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Attorney for Petitioners
Citizens for Avian Resource and
Environmental Sustainability;
Yolo Audubon Society; and Tuleyome

FILED
YOLO SUPERIOR COURT
APR 25 2014

BY E. ENDO
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF YOLO

CITIZENS FOR AVIAN RESOURCE AND)
ENVIRONMENTAL SUSTAINABILITY)
YOLO AUDUBON SOCIETY; AND)
TULEYOME;)

Petitioners)

v.)

COUNTY OF YOLO; YOLO COUNTY)
BOARD OF SUPERVISORS, and)
DOES 1 to 20,)

Respondents)

THE BOGLE FAMILY LIMITED)
PARTNERSHIP; BOGLE VINEYARDS, LLC;)
and DOES 21 to 40,)

Real Parties in Interest)

Case No. PT14-718

**VERIFIED PETITION FOR
WRIT OF MANDATE**

1. Petitioners Yolo Audubon Society, Tuleyome, and Citizens for Avian Resource and
Environmental Sustainability respectfully petitions this Court for a Writ of Mandate directed to
Respondents County of Yolo and Yolo County Board of Supervisors ("Respondents" or

1 “County”). Petitioners challenge Respondents’ approval of a Mitigated Negative Declaration for
2 the Bogle Wind Turbine Use Permit, Variance and Flood Hazard Development Permit. (Zone
3 File #2103-0034) (“Project”). Respondents’ approval of the Project and the Mitigated Negative
4 Declaration violated the requirements of the California Environmental Quality Act (“CEQA”),
5 Public Resources Code, section 21000 *et seq.* In the Mitigated Negative Declaration,
6 Respondents concluded that the Project would not have a significant effect on the environment
7 despite, *inter alia*, the fact that substantial evidence supports a fair argument that the Project will
8 have significant environmental impacts to biological resources and aesthetics. Petitioners seek a
9 determination from this Court that Respondents’ approval of the Project is invalid and void and
10 fails to satisfy the requirements of CEQA, and the CEQA Guidelines, Title 14, California Code
11 of Regulations, section 15000 *et seq.*

12 **PARTIES**

13 2. Petitioner Citizens for Avian Resource and Environmental Sustainability (CARES)
14 is an unincorporated association and comprised of residents of the Clarksburg area located in
15 Yolo County. CARES and its members have a direct and substantial beneficial interest in
16 ensuring that Respondents comply with CEQA and the State Planning and Zoning Laws.
17 CARES was formed after Respondents’ approval of the Project. (See Public Resources Code §
18 21177(c).) Members of CARES submitted written comments on the MND and timely filed an
19 administrative appeal of the Planning Commission’s approval of the Project.

20 3. Petitioner Yolo Audubon Society is a California Non-Profit Public Benefit
21 Corporation. Yolo Audubon Society educates the public about the importance of birds in the
22 Sacramento and Central Valley areas and what needs to be done to protect their habitat. Yolo
23 Audubon Society and its members have a direct and substantial beneficial interest in ensuring
24 that Respondents comply with laws relating to environmental protection. Yolo Audubon Society
25 and its members are adversely affected by Respondents’ failure to comply with CEQA and the
26 State Planning and Zoning laws in approving the Project. Yolo Audubon Society submitted
27 written comments on the MND and timely filed an administrative appeal of the Planning
28 Commission’s approval of the Project.

1 4. Petitioner Tuleyome was founded in 2002 as a volunteer advocacy-oriented
2 nonprofit organization to protect the wild and agricultural heritages of the Inner Coastal Range
3 and the Western Sacramento Valley for current and future generations. These areas include
4 Yolo, Solano, Lake, Napa, Glenn, Tehama, Colusa, and Mendocino counties in northwestern
5 California. Tuleyome and its members have a direct and substantial beneficial interest in
6 ensuring that Respondents comply with laws relating to environmental protection. Tuleyome
7 and its members are adversely affected by Respondents' failure to comply with CEQA and the
8 State Planning and Zoning laws in approving the Project. Tuleyome submitted written
9 comments on the MND and timely filed an administrative appeal of the Planning Commission's
10 approval of the Project.

11 5. Respondent Yolo County is a political subdivision of the State of California and a
12 body corporate and politic exercising local government power. Yolo County is the CEQA
13 "lead agency" for the Project. As lead agency for the Project, Yolo County is responsible for
14 preparation of an environmental document that describes the Project and its impacts, and, if
15 necessary evaluates mitigation measures and/or alternatives to lessen or avoid any significant
16 environmental impacts.

