

RETTIG - FORGETTE - ILLER - ADAMSON
ATTORNEYS AT LAW

ATTORNEYS

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hl@rettlaw.com

July 6, 2017

File No. 16-150
B-No. 6188.0011

Yakima County Public Services
Planning Division
Attn: Dinah Reed, Senior Project Planner
4th Floor Courthouse
128 North 2nd Street
Yakima, WA 99301

Re: **Case No. CUP2016-19/SEP2016-00007**
Applicant: Frysian Ranch

**WRITTEN COMMENTS IN OPPOSITION TO PROPOSAL
FROM
MENSONIDES DAIRY AND ART AND TERESA MENSONIDES**

These comments are submitted on behalf of Mensonides Dairy, LLC and Art and Teresa Mensonides ("Mensonides"). The Mensonides Dairy is at 305 South Fisher Road, Mabton, WA 98935 adjacent to the project. The Mensonides also live on that property.

The Mensonides have previously submitted comments regarding this proposal.

Exhibit 1 hereto is a true and accurate copy of the April 21, 2016 comments submitted to Yakima County Public Services on behalf of Mensonides, and those comments are incorporated herein as though fully set forth.

Exhibit 2 hereto is a true and accurate copy of the May 10, 2017 comments submitted to Yakima County Public Services on behalf of Mensonides, and those comments are incorporated herein as though fully set forth.

In addition, certified professional agronomist Stuart A. Turner has submitted comments to Yakima County public services regarding this proposal.

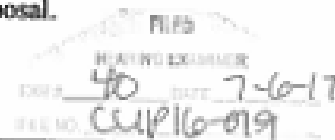


Exhibit 3 hereto is a copy of Mr. Turner's April 19, 2016 comments regarding the project, and those comments are incorporated herein as though fully set forth.

Exhibit 4 hereto is a copy of Mr. Turner's May 8, 2017 comments regarding the project, and those comments are incorporated herein as though full set forth.

A. SUMMARY OF UNADDRESSED CONCERNS FROM PRIOR COMMENTS.

1. Cumulative Impacts of Area AFO/CAFO Not Addressed.

Mensonides requested that the County consider cumulative impacts of this proposed project in light of existing AFO/CAFO uses. See Exhibit 1, p. 2. There are already over 27,000 head of cattle in nearby AFOs and CAFOs. The current MDNS makes no findings regarding the cumulative impacts of the proposed project on the area.

2. Unnecessary Location of CAFO Next to Pre-Existing Residential Uses.

Mensonides pointed out that the proposed 77 acre CAFO was located next to a medium density housing area, even though the Owner's land is over 1,456 acres, which would allow location farther away from these homes. See Exhibit 1, pp. 1-2. The current MDNS makes no mention of the incompatibility of these uses and the availability of a better, more compatible area for the project.

3. Road Plan Is a Sham.

Mensonides and Turner pointed out that the project claims to use a 2 mile road from Glade Road in the West to access the location. (Exhibit 1, page 3; Exhibit 3 pages 2-3; Exhibit 4, page 2). Mr. Turner has provided photographic proof that the property is being accessed from a different location for its current usage (manure storage and dead cow disposal). There is no condition in the current MDNS that precludes use of this other access.

4. Continued Violations of Environmental Regulations. Mensonides and Turner have pointed out the Owner's and related parties continual violation of

environmental regulations and good agronomic practices, including those related to disposal of animal carcasses, manure stockpiling, and dumping of household and industrial trash. See Exhibit 1, pp 3-4 (manure) and p. 4 (Dumping); and Exhibit 3, page 3, paragraph 6 and 7. Mr. Turner has provided photographic evidence of these events. The current MDNS contains no conditions that effectively regulate these continued illegal and/or environmentally risky actions, and instead authorizes the use of the property for a CAFO on the hope and a prayer that the Owner will follow regulations that he has continually violated.

5. Environmental Risks of CAFO in Flood Plain. Mr. Turner pointed out that the site is partially in the flood plain and that portions were underwater during a May, 2015 storm event, as well as above the SVID Mabton Lateral Canal. The current MDNS makes no conditions to address these continued illegal and/or environmentally risky actions.

B. DEFECTS IN CURRENT MDNS WHICH SHOULD BE MODIFIED:

Mensonides identify the following portions of the MDNS which should be reversed or modified.

1. Threshold Determination Should be a DS Rather than MDNS. The County's decision to issue a Mitigated Determination of Non-Significance (MDNS) rather than a Determination of Significance (DS) is erroneous. The principals and operators of the proposed CAFO have repeatedly violated environmental and regulatory standards. No enforcement has ever effectively worked against this operator. Examples of environmental and regulatory disregard:
 - a. Road Usage: The Owner and its related entities have demonstrated that they will never use road access from West. The property has been used for more than a year the Applicant has been in constant violation of his own representation as to how the property will be accessed. Aerial and ground images prove that trucks are using access from East rather than from the West.
 - b. Current Use of Property for Carcass Disposal Violates Existing Land Use Rules. Mass graves of over a thousand cow carcasses are already dumped on

site in violation of existing regulations found in WAC Ch. 16-25, including but not limited to WAC 16-25-025.

- c. Destruction of Proposed Environmental Buffer. Applicant promises to maintain an environmental buffer, but the first thing done on the site by the Owner was to mow, down to the dirt, the existing shrub steppe habitat with a large flail mower. This has created and will continue to create dust and destroyed the possibility of any environmental buffer in the areas mowed.

2. Water Impacts Inadequately Investigated and Protected.

- a. Development Will Not Be Properly Managed. The MDNS finds that there will be no adverse effect on water quality "if development is properly designed and managed." There is strong evidence that the development will not be properly managed, even if properly designed. This evidence shows multiple violations of environmental regulations and best farm practiced. The facility located at downhill end of property where water will accumulate and the water will become contaminated. In 2015, there was more than five acres covered with standing water from a spring runoff event. Yakima County Public Services has been provided with multiple photos showing other environmental violations by the Owner at related operations.
- b. Exempt Water Wells Will Impact Nearby Water Rights.

Applicants have already drilled two large production wells under the livestock exemption. The livestock exemption is from permit requirements, not from the legal duty to avoid impairment to older wells from the use the new wells. There is a nearby well previously owned by DNR but then transferred to Martinez Livestock. Martinez Livestock is in the process of developing that well for irrigation, and that well is prior in priority. This well and the associated water right was not included by the consultant retained by applicant. There is no indication in the MDNS that impacts to this well and the associated water right were considered.

