Napa County

Board of Supervisors Chambers
1195 Third Street, Third Floor
Napa, CA 94559

Agenda

Tuesday, August 20, 2024
9:00 AM

Board of Supervisors Chambers
1195 Third Street, Third Floor

Board of Supervisors

Joelle Gallagher, District 1
Ryan Gregory, District 2
Anne Cottrell, District 3
Alfredo Pedroza, District 4
Belia Ramos, District 5

**** This is a simultaneous meeting of the Board of Supervisors of Napa County, Napa County Public Improvement Corporation, Silverado Community Services District, Monticello Public Cemetery District, In-Home Supportive Services Public Authority of Napa County, Lake Berryessa Resort Improvement District, Napa Berryessa Resort Improvement District, Napa County Housing Authority, and the Napa County Groundwater Sustainability Agency.***

www.countyofnapa.org

GENERAL INFORMATION

The Board of Supervisors meets as specified in its adopted annual calendar on Tuesdays at 9:00 A.M. in regular session at 1195 Third Street, Suite 310, Napa, California 94559. The meeting room is wheelchair accessible. Assistive listening devices and interpreters are available through the Clerk of the Board of the Napa County Board of Supervisors. Requests for disability related modifications or accommodations, aids or services may be made to the Clerk of the Board's office no less than 72 hours prior to the meeting date by contacting (707) 253-4580.

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS

Levine Act Compliance: Effective January 1, 2023, the Levine Act (Government Code Section 84308) governs contributions in Board of Supervisor proceedings related to licenses, permits, or entitlements, as defined in the Act. Board members are prohibited from accepting contributions exceeding $250 from parties, their agents, or participants during such proceedings and for 12 months after a final decision. If a Board member received a contribution exceeding $250 within the past 12 months, disclosure is required on the record, and the member must not use their position to influence decisions. Parties and participants must disclose applicable contributions exceeding $250 on the record, providing the following: • Name of the party or participant and any other person making the contribution • The name of the recipient • The amount of the contribution; and • The date the contribution was made. This information does not constitute legal advice. Parties and participants are advised to consult their legal counsel for guidance on compliance.

ON A MATTER ON THE AGENDA

Please proceed to the podium when the matter is called and, after receiving recognition from the Chair, give your name and your comments or questions. In order that all interested parties have an opportunity to speak, please be brief and limit your comments to the specific subject under discussion. Time limitations shall be at the discretion of the Chair or Board, but is generally limited to three minutes.

ON A MATTER NOT ON THE AGENDA

Public comment is an opportunity for members of the public to speak on items that are not on the agenda but are within the subject matter jurisdiction of Napa County and its related districts and agencies. Public comment is limited to three minutes per speaker, subject to the discretion of the Chair. Comments should be brief and focused, and speakers should be respectful of one another who may have different opinions. The Board is here to listen to everyone who wishes to address them, but everyone has the responsibility to act in a civil manner. Please remember this meeting is being recorded and broadcast on live television. The County will not tolerate profanity, hate speech, abusive language, or threats. Also, while public input is appreciated, the Brown Act prohibits the Board from taking any action today on matters raised during public comment.

How to Watch or Listen to the Napa County Board of Supervisors Meetings

The Napa County Board of Supervisors will continue to meet pursuant to the annually adopted meeting calendar available at the following link:

https://www.countyofnapa.org/1429/Board-of-Supervisors-Special-Districts-C

The Board realizes that not all County residents have the same ways to stay engaged, so several alternatives are offered. Remote Zoom participation for members of the public is provided for convenience only. In the event that the Zoom connection malfunctions for any reason, the Board of Supervisors reserves the right to conduct the meeting without remote access.

Please watch or listen to the Board of Supervisors meeting in one of the following ways:

1. Attend in-person at the Board of Supervisors Chambers, 1195 Third Street, Napa Suite 305.
2. Watch via YouTube at https://www.youtube.com/@NapaCounty/streams.
3. Watch online at https://napa.legistar.com/Calendar.aspx (click the “In Progress” link in the “Video” column).
4. Watch on Napa Valley TV Channel 28.
5. Watch on Zoom via www.zoom.us/join (Meeting ID: 842-343-169) or listen on Zoom by calling 1-669-900-6833 (Meeting ID: 842-343-169).
6. To listen or watch in Spanish, please visit https://www.countyofnapa.org/3723/

If you are unable to attend the meeting in person and wish to submit a general public comment or a comment on a specific agenda item, please do the following:

1. Call the Board of Supervisors Public Comment Line at 707-299-1776 during the item on which you want to speak. Comments will be limited to three minutes, subject to the discretion of the Chair. If you cannot make the meeting, you may leave a comment by voice mail by calling the Public Comment Line before or after the meeting.

2. Email your comment to publiccomment@countyofnapa.org 24 hours in advance of the meeting to ensure that your comment will be shared with all members of the Board of Supervisors.

For more information, please contact the Clerk of the Board's office at 707-253-4580 or email clerkoftheboard@countyofnapa.org.

1. CALL TO ORDER; ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. PET OF THE WEEK

4. PROCLAMATIONS AND COMMENDATIONS

5. CONSENT CALENDAR - SPECIAL DISTRICTS

Napa County Housing Authority

A. Acceptance of donation report for quarter ending June 30, 2024. (Fiscal Impact $7,356 Revenue; Housing Authority Fund; Budgeted; Discretionary) **24-1317**

Attachments: Donation Report

Lake Berryessa Resort Improvement District

B. Approve the Plans and Specifications for Phase I of the "LBRID Wastewater Ponds Groundwater Inflow Mitigation Project" and authorize the advertisement for sealed bids, and opening of the bids at a time, date, and location to be published by the District Engineer pursuant to Section 20150.8 of the Public Contract Code. (No Fiscal Impact; Discretionary) **24-1359**

C. Authorize preparation of the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024. (Fiscal Impact: $3,554,206 Expense; Lake Berryessa Resort Improvement District Fund; Not budgeted; Discretionary) **24-1410**
[4/5 vote required]

Attachments: Attachment A - Carryforward Schedule

Napa Berryessa Resort Improvement District

D. Authorize preparation of the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024. (Fiscal Impact: $259,930 Expense; Napa Berryessa Resort Improvement District Fund; Not Budgeted; Discretionary) **24-1433**
[4/5 vote required]

Attachments: Attachment A - Carryforward Schedule

6. CONSENT CALENDAR

Auditor-Controller

A. Authorize preparation of the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024. (Fiscal impact: identified with each requested item in the attached letter; Various Funds; Not budgeted; Discretionary)
[4/5 vote required] **24-1274**

Attachments: Year End Memo
Year End Memo Attachment A - PO Carryforward
Year End Memo Attachment B - CIP and Non CIP Carryforward
Year End Memo Attachment C - PERS Reconciliation

B. Deny four (4) State assessed unitary property tax refund claims for return of 2019-20, 2020-21, 2021-22, and 2022-23 taxes paid on Assessor's Parcel No. 799-000-226 in accordance with Revenue and Taxation Code section 100 and Sections 5096 and 5097 (one Railroad company). (Fiscal Impact: $22,643.68 Revenue; Discretionary) **24-1362**

Attachments: Claim for Refund 19-20
Claim for Refund 20-21
Claim for Refund 21-22
Claim for Refund 22-23

C. Adopt a Resolution to authorize the issuance of the fiscal year 2023-24 promissory note for delinquent secured taxes and the continuance of the Teeter Plan for fiscal year 2024-25. (Fiscal Impact: $1,705,498 Revenue, Various Funds, Budgeted, Mandatory) **24-1400**

Attachments: Resolution
Teeter Buyout Memo from Auditor-Controller

Child Support Services

D. Approve and authorize the Director of Child Support Services to sign the revised Plan of Cooperation Agreement No. 8677 with the California Department of Child Support Services amending language that addresses the role of the program participants and simplifies existing processes for the Child Support Program. (No Fiscal Impact; Mandatory) **24-1416**

Attachments: Agreement

Clerk of the Board

E. Approval of minutes from the August 6, 2024 regular meeting. (No Fiscal Impact) **24-930**

Attachments: August 6, 2024

F. Reappoint Miguel Garcia, Mathias Kondolf, Albert Filipelli, Julie Chambon, and Monica Cooper to the Napa County Technical Advisory Group with terms of office to commence immediately and expire on June 30, 2026. (No Fiscal Impact) **24-1309**

Attachments: Garcia Request
Kondolf Request
Filipelli Request
Chambon Request
Cooper Request

G. Appointment of Jimmy T. Kontras to represent Regular Member on the Napa County Dangerous Animal Hearing Panel with term of office to commence immediately and expire on January 31, 2027. (No Fiscal Impact) **24-1366**

Attachments: Kontras Application

H. Reappointments of Fren Yaffa, Neil Watter, and Susan Ensey as Napa County representatives, and Fran Rosenberg as Napa County Alternate 1 to the Napa/Solano Agency on Aging Advisory Council. The terms of office are to commence immediately and expire on June 30, 2026. (No Fiscal Impact) **24-1367**

Attachments: Yaffa Application
Watter Application
Ensey Application
Rosenberg Application

I. Reappoint Stacey D. Capitani representing Napa Valley Vintners/Top 5 Revenue on the Unincorporated Napa Valley Tourism Improvement District Governing Committee with term of office to commence immediately and expire on June 30, 2028. (No Fiscal Impact) **24-1386**

Attachments: Capitani Application

County Counsel

J. Approve and authorize Amendment No. 1 to Agreement No. 230248B with Thomson Reuters for Westlaw legal research software adding two additional user licenses for a new maximum compensation of $17,451, expiring on January 31, 2026. (Fiscal Impact: $1,939 Expense; General Fund; Budgeted; Discretionary) **24-1313**

Attachments: Agreement

K. Approve and authorize the Informed Consent Letter with Liebert Cassidy Whitmore to allow the law firm to represent the Community College District in negotiations between the County and the College District for law enforcement services. (No fiscal Impact; Discretionary) **24-1347**

Attachments: Informed Consent Letter

County Executive Office

L. Approve and authorize Agreement No. 250100B with Willdan Financial Services to conduct a nexus study for Affordable Housing, Traffic, Utility Connections, and Small Woodland Conversion mitigation projects. (Fiscal Impact: $68,460 Expense; General Fund; Budgeted; Discretionary) **24-1252**

Attachments: Agreement
Letter

M. Accept and file the Annual Report of fees waived by various County departments during FY 2023-24. (Fiscal Impact: $52,027 net expense; Various Funds; Budgeted; Discretionary) **24-1307**

Attachments: Fees

N. Approve transmittal of the proposed responses to the 2023-24 Grand Jury Final Reports to the Presiding Judge as prescribed by Section 933 of the Penal Code. (No Fiscal Impact; Mandatory) **24-1365**

Attachments: Report - Hitting the Reset Button
Report - Communications
Report - Elder Abuse
Report - Skyline Academy
Response - Hitting the Reset Button
Response - Communications
Response - Elder Abuse
Response - Skyline Academy

County Fire Department

O. Approve a Budget Amendment to increase the appropriations by $70,000 in Fire Operations to purchase a 2023 Ford Expedition and 6 Motorola Dual Band Radios, waive competitive bidding requirements, and provide a sole source award to Cordelia Fire District for the vehicle. (Fiscal Impact: $70,000 Expense; Fire Fund, Not Budgeted: Discretionary) **24-1397**
[4/5 vote required]

Health and Human Services Agency

P. Approve and authorize Agreement No. 250159B with Mentis, Inc., for $1,520,000 for Fiscal Year 2024-2025, and each subsequent annual renewal, for the provision of Early and Periodic Screening, Diagnostic and Treatment program services. (Fiscal Impact: $1,520,000 Expense; Health and Human Services Agency Fund; Budgeted; Mandatory) **24-1300**

Attachments: Agreement

Q. Approve and authorize Agreement No. 250090B with Ole Health dba CommuniCare OLE, for a maximum of $452,738 for the term of July 1, 2024 through June 30, 2027, for the provision of the Dental Access Program. (Fiscal Impact: $452,738 Expense; Health and Human Services Agency Fund and General Fund; Budgeted; Discretionary) **24-1392**

Attachments: Agreement

Human Resources – Division of CEO's Office

R. Approve and authorize Agreement No. 240398B with ExamWorks for the term of January 1, 2024, through June 30, 2024, to provide advisory medical record review, independent medical examinations, and/or reports, and pay for previous work regarding an independent medical examination. (Fiscal Impact: $80,000 annual expense; Fund dependent upon Department usage; Budgeted; Discretionary) **24-969**

Attachments: Agreement

S. Adopt a Resolution to amend Napa County Policy Manual Part I to add Section 37DD - Lactation Accommodation Policy. (No Fiscal Impact) **24-1306**

Attachments: Resolution
Exhibit A

Information Technology Services – Division of CEO's Office

T. Approve and authorize Agreement No. 250075B with AMS.NET, for a maximum of $29,800 through June 30, 2025 for professional services required for network configuration at the Napa County Replacement Detention Facility; and a waiver of competitive bidding requirement and sole source award (pursuant to Napa County Code Section 2.36.090). (Fiscal Impact: $29,800 Expense; Capital Projects Fund; Budgeted; Discretionary) **24-1015**

Attachments: Agreement

U. Approve and authorize Agreement No. 250096B with Pictometry International Corporation for a maximum of $252,180 to provide aerial photography services through August 31, 2027 (Fiscal Impact: $252,180 Expense; Information Technology Services Fund; Budgeted; **24-1336**

Discretionary).

Attachments: Agreement

V. Adopt a Resolution approving revisions to the Clerk of the Board and Public Works retention schedules in Section 40 of the County Policy Manual effective August 20, 2024. **24-1352**
[4/5 vote required]

Attachments: Resolution
Exhibit "A" - Public Works Retention Worksheet (Clean)
Exhibit "B" - Clerk of the Board Retention Worksheet (Clean)
Public Works - Retention Worksheet (Redlined)
Clerk of the Board - Retention Worksheet (Redlined)

Planning, Building and Environmental Services (PBES)

W. Approve a Budget Amendment to increase appropriations in Community Grants with use of fund balance to allow the Wildlife Conservation Commission to fund additional annual grant applications. (Fiscal Impact: $10,000 Expense; Not Budgeted; Discretionary) **24-1374**
[4/5 vote required]

X. Adopt and approve a temporary office closure on Thursday, September 19, 2024, from 11:00 a.m. to 2:00 p.m. for a department-wide team building, professional development luncheon. (No Fiscal Impact; Discretionary) **24-1394**

Probation

Y. Approve and authorize Agreement No. 250149B with Jan C. Bouch, for the term August 1, 2024 through June 30, 2025 to provide executive coaching and mentoring of Probation Supervisors and Managers. (Fiscal Impact: $58,000 Expense; General Fund; Budgeted; Discretionary) **24-1413**

Attachments: Agreement

Public Works

Z. Approve and authorize the disposal of one surplus piece of equipment by way of trade-in. (Fiscal Impact: $28,000 Revenue; Fleet; Not Budgeted; Discretionary) **24-1192**

AA. Adopt a Resolution authorizing the filing of an application, acceptance of allocation of funds, and execution of a grant agreement by the Director of Public Works with the California Department of Transportation Aeronautics Division in support of the Airport Improvement Program for a State Matching Grant for the Taxiway K **24-1299**

and 19R Runup Apron Rehabilitation Project. (Fiscal Impact: $219,629 Revenue; Airport CIP Fund; Budgeted; Discretionary)

Attachments: Resolution

AB. Approve and authorize Agreement No. 250070B with St. Francis Electric for a maximum of $150,000 per fiscal year, for the term of July 1, 2024 through June 30, 2027 with an automatic one-year renewal option for up to two additional years to provide Electrical Maintenance and On-Call Services for Napa County. (Fiscal Impact: $150,000 Expense; Roads and County Service Area No. 3 Funds; Budgeted; Discretionary) **24-1308**

Attachments: Agreement

AC. Authorize the purchase of a capital asset for a Motorola Two-Way All-Band radio, sole source award to Motorola Solutions, and approve a Budget Amendment. (Fiscal Impact: $7,400 Expense; Roads Fund; Not Budgeted; Discretionary) **24-1341**
[4/5 vote required]

AD. Award a Construction Contract to "E.E. Gilbert Construction, Inc." for the "Redwood Road 5.76 Slide Repair Project"; and approve a Budget Amendment. (Fiscal Impact: $166,377 Expense; Measure T Non-Operating Special Revenue Fund; Not Budgeted; Discretionary) **24-1348**
[4/5 vote required]

Attachments: Budget Summary

Sheriff

AE. Approve and authorize revenue Agreement No. 170821B with Napa County Office of Education to provide a School Resource Officer at Juvenile Court and Camille Creek Community School. (Fiscal Impact: $201,938 Revenue; General Fund; Budgeted; Discretionary) **24-1305**

Attachments: Agreement

AF. Approve and authorize Agreement No. 250148B with Axon Enterprise, Inc. for body worn cameras, conducted energy devices, and fleet video systems and approval of a waiver for competitive bidding and sole source award. (Fiscal Impact: $3,042,638 Expense; General Fund; Budgeted; Discretionary) **24-1375**

Attachments: Agreement

AG. Adopt a Resolution; and approve and authorize grant agreement 250162B and related Budget Amendment to participate in the Urban Area Security Initiative (UASI) administered by Bay Area UASI FY22 grant funding for the performance period of July 1, 2024, to December 31, 2024 to enhance regional preparedness. (Fiscal Impact: $7,872 **24-1385**

Revenue; General Fund; Not Budgeted; Discretionary)
[4/5 vote required]

Attachments: Resolution
Agreement

7. PUBLIC COMMENT
For all matters not listed on the agenda but within the jurisdiction of the Board of Supervisors and Special Districts. (see page 1)

8. BOARD OF SUPERVISORS REPORTS AND ANNOUNCEMENTS

9. DISCUSSION OF ITEMS PULLED FROM CONSENT CALENDARS

10. ADMINISTRATIVE ITEMS - SPECIAL DISTRICTS

11. ADMINISTRATIVE ITEMS

County Executive Office

A. Adopt a Resolution authorizing the execution of a Termination Agreement and related documents; and provide payment to defease the County's portion of the State lease for the Re-Entry Facility. (Fiscal Impact: $16 million; Capital Improvement Projects Fund; Budgeted; Discretionary) **24-1292**

Attachments: Resolution
Termination Agreement
State Approval

Housing & Homeless Services – Division of CEO's Office

B. Receive a presentation regarding the "Napa Valley Housing Needs Assessment". (No fiscal impact) **24-1199**

Attachments: Report

12. PUBLIC HEARING - SPECIAL DISTRICTS

13. PUBLIC HEARINGS

Public Works

A. PUBLIC HEARING - Zone One Rates **24-1325**

Adopt a Resolution adjusting rates effective October 1, 2024, for the residential and commercial operational cost associated with the collection of solid waste, recyclables, green waste, and food waste applicable to the Unincorporated Area of Garbage Zone One, a service which is provided by Napa County Recycling and Waste Services, LLC. (Fiscal Impact: $16,200 net revenue; Zone One; Budgeted; Discretionary)

Attachments: Resolution
Zone 1 Map

Planning, Building and Environmental Services (PBES)

B. PUBLIC HEARING 9:00 AM- Sentinel LLC/Inglenook Residence Appeal **24-1186**

Move to continue the public hearing for an appeal filed by Water Audit California (Appellant) to the Napa County Planning Commission's decision on November 15, 2023, to approve a Use Permit Exception to the Conservation Regulations (No. P22-00404-UP) filed by Adobe Associates, Inc. on behalf of Niebaum-Coppola Estate Winery LP (Applicant) to allow a private access road to encroach into the creek setback in order to serve existing agricultural structures and a potential future residence. (No Fiscal Impact)

(CONTINUED FROM JUNE 11, 2024. APPELLANT, APPLICANT, AND STAFF REQUEST A CONTINUANCE TO NOVEMBER 12, 2024, AT 9:00 AM.)

Planning, Building and Environmental Services (PBES)

C. PUBLIC HEARING 2:00 PM - Duckhorn Vineyards Winery Appeal (Use Permit Major Modification No. P19-00097-MOD) **24-642**

Conduct a public hearing to consider the appeals filed by Appellant John Murphy on behalf of Preserve Lodi Lane and Appellant Water Audit California concerning Napa County Planning Commission's decision on May 3, 2023, to approve the Duckhorn Vineyards Winery Use Permit Major Modification Application No. P19-00097 and adopt the Revised Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. (No Fiscal Impact) (CONTINUED FROM NOVEMBER 7, 2023)

Attachments:
A - Preserve Lodi Lane's Appeal Packet
B - Water Audit California's Appeal Packet
C - Appellant PLL Witness List
D - Appellant WAC Witness List
E - Applicants Witness List
F - Planning Commission Adopted Conditions of Approval
G - Revised Mitigated Negative Declaration
H - PLL's response to revised MND
I - WAC's response to revised MND
J - PLL's Good Cause Request to Augment the Record
K - WAC's Good Cause Request to Augment the Record
L - Applicant's Objections to Good Cause Requests
M - Chair's Good Cause Determination
N - PLL's Supplemental Argument
O - WAC's Supplemental Argument
P - Applicant's Supplemental Argument
Q - Correspondence through August 8, 2024
R - Staff Responses to PLL's Appeal
S - Staff Responses to WAC's Appeal

14. CLOSED SESSION

15. ADJOURNMENT

ADJOURN TO THE BOARD OF SUPERVISORS REGULAR MEETING, TUESDAY, SEPTEMBER 10, 2024 AT 9:00 A.M.

I HEREBY CERTIFY THAT THE AGENDA FOR THE ABOVE STATED MEETING WAS POSTED AT A LOCATION FREELY ACCESSIBLE TO MEMBERS OF THE PUBLIC AT THE NAPA COUNTY ADMINISTRATIVE BUILDING, 1195 THIRD STREET, NAPA, CALIFORNIA ON FRIDAY, AUGUST 16, 2024 BY 5:00 P.M. A HARDCOPY SIGNED VERSION OF THE CERTIFICATE IS ON FILE WITH THE CLERK OF THE BOARD OF SUPERVISORS AND AVAILABLE FOR PUBLIC INSPECTION.

Neha Hoskins (By e-signature)

NEHA HOSKINS, Clerk of the Board

1195 THIRD STREET
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Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1317

TO: Housing Authority Commissioners

FROM: Jennifer Palmer, Executive Director of Housing Authority

REPORT BY: Alex Carrasco, Project Manager

SUBJECT: Acceptance of Housing Authority Donation Report for Quarter Ending June 30, 2024

RECOMMENDATION

Acceptance of donation report for quarter ending June 30, 2024. (Fiscal Impact $7,356 Revenue; Housing Authority Fund; Budgeted; Discretionary)

BACKGROUND

The Napa County Housing Authority (Authority) is a public housing authority established pursuant to California Health and Safety Code section 34200 et seq., and is the owner of three farmworker centers (Centers) located in Napa County. In accordance with Article VI of the Authority's donation policy, at the end of each quarter, Authority staff prepare a report to the Board for any donations received and declined in the aggregate amount per occurrence. The report must include: the name of the donor, total value of the donations received or declined, the name of the center receiving donation and the name of center utilizing the donation. For the quarter ending June 30, 2024 the Centers received a total of $7,356 in donations.

Requested Action: Accept donation report for quarter ending June 30, 2024.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Fund 5060 Housing Authority
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Facilitate fiscal monitoring and ensure donation spending is consistent with intent of donors.

Is the general fund affected?	No
Future fiscal impact:	Certain donations may require preventative maintenance, which staff will monitor and budget for accordingly.
Consequences if not approved:	Noncompliance with donation policy.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Napa County Housing Authority Donations Reporting Fiscal Year 2023-2024

Calistoga, River Ranch, and Mondavi Farmworker Centers

For the Quarter Ended September 30, 2023

Description	Donor	Center(s) Receiving Donation	Center(s) Utilizing Donation	Amount
John Deere Z515E Mower (non cash)	Cinco de Mayo Golf, Inc.	Mondavi	Mondavi	$5,636.94
John Deere Z515E Mower (non cash)	Cinco de Mayo Golf, Inc.	River Ranch	River Ranch	$5,636.94
BBQ Grate/Grill (non cash)	Cinco de Mayo Golf, Inc.	River Ranch	River Ranch	$461.26
Owl Box Maintenance (non cash)	Cinco de Mayo Golf, Inc.	River Ranch	River Ranch	$125.00
Subtotal				**$11,860.14**

For the Quarter Ended December 31, 2023

Description	Donor	Center(s) Receiving Donation	Center(s) Utilizing Donation	Amount
Christmas gifts for lodgers (non cash)	Cinco de Mayo Golf, Inc	River Ranch	River Ranch	$2,198.88
Christmas dinner for lodgers (non cash)	Cinco de Mayo Golf, Inc	River Ranch	River Ranch	$1,500.00
Owl Box Maintenance (non cash)	Cinco de Mayo Golf, Inc.	River Ranch	River Ranch	$125.00
Subtotal				**$3,823.88**

For the Quarter Ended March 31, 2024

Description	Donor	Center(s) Receiving Donation	Center(s) Utilizing Donation	Amount
Commercial Ranges	Cinco de Mayo Golf, Inc.	All Centers	All Centers	$20,925.10
Subtotal				**$20,925.10**

For the Quarter Ended June 30, 2024

Description	Donor	Center(s) Receiving Donation	Center(s) Utilizing Donation	Amount
Landscaping Materials	Cinco de Mayo Golf, Inc	Calistoga	Calistoga	$1,820.24
Landscaping Materials	Cinco de Mayo Golf, Inc	River Ranch	River Ranch	$1,820.24
Landscaping Materials	Cinco de Mayo Golf, Inc	Mondavi	Mondavi	$1,820.23
Pottery, plants, and flowers	Central Valley Builders	All Centers	All Centers	$1,894.95
Subtotal				**$7,355.66**

Total Non Cash Donations Received **$17,578.97**

Total Donations Reported **$43,964.78**

Donations Declined: No donations declined through Q4

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Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1359

TO: Members of the Governing Board

FROM: Christopher Silke, District Engineer

REPORT BY: Annamaria Martinez, Assistant Engineer

SUBJECT: Approval of Plans and Specifications and Authorization to Advertise for Bids for Phase I of the "LBRID Wastewater Ponds Groundwater Inflow Mitigation Project" (LB 18-01)

RECOMMENDATION

Approve the Plans and Specifications for Phase I of the "LBRID Wastewater Ponds Groundwater Inflow Mitigation Project" and authorize the advertisement for sealed bids, and opening of the bids at a time, date, and location to be published by the District Engineer pursuant to Section 20150.8 of the Public Contract Code. (No Fiscal Impact; Discretionary)

BACKGROUND

Persistent heavy rainfall, runoff, and saturated soil conditions in the winter of 2017 filled Lake Berryessa Resort Improvement District (LBRID) wastewater ponds. Stored treated wastewater in Pond 7 had to be removed through the irrigation pump station and onto the land disposal fields to avoid damage to the earthen berm. Uncontrolled overland runoff ensued. The District's Waste Discharge Requirements (WDRs) permit prohibits land application runoff beyond tailwater capture ditches that return flow back to the ponds. Central Valley Regional Water Quality Control Board (Regional Board) subsequently served the District with a Notice of Violation in April 2017. To address the violation, Regional Board ordered the District to complete a Revised Water Balance Evaluation and submit a Work Plan if it is found that there is insufficient storage and/or disposal capacity. The District authorized Agreement No. 170871B with GHD, Inc. in May 2017 to provide engineering study services. The scope of the investigation centered on Water Balance Update and Calibration Model tasks executed in conformance with the Regional Board guidelines. The review of the wastewater ponds and irrigation facilities was to assess the adequacy for storing and handling a 100-year annual return precipitation winter period. GHD, Inc. was also tasked with inspecting the original inlet piping constructed in the mid-1960s for Ponds 1 through 3. In their June 2017 Revised Water Balance Report, the engineering consultant team concluded the lack of any pond liner barrier or means to intercept groundwater flow upgradient of the ponds was responsible for large seepage inflow volume as soils became saturated in the winter of 2017. Additional drainage improvements alongside Ponds 1 through 3 would reduce surface water runoff during intense storm events.

GHD, Inc. published an Inflow / Infiltration Mitigation and Storage Expansion Work Plan as mandated by Regional Board. First initiatives recommended in the plan were to survey as-built bathymetry of storage ponds to estimate capacities, perform geotechnical exploration borings to bedrock or boulder refusal, sample soils for classification, and obtain contiguous northern perimeter surface topography adjacent to all ponds.

Amendment No. 1 to Agreement No. 170871B with GHD, Inc. was approved in March 2018 to advance the project into a technical feasibility analysis, furnish a geotechnical opinion on the suitability for constructing a groundwater cutoff wall, and mapping for future base plan design. GHD, Inc. stated in their geotechnical findings sub-report that the wastewater ponds site soils were conducive to an engineered vertical trench and drain pipe collector at the underlying bedrock interface surrounding the northerly perimeter of Ponds 1, 2, 3, 7 & 8. District staff compiled all technical project documentation and maps into a Final Feasibility Report filed with Regional Board in May 2018. Preliminary total project costs (engineering, permitting, administration and construction) to install a vertical trench drain, replace the vintage 10" tar-coated steel pond inlet pipe, re-grade drainage channels at the site and build earthen berm heights at Ponds 1 - 3 were estimated to be $1,250,000. A Clean Water State Revolving Fund (CWSRF) project application in the amount of $2,000,000 was filed with the State Water Resources Control Board, Division of Financial Assistance (DFA) in September 2018 seeking principal forgiveness to cover preliminary engineering, engineering design, permitting, administrative, and construction costs. Included with the application was LBRID Resolution 2018-05 authorizing the District Engineer to submit a principal forgiveness financial assistance application to the State Water Resources Control Board Division of Financial Assistance (DFA) and take related action to receive funding for the Project. State officials with Small Community Wastewater Grant Program oversight stated that the District would be potentially eligible for principal forgiveness if it maintains designation as a Disadvantaged Community (DAC). Rural Community Assistance Corporation (RCAC) was hired by the District to update its Median Household Income (MHI) because the DAC status had expired on December 31, 2017. RCAC household income survey methodology conforms with SWRCB standards. Certified results of the District's survey found the MHI to be $43,200 which is significantly below 80% of the statewide income average for DAC classification. Amendment No. 2 to Agreement No. 170871B with GHD, Inc. was approved in September, 2018, and expanded the scope of services to include additional design and bid-phase consulting services increasing the contract amount by $106,247 for a new maximum of $184,858.

Amendment No. 3 to Agreement No. 170871B with GHD, Inc. was approved in March 2019 to expand the scope of services for Stormwater Inflow / Infiltration Monitoring as ordered by the Central Valley Regional Water Quality Board. Engineering fees for the contract supplement added $46,488 to the budget for an adjusted total of $231,346.

Amendment No. 4 to Agreement No. 170871B with GHD, Inc. was approved in January 2020 expanding the scope of services to include a Preliminary Engineering Report in accordance with DFA Guidelines thereby increasing the consulting fees by $8,196 to a new maximum amount of $239,542.

Preliminary design plans and technical specifications for the project, including the addition of widening and raising the earthen berm height of Ponds 1 -3, were submitted to SWRCB and Central Valley RWQCB for review and comment in the fall of 2023.

On March 26, 2024, DFA signaled that issuance of a funding agreement was imminent, and staff recommended that the Board approve a new Agreement with GHD, Inc. to begin additional geotechnical design tasks related to upgrading the original treatment pond berms that would lead to preparation of final plans and specifications upon receipt and acceptance of the State Water Resources Control Board Funding Agreement. Available operations budget fund balance funded the new agreement and it is expected the soft costs are eligible for

reimbursement under the CWSRF program guidelines.

In May 2024, the District Engineer received and signed a Groundwater Inflow Mitigation funding agreement as authorized by Resolution 2018-05, and on July 2, 2024, a fully executed funding agreement was issued by DFA in the amount of $2,265,934.

On July 23, 2024, Amendment No 1 to Agreement No 24036B with GHD, Inc. was approved by the Board. The Agreement added scope and increased compensation to the Agreement that would allow GHD, Inc. to complete the Plans and Specifications for the project as a whole - splitting the project scope into two phases thereby front loading construction of the vertical trench drain before winter 2025 followed by bid and construction of the earthen berm plus inlet pipe work over the 2025 construction season when site conditions are dry.

The Plans and Specifications for Phase I are complete and ready for approval by the Governing Board. The District Engineer is requesting authorization to advertise for construction bids. The Engineer's Estimate for Phase I of the project is $650,000.

Requested Action:

1. Approve Plans and Specifications for Phase 1 of the "LBRID Wastewater Ponds Groundwater Inflow Mitigation Project" (LB 18-01) and authorization to advertise for sealed bids.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	LBRID received and accepted a CWSRF funding agreement as authorized by Resolution 2018-05. The design and construction appropriations allow staff to implement wastewater pond upgrades and comply with ordered directives by RWQCB.
Is the general fund affected?	No
Future fiscal impact:	The project will span multiple fiscal years; however, the grant award is expected to cover future project costs and reimburse LBRID for expenses incurred in prior fiscal years for design services.
Consequences if not approved:	The Project will be stalled exposing the District to potential enforcement action by RWQCB.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is statutorily exempt from CEQA pursuant to CEQA Guidelines section 15262 as a feasibility or planning study for possible future construction or repairs, and categorically exempt from CEQA pursuant to CEQA Guidelines section 15301 as the repair, maintenance, or minor alteration of existing public facilities involving negligible or no expansion of existing or former use.

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Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1410

TO: Lake Berryessa Resort Improvement District Board

FROM: Tracy Schulze - Auditor-Controller

REPORT BY: Georgina Panganiban -Accountant-Auditor Manager

SUBJECT: Authorization to prepare necessary entries to close the financial books for the fiscal year ended June 30, 2024.

RECOMMENDATION

Authorize preparation of the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024. (Fiscal Impact: $3,554,206 Expense; Lake Berryessa Resort Improvement District Fund; Not budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

The Auditor-Controller anticipates completing all the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024 by Monday, September 30, 2024. Completing this process requires approval by the Lake Berryessa Resort Improvement District Board and requires a 4/5 vote.

The two requested actions for approval include:

1. Approve Budget Amendment 24-1410, increasing appropriations by $3,554,206 in Fiscal Year 2024-25 for continued projects from Fiscal Year 2023-24. On June 25, 2024, your Board approved estimated amounts of remaining budget and related contracts to be carry forward into the following year. This item is to ratify final amounts resulting from completing all accounting entries through June 30, 2024. See Attachment A.

2. Maintain the fund balance restriction in the amount of $150,151 for FEMA/CALOES revenue received for the 2017 Storm Event. Funds are restricted until the projects are fully audited and can be released.

The eight capital improvement projects to be completed in Fiscal Year 2024-25 or beyond are as follows:

Project 19007

Ponds Inflow Mitigation Project was created in September of 2018 for the purpose of sewer collection system inflow and infiltration studies after heavy rainfall in the winter of 2017 caused a series of spills into the environment. The carryover appropriations amount is $33,658. The re-encumbrance contract for G.H.D. Inc. (No.2403068B) is $18,472.

Project 22009

To find other sustainable potable water resources from Putah Creek, the drought, aged infrastructure and wildfire devastation in the Putah Creek watershed have compromised the water supply The carryover amount is $2,011,958.

Project 22013

Replace treatment process air compressors, refrigerated dryer, delivery piping, add cross-flow building ventilation, small pipe, metal door, protective coatings. Move chemicals to outdoor storage. Drinking water and regulatory permit compliance. The carryover amount is $101,491.

Project 22014

Coatings on the tank interior are deteriorating rapidly with pit corrosion emerging through steel wall panels in the past year. Seep stains when the tank has filled are evident on the outside surfaces. The metal roof dome and showing signs of corrosion attack. Replace bolted steel tank with reinforced concrete structure. A new tank is necessary to prevent raw sewerage spills into nearby Putah Creek prompting regulatory enforcement action by Central Valley Regional Water Quality Control Board. Clean water, environmental and regulatory permit compliance. The carryover amount is $567,347. The re-encumbrance contract for G.H.D. Inc. (No.230149B) is $18,458.

Project 22015

The existing generator provides emergency power to the water treatment plant and associated pump operations, as well as to the District’s central sewer lift station (Station A) and one ancillary lift station (Station E). Standby power at this location is critical to maintaining both water and sewer service during scheduled Public Safety Power Shutdowns, emergencies (e.g. wildfires and storms), or when PG&E power is unstable. Drinking water, clean water, environmental and regulatory permit compliance. The carryover amount is $14,516.

Project 22016

Over the past ten (10) years pump stations and water storage tanks have been integrated into the Rockwell Factory Talk Human Machine Interface (HMI) platform. While functional, the older generation HMI software does not provide advanced level of automation, remote control, alarm alerts, sufficient network speed, trend

charts and dependability needed by the District in a more stringent regulatory environment. Monthly State Compliance Report data originates from the SCADA systems. Drinking water, clean water, environmental and regulatory permit compliance. The carryover amount is $93,595. The re-encumbrance contract for Telestar (No. 230381B) is $78,710.

Project 23005

To replace an existing, Tank number 3, a 100,000 gallon redwood water storage tank original to the District with a new bolted steel tank with similar capacity. Other improvements include access road improvements, site security at all three of the District's potable storage tank locations, and the installation of equipment in each of the three tanks that will help reduce the formation of disinfection byproducts in the District potable water. The carryover amount is $576,827 and includes grant revenue carryforward of the same amount from the State of Water Resources Control Board. The re-encumbrance contract for G.H.D (No. 230208B) is $48,128; for Piazza (No. 240118B) is $273,927; for RGM Kramer (No. 240189D) is $9,275.

Project 24019

The Drought and Water Supply Sustanability project includes procurement of material and services to install a floating intake structure in Putah Creek. It is to conduct temporary water transfers within the creek channel from up-channel pools to the existing intake pool during drought conditions, rehabilitation of the existing stationary intake structure, and hydrogeologic explorations for a potential alternative water supply that can satisfy the maximum daily water demand of the community. The carryover amount is $154,814 and includes grant revenue carryforward of $320,481.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	All capital projects listed (19007, 22009, 22013, 22014, 22015, 22016, 23005 and 24019) are funded with use of available fund balance.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approval of these entries will enable the books to be properly closed in compliance with Generally Accepted Accounting Principles (GAAP) and with State accounting and budgeting practices, and will also align the Capital Improvement Projects with the County's budgeting process.
Is the general fund affected?	No

Consequences if not approved:	The Lake Berryessa Resort Improvement District would not be in compliance with Generally Accepted Accounting Principles (GAAP) or State accounting and budgeting practices. In addition, the current approved Capital Improvement Projects would not have the appropriations to complete the work committed.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Lake Berryessa Resort Improvement District
CIP Carryforward detail listing
June 30, 2024

ATTACHMENT A

			Budget Rollover Revenues	Budget Rollover Appropriations	Vendor/Contractor	Remaining Contract Balance
CIP Carryforward Detail Listing						
LBRID						
5220	5220500	19007 Groundwater Mitigation Project	$ -	$ 33,658	240306B GHD Inc	$ 18,472
5220	5220500	22009 Sustainable Water Supply Project	453,634	2,011,958		
5220	5220500	22013 Water Treatment Plant Upgrades	-	101,491		
5220	5220500	22014 Lift Station A Sewer Tank Replacement Project	-	567,347	230149B GHD Inc	18,458
5220	5220500	22015 Water Plant Generator Replacement	-	14,516		
5220	5220500	22016 SCADA System Upgrades Project	-	93,595	230381B Telstar	78,710
5220	5220500	23005 Tank No 3 Replacement and Distribution System Improvements Project	576,827	576,827	240118B Piazza	273,927
					230208B GHD Inc	48,128
					240189D RGM Kramer	9,275
5220	5220500	24019 Drought and Water Supply Sustain	320,481	154,814		
		Total CIP Revenue/Appropriations Carryforward	**$ 1,350,942**	**$ 3,554,206**	**Total CIP Contract Balances to Carryforward**	**$ 446,970**

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Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1433

TO: Napa Berryessa Resort Improvement District Board

FROM: Tracy Schulze - Auditor-Controller

REPORT BY: Georgina Panganiban -Accountant-Auditor Manager

SUBJECT: Authorization to prepare necessary entries to close the financial books for the fiscal year ended June 30, 2024.

RECOMMENDATION

Authorize preparation of the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024. (Fiscal Impact: $259,930 Expense; Napa Berryessa Resort Improvement District Fund; Not Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

The Auditor-Controller anticipates completing all the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024 by Monday, September 30, 2024. Completing this process requires approval by the Napa Berryessa Resort Improvement District Board of the below entries and requires a 4/5 vote.

The requested actions for approval include:

1. Approve Budget Adjustment 24-1433, increasing appropriations by $259,930 in Fiscal Year 2024-25 for continued projects from Fiscal Year 2023-24. On June 25, 2024, your Board approved estimated amounts of remaining budget and related contracts to be carry forward into the following year. This item is to ratify final amounts resulting from completing all accounting entries through June 30, 2024. See Attachment A.

2. Maintain restriction of $34,556 for FEMA/CalOES. Funds are restricted until projects are fully audited and

can be released.

3. Establish restriction of $74,959 due to the remaining excess insurance proceeds from the 2020 LNU Fire Complex, transferred from the General Fund Declared Emergency subdivision. Funds are being transferred after a successful completion of the post emergency audit. Funds are to remain restricted until a new construction project is established.

There are five capital improvement projects to be completed in Fiscal Year 2024-25:

Project 21071

The USDA Reserve Wastewater Treatment Plant project is the replacement of various short lived assets installed as part of the USDA funded wastewater treatment plant replacement project in 2012. Funded by depreciation reserves the funds are needed to procure services and supplies to complete work on the following: StormBLOX treatment unit transfer pump replacement; the StormBLOX treatment unit filter module replacement and; the Polymer feed system rehabilitation. The carryover appropriation amount is $63,750.

Project 21072

The USDA Reserve Water Treatment Plant project is the replacement of various short lived assets installed as part of the USDA funded wastewater treatment plant replacement project in 2012. Funded by depreciation reserves the funds are needed to procure supplies to complete work on the Roberts Filter blower rehabilitation. The carryover appropriations amount is $130,574.

Project 22017

The Wastewater Pond No. 2 has multiple slide planes within the southern bank cut. Sloughing is prevalent on the westernmost face with large earth quantities filling in a drainage ditch when soils become saturated in the winter. Around the mid-point of Pond No. 2 southern embankment a slide greater than 500 cubic yards in quantity has slumped into the wastewater storage pond. Project and evaluation began in fiscal year 2022 and construction planned to begin in fiscal year 2023. The carryover appropriations amount is $7,505.

Project 23032

The Woodhaven Court sewer lift station was destroyed in the August 2020 LNU Lighting Complex Fire, along with the residences on the street that relied on the lift station to transport sewage toward the wastewater treatment plant. The facility was deemed a total loss and the District received insurance proceeds to replace it.

The Woodhaven Lift Station Replacement Project will replace the station with a lift station of similar design and capacity, including site improvements and security. The carryover appropriation amount is $4,195.

Project 24013

In August 2020 the LNU Lighting Complex Fire burned through the community destroying critical elements of infrastructure needed to operate the water and wastewater facilities. Including the complete loss of an irrigation system spanning 60 acres in coverage to disposal of treated wastewater effluent. The newly designed wastewater disposal sprayfield system will encompass the entire District owned parcel yielding more surface area for land application, not be susceptible to iron corrosion, give more flexibility to apply water over subzones, and require much less maintenance and improve fire resiliency with a wider wet break line of defense. The carryover appropriation amount is $53,906. The re-encumbrance contracts are Brightview Landscape (No. 240213B) for $2,085 and Odell's Pump (No. 240428D) in the amount of $28,711.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	The requested adjustments will be funded by Napa Berryessa Resort Improvement District's available fund balance.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approval of these entries will enable the books to be properly closed in compliance with Generally Accepted Accounting Principles (GAAP) and with State accounting and budgeting practices and also align the Capital Improvement Project budgeting process with the County's budgeting process.
Is the general fund affected?	No
Consequences if not approved:	The Napa Berryessa Resort Improvement District would not be in compliance with Generally Accepted Accounting Principles (GAAP) or State accounting and budgeting practices. In addition, the current approved Capital Improvement Projects would not have the appropriations to complete the work committed.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Napa Berryessa Resort Improvement District

CIP Carryforward detail listing

June 30, 2024

ATTACHMENT A

			Budget Rollover Revenues	Budget Rollover Appropriations	Vendor/Contractor	Remaining Contract Balance
CIP Carryforward Detail Listing						
NBRID						
5240	5240500	21071 (USDA Depreciation Reserve Wastewater Projects)	$ -	$ 63,750		
5240	5240500	21072 (USDA Depreciation Reserve Water Projects)	-	130,574		
5240	5240500	22017 (Wastewater Pond No 2 Berm Repair Project)	-	7,505		
5240	5240500	23032 (Woodhaven Sewer Lift Station Replacement Project)	-	4,195		
5240	5240500	24013 (Wastewater Disposal Sprayfield Project)	-	53,906	240213B Brightview Landscape	$ 2,085
					240428D Odell's Pump	$ 28,711
		Total CIP Revenue/Appropriations Carryforward	**$ -**	**$ 259,930**	**Total CIP Contract Balances to Carryforward**	**$ 30,796**

Napa County

Board Agenda Letter

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Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1274

TO: Board of Supervisors

FROM: Tracy Schulze - Auditor Controller

REPORT BY: Georgina Panganiban - Accounting Manager

SUBJECT: Authorization to prepare necessary accounting entries to close financial books for the fiscal year ended June 30, 2024.

RECOMMENDATION

Authorize preparation of the necessary accounting entries to close the financial books for the fiscal year ended June 30, 2024. (Fiscal impact: identified with each requested item in the attached letter; Various Funds; Not budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

The Auditor-Controller anticipates completing all the necessary accounting entries to close the fiscal year ended June 30, 2024 by Monday, September 30, 2024. Completing this process requires approval by the Board of Supervisors of numerous entries affecting various funds. These actions include all funds under the control of the Board of Supervisors.

Requested Actions:

1. Establishing, increasing, decreasing and maintaining fund balance assignments, restrictions or commitments;

2. Approving budgetary adjustments to increase appropriations offset by use of contingency or use of available/restricted fund balance;

3. Authorizing contract increases for client services rendered at Health and Human Services, Mental Health Division;

4. Authorizing temporary cash advances, if necessary, for a negative cash position as of June 30, 2024, due to timing of receiving State reimbursements;

5. Approving an increase in the fiscal year 2024-25 budget for fiscal year 2023-24 commitments that were not fulfilled during the year and not re-budgeted for in the following year, including ratification of amounts for both open purchase orders and multi-year capital projects;

6. Accepting a report of cash shortages throughout the year from various departments; and

7. Authorizing the Auditor-Controller the ability to continue to make additional accounting and budgetary entries as necessary to close the books.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	The requested adjustments will be funded by contingencies or use of available/restricted fund balance. Sources are identified with each requested item in the attached letter.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approval of these entries will enable the books to be properly closed in compliance with Generally Accepted Accounting Principles (GAAP) and with State accounting and budgeting regulations.
Is the general fund affected?	Yes
Future fiscal impact:	Included in this item is a budget adjustment to carry-forward budget appropriations from fiscal year 2023-24 to 2024-25. Carryforward amounts are encumbrances for commitments entered into during the fiscal year 2023-24 that have not been completed or fulfilled by June 30, 2024 and have not been re-budgeted as part of the 2024-25 Adopted Budget. Detailed listings of carryforward amounts are included as attachments to this item.
Consequences if not approved:	The County would not be in compliance with Generally Accepted Accounting Principles (GAAP) or State accounting and budgeting regulations.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

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A Commitment to Service

Auditor-Controller

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Tracy A. Schulze
Auditor-Controller

Date: August 20, 2024

To: Napa County Board of Supervisors

From: Tracy A. Schulze
Auditor-Controller

Subject: Fiscal Year 2023-24 Closing Entries

At the end of each fiscal year, certain accounting and budgetary entries need to be recorded by the Auditor-Controller to complete the year-end closing process. I am requesting authorization to process these year-end adjustments, which are detailed below.

A. FUND BALANCE - ASSIGNMENTS/RESTRICTIONS/COMMITMENTS

Requested Action: Establish, increase, decrease or maintain assignments, restrictions and commitments as of June 30, 2024.

Government Accounting Standards Board (GASB) #54 requires governmental entities to clearly define categories of constraints placed on the government's fund balance for transparency and comparability. Fund Balance is categorized as follows:

1. Non-Spendable: not is spendable form (inventories and prepaid assets), or legally required to be maintained intact (endowments).
2. Restricted: externally imposed by creditors, grantors, contributors or laws, or imposed by law through constitutional provisions or enabling legislation.
3. Committed: imposed by formal action of the highest level of decision making authority (Board of Supervisors) and cannot be used for any other purpose unless there is a removal or change through the same type of formal action.
4. Assigned: constrained by the government's intent to be used for specified purposes, expressed by the governing body, except for stabilization agreements.
5. Unassigned: available; not restricted, committed or assigned to a specific use.

General Fund

Non-Departmental - Decrease assignment in the amount of $1,000,000, to reflect the 3rd and final year of General Fund contributions to Health and Human Services Mental Health Program. This action will bring down the total designation to $0, with no additional contributions to Health and Human Services Mental Health Program resulting from General Fund's net county cost recovery from the American Rescue Plan Act of 2021 (ARPA) standard allowance.

Non-Departmental – Increase General Reserve designation by $1,401,946 due to the close out and return of excess funds in the Declared Emergency subdivisions. The excess funds are from the 2020 LNU Fire Complex FEMA grant. The post emergency audit has completed successfully with no requirement of payback.

A. FUND BALANCE - ASSIGNMENTS/RESTRICTIONS/COMMITMENTS (Continued)

Declared Emergency - (Restrictions for FEMA/CalOES revenues until the projects are fully audited and released)

- 2014 Earthquake, General Fund (1058001) - Increase restriction by $394,315 for a total restriction of $1,450,583
- 2017 Storms, General Fund (1058000) - Increase restriction by $3,171 for a total restriction of $6,648,780
- 2017 Storms, Measure A Public Works Special Revenue Fund (1220060) - Maintain restriction of $379,565
- 2017 Fire, General Fund (1058003) - Maintain restriction of $3,753,381
- 2019 Storms, General Fund (1058000) - Maintain restriction of $277,877.
- 2020 LNU Fire Complex, General Fund (1058000) - Increase restriction by $6,229 for a total restriction of $2,690,563.
- 2020 LNU Fire Complex, General Fund (1058006) – Increase restriction by $5,020 due to current year revenue, bringing total restriction to $1,476,905. Subsequently, release entire restriction of $1,476,905 bringing the total restriction to $0. The release of this restriction will allow for the return of $1,401,946 back to the General Reserve, and the remaining $74,959 to Napa Berryessa Resort Improvement District for their remaining excess insurance proceeds.
- 2020 Glass Fire, General Fund (1058000) – Increase restriction by $1,205,360 for a total restriction of $1,817,391.

Public Defender - Board of State and Community Correction (BSCC)'s Indigent Defense Grant Program – Release restriction in subdivision 1320000, in the amount of $286,021 due to the spending of grant funds and payback of remaining funds.

Ag Commissioner- Sealer - Excess Unclaimed Gas Tax - Increase assignment for facility improvements in subdivision 1600000, in the amount of $350,000 due to increased unclaimed gas tax allocation from the State.

Planning, Building and Environmental Services – Establish assignment in the amount of $129,231.92 in subdivision 1700000, for the unspent funds from a staff relocation project approved by the Board of Supervisors on June 25, 2024 on Agenda Item 24-979.

Library Fund

Napa Library, Literacy Program - Decrease restriction for the California Library Literacy Services (CLLS), funding received has been expended in fiscal year 2023-24 in the amount of $20,685, bringing total restriction to $0.

Health and Human Services Fund

Mental Health Cost Report Payback – Maintain the restriction of $6,609,606. This assignment is used to fund potential claims settlement or audit paybacks. No funds were used in fiscal year 2023-24.

EMS Medical Cache Trailers - Maintain the restriction of $5,000. In accordance with the terms of the JPA established in 2006, this restriction is to be used for major repairs and maintenance on Emergency Medical Service medical cache trailers purchased in 2006 using Department of Homeland Security grant funding. The trailers are used to house medical supplies needed to respond to potential emergency situations. No funds were used in fiscal year 2023-24.