17 6. Respondent Yolo County Board of Supervisors is a legislative body duly
18 authorized under the California Constitution and the laws of the State of California to act on
19 behalf of the County of Yolo. Respondent Yolo County Board of Supervisors are responsible
20 for regulating and controlling land use within the County including, but not limited to,
21 implementing and complying with the provisions of CEQA and the CEQA Guidelines, 14
22 California Code of Regulations, title 14, section 15000 *et seq.* (the "Guidelines").

23 7. Real Party in Interest The Bogle Family Limited Partnership, is a limited
24 partnership formed pursuant to the laws of the State of California with its principal place of
25 business in Clarksburg, California. The Bogle Family Limited Partnership is the Project
26 applicant and property owner for the site of the Project.

27 8. Real Party in Interest Bogle Vineyards, LLC, is limited liability corporation
28 formed pursuant to the laws of the State of California with its principal place of business in

1 Clarksburg, California. Bogle Vineyards, LLC, owns the land where the wine processing
2 facilities are located.

3 9. Petitioners are unaware of the true names and identities of DOES 1 through 20
4 and 21 through 40, inclusive, and sues such unnamed Respondents and Real Parties in Interest
5 respectively, by their fictitious names. Petitioners are informed and believe, and based thereon
6 alleges, that fictitiously named Respondents and Real Parties in Interest also are responsible for
7 all acts and omissions described above. When the true identities and capacities of Respondents
8 and Real Parties in Interest have been determined, Petitioners will, with leave of Court if
9 necessary, amend this Petition to include such identities and capacities.

10 BACKGROUND INFORMATION

11 10. The Project is a single large wind turbine with a maximum power rating of 1.6
12 megawatts of electricity to supplement power for the Bogle winery production facility near
13 Clarksburg. The Bogle facility is located at 49762 Hamilton Road, west of Jefferson Boulevard
14 (State Route 84), approximately 4.5 miles southwest of Clarksburg.

15 11. As approved, the wind turbine will be constructed at the southwest corner of a 60-
16 acre property, which is one of three adjacent parcels owned by Bogle (APN 043-310-012). The
17 60-acre parcel that includes the winery production facility and the proposed wind turbine is
18 under a Williamson Act contract. To the west is an adjacent 115-acre parcel of land owned by
19 the Bogle family. Eighty acres of the parcel is subject to a Swainson's hawk conservation
20 easement. Immediately to the north of the proposed turbine are the wastewater treatment plants
21 used by the winery facility. A third 80-acre parcel of land owned by the Bogle family wraps
22 around the winery facility and is planted in alfalfa.

23 12. The wind turbine will be constructed at the site of Bogle's wine producing facility.
24 The turbine will be located adjacent to the wastewater ponds used by the facility, within a
25 fenced 2,500-square foot graveled area. The 1 MW wind turbine will be approximately 263 feet
26 in height (the main tower of the turbine) and 398 feet high with the rotor (blade) in the twelve
27 o'clock position.

1 13. Bogle Vineyards intends to use the power the turbine generates for its production
2 facility and will send any excess power to back feed the PG&E grid.

3 14. At least twenty rural residences are within one mile of the proposed turbine. Three
4 nearest homes are located along Hamilton Road and eight homes are on Jefferson Boulevard
5 and seven homes are on Central Avenue. The four nearest homes are located along Hamilton
6 Road approximately 1,335 feet and 2,700 feet south of the proposed turbine, and along
7 Jefferson Boulevard approximately 3,005 feet to the east. Six additional homes are located
8 along Jefferson Boulevard ranging between 3,500 feet and 5,300 feet east of the turbine. Seven
9 homes are located north of the turbine on Central Avenue, approximately 3,700 to 4,500 feet
10 away. There are at least 22 additional residences located within one to two miles of the turbine.

11 15. On September 9, 2013, the County released the MND for a 30-day public review
12 period. On October 8, 2013, the County released a revised MND for an additional 30-day
13 review period.

14 16. On September 11, 2013, the Clarksburg Citizens Advisory Committee considered
15 the Project. The committee did not take any action due to the lack of a quorum.

16 17. On November 14, 2013 and December 12, 2013, the Yolo County Planning
17 Commission held public hearings on the project. At the December 12, 2013, meeting, the Yolo
18 County Planning Commission approved the Major Use Permit, Variance and a Flood Hazard
19 Development Permit.

20 18. On January 2, 2014, Petitioners timely filed an administrative appeal of the
21 Planning Commissioner's approval of the Major Use Permit, Variance and a Flood Hazard
22 Development Permit.

23 19. On March 25, 2014, the Board of Supervisors held a hearing regarding Petitioners'
24 appeal. At the hearing the Board of Supervisors denied the appeal and approved the Mitigated
25 Negative Declaration, the Major Use Permit, Variance, and a Flood Hazard Development
26 Permit.