3. Impacts to Air Quality Inadequately Conditioned

The proposed mitigation is a dust control plan. There is no condition for continued enforcement of a dust control plan or termination of the development if that plan is violated. This CAFO is to grow raise dairy cows and should be

subject to the higher standard associated with Dairy CAFOs. Because of the number of cattle that will be present, they should have a Dairy Air Quality Plan from the Yakima County Clear Air Authority. Further, the Dairy Air Quality Permit has enforcement mechanisms that are lacking in a simple dust control plan. That process involves site inspection and scoring as opposed to a simple dust control plan that is generally limited to the construction phase of the project.

Again, the mowing operation that has already occurred has already caused a number of dust events.

4. Environment Health Conditions are Based on Erroneous Facts And Are Inadequate.

There are obvious errors and inadequacies with these conditions. As to Mitigation Measure C1, lining a pond will do nothing to prevent larvae. Manure handling in the pens is what is critical to prevent larvae development. Existing management on the site is to haul manure out once a year.

Mitigation Measure C2 is a reasonable condition in theory, but there is no meaningful enforcement provision, and the applicant's current activities on the site indicate there is no basis to hope and pray that the applicant will follow such measures. This site has become the dumping ground for manure and animal carcasses from the dairies owned by the same Owner and his relations.

Mitigation Measure C4: The Owner is currently in violation of the state and local laws that apply to the site regarding dead animal disposal. Mortalities from all of Owner's related dairies are being dumped on this site. The Owner and his family own five dairies, and approximately 200 dead cows are being delivered every week to the site and being buried in mass graves in violation of WAC 16-25-025. Hundreds of pictures have already been provided to Yakima County Public Services by Agronomist Stuart Turner on a thumb drive that shows beyond doubt or debate that the Applicant is violating the currently applicable requirements for burial of carcasses.

Mitigation Measure C6 again is inadequate in light of the continued violation of environmental regulations by this Owner on this site and in its related operations. Again, these would be more fully addressed and enforced through a dairy air permit which would be more detailed and have enforcement mechanisms.

Mitigation Measure C7: This operation is already an integrated part of the dairy operations at five locations by the same operators because it is being used for carcass and manure disposal.

Who is going to enforce this condition? How is going to be enforced? So far, WSDA and WDOE have attempted to enforce environmental laws against these operators and have been unsuccessful in generating long term compliance. There is no basis for Yakima County to conclude that the mere stating of conditions will reduce impacts below significance.

Complaint Management: The complaint management condition is inadequate. The Owner's proposed complaint manager is Jacob Veldhuis, the Owner's father, who lives 15 miles away. Ruud Veldhuis, the Owner and manager of the subject sight, has stated that he will be living on the site. Accordingly, he will be onsite and it will remove the potential for miscommunication or claims of miscommunication of complaints to the Owner. Jacob Veldhuis has a history of misrepresentation and dishonesty regarding his violations of environmental regulations, including misrepresentations to Virginia Prest, Manager of WSDA Dairy Inspection and Dan McCarty, WSDA Dairy Inspector regarding operations at current CAFOs. There is no basis in fact to believe that a complaint management system will be effective to reduce impacts below significance.

5. Plants and Animals:

As noted above, the applicant has already mowed the entire parcel that is the subject of this application, therefore there can be no meaningful conservation easement. It takes at least 20 years to reestablish shrub steppe. Accordingly, there is no factual basis for the conclusion that the proposed environmental buffers will exist, will be maintained or will be effective to reduce impacts below significance.

C. DESIRED RELIEF:

1. **Reverse the MDN and Make a Determination of Significance.** This proposed CAFO requires a full Environmental Impact Statement that considers all water rights that might be impaired, and considers the environmental impacts of a CAFO of this size in this location that is operated by someone who has demonstrated a pattern of noncompliance with environmental regulations, a pattern of violation of best agricultural practices, and has submitted an application that promises to maintain environmental buffers that the applicant has already destroyed.

2. First Alternative, include a condition that any single violation of a condition will result in the closing of the CAFO.
3. Second Alternative, require CAFO to obtain and operate pursuant to Dairy Air Quality Plan from the Yakima County Clean Air Authority.

Respectfully submitted this 6th day of July, 2017.

RETTIG FORGETTE ILLER ADAMSON, LLP

By: 

BRIAN J. ILLER, WSBA #16150

BJI/ef

cc: Mensorides Dairy, LLC

a/binary document(s) work not mensorides v/d/b/a/ find call apply/cd/letter comment for hearing class data

EXHIBIT I

Ketting • Forgyte • Her • Adamson

ATTORNEYS

David R. Ketting • Francis E. Forgyte • Brian J. Her • Cheryl E.S. Adamson • Belle Schenk Pedersen • G. Christy Stevens
Judicial Services Center

Personal E-mail: dk@kettlaw.com

For Mailing Use

April 21, 2016

Via U.S. Mail To:
Yakima County Public Services
Planning Division
Attn: Dinah Reed, Senior Project Planner
4th Floor Courthouse
128 North 2nd Street
Yakima, WA 99301

Via Email To:
dinah.reed@co.yakima.wa.us
hana.detricks@co.yakima.wa.us

Re: CUP 2016-019 and SEPA 2016-007
PRH Enterprises/Wind Mill Estates Foodlot Proposal (Veldhuis)

Comments on behalf of Mensonides Dairy, LLC.

Dear Ms. Reed:

This firm represents Mensonides Dairy, LLC which owns land in the vicinity of this proposed project.

These comments are submitted on behalf of Mensonides Dairy, LLC. They have been developed with the assistance of Stuart Turner, Certified Professional Agronomist. Mr. Turner will make himself available to Yakima County Planning should it want additional information on the subject proposal and on Mensonides Dairy's concerns about that proposal. His mobile phone number is 509-539-5524.

The principal behind this project is Jacob Veldhuis, who owns five dairies which combined would constitute one of the largest dairy operations in

8725 West Clearwater Ave. • Kennewick, WA 98558 • Tel: 509.783.6104 • Fax: 509.783.0868 • www.kettlaw.com

Exhibit I - 001

Washington State. It is obvious from roadside and aerial observation that four of facilities are at or over the desired animal density. Removing the calf element from those four facilities would be an overall desirable goal if done in an appropriate manner and at an appropriate location. Unfortunately, neither appears to be the case.

