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# MEMORANDUM

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Date: January 3, 2017

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator

A handwritten signature in black ink, appearing to be "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Regulatory Authority of the County Regarding Monsanto's Proposed Agricultural Production Facility in Avra Valley**

Attached is a memorandum from Economic Development staff summarizing the County's regulatory authority regarding Monsanto. This matter resulted in a significant Call to the Audience discussion and a question arose regarding our regulatory authority.

In summary, the County has little regulatory authority regarding the proposed facility to be operated by Monsanto in Avra Valley. We do have limited authority regarding points of access to public highways and whether the facility complies with the County's Floodplain Management Ordinance. If Monsanto constructs an onsite septic system, the County would permit and regulate its installation.

In general, Pima County has no zoning, land use or building Code authority relative to the proposed Monsanto facility in Avra Valley.

CHH/anc

Attachment

c: Dr. John Moffatt, Director, Economic Development Office  
Patrick Cavanaugh, Deputy Director, Economic Development Office



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# MEMORANDUM

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**December 23, 2016**

**To: Chuck Huckelberry,  
Pima County Administrator**

**From: Patrick Cavanaugh,  
Deputy Director, Office of Economic Development**

**Through: John Moffatt  
Director, Office of Economic Development**

**Subject: The Specific Regulatory Authority of Pima County with Regard to  
the Proposed Monsanto Agricultural Production Facility in Avra Valley**

Please see below in response to your questions and your request for information as to Pima County's authority to regulate the proposed Monsanto agricultural production facility. The information is drawn primarily from the Code of Federal Regulation, Arizona Revised Statutes (A.R.S.) and the Pima County Code. Pima County departments that reviewed this information include the Pima County Economic Development Office, Pima County Attorney's Office, Pima County Development Services, Pima County Department of Environmental Quality and the Pima County Regional Flood Control District.

**Question 1**

**"Could the County have prevented Monsanto from purchasing the property in Avra Valley?"**

**Answer:**

No. The purchase of the private property was a legal agricultural land transaction between two private-sector parties and did not include any land owned by Pima County.

**Question 2**

**"Could Pima County prevent or reject any building proposal by Monsanto on the property they recently acquired in Avra Valley?"**

**Answer:**

No, per the following Arizona Revised Statute and Pima County Code sections:

Arizona Revised Statute: Article 2 – County Zoning

*11-812 Restriction on regulation; exception; aggregate mining regulation; definitions*

A. Nothing contained in any ordinance authorized by this chapter shall:

- 1. Affect existing uses of property or the right to its continued use or, the reasonable repair or alteration of the property for the purpose for which used at the time the ordinance affecting the property takes effect.*
- 2. Prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five or more contiguous commercial acres. For the purposes of this paragraph, general agricultural purposes do not include the cultivation of cannabis as defined in section 13-3401 or marijuana as defined in section 13-3401 or 36—2801. For the purposes of this paragraph, “mining” has the same meaning as prescribed in section 27-301.*

Arizona Revised Statute: Article 5 – Building Codes

*11-865 Exemptions; exception*

A. The provisions of this article shall not be construed to apply to:

- 1. Construction or operation incidental to construction and repair to irrigation and drainage ditches or appurtenances thereto, of regularly constituted districts or reclamation districts, or to farming, dairying, agriculture, viticulture, horticulture or stock or poultry raising, or clearing or other work upon land in rural areas for fire prevention purposes.*
  - 2. Devices used in manufacturing, processing or fabricating normally considered as involved in industry and construction, operation and maintenance of electric, gas or other public utility systems operated by public service corporations operating under a franchise or certificate of convenience and necessity.*
- B. Notwithstanding subsection A, the requirements of this article apply to the use or occupation of land or improvements by a person or entity consisting of or including changing, remanufacturing or treating human sewage or sludge for distribution or resale.*

Pima County Code

*18.01.030 – Application of Zoning Code*

C. Statutory Exemptions.

- 1. As specified in A.R.S. Section {11-8121} the provisions of this code shall not prevent, restrict or otherwise regulate in any district or zone the use or occupation of land or improvements for railroad, mining, metallurgical, grazing or*

general agricultural purposes, as define herein, provided the tract or premises so used in not less than five contiguous commercial acres.

2. Land shall be classified as being used for:

a. Grazing purposes when fifty percent or more of the owner's income from said land is derived from the use of, or from the rental of said land for grazing purposes; or

b. General agricultural purposes when fifty percent or more of the owner's income from said land is derived from the production of agricultural products or from the rental of said land for the production of said products.

**3. Does the County regulate or permit any of the following with regard to Monsanto and their proposed agricultural production facilities on the property they acquired in Avra Valley?**

**A. Zoning – Does Monsanto's proposed action require any zoning approval by the County?**

No, per Statute and Code above.

**B. Development Plan – Do Monsanto's proposed facility improvements require approval of a development plan by Pima County?**

No, per Statute and Code above.

**C. Can Pima County require a building permit from the County regulating the construction of Monsanto's building and/or facilities?**

No, per Statute and Code above.