27 20. On March 26, 2014, the County filed a Notice of Determination with the Yolo
28 County Clerk.

1 28. Respondents' action in adopting the Mitigated Negative Declaration constitutes a
2 violation of CEQA in that Respondents failed to proceed in the manner required by law and
3 their decision not to prepare an EIR is not supported by substantial evidence. Based upon
4 substantial evidence in the record, a "fair argument" exists that the project may have a
5 significant impact on the environment.

6 29. The Initial Study/Mitigated Negative Declaration fails to adequately describe the
7 environmental setting, including but not limited to the biological resources at the site.

8 30. Substantial evidence in the administrative record supports a "fair argument" that
9 the Project may result in a significant impact to the environment. The substantial evidence
10 before Respondent demonstrates, at a minimum, that:

11 a) **Biological Resources:** Respondents failed to conduct an adequate
12 biological assessment of the Project's environmental impacts. The IS/MND failed to provide the
13 baseline conditions describing the use of habitat types present within the Proposed Project site by
14 special status species and other wildlife. Substantial evidence supports a fair argument that the
15 mitigation measures will not adequately mitigate the Project's significant impacts to biological
16 resources. Substantial evidence also supports a fair argument that the Project may have
17 significant impacts to biological resources, including but not limited to Sand Hill Crane, White-
18 tailed Kite, Northern Harrier, Tricolored Blackbird, and Swainson's Hawk.

19 b) **Cumulative Impacts to Biological Resources:** Substantial evidence
20 supports a fair argument that the Project may have a significant cumulative impact on biological
21 resources.

22 c) **Aesthetic Impacts:** Substantial evidence supports a fair argument that the
23 Project may have a significant impact on aesthetic resources. Additionally, the IS/MND relied
24 upon an aesthetic assessment that is inconsistent with the industry standard assessment methods
25 and that contains factual errors.

26 d) **Noise:** Substantial evidence supports a fair argument that the Project may
27 have a significant impact on noise and the noise study was provided after the IS/MND had been
28 circulated for public review.

1 inconsistent with the limitations upon other properties in the vicinity and zone in
2 which such property is situated.

3 A variance shall not be granted for a parcel of property which authorizes a use or
4 activity which is not otherwise expressly authorized by the zone regulation
5 governing the parcel of property. The provisions of this section shall not apply to
6 conditional use permits.

7 37. In granting a variance, the agency's findings must be supported by substantial
8 evidence. (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11
9 Cal.3d 506, 515.) Government Code requires that all findings be made. (Gov't Code, § 65906.)
10 If even one finding cannot be satisfied then the Variance cannot be approved. (*Id.*)

11 38. To the extent an agency may have a certain amount of discretion in granting a
12 variance, the exercise of such discretion must be consistent with and not contrary to all
13 applicable laws.

14 39. Evidence does not support that special circumstances apply the property. A
15 Variance must be limited solely to the *physical* circumstances of the property and the hardship
16 cannot be self-induced.

17 40. Substantial evidence does not support the finding that Bogle is being deprived of
18 privileges enjoyed by other property owners in the vicinity.

19 41. The variance fails to meet the requirements of Government Code 65906.
20 Additionally, substantial evidence does not support Respondents' findings in approving the
21 Variance.

22 PRAYER FOR RELIEF

23 WHEREFORE, Petitioners pray for judgment as follows:

- 24 1. That this Court issue a peremptory writ of mandate ordering Respondents to:
25 (a) vacate and set aside approval of the Negative Declaration on the grounds
26 that it violates the California Environmental Quality Act, Public Resources Code section 21000
27 *et seq.*

1 (b) vacate and set aside the Major Use Permit; Variance; and the Flood
2 Hazard Development Permit on the grounds that their approval violates the California
3 Environmental Quality Act, Public Resources Code section 21000 *et seq.*

4 (c) withdraw the Notice of Determination for the Project;

5 (d) prepare, circulate and consider a legally adequate EIR for the Project;

6 (e) suspend approval of any and all construction of the Project until the
7 Respondents are in compliance with CEQA;

8 (f) suspend all activity that could result in any change or alteration to the
9 physical environment until Respondents have taken such actions as may be necessary to bring
10 their determination, findings or decision regarding the Project into compliance with CEQA;

11 (g) vacate and set aside the Major Use Permit; Variance; and the Flood
12 Hazard Development Permit on the grounds that their approval violates Government Code
13 65906;

14 2. For Petitioners' costs associated with this action;

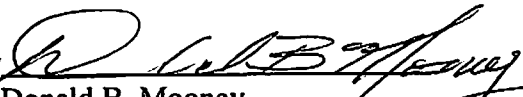
15 3. For an award of reasonable attorneys' fees pursuant to Code of Civil Procedure
16 section 1021.5; and

17 4. For such other and further relief as the Court may deem just and proper.