It is critical to view the subject proposal in light of the now-withdrawn proposal CUP 2015-00350 by Mr. Veldhuis and the objections thereto by Mensonides and other neighbors. That proposal would have created a mammoth feedlot complex with all age classes that could have ultimately housed up to 72,000 total head. That proposal was withdrawn in the face of severe technical problems and local resident opposition, and now submit this application for the first two age classes exclusively for calves (70-150#, 150-350#).

The current proposal downsizes from that extreme proposal. We consider the environmental "footprint" of cattle primarily on the basis of an AUM (animal unit month) basis relating to daily water requirements (25-45 gallons a day) and manure and urine output (varies depending on diet). With 1500 hutches and two calves per hatch, and two age classes, about 6,000 calves will be on site at projected capacity.

SUMMARY OF MENSONIDES DAIRY, LLC'S CONCERNS

1. Cumulative APO/CAFO Impacts Must Be Considered.

The current proposal contains no discussion about the population density for other APO/CAFO operations in the immediate vicinity. Adjoining the subject parcel to the West is the Van Boven calf ranch which currently contains about 15,000 calves. Just Northeast of the proposed site is the Mensonides intermediate calf operation with about 1,000 calves. To the East is the Martinez sheep camp, which is seasonally operated during the lambing season with 1,000+ head of sheep. East of that facility is the main Mensonides Dairy with a total cow capacity of around 8,000 head all age classes. Adjoining the Mensonides to the North is the former Hansen dairy, now owned and operated by Veldhuis with an estimated 3,000 cows on site.

2. Proposed CAFO Is Unnecessarily Adjacent To Pre-Existing Residential Uses.

Directly North of the proposed site is an area of medium density housing just outside of the City of Mabton; see attached Google Earth image. The subject proposed facility would be the closest APO/CAFO to this medium density housing area. Stu Turner spoke to Zan and Suzi Straux, who are

basically next door to the operation to the North. For unknown reasons they had NOT received the Yakima County Planning notice concerning CUP 16-019. Perhaps this was an unintentional oversight in your department. However, that lack of notice is especially important because the project proponent has selected the 77 acres closest to the neighboring residential area out of the 1456.94 acre parcel. This location is unnecessary. Veldhuis purchased a 520 acre parcel from Horrigan Farms Inc. (HFI) which is located West and South of the proposed location, much further from the many affected homeowners who live adjacent to the selected site. The HFI site is far more advantageous for this proposed feedlot for other reasons. The HFI property is split by (paved) Glade road, and has power already along the roadside, unlike the current proposed location.

Mensonides has experience with Veldhuis as a neighbor, and it is not good. Veldhuis has, in the past, improperly disposed of dead cows by partially burying them right on the property line nearest Mensonides Dairy. Further, he has a history of complaints regarding manure handling. Those neighbors are at risk, and at least one received no notice of the proposal.

Without waiting for any approval from Yakima County Planning or any permits Veldhuis immediately destroyed the delicate and declining shrub-steppe habitat, which had remained untouched with the exception of light grazing for a two month period in early spring by a neighbor (Martinez sheep).

3. Applicant's Submitted Road Plan Appears to be A Sham intended to Mislead Yakima County Planning As to The Actual Traffic Patterns.

Veldhuis claims that the main route of access will be an almost 2 mile-long access road from Glade Road from the West to the site. This quite obviously will not be the primary access route and is apparently a "decoy" designed to minimize the likely actual transportation impacts to the neighborhood. The actual primary route of access has been established quite vividly and indisputably by the pattern of the applicant's activities on this site since inception. Here is the evidence to support that assertion:

- a. Site Preparation Equipment Used Different Route. The project site was fall mowed to ankle height last year by equipment which accessed the site from a residential easement it acquired in one of the purchases which included a house and small acreage. The equipment and personnel which worked over several weeks to complete this task came and went daily from the nearby Veldhuis dairy located East of S. Fisher Road, and South of Hwy 22. It should be noted that this activity destroyed essentially pristine shrub-steppe habitat, 80% of which, based on the current proposal, was not necessary.

- b. A Different Route Is More Improved For Traffic Than the Claimed Primary Route And Is Not Discussed in the Application. The actual likely primary route is shown highlighted in BLUE on the attached Exhibit "A" which is a Google Earth Image of the subject area. Over the winter the applicant built a large, concrete and steel bridge to span the Mabton Lateral SVID canal, see Exhibit B, photo #9671 taken on April 19, 2016. Close examination shows this is a new and presumably expensive structure and is also showing HEAVY truck traffic. Exhibit C, Photo #9683, shows a truck of Veldhuis wet raw manure crossing this new bridge. Exhibit D contains a series of photos showing the entire sequence of loading raw manure, exiting onto S. Fisher Road, turning West on Rusk Road, and turning South on the newly created road and crossing the new bridge to the project parcel. The applicant was silent about in the SEPA application. Exhibit E, photo #9726, is a photo of the road the applicant claims is the primary access from Glade Road. On close examination, the photo shows that only the first .5 mile of this almost 2 mile long road was ever widened and graveled to create the appearance of a main access road. Accordingly, based on actual use, distance, and physical attributes, it is clear that the access from Glade is not likely to be used as the primary road and is a decoy to avoid concerns about the large quantities of manure that will be crossing over the Mabton Lateral canal.

- c. Exhibit A, outlined in GREEN, is the Glade Road route Veldhuis has told you his workers will take to the site; feed will be trucked in; calves will be rotated in and out; equipment will go in and out. Further, it is obvious that the site is currently being used for stockpiling of manure from Veldhuis' Highway 22 dairy. The road outlined in BLUE is the newly improved (with new bridge) route that Veldhuis is currently using to move manure to the site. It is highly likely that the applicant's workers and suppliers will take the short, highlighted in BLUE route, which is about 1/4 as long as the Green route that they represent will be the primary access. The strongest evidence of this is the actual behavior of the applicant. For the past week an average of one truck every 5 minutes during daylight hours has been dumping manure stockpiled for the past year on the Highway 22 dairy. Please review the accompanying USB drive for the many other photos documenting this process and the route taken by the Veldhuis (applicant) equipment and employees.

