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November 29, 2013

VIA EMAIL

Christine Knight, Delta County Attorney
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Re: Update and Proposal

Dear Counsel:

While they have tried diligently to meet the Board's deadline of December 1, 2013, it has become clear to Edwin and Eileen Hostetler (the "Hostetlers") that they cannot have all of their birds removed from the chicken barn by this Sunday. The Hostetlers tried to explain the extreme difficulty of the date previously but still worked to try to meet it by finding places for the birds to go that would be quicker than the availability of kill facilities. While the Hostetlers were able to remove a couple loads of birds over the last weeks and continue to search for a quicker resolution, the majority of the birds currently remain in the chicken barn.

Based on the letter from the County Attorney dated November 8, 2013, if birds remain after December 1, 2013, then she "will take enforcement action against [the Hostetlers] pursuant to Article VIII, § 3 of the Delta County Specific Development Regulations." In order for civil penalties to be assessed pursuant to Article VIII, § 3, the County Attorney would have to file a civil enforcement suit. The regulations call for a maximum penalty of \$1,000 for a violation, plus a maximum of \$100 per day for each day the violation continues after a court order regarding the civil enforcement suit. *Id.*

Additionally, the opponents of the chicken barn acting as plaintiffs in the current suit have stated that the County's enforcement of the regulations is not sufficient. They have related that their concern is that the chicken barn is harming its neighbors (not just the plaintiffs, but others, as well) every day chickens remain. In an effort to address both concerns (and not force the County to go through the time-intensive process required by

the Regulations or the parties to go through contempt proceedings which require additional due process), the Hostetlers propose the following:

The Hostetlers would agree to pay the maximum fine and double the maximum daily fine allowed under the regulations until the birds have been completely depopulated. The payments would not be collected by the County as an enforcement penalty, but paid into a trust account to compensate any members of the public adversely affected by the chicken barn's operations from the date the last temporary stay was lifted: November 1, 2013, until its complete depopulation.

The trust account would be administered by a board of three individuals: one chosen by the chicken barn's opposition, one chosen by the Hostetlers, and the third chosen by the other two. Any person who believes their health is negatively impacted by the chicken barn's operations can file a claim with the selected board. If the board decides that a person's claim has been supported as valid, the board may authorize payment from the trust account. The Hostetlers will not be involved with approving or arguing against any claims submitted. Any funds remaining in the trust account after providing sufficient time for claims would be donated to a charity (not involving any parties to the lawsuit) that addresses public health.

This proposal seeks to address all the parties' concerns (the County's enforcement of the Regulations, the plaintiffs' concern with their and others' health, and the Hostetlers' practical limitations for depopulation). Please let us know your clients' positions concerning this proposal. We would be happy to discuss or define any other specifics your clients might think be necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joshua Tolin", with a horizontal line extending to the right.

Joshua Tolin
Karen Budd-Falen
BUDD-FALEN LAW OFFICES, L.L.C.