conversion of the prime agricultural land to urban use by the “project as a whole.” The land adjacent to and in close proximity to the proposed Project has been farmed for years in high-value crops, such as almonds, and there is no evidence in the record to support a finding that the conversion of this land to urban use is not subject to agricultural land conversion Mitigation Measure 4.1-1. There is no Condition of Approval (“CoA”) quantifying, analyzing, or addressing this adverse impact.

Therefore, the Planning Commission lacks substantial credible evidence in the record to support a finding of “clearly insignificant” adverse cumulative impact to agricultural land.

5. Failure to consider, analyze, discuss, or mitigate compliance with AB 32 relative to “Green House Gas” emissions and extreme non-attainment status of the San Joaquin Valley air basis

Mobile source emissions from urban development located in the San Joaquin Valley Unified Air Pollution Control District (“SJVUAPCD”) have been determined to have significant public health and safety impacts to public health and safety, due to a further increase in Ozone precursors and Ozone---in an area that has been found to be in “extreme non-attainment” under the Federal Clean Air Act (FCAA) and for which the Air District has been unable to adopt an Attainment Plan which will bring the District into compliance until 2023.

The District’s so-called “Thresholds of Significance” for Ozone precursors were adopted prior to the enactment of AB 32 by the State Legislature and signature by the Governor in 2006. Consequently, there has been no consideration, analysis, or discussion of the existing “Thresholds of Significance” adopted by the District prior to the enactment of AB 32. Given this significant new legislation and the legislative record which supports the legislative enactment of AB 32, the Planning Commission should not approve and adopt the proposed MND until the District has analyzed and updated its Threshold of Significance for Volatile Organic Compounds (“VOC”) and Reactive Organic Gasses (“ROG”) and has re-visited whether the Threshold of Significance standard meets the CEQA standard of “clearly insignificant,” due to the substantial number of new Ethanol Facilities which have been constructed and are proposed to be constructed.

In addition, County Staff has provided no substantial information regarding the number of such new Ethanol Plants which have already been permitted, have been applied for, and/or are proposed for development and construction in the San Joaquin Valley. Therefore, the Planning Commission can not make a finding of “clearly insignificant” without the consideration of such new and significant information, pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162.

Finally, since the proposed MND does not include a Traffic Study or cumulative impacts analysis for the cumulative adverse impacts from haul vehicles and employee’s vehicles for the “project as a whole,” there is no substantial credible evidence upon which the Planning Commission can make a finding of “clear insignificance” of the cumulative impacts from the cumulative impacts from all these vehicles. In fact, there are no mitigation measures proposed for haul vehicles and employees vehicles for the project as a whole, when it is clear that the proposed Project will be producing 55 million gallons per year of ethanol for use in passenger vehicles and trucks. Therefore, the Planning Commission should require a Mitigation Measure for the project as a whole that requires all haul vehicles and employees’ vehicles to use alternative fuels, either ethanol or bio-diesel during the life of the proposed Project.

6. VA incorporates by reference all of the objections in its letter of December 29, 2006 to the District

Rather than re-state the objections set forth in its letter of December 29, 2006 my client and I incorporate by reference all of the objections that it has lodged in the record in its opposition to the District's approval and issuance of its Authority to Construct (ATC) Permits. The responses to Comments prepared and submitted with the proposed MND do not adequately respond to VA's objections and comments filed with the District.

7. VA reserves the right to amend its Appeal and to present evidence in support of additional claims at the time of the public hearing, based upon the record

Conclusion

Based upon the foregoing reasons and others to be presented at the time of the hearing of these matters, VA hereby respectfully requests the County Planning Commission to reverse the Staff Approval of the above-referenced project entitlements deny and deny the applications for lot line adjustments with prejudice and remand them to City Staff with instructions to prepare a revised and amended Initial Study and to prepare, publish, and circulate a Notice of Preparation notifying all responsible and trustee agencies and the general public of the County's intent to prepare an EIR or a Focused EIR for the proposed project as a whole and for any other project entitlements sought by Cilion, Inc. and/or AL Gilbert Company, Inc. for the proposed Project, based upon the fact that the approval of the above-referenced project entitlements will be facilitating the development and construction of the proposed project without an adequate environmental review under the California Environmental Quality Act.

Respectfully submitted,



RICHARD L. HARRIMAN

Enc.: 12/29/06 Letter

cc: Clients

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December 29, 2006

VIA EMAIL AND HAND DELIVERY

[daniel.barber@valleyair.org]

Daniel Barber Ph.D.
Senior Air Quality Specialist
San Joaquin Valley Unified Air Pollution
Control District
1990 East Gettysburg Avenue
Fresno, CA 93726-0244

Re: Project Title: Ethanol Plant. District Project Number N1062063
Applicant: Cilion, Inc.
Project Location: 4209 Jessup Road, near the unincorporated town of Keyes
And just west of State Route 99, Stanislaus County
Objections and Comments of Valley Advocates re Initial Study/Proposed
Mitigated Negative Declaration
Public Review Period: 12/1/06-1/1/07

Dear Dr. Barber:

As you are aware from my previous correspondence with the San Joaquin Valley Unified Air Pollution Control District ("District"), my office has been retained to represent Valley Advocates, a California non-profit public benefit corporation, having its principal place of business located in Fresno, California, in connection with the above-referenced matter. My client has authorized and directed me to monitor the administrative and environmental review of the above-referenced project, hereinafter referred to as the "Project."

INTRODUCTION

Pursuant to the direction of my client, I have reviewed the Initial Study/Proposed Mitigated Negative Declaration dated November 27, 2006 for the above reference project. The project consists of an ethanol distillery that will produce 55 million gallons per year of fuel grade ethanol utilizing corn supplied from the neighboring A.L. Gilbert Company ("ALGC") grain facility. The proposed Mitigated Negative Declaration is inadequate in that it does not evaluate the entire scope of the project; it fails to consider a number of possibly significant impacts in sufficient detail to inform the public decision-makers and the reviewing public properly; it fails to include the substantial evidence necessary to support many of its purported conclusions. In

sum, it is necessary to prepare and circulate a complete and adequate Environmental Impact Report ("EIR"), in order to serve the essential functions of the California Environmental Quality Act (CEQA) [Public Resources Code (PRC) section 21000 *et seq.*] by fully disclosing all potentially significant adverse environmental effects, properly informing the public, and providing the public an adequate opportunity to review and comment on a project of this magnitude which has a number of potentially significant impacts and very complex and unproven proposed mitigation measures. The reasons that the District should require an EIR be prepared for the proposed Project are set forth hereinbelow.

INADEQUATE PROJECT DESCRIPTION

At the outset, based upon the evidence in the records of the Stanislaus County Community Development and Planning Department and the Building Department, the proposed Initial Study ("IS") and Proposed Mitigated Negative Declaration ("MND") fail as an information and disclosure document because they omit an essential component of the project as a whole. Specifically, the Stanislaus County Building Department has already received applications for grading and excavation of the expansion of the A.L. Gilbert Company grain processing facility which currently exists, in order to serve the proposed Cilion Project. In fact, extensive site preparation work has already begun on the ALGC expansion project, and the County has already initiated a separate review process for the issuance of a building permit for the expansion of the A.L. Gilbert Company facility. Exhibit A to this letter is the May 4, 2006 letter from Roy Campbell of Ethanol West LLC to Kirk Ford, Deputy Director, Planning and Community Development, Stanislaus County. That letter includes two attachments, one is a proposed project description entitled, "Ethanol West Keyes, CA 55 MM Gallon Per Year Corn Dry Mill Ethanol Plant. The other is an article by John M. Urbanchuck entitled, "Contribution of the Ethanol Industry to the Economy of the United States. This information was then communicated to the Stanislaus County Environmental Review Committee by the May 11, 2006 memo from Mr. Ford that is attached as Exhibit B.

As stated above, a significant flaw in the proposed MND is its focus on the applicant's description of the project. That description focuses on the ethanol plant in a vacuum without acknowledging what the applicant presumably views as the ancillary portions of the project. The result is that the project description and the impacts that are reviewed in the MND do not include the entire project and all of its impacts; hence, the project has been impermissibly piecemealed. This is particularly critical in the application of BACT and the application of the thresholds of significance to the project as a whole. That may be an innocent oversight; however, the negative declaration process is particularly prone to this sort of oversight, as a negative declaration does not include all the required elements of the EIR that force a comprehensive evaluation of a project proposal.

In this case, the project description states that 571,000 tons of corn will be delivered from the adjoining A.L. Gilbert Company business. The grain has to be transported to the A.L. Gilbert facility, has to be handled by A.L. Gilbert and the A.L. Gilbert facility must be expanded and the workforce must be increased to handle that increased volume of grain. Those processes create impacts that must be taken into account—but, they were not discussed in the MND. Although this is not discussed in any of the materials issued pertaining to the District's proposed MND, according to the Stanislaus County Planning and Community Development documents, the project is being built on the A.L. Gilbert

Company property, and the property owner—A.L. Gilbert Company—is a participant in the project. According to the County Public Works department, A.L. Gilbert received a grading permit to cut 7598 cubic yards and fill 17,651 cubic yards of earth on an approximately 10 acre site. Then, A.L. Gilbert received permits to construct grain handling facilities on that site. When I inquired how that could occur without any Authority to Construct issued by the District, I was informed that it is an expansion of the grain plant that is not subject to District review. [Oral communications with Stanislaus County staff person, Kirk Ford, Assistant Director of Planning and Community Development and SJVUAPCD staff person, Rick Dyer, assigned to the proposed Project.]

However, the applicants' own submission to the County Planning Department states, "A.L. Gilbert-Berry Feed and Seed which operates as a grain storage and feed facility and Ethanol West, LLC plan to expand the feed mill to include a 55 million gallon ethanol and wet distiller's grain plant." [See Exhibit A] The applicant's project proposal goes on to state that at least one additional trainload of corn from the Midwest will be required each week to supply the plant. The document continues to highlight all of the economic benefits to the County from the ethanol plant itself and the high paying jobs it will generate, the reduction in ethanol imports to the area, the offset of other feeds by distiller's grain, and CO2 production. The applicant's document concludes with a full page summary of economic benefits as it touts as "a win-win situation for all segments of our society." See Exhibit A.

Although the records in the County Planning Department and Building Department currently include the foregoing information, the project description of the Cilion Project does not include the disclosure of the Cilion project as a whole, including the adjacent facility expansion, which will generate additional and integrally related emissions and other potentially significant adverse impacts from the Project. This omission is significant, due to the fact that the actual adverse impacts from criterion air emissions from stationary, mobile, and indirect/secondary sources and the related transportation impacts from the Cilion Ethanol Plant Project, as a whole, have not been disclosed, quantified, analyzed, or considered, accordingly. The result is an improperly segmented or "piecemealed" project and project description.

Finally, it should be noted that the IS/MND document contains internally inconsistent references to the proposed Project being located in the unincorporated community of Keyes and in the incorporated City of Ceres. [See the heading at the top of the Public Notice of Availability and the "Description of the Project" on the same page; see, also, the heading on each page referring to "Ceres," while the proposed Project is referred to as the "Keyes project" on page 2, last sentence of paragraph in the middle of the page, and elsewhere in the document]. Likewise, the "Notice of Preliminary Decision for the Proposed Issuance of an Authority to Construct" refers, again, to Ceres, and not to Keyes, so that a member of the public residing in Keyes would not be put on notice of the fact that the proposed Project is to be located south of the City of Ceres in the unincorporated town of Keyes. This inconsistency is confusing and misleading to the members of the public who reside in and near the town of Keyes and violates CEQA Guidelines [California Code of Regulations ("CCR"), title 14, section 15000 *et seq.*], section 15201, because it deprives the public of its right to reasonable notice and meaningful participation in the public environmental review process.

THE AIR DISTRICT IS NOT THE APPROPRIATE LEAD AGENCY

Due, at least in part, to the incomplete and inadequate project description from improper segmentation of the Cilion Ethanol Plant from the expansion of the A.L. Gilbert grain processing facility, the County has improperly asserted that it will be making decisions and taking actions which it deems to be “ministerial” in nature. However, my clients note that the record of proceedings already contains written comments and analysis of the Adams, Broadwell, Cardoza, and Joseph law firm (attached) which contradict this narrow and incorrect analysis of the County’s decision-making functions under CEQA. Specifically, in Section 9 of the IS/MND, at page 9, the proposed MND fails to list the County’s Department of Environmental Resources (“DER”) as an agency which will be reviewing and considering Cilion’s application for permits for the installation of wells to supply water for the Project. [See Paragraph VIII, Hydrology/Water Quality, Discussion, at page 19.]

Similarly, the proposed discharge and storage of storm water on-site will be subject to concurrent review by the County Department of Public Works and Planning Department as part of the County’s review of the proposed Site Plan for the Project, and as part of the exercise of its discretionary land use review under its land use authority in the Planned Development and Industrial zones. The County’s disingenuous insistence that it has no discretionary land use or zoning authority in the Planned Development and Industrial zones does not relieve it of its mandatory duty under CEQA to undertake environmental review of the Cilion Project as a whole. [See, IS/MND, Paragraph IX, Discussion, at page 20; see, *Day v. City of Glendale* (1975) 51 Cal.App.3d 817, 823-824, 124 Cal.Rptr. 569; *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 271-273, 235 Cal.Rptr. 1721; and *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 270 Cal.Rptr. 650; see, also, Remy, Thomas, Moose & Manley, *Guide to the California Environmental Quality Act (CEQA)*, Solano Press Books (Tenth Ed., 1999), pages 68-74]

Likewise, as discussed further hereinbelow, the study and analysis of potentially significant adverse impacts to traffic circulation and safety, which are noteworthy by their absence, would likely require the imposition of mitigation measures and conditions that require professional judgment and the exercise of discretion that are the hallmark of discretionary review and decision-making by the County administrative staff. [See citations hereinabove.]

Furthermore, as noted in the Kostka & Zischke treatise, “For a private project, the lead agency is the public agency that has the greatest responsibility for supervising or approving **the project as a whole**. 14 Cal Code Regs §15051(b). This will normally be the agency with general governmental powers over a project, **rather than a single purpose agency**. The Guidelines specify that a city or county will normally serve as lead agency, **rather than an air pollution control district** or a district that provides some public service or public utility to the project. 14 Cal Code Regs § 15051(b)(1).” (emphasis added) [Kostka & Zischke, *Practice Under the California Environmental Quality Act* (Continuing Education of the Bar, as updated), Volume 1, §3.4, at pp. 88-88.1]

Therefore, for the foregoing reasons and others set forth hereinbelow and the cases described and cited in Attachment B, the County of Stanislaus is the appropriate administrative agency to serve as the lead agency under CEQA and cannot divest itself of, and delegate, its land

use and zoning authority and discretionary review, accordingly. Thus, the environmental review of this proposed Project should be remanded to the County of Stanislaus to prepare and circulate a legally adequate draft EIR for the proposed Cilion Project.

THE PROJECT COMPLEXITY AND NEW TECHNOLOGY REQUIRE THE PREPARATION AND CIRCULATION OF AN EIR

On the basis of the proposed Project's air impacts alone, an EIR should be required for the proposed Project, as extensive study is needed at this phase of the development of the ethanol production industry. The plant is proposing to use non-standardized technology, which must undergo substantial analysis in this area that is in extreme non-attainment for ozone and particulate matter, and serious non-attainment for other criterion pollutants.

There are a number of ethanol plants being proposed in the region with a variety of competing technologies and theories of emission controls. A number of the other proposed plants have proceeded with full EIRs and significant source testing information continues to be produced by the industry, pertaining just to air emissions. The public has the right to be fully informed and participate in the evaluation of the potentially significant environmental impacts from new ethanol plants through a full EIR process that provides significantly more information and more reviewing time to the public decision-makers and the interested public. [Additional details regarding our objections to the air resources analysis provided in the Proposed MND may be found in "Attachment A" hereto.]

It should be noted that the IS/MND indicates that the analysis of area and operational emissions "...was based on information submitted in support of Cilion's ethanol production facility located in Famoso, CA, which for the purpose of this analysis is considered representative of the proposed project." [pages 8-9] However, the IS/MND fails to disclose that the lead agency for the Cilion Famoso ethanol facility was the County of Kern and that the environmental review adopted for that facility was an EIR, rather than an MND. Similarly, it should be noted that the Pacific Ethanol Plant proposed for Stockton, CA is proceeding in its environmental review with the preparation and circulation of an EIR.

Therefore, there are existing precedents for the APCD to continue to require that an EIR be prepared for each plant to examine the complex air pollution impacts and proposed mitigation measures, along with the preparation and consideration of avoidance strategies, including the analysis of feasible project alternatives to avoid or mitigate potentially significant adverse effects to air quality.

THE PERMITTING AGENCIES HAVE NOT COORDINATED THEIR REVIEW OF THE PROJECT, SO THAT THE PUBLIC HAS RECEIVED INCOMPLETE INFORMATION

CEQA Guidelines, section 15140, subd. (a) provides, "[A]n EIR or Negative Declaration may incorporate by reference of all or portions of other documents which is a matter of public record or is generally available to the public." Section 15140, subd. (b) states, "The EIR or Negative Declaration shall state where the incorporated documents will be available for

inspection. Section 15240, subd. (c) provides, "Where an EIR or Negative Declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized."

Perhaps, the most important violation of the above-cited Guideline occurs in Section IX, "LAND USE/PLANNING," at page 20 of the IS/MND. In support of the County of Stanislaus's "determination that the proposal can be accommodated under existing land use entitlements," the document makes the conclusory reference to "Reference: Stanislaus County General Plan and Support Documentation." There is no further analysis, disclosure, or reference to specific portions of the General Plan and Support Documentation, nor is there any disclosure of the location of these documents or any brief summary of the provisions which are applicable.

Moreover, with respect to the applicant's touting of the economic benefits which will purportedly redound to the benefit of the County from the construction and operation of the proposed Project, this is all very important information for the public to know in order to review this project proposal, it was not disclosed to the public; and my clients and I had to obtain it from another agency, the County. It was not attached or referred to in the environmental document as it should be. While it may be true that Stanislaus County may find and determine during its internal "ministerial" administrative staff review that the economic and societal benefits of an ethanol plant will override any significant, unavoidable, and unmitigatable environmental effects of the proposed Project, that decision can only be made following the preparation and review of an adequate and complete EIR—and not a Mitigated Negative Declaration.

Further, with regard to the potentially significant Transportation/Traffic impacts, there is no evidence whatsoever of a Traffic Circulation/Safety Study or Analysis having been prepared that analyzes the existing background traffic circulation/safety impacts, the increased traffic circulation/safety impacts from the expansion of the A.L. Gilbert Company grain processing facility, or the new impacts from the proposed Project. [See Section XV, Discussion, at page 23] There is no general plan, other planning document, a summary of quantified data or analysis, nor an indication where one might locate such data or information. The preparer's discussion and evaluation are wholly conclusory and legally inadequate.