4. Current Manure Stockpile Use Does Not Meet Agronomic Standards And Creates An Environmental Hazard.

As noted above, the site is currently being used for manure stockpiling. The site was not graded and compacted in accordance with NRCS guidelines. There are no berms or other containment to prevent runoff of the stockpiled manure. That creates an enormous environmental hazard should heavy rains

or cloudbursts occur on the stockpiles - there is nothing to prevent offsite movement.

This site was not graded and compacted in accordance with NRCS guidelines contained in the 317 Standard. There is a need for protection for groundwater in this area - so this site should have been graded, leveled, watered and compacted to the standard. Then water control features - designed to prevent runoff and run on from storm events needs to be added. This facility sits in a flood plain, and portions of this site were under water last May after the 1.5"+ storm event. Yakima County must insist on creation of a site matching all NRCS 317 requirements before considering issuing a determination on this pending application. If Yakima County does approve the site, it needs to have this requirement in the conditional use permit.

5. Additional Traffic Impacts.

All this truck traffic on the route they are and will be using is causing traffic on the segment of Rusk Road between S. Fisher and Phillips to more than triple. This is an unpaved road so there is a ton of dust generated daily. When Yakima County approved the Mensonides SEPA for the dairy at 305 S. Fisher Road, they required matching funds to pave S. Fisher from Hwy 22 to Rusk Road. Mensonides paid 100% of the balance of the road onto the dairy property extending about ¼ mile to the Southeast. If Yakima County approves this SEPA a condition of approval should be cost share at least 50% for the unpaved section of Rusk Road. Photos on the USB Drive show the truck traffic and resulting dust.

6. Existing Violations of Dumping Rules.

Veldhuis is in violation of both County and State dumping rules. Exhibit F (Photos #9681 and #9682), which when the viewed digitally in zoom mode (digital copies will be provided with the hard copy of this letter) clearly shows household and industrial trash along with what appears to be yard debris on this specific site. Exhibit G (images 1508 thru 1512) is a series of ground images showing this disgusting carnage along with plastic pipe, which cannot be dumped or buried either.

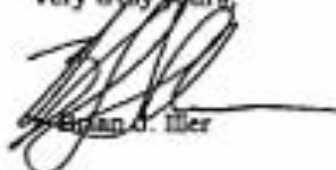
Photo #9682 is an aerial shot taken of the same site as the two prior photos, but date of photography is earlier, 4-17-2016. You will find visible a mass burial, in violation of the existing WAC, of as many as 70 head of dead, mature dairy cows. Such behavior is the best forecast of what can be expected should Yakima County allow this operator a permit to operate another CAFO in Yakima County to not just continue, but expand operations on this site.

7. It seems that this proposal is a direct response to the poorly conceived application last year for a much larger complex that could have, at full build out had over 70,000 cows on site. Mensonides Dairy's concern is that the

current application is simply an attempt to get the camel's nose under the tent, and, if granted, will lead to successive applications to expand use until the original goal is reached.

Since the applicant has demonstrated ongoing disregard of environmental regulations and that he is a bad neighbor (stacking dead cows on the border with Mensonides Dairy), Yakima County should not authorize further uses that, if done improperly, present dangers to the environment and to neighbors. At a very minimum, Yakima County MUST hold a public hearing where testimony is heard in more detail, and response to questions can be had from members of the community/public at large, Yakima County Planning Staff, and the applicants.

Very truly yours,



Brian G. Miller

BJI/cf

Attachments

Hard copy w/ USB Drive of Photos

cc: Mensonides Dairy

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EXHIBIT 2

RETTIG - FORGETTE - ILLER - ADAMSON
ATTORNEYS AT LAW

ATTORNEYS

DAVID B. RETTIG (2043 - 2000) • FRANCIS E. FORGETTE • BRIAN J. ILLER • COLLEEN E. G. ADAMSON • G. CHARLES BROWN

PROSECUTOR • BARBARA J. WOOD

<http://www.rettiglaw.com>

May 10, 2017

File No.
B-No.

Via U.S. Mail To:
Yakima County Public Services
Planning Division
Attn: Dinah Reed, Senior Project Planner
4th Floor Courthouse
128 North 2nd Street
Yakima, WA 99301

Via Email To:
dfinah.reed@co.yakima.wa.us

Re: CUP 2016-019 and SEP16-007
FRH Enterprises/Wind Mill Estates Foodlot Proposal (Veldhuis)

Comments on behalf of Menonides Dairy, LLC On Threshold Determination.

Dear Ms. Reed:

This firm represents Menonides Dairy, LLC which owns land in the vicinity of this proposed project. Please consider this formal protest of the draft April 25, 2017 MDNS issued on the above captioned projects under the listed SEPA docs 2016-00015 and SEP2016-00007. A full EIS must be required to address the environmental impacts of this proposed CAFC.

Please refer to my letter of April 21, 2016, copy attached, which is incorporated herein

Major concerns raised in that letter have not been addressed. Indeed, the MDNS does not appear to have been based on any new or amended application that addresses those concerns. There is no indication in the current proposed MDNS that cumulative CAFO/AFO impacts have been considered by the County. There is no condition that roads be improved to handle the increased traffic. There is no evidence that the illegal dumping of cow carcasses on the property has ceased.

Instead, according to Stuart A Turner, a certified professional agronomist, the dumping of manure and illegal disposal of cow carcasses has continued and expanded in the year since the County last considered this proposal. I understand that Mr. Turner is submitting a detailed letter describing the current abhorrent and illegal practices on the site, and providing multiple photos documenting the owners' total disregard for federal, state and local regulations, as well as the violation of accepted agricultural practices on the site.

The evidence submitted by Mr. Turner demonstrates beyond any reasonable debate that the owner of the project, Veldhuis are scofflaws who have no regard for their neighbors and no regard for regulatory authority.

It is inexplicable that the County would propose a Mitigated Determination of Non-Significance for an owner with such a track record. This is equivalent to a judge dismissing an alcoholic's fourth drunk driving case based on the driver's promise that he won't do it again even though the driver showed up drunk to court.

