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June 29, 2017

File No. 16-150
B-No. 6188.0011

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 98901

Via Email To:

dinah.reed@co.yakima.wa.us

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

Dear Ms. Reed:

A. **APPELLANTS:**

Mensonides Dairy, LLC
305 South Fisher Road
Mabton, WA 98935
T. (509) 894-9902

Art and Teresa Mensonides
305 South Fisher Road
Mabton, WA 98935
T. (509) 894-9902

B. STANDING:

Mensonides Dairy owns land immediately adjacent to the proposed CAFO and will be adversely impacted should the Applicants continue to flaunt environmental laws and land use regulations and cause impacts to air and water quality.

Art and Teresa Mensonides live on the property on which Mensonides Dairy is operated, adjacent to the proposed CAFO, and will be adversely impacted should the Applicants continue to flaunt environmental laws and land use regulations and cause impacts to air and water quality.

C. SPECIFIC ACTIONS, OMISSION, CONDITIONS OR DETERMINATION FOR WHICH APPEAL IS SOUGHT:

Appellants identify the following specific actions, omissions, conditions and/or determinations for which appeal is sought.

1. Threshold Determination of MDNS Rather than DS: 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 worked against this operator.
2. The MDNS is based on erroneous findings unsupported by substantial evidence regarding potential impacts regarding water rights.
3. The conditions contained in the MDNS are inadequate to mitigate impacts to a level below significance.

D. STATEMENT OF PARTICULAR GROUNDS FOR APPEAL:

1. A Mitigated Determination of Nonsignificance is Not Adequate When Evidence shows that an applicant has a long history of violation of land use and environmental regulations.

Examples:

- 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 he has been in constant violation of the access requirement. Aerial and ground images 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 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 2017, 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. 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 impairment to older wells from the use the new wells. There is a nearby well 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.

5. 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.

6. 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 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.

E. DESIRED OUTCOME AND 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 29th day of June, 2017.

RETTIG FORGETTE ILLER ADAMSON, LLP

By: 

BRIAN J. ILLER, WSBA #16150

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cc: Mensonides Dairy, LLC
Stuart Turner

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