A. FUND BALANCE - ASSIGNMENTS/RESTRICTIONS/COMMITMENTS (Continued)

Housing is Healthcare - Maintain the restriction of $9,160. This restriction is for advancing health equity work from the California Endowment and Public Health Institute for Housing is Healthcare to develop a communication campaign to increase awareness on the impact of homelessness on healthcare costs. No funds were used in fiscal year 2023-24.

Exemplary Health Equity - Maintain the restriction of $18,539. The Public Health Division is working with community partners to determine how the award can be best utilized for health equity work. No funds were used in fiscal year 2023-24.

Cross-Sector Innovations Initiative Grant – Decrease restriction by $32,593 to reflect funds used during the year, bringing total restriction to $16,906. Funds are to be used for the development of a data sharing and evaluation plan as part of the Cross-Sector Innovation Initiative.

Community Immunity Outreach & Engagement (COEG) – Decrease restriction by $32,035 to reflect funds used during the year, bringing the total restriction to $0. COEG funds are used to conduct grassroots outreach related to COVID-19 vaccines and how to access vaccination appointments across the County of Napa, with a special focus on those population groups most impacted by the COVID-19 pandemic.

Behavioral Health Integration Grant – Decrease the restriction of $37,795, bringing total restriction to $0. Funds will be used to improve physical and behavioral health outcomes. Funds were spent in fiscal year 2022-23.

Homeless Mentally Ill Outreach & Treatment - Maintain the restriction of $21,993. This restriction is for a one-time funding related to homeless persons with mental illness. No funds were used in fiscal year 2023-24.

Transitional Housing Program Grant (Round 2) – Release restriction of $13,352 to reflect funds used during the year, bringing total restriction to $0. The Transitional Housing Program provides funding for child welfare services agencies to help young adults aged 18 to 24 years find and maintain housing with priority given to those formerly in the foster care or probation systems.

Transitional Housing Program Grant (Round 3) – Establish restriction of $11,141 to reflect grant funds received and not used during the year. The Transitional Housing Program provides funding for child welfare services agencies to help young adults aged 18 to 24 years find and maintain housing with priority given to those formerly in the foster care or probation systems.

Medi-Cal Administration – Maintain restriction of $2,039,929. The Medi-Cal Administrative allocation funds eligibility activities performed on behalf of applicants and recipients of the Medi-Cal program, such as screening, referrals, and processing applications and changes. No funds were used during fiscal year 2023-24.

Health Care Enhancement Program (IGT) – Increase the restriction by $753,124 designating available program fund balance towards future projects, bringing the total to $8,217,728. Funds are and will be used for health and behavioral health needs and outcome improvements.

Local Indigent Care Needs (LICN) – Release designation of $10,227 to reflect funds used during the year, bringing total designation to $0. LICN grants were created to expand the delivery of locally directed indigent care services in County Medical Service Program counties. Napa County received a Planning Project Grant under the LICN program.

Behavioral Health Bridge Housing (BHBH) – Establish restriction of $293,882, to reflect the balance of the initial draw for Bridge Housing. This program funds immediate and sustainable housing needs of people experiencing homelessness who have serious behavioral health conditions, including mental illness (SMI) and/or substance use disorder (SUD).

A. FUND BALANCE - ASSIGNMENTS/RESTRICTIONS/COMMITMENTS (Continued)

Affordable Housing Fund

Restrict fund balance in the amount of previously board approved loan resolutions for the below Napa Valley Community Housing developments:

- Monarch Landing (City of Napa) - Monarch Landing will provide housing available to a variety of low and very-low income residents, including 1, 2 and 3-bedroom family rental apartments with 16 units reserved for Coordinated Entry System (CES) placement. Establish restriction in the amount of $1,500,000. No funds were used in fiscal year 2023-24. (Reso. No. 2024-31)

- Pope Street - The Pope Street project in St. Helena is a 5-unit project between Napa Valley Community Housing and Our Town St. Helena. The project includes the conversion of an existing unit and the addition of other units to result in 5 units on a property already owned by Our Town. Establish restriction in the amount of $200,000. No funds were used in fiscal year 2023-24. (Reso No. 2024-30)

- Jamboree Housing Project - Jamboree Housing Corporation (JHC), LLC, has site control of 515 Silverado Trail in the City of Napa, comprised of approximately 1.05 acres for the purposes of building forty (40) permanent supportive housing units (PSH) and one (1) managers unit. Establish restriction in the amount of $1,550,000. No funds were used in fiscal year 2023-24. (Reso. No. 2023-150)

B. JUNE 30, 2024 BUDGETARY AMENDMENTS

Record the following entries to process budgetary transactions (No. 24-1274) as of June 30, 2024:

General Fund

1. Fund 1000 (General Fund) – Increase appropriations in the General Fund 2020 LNU subdivision to return excess funds, increase General Reserves by $1,401,946, and close the subdivision due to the completion of a successful post emergency audit of the 2020 LNU Fire Complex with no requirement of payback:
   Declared Emergency (1058006-57900) – Increase Intrafund Transfers Out by $1,401,946
   Declared Emergency (1058006-33100) – Decrease Available Fund Balance by $1,401,946
   Non-Departmental (1050000-49900) – Increase Intrafund Transfers In by $1,401,946

2. Fund 1000 (General Fund) – Increase appropriations in the General Fund, 2020 LNU subdivision to return remaining excess insurance proceeds to Napa Berryessa Report Improvement District:
   Declared Emergency (1058006-56100) – Increase Transfers Out by $74,959
   Declared Emergency (1058006-33100) – Decrease Available Fund Balance by $74,959
   NBRID Operations (524000-48200) – Increase Transfers In by $74,959

3. Fund 1000 (General Fund) – Increase appropriations in the General Fund, Public Defender subdivision to return remaining unspent Indigent Defense grant funds to the Board of State and Community Correction:
   Public Defender (1320000-56900) – Increase Other Financing Uses by $196,898
   Public Defender (1320000-33100) – Decrease Available Fund Balance by $196,898

4. Fund 1000 (General Fund) – Increase appropriations in the General Fund, Public Defender subdivision to cover increased salaries and benefits through the end of fiscal year due to recent retirement:
   Public Defender (1320000-51100) – Increase Salaries and Wages by $200,000
   Appropriation for Contingency (1059000-58100) – Decrease Appropriation for Contingency by $200,000.

B. JUNE 30, 2024 BUDGETARY AMENDMENTS (Continued)

Special Revenue Funds

5. Fund 2120 (Wildlife Conservation Commission) - Increase appropriations in Community Grants to pay for two invoices as part of Grant Agreement No. 240135D with Napa County Resource Conservation District; and one invoice as part of Grant Agreement No. 240139D with UC Regents:
   Wildlife Conservation Commission (2120000-54805) - Increase Community Grants by $10,700
   Wildlife Conservation Commission (2120000-33100) – Decrease Available Fund Balance by $10,700

6. Fund 2460 (Health and Sanitation SRF) – Increase appropriations in Emergency Medical Services to cover existing costs in operating fund 2000, Public Health:
   Emergency Medical Service (2000152-56100) – Increase Transfers Out by $72,000
   Emergency Medical Service (2000152-33100) – Decrease Available Fund Balance by $72,000
   HHSA Fund, Public Health (2000-2000100-48200) – Increase Transfers In by $72,000

7. Fund 2460 (Health and Sanitation SRF) – Increase appropriations in Vital Health Statistics to cover existing costs in operating fund 2000, Public Health:
   Vital Health Statistics (2000153-56100) – Increase Transfers Out by $5,282
   Vital Health Statistics (2000153-33100) – Decrease Available Fund Balance by $5,282
   HHSA Fund, Public Health (2000-2000100-48200) – Increase Transfers In by $5,282

8. Fund 2460 (Health and Sanitation SRF) - Increase appropriations in Tobacco Control Prop 99 to cover eligible costs in operating fund 2000, Public Health:
   Tobacco Control Prop 99 (2000158-56100) – Increase Transfers Out by $1,000
   Tobacco Control Prop 99 (2000158-33100) - Decrease Available Fund Balance by $1,000
   HHSA Fund, Public Health (2000-2000100-48200) – Increase Transfers In by $1,000

9. Fund 2460 (Health and Sanitation SRF) - Increase appropriations in Tobacco Control Prop 56 to cover eligible costs in operating fund 2000, Public Health:
   Tobacco Control Prop 56 (2000159-56100) – Increase Transfers Out by $1,000
   Tobacco Control Prop 56 (2000159-33100) - Decrease Available Fund Balance by $1,000
   HHSA Fund, Public Health (2000-2000100-48200) – Increase Transfers In by $1,000

10. Fund 2480 (Public Assistance SRF) - Increase appropriations in Clerk Domestic Violence to cover existing costs in operating fund 2000, Self Sufficiency:
    Clerk Domestic Violence (2000650-56100) – Increase Transfers Out by $6,480
    Clerk Domestic Violence (2000650-33100) - Decrease Available Fund Balance by $6,480
    HHSA Fund, Self Sufficiency (2000-2000600-48200) – Increase Transfers In by $6,480

11. Fund 2480 (Public Assistance SRF) - Increase appropriations in Family Support Sub-Account to cover existing costs in operating fund 2000, Self Sufficiency:
    Family Support Sub-Account (2000651-56100) – Increase Transfers Out by $500,000
    Family Support Sub-Account (2000651-33100) - Decrease Available Fund Balance by $500,000
    HHSA Fund, Self Sufficiency (2000-2000600-48200) – Increase Transfers In by $500,000

12. Fund 2480 (Public Assistance SRF) - Increase appropriations in 2011 Realignment to cover existing costs in operating fund 2000, Self Sufficiency:
    Sales Tax Realignment- CALWorks (2000652-56100) – Increase Transfers Out by $75,000
    Sales Tax Realignment- CALWorks (2000652-33100) - Decrease Available Fund Balance by $75,000
    HHSA Fund, Self Sufficiency (2000-2000600-48200) – Increase Transfers In by $75,000

C. CONTRACT INCREASES

Increase the following contract amounts to pay for services received as of June 30, 2024

Vendor Name	Contract #	Current Contract Amount	Increase Requested	Increased Contract Amount	Reason for Increase
Willow Glenn Care Center	200273B-24	$31,668	$10,000	$41,668	Increased costs in Mental Health (2000-20002) due to higher than anticipated Behavioral Health utilization (client placement) during FY 2023-24.

D. TEMPORARY CASH ADVANCES

Allow Auditor-Controller to record entries providing temporary cash advances to funds that end the fiscal year in a deficit cash position, if necessary. The majority of these advances are needed when reimbursements for program expenditures are not received by year-end, as is the case with the In-Home Supportive Services Authority. These cash advances are repaid with first revenues collected in the new fiscal year.

E. PURCHASE ORDER ENCUMBRANCES (Fiscal Year 2024-25 carryforward)

Complete a budget adjustment to increase budget appropriations of $3,446,884, carrying forward budget from fiscal year 2023-24 to 2024-25 for commitments (encumbrances) existing during fiscal year that have not been completed or fulfilled by June 30, 2024. Once the commitment is complete, any budget remaining will be removed to disallow unauthorized use for another purpose. A list of re-encumbrances is provided in Attachment A.

F. RATIFY FINAL CARRY FORWARD CAPITAL PROJECT BUDGETS AND CONTRACTS

On June 25, 2024, a budget adjustment carrying forward preliminary remaining balances of capital project budgets and contracts associated with the projects was approved. These estimates were provided to the Board to ensure the projects could continue into the new fiscal year without delay from budgetary restraints. Attachment B provides updated capital improvement (CIP) and other projects remaining budgets required to date, for total carry forward appropriations into fiscal year 2024-25 of $89,552,335 a decrease of approximately $11.7 million from the original estimates.

G. CASH SHORTAGES

On September 17, 2002, Resolution R-02-188 adopted by the Board of Supervisors requires the Auditor-Controller to request release of accountability from Board of Supervisors on behalf of all affected departments at the end of each year. During the fiscal year 2023-24, no cash shortages occurred.

H. ADDITIONAL APPROVAL REQUEST

Record other accounting and budgetary entries as needed to balance and close fiscal year 2023-24 for all funds controlled by the Board of Supervisors. This authorization will ensure the financial records of the County are recorded in accordance with Generally Accepted Accounting Principles (GAAP), following all Governmental Accounting Standards Board (GASB) procedures.

EXCESS ERAF (Informational Item)

We have now completed all allocations to ERAF for fiscal year 2023-24 as required by State Revenue & Taxation Code (R&T) 97. Following the allocations, we calculated the ERAF distributions using State apportionment factors and information provided by the State Department of Education and the California Community College Chancellor's Office. The calculation resulted in an excess amount in ERAF above the amounts required to fully fund all public schools within the county.

R&T 97.70(f)(1) has a provision to 'hold the entities harmless' for excess funds that would otherwise have been allocated. This provision requires the Auditor-Controller to return excess ERAF funds to all entities that contributed to the ERAF shift. We hold a 10% reserve each year, which subsequently gets released after three years, due to the ability for the school calculations to be changed for up to three years regarding ERAF entitlement.

The following chart shows the calculated excess ERAF, the amounts held in reserve for future state settlements, and the amounts distributed back to the contributing entities. This revenue is for fiscal year 2023-24 and will be recorded as of June 30, 2024.

Fund	Description	Total Excess ERAF	Less: Reserve	Excess ERAF to be Distributed
1000	Napa County	$ 24,544,593	$ (2,454,459)	$ 22,090,134
2100	Fire Non-Structural	(1,314,805)	131,481	(1,183,324)
2020	County Library	1,238,500	(123,850)	1,114,650
2100	Fire Protection	1,396,565	(139,657)	1,256,908
		25,864,853	(2,586,485)	23,278,368
9411	City of Calistoga	399,301	(39,930)	359,371
9412	City of Napa	4,136,589	(413,659)	3,722,930
9412	City of St. Helena	463,473	(46,347)	417,126
9414	Town of Yountvilee	200,920	(20,092)	180,828
9415	City of American Canyon	59,564	(5,956)	53,608
		5,259,847	(525,984)	4,733,863
5220	Lake Berryessa Resort Improvement District	12,697	(1,270)	11,427
5240	Napa Berryessa Resort Improvement District	18,340	(1,834)	16,506
2860	Monticello Cemetery District	13,230	(1,323)	11,907
9504	Circle Oaks Water District	14,045	(1,405)	12,640
7400	Congress Valley Water District	35,864	(3,586)	32,278
7100	Mosquito Abatement District	93,485	(9,349)	84,136
7500	River Reclamation District	37,306	(3,731)	33,575
		224,967	(22,498)	202,469
	Total Fiscal Year 2023-24	**$ 31,349,667**	**$ (3,134,967)**	**$ 28,214,700**

PERS PREPAYMENT (Informational Item)

Beginning with fiscal year 2010-11, the County has consistently prepaid the Employer's Contribution related to the Miscellaneous Plan in order to take advantage of discounted rates. Changes at CalPERS have opened prepayment options for the County's Safety Plan, but have limited the amount an agency can prepay to each plan's Employer's Contribution related to unfunded actuarial accrued liabilities. While adapting to these changes, the County continues to take full advantage of the prepayment option. In order to spread these lump sum payments to the appropriate departments, the County calculates pension rates that allow pension expense to be allocated each payroll with offsets against the prepayment balances. For fiscal year 2023-24, the rates charged resulted in an over allocation of pension payments totaling $4,112,715. The over-allocated amount was returned to departments once the final PERS transactions were completed. A breakdown of the benefitting funds and departments is provided in Attachment C.

I will be available at the Board meeting to answer any questions you may have regarding the above requests.

ATTACHMENT A

PO Number	Description	Carryforward Amount	Vendor Name	Department
24002403	AIR- Hangar 17 Door Install	$5,784	DOOR 28, INC.	Airport
24001987	Control Heads for SO Command Vehicles	$2,058	MOTOROLA SOLUTIONS INC	County Executive Office
24002396	New Jail Hardware from AMS	$262,399	AMS.NET, INC	County Executive Office
24001412	Tablets and subscriptions for JV Hall	$11,123	IT1 SOURCE, LLC	County Library
24002368	#12 Storage Cabinets for Stations	$38,375	COLOMBARA'S CABINETS	Fire Protection
24002398	R1437 F550 Lettering & Radio ID	$3,500	NAPA SIGN SHOP	Fire Protection
24002397	R1436 F550 Lettering & Radio ID	$3,500	NAPA SIGN SHOP	Fire Protection
24002379	R14367 Mechanics body package	$90,779	INTERSTATE DISTRIBUTION AND MANUFACTURING, INC	Fire Protection
24002365	WH Webgear (small-XLarge)	$23,377	WESTERN FIRE SUPPLY	Fire Protection
24002246	T-12 Milwaukee Small Tools (lot of 27 items)	$14,793	INDEPENDENT ELECTRIC SUPPLY	Fire Protection
24002235	WH Stock Danner Wildland Boots	$1,945	WORLDWIDE SALES MANGEMENT	Fire Protection
24002127	T-12 Elkhart Fire Hose Nozzles	$3,501	ALLSTAR FIRE EQUIPMENT INC	Fire Protection
24001926	WH Wildland Jackets	$9,428	L.N. CURTIS & SONS	Fire Protection
24001907	Fire- Vehicle Cradlepoints	$4,918	DEROTIC LLC	Fire Protection
24001717	#12 Apparatus Bay Door Repair	$4,612	R & S ERECTION OF VALLEJO, INC	Fire Protection
24001467	WH Nomex 360 Yellow Helmet	$11,023	MAINTENANCE SUPPLIES	Fire Protection
24000703	WH Breakaway Stretcher	$1,158	ALLSTAR FIRE EQUIPMENT INC	Fire Protection
24000586	#21 Skeeter EV/IHC 1750 Water Tender	$570,993	GOLDEN STATE FIRE APPARATUS/PIERCE MFG	Fire Protection
24000580	Hose Replacement- Gladiator Attack Hose	$6,109	L.N. CURTIS & SONS	Fire Protection
24000524	WH Webgear (small-XLarge), hydration packs, talk b	$24,179	WESTERN FIRE SUPPLY	Fire Protection
23002325	U10 Outfit Equipment	$1,625	ALLSTAR FIRE EQUIPMENT INC	Fire Protection
23001266	Skeeter Type 6 Patrol Engine for Station 14	$347,062	GOLDEN STATE FIRE APPARATUS/PIERCE MFG	Fire Protection
24002433	R1437/8043 mechanics truck - Lightbar &Radios	$8,270	WATTCO	Fire Protection
24002432	R1436/8144 mechanics truck - Lightbar & Radio	$8,270	WATTCO	Fire Protection
24002429	R1436 Mechanics body package	$90,779	INTERSTATE DISTRIBUTION AND MANUFACTURING, INC	Fire Protection
24001883	FO-Electric Veh. Non Conductive Tools & Box	$13,635	SNAP-ON INDUSTRIAL	Fleet Management
24000001	Police Responder and F250 Animal Control Vehicle	$77,126	NAPA FORD LINCOLN MERCURY	Fleet Management
23000422	S.O. Interceptors	$119,428	SAGER FORD	Fleet Management
23000421	S.O. Responder and Interceptors	$60,873	NAPA FORD LINCOLN MERCURY	Fleet Management
24002441	Dismantle (12) AO2 stations, receive, deliver, and	$17,260	COORDINATED PROJECT INSTALLATIONS INC	Health & Human Services
24001622	Cabinets/Siren Warning Package Equipment -Ford350	$6,537	WATTCO	Health & Human Services
24001195	Mobile Outreach Vehicle	$744,195	LDV CUSTOM SPECIALTY VEHICLES	Health & Human Services
24002077	INK MONKEY- JH CAMP SHIRTS	$5,053	INK MONKEY	Probation
24001874	Adamson - Tac Dry Rain Jackets	$1,247	ADAMSON POLICE PRODUCTS	Probation
24000527	LDV - Mobile Supervision Vehicle	$243,168	LDV CUSTOM SPECIALTY VEHICLES	Probation
24002334	Remove and Replace Circuit #1 Compressor	$22,500	PETERSON MECHANICAL, INC.	Property Management

24002424	PM- AC-4 unit for Flood	$13,400	PETERSON MECHANICAL, INC.	Property Management
24002373	Closed Captioning Encoder, A/V Board Room	$58,387	LINK ELECTRONICS	Public Works
24002380	SKYDIO X10 STARTER KIT	$25,059	SKYDIO, INC.	Sheriff
24002392	MOBILE ID SOFTWARE AND SERVICES	$42,768	DATAWORKS PLUS, LLC	Sheriff
24002209	2024 NORTH STAR PRISONER TRANSPORT	$206,384	BRAUN NORTHWEST, INC	Sheriff
24002208	2024 NORTH STAR PRISONER TRANSPORT	$206,384	BRAUN NORTHWEST, INC	Sheriff
24002165	APX8000 All Band Portable Radio	$33,920	MOTOROLA SOLUTIONS INC	Sheriff
	Total PO Carryforward	**$3,446,884**		

County of Napa
CIP & Non-CIP Carryforward detail listing
June 30, 2024

ATTACHMENT B

		Budget Rollover Revenues	Budget Rollover Appropriations	Vendor/Contractor	Remaining Contract Balance
CIP Carryforward Detail Listing					
General Fund - Public Works Projects					
1000 1220500 05001 (MST Reclaim Water)		$ 188,885	$ 188,885		
1000 1220500 05002 (Angwin Water Study)		228,352	228,352		
1000 1220500 07002 (Oakville-Knowl Sediment Plan)		1,118,046	1,118,046	130004B ESA	72,197
				210363B Siteworks	272,503
1000 1220500 10005 (Water Conservation Program)		32,127	32,127		
1000 1220500 11012 (Measure A-Lake Berryessa)		1,315,241	1,315,241	220386B Tuleyome	49,232
1000 1220500 18025 (Airport Measure A)		27,041	27,041		
1000 1220500 20031 (FEMA House Elevation Grant)		226,775	226,775		
		3,136,467	**3,136,467**		**393,932**
Roads					
2040 2040500 06004 (Flood Disaster Road Repairs)		-	36,415		
2040 2040500 10002 (Devlin Road Segment E)		-	228,627		
2040 2040500 14009 (Dry Creek Bridge -Dry Creek)		-	377,403	170635B Biggs Cardosa Associates	222,494
2040 2040500 14010 (Chiles Creek Bridge-Pope Valle)		-	5,953,862	170727B Biggs Cardosa Associates	205,568
				230084B ADKO Engineering, Inc.	13,744
				240283B BUREAU VERITAS NORTH AMERICA INC	489,457
				240254B GORDON N. BALL, INC.	3,598,418
2040 2040500 16003 (Garnett Bridge at Greenwd Ave)		281,008	206,290	190001B Biggs Cardosa Associates	70,305
2040 2040500 16017 (Greenwood EMRM)		-	31,430		
2040 2040500 20035 (Buhman Bridge)		-	67,213	220105B Pat Nelson Construction Inc.	13,273
2040 2040500 21060 (Soscol Ferry Rd at Devlin Rd Intersection Roundabout)		-	196,473	210324B G.H.D. INC.	54,398
2040 2040500 21061 (2020 Glass-Silverado Trail Culvert)		-	66,228		
2040 2040500 21069 (BK FLAP 2)		-	255,999		
2040 2040500 22003 (HSIP Cycle Striping Project)		-	299,374		
2040 2040500 22005 (2021 Storm 1730 Silverado Trail)		-	61,864		
2040 2040500 22006 (White/Sobleman Abatement)		-	5,437		
2040 2040500 22012 (Campbell Creek Culvert)		-	96,846	220242B Stantec Consulting Services, Inc.	55,076
2040 2040500 22026 (American Canyon Road Repair)		-	116,990		
2040 2040500 22030 (Berryessa Estate Paving)		-	715,132	240328B MILLER PACIFIC ENGINEERING GROUP	20,660
				240377B GOODFELLOW BROS. CALIFORNIA, LLC	63,034
2040 2040500 22031 (Berryessa Highlands Paving)		-	228,730	230190B Miller Pacific Engineering Group	474
2040 2040500 22042 (HSIP Cycle 11)		-	132,021		
2040 2040500 23002 (Diamond Mtn-PG&E)		-	500,000		
2040 2040500 23006 (2023 Annual Guardrail Repairs)		-	565,612	230084B ADKO Engineering, Inc.	73,124
				240382B BRIDGEWAY CIVIL CONSTRUCTORS, INC.	262,591
2040 2040500 23007 (Redwood Road Seal)		-	13,637		

County of Napa
CIP & Non-CIP Carryforward detail listing
June 30, 2024

ATTACHMENT B

			Budget Rollover Revenues	Budget Rollover Appropriations	Vendor/Contractor	Remaining Contract Balance
2040	2040500	23008 (Old Howell Mt Rd Seal)	-	14,967		
2040	2040500	23009 (Wooden Valley Road Seal)	-	14,967		
2040	2040500	23022 (Sunset Road Seal)	-	33,310		
2040	2040500	23023 (4th Avenue Striping)	-	11,946		
2040	2040500	23024 (Las Amingas Road Striping)	-	3,887		
2040	2040500	23026 (Monticella Area Paving)	-	318,096		
2040	2040500	23027 (Steele Canyon Rd.)	-	311,288	230190B Miller Pacific Engineering Group	10,232
2040	2040500	23029 (Napa Valley Vine Trail Resurfacing)	-	296,848		
2040	2040500	23031 (2023 Road Striping Maintenance)	-	196,736		
2040	2040500	23033 (Dry Creek Rd. MPM 11.6)	-	181,932	230309B Miller Pacific Engineering Group	38,279
2040	2040500	23034 (Lawley Toll Rd. MPM 2.50)	-	91,563		
2040	2040500	23035 (Mt. Veeder Rd. MPM 3.75)	-	482,616	230322B Miller Pacific Engineering Group	16,436
2040	2040500	23037 (Mt. Veeder Rd. MPM 3.99)	-	1,152,877	230388B Miler Pacific Engineering Group	63,250
2040	2040500	23038 (Steele Canyon Rd. MPM 6.4)	-	264,396	230190B Miller Pacific Engineering Group	356
					230321B Miller Pacific Engineering Group	18,371
2040	2040500	23039 (Redwood Rd. MPM 4.5)	-	98,553		
2040	2040500	23043 (Slide Repairs Jan-Mar 2023 Storms)	-	499,909		
2040	2040500	24007 (Pope Valley Road Resurfacing)	-	4,154,447		
2040	2040500	24008 (Ink Grade Road Resurfacing)	-	3,343,548	230190B MILLER PACIFIC ENGINEERING GROUP	56
2040	2040500	24012 (NV Vine Trail Yountville-St. Helena)	-	1,390,323	240200B KIMLEY-HORN AND ASSOCIATES, INC	1,246,395
2040	2040500	24015 (HSIP Cycle 11 Intersection Improv.)	-	293,163		
2040	2040500	24016 (2024 Annual Guardrail Repair)	-	513,593		
2040	2040500	24017 (2024 Annual Bridge Repairs)	-	551,577	210324B G.H.D. INC.	31,066
					240388B Ashron Construction and Restoration, Inc.	388,500
2040	2040500	24020 (Butts Canyon Road Resurfacing)	-	890,240		
2040	2040500	24021 (North Napa Crossroads Paving)	-	4,017,165	240285B G.H.D. INC.	152,139
					240405B Ghilotti Bros., Inc.	2,375,256
					230150D Cal Interpreting & Translations Inc.	119
2040	2040500	24024 (M-T Oakville Yountville Finnell)	-	2,163,900	230190B MILLER PACIFIC ENGINEERING GROUP	64,363
					240386B O.C. JONES AND SONS, INC.	1,779,579
2040	2040500	24025 (South County Paving)	-	95,689	210324B G.H.D. INC.	82,054
					230190B MILLER PACIFIC ENGINEERING GROUP	6,033
2040	2040500	24030 (Zinfandel Approach Scour)	-	81,362	240278B ADKO ENGINEERING, INC.	58,084
2040	2040500	24033 (MT Solano Ave-Big Ranch Rd. Pavement)	-	297,830		
2040	2040500	97001 (Oakville Bridge)	-	494,603		
2040	2040500	R8020 (Partrick Road Bridge MPM 00.88)	-	322,242	230065B ADKO Engineering Inc.	2,869
					240221B AZUL WORKS, INC	48,768
2040	2040500	R8390 (Manley Lane)	-	20,385		
2040	2040500	S7302 (108 Brookside Drive)	-	871		

County of Napa
CIP & Non-CIP Carryforward detail listing
June 30, 2024

ATTACHMENT B

			Budget Rollover Revenues	Budget Rollover Appropriations	Vendor/Contractor	Remaining Contract Balance
2040	2040500	S7312 (Dry Creek Road-MPM 9.75)	-	61,500	210301B ADKO Engineering Inc.	1,775
					230084B ADKO Engineering, Inc.	318
					230190B MILLER PACIFIC ENGINEERING GROUP	8,622
					220320B Piazza Construction	6,344
2040	2040500	S7315 (Redwood Rd - MPM 5.76)	-	313,083	240278B ADKO ENGINEERING, INC.	38,820
2040	2040500	S9101 (555 Wall Road)	-	49,484		
2040	2040500	S9102 (Livermore Road-MPM 1.25)	-	148,670	200287B ADKO Engineering Inc.	12,719
2040	2040500	S9103 (Oakville Grade mpm 1.35)	-	1,957,574	210080B MGE Engineering Inc.	98,846
					230151D Homeland Language Services LLC	60
					240366B ETIC	1,318,628
2040	2040500	24034 (Deer Park Region and West Zinfandel Paving)	-	400,000		
			281,008	**35,690,723**		**13,010,952**
Capital Projects						
3000	3000505	13025 (Jail Replacement Project)	-	79,811		
3000	3000560	17015 (ADA Transition Plan)	-	93,345		
3000	3000502	18005 (Jail Radio)	-	389,771		
3000	3000560	19002 (Bear Creek Tributary)	22,024	7,239		
3000	3000505	19005 (New Jail)	8,259,530	29,297,342	230333B GEOCON CONSULTANTS	39,494
					230267B BROWARD BUILDERS, INC.	19,045,107
3000	3000505	19006 (New Jail (Offsite)	-	1,526,855	230267B BROWARD BUILDERS, INC.	1,029,058
3000	3000550	20024 (Sullivan Lot Redesign & Resurface)	-	18,546		
3000	3000504	21064 (South Campus Bldg B EmergPower)	-	136,863		
3000	3000550	21070 (1127 First HVAC Replacement)	-	172,479		
3000	3000503	22007 (JJC Boiler Replacement)	-	31,272		
3000	3000504	22008 (South Campus Bldg A&B Maintenance)	-	488,912		
3000	3000504	22020 (CWS Safety & Security Improvements)	-	24,805	220255B T.L.C.D. Architecture	4,988
3000	3000560	22028 (Coutywide Security Projects)	-	525,478		
3000	3000560	22035 (EOC Emergency Generators)	-	49,625		
3000	3000560	23004 (Downtown Landscaping Project)	-	1,200,000		
3000	3000505	23013 (Jail Transition Project)	-	120,481	220317B NACHT & LEWIS ARCHITECTS, INC.	32,760
3000	3000504	23014 (South Campus Bldg 4 Roof)	-	67,086		
3000	3000550	23015 (SO Napa Shelter Wattstopper Lighting)	-	14,883		
3000	3000504	23018 (So Campus Bldg #4 HVAC Upgrades)	-	177,131	230155B YEI Engineers Inc.	45,721
3000	3000503	23021 (JJC Security System)	-	151,172		
3000	3000560	23045 (Facilities Space Plan and Plan Dev.)	-	33		
3000	3000560	24001 (Countywide ADA)	-	1,569,959		
3000	3000501	24002 (SO-Records Communication Box)	-	120,616		
3000	3000500	24006 (Board Chambers A/V Upgrade)	-	222,938		

County of Napa
CIP & Non-CIP Carryforward detail listing
June 30, 2024

ATTACHMENT B

		Budget Rollover Revenues	Budget Rollover Appropriations	Vendor/Contractor	Remaining Contract Balance
3000	3000560 24011 (Enterprise Data Mgmt. Solutions)	-	137,704	240184B INFOVERITY, U.S., INC	25,250
3000	3000500 24026 (Admin Building Emergency Sewer Line)	-	91,866	240340B G D NIELSON CONSTRUCTION INC.	83,307
3000	3000504 24027 (Crisis Stailization Napa B5_497)	-	491,321	240326B T.L.C.D. ARCHITECTURE	447,173
3000	3000560 24028 (Atlas Peak Generator Replacement)	-	49,931	220316B COAR Design Group	31,500
		8,281,554	**37,257,463**		**20,784,358**
Airport					
5010	5010500 23041 (Airport Terminal Redevelop. Phase I)	-	992,748	230243B MEAD & HUNT INC	26
				210342B MEAD & HUNT INC	10,332
				240104B MCK AMERICAS, INC.	96,514
				240179B ROYAL ELECTRIC COMPANY	612,976
5010	5010500 24003(Twy K-Rwy 19R Apron Reconstruction)	4,392,584	4,905,585	240342B MEAD & HUNT INC	427,669
		4,392,584	**5,898,333**		**1,147,517**
5th Street Parking Garage					
5020	5020500 PKG00 (Uncommitted Project Funds)	-	83,850		
		-	**83,850**		**-**
Animal Shelter					
5040	5040500 ANS00 (Uncommitted Project Funds)	-	68,240		
		-	**68,240**		**-**
	Total CIP Appropriations/Revenue Carryforward	**$ 16,091,613**	**$ 82,135,076**	**Total CIP Contract Balances to Carryforward**	**$ 35,336,759**

Non-CIP Carryforward detail listing

1000 - General Fund					
1100000-52490 Auditor-Controller	$ -	$ 50,000	210296B CPS HR Consulting	$ 50,000
1140000-52515 Assessor Clerk Recorder	-	17,683	230227B The Sidwell Company	17,683
1700000-53105 Planning, Buliding and Enviromental Services	-	110,000	BOS Agenda Item #24-979	110,000
1700000-52510 Planning, Bulding and Enviromental Services	-	19,232	BOS Agenda Item #24-979	19,232
2030000-52515 Housing and Homeless Services	-	36,584	240433D Trope Group, Inc.	36,584

County of Napa
CIP & Non-CIP Carryforward detail listing
June 30, 2024

ATTACHMENT B

	Budget Rollover Revenues	Budget Rollover Appropriations	Vendor/Contractor	Remaining Contract Balance
2080 - Affordable Housing				
2080010-56500 Affordable Housing Projects	-	495,712	Sandpiper	395,712
			Heritage House	100,000
2080020-56500 Proximity Housing Projects	-	1,195,248		
2080050-56500 Jr. Accessory Dwelling Loans	-	4,252,702		
3000 -Capital Projects - Project 20ERP				
3000560 20ERP (County Finance & HR ERP System)	-	1,240,098	200281B TYLER TECHNOLOGIES, INC.	617,833
	-	**7,417,259**		**1,347,044**
Total Non-CIP Appropriations/Revenue Carryforward	**$ -**	**$ 7,417,259**	**Total Non-CIP Contract Balances to Carryforward**	**$ 1,347,044**
Grand Total Appropriations/Revenue Carryforward	**$ 16,091,613**	**$ 89,552,335**	**Grand Total Appropriations/Revenue Carryforward**	**$ 36,683,803**

County of Napa

Retirement Prepayment Reconciliation

June 30, 2024

Fund	Description	Subdivision	Description	Retirement Adjustment
1000	General Fund	1010000	Board of Supervisors	22,222.42
1000	General Fund	1020000	County Executive Office	71,385.54
1000	General Fund	1021500	Administration	38,074.73
1000	General Fund	1022000	Human Resources	65,014.56
1000	General Fund	1028000	LAFCO	9,870.85
1000	General Fund	1100000	Auditor-Controller	58,058.92
1000	General Fund	1120000	Treasurer-Tax Collector	30,995.45
1000	General Fund	1140000	Assessor	57,496.89
1000	General Fund	1141000	Elections	13,688.28
1000	General Fund	1142000	Recorder-County Clerk	14,252.45
1000	General Fund	1200000	County Counsel	80,977.41
1000	General Fund	1220000	PW Admin Building	109,078.16
1000	General Fund	1220001	PW Flood Building	42,249.31
1000	General Fund	1220004	Solid Waste	5,900.18
1000	General Fund	1300000	District Attorney	236,112.05
1000	General Fund	1320000	Public Defender	96,727.17
1000	General Fund	1360000	Sheriff	461,926.14
1000	General Fund	1361000	Sheriff-Coroner	8,459.56
1000	General Fund	1362000	Sheriff-Animal Services	12,723.47
1000	General Fund	1363000	Sheriff-Special Investigations	14,768.81
1000	General Fund	1380000	Emergency Services - Operations	9,190.91
1000	General Fund	1400000	Corr-Administration	35,392.36
1000	General Fund	1400001	Corr-Law Enforcement Op	217,644.75
1000	General Fund	1400002	Corr-Culinary-Laundry	9,678.16
1000	General Fund	1400003	Corr-Maintenance	9,538.21
1000	General Fund	1420000	Probation	234,338.69
1000	General Fund	1421000	Probation-Juvenile Hall	78,975.18
1000	General Fund	1600000	Ag Commissioner-Sealer	70,538.61
1000	General Fund	1700000	PBES-Planning	104,180.17
1000	General Fund	1702000	PBES-Environmental Health	57,957.48
1000	General Fund	1703000	PBES-Local enforcement Agency	10,955.99
1000	General Fund	1704000	PBES - Natural Resources	10,354.06
1000	General Fund	1750000	Parks	10,102.14
1000	General Fund	1800000	UC Cooperative Extension	6,661.95
			Total General Fund	2,315,491.01

County of Napa

Retirement Prepayment Reconciliation

June 30, 2024

Fund	Description	Subdivision	Description	Retirement Adjustment
2000	Health and Human Service	2000100	PH-Administration	183,514.72
2000	Health and Human Service	2000200	BH-Mental Health	160,539.13
2000	Health and Human Service	2000203	BH-MHSA	79,570.01
2000	Health and Human Service	2000205	BH-Alcohol and Drug Services	54,738.53
2000	Health and Human Service	2000400	CWS-Administration	164,704.57
2000	Health and Human Service	2000500	CSOA-Administration	108,457.93
2000	Health and Human Service	2000600	SS-Administration	234,358.79
2000	Health and Human Service	2001000	Agency Administration	170,384.78
			Total HHSA	1,156,268.46
2020	County Library	2020000	Library General Operations	40,135.23
2020	County Library	2020001	Napa Main Library	49,256.72
2020	County Library	2020002	American Canyon Library	8,028.86
2020	County Library	2020003	Yountville Library	4,357.42
2020	County Library	2020004	Calistoga Library	5,639.19
2020	County Library	2020005	Literacy Program	6,514.55
			Total Library	113,931.97
2100	Fire Protection	2100001	Fire - Fire Marshall	11,976.00
2100	Fire Protection	2100300	Fire Prevention	5,191.50
			Total Fire Protection	17,167.50
2040	Roads	2040000	Roads Operations-Maintenance	69,492.77
2140	Building	2140000	Building-Inspection	71,175.30
2160	Child Support Services	2160000	Child Support Services	57,130.88
4100	Fleet Management	4100000	Fleet Managment-Operations	9,948.30
4200	Information Technology Service	4200000	ITS-Administration	25,725.72
4200	Information Technology Service	4200001	ITS-Applications & Development	77,477.61
4200	Information Technology Service	4200002	ITS-Network Operations	60,736.09
4200	Information Technology Service	4200011	ITS-Records Management	7,458.36
4200	Information Technology Service	4200012	ITS-Telephony	13,976.18
4200	Information Technology Service	4200013	ITS-Radio	9,013.03
			Total ITS	194,386.99
4300	Property Management	4300000	Prop Mgmt - Maintenance	35,100.83
4300	Property Management	4300005	Prop Mgmt - Custodial	31,702.46
			Total Property Management	66,803.29
5010	Airport	5010000	Airport-Operations	17,514.50
5040	Animal Shelter	5040000	Animal Shelter-Operations	18,826.71
5080	Lake Berryessa Concessions	5080000	Lae Berryessa Concessions	4,576.94
			Grand Total	**$ 4,112,714.62**

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1362

TO: Board of Supervisors

FROM: Tracy A. Schulze - Auditor-Controller

REPORT BY: Edward Brown - Accountant-Auditor I

SUBJECT: Authorization for the Auditor-Controller to deny state assessed unitary property tax refund claims for Tax Years 2019-20, 2020-21, 2021-22, and 2022-23

RECOMMENDATION

Deny four (4) State assessed unitary property tax refund claims for return of 2019-20, 2020-21, 2021-22, and 2022-23 taxes paid on Assessor's Parcel No. 799-000-226 in accordance with Revenue and Taxation Code section 100 and Sections 5096 and 5097 (one Railroad company). (Fiscal Impact: $22,643.68 Revenue; Discretionary)

BACKGROUND

The Auditor-Controller's Office received four property tax refund claims from Ryan, LLC on behalf of California Northern Railroad (CFNR) for tax years 2019-20, 2020-21, 2021-22, and 2022-23. The claims state that the unitary property tax rate applied exceeds the rate allowed by the California Constitution and the Railroad Revitalization and Regulatory Reform Act of 1976 and seek refunds totaling $22,643.68 plus interest.

The claims challenge the state requirements for calculating unitary tax rates and state that CFNR is entitled to a partial refund on the grounds the taxes were erroneously or illegally collected, or illegally assessed or levied and gave the following reasons:

a. The property tax rate applied to compute CFNR's property taxes was in excess of the rate applied in the same year to property in the county assessed by the assessor of Napa County, in violation of Article XIII, section 19 of the California Constitution.

b. The property tax rate applied to compute CFNR's property taxes exceeded the rate allowed by Article XIIIA,

section 1 of the California Constitution.

c. The property tax rate applied to compute CFNR's property taxes exceeds the rate allowed by the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. Section 11501(b)(3).

The Auditor-Controller's Office has followed all the requirements of the Revenue and Taxation Code Section 100 directing the establishment and calculation of the unitary tax rate for tax years 2019-20, 2020-21, 2021-22, and 2022-23. The unitary tax rate process has been previously audited by the State Controller's Office and deemed calculated in compliance with State law. Other companies claiming refunds on the same California Constitution grounds have already litigated similar claims in Santa Clara County, resulting in a published court opinion rejecting their allegations as grounds for a refund and upholding state law as constitutional. County of Santa Clara v. Superior Court, 87 Cal. App. 5th 347 (2023).

In consultation with the County Counsel, the Auditor-Controller's Office has reviewed the claims and audited County practices for unitary taxation. Napa County follows the requirements of Revenue and Taxation Code section 100 for the calculation of unitary tax rate and the calculations are neither "erroneous" nor "illegal."

Additionally, the claims are technically deficient and must be denied because they were not verified by the taxpayer as required by Revenue and Taxation Code section 5097(a)(1) (see also Code of Civil Procedure section 446 which provides that only a corporate officer [i.e., not a third-party agent such as Ryan, LLC] may make a verification on a corporation's behalf).

Therefore, the Auditor-Controller has determined that no refund is allowable to the claimant and requests the Board to instruct the Auditor-Controller's Office to deny the claims.

Requested Action: The Auditor-Controller is requesting the Board's authorization to deny the claims.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Is the general fund affected?	No
Future fiscal impact:	If further claims for other tax years are received, there would be similar reductions to property tax revenue for those years.
Consequences if not approved:	The County would not be in compliance with Revenue and Taxation Code 100.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Duplicate

RECEIVED

MAR 04 2024

NAPA COUNTY
EXECUTIVE OFFICE

Ryan
Innovative Solutions to Taxing Problems.

1233 W Loop S
Suite 1500
Houston, TX 77027
Tel. 713.629.0090
Fax 713.629.0227

www.ryan.com

RETURN RECEIPT REQUESTED
VIA CERTIFIED MAIL #9214 8969 0099 9790 1651 1048 78

February 23, 2024

Clerk of the Board
Napa County Board of Supervisors
1195 Third Street
Suite 310
Napa, CA 94559

RE: CLAIM FOR REFUND OF PROPERTY TAXES
Taxpayer: California Northern Railroad
SBE Number:810

We found an error in the previously sent Claim for Refund. This is intended to amend the Claim for Refund for tax year 2019-2020.
Enclosed please find two copies of the Claim for refund of property tax for the above referenced taxpayer.

If you have any questions, please contact me at 713.629.0090 or Ashley.moore@Ryan.com.

Sincerely,

Ryan, LLC
Ashley Moore
Taxpayer's Representative
Enclosures – As Stated

Duplicate

CLAIM FOR REFUND OF PROPERTY TAXES

To: Board of Supervisors, County of Napa, California

The undersigned as California Northern Railroad, as delegated by the claimant herein, hereby makes this claim for refund of property tax on behalf of the claimant pursuant to Revenue and Taxation Code section 5097 and demands that the Board of Supervisors make its order directing the controller of said County to refund to claimant the sum of $5,405.80 in taxes levied for the fiscal year 2019/2020. In support of said claim the undersigned states:

1. Claimant is and at all times herein mentioned was California Northern Railroad, a limited liability company duly organized and existing under the laws of the State of Oregon, with its principal place of business located at 200 Meridian Centre Ste 300 Rochester, NY 14618.

2. For fiscal year 2019/2020, the California State Board of Equalization assessed the value of claimant's unitary and nonoperating California property pursuant to its authority under Article XIII, section 19 of the California Constitution and section 721 of the Revenue and Taxation Code. Pursuant to its authority under Revenue and Taxation Code section 756, the California Board of Equalization transmitted a roll showing claimants unitary and nonoperating property in Napa County. On the basis of said assessment and transmittal of said roll, taxes were levied on said property for said fiscal year in the sum of $10,920.70 (Exhibit 1) and paid by claimant on full on or about April 4, 2019 (Exhibit 2).

3. Claimant is entitled to a refund of a portion of said taxes in the amount of $5,405.80, plus appropriate interest, on the grounds that said taxes were erroneously and illegally

collected, or illegally assessed or levied, for the following reasons:

a. The property tax rate applied to compute claimant's property taxes was in excess of the rate applied in the same year to property in the county assessed by the assessor of Napa County, in violation of Article XIII, section 19 of the California Constitution and ITT World Communications v. City and County of San Francisco, 37 Cal. 3d 859 (1985).

b. The property tax rate applied to compute claimant's property taxes exceeded the rate allowed by Article XIIIA, section 1 of the California Constitution.

c. The excess taxes are direction violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. Section 11501 (b) (3).

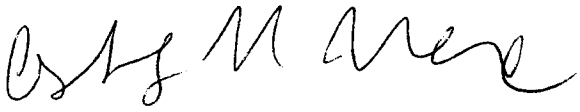
4. No refund of said taxes, or any part thereof, has been previously made.

I declare under penalty of perjury that the foregoing is true and correct, and that I am authorized by claimant to make this claim for refund.

Dated: February 23, 2024 at 1233 West Loop S STE1500 Houston, TX 77027.

Name: Ashley N Moore

Title: Authorized Agent

Signature: 

55

BOE-892 REV. 29 (12-22)

STATEMENT OF AUTHORIZATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

2023

Please return completed form to the State-Assessed Properties Division, Board of Equalization, P.O. Box 942879, MIC:61, Sacramento, CA 94279-0061. If you have any questions, you may contact us at 1-916-274-3270.

COMPANY NAME	SBE NUMBER
California Northern Railroad Company	0810

ADDRESS		
200 Meridian Centre, Suite 300		
CITY	**STATE**	**ZIP CODE**
Rochester	NY	14618

DESIGNATED REPRESENTATIVE	EMAIL ADDRESS
Ashley Moore	Ashley.Moore@ryan.com

ADDRESS		
1233 W Loop S Suite 1600		
CITY	**STATE**	**ZIP CODE**
Houston	TX	77027

TELEPHONE NUMBER	FAX NUMBER
713.629.0090	713.629.0227

Please be advised that the person listed above is authorized to act as our designated representative before the California State Board of Equalization in connection with the assessment of our property. Our designated representative may inspect or copy all information, documents, and records, including narrations and workpapers relating to the appraisal and the assessment of our property during the period January 1, 2022, through December 31, 2022, for the lien date 2023. *I understand that this form must be filed annually in order for the representative status to remain current.*

OWNER, PARTNER, OR OFFICER'S SIGNATURE	DATE
Lauren Valerio	1/13/2023
SIGNATORY'S PRINTED NAME	**TITLE**
Lauren Valerio	Senior Accounting Manager

PRINT

EXHIBIT 1

EXHIBIT 2

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BNSF RAILWAY COMPANY, *Plaintiff-Appellee*, v. COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE, *Defendants-Appellants*, and COUNTY OF SAN DIEGO, *Defendant.*	No. 20-15896 D.C. No. 4:19-cv-07230-HSG

BNSF RAILWAY COMPANY,
Plaintiff-Appellee,

v.

COUNTY OF SAN DIEGO,
Defendant-Appellant,

and

COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE,
Defendants.

No. 20-15897

D.C. No.
4:19-cv-07230-
HSG

OPINION

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted June 17, 2021
San Francisco, California

Filed August 5, 2021

Before: Sidney R. Thomas, Chief Judge, and
Daniel A. Bress and Patrick J. Bumatay, Circuit Judges.

Opinion by Chief Judge Thomas

SUMMARY*

Tax

The panel affirmed the district court's preliminary injunction in favor of BNSF Railway Company in BNSF's action alleging that several California counties are taxing railroad property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11501(b)(3).

The panel held that the district court applied the correct preliminary injunction standard under 49 U.S.C. § 11501, which does not require courts to consider traditional equitable factors. Instead, binding circuit precedent establishes that a railroad is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that a violation of § 11501 has been, or is about to be committed.

The district court had observed that it is difficult to apply § 11501 to California, because California has no specific tax rate for commercial and industrial property. The panel held that the district court properly analyzed BNSF's tax rate

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

under *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert denied*, 464 U.S. 846 (1983), which provides a framework for identifying the proper tax comparison rate—in this case, a county's average tax rate. The panel further held that the district court properly concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3), because BNSF's tax rate was higher than the average countywide tax rates for each county. Accordingly, the panel affirmed the district court.

The district court had rejected the Counties' contention that the relevant assessment jurisdiction is the State. The panel suggested that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

COUNSEL

Margaret R. Prinzing (argued), Robin B. Johansen, and Omar El-Qoulaq, Olson Remcho LLP, Oakland, California, for Defendants-Appellants County of Alameda, County of Contra Costa, County of Fresno, County of Kern, County of Madera, County of Merced, County of Orange, County of Plumas, County of Riverside, County of San Bernardino, County of San Joaquin, County of Stanislaus, and County of Tulare.

Laura E. Blome (argued), Senior Deputy; Thomas E. Montgomery, County Counsel; Office of County Counsel, San Diego, California; for Defendant-Appellant County of San Diego.

Benjamin J. Horwich (argued), Munger Tolles & Olson LLP, San Francisco, California; Jessica Reich Baril, Munger Tolles & Olson LLP, Los Angeles, California; Misty Smith Kelley and John M. Phillips, Baker Donelson Bearman Caldwell & Berkowitz PC, Chattanooga, Tennessee; for Plaintiff-Appellee.

OPINION

THOMAS, Chief Judge:

This appeal requires us to consider whether California's taxation of railroad property complies with the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 306, 90 Stat. 31, 54–55 (1976) ("the 4-R Act"). BNSF Railway Company ("BNSF") owns property in various California Counties ("the Counties"). BNSF alleges that the Counties are taxing its property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the 4-R Act. 49 U.S.C. § 11501(b)(3).

The district court determined that the proper preliminary injunction standard under the 4-R Act asks whether BNSF had shown a "reasonable cause to believe" that the 4-R Act was being violated, and that the proper comparison class was the average countywide tax rate for each County. The district court issued a preliminary injunction, concluding BNSF had shown that the Counties were violating the 4-R Act because BNSF's tax rate was higher than the average countywide tax rates for each County.

The district court had jurisdiction under 49 U.S.C. § 11501(c). We have jurisdiction under 28 U.S.C. § 1292(a). We review for abuse of discretion a district court's decision regarding preliminary injunctive relief. *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1103 (9th Cir. 2016). We review findings of fact for clear error and conclusions of law de novo. *Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1050, 1055 (9th Cir. 2008). However, where a district court's ruling rests solely on a premise of law and the facts are either established or undisputed, review is de novo. *See Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 760 (9th Cir. 2004). We affirm.