Of special concern is Mr. Turner's evidence that one of Veldhuis' other operations engaged in the illegal spreading of manure on a snow pack in 2017, and drained water from its manure-covered fields into ditches along County roads. Nonetheless, the County proposes to allow Veldhuis' to open another CAFO uphill from multiple residences and uphill of an irrigation canal. The only condition suggested to protect water and neighbors is that the operation must be operated "in accordance with an approved Nutrient Management Plan." There is no requirement of regular inspections, regular reporting, and no condition that the facility will be immediately shut down in the event of noncompliance with the NMP.

In light of the evidence, the MDNS appears to be a pro forma approval without consideration of the evidence in the County's possession.

Should the County issue this final MDNS, Menosides Dairy will appeal. The evidence will prove embarrassing to the County. Further, should this project go forward on this obviously inadequate MDNS and cause damage to Menosides Dairy, Menosides Dairy will hold the County responsible. This MDNS is no different than giving a drunk the car keys.

I urge the County to reconsider this pro forma MDNS that puts the proposed project's neighbors and the county's and state's water resources at risk. A full EIS and a public hearing is required, not an MDNS that is based on trust and faith that a known bad operator will finally do the right thing.

Sincerely,



Brian J. Eller

BJJ/cf
Enclosure
cc: Menosides Dairy

EXHIBIT 3

Turner & Co., Inc.

STUART A. TURNER
5833 Klawsa Dr.
West Richland, WA 99353

Phone: (509) 937-0480
Fax: (509) 937-8968
Mobile: (509) 538-5524
E-mail: agforensic@tsc.com

April 13, 2016

Yakima County Planning
Re: CLIP 16-019 Veldhuis Calf Ranch Proposal Comments

To Whom It May Concern:

I have read the 77-page submission by Tim Bardell of B-7 Engineering on behalf of Fryland Ranch Calf Yard. The principal behind this project is Jacob Veldhuis, who owns 5 dairies which combined are one of the largest dairy operations in Washington State. It is obvious from roadside and aerial recon that many of these facilities are at or over the desired animal density and removing the calf element would be an overall desirable goal if Mr. Veldhuis intends to continue to populate these facilities at this level.

This is a substantially different project compared to the 2015 proposal which would have created a mammoth feedlot complex with all age classes that could have ultimately housed up to 72,000 total head. They have withdrawn that application in the face of strong technical problems and local resident opposition, and now submit this application for the first two age classes exclusively for calves (70-150#, 150-350#). We consider the environmental "footprint" of cattle primarily on the basis of an AUM (animal unit month) basis relating to daily water requirements (25-45 gallons a day) and manure and urine output (varies depending on diet). With 1500 hutches and two calves per hutch, and two age classes about 6,000 calves will be on site at projected capacity.

There was no discussion about the population density for other AFO/CAFO operations in the immediate vicinity. To the West adjoining the Veldhuis parcels is the Van Boven calf ranch, there are about 15,000 calves on this operation currently. Just Northeast of the proposed site is the Mensorides Intermediate calf operation with about 1,000 calves. To the East is the Mortimer sheep camp, which is seasonally operated during the lambing season with 1,000+ head of sheep. East of that facility is the main Mensorides Dairy with a total cow capacity of around 8,000 head all age classes. Adjoining the Mensorides to the North is the former Haiszen dairy, now owned and operated by Veldhuis with an estimated 3,000 cows on site.

Directly North of the proposed site is an area of medium density housing just outside of the City of Mabton; see attached Google Earth image. This proposed facility would be the closest AFO/CAFO to this medium density housing area. I spoke to one landowner who is basically next door to the operation to the North, Zan and Suzi Struss. They were stunned when I called because for unknown reasons they had NOT received the Yakima County Planning notice concerning CLIP 16-019. Perhaps this was an unintentional oversight in your department. I cannot understand why the proponent has elected to select out of the 1456.94 acres purchased by Veldhuis, this parcel, which is closest to the medium density housing, was selected for development. In fact, when I heard about several of these pending land purchases, I approached a client, Horrigan Farms Inc. which owned a 520-acre parcel located West



AMERICAN SOCIETY OF AGRONOMY • CERTIFIED PROFESSIONAL AGRONOMIST • 602579

Exhibit 3 - 001

and South of the proposed location, much further from the many affected homeowners who live adjacent to the selected site, and asked him to consider making an unsolicited offer to sell to Mr. Veldhuis. The thinking at the time was that this would provide a much better location for the excess animals Veldhuis desperately needed to relocate from the four overpopulated facilities he currently owns, to an area much more appropriate for this type of development.

The HFI property was split by (paved) Glade road, and has power already along the roadside, unlike the current proposed location. Eventually an agreement was reached, with HFI carrying a contract at low interest to assist in the purchase by Veldhuis for this much better location. Imagine my surprise and disappointment to learn that instead the worst possible location, next to a medium density housing area and closest to other AFO/CAFO facilities was selected for development. Without waiting for any approval from Yakima County Planning or any permits Veldhuis immediately destroyed the delicate and declining shrub-steppe habitat, which had remained untouched with the exception of light grazing for a two-month period in early spring by a neighbor (Martinez sheep). This site is far more remote and removed from residential properties than the portion selected by the applicant for this proposal.

Applicant's Submitted Plan is a SHAM intended to Mislead Yakima County Planning

The construction of an almost 2-mile-long access road from Glade Road to the West to the site was and is apparently a "decoy" and is quite obviously NOT the PRIMARY route of access to this proposed site. The actual primary route of access has been established quite vividly and indisputably by the pattern of the applicant's activities on this site since inception. Here is the evidence to support that assertion:

1. Site was Fall Mowed to ankle height last year by equipment with accessed the site from a residential easement it acquired in one of the purchases which included a house and small acreage. The equipment and personnel which worked over several weeks to complete this task of destroying (as it turns out 80% of which was not necessary) pristine shrub-steppe habitat came and went daily from the nearby Veldhuis dairy located East of S. Fisher Road, and South of Hwy 22.
2. This route is shown highlighted in BLUE on the attached Exhibit "A" which is a Google Earth image of the subject area. Over the winter the applicant built a large, concrete and steel bridge to span the Mabton Lateral SWD canal, see photo #9671 taken on April 19, 2016 on Exhibit "B" an 8' g/g thumb drive. Close examination shows this is a NEW and presumably expensive structure and is also showing HEAVY truck traffic. Photo #9683 shows a truck of Veldhuis wet raw manure crossing this structure. A complete review of photos shows the entire sequence of loading raw manure, exiting onto S. Fisher Road, turning West on Bush Road, and turning South on the newly created road the applicant was SILENT about in the SEPA application. It is patently obvious the road from Glade was only a "decoy"; see photo #9726 which shows on close examination that only the first .5 miles of this almost 2-mile-long road was ever widened and gravelled to create the appearance of a main access road.
3. On Exhibit "A" outlined in GREEN is the route Veldhuis has told you his workers will take to the site; feed will be trucked in; calves will be rotated in and out; equipment will go in and out; and it appears MANURE will be shipped in from the Hwy 22 dairy for STOCKPILING. It is obvious that the applicant will take the short, highlighted in BLUE route which is about 1/3 as long as the route they are telling Yakima County they will use. The strongest evidence of this is the actual behavior of the applicant. For the past week an average of one truck every 5 minutes during daylight hours has been dumping manure stockpiled for the past year on

- the Hwy 22 dairy. Please review exhibit "B" for the many other photos documenting this process and the route taken by the Veldhuis (applicant) equipment and employees.
4. This site was not graded and compacted in accordance with NRCS guidelines contained in the 317 Standard (see attached copy exhibit "C"). There is a need for protection for groundwater in this area -- so this site should have been graded, leveled, watered and compacted to the standard. Then water control features -- designed to prevent runoff and run on from storm events needs to be added. This facility sits in a flood plain, and portions of this site were UNDER WATER last May after the 1.5" + storm event. Yakima County must insist on creation of a site matching all NRCS 317 requirements BEFORE considering issuing a determination on this pending application. If Yakima County does approve the site, it needs to have this requirement in the CONDITIONAL USE PERMIT. As you can see, the entire proposed facility is well within (including the current manure stacking) the existing flood plain. With the Mabton Lateral SVID canal at the bottom/North end of the property, flooding of some scale is expected EVERY YEAR. Every 5-10 years it will be on a massive scale. The area to the South slopes steadily upwards, within three miles almost 1,000' in elevation. Runoff events must be planned for with berms to prevent any run on, and even more importantly, LOCATING OUTSIDE OF THE STANDING WATER AREA created by the "dike" of the SVID lateral canal.
 5. All this truck traffic on the route they are and will be using is causing traffic on the segment of Rusk Road between S. Fisher and Phillips to more than TRIPLE. This is an unpaved road so there is a ton of dust generated daily. When Yakima County approved the Mensonides SEPA for the dairy at 305 S. Fisher Road, they required matching funds to pave S. Fisher from Hwy 22 to Rusk Road. Mensonides paid 100% of the balance of the road onto the dairy property extending about 1/2 mile to the Southeast. If Yakima County approves this SEPA a condition of approval should be cost share at least 50% for the unpaved section of Rusk Road. Photos in Exhibit "B" show the truck traffic and resulting dust.
 6. Veldhuis is in violation of both County and State dumping rules. Please review and use the zoom tool on digital photos #9651 and #9652 which clearly show household and industrial trash along with what appears to be yard debris on this specific site. Why would Yakima County issue any kind of permit to an illegal dumper? Please contact Washington State DOE enforcement and WSDA Livestock enforcement; he has a HISTORY of such behavior.
 7. Photo#5791 is an aerial shot taken of the same site as the two prior photos, but date of photography is earlier, 4-17-2016. Please use your magnification tool to zoom in and examine this photo carefully. You will find visible a mass burial, in violation of the existing WAC, of as many as 70 head of mature dairy cows. Such behavior is the best forecast of what you can expect if Yakima County allows this operator to not just continue but expand operations on this site. Images 1508 thru 1512 are ground images showing this disgusting carnage along with plastic pipe, which cannot be dumped or buried either.
 8. It seems that this proposal is a direct response to the poorly conceived application last year for a much larger complex that could have at full build out had over 70,000 cows on site. My great concern with this much more modest approach is that it is a stealth plan to take an incremental approach like stacking dominoes; we will next see an application for more pens for more and older animals, and sequentially, they will end up at the same place that they originally tried to do in one fell swoop. If Yakima County should be foolish enough to trust these folks, with a provable and long track record of lying to enforcement inspectors from multiple state agencies, this is almost certainly the outcome UNLESS Yakima County can find a way to put a cork in this bottle and limit future development on this are adjacent sites. At a very minimum, Yakima County MUST hold a public hearing where testimony in more

detail, and response to questions can be had from members of the community/public at large, Yakima County Planning Staff, and the applicants. What type of code enforcement can we expect from Yakima County on this facility if permitted?

9. What about a YRCMA styled dust control plan required of dairies? In my opinion every AFO or CAFO should have a similar plan with inspection and enforcement as a requirement. We have 100% coverage with this on Dairies, why should the calf portion be exempt?

Conclusion: Now that Yakima County is well armed with detailed information about what to expect with this proposal, I would ask the County to also conduct a legal review to determine if approval of the applicant's proposal could create additional, unwanted litigation exposure to Yakima County, and by extension, all of the tax paying citizens. This is the wrong site, wrong plan and WRONG OPERATOR to trust, especially where the site physical factors are so aligned against the safe operation of a CAFO/AFO. This applicant can site on other areas which present a much lower risk, and will have much reduced impacts on the community and environment. Yakima County should be prepared to deny this application and inform the applicant to go back to the drawing board and this time do it right. When, inevitably a permit is granted, it should ONLY be after a public hearing and with an appropriate SITE and PLAN. Then Yakima County needs to be prepared to do appropriate code enforcement on dumping, etc. This facility should by extension also fall into a new DNMP due to its close proximity, same ownership and other links to the existing Veldhous Dairy on Hwy 22 and S. Fisher Road.

Yours Very Truly,



Stuart A. Turner, CPA, CCA
Turner & Co., Inc.

Enclosures: Exhibits "A", "B", "C"

EXHIBIT 4

Turner & Co., Inc.

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May 8, 2017

Ms. Dinah Reed, Sr. Project Planner
Mr. Vern Redifer, P.E. Director
Yakima County Public Services
128 N. 2nd Street, 4th Floor
Yakima, WA 98901

Re: SEPA 2016-00019/SEP 2016/00007
FORMAL COMMENT, PROTEST AND REQUEST FOR A HEARING

Please consider this formal comment in protest of the April 25, 2017 MDNS issued on the above captioned projects under the listed SEPA docs 2016-00015 and SEP2016-00007.