18
19 Dated: April 25, 2014

Respectfully submitted,

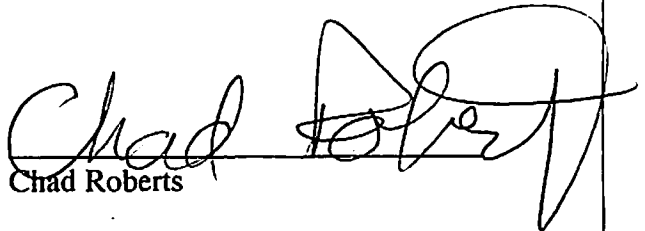
20
21 LAW OFFICE OF DONALD B. MOONEY

22 By 
23 Donald B. Mooney
24 Attorney for Petitioners Citizens for Avian
25 Resource and Environmental Sustainability;
26 Yolo Audubon Society, and Tuleyome
27
28

VERIFICATION

I, Chad Roberts, the undersigned, certify and declare that I have read the foregoing Verified Petition for Writ of Mandate and know its contents. I am on the Board of Directors for the Yolo Audubon Society, a Petitioner in this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the Verified Petition for Writ of Mandate are true.

I declare under penalty of perjury that the above is true and correct. Executed this 25th day of April 2014, at Davis, California.


Chad Roberts


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VERIFICATION

I, Andrew Fulks, the undersigned, certify and declare that I have read the foregoing Verified Petition for Writ of Mandate and know its contents. I am the Senior Policy Director of Tuleyome, a Petitioner in this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the Verified Petition for Writ of Mandate are true.

I declare under penalty of perjury that the above is true and correct. Executed this 25th day of April 2014, at Davis, California.



Bob Schneider

EXHIBIT A

EXHIBIT A

LAW OFFICES OF DONALD B. MOONEY

DONALD B. MOONEY

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Davis, California 95616
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dbmooney@dcn.org

April 24, 2014

**VIA FEDERAL EXPRESS
AND ELECTRONIC MAIL**
julie.dachtler@yolocounty.org

Julie Dachtler
Deputy Clerk of the Board
Yolo County Board of Supervisors
625 Court Street, Room 204
Woodland, CA 95695

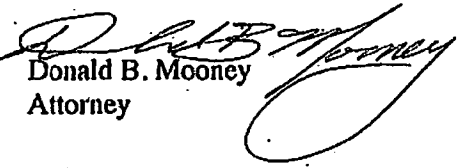
Re: Notice of Intent to File CEQA Petition

Dear Ms. Dachtler:

Please take notice that under Public Resources Code section 21167.5, that Petitioners Yolo Audubon Society, Tuleyome, and Citizens for Avian Resource and Environmental Sustainability intend to file a petition for Writ of Mandate in Yolo County Superior Court under the provisions of the California Environmental Quality Act, Public Resources Code, Public Resources Code section 21000 *et seq*, against the County of Yolo and the Yolo County Board of Supervisors challenging the adoption and approval of a Mitigated Negative Declaration, and the Bogle Wind Turbine Use Permit, Variance, and Flood Hazard Development Permit ("Project").

The petition for writ of mandate will request that the court direct Respondents to vacate and rescind approval of the Mitigated Negative Declaration, along with the approval of the Project. Additionally, the petition will seek Petitioners' costs and attorney's fees associated with this action.

Very truly yours,


Donald B. Mooney
Attorney

PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 129 C Street, Suite 2 Davis, California; I am over the age of 18 years and not a party to the foregoing action. On April 24, 2014, I served a true and correct copy of as follows:

Notice of Intent to File CEQA Petition – Public Resources Code section 21167.5

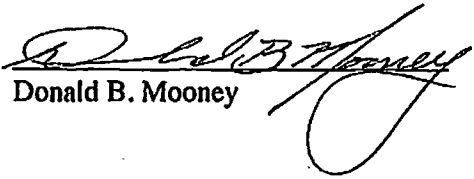
____ (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in Davis, California.

X (by overnight delivery service) via Federal Express to the person at the address set forth below:

____ (by facsimile transmission) and via Federal Express to the person at the address and phone number set forth below:

Julie Dachtler
Deputy Clerk of the Board
625 Court Street, Room 204
Woodland, CA 95695

I declare under penalty of perjury that the foregoing is true and correct. Executed April 24, 2014, at Davis, California.


Donald B. Mooney