THE INTIAL STUDY/PROPOSED MITIGATED NEGATIVE DECLARATON ANALYSIS IS LACKS SUBSTANTIAL EVIDENCE IN CRITICAL AREAS

Hydrology/Water Quality

Although the District's documentation is extensive when analyzing the proposed Authorities to Construct and all of the air pollution control equipment that is within the District's area of expertise, it is woefully inadequate in a number of other areas. Specifically, in Section VIII, "Hydrology/Water Quality," at pages 18-19, the proposed MND does not include substantial credible evidence to disclose the background and environmental setting, the existing groundwater uses and users, availability and priority of water rights, depth to groundwater, groundwater quality, cumulative impacts, and potentially available alternative surface water

supplies. In essence, the so-called "Discussion" discloses that the proposed Project is estimated to consume 1,017,960 gallons [a little more than three (3) acre feet per day (AFD).] However, it provides no inventory of water pollutants which will be discharged and does not indicate whether on-site ponding basins will be utilized for such discharges.

The water resources analysis fails to discuss Project receiving waters, fails to analyze how the Project's discharges will affect those waters, fails to specify the applicable permits, and fails to describe how the proposed Project will meet those permit requirements. Moreover, there is an utter lack of discussion of the flooding and drainage impacts, as required by CEQA regulations.

The purported "environmental review" document does not disclose, analyze, consider, or address water quality issues, nor does it disclose the potential contaminants in the cooling water which will be discharged into the atmosphere in the area of the proposed Ethanol Plant. In effect, no substantial data or information is disclosed, other than that approximately three (3) AFD of groundwater may be used and that the discharge following its use by the proposed Project and that "the project may result in a discharge of waste constituents to land in a manner that may affect the quality of the waters of the State (e.g., cooling water discharge, as well as the collection and impoundment of storm water containing waste constituents from contact with stockpiled materials). Even if all of the water discharges are subject to regulation by the Central Valley Regional Water Quality Control Board and/or the County of Stanislaus, the public is entitled to know what the amounts will be, what pollutants or contaminants will be contained therein, and if the discharges will violate water quality objectives. The MND does not provide the minimum information necessary to make a reasonable informed decision about the water supply source(s) and/or the disposal of water during the construction phase or used in the production process utilized by the proposed Project. The MND essentially says that these matters will be worked out later by the applicant and various agencies and asks the reviewing public to trust that everything will be fine. The MND does not just lack evidence to support the conclusion; the proposal is not yet definite enough for the District to analyze, and the potential mitigation is improperly deferred in violation of CEQA.

Transportation/Traffic

Similarly, with respect to the Transportation/Traffic circulation and safety "analysis," purportedly found in Section XV, Discussion, at page 23, there is no substantial credible evidence upon which an adequate analysis could be supported. There is no Traffic Study or Analysis of the background traffic circulation, the new traffic to be generated by the expansion of the A.L. Gilbert Company facility, and/or the new Cilion Ethanol Plant Project. There is no discussion of existing projects, approved projects, and/or reasonably foreseeable new projects, despite the fact that the Town of Keyes and the City of Ceres have both been growing at extremely rapid rates during the recent real estate boom cycle.

It should be noted that there is no map or diagram of the streets and highways in the proposed Project area, nor is there any verbal description or diagram which discloses, analyzes, considers, or addresses the transportation/traffic constraints to the development of the proposed Project, such as the fact that the only point of access and egress to and from the proposed Project

is located at a "T-intersection" on Keyes Road, which is controlled with only a stop sign. At this point of access and egress, all northbound and southbound traffic to State Route 99 must make a left-hand turn eastbound onto Keyes Road in order to proceed to the SR 99 freeway interchange. Given the applicant's own disclosure of 82 self-described "heavy-heavy" in-bound trucks and 82 "heavy-heavy" out-bound trucks daily, the total number of vehicles, excluding employees' and customers passenger vehicles, is 164 trucks per day, or approximately seven trucks every hour during a 24-hour work day; or 21 trucks per hour for an 8-hour work day. The IS/MND does not disclose the hours of operation or the proposed conditions, mitigation measures, or Mitigation Monitoring Program to be included with the adoption of the final MND.

Finally, since there is no Traffic Study or Analysis included in the IS/MND, there is no peak a.m. and p.m. traffic analysis of commuters and other traffic using the Keyes Road freeway on-ramps and off-ramps, nor for that matter, is there any data, information, or analysis whatsoever regarding the cumulative traffic circulation impacts from the existing A.L. Gilbert Plant operations, the ALGC expansion of the grain processing facility, and/or the proposed new Cilion Project. It should also be noted that, in the absence of a legible Map or Diagram of streets and highways, there can be no analysis of the potentially significant traffic circulation and safety impacts from public events held at the Ceres Sports Arena north of the proposed Project site on the west side of SR 99, which can be accessed from the Keyes Road/SR 99 interchange by passing the access and egress point from the A.L. Gilbert Company facility and the proposed Cilion Ethanol Plant Project on small rural roads that have not been well maintained. Therefore, no public decision-maker or member of the public can meaningfully participate in or analyze the adverse impacts from the proposed Project in conjunction with the existing, approved, planned, and reasonably foreseeable traffic on Keyes Road, Faith Home Road, Jessup Road, and/or the SR 99 freeway/Keyes Road interchange, nor can one accurately evaluate and determine what mitigation measures will be required to maintain such roads during the Project's lifetime—a maintenance cost that the Stanislaus County taxpayers will have to bear.

Air Quality

The Proposed MND fails to analyze construction phase air emission impacts, fails to assess toxic air impacts, does not include a Health Risk Assessment, fails to support conclusions related to air impacts to sensitive receptors, and fails to discuss alternatives to air emission offsets as mitigation.

Noise

The Proposed MND does not include substantial credible evidence to support the conclusory finding of no significant impacts from noise. There is no noise study or written analysis of the potentially significant noise impacts of the proposed Project in the context of existing conditions, which involve other noise-generating facilities in close proximity to the proposed Project.

Hazardous Materials

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Hazardous Materials

There is not analysis of the potentially significant exposure to hazardous materials of the public created by the storage of such materials and substances on-site and from the deliveries of raw materials to the proposed Project and the ethanol produced and stored on-site, along with waste materials from the proposed Project site. Hazardous materials and emergency response plans may be necessary and required and have not yet been prepared, disclosed, or discussed in the environmental review documentation.

Seismic Hazards

There is a lack of any study or analysis of potential seismic hazards.

Historic/Cultural Resources

Without conducting any studies, the Proposed MND improperly concludes that impacts to cultural or paleontological resources will be less than significant, which conclusory statement is not supported by any substantial credible evidence or expert consultant study.

Public Services

The Proposed MND provides no analysis of impacts to public services during construction and of firefighting capabilities during operations. Furthermore, there is a lack of analysis of emergency response capabilities to address potential transportation/hazardous material issues during operation and/or potential emergencies caused by spills along the haul routes.

Biological Resources

There have been no surveys or written studies of biological resources affected by the proposed Project, including threats to species of concern, habitat, and wetland areas, such as hawks and other raptors.

Aesthetic Impacts

The proposed MND lacks any quantified data, information, or analysis of adverse cumulative visual impacts or impacts from light and glare generated by the proposed Project.

In sum, the deficiencies set forth above relate to the lack of substantial credible evidence in the record and lack of analysis of the above-referenced potentially significant adverse impacts from the proposed Project to support the conclusions contained in the IS/MND, which are discussed in greater detail in Attachment A to this letter.

STATEMENT OF OVERRIDING CONSIDERATIONS CANNOT BE ADOPTED BASED ONLY UPON A NEGATIVE DECLARATION.

After adopting findings pursuant to Public Resources Code section 21081 (a), an agency may adopt a "statement of overriding considerations" as a means of approving a project with

unmitigated significant environmental impacts. [PRC sections 21081(b); CEQA Guidelines, sections 15021(d), 15093.]

PRC section 21081 provides:

“Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect: (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency. (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.”

Principles Codified under 21081(b). Under CEQA Guideline section 15093(b), “[w]hen the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.” (See also CEQA Guidelines, sections 15021(d), 15043(b); *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 683-685.)

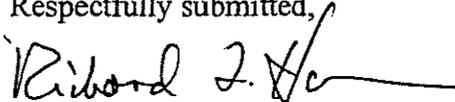
A Finding of Overriding Consideration can be adopted by the decision making body for the lead agency only after certification of an EIR and a finding that all feasible mitigation has been applied to the project. In this case, it appears that the County staff made that decision with no public review when they determined that it was appropriate to “piecemeal” the whole project into discrete pieces that were then determined each to be exempt from CEQA.

CONCLUSION

In summary, given the many deficiencies which pervade the purported analysis throughout the Initial Study/Proposed Mitigated Negative Declaration, including the inadequate project description, improper segmentation of the proposed Project, complexity of the proposed Project, failure to coordinate with and designate the proper lead agency, failure to disclose,

analyze, consider, and mitigate adequately the potentially significant adverse impacts of the proposed Project, and failure to provide adequate mitigation measures and alternatives, it is respectfully submitted that the District must re-initiate the CEQA environmental review process with a new Notice of Preparation and must proceed to prepare and circulate an EIR for the proposed Ethanol Plant. For the foregoing reasons and others stated in Attachments A and B to this letter, my clients and I respectfully request that the District and the County of Stanislaus remand the environmental review of the proposed Project to the County of Stanislaus to serve as the lead agency in a proper environmental review of this Project.

Respectfully submitted,


RICHARD L. HARRIMAN

Enc.: Attachments A and B
Project Documentation from County files
Adams, Broadwell, et al. letters

cc: Clients
Modesto Bee
Fresno Bee

**ATTACHMENT A TO
VALLEY ADVOCATES DECEMBER 29, 2006 COMMENT LETTER
DETAILED OBJECTIONS TO PROPOSED MITIGATED NEGATIVE DECLARATION
FOR KEYES ETHANOL PLANT DISTRICT PROJECT NUMBER N1062063**

AIR QUALITY

1. The Proposed Mitigated Negative Declaration (Proposed MND) fails to address whether emissions resulting from construction activities would surpass daily emission threshold levels as established by SJVUAPCD. Criteria air pollutants would be generated from grading activities and from operation of construction equipment. While temporary, the document should assess the impacts of emissions from construction activities.
2. The Air Quality analysis fails to address whether toxic air would be released from the project, nor the impacts of such releases. For example, diesel particulate matter has been determined by the state of California to be a toxic air contaminant; the project may operate diesel sources. A Health Risk Assessment may be required.
3. The Proposed MND states that the impact resulting from "objectionable odors affecting a substantial number of people" will be less than significant. The document does not present any evidence to support this assertion.
4. The Proposed MND states that the impact resulting from the exposure of sensitive receptors to substantial pollution concentrations will be less than significant. The document does not present any evidence to support this assertion.
5. In mitigating the potentially significant impacts of pollutant emissions resulting from area and operational emissions, the analysis solely relies on emission offsets. The analysis fails to discuss any alternatives which would have the effect of reducing emissions from the project. While offsets are important for mitigation, other reasonably effective measures may be available.
6. The projected emissions from the project are based on modeling results using the URBEMIS 2002 for Windows 8.7.0 Modeling Program. However, there is insufficient information regarding the assumptions relied upon to support the conclusions reached by this model, nor have the modeling results been provided. Assumptions such as how many hours such vehicles are operational, and the types and amounts of such vehicular emissions, are excluded. Furthermore, there is no description of assumptions used in modeling the operational emissions from the project.

HYDROLOGY AND WATER QUALITY

7. The water quality discussion fails to analyze the potential pollutants in the project storm flows or process wastewater discharges; and fails to analyze the potential effects to local surface waters, groundwater resources, or sanitary sewer facilities that may receive such discharges from the proposed project site. There is no statement as to where discharges from the project will go (e.g., which receiving water) and no discussion of the water quality

objectives applicable in the area or how the discharges from the project will not violate those standards. The project proponent does not seem to have made any decision concerning waste water discharge so it is premature to proceed with a MND until that is resolved. The Proposed MND does not clarify which state or federal water quality permits will apply, what the requirements of the permits are, or how the project will meet permit requirements—such regulatory programs include permits for groundwater discharges, process wastewater discharges to surface waters or publicly owned treatment works, and storm water discharges (including compliance with the County of Stanislaus Storm Water Management Program). Thus, the conclusion of less than significant impacts to water resources presented in the Proposed MND lacks sufficient evidentiary support.

8. There is no discussion whatsoever of the potential project impacts or of the necessary mitigation measures to address water quality during the construction phase.
9. The project will add a large amount of impervious surface to the project site which will likely alter drainage patterns and increase runoff rates, volumes, and velocities. There is no analysis of the availability or capacity of storm water drainage systems to accept flows from the project site or potential effects of the project on these facilities.
10. There is no analysis whatsoever of the project site in the context of the 100-year floodplain and no analysis of the potential flooding impacts caused by the project or flooding that could occur at the project site as required by CEQA Appendix G.
11. The project proposes to draw over a million gallons of groundwater daily from a proposed on-site well. There is no discussion of the potential water quality or the hydrologic impacts the proposed extractions will have on upon the groundwater supplies. Additionally, there is no discussion or analysis of the availability of groundwater in the area to meet the project's needs as well as the needs of other existing projects and the future needs of the area.
12. The list of thresholds for hydrology and water quality does not include all thresholds as listed in CEQA Appendix G.

UTILITIES/SERVICE SYSTEMS

13. A Water Supply Analysis is required to be prepared for the project per California Water Code section 10910. Such an assessment has not yet been prepared, thus the availability of water supplies for the project in the context of other existing and future projects has not been sufficiently assessed.
14. Although the Proposed MND acknowledges that the project will utilize municipal facilities for the disposal of surface runoff and process wastewater, there is no analysis that the local storm drain system and local wastewater treatment plant have the capacity to accept flows from the project or that those flows will meet pre-treatment requirements established by the treatment plant. Without a capacity analysis, it is unknown if additional facilities or expanded facilities will be required, construction of which may have a significant environmental impact.

15. The Proposed MND contains no discussion of the potential project impacts on solid waste disposal facilities or on how the proposed project will comply with solid waste disposal regulations.

TRAFFIC – TRANSPORTATION

16. There is no indication that a traffic study was prepared or any traffic analysis set any level was included in the production of the Proposed MND. Given the size of the project and the expected traffic (most notably truck traffic) the project will generate, a traffic study should be prepared to analyze the project's impacts on traffic and circulation, including levels of service. Depending on the results of the traffic study, a traffic control plan may be necessary. In addition, capital improvements to adjacent road ways may be appropriate especially due to the hazardous nature of the cargo carried to and from the project site.
17. Traffic in the project area has the potential to be impacted by lane closures and construction vehicles traveling in and out of the project site. No analysis for construction-phase traffic impacts is presented in the Proposed MND.
18. If the adjacent grain facility increases railway activity in order to service the instant project, then potentially significant impacts on both railway capacity and railroad crossings exist— such impacts have not yet been analyzed. Information provided to the County indicates that the Ethanol Plant will require at least one 110 car unit train from the Midwest per week.

NOISE

19. The Proposed MND fails to consider cumulative noise impacts of the project. Moreover, there is no linkage discussed in the analysis provided between the existing setting (with a nearby highway, railroad and grain mill) and the proposed project. An analysis of cumulative noise impacts may demonstrate that noise levels set by the Stanislaus County General Plan will be exceeded because of the project.

HAZARDOUS MATERIALS

20. There is no analysis provided of the potentially significant hazard to the public of transporting 55 million gallons of ethanol by truck annually. The associated risks include fires, explosions, spills, and wastewater discharges. Additionally, the project may involve the routine transport of natural gas and denaturant – both considered hazardous (flammable). Without proper analysis, significant unmitigated impacts may exist that have not been opened to public review. The proposed project must be analyzed to determine if it requires a Hazardous Materials Business/Management Plan and Emergency Response Plan to reduce the risk of impact from the use and transport of hazardous materials. Without sufficient analysis, the need for and contents of such plans is unknown, however, this is not even discussed in the Proposed MND.
21. The Proposed MND fails to analyze the potentially significant safety hazard to people working and/or residing in the project area that results from the routine use of hazardous materials to produce ethanol, which include ammonium hydroxide, sodium hydroxide,

sulfuric acid, and anhydrous ammonia. The associated risks include: potential cancer risk, explosions, fires, and reasonably foreseeable releases to the environment.

GEOLOGY – SOILS

22. There appears to have been no site-specific geotechnical investigations, including subsurface exploration and laboratory testing conducted for the Proposed MND. Such investigations could reveal fault lines and would determine the potential for impact from seismic ground-shaking and whether such impact would be potentially significant. Potentially significant impacts include soil liquefaction and building/roadway subsidence.
23. There is no analysis of soil disturbance associated with construction activities or the long-term development of the project that could result in erosion (on-site or in off-site areas) during construction or in the operations phase.

CULTURAL/PALEONTOLOGICAL RESOURCES

24. Apparently, there has been no survey performed to verify that project site does not contain cultural or paleontological resources. Rather than conducting a survey, the Proposed MND simply bases its conclusion of less than significant impacts upon a statement that the project's location is "adjacent to an existing industrial site." This is an insufficient basis for the conclusion that this project will have no impact on such resources.
25. The Proposed MND fails to discuss any pre-discovery mitigation measures to be taken in order to reduce potential impacts to cultural or paleontological resources during the construction phase that would potentially avoid damage to such resources. Without such mitigation, the potential impacts remain significant and unmitigated.

BIOLOGICAL RESOURCES

26. There is no indication that any study or surveys were performed to investigate the existence of any endangered species or habitats, locally designated species, wildlife dispersal or migration corridors, migratory/nesting bird locations, or riparian/wetland areas at the proposed project site. The Proposed MND simply asserts biological resources are not impacted by the proposed project, but such conclusory statements, lacking any evidentiary support, are not sufficient to support the claim that there will be no impact to biological resources as a result of the project.

PUBLIC SERVICES

27. The Proposed MND fails to consider the potentially significant construction-phase impacts of the project on various public services, including road blockages/closures, and increased demand for emergency services (inclusive of response times for local fire and police departments).
28. There is a complete lack of analysis of available firefighting response capabilities or available water supplies for firefighting to address the numerous and extremely large volumes of hazardous and highly flammable substances that will be stored at the proposed

project site. Without such analysis, the document's conclusion that project impacts related to fire projection would be less than significant lacks sufficient support.

29. Because the project will involve the transportation, handling and storage of various hazardous materials, the risk that an accident or spill involving such materials will occur places additional burdens on local public services, and the Proposed MND fails to analyze these burdens or mitigate their potential impacts.
30. Although the Proposed MND indicates that a Public Facilities Fee will be paid to mitigate the impacts the plant will have on local public services, there is no evidence to support the claim that the payment of such a fee will adequately reduce the impact of the project. Significantly, the Proposed MND does not discuss how such a fee will allow firefighting and police forces to maintain acceptable service ratios, response times and other performance objectives established by these local departments when the additional burdens of this fuel are added to their service areas.