This project was formerly by the applicant to alleviate one main critical problem on their five existing Yakima County Dairies – chronic overcrowding. While I would like to see the animal welfare improved, there are a number of unmitigated problems with this proposed project, some of which simply cannot be mitigated. The following are my primary concerns and comments about how the proposed MDNS will be ineffective or inadequate, and may lead to long term problems and potential litigation involving Yakima County.

1. The MDNS is based on Unwarranted Faith in the Applicant's Voluntary Compliance. The overriding issue of concern is that the proposed MDNS is base fundamentally on good will and voluntary compliance. I have worked in the Yakima Valley since 1978 providing technical assistance to producers of all major and most minor crops. In the course of that work, I have had ample opportunity to evaluate the management of Dairy and CAFO operators and their compliance or noncompliance with RCW 90.64 and other federal and state air and water quality regulations. I am not anti-CAFO. Most of these producers are hard-working folks who through their management efforts set fine examples in the ag community. Confining large numbers of animals in a modern CAFO permits the use of advanced technology, automation and



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Exhibit 4 - 001

mechanization of the many phases of normal dairy operations. Economy of scale is an enormous external influence, and will continue to be a driver in this industry, as smaller operations cease or consolidate into larger operations.

However, the applicant in this case is not one of those positive examples. The extended family operation that is behind this applicant has received more complaints and experienced more compliance issues over the past 20 years than any other dairy operator in Yakima County. These violations include deliberately ditching water to discharge in YOUR COUNTY road ditch on High School road near Mabton, from a field with dozens of manure applications right after the big spring thunderstorm left large ponds. This is a violation of RCW 90.64 and a violation of the existing DNMP for this operator. This operator has been investigated and found to be in violation of regulations by both the Washington State Department of Agriculture (WSDA) and the Washington Department of Ecology (WDOE) on numerous occasions over the past 20 years. I am told by officials of both agencies the paper files on this operator relating to these multiple violations is TOO LAIDLE TO PHYSICALLY PICK UP. I strongly urge Yakima County to review these files before approving a new CAFO operation based on trust that these same operators will voluntarily comply with the regulations they have repeatedly broken in the past. Any approval of this proposal cannot be based on blind trust, but must lay out specific plans for regular and frequent inspection of the operation, as well as immediate inspections based on complaints. Further, given the history of violations, the conditions must include County authority to immediately revoke the permit when violations are found, as they will be.

2. The Applicant Has a History of Misleading Yakima County. This applicant has deliberately misled Yakima County about it's true intentions on this site (see my comments and the comments of others regarding the applicants initial SEPA filing for this site). When it became apparent that the original plan would not be approved because of the design flaws, location and SIZE of the ultimate build out, the applicant withdrew the initial offering and substituted the current proposal. While I am a strong believer of equal opportunity under the law, it is foolish and dangerous for Yakima County to take this applicant at face value. The very best predictor of future behavior can be found in a study of past behavior. You can paint a leopard any color you want, but under the paint the spots remain . . . and the leopard does what it does. One excellent example of how this applicant is trying to mislead Yakima County is the access road issue. While they were telling you, and everyone commenting on the SEPA proposal the main access would be From Glade Road to the West almost 2 miles, they were busy building an enormous concrete bridge across the Mabton Lateral canal on the SE corner of the property. Since its construction, there has been steady heavy dump truck traffic with several thousand 30 wheeler and semi-truck loads of wet manure dumped on this site. I carefully monitored this site weekly and over 180 days went by before there was ANY attempt to turn or compost this raw manure. This is in violation of current WDOE and WSDA regulations. All of these big truck loads came in via the back door, NOT THE PROPOSED GLADE ROAD ACCESS ROAD TO THE WEST. Folks, if the applicant is going to conduct such obvious "in your face" operations that violate their written plan even before getting a permit, how can the County believe that their violations will stop after a permit is issued? The only reasoned conclusion is that the violations will continue or get worse after the proposed permit is issued.

I have attached a copy of the NRCS 318 Standard, which covers temporary storage of manure. Please note that the applicant's current practices are grossly in violation of at least a half dozen of these well-known and accepted mandates. In particular, the applicant did not properly

compact the soil prior to dumping manure, did not construct runoff controls, made no attempt to remove seeping liquids or rainfall/snowfall runoff, greatly exceeded the maximum time limit of 180 days (over 400 days for some materials and counting). I am proving PROOF of these conditions in the form of geo-referenced, time/date stamped digital, high resolution photos take over the past 18 months on or around this site.

- 1. The Proposal Has Unsafe Access and Will Cause Road Damage.** The use of the back entrance is not excusable because it places very heavy trucks on both S. Fisher road and Rusk road year around, and especially when roads are most vulnerable to heavy truck traffic – early spring and late fall when rainfall and frost create damaging conditions for these roads, which are not built to take this kind of traffic. Much of this material is coming from the dairy operated by this same ownership group located East of S. Fisher road, and South of Highway 22. The proximity of the Highway 22 dairy has created also several other problems associated with use of the newly constructed concrete bridge over the Mabton Lateral Canal at the SE corner of the applicants' property. Early on when this dairy was bought by the Veldhuis family, they went through a SEPA process that is a matter of record in your department. Many comments were received about the access issues here, because of a large concrete irrigation structure at the SE corner of Rusk and S. Fisher road, there is no clear sight line for trucks leaving the facility and traveling West on Rusk road. This endangered other users of S. Fisher road. The attorney for the Veldhuis family (who control the applicant) met with me and agreed to NOT use this access road from Rusk Road, and to instead enter Highway 22 where the road is built for heavy truck traffic and there is an unobstructed, straight east and west sightline for traffic safety. Again I refer you to photos taken from my aircraft showing the steady stream of heavy truck traffic, in violation of this agreement and their SEPA to Yakima County for that project. There have been accidents involving Veldhuis heavy trucks and private vehicles because of this behavior. You will also note that many photos show HEAVY TRACK OUT OF MANURE AND MUD onto S. Fisher Road and Rusk road. This is a repetitive problem which is well documented, quite obvious, and absolutely avoidable. There was a clear provision in the first SEPA for the Highway 22 dairy requiring truck wash to prevent mud and manure track out. There has been no response and no enforcement action that I am aware of from Yakima County. It's no wonder there is strong anti-dairy sentiment in Yakima County when there is this type of bad behavior in violation of regulations and there is no enforcement action by Yakima County or any other entity. The public expects, at a minimum, to be protected from excessive mud and manure on roadways, and to be SAFE. The expectation also is that Yakima County is the steward of the County resources, which include its roads and rights-of-ways.
- 4. Illegal Use of Site as Mass Grave.** This applicant has been illegally using this site as a concentrated, MASS GRAVE for dairy cows since acquisition of this property several years ago. Please see selected digital images which are time/date stamped and provide copious proof of this detestable practice. WAC 16-25-025 (d) states: Each burial site is limited to one thousand pound carcass or one livestock carcass weighing more than one thousand pounds. I have personally observed by direct carcass count and aerial image analysis (see attached thumb drive) hundreds of cows of all ages, all dairy types, wholesale dumped into silt trenches some of which remained uncovered for weeks. Since this began well over a year ago on this property, a fair estimate of the total number of cows dumped in an area of less than an acre is in excess of 1,000 head. I have provided documentation to WSDA, which passed the buck to Yakima County Health (Ted Silvestri). I don't know what if anything Yakima County Health has done, but the mass grave is continuing to accumulate dead cows in the months since its involvement. This