**D. Can the County regulate points of access to the Monsanto facility from a County roadway in the unincorporated area of Pima County?**

Yes. However, the County is prohibited from denying or impairing reasonable access to private property from Pima County roads under A. R. S. 33-2401. Subject to this limitation, the County may regulate points of access along particular County roads. See A.R.S. 11-251 (4) and Pima County Code 10.44.020 (D); see also Gear v. City of Phoenix, 93 Ariz. 260, 263 (1963).

**E. What regulatory authority does the County have over Monsanto's water use for the agricultural production facilities?**

Pima County has no regulatory authority over water use for agricultural production facilities. That authority lies with the Arizona Department of Water Resources. The Director of ADWR regulates the appropriation and distribution of surface water and the withdrawal of groundwater ( A.R.S. 45-103 (B) and 45 10 5(B) (2)) and to enforce violations of Title 45 (A.R.S. 45-105 (B) (8)).

**F. Does the County have any permitting authority or is a permit required for any composting operation or solid waste from the facility?**

Pima County has no direct authority to regulate composting operations or solid waste generated at the Monsanto site. Under the most conservative interpretation of Arizona statutes, Monsanto may be required to submit a Solid Waste Notification for Composting notice to the Arizona Department of Environmental Quality (ADEQ). In terms of any other applicable County regulation, if Monsanto chooses to burn plant materials grown at the site, an open burn permit would be required from Pima County Department of Environmental Quality (PDEQ).

**G. Does the County have any authority to regulate the storage or use of hazardous materials or pesticides on the property within the facility?**

PDEQ enforces federal and state hazardous waste regulations through a delegation agreement with ADEQ. If Monsanto were to be subject to hazardous waste regulations, they would be required to register with PDEQ and comply with applicable regulations. The registration process requires the payment of a fee and compliance with specific storage requirements. PDEQ would inspect the facility for compliance practices; however, any formal enforcement actions (civil penalties or injunctions) would be brought by ADEQ.

Pima County does not have any authority to regulate hazardous materials or pesticides through an environmental code as the County is constrained by A.R.S. 49-112 (*County regulations; standards*). This statute prohibits a county's imposition of requirements more stringent than the state's requirements unless specific conditions are met.

**H. Does the County have any authority to regulate or monitor any emissions or impacts to air quality, particularly those related to pollen?**

Pima County has air quality authority to adopt rules regarding air quality pursuant to A.R.S. 49-479 that are no more stringent than the state's regulations unless specific conditions are met as required by A.R.S. 49-112. The only air quality regulations that would apply to the proposed facility would be in regard to fuel-fired equipment (generators and boilers) as well as dust control requirements for the grading of the building site.

With regard to pollen, PDEQ enforces Pima County Code: 7.07.41 (*Pollen control*). However, the provisions in this chapter are limited to the plants designated in Pima County Code 7.41.010 which are common Bermuda grass, mulberry trees and olive trees. There are no other plants regulated under this chapter.

**I. Does the County have any authority to regulate outdoor lighting or illumination of the agricultural production facilities?**

Yes. While agricultural buildings are exempt from building code requirements per A.R.S. 11-865 (A) (1) this section does not exempt agricultural buildings from the requirements for outdoor lighting adopted under A.R.S. 11-251 (35).

**J. Does the County have any authority to regulate Monsanto's operation of the proposed agricultural production facilities?**

Pima County is heavily constrained by state law in regulating agricultural facilities. Other than the very narrow authority cited in the sections above and the limited flood control district regulations cited in the section below, Pima County has practically no ability to regulate the proposed Monsanto facility.

**K. Does the County regulate stormwater generation or flood conditions on the property?**

The Pima County Regional Flood Control District does have some limited regulatory authority regarding the proposed development. Due to the location of Monsanto's property within the federally-mapped Special Flood Hazard Area, any proposed improvements are subject to permitting in order to ensure the improvements are designed to mitigate the flood risk and that the improvements do not cause an adverse flood impact to neighboring properties. The underlying authority for the permitting requirements is found in the Code of Federal Regulations 44 CFR 60.3, the Arizona Revised Statutes 48-3609 and Title 16 of the Pima County Code (*Floodplain Management Ordinance*). Although some agricultural exemptions exist for certain improvements within the floodplain, the improvements proposed by Monsanto do not enjoy such exemption.

It is important to note that the permitting exercise is a non-discretionary administrative function. County ordinance establishes specific standards for flood risk reduction that will be applied to the proposed project, including elevating or flood-proofing structures and service equipment, erosion protection of fill pads, minimization of flow obstruction by requiring at-grade driveways, and use of flow-through security fencing. If these standards are met, the district is required to issue Floodplain Use Permits.

Regarding onsite stormwater detention and retention, the County ordinance provides specific standards for projects that are subject to standard commercial or subdivision processes. It is the Regional Flood Control District's understanding that the Monsanto project is not subject to the standard permitting processes and, as such, the detention and retention standards will not be required.

Please let me know if you require any additional information.