AESTHETICS

31. The Proposed MND fails to analyze the individual impacts the proposed project would have on aesthetics, but rather, relies on the fact that the project will be built adjacent to an existing industrial facility. The adjacency to an existing plant is not sufficient analysis, as it does not evaluate any additional aesthetic impacts posed by the project individually, and thus, the conclusion of less than significant project impacts is insufficiently supported.
32. Additionally, there is a lack of analysis of the cumulative aesthetic impact resulting from the additional industrial use proposed by this project.
33. There is a complete absence of discussion on mitigation to reduce light and glare from the proposed project.

**ATTACHMENT B TO
VALLEY ADVOCATES DECEMBER 29, 2006 COMMENT LETTER
DETAILED OBJECTIONS TO PROPOSED MITIGATED NEGATIVE
DECLARATION FOR KEYES ETHANOL PLANT DISTRICT PROJECT
NUMBER N1062063**

Determination of Correct Lead Agency:

Planning & Conservation League (PCL) v. Department of Water Resources (2000) 83 Cal.App. 892.

This case involved a dispute between local water contractors over the lead agency for an EIR on the implementation of the "Monterey Agreement," which seeks to establish the principles for revising long-term contracts for water from the State Water Project. The Department of Water Resources (DWR) and local water contractors agreed to revise long-term contracts governing the supply of water under the State Water Project. The revisions included the elimination of the original contracts' provision for reallocation of water among contractors in the event of permanent water shortage, and transfer of title to a water storage facility by the DWR.

In mandamus and validation proceedings, two citizens groups and a public agency challenged the designation of a joint powers water agency as lead agency for preparation of the EIR under CEQA. The court held that the DWR, not the joint powers water agency, had the statutory duty to serve as lead agency in preparing the EIR. The court rejected the agreement designating the local water authority as lead agency because the DWR had principal responsibility for implementing the water agreement in question. (*Id.* at 903.) Meanwhile, the water agency was a regional water contractor who did not have principal responsibility for implementing the "Monterey Agreement." DWR's statewide perspective, expertise and familiarity with the issues involved in the agreement made it the "logical choice for lead agency."

In the present matter, the Air Board holds a position similar to that of the water agency in *PCL*. Specifically, the air board certainly maintains an expertise regarding key potential impacts of the proposed ethanol plant, yet the potential impacts of this project go far beyond air quality issues. Water quality, traffic, noise, hazardous materials, aesthetics, and a host of other issues are involved in this project, none of which are within the District's jurisdiction. The County of Stanislaus is better equipped and better able to manage because it routinely receives similar issues and can approach the environmental effects of the proposed project more comprehensively.

City of Sacramento v. State Water Resources Control Board (1992) 2 Cal.App.4th 960,

In *City of Sacramento v. State Water Resources Control Board*, the appointment of the wrong lead agency also required the court's reversal. This matter involved the alleged failure to enforce a pesticide concentration objective contained in a regional water basin plan. The Regional Water Quality Control Board was originally designated as lead agency for the project, however the court determined that the

Department of Food and Agriculture was better equipped to serve the role of lead agency. The court reasoned that while the Regional Board's responsibility is to protect state waters from all forms of pollution, the DFA's responsibility extends beyond water pollution to include the *total* environment. (*Id.* at 974. [Emphasis in original.]) Thus, because the underlying purpose of an EIR is to analyze and inform the public and decision makers regarding adverse effects to the environment as a whole (Publ. Resources Code § 21061), DFA was in the best position to make such an assessment. (*Ibid.*)

City of Sacramento v. State Water Resources Control Board is also very similar to the instant matter because both involve an agency well equipped to handle a specific area of the project, however, it is ill equipped to adequately review and manage the project in its entirety. Like the Regional Water Quality Control Board specialized only in the pollution of state waters, the Air Board can only effectively focus on the air quality aspect of the proposed project. The lead agency in this case should be one that is capable of examining the impact of this project to all aspects of the environment - the County of Stanislaus.

“Substantial Evidence”

Stanislaus Audobon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144

In *Stanislaus Audobon Society*, Plaintiff's complaint and writ of mandate challenged a county's approval of a proposed project to construct a country club, including a golf course and attendant facilities. The writ of mandate alleged that the county's certification of a negative declaration for the proposed project and its finding that the project was compatible with a Williamson Act land contract designation constituted prejudicial abuses of discretion.

The court held that the county's certification of a negative declaration and approval of a use permit constituted a prejudicial abuse of discretion. The record was replete with evidence supporting a fair argument the proposed country club might have a significant adverse growth-inducing effect on the surrounding area and that the county avoided evaluation of this impact by specifically deferring consideration thereof until the expected housing developments were actually proposed. While no single piece of evidence standing alone required preparation of an environmental impact report, the collective weight of the evidence did. In the absence of mitigation measures reducing the adverse growth-inducing impact, the certification of the negative declaration and approval of a use permit constituted a prejudicial abuse of discretion.

Much of the dispute stemmed from the unreasonable definition the defendants attempted to give to the term “substantial evidence,” equating it with overwhelming or overpowering evidence. CEQA does not impose such a monumental burden on the plaintiff. Rather, substantial evidence is simply evidence which is of ponderable legal significance, reasonable in nature, credible, and of solid value. The court recognized the CEQA Guidelines include a different definition that includes similar concepts, defining “substantial evidence” as, “enough relevant information that

reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusion might also be reached.” (Cal. Code Regs. tit 14 § 15384.)

Here, there is also a great deal of reasonable, credible evidence showing that the proposed project will have a significant effect on the environment. For example, the project proposes to draw over a million gallons of groundwater daily from a proposed on-site well, it estimates it will run 82 fully loaded trucks per day on small rural roads surrounding the plant, there is routine use of hazardous materials to produce ethanol, and the potential exists that the project may impede on various biological resources. In fact, most of the evidence raising the questions of the project’s environmental impact is gleaned from the negative declaration itself, which implies that it is undisputed and credible. Ultimately, substantial evidence exists, beyond the minimal threshold described in *Stanislaus Audobon Society*, that shows the project may exact a significant impact on the environment that must be adequately studied and mitigated.

Rejection of Use of Negative Declaration by Court:

Mejia v. City of Los Angeles (2005) 130 Cal.App. 332

A developer proposed to subdivide 17 acres of land and build 23 single-family homes on the site. The court held that substantial evidence supported a fair argument that the project would have significant, unmitigated environmental impacts on wildlife and traffic. A mitigated negative declaration was thus improper, and preparation of an environmental impact report was necessary. Several residents stated in administrative hearings that they had observed animal wildlife on the property site and expressed concerns that the project would adversely impact animal wildlife. With respect to traffic, residents stated that the road had no sidewalks, that equestrians and pedestrians shared the road with vehicles, that the road was particularly crowded on trash collection day and horse manure collection days when refuse cans crowded the road, that vehicles had collided with horses on at least three recent occasions resulting in horses having to be killed, and that the increased traffic caused by the additional homes would add to the problem.

The mitigation measures set forth by the City of Los Angeles in the mitigated negative declaration were not designed to mitigate significant impacts on animal wildlife because the city did not acknowledge any potentially significant impact on animal wildlife. The city similarly ignored traffic concerns because it merely declared that there would be a less than significant impact. Because the evidence supported the conclusion that the project may have significant impacts on animal wildlife and traffic, the court required an EIR.

An EIR will be required by the courts in regard to the proposed ethanol facility as well. Just like the City of Los Angeles in *Mejia*, the Board simply elects to ignore environmental issues upon which the proposed project may have a significant impact by declaring “no impact” without supporting evidence. The proposed mitigated

negative declaration fails to analyze the potential pollutants in the project storm flows or process wastewater discharges, and fails to analyze the potential effects to local surface waters, groundwater resources, or sanitary sewer facilities that may receive such discharges from the proposed project site. There is no discussion or analysis regarding the potential project impacts on solid waste disposal facilities or on how the proposed project will comply with solid waste disposal regulations. Traffic in the area will clearly be impacted by the proposed project, however the proposed mitigated negative declaration fails to provide a traffic study or address how the area may be impacted by construction-phase traffic. The Air Board cannot ignore these, and other, issues by electing to simply declare that there will be no environmental impact without supporting the each conclusion with substantial evidence.

Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296.

The permit applicant operated a small motel with a restaurant and filling station on the outskirts of a small unincorporated coastal town. He planned to build a nearby larger motel with a restaurant and cocktail lounge. The use permit concerned a private sewage treatment plant intended to serve the new development as well as the existing motel complex. The applicant proposed to build a relatively advanced and sophisticated waste disposal system, employing irrigation to dispose of treated water. Eventually, the county board of supervisors approved the permit, with amendments, and adopted the negative declaration.

The court held the use permit failed to comply with the procedural requirements of CEQA as to the adoption of the negative declaration. The county's initial study displayed only token observance of regulatory requirements; although a checklist indicated no significant environmental problems would occur if mitigation measures were adopted, later evidence disclosed that the project would disturb existing conditions. The court held that sludge disposal presented a material environmental impact requiring an EIR.

Similarly, the Air Board in this instance has displayed "only token observance of regulatory requirements" when completing the Appendix G checklist. Because the Board has wholly failed to examine the litany of issues relating to water quality, traffic, noise, hazardous materials, etc., they are nearly guaranteed that subsequent evidence will show that the project may have major impacts on the environment. Because of the insufficient evidence supporting the Board's "no impact" decision, and the likelihood of evidence arising to the project's actual environmental impact, a court reviewing the Board's decision to provide a mitigated negative declaration will almost certainly find that it was improper.

"Piecemeal" Approval:

CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones - each with a minimal potential impact on the environment - which cumulatively may have disastrous

consequences. (*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 284-85, superceded by statute with respect to the issue of designation of a lead agency by *City of Redding v. Shasta County Local Agency Formation Comm.* (1989) 209 Cal.App.3d 1169, 1177.) This principle is expressed in section 15069 of the CEQA guidelines, which state, “[w]here individual projects are, or a phased project is, to be undertaken and where the total undertaking compromises a project with significant environmental effect, the lead agency must prepare a single EIR for the ultimate project.”

Citizens Assn. For Sensible Dev. v. County of Inyo (1985) 172 Cal.App.3d 151.

In this case, the lead agency (the county board of supervisors) divided the required approvals and the corresponding environmental review into two groups when considering the environmental impact of a proposed shopping center. It first considered general plan amendments and zone reclassification, and secondly considered tentative tract map approval and road abandonment. The board thereafter adopted negative declarations of environmental impact as to each portion.

The court held that in filing separate environmental documents for the same project the board failed to consider the cumulative impact of the development project and thus failed to proceed in the manner required by law. Such failure was prejudicial because the board never considered whether the environmental impact of the total shopping center project, properly defined, was significantly adverse, and thus required an environmental impact report. The court further held that on remand the board should also consider the reasonably foreseeable probable future projects, if any, that will be added in the shopping center.

The Board’s proposed mitigated negative declaration is problematic because it approaches the proposed project as one that is separate and distinct from the expansion of A.L. Gilbert Berry Feed and Seed, which will supply the project with nearly all of its corn. Similar to the piecemeal approach taken by the county in *Citizens Assn. For Sensible Dev.*, the separation of the two projects may appear to lessen the environmental impact of each. However, this is an impermissible approach and is one that will likely be struck down by the court. The expansion of the A.L. Gilbert facility is being done specifically with the creation of the propose ethanol plant in mind, and will certainly impact the surrounding environment significantly. Because these projects are part of a combined effort to establish the proposed project, and because the A.L. Gilbert expansion would not occur but for the proposed ethanol plant, the “Feed and Seed” operation must be considered when examining the overall impact of the proposed project.

Exhibit A



May 4, 2006

Mr. Kirk Ford
Deputy Director
Planning & Community Development
Stanislaus County
1010 10th Street, Suite 3400
Modesto, CA 95354

re: Follow-up to Preliminary Project Meeting

Dear Mr. Ford:

Thank you for allowing Ethanol West LLC and A.L. Gilbert to present its planned project at to you at our meeting on April 17, 2006. We appreciate your input and advice on how to proceed with the submittal of our project.

In taking your advice attached is a site plan that lays out the new facility. Also attached is a brief process description and pictures of our current facility. Please distribute our proposal to the Environmental Review Committee. We look forward to meeting with you and the other members of the committee.

Also attached are a summary of the economic benefits to a community along with the article that the information was extracted from and a Morgan Stanley evaluation of the ethanol business. Please pass this information along to the committee for their consideration.

Should you have any questions, do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Roy Campbell'.

Roy Campbell
Director of Environmental, Health and Safety

Attachments

**Ethanol West Keyes, CA
55 MM Gallon per Year Corn Dry Mill Ethanol Plant**

A.L. Gilbert- Berry Feed and Seed which operates as a grain storage and feed facility and Ethanol West, LLC plan to expand the feed mill to include a 55 million gallon ethanol plant and wet distillers grain plant. The plant will be expanded northeast of the existing feed mill operations.

EXPANSION PLANS

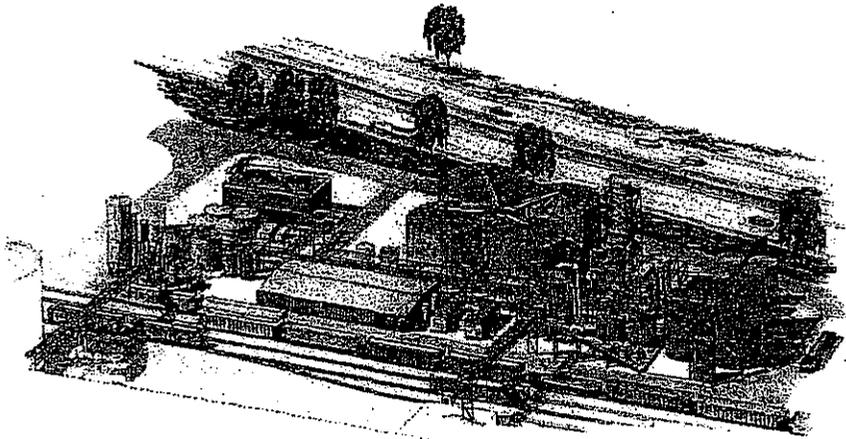
Background on Ethanol Plant Expansion

Ethanol West, LLC and Western Milling, LLC built the first corn-to-ethanol plant in California this past year in Goshen (near Visalia). In August 2005 the United States Senate & Congress passed an Energy Bill which was signed by the President. This new law requires an increase in ethanol production that will double production and use in the United States over the next 7 years, from 4 billion to 8 billion gallons per year. Ethanol is used in California gasoline today (5.7%) as an oxygenate, reducing emissions and helping improve air quality. Currently ethanol demand is being met by rail cars of ethanol being transported from the Mid-West, Canada and South America to the California fuel hubs where it is then trucked to the local markets. This Keyes site will reduce the need for this rail and truck service and supplement it with direct truck service from Keyes to the Bay Area fuel blenders. It will also provide the added benefit of reducing California's reliance on imported fuel.

The timing of constructing this plant is important. It has become a goal of the United States to:

1. Reduce dependence on imported oil;
2. Reduce the trade deficit that is negatively impacted by importing oil;
3. Increase the supply of refined fuel to reduce prices to the consumer;
4. Improve air quality and reduce greenhouse gases.

This ethanol plant will help accomplish these goals.



25,000,000 gal/yr. CORN DRY-MILL ETHANOL PRODUCTION FACILITY
GOSHEN, CALIFORNIA
Provenia Bio Industries, LLC

The Goshen Ethanol Facility Looking Southwest

The Keyes plant is being designed to produce 55 million gallons of 200 proof ethanol per year.

Process Description

Corn will be received at the ethanol plant from A.L. Gilbert's expanded grain operation by conveyor. Ground corn is combined with thin stillage and boiler water blow down water (concentrates from steam production) to form a slurry. The slurry or mash is then heated to 190 F° and the alpha-amylase enzyme is added to begin the liquification process where the complex starch molecule is broken down. From the cook area the slurry is pumped to tanks where liquification continues.

After reducing the temperature of the slurry, it is pumped into large fermenters. Another enzyme (gluco-amylase) is added to the fermenters along with yeast. The enzyme helps produce glucose for the yeast to process into ethanol and CO₂. Following 48 to 60 hours of fermentation, beer or distilling material (DM) containing 13-15% alcohol is pumped to a 1.25MM gallon beer well tank.

DM is fed from the beer well to a distillation system. Steam is fed to the distillation system DM to boil. The alcohol is vaporized and concentrated to 95 % by volume or 190 proof. The 190 proof alcohol is pumped to the 190 proof alcohol storage tanks. It is then passed through a molecular sieve where the remaining 5% water is removed producing 200 proof or anhydrous alcohol. This anhydrous alcohol is pumped from the molecular sieve to product storage, where it is denatured with 2-5% hydrocarbon and shipped to customers for blending with gasoline.

The distillation process takes the alcohol from the slurry making what are called still bottoms. These alcohol-free still bottoms or whole stillage are passed through decanter

centrifuges which concentrate the slurry to a 30% solids wet distillers' grain, which is shipped to local area livestock operations as a high value feed.

Another by-product of the centrifuge process is the liquid portion known as thin stillage. This thin stillage is fed to an evaporator where it is concentrated from 5% solids to 25 to 35% solids and called syrup. This syrup may be combined with the wet distiller's grains or sold as a liquid feed. Water recovered from thin stillage concentration is returned to the front end of the process for grain hydration and blending.

Heat is produced for cook, liquification, distillation and evaporation from boilers. There will be some portions of the boiler feed water that will not vaporize. This "blowdown" will be blended with thin stillage and become part of the make-up water for the cooking process. Sixty-five percent or so of wet distiller grains and syrup is made up of water. Water that will be used in the boiler(s), cleaning-in-process and in the process itself is either evaporated or sent out in wet distillers grain or syrup.