mass grave is directly up gradient of several dozen homes with shallow groundwater/exempt domestic wells. It is a ticking time bomb, and a classic example of how this applicant views compliance with basic environmental regulations. If they are doing this to their own land, what kind of respect will be accorded to the neighbors? There are multiple legal options for the disposal of cows and other carcasses. They could comply with the WAC 16-25 and limit the burial to one dispersed deep grave per acre, or engage a rendering company to pick the mortalities up; or compost on site. Composting on a properly prepared site in accordance with the NRCS Standard 317 will allow recovery and recycling of all the animal nutrients in an environmentally acceptable way (See WSOA Standards). Here again I refer you to the thumb drive with digital still photos (use your zoom tool to see exposed animals and parts) documenting this disgusting practice. While poor management always leads to higher mortality, there is some reasonable question about whether all the animals dumped on the Veldhuis site subject of this SEPA could come solely from their 5 dairies. At times, semi-trucks have dumped nearly 80 animals at one time. How can Yakima County know this and still issue a permit based on trust that the applicant will follow regulations? What will Yakima County tell the public when the public learns of this?

5. Illegal Spraying of Manure on Snow. Another example of the applicants' complete disregard for environmental regulations and their neighbors' well-being is the spraying of manure on top of snow pack. In late February of this year, when we still had a 2" snowpack (with several layers of freezing rain), they were caught red handed spraying concentrated liquid manure on top of the snow (see attached thumb drive with very high resolution photos). I don't care what they say, I care what they do. If Yakima County issues this permit they are sealing their own legal fate, and are almost certain to come out the other end smelling something worse than manure.
6. I am formally requesting a Public Hearing for this pending permit, so that I may have the chance to be present much more evidence of a continuous pattern of bad management and illegal conduct.
7. There is an irrigation groundwater permit dating back to 1992, originally filed by the State of Washington (DNR) on a 520-acre parcel that adjoins this project. Several years ago, the Martinez family traded DNR for this parcel, which came with the original water right. The two large wells drilled (before receiving any permits) by Veldhuis very clearly have the real potential to impair this existing water right. The "study" by experts on behalf of Veldhuis make no reference to this priority date 1992 groundwater right on the adjoining parcel.

Please note that I presented testimony IN SUPPORT of the Veldhuis proposal in [year] to remake the Highway 22 dairy, because I believed then they would follow the written contract their attorneys presented that alleviated the threat of direct truck access presented on S. Fisher and Rusk roads. History has proven my faith in them to be greatly misplaced. In the thumb drive are photos of just a fraction of the thousands of round trips via the back door to the new site, loaded with raw manure, which is NOT being composted, and is being dumped without treatment on ground not properly prepared. These photos also establish the reckless pattern of willful disregard of basic Best Management Practices and provide a clear preview to what operations will be like if Yakima County permits this Veldhuis request. Photos in the thumb drive show heavy truck traffic with associated mud and manure caking on S. Fisher Road, Rusk Road, and clearly establish the actual MAIN entrance/exit for the project on the SE corner, NOT

AS THE APPLICANT HAS STATED off Glade Road 2 miles to the West. The mass grave on the actual parcel at issue is well documented on the digital photos taken over an 18-month span; use your digital "Zoom" tool to get a close-up view of unburied or partially buried carcasses. Images #6321, 6322, and 6323 taken on February 19, 2017 show almost 100 carcasses dumped on the site with no attempt at burial. The best estimates are that there are 1,000-1,300+ carcasses in this mass grave. When the Valdhuis group built the new liquid manure impoundment for nearby Highway 22 dairy, it was not built to NRCS Standards and Specifications. On the thumb drive is a photo of this basin showing a "whale" or gas inflated bubble under the liner causing it to float. This is because they failed to install necessary gas venting beneath the liner when constructed. This is yet another

I would be delighted to provide many more detailed images showing that bad behavior which if you permit this facility will certain not just continue but EXPAND in scale and scope. Please do not ignore HISTORY of this applicant, it provides an excellent guide to exactly the behavior you can expect in the future if you permit this facility. It would be particularly bad to do so when it is so easily provable that their own application contains deliberately misleading information (example: true main road access). If you have any questions, or I can assist you all in any way please do not hesitate to call me. I believe the County would be best served with a full public appeal hearing, where a full palate of information can be considered, along with the applicant's history, and allow you to make the right decision on this application.

Yours Very Truly,



Stuart A. Turner, CPA, CCA
Turner & Co., Inc.

Enclosure: Thumb Drive with High Resolution, Geo-Referenced Digital photos
NRCS Code 317 Composting Facility Standard

Exhibit 4 - 005

YAKIMA COUNTY HEARING EXAMINER
July 6, 2017 HEARING
UPDATED EXHIBIT LIST

File Nos.: CUP2016-00019/SEP16-00007/PRJ15-00350 – Fryslau Ranch
Staff Contact: Dinaah Reed, Senior Project Planner Zoning & Subdivision

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