

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Supervisor Jeff Stone
Supervisor John J. Benoit

SUBMITTAL DATE: August 6, 2010

SUBJECT: Initiation of Ordinance Amendment for Riverside County Ordinance No. 457 With Regard to Certain Changes to Agricultural Grading Exemption Contained Therein.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt an order initiating an amendment to Ordinance No. 457 that would make certain changes to the existing Agricultural Grading exemption; and
2. Direct the Building and Safety Department and County Counsel to prepare and process the ordinances.

BACKGROUND:

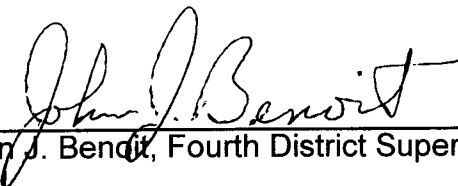
The Hudack Decision

On June 18, 2007, the Riverside County Superior Court issued a Judgment Granting Writ of Mandate in a writ petition lawsuit entitled Hudack v. Siggard et al. (Riverside Superior Court Case No. RIC 450529). The Petitioners alleged in their lawsuit that the County failed to conduct the review required by the California Environmental Quality Act ("CEQA") before it determined that Mr. Siggard qualified for an agricultural grading exemption to the grading permit requirement. The agricultural grading exemption is set forth in RCO No. 457, Section 4.J.2.14.

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Jeff Stone, Third District Supervisor



John J. Benoit, Fourth District Supervisor

3.84

Form 11

SUBJECT: Initiation of Ordinance Amendment for Riverside County Ordinance No. 457 With Regard to Certain Changes to Agricultural Grading Exemption Contained Therein.

BACKGROUND: (continued)

Because CEQA applies to discretionary rather than ministerial projects, the critical issue in the Hudack case became whether a determination that the agricultural grading exemption applies is "discretionary" within the meaning of CEQA. See California Public Resources Code Sections 21065, 21080(a) and Section 15357 of the Guidelines for CEQA. The Court closely examined the wording for the agricultural grading exemption set forth in RCO No. 457, Section 4.J.2.14 and found that the determination at issue was discretionary and that the County failed to comply with CEQA before it made that determination. As a result, the County invalidated the agricultural grading exemption that had been previously issued to Mr. Siggard. Moreover, consistent with the Hudack decision, the County began treating determinations regarding the applicability of the agricultural grading exemption as discretionary and conducted the appropriate level CEQA review before making any further determinations.

Subsequently, County staff and members of the regulated farming community (including representatives from the Riverside County Farm Bureau and the Temecula Valley Winegrower's Association) have engaged in extensive discussions with regard to adoption of an amendment to RCO No. 457 that removes the problematic discretionary language and provides for some clarifying changes to the agricultural grading exemption set forth in RCO No. 457, Section 4.J.2.14.

Proposed County Ordinance Amendment

The proposed ordinance amendment would more specifically do each of the following:

- Remove discretionary language in connection with agricultural grading exemption determinations.
- Provide for two (2) ministerial categories which allow a person to claim the benefit of the agricultural grading exemption.
- Establish an 'Agricultural Grading/Clearing Certificate' to be submitted by each person claiming the benefit of the agricultural grading exemption prior to commencing the agricultural grading or clearing.
- Establish an 'Agricultural Grading/Clearing Verification' to be submitted by each person claiming the benefit of the agricultural grading exemption within one (1) year of filing a Certificate for agricultural grading or clearing.
- Provides for some clarifying changes to the agricultural grading exemption, including, but not limited to, definitional terms contained in the ordinance.

Form 11

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FISCAL: It will cost approximately \$13,000.00 to prepare and process the ordinance amendment. This estimate includes \$3,000.00 for Building and Safety Department staff costs, advertising costs, and Board meeting costs associated with the introduction and adoption of the proposed ordinance amendment. This estimate also includes \$10,000.00 in County Counsel costs for researching and drafting the ordinance and ordinance amendment. The balance of the \$13,000.00 will be expended by the Building and Safety Department, Agricultural Commissioner's Office, and County Counsel for internal meetings and meetings with concerned citizens groups. If during the process it is determined that further Board meetings are required, the costs will be higher. These estimated costs are currently unbudgeted for FY 10/11.

It is anticipated that the costs of implementing the ordinance amendment will be covered by the processing fee charged for the filing of the 'Agricultural Grading/Clearing Certificate' and subsequent 'Verification' with the building official. The Building and Safety Department is currently considering two (2) options for such fee:

Option one, requires (1) field inspection:

Processing.....	\$40
Office and Inspection.....	\$195 (1.5 hrs @130)
2% LMS & 4% GIS surcharge.....	\$14.10
Total \$249.10	

Option two, eliminates the field inspection:

Processing.....	\$40
Office and Inspection.....	\$65 (0.5 hrs @130)
2% LMS & 4% GIS surcharge.....	\$6.30
Total \$111.30	