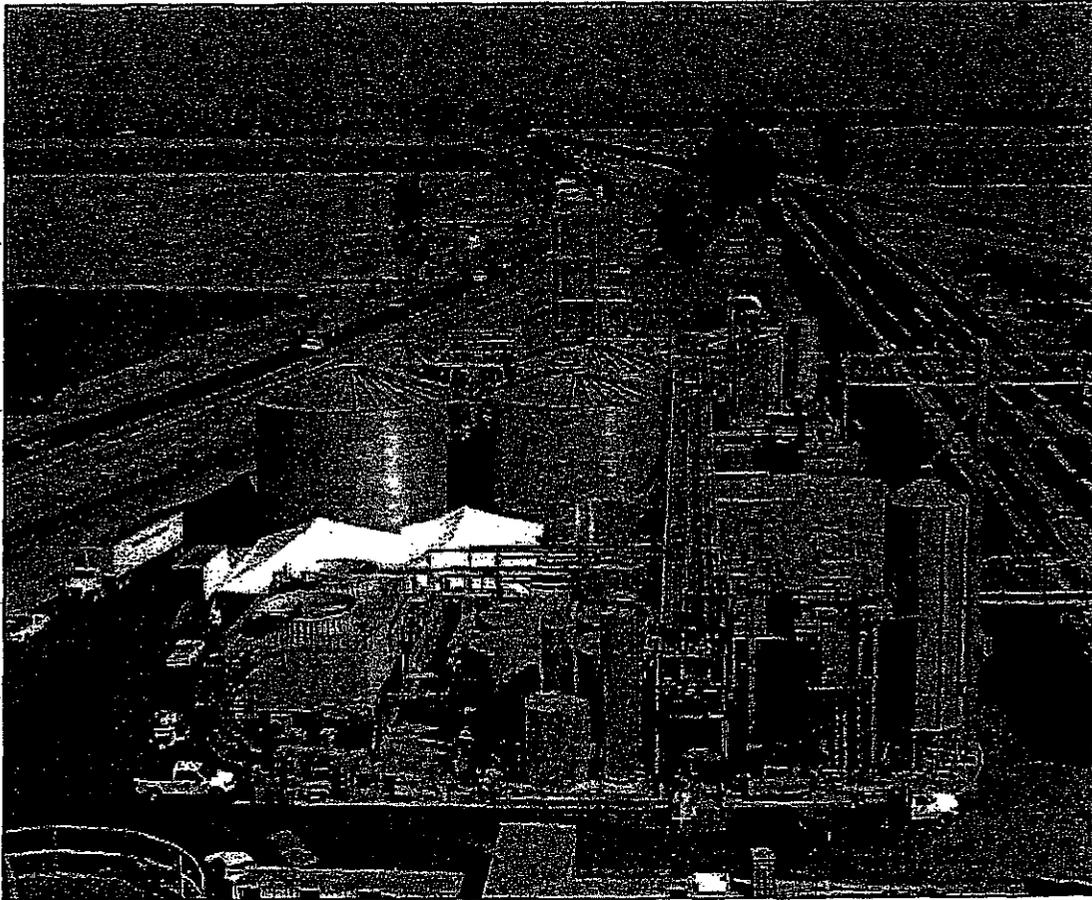
Cooling steps in the process are ultimately accomplished with cooling towers and chillers. A by-product of the cooling tower process is a concentration of the conductivity and solidity of the water ("blowdown") due to the evaporation that occurs during cooling. This water will need to be discharged and or treated.

OTHER ISSUES

1. Ethanol West expects to pay competitive wages with good benefits to personnel hired to work in the completed facility. In addition we expect that many of the designated trades used during construction will be paid prevailing wage. The ethanol plant will be a separate LLC and Ethanol West expects to own about 10-20% of the business.
2. Ethanol Traffic
On a regional basis the ethanol plant will offset the ethanol trucks that are brought into other locations and transported to Bay Area fuel blenders. The plant when at full production will have about 19-22 trucks per weekday of ethanol that will leave the site. Total ethanol production will be about 3.3 to 4.5 million gallons per month.
3. Wet Distillers Grain Traffic
Part of the ethanol process is to take corn into the process and a by-product is wet distillers grain, a high protein animal feed. On a regional basis the ethanol plant will not cause more feed to be consumed in the area, it will offset other feed that is brought in by rail or truck to local animal operations. All of the wet distillers grain is expected to be consumed within a local area of about 100 miles. There will be about 44 to 50 trucks of wet distillers per day. In our Goshen site, to address emission and odor issues all of these trucks are tarped and the product moves daily. Total wet distillers production will be about 35,000 tons per month.

4. CO₂ Traffic

Part of the ethanol process has CO₂ as a by-product of the fermentation process. The plant is expected to have in a later phase part of the development a CO₂ plant that will capture and process this for use in the beverage industry. It is expected that there will be about 10 trucks per day from the CO₂ plant. Total CO₂ production will be about 7,500 tons per month.



Ethanol West's Goshen, CA Ethanol Facility Looking North

Major Equipment (Proposed)

- (1) corn hammermill
- (1) baghouse
- (6) 10,000 mash cooking tanks
- (3) 44,000 mash liquification tanks
- (6) 600,000 gallon stainless steel fermentation tanks
- (1) 1,250,000 gallon stainless steel beer well
- (2) 600 ton chillers
- (2) 1,000 ton cooling tower
- (2) 60,000 #/hr. 550 psi water tube steam boiler
- (2) Multi-stage back pressure steam turbine
- (2) Multiple column distillation system
- (2) Multiple effect steam evaporator
- (4) 66,000 gallon in process ethanol tanks
- (1) 1,000,000 gallon ethanol tanks
- (2) 44,000 gallon whole stillage tanks
- (2) 30,000 gallon thin stillage tanks
- (1) 60,000 gallon syrup tank
- (1) 20,000 gallon boiler water tank
- (2) 10,000 gallon enzyme tanks
- (1) 10,000 gallon sulfuric acid tank
- (2) 60,000 gallon chilled water tanks
- (4) 30,000 gallon heated water tanks
- (1) 24,000 gallon yeast propagation tank
- (1) 10,000 gallon urea tank
- (1) 10,000 gallon caustic tank
- (3) 20,000 gallon cleaning and rinse tanks
- (4) molecular sieve alcohol dehydration system
- (6) 150 hp decanter centrifuges
- (1) 40,000 gallon denaturant (natural gasoline) tank

Summary of Economic Benefits

Ethanol Production is a rare win- win situation for all segments of our society. It uses corn and other agricultural products strengthening our rural economy; it lowers the level of greenhouse gases in the atmosphere, making the environment cleaner. Ethanol production also lessens our dependence on foreign oil, allowing us to keep more money in the American economy where it can help improve the lives of average Americans.

In addition, there are several direct benefits that accrue directly the local economy from the construction of an ethanol plant I that region including.

- The project will bring 100 new construction jobs and over 40 new full time jobs to Keyes
- The plants cost will be over \$60 million. Construction will bring a one time boost of \$140 million to State and Local economies
- The plant will generate 850 new permanent jobs and over \$209 million for the local economy
- This project will generate \$30 million in household income
- The project will generate \$1 million in new tax revenue for State and Local governments

These are just some of the economic benefits of an ethanol plant in your area, Attached is a report further detailing more of the contributions that are fomented by ethanol production. Thank you for your time.

PROP. LLA BTWN ①, ②, ③ & ④ NO LAND LOCKED CASE

LOTS ARE ALL EXISTING

LEGEND

- INDICATES BEST MEASUREMENT LONG IRON PIPE WITH TAG L.S. 3550
- INDICATES 1/4" I.S. 3550 FOUND UNLESS OTHERWISE NOTED (I.S. M) MEASURED THIS SURVEY.
- ① INDICATES BEARING, DISTANCE OR ANGLE CALCULATED FROM RECORD DATA, AS NOTED
- ② REFERS TO BOOK 40 OF PARCEL MAPS AT PAGE 07.
- ③ REFERS TO BOOK 41 OF PARCEL MAPS AT PAGE 24
- ④ REFERS TO BOOK 52 OF PARCEL MAPS AT PAGE 14
- ⑤ REFERS TO BOOK 280 D.F. PAGE PAGE 425 DIST 94507

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AT THE REQUEST OF RICHARD L. SHEDDEN

I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP AND ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED. THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

Richard L. Shedden
 RICHARD L. SHEDDEN L.S. 3550
 (STANISLAUS COUNTY)

RECORDER'S STATEMENT

FILED THIS 7 DAY OF Nov. A.D. 1999 AT 10:44 A.M.
 IN BOOK 42 OF PARCEL MAPS, AT PAGE 50, AT THE REQUEST OF
A.L. Gilbert & Vineyards, Inc.
 FEES \$ 8.00
David R. Warm
 COUNTY RECORDER
 BY: Pat Seidel
 DEPUTY

COUNTY SURVEYOR'S STATEMENT

THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AND IS TECHNICALLY CORRECT
 DATED THIS 2nd DAY OF November A.D. 1999
 BY: John Ray Edwards

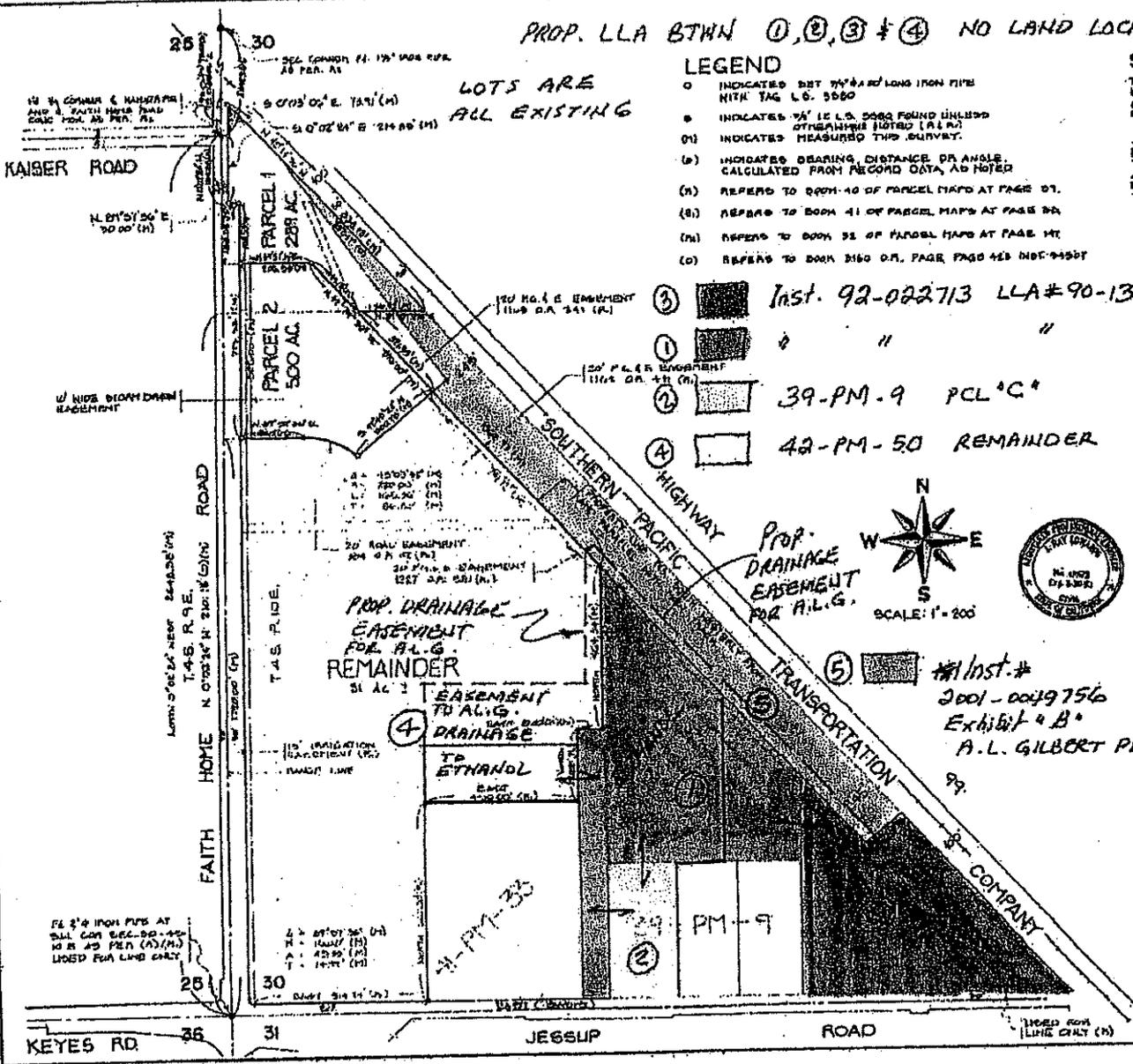
BASIS OF BEARINGS:

A COURSE OF EAST AS SHOWN FOR THE CENTER LINE OF JESSUP ROAD AS PER VOLUME 11 PARCEL MAPS PAGE 24, STANISLAUS COUNTY RECORDS.

PARCEL MAP

BEING A DIVISION OF A PORTION OF THE WEST ONE HALF OF SECTION 30, T45N R9E, S12E, RANGE 10 EAST, MOUNT Diablo MERIDIAN, STANISLAUS COUNTY.

R.B. WELTY & ASSOCIATES, INC.
 521 15TH STREET - P.O. BOX 1724
 MODESTO, CALIFORNIA 95353-1724
 (209) 526-1515
 STANISLAUS COUNTY FILE NO. 01-07
 JOB NO. 00102 SHEET 2 OF 2



KEYES RD

JESSUP ROAD

ROAD

ROAD (LINE ONLY)

LECG

CONTRIBUTION OF THE ETHANOL INDUSTRY TO THE ECONOMY OF THE UNITED STATES

Prepared for the Renewable Fuels Association by

John M. Urbanchuk

Director, LECG LLC

February 21, 2006

The ethanol industry is one of the most significant success stories in American manufacturing over the past quarter-century. From a cottage industry that produced 175 million gallons in 1980, the American ethanol industry has grown to include 95 manufacturing facilities with an annual capacity of almost 4.3 billion gallons. 2005 was a watershed year for the ethanol industry. In August President Bush signed into law the Energy Policy Act of 2005 (EPACT05). Among the many incentives for renewable fuels, EPACT05 provided the ethanol industry with a Renewable Fuels Standard that requires a minimum of 7.5 billion gallons of renewable fuels to be used in the nation's highway fuel supply by 2012. As a consequence of strong demand from rapidly growing China and India world oil prices reached new record levels in 2005 while an unusually severe and destructive hurricane season pushed retail gasoline prices to new highs in the U.S. High gasoline prices combined with low corn prices resulting from the second largest crop on record to improve the economics of blending ethanol. We expect this economic advantage to remain for some time and the RFS to serve as a floor for ethanol demand, not a ceiling.

These developments have spurred a surge in ethanol plant investment and development. According to the Renewable Fuels Association 34 new plants and eight major plant expansions representing an additional 2,100 million gallons of capacity currently are under construction and more are planned. Total ethanol production for 2005 is estimated at four billion gallons on a year-end capacity base of 4.3 billion gallons.

This study estimates the contribution of the ethanol industry to the American economy in 2005; outlines a path of investment and development that takes ethanol production to 9.8 billion gallons by 2015 and describes the contribution of the industry to the economy by 2015; and examines the impact of ethanol production on local communities.

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Contribution of the Ethanol Industry in 2005

The ethanol industry provides a significant contribution to the American economy. The industry spent almost \$5.1 billion on raw materials, other inputs, goods and services to produce an estimated four billion gallons of ethanol during 2005. The largest share of this spending was for corn and other grains used as the raw material to make ethanol. The ethanol industry used more than 1.4 billion bushels of corn in 2005, valued at \$2.9 billion. Ethanol production represents the third largest component of corn demand after feed use and exports and will account for 16 percent of total corn utilization this marketing season. In addition to providing a growing and reliable domestic market for American farmers, the ethanol industry also provides the opportunity for farmers to enjoy some of the value added to their commodity by further processing. Farmer-owned ethanol plants account for half of U.S. fuel ethanol plants and almost 40 percent of industry capacity.

The remainder of the spending by the ethanol industry is for a wide range of inputs such as industrial chemicals; electricity, natural gas, and water; labor; and services such as maintenance, insurance, and general overhead. Spending for these goods and services represents the purchase of output of other industries. In addition, the construction of new ethanol plants results in spending for a wide range of goods and services. At an estimated construction cost of \$1.40/gallon for a new dry mill ethanol plant and \$1.00/gallon for a plant expansion, the capacity currently under construction or expansion represents the expenditure of an additional \$2.4 billion by the ethanol industry.

The spending associated with current ethanol production and investment spending on new plant capacity will circulate throughout the entire economy several fold. Consequently this spending will stimulate aggregate demand, support the creation of new jobs, generate additional household income, and provide tax revenue for government at all levels. The impact of the ethanol industry on the American economy was estimated by applying the appropriate final demand multipliers for output, earnings, and employment for the relevant supplying industry calculated by the U.S. Bureau of Economic Analysis (BEA) to the estimates of spending described above.¹ The final demand multipliers for output, earnings, and employment for the selected industries are shown in Appendix Table 1.

¹ The multipliers used in this analysis are the detailed industry RIMS II multipliers for the United States estimated by the Bureau of Economic Analysis, U.S. Department of Commerce.

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The following summarizes the economic contribution of the American ethanol industry. These impacts are detailed by industry segment in Appendix Table 2.

- *The combination of spending for annual operations and capital spending for new plants under construction added \$32.2 billion of gross output to the American economy in 2005. Gross output represents the market value of an industry's production, including commodity taxes, and it differs from GDP.² Generally speaking, Gross Output is larger than GDP since it includes the value of intermediate goods and services, which are "netted out" of GDP. Reflecting this difference, the ethanol industry added \$17.7 billion to the nation's Gross Domestic Product in 2005.*
- *New jobs are created as a consequence of increased economic activity caused by ethanol production. The increase in gross output (final demand) resulting from ongoing production and construction of new capacity supports the creation of 153,725 jobs in all sectors of the economy this year. These include more than 19,000 jobs in America's manufacturing sector – American jobs making ethanol from grain produced by American farmers.*
- *Increased economic activity and new jobs result in higher levels of income for American households. The production of ethanol will put an additional \$5.7 billion into the pockets of American consumers this year.*
- *The combination of increased output and GDP and higher income generates tax revenue for government at all levels. The full impact of the annual operations of the ethanol industry and spending for new construction will add more than \$1.9 billion of tax revenue for the Federal government and nearly \$1.6 billion for State and Local governments.*
- *Ethanol reduces our dependence on imported oil and reduces the U.S. trade deficit. The ethanol industry. The production and use of ethanol displaces crude oil needed to manufacture gasoline. According to the Energy Information Administration imports account for 65 percent of our crude oil supplies and oil imports are the largest component of the*

² BEA description of Gross Output taken from www.bea.doc.gov/bea/dn2/readgo.htm. According to BEA accounts GDP was 55% of the value total gross output in 2004.

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expanding U.S. trade deficit. The production of 4 billion gallons of ethanol means that the U.S. needed to import 170 million fewer barrels of oil in 2005, valued at \$8.7 billion, to meet the same demand levels.

The Ethanol Industry in 2015

As indicated earlier the RFS provided by EPACT05 is expected to provide a floor for ethanol demand and production, not a ceiling. Ethanol demand is expected to increase due a combination of factors that include the decision by the oil industry to abandon MTBE; the aggressive production and promotion of alternative fuel (i.e. flexible fuel) vehicles by the major auto manufacturers; and anticipated increases in investment in flexible fuel infrastructure. Concerns over gasoline prices and energy security issues are expected to maintain public interest in alternative fuels.

According to the Renewable Fuels Association 34 new plants and eight major plant expansions representing an additional 2,100 million gallons of capacity currently are under construction and more are planned. A review of conversations with and public statements of ethanol industry analysts, plant developers, builders, and financiers lead us to anticipate that an additional 4.1 billion gallons of new capacity will be added between 2006 and 2015, with most of the capacity coming on line within the next three years.