I

A

Congress passed the 4-R Act out of concern for the financial stability of the nation's railway system. *Burlington N. R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 457 (1987) (quoting 4-R Act § 101(a)). Recognizing that "railroads are easy prey for State and local tax assessors in that they are nonvoting, often nonresident, targets for local taxation, who cannot easily remove themselves from the locality," *Dep't of Revenue of Or. v. ACF Indus., Inc.*, 510 U.S. 332, 336 (1994) (internal quotation marks and citation omitted), Congress instituted "a prohibition on discriminatory state taxation of railroad property," *Okla. Tax Comm'n*, 481 U.S. at 457.

The 4-R Act establishes that "[t]he following acts unreasonably burden and discriminate against interstate commerce, and a State [or locality] may not do any of them:"

> (1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
>
> (2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.
>
> (3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
>
> (4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

49 U.S.C. § 11501(b).[1]

[1] This provision was originally contained in § 306 of the 4-R Act. 90 Stat. 31, 54–55. The language "was slightly altered" upon recodification in 1978, but such alteration "may not be construed as making a substantive change in the laws repealed." *Okla. Tax Comm'n*, 481 U.S. at 457 n.1 (internal quotation marks and citation omitted). Therefore, we "resolve any substantive conflicts between the original language of § 306 and the language in § [11501] in favor of the original language." *Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.*,

B

As the district court stated, California's system of property taxation "is, in a word, complicated." California employs an ad valorem (or value-based) property tax system. Cal. Const. art. XIII, § 1. Taxation follows a three-step process: (1) the value of taxable property is assessed, (2) the tax rate is computed, and (3) the tax is levied from the taxpayer. For most property, its value is assessed (and its rate is calculated) at the local level. *See* Cal. Rev. & Tax. Code § 404. But for a subset of property delineated in the California Constitution, including railroad property, the State assesses the value and calculates the applicable rate. Cal. Const. art. XIII, § 19.[2]

1

An understanding of California's system of taxation of locally assessed property is important for resolution of this case. Most property in California is locally assessed. County-level assessors determine the value of this property

934 F.2d 1064, 1066 n.1 (9th Cir. 1991). We reproduce the language of the original § 306 as relevant *infra*.

[2] California's Constitution establishes which property is state-assessed: "(1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity." Cal. Const. art. XIII, § 19.

for tax purposes. *See* Cal. Rev. & Tax. Code § 404.[3] This property is classified into one of two rolls: the secured roll or the unsecured roll. The secured roll contains "property the taxes on which are a lien on real property sufficient . . . to secure payment of the taxes." *Id.* § 109. In practice, this is most real property. The unsecured roll contains all other property. *Id.* § 109; 1 Sean Flavin, Taxing California Property §§ 12:3–12:4 (4th ed. 2020). There is no further subdivision based on use; for example, both the secured and unsecured roll contain both residential property and commercial and industrial property.

After determining the appropriate roll, Counties next assign locally assessed property to a particular tax rate area ("TRA") based on the property's location, and that TRA's tax rate is applied to the property. A TRA is a small geographical area serviced by the same combination of local government entities, including the county, city, special district, and school districts. Cal. Rev. & Tax. Code § 95(g). A county may have hundreds or thousands of TRAs—for example, San Diego County has over five thousand TRAs.[4]

The tax rate for property on the secured roll is taxed at a rate calculated under a formula found in § 93 of the California Revenue and Taxation Code ("the Code"), and it

[3] The assessment ratio of real property is limited by constitutional amendment in California. *See* Cal. Const. art. XIIIA, § 1 ("Proposition 13").

[4] San Diego County requests that we take judicial notice of several publicly available documents explaining the taxation process in that County and in California. These documents are matters of public record, and we grant the motion. Fed. R. Evid. 201(b)(1)–(2); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

is specific to a particular TRA. The § 93 formula contains two components: the first component is a general tax levy, calculated at 1%. Cal. Const. art. XIIIA, § 1(a); Cal. Rev. & Tax. Code § 93. The second component, referred to as the "debt service component," is the amount needed as a percentage of property values to produce enough revenue to make payments for the interest and principal on all voter-approved bonded indebtedness issued by any of the various local entities, Cal. Rev. & Tax. Code § 93; *see also* Cal. Gov. Code § 29100, such as a voter-approved bond that funds school construction in the elementary school district serving that TRA. For locally assessed property on the unsecured roll, the rate is the § 93 rate for the previous year for that TRA. Cal. Const. art. XIII, § 12; Cal. Rev. & Tax. Code § 2905. This formula ensures that each TRA will have enough revenue to make payments for the interest and principal on its bonded indebtedness. The rate is then applied to the assessed value of the property on the assessment rolls, *see* Cal. Rev. & Tax. Code § 2152, and collected. *Id.* § 2602. As a result, each County, with its hundreds or thousands of TRAs, likewise has hundreds or thousands of different tax rates applied to property in that County, and these rates apply to all property in that TRA, without regard to use, i.e., whether commercial and industrial or residential or otherwise.

2

Other property, including railroad property, is State-assessed. *See* Cal. Const. art. XIII, § 19. State-assessed property is also classified onto either the secured or unsecured roll. However, for this property, the *State* assesses its value for tax purposes, as opposed to the counties, Cal.

Const. art. XIII, § 19, and applies a different formula to calculate the tax rate. *See* Cal. Rev. & Tax. Code § 100.

The assessment process for some of this property, including BNSF's property, is different from standard local assessment. For this subset of State-assessed property, known as "unitary property," the value is calculated under the unit valuation method. *Id.* §§ 723, 723.1. Under this method, the State Board of Equalization ("the State Board") first calculates the value of a taxpayer's entire system, i.e., BNSF's railroad property nationwide. Then, the State Board allocates a portion of that value to California, and further allocates that value among the various counties in which the taxpayer's property is located. The unit valuation method is meant to account for the valuation of assets where the component parts are valuable as a whole, but less valuable in isolation. For example, in the railway context, "ten miles of [railroad] track would have a questionable value, other than as scrap, without the benefit of the rest of the system as a whole." *Am. Airlines, Inc. v. Cnty. of San Mateo*, 912 P.2d 1198, 1208 (Cal. 1996) (alterations and citation omitted).

The tax rate applied to State-assessed property is calculated under a formula different from the § 93 formula. Due to a lengthy legislative history, unitary property holders do not need to demonstrate the TRAs in which their property is located.[5] Instead, their countywide value is allocated to a

[5] Prior to 1986, the value of unitary property was not allocated to the counties—instead, taxpayers reported to individual local TRAs where their property was located. There was no separate tax rate for unitary property; the local taxing jurisdictions applied their own rates. Under this system, an individual assessee had to report in thousands of TRAs. A series of state legislation established today's system. *See* 1986 Cal. Stat. 5217, 5223–24 (establishing that the State Board will allocate unitary

countywide TRA with a single tax rate. *See* Cal. Rev. & Tax. Code § 100.11(a)(2)(B). For this reason, the tax rate applied cannot be informed by the debt service needs of the particular TRA where the property is located. *Compare id.* § 93. State-assessed property is therefore taxed under a different formula established in § 100 of the Code, the "unitary rate." *Id.* § 100.

Like § 93, § 100's first component is effectively a 1% general tax levy. *Id.* § 100(b)(1). Section 100's second component is also a debt service component, but it is calculated differently from § 93's. Section 100's debt service component is calculated as the previous year's unitary debt service rate, *see id.* § 100(b)(2)(A), multiplied by the percentage change between the two preceding fiscal years in the county's ad valorem debt service *levy* (not rate) for the secured roll. *Id.* § 100(b)(2)(B). The formula for the second component means that the unitary rate is based on the change in absolute dollars of the county's debt service rate, not changes in the percentage that taxpayers are paying. According to BNSF, it is this component that accounts for the divergence between the §100 and § 93 rates. Specifically, if the tax rate applied to the secured roll increases, but the property values also rise, the § 93 rate will not rise. But the

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property value to a county's existing TRAs, irrespective of the property's actual location); 1987 Cal. Stat. 2959, 2959–61 (creating a single countywide TRA for unitary property so that each taxpayer receives only one tax bill per county); 1988 Cal. Stat. 2087, 2094–95 (tying the tax rates for unitary property to the unitary and operating non-unitary data rather than the total county-wide data, effectively implementing what is now § 100(b)(2)(A)). In 2006, the 1987 and 1988 laws were applied to railroads, 2006 Cal. Legis. Serv. ch. 791 (A.B. 2670) (West), via a bill "introduced on behalf of the California Railroad Industry," including BNSF.

§ 100 rate will increase because it is based on the increase in actual dollars of debt service tax paid. The difference in tax rates between the countywide average tax rates (labeled as the "Section 11501 Benchmark Rate") and BNSF's rate (the "Plaintiff Unitary Rate") for the 2019–2020 tax year are represented below:

County	2019–20 Plaintiff Unitary Rate	2019–20 Section 11501 Benchmark Rate
Alameda	2.5187%	1.241%
Contra Costa	1.6865%	1.148%
Fresno	1.370408%	1.181%
Kern	1.611299%	1.24%
Kings	1.326084%	1.087%
Madera	1.203169%	1.089%
Merced	1.4109014%	1.088%
Orange	1.28173%	1.064%
Plumas	1.11652%	1.089%
Riverside	1.76133%	1.164%
San Bernardino	1.3645%	1.144%
San Diego	1.62331%	1.142%
San Joaquin	1.6922%	1.145%
Stanislaus	1.38011%	1.103%
Tulare	1.4002%	1.113%

The countywide average rates are calculated by the State Board every year, as required by statute. Cal. Rev. & Tax. Code § 11403. This average is calculated by dividing (1) the sum of all ad valorem property tax levies for a given county

per year by (2) the sum of the assessed values of all property in that county for that year. *Id.*

C

Observing that BNSF's tax rate had deviated from the average countywide tax rates in each County, BNSF filed suit on November 1, 2019, alleging a violation of 49 U.S.C. § 11501(b)(3). BNSF sought a preliminary injunction preventing the Counties from collecting taxes at a rate higher than each County's average rate. The district court granted the preliminary injunction, noting that the law of this circuit does not require courts to consider traditional equitable factors in considering a § 11501 case, and instead requires issuance of a preliminary injunction upon a showing that "a violation of [§ 11501] has been, or is about to be committed." *See Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.* (*Burlington Northern v. Washington*), 934 F.2d 1064, 1074–75 (9th Cir. 1991).

On the merits, the district court observed that the trouble with 4-R Act analysis in California is that "California has no specific tax rate for commercial and industrial property" against which to compare a railroad's rate. Accordingly, the court followed the approach outlined in *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983), for identifying a proper comparison rate. The court first addressed *Trailer Train*'s recommended comparison rate—the rate applicable to whichever roll, secured or unsecured, contains the "majority of the commercial and industrial property" in the State. *Id.* at 867. Although the secured roll almost certainly contains the majority of commercial and industrial property, the "tax rate applicable" to the secured roll, *id.*, "cannot be

determined," because property on the secured roll is "spread among the hundreds or thousands of TRAs in each County." In other words, there is no single identifiable tax rate applicable to the secured roll. Therefore, the district court followed *Trailer Train*'s fallback approach and compared BNSF's tax rate to the *average* tax rate. *See Trailer Train*, 697 F.2d at 867. In doing so, it used Counties as the relevant assessment jurisdiction. Although this property too is spread across hundreds or thousands of TRAs, the *average* rate is readily available, since the State Board is required by statute to calculate it each year. *See* Cal. Rev. & Tax. Code § 11403.

The district court rejected the Counties' proposal to compare BNSF's rate only to the rates for other State-assessed taxpayers—who pay the same § 100 rate that BNSF pays. The Counties argued that the relevant "assessment jurisdiction" is the State, and as such the court should compare only to other State-assessed property. *See* 49 U.S.C. § 11501(b)(3). The district court held that, even if the State (as opposed to the County) were the appropriate assessment jurisdiction, the commercial and industrial property *in the State* is clearly not limited to the group of mostly utility company property that is State-assessed. *See* Cal. Const. art. XIII, § 19. Moreover, the court observed that to limit the comparison class to "a relatively narrow subset of other state-assessed utilities and other entities that pay the same unitary tax rate," would depart from Congress's intention to "link railroads' fate" to commercial and industrial taxpayers.

The district court also rejected the Counties' argument that BNSF needed to make an independent showing of discrimination in order to prevail under § 11501(b)(3). The court held that subsection (b)(3) "does not require proof of discrimination, because Congress has already declared in the

preface of Section 11501(b) that the imposition of such an ad valorem property tax rate disparity 'unreasonably burden[s] and discriminate[s] against interstate commerce.'"

The district court's amended preliminary injunction order requires BNSF to deposit the enjoined amount of taxes for the 2019–2020 tax year in an escrow account and deposit the enjoined amount for future tax years when those tax payments would be due. The preliminary injunction enjoins the collection of only the disputed portion of BNSF's taxes, not the collection of the undisputed taxes.

II

As a threshold matter, we must first determine whether the district court applied the correct standard in awarding a preliminary injunction to BNSF. We generally consider traditional equitable factors when evaluating requests for preliminary injunctions. *See BOKF, NA v. Estes*, 923 F.3d 558, 561–62 (9th Cir. 2019) (listing factors). However, in some circumstances, a statute will prescribe that a showing of a violation of the statute alone warrants the issuance of a preliminary injunction. *See Burlington Northern v. Washington*, 934 F.2d at 1074 (quoting *Atchison, Topeka and Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 258 (10th Cir. 1981)); *cf. Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313–14 (1982). In *Trailer Train*, we held that the 4-R Act falls within this limited category, 697 F.2d at 869, and we reaffirmed that reasoning more recently in *Burlington Northern v. Washington*, 934 F.2d at 1074 ("Although we need not reach this issue, we note that [this injunction standard] is supported by the existing case law."). As the district court correctly observed, these cases constitute binding circuit precedent establishing the proper injunction

standard for violations of the 4-R Act: the railroad "is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that [§ 11501] has been violated, or is about to be violated." *Id.* at 1075 (internal quotation marks omitted).

Romero-Barcelo does not qualify as intervening irreconcilable authority that would require deviation from our circuit precedent. *See Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc). First, and importantly, *Romero-Barcelo* was not intervening authority: it was decided on April 27, 1982, after *Trailer Train* was argued but more than seven months *before Trailer Train* was decided on January 25, 1983. *Compare Romero-Barcelo*, 456 U.S. at 305, *with Trailer Train*, 697 F.2d at 860. Thus, the *Trailer Train* panel had the benefit of consulting the reasoning in *Romero-Barcelo* before issuing its decision.[6]

Second, *Romero-Barcelo* is not irreconcilable with *Trailer Train*. The irreconcilability requirement is a "high standard." *FTC v. Consumer Def., LLC*, 926 F.3d 1208, 1213 (9th Cir. 2019). "[I]f we can apply our precedent consistently with that of the higher authority, we must do so. . . . [I]t is not enough for there to be some tension between the intervening higher authority and prior circuit precedent." *Id.* (internal quotation marks and citations omitted). In *Romero-Barcelo*, the Supreme Court held that a certain provision of the Federal Water Pollution and Control Act did not withdraw courts' traditional equitable discretion. 456 U.S. at 320. The

[6] We also note that this court reaffirmed *Trailer Train*'s preliminary injunction standard in 1991 in *Burlington Northern v. Washington*, nearly a decade after *Romero-Barcelo* was decided. *Burlington Northern v. Washington*, 934 F.2d at 1074–75.

Supreme Court cautioned that courts should apply equitable principles "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity." *Id.* at 313 (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)). These instructions are not "irreconcilable" with our holding in *Trailer Train* that § 11501 "clearly falls within" the exception for statutes that "specifically provide[] for injunctive relief." 697 F.2d at 869. Indeed, *Trailer Train* followed these requirements, looking to the language of the original § 306, which specified that "the district courts of the United States shall have jurisdiction . . . to grant such mandatory or prohibitive injunctive relief . . . *as may be necessary to prevent*, restrain, or terminate any acts in violation of this section." 4-R Act of 1976, § 306(2) (emphasis added); *Trailer Train*, 697 F.2d at 869 & n.16. *Trailer Train*'s interpretation of this language is a holding that we "can apply . . . consistently," *Consumer Def.*, 926 F.3d at 1213, with the Supreme Court's instruction in *Romero-Barcelo* to look to the statute's direct command or necessary and inescapable inference. *See* 456 U.S. at 313. The district court applied the correct injunction standard to this case.

III

On the merits, the Counties' arguments fall into three categories. The first two involve the Counties' contention that the district court erred in selecting the countywide average tax rates as the baseline rate against which it compared BNSF's rate. First, the Counties argue that the district court only arrived at that rate by following the *Trailer Train* framework, which was error because *Trailer Train* involved a prior version of California's property taxation system, under which railroads were not taxed at the unitary

rate. Second, the Counties argue that the district court should have disregarded the *Trailer Train* framework and compared BNSF's property only to other property taxed at the unitary rate, *see* Cal. Rev. & Tax. Code § 100, since this is the only property in the same "assessment jurisdiction." 49 U.S.C. § 11501(b)(3); *see id.* § 11501(a)(2). Third, and separately, the Counties contend that BNSF was required to make a threshold showing that its tax rate was not only different, but also discriminatory. BNSF cannot do so, the Counties contend, because they are justified in taxing BNSF subject to the unitary rate since BNSF lobbied for the change in state law that subjected it to this rate. We address each argument in turn.

A

The 4-R Act prohibits States and localities from taxing railroad property "at a tax rate that exceeds the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11501(b)(3). As we noted in *Trailer Train*, and as is still true today, it is difficult to apply this statute to California, since California "has no specific tax rate for commercial and industrial property." *Trailer Train*, 697 F.2d at 867. Thus, the baseline rates to which we should compare a railroad's rate are not readily apparent.

We first addressed this issue in *Trailer Train* in 1983, the only time this court has applied subsection (b)(3) to California's system of taxation. At that time, the tax rate applied to private rail cars was essentially the weighted average of the prior year's secured and unsecured rates. *Id.* at 863. The Board determined that the recently established tax rate limitations in Proposition 13 applied to private

railcars, and it taxed Trailer Train's property at the lower rate required by Proposition 13 for the 1978–1979 tax year. *Id.* at 863–64. In 1980, when the California Supreme Court ruled that the Proposition 13 tax rate limitation did not apply to the unsecured roll, the Board interpreted the Court's decision to mean Proposition 13 must not apply to private railcars and determined that its rate reduction on railcars for the 1978–1979 tax year was improper. *Id.* The Board recalculated the tax at a higher rate. *Id.* Railway companies sued to enjoin collection of taxes at the higher rate as a violation of 49 U.S.C. § 11501(b)(3). *Id.*

To address the issue of the proper comparison rate, *Trailer Train* outlined two approaches. The first approach instructs a court to ascertain which roll, secured or unsecured, contains the majority of California's commercial and industrial property. *Id.* at 867. "The tax rate applicable to the roll that contained the majority of commercial and industrial property shall be deemed" the proper comparison rate. *Id.* As a second, fallback approach, the court instructed that, if that determination is "not possible, the average tax rate for all property shall be used as the basis for comparison." *Id.*[7]

The Counties do not suggest any persuasive reason for departing from this framework. To be sure, the choice between the secured roll, the unsecured roll, or the average of

[7] The district court was correct to move to *Trailer Train*'s second option when no party offered data reflecting the tax rate applicable to the secured roll or otherwise limited to only commercial and industrial property. We are not persuaded by the Counties' contention that BNSF should have provided such data. BNSF's expert represented below that BNSF did not believe those numbers were "published or readily ascertainable." If the Counties, who are in possession of the tax rate data, wish the district court to consider these rates, then they may produce them.

all tax rates had the potential for a more significant impact at the time of *Trailer Train*: at that time, the two rates were quite different, *see id.* at 864, whereas today they may not diverge as dramatically. However, the district court was correct that the central question of *Trailer Train*—how to identify the proper comparison rate to capture commercial and industrial property in California, *see id.* at 867—remains equally relevant in this case. This is the question that *Trailer Train* answered by pointing us to either the rate applicable to the secured or unsecured roll or the average rate applied to all property. The evolution in California's system of taxation does not provide a sufficient reason to deviate from these instructions.[8]

B

The Counties also urge deviation from *Trailer Train* because the district court should have compared BNSF's rate to other State-assessed taxpayers' rates rather than the countywide averages, since the only property in the same "assessment jurisdiction" as BNSF is other State-assessed unitary property. The Counties thus argue that they comply with the 4-R Act because they do not treat BNSF differently from other unitary property taxpayers. We disagree.

The 4-R Act forbids railroads from being taxed at a rate that exceeds the rate applicable to commercial and industrial property "in the same assessment jurisdiction." 49 U.S.C.

[8] San Diego County argues that the district court needed to compare BNSF's tax rate for its specific parcels to the tax rate for the corresponding TRA. We decline to reach this argument since it was not raised below. *See Detrich v. Ryan*, 740 F.3d 1237, 1248–49 (9th Cir. 2013) (en banc).

§ 11501(b)(3). The statute defines "assessment jurisdiction" as "a geographical area in a State used in determining the assessed value of property for ad valorem taxation." *Id.* § 11501(a)(2). The Counties argue that the State is the appropriate assessment jurisdiction here, and that therefore, the district court should have compared BNSF's rate to the rate applied to other State-assessed entities: the § 100 rate. *See* Cal. Const. art. XIII, § 19; Cal. Rev. & Tax. Code § 100.

Yet even if the State were the appropriate assessment jurisdiction, the Counties' proposal cannot pass muster. If the State were the appropriate assessment jurisdiction, then the statute instructs that the proper comparison rate is that applicable to "commercial and industrial property in the same assessment jurisdiction"—the State of California. 49 U.S.C. § 11501(b)(3). Commercial and industrial property in California certainly is not limited to the small subset of State-assessed property. Furthermore, the definition of "assessment jurisdiction" is a "geographical area." *Id.* § 11501(a)(2). The statute does not require comparison only to other entities assessed by the same agency, just entities within the appropriate "geographical area."[9] Thus, if the State were the appropriate assessment jurisdiction, the proper comparison would be to *all* commercial and industrial property in the State, not just the limited group of State-assessed entities.

Furthermore, the Counties' proposal to compare BNSF's tax rate only to the rate applied to State-assessed property, a limited set of property mostly owned by utility companies that pay the same tax rate as BNSF, runs contrary to the

[9] For this reason we are also not persuaded by San Diego County's argument that the countywide TRA (as opposed to the County) is the proper assessment jurisdiction.

purpose of the 4-R Act. Congress's goal in passing this legislation was to ensure railroads were treated equally as taxpayers. *See CSX Transp., Inc. v. Ala. Dep't of Revenue* (*CSX I*), 562 U.S. 277, 280 (2011); *see also Okla. Tax Comm'n*, 481 U.S. at 457. To do so, the statute instructs comparison to "commercial and industrial property"—a deliberately broad term. 49 U.S.C. § 11501(b). Moreover, a comparison to entities paying *the same tax rate* would deprive this subsection of nearly all meaning. It was, in part, for this reason that we recently rejected a similar proposal to compare railroad property only to centrally assessed property under a different subsection of the 4-R Act. *See BNSF Ry. Co. v. Or. Dep't of Revenue*, 965 F.3d 681, 692 (9th Cir. 2020) (noting that such a comparison would "deprive subsection (b)(4) of all real-world effect"). Accordingly, we affirm the district court's decision to not compare BNSF's rate only to other State-assessed taxpayers' rates.[10]

C

Finally, the Counties contend that the statute requires BNSF to demonstrate not only that there is a difference in tax rates, but also that any difference is discriminatory. The

[10] The district court assumed that the county was the proper assessment jurisdiction rather than the State. We agree that, under either possible assessment jurisdiction, the Counties' proposal to compare BNSF only to other State-assessed taxpayers must fail. We also recognize that the effect of selecting either the county or the State is slight, since the countywide averages do not significantly diverge from the statewide averages. However, we note that it would be appropriate for the district court to examine this issue in the first instance as proceedings continue, especially considering our case law interpreting the phrase "the same assessment jurisdiction" in the subsection (b)(1) context. *See Arizona v. Atchison, Topeka, & Santa Fe Ry. Co.*, 656 F.2d 398, 405 (9th Cir. 1981).

Supreme Court has defined discrimination in the 4-R Act context to mean "failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored." *CSX I*, 562 U.S. at 286 (quoting Black's Law Dictionary 534 (9th ed. 2009)). The Counties contend that BNSF cannot show discrimination because the Counties are justified in taxing BNSF at the unitary rate, the rate at which BNSF itself lobbied to be taxed. *See Ala. Dep't of Revenue v. CSX Transp., Inc.* (*CSX II*), 575 U.S. 21, 31 (2015) ("[A tax] does not discriminate unless it treats railroads differently from other *similarly situated* taxpayers *without sufficient justification*."). The Counties also contend that, since discrimination requires that an individual entity be treated worse than similarly situated entities, the proper comparison group is other State-assessed, unitary property.

However, the Counties arguments are unsuccessful at the outset because no independent showing of discrimination is required for subsection (b)(3) claims. The Supreme Court has clearly stated that "[w]hat subsection (b)(4) requires, and subsections (b)(1)–(3) do not, is a showing of *discrimination*—of a failure to treat similarly situated persons alike." *CSX II*, 575 U.S. at 27 (emphasis in original); *see also Trailer Train*, 697 F.2d at 866–67 (explaining that to "discern whether California has imposed a discriminatory tax rate in violation of [subsection] (b)(3)," the court's task was "to compare the tax rate applied to the Companies' railroad cars with that generally applicable to commercial and industrial property").

The text of the statute is not to the contrary. The preface to § 11501(b) states: "The following acts unreasonably burden *and discriminate against* interstate commerce." 49 U.S.C. § 11501(b) (emphasis added). The language of the

original § 306, states that "any action described in this subsection is *declared to constitute* an unreasonable and unjust *discrimination against*, and an undue burden on, interstate commerce." 4-R Act § 306(1) (emphasis added). It is true that subsection (b)(4) includes the term "discrimination," whereas the term is absent from subsections (b)(1)–(3). However, this additional requirement was likely included because subsection (b)(4) is a catch-all provision. *CSX I*, 562 U.S. at 280–81. The inclusion of a discrimination requirement in this broader provision makes sense: discrimination may come in forms other than the three types listed in subsections (b)(1)–(3), but in that case an additional showing of discrimination, rather than simply difference, is required. *See CSX II*, 575 U.S. at 27. Accordingly, since BNSF was not required to show discrimination, we need not address the Counties' arguments that BNSF would be unable to make this showing.

IV

In sum, the district court applied the correct preliminary injunction standard, properly analyzed BNSF's tax rate under the *Trailer Train* framework, and concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3). Accordingly, we affirm the district court, and suggest that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

AFFIRMED.

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EXECUTIVE OFFICE

Clerk of the Board
Napa County Board of Supervisors
1195 Third Street
Suite 310
Napa, CA 94559

RE: CLAIM FOR REFUND OF PROPERTY TAXES
Taxpayer: California Northern Railroad
SBE Number:810

Enclosed please find two copies of the Claim for refund of property tax for the above referenced taxpayer.

If you have any questions, please contact me at 713.629.0090 or Ashley.moore@Ryan.com.

Sincerely,

Ryan, LLC
Ashley Moore
Taxpayer's Representative
Enclosures – As Stated

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A Commitment to Service

TRACY A. SCHULZE
AUDITOR-CONTROLLER

NAPA COUNTY
DEPARTMENT OF AUDITOR-CONTROLLER

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NAPA, CALIFORNIA 94559
PHONE: (707) 253-4551, FAX: (707) 226-9065

ADDRESS ALL CORRESPONDENCE TO:
PROPERTY TAX SERVICES DIVISION
1195 THIRD STREET, SUITE B10
NAPA, CA 94559

NAPA COUNTY PROPERTY TAX CLAIM FOR REFUND

Step 1: Requestor's name and address (If requestor is an agent, please provide Tax Agent Registration #)	Requestor's name: **Ashley Moore**				Tax Agent Registration #
	Present mailing address (number and street): 1233 West Loop S Suite 1500				Email Address: Ashley,Moore@ryan.com
	City, town or post office, state, ZIP code: Houston, TX 77027				Phone (area code and number): 713.629.0090 EXT. 13-3549
Step 2: Describe the property	Owner's name: California Northern Railroad : Genesee & Wyoming Rail Road				
	Assessor's Identification Number (Mapbook - Page - Parcel): 081028001			Unsecured Bill Number: 799-000-226-000	
	Year: 2020-2021	Sequence:		Tax Rate Area: 000-002	
	Situs address (number and street): Map 0810 28 001 Par 02 LSD From UPRR 000				
	City, town or post office, state, ZIP code:				
Step 3: Did you file an appeal with the Assessment Appeals	If yes, what is the assessment appeal application number? NO	Filing date: N/A	Yes ☐ No ☐ Did you receive a Notice of Board Action?	If yes, when? N/A	**NOTE**: If you designated your Assessment Appeal Application as a Claim for Refund, there is no need to file this application.
Step 4: Describe reason for property tax refund	Reason: The property tax rate applied to compute claimant's property taxes was in excess of the rate applied the same year to property in the				
	county assessed by the assessor of Napa County, in Violation of Article XIII, Section 19 of the California Constitution and ITT World Communications v. City and County of San Francisco, 37 Cal. 3d 859 (1985).				
Attach additional documents if	The property tax rate applied to compute claimant's property taxes exceed the rate allowed by Article XIIIA, section 1 of the California Constitution. The excess taxes are direction violation of the Railroad Revitalization and Regulatory Reform Act of 1976,				
	49 U.S.C. Section 11501 (b) (3). For more information please see the attached.				
Step 5: Amount of property tax refund	Tax amount: $11,577.14	Penalty amount:	Redemption penalty amount:	Cost amount: / Fee amount:	Total refund amount: $5,622.78
Step 6: Sign the application	I hereby certify and declare under penalty of perjury that the foregoing is true and correct that the tax amount sought to be refunded was paid within four years prior to filing this demand; that the amounts herein claimed are correct and no part thereof has heretofore been refunded to this claimant or to any other person for his benefit; and, if acting on behalf of a corporation, that I am duly authorized to act on their behalf, and that the title shown is true and correct.				
	sign here ➡ Signature:				Date: 5/7/2024
	Title (If applicable): Senior Manager - Authorized Agent				
	If this claim is for a company, the person signing must state their title.				
Step 7: Mail application to:	Napa County Auditor-Controller Property Tax Services Division 1195 Third Street, Suite B10 Napa, CA 94559				
Contact Numbers	Customer Service: (707) 253-4551				FAX: (707) 226-9065

Please submit a separate form for each tax year for which you are requesting refund. Claim must be filled out completely and signed in order to be deemed a properly executed claim.

INSTRUCTIONS FOR FILING APPLICATION

CLAIM FOR REFUND

This claim is to request a refund for "paid" property taxes and/or penalties pursuant to Revenue and Taxation Code Sections 5096 and 5097. This form must be filed with the Auditor-Controller within four years of the date of payment of the property taxes. Should you have any questions, please call (707) 253-4551.

Note: Please complete application completely and accurately; incomplete applications will be returned.

1. **Requestor's name and address** – Provide the name of the person/entity who is requesting the property tax refund, their complete mailing address and their telephone number. If requestor is an agent, please provide the mandatory Tax Agent Registration number.

2. **Describe the property** – Provide the owner's name, the Assessor's Identification Number or Bill number, the year for which you are claiming the property tax refund, the sequence number, the Tax Rate Area and the complete situs address. This information can be found on your Property Tax Bill.

3. **Assessment Appeal** – If your claim for refund is related to an assessment appeal or if your assessment appeal application was designated as a "Claim for Refund" please provide the information related to the assessment appeal and attach copies of the documents you may have received from the Assessment Appeals Board pertaining to the appeal. **Note: If you designated your assessment appeal application as a 'Claim for Refund'; there is no need to file again.**

4. **Describe the reason for the property tax refund request** – Provide a brief narrative of the reason why you are requesting a property tax refund. Attach additional documents to this form if necessary. Providing proof of payment for the relevant property taxes will expedite the property tax refund claim process. **Note - Please provide all relevant documents.**

5. **Amount of property tax refund** – Indicate the refund amount you are claiming.

6. **Sign the application** – The application must be signed and dated by the requestor. If the requestor is filing on behalf of a company, they must state their title.

7. **Mail or Fax application to:** **Napa County Auditor-Controller**
Property Tax Services Division
1195 Third Street, Suite B10
Napa, California 94559

Email – auditor@countyofnapa.org

FAX – (707) 226-9065

PLEASE FAX OR MAIL YOUR APPLICATION. <u>DO NOT</u> DO BOTH AS THIS WILL DELAY THE PROCESSING OF YOUR CLAIM.

TO REQUEST A CONFIRMATION OF RECEIPT OF YOUR CLAIM FOR REFUND, PLEASE ENCLOSE A SELF-ADDRESSED STAMPED ENVELOPE.

Duplicate

CLAIM FOR REFUND OF PROPERTY TAXES

To: Board of Supervisors, County of Napa, California

The undersigned as California Northern Railroad, as delegated by the claimant herein, hereby makes this claim for refund of property tax on behalf of the claimant pursuant to Revenue and Taxation Code section 5097 and demands that the Board of Supervisors make its order directing the controller of said County to refund to claimant the sum of $5,622.78 in taxes levied for the fiscal year 2020/2021. In support of said claim the undersigned states:

1. Claimant is and at all times herein mentioned was California Northern Railroad, a limited liability company duly organized and existing under the laws of the State of Oregon, with its principal place of business located at 200 Meridian Centre Ste 300 Rochester, NY 14618.

2. For fiscal year 2020/2021, the California State Board of Equalization assessed the value of claimant's unitary and nonoperating California property pursuant to its authority under Article XIII, section 19 of the California Constitution and section 721 of the Revenue and Taxation Code. Pursuant to its authority under Revenue and Taxation Code section 756, the California Board of Equalization transmitted a roll showing claimants unitary and nonoperating property in Napa County. On the basis of said assessment and transmittal of said roll, taxes were levied on said property for said fiscal year in the sum of $11,577.14 (Exhibit 1) and paid by claimant on full on or about April 4, 2020 (Exhibit 2).

3. Claimant is entitled to a refund of a portion of said taxes in the amount of $5,622.78, plus appropriate interest, on the grounds that said taxes were erroneously and illegally

collected, or illegally assessed or levied, for the following reasons:

a. The property tax rate applied to compute claimant's property taxes was in excess of the rate applied in the same year to property in the county assessed by the assessor of Napa County, in violation of Article XIII, section 19 of the California Constitution and ITT World Communications v. City and County of San Francisco, 37 Cal. 3d 859 (1985).

b. The property tax rate applied to compute claimant's property taxes exceeded the rate allowed by Article XIIIA, section 1 of the California Constitution.

c. The excess taxes are direction violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. Section 11501 (b) (3).

4. No refund of said taxes, or any part thereof, has been previously made.

I declare under penalty of perjury that the foregoing is true and correct, and that I am authorized by claimant to make this claim for refund.

Dated: February 12, 2024 at 1233 West Loop S STE1500 Houston, TX 77027.

Name: Ashley N Moore

Title: Authorized Agent

Signature:

BOE-892 REV. 29 (12-22)

STATEMENT OF AUTHORIZATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

2023

Please return completed form to the State-Assessed Properties Division, Board of Equalization, P.O. Box 942879, MIC:61, Sacramento, CA 94279-0061. If you have any questions, you may contact us at 1-916-274-3270.

	SBE NUMBER
	0810

COMPANY NAME
California Northern Railroad Company

ADDRESS
200 Meridian Centre, Suite 300

CITY	STATE	ZIP CODE
Rochester	NY	14618

DESIGNATED REPRESENTATIVE	EMAIL ADDRESS
Ashley Moore	Ashley.Moore@ryan.com

ADDRESS
1233 W Loop S Suite 1600

CITY	STATE	ZIP CODE
Houston	TX	77027

TELEPHONE NUMBER	FAX NUMBER
713.629.0090	713.629.0227

Please be advised that the person listed above is authorized to act as our designated representative before the California State Board of Equalization in connection with the assessment of our property. Our designated representative may inspect or copy all information, documents, and records, including narrations and workpapers relating to the appraisal and the assessment of our property during the period January 1, 2022, through December 31, 2022, for the lien date 2023. *I understand that this form must be filed annually in order for the representative status to remain current.*

OWNER, PARTNER, OR OFFICER'S SIGNATURE	DATE
Lauren Valerio	1/13/2023
SIGNATORY'S PRINTED NAME	TITLE
Lauren Valerio	Senior Accounting Manager

PRINT

EXHIBIT 1

EXHIBIT 2

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BNSF RAILWAY COMPANY, *Plaintiff-Appellee*, v. COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE, *Defendants-Appellants*, and COUNTY OF SAN DIEGO, *Defendant.*	No. 20-15896 D.C. No. 4:19-cv-07230-HSG

BNSF RAILWAY COMPANY,
Plaintiff-Appellee,

v.

COUNTY OF SAN DIEGO,
Defendant-Appellant,

and

COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE,
Defendants.

No. 20-15897

D.C. No.
4:19-cv-07230-
HSG

OPINION

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted June 17, 2021
San Francisco, California

Filed August 5, 2021

Before: Sidney R. Thomas, Chief Judge, and
Daniel A. Bress and Patrick J. Bumatay, Circuit Judges.

Opinion by Chief Judge Thomas

SUMMARY*

Tax

The panel affirmed the district court's preliminary injunction in favor of BNSF Railway Company in BNSF's action alleging that several California counties are taxing railroad property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11501(b)(3).

The panel held that the district court applied the correct preliminary injunction standard under 49 U.S.C. § 11501, which does not require courts to consider traditional equitable factors. Instead, binding circuit precedent establishes that a railroad is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that a violation of § 11501 has been, or is about to be committed.

The district court had observed that it is difficult to apply § 11501 to California, because California has no specific tax rate for commercial and industrial property. The panel held that the district court properly analyzed BNSF's tax rate

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

under *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert denied*, 464 U.S. 846 (1983), which provides a framework for identifying the proper tax comparison rate—in this case, a county's average tax rate. The panel further held that the district court properly concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3), because BNSF's tax rate was higher than the average countywide tax rates for each county. Accordingly, the panel affirmed the district court.

The district court had rejected the Counties' contention that the relevant assessment jurisdiction is the State. The panel suggested that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

COUNSEL

Margaret R. Prinzing (argued), Robin B. Johansen, and Omar El-Qoulaq, Olson Remcho LLP, Oakland, California, for Defendants-Appellants County of Alameda, County of Contra Costa, County of Fresno, County of Kern, County of Madera, County of Merced, County of Orange, County of Plumas, County of Riverside, County of San Bernardino, County of San Joaquin, County of Stanislaus, and County of Tulare.

Laura E. Blome (argued), Senior Deputy; Thomas E. Montgomery, County Counsel; Office of County Counsel, San Diego, California; for Defendant-Appellant County of San Diego.

Benjamin J. Horwich (argued), Munger Tolles & Olson LLP, San Francisco, California; Jessica Reich Baril, Munger Tolles & Olson LLP, Los Angeles, California; Misty Smith Kelley and John M. Phillips, Baker Donelson Bearman Caldwell & Berkowitz PC, Chattanooga, Tennessee; for Plaintiff-Appellee.

OPINION

THOMAS, Chief Judge:

This appeal requires us to consider whether California's taxation of railroad property complies with the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 306, 90 Stat. 31, 54–55 (1976) ("the 4-R Act"). BNSF Railway Company ("BNSF") owns property in various California Counties ("the Counties"). BNSF alleges that the Counties are taxing its property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the 4-R Act. 49 U.S.C. § 11501(b)(3).

The district court determined that the proper preliminary injunction standard under the 4-R Act asks whether BNSF had shown a "reasonable cause to believe" that the 4-R Act was being violated, and that the proper comparison class was the average countywide tax rate for each County. The district court issued a preliminary injunction, concluding BNSF had shown that the Counties were violating the 4-R Act because BNSF's tax rate was higher than the average countywide tax rates for each County.

The district court had jurisdiction under 49 U.S.C. § 11501(c). We have jurisdiction under 28 U.S.C. § 1292(a). We review for abuse of discretion a district court's decision regarding preliminary injunctive relief. *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1103 (9th Cir. 2016). We review findings of fact for clear error and conclusions of law de novo. *Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1050, 1055 (9th Cir. 2008). However, where a district court's ruling rests solely on a premise of law and the facts are either established or undisputed, review is de novo. *See Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 760 (9th Cir. 2004). We affirm.

I

A

Congress passed the 4-R Act out of concern for the financial stability of the nation's railway system. *Burlington N. R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 457 (1987) (quoting 4-R Act § 101(a)). Recognizing that "railroads are easy prey for State and local tax assessors in that they are nonvoting, often nonresident, targets for local taxation, who cannot easily remove themselves from the locality," *Dep't of Revenue of Or. v. ACF Indus., Inc.*, 510 U.S. 332, 336 (1994) (internal quotation marks and citation omitted), Congress instituted "a prohibition on discriminatory state taxation of railroad property," *Okla. Tax Comm'n*, 481 U.S. at 457.

The 4-R Act establishes that "[t]he following acts unreasonably burden and discriminate against interstate commerce, and a State [or locality] may not do any of them:"

> (1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
>
> (2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.
>
> (3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
>
> (4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

49 U.S.C. § 11501(b).[1]

[1] This provision was originally contained in § 306 of the 4-R Act. 90 Stat. 31, 54–55. The language "was slightly altered" upon recodification in 1978, but such alteration "may not be construed as making a substantive change in the laws repealed." *Okla. Tax Comm'n*, 481 U.S. at 457 n.1 (internal quotation marks and citation omitted). Therefore, we "resolve any substantive conflicts between the original language of § 306 and the language in § [11501] in favor of the original language." *Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.*,

B

As the district court stated, California's system of property taxation "is, in a word, complicated." California employs an ad valorem (or value-based) property tax system. Cal. Const. art. XIII, § 1. Taxation follows a three-step process: (1) the value of taxable property is assessed, (2) the tax rate is computed, and (3) the tax is levied from the taxpayer. For most property, its value is assessed (and its rate is calculated) at the local level. *See* Cal. Rev. & Tax. Code § 404. But for a subset of property delineated in the California Constitution, including railroad property, the State assesses the value and calculates the applicable rate. Cal. Const. art. XIII, § 19.[2]

1

An understanding of California's system of taxation of locally assessed property is important for resolution of this case. Most property in California is locally assessed. County-level assessors determine the value of this property

934 F.2d 1064, 1066 n.1 (9th Cir. 1991). We reproduce the language of the original § 306 as relevant *infra*.

[2] California's Constitution establishes which property is state-assessed: "(1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity." Cal. Const. art. XIII, § 19.

for tax purposes. *See* Cal. Rev. & Tax. Code § 404.[3] This property is classified into one of two rolls: the secured roll or the unsecured roll. The secured roll contains "property the taxes on which are a lien on real property sufficient . . . to secure payment of the taxes." *Id.* § 109. In practice, this is most real property. The unsecured roll contains all other property. *Id.* § 109; 1 Sean Flavin, Taxing California Property §§ 12:3–12:4 (4th ed. 2020). There is no further subdivision based on use; for example, both the secured and unsecured roll contain both residential property and commercial and industrial property.

After determining the appropriate roll, Counties next assign locally assessed property to a particular tax rate area ("TRA") based on the property's location, and that TRA's tax rate is applied to the property. A TRA is a small geographical area serviced by the same combination of local government entities, including the county, city, special district, and school districts. Cal. Rev. & Tax. Code § 95(g). A county may have hundreds or thousands of TRAs—for example, San Diego County has over five thousand TRAs.[4]

The tax rate for property on the secured roll is taxed at a rate calculated under a formula found in § 93 of the California Revenue and Taxation Code ("the Code"), and it

[3] The assessment ratio of real property is limited by constitutional amendment in California. *See* Cal. Const. art. XIIIA, § 1 ("Proposition 13").

[4] San Diego County requests that we take judicial notice of several publicly available documents explaining the taxation process in that County and in California. These documents are matters of public record, and we grant the motion. Fed. R. Evid. 201(b)(1)–(2); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

is specific to a particular TRA. The § 93 formula contains two components: the first component is a general tax levy, calculated at 1%. Cal. Const. art. XIIIA, § 1(a); Cal. Rev. & Tax. Code § 93. The second component, referred to as the "debt service component," is the amount needed as a percentage of property values to produce enough revenue to make payments for the interest and principal on all voter-approved bonded indebtedness issued by any of the various local entities, Cal. Rev. & Tax. Code § 93; *see also* Cal. Gov. Code § 29100, such as a voter-approved bond that funds school construction in the elementary school district serving that TRA. For locally assessed property on the unsecured roll, the rate is the § 93 rate for the previous year for that TRA. Cal. Const. art. XIII, § 12; Cal. Rev. & Tax. Code § 2905. This formula ensures that each TRA will have enough revenue to make payments for the interest and principal on its bonded indebtedness. The rate is then applied to the assessed value of the property on the assessment rolls, *see* Cal. Rev. & Tax. Code § 2152, and collected. *Id.* § 2602. As a result, each County, with its hundreds or thousands of TRAs, likewise has hundreds or thousands of different tax rates applied to property in that County, and these rates apply to all property in that TRA, without regard to use, i.e., whether commercial and industrial or residential or otherwise.

2

Other property, including railroad property, is State-assessed. *See* Cal. Const. art. XIII, § 19. State-assessed property is also classified onto either the secured or unsecured roll. However, for this property, the *State* assesses its value for tax purposes, as opposed to the counties, Cal.

Const. art. XIII, § 19, and applies a different formula to calculate the tax rate. *See* Cal. Rev. & Tax. Code § 100.

The assessment process for some of this property, including BNSF's property, is different from standard local assessment. For this subset of State-assessed property, known as "unitary property," the value is calculated under the unit valuation method. *Id.* §§ 723, 723.1. Under this method, the State Board of Equalization ("the State Board") first calculates the value of a taxpayer's entire system, i.e., BNSF's railroad property nationwide. Then, the State Board allocates a portion of that value to California, and further allocates that value among the various counties in which the taxpayer's property is located. The unit valuation method is meant to account for the valuation of assets where the component parts are valuable as a whole, but less valuable in isolation. For example, in the railway context, "ten miles of [railroad] track would have a questionable value, other than as scrap, without the benefit of the rest of the system as a whole." *Am. Airlines, Inc. v. Cnty. of San Mateo*, 912 P.2d 1198, 1208 (Cal. 1996) (alterations and citation omitted).

The tax rate applied to State-assessed property is calculated under a formula different from the § 93 formula. Due to a lengthy legislative history, unitary property holders do not need to demonstrate the TRAs in which their property is located.[5] Instead, their countywide value is allocated to a

[5] Prior to 1986, the value of unitary property was not allocated to the counties—instead, taxpayers reported to individual local TRAs where their property was located. There was no separate tax rate for unitary property; the local taxing jurisdictions applied their own rates. Under this system, an individual assessee had to report in thousands of TRAs. A series of state legislation established today's system. *See* 1986 Cal. Stat. 5217, 5223–24 (establishing that the State Board will allocate unitary

countywide TRA with a single tax rate. *See* Cal. Rev. & Tax. Code § 100.11(a)(2)(B). For this reason, the tax rate applied cannot be informed by the debt service needs of the particular TRA where the property is located. *Compare id.* § 93. State-assessed property is therefore taxed under a different formula established in § 100 of the Code, the "unitary rate." *Id.* § 100.

Like § 93, § 100's first component is effectively a 1% general tax levy. *Id.* § 100(b)(1). Section 100's second component is also a debt service component, but it is calculated differently from § 93's. Section 100's debt service component is calculated as the previous year's unitary debt service rate, *see id.* § 100(b)(2)(A), multiplied by the percentage change between the two preceding fiscal years in the county's ad valorem debt service *levy* (not rate) for the secured roll. *Id.* § 100(b)(2)(B). The formula for the second component means that the unitary rate is based on the change in absolute dollars of the county's debt service rate, not changes in the percentage that taxpayers are paying. According to BNSF, it is this component that accounts for the divergence between the §100 and § 93 rates. Specifically, if the tax rate applied to the secured roll increases, but the property values also rise, the § 93 rate will not rise. But the

property value to a county's existing TRAs, irrespective of the property's actual location); 1987 Cal. Stat. 2959, 2959–61 (creating a single countywide TRA for unitary property so that each taxpayer receives only one tax bill per county); 1988 Cal. Stat. 2087, 2094–95 (tying the tax rates for unitary property to the unitary and operating non-unitary data rather than the total county-wide data, effectively implementing what is now § 100(b)(2)(A)). In 2006, the 1987 and 1988 laws were applied to railroads, 2006 Cal. Legis. Serv. ch. 791 (A.B. 2670) (West), via a bill "introduced on behalf of the California Railroad Industry," including BNSF.

§ 100 rate will increase because it is based on the increase in actual dollars of debt service tax paid. The difference in tax rates between the countywide average tax rates (labeled as the "Section 11501 Benchmark Rate") and BNSF's rate (the "Plaintiff Unitary Rate") for the 2019–2020 tax year are represented below:

County	2019–20 Plaintiff Unitary Rate	2019–20 Section 11501 Benchmark Rate
Alameda	2.5187%	1.241%
Contra Costa	1.6865%	1.148%
Fresno	1.370408%	1.181%
Kern	1.611299%	1.24%
Kings	1.326084%	1.087%
Madera	1.203169%	1.089%
Merced	1.4109014%	1.088%
Orange	1.28173%	1.064%
Plumas	1.11652%	1.089%
Riverside	1.76133%	1.164%
San Bernardino	1.3645%	1.144%
San Diego	1.62331%	1.142%
San Joaquin	1.6922%	1.145%
Stanislaus	1.38011%	1.103%
Tulare	1.4002%	1.113%

The countywide average rates are calculated by the State Board every year, as required by statute. Cal. Rev. & Tax. Code § 11403. This average is calculated by dividing (1) the sum of all ad valorem property tax levies for a given county

Benjamin J. Horwich (argued), Munger Tolles & Olson LLP, San Francisco, California; Jessica Reich Baril, Munger Tolles & Olson LLP, Los Angeles, California; Misty Smith Kelley and John M. Phillips, Baker Donelson Bearman Caldwell & Berkowitz PC, Chattanooga, Tennessee; for Plaintiff-Appellee.

OPINION

THOMAS, Chief Judge:

This appeal requires us to consider whether California's taxation of railroad property complies with the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 306, 90 Stat. 31, 54–55 (1976) ("the 4-R Act"). BNSF Railway Company ("BNSF") owns property in various California Counties ("the Counties"). BNSF alleges that the Counties are taxing its property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the 4-R Act. 49 U.S.C. § 11501(b)(3).

The district court determined that the proper preliminary injunction standard under the 4-R Act asks whether BNSF had shown a "reasonable cause to believe" that the 4-R Act was being violated, and that the proper comparison class was the average countywide tax rate for each County. The district court issued a preliminary injunction, concluding BNSF had shown that the Counties were violating the 4-R Act because BNSF's tax rate was higher than the average countywide tax rates for each County.

per year by (2) the sum of the assessed values of all property in that county for that year. *Id.*

C

Observing that BNSF's tax rate had deviated from the average countywide tax rates in each County, BNSF filed suit on November 1, 2019, alleging a violation of 49 U.S.C. § 11501(b)(3). BNSF sought a preliminary injunction preventing the Counties from collecting taxes at a rate higher than each County's average rate. The district court granted the preliminary injunction, noting that the law of this circuit does not require courts to consider traditional equitable factors in considering a § 11501 case, and instead requires issuance of a preliminary injunction upon a showing that "a violation of [§ 11501] has been, or is about to be committed." *See Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.* (*Burlington Northern v. Washington*), 934 F.2d 1064, 1074–75 (9th Cir. 1991).

