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VIA ELECTRONIC MAIL ONLY

Board of Supervisors
Mendocino County
E-Mail: bos@mendocinocounty.org

Re: January 26, 2021 Board of Supervisors Meeting Agenda Item 8(a)

Dear Honorable Directors:

This office represents Navarro Vineyards and Pennyroyal Farm in the matter involving the Anderson Valley Community Services District plan to construct a wastewater treatment plant and subsurface disposal system (WWTP) on the Mendocino Fairgrounds. To be clear, while both Navarro Vineyards and Pennyroyal Farm are opposed to locating the WWTP on the Fairgrounds property, they are not opposed to the project if it is located on a different and suitable site with less environmental, economic, visual and numerous other impacts.

However, as an initial matter and the sole purpose of this letter is to question the ability of the Board to consider Item 8(a) at this meeting and request that the item be removed from the Agenda. We received notice of this item late today at approximately 4:30 pm. It appears that his item was added to the agenda after the original agenda was posted. Agenda Item 8 is entitled "Modifications to the Agenda" and states: "Items added to the agenda subsequent to agenda publication, up to 72 hours in advance of the meeting, pursuant to Government Code section 54954." While I have no additional facts regarding when and how this item was added to the Agenda, it seems clear by its description that the item was added after the agenda was posted and within 72-hours of the meeting. Thus, as I shall explain, if the Board were to take action on item 8(a) at this meeting it would be in clear violation of the Brown Act since the item was not posted on the agenda within 72-hours of the meeting (as it was added later), and it is not a proper exception to items that may be added to the agenda within 72-hours. Therefore, we respectfully request the Board remove this item from consideration and take no action on it.

Agenda Item 8 refers to California Government Code section 54954 which is simply general rules regarding posting of agendas, when and where meetings can be held, etc. but this section does not address when items can be added to an agenda once posted, or within 72-hours of the meeting. That situation is addressed in Government Code 54954.2. While it is a long statute, reduced to its pertinent parts section (a) (1) repeats the 72-hour agenda posting requirement, and subsection (a)(3) contains very limited exceptions to allow agenda items to be added within 72-hours of a meeting. That subsection states:

b) Notwithstanding subdivision (a) [stating no action may be taken on items not on the agenda], the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior

to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

Cal. Gov. Code § 54954.2, bracketed part added for clarification.

The facts do not appear to support that any of the three exceptions above apply to the situation where this Board added Agenda item 8(a), and thus, Item 8(a) must be removed from the Agenda. Under exception (1), there is clearly no emergency situation that would allow the Board to add this agenda item. A review of Government Code section 54956.5 shows that an emergency that would qualify for this exception would be:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

Obviously, granting access to Anderson Valley CSD to access the site for investigations and studies does not meet the definition of emergency to allow that exception to apply.



The closest exception is (2), assuming the correct voting numbers were reached, but again, there is no evidence that "there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted". The proposed WWTP project has been around for years and the CSD's laser-focused desire to gain access to the Fairgrounds has also been known for several years (at the expense of other good sites). The memo attached to the agenda item is dated January 11th, at least 10-days before the agenda for this meeting was posted. Thus, there is no way that the Board in good faith can make either of the required findings to use this exception. That leaves the 3rd and final exception was clearly is not applicable. Based on all of the above, we respectfully request that the Board remove agenda item 8(a) and take no action in order not to violate the Brown Act.

We are troubled by the fact that this agenda item appears to have been "snuck onto" the agenda and consider that to be in bad faith. This is not in the spirit of the Brown Act nor is it proper when such a significant project sited where it is proposed could have major detrimental impacts to your beloved Fairgrounds and the surrounding community. Interested parties should have the right to properly participate, and sneaking items on an agenda doesn't allow for that. We hope nothing like this happens again, and request to receive notice of any future agenda items for the WWTP.

As I said at the opening of this letter, Navarro Vineyards and Pennyroyal Farm is not opposed to a well-designed, correctly sited WWTP, and we look forward to working cooperatively with the CSD and Mendocino County to help make that a reality for the community. However, siting the WWTP at the Fairgrounds is not that project, and if the CSD continues on that path we will vigorously oppose that.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



SCOTT A. MORRIS

SAM

cc: Deborah Cahn