Table 1 details our expectation for ethanol industry expansion and production through 2015. As shown in Table 1, this investment is expected to bring total industry capacity to 10.3 billion gallons by 2015. Assuming an average capacity utilization rate of 95 percent, ethanol production is projected to top 9.8 billion gallons by 2015.

Feedstock availability is not expected to be a constraint for ethanol production over the next decade. Corn, which is currently used to make about 90 percent of all U.S. ethanol, is expected to remain the predominant feedstock, although its share likely will decline modestly by 2015. The ethanol industry also is making significant improvements in yields. Based on improved technology and new plant designs, and reports of yields from new plants, we expect average ethanol yields to increase from the current level of 2.75 gallons per bushel to nearly 3 gallons per bushel by 2015. When this is taken into consideration, we project total corn utilized for ethanol production to increase from 1,586 million bushels this season to nearly 3 billion bushels by 2015.

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Table 1
Projected Ethanol Capacity and Production
2005-2015

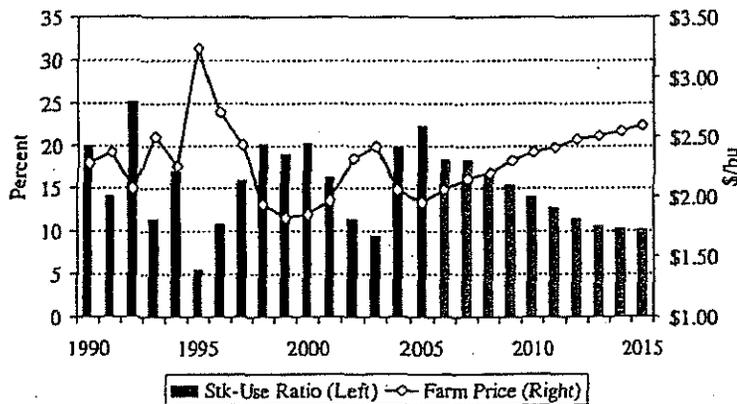
	ETOH Capacity (MGY)	Net New Capacity (MGY)	Capacity Utilization (Pct)	ETOH Production (MGY)	Corn Share (%)	Other Feedstocks (MGY)	Ethanol Yield (Gal/bu)	Crop Year Corn Use for ETOH (Mil Bu)
2005	4,286	686	93%	4,003	90.0%	600	2.750	1,586
2006	5,911	1,625	95%	5,615	90.0%	562	2.765	2,196
2007	7,611	1,700	95%	7,230	90.0%	723	2.780	2,502
2008	8,361	750	95%	7,943	90.0%	794	2.795	2,643
2009	8,761	400	95%	8,323	90.0%	832	2.810	2,751
2010	9,161	400	95%	8,703	89.0%	957	2.825	2,805
2011	9,461	300	95%	8,988	88.5%	1,034	2.840	2,853
2012	9,711	250	95%	9,225	88.0%	1,107	2.855	2,895
2013	9,961	250	95%	9,463	87.5%	1,183	2.870	2,926
2014	10,161	200	95%	9,653	87.0%	1,255	2.885	2,951
2015	10,361	200	95%	9,843	86.5%	1,329	2.900	2,976

Source: LECG, LLC

A combination of improved corn yields and acreage shifts from other crops will enable the U.S. corn sector to supply the ethanol industry without significant increases in prices that would adversely affect ethanol profitability or the livestock and poultry industry. As corn stocks are drawn down from this season's 2.4 billion bushel projected carryout, farm-level corn prices will increase, reaching \$2.58 per bushel by the 2015 marketing year. The impact of this level of demand for ethanol on stocks measured by the stocks to use ratio and farm-level corn prices is illustrated in Figure 1.

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Figure 1
U.S. Corn Stocks and Farm Price



LECG, LLC

The investment in an additional 6 billion gallons of new ethanol capacity and production of 9.3 billion gallons by 2015 will make a significant contribution to the U.S. economy.

- The combination of spending for annual operations and capital spending for new capacity will add \$83.1 billion (2005 dollars) of gross output to the American economy by 2015. Adjusting for the difference between gross output and GDP, the U.S. economy measured by Gross Domestic Product economy will be nearly \$46 billion (2005 dollars) larger by 2015 as a result of the ethanol industry. in 2005.
- New jobs are created as a consequence of increased economic activity caused by ethanol production. The increase in gross output (final demand) resulting from ongoing production and construction of new capacity supports the creation of as many as 203,879 jobs in all sectors of the economy by 2015.
- Increased economic activity and new jobs result in higher levels of income for American households. The production of ethanol will put an additional \$14.6 billion into the pockets of American consumers in 2015.

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- Ethanol reduces our dependence on imported oil and reduces the U.S. trade deficit. The *ethanol industry*. The production and use of ethanol displaces crude oil needed to manufacture gasoline. According to the Energy Information Administration imports account for 65 percent of our crude oil supplies and oil imports are the largest component of the expanding U.S. trade deficit. The production of 9.8 billion gallons of ethanol by 2015 means that the U.S. will import 3.7 billion fewer barrels of oil between 2005 and 2015. This means that \$197.4 billion dollars will stay in the U.S. instead of being shipped offshore to pay for foreign oil.

Impact of ethanol to the local economy

The structure of the ethanol industry has changed dramatically over the past 15 years. In 1991 35 plants produced 865 million gallons of ethanol. Two-thirds of capacity was accounted for by wet mill plants that had an average capacity of 95.5 MGY. The 20 operating dry mill plants had an average capacity of 16.5 MGY. By January 2006, the ethanol industry comprised 92 plants with annual capacity of more than 4.3 billion gallons. Dry mill plants accounted for 71 percent of capacity with an average size of 42 MGY.

Virtually all new ethanol plants being built today are dry mills and average plant sizes are closer to 100 MGY than 50 MGY. Ethanol plants make an important contribution to the economy of the local communities in which they are located.

The contribution of an ethanol plant to a local economy can be estimated in the same manner as for the national economy described above. Expenditures for plant construction have a short-term impact that is replaced by the contribution from ongoing production. The size of the impact is directly linked to plant size and depends on the relationship between the ethanol plant and the local economy. Specifically this relates to the amount of inputs that are sourced locally. For purposes of this analysis we assume that all grain feedstock is procured from local farmers (i.e. corn produced within a 100 mile radius of the plant) but that other inputs such as natural gas and chemicals are provided by suppliers outside of the local community. As opposed to grain, only a small share of the expenditure for chemicals, enzymes, and natural gas will accrue to local suppliers.

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As shown in Table 2, annual expenditures for goods and services for a 50 MGY ethanol plant are estimated at \$46.7 million (2005 dollars) while spending for a 100 MGY plant is estimated at \$88.2 million. There are relatively few economies of scale in dry mill ethanol production. The most significant savings for a larger plant are for lower capital costs in construction and reduced labor costs since larger new plants are more automated. Reflecting this, the impact of a 100 MGY plant is slightly less than twice that of a 50 MGY plant.

Table 2
Annual Economic Impact of
a 50 and 100 MGY Dry Mill Ethanol Plant

	50 MGY	100 MGY
Annual Expenditures (Mil 2005 \$)	\$46.7	\$88.2
Gross Output (Mil 2005 \$)	\$209.2	\$406.2
GSP (Mil 2005 \$)	\$115.0	\$223.4
Household Income (Mil 2005 \$)	\$29.7	\$51.2
Employment (Jobs)	836	1,573

While the precise impact on a specific community will depend on the structure of the local community (reflected in unique multipliers), the generalized annual contribution of a 50 and 100 MGY ethanol plant is summarized in Table 2.

- A 50 MGY ethanol plant will use 18.2 million bushels of corn annually and a 100 MGY plant will require 36.4 million bushels annually. Feedstocks account for about two-thirds of annual operational spending. If all grain is sourced locally, the economic impact is maximized. The spending for production for a 50 MGY plant will generate \$209 million (2005 dollars) of new gross output while a 100 MGY plant will generate \$406 million annually for the local economy.
- When viewed at the State level, a 50 MGY ethanol plant will add \$115 million annually to the size of the State economy measured by Gross State Output. A 100 MGY plant will increase GSP by \$223 million. That is, the State economy will, be larger as a result of the operations of the ethanol plant.

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- New jobs are created as a consequence of increased economic activity caused by ethanol production. The increase in gross output (final demand) resulting from ongoing production of a 50 MGY ethanol plant will support the creation of as many as 836 jobs in all sectors of the local economy while a 100 MGY plant will generate nearly 1,600 new jobs..
- Increased economic activity and new jobs results in higher levels of income. The ongoing annual operations of a 50 MGY plant will increase household income in the local economy by nearly \$30 million annually. A 100 MGY plant will increase household income by more than \$50 million.

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Appendix Table 1
BEA RIMS II Final Demand Multipliers, U.S.³

	Output	Earnings	Employment (Jobs)
Construction	3.4230	1.0521	28.4941
Annual Operations			
Feed Grains (Corn)	2.7644	0.5277	18.9075
Other basic organic chemicals	3.3519	0.7101	15.9730
Power generation and supply	2.4634	0.5944	12.8781
Natural gas distribution	3.3205	0.5774	16.5073
Water, sewage	2.5899	0.7068	17.8532
Facilities support services	2.6503	0.9423	28.3832
Office administrative services	2.8359	1.0009	25.1341
Households	2.3296	0.6476	19.4085

Source: Regional Input-Output Modeling System (RIMS II). Regional Economic Analysis Division, BEA.

Multipliers based on 1997 Benchmark I-O Table; 2003 regional accounts data.

Appendix Table 2
Economic Contribution of the Ethanol Industry: 2005

Industry	Spending (Mil 2005\$)	Output (Mil 2005\$)	Impact	
			Earnings (Mil 2005\$)	Employment (Jobs)
Construction	\$2,433.2	\$8,328.8	\$2,560.0	65,842
Plus initial changes		\$2,433.2		
Total		\$10,762.0	\$2,560.0	65,842
Annual Operations				
Farm Products/Agriculture	\$2,901.3	\$8,020.3	\$1,531.0	52,095
Industrial chemicals	\$361.4	\$1,211.2	\$256.6	5,481
Electric, natural gas, water	\$1,374.8	\$4,390.1	\$800.7	20,976
Maintenance and repair	\$82.6	\$219.0	\$77.9	2,227
Business Services	\$103.1	\$292.3	\$103.2	2,460
Earnings paid to households	\$251.9	\$586.9	\$163.1	4,643
Subtotal	\$5,075.0	\$14,719.8	\$2,932.5	87,883
Plus initial changes:				
Value of ethanol production		\$5,467.5	\$251.9	
Value of co-products		\$1,244.0		
Total Annual Operations		\$21,431.2	\$3,184.4	87,883

³ The multipliers represent the effect on output, income and employment of every \$1 million of expenditures.



Exhibit B

May 11, 2006

TO: Stanislaus County ERC
FROM: Kirk Ford *Kirk Ford*
Deputy Planning Director
RE: A.L. Gilbert Proposed Ethanol Plant

AL Gilbert and Ethanol West propose to construct an ethanol distilling plant at the existing AL Gilbert properties at the Keyes Road/Hwy 99 Interchange. A project description and site plan is attached.

The site is zoned "**Industrial**" and the General Plan Designation is also "**Industrial**". As a supplemental use to the existing grain and feed mill, they propose to bring one additional trainload of corn per week to the site, and ship out about 3.3 to 4.5 million gallons of ethanol per month (19-22 trucks per day). A by product of the distillation is "wet distillers grain" which is a high protein feed. They expect an additional 44-50 trucks per day leaving the site to distribute the feed. A later phase will capture CO₂ and they expect an additional 10 trucks per day to distribute that.

Because the site has the proper zoning and General Plan designation for the use, I believe that all we need do is process a building permit and that no additional discretionary approvals (Use Permits or Staff Approvals) are necessary.

However, because of the scope of this project, I felt it was wise to inform ERC of the project and to solicit any comments or concerns the ERC members may have, before we made any final decisions regarding the project. Specifically, I need to know if ERC has a different opinion about whether we need to process any additional discretionary approvals, or whether there are specific improvements that we should try to request from the project. (This last part may be hard to do if we do not require an approval other than a Building Permit)

Should ERC desire, the applicant is available to attend a regular ERC meeting and discuss the project and answer any questions you may have.

Please review the attached project description and forward me any comments you may have. I have copies of an article regarding the contribution of the Ethanol Industry to the economy, and a Morgan Stanley Analysis of the economics of the industry if you are interested.

Thank You.



Stanislaus County
Public Works Department
Development Services Division
1010 10th Street, Ste.3500, Modesto, California 95354

THIS PERMIT WILL EXPIRE IF WORK IS NOT STARTED WITHIN 90 DAYS OF ISSUE OR IF THERE IS A WORK STOPPAGE OF 180 DAYS DURING CONSTRUCTION.

Phone (209) 525-6557
24 Hr. Inspection Request
525-7550

PERMIT

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm that I am licensed under provision of Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code and my license is in full force and effect.

License Number _____ Class _____
Signature [Signature] Date 7-3-06

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractor's License Law for the following reason (Sec 7031.5 Business and Professions Code: Any City or County that requires a permit to construct, alter, improve, demolish or repair any structure prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractor's License Law (Chapter 9) (commencing with section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500):

I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.)

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to any owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors License Law.)

I am exempt under Sec. _____ B & P.C. for this reason: _____

Owner's Signature _____ Date _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:
 I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by section 3700 of the Labor Code, for the performance of the work for which the permit is issued.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance and policy number are:

Carrier State Comp

Policy Number 1560463

(This section need not be completed if the permit is for one hundred dollars (\$100) or less)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the labor code, I shall forthwith comply with those provisions.

Applicant [Signature] Date 7-3-06

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. Code.).

Lender's Name _____

Lender's Address _____

APPLICATION APPROVAL

This Permit Does Not Become Valid Until Signed By The Building Official Or Their Deputy And All Fees Are Paid.

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to construction, and hereby authorize representatives of this county to enter upon the above mentioned property for inspection purposes.

SIGNED [Signature] Date 7-3-06

Permit #: BLD2006-02148

Received by: HALLK

APN: 045-26-34

Job site: 4209 Jessup Rd
Ceres

Application Date 6/30/2006

Issued: 7/3/2006 By: KH

Plan Chk By: [Signature]

Job Description: GRADING PERMIT FOR A. L. GILBERT COMPANY
CUT 7598 CU YDS, FILL 17651 CU YDS C/S FAITH HOME RD.

Owner:
A L GILBERT
PO Box 38
Oakdale, CA 95361-0038

Contractor: 700619
KEVIN FEES
P. O. BOX 869
PIXLEY, CA 93256

847-1721

559-901-6969

Architech/Engineer: 6152

R B. WELTY
521 13TH STREET
MODESTO, CA 95353

526-1515

Type of Constr:	Occupancy:	
Use:	Sq. Ft.	Valuation:

(Not all may be shown) Total Valuation:

Work Included:	Setbacks:
Electric:	Front:
Plumbing:	Right:
Mechanical:	Left:
	Rear:

Total Fees: 858.66

Conditions: (Not all may be shown) Inspector Area 2

- 1) N. O. I. FILING DATE: JUNE 19, 2006
- 2) Please provide contractor information



Stanislaus County
Public Works Department
 Development Services Division
 1010 10th Street, Ste.3500, Modesto, California 95354

180 DAYS OF ISSUE OR IF THERE IS A WORK STOPPAGE OF 180 DAYS DURING CONSTRUCTION.

Phone (209) 525-6557
 24 Hr. Inspection Request
 525-7550

PERMIT

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm that I am licensed under provision of Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code and my license is in full force and effect.
 License Number _____ Class _____
 Signature [Signature] Date 7-3-06

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractor's License Law for the following reason (Sec 7031.5 Business and Professions Code: Any City or County that requires a permit to construct, alter, improve, demolish, or repair any structure prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractor's License Law (Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500):
 I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale, if, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.)
 I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec 7044, Business and Professions Code: The Contractors License Law does not apply to any owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors License Law.)
 I am exempt under Sec. _____ B. & P.C.
 for this reason: _____

Owner's Signature _____ Date _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:
 I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by section 3700 of the Labor Code, for the performance of the work for which the permit is issued.
 I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit issued. My workers' compensation insurance and policy number are:
 Carrier State Fund
 Policy Number 15004103
 (This section need not be completed if the permit is for one hundred dollars (\$100) or less)
 I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the labor code, I shall forthwith comply with those provisions.
 Applicant [Signature] Date 7-3-06

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3087, Civ. Code).
 Lender's Name _____
 Lender's Address _____

APPLICATION APPROVAL

This Permit Does Not Become Valid Until Signed By The Building Official Or Their Deputy And All Fees Are Paid.

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to construction, and hereby authorize representatives of this county to enter upon the above mentioned property for inspection purposes.

SIGNED [Signature] Date 7-3-06

Permit #: **BLD2006-02149** Application Date **6/30/2006**
 Received by: **HALLK** Issued: **7/3/2006** By: **KH**
 APN: **045-26-35** Plan Chk By: **TR**
 Job site: **Jessop Rd**
KE

Job Description: **GRADING PERMIT FOR A. L. GILBERT COMPANY / CUT 15930:**

Owner: **A. L. GILBERT COMPANY** Contractor: **700619 KEVIN FEES**
P. O. BOX 38 **P. O. BOX 869**
OAKDALE, CA 95361 **PIXLEY, CA 93256**

559-901-6969

Architech/Engineer: **6152 R. B. WELTY**
521 13TH STREET
MODESTO, CA 95353

526-1515

Type of Constr:	Occupancy:	
Use:	Sq. Ft.	Valuation:

(Not all may be shown) Total Valuation:

Work included:	Setbacks:
Electric:	Front:
Plumbing:	Right:
Mechanical:	Left:
	Rear:

Total Fees: **538.92**

Conditions: (Not all may be shown) Inspector Area **2**

1) N. O. I. FILING DATE: JUNE 19, 2006

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7027

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FAX: (650) 589-5082

tguleserian@adamsbroadwell.com

SACRAMENTO OFFICE

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SACRAMENTO CA 95814-4010

TEL: (916) 444-8201

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MARC D. JOSEPH
OSMA R. MESERVE
SUMA PEEBAPATI
GLORIA D. SMITH

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL

September 1, 2006

FOR IMMEDIATE DELIVERY

By Facsimile and Overnight Mail

Seyed Sadredin
Air Pollution Control Officer
San Joaquin Valley Unified Air Pollution Control District
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Fax: (559) 230-6061

Re: Illegal Construction - Cilion Ethanol Project in Keyes, Stanislaus County

Dear Seyed Sadredin:

We are writing on behalf of the California Unions For Reliable Energy to notify the San Joaquin Valley Unified Air Pollution Control District that the Air District must order Cilion, Inc. to immediately halt illegal construction of its proposed 55 Million Gallon Per Year Corn Dry Mill Ethanol Plant and Wet Distillers Grain Plant ("Project") located at and adjacent to 4209 Jessup Road in Keyes near Turlock in Stanislaus County. This illegal construction must cease until Cilion applies for and receives all required permits for the Project in compliance with the Air District rules and regulations, the California Environmental Quality Act and all other local, state and federal laws and regulations applicable to the proposed Project.

We understand that Cilion has begun constructing the Project without an Authority to Construct from the Air District. Specifically, the Properties have been graded, foundations are being constructed and rebar is being installed and is visible approximately six to twelve inches above the graded surface. A drainage pond basin may also have been excavated on the property.

September 1, 2006
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Cilion's construction of the Project is illegal. Under the Clean Air Act, California's State Implementation Plan and Air District Rules, no new major stationary source shall begin construction without a permit. (Air District, Rule 2010; 40 C.F.R. § 52.21(a).) Construction specifically includes installation of building supports and foundations. (40 C.F.R. § 52.21 (b)(11) (prohibited activities include anything of a permanent nature, such as installation of building supports and foundations).) Since the Air District has not issued any permits for construction of the Project, including construction of foundations, the Air District must order Cilion to immediately halt construction of the Project.

In addition, before the Air District issues any permit for the Project, the Air District must conduct full environmental review of the proposed Project, pursuant to CEQA. Cilion may not construct the ethanol plant, or any component of the Project, before the completion of this CEQA review. Since CEQA review is only now beginning, no permits should be issued for the Project, and Cilion should not be undertaking any actions in furtherance of the Project. (See, *San Joaquin Raptor v. Stanislaus* (1994) 27 Cal.App.4th 713.)

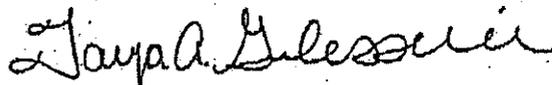
In *San Joaquin Raptor v. Stanislaus*, the court enjoined "all activities . . . in furtherance of the development project pending full compliance with CEQA." (See, *San Joaquin Raptor v. Stanislaus*, 27 Cal.App.4th at 742.) The court even enjoined activities without a direct environmental impact, such as surveying, because without an injunction, the court found that "momentum will build and the project will be approved no matter how severe the environmental consequences identified in the new EIR. . . . Additional mitigation measures . . . will be both more difficult to effect and less likely to occur." (*Id.*; see also, *Burbank Airport v. Hensler* (1991) 233 Cal.App.3d 577, 595-96 (airport project enjoined pending CEQA review); *Day v. Glendale* (1975) 51 Cal.App.3d 817 (EIR is required prior to site grading).)

We strongly urge the Air District to immediately order Cilion to stop construction pending receipt of all necessary permits in compliance with the Air District rules and regulations, CEQA and all other applicable local, state and federal laws and regulations.

September 1, 2006
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Thank you for your attention to this matter.

Sincerely,



Tanya A. Gulesserian

TAG:bh

cc: Deborah Montrosso, Senior Air Quality Specialist
Jim Swaney, Permit Services Manager – Northern Region
Philip M. Jay, District Counsel

September 1, 2006

Page 4

bcc: Richard Harriman

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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SOUTH SAN FRANCISCO, CA 94080-7037

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SACRAMENTO OFFICE

1225 8th STREET, SUITE 660
SACRAMENTO, CA 95814-4810

TEL (916) 444-6201
FAX (916) 444-6200

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MARC D. JOSEPH
OSMA R. MESERVO
SUNJA PEECAPATI
GLORIA D. SMITH

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL

September 1, 2006

FOR IMMEDIATE DELIVERY

By Facsimile and Overnight Mail

Ron E. Freitas, Director
Department of Planning and Community Development
Stanislaus County
1010 10th Street
Suite 8400, 3rd Floor
Modesto, CA 95354
Fax: (209) 525-5911

George Stillman, Director
Public Works Development Services
Stanislaus County
1010 10th Street
Suite 3500
Modesto, CA 95354
Fax: (209) 525-6507

Michael H. Krausnick
County Counsel
Stanislaus County
1010 Tenth Street, Suite 6400
Modesto, CA 95354
Fax: (209) 525-4473

Members of the Environmental Review Committee
Stanislaus County
1010 Tenth Street, Suite 6400
Modesto, CA 95354
Fax: (209) 525-5911

Re: Cilion Ethanol Project - Illegal Grading and Construction

September 1, 2006

Page 2

Dear Mr. Freitas, Mr. Stillman, Mr. Krausnick and Members of the Environmental Review Committee:

We are writing on behalf of the California Unions For Reliable Energy to notify Stanislaus County that the County must order Cilion, Inc. to immediately halt illegal grading and construction of its proposed 55 Million Gallon Per Year Corn Dry Mill Ethanol Plant and Wet Distillers Grain Plant ("Project") located at and adjacent to 4209 Jessup Road on Assessor Parcel Numbers ("APNs") 045-026-034 and 045-026-035 in Keyes near Turlock in Stanislaus County. Construction must cease until Cilion applies for and receives all required permits for the Project in compliance with the Stanislaus County Code, the California Environmental Quality Act ("CEQA"), and all other local and state laws and regulations applicable to the proposed Project.

We understand that Cilion has begun grading and constructing the Project on two parcels: APN 045-026-034 which is zoned Industrial District (M) and APN 045-026-035 which is zoned Planned Development District (P-D) (collectively, "Properties"). Specifically, the Properties have been graded, foundations are being constructed and rebar is being installed and is visible approximately six to twelve inches above the graded surface. A drainage pond basin may also have been excavated on the property which is zoned Planned Development.

Cilion's construction of the Project is illegal. While the County has issued permits to grade the Properties, Cilion has not applied for and the County has not issued any permits for construction of the Project, including construction of foundations and a drainage pond.

In addition, the Stanislaus County Code governing development in an Industrial District, such as APN 045-026-034, requires certain industrial uses to first obtain a discretionary use permit. (Stanislaus County Code, Chap. 21.60.) All industrial uses are subject to numerous requirements, such as height limits, setbacks, screening, parking, and maximum lot coverage, among others, some of which also require a discretionary use permit under certain circumstances. (Stanislaus County Code, Chaps. 21.60 and 21.08.)

In a Planned Development District, such as APN 045-026-035 where Cilion may be illegally constructing a drainage pond, all proposed uses require discretionary approval of a development plan by the planning commission. (Stanislaus County Code, Chap. 21.40.) Like development in the Industrial District,

September 1, 2006

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development in the Planned Development District is subject to numerous requirements, such as height limits, setbacks, screening, parking, and maximum lot coverage, among others. (Stanislaus County Code, Chaps. 21.40 and 21.08.) Thus, Cilion is clearly required to obtain permits prior to constructing its Project, and the County must order Cilion to immediately halt all construction on the Properties.

However, the County cannot issue any permits until the San Joaquin Valley Unified Air Pollution Control District ("Air District") has completed its environmental review of the proposed Project, pursuant to CEQA. The Air District is at the earliest phase of the CEQA process for the Project. Cilion may not construct the ethanol plant, or any component of the Project, before CEQA review is completed. The County may not grant any permits for the Project until after CEQA review is completed. Since CEQA review is only now beginning, no permits should have been issued for the Project, and Cilion may not undertake any actions in furtherance of the Project. (See, *San Joaquin Raptor v. Stanislaus* (1994) 27 Cal.App.4th 713.)

In *San Joaquin Raptor v. Stanislaus*, the court enjoined "all activities . . . in furtherance of the development project pending full compliance with CEQA." (See, *San Joaquin Raptor v. Stanislaus*, 27 Cal.App.4th at 742.) The court even enjoined activities without a direct environmental impact, such as surveying, because without an injunction, the court found that "momentum will build and the project will be approved no matter how severe the environmental consequences identified in the new EIR. . . . Additional mitigation measures . . . will be both more difficult to effect and less likely to occur." (*Id.*; see also, *Burbank Airport v. Hensler* (1991) 233 Cal.App.3d 577, 595-96 (airport project enjoined pending CEQA review); *Day v. Glendale* (1975) 51 Cal.App.3d 817 (EIR is required prior to site grading).)

Also, before the County issues any permits for the proposed Project, the County must either act as a responsible agency under CEQA by ensuring that the Air District fully evaluates all potentially significant impacts from the proposed Project, or conduct independent environmental review of the proposed Project's impacts. County staff has informed us that, even when Cilion applies for a permit, County staff considers a building permit for the proposed 55 million gallon ethanol plant to be a "ministerial" action which is exempt from environmental review. County staff's opinion, however is contrary to the plain language of CEQA. The issuance of a grading permit, building permit and any other required permits for a project of the magnitude described by Cilion qualifies as a "discretionary" rather

September 1, 2006

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than a "ministerial" action triggering environmental review pursuant to CEQA. (See, *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259.)

In *Friends of Westwood*, the Court admonished the City of Los Angeles for arguing that a building permit for a 26-story, 363,000 square foot, \$88 million multiple-use tower was "ministerial" under CEQA and thus exempt from environmental review. Under CEQA, a permit is "ministerial" only if the ordinance requiring the permit limits the public official "to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee." (CEQA Guidelines § 15369.) The Court determined that the legislative history of CEQA indicates that the term "ministerial" is limited to those approvals which can be legally compelled without modification or change. (See, *Friends of Westwood v. City of Los Angeles*, 191 Cal.App.3d at 269.) "It is enough that the [agency] possesses discretion to require changes which would mitigate in whole or part one or more of the [significant or potentially significant] environmental consequences an EIR might conceivably uncover." (*Id.*) After reviewing the actions of the city, the Court found that the city was not limited to determining whether the proposed highrise was allowed in the zone and complied with strength requirements. (*Id.* at 277.) Instead, the Court found that the city retained the discretion to set standards for many important phases of the project and to insist on modifications in the building plans to conform with those standards. (*Id.* at 277-278.)

Even if the County retains no discretion whether to approve an ethanol plant in an industrial zone, the proposed Project also involves development on the adjacent parcel, which is zoned Planned Development. Authorizing any portion of the Project on this parcel is unquestionably discretionary. Significantly, CEQA and the case law are absolutely clear that where a project approval involves elements of both a ministerial action and a discretionary action, "the project will be deemed to be discretionary and will be subject to the requirements of CEQA." (Guidelines 15268(d); see, *Day v. City of Glendale* (1975) 51 Cal.App.3d 817 (finding that a grading permit was a discretionary action under CEQA).)

In this case, the record is already clear that the County's review of Cilion's Project involves discretionary aspects which are subject to CEQA. The Project proposes a 55 million gallon per year, \$60 million, 200 proof ethanol plant and wet distillers grain plant. Major equipment includes a hammermill, baghouse, six cooking tanks, three liquefaction tanks, six 600,000 gallon stainless steel

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fermentation tanks, one 1,250,000 gallon stainless steel beer well, chillers, a cooling tower, steam boilers, steam turbines, distillation systems, steam evaporators, multiple tanks for ethanol, sulfuric acid, stillage and water, among other liquid elements and other major equipment. A new drainage pond is also required and proposed on the adjacent Planned Development parcel

Corn will be delivered weekly to the site by train and approximately 72 trucks will ship out ethanol and wet distillers grain *each day*. Approximately 100 employees will drive to and from the site during construction and over 40 employees will drive to and from the site during operation *each day*. The plant is also expected to have in a later phase a carbon dioxide plant to capture and process carbon dioxide, a by-product of the fermentation process for ethanol. There will be at least an additional 10 trucks per day from the carbon dioxide plant.

Again, the record is already clear that the County's review of Cilion's multi-million dollar ethanol project involves discretionary aspects which are subject to CEQA. According to public records, County staff approved two grading permits to cut 23,528 cubic yards of soil and fill 17,651 cubic yards of soil on the Properties. According to public records, County staff is conducting a review of development plans, which involve discretionary decisions regarding moving irrigations pipes and structures located on the Properties, amending an existing development plan (PD-129), shifting development around the Properties, installing high voltage lines and service to the Properties, including constructing a structure for the utilities to service the ethanol plant, where to approve placement of centrifuges for wet distillers grain, and whether to allow stockpiling of wet grain on the pavement in the Planned Development zoned area. Another key discretionary decision which must be made is regarding development of a proposed drainage pond on the Planned Development parcel

Other public agencies also consider the County's review of the proposed Project to be discretionary. For example, on June 15, 2006, the California Department of Transportation sent a letter to the Stanislaus County Planning Department requesting "a complete Traffic Impact Study to determine this proposed project's near-term and long-term impacts to State facilities - both existing and proposed - and to propose appropriate mitigation measures (cost estimates)." (See Letter from Dumas to Kachel, June 15, 2006 (emphasis added).) The Department of Transportation set forth specific requirements for the Traffic Impact Study and recommended that the developer submit a scope of work for the study prior to circulating the local development application for comment.

1916-005a

September 1, 2006

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CEQA applies when a public agency is considering approval of a discretionary permit for a project.¹ A permit for a project is discretionary if the public agency is required to exercise judgment in deciding whether to approve or disapprove a particular activity.² Before approving a discretionary project, CEQA requires a public agency to determine whether the project is exempt from environmental review or whether a negative declaration or an environmental impact report ("EIR") must be prepared.³ An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment."⁴

A grading permit, a building permit and a use permit for a 55 million gallon per year, \$60 million ethanol plant are clearly discretionary permits for a project that may have significant adverse environmental impacts. Therefore, the County's issuance of any such permits are subject to environmental review under CEQA.⁵

The County must immediately order Cilion to stop construction pending receipt of all necessary permits in compliance with the Stanislaus County Code, the California Environmental Quality Act and other local and state laws.

Thank you for your attention to this matter.

Sincerely,



Tanya A. Gulesserian

TAG:bh

cc: Stanislaus County Board of Supervisors (Fax: 209-525-4410)
Ray Simon, Chairman, Board of Supervisors
William O'Brian, Supervisor
Thomas Mayfield, Supervisor

¹ 14 Cal. Code Reg. ("CEQA Guidelines") §15352.

² CEQA Guidelines §15357.

³ Pub. Res. Code § 21080.

⁴ Pub. Res. Code § 21080(d); CEQA Guidelines § 15064(a)(1); see also *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322.

⁵ Pub. Res. Code § 21080(d).

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September 1, 2006
Page 7

ccs: continued:

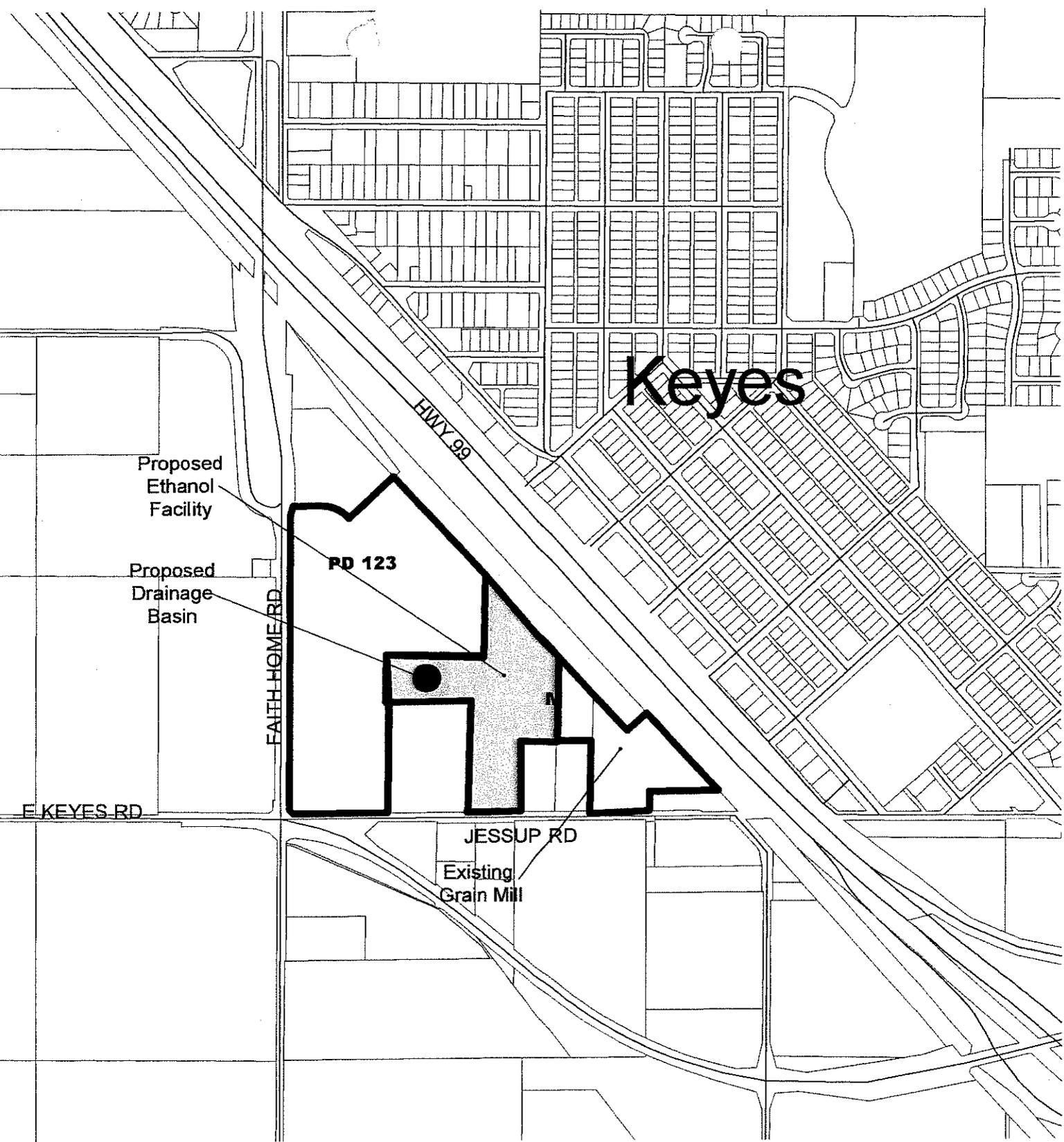
Jeff Grover, Supervisor

Jim DeMartini, Supervisor

Tom Dumas, Chief, Office of Intermodal Planning (Fax: 209-948-7194)
California Department of Transportation

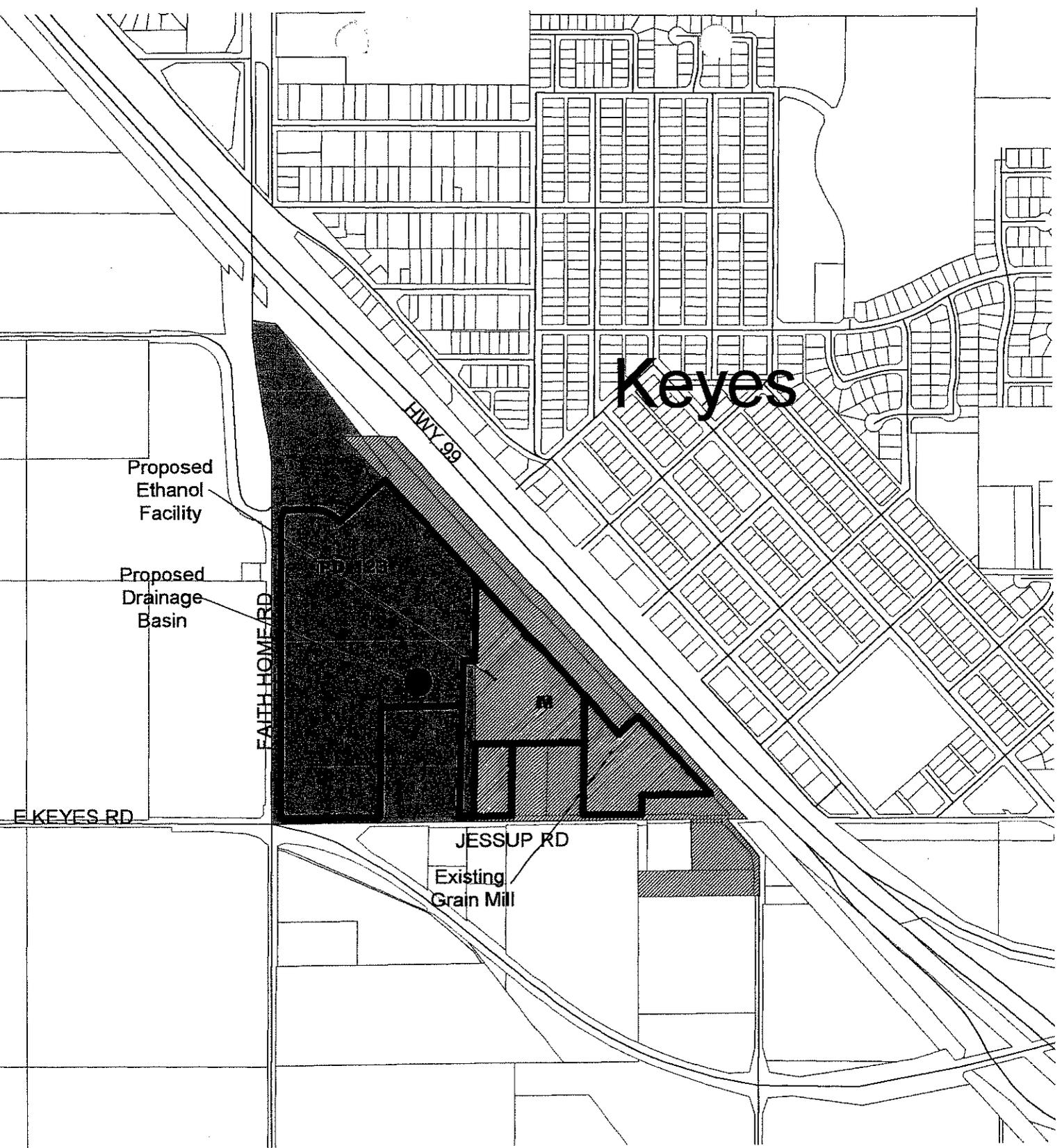
September 1, 2006
Page 8

bcc: Richard Harriman



Cilion Ethanol Plant Site

LLA 2006-45
SAA 2007-09



Cilion Ethanol Plant and Gilbert Feeds Sites
 Zoning and Parcel locations
 Prior to Lot Line Adjustment

LLA 2006-45
 SAA 2007-09

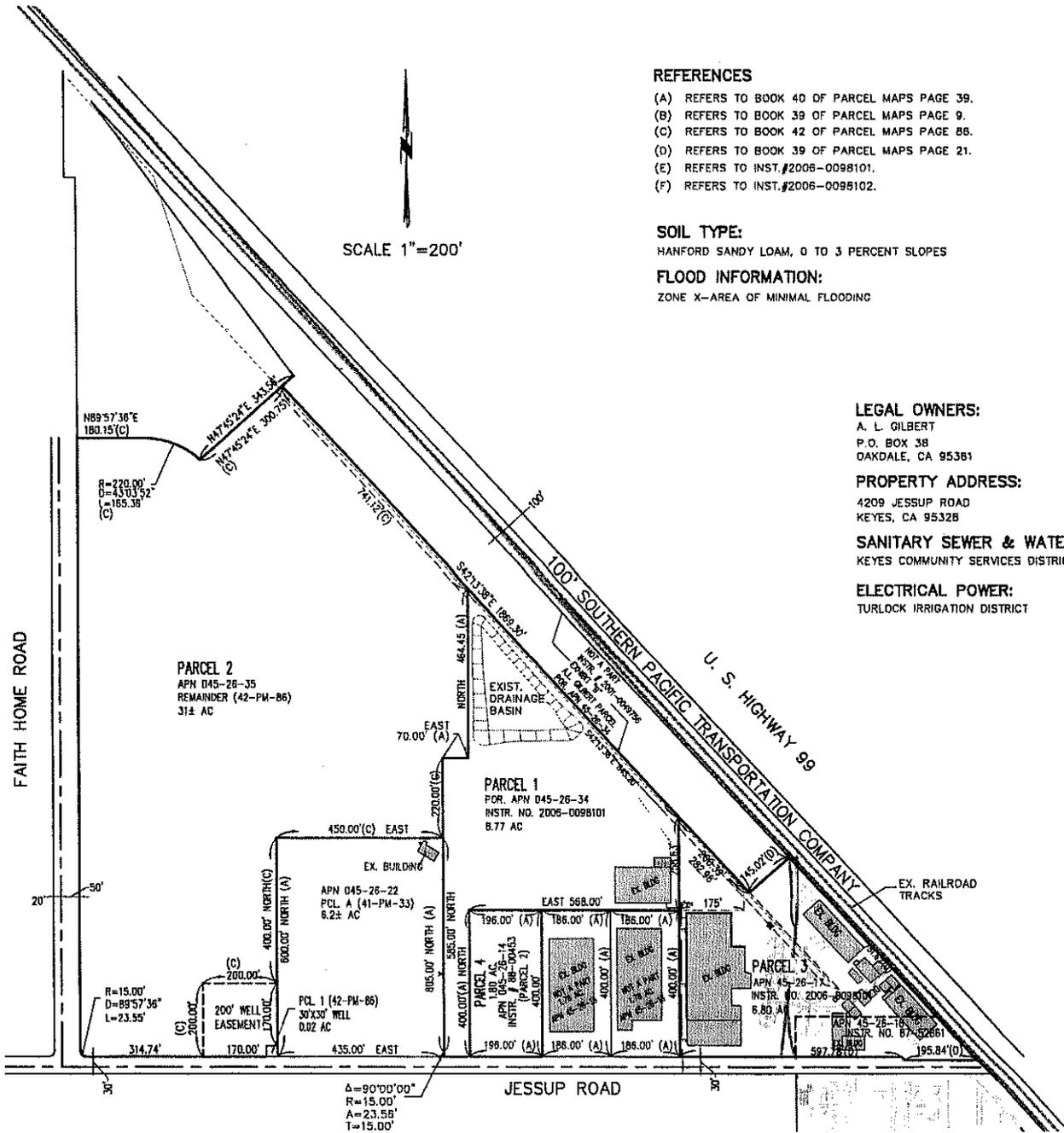
Zoning Designations



Planned Development 123



Industrial



REFERENCES

- (A) REFERS TO BOOK 40 OF PARCEL MAPS PAGE 39.
- (B) REFERS TO BOOK 39 OF PARCEL MAPS PAGE 9.
- (C) REFERS TO BOOK 42 OF PARCEL MAPS PAGE 88.
- (D) REFERS TO BOOK 39 OF PARCEL MAPS PAGE 21.
- (E) REFERS TO INST.#2006-0098101.
- (F) REFERS TO INST.#2006-0098102.

SOIL TYPE:
HANFORD SANDY LOAM, 0 TO 3 PERCENT SLOPES

FLOOD INFORMATION:
ZONE X-AREA OF MINIMAL FLOODING

SCALE 1"=200'

LEGAL OWNERS:

A. L. GILBERT
P.O. BOX 38
OAKDALE, CA 95361

PROPERTY ADDRESS:

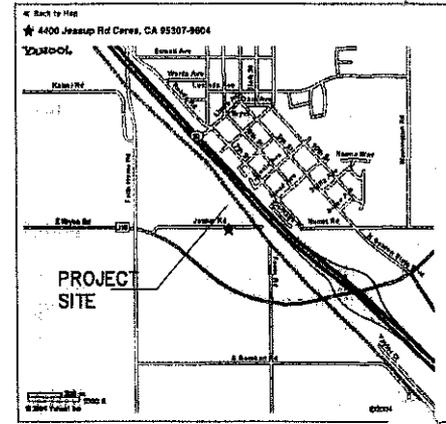
4209 JESSUP ROAD
KEYES, CA 95328

SANITARY SEWER & WATER:

KEYES COMMUNITY SERVICES DISTRICT

ELECTRICAL POWER:

TURLOCK IRRIGATION DISTRICT



LEGEND:

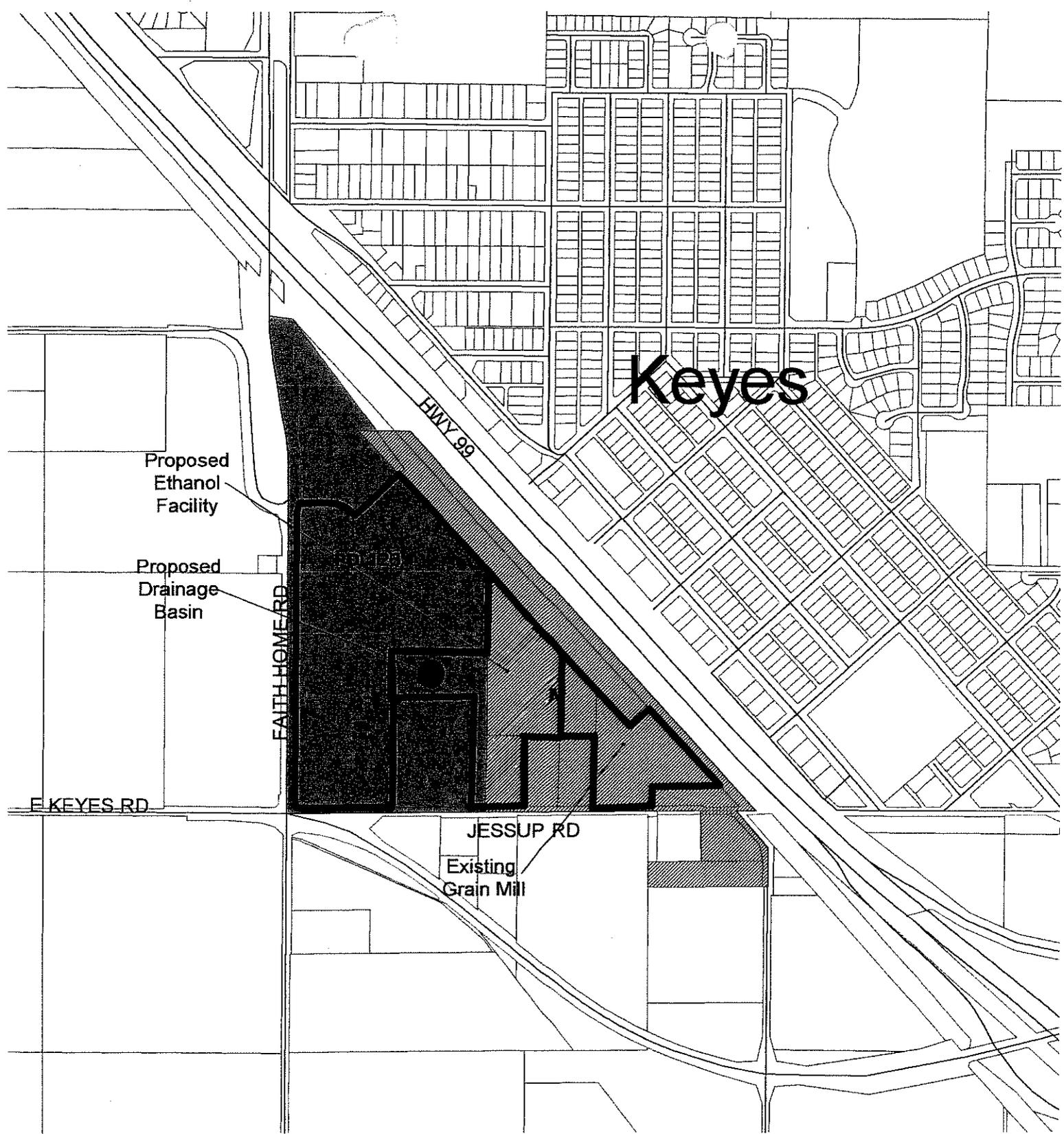
- X — FENCE
- W — WATER LINE
- G — GAS LINE
- SS — SANITARY SEWER LINE
- F — FIRE LINE
- — PARCEL LINE
- — EASEMENT LINE
- EX. BLDG. — EX. BUILDING

BEFORE LOT LINE ADJUSTMENT MAP

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN, STANISLAUS COUNTY

DATE: AUGUST 31, 2006
JOB# 75161

R.B. WELTY & ASSOCIATES, INC.
521 13TH STREET / P.O. BOX 1724
MODESTO, CALIFORNIA 95354
(209) 526-1515 FAX 523-3383

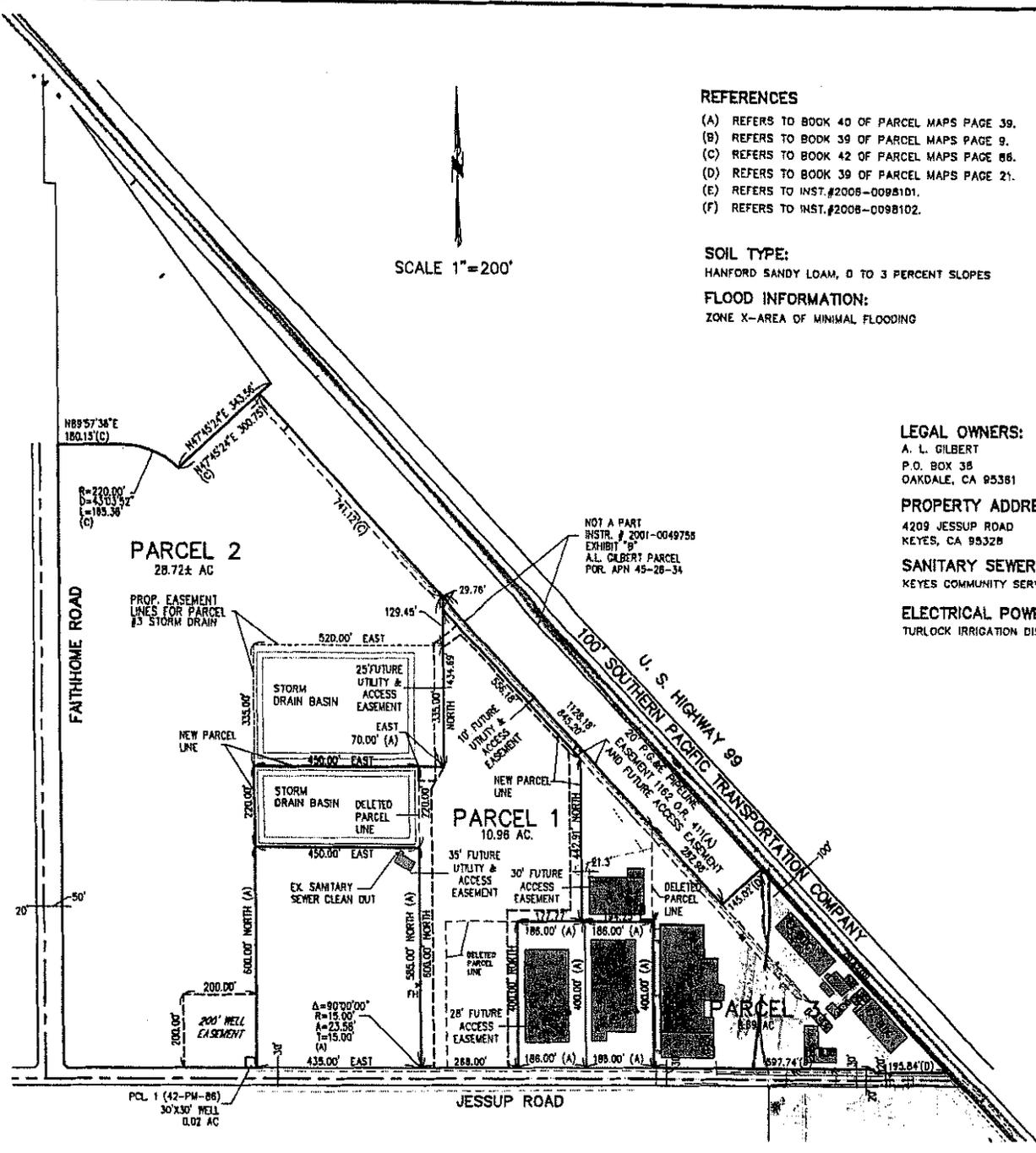


Cilion Ethanol Plant and Gilbert Feeds Sites
 Zoning and Parcel locations
 AFTER Lot Line Adjustment

LLA 2006-45
 SAA 2007-09

Zoning Designations

-
Planned Development 123-
Industrial

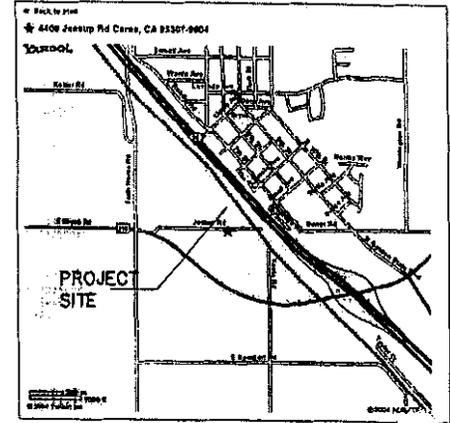


REFERENCES

- (A) REFERS TO BOOK 40 OF PARCEL MAPS PAGE 39.
- (B) REFERS TO BOOK 39 OF PARCEL MAPS PAGE 9.
- (C) REFERS TO BOOK 42 OF PARCEL MAPS PAGE 88.
- (D) REFERS TO BOOK 39 OF PARCEL MAPS PAGE 21.
- (E) REFERS TO INST.#2008-0098101.
- (F) REFERS TO INST.#2008-0098102.

SOIL TYPE:
HANFORD SANDY LOAM, 0 TO 3 PERCENT SLOPES

FLOOD INFORMATION:
ZONE X—AREA OF MINIMAL FLOODING



LEGAL OWNERS:

A. L. GILBERT
P.O. BOX 38
OAKDALE, CA 95381

PROPERTY ADDRESS:

4209 JESSUP ROAD
KEYES, CA 95328

SANITARY SEWER & WATER:
KEYES COMMUNITY SERVICES DISTRICT

ELECTRICAL POWER:
TURLOCK IRRIGATION DISTRICT

LEGEND:

- X — FENCE
- W — WATER LINE
- G — GAS LINE
- SS — SANITARY SEWER LINE
- F — FIRE LINE
- — PARCEL LINE
- - - - EASEMENT LINE
- — EX. BUILDING

AFTER LOT LINE ADJUSTMENT MAP

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 SOUTH RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN, STANISLAUS COUNTY

DATE: AUGUST 14, 2006
JOB# 75161

R.B. WELTY & ASSOCIATES, INC.
521 13TH STREET / P.O. BOX 1724
MODESTO, CALIFORNIA 95354
(209) 526-1515 FAX 523-3383

CHAPTER 21.60

INDUSTRIAL DISTRICT (M)

SECTIONS:

21.60.010	APPLICABILITY
21.60.020	PERMITTED USES
21.60.030	USES REQUIRING A USE PERMIT
21.60.040	HEIGHT LIMIT
21.60.050	YARDS
21.60.060	NUISANCES
21.60.070	SCREENING
21.60.080	OFF-STREET PARKING
21.60.090	LOT COVERAGE

21.60.010 APPLICABILITY

The regulations set forth in this chapter shall apply in all M districts and shall be subject to the provisions of Chapter 21.08. (Ord. CS 106 Sec. 12 (part), 1984).

21.60.020 PERMITTED USES

Uses permitted in M districts:

- A. Wholesale and distribution establishments, service establishments, public and quasi-public buildings; junkyards, wrecking yards and auto dismantling yards; and all uses permitted in the C districts except dwelling units of any kind unless otherwise specifically permitted in this zone (Ord. CS 896, Sec. 9, 2004);
- B. All industrial uses except those specified in Section 21.60.030;
- C. Outdoor advertising signs which are nonflashing and nonanimated;
- D. One mobile home when appurtenant and secondary to a permitted use with substantial outside storage subject to provisions of Chapter 21.72;
- E. One identification or informational sign not more than twelve square feet in area nor more than six feet in height may be permitted in the front yard or side yard adjacent to each street frontage in lieu of any other freestanding sign, provided that:
 1. It does not bear any advertising message,
 2. It is nonflashing, nonmoving, and nonanimated,
 3. It is located wholly on private property on the premises to which it pertains,
 4. A plot plan and elevation of the sign is approved by the director of planning and community development prior to request for building or electrical permits and installation;

21.60.020 Permitted uses

- F. Crop farming;
- G. Ballrooms, commercial clubs, dance halls, drive-in theaters, night clubs, stadiums and tent or open-air churches. However, when located within two hundred feet of the boundary of an R district, a use permit shall first be secured;
- H. Single-family dwelling or one apartment if it is accessory to a permitted commercial or industrial use;
- I. Christmas tree sales lots provided they meet the required setbacks and provide at least ten accessible and usable off-street parking spaces in addition to one space per employee on a maximum shift. Such lots shall be limited to two double-faced signs not to exceed twelve square feet each. No off-site signs shall be permitted. Such lots may not be established prior to November 15 of any year and shall be removed and the property returned to its original condition prior to January 1;
- J. Fireworks stands provided they meet all required setbacks and provide at least five usable and accessible off-street parking spaces in addition to one space per employee on a maximum shift. Such stands shall meet all the requirements of the department of fire safety and shall be erected and removed within the time period prescribed by that department;
- K. Adult businesses as allowed by the provisions of Chapter 21.68; (Ord. CS 607, Sec. 3, 1995; Ord. CS 106, Sec. 12 (part), 1984)
- L. All retail stores and wholesale retail stores which have a building and sales area less than 65,000 square feet or greater. (Ord. CS. 896, Sec. 10, 2004)

21.60.030 USES REQUIRING A USE PERMIT

Uses permitted, subject to first securing a use permit in each case:

- A. Distillation of bones, disposal, dumping, sanitary landfill; incineration or reduction of dead animals, garbage, offal, refuse or sewage; and fat rendering;
- B. Manufacturing of acid, cement, compressed gases, fertilizer, fungicides, glue, gypsum, hides, insecticides, lime, paper pulp, pesticides, plaster of paris or poison gas;
- C. Manufacture of explosives, or fireworks, and storage of explosives;
- D. Feed lots, stockyards, slaughter of animals or poultry;
- E. Refining of petroleum products, smelter of copper, iron, tin, zinc or other ores and metals;

21.60.030 Uses requiring a use permit

- F. Drilling for, or removal of gas, oil or commercial removal of minerals, earth or other materials;
- G. Go-cart tracks, motor vehicle rides, race tracks, rifle ranges, skeet ranges, motorcycle tracks and motorcycle hill climbs. (Ord. CS 106 Sec. 12 (part), 1984).
- H. All retail stores and wholesale retail stores with a gross building and/or sales area of 65,000 square feet or greater. (Ord. CS 896, Sec. 11, 2004)

21.60.040 HEIGHT LIMIT

Height limit in M districts:

- A. Building and appurtenant structures, seventy-five feet;
- B. Fireproof structures (excluding advertising structures) not used for human occupancy, no height limit;
- C. Separate standing advertising structures, thirty-five feet;
- D. No fence or screen planting in excess of three feet in height shall be constructed or permitted to grow within any required front yard, or side yard of a corner lot, unless the director determines that visibility will not be obstructed;
- E. Additional height may be granted for advertising signs, transmitting towers, storage towers, and structures not used for human occupancy, provided that a use permit is first secured in each case. (Ord. CS 106 Sec. 12 (part), 1984).

21.60.050 YARDS

Yards required in M districts:

- A. Front Yard and Side Yards of Corner Lots.
 - 1. Not less than seventy feet from the existing centerline of the street nor less than fifteen feet from the planned street line on a major street or expressway, whichever is the greater. Loading docks shall be so located that trucks will head-in and head-out and not use the public street for maneuvering, loading and unloading. The vehicle opening of any building shall be no closer than twenty feet to the property line toward which the opening faces;
 - 2. Not less than forty-five feet from the existing centerline of the street on a collector street (sixty feet wide) nor less than fifteen feet from the planned street line where a specific plan has been adopted. Loading docks shall be so located that trucks will head-in and head-out and not use the public highway for maneuvering, loading or unloading. The vehicle opening of any building shall be no closer than twenty feet to the property line toward which the opening faces;

21.60.050 Yards

3. Not less than forty feet from the existing centerline of the street on a minor street (fifty feet wide) nor less than fifteen feet from the planned street line where a specific plan has been adopted. Loading docks shall be so located that trucks will head-in and head-out and not use the public highway for maneuvering, loading and unloading. The vehicle opening of any building shall be no closer than twenty feet to the property line toward which the opening faces;
4. The side yards of corner lots may be five feet less than the required front yard for the main building.

B. Side Yard of Interior Lot and Rear Yard. To be governed by the Uniform Building Code for use or occupancy and type of construction. (Ord. CS 106 Sec. 12 (part), 1984).

21.60.060 NUISANCES

No operation shall be conducted on any premises in such a manner as to cause an unreasonable amount of noise, odor, dust, smoke, vibration, or electrical interference detectable off the site. (Ord. CS 106 Sec. 12 (part), 1984).

21.60.070 SCREENING

An eight-foot masonry wall shall be constructed along the property line adjacent to any residential or agricultural zone or any P-D zoning for residential use, except where a building abuts an alley in which case no wall shall be required. (Ord. CS 106 Sec. 12 (part), 1984).

21.60.080 OFF-STREET PARKING

See Chapter 21.76 for off-street parking requirements for all uses in all districts. (Ord. CS 106 Sec. 12 (part), 1984).

21.60.090 LOT COVERAGE

Percentage of lot coverage, total area of building, maximum seventy-five percent. (Ord. CS 106 Sec. 12 (part), 1984).



May 11, 2006

TO: Stanislaus County ERC
FROM: Kirk Ford 
Deputy Planning Director
RE: A.L. Gilbert Proposed Ethanol Plant

AL Gilbert and Ethanol West propose to construct an ethanol distilling plant at the existing AL Gilbert properties at the Keyes Road/Hwy 99 Interchange. A project description and site plan is attached.

The site is zoned "**Industrial**" and the General Plan Designation is also "**Industrial**". As a supplemental use to the existing grain and feed mill, they propose to bring one additional trainload of corn per week to the site, and ship out about 3.3 to 4.5 million gallons of ethanol per month (19-22 trucks per day). A by product of the distillation is "wet distillers grain" which is a high protein feed. They expect an additional 44-50 trucks per day leaving the site to distribute the feed. A later phase will capture CO₂ and they expect an additional 10 trucks per day to distribute that.

Because the site has the proper zoning and General Plan designation for the use, I believe that all we need do is process a building permit and that no additional discretionary approvals (Use Permits or Staff Approvals) are necessary.

However, because of the scope of this project, I felt it was wise to inform ERC of the project and to solicit any comments or concerns the ERC members may have, before we made any final decisions regarding the project. Specifically, I need to know if ERC has a different opinion about whether we need to process any additional discretionary approvals, or whether there are specific improvements that we should try to request from the project. (This last part may be hard to do if we do not require an approval other than a Building Permit)

Should ERC desire, the applicant is available to attend a regular ERC meeting and discuss the project and answer any questions you may have.

Please review the attached project description and forward me any comments you may have. I have copies of an article regarding the contribution of the Ethanol Industry to the economy, and a Morgan Stanley Analysis of the economics of the industry if you are interested.

Thank You.

Ethanol West Keyes, CA
55 MM Gallon per Year Corn Dry Mill Ethanol Plant

A.L. Gilbert- Berry Feed and Seed which operates as a grain storage and feed facility and Ethanol West, LLC plan to expand the feed mill to include a 55 million gallon ethanol plant and wet distillers grain plant. The plant will be expanded northeast of the existing feed mill operations.

EXPANSION PLANS

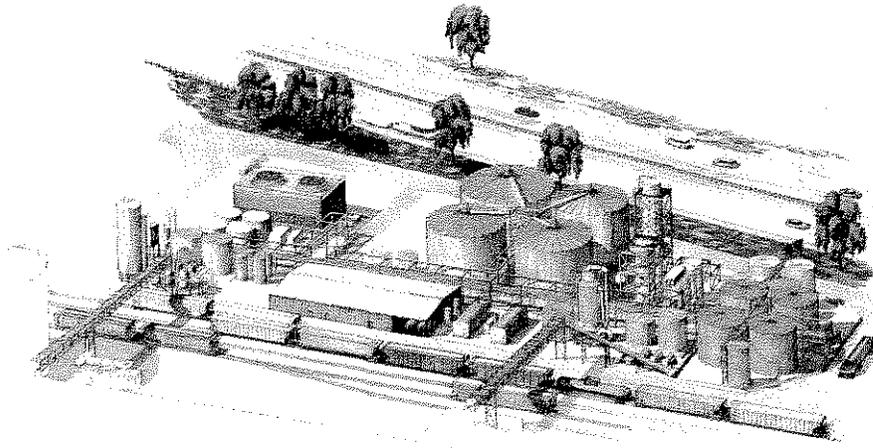
Background on Ethanol Plant Expansion

Ethanol West, LLC and Western Milling, LLC built the first corn-to-ethanol plant in California this past year in Goshen (near Visalia). In August 2005 the United States Senate & Congress passed an Energy Bill which was signed by the President. This new law requires an increase in ethanol production that will double production and use in the United States over the next 7 years, from 4 billion to 8 billion gallons per year. Ethanol is used in California gasoline today (5.7%) as an oxygenate, reducing emissions and helping improve air quality. Currently ethanol demand is being met by rail cars of ethanol being transported from the Mid-West, Canada and South America to the California fuel hubs where it is then trucked to the local markets. This Keyes site will reduce the need for this rail and truck service and supplement it with direct truck service from Keyes to the Bay Area fuel blenders. It will also provide the added benefit of reducing California's reliance on imported fuel.

The timing of constructing this plant is important. It has become a goal of the United States to:

1. Reduce dependence on imported oil;
2. Reduce the trade deficit that is negatively impacted by importing oil;
3. Increase the supply of refined fuel to reduce prices to the consumer;
4. Improve air quality and reduce greenhouse gases.

This ethanol plant will help accomplish these goals.



25,000,000 gal/yr. CORN DRY-MILL ETHANOL PRODUCTION FACILITY
GOSHEN, CALIFORNIA
Phoenix Bio Industries, LLC

The Goshen Ethanol Facility Looking Southwest

The Keyes plant is being designed to produce 55 million gallons of 200 proof ethanol per year.

Process Description

Corn will be received at the ethanol plant from A.L. Gilbert's expanded grain operation by conveyor. Ground corn is combined with thin stillage and boiler water blow down water (concentrates from steam production) to form a slurry. The slurry or mash is then heated to 190 F° and the alpha-amylase enzyme is added to begin the liquification process where the complex starch molecule is broken down. From the cook area the slurry is pumped to tanks where liquification continues.

After reducing the temperature of the slurry, it is pumped into large fermenters. Another enzyme (gluco-amylase) is added to the fermenters along with yeast. The enzyme helps produce glucose for the yeast to process into ethanol and CO₂. Following 48 to 60 hours of fermentation, beer or distilling material (DM) containing 13-15% alcohol is pumped to a 1.25MM gallon beer well tank.

DM is fed from the beer well to a distillation system. Steam is fed to the distillation system DM to boil. The alcohol is vaporized and concentrated to 95 % by volume or 190 proof. The 190 proof alcohol is pumped to the 190 proof alcohol storage tanks. It is then passed through a molecular sieve where the remaining 5% water is removed producing 200 proof or anhydrous alcohol. This anhydrous alcohol is pumped from the molecular sieve to product storage, where it is denatured with 2-5% hydrocarbon and shipped to customers for blending with gasoline.

The distillation process takes the alcohol from the slurry making what are called still bottoms. These alcohol-free still bottoms or whole stillage are passed through decanter

centrifuges which concentrate the slurry to a 30% solids wet distillers' grain, which is shipped to local area livestock operations as a high value feed.

Another by-product of the centrifuge process is the liquid portion known as thin stillage. This thin stillage is fed to an evaporator where it is concentrated from 5% solids to 25 to 35% solids and called syrup. This syrup may be combined with the wet distiller's grains or sold as a liquid feed. Water recovered from thin stillage concentration is returned to the front end of the process for grain hydration and blending.

Heat is produced for cook, liquification, distillation and evaporation from boilers. There will be some portions of the boiler feed water that will not vaporize. This "blowdown" will be blended with thin stillage and become part of the make-up water for the cooking process. Sixty-five percent or so of wet distiller grains and syrup is made up of water. Water that will be used in the boiler(s), cleaning-in-process and in the process itself is either evaporated or sent out in wet distillers grain or syrup.

Cooling steps in the process are ultimately accomplished with cooling towers and chillers. A by-product of the cooling tower process is a concentration of the conductivity and solidity of the water ("blowdown") due to the evaporation that occurs during cooling. This water will need to be discharged and or treated.

OTHER ISSUES

1. Ethanol West expects to pay competitive wages with good benefits to personnel hired to work in the completed facility. In addition we expect that many of the designated trades used during construction will be paid prevailing wage. The ethanol plant will be a separate LLC and Ethanol West expects to own about 10-20% of the business.
2. Ethanol Traffic
On a regional basis the ethanol plant will offset the ethanol trucks that are brought into other locations and transported to Bay Area fuel blenders. The plant when at full production will have about 19-22 trucks per weekday of ethanol that will leave the site. Total ethanol production will be about 3.3 to 4.5 million gallons per month.
3. Wet Distillers Grain Traffic
Part of the ethanol process is to take corn into the process and a by-product is wet distillers grain, a high protein animal feed. On a regional basis the ethanol plant will not cause more feed to be consumed in the area, it will offset other feed that is brought in by rail or truck to local animal operations. All of the wet distillers grain is expected to be consumed within a local area of about 100 miles. There will be about 44 to 50 trucks of wet distillers per day. In our Goshen site, to address emission and odor issues all of these trucks are tarped and the product moves daily. Total wet distillers production will be about 35,000 tons per month.

4. CO₂ Traffic

Part of the ethanol process has CO₂ as a by-product of the fermentation process. The plant is expected to have in a later phase part of the development a CO₂ plant that will capture and process this for use in the beverage industry. It is expected that there will be about 10 trucks per day from the CO₂ plant. Total CO₂ production will be about 7,500 tons per month.



Ethanol West's Goshen, CA Ethanol Facility Looking North

Major Equipment (Proposed)

- (1) corn hammermill
- (1) baghouse
- (6) 10,000 mash cooking tanks
- (3) 44,000 mash liquification tanks
- (6) 600,000 gallon stainless steel fermentation tanks
- (1) 1,250,000 gallon stainless steel beer well
- (2) 600 ton chillers
- (2) 1,000 ton cooling tower
- (2) 60,000 #/hr. 550 psi water tube steam boiler
- (2) Multi-stage back pressure steam turbine
- (2) Multiple column distillation system
- (2) Multiple effect steam evaporator
- (4) 66,000 gallon in process ethanol tanks
- (1) 1,000,000 gallon ethanol tanks
- (2) 44,000 gallon whole stillage tanks
- (2) 30,000 gallon thin stillage tanks
- (1) 60,000 gallon syrup tank
- (1) 20,000 gallon boiler water tank
- (2) 10,000 gallon enzyme tanks
- (1) 10,000 gallon sulfuric acid tank
- (2) 60,000 gallon chilled water tanks
- (4) 30,000 gallon heated water tanks
- (1) 24,000 gallon yeast propagation tank
- (1) 10,000 gallon urea tank
- (1) 10,000 gallon caustic tank
- (3) 20,000 gallon cleaning and rinse tanks
- (4) molecular sieve alcohol dehydration system
- (6) 150 hp decanter centrifuges
- (1) 40,000 gallon denaturant (natural gasoline) tank

Summary of Economic Benefits

Ethanol Production is a rare win- win situation for all segments of our society. It uses corn and other agricultural products strengthening our rural economy; it lowers the level of greenhouse gases in the atmosphere, making the environment cleaner. Ethanol production also lessens our dependence on foreign oil, allowing us to keep more money in the American economy where it can help improve the lives of average Americans.

In addition, there are several direct benefits that accrue directly the local economy from the construction of an ethanol plant I that region including.

- The project will bring 100 new construction jobs and over 40 new full time jobs to Keyes
- The plants cost will be over \$60 million. Construction will bring a one time boost of \$140 million to State and Local economies
- The plant will generate 850 new permanent jobs and over \$209 million for the local economy
- This project will generate \$30 million in household income
- The project will generate \$1 million in new tax revenue for State and Local governments

These are just some of the economic benefits of an ethanol plant in your area, Attached is a report further detailing more of the contributions that are fomented by ethanol production. Thank you for your time.

Next Page