On the merits, the district court observed that the trouble with 4-R Act analysis in California is that "California has no specific tax rate for commercial and industrial property" against which to compare a railroad's rate. Accordingly, the court followed the approach outlined in *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983), for identifying a proper comparison rate. The court first addressed *Trailer Train*'s recommended comparison rate—the rate applicable to whichever roll, secured or unsecured, contains the "majority of the commercial and industrial property" in the State. *Id.* at 867. Although the secured roll almost certainly contains the majority of commercial and industrial property, the "tax rate applicable" to the secured roll, *id.*, "cannot be

determined," because property on the secured roll is "spread among the hundreds or thousands of TRAs in each County." In other words, there is no single identifiable tax rate applicable to the secured roll. Therefore, the district court followed *Trailer Train*'s fallback approach and compared BNSF's tax rate to the *average* tax rate. *See Trailer Train*, 697 F.2d at 867. In doing so, it used Counties as the relevant assessment jurisdiction. Although this property too is spread across hundreds or thousands of TRAs, the *average* rate is readily available, since the State Board is required by statute to calculate it each year. *See* Cal. Rev. & Tax. Code § 11403.

The district court rejected the Counties' proposal to compare BNSF's rate only to the rates for other State-assessed taxpayers—who pay the same § 100 rate that BNSF pays. The Counties argued that the relevant "assessment jurisdiction" is the State, and as such the court should compare only to other State-assessed property. *See* 49 U.S.C. § 11501(b)(3). The district court held that, even if the State (as opposed to the County) were the appropriate assessment jurisdiction, the commercial and industrial property *in the State* is clearly not limited to the group of mostly utility company property that is State-assessed. *See* Cal. Const. art. XIII, § 19. Moreover, the court observed that to limit the comparison class to "a relatively narrow subset of other state-assessed utilities and other entities that pay the same unitary tax rate," would depart from Congress's intention to "link railroads' fate" to commercial and industrial taxpayers.

The district court also rejected the Counties' argument that BNSF needed to make an independent showing of discrimination in order to prevail under § 11501(b)(3). The court held that subsection (b)(3) "does not require proof of discrimination, because Congress has already declared in the

preface of Section 11501(b) that the imposition of such an ad valorem property tax rate disparity 'unreasonably burden[s] and discriminate[s] against interstate commerce.'"

The district court's amended preliminary injunction order requires BNSF to deposit the enjoined amount of taxes for the 2019–2020 tax year in an escrow account and deposit the enjoined amount for future tax years when those tax payments would be due. The preliminary injunction enjoins the collection of only the disputed portion of BNSF's taxes, not the collection of the undisputed taxes.

II

As a threshold matter, we must first determine whether the district court applied the correct standard in awarding a preliminary injunction to BNSF. We generally consider traditional equitable factors when evaluating requests for preliminary injunctions. *See BOKF, NA v. Estes*, 923 F.3d 558, 561–62 (9th Cir. 2019) (listing factors). However, in some circumstances, a statute will prescribe that a showing of a violation of the statute alone warrants the issuance of a preliminary injunction. *See Burlington Northern v. Washington*, 934 F.2d at 1074 (quoting *Atchison, Topeka and Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 258 (10th Cir. 1981)); *cf. Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313–14 (1982). In *Trailer Train*, we held that the 4-R Act falls within this limited category, 697 F.2d at 869, and we reaffirmed that reasoning more recently in *Burlington Northern v. Washington*, 934 F.2d at 1074 ("Although we need not reach this issue, we note that [this injunction standard] is supported by the existing case law."). As the district court correctly observed, these cases constitute binding circuit precedent establishing the proper injunction

standard for violations of the 4-R Act: the railroad "is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that [§ 11501] has been violated, or is about to be violated." *Id.* at 1075 (internal quotation marks omitted).

Romero-Barcelo does not qualify as intervening irreconcilable authority that would require deviation from our circuit precedent. *See Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc). First, and importantly, *Romero-Barcelo* was not intervening authority: it was decided on April 27, 1982, after *Trailer Train* was argued but more than seven months *before Trailer Train* was decided on January 25, 1983. *Compare Romero-Barcelo*, 456 U.S. at 305, *with Trailer Train*, 697 F.2d at 860. Thus, the *Trailer Train* panel had the benefit of consulting the reasoning in *Romero-Barcelo* before issuing its decision.[6]

Second, *Romero-Barcelo* is not irreconcilable with *Trailer Train*. The irreconcilability requirement is a "high standard." *FTC v. Consumer Def., LLC*, 926 F.3d 1208, 1213 (9th Cir. 2019). "[I]f we can apply our precedent consistently with that of the higher authority, we must do so. . . . [I]t is not enough for there to be some tension between the intervening higher authority and prior circuit precedent." *Id.* (internal quotation marks and citations omitted). In *Romero-Barcelo*, the Supreme Court held that a certain provision of the Federal Water Pollution and Control Act did not withdraw courts' traditional equitable discretion. 456 U.S. at 320. The

[6] We also note that this court reaffirmed *Trailer Train*'s preliminary injunction standard in 1991 in *Burlington Northern v. Washington*, nearly a decade after *Romero-Barcelo* was decided. *Burlington Northern v. Washington*, 934 F.2d at 1074–75.

Supreme Court cautioned that courts should apply equitable principles "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity." *Id.* at 313 (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)). These instructions are not "irreconcilable" with our holding in *Trailer Train* that § 11501 "clearly falls within" the exception for statutes that "specifically provide[] for injunctive relief." 697 F.2d at 869. Indeed, *Trailer Train* followed these requirements, looking to the language of the original § 306, which specified that "the district courts of the United States shall have jurisdiction . . . to grant such mandatory or prohibitive injunctive relief . . . *as may be necessary to prevent*, restrain, or terminate any acts in violation of this section." 4-R Act of 1976, § 306(2) (emphasis added); *Trailer Train*, 697 F.2d at 869 & n.16. *Trailer Train*'s interpretation of this language is a holding that we "can apply . . . consistently," *Consumer Def.*, 926 F.3d at 1213, with the Supreme Court's instruction in *Romero-Barcelo* to look to the statute's direct command or necessary and inescapable inference. *See* 456 U.S. at 313. The district court applied the correct injunction standard to this case.

III

On the merits, the Counties' arguments fall into three categories. The first two involve the Counties' contention that the district court erred in selecting the countywide average tax rates as the baseline rate against which it compared BNSF's rate. First, the Counties argue that the district court only arrived at that rate by following the *Trailer Train* framework, which was error because *Trailer Train* involved a prior version of California's property taxation system, under which railroads were not taxed at the unitary

rate. Second, the Counties argue that the district court should have disregarded the *Trailer Train* framework and compared BNSF's property only to other property taxed at the unitary rate, *see* Cal. Rev. & Tax. Code § 100, since this is the only property in the same "assessment jurisdiction." 49 U.S.C. § 11501(b)(3); *see id.* § 11501(a)(2). Third, and separately, the Counties contend that BNSF was required to make a threshold showing that its tax rate was not only different, but also discriminatory. BNSF cannot do so, the Counties contend, because they are justified in taxing BNSF subject to the unitary rate since BNSF lobbied for the change in state law that subjected it to this rate. We address each argument in turn.

A

The 4-R Act prohibits States and localities from taxing railroad property "at a tax rate that exceeds the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11501(b)(3). As we noted in *Trailer Train*, and as is still true today, it is difficult to apply this statute to California, since California "has no specific tax rate for commercial and industrial property." *Trailer Train*, 697 F.2d at 867. Thus, the baseline rates to which we should compare a railroad's rate are not readily apparent.

We first addressed this issue in *Trailer Train* in 1983, the only time this court has applied subsection (b)(3) to California's system of taxation. At that time, the tax rate applied to private rail cars was essentially the weighted average of the prior year's secured and unsecured rates. *Id.* at 863. The Board determined that the recently established tax rate limitations in Proposition 13 applied to private

railcars, and it taxed Trailer Train's property at the lower rate required by Proposition 13 for the 1978–1979 tax year. *Id.* at 863–64. In 1980, when the California Supreme Court ruled that the Proposition 13 tax rate limitation did not apply to the unsecured roll, the Board interpreted the Court's decision to mean Proposition 13 must not apply to private railcars and determined that its rate reduction on railcars for the 1978–1979 tax year was improper. *Id.* The Board recalculated the tax at a higher rate. *Id.* Railway companies sued to enjoin collection of taxes at the higher rate as a violation of 49 U.S.C. § 11501(b)(3). *Id.*

To address the issue of the proper comparison rate, *Trailer Train* outlined two approaches. The first approach instructs a court to ascertain which roll, secured or unsecured, contains the majority of California's commercial and industrial property. *Id.* at 867. "The tax rate applicable to the roll that contained the majority of commercial and industrial property shall be deemed" the proper comparison rate. *Id.* As a second, fallback approach, the court instructed that, if that determination is "not possible, the average tax rate for all property shall be used as the basis for comparison." *Id.*[7]

The Counties do not suggest any persuasive reason for departing from this framework. To be sure, the choice between the secured roll, the unsecured roll, or the average of

[7] The district court was correct to move to *Trailer Train*'s second option when no party offered data reflecting the tax rate applicable to the secured roll or otherwise limited to only commercial and industrial property. We are not persuaded by the Counties' contention that BNSF should have provided such data. BNSF's expert represented below that BNSF did not believe those numbers were "published or readily ascertainable." If the Counties, who are in possession of the tax rate data, wish the district court to consider these rates, then they may produce them.

all tax rates had the potential for a more significant impact at the time of *Trailer Train*: at that time, the two rates were quite different, *see id.* at 864, whereas today they may not diverge as dramatically. However, the district court was correct that the central question of *Trailer Train*—how to identify the proper comparison rate to capture commercial and industrial property in California, *see id.* at 867—remains equally relevant in this case. This is the question that *Trailer Train* answered by pointing us to either the rate applicable to the secured or unsecured roll or the average rate applied to all property. The evolution in California's system of taxation does not provide a sufficient reason to deviate from these instructions.[8]

B

The Counties also urge deviation from *Trailer Train* because the district court should have compared BNSF's rate to other State-assessed taxpayers' rates rather than the countywide averages, since the only property in the same "assessment jurisdiction" as BNSF is other State-assessed unitary property. The Counties thus argue that they comply with the 4-R Act because they do not treat BNSF differently from other unitary property taxpayers. We disagree.

The 4-R Act forbids railroads from being taxed at a rate that exceeds the rate applicable to commercial and industrial property "in the same assessment jurisdiction." 49 U.S.C.

[8] San Diego County argues that the district court needed to compare BNSF's tax rate for its specific parcels to the tax rate for the corresponding TRA. We decline to reach this argument since it was not raised below. *See Detrich v. Ryan*, 740 F.3d 1237, 1248–49 (9th Cir. 2013) (en banc).

§ 11501(b)(3). The statute defines "assessment jurisdiction" as "a geographical area in a State used in determining the assessed value of property for ad valorem taxation." *Id.* § 11501(a)(2). The Counties argue that the State is the appropriate assessment jurisdiction here, and that therefore, the district court should have compared BNSF's rate to the rate applied to other State-assessed entities: the § 100 rate. *See* Cal. Const. art. XIII, § 19; Cal. Rev. & Tax. Code § 100.

Yet even if the State were the appropriate assessment jurisdiction, the Counties' proposal cannot pass muster. If the State were the appropriate assessment jurisdiction, then the statute instructs that the proper comparison rate is that applicable to "commercial and industrial property in the same assessment jurisdiction"—the State of California. 49 U.S.C. § 11501(b)(3). Commercial and industrial property in California certainly is not limited to the small subset of State-assessed property. Furthermore, the definition of "assessment jurisdiction" is a "geographical area." *Id.* § 11501(a)(2). The statute does not require comparison only to other entities assessed by the same agency, just entities within the appropriate "geographical area."[9] Thus, if the State were the appropriate assessment jurisdiction, the proper comparison would be to *all* commercial and industrial property in the State, not just the limited group of State-assessed entities.

Furthermore, the Counties' proposal to compare BNSF's tax rate only to the rate applied to State-assessed property, a limited set of property mostly owned by utility companies that pay the same tax rate as BNSF, runs contrary to the

[9] For this reason we are also not persuaded by San Diego County's argument that the countywide TRA (as opposed to the County) is the proper assessment jurisdiction.

purpose of the 4-R Act. Congress's goal in passing this legislation was to ensure railroads were treated equally as taxpayers. *See CSX Transp., Inc. v. Ala. Dep't of Revenue* (*CSX I*), 562 U.S. 277, 280 (2011); *see also Okla. Tax Comm'n*, 481 U.S. at 457. To do so, the statute instructs comparison to "commercial and industrial property"—a deliberately broad term. 49 U.S.C. § 11501(b). Moreover, a comparison to entities paying *the same tax rate* would deprive this subsection of nearly all meaning. It was, in part, for this reason that we recently rejected a similar proposal to compare railroad property only to centrally assessed property under a different subsection of the 4-R Act. *See BNSF Ry. Co. v. Or. Dep't of Revenue*, 965 F.3d 681, 692 (9th Cir. 2020) (noting that such a comparison would "deprive subsection (b)(4) of all real-world effect"). Accordingly, we affirm the district court's decision to not compare BNSF's rate only to other State-assessed taxpayers' rates.[10]

C

Finally, the Counties contend that the statute requires BNSF to demonstrate not only that there is a difference in tax rates, but also that any difference is discriminatory. The

[10] The district court assumed that the county was the proper assessment jurisdiction rather than the State. We agree that, under either possible assessment jurisdiction, the Counties' proposal to compare BNSF only to other State-assessed taxpayers must fail. We also recognize that the effect of selecting either the county or the State is slight, since the countywide averages do not significantly diverge from the statewide averages. However, we note that it would be appropriate for the district court to examine this issue in the first instance as proceedings continue, especially considering our case law interpreting the phrase "the same assessment jurisdiction" in the subsection (b)(1) context. *See Arizona v. Atchison, Topeka, & Santa Fe Ry. Co.*, 656 F.2d 398, 405 (9th Cir. 1981).

Supreme Court has defined discrimination in the 4-R Act context to mean "failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored." *CSX I*, 562 U.S. at 286 (quoting Black's Law Dictionary 534 (9th ed. 2009)). The Counties contend that BNSF cannot show discrimination because the Counties are justified in taxing BNSF at the unitary rate, the rate at which BNSF itself lobbied to be taxed. *See Ala. Dep't of Revenue v. CSX Transp., Inc.* (*CSX II*), 575 U.S. 21, 31 (2015) ("[A tax] does not discriminate unless it treats railroads differently from other *similarly situated* taxpayers *without sufficient justification*."). The Counties also contend that, since discrimination requires that an individual entity be treated worse than similarly situated entities, the proper comparison group is other State-assessed, unitary property.

However, the Counties arguments are unsuccessful at the outset because no independent showing of discrimination is required for subsection (b)(3) claims. The Supreme Court has clearly stated that "[w]hat subsection (b)(4) requires, and subsections (b)(1)–(3) do not, is a showing of *discrimination*—of a failure to treat similarly situated persons alike." *CSX II*, 575 U.S. at 27 (emphasis in original); *see also Trailer Train*, 697 F.2d at 866–67 (explaining that to "discern whether California has imposed a discriminatory tax rate in violation of [subsection] (b)(3)," the court's task was "to compare the tax rate applied to the Companies' railroad cars with that generally applicable to commercial and industrial property").

The text of the statute is not to the contrary. The preface to § 11501(b) states: "The following acts unreasonably burden *and discriminate against* interstate commerce." 49 U.S.C. § 11501(b) (emphasis added). The language of the

original § 306, states that "any action described in this subsection is *declared to constitute* an unreasonable and unjust *discrimination against*, and an undue burden on, interstate commerce." 4-R Act § 306(1) (emphasis added). It is true that subsection (b)(4) includes the term "discrimination," whereas the term is absent from subsections (b)(1)–(3). However, this additional requirement was likely included because subsection (b)(4) is a catch-all provision. *CSX I*, 562 U.S. at 280–81. The inclusion of a discrimination requirement in this broader provision makes sense: discrimination may come in forms other than the three types listed in subsections (b)(1)–(3), but in that case an additional showing of discrimination, rather than simply difference, is required. *See CSX II*, 575 U.S. at 27. Accordingly, since BNSF was not required to show discrimination, we need not address the Counties' arguments that BNSF would be unable to make this showing.

IV

In sum, the district court applied the correct preliminary injunction standard, properly analyzed BNSF's tax rate under the *Trailer Train* framework, and concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3). Accordingly, we affirm the district court, and suggest that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

AFFIRMED.

Duplicate

1233 W Loop S
Suite 1500
Houston, TX 77027
Tel. 713.629.0090
Fax 713.629.0227

www.ryan.com

RETURN RECEIPT REQUESTED
VIA CERTIFIED MAIL #9214 8969 0099 9790 1650 9674 36

RECEIVED
FEB 22 2024
NAPA COUNTY
EXECUTIVE OFFICE

February 13, 2024

Clerk of the Board
Napa County Board of Supervisors
1195 Third Street
Suite 310
Napa, CA 94559

RE: CLAIM FOR REFUND OF PROPERTY TAXES
Taxpayer: California Northern Railroad
SBE Number:810

Enclosed please find two copies of the Claim for refund of property tax for the above referenced taxpayer for tax years 2021-2022 and 2022-2023.

If you have any questions, please contact me at 713.629.0090 or Ashley.moore@Ryan.com.

Sincerely,

Ryan, LLC
Ashley Moore
Taxpayer's Representative
Enclosures – As Stated

A Tradition of Stewardship
A Commitment to Service

TRACY A. SCHULZE
AUDITOR-CONTROLLER

NAPA COUNTY
DEPARTMENT OF AUDITOR-CONTROLLER

1195 THIRD STREET, SUITE B10
NAPA, CALIFORNIA 94559
PHONE: (707) 253-4551, FAX: (707) 226-9065

ADDRESS ALL CORRESPONDENCE TO:
PROPERTY TAX SERVICES DIVISION
1195 THIRD STREET, SUITE B10
NAPA, CA 94559

NAPA COUNTY PROPERTY TAX CLAIM FOR REFUND

Step 1: Requestor's name and address (If requestor is an agent, please provide Tax Agent Registration #)	Requestor's name: **Ashley Moore**				Tax Agent Registration #:
	Present mailing address (number and street): 1233 West Loop S Suite 1500				Email Address: Ashley,Moore@ryan.com
	City, town or post office, state, ZIP code: Houston, TX 77027				Phone (area code and number): 713.629.0090 EXT. 13-3549
Step 2: Describe the property	Owner's name: California Northern Railroad : Genesee & Wyoming Rail Road				
	Assessor's Identification Number (Mapbook - Page - Parcel): 081028001			Unsecured Bill Number: 799-000-226-000	
	Year: 2021-2022		Sequence:		Tax Rate Area: 000-002
	Situs address (number and street): Map 0810 28 001 Par 02 LSD From UPRR 000				
	City, town or post office, state, ZIP code:				
Step 3: Did you file an appeal with the Assessment Appeals	If yes, what is the assessment appeal application number? NO	Filing date: N/A	☐ Yes ☐ No Did you receive a Notice of Board Action?	If yes, when? N/A	**NOTE**: If you designated your Assessment Appeal Application as a Claim for Refund, there is no need to file this application.
Step 4: Describe reason for property tax refund	Reason: The property tax rate applied to compute claimant's property taxes was in excess of the rate applied the same year to property in the				
	county assessed by the assessor of Napa County, in Violation of Article XIII, Section 19 of the California Constitution and ITT World Communications v. City and County of San Francisco, 37 Cal. 3d 859 (1985).				
Attach additional documents if	The property tax rate applied to compute claimant's property taxes exceed the rate allowed by Article XIIIA, section 1 of the California Constitution. The excess taxes are direction violation of the Railroad Revitalization and Regulatory Reform Act of 1976,				
	49 U.S.C. Section 11501 (b) (3). For more information please see the attached.				
Step 5: Amount of property tax refund	Tax amount: $11,141.58	Penalty amount:	Redemption penalty amount:	Cost amount: / Fee amount:	Total refund amount: $5,561.46
Step 6: Sign the application	I hereby certify and declare under penalty of perjury that the foregoing is true and correct that the tax amount sought to be refunded was paid within four years prior to filing this demand; that the amounts herein claimed are correct and no part thereof has heretofore been refunded to this claimant or to any other person for his benefit; and, if acting on behalf of a corporation, that I am duly authorized to act on their behalf, and that the title shown is true and correct.				
	sign here → Signature:				Date: 5/7/2024
	Title (If applicable): Senior Manager - Authorized Agent				
	If this claim is for a company, the person signing must state their title.				
Step 7: Mail application to:	Napa County Auditor-Controller Property Tax Services Division 1195 Third Street, Suite B10 Napa, CA 94559				
Contact Numbers	Customer Service: (707) 253-4551				FAX: (707) 226-9065

Please submit a separate form for each tax year for which you are requesting refund. Claim must be filled out completely and signed in order to be deemed a properly executed claim.

INSTRUCTIONS FOR FILING APPLICATION

CLAIM FOR REFUND

This claim is to request a refund for "paid" property taxes and/or penalties pursuant to Revenue and Taxation Code Sections 5096 and 5097. This form must be filed with the Auditor-Controller within four years of the date of payment of the property taxes. Should you have any questions, please call (707) 253-4551.

Note: Please complete application completely and accurately; incomplete applications will be returned.

1. **Requestor's name and address** – Provide the name of the person/entity who is requesting the property tax refund, their complete mailing address and their telephone number. If requestor is an agent, please provide the mandatory Tax Agent Registration number.

2. **Describe the property** – Provide the owner's name, the Assessor's Identification Number or Bill number, the year for which you are claiming the property tax refund, the sequence number, the Tax Rate Area and the complete situs address. This information can be found on your Property Tax Bill.

3. **Assessment Appeal** – If your claim for refund is related to an assessment appeal or if your assessment appeal application was designated as a "Claim for Refund" please provide the information related to the assessment appeal and attach copies of the documents you may have received from the Assessment Appeals Board pertaining to the appeal. **Note: If you designated your assessment appeal application as a 'Claim for Refund'; there is no need to file again.**

4. **Describe the reason for the property tax refund request** – Provide a brief narrative of the reason why you are requesting a property tax refund. Attach additional documents to this form if necessary. Providing proof of payment for the relevant property taxes will expedite the property tax refund claim process. **Note - Please provide all relevant documents.**

5. **Amount of property tax refund** – Indicate the refund amount you are claiming.

6. **Sign the application** – The application must be signed and dated by the requestor. If the requestor is filing on behalf of a company, they must state their title.

7. **Mail or Fax application to:** **Napa County Auditor-Controller**
Property Tax Services Division
1195 Third Street, Suite B10
Napa, California 94559

Email – auditor@countyofnapa.org

FAX – (707) 226-9065

PLEASE FAX OR MAIL YOUR APPLICATION. <u>DO NOT</u> DO BOTH AS THIS WILL DELAY THE PROCESSING OF YOUR CLAIM.

TO REQUEST A CONFIRMATION OF RECEIPT OF YOUR CLAIM FOR REFUND, PLEASE ENCLOSE A SELF-ADDRESSED STAMPED ENVELOPE.

Duplicate

CLAIM FOR REFUND OF PROPERTY TAXES

To: Board of Supervisors, County of Napa, California

The undersigned as California Northern Railroad, as delegated by the claimant herein, hereby makes this claim for refund of property tax on behalf of the claimant pursuant to Revenue and Taxation Code section 5097 and demands that the Board of Supervisors make its order directing the controller of said County to refund to claimant the sum of $5,561.46 in taxes levied for the fiscal year 2021/2022. In support of said claim the undersigned states:

1. Claimant is and at all times herein mentioned was California Northern Railroad, a limited liability company duly organized and existing under the laws of the State of Oregon, with its principal place of business located at 200 Meridian Centre Ste 300 Rochester, NY 14618.

2. For fiscal year 2021/2022, the California State Board of Equalization assessed the value of claimant's unitary and nonoperating California property pursuant to its authority under Article XIII, section 19 of the California Constitution and section 721 of the Revenue and Taxation Code. Pursuant to its authority under Revenue and Taxation Code section 756, the California Board of Equalization transmitted a roll showing claimants unitary and nonoperating property in Napa County. On the basis of said assessment and transmittal of said roll, taxes were levied on said property for said fiscal year in the sum of $11,141.58 (Exhibit 1) and paid by claimant on full on or about April 4, 2021 (Exhibit 2).

3. Claimant is entitled to a refund of a portion of said taxes in the amount of $5,561.46, plus appropriate interest, on the grounds that said taxes were erroneously and illegally

collected, or illegally assessed or levied, for the following reasons:

a. The property tax rate applied to compute claimant's property taxes was in excess of the rate applied in the same year to property in the county assessed by the assessor of Napa County, in violation of Article XIII, section 19 of the California Constitution and ITT World Communications v. City and County of San Francisco, 37 Cal. 3d 859 (1985).

b. The property tax rate applied to compute claimant's property taxes exceeded the rate allowed by Article XIIIA, section 1 of the California Constitution.

c. The excess taxes are direction violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. Section 11501 (b) (3).

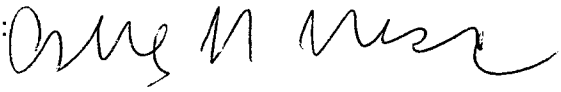
4. No refund of said taxes, or any part thereof, has been previously made.

I declare under penalty of perjury that the foregoing is true and correct, and that I am authorized by claimant to make this claim for refund.

Dated: February 13, 2024 at 1233 West Loop S STE1500 Houston, TX 77027.

Name: Ashley N Moore

Title: Authorized Agent

Signature: 

BOE-892 REV. 29 (12-22)

STATEMENT OF AUTHORIZATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

2023

Please return completed form to the State-Assessed Properties Division, Board of Equalization, P.O. Box 942879, MIC:61, Sacramento, CA 94279-0061. If you have any questions, you may contact us at 1-916-274-3270.

	SBE NUMBER
	0810

COMPANY NAME
California Northern Railroad Company

ADDRESS
200 Meridian Centre, Suite 300

CITY	STATE	ZIP CODE
Rochester	NY	14618

DESIGNATED REPRESENTATIVE	EMAIL ADDRESS
Ashley Moore	Ashley.Moore@ryan.com

ADDRESS
1233 W Loop S Suite 1600

CITY	STATE	ZIP CODE
Houston	TX	77027

TELEPHONE NUMBER	FAX NUMBER
713.629.0090	713.629.0227

Please be advised that the person listed above is authorized to act as our designated representative before the California State Board of Equalization in connection with the assessment of our property. Our designated representative may inspect or copy all information, documents, and records, including narrations and workpapers relating to the appraisal and the assessment of our property during the period January 1, 2022, through December 31, 2022, for the lien date 2023. *I understand that this form must be filed annually in order for the representative status to remain current.*

OWNER, PARTNER, OR OFFICER'S SIGNATURE	DATE
Lauren Valerio	1/13/2023
SIGNATORY'S PRINTED NAME	TITLE
Lauren Valerio	Senior Accounting Manager

PRINT

EXHIBIT 1

EXHIBIT 2

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BNSF RAILWAY COMPANY, *Plaintiff-Appellee*, v. COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE, *Defendants-Appellants*, and COUNTY OF SAN DIEGO, *Defendant.*	No. 20-15896 D.C. No. 4:19-cv-07230-HSG

BNSF RAILWAY COMPANY,
Plaintiff-Appellee,

v.

COUNTY OF SAN DIEGO,
Defendant-Appellant,

and

COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE,
Defendants.

No. 20-15897

D.C. No. 4:19-cv-07230-HSG

OPINION

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted June 17, 2021
San Francisco, California

Filed August 5, 2021

Before: Sidney R. Thomas, Chief Judge, and
Daniel A. Bress and Patrick J. Bumatay, Circuit Judges.

Opinion by Chief Judge Thomas

SUMMARY*

Tax

The panel affirmed the district court's preliminary injunction in favor of BNSF Railway Company in BNSF's action alleging that several California counties are taxing railroad property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11501(b)(3).

The panel held that the district court applied the correct preliminary injunction standard under 49 U.S.C. § 11501, which does not require courts to consider traditional equitable factors. Instead, binding circuit precedent establishes that a railroad is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that a violation of § 11501 has been, or is about to be committed.

The district court had observed that it is difficult to apply § 11501 to California, because California has no specific tax rate for commercial and industrial property. The panel held that the district court properly analyzed BNSF's tax rate

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

under *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert denied*, 464 U.S. 846 (1983), which provides a framework for identifying the proper tax comparison rate—in this case, a county's average tax rate. The panel further held that the district court properly concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3), because BNSF's tax rate was higher than the average countywide tax rates for each county. Accordingly, the panel affirmed the district court.

The district court had rejected the Counties' contention that the relevant assessment jurisdiction is the State. The panel suggested that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

COUNSEL

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OPINION

THOMAS, Chief Judge:

This appeal requires us to consider whether California's taxation of railroad property complies with the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 306, 90 Stat. 31, 54–55 (1976) ("the 4-R Act"). BNSF Railway Company ("BNSF") owns property in various California Counties ("the Counties"). BNSF alleges that the Counties are taxing its property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the 4-R Act. 49 U.S.C. § 11501(b)(3).

The district court determined that the proper preliminary injunction standard under the 4-R Act asks whether BNSF had shown a "reasonable cause to believe" that the 4-R Act was being violated, and that the proper comparison class was the average countywide tax rate for each County. The district court issued a preliminary injunction, concluding BNSF had shown that the Counties were violating the 4-R Act because BNSF's tax rate was higher than the average countywide tax rates for each County.

The district court had jurisdiction under 49 U.S.C. § 11501(c). We have jurisdiction under 28 U.S.C. § 1292(a). We review for abuse of discretion a district court's decision regarding preliminary injunctive relief. *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1103 (9th Cir. 2016). We review findings of fact for clear error and conclusions of law de novo. *Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1050, 1055 (9th Cir. 2008). However, where a district court's ruling rests solely on a premise of law and the facts are either established or undisputed, review is de novo. *See Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 760 (9th Cir. 2004). We affirm.

I

A

Congress passed the 4-R Act out of concern for the financial stability of the nation's railway system. *Burlington N. R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 457 (1987) (quoting 4-R Act § 101(a)). Recognizing that "railroads are easy prey for State and local tax assessors in that they are nonvoting, often nonresident, targets for local taxation, who cannot easily remove themselves from the locality," *Dep't of Revenue of Or. v. ACF Indus., Inc.*, 510 U.S. 332, 336 (1994) (internal quotation marks and citation omitted), Congress instituted "a prohibition on discriminatory state taxation of railroad property," *Okla. Tax Comm'n*, 481 U.S. at 457.

The 4-R Act establishes that "[t]he following acts unreasonably burden and discriminate against interstate commerce, and a State [or locality] may not do any of them:"

> (1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
>
> (2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.
>
> (3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
>
> (4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

49 U.S.C. § 11501(b).[1]

[1] This provision was originally contained in § 306 of the 4-R Act. 90 Stat. 31, 54–55. The language "was slightly altered" upon recodification in 1978, but such alteration "may not be construed as making a substantive change in the laws repealed." *Okla. Tax Comm'n*, 481 U.S. at 457 n.1 (internal quotation marks and citation omitted). Therefore, we "resolve any substantive conflicts between the original language of § 306 and the language in § [11501] in favor of the original language." *Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.*,

B

As the district court stated, California's system of property taxation "is, in a word, complicated." California employs an ad valorem (or value-based) property tax system. Cal. Const. art. XIII, § 1. Taxation follows a three-step process: (1) the value of taxable property is assessed, (2) the tax rate is computed, and (3) the tax is levied from the taxpayer. For most property, its value is assessed (and its rate is calculated) at the local level. *See* Cal. Rev. & Tax. Code § 404. But for a subset of property delineated in the California Constitution, including railroad property, the State assesses the value and calculates the applicable rate. Cal. Const. art. XIII, § 19.[2]

1

An understanding of California's system of taxation of locally assessed property is important for resolution of this case. Most property in California is locally assessed. County-level assessors determine the value of this property

934 F.2d 1064, 1066 n.1 (9th Cir. 1991). We reproduce the language of the original § 306 as relevant *infra*.

[2] California's Constitution establishes which property is state-assessed: "(1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity." Cal. Const. art. XIII, § 19.

for tax purposes. *See* Cal. Rev. & Tax. Code § 404.[3] This property is classified into one of two rolls: the secured roll or the unsecured roll. The secured roll contains "property the taxes on which are a lien on real property sufficient . . . to secure payment of the taxes." *Id.* § 109. In practice, this is most real property. The unsecured roll contains all other property. *Id.* § 109; 1 Sean Flavin, Taxing California Property §§ 12:3–12:4 (4th ed. 2020). There is no further subdivision based on use; for example, both the secured and unsecured roll contain both residential property and commercial and industrial property.

After determining the appropriate roll, Counties next assign locally assessed property to a particular tax rate area ("TRA") based on the property's location, and that TRA's tax rate is applied to the property. A TRA is a small geographical area serviced by the same combination of local government entities, including the county, city, special district, and school districts. Cal. Rev. & Tax. Code § 95(g). A county may have hundreds or thousands of TRAs—for example, San Diego County has over five thousand TRAs.[4]

The tax rate for property on the secured roll is taxed at a rate calculated under a formula found in § 93 of the California Revenue and Taxation Code ("the Code"), and it

[3] The assessment ratio of real property is limited by constitutional amendment in California. *See* Cal. Const. art. XIIIA, § 1 ("Proposition 13").

[4] San Diego County requests that we take judicial notice of several publicly available documents explaining the taxation process in that County and in California. These documents are matters of public record, and we grant the motion. Fed. R. Evid. 201(b)(1)–(2); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

is specific to a particular TRA. The § 93 formula contains two components: the first component is a general tax levy, calculated at 1%. Cal. Const. art. XIIIA, § 1(a); Cal. Rev. & Tax. Code § 93. The second component, referred to as the "debt service component," is the amount needed as a percentage of property values to produce enough revenue to make payments for the interest and principal on all voter-approved bonded indebtedness issued by any of the various local entities, Cal. Rev. & Tax. Code § 93; *see also* Cal. Gov. Code § 29100, such as a voter-approved bond that funds school construction in the elementary school district serving that TRA. For locally assessed property on the unsecured roll, the rate is the § 93 rate for the previous year for that TRA. Cal. Const. art. XIII, § 12; Cal. Rev. & Tax. Code § 2905. This formula ensures that each TRA will have enough revenue to make payments for the interest and principal on its bonded indebtedness. The rate is then applied to the assessed value of the property on the assessment rolls, *see* Cal. Rev. & Tax. Code § 2152, and collected. *Id.* § 2602. As a result, each County, with its hundreds or thousands of TRAs, likewise has hundreds or thousands of different tax rates applied to property in that County, and these rates apply to all property in that TRA, without regard to use, i.e., whether commercial and industrial or residential or otherwise.

2

Other property, including railroad property, is State-assessed. *See* Cal. Const. art. XIII, § 19. State-assessed property is also classified onto either the secured or unsecured roll. However, for this property, the *State* assesses its value for tax purposes, as opposed to the counties, Cal.

Const. art. XIII, § 19, and applies a different formula to calculate the tax rate. *See* Cal. Rev. & Tax. Code § 100.

The assessment process for some of this property, including BNSF's property, is different from standard local assessment. For this subset of State-assessed property, known as "unitary property," the value is calculated under the unit valuation method. *Id.* §§ 723, 723.1. Under this method, the State Board of Equalization ("the State Board") first calculates the value of a taxpayer's entire system, i.e., BNSF's railroad property nationwide. Then, the State Board allocates a portion of that value to California, and further allocates that value among the various counties in which the taxpayer's property is located. The unit valuation method is meant to account for the valuation of assets where the component parts are valuable as a whole, but less valuable in isolation. For example, in the railway context, "ten miles of [railroad] track would have a questionable value, other than as scrap, without the benefit of the rest of the system as a whole." *Am. Airlines, Inc. v. Cnty. of San Mateo*, 912 P.2d 1198, 1208 (Cal. 1996) (alterations and citation omitted).

The tax rate applied to State-assessed property is calculated under a formula different from the § 93 formula. Due to a lengthy legislative history, unitary property holders do not need to demonstrate the TRAs in which their property is located.[5] Instead, their countywide value is allocated to a

[5] Prior to 1986, the value of unitary property was not allocated to the counties—instead, taxpayers reported to individual local TRAs where their property was located. There was no separate tax rate for unitary property; the local taxing jurisdictions applied their own rates. Under this system, an individual assessee had to report in thousands of TRAs. A series of state legislation established today's system. *See* 1986 Cal. Stat. 5217, 5223–24 (establishing that the State Board will allocate unitary

countywide TRA with a single tax rate. *See* Cal. Rev. & Tax. Code § 100.11(a)(2)(B). For this reason, the tax rate applied cannot be informed by the debt service needs of the particular TRA where the property is located. *Compare id.* § 93. State-assessed property is therefore taxed under a different formula established in § 100 of the Code, the "unitary rate." *Id.* § 100.

Like § 93, § 100's first component is effectively a 1% general tax levy. *Id.* § 100(b)(1). Section 100's second component is also a debt service component, but it is calculated differently from § 93's. Section 100's debt service component is calculated as the previous year's unitary debt service rate, *see id.* § 100(b)(2)(A), multiplied by the percentage change between the two preceding fiscal years in the county's ad valorem debt service *levy* (not rate) for the secured roll. *Id.* § 100(b)(2)(B). The formula for the second component means that the unitary rate is based on the change in absolute dollars of the county's debt service rate, not changes in the percentage that taxpayers are paying. According to BNSF, it is this component that accounts for the divergence between the §100 and § 93 rates. Specifically, if the tax rate applied to the secured roll increases, but the property values also rise, the § 93 rate will not rise. But the

property value to a county's existing TRAs, irrespective of the property's actual location); 1987 Cal. Stat. 2959, 2959–61 (creating a single countywide TRA for unitary property so that each taxpayer receives only one tax bill per county); 1988 Cal. Stat. 2087, 2094–95 (tying the tax rates for unitary property to the unitary and operating non-unitary data rather than the total county-wide data, effectively implementing what is now § 100(b)(2)(A)). In 2006, the 1987 and 1988 laws were applied to railroads, 2006 Cal. Legis. Serv. ch. 791 (A.B. 2670) (West), via a bill "introduced on behalf of the California Railroad Industry," including BNSF.

§ 100 rate will increase because it is based on the increase in actual dollars of debt service tax paid. The difference in tax rates between the countywide average tax rates (labeled as the "Section 11501 Benchmark Rate") and BNSF's rate (the "Plaintiff Unitary Rate") for the 2019–2020 tax year are represented below:

County	2019–20 Plaintiff Unitary Rate	2019–20 Section 11501 Benchmark Rate
Alameda	2.5187%	1.241%
Contra Costa	1.6865%	1.148%
Fresno	1.370408%	1.181%
Kern	1.611299%	1.24%
Kings	1.326084%	1.087%
Madera	1.203169%	1.089%
Merced	1.4109014%	1.088%
Orange	1.28173%	1.064%
Plumas	1.11652%	1.089%
Riverside	1.76133%	1.164%
San Bernardino	1.3645%	1.144%
San Diego	1.62331%	1.142%
San Joaquin	1.6922%	1.145%
Stanislaus	1.38011%	1.103%
Tulare	1.4002%	1.113%

The countywide average rates are calculated by the State Board every year, as required by statute. Cal. Rev. & Tax. Code § 11403. This average is calculated by dividing (1) the sum of all ad valorem property tax levies for a given county

per year by (2) the sum of the assessed values of all property in that county for that year. *Id.*

C

Observing that BNSF's tax rate had deviated from the average countywide tax rates in each County, BNSF filed suit on November 1, 2019, alleging a violation of 49 U.S.C. § 11501(b)(3). BNSF sought a preliminary injunction preventing the Counties from collecting taxes at a rate higher than each County's average rate. The district court granted the preliminary injunction, noting that the law of this circuit does not require courts to consider traditional equitable factors in considering a § 11501 case, and instead requires issuance of a preliminary injunction upon a showing that "a violation of [§ 11501] has been, or is about to be committed." *See Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.* (*Burlington Northern v. Washington*), 934 F.2d 1064, 1074–75 (9th Cir. 1991).

On the merits, the district court observed that the trouble with 4-R Act analysis in California is that "California has no specific tax rate for commercial and industrial property" against which to compare a railroad's rate. Accordingly, the court followed the approach outlined in *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983), for identifying a proper comparison rate. The court first addressed *Trailer Train*'s recommended comparison rate—the rate applicable to whichever roll, secured or unsecured, contains the "majority of the commercial and industrial property" in the State. *Id.* at 867. Although the secured roll almost certainly contains the majority of commercial and industrial property, the "tax rate applicable" to the secured roll, *id.*, "cannot be

determined," because property on the secured roll is "spread among the hundreds or thousands of TRAs in each County." In other words, there is no single identifiable tax rate applicable to the secured roll. Therefore, the district court followed *Trailer Train*'s fallback approach and compared BNSF's tax rate to the *average* tax rate. *See Trailer Train*, 697 F.2d at 867. In doing so, it used Counties as the relevant assessment jurisdiction. Although this property too is spread across hundreds or thousands of TRAs, the *average* rate is readily available, since the State Board is required by statute to calculate it each year. *See* Cal. Rev. & Tax. Code § 11403.

The district court rejected the Counties' proposal to compare BNSF's rate only to the rates for other State-assessed taxpayers—who pay the same § 100 rate that BNSF pays. The Counties argued that the relevant "assessment jurisdiction" is the State, and as such the court should compare only to other State-assessed property. *See* 49 U.S.C. § 11501(b)(3). The district court held that, even if the State (as opposed to the County) were the appropriate assessment jurisdiction, the commercial and industrial property *in the State* is clearly not limited to the group of mostly utility company property that is State-assessed. *See* Cal. Const. art. XIII, § 19. Moreover, the court observed that to limit the comparison class to "a relatively narrow subset of other state-assessed utilities and other entities that pay the same unitary tax rate," would depart from Congress's intention to "link railroads' fate" to commercial and industrial taxpayers.

The district court also rejected the Counties' argument that BNSF needed to make an independent showing of discrimination in order to prevail under § 11501(b)(3). The court held that subsection (b)(3) "does not require proof of discrimination, because Congress has already declared in the

preface of Section 11501(b) that the imposition of such an ad valorem property tax rate disparity 'unreasonably burden[s] and discriminate[s] against interstate commerce.'"

The district court's amended preliminary injunction order requires BNSF to deposit the enjoined amount of taxes for the 2019–2020 tax year in an escrow account and deposit the enjoined amount for future tax years when those tax payments would be due. The preliminary injunction enjoins the collection of only the disputed portion of BNSF's taxes, not the collection of the undisputed taxes.

II

As a threshold matter, we must first determine whether the district court applied the correct standard in awarding a preliminary injunction to BNSF. We generally consider traditional equitable factors when evaluating requests for preliminary injunctions. *See BOKF, NA v. Estes*, 923 F.3d 558, 561–62 (9th Cir. 2019) (listing factors). However, in some circumstances, a statute will prescribe that a showing of a violation of the statute alone warrants the issuance of a preliminary injunction. *See Burlington Northern v. Washington*, 934 F.2d at 1074 (quoting *Atchison, Topeka and Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 258 (10th Cir. 1981)); *cf. Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313–14 (1982). In *Trailer Train*, we held that the 4-R Act falls within this limited category, 697 F.2d at 869, and we reaffirmed that reasoning more recently in *Burlington Northern v. Washington*, 934 F.2d at 1074 ("Although we need not reach this issue, we note that [this injunction standard] is supported by the existing case law."). As the district court correctly observed, these cases constitute binding circuit precedent establishing the proper injunction

standard for violations of the 4-R Act: the railroad "is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that [§ 11501] has been violated, or is about to be violated." *Id.* at 1075 (internal quotation marks omitted).

Romero-Barcelo does not qualify as intervening irreconcilable authority that would require deviation from our circuit precedent. *See Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc). First, and importantly, *Romero-Barcelo* was not intervening authority: it was decided on April 27, 1982, after *Trailer Train* was argued but more than seven months *before Trailer Train* was decided on January 25, 1983. *Compare Romero-Barcelo*, 456 U.S. at 305, *with Trailer Train*, 697 F.2d at 860. Thus, the *Trailer Train* panel had the benefit of consulting the reasoning in *Romero-Barcelo* before issuing its decision.[6]

Second, *Romero-Barcelo* is not irreconcilable with *Trailer Train*. The irreconcilability requirement is a "high standard." *FTC v. Consumer Def., LLC*, 926 F.3d 1208, 1213 (9th Cir. 2019). "[I]f we can apply our precedent consistently with that of the higher authority, we must do so. . . . [I]t is not enough for there to be some tension between the intervening higher authority and prior circuit precedent." *Id.* (internal quotation marks and citations omitted). In *Romero-Barcelo*, the Supreme Court held that a certain provision of the Federal Water Pollution and Control Act did not withdraw courts' traditional equitable discretion. 456 U.S. at 320. The

[6] We also note that this court reaffirmed *Trailer Train*'s preliminary injunction standard in 1991 in *Burlington Northern v. Washington*, nearly a decade after *Romero-Barcelo* was decided. *Burlington Northern v. Washington*, 934 F.2d at 1074–75.

Supreme Court cautioned that courts should apply equitable principles "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity." *Id.* at 313 (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)). These instructions are not "irreconcilable" with our holding in *Trailer Train* that § 11501 "clearly falls within" the exception for statutes that "specifically provide[] for injunctive relief." 697 F.2d at 869. Indeed, *Trailer Train* followed these requirements, looking to the language of the original § 306, which specified that "the district courts of the United States shall have jurisdiction . . . to grant such mandatory or prohibitive injunctive relief . . . *as may be necessary to prevent*, restrain, or terminate any acts in violation of this section." 4-R Act of 1976, § 306(2) (emphasis added); *Trailer Train*, 697 F.2d at 869 & n.16. *Trailer Train*'s interpretation of this language is a holding that we "can apply . . . consistently," *Consumer Def.*, 926 F.3d at 1213, with the Supreme Court's instruction in *Romero-Barcelo* to look to the statute's direct command or necessary and inescapable inference. *See* 456 U.S. at 313. The district court applied the correct injunction standard to this case.

III

On the merits, the Counties' arguments fall into three categories. The first two involve the Counties' contention that the district court erred in selecting the countywide average tax rates as the baseline rate against which it compared BNSF's rate. First, the Counties argue that the district court only arrived at that rate by following the *Trailer Train* framework, which was error because *Trailer Train* involved a prior version of California's property taxation system, under which railroads were not taxed at the unitary

rate. Second, the Counties argue that the district court should have disregarded the *Trailer Train* framework and compared BNSF's property only to other property taxed at the unitary rate, *see* Cal. Rev. & Tax. Code § 100, since this is the only property in the same "assessment jurisdiction." 49 U.S.C. § 11501(b)(3); *see id.* § 11501(a)(2). Third, and separately, the Counties contend that BNSF was required to make a threshold showing that its tax rate was not only different, but also discriminatory. BNSF cannot do so, the Counties contend, because they are justified in taxing BNSF subject to the unitary rate since BNSF lobbied for the change in state law that subjected it to this rate. We address each argument in turn.

A

The 4-R Act prohibits States and localities from taxing railroad property "at a tax rate that exceeds the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11501(b)(3). As we noted in *Trailer Train*, and as is still true today, it is difficult to apply this statute to California, since California "has no specific tax rate for commercial and industrial property." *Trailer Train*, 697 F.2d at 867. Thus, the baseline rates to which we should compare a railroad's rate are not readily apparent.

We first addressed this issue in *Trailer Train* in 1983, the only time this court has applied subsection (b)(3) to California's system of taxation. At that time, the tax rate applied to private rail cars was essentially the weighted average of the prior year's secured and unsecured rates. *Id.* at 863. The Board determined that the recently established tax rate limitations in Proposition 13 applied to private

railcars, and it taxed Trailer Train's property at the lower rate required by Proposition 13 for the 1978–1979 tax year. *Id.* at 863–64. In 1980, when the California Supreme Court ruled that the Proposition 13 tax rate limitation did not apply to the unsecured roll, the Board interpreted the Court's decision to mean Proposition 13 must not apply to private railcars and determined that its rate reduction on railcars for the 1978–1979 tax year was improper. *Id.* The Board recalculated the tax at a higher rate. *Id.* Railway companies sued to enjoin collection of taxes at the higher rate as a violation of 49 U.S.C. § 11501(b)(3). *Id.*

To address the issue of the proper comparison rate, *Trailer Train* outlined two approaches. The first approach instructs a court to ascertain which roll, secured or unsecured, contains the majority of California's commercial and industrial property. *Id.* at 867. "The tax rate applicable to the roll that contained the majority of commercial and industrial property shall be deemed" the proper comparison rate. *Id.* As a second, fallback approach, the court instructed that, if that determination is "not possible, the average tax rate for all property shall be used as the basis for comparison." *Id.*[7]

The Counties do not suggest any persuasive reason for departing from this framework. To be sure, the choice between the secured roll, the unsecured roll, or the average of

[7] The district court was correct to move to *Trailer Train*'s second option when no party offered data reflecting the tax rate applicable to the secured roll or otherwise limited to only commercial and industrial property. We are not persuaded by the Counties' contention that BNSF should have provided such data. BNSF's expert represented below that BNSF did not believe those numbers were "published or readily ascertainable." If the Counties, who are in possession of the tax rate data, wish the district court to consider these rates, then they may produce them.

all tax rates had the potential for a more significant impact at the time of *Trailer Train*: at that time, the two rates were quite different, *see id.* at 864, whereas today they may not diverge as dramatically. However, the district court was correct that the central question of *Trailer Train*—how to identify the proper comparison rate to capture commercial and industrial property in California, *see id.* at 867—remains equally relevant in this case. This is the question that *Trailer Train* answered by pointing us to either the rate applicable to the secured or unsecured roll or the average rate applied to all property. The evolution in California's system of taxation does not provide a sufficient reason to deviate from these instructions.[8]

B

The Counties also urge deviation from *Trailer Train* because the district court should have compared BNSF's rate to other State-assessed taxpayers' rates rather than the countywide averages, since the only property in the same "assessment jurisdiction" as BNSF is other State-assessed unitary property. The Counties thus argue that they comply with the 4-R Act because they do not treat BNSF differently from other unitary property taxpayers. We disagree.

The 4-R Act forbids railroads from being taxed at a rate that exceeds the rate applicable to commercial and industrial property "in the same assessment jurisdiction." 49 U.S.C.

[8] San Diego County argues that the district court needed to compare BNSF's tax rate for its specific parcels to the tax rate for the corresponding TRA. We decline to reach this argument since it was not raised below. *See Detrich v. Ryan*, 740 F.3d 1237, 1248–49 (9th Cir. 2013) (en banc).

§ 11501(b)(3). The statute defines "assessment jurisdiction" as "a geographical area in a State used in determining the assessed value of property for ad valorem taxation." *Id.* § 11501(a)(2). The Counties argue that the State is the appropriate assessment jurisdiction here, and that therefore, the district court should have compared BNSF's rate to the rate applied to other State-assessed entities: the § 100 rate. *See* Cal. Const. art. XIII, § 19; Cal. Rev. & Tax. Code § 100.

Yet even if the State were the appropriate assessment jurisdiction, the Counties' proposal cannot pass muster. If the State were the appropriate assessment jurisdiction, then the statute instructs that the proper comparison rate is that applicable to "commercial and industrial property in the same assessment jurisdiction"—the State of California. 49 U.S.C. § 11501(b)(3). Commercial and industrial property in California certainly is not limited to the small subset of State-assessed property. Furthermore, the definition of "assessment jurisdiction" is a "geographical area." *Id.* § 11501(a)(2). The statute does not require comparison only to other entities assessed by the same agency, just entities within the appropriate "geographical area."[9] Thus, if the State were the appropriate assessment jurisdiction, the proper comparison would be to *all* commercial and industrial property in the State, not just the limited group of State-assessed entities.

Furthermore, the Counties' proposal to compare BNSF's tax rate only to the rate applied to State-assessed property, a limited set of property mostly owned by utility companies that pay the same tax rate as BNSF, runs contrary to the

[9] For this reason we are also not persuaded by San Diego County's argument that the countywide TRA (as opposed to the County) is the proper assessment jurisdiction.

purpose of the 4-R Act. Congress's goal in passing this legislation was to ensure railroads were treated equally as taxpayers. *See CSX Transp., Inc. v. Ala. Dep't of Revenue* (*CSX I*), 562 U.S. 277, 280 (2011); *see also Okla. Tax Comm'n*, 481 U.S. at 457. To do so, the statute instructs comparison to "commercial and industrial property"—a deliberately broad term. 49 U.S.C. § 11501(b). Moreover, a comparison to entities paying *the same tax rate* would deprive this subsection of nearly all meaning. It was, in part, for this reason that we recently rejected a similar proposal to compare railroad property only to centrally assessed property under a different subsection of the 4-R Act. *See BNSF Ry. Co. v. Or. Dep't of Revenue*, 965 F.3d 681, 692 (9th Cir. 2020) (noting that such a comparison would "deprive subsection (b)(4) of all real-world effect"). Accordingly, we affirm the district court's decision to not compare BNSF's rate only to other State-assessed taxpayers' rates.[10]

C

Finally, the Counties contend that the statute requires BNSF to demonstrate not only that there is a difference in tax rates, but also that any difference is discriminatory. The

[10] The district court assumed that the county was the proper assessment jurisdiction rather than the State. We agree that, under either possible assessment jurisdiction, the Counties' proposal to compare BNSF only to other State-assessed taxpayers must fail. We also recognize that the effect of selecting either the county or the State is slight, since the countywide averages do not significantly diverge from the statewide averages. However, we note that it would be appropriate for the district court to examine this issue in the first instance as proceedings continue, especially considering our case law interpreting the phrase "the same assessment jurisdiction" in the subsection (b)(1) context. *See Arizona v. Atchison, Topeka, & Santa Fe Ry. Co.*, 656 F.2d 398, 405 (9th Cir. 1981).

Supreme Court has defined discrimination in the 4-R Act context to mean "failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored." *CSX I*, 562 U.S. at 286 (quoting Black's Law Dictionary 534 (9th ed. 2009)). The Counties contend that BNSF cannot show discrimination because the Counties are justified in taxing BNSF at the unitary rate, the rate at which BNSF itself lobbied to be taxed. *See Ala. Dep't of Revenue v. CSX Transp., Inc.* (*CSX II*), 575 U.S. 21, 31 (2015) ("[A tax] does not discriminate unless it treats railroads differently from other *similarly situated* taxpayers *without sufficient justification*."). The Counties also contend that, since discrimination requires that an individual entity be treated worse than similarly situated entities, the proper comparison group is other State-assessed, unitary property.

However, the Counties arguments are unsuccessful at the outset because no independent showing of discrimination is required for subsection (b)(3) claims. The Supreme Court has clearly stated that "[w]hat subsection (b)(4) requires, and subsections (b)(1)–(3) do not, is a showing of *discrimination*—of a failure to treat similarly situated persons alike." *CSX II*, 575 U.S. at 27 (emphasis in original); *see also Trailer Train*, 697 F.2d at 866–67 (explaining that to "discern whether California has imposed a discriminatory tax rate in violation of [subsection] (b)(3)," the court's task was "to compare the tax rate applied to the Companies' railroad cars with that generally applicable to commercial and industrial property").

The text of the statute is not to the contrary. The preface to § 11501(b) states: "The following acts unreasonably burden *and discriminate against* interstate commerce." 49 U.S.C. § 11501(b) (emphasis added). The language of the

original § 306, states that "any action described in this subsection is *declared to constitute* an unreasonable and unjust *discrimination against*, and an undue burden on, interstate commerce." 4-R Act § 306(1) (emphasis added). It is true that subsection (b)(4) includes the term "discrimination," whereas the term is absent from subsections (b)(1)–(3). However, this additional requirement was likely included because subsection (b)(4) is a catch-all provision. *CSX I*, 562 U.S. at 280–81. The inclusion of a discrimination requirement in this broader provision makes sense: discrimination may come in forms other than the three types listed in subsections (b)(1)–(3), but in that case an additional showing of discrimination, rather than simply difference, is required. *See CSX II*, 575 U.S. at 27. Accordingly, since BNSF was not required to show discrimination, we need not address the Counties' arguments that BNSF would be unable to make this showing.

IV

In sum, the district court applied the correct preliminary injunction standard, properly analyzed BNSF's tax rate under the *Trailer Train* framework, and concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3). Accordingly, we affirm the district court, and suggest that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

AFFIRMED.

Duplicate

1233 W Loop S
Suite 1500
Houston, TX 77027
Tel. 713.629.0090
Fax 713.629.0227

www.ryan.com

RETURN RECEIPT REQUESTED
VIA CERTIFIED MAIL #9214 8969 0099 9790 1650 9674 36

RECEIVED
FEB 22 2024
NAPA COUNTY
EXECUTIVE OFFICE

February 13, 2024

Clerk of the Board
Napa County Board of Supervisors
1195 Third Street
Suite 310
Napa, CA 94559

RE: CLAIM FOR REFUND OF PROPERTY TAXES
Taxpayer: California Northern Railroad
SBE Number:810

Enclosed please find two copies of the Claim for refund of property tax for the above referenced taxpayer for tax years 2021-2022 and 2022-2023.

If you have any questions, please contact me at 713.629.0090 or Ashley.moore@Ryan.com.

Sincerely,

Ryan, LLC
Ashley Moore
Taxpayer's Representative
Enclosures – As Stated

A Tradition of Stewardship
A Commitment to Service

TRACY A. SCHULZE
AUDITOR-CONTROLLER

NAPA COUNTY
DEPARTMENT OF AUDITOR-CONTROLLER

1195 THIRD STREET, SUITE B10
NAPA, CALIFORNIA 94559
PHONE: (707) 253-4551, FAX: (707) 226-9065

ADDRESS ALL CORRESPONDENCE TO:
PROPERTY TAX SERVICES DIVISION
1195 THIRD STREET, SUITE B10
NAPA, CA 94559

NAPA COUNTY PROPERTY TAX CLAIM FOR REFUND

Step 1: Requestor's name and address (If requestor is an agent, please provide Tax Agent Registration #)	Requestor's name **Ashley Moore**				Tax Agent Registration #
	Present mailing address (number and street) 1233 West Loop S Suite 1500				Email Address Ashley,Moore@ryan.com
	City, town or post office, state, ZIP code Houston, TX 77027				Phone (area code and number) 713.629.0090 EXT. 13-3549
Step 2: Describe the property	Owner's name California Northern Railroad : Genesee & Wyoming Rail Road				
	Assessor's Identification Number (Mapbook - Page - Parcel) 081028001			Unsecured Bill Number 799-000-226-000	
	Year 2022-2023		Sequence		Tax Rate Area 000-002
	Situs address (number and street) Map 0810 28 001 Par 02 LSD From UPRR 000				
	City, town or post office, state, ZIP code				
Step 3: Did you file an appeal with the Assessment Appeals	If yes, what is the assessment appeal application number? NO	Filing date N/A	Yes ☐ No ☐ Did you receive a Notice of Board Action?	If yes, when? N/A	**NOTE**: If you designated your Assessment Appeal Application as a Claim for Refund, there is no need to file this application.
Step 4: Describe reason for property tax refund **Attach additional documents if**	Reason: The property tax rate applied to compute claimant's property taxes was in excess of the rate applied the same year to property in the				
	county assessed by the assessor of Napa County, in Violation of Article XIII, Section 19 of the California Constitution and ITT World Communications v. City and County of San Francisco, 37 Cal. 3d 859 (1985).				
	The property tax rate applied to compute claimant's property taxes exceed the rate allowed by Article XIIIA, section 1 of the California Constitution. The excess taxes are direction violation of the Railroad Revitalization and Regulatory Reform Act of 1976,				
	49 U.S.C. Section 11501 (b) (3). For more information please see the attached.				
Step 5: Amount of property tax refund	Tax amount $11,932.67	Penalty amount	Redemption penalty amount	Cost amount Fee amount	Total refund amount $6,053.64
Step 6: Sign the application	I hereby certify and declare under penalty of perjury that the foregoing is true and correct that the tax amount sought to be refunded was paid within four years prior to filing this demand; that the amounts herein claimed are correct and no part thereof has heretofore been refunded to this claimant or to any other person for his benefit; and, if acting on behalf of a corporation, that I am duly authorized to act on their behalf, and that the title shown is true and correct.				
	sign here → Signature				Date 5/7/2024
	Title (If applicable) Senior Manager - Authorized Agent				
	If this claim is for a company, the person signing must state their title.				
Step 7: Mail application to:	Napa County Auditor-Controller Property Tax Services Division 1195 Third Street, Suite B10 Napa, CA 94559				
Contact Numbers	Customer Service: (707) 253-4551				FAX: (707) 226-9065

Please submit a separate form for each tax year for which you are requesting refund. Claim must be filled out completely and signed in order to be deemed a properly executed claim.

INSTRUCTIONS FOR FILING APPLICATION

CLAIM FOR REFUND

This claim is to request a refund for "paid" property taxes and/or penalties pursuant to Revenue and Taxation Code Sections 5096 and 5097. This form must be filed with the Auditor-Controller within four years of the date of payment of the property taxes. Should you have any questions, please call (707) 253-4551.

Note: Please complete application completely and accurately; incomplete applications will be returned.

1. **Requestor's name and address** – Provide the name of the person/entity who is requesting the property tax refund, their complete mailing address and their telephone number. If requestor is an agent, please provide the mandatory Tax Agent Registration number.

2. **Describe the property** – Provide the owner's name, the Assessor's Identification Number or Bill number, the year for which you are claiming the property tax refund, the sequence number, the Tax Rate Area and the complete situs address. This information can be found on your Property Tax Bill.

3. **Assessment Appeal** – If your claim for refund is related to an assessment appeal or if your assessment appeal application was designated as a "Claim for Refund" please provide the information related to the assessment appeal and attach copies of the documents you may have received from the Assessment Appeals Board pertaining to the appeal. **Note: If you designated your assessment appeal application as a 'Claim for Refund'; there is no need to file again.**

4. **Describe the reason for the property tax refund request** – Provide a brief narrative of the reason why you are requesting a property tax refund. Attach additional documents to this form if necessary. Providing proof of payment for the relevant property taxes will expedite the property tax refund claim process. **Note - Please provide all relevant documents.**

5. **Amount of property tax refund** – Indicate the refund amount you are claiming.

6. **Sign the application** – The application must be signed and dated by the requestor. If the requestor is filing on behalf of a company, they must state their title.

7. **Mail or Fax application to:** **Napa County Auditor-Controller**
Property Tax Services Division
1195 Third Street, Suite B10
Napa, California 94559

Email – auditor@countyofnapa.org

FAX – (707) 226-9065

PLEASE FAX OR MAIL YOUR APPLICATION. <u>DO NOT</u> DO BOTH AS THIS WILL DELAY THE PROCESSING OF YOUR CLAIM.

TO REQUEST A CONFIRMATION OF RECEIPT OF YOUR CLAIM FOR REFUND, PLEASE ENCLOSE A SELF-ADDRESSED STAMPED ENVELOPE.

Duplicate

CLAIM FOR REFUND OF PROPERTY TAXES

To: Board of Supervisors, County of Napa, California

The undersigned as California Northern Railroad, as delegated by the claimant herein, hereby makes this claim for refund of property tax on behalf of the claimant pursuant to Revenue and Taxation Code section 5097 and demands that the Board of Supervisors make its order directing the controller of said County to refund to claimant the sum of $6,053.64 in taxes levied for the fiscal year 2022/2023. In support of said claim the undersigned states:

1. Claimant is and at all times herein mentioned was California Northern Railroad, a limited liability company duly organized and existing under the laws of the State of Oregon, with its principal place of business located at 200 Meridian Centre Ste 300 Rochester, NY 14618.

2. For fiscal year 2022/2023, the California State Board of Equalization assessed the value of claimant's unitary and nonoperating California property pursuant to its authority under Article XIII, section 19 of the California Constitution and section 721 of the Revenue and Taxation Code. Pursuant to its authority under Revenue and Taxation Code section 756, the California Board of Equalization transmitted a roll showing claimants unitary and nonoperating property in Napa County. On the basis of said assessment and transmittal of said roll, taxes were levied on said property for said fiscal year in the sum of $11,932.67(Exhibit 1) and paid by claimant on full on or about October 4, 2022 (Exhibit 2).

3. Claimant is entitled to a refund of a portion of said taxes in the amount of $6,053.64, plus appropriate interest, on the grounds that said taxes were erroneously and illegally

collected, or illegally assessed or levied, for the following reasons:

a. The property tax rate applied to compute claimant's property taxes was in excess of the rate applied in the same year to property in the county assessed by the assessor of Napa County, in violation of Article XIII, section 19 of the California Constitution and ITT World Communications v. City and County of San Francisco, 37 Cal. 3d 859 (1985).

b. The property tax rate applied to compute claimant's property taxes exceeded the rate allowed by Article XIIIA, section 1 of the California Constitution.

c. The excess taxes are direction violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. Section 11501 (b) (3).

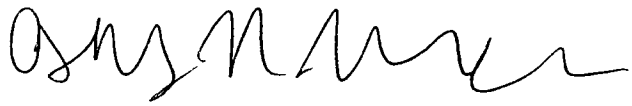
4. No refund of said taxes, or any part thereof, has been previously made.

I declare under penalty of perjury that the foregoing is true and correct, and that I am authorized by claimant to make this claim for refund.

Dated: February 13, 2024 at 1233 West Loop S STE1500 Houston, TX 77027.

Name: Ashley N Moore

Title: Authorized Agent

Signature: 

BOE-692 REV. 29 (12-22)

STATEMENT OF AUTHORIZATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

2023

Please return completed form to the State-Assessed Properties Division, Board of Equalization, P.O. Box 942879, MIC:61, Sacramento, CA 94279-0061. If you have any questions, you may contact us at 1-916-274-3270.

	SBE NUMBER
	0810

COMPANY NAME
California Northern Railroad Company

ADDRESS
200 Meridian Centre, Suite 300

CITY	STATE	ZIP CODE
Rochester	NY	14618

DESIGNATED REPRESENTATIVE	EMAIL ADDRESS
Ashley Moore	Ashley.Moore@ryan.com

ADDRESS
1233 W Loop S Suite 1600

CITY	STATE	ZIP CODE
Houston	TX	77027

TELEPHONE NUMBER	FAX NUMBER
713.629.0090	713.629.0227

Please be advised that the person listed above is authorized to act as our designated representative before the California State Board of Equalization in connection with the assessment of our property. Our designated representative may inspect or copy all information, documents, and records, including narrations and workpapers relating to the appraisal and the assessment of our property during the period January 1, 2022, through December 31, 2022, for the lien date 2023. *I understand that this form must be filed annually in order for the representative status to remain current.*

OWNER, PARTNER, OR OFFICER'S SIGNATURE	DATE
Lauren Valerio	1/13/2023
SIGNATORY'S PRINTED NAME	TITLE
Lauren Valerio	Senior Accounting Manager

PRINT

EXHIBIT 1

EXHIBIT 2

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BNSF RAILWAY COMPANY, *Plaintiff-Appellee*, v. COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE, *Defendants-Appellants*, and COUNTY OF SAN DIEGO, *Defendant.*	No. 20-15896 D.C. No. 4:19-cv-07230-HSG

BNSF RAILWAY COMPANY,
Plaintiff-Appellee,

v.

COUNTY OF SAN DIEGO,
Defendant-Appellant,

and

COUNTY OF ALAMEDA; COUNTY OF CONTRA COSTA; COUNTY OF FRESNO; COUNTY OF KERN; COUNTY OF MADERA; COUNTY OF MERCED; COUNTY OF ORANGE; COUNTY OF PLUMAS; COUNTY OF RIVERSIDE; COUNTY OF SAN BERNARDINO; COUNTY OF SAN JOAQUIN; COUNTY OF STANISLAUS; COUNTY OF TULARE,
Defendants.

No. 20-15897

D.C. No.
4:19-cv-07230-
HSG

OPINION

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted June 17, 2021
San Francisco, California

Filed August 5, 2021

Before: Sidney R. Thomas, Chief Judge, and
Daniel A. Bress and Patrick J. Bumatay, Circuit Judges.

Opinion by Chief Judge Thomas

SUMMARY*

Tax

The panel affirmed the district court's preliminary injunction in favor of BNSF Railway Company in BNSF's action alleging that several California counties are taxing railroad property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 11501(b)(3).

The panel held that the district court applied the correct preliminary injunction standard under 49 U.S.C. § 11501, which does not require courts to consider traditional equitable factors. Instead, binding circuit precedent establishes that a railroad is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that a violation of § 11501 has been, or is about to be committed.

The district court had observed that it is difficult to apply § 11501 to California, because California has no specific tax rate for commercial and industrial property. The panel held that the district court properly analyzed BNSF's tax rate

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

under *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert denied*, 464 U.S. 846 (1983), which provides a framework for identifying the proper tax comparison rate—in this case, a county's average tax rate. The panel further held that the district court properly concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3), because BNSF's tax rate was higher than the average countywide tax rates for each county. Accordingly, the panel affirmed the district court.

The district court had rejected the Counties' contention that the relevant assessment jurisdiction is the State. The panel suggested that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

COUNSEL

Margaret R. Prinzing (argued), Robin B. Johansen, and Omar El-Qoulaq, Olson Remcho LLP, Oakland, California, for Defendants-Appellants County of Alameda, County of Contra Costa, County of Fresno, County of Kern, County of Madera, County of Merced, County of Orange, County of Plumas, County of Riverside, County of San Bernardino, County of San Joaquin, County of Stanislaus, and County of Tulare.

Laura E. Blome (argued), Senior Deputy; Thomas E. Montgomery, County Counsel; Office of County Counsel, San Diego, California; for Defendant-Appellant County of San Diego.

Benjamin J. Horwich (argued), Munger Tolles & Olson LLP, San Francisco, California; Jessica Reich Baril, Munger Tolles & Olson LLP, Los Angeles, California; Misty Smith Kelley and John M. Phillips, Baker Donelson Bearman Caldwell & Berkowitz PC, Chattanooga, Tennessee; for Plaintiff-Appellee.

OPINION

THOMAS, Chief Judge:

This appeal requires us to consider whether California's taxation of railroad property complies with the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 306, 90 Stat. 31, 54–55 (1976) ("the 4-R Act"). BNSF Railway Company ("BNSF") owns property in various California Counties ("the Counties"). BNSF alleges that the Counties are taxing its property at a higher rate than the rate applicable to commercial and industrial property in the same assessment jurisdiction, in violation of the 4-R Act. 49 U.S.C. § 11501(b)(3).

The district court determined that the proper preliminary injunction standard under the 4-R Act asks whether BNSF had shown a "reasonable cause to believe" that the 4-R Act was being violated, and that the proper comparison class was the average countywide tax rate for each County. The district court issued a preliminary injunction, concluding BNSF had shown that the Counties were violating the 4-R Act because BNSF's tax rate was higher than the average countywide tax rates for each County.

The district court had jurisdiction under 49 U.S.C. § 11501(c). We have jurisdiction under 28 U.S.C. § 1292(a). We review for abuse of discretion a district court's decision regarding preliminary injunctive relief. *Puente Ariz. v. Arpaio*, 821 F.3d 1098, 1103 (9th Cir. 2016). We review findings of fact for clear error and conclusions of law de novo. *Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1050, 1055 (9th Cir. 2008). However, where a district court's ruling rests solely on a premise of law and the facts are either established or undisputed, review is de novo. *See Harris v. Bd. of Supervisors, L.A. Cnty.*, 366 F.3d 754, 760 (9th Cir. 2004). We affirm.

I

A

Congress passed the 4-R Act out of concern for the financial stability of the nation's railway system. *Burlington N. R.R. Co. v. Okla. Tax Comm'n*, 481 U.S. 454, 457 (1987) (quoting 4-R Act § 101(a)). Recognizing that "railroads are easy prey for State and local tax assessors in that they are nonvoting, often nonresident, targets for local taxation, who cannot easily remove themselves from the locality," *Dep't of Revenue of Or. v. ACF Indus., Inc.*, 510 U.S. 332, 336 (1994) (internal quotation marks and citation omitted), Congress instituted "a prohibition on discriminatory state taxation of railroad property," *Okla. Tax Comm'n*, 481 U.S. at 457.

The 4-R Act establishes that "[t]he following acts unreasonably burden and discriminate against interstate commerce, and a State [or locality] may not do any of them:"

> (1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.
>
> (2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.
>
> (3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.
>
> (4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

49 U.S.C. § 11501(b).[1]

[1] This provision was originally contained in § 306 of the 4-R Act. 90 Stat. 31, 54–55. The language "was slightly altered" upon recodification in 1978, but such alteration "may not be construed as making a substantive change in the laws repealed." *Okla. Tax Comm'n*, 481 U.S. at 457 n.1 (internal quotation marks and citation omitted). Therefore, we "resolve any substantive conflicts between the original language of § 306 and the language in § [11501] in favor of the original language." *Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.*,

B

As the district court stated, California's system of property taxation "is, in a word, complicated." California employs an ad valorem (or value-based) property tax system. Cal. Const. art. XIII, § 1. Taxation follows a three-step process: (1) the value of taxable property is assessed, (2) the tax rate is computed, and (3) the tax is levied from the taxpayer. For most property, its value is assessed (and its rate is calculated) at the local level. *See* Cal. Rev. & Tax. Code § 404. But for a subset of property delineated in the California Constitution, including railroad property, the State assesses the value and calculates the applicable rate. Cal. Const. art. XIII, § 19.[2]

1

An understanding of California's system of taxation of locally assessed property is important for resolution of this case. Most property in California is locally assessed. County-level assessors determine the value of this property

934 F.2d 1064, 1066 n.1 (9th Cir. 1991). We reproduce the language of the original § 306 as relevant *infra*.

[2] California's Constitution establishes which property is state-assessed: "(1) pipelines, flumes, canals, ditches, and aqueducts lying within 2 or more counties and (2) property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the State, and companies transmitting or selling gas or electricity." Cal. Const. art. XIII, § 19.

for tax purposes. *See* Cal. Rev. & Tax. Code § 404.[3] This property is classified into one of two rolls: the secured roll or the unsecured roll. The secured roll contains "property the taxes on which are a lien on real property sufficient . . . to secure payment of the taxes." *Id.* § 109. In practice, this is most real property. The unsecured roll contains all other property. *Id.* § 109; 1 Sean Flavin, Taxing California Property §§ 12:3–12:4 (4th ed. 2020). There is no further subdivision based on use; for example, both the secured and unsecured roll contain both residential property and commercial and industrial property.

After determining the appropriate roll, Counties next assign locally assessed property to a particular tax rate area ("TRA") based on the property's location, and that TRA's tax rate is applied to the property. A TRA is a small geographical area serviced by the same combination of local government entities, including the county, city, special district, and school districts. Cal. Rev. & Tax. Code § 95(g). A county may have hundreds or thousands of TRAs—for example, San Diego County has over five thousand TRAs.[4]

The tax rate for property on the secured roll is taxed at a rate calculated under a formula found in § 93 of the California Revenue and Taxation Code ("the Code"), and it

[3] The assessment ratio of real property is limited by constitutional amendment in California. *See* Cal. Const. art. XIIIA, § 1 ("Proposition 13").

[4] San Diego County requests that we take judicial notice of several publicly available documents explaining the taxation process in that County and in California. These documents are matters of public record, and we grant the motion. Fed. R. Evid. 201(b)(1)–(2); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

is specific to a particular TRA. The § 93 formula contains two components: the first component is a general tax levy, calculated at 1%. Cal. Const. art. XIIIA, § 1(a); Cal. Rev. & Tax. Code § 93. The second component, referred to as the "debt service component," is the amount needed as a percentage of property values to produce enough revenue to make payments for the interest and principal on all voter-approved bonded indebtedness issued by any of the various local entities, Cal. Rev. & Tax. Code § 93; *see also* Cal. Gov. Code § 29100, such as a voter-approved bond that funds school construction in the elementary school district serving that TRA. For locally assessed property on the unsecured roll, the rate is the § 93 rate for the previous year for that TRA. Cal. Const. art. XIII, § 12; Cal. Rev. & Tax. Code § 2905. This formula ensures that each TRA will have enough revenue to make payments for the interest and principal on its bonded indebtedness. The rate is then applied to the assessed value of the property on the assessment rolls, *see* Cal. Rev. & Tax. Code § 2152, and collected. *Id.* § 2602. As a result, each County, with its hundreds or thousands of TRAs, likewise has hundreds or thousands of different tax rates applied to property in that County, and these rates apply to all property in that TRA, without regard to use, i.e., whether commercial and industrial or residential or otherwise.

2

Other property, including railroad property, is State-assessed. *See* Cal. Const. art. XIII, § 19. State-assessed property is also classified onto either the secured or unsecured roll. However, for this property, the *State* assesses its value for tax purposes, as opposed to the counties, Cal.

Const. art. XIII, § 19, and applies a different formula to calculate the tax rate. *See* Cal. Rev. & Tax. Code § 100.

The assessment process for some of this property, including BNSF's property, is different from standard local assessment. For this subset of State-assessed property, known as "unitary property," the value is calculated under the unit valuation method. *Id.* §§ 723, 723.1. Under this method, the State Board of Equalization ("the State Board") first calculates the value of a taxpayer's entire system, i.e., BNSF's railroad property nationwide. Then, the State Board allocates a portion of that value to California, and further allocates that value among the various counties in which the taxpayer's property is located. The unit valuation method is meant to account for the valuation of assets where the component parts are valuable as a whole, but less valuable in isolation. For example, in the railway context, "ten miles of [railroad] track would have a questionable value, other than as scrap, without the benefit of the rest of the system as a whole." *Am. Airlines, Inc. v. Cnty. of San Mateo*, 912 P.2d 1198, 1208 (Cal. 1996) (alterations and citation omitted).

The tax rate applied to State-assessed property is calculated under a formula different from the § 93 formula. Due to a lengthy legislative history, unitary property holders do not need to demonstrate the TRAs in which their property is located.[5] Instead, their countywide value is allocated to a

[5] Prior to 1986, the value of unitary property was not allocated to the counties—instead, taxpayers reported to individual local TRAs where their property was located. There was no separate tax rate for unitary property; the local taxing jurisdictions applied their own rates. Under this system, an individual assessee had to report in thousands of TRAs. A series of state legislation established today's system. *See* 1986 Cal. Stat. 5217, 5223–24 (establishing that the State Board will allocate unitary

countywide TRA with a single tax rate. *See* Cal. Rev. & Tax. Code § 100.11(a)(2)(B). For this reason, the tax rate applied cannot be informed by the debt service needs of the particular TRA where the property is located. *Compare id.* § 93. State-assessed property is therefore taxed under a different formula established in § 100 of the Code, the "unitary rate." *Id.* § 100.

Like § 93, § 100's first component is effectively a 1% general tax levy. *Id.* § 100(b)(1). Section 100's second component is also a debt service component, but it is calculated differently from § 93's. Section 100's debt service component is calculated as the previous year's unitary debt service rate, *see id.* § 100(b)(2)(A), multiplied by the percentage change between the two preceding fiscal years in the county's ad valorem debt service *levy* (not rate) for the secured roll. *Id.* § 100(b)(2)(B). The formula for the second component means that the unitary rate is based on the change in absolute dollars of the county's debt service rate, not changes in the percentage that taxpayers are paying. According to BNSF, it is this component that accounts for the divergence between the §100 and § 93 rates. Specifically, if the tax rate applied to the secured roll increases, but the property values also rise, the § 93 rate will not rise. But the

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property value to a county's existing TRAs, irrespective of the property's actual location); 1987 Cal. Stat. 2959, 2959–61 (creating a single countywide TRA for unitary property so that each taxpayer receives only one tax bill per county); 1988 Cal. Stat. 2087, 2094–95 (tying the tax rates for unitary property to the unitary and operating non-unitary data rather than the total county-wide data, effectively implementing what is now § 100(b)(2)(A)). In 2006, the 1987 and 1988 laws were applied to railroads, 2006 Cal. Legis. Serv. ch. 791 (A.B. 2670) (West), via a bill "introduced on behalf of the California Railroad Industry," including BNSF.

§ 100 rate will increase because it is based on the increase in actual dollars of debt service tax paid. The difference in tax rates between the countywide average tax rates (labeled as the "Section 11501 Benchmark Rate") and BNSF's rate (the "Plaintiff Unitary Rate") for the 2019–2020 tax year are represented below:

County	2019–20 Plaintiff Unitary Rate	2019–20 Section 11501 Benchmark Rate
Alameda	2.5187%	1.241%
Contra Costa	1.6865%	1.148%
Fresno	1.370408%	1.181%
Kern	1.611299%	1.24%
Kings	1.326084%	1.087%
Madera	1.203169%	1.089%
Merced	1.4109014%	1.088%
Orange	1.28173%	1.064%
Plumas	1.11652%	1.089%
Riverside	1.76133%	1.164%
San Bernardino	1.3645%	1.144%
San Diego	1.62331%	1.142%
San Joaquin	1.6922%	1.145%
Stanislaus	1.38011%	1.103%
Tulare	1.4002%	1.113%

The countywide average rates are calculated by the State Board every year, as required by statute. Cal. Rev. & Tax. Code § 11403. This average is calculated by dividing (1) the sum of all ad valorem property tax levies for a given county

per year by (2) the sum of the assessed values of all property in that county for that year. *Id.*

C

Observing that BNSF's tax rate had deviated from the average countywide tax rates in each County, BNSF filed suit on November 1, 2019, alleging a violation of 49 U.S.C. § 11501(b)(3). BNSF sought a preliminary injunction preventing the Counties from collecting taxes at a rate higher than each County's average rate. The district court granted the preliminary injunction, noting that the law of this circuit does not require courts to consider traditional equitable factors in considering a § 11501 case, and instead requires issuance of a preliminary injunction upon a showing that "a violation of [§ 11501] has been, or is about to be committed." *See Burlington N. R.R. Co. v. Dep't of Revenue of State of Wash.* (*Burlington Northern v. Washington*), 934 F.2d 1064, 1074–75 (9th Cir. 1991).

On the merits, the district court observed that the trouble with 4-R Act analysis in California is that "California has no specific tax rate for commercial and industrial property" against which to compare a railroad's rate. Accordingly, the court followed the approach outlined in *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 867 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983), for identifying a proper comparison rate. The court first addressed *Trailer Train*'s recommended comparison rate—the rate applicable to whichever roll, secured or unsecured, contains the "majority of the commercial and industrial property" in the State. *Id.* at 867. Although the secured roll almost certainly contains the majority of commercial and industrial property, the "tax rate applicable" to the secured roll, *id.*, "cannot be

determined," because property on the secured roll is "spread among the hundreds or thousands of TRAs in each County." In other words, there is no single identifiable tax rate applicable to the secured roll. Therefore, the district court followed *Trailer Train*'s fallback approach and compared BNSF's tax rate to the *average* tax rate. *See Trailer Train*, 697 F.2d at 867. In doing so, it used Counties as the relevant assessment jurisdiction. Although this property too is spread across hundreds or thousands of TRAs, the *average* rate is readily available, since the State Board is required by statute to calculate it each year. *See* Cal. Rev. & Tax. Code § 11403.

The district court rejected the Counties' proposal to compare BNSF's rate only to the rates for other State-assessed taxpayers—who pay the same § 100 rate that BNSF pays. The Counties argued that the relevant "assessment jurisdiction" is the State, and as such the court should compare only to other State-assessed property. *See* 49 U.S.C. § 11501(b)(3). The district court held that, even if the State (as opposed to the County) were the appropriate assessment jurisdiction, the commercial and industrial property *in the State* is clearly not limited to the group of mostly utility company property that is State-assessed. *See* Cal. Const. art. XIII, § 19. Moreover, the court observed that to limit the comparison class to "a relatively narrow subset of other state-assessed utilities and other entities that pay the same unitary tax rate," would depart from Congress's intention to "link railroads' fate" to commercial and industrial taxpayers.

The district court also rejected the Counties' argument that BNSF needed to make an independent showing of discrimination in order to prevail under § 11501(b)(3). The court held that subsection (b)(3) "does not require proof of discrimination, because Congress has already declared in the

preface of Section 11501(b) that the imposition of such an ad valorem property tax rate disparity 'unreasonably burden[s] and discriminate[s] against interstate commerce.'"

The district court's amended preliminary injunction order requires BNSF to deposit the enjoined amount of taxes for the 2019–2020 tax year in an escrow account and deposit the enjoined amount for future tax years when those tax payments would be due. The preliminary injunction enjoins the collection of only the disputed portion of BNSF's taxes, not the collection of the undisputed taxes.

II

As a threshold matter, we must first determine whether the district court applied the correct standard in awarding a preliminary injunction to BNSF. We generally consider traditional equitable factors when evaluating requests for preliminary injunctions. *See BOKF, NA v. Estes*, 923 F.3d 558, 561–62 (9th Cir. 2019) (listing factors). However, in some circumstances, a statute will prescribe that a showing of a violation of the statute alone warrants the issuance of a preliminary injunction. *See Burlington Northern v. Washington*, 934 F.2d at 1074 (quoting *Atchison, Topeka and Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 258 (10th Cir. 1981)); *cf. Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313–14 (1982). In *Trailer Train*, we held that the 4-R Act falls within this limited category, 697 F.2d at 869, and we reaffirmed that reasoning more recently in *Burlington Northern v. Washington*, 934 F.2d at 1074 ("Although we need not reach this issue, we note that [this injunction standard] is supported by the existing case law."). As the district court correctly observed, these cases constitute binding circuit precedent establishing the proper injunction

standard for violations of the 4-R Act: the railroad "is entitled to a preliminary injunction if its evidence demonstrates reasonable cause to believe that [§ 11501] has been violated, or is about to be violated." *Id.* at 1075 (internal quotation marks omitted).

Romero-Barcelo does not qualify as intervening irreconcilable authority that would require deviation from our circuit precedent. *See Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc). First, and importantly, *Romero-Barcelo* was not intervening authority: it was decided on April 27, 1982, after *Trailer Train* was argued but more than seven months *before Trailer Train* was decided on January 25, 1983. *Compare Romero-Barcelo*, 456 U.S. at 305, *with Trailer Train*, 697 F.2d at 860. Thus, the *Trailer Train* panel had the benefit of consulting the reasoning in *Romero-Barcelo* before issuing its decision.[6]

Second, *Romero-Barcelo* is not irreconcilable with *Trailer Train*. The irreconcilability requirement is a "high standard." *FTC v. Consumer Def., LLC*, 926 F.3d 1208, 1213 (9th Cir. 2019). "[I]f we can apply our precedent consistently with that of the higher authority, we must do so. . . . [I]t is not enough for there to be some tension between the intervening higher authority and prior circuit precedent." *Id.* (internal quotation marks and citations omitted). In *Romero-Barcelo*, the Supreme Court held that a certain provision of the Federal Water Pollution and Control Act did not withdraw courts' traditional equitable discretion. 456 U.S. at 320. The

[6] We also note that this court reaffirmed *Trailer Train*'s preliminary injunction standard in 1991 in *Burlington Northern v. Washington*, nearly a decade after *Romero-Barcelo* was decided. *Burlington Northern v. Washington*, 934 F.2d at 1074–75.

Supreme Court cautioned that courts should apply equitable principles "[u]nless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity." *Id.* at 313 (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)). These instructions are not "irreconcilable" with our holding in *Trailer Train* that § 11501 "clearly falls within" the exception for statutes that "specifically provide[] for injunctive relief." 697 F.2d at 869. Indeed, *Trailer Train* followed these requirements, looking to the language of the original § 306, which specified that "the district courts of the United States shall have jurisdiction . . . to grant such mandatory or prohibitive injunctive relief . . . *as may be necessary to prevent*, restrain, or terminate any acts in violation of this section." 4-R Act of 1976, § 306(2) (emphasis added); *Trailer Train*, 697 F.2d at 869 & n.16. *Trailer Train*'s interpretation of this language is a holding that we "can apply . . . consistently," *Consumer Def.*, 926 F.3d at 1213, with the Supreme Court's instruction in *Romero-Barcelo* to look to the statute's direct command or necessary and inescapable inference. *See* 456 U.S. at 313. The district court applied the correct injunction standard to this case.

III

On the merits, the Counties' arguments fall into three categories. The first two involve the Counties' contention that the district court erred in selecting the countywide average tax rates as the baseline rate against which it compared BNSF's rate. First, the Counties argue that the district court only arrived at that rate by following the *Trailer Train* framework, which was error because *Trailer Train* involved a prior version of California's property taxation system, under which railroads were not taxed at the unitary

rate. Second, the Counties argue that the district court should have disregarded the *Trailer Train* framework and compared BNSF's property only to other property taxed at the unitary rate, *see* Cal. Rev. & Tax. Code § 100, since this is the only property in the same "assessment jurisdiction." 49 U.S.C. § 11501(b)(3); *see id.* § 11501(a)(2). Third, and separately, the Counties contend that BNSF was required to make a threshold showing that its tax rate was not only different, but also discriminatory. BNSF cannot do so, the Counties contend, because they are justified in taxing BNSF subject to the unitary rate since BNSF lobbied for the change in state law that subjected it to this rate. We address each argument in turn.

A

The 4-R Act prohibits States and localities from taxing railroad property "at a tax rate that exceeds the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. § 11501(b)(3). As we noted in *Trailer Train*, and as is still true today, it is difficult to apply this statute to California, since California "has no specific tax rate for commercial and industrial property." *Trailer Train*, 697 F.2d at 867. Thus, the baseline rates to which we should compare a railroad's rate are not readily apparent.

We first addressed this issue in *Trailer Train* in 1983, the only time this court has applied subsection (b)(3) to California's system of taxation. At that time, the tax rate applied to private rail cars was essentially the weighted average of the prior year's secured and unsecured rates. *Id.* at 863. The Board determined that the recently established tax rate limitations in Proposition 13 applied to private

railcars, and it taxed Trailer Train's property at the lower rate required by Proposition 13 for the 1978–1979 tax year. *Id.* at 863–64. In 1980, when the California Supreme Court ruled that the Proposition 13 tax rate limitation did not apply to the unsecured roll, the Board interpreted the Court's decision to mean Proposition 13 must not apply to private railcars and determined that its rate reduction on railcars for the 1978–1979 tax year was improper. *Id.* The Board recalculated the tax at a higher rate. *Id.* Railway companies sued to enjoin collection of taxes at the higher rate as a violation of 49 U.S.C. § 11501(b)(3). *Id.*

To address the issue of the proper comparison rate, *Trailer Train* outlined two approaches. The first approach instructs a court to ascertain which roll, secured or unsecured, contains the majority of California's commercial and industrial property. *Id.* at 867. "The tax rate applicable to the roll that contained the majority of commercial and industrial property shall be deemed" the proper comparison rate. *Id.* As a second, fallback approach, the court instructed that, if that determination is "not possible, the average tax rate for all property shall be used as the basis for comparison." *Id.*[7]

The Counties do not suggest any persuasive reason for departing from this framework. To be sure, the choice between the secured roll, the unsecured roll, or the average of

[7] The district court was correct to move to *Trailer Train*'s second option when no party offered data reflecting the tax rate applicable to the secured roll or otherwise limited to only commercial and industrial property. We are not persuaded by the Counties' contention that BNSF should have provided such data. BNSF's expert represented below that BNSF did not believe those numbers were "published or readily ascertainable." If the Counties, who are in possession of the tax rate data, wish the district court to consider these rates, then they may produce them.

all tax rates had the potential for a more significant impact at the time of *Trailer Train*: at that time, the two rates were quite different, *see id.* at 864, whereas today they may not diverge as dramatically. However, the district court was correct that the central question of *Trailer Train*—how to identify the proper comparison rate to capture commercial and industrial property in California, *see id.* at 867—remains equally relevant in this case. This is the question that *Trailer Train* answered by pointing us to either the rate applicable to the secured or unsecured roll or the average rate applied to all property. The evolution in California's system of taxation does not provide a sufficient reason to deviate from these instructions.[8]

B

The Counties also urge deviation from *Trailer Train* because the district court should have compared BNSF's rate to other State-assessed taxpayers' rates rather than the countywide averages, since the only property in the same "assessment jurisdiction" as BNSF is other State-assessed unitary property. The Counties thus argue that they comply with the 4-R Act because they do not treat BNSF differently from other unitary property taxpayers. We disagree.

The 4-R Act forbids railroads from being taxed at a rate that exceeds the rate applicable to commercial and industrial property "in the same assessment jurisdiction." 49 U.S.C.

[8] San Diego County argues that the district court needed to compare BNSF's tax rate for its specific parcels to the tax rate for the corresponding TRA. We decline to reach this argument since it was not raised below. *See Detrich v. Ryan*, 740 F.3d 1237, 1248–49 (9th Cir. 2013) (en banc).

§ 11501(b)(3). The statute defines "assessment jurisdiction" as "a geographical area in a State used in determining the assessed value of property for ad valorem taxation." *Id.* § 11501(a)(2). The Counties argue that the State is the appropriate assessment jurisdiction here, and that therefore, the district court should have compared BNSF's rate to the rate applied to other State-assessed entities: the § 100 rate. *See* Cal. Const. art. XIII, § 19; Cal. Rev. & Tax. Code § 100.

Yet even if the State were the appropriate assessment jurisdiction, the Counties' proposal cannot pass muster. If the State were the appropriate assessment jurisdiction, then the statute instructs that the proper comparison rate is that applicable to "commercial and industrial property in the same assessment jurisdiction"—the State of California. 49 U.S.C. § 11501(b)(3). Commercial and industrial property in California certainly is not limited to the small subset of State-assessed property. Furthermore, the definition of "assessment jurisdiction" is a "geographical area." *Id.* § 11501(a)(2). The statute does not require comparison only to other entities assessed by the same agency, just entities within the appropriate "geographical area."[9] Thus, if the State were the appropriate assessment jurisdiction, the proper comparison would be to *all* commercial and industrial property in the State, not just the limited group of State-assessed entities.

Furthermore, the Counties' proposal to compare BNSF's tax rate only to the rate applied to State-assessed property, a limited set of property mostly owned by utility companies that pay the same tax rate as BNSF, runs contrary to the

[9] For this reason we are also not persuaded by San Diego County's argument that the countywide TRA (as opposed to the County) is the proper assessment jurisdiction.

purpose of the 4-R Act. Congress's goal in passing this legislation was to ensure railroads were treated equally as taxpayers. *See CSX Transp., Inc. v. Ala. Dep't of Revenue* (*CSX I*), 562 U.S. 277, 280 (2011); *see also Okla. Tax Comm'n*, 481 U.S. at 457. To do so, the statute instructs comparison to "commercial and industrial property"—a deliberately broad term. 49 U.S.C. § 11501(b). Moreover, a comparison to entities paying *the same tax rate* would deprive this subsection of nearly all meaning. It was, in part, for this reason that we recently rejected a similar proposal to compare railroad property only to centrally assessed property under a different subsection of the 4-R Act. *See BNSF Ry. Co. v. Or. Dep't of Revenue*, 965 F.3d 681, 692 (9th Cir. 2020) (noting that such a comparison would "deprive subsection (b)(4) of all real-world effect"). Accordingly, we affirm the district court's decision to not compare BNSF's rate only to other State-assessed taxpayers' rates.[10]

C

Finally, the Counties contend that the statute requires BNSF to demonstrate not only that there is a difference in tax rates, but also that any difference is discriminatory. The

[10] The district court assumed that the county was the proper assessment jurisdiction rather than the State. We agree that, under either possible assessment jurisdiction, the Counties' proposal to compare BNSF only to other State-assessed taxpayers must fail. We also recognize that the effect of selecting either the county or the State is slight, since the countywide averages do not significantly diverge from the statewide averages. However, we note that it would be appropriate for the district court to examine this issue in the first instance as proceedings continue, especially considering our case law interpreting the phrase "the same assessment jurisdiction" in the subsection (b)(1) context. *See Arizona v. Atchison, Topeka, & Santa Fe Ry. Co.*, 656 F.2d 398, 405 (9th Cir. 1981).

Supreme Court has defined discrimination in the 4-R Act context to mean "failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored." *CSX I*, 562 U.S. at 286 (quoting Black's Law Dictionary 534 (9th ed. 2009)). The Counties contend that BNSF cannot show discrimination because the Counties are justified in taxing BNSF at the unitary rate, the rate at which BNSF itself lobbied to be taxed. *See Ala. Dep't of Revenue v. CSX Transp., Inc.* (*CSX II*), 575 U.S. 21, 31 (2015) ("[A tax] does not discriminate unless it treats railroads differently from other *similarly situated* taxpayers *without sufficient justification*."). The Counties also contend that, since discrimination requires that an individual entity be treated worse than similarly situated entities, the proper comparison group is other State-assessed, unitary property.

However, the Counties arguments are unsuccessful at the outset because no independent showing of discrimination is required for subsection (b)(3) claims. The Supreme Court has clearly stated that "[w]hat subsection (b)(4) requires, and subsections (b)(1)–(3) do not, is a showing of *discrimination*—of a failure to treat similarly situated persons alike." *CSX II*, 575 U.S. at 27 (emphasis in original); *see also Trailer Train*, 697 F.2d at 866–67 (explaining that to "discern whether California has imposed a discriminatory tax rate in violation of [subsection] (b)(3)," the court's task was "to compare the tax rate applied to the Companies' railroad cars with that generally applicable to commercial and industrial property").

The text of the statute is not to the contrary. The preface to § 11501(b) states: "The following acts unreasonably burden *and discriminate against* interstate commerce." 49 U.S.C. § 11501(b) (emphasis added). The language of the

original § 306, states that "any action described in this subsection is *declared to constitute* an unreasonable and unjust *discrimination against*, and an undue burden on, interstate commerce." 4-R Act § 306(1) (emphasis added). It is true that subsection (b)(4) includes the term "discrimination," whereas the term is absent from subsections (b)(1)–(3). However, this additional requirement was likely included because subsection (b)(4) is a catch-all provision. *CSX I*, 562 U.S. at 280–81. The inclusion of a discrimination requirement in this broader provision makes sense: discrimination may come in forms other than the three types listed in subsections (b)(1)–(3), but in that case an additional showing of discrimination, rather than simply difference, is required. *See CSX II*, 575 U.S. at 27. Accordingly, since BNSF was not required to show discrimination, we need not address the Counties' arguments that BNSF would be unable to make this showing.

IV

In sum, the district court applied the correct preliminary injunction standard, properly analyzed BNSF's tax rate under the *Trailer Train* framework, and concluded that the Counties were overtaxing BNSF's property in violation of § 11501(b)(3). Accordingly, we affirm the district court, and suggest that, as proceedings continue, the district court consider in the first instance whether the State or the county is the proper assessment jurisdiction.

AFFIRMED.

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Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1400

TO: Board of Supervisors

FROM: Tracy Schulze, Auditor-Controller

REPORT BY: Raymond Francis, Property Tax Accountant-Auditor

SUBJECT: Teeter Plan Implementation

RECOMMENDATION

Adopt a Resolution to authorize the issuance of the fiscal year 2023-24 promissory note for delinquent secured taxes and the continuance of the Teeter Plan for fiscal year 2024-25. (Fiscal Impact: $1,705,498 Revenue, Various Funds, Budgeted, Mandatory)

BACKGROUND

The Napa County Board of Supervisors adopted Resolution No. 93-79 on July 13, 1993 to approve and implement the alternative method of property tax apportionment known as the Teeter Plan. This item authorizes the promissory note for Fiscal Year 2023-24 and the continuance of the Teeter Plan for Fiscal Year 2024-25.

The Auditor Controller's Office has calculated the Fiscal Year 2023-24 Teeter Buyout, in the amount of $8,115,935, to fund payment of the delinquent secured taxes. The required Teeter 2023-24 Note Reserve amount is $243,478. In accordance with Revenue and Taxation Code 4703.2, the minimum balance for the Tax Loss Reserve is $4,123,978.

The County's portion of the Teeter Buyout consists of $1,325,204 for General Fund, $116,902 for Fire Non-Structural, $155,538 for the County Library, and $107,854 for Fire Protection. The County total is $1,705,498.

Please see the attached memo, resolution and promissory note for the ongoing implementation of the Teeter Plan.

Requested Action: Adoption of the Resolution authorizing the continuance of the Teeter Plan for fiscal year 2024-25, authorize the issuance of a promissory note to fund payment of the Fiscal Year 2023-24 delinquent secured taxes, and authorize the Chair and the Clerk of the Board to sign said promissory note.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	The appropriate buyout is calculated by the Auditor-Controller every year, in accordance with Revenue and Taxation Code 4702 et seq.
Consequences if not approved:	In accordance with Revenue and Taxation Code 4702 et seq, the county will forfeit the ability to use the Teeter Method if not approved through resolution by October 15 of the relevant tax year. The General fund and affected taxing entities will not receive their portions of the Teeter Buyout, reducing flexibility in available cash resources.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO.

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS SELECTING THE REVENUE & TAXATION CODE SECTION 4703.2 METHOD FOR CALCULATING THE MINIMUM BALANCE THAT MUST EXIST IN THE TAX LOSSES RESERVE FUND UNDER THE "TEETER PLAN", APPROVING ISSUANCE OF A NOTE TO FUND PAYMENT OF CERTAIN DELINQUENT TAXES, AND AUTHORIZING THE CHAIR AND CLERK OF THE BOARD OF SUPERVISORS TO SIGN THE NOTE

WHEREAS, the Napa County Board of Supervisors (the "Board") adopted Resolution No. 93-79 on July 13, 1993, to approve and implement the alternative method of property tax allocation specified in Revenue and Taxation Code Sections 4701 *et seq*. (the "Teeter Plan") in Napa County; and

WHEREAS, use of the Teeter Plan requires the creation of a Tax Losses Reserve Fund ("Fund"); and

WHEREAS, the Board thereafter amended Resolution No. 93-79 by Resolution 94-36 to not include assessments in Napa County's implementation of the Teeter Plan; and

WHEREAS, pursuant to state law there are two methods of creating a Tax Losses Reserve Fund: the first method is described in Revenue and Taxation Code Section 4703 ("Section 4703 method") and the second method is described in Revenue and Taxation Code Section 4703.2 ("Section 4703.2 method"); and

WHEREAS, according to the Section 4703 method, the Fund must contain a minimum balance equal to 1% of the total of all taxes levied on the secured roll for the fiscal year involved for participating entities in the County before excess monies from the Fund can begin to accrue to the County's general fund, except prior to October 31st of any given fiscal year, the County may elect to use the alternate Section 4703.2 method for calculating the minimum balance of the Fund before the excess may be diverted for general fund uses; and

WHEREAS, according to the Section 4703.2 method, a minimum fund balance must be maintained in an amount not less than twenty-five percent (25%) of the total delinquent secured taxes for participating entities in the County as calculated at the end of the fiscal year; and

WHEREAS, Revenue and Taxation Code Section 4703.2(a) provides that once an election has been made to utilize the Section 4703.2 method of computing the minimum balance of the Fund, that method shall continue to be used unless the Board of Supervisors adopts a Resolution on or before October 31st of a fiscal year electing to compute the minimum balance to be maintained in the Fund in the manner set forth in Section 4703; and

WHEREAS, regardless of the method selected to compute the minimum balance that must be maintained in the Fund, the Teeter Plan requires the County to pay each participating taxing jurisdiction one hundred percent (100%) of all taxes due to that entity, regardless of whether such taxes have been collected by the County or are delinquent; and

WHEREAS, based upon the recommendation of the Napa County Auditor-Controller ("Auditor") the Board of Supervisors has in some years adopted the Section 4703.2 method and in other years adopted the Section 4703 method; and

WHEREAS, in 2023 the Board of Supervisors adopted the Section 4703.2 method, and the Auditor-Controller recommends a continuation of the Section 4703.2 method for 2024 as it results in a lower reserve; and

WHEREAS, the Board also believes that use of the Section 4703.2 method is in the best interest of Napa County; and

WHEREAS, the Board wishes to issue a note to fund the payment of fiscal 2023-2024 delinquent taxes;

NOW, THEREFORE, BE IT RESOLVED by the Napa County Board of Supervisors as follows:

1. Tax Loss Reserve Fund Election. For the 2024-2025 fiscal year, and thereafter until the Board takes further action to change its election, the minimum balance in the Fund shall be equal to 25 percent (25%) of the total delinquent secured roll net of direct charges for participating entities in the County as calculated at the end of the fiscal year, all in accordance with Section 4703.2 of the Revenue and Taxation Code.

2. Creation of 2024 Teeter Repayment Fund. In connection with the issuance of the Note (defined below), the Napa County Auditor-Controller shall establish a 2024 Teeter repayment fund ("2024 Repayment Fund"). All moneys collected constituting fiscal 2023-2024 delinquencies shall be deposited in the 2024 Repayment Fund after receipt by the tax resources fund unless required by law to be deposited in the tax losses reserve fund. In addition, $243,478 shall be deposited in the 2024 Repayment Fund as a reserve, and the Auditor-Controller is hereby directed and authorized to transfer the necessary funds for this purpose.

3. Issuance of a Note to Fund Payment of 2023-2024 Delinquent Taxes. The Board hereby authorizes issuance of a note ("Note") in the amount of $8,115,935 in the form set forth in Exhibit 'A', attached hereto and by reference incorporated herein, to fund the payment to participating jurisdictions of outstanding delinquencies of fiscal year 2023-2024 taxes as of June 30, 2024. The term of the Note shall be from the date of execution until September 1, 2029. Interest on the Note shall be payable at a variable rate, adjusted annually, based on the interest rate for a constant maturity U. S. Treasury Note of similar term plus a fixed spread as set forth in the Note. Neither the Napa County general fund nor any taxing power shall be available for payment of principal or interest under the Note.

4. Authority to Execute Note. The Chair of the Board of Supervisors who is in office on the date set forth on the Note, or at any time thereafter prior to the delivery of the Note to the purchaser thereof, is hereby authorized and directed as the officer to sign the Note by manual signature, and the Clerk of the Board who is in office on the date set forth on the Note, or any time thereafter prior to such delivery of the Note to the purchaser thereof, is hereby authorized and directed as the officer to countersign the Note by manual signature. If any officer whose signature or countersignature appears upon the Note ceases to be an officer of the Board before the delivery of the Note to the purchaser, that officer's signature or countersignature shall nevertheless be valid and of the same force and effect as if the prior officer had remained such officer.

5. The Clerk of the Board is directed to file a copy of this Resolution and its attachments with the Napa County Auditor-Controller and the Treasurer-Tax Collector.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 20th day of August 2024, by the following vote:

AYES: SUPERVISORS _____

_____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: *Ryan FitzGerald* (e-sign) Deputy County Counsel Date: August 15, 2024	Date: _____ Processed By: _____ Deputy Clerk of the Board	By: _____

Exhibit 'A'

2024 PROMISSORY NOTE

Teeter Plan Delinquencies
(Subject to Call and Redemption)

$8,115,935.00

Napa County (the "County"), duly organized and existing under and pursuant to the Constitution and laws of the State of California, for value received hereby promises to pay (but only out of the funds hereinafter mentioned) to the registered owner hereof, or registered assigns, the principal sum of $8,115,935 together with accrued and unpaid interest thereon, payable on the dates and in the manner set forth below.

This Note is issued pursuant to a resolution (the 'Resolution') adopted by the Board of Supervisors of the County on August 20, 2024. Reference is hereby made to the Resolution for a specific description of the security therein provided for the payment of the principal of and interest on this Note, to all of the provisions of which the registered owner hereof by such owner's acceptance of this Note hereby consents and agrees, and each subsequent registered owner of this Note has recourse to all of the provisions of the Resolution and is bound thereby. All terms defined in the Resolution shall have the same definitions when used herein, unless otherwise defined herein.

This Note shall bear interest on the outstanding principal amount hereof from the date hereof until payment in full at a variable rate, adjusted annually (commencing September 1, 2024), equal to the rate of interest on the constant maturity U. S. Treasury Note for the number of years corresponding to the number of full years remaining in the term of the Note plus a fixed percentage in accordance with the following schedule:

Five–year Treasury Note	. . . plus 50 basis points
Four–year Treasury Note	. . . plus 45 basis points
Three–year Treasury Note	. . . plus 40 basis points
Two–year Treasury Note	. . . plus 35 basis points
One–year Treasury Note	. . . plus 30 basis points

Interest shall be payable on or before the dates set forth below and shall be calculated on the basis of a 365–day year for the actual number of days elapsed. Notwithstanding the foregoing, interest shall be payable at the maximum rate permissible by law if such amount is less than the rate set forth above.

This Note shall be payable in full upon maturity, which shall be September 1, 2029. The County shall make payments of principal and interest hereunder annually on or before the first business day in September of each year, commencing September 2025. The amount of interest to be paid each year shall equal the amount of accrued but unpaid interest under the Note to the extent of the monies available in the 2024 Repayment Fund or the Tax Loss Reserve Fund as of the end of the County's previous fiscal year. The amount of principal to be paid each year shall equal the amount of monies available in the 2024 Repayment Fund exclusive of the $243,478 in reserve monies described in the Resolution as of the end of the County's previous fiscal year. At maturity, outstanding principal and any accrued but unpaid interest shall be payable only to the extent of the monies available in the 2024 Repayment Fund or the Tax Loss Reserve Fund as of June 30, 2029. Both the principal of and interest on this Note are payable by the Napa County Auditor–Controller in lawful money of the United States of America at the Office of the Napa County Treasurer.

This Note is not a lien, charge or liability against the County or against the Board of Supervisors of the County, or against any property or funds of the County or said Board of Supervisors, except the monies available in the 2024 Repayment Fund as provided in the Resolution, and neither the payment of the principal hereof nor any part thereof, nor of any interest hereon, constitutes a debt, liability or obligation of the County except as provided in the Resolution.

The County hereby covenants and warrants that it will pay promptly, when due, the principal of this Note and any interest accruing hereon, all in accordance with the terms hereof and the terms and provisions set forth in the Resolution.

It is hereby certified that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law.

This Note is subject to call and redemption in whole or in part at any time prior to maturity without penalty or premium by the County giving the registered owner 60 days' prior written notice thereof.

The registered owner hereof may assign this Note only with the County's prior written consent. Upon the giving of such consent, the assignee shall be deemed the registered owner for all purposes hereunder.

This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

/ / /

/ / /

/ / /

IN WITNESS WHEREOF, the County has caused this Note to be signed in its name by the Chair of the Board of Supervisors and countersigned by the Clerk of the Board, and has caused this Note to be dated September 1, 2024.

NAPA COUNTY a political subdivision of the State of California

By _____
JOELLE GALLAGHER, Chair of the
Napa County Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: *Ryan FitzGerald* (e-sign) Deputy County Counsel Date: August 15, 2024	Date: _____ Processed By: _____ Deputy Clerk of the Board	By: _____

REGISTERED OWNER:

Napa County -- Pooled Investment Fund
1195 Third Street, Room 108
Napa, CA 94559
Attn: Napa County Treasurer

AUDITOR-CONTROLLER
INTER-OFFICE MEMO

Date: August 20, 2024

To: Board of Supervisors

From: Tracy A. Schulze
Auditor-Controller

Subject: 2024-25 Teeter Plan Implementation

At the end of each fiscal year, an analysis is completed in connection with the continued implementation of an Alternate Method of Property Tax Allocation (hereafter "Teeter Plan"). Based on the analysis, I am requesting the following action to complete the process:

Adoption of the Resolution for Teeter Plan implementation for fiscal year 2024-25.
This action provides the authority to:

a. Establish the minimum balance for the Tax Loss Reserve in accordance with Section 4703.2 of the Revenue and Taxation Code;
b. Create the 2024 Teeter Repayment Fund;
c. Issue a Note to Fund Prepayment of 2023-24 Delinquent Taxes; and
d. Execute the Note.

Teeter Plan Implementation

On April 5, 1994, the County completed the appropriate authorizations for implementing the Teeter Plan in Napa County. The benefit to the County over the past thirty fiscal years has been approximately $26.1 million. We are estimating the 2024-25 Tax Loss Reserve Fund (hereafter "Fund") will generate approximately $500,000 which is reflected in the County's General Fund budget.

Establish the Minimum Balance for the Tax Loss Reserve

The minimum balance that must be included in the Reserve is set forth in the Revenue and Taxation Code Section 4703. There are two alternate methods of computing the minimum. The first method requires the Reserve to maintain a minimum balance of no less than 1% of the total of all taxes levied on the secured roll for the year involved (hereafter "Section 4703 method"). The second method requires the Reserve to maintain a minimum balance of not less than 25% of the total delinquent secured taxes of all participating entities as of the end of the fiscal year (hereafter "Section 4703.2 method").

The Auditor-Controller's office has completed an analysis of which method would offer the most benefit to the County. The Section 4703 method (1% of the total of all taxes levied on the secured roll) requires a minimum balance in the Reserve of $5,667,706. The Section 4703.2 method (25% of the total prior year's delinquent secured taxes) requires a minimum balance in the Fund of $4,123,978. Since the Section 4703.2 method will be most beneficial to the County's General Fund, it is recommended for fiscal year 2023-24 the County use the Section 4703.2 method. The attached resolution includes the use of the Section 4703.2 method of determining the balance in the Reserve for fiscal year 2024-25.

Issue a Promissory Note with the Treasurer and Create a Teeter 2023-24 Note Reserve

Each year a note must be issued to fund the payment of the prior year's delinquent taxes. The structure of the attached note is identical to those of the previous thirty years. The 2024 Note is for $8,115,935 between the County of Napa and the Treasurer of Napa County, representing the 2023-24 delinquencies for those taxing agencies included in the Teeter Plan. The note is for five years with the interest rates as stated, and requires a reserve amount for potential uncollected delinquencies. The reserve amount required for the 2024 note is $243,478 and will be financed/drawn/expensed from the Teeter Tax Loss Reserve, leaving an uncommitted cash of approximately $1.38 million.

Please see Attachment "A" for the history of Teeter Notes issued.

Please see Attachment "B" for the Teeter Buyout Distribution by Taxing Entity.

Attachment A - History of Teeter Notes Issued

The following table details the thirty notes that have previously been issued and the new 2024 Note affected by your action today.

Year of Note	Year Matured or Paid Off	Secured Taxes Delinquency Rate at time of Note	Original Principal	Outstanding Note Balance as of 6/30/24
1993	1998	not available	$ 5,952,213	$ -
1994	1999	not available	$ 2,730,795	$ -
1995	1999	not available	$ 2,500,781	$ -
1996	2000	not available	$ 2,106,087	$ -
1997	2001	not available	$ 2,094,137	$ -
1998	1999	not available	$ 1,227,754	$ -
1999	2003	not available	$ 1,887,177	$ -
2000	2003	1.57%	$ 1,572,934	$ -
2001	2006	1.68%	$ 2,035,165	$ -
2002	2007	1.56%	$ 2,009,986	$ -
2003	2008	1.78%	$ 2,524,243	$ -
2004	2008	1.47%	$ 2,263,932	$ -
2005	2008	1.81%	$ 2,886,199	$ -
2006	2011	1.66%	$ 3,972,372	$ -
2007	2012	2.32%	$ 5,339,600	$ -
2008	2013	3.33%	$ 7,686,681	$ -
2009	2014	3.57%	$ 9,308,650	$ -
2010	2015	2.82%	$ 6,920,620	$ -
2011	2016	2.14%	$ 4,952,007	$ -
2012	2017	2.35%	$ 4,271,055	$ -
2013	2018	1.62%	$ 3,252,981	$ -
2014	2019	1.42%	$ 2,310,450	$ -
2015	2020	1.27%	$ 2,329,880	$ -
2016	2021	1.52%	$ 2,246,730	$ -
2017	2022	1.40%	$ 2,150,466	$ -
2018	2023	1.53%	$ 2,512,654	$ -
2019	2024	1.59%	$ 3,048,567	$ -
2020	2025	2.05%	$ 6,725,750	$ 509,795
2021	2026	1.64%	$ 5,268,793	$ 644,632
2022	2027	1.28%	$ 4,415,604	$ 526,906
2023	2028	1.70%	$ 5,466,440	$ 2,503,255
2024	2029	2.41%	$ 8,115,935	N/A
			Total Note Balance as of 6/30/24	$ 4,184,588

Attachment B – Teeter Buyout Distribution by Taxing Entity

Code	Description	Sub-Division	Teeter Buyout
10000	County General Fund	1050000	1,325,204
10800	Fire Non-Structural	2100000	116,902
11500	County Library	2020001	155,538
11700	Fire Protection	2100000	107,854
	Total County		**1,705,498**
15100	City of Calistoga	9411000	36,367
15200	City of Napa	9412000	424,364
15300	City of St. Helena	9413000	73,718
15400	Town of Yountville	9414000	19,998
18800	City of American Canyon	9415000	157,688
	Total Cities/Town		**712,135**
23100	Lake Berryessa Resort Imp	5220000	556
24100	Napa Berryessa Resort Imp	5240000	804
34700	Monticello Cemetery	2860000	473
36000	Circle Oaks Water	9504000	616
37000	Congress Valley Water	7400000	1,676
38000	American Canyon Fire	9415200	81,933
38500	Mosquito Abatement Dist.	7100000	27,438
42000	Napa Co. Res. Consv	7300000	6,726
42500	Napa River Reclamation	7500000	444
43100	Bay Area Air Quality	9503000	20,727
	Total Special Districts		**141,393**
45000	Howell Mountain Elementary	9020001	23,315
45100	Pope Valley Union Elementary	9060001	19,539
45300	Fairfield/Suisun Unified	9300001	9,346
45500	Calistoga Joint Unified	9010001	220,886
45700	Napa Valley Unified	9050001	2,428,994
45800	St Helena Unified	9070001	495,859
46500	Napa Valley College	9030010	608,078
48300	Solano County Office of Education	9310001	374
49000	Napa County Office of Education	9040001	229,520
49999	ERAF Fund	9490000	920,463
	Total School Districts		**4,956,374**
	Total School Bonds and Other Direct Charges		**600,535**
	Total Teeter Buyout		**8,115,935**

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1416

TO: Board of Supervisors

FROM: Douglas Durward, Director of Child Support Services

REPORT BY: Karina Castañeda, Staff Services Manager

SUBJECT: Approval and authorization to sign Amendment to current Plan of Cooperation

RECOMMENDATION

Approve and authorize the Director of Child Support Services to sign the revised Plan of Cooperation Agreement No. 8677 with the California Department of Child Support Services amending language that addresses the role of the program participants and simplifies existing processes for the Child Support Program. (No Fiscal Impact; Mandatory)

BACKGROUND

All local child support agencies (LCSAs) are required to enter a Plan of Cooperation (POC) with the California Department of Child Support Services (DCSS) to define responsibilities assigned for both the state and local Child Support departments include complying with all federal Title IV-D provisions of the Social Security Act.

This POC allocates responsibilities for administering Title IV-D services between the State Department of Child Support Services and the LCSA, Napa County Department of Child Support Services.

The POC clarifies minor language changes and streamlines several existing processes such as simplifying expected interaction between DCSS and the LCSA's Ombudsperson. The POC also requires information sharing with DCSS regarding any existing LCSA customer service surveys on a regular basis.

Additionally, the POC expands existing processes for required department audits, such as the self-assessment, data reliability, fiscal, and security audits, including the notification of DCSS when the LCSA will have a single audit. The POC also extends the record retention period for safeguarding of federal tax information via Information Security Logs from five to seven years and highlights the location of Exhibit 7, (which provides

already required security language for any new contract), to DCSS's secure website.

The final revision provides clarification regarding the POC renewal period. This POC will automatically renew on October 1, 2025, and continue to renew annually unless new laws, regulations, or requirements necessitate an update.

Requested Action:

1. Approve and authorize the Director of Child Support Services to sign the revised Plan of Cooperation with the California Department of Child Support Services amending language that addresses the role of the program participants and simplifies existing processes for the Child Support Program.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

STATE LOCAL CHILD SUPPORT AGENCY

PLAN OF COOPERATION

FFY 2025

OCTOBER 1, 2024 – SEPTEMBER 30, 2025

Amended October 1, 2024

CALIFORNIA
CHILD SUPPORT SERVICES

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SECTION I: PURPOSE

The purpose of this State / LCSA Plan of Cooperation, hereinafter referred to as the "POC," is to define responsibilities for securing child support, including child support establishment, collection, and disbursement services; medical support; determining paternity; and providing other public services in accordance with the provisions of Title IV-D of the Social Security Act, Title 42 USC § 651 et seq., hereinafter referred to as "Title IV-D," "Title IV-D program," or "Title IV-D services."

This POC is between the Department of Child Support Services, hereinafter referred to as the "Department" or "DCSS" and the Napa County Department of Child Support Services, hereinafter referred to as the "Local Child Support Agency" or "LCSA."

SECTION II: AUTHORITY

Family Code (FC) § 17202 designates the Department as the single organizational unit whose duty it shall be to administer the Title IV-D state plan for securing child and spousal support, medical support, and determining paternity. State plan functions shall be performed by other agencies as required by law, by delegation of the Department, or by cooperative agreements.

FC § 17304(a) requires the Director of the Department to negotiate and enter into cooperative agreements with county and state agencies to carry out the requirements of the state plan for administering the Title IV-D child support program.

FC § 17304(b) requires the Director of the Department to have direct oversight and supervision of the Title IV-D operations of the LCSA. No other local or state agency shall have any authority over the LCSA as to any function relating to its Title IV-D operations.

FC § 17314(b) requires Regional Administrators to oversee the LCSAs to ensure compliance with all state and federal laws and regulations.

SECTION III: GENERAL PROVISIONS

The Department and LCSA shall comply and work in collaboration with all provisions of this POC, Title IV-D of the Social Security Act, and all federal and state laws, regulations, policies and directives.

SECTION IV: DEPARTMENT RESPONSIBILITIES

Per FC § 17304(c), and as a condition of disbursing federal and state funds to the LCSA, ensure a current, signed POC is on file. Amend the POC to reflect new or revised federal and state laws, regulations, policies, and directives as necessary. The Department shall ensure that the LCSA has the POC within 60 days of effective date in order to acquire appropriate approvals.

1) Per FC § 17306(a), develop, adopt and disseminate forms, policies, and procedures to inform the LCSA and other appropriate county agencies of federal and state law, policies, standards, procedures, and instructions relative to Title IV-D services.

2) Per FC § 17310, formulate, adopt, amend, or repeal regulations affecting the purposes, responsibilities, and jurisdiction of the Department consistent with the law and necessary for the administration of the state plan for securing child support and enforcing spousal support and determining paternity.

3) Communicate with the Judicial Branch Partners regarding statewide uniformity issues, statewide standards, LCSA/local court handling of LCSA cases and workload priorities.

4) Per 45 CFR § 302.12(a)(2), maintain an organizational structure and sufficient staff to efficiently and effectively administer and supervise all automation functions for which it is responsible under the Title IV-D state plan and other federal and state automation requirements.

5) Initiate legislation, as appropriate, to improve clarity and efficiency of the child support program and ensure compliance with federal and state laws, regulations, policies, and directives. Consider legislative initiatives proposed to the Department by the LCSA.

6) Analyze pending legislation to identify the impact to the child support program if enacted.

7) Provide quarterly summaries of statewide customer service survey results to the LCSA.

A. Case Management

1) Case Processing

Establish and maintain systems and procedures to facilitate the LCSA administration of the Title IV-D program.

a) Per 45 CFR §302.51(a)(1), accurately collect and distribute child support, medical support, and spousal support payments in accordance with federal and state laws, regulations, policies, and directives. Take all steps necessary to minimize undistributed collections.

b) Extend the full range of Intergovernmental services available under the Title IV-D plan per 45 CFR §302.36.

2) Case Record Maintenance

Per 45 CFR §302.85, manage the Child Support Enforcement (CSE) system and maintain CSE data in accordance with federal and state laws, regulations, policies, and directives for the administration of the Title IV-D program.

3) Record Retention

Maintain all closed Title IV-D case records in CSE for a period of four years and four months from the date of case closure, per 22 California Code of Regulations (CCR) § 111450, unless the case is subject to an open federal or state audit, civil litigation, or a court order which extends the retention period.

Maintain case records that contain IRS federal tax information (FTI) for a period of seven years, per IRS Publication 1075 Section 9.3.3.10.

When required by law, such as FC § 17400(b)(3) for retention of documents electronically filed, but signed under penalty of perjury, ensure that case records are retained as required.

4) Case Complaint Resolution

a) Ombudsperson Program

i) Public Inquiry Response Team coordinates with LCSA Ombudsperson liaison(s) to respond to participants or outside inquiries.

ii) Maintain a statewide list of Ombudspersons.

b) Complaint Resolution Program and State Hearing

i) Maintain the Department portion of the complaint resolution and state hearing process as set forth in FC § 17800 et seq., including maintenance of the Complaint Resolution Tracking System.

ii) Work with the LCSA to facilitate resolution of any complaints as needed.

iii) Provide statewide training regarding handling of participant inquiries, complaint resolution, Complaint Resolution Tracking System and state hearings.

5) Litigation, Writs and Appeals, and Class Action Settlements

Any decision by an appellate court regarding child support can have broad application to state child support policy, all LCSAs, and the Department.

a) Provide a procedure to review incoming appellate case submissions provided by LCSAs including respondent and appellant case submissions. Pursuant to FC §17304(b), review, approve or deny any request from an LCSA to pursue a writ or appeal.

b) Contract with the California Department of Justice to provide appellate representation in Title IV-D appeals, at no cost to LCSA.

c) Provide direction and action regarding statewide enforcement against potential recovery by obligors of settlements arising from class action litigation. This includes, but is not limited to:

   i) Act as the Statewide point of contact for outreach to obtain information and secure data matches.

   ii) Submit income withholding orders or other levy tools and review efficacy of efforts.

B. Parentage Opportunity Program

The California Paternity Opportunity Program (POP) was established in 1995 to comply with the federal mandate (Title 42 United States Code (USC) 666(a)(5)(C)) to have a simple system for an unmarried mother and biological father to establish paternity. For more than 25 years, POP has established paternity for over 3.6 million children in California. In September 2018, Assembly Bill 2684, which proposed to expand the existing voluntary declaration of paternity procedures, was passed into law. AB 2684 amended the Uniform Parentage Act, and effective January 1, 2020, the Paternity Opportunity Program was renamed the Parentage Opportunity Program. DCSS operates the POP in collaboration with the LCSAs as set forth in 45 CFR § 302.31(a)(1), §

302.70(a)(5), § 303.5(g) and FC §§ 7570–7581.

C. Training

1) Collaborate with LCSA to evaluate and administer, as appropriate, a statewide training program which delivers easy to access, quality training to meet LCSA training needs; develop annual training survey to assess those needs.

2) Develop short and long-term program training goals; develop methods/metrics for measuring training effectiveness to meet DCSS and LCSA training program goals.

D. Tribal Relations

Provide statewide leadership, through the Department's tribal liaison, to establish direct and open communication with tribal governments in an effort to establish government-to-government relationships and enter into Memorandums of Understanding with comprehensive Tribal IV-D programs, operating under Title 45 CFR § 309.65(a), which shall be included in the state plan.

1) Manage shared tribal IV-D cases where both California and any Tribal IV-D program in California have an interest in the case.

a) Coordinate the transfer of IV-D cases to any comprehensive Tribal IV-D program in California where court action has not been initiated.

b) Coordinate case transfer under California Rule of Court, Rule 5.372, with the LCSA and any Tribal IV-D program in California, where appropriate.

2) Provide locate services to any comprehensive Tribal IV-D program operating under Title 45 CFR § 309.65(a) consistent with Title 42, USC § 654(26) and § 666(c)(1)(D), Title 45 CFR § 302.35, and FC § 17212.

3) Extend the full range of services to any Tribal IV-D program operating under Title 45 CFR § 309.65(a) except for Tribal IV-D responding intergovernmental cases.

E. Audits

1) Data Reliability

a) Coordinate and oversee data reliability monitoring to ensure LCSA maintains complete and reliable data in accordance with the standards set forth by the federal incentive funding system outlined in the federal Child Support Performance and Incentive Act of 1998.

b) Take all steps necessary to ensure the accuracy of all data, including data entered into the state automated system; provide policy and system documentation to ensure data is entered correctly; and ensure LCSA is in compliance with federal state data reliability standards. The implementation of required corrective actions is included in these steps.

c) Coordinate and oversee data reliability reviews and participate in other data reliability efforts consistent with Department directives. This ensures the maintenance of complete and reliable data in accordance with the standards set forth by the federal incentive funding system.

d) Coordinate, oversee, and participate in all annual federal data reliability audit activities as needed, including, but not limited to, the following:

i) Provide LCSA-specific case samples selected by federal auditors to validate;

ii) Coordinate, facilitate, and attend conference calls to discuss questions;

iii) Request the LCSA provide any case documentation required;

iv) Work with the LCSA to address and resolve issues with problem cases; and

v) Work with the LCSA to address and resolve any case variances as identified by federal auditors.

2) *Administrative Expense Claim Schedule and Certification*

Effective March 31, 2020, the CS356 application is no longer accessible to LCSAs or the County Auditor/Controllers. DCSS has retained and has access to all historical data. Expenditure claims formerly submitted through the CS356 system should be submitted into the Budget and Expenditure Claiming Application (BECA).

a) Perform fiscal reviews of reported expenditures and abatements on the Administrative Expense Claim Schedule.

b) Coordinate and conduct audits and reviews of the LCSAs, to ensure compliance with program requirements.

c) Provide LCSA with notification of the review, audit scope, methodology and audit process.

d) Request and require the LCSA to provide all fiscal and administrative records necessary to comply with the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in Title 2 CFR Part 200 as well as coordinating access to necessary case and financial records.

e) Follow up on allegations of fiscal noncompliance and evaluate, monitor and document the risk identified and the impact to the child support program.

f) Report on LCSA compliance with the Uniform Requirements, Child Support Program Regulations and in relation to costs claimed in BECA.

g) Obtain corrective action within 6 months following the issuance of the final report.

3) *Other Audits*

Coordinate and oversee federal and state auditors when conducting required audits to assess completeness, accuracy, reliability, and security of data used in calculating

the performance indicators. This includes, but is not limited to, the following:

a) Department of Finance, Bureau of State Audits, and contract auditors as prescribed by the Department, access to all requested information in order to conduct audits/reviews including, but not limited to, data reliability audits, administrative and expenditure claim audits, and Internal Revenue Service (IRS) Safeguard reviews.

b) Require LCSA to provide to independent auditors all case records necessary to comply with the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in Title 2 CFR Part 200 as well as coordinating access to necessary case and financial records. Monitor data reliability to ensure the LCSA maintains complete and reliable data in accordance with the standards set forth by the federal incentive funding system outlined in the federal Child Support Performance and Incentive Act of 1998.

F. Compliance and Monitoring

In accordance with 45 CFR §§ 303 and 308, the Department will conduct the Annual Federal Self-Assessment Review on a sample of selected cases beginning October 1st of each year to measure compliance with and ensure the implementation of actions necessary to meet federal requirements. The Department will inform the LCSA Compliance Coordinator of the preliminary findings of non-compliance. The Department will make a final determination regarding the preliminary findings in consideration of additional information provided by the LCSA. The Department will finalize the results of the review by March 31st of the following year. The Department will notify the LCSA Director and Compliance Coordinator of the requirements to develop a corrective action plan if non-compliance findings have been determined, review the LCSA's corrective action plan for approval or consult with LCSA for revision, report the results of the Federal Self-Assessment Review and any LCSA corrective action plan(s) to the federal Office of Child Support Services (OCSS),

and evaluate LCSA's progress in achieving compliance through the implementation of the corrective action plan. In accordance with FC Division 17, Chapters 1 and 2, and Title 22 CCR Division 13. The Department will assess and identify the need for compliance reviews in programmatic areas. Compliance reviews may entail a review of cases, data, or an onsite review at the LCSA. DCSS will notify the LCSA Director and Compliance Coordinator of the requirements to develop an improvement strategy if non-compliance findings have been determined, review the LCSA's improvement strategy plan for approval or consult with LCSA for revision, and evaluate LCSA's progress in achieving compliance through the implementation of the improvement strategy.

G. Outreach

1) Per 45 CFR § 302.30 and FC § 17210, establish systems for informing the public, including persons receiving support and parents ordered to pay support, of its services and operations.

2) Make Title IV-D outreach materials available to the public and the LCSA.

3) Provide appropriate translation of statewide public education and outreach materials and required forms.

H. Program Performance

1) *Performance Management Plan*

   a) Develop a state strategic plan and annual goals.

   b) Develop an annual performance plan aligned with the state strategic plan and annual goals.

   c) Review LCSA performance management plans to ensure they incorporate annual goals established by the state.

2) *Corrective Action*

a) Require a corrective action plan for any area of noncompliance identified by a federal or state audit, or state program or local review or assessment, or resulting from any conditions of program deficiencies pursuant to FC §17602.

I. Fiscal Administration

In accordance with federal and state laws, regulations, policies, and directives, the Department shall provide, maintain, and update systems, processes, and guidelines in support of LCSAs as they perform fiscal activities outlined in the LCSA Fiscal and Administrative Policy Manual and Department letters.

J. Information Security and Privacy Protection

1) Ensure access to information from the following sources, including but not limited to, IRS, OCSS, Department of Motor Vehicles, Franchise Tax Board, Social Security Administration, Medi-Cal Eligibility Data System, Title IV-A and the Employment Development Department, is consistent with the terms and conditions of agreements entered into between the Department and those information providers, including the terms and conditions of the DCSS Medi-Cal Privacy and Security Agreement with the California Department of Health Care Services.

DCSS must also ensure access is consistent with the terms and conditions of the following agreements, including but not limited to, the Information Exchange Agreement between the Social Security Administration and DCSS, Information Exchange Agreement Attachment 2 - Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and California Health and Human Services, and Information Exchange Agreement Attachment 4 - "Electronic Information Exchange Security Requirements for State and Local Agencies Exchanging Electronic Information with the Social Security Administration" (Technical Systems Security Requirements). These sensitive documents are available on the Information Security site on

California Child Support Central.

2) Provide governance and oversight on Information Security and Privacy related issues and represent the Department and LCSA to external agencies on related matters.

3) Maintain and disseminate Information Security policies and standards consistent with state and federal regulations (see DCSS Information Security Manual, Section 1003 References) and industry best practices.

4) Provide assistance with maintenance of Business Continuity Plans.

5) Follow federal and state requirements for Information Security Incident Reporting.

6) Implement and manage a security safeguards review program which assesses local compliance with all security-related requirements; and assist LCSA Directors and staff with compliance efforts.

7) Coordinate all federal and state Information Security Reporting requirements to include the annual IRS Safeguard Security Report, Business Continuity Plans, and Incident Reporting.

8) Maintain an Information Security Awareness Training program pursuant to federal and state mandates.

9) Monitor access to all information and systems maintained by the Department.

K. Information Technology

1) *IT Policies and Procedures*

Establish, maintain and oversee Information Technology (IT) policies and procedures for child support IT systems in compliance with the Code of Federal Regulations, the

State Administrative Manual (SAM), IRS Publication 1075 (including attached Exhibit 7, *Safeguarding Contract Language*), the Statewide Information Management Manual, the OCSS Security Agreement and the LCSA Fiscal and Administrative Policy Manual.

2) IT Procurements

a) Manage and oversee procurements of IT goods and services in accordance with state and federal laws, regulations, and policies as stated herein. Acquire IT goods and services in accordance with the Principles for IT Procurement per 45 CFR § 95.617, SAM § 5230.4 and Public Contract Code § 12100.

b) Provide oversight of IT procurements to support a new technology project.

c) Provide language to ensure software ownership rights and modification information is incorporated in all applicable procurements.

3) IT Asset Management

Manage state-owned IT assets for the child support program; including identification and classification of state-owned hardware and software, telecommunications, maintenance costs and expenditures, support requirements, and the ongoing refresh activities necessary to maintain the IT assets per SAM § 4989.

Establish and maintain policies and procedures for management of IT state-owned assets in accordance with state and federal laws, regulations, OCSS Security Agreement, LCSA Fiscal and Administrative Policy Manual, IRS Publication 1075 (including attached Exhibit 7, *Safeguarding Contract Language*), and policies.

a) Manage IT equipment, maintain inventory records on the equipment, and take periodic physical inventories per 45 CFR § 95.707, and Department policies.

b) Establish and maintain contracts to support the warranty of state-owned assets.

c) Work with LCSA and vendors to provide replacements of IT equipment that is no longer able to meet the operational requirements.

d) Develop and implement a technology refresh plan to replace equipment prior to its end of support or lifecycle per SAM § 5001.

e) Manage disposition of all IT assets per 45 CFR § 95.707 and SAM § 5900, § 8633, and § 8640.

4) Systems Development

Responsible and accountable for ensuring the development of technology adheres to the Department, state, and federal regulations and policies.

a) Oversee the development of new technology systems or applications to support the child support program.

b) Ensure information security controls are designed in new system development per SAM § 5315 and the OCSS Security Agreement.

L. Grants

1) Federal Grants

Section 1115(a) of the Social Security Act provides the OCSS with authority to fund demonstration grants. Only State Title IV-D agencies, or the state umbrella agency of which they are a part of, can receive 1115 Demonstration Grants.

a) Monitor Section 1115 Demonstration Grant forecasts and announcements.

b) Alert LCSA of potential forecasts, announcements, and timelines for national child support grant program opportunities.

c) Provide support to LCSA in preparing grant conceptual proposals.

d) Assign a grant sponsor to assist the LCSA in the application process for any grant proposal the Department has approved in concept.

e) Submit grant application documents to OCSS. Monitor funded grant projects through completion.

f) Assist LCSA in preparation of periodic and end-of-project performance and financial grant reports; submit to OCSS.

2) Other Grants

Other grants, whether federal, state or local (private or public) that involve child support participants (human subjects) and require data extracts from CSE to support a research effort will be discussed in a timely manner between the LCSA and Department prior to submission or commitment of support to a local partner agency that may be preparing a grant application.

a) Provide support to LCSA in considering the necessity of submitting a request to the Committee for the Protection of Human Subjects, the designated Institutional Review Board on behalf of all departments under California Health and Human Services.

b) If determined necessary, assist LCSA in completing Institutional Review Board request application and submitting to Committee for the Protection of Human Subjects.

c) If the Institutional Review Board request application is approved, assist LCSA with all monitoring and reporting requirements.

M. Non-Compliance

1) If the LCSA raises a concern where DCSS fails to meet the terms and conditions

of this POC and non-compliance becomes an issue, the parties agree to an informal resolution process. DCSS and the LCSA will collaborate how best to correct the issue.

2) The Department remains subject to all program requirements as outlined in statute and regulations.

3) If the LCSA is subject to the formal non-compliance process in FC § 17604, and submits a justification for reconsideration, DCSS will:

a) Consider and make a decision on all appeals within 30 calendar days of receipt of the appeal.

b) Notify the LCSA in writing, of the results of the request for reconsideration within 30 calendar days of receipt.

c) Restore any withheld funding to the LCSA if the facts presented in the appeal persuade the Department that the sanctions should not have been imposed.

SECTION V: LCSA RESPONSIBILITIES

As a condition of receiving federal and state funds from the Department, ensure a current, signed POC is received by the Department prior to the beginning of each Federal Fiscal Year.

1) Responsible to provide all Title IV-D program services as required by federal or state laws, regulations, policies, or directives within Napa County as directed by the Department and described herein.

2) Notify the Director and Regional Administrator of any situation or circumstance directly impacting the operation of the LCSA, including closure for holidays, furlough and other county specific circumstances.

3) Promptly notify the Director and Regional Administrator of changes in

LCSA Executive Management positions.

4) Conduct customer service surveys regularly. LCSAs using internal surveys provide results regularly to the Department.

A. Case Management

1) Case Processing

a) Accept all applications and referrals requesting service in accordance with 45 CFR § 303.2.

b) Per 45 CFR § 303.4 and 45 CFR § 303.31(b), establish child support and medical support orders.

c) Per 45 CFR § 302.31 and 22 CCR § 112210, ensure all actions on a Title IV-D case have been suspended; when:

i) Notified by the County Welfare Department of good cause for non-cooperation pursuant to Welfare and Institutions Code (WIC) § 11477.04.

ii) The case is under the jurisdiction of the juvenile court as provided in WIC §300.

d) In accordance with 45 CFR § 303.3, conduct locate activities, using all appropriate federal, state, and local locate resources to assist in the location of all parents ordered to pay support (PPS) or persons ordered to receive support (PRS) whose whereabouts or assets are unknown.

e) Initiate appropriate enforcement actions to obtain payment of current and past due support in all Title IV-D cases with court orders for child and/or medical support in accordance with federal and state laws, regulations and policies (45 CFR § 303.6).

f) Enter into CSE and report to the County Welfare Department, when known, the following on Title IV-D cases:
   i) Any welfare applicant/recipient who refuses to cooperate with the LCSA in the establishment or enforcement of child support orders (45 CFR §264.30).
   ii) Payments directly received by aided PRS in accordance with 45 CFR § 302.32(a).

g) In accordance with 45 CFR § 303.8, review child support orders when requested by a PPS or PRS, or, when the LCSA becomes aware of a change of circumstances which may affect the support obligation. Review and, if appropriate, adjust orders for current Temporary Assistance for Needy Families (TANF).

h) Manage Title IV-D cases from other jurisdictions pursuant to the Uniform Interstate Family Support Act (FC §§ 5700.101-5700.905).

i) Comply with federal and state laws, regulations, policies, and directives for case closure (45 CFR § 303.11).

j) Ensure all financial processing is in accordance with 45 CFR § 302.32(b).

2) Case Records Maintenance

Prepare and maintain records for each Title IV-D case which includes information necessary for proper and efficient processing of cases in accordance with federal and state laws, regulations, policies, and directives for the administration of the Title IV-D program (45 CFR § 302.15). This includes, but is not limited to, the following:

a) Applications for child support services.

b) Records created to locate and identify PPSs, to establish paternity, and to obtain, modify, and enforce support orders, including medical support, and the costs incurred in such actions. This includes any relevant facts and actions taken by the LCSA and the results of such action.

c) All records pertaining to complaint resolution and state hearings (22 CCR § 120107).

3) Record Retention

a) For data housed by and under control of the LCSA, maintain all Title IV-D closed case records for a period of four years and four months from the date of case closure per 22 CCR § 111450, and purge from all systems unless the case is subject to an open federal or state audit, civil litigation, or a court order that extends the retention period.

b) Extend the retention period and maintain case records for any open federal or state audit, civil litigation, or a court order until the audit is complete, the court case is closed, or a court ordered extension of the retention period expires.

c) Per IRS Publication 1075, retain electronic and non-electronic FTI logs for seven years.

d) The LCSA may send documents to central imaging or use local scanning capabilities. All documents scanned into CSE must be verified as readable.

   i) Once the documents have been verified, those documents must be destroyed via the LCSAs' confidential destruct process.

e) Where an LCSA opts to electronically file documents signed under penalty of perjury, the LCSA will ensure compliance with FC § 17400(b)(3) by uploading a copy of the signed document to CSE for retention for the period required by law.

f) Where the LCSA opts to maintain the originally signed document in hard copy, per the option under Code of Civil Procedure § 1010.6(b)(2), the LCSA will maintain this original for the period required under Government Code § 68152(a)(7).

4) Case Complaint Resolution

a) Ombudsperson

i) Have in place an Ombudsperson who is responsible for the implementation of a program which provides assistance to PRSs and PPSs, employers, and the public on inquiries regarding the child support program, local complaint resolution process, and the state hearing process. The Ombudsperson shall be the liaison with the Department for all issues relating to the Ombudsperson program and shall review complaint activity.

ii) The Ombudsperson is the designated State Hearing Coordinator for the purpose of managing the hearing schedule, securing the hearing site, contracting, and acting as the contact person for the complainant and liaison with the State Hearing Office.

b) Complaint Resolution Program and State Hearing

Maintain a complaint resolution program and state hearing process as set forth in FC § 17800, et seq., and as specified in Title 22 CCR § 120100, et seq. The LCSA shall:

i) Maintain the complaint resolution process and seek to resolve all complaints within 30 days, accurately track and report any complaints in the Department's Complaint Resolution Tracking System, make complaint resolution activity log entries in the CSE system, image or send to central scan complaint resolution documents, work with the Department's Office of Legal Services staff to facilitate resolution of any complaints as needed, and continue to work with customers to resolve issues regardless of whether or not the customer requested a state hearing. Follow the procedures detailed in the Complaint Resolution and

State Hearing procedures located in the Statewide Procedures Manual on California Child Support Central.

5) *Litigation, Writs and Appeals, and Class Action Settlements*

Any decision by an appellate court regarding child support can have broad application to state child support policy, all LCSAs, and the Department.

a) LCSA shall notify the Department using the Appellate Case Review process/form as soon as possible, but no later than five business days after receipt of notice of an appeal in a Title IV-D case and provide an LCSA attorney to discuss the case at the next Appellate Advisory Committee meeting.

b) LCSAs who wish to pursue a writ or appeal of a court's decision on a Title IV-D case, shall submit a request to the Department using the Appellate Case Review process/form prior to taking any appellate action. Consistent with the authority established in FC § 17304(b), a writ or appeal shall not be filed unless approved by the Department. However, this provision is not intended to prevent any action by a county counsel, or private counsel hired to act in the same capacity as a county counsel, to defend the county from any action for damages, including sanctions.

c) The LCSA, when informed of such action being taken by the county counsel or private counsel, shall inform the Department by way of email (DCSSLegalServicesMailbox@dcss.ca.gov) when the action is related to a child support matter.

d) Notify the Department of class actions and class action settlements where LCSAs believe statewide enforcement against such settlements may be beneficial to collect outstanding child support obligations.

   i) Cooperate with DCSS regarding the Department's statewide management of this enforcement, unless and until the LCSA is

notified that the Department will not pursue statewide enforcement.

ii) This section does not prohibit an LCSA from taking action to intercept potential disbursements due to individual, already-identified non-custodial parents who are plaintiffs or claimants in the class action.

B. Parentage Opportunity Program

Legal paternity and parentage can be established by the execution of a Voluntary Declaration of Parentage (VDOP). The VDOP is signed in the presence of an authorized witness at the time of the child's birth or anytime thereafter. Witnessing agencies, which include birthing hospitals and other entities that provide prenatal services, local registrars of births and deaths, courts, county welfare departments, and LCSAs within the state provide information about POP, witness the completion of the VDOP, and are responsible for submitting signed VDOPs to DCSS for filing. California currently has over 750 authorized witnessing agencies throughout the state, that participate by promoting and administering POP, in collaboration with DCSS, to provide voluntary paternity and parentage establishment services as set forth in 45 CFR § 302.31(a)(1), § 302.70(a)(5), § 303.5(g) and FC §§ 7570 – 7577.

LCSA shall establish a "POP Coordinator" as a point of contact for DCSS, maintain a written agreement with local birthing hospitals and other entities that provide prenatal services to ensure that completed VDOP forms are submitted to DCSS within 20 days of the date the last parent signed the VDOP and pay a sum of $10 for each VDOP that is subsequently filed by DCSS, and submit each written agreement with a birthing hospital and other entities that provide prenatal services to DCSS for upload into the Cooperative Agreement Tracking System. Each LCSA shall provide training and outreach to staff of all authorized agencies within the county, including birthing hospitals, to ensure staff are able to explain to parents their rights and responsibilities, respond to questions, witness parents' signatures, and attend periodic POP training provided by DCSS.

C. Training

1) Collaborate with DCSS to evaluate and administer, as appropriate, a statewide training program which delivers easy to access, quality training to meet LCSA training needs; respond to DCSS annual survey to communicate those needs.

2) When statewide standards have been developed, ensure that locally developed child support program related training material complies with statewide standards, federal and state policies, regulations and laws.

D. Tribal Relations

Maximize opportunities to establish and maintain effective working relationships with tribal governments.

Pursuant to Title 42 USC Chapter 7 § 654(7) and (33), and Title 45 CFR § 302.34, the LCSA may enter into cooperative agreements with other entities, including Indian tribes or tribal organizations provided they are included in the Title IV-D state plan. LCSAs pursuing working relationships with tribal governments could include, but are not limited to, developing:

1) Cooperative agreements with individual Tribal TANF programs to establish procedures for referring Tribal TANF recipients to the LCSA to secure Title IV-D services and to memorialize the expectations of both the Tribal TANF program and the LCSA. This agreement must be submitted to the Department prior to enactment for approval.

2) Cooperative agreements with federally recognized tribes, pursuant to the Full Faith and Credit for Child Support Orders Act (FFCCSOA) which specifically applies to Indian Country (as defined by Title 18 USC § 1151), as well as States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions, to recognize and enforce the other's valid child support orders, i.e., orders entered with appropriate subject matter and personal jurisdiction. The FFCCSOA requires the appropriate parties of such

jurisdiction to:

a) Enforce, according to its terms, a child support order consistent with FFCCSOA by a court or agency of another State.

b) Modify such an order only in accordance with FFCCSOA.

3) In addition, the LCSA shall take the following actions:

a) Appoint a tribal liaison to provide local expertise on tribal matters and serve as a single point of contact for tribes, tribal organizations, and Tribal IV-D programs; and participate in all activities convened by the Department's tribal liaison related to tribal issues.

b) Initiate and appear at court proceedings under California Rule of Court, Rule 5.372 at the request of the Department.

c) Provide notice to the Tribal IV-D program operating under Title 45 CFR § 309.65(a) in California.

d) File a motion with the court that shows the manner in which the intent to request case transfer was made in accordance with FC § 17212 and which states whether any party provided with notice objected, the identity of the party objecting, and the reason indicated for the objection.

e) Conduct itself in accordance with FC § 17406 which includes providing the court with authorities to secure information concerning tribal laws and the legal effect of tribal judgments or orders under FC § 5700.317.

f) Provide assistance, upon request, with case account and unreimbursed assistance pool audits as needed.

g) Enforce, according to its terms, a child support order consistent with FFCCSOA by a court or agency of another State.

h) Modify such a child support order only in accordance with FFCCSOA.

i) Provide the full range of services available under the Title IV-D plan in responding to intergovernmental cases under Title 45 CFR § 302.36, to any comprehensive Tribal IV-D programs operating under Title 45 CFR§ 309.65(a).

E. Audits

1) Data Reliability

a) Maintain complete and reliable data in accordance with the standards set forth by the federal incentive funding system outlined in the federal Child Support Performance and Incentive Act of 1998.

b) Take all steps necessary to ensure the accuracy of all data, including data entered into CSE; follow policy and system documentation to ensure data is entered correctly; and maintain compliance with federal and state data reliability standards. The implementation of required corrective actions is included in these steps.

c) To ensure the maintenance of complete and reliable data is in accordance with the standards set forth by the federal incentive funding system, conduct quarterly data reliability reviews and participate in other data reliability efforts consistent with Department directives.

d) Participate in all annual federal data reliability audit activities as needed, including, but not limited to, the following:

i) Validation of data in cases that are part of the sample selected by the federal auditors;

ii) Submission of any related questions to the Department;

iii) Attending conference calls to discuss questions;

iv) Assemble and provide any hardcopy case documentation required, and image such documents to ensure availability of documents in CSE;

v) Working with the Department to address and resolve issues with problem cases; and

vi) Working with the Department to address and resolve any case variances as identified by the federal auditors.

e) Provide, when requested, the number of full-time equivalent staff including part-time and contracted staff each month.

2) Administrative Expense Claim Schedule and Certification

Effective March 31, 2020, the CS356 application is no longer accessible to LCSAs or the County Auditor/Controllers. DCSS has retained and has access to all historical data. Expenditure claims formerly submitted through the CS356 system should be submitted into BECA.

a) Monitor the fiscal administration and program performance to ensure compliance with all related laws, regulations and policy in administering the child support program, including the adequate safeguard of program assets.

b) Implement an effective system of internal controls.

c) Ensure proper reporting of claimed costs on the Administrative Expense Claim Schedule and in BECA.

d) Gather and provide the auditor access to all records and documents to support fiscal and administrative compliance.

e) Coordinate and provide staff for interviews, conference calls, entrance conferences, and exit conferences.

f) Provide a written response to reported audit findings (if any).

g) Develop a plan of action and provide documentation that demonstrates corrective action of findings was taken within 6 months following the issuance

of the final report (as needed).

3) Other Audits

Allow federal and state auditors to conduct required audits to assess completeness, accuracy, reliability, and security of data used in calculating the performance indicators. This includes, but is not limited to, the following:

a) Department of Finance, Bureau of State Audits, California Department of Child Support Services and contract auditors as prescribed by the Department access to all requested information in order to conduct audits/review including, but not limited to, data reliability audits, administrative and expenditure claims audits, and IRS Safeguard reviews.

b) Provide necessary case records to independent auditors. Recipients and sub-recipients are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 2 CFR Part 200, Subpart F – Audit Requirement Sections 200.500 – 200.521. In addition, each sub-recipient shall permit independent auditors to have access to the records and financial statements. The LCSA, when informed of a single audit, shall inform the Department by way of email (DCSSOAC@dcss.ca.gov) and provide the commencement date and the period under review.

F. Compliance and Monitoring

Pursuant to 45 CFR §§ 303 and 308 LCSA will respond to inquiries by the Department in regard to the Annual Federal Self-Assessment Review findings and develop and submit a corrective action plan to DCSS for approval if the LCSA is deemed to be out of compliance.

Pursuant to FC Division 17, Chapters 1 and 2, and Title 22 CCR Division 13, LCSA will respond to inquiries by DCSS regarding the programmatic areas determined in need of compliance reviews and develop and submit an improvement strategy to DCSS for approval if the LCSA is deemed to be out of compliance.

G. Outreach

1) Per 45 CFR § 302.30 and FC § 17210, conduct outreach programs to inform the public of the availability of Title IV-D services.

2) Collaborate with the Department to make Title IV-D outreach materials available to the public.

H. Program Performance

1) *Performance Management Plan*

Implement a performance management plan.

a) Align tactics with the Department's Strategic Plan and annual goals.

b) Focus on enhancing the delivery of program services and improved performance.

2) *Corrective Action*

Develop and implement a corrective action plan, as required by the Department and/or the federal government, for any area of noncompliance identified by a federal or state audit, or state program or local review or assessment, or resulting from any conditions of program deficiencies as may be required by the Department pursuant to FC § 17602.

I. Fiscal Administration

LCSAs shall effectively manage their budget and ensure expenditures adhere to federal, state, and local guidelines throughout the year to remain within their total Administrative and Electronic Data Processing allocations. LCSAs shall perform fiscal activities and submit complete and accurate financial and statistical information in accordance with federal and state laws, regulations, the LCSA Fiscal and Administrative Policy Manual and Department letters.

J. Information Security and Privacy Protection

Establish, implement, and enforce information security protocols consistent with the Department Information Security Manual, IRS Publication 1075 (including attached Exhibit 7, *Safeguarding Contract Language*), and other relevant information security authority such as state and federal law or recognized national standards

1) Implement policies and procedures consistent with the Information Security Manual to ensure child support customer information is secure and protected from intentional and unintentional misuse or exposure. Controls include but are not limited to:

a) Limit access, use or disclosure of confidential child support information to purposes described in IRS Code 6103(p)(4), 6103 (l)(6), 6103 (l)(8), 6103 (l)(10), Title 42 USC § 653a (f), (g) and (h); Title 45 CFR § 302.35, § 307.10, § 307.11, § 307.13, and FC § 17212, and SAM § 5300. Maintain and disseminate Information Security policies and standards consistent with 5 USC § 552a, 42 USC § 654(26), 45 CFR § 95.621, 45 CFR § 302.85, 45 CFR§ 303.21, 45 CFR § 305.60, IRS Publication 1075 (including attached Exhibit 7, *Safeguarding Contract Language*), NIST 800-53 rev. 4, CA Civil Code § 1798.29, SAM § 5300, and Payment Card Industry Data Security Standard version 3.0.

b) Include safeguarding language in any agreement or contract defining access, user disclosure, and disposal of confidential child support information by third party organizations. Specific safeguarding language is available on the Information Security site on California Child Support Central.

c) Ensure personally identifying information is not subject to public disclosure.

d) Comply with the confidentiality provisions of FC § 17212 (Ensuring the Confidentiality of Support Enforcement Records), and Title 22 CCR §§ 111430-111440.

e) Comply with provisions of IRS Publication 1075 (including attached Exhibit 7, *Safeguarding Contract Language*) to restrict disclosure of FTI.

2) Ensure access to information from the following sources, including, but not limited to the IRS, OCSS, Social Security Administration, Department of Motor Vehicles, Medi-Cal Eligibility Data System, Title IV-A and Employment Development Department, is consistent with the terms and conditions of agreements entered into between the Department and those information providers, including the terms and conditions of the Medi-Cal Privacy and Security Agreement with the California Department of Health Care Services.

LCSA must also ensure access is consistent with the terms and conditions of the following agreements, including but not limited to, the Information Exchange Agreement between the Social Security Administration and DCSS, Information Exchange Agreement Attachment 2 - Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and California Health and Human Services, and Information Exchange Agreement Attachment 4,"Electronic Information Exchange Security Requirements for State and Local Agencies Exchanging Electronic Information with the Social Security Administration" (Technical Systems Security Requirements). These sensitive documents are available on the Information Security site on California Child Support Central.

3) Maintain Business Continuity Plans to ensure appropriate level of service continuity. Business Continuity Plans shall be updated annually and submitted to the Department upon request.

4) All LCSA employees are required to successfully complete the online Department Security Awareness Training Program prior to being granted access

to any child support information assets. Annually thereafter, the online training program must be completed to ensure compliance to departmental security awareness management requirements.

a) The LCSA will ensure all contractors/vendors successfully complete at initial hire and annually thereafter the Department Contractor/Vendor Security Awareness Training provided by the Department's Information Security Office.
b) The LCSA is responsible for keeping an annual record of the contractor/vendors confidentiality statement, or upon new hire.

5) Comply with information security incident management in accordance with the requirements listed in the Incident Response Policy and cooperate with the Department to effectively respond and mitigate all incidents.

6) Notify the Department Information Security Office prior to developing any hardware or software, including applications, tools or macros, that would interface with Department systems or use or manipulate child support data, including those that would download, extract and/or store that data.

7) Immediately report any suspected or known security or privacy related issues to the Department's Information Security Office.

K. Information Technology

1) IT Policies and Procedures

Comply with Information Technology policies and procedures in compliance with the Code of Federal Regulations, Title 45, the SAM §§ 4800-5900, IRS Publication 1075 (including attached Exhibit 7, *Safeguarding Contract Language*), the State Information Management Manual, and the LCSA Fiscal and Administrative Policy Manual.

Submit complete and accurate information to the Department for IT services as required by Departmental, state and federal laws, regulations, and policies.

2) *IT Procurements*

a) Comply with the Department IT Procurement processes which are regulated per state policies and procedures.
b) Obtain prior Departmental approval for IT Procurements as identified in the LCSA Fiscal and Administrative Policy Manual.

3) *IT Asset Management*

Comply with Departmental, state and federal laws, regulations, policies, and LCSA Fiscal and Administrative Policy Manual to ensure effective tracking and management of state- owned IT assets for the child support program.

a) Submit a notification when moving state-owned IT assets. The notification shall be submitted to the Department a minimum of 60 days prior to the anticipated date of physical relocation of the state-owned IT assets. A move is defined as a relocation of an asset to a different physical building address in the same county and the exchange of state-owned IT assets with other LCSAs.

b) Submit a list of state-owned IT assets to be surveyed for disposal. The list shall be submitted to the Department within a minimum of 30 days for approval/denial and handling instructions.

c) Comply with the OCSS Security Agreement in that State-owned equipment has the appropriate software with the latest updates to protect against attacks, including, at a minimum, current antivirus software and up-to-date system patches and other software patches.

4) *Systems Development*

a) Obtain approval from the Department through the DCSS IT Governance Process prior to the development of software, automation processes, and

other technology related systems to support the child support program utilizing Child Support Program data.

b) Comply with Departmental, state and federal laws, regulations, policies and instructions for system development activities per SAM § 4800, IRS 1075 Publication (including attached Exhibit 7, *Safeguarding Contract Language*), and the OCSS Security Agreement.

L. Grants

1) Federal Grants

Section 1115(a) of the Social Security Act provides the OCSS with authority to fund demonstration grants. Only State Title IV-D agencies, or the state umbrella agency of which they are a part of, can receive 1115 Demonstration Grants.

a) LCSA may submit a conceptual proposal to the Department.

b) If the state is awarded a grant by OCSS, the LCSA, as the demonstration site, will ensure milestones and projects are on track through completion of the grant.

c) Communicate with the Department on all grant activities.

d) Prepare all periodic and end-of-project performance and financial grant reports and,

e) Submit all grant reports to the Department for review, approval, and submission to OCSS.

2) Other Grants

Other grants, whether federal, state, or local (private or public) that involve child support participants (human subjects) and require data extracts from CSE to support a research effort will be discussed in a timely manner between the LCSA

and Department prior to submission or commitment of support to a local partner agency that may be preparing a grant application.

a) LCSA will consult with DCSS in considering the necessity of submitting a request to the Committee for the Protection of Human Subjects, the designated Institutional Review Board on behalf of all departments under the California Health and Human Services Agency

b) If determined necessary, the LCSA will consult with DCSS in completing the Institutional Review Board request application.

c) If the Institutional Review Board request application is approved, LCSA will consult with DCSS to ensure all monitoring and reporting requirements are met.

M. Non-Compliance

1) If the LCSA fails to meet the terms and conditions of this POC, and non-compliance becomes an issue, the parties agree to an informal resolution process. DCSS and the LCSA will collaborate how best to correct the issue.

2) Any program compliance issue that cannot be resolved through the informal resolution process, may be escalated to the formal process outlined in FC § 17604.

3) If the LCSA is subject to the formal non-compliance process in FC § 17604 and chooses to request reconsideration from the Director of the Department or his/her designee, the LCSA will submit a justification for not meeting a requirement in this agreement. This assumes new or additional information, not previously available to either the LCSA or to the Department, has come to light and could substantially alter the position of the state and, subsequently, the outcome for the LCSA. The justification must be submitted within 30 working days from the date the Department's notification letter to the LCSA is postmarked.

SECTION VI: ADDITIONAL PROVISIONS

A. Certification of Contractor(s)

Certify, by signing this POC, that neither it nor its principals are presently debarred, suspended, ineligible, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the transaction by any federal department or agency pursuant to Executive Order 12549, and 2 CFR Part 382, whenever applicable. And that a contractor providing Title IV-D services must certify by signing an agreement that neither it nor its principals are presently debarred, proposed for debarment, declared ineligible, or voluntarily excluded from participating in the transaction by any federal department or agency. Where the prospective contractor, as the recipient of federal funds, is unable to certify to any of the statements in the certification, such contractor must attach an explanation to their proposal. If the LCSA is unable to certify any of these statements, it must attach an explanation to that effect to the POC at the time of signing.

B. Certification of Lobbying

1) Certify by signing this POC, that no federal appropriated funds will be paid by, or on behalf of, the LCSA, to any person for influencing or attempting to influence an officer or employee of any agency; a member of Congress; an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2) Include language of this certification in the award document for sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 USC § 1352. Any person who fails to file the

required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3) Allow for inspection, review, and/or audit by authorized federal, state, regional, and county officials all Title IV-D records maintained pursuant to this POC.

C. State and Federal Law Conflicts

To the extent that any provision of this POC or portion thereof is in conflict with any federal laws and/or state laws, and/or implementing federal regulations and/or state regulations, the laws and/or implementing regulations supersede such provision or portion thereof.

D. Severability

If any provision of this POC or any portion is adjudged to be invalid by a court of competent jurisdiction, or if any provision of this POC or a portion loses its force or effect as a result of legislative action, that judgment or action does not affect the remainder of the provisions of this POC.

SECTION VII: TERM AND APPROVAL

Effective Date: October 1, 2024 **Expiration Date**: September 30, 2025

The initial intended term of this POC is from the effective date until the end of the federal fiscal year. However, this POC shall automatically renew for an additional federal fiscal year, until and unless it is expressly superseded by a future POC. This POC shall also be subject to amendment as necessary to reflect new or revised state and federal laws, regulations, and requirements.

This POC shall be signed by the Director of the LCSA and returned to the Department on or before September 1, 2024. Failure to sign and return this POC may result in the withholding of part or all of the federal and state funds including incentive funds, or other compliance actions authorized by federal or state law, regulation, or policy.

This POC may be amended by a written agreement of both parties if required by changes in policies or directives that may occur during the term of this POC. The Department will communicate with the LCSA regarding any and all obligations under this POC and will, as needed, meet with the LCSA on issues or concerns about program responsibility, operations, or performance.

Failure of the parties to amend or renew the POC to reflect new or revised federal and state laws, regulations, policies, and directives does not relieve the LCSA of the responsibility to act in accordance with those laws, regulations, and requirements.

Dated: _____

Douglas Durward Director
Napa County
Department of Child Support Services

Dated: _____

David Kilgore, Director
California Department of Child Support Services

APPROVED AS TO FORM
Napa County Counsel
By: Rachel Ross
Date: 8/8/2024
Doc Title: CDCSS POC Oct 2024

Exhibit 7: Safeguarding Contract Language

Safeguarding Contract Language can be found on California Child Support Central: California Child Support Central>Systems Resources>Information Security>Compliance>Security Agreements>Contract Security Exhibits

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-930

TO: Board of Supervisors

FROM: Neha Hoskins - Clerk of the Board

REPORT BY: Anthony Williams - Senior Deputy Clerk of the Board

SUBJECT: Approval of Minutes

RECOMMENDATION

Approval of minutes from the August 6, 2024 regular meeting. (No Fiscal Impact)

BACKGROUND

Approval of minutes from the August 6, 2024 regular meeting.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Meeting Minutes

Napa County Board of Supervisors

Joelle Gallagher, District 1
Ryan Gregory, District 2
Anne Cottrell, District 3
Alfredo Pedroza, District 4
Belia Ramos, District 5

* This is a simultaneous meeting of the Board of Supervisors of Napa County, Napa County Public Improvement Corporation, Silverado Community Services District, Monticello Public Cemetery District, In-Home Supportive Services Public Authority of Napa County, Lake Berryessa Resort Improvement District, Napa Berryessa Resort Improvement District, Napa County Housing Authority, and the Napa County Groundwater Sustainability Agency.

www.countyofnapa.org

Tuesday, August 6, 2024 **9:00 AM** **Board of Supervisors Chambers**
1195 Third Street, Third Floor

1. CALL TO ORDER; ROLL CALL

   Present: Chair Joelle Gallagher, Vice-Chair Anne Cottrell, and Supervisors Ryan Gregory. Supervisors Alfredo Pedroza and Belia Ramos were en route. Supervisor Alfredo Pedroza arrived during Proclamations and Commendations. Supervisor Belia Ramos arrived during Item 11A. The meeting was called to order by Chair Joelle Gallagher.

2. PLEDGE OF ALLEGIANCE

   Fire Chief Matt Ryan led the assembly in the Pledge of Allegiance.

3. PET OF THE WEEK

   Animal Shelter Manager Katie Ribardiere presented the Pet of the Week (Mr. Bean)

4. PROCLAMATIONS AND COMMENDATIONS

A. Presentation of a Proclamation recognizing August 2024 as "Child Support Awareness Month" in Napa County. (No Fiscal Impact) **24-1320**

Chair Joelle Gallagher presented the proclamation.

Director of Child Support Services Douglas Durward accepted the proclamation and made presentation.

Discussion held.

Motion Text:	**Approve the proposed Proclamation.**
Voting Yes:	**Cottrell, Gregory, and Gallagher**
Excused:	**Pedroza, and Ramos**
Recusals:	**None**
Result:	**Passed**

5. CONSENT CALENDAR - SPECIAL DISTRICTS

Motion Text:	**Approve the Special District Consent Calendar.**
Voting Yes:	**Gregory, Pedroza, Cottrell, and Gallagher**
Excused:	**Ramos**
Recusals:	**None**
Result:	**Passed**

Napa County Groundwater Sustainability Agency

A. Approve and authorize Amendment No. 1 to Agreement No. 230312B (NCGSA) with SCI Consulting Group, increasing the maximum by $27,487 for a total of $110,075, for additional services to support development of a fee, special tax or benefit assessment to fund implementation of Napa County's Groundwater Sustainability Program and extending the term to December 31, 2025. (Fiscal Impact: $27,487 Expense; Groundwater Sustainability Agency Special Revenue Fund; Budgeted; Discretionary) **24-1311**

Enactment No: **A-230312B (NCGSA) Amend. 1**

Lake Berryessa Resort Improvement District

B. Approve plans and specifications for the Water Supply Intake Utility Building Project, LB 24-01 and authorization to advertise for sealed bids and opening of the bids at a time, date, and location to be published by the District Engineer pursuant to Section 20150.8 of the Public Contract Code. (No Fiscal Impact; Discretionary) **24-1291**

Monticello Public Cemetery District

C. Approve and authorize Amendment No. 3 to Agreement No. 230118B (MPCD) with Prestige Lawn Care Maintenance to increase the contract maximum to $105,000 and to extend the term through June 30, 2025 to construct a walkway system; and approve a Budget Amendment to increase appropriations in landscaping services. (Fiscal Impact: $50,000 Expense; Monticello Public Cemetery District; Not Budgeted; Discretionary) [4/5 vote required] **24-1255**

Enactment No: **A-230118B (MPCD) Amend. 3**

6. CONSENT CALENDAR

One (1) person spoke during Public comment.

Motion Text:	**Approve the Consent Calendar as amended.**
Voting Yes:	**Pedroza, Cottrell, Gregory, and Gallagher**
Excused:	**Ramos**
Recusals:	**None**
Result:	**Passed**

Clerk of the Board

A. Approval of minutes from the July 23, 2024 regular meeting. (No Fiscal Impact) **24-929**

B. Reappointment of Elayna Trucker as the At Large Representative and appointment of April L. Del Rosario as the Child Care Provider Representative to the Napa County Child Care and Development Planning Council with terms of office to commence immediately and expire on June 30, 2027. (No Fiscal Impact) **24-1256**

Corrections

C. Authorize the purchase of a capital asset for a replacement booster water heater within the correctional facility and budget amendment due to the failure of the current unit. (Fiscal Impact $14,500 Expense; General Fund; Not Budgeted; Discretionary) [4/5 vote required] **24-1302**

County Counsel

D. Adopt a Resolution consolidating elections for the following jurisdictions, with the November 5, 2024 statewide general election: Cities of American Canyon, Calistoga, Napa, St. Helena, and Town of Yountville, the Bay Area Housing Finance Authority, the Napa Valley Unified School District, and the Napa County Regional Park and Open Space District; and direct the Registrar of Voters to conduct these elections, with full reimbursement of services by the jurisdictions. (No Fiscal Impact) **24-1238**

Enactment No: R-2024-81

E. Approve participation in the National Opioids Settlement with Kroger to receive $260,000 over 11 years and authorize the participation agreement waiving the right to sue Kroger. (Fiscal Impact: $260,000 Revenue; General Fund; Not Budgeted; Discretionary) **24-1283**

County Executive Office

F. Approve transmittal of the proposed responses to the 2023-24 Grand Jury Final Reports to the Presiding Judge as prescribed by Section 933 of the Penal Code. (No Fiscal Impact; Mandatory) **24-1235**

Item pulled for discussion. See Item 9.

Health and Human Services Agency

G. Approve and authorize 36 agreements for services supporting Community Health Improvement Plan objectives funded through Tobacco Master Settlement Agreement, Mental Health Services Act and Opioid Settlement Funds totaling $10,824,956 for terms from July 1, 2024 through June 30, 2027. (Fiscal Impact: $10,824,956; Health and Human Services Agency Fund and General Fund; Budgeted; Discretionary). **24-1281**

Enactment No: A-250079B; A-250080B; A-250081B; A-250082B; A-250083B; A-250084B; A-250085B; A-250086B; A-250087B; A-250088B; A-250089B; A-250091B; A-250092B; A-250093B; A-250094B; A-250095B; A-250055B; A-250128B; A-250131B; A-230171B Amend. 2; A-230355B Amend. 1; A-250121B; A-250122B; A-250123B; A-250124B; A-250125B; A-250126B; A-250127B; A-250129B; A-250130B; A-250132B; A-250039B; A-250040B; A-250041B; A-250042B

Information Technology Services – Division of CEO's Office

H. Approve and authorize Agreement No. 250120B with Environmental Systems Research Institute, Inc., for a maximum of $350,100 for GIS license software for the term of August 1, 2024 through July 31, 2027. (Fiscal Impact: $350,100 Expense; Information Technology Services Fund; Budgeted; Discretionary) **24-1253**

Enactment No: A-250120B

I. Approve and authorize Agreement No. 250136B with Environmental Science Associates for a maximum of $18,004, for the term August 6, 2024, through June 30, 2025, for cultural resources technical services to support environmental review of the Mount St. Helena telecommunications tower replacement project. (Fiscal Impact: $18,004 Expense; Information Technology Services Fund; Budgeted; Discretionary) **24-1284**

Enactment No: **A-250136B**

Library

J. Approve and authorize Amendment No. 1 to Agreement No. 240019B with Lucky Penny Productions to extend the term of the Grant Agreement to December 31, 2024, to allow grantee additional time to complete the project as originally approved by the County. (No Fiscal Impact; Discretionary) **24-1290**

Enactment No: **A-240019B Amend. 1**

K. Approve and authorize Agreement No. 250145B with Arts Council Napa Valley for a maximum of $61,418 for the term August 6, 2024 through June 30, 2025, to act as the Napa County Local Arts Agency and implement the Napa County Cultural Plan. (Fiscal Impact: $61,418 Expense; General Fund; Budgeted; Discretionary). **24-1293**

Enactment No: **A-250145B**

Public Works

L. Approve and authorize Amendment No. 1 to Lease Agreement No. 230232B with Napa Jet Center, Inc. dba Atlantic Aviation (Atlantic) to adjust square footage and total compensation to lease areas, change adjustments to base rent, add Fuel Farm Infrastructure Improvement reimbursement to County, extend development timelines, and replace Exhibits. (Fiscal impact: $201,990 Revenue; Airport Fund; Budgeted; Discretionary) **24-957**

Item pulled for discussion. See Item 9.

Enactment No: **A-230232B Amend. 1**

M. Accept and file report on Space License Agreements and Lease Agreements executed by the County Executive Officer during the period January 1, 2024 through July 30, 2024, pursuant to Resolution No. 2018-36. (No Fiscal Impact; Discretionary) **24-1278**

N. Approval of plans and specifications for the "South Campus Building A&B Window Maintenance Project," PW 21-37 and authorization to advertise for sealed bids, and opening of the bids at a time, date, and location to be published by the Director of Public Works pursuant to Section 20150.8 of the Public Contract. (No Fiscal Impact; Discretionary) **24-1298**

O. Approve a Budget Amendment for the "JJC Skyline Academy Project," PW 24-34. (Fiscal Impact: $200,000 Expense; Capital Improvement Projects Fund; Not Budgeted; Discretionary)
[4/5 vote required] **24-1315**

Sheriff

P. Accept a cash donation from Operation Underground Railroad and approve a Budget Amendment to purchase the investigative software license GrayKey from Magnet Forensics to support forensic examinations of mobile digital devices, specifically for human trafficking cases. (Fiscal Impact: $30,498 Expense; $15,249 Revenue; Sheriff Asset Forfeiture Fund and General Fund; Not Budgeted; Discretionary)
[4/5 vote required] **24-1345**

7. PUBLIC COMMENT

Two (2) people spoke during public comment.

8. BOARD OF SUPERVISORS REPORTS AND ANNOUNCEMENTS

Vice-Chair Anne Cottrell reported she was appointed as the Vice-Chair of the National Association of Counties (NACo) Resilient Counties Advisory Board, which looks at how counties can build resiliency across subject areas, such as wildfires, floods, and hurricanes. Vice-Chair Cottrell also reported she and the Sheriff will be holding an emergency preparedness event for Berryessa Estates/Pope Valley residents at the Pope Valley Fire Department on August 14 with participants from the Sheriff's office, Office of Emergency Services, and UpValley Family Centers.

Supervisor Ryan Gregory reported he and Vice-Chair Cottrell attended a key exchange ceremony with the City of Calistoga two weeks ago for the keys to the Calistoga Fairgrounds.

Chair Joelle Gallagher thanked the Health and Human Services Agency for their work on the Mental Health Services Act, Tobacco Master Settlement Agreement, and Opioid Settlement Funds grants and congratulated the grantees and commended them on the important work they do in the community.

Napa County Assistant Fire Administrator J.R. Rogers introduced new Napa County Fire Chief Matt Ryan, who made a presentation.

9. DISCUSSION OF ITEMS PULLED FROM CONSENT CALENDARS

- 6F

County Executive Office Senior Management Analyst Daniel Sanchez made presentation.

Discussion held.

Direction given to staff.

Motion Text:	**Approve the requested actions as amended**.
Voting Yes:	**Gregory, Cottrell, Pedroza and Gallagher**
Excused:	**Ramos**
Recusals:	**None**
Result:	**Passed**

- 6L

Motion Text:	**Approve the requested actions.**
Voting Yes:	**Gregory, Cottrell, Pedroza and Gallagher**
Excused:	**Ramos**
Recusals:	**None**
Result:	**Passed**

10. ADMINISTRATIVE ITEMS - SPECIAL DISTRICTS

None

11. ADMINISTRATIVE ITEMS

Planning, Building and Environmental Services (PBES)

A. Receive a presentation on the Baseline Data Report and authorize the Director of Planning, Building and Environmental Services to issue a Request for Proposal for the preparation of an update to the Baseline Data Report. **24-541**

Planning, Building, and Environmental Services Planning Manager Michael Parker made presentation.

Three (3) people spoke during public comment.

Discussion held.

Motion Text:	**Approve the requested actions.**
Voting Yes:	**Gregory, Cottrell, Pedroza, Ramos, and Gallagher**
Recusals:	**None**
Result:	**Passed**

County Executive Office

B. Receive a presentation related to a recently completed market equity study on Board of Supervisors' compensation, which is part of a larger ongoing management compensation market equity study. (No Fiscal Impact) **24-1324**

County Executive Officer Ryan J. Alsop made presentation.

Director of Human Resources Christine Briceño made presentation.

Discussion held.

12. PUBLIC HEARING - SPECIAL DISTRICTS

None

13. PUBLIC HEARINGS

County Executive Office

A. PUBLIC HEARING - TRUTH Act **24-1183**

Convene a community forum pursuant to the federal Transparent Review of Unjust Transfers and Holds Act, which calls for counties to hold annual public forums explaining how County law enforcement worked with Immigration and Customs Enforcement representatives. (No Fiscal Impact; Mandatory)

Chair Joelle Gallagher opened the public hearing.

County Executive Office Senior Management Analyst Daniel Sanchez made presentation.

Assistant Director of Corrections Alexander Alarcon made presentation.

Discussion held.

Direction provided to staff.

Chair Joelle Gallagher closed the public hearing.

Human Resources – Division of CEO's Office

B. PUBLIC HEARING - California Public Employees' Retirement System **24-1287**

Conduct a public hearing to consider the first reading and the intention to adopt an ordinance amending Napa County's Contract with the Board of Administration of the California Public Employees' Retirement System (CalPERS) to allow the Napa County Probation Professionals Association (NCPPA) Non-Supervisory and Supervisory employee groups to be recognized bargaining units in the County's Contract with CalPERS and further requests the adoption of a Resolution of intent to approve an amendment to the County's contract with the Board of Administration of the California Public Employees' Retirement System.

Chair Joelle Gallagher opened the public hearing.

Director of Human Resources Christine Briceño made presentation.

Discussion held.

Chair Joelle Gallagher closed the public hearing.

Motion Text:	**Approve the requested actions.**
Voting Yes:	**Gregory, Cottrell, Pedroza, and Gallagher**
Excused:	**Ramos**
Recusals:	**None**
Result:	**Passed**
Enactment No:	**R-2024-82**

Planning, Building and Environmental Services (PBES)

C. PUBLIC HEARING 2:00 P.M. - VIDA VALIENTE WINERY APPEAL (USE PERMIT NO. P20-00079-UP) **24-1064**

Conduct a public hearing to consider an appeal filed by Appellant and Applicant Hayes Drumwright concerning the Napa County Planning Commission's decision on May 1, 2024, to deny the Vida Valiente Winery Use Permit No. P20-00079-UP. (No Fiscal Impact.)

Chair Joelle Gallagher opened the public hearing.

The Board of Supervisor provided Levine Act disclosures and general disclosures.

Planning, Building, and Environmental Services Planner III Matthew Ringel made presentation.

Director of Public Works Steven Lederer made presentation.

Napa County Fire Marshal Jason Downs made presentation.

Appellant Representative and Attorney Rob Anglin made presentation. Appellant

Hayes Drumwright made presentation.

Thirty-nine (39) people spoke during public comment.

Appellant Representative and Attorney Rob Anglin provided rebuttal on behalf of the appellant.

Chair Joelle Gallagher closed the public hearing.

Discussion held.

Motion Text:	**Motion of intent to uphold the appeal with proposed amendments.**
Voting Yes:	**Gregory, Gallagher, Cottrell, Pedroza, and Ramos**
Recusals:	**None**
Result:	**Passed**

14. CLOSED SESSION

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code Section 54957) **24-1339**
Title: County Executive Officer

Closed session held. No reportable action.

15. ADJOURNMENT

ADJOURN TO THE BOARD OF SUPERVISORS REGULAR MEETING, TUESDAY, AUGUST 20, 2024 AT 9:00 A.M.

Neha Hoskins (By e-signature)

NEHA HOSKINS, Clerk of the Board

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1309

TO: Board of Supervisors

FROM: Neha Hoskins, Clerk of the Board

REPORT BY: Paulette Cooper, Deputy Clerk of the Board

SUBJECT: Reappointments to the Napa County Technical Advisory Group

RECOMMENDATION

Reappoint Miguel Garcia, Mathias Kondolf, Albert Filipelli, Julie Chambon, and Monica Cooper to the Napa County Technical Advisory Group with terms of office to commence immediately and expire on June 30, 2026. (No Fiscal Impact)

BACKGROUND

There are currently five openings on the Napa County Technical Advisory Group (TAG) due to term expirations. The County Executive Office advertised the vacancies and received five reappointment requests from Miguel Garcia, Mathias Kondolf, Albert Filipelli, Julie Chambon, and Monica Cooper, all seeking a second term.

On June 21, 2022 the Board of Supervisors adopted Resolution No. 2022-04 (GSA) creating the Napa County Technical Advisory Group (TAG).

The core charge of the TAG is to provide well-informed, practical recommendations to the NCGSA as they carry out Napa Valley Subbasin Groundwater Sustainability Plan (GSP) implementation, taking into account the best available scientific information and best practices in groundwater management.

Members of the TAG have technical expertise relevant to the GSP, as well as experience working in a collaborative setting on public policy implementation. The TAG has both the responsibility and the timely opportunity to advise the NCGSA and will be involved with implementation of the GSP, including a focus on data gaps and adaptive management as described in GSP Section 11 Projects and Management Actions (PMAs).

Activities of the TAG include:

1. Providing input on water resources information and monitoring data collected during GSP implementation;

2. Vetting data analyses particularly pertaining to data collected at representative monitoring sites, including assessing when sustainable management criteria (SMC) may approach or exceed triggers and/or SMC as outline in the GSP;
3. Providing input on the development and review of Workplans described in the GSP and others that may be identified during GSP implementation;
4. Recommending additional data vetting and potential response actions (i.e., implementation of projects and/or management actions [PMAs]) to the NCGSA, including guidance on the prioritization and initiation of PMAs; and
5. Providing input on monitoring data gaps described in the GSP and other data gaps that may be identified, rationale for addressing the gap areas, and potential opportunities to coordinate monitoring efforts with other programs.

Requested Action:

Reappoint Miguel Garcia, Mathias Kondolf, Albert Filipelli, Julie Chambon, and Monica Cooper on the Napa County Technical Advisory Group.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
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Neha Hoskins
Clerk of the Board

July 18, 2024

Miguel Garcia
Via email: [redacted]

Re: **Technical Advisory Group (TAG)**

Dear Miguel Garcia:

You have been a valued member of the **Technical Advisory Group (TAG)**. The term of your position expired on June 31, 2024. If you wish to request reappointment for a 2-Year term, please check the following box:

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the **Technical Advisory Group (TAG)** for the term commencing immediately and expiring June 2026.

After checking the box, **sign and date on the lines below and return this letter to the County Executive Office by mail, email.**

Miguel A. Garcia
SIGNATURE

7/19/24
DATE

A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

July 18, 2024

Mathias Kondolf
Via email: [redacted]

Re: **Technical Advisory Group (TAG)**

Dear Mathias Kondolf:

You have been a valued member of the **Technical Advisory Group (TAG)**. The term of your position expired on June 31, 2024. If you wish to request reappointment for a 2-Year term, please check the following box:

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the **Technical Advisory Group (TAG)** for the term commencing immediately and expiring June 2026. After checking the box, **sign and date on the lines below and return this letter to the County Executive Office by mail, email.**

SIGNATURE

_____

_____19 July 2024_____
DATE

A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

July 18, 2024

Albert Filipelli
[redacted]

Re: **Technical Advisory Group (TAG)**

Dear Albert Filipelli:

You have been a valued member of the **Technical Advisory Group (TAG)**. The term of your position expired on June 31, 2024. If you wish to request reappointment for a 2-Year term, please check the following box:

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the **Technical Advisory Group (TAG)** for the term commencing immediately and expiring June 2026.

After checking the box, **sign and date on the lines below and return this letter to the County Executive Office by mail, email.**

SIGNATURE

8/9/2024
DATE

A Tradition of Stewardship
A Commitment to Service

County Executive Office

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www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

July 18, 2024

Julie Chambon
Via email: [redacted]

Re: **Technical Advisory Group (TAG)**

Dear Julie Chambon:

You have been a valued member of the **Technical Advisory Group (TAG)**. The term of your position expired on June 31, 2024. If you wish to request reappointment for a 2-Year term, please check the following box:

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the **Technical Advisory Group (TAG)** for the term commencing immediately and expiring June 2026.

After checking the box, **sign and date on the lines below and return this letter to the County Executive Office by mail, email.**

Julie Chambon — Digitally signed by Julie Chambon Date: 2024.07.18 16:41:19 -07'00'

SIGNATURE _____ DATE _____

A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

July 18, 2024

Monica Cooper
Via email: [redacted]

Re: **Technical Advisory Group (TAG)**

Dear Monica Cooper:

You have been a valued member of the **Technical Advisory Group (TAG)**. The term of your position expired on June 31, 2024. If you wish to request reappointment for a 2-Year term, please check the following box:

☑ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the **Technical Advisory Group (TAG)** for the term commencing immediately and expiring June 2026.

After checking the box, **sign and date on the lines below and return this letter to the County Executive Office by mail, email.**

Monica Cooper
SIGNATURE

18-Jul-2024
DATE

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1366

TO: Board of Supervisors

FROM: Neha Hoskins, Clerk of the Board

REPORT BY: Paulette Cooper, Deputy Clerk of the Board

SUBJECT: Appointment to the Napa County Dangerous Animal Hearing Panel

RECOMMENDATION

Appointment of Jimmy T. Kontras to represent Regular Member on the Napa County Dangerous Animal Hearing Panel with term of office to commence immediately and expire on January 31, 2027. (No Fiscal Impact)

BACKGROUND

There is currently one opening on the Napa County Dangerous Animal Hearing Panel due to a vacancy. The County Executive Office advertised the vacancy and received one appointment request from Jimmy T. Kontras.

The Board of Supervisors adopted Resolution No. 01-159 on December 18, 2001 creating the Napa County Dangerous Animal Hearing Panel (Panel).

The functions of the Panel are to:

- Consider and review cases in which an animal is alleged to be "dangerous" under the Napa County Code Section 6.16.020 and/or any other applicable code, ordinance or statute that may relate to allegedly dangerous animals, and
- Determine whether or not the animal is dangerous and/or a public nuisance and what actions, if any, should be taken to protect the public including control, confinement, destruction or restriction of the animal.

The Panel consists of three voting members (regular) and two alternate members who are designated as the first and second alternate. Members should be individuals who have experience in animal care and/or animal training, including but not limited to veterinarians, kennel owners, animal breeders or trainers from within the unincorporated County of Napa, or any City/Town therein which utilizes the services of the Napa County

Animal Control Officer. The Panel shall be convened to act as a hearing body at the request of the Animal Control Officer following the impound of an animal.

Requested Action:

Appointment of Jimmy T. Kontras to represent Regular Member on the Napa County Dangerous Animal Hearing Panel.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Application for Appointment to Board, Commission, Committee, Task Force or Position

Applicants appointed by the Board of Supervisors will be required to take an oath of office. All applications will be kept on file for one year from the date of application.

Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code

California Fair Political Practices Website

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Napa County Dangerous Animal Hearing Panel: Submitted

Category of Membership for Which You Are Applying

Mammals

Profile

Jimmy (First Name) | T (Middle Initial) | Kontras (Last Name)

[redacted] (Email Address)

[redacted] (Home Address) | (Suite or Apt)

NAPA (City) | CA (State) | 94558 (Postal Code)

Which supervisorial district do you reside in? *

- [x] District 4

To find your supervisorial district go to https://www.countyofnapa.org/2051/Find-my-supervisor-and-district and enter your address.

[redacted] (Primary Phone)

Pet Food Express	Sales Associate	Nutrition
Employer	Job Title	Occupation

Education/Experience

I have a degree in Nutrition and Community Health. I have been working in animal behavior since 2019, with personally having a behavior/training business from 2019-2024. I discontinued my training and behavior work to focus on Animal Wellness overall with a focus on Nutrition and Behavior. I currently work at Pet Food Express in Napa and am an online behavior and nutrition expert with Well Me Right and Dog Acadmey!

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes)

Kaylyn Kontras (Systems Engineer)

Resume

Jimmy_Kontras_Resume_2024_Updated.pdf
Upload a Resume

Letter of Recommendation or Supplemental Attachments

Professional or occupational license, date of issue, and expiration including status

BSc Nutrition and Community Health

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Jerri McCulloch [redacted] Neidy [redacted] Matt Naslund [redacted]

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

I love animals and I love this community! I want to help the people of Napa help their animals in anyway I can. I connect with animals on a different level of Han most and feel I could really help communicate with the animals (even if just on paper) to see what is going on with the animal, how is it impacting the community, and what the best course of action is.

Nature of activity and community location

Other County Board/Commission/Committee on Which You Serve/Have Served

None

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

None

Electronic Signature Agreement

I meet the criteria required to serve in this position.

◉ Yes ○ No

I declare under penalty of perjury that the foregoing is true and correct.

◉ Yes ○ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☑ I Agree

Electronic Signature (First M. Last)

James T Kontras

Date

7/18/24

Jimmy Kontras

United States

[redacted]

Summary

Experienced Manager and Brand Builder with a demonstrated history of working in the health wellness and fitness industry. Strong operations professional skilled in Operations Management, Development, Coaching, Customer Service Representatives, Social Media, Marketing and Sales.

Experience

Sales Associate

Pet Food Express

Jan 2023 - Present (1 year 3 months)

Dog Walker

Rover.com

Jun 2022 - Present (1 year 10 months)

As a professional dog walker and pet sitter on the Rover app, I provide exceptional care and companionship to a wide variety of animals in diverse settings. My responsibilities include conducting individual or group dog walks, offering in-home pet sitting services, and maintaining open communication with pet owners to ensure their pets' well-being and satisfaction. With extensive experience handling high volumes of animals of different breeds, sizes, and temperaments, I am skilled at navigating various pet care scenarios with confidence and expertise. Enjoying the flexibility of setting my own schedule and the satisfaction of forming bonds with pets and their owners make this role both rewarding and fulfilling.

Dog Trainer/Behavior Specialist

Self-employed

Sep 2019 - Present (4 years 7 months)

As a self-employed dog trainer and behavior modification specialist, my work centers on utilizing my comprehensive knowledge and experience in canine behavior, nutrition, obedience, and communication. I excel in understanding the unique needs and intricacies of each dog, enabling me to tailor my training and behavior modification techniques accordingly. From addressing basic obedience to tackling complex behavioral issues, I leverage my expertise to effectively guide dogs and their owners toward positive outcomes. I am deeply committed to improving the lives of both dogs and their owners.

Store Associate

In-N-Out Burger

Aug 2022 - Jan 2023 (6 months)

Executive Project Manager

Dry Farm Wines

Nov 2019 - May 2022 (2 years 7 months)

Executive position that included executive assistant, asset management, property management, finance aid, executive project management, travel and calendar management, event planning, office manager, fulfillment efficiency consultant and customer service collaboration.

Managed over 8 million dollars in assets.
Managed three $750,000 plus construction remodels.
Managed a 6 figure supply budget year over year.
Improved warehouse efficiency by over 200% by implementing automation.
Managed travel schedule and calendars for 35 employees, including founder, CEO, COO, and CFO.
The only employee to work with every department and line of business in the company on a regular basis. This included; Accounting, Growth, Operations, Customer Service, and Executive.

Head Dog Trainer Assistant

Devotion to Dogs

Jun 2019 - Sep 2019 (4 months)

As the right hand to our Head Dog Trainer, I played a key role in supporting training programs and operations. My responsibilities included assisting in training sessions, analyzing dog behavior, implementing training techniques, monitoring health, and communicating with clients. Through hands-on experience, I gained intimate insights into animal behavior, training methods, and health management, contributing to my professional growth and development.

Regional Manager

Oct 2018 - Jul 2019 (10 months)

Regional position that included day-to-day studio operations, new leadership and studio staff hiring, new and ongoing staff training, social media management, events and marketing coordination, brand continuity, leadership development, exceeding KPI metrics, product quality control, and community outreach.

• Brought the brand to the new market of the West Coast.
• Opened first studio in California.
• First MOTION Stretch Studio to reach 100 members in 15 days of opening.
• In first month of operating for all Orange and San Diego County studios, all studios saw a 4% growth revenue from previous month.

Operations Manager

LA Fitness

Sep 2016 - Sep 2018 (2 years 1 month)

Operations position that oversaw all in-club operations that included sales, hiring, staff training, personal training, janitorial, and front desk. In addition, was a Member Service Manager on our nationwide phone queue, requiring 20 high level problem solving customer calls each day.

• Sales and retention growth from bottom 20% in the region upon arrival to number one in 2 months.
• Remained in top 10% in the region for Sales and Retention during tenure.
• 99% on white glove inspection after first month of operation, 2nd highest score in the company in 2016.

• Maintained a 96% or above on all white glove inspections during tenure.
• Completed and resolved over 7,500 customer concern calls nationwide.
• Successfully trained 2 Operations Managers to take nationwide calls on our phone queue.

Area Supervisor
Disneyland Resort
Nov 2012 - Nov 2016 (4 years 1 month)
Day-to-day Operational Leader that managed park staffing, deployment, training, KPIs for area, product quality control, and in-park guest recovery.

• Lead Princess Fantasy Faire new attraction to the #1 most efficient attraction in all of Disneyland Resort for first 3 consecutive months.
• Operational Leader for Imagineering test entertainment program called “Frontierland”.
• Operational Leader that oversaw the opening of new Marvel attractions, Thor and Captain America.
• Successfully trained 30 new Area Supervisors.
• Developed and partnered with a new Safety Leadership Team for 12 months to ensure guests and employees a safe visit to the parks.
• Performed in over 500 shows as a performer.

Education

The Ohio State University
Bachelor of Applied Science - BASc, Human Nutrition
Oct 2007 - Jun 2012

The Ohio State University
Bachelor of Science (B.S.), Human Nutrition
2007 - 2012

Skills

Customer Satisfaction • Dog Behavior • Dog Training • Customer Service Management • Soft Skills • Customer Service Operations • Training • Customer Support • Nutrition Education • Nutritional Counseling

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1367

TO: Board of Supervisors

FROM: Neha Hoskins, Clerk of the Board

REPORT BY: Paulette Cooper, Deputy Clerk of the Board

SUBJECT: Reappointments to the Napa/Solano Agency on Aging Advisory Council

RECOMMENDATION

Reappointments of Fren Yaffa, Neil Watter, and Susan Ensey as Napa County representatives, and Fran Rosenberg as Napa County Alternate 1 to the Napa/Solano Agency on Aging Advisory Council. The terms of office are to commence immediately and expire on June 30, 2026. (No Fiscal Impact)

BACKGROUND

There are currently eight openings on the Napa/Solano Agency on Aging Advisory Council due to a term expirations and vacancies. The County Executive Office advertised the vacancies and received four reappointment requests from Fern Yaffa, Neil Watter, Susan Ensey, and Fran Rosenberg, all seeking a second term.

On August 28, 2018, the Napa County Board of Supervisors approved a joint application with Solano County to form a new Area Agency on Aging for Planning Service Area 28. Subsequent to that, both counties appointed representatives to the Oversight Board and conducted a recruitment for members for the federally-mandated advisory council. The Advisory Council members were appointed on April 23, 2019.

The advisory council is required to represent the senior population in respect to ethnic and racial distribution in Napa and Solano counties. In addition, the following categories must be represented among the eight Napa representatives and the eight Solano representatives:

1. Older persons, including minority Individuals, who are participants or who are eligible to participate in programs under 45 CFR 1321.57;
2. Representatives of older individuals;
3. Representatives of health care provider organizations, including providers of veterans' health care;
4. Representatives of supportive services providers organizations;

5. Persons with leadership experience in the private and voluntary sectors;
6. Local elected officials;
7. Family caregiver representative; and
8. The general public.

Requested Action:

Reappoint Fern Yaffa, Neil Watter, Susan Ensey, and Fran Rosenberg to the Napa/Solano Agency on Aging Advisory Council.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship
A Commitment to Service

RECEIVED
JUL 5 2024
NAPA COUNTY
EXECUTIVE OFFICE

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

June 13, 2024

Fern Yaffa
[redacted]
Napa, CA 94558
Via email: [redacted]

Re: **Napa/Solano Area Agency on Aging Advisory Council**

Dear Fern:

You have been a valued member of the **Napa/Solano Area Agency on Aging Advisory Council** representing **Napa County**. The term of your position expires on June 30, 2024. If you wish to request reappointment for a 2-year term, please check the following box:

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the Napa County Mental Health Board for the term commencing immediately and expiring June 30, 2026.

If you have chosen to request reappointment, please check **one** of the two boxes below regarding your last application:

==========

☒ I confirm that all the information on my last application is current.

☐ Some of the information on my last application is no longer current or is five (5) years old or older. I will submit a new or revised application.

(To complete a new application form either contact the Napa County Executive Office or go to the following link to complete your application online:

http://ca-napacounty.civicplus.com/1420/Committees-Commissions

After checking the appropriate boxes, sign and date on the lines below and return this letter to the County Executive Office by mail or email no **later than Friday, June 28, 2024.**

Fern Yaffa
SIGNATURE

June 30th, 2024
DATE

A Tradition of Stewardship
A Commitment to Service

NAPA / SOLANO AREA AGENCY ON AGING

275 Beck Avenue, Fairfield, CA 94533

Application for Membership on Napa/Solano Area Agency on Aging Advisory Council
(Feel free to attach a resume or curriculum vitae (CV))

Federal and State laws mandate the composition of the Area Agency on Aging (AAA) Advisory Council. The application questions are designed to ensure the legal composition of the Advisory Council.

Name: FERN YAFFA

Date of Birth: [redacted]
Month Date Year

Please indicate which county you are applying to represent:

☒ Napa County ☐ Solano County

Please indicate your membership preference:

☒ Primary Representative ☐ Alternate Representative ☐ No Preference

Please indicate the category for which you are applying and your category affiliation (if applicable):

☒ Representatives of older individuals

☐ Representative of health care provider organizations, including providers of veterans' health care

Health care organization affiliation: _____

☐ Representatives of supportive services provider organizations.

Supportive Services organization affiliation: _____

☐ Persons with leadership experience in the private and voluntary sectors.

Leadership experience (resume or CV may be attached): _____

_____

_____

_____

☐ Local elected officials

Elected position: _____

Term of Office: _____
Term Start Date Term End Date

☐ Family caregiver representative

☐ The general public.

Please indicate your race and ethnicity:

☒ White ☐ Hispanic ☐ Asian ☐ Black

☐ Native Hawaiian/Pacific Islander ☐ American Indian ☐ Other: _____

Residence Address: [redacted]

Business Address: _____

Phone Numbers: Home: _____ Business: _____

Mobile [redacted] E-mail Address: [redacted]

Supervisorial District in which you reside: ☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5

The following links can be used as a reference for Supervisorial District information:

Solano County:

http://www.solanocounty.com/depts/rov/district_maps_and_lookup/districtlookup.asp

Napa County (select "My District" from the link below):

https://www.countyofnapa.org/2116/Board-of-Supervisors

The Advisory Council meets monthly on the first Tuesday of the month. Meetings are held from 10:00 am – 12:00 noon. Meeting locations are in Napa and Solano Counties. Members may be asked to attend quarterly meetings of the AAA Oversight Board and monthly subcommittee meetings. Please indicate any obstacles you may have with regard to meeting attendance (example: "I am not able to meet on Mondays or Wednesdays"):

_____

Memberships in other organizations or committees or other community participation (list name and address and nature of organization/committee or community participation):

KAISER CLINIC – Volentoer (on hold right now)
Lucky Penny Community Theater - NAPA - Volunteer

Please provide a brief description of your employment and educational history (resume or CV may be attached): See Resume

References (list 3):

Name	Relationship	Phone Number
Donna Altes	Friend	[redacted]
MARY BETH WEST	Friend	[redacted]
MARIA ESCALERA	Supervisor Kaiser Vol.	[redacted]

Why do you want to serve on the Advisory Council?:

I am a retired health care professional who has an avid interest in the elder population and advocating for them to improve their life.

Napa Applicants: please list all court or other public administration actions impacting your credit rating within the past 10 years: None

Applicant signature: [signature] Date: 6/16/21

FERN YAFFA
[redacted]
NAPA CA. 94558
[redacted]

SUMMARY

Experienced in management and delivery of highest quality services within the healthcare industry. Particular expertise in, Utilization Management, Case Management and Health Plan Regulatory Services for HMO Plans.

ACCOMPLISHMENTS

- Investigate health plan member complaints and respond to the Department of Managed Health Care for a large HMO plan. High level analysis of and data collection for resolving member's issues for the maintenance of organization integrity and member satisfaction. Time sensitive requirements for responses.
- Perform medical record reviews and other related materials such as depositions, utilization review records, employment records and surveillance videos review for a group of worker comp physicians. Prepare medical chronologies for physician experts (AMEs, QMEs, Panel QMEs and AOE/COE. Have experience doing orthopedics, psychiatry, internal medicine and neurology.
- Regional Liver Transplant Case Manager for 350 patients. Involves developing close working relationships with centers of excellence. Management includes travel to transplant centers, concurrent reviews, following through the continuum of care.
- Perform utilization review for a 200-bed acute care hospital with a cardiac care center of excellence. Responsibilities include educating patients about their health plan benefits and expediting their movement through the continuum of care.
- Case management experience including implementation of NCQA and HEDIS standards for IPA, EPO and PPO lines of business.
- Developed and administrated a Medicare certified home health agency. Deficiency free Title XXII survey received in August 1997.

PROFESSIONAL EXPERIENCE

Kaiser Permanente Health Plan	Oakland, CA.	2007-2016
Kaiser Permanente Liver Transplant Case Manager	Oakland, CA	2002-2007
Kaiser Permanente Utilization Review/DCP	San Francisco, CA.	2000-2002
Pacific Health Alliance Case Manager	Burlingame, CA	1998-2000

Vencor Home Care Services — San Francisco, CA — 1994-1998
Administrator

EDUCATION

College of Notre Dame — Belmont, CA
Master of Public Administration Health Services

University of San Francisco — San Francisco, CA
Bachelor of Science – Nursing – Public Health Certificate

Home Care Management Certificate — San Francisco, CA

Quality/Performance Management Certificate — San Francisco, CA

COMPUTER SKILLS

Microsoft Word, Lotus Notes, Health Connect (Epic)

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

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A Commitment to Service

RECEIVED
JUN 20 2024
NAPA COUNTY
EXECUTIVE OFFICE

June 13, 2024

Neil Watter
[redacted]
Napa, CA 94559
Via email: [redacted]

Re: **Napa/Solano Area Agency on Aging Advisory Council**

Dear Neil:

You have been a valued member of the **Napa/Solano Area Agency on Aging Advisory Council** representing **Napa County**. The term of your position expires on June 30, 2024. If you wish to request reappointment for a 2-year term, please check the following box:

☑ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the Napa County Mental Health Board for the term commencing immediately and expiring June 30, 2026.

If you have chosen to request reappointment, please check **one** of the two boxes below regarding your last application:

==========

☑ I confirm that all the information on my last application is current.

☐ Some of the information on my last application is no longer current or is five (5) years old or older. I will submit a new or revised application.

(To complete a new application form either contact the Napa County Executive Office or go to the following link to complete your application online:

http://ca-napacounty.civicplus.com/1420/Committees-Commissions

After checking the appropriate boxes, sign and date on the lines below and return this letter to the County Executive Office by mail or email no **later than Friday, June 28, 2024.**

[signature] _____
SIGNATURE

6-20-24
DATE

NAPA / SOLANO AREA AGENCY ON AGING

275 Beck Avenue, Fairfield, CA 94533

A Tradition of Stewardship
A Commitment to Service

Application for Membership on Napa/Solano Area Agency on Aging Advisory Council
(Feel free to attach a resume or curriculum vitae (CV))

Federal and State laws mandate the composition of the Area Agency on Aging (AAA) Advisory Council. The application questions are designed to ensure the legal composition of the Advisory Council.

Name: Neil Watter

Date of Birth: [redacted]
Month Date Year

Please indicate which county you are applying to represent:

☒ Napa County ☐ Solano County

Please indicate your membership preference:

☒ Primary Representative ☐ Alternate Representative ☐ No Preference

Please indicate the category for which you are applying and your category affiliation (if applicable):

☒ Representatives of older individuals

☒ Representative of health care provider organizations, including providers of veterans' health care

Health care organization affiliation: Retired from Kaiser Vallejo. as a primary care internist

☐ Representatives of supportive services provider organizations.

Supportive Services organization affiliation: _____

☐ Persons with leadership experience in the private and voluntary sectors.

Leadership experience (resume or CV may be attached): _____

☐ Local elected officials

Elected position: _____

Term of Office: _____
Term Start Date Term End Date

☐ Family caregiver representative

☒ The general public.

Please indicate your race and ethnicity:

☒ White ☐ Hispanic ☐ Asian ☐ Black

☐ Native Hawaiian/Pacific Islander ☐ American Indian ☐ Other: _____

Residence Address: [redacted]

Business Address: _____

Phone Numbers: Home: _____ Business: _____

Mobile: [redacted] E-mail Address: [redacted]

Supervisorial District in which you reside: ☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

The following links can be used as a reference for Supervisorial District information:

Solano County:

http://www.solanocounty.com/depts/rov/district_maps_and_lookup/districtlookup.asp

Napa County (select "My District" from the link below):

https://www.countyofnapa.org/2116/Board-of-Supervisors

The Advisory Council meets monthly on the first Tuesday of the month. Meetings are held from 10:00 am – 12:00 noon. Meeting locations are in Napa and Solano Counties. Members may be asked to attend quarterly meetings of the AAA Oversight Board and monthly subcommittee meetings. Please indicate any obstacles you may have with regard to meeting attendance (example: "I am not able to meet on Mondays or Wednesdays"):

None

Memberships in other organizations or committees or other community participation (list name and address and nature of organization/committee or community participation):

Napa County Civil Grand Jury 2021-22

Please provide a brief description of your employment and educational history (resume or CV may be attached):

(1) MD degree Univ. of Virginia 1972
(2) Primary Care internal Medicine MD, Kaiser-Permanente, 1990-2014 - Vallejo Med Center
(3) 24 years of Skilled Nursing facility work for K-P in addition to primary care.

References (list 3):

Name	Relationship	Phone Number
Michael Stone	Friend + Foreperson of NC Grand Jury	[redacted]
George Vellucci MD	Colleague at K-P	[redacted]
Lynn Baker RN	Colleague at K-P	[redacted]

Why do you want to serve on the Advisory Council?:

I can contribute to the community with my knowledge of Geriatrics + Skilled Nursing home care

Napa Applicants: please list all court or other public administration actions impacting your credit rating within the past 10 years: None

Applicant signature: [signature] Date: Feb 20 2023

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

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A Commitment to Service

June 14, 2024

Susan Ensey
[redacted]
Napa, CA 94558
[redacted]

Re: **Napa/Solano Area Agency on Aging Advisory Council**

Dear Susan:

You have been a valued member of the **Napa/Solano Area Agency on Aging Advisory Council** representing **Napa County**. The term of your position expires on June 30, 2024. If you wish to request reappointment for a 2-year term, please check the following box:

☑ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the Napa County Mental Health Board for the term commencing immediately and expiring June 30, 2026.

If you have chosen to request reappointment, please check **one** of the two boxes below regarding your last application:

==========

☑ I confirm that all the information on my last application is current.

☐ Some of the information on my last application is no longer current or is five (5) years old or older. I will submit a new or revised application.

(To complete a new application form either contact the Napa County Executive Office or go to the following link to complete your application online:

http://ca-napacounty.civicplus.com/1420/Committees-Commissions

After checking the appropriate boxes, sign and date on the lines below and return this letter to the County Executive Office by mail or email no **later than Friday, June 28, 2024.**

Susan H Ensey
SIGNATURE

7-1-24
DATE

A Tradition of Stewardship
A Commitment to Service

NAPA / SOLANO AREA AGENCY ON AGING

275 Beck Avenue, Fairfield, CA 94533

Application for Membership on Napa/Solano Area Agency on Aging Advisory Council

(Feel free to attach a resume or curriculum vitae (CV))

Federal and State laws mandate the composition of the Area Agency on Aging (AAA) Advisory Council. The application questions are designed to ensure the legal composition of the Advisory Council.

Name: Susan Ensey

Date of Birth: [redacted]
Month Date Year

Please indicate which county you are applying to represent:

☑ Napa County ☐ Solano County

Please indicate your membership preference:

☑ Primary Representative ☐ Alternate Representative ☐ No Preference

Please indicate the category for which you are applying and your category affiliation (if applicable):

☑ Representatives of older individuals

☐ Representative of health care provider organizations, including providers of veterans' health care

Health care organization affiliation: _____

☑ Representatives of supportive services provider organizations.

Supportive Services organization affiliation: Volunteer with Molly's Angels

☑ Persons with leadership experience in the private and voluntary sectors.

Leadership experience (resume or CV may be attached): _____

Board of Directors experience with a variety of non-profit and professional organizations,

plus management level experience throughout corporate career.

☐ Local elected officials

Elected position: _____

Term of Office: _____
Term Start Date Term End Date

☐ Family caregiver representative

☑ The general public.

Please indicate your race and ethnicity:

☑ White ☐ Hispanic ☐ Asian ☐ Black

☐ Native Hawaiian/Pacific Islander ☐ American Indian ☐ Other: _____

Residence Address: [redacted]

Business Address: _____

Phone Numbers: Home: _____ Business: _____

Mobile: [redacted] E-mail Address: [redacted]

Supervisorial District in which you reside: ☐ 1 ☐ 2 ☐ 3 ☑ 4 ☐ 5

The following links can be used as a reference for Supervisorial District information:

Solano County:

http://www.solanocounty.com/depts/rov/district_maps_and_lookup/districtlookup.asp

Napa County (select "My District" from the link below):

https://www.countyofnapa.org/2116/Board-of-Supervisors

The Advisory Council meets monthly on the first Tuesday of the month. Meetings are held from 10:00 am – 12:00 noon. Meeting locations are in Napa and Solano Counties. Members may be asked to attend quarterly meetings of the AAA Oversight Board and monthly subcommittee meetings. Please indicate any obstacles you may have with regard to meeting attendance (example: "I am not able to meet on Mondays or Wednesdays"):

No obstacles to attendance as I am retired and dedicated to serving older adults.

Memberships in other organizations or committees or other community participation (list name and address and nature of organization/committee or community participation):

Board of Directors and volunteer with Molly's Angels at 433 Soscol Avenue, Napa.

Member CVNL (Center for Volunteer and Nonprofit Leadership Napa, 433 Soscol Avenue, Napa.

Previous member of NCASE (Napa County Alliance for Senior Education,) Napa Valley College.

Please provide a brief description of your employment and educational history (resume or CV may be attached):

Career of 40+ years in senior level and management responsibilities in Human Resources and Staffing for major corporations. Most recently my work was in Recruitment and Talent Acquisition for technology companies in the Bay Area.

Education includes a Bachelors and Masters in Psychology, and graduate level courses in Business.

References (list 3):

Name	Relationship	Phone Number
Fran Rosenberg	*Colleague*	[redacted]
Fern Yaffa	*Colleague*	[redacted]
Elaine Clark	*Exec Dir AAA*	[redacted]

Why do you want to serve on the Advisory Council?:

I am interested and commited to volunteering and serving activities that assist older adults.

I believe my skills and abilities are helpful and needed and ope to make significant contributions to the Advisory Council.

Napa Applicants: please list all court or other public administration actions impacting your credit rating within the past 10 years: *None*

Applicant signature: Susan H Kersey Date: 3-6-24

A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

RECEIVED
JUN 24 2024
NAPA COUNTY
EXECUTIVE OFFICE

June 13, 2024

Fran Rosenberg
[redacted]
Napa, CA 94558
Via email: [redacted]

Re: **Napa/Solano Area Agency on Aging Advisory Council**

Dear Fran:

You have been a valued member of the **Napa/Solano Area Agency on Aging Advisory Council** representing **Napa County Alternate 1**. The term of your position expires on June 30, 2024. If you wish to request reappointment for a 2-year term, please check the following box:

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the Napa County Mental Health Board for the term commencing immediately and expiring June 30, 2026.

If you have chosen to request reappointment, please check **one** of the two boxes below regarding your last application:

==========

☒ I confirm that all the information on my last application is current.

☐ Some of the information on my last application is no longer current or is five (5) years old or older. I will submit a new or revised application.

(To complete a new application form either contact the Napa County Executive Office or go to the following link to complete your application online:

http://ca-napacounty.civicplus.com/1420/Committees-Commissions

After checking the appropriate boxes, sign and date on the lines below and return this letter to the County Executive Office by mail or email no **later than Friday, June 28, 2024.**

Fran Rosenberg
SIGNATURE

6/17/2024
DATE

Received 2/14/19 SMC

A Tradition of Stewardship
A Commitment to Service

[redacted]

Application for Membership on Napa/Solano Area Agency on Aging Advisory Council

(Feel free to attach a resume or curriculum vitae (CV))

Federal and State laws mandate the composition of the Area Agency on Aging (AAA) Advisory Council. The application questions are designed to ensure the legal composition of the Advisory Council.

Name: FRAN ROSENBERG

Date of Birth: [redacted]
Month Date Year

Please indicate which county you are applying to represent:

☑ Napa County ☐ Solano County

Please indicate your membership preference:

☐ Primary Representative ☐ Alternate Representative ☑ No Preference

Please indicate the category for which you are applying and your category affiliation (if applicable):

☐ Representatives of older individuals

☐ Representative of health care provider organizations, including providers of veterans' health care

Health care organization affiliation: _____

☐ Representatives of supportive services provider organizations.

Supportive Services organization affiliation: _____

☑ Persons with leadership experience in the private and voluntary sectors.

Leadership experience (resume or CV may be attached): EXECUTIVE DIRECTOR MOLLY'S ANGELS (RETIRED)

☐ Local elected officials

Elected position: _____

Term of Office: _____
Term Start Date Term End Date

☐ Family caregiver representative

☐ The general public.

Please indicate your race and ethnicity:

☑ White ☐ Hispanic ☐ Asian ☐ Black

☐ Native Hawaiian/Pacific Islander ☐ American Indian ☐ Other: _____

Residence Address: [redacted]

Business Address: _____

Phone Numbers: Home: [redacted] Business: [redacted]

Mobile [redacted]

Supervisorial District in which you reside: 1 (2) 3 4 5

The following links can be used as a reference for Supervisorial District information:

Solano County:

http://www.solanocounty.com/depts/rov/district_maps_and_lookup/districtlookup.asp

Napa County (select "My District" from the link below):

https://www.countyofnapa.org/2116/Board-of-Supervisors

It is anticipated that the Advisory Council will meet monthly. Dates and meetings locations will be determined by the Advisory Council and Advisory Council members may be asked to attend quarterly meetings of the AAA Oversight Board. Please indicate any obstacles you may have with regard to meeting attendance (example: "I am not able to meet on Mondays or Wednesdays"):

Any day will be acceptable.

Memberships in other organizations or committees or other community participation (list name and address and nature of organization/committee or community participation):

N/A today

Previous - HAPI - Napa Up Valley Senior Collaboration - St Helena

VITAL - Volunteer Transportation Alliance - Lafayette, CA

Please provide a brief description of your employment and educational history (resume or CV may be attached): Presentation High School, S.F. 12th grade / City College SF 1 year

Small business owner - 30 years

Molly's Angels non-profit organization - 20 years

References (list 3):

Name	Relationship	Phone Number
Bill Lipschultz	Friend	[redacted]
Joan Bennett	Friend	[redacted]
Nicole Pfister	Friend	[redacted]

Why do you want to serve on the Advisory Council?: Knowledge of Senior programs and problems of the older adults in Napa County.

Napa Applicants: please list all court or other public administration actions impacting your credit rating within the past 10 years: None

Applicant signature: Fran Rosenberg Date: Sept. 13, 2019

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1386

TO: Board of Supervisors

FROM: Neha Hoskins - Clerk of the Board

REPORT BY: Paulette Cooper - Deputy Clerk of the Board II

SUBJECT: Reappointment to the Unincorporated Napa Valley Tourism Improvement District Governing Committee

RECOMMENDATION

Reappoint Stacey D. Capitani representing Napa Valley Vintners/Top 5 Revenue on the Unincorporated Napa Valley Tourism Improvement District Governing Committee with term of office to commence immediately and expire on June 30, 2028. (No Fiscal Impact)

BACKGROUND

There are currently two openings due to a term expiration and a vacancy on the Unincorporated Napa Valley Tourism Improvement District Governing Committee. The County Executive Office advertised the openings and received one reappointment request from Stacey D. Capitani, seeking a third term.

The Napa Valley Tourism Improvement District (NVTID) promotes tourism throughout Napa County, and its activities are funded by a 2% assessment on gross short-term (less than 30 days) room rentals in lodging businesses. The assessment was made effective July 1, 2010.

The NVTID Governing Committee is charged with developing and overseeing the share of the assessment funds generated in the unincorporated area and is ruled by a Governing Policy approved by the Governing Committee on August 15, 2016 and adopted by the Board on October 18, 2016. The Governing Policy defines the Governing Committee's membership term as staggered four-year terms and ensures that membership is open to other lodging businesses every year that there is a vacancy on the Governing Committee.

The NVTID Governing Committee is composed of the following seven members:

- One member of the Board of Supervisors;
- The County Executive Officer's designee;

- A member of the Napa Valley Vintners; and
- Four representatives of the eligible lodging businesses.

Requested Action:

Reappointment of Stacey D. Capitani to the Unincorporated Napa Valley Tourism Improvement District Governing Committee.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

County Executive Office

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Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

A Tradition of Stewardship
A Commitment to Service

June 17, 2024

Stacy Dolan Capitani
[redacted]
Napa, CA 94558
Via email: [redacted]

Re: Unincorporated Napa Valley Tourism Improvement District Governing Committee (NVTID)

Dear Stacy:

You have been a valued member of the **Unincorporated Napa Valley Tourism Improvement District Governing Committee** representing one of the top five revenue-generating lodging businesses in unincorporated Napa County. The term of your position will be expiring June 30, 2024. If you wish to request reappointment for another four-year term, please check the box below:

☑ Yes, I would like my name, this reappointment request letter and application forwarded to the Board of Supervisors requesting reappointment to the **Unincorporated Napa Valley Tourism Improvement District Governing Committee** for the term commencing immediately and expiring June 30, 2028.

==========

If you have chosen to request reappointment, please check **one** of the two boxes below regarding your last application.

☐ I confirm that all the information on my last application is current.

☑ Some of the information on my last application is no longer current or is five (5) years old or older. I will submit a new or revised application.

To complete a new application form either contact the Napa County Executive Office or go to the following link to complete your application online:
http://ca-napacounty.civicplus.com/1420/Committees-Commissions

After checking the appropriate boxes, sign and date on the lines below and return this letter to the County Executive Office by mail or email no **later than Friday, June 28, 2024.**

Stacy Dolan Capitani — June 17, 2024

SIGNATURE DATE

Application for Appointment to Board, Commission, Committee, Task Force or Position

Applicants appointed by the Board of Supervisors will be required to take an oath of office. All applications will be kept on file for one year from the date of application.

Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code
California Fair Political Practices Website

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Unincorporated Napa Valley Tourism Improvement District Governing Committee (NVTID): Submitted

Category of Membership for Which You Are Applying

Governing Committee

Profile

Stacey (First Name) | D (Middle Initial) | Capitani (Last Name)

[redacted] (Email Address)

[redacted] (Home Address) | (Suite or Apt)

Napa (City) | CA (State) | 94558 (Postal Code)

Which supervisorial district do you reside in? *

- [x] District 2

To find your supervisorial district go to https://www.countyofnapa.org/2051/Find-my-supervisor-and-district and enter your address.

[redacted] (Primary Phone)

Napa Valley Vintners	Vice President of Marketing	Marketing
Employer	Job Title	Occupation

Education/Experience

- Brand Positioning - Strategic Planning - Charitable event management and fundraising

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes)

Curtis Capitani, Electrician

Resume

Upload a Resume

Letter of Recommendation or Supplemental Attachments

Professional or occupational license, date of issue, and expiration including status

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

- Assist with strategic positioning of the Napa Valley Brand - Confirm cohesive work is happening with all the partners (Visit Napa Valley, Napa Valley Vintners, hotels) - Confirm consistent messaging

Nature of activity and community location

Other County Board/Commission/Committee on Which You Serve/Have Served

None

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

None

Electronic Signature Agreement

I meet the criteria required to serve in this position.

◉ Yes ○ No

I declare under penalty of perjury that the foregoing is true and correct.

◉ Yes ○ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☑ I Agree

Electronic Signature (First M. Last)

Stacey Capitani

Date

June 17 2024

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1313

TO: Board of Supervisors

FROM: Sheryl Bratton, County Counsel

REPORT BY: Erin Cossen, Legal Office Manager

SUBJECT: Amendment to Agreement 230248B with Thomson Reuters for Westlaw

RECOMMENDATION

Approve and authorize Amendment No. 1 to Agreement No. 230248B with Thomson Reuters for Westlaw legal research software adding two additional user licenses for a new maximum compensation of $17,451, expiring on January 31, 2026. (Fiscal Impact: $1,939 Expense; General Fund; Budgeted; Discretionary)

BACKGROUND

Napa County entered into Agreement No. 230248B on December 6, 2022, for the provision of legal research software, known as Westlaw, to the County Counsel's Office and the attorneys at Child Support Services for 16 licenses.

County Counsel now needs two additional licenses due to the addition of one full-time attorney and one extra-help attorney. The new maximum compensation for Fiscal Year 2024-2025 will be $17,451. The Agreement expires January 31, 2026.

Requested Action: Approve and authorize Amendment 1 to Agreement No. 230248B.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	County Counsel 1200000
Is it Mandatory or Discretionary?	Discretionary

Discretionary Justification:	County Counsel is currently using Westlaw for its legal research software. Two additional licenses are needed for the two attorney positions that were recently added.
Is the general fund affected?	Yes
Future fiscal impact:	Funds will be appropriated in future fiscal years, as needed.
Consequences if not approved:	County Counsel would have to look for other ways to conduct legal research, such as establishing and stocking a new library.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Thomson Reuters™

Order Form Order ID: Q-08583958

Contact your representative hailey.foeller@thomsonreuters.com with any questions. Thank you.

Sold To Account Address	Shipping Address	Billing Address
Account #: 1000802999 NAPA COUNTY COUNSEL 1195 3RD ST STE 301 NAPA CA 94559-3035 US "Customer"	Account #: 1000802999 NAPA COUNTY COUNSEL 1195 3RD ST STE 301 NAPA CA 94559-3035 US	Account #: 1000802999 NAPA COUNTY COUNSEL 1195 3RD ST STE 301 NAPA, CA 94559-3035 US

This Order Form is a legal document between Customer and

A. West Publishing Corporation to the extent that products or services will be provided by West Publishing Corporation, and/or
B. Thomson Reuters Enterprise Centre GmbH to the extent that products or services will be provided by Thomson Reuters Enterprise Centre GmbH.

A detailed list of products and services that are provided by Thomson Reuters Enterprise Centre GmbH and current applicable IRS Certification forms are available at: https://www.tr.com/trorderinginfo

West Publishing Corporation may also act as an agent on behalf of Thomson Reuters Enterprise Centre GmbH solely with respect to billing and collecting payment from Customer. Thomson Reuters Enterprise Centre GmbH and West Publishing Corporation will be referred to as "Thomson Reuters", "we" or "our," in each case with respect to the products and services it is providing, and Customer will be referred to as "you", or "your" or "Client".

ProFlex Modification

Material #	Product	Agreement #	New Monthly Charges
40757482	West Proflex	0000247231	$1,454.23

This Order Form modifies the current order form for the products listed above("Original Order Form"). The terms of this modification will be effective on the date we process the modification. The Monthly Charges will increase to new Monthly Charges identified in the New Monthly Charges column and will begin billing the first of the month following processing. All other terms and conditions of the Original Order Form including, but not limited to, annual monthly charges increases and the length of the term remain unchanged.

ProFlex Modification Governing Agreement. Access and use of the products and services on this ProFlex Modification Order Form is governed by the same agreement terms and conditions as the order form this Order Form is modifying ("General Terms and Conditions") along with any applicable Product Specific Terms (set forth below). Such terms are incorporated into this Order Form by this reference. In the event that there is a conflict of terms among the General Terms and Conditions, the Product Specific Terms and this Order Form, the order of precedence shall be Order Form, the Product Specific Terms, and last the General Terms and Conditions.

If this modification is of a ProFlex under a current WestPack, this Order Form serves as a modification of the Principal product.

If you are licensing banded products, you certify the total number of attorneys (partners, shareholders, associates, contract or staff attorneys, of counsel, and the like), corporate users, personnel or full-time-equivalent students is indicated in the this Order Form. Our pricing for banded products is made in reliance upon your certification. If we learn that the actual number is greater or increases at any time, we reserve the right to increase your charges as applicable.

Banded Product Subscriptions. You certify your total number of attorneys (full-time and part-time partners, shareholders, associates, contract or staff attorneys, of counsel, and the like), corporate users, personnel or full-time-equivalent students is indicated in this Order Form. Our pricing for banded products is made in reliance upon your certification. If we learn that the actual number is greater or increases at any time, we reserve the right to increase your charges to the market rate for all of your attorneys.

Miscellaneous

Applicable Law. If you are a state or local governmental entity, your state's law will apply, and any claim may be brought in the state or federal courts located in your state. If you are a non-governmental entity, this Order Form shall be interpreted under Minnesota state law and any claim by one of us shall exclusively be brought in the state or federal courts in Minnesota. If you are a United States Federal Government subscriber, United States federal law will apply, and any claim may be brought in any federal court.

Material Change. If, at any time during the Minimum Term or the Renewal Term, there is a material change in your organizational structure including, but not limited to merger, acquisitions, combination, significant increase in the number of attorneys at a location covered by the agreement, divestitures, downsizing or dissolution, the parties agree to immediate good faith renegotiation of the terms and conditions of this ordering document, during which we may modify your rates proportionally. If you acquire the assets of, or attorneys from, another entity that is a current subscriber, you assume all obligations under the agreements that apply to those assets and attorneys, and you will pay the invoiced charges on both those agreements as they become due, until a superseding agreement is negotiated in good faith.

Charges, Payments & Taxes. You agree to pay all charges in full within 30 days of the date of invoice. You are responsible for any applicable sales, use, value added tax (VAT), etc. unless you are tax exempt. If you are a non-government customer and fail to pay your invoiced charges, you are responsible for collection costs including attorneys' fees.

Excluded Charges And Schedule A Rates. If you access products or services that are not included in your subscription you will be charged our then-current rate ("Excluded Charges"). Excluded Charges will be invoiced and due with your next payment. For your reference, the current Excluded Charges schedules are located in the below link. Excluded Charges may change from time-to-time upon 30 days written or online notice. We may, at our option, make certain products and services Excluded Charges if we are contractually bound or otherwise required to do so by a third party provider or if products or services are enhanced or if new products or services are released after the effective date of this ordering document. Modification of Excluded Charges or Schedule A rates is not a basis for termination under paragraph 9 the General Terms and Conditions.
https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/other/plan-2-pro-govt-agencies.pdf

eBilling Contact. All invoices for this account will be emailed to your e-Billing Contact(s) unless you have notified us that you would like to be exempt from e-Billing.

Credit Verification. If you are applying for credit as an individual, we may request a consumer credit report to determine your creditworthiness. If we obtain a consumer credit report, you may request the name, address and telephone number of the agency that supplied the credit report. If you are applying for credit on behalf of a business, we may request a current business financial statement from you to consider your request.

Cancellation Notification Address. Send your notice of cancellation to Customer Service, 610 Opperman Drive, P.O. Box 64833, Eagan MN 55123-1803

Returns and Refunds. You may return a print product to us within 45 days of the original shipment date if you are not completely satisfied. Please see http://static.legalsolutions.thomsonreuters.com/static/returns-refunds.pdf or contact Customer Service at 1-800-328-4880 for additional details regarding our policies on returns and refunds.

Document Intelligence Product Specific Terms: The following product specific terms shall apply to the Document Intelligence products on this order form, and are incorporated by reference: http://www.thomsonreuters.com/document-intelligence-PST.

Generative Artificial Intelligence ("AI") Features Product Specific Terms: The following product specific terms shall apply to any Generative AI features, including AI Assisted Research, available through the products and services on this order form, and are incorporated by reference: http://tr.com/ai-content-product-specific-terms

Product Specific Terms and Service Levels: The following product specific terms and service levels shall apply to the HighQ products on this order form, and are incorporated by reference:

- HighQ Product Specific Terms http://tr.com/HighQ-PST
- HighQ Service Level**s:** Thomson Reuters shall provide service availability, maintenance and support for the term of the Agreement. Details are available at: http://tr.com/HighQ-SLA. Note that Sections 3.3 of the SLA does not apply to any HighQ Light packages

Product Specific Terms. The following products have specific terms which are incorporated by reference and made part of this Order Form if they apply to your order. They can be found at https://static.legalsolutions.thomsonreuters.com/static/ThomsonReuters-General-Terms-Conditions-PST.pdf. If the product is not part of your order, the product specific terms do not apply. If there is a conflict between product specific terms and the Order Form, the product specific terms control.

- Campus Research
- Hosted Practice Solutions
- ProView eBooks
- Time and Billing
- West km Software
- West LegalEdcenter
- Westlaw
- Westlaw Doc & Form Builder
- Westlaw Paralegal
- Westlaw Patron Access
- Westlaw Public Records

Drafting Tools Product Specific Terms: The following product specific terms shall apply to the Drafting Tools products (Drafting Assistant, Clause Finder, Clause Finder: Internal Agreements) on this order form, and are incorporated by reference: http://tr.com/drafting-tools-product-specific-terms.

The Federal Product Specific Terms can be found here: http://tr.com/federal-product-specific-terms

This Order Form will expire and will not be accepted after 8/17/2024.

Thomson Reuters™	**Attachment** **Order ID: Q-08583958**
	Contact your representative hailey.foeller@thomsonreuters.com with any questions. Thank you.

Payment, Shipping, and Contact Information

Payment Method:
Payment Method: Bill to Account
Account Number: 1000802999
This order is made pursuant to:

Shipping Information:
Shipping Method: Ground Shipping - U.S. Only

Order Confirmation Contact (#28)
Contact Name: Cossen, Erin
Email: erin.cossen@countyofnapa.org

eBilling Contact
Contact Name Erin Cossen
Email **erin.cossen@countyofnapa.org**

ProFlex Multiple Location Details

Account Number	Account Name	Account Address	Action
1000802999	NAPA COUNTY COUNSEL	1195 3RD ST STE 301 NAPA CA 94559-3035 US	Existing

Modifications to ProFlex

Material Number	Product Title	Agreement Number	Prior Quantity	New Amended Quantity	Unit	Subscription Type
40757481	West Proflex	0000247231		1	Each	Exist
42077867	Westlaw Multi-State Analytical, Enterprise access, Government	0000247231	16	18	Attorneys	Exist
41984066	Gvt - Briefs For Government (Westlaw PRO™)	0000247231	16	18	Attorneys	Exist
42510229	Westlaw Edge National Primary Law, Enterprise access, Government	0000247231	16	18	Attorneys	Exist

NAPA COUNTY, a political subdivision of the State of California

By _____
JOELLE GALLAGHER, Chair
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: _____ County Counsel Date: 7-26-24	Date: _____ Processed By: _____ Deputy Clerk of the Board	By: _____

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1347

TO: Board of Supervisors

FROM: Sheryl L. Bratton, County Counsel

REPORT BY: Sheryl L. Bratton, County Counsel

SUBJECT: Informed Consent Letter

RECOMMENDATION

Approve and authorize the Informed Consent Letter with Liebert Cassidy Whitmore to allow the law firm to represent the Community College District in negotiations between the County and the College District for law enforcement services. (No fiscal Impact; Discretionary)

BACKGROUND

Liebert Cassidy Whitmore ("LCW") is retained by the County for legal advice on specialized employment matters, including assisting the County with CalPERS cost sharing and industrial retirement issues. LCW has been asked by Napa Valley Community College District ("District") to provide it with legal advice in connection with reviewing an agreement for law enforcement services between the District and Napa County for the housing areas owned by the District.

Because the District and the County are each separate and individual clients of LCW, informed written consent is required before LCW can proceed with reviewing the agreement on behalf of the District. The informed consent is limited to LCW's representation of the District in the negotiation of the law enforcement services agreement. The County's consent to this representation would not apply to any other matter or services provided by LCW to the County.

California Rules of Professional Conduct Rule 1.7(a) requires that lawyers obtain informed written consent from each client when the representation of one client is directly adverse to another client in the same or a separate matter. An attorney owes a duty to represent a client with undivided loyalty and without being influenced by the interests of others, including interests of other current clients in unrelated matters. Absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The parties will be negotiating the terms of the law

enforcement services agreement, which may include key provisions on which we would likely consider advising each client differently.

Consent to LCW's representation of the District in this matter will not extend to litigation arising from any disputes over the law enforcement services agreement in the future. If litigation arises in connection with the agreement, LCW will not represent either the District or the County.

The District has signed the Informed Consent.

Requested action: Approve and authorize the Informed Consent Letter with Liebert Cassidy Whitmore

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The approval of the letter will not jeopardize or impact the employment law services the County receives from LCW.
Is the general fund affected?	No
Consequences if not approved:	LCW will not be able to provide legal services to the District, which may delay the negotiations of the law enforcement services agreement between the County and the District.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

6033 WEST CENTURY BOULEVARD, 5TH FLOOR
LOS ANGELES, CALIFORNIA 90045
T: 310.981.2000 F: 310.337.0837

hdeblanc@lcwlegal.com
310.981.2028

August 2, 2024

Via Email
james.reeves@napavalley.edu;
sheryl.bratton@countyofnapa.org

Mr. James Reeves
Assistant Superintendent/Vice President of Administrative Services
Napa Valley Community College District
2277 Napa-Vallejo Highway
Napa, California 94558

Ms. Sheryl Bratton
County Counsel
Napa County Counsel's Office
1195 Third Street
Suite 301
Napa, California 94559

Re: ***Informed Consent Regarding Legal Services***
Client-Matter: NA025/500

Dear Mr. Reeves and Ms. Bratton:

The Napa Valley Community College District ("District") has asked Liebert Cassidy Whitmore ("LCW") to provide it with legal advice in connection with reviewing an agreement for law enforcement services between the District and the County of Napa ("Napa") for the Napa County Sheriff's Office to patrol housing areas owned by the District ("Agreement").

Because the District and the County are each separate and individual clients of LCW, we are writing to advise you that informed written consent from all parties is required before LCW can proceed with reviewing the Agreement on behalf of the District. The informed consent discussed herein would be strictly limited to LCW's representation of the District in the aforementioned matter. The District's and the County's consent to this representation would not apply to any other matter or services provided by LCW to the District or County. In addition, in the event all parties sign and return the attached informed consent, Heather DeBlanc and Cindy Allen will be advising the District on the contemplated Agreement. Neither Ms. DeBlanc nor Ms. Allen will be personally representing or advising the County while working on this matter.

California Rules of Professional Conduct (the "Professional Rules"), Rule 1.7(a) requires that lawyers obtain informed written consent from each client when the representation of one client is directly adverse to another client in the same or a separate matter. An attorney owes a duty to represent a client with undivided loyalty and without being influenced by the interests of others, including the interests of other current clients in unrelated matters. A lawyer's judgment and advice must be entirely independent of any such influences. An attorney's ability to discharge his or her duty of loyalty is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other

responsibilities or interests towards a different client. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. (Professional Rules, Rule 1.7, subd. (a), cmt. 1.)

Moreover, California Rules of Professional Conduct, Rule 1.7(b) requires that lawyers obtain informed written consent from each affected client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationship with another client. The critical questions with respect to "material interference" include: the likelihood that a difference in interests exists or will eventuate and, if it does, whether it will interfere with a lawyer's independent professional judgment in considering alternatives or foreclose courses of actions that reasonably should be pursued on behalf of each client. (Professional Rules, 1.7 subd. (b), cmt. 4.) A material limitation conflict could arise out of any interest that impacts a lawyer's ability to provide diligent, impartial representation for a client, such as a desire to maintain good relations with another client.

Here, the Parties' interests are not aligned for several reasons. The Parties will be negotiating the terms of the Agreement, which may include key provisions on which we would likely consider advising each client differently. For example, indemnity provisions between contracting parties are typically negotiated, and each contracting party would typically have independent counsel to review and advise on such terms. As distinct public agencies on opposite sides of this transaction, it is likely you will have differing views on how some of these provisions should be drafted. As another example, each party here may have differing views as to the amount of compensation to be paid for the law enforcement services. Accordingly, a divergence in interests currently exists which may require LCW to act as an advocate for the District, against the County, a current LCW client, compromising its duties to the County. This may rise to the level of direct adversity, or could constitute a material limitation conflict, both of which require each client's consent to represent the District. In addition to the divergent interests of the District and the County, discussed above, differences in the positions of the Parties may become evident during the course of our representation due to new facts discovered or new legal issues that arise.

Even if the representation of the District in this matter, and concurrent representation of the County in other matters, does not in fact result in direct adversity or material interference with LCW's professional judgment, the Rules requires LCW to disclose its relationship with the District and the County to each party, because of its professional attorney-client relationship with both. (Professional Rules, Rule 1.7, subd. (c).) This letter also serves this disclosure purpose.

As the District's attorney in this matter, contingent on all Parties' executed consent to such representation below, LCW would have to provide advice consistent with its duty of loyalty to the District and would not modify or tailor its advice to the District due to its current client relationships with the County. LCW strongly recommends that the County seek independent counsel to both review this informed consent, and to provide advice in connection with the contemplated Agreement. Neither the District nor the County must sign this consent.

Please be advised that this consent to LCW's representation of the District in this matter will not extend to litigation arising from any disputes over sharing information between the Parties. In other words, we are not asking any party to waive any potential conflict of interest with LCW's representation of the District in litigation arising from a dispute over the above-referenced matter. If litigation arises in connection with the above-referenced matter, LCW will not represent either the District or the County.

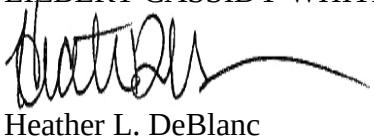
Please note also that LCW is not merely providing this letter regarding informed consent to you to enable LCW to comply with its own ethical obligations. Failure to obtain fully informed consent can have significant consequences for clients of the same law firm negotiating business transactions that result in later litigation between the parties. Courts have found negotiated provisions in written agreements that benefit one client over another unenforceable where an actual conflict existed and consent was deemed inadequate. Moreover, if a client's lawyer is disqualified by a court due to a conflict of interest, a client will be harmed by legal fees incurred in having to find alternate legal counsel.

In conclusion, the District and the County should carefully consider whether to provide informed consent to waiving the conflict of interest issues described above. If the District wishes to have LCW serve as its legal counsel for the above-referenced matter, the District must sign the last page of this letter indicating its informed consent regarding conflicts. Similarly, if the County consents to have LCW represent the District in this matter, they must sign the last page of this letter indicating their informed consent regarding conflicts.

If you wish to discuss any related issues, please contact me at your earliest convenience. However, if you agree to LCW's representation of the District in this matter, please sign the attached and return an executed copy of this letter.

Very truly yours,

LIEBERT CASSIDY WHITMORE



Heather L. DeBlanc

HLD:cla

INFORMED CONSENT REGARDING CONFLICT OF INTEREST REGARDING LAW ENFORCEMENT SERVICES AGREEMENT

The informed consent refers to and incorporates the entire letter contained above. By signing below, the Napa Valley Community College District and the County of Napa acknowledge that Liebert Cassidy Whitmore informed them that they are each a client of Liebert Cassidy Whitmore, and are providing their informed consent to have Liebert Cassidy Whitmore represent the Napa Valley Community College District with respect to the parties' negotiations involving an agreement for law enforcement services.

NAPA VALLEY COMMUNITY COLLEGE DISTRICT	**COUNTY OF NAPA, a political subdivision of the State of California**
James Reeves By:	By: JOELLE GALLAGHER, Chair of the Napa County Board of Supervisors
8/2/24 Date	Date

"COUNTY"

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS
By: ___ _____ County Counsel Date: August 5, 2024	Date:_____ Processed By: _____ Deputy Clerk of the Board	By: _____

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1252

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Becky Craig, Assistant County Executive Officer

SUBJECT: Development Impact Fees Study

RECOMMENDATION

Approve and authorize Agreement No. 250100B with Willdan Financial Services to conduct a nexus study for Affordable Housing, Traffic, Utility Connections, and Small Woodland Conversion mitigation projects. (Fiscal Impact: $68,460 Expense; General Fund; Budgeted; Discretionary)

BACKGROUND

A development impact fee is a monetary exaction other than a tax or special assessment that is charged by a local governmental agency to an applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. (Gov. Code § 66000(b).) The legal requirements for enactment of development impact fee programs are set forth in Government Code §§ 66000-66025 (the "Mitigation Fee Act"), the bulk of which were adopted as 1987's AB 1600 and thus are commonly referred to as "AB 1600 requirements." A development impact fee is not a tax or special assessment; by its definition, a fee is voluntary and must be reasonably related to the cost of the service provided by the local agency. If a development impact fee does not relate to the impact created by development or exceeds the reasonable cost of providing the public service, then the fee may be declared a special tax and must then be subject to two-thirds voter approval. (Cal. Const., Art. XIII A, § 4.)

Napa County currently administers two development impact fee programs - Napa Valley Business Park Traffic Mitigation Fee (TMF) and the Affordable Housing Fee. The TMF was adopted in 1990 and last updated in November 2021. This program is operating as intended and is not proposed for review this year.

The County adopted an Affordable Housing Trust Fund Ordinance in 1992, which created a Housing Trust Fund to assist with the development of affordable housing in Napa County. The Ordinance was based upon a Jobs-Housing Nexus Study conducted by the County and established a housing impact fee on non-residential construction and an inclusionary housing requirement on residential construction. The non-residential

component of the program was updated and revised in 2004 and again in 2014; the residential component was revised in 2009. The current inclusionary program has an in-lieu fee option available to all new construction and virtually all residential projects have paid the in-lieu fee. The purpose of a nexus study is to quantify and document the linkages among construction of new workplace buildings, the employees that work in them, and the demand for affordable housing. Likewise, nexus studies explore the linkages between new residential construction, the expenditures of new households in Napa, new jobs generated by the expenditures, and the demand for additional affordable housing units. The nexus analysis will need to demonstrate a reasonable relationship between the fee and the demand for affordable housing created by new residential and commercial development.

The Board of Supervisors recently discussed an interest to review and update this fee program. Additionally, the County's approved and HCD-certified Housing Element contains a program requiring that the Affordable Housing Fee be updated.

Staff solicited consultant proposals to study the Affordably Housing fee program and additional possible developer impact fee programs, including Traffic and Small Woodland Conversion. Staff also recommends updating the water and sewer utility connections in LBRID and NBRID. Each program will ensure nexus of development impact with potential projects consistent with the County's General Plan and cannot mitigate any existing deficiencies, as required by established and recent case law. Community input and comparisons with other jurisdictions will be incorporated. Fee adoption will provide developers an alternative for mitigating their fair share of impacts.

Requested Action:

1. Approve agreement

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Central Services
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Provide developers with a mechanism to address impacts through fee nexus.
Is the general fund affected?	Yes

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California

Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO. 250100B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 20th day of August, 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and WILLDAN FINANCIAL SERVICES, INC., whose mailing [or business] address is 27368 Via Industria, Suite 200, Temecula, CA 92590, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to conduct an AB 1600 Development Impact Fee (or Nexu)s Study for Affordable Housing, Traffic, Utility Connections, Watershed Management, and Small Woodland Conversion mitigation projects; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2025, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed three additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A," attached hereto, in addition to the RFP and CONTRACTOR's proposal, incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B," attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a fixed fee of SIX-EIGHT THOUSAND FOUR HUNDRED AND SIXTY DOLLARS ($68,460) for professional services; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the Management Analyst who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Management Analyst upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of

CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and

non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the County Executive Office prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not

be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within thirty (30) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving thirty (30) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby

authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least 30 days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CONTRACTOR
County Executive Office Napa County 1195 Third Street Suite 310 Napa, CA 94559	Willdan Financial Services 27368 Via Industria, Ste 200 Temecula, CA 92590

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and

subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Management Analyst. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This

includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Management Analyst.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof

as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages.

(1) Affected Work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing Wages Rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll Records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

Willdan Financial Services

By_____
Chris Fisher, Vice President/Director

NAPA COUNTY, a political subdivision of
the State of California

By_____
JOELLE GALLAGHER, Chair
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: Silva Darbinian Deputy County Counsel Date: July 30, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:___ _____

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

Complete a Development Impact Fees Study to update Napa County's impact fees. The County's impact fee program must comply with the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as Assembly Bill 1600) and applicable case law.

Required Services:

a. **Fee Study**: Conduct a fee study on the following:
   - Affordable Housing Fees
   - Connection Fees (water/sewer)
   - In-lieu Fee for Small Oak Woodland Conversion Projects
   - Municipal Watershed Management
   - Traffic Impact Fees

b. **Findings**: Provide sufficient information and the necessary findings to help the County determine the develop impact fees based on the proposed infrastructure requirements to support the County's growth projections. The consultant will work with County staff to determine other supporting infrastructure (i.e., equipment, vehicles, etc.) or other operational services that could rightfully be included in the fee program to ensure the costs of such supporting infrastructure are paid by development. The consultant will evaluate the following:
   - If current fees have resulted in funding anticipated projects.
   - If an increase to fees is necessary to complete anticipated projects.
   - If there are potential new projects that should be supported by impact fees and what those fees should be.

c. **Meetings:** The consultant shall include attendance at the following meetings, as a minimum:
   - Kick-off meeting between consultant and County staff to review objectives of study, agree to methodology, exchange information, timing, schedule for all tasks and to determine information to be provided by County staff.
   - Public Workshop aimed at educating the community about the purpose of impact fees, the process, and to seek input.
   - Review findings with County staff. Consultant to provide information supporting findings to date and proposed fees.

   The consultant shall consider the following optional meetings in their proposal, with a separate fee schedule, if necessary, for three additional meetings.
   - Public meeting to present draft study report and share findings with stakeholders, including developers and engineers. Consultant to facilitate meeting, provide exhibits and formal presentation, collect input, and prepare meeting minutes capturing public input.
   - Board of Supervisors meeting to present draft study report. Discuss methodology, findings, formal presentation, answer questions about findings, collect input for preparation of final report.

- Final Board of Supervisors meeting to follow-up on first meeting and present final report.

d. **Best Practices**: Recommend best practices to help ensure better collections.

e. **Report Deliverables:** Prepare a final report submitted to the County containing background information, methodology, findings, and recommendations. More specifically, consultant shall prepare a report containing, but not limited to, the following:

- Background information
- A description of the overall methodology
- Supporting justification
- Calculations that demonstrate the legal nexus between recommended fees and the impact created by new development
- Relationship between the fee's use and the type of project on which it would be imposed
- Purpose of the fee
- How the fee would be used
- Description of the relationship between the need for any additional facilities and the type of development project on which the fee would be imposed
- Comparable Agencies' Fees
- Any additional matters that County staff should be made aware of, findings, and recommendations

When possible, and as coordinated with COUNTY, all reports shall be provided electronically. Ensure that any reports, and any deliverable to the County be delivered in a manner to ensure non-discrimination and equal access to County services and digital properties such as websites, documents, and applications by persons with a disability under the Americans with Disabilities Act (ADA) and under Section 508 of the Rehabilitation Act of 1973. Successful respondent shall ensure that any deliverable, including but not limited to, reports, documents, videos, multimedia productions, live broadcasts and any and all other web content and information communications technology are fully accessible and in compliance with federal accessibility standards and laws and with the COUNTY's Web Content Accessibility Standards. Examples of accessibility measures include, but are not limited to, providing closed captions, video descriptions, and 508 compliant players.

All work shall be completed in accordance with the schedule outlined in CONTRACTOR's RFP, commencing on page 29. The schedule shall serve as a general guideline. CONTRACTOR shall keep COUNTY apprised of any changes or delays in meeting the schedule guidelines.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

NAPA COUNTY

Development Impact Fee Study

WILLDAN

May 21, 2024

Ms. Jasmine Elo
Management Analyst
County Executive Office
Napa County
1195 3rd Street
Napa, CA 94559

Re: Proposal to Conduct a Development Impact Fee Study for Napa County – RFP CEO042402

Dear Ms. Elo:

Willdan Financial Services ("Willdan") is pleased to present this proposal to the Napa County ("County") to conduct a development impact fee study. Willdan's project approach helps to ensure the preparation of an impact fee study that will withstand technical challenges and public scrutiny. Given Willdan's unmatched impact fee experience, we are particularly well positioned to serve the County and help achieve established long-term goals. Outlined below are the advantages and benefits that Willdan will provide to the County.

Unmatched experience implementing and defending fee programs. Willdan's impact fee staff has assisted more than 100 California government agencies with the development and/or update of all fee types and is fortunate to be in a position that will provide a tremendous benefit to the County. Each project has required defensible documentation and thorough coordination of fee program changes for different agency departments and stakeholders within the business community. In some cases, Willdan has been required to negotiate fees with stakeholders and, on occasion, defend them in meetings and public forums.

We are particularly strong in advising our clients on the advantages and disadvantages of different fee schedule structures (countywide versus multiple-fee districts/zones; more versus fewer land-use categories; etc.) and methods of fee calculation that are based on the County's and stakeholder priorities. Impact fees also need to be developed in compliance with the *Mitigation Fee Act* (California Government Code Section 66000 et seq., also known as Assembly Bill 1600) so that they are defensible and transparent. We are also current on the changes to fee programs and the adoption of nexus studies resulting from AB 602, which took effect in 2022.

Innovative Methodologies. As Willdan operates nationally, we possess unique experiences in numerous jurisdictions dealing with multiple challenges. Our ability to produce studies that accommodate various options and viewpoints ensures fair-minded and sensible projects. Our methodology and approach to impact fees has proven to be effective for Cities and Counties, the development community, and the public. Utilizing focus groups, with established guidelines, during the study, fully informs the development community and the public of the justification of the impact fees, and their positive effect on community growth.

Best-in-class impact fee team that can work immediately to prepare an impact fee program. The Willdan team begins a project by evaluating the agency's existing fee program, if available, and current capital planning policies and funding programs. Not all capital projects are amenable to funding from impact fee programs, and we identify sources that complement fee revenues to fully fund the capital improvement program. The team's Principal-in-Charge James Edison and Project Manager Carlos Villarreal are well respected by our clients for their skill in proactively organizing a clear, consensus-based project approach.

Successful project completion. Willdan has successfully completed many development impact fee studies, including most recently in the ***Counties of Riverside, San Benito, and Stanislaus; and the Cities of Murrieta, Moreno Valley, Bell Gardens, Pomona, Fountain Valley, McFarland, Riverbank, Santa Paula, Morgan Hill, Hollister, Pismo Beach, Santa Clara***. These fee programs were approved by their respective Councils and Boards.

We are excited about this opportunity to use our skills and expertise to serve Napa County. To discuss any aspect of this submittal, please contact Managing Principal James Edison, who will serve as the primary contact for this proposal, his contact information is as follows: Tel#: (800) 755-6864 | Email: JEdison@Willdan.com.

As a Vice President of Willdan Financial Services, I am authorized to bind the firm to the terms of this proposal, as well as the subsequent agreement.

Sincerely,
WILLDAN FINANCIAL SERVICES

Chris Fisher
Vice President / Director

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1. Company Background

Firm Profile

Willdan Financial Services is an operating division within Willdan Group, Inc. (WGI), which was founded in 1964 as an engineering firm working with local governments. Today, WGI is a publicly traded company (WLDN). WGI, through its divisions, provides professional technical and consulting services that ensure the quality, value and security of our nation's infrastructure, systems, facilities, and environment. The firm has pursued two primary service objectives since its inception—ensuring the success of its clients and enhancing its surrounding communities.

A financially stable company, Willdan has approximately 1,600 employees working in more than a dozen states across the U.S. Our employees include a number of nationally recognized Subject Matter Experts for all areas related to the broadest definition of connected communities—***including a team who will be committed to contribute their expertise throughout the duration of Napa County's Development Impact Fee Study engagement.***

Willdan has solved economic, engineering and energy challenges for local communities and delivered industry-leading solutions that have transformed government and commerce. Today, we are leading our clients into a future accelerated by a change in resources, infrastructure, technology, regulations, and industry trends.

Willdan Financial Services

Established on June 24, 1988, Willdan Financial Services, is a national firm and is one of the largest public sector economic and financial analysis consulting firms in the United States. Since that time, we have helped over 800 public agencies successfully address a broad range of infrastructure challenges.

Willdan assists local public agencies by providing the following services:

Willdan Financial Services	
Services	
▪ User fee studies; ▪ Cost allocation studies; ▪ Utility rate and cost of service studies; ▪ Real estate economic analysis; ▪ Feasibility studies; ▪ Municipal Advisory; ▪ Arbitrage and Continuing Disclosure Services; ▪ Economic development strategic plans; ▪ Debt issuance support	▪ Development impact fee establishment and analysis; ▪ District Administration Services; ▪ Property tax audits; ▪ Tax increment finance district formation and amendment; ▪ Housing development and implementation strategies; and ▪ Long-term financial plans and cash flow modeling.

Employee Structure

Our staff of over 80 full-time employees support our clients by conducting year-round workshops and on-site training to assist them in keeping current with the latest developments in our areas of expertise.

Employee Structure	
Title	Count
President & CEO	1
Vice President – Group Director	2
Vice President	5
Assistant Director	2
Principal Consultant	13
Project Manager	8
Analyst	32
Analyst Assistant	12
Administration	7

WFS Office Locations

The following table provides the location of our Division Headquarters, as well as our satellite offices. The Napa County engagement will be conducted from the Oakland office.

Willdan Financial Services		
Office Locations		
Division Headquarters 27368 Via Industria, Suite 200, Temecula, California 92590 | Tel: (800) 755-6864 | Fax: (888) 326-6864		
Aurora, CO 3190 S. Vaughn Way, Ste, 550,Of. 523 Aurora, Colorado 80014 (303) 990-4616	**Orlando, FL** 200 South Orange Avenue, Suite 1550 Orlando, Florida 32801 (407) 872-2467	**Plano, TX** 5500 Democracy Lane, Suite 130 Plano, Texas 75024 (972) 378-6588
Oakland, CA 66 Franklin Street, Suite 300 Oakland, California 94607 (510) 832-0899	**Phoenix, AZ** 1440 E. Missouri Ave, Suite C-170 Phoenix, Arizona 85014 (602) 870-7600	**Washington, DC** 1025 Connecticut Ave. NW, Ste 1000 Washington, DC 20036 (202) 510-0511

Slate of Officers

Provided in the table below are the slate of officers for Willdan Financial Services.

Willdan Financial Services		
Slate of Officers		
Michael Bieber Willdan Group Inc. CEO	Mark J. Risco President and CEO	Creighton K. Early Chief Financial Officer
Chris Fisher Vice President / Group Director		Gladys Medina Vice President / Group Director
Jason Gray Vice President	Jeff McGarvey Vice President	Josephine Moses Vice President
Dan Jackson Vice President	Kate Nguyen Secretary	Rebekah Smith Assistant Secretary

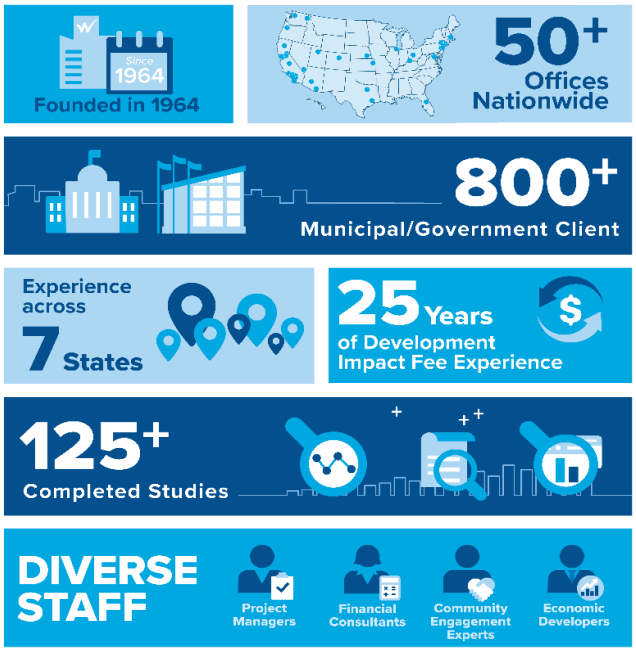
2. Background and Experience

Experience and Expertise

Willdan has been preparing impact fee nexus studies since the passage of the *Mitigation Fee Act*. Our commitment to public agencies and public solutions has helped us develop the broad finance expertise that will be utilized to support the County's Development Impact Fee Study. Willdan has worked on virtually every aspect of municipal finance, including fiscal and economic impact studies related to development and re-organization, the financing of infrastructure and services through special district or supplemental taxes, and even working under contract as a department head of an entire municipality. This experience has provided Willdan team members with deep insight into the sources of municipal revenue and the costs of services.

Managing Principal James A. Edison and his team have worked with public agencies on many community development projects, including the full range of analysis related to feasibility, economic and fiscal impacts, infrastructure finance, and negotiations with private developers. Willdan is thoroughly familiar with both the Act and with the technical and policy issues surrounding impact fees.

In the past five years Willdan has conducted over 125 Impact Fee Studies



Unique Qualifications

Willdan is uniquely qualified to assist Napa County with the proposed Development Impact Fee Study. The following are specific advantages that we will provide for the proposed engagement.

Project Dedication

Willdan has assembled a project team of subject matter experts within the Financial Consulting Services group, to conduct the Napa County Development Impact Fee Study engagement. This team has coordinated or participated in numerous public stakeholder and staff workshops regarding fees and cost of service-based charges.

Community Investment

Much of our success in developing impactful programs and studies is due to our experiences in meeting with citizen / stakeholder groups and elected officials. Our ability to explain technical information in a concise, understandable manner is a fundamental reason for our high degree of success. Willdan staff takes the time to ***include and inform the Community***.

Proven Professionals

The Team's quality is often as important as the consulting firm's reputation. Willdan is known for its personal, customized service. Our team will work with the County's professional staff to provide the long-term service, that is our prime goal.

The team presented within this proposal has worked collectively on numerous projects, such as the one requested by Napa County; an established work practice between the team members has been forged, this proven long-standing system has benefited our clients.

Extensive Public Sector Experience

Willdan Group Inc. has delivered industry-leading financial, energy and engineering solutions that have transformed government and commerce for 60 years. Willdan Financial Services advises governments throughout the United States and abroad about financial and economic consulting. We serve all levels of government and collaborate with government staff, constituents, developers, officials, and other professional services firms.

References

Provided below are client references for projects completed by Willdan and the project team members proposed herein, which demonstrates our ability to provide the requested services. We are proud of our reputation for customer service and encourage you to contact our past clients regarding our commitment to excellence.

County of Stanislaus, CA
Development Impact Fee Update

Willdan has a long-standing relationship with the County of Stanislaus. In 2016, we assisted the County with an update to the existing impact fee program. The program is made up of a range of fee categories including animal control, behavioral health, criminal justice, detention, emergency services, health, library, park, sheriff patrol and investigation, and countywide information technology facilities. Fees are collected on new development countywide, including incorporated municipalities within the County, which include the Cities of Ceres, Hughson, Modesto, Newman, Oakdale, Patterson, Riverbank, Turlock and Waterford. The study also includes a Regional Transportation Impact Fee (RTIF), which is currently being updated for the County. Considerable stakeholder outreach was an integral component of this project.

Willdan recently revised the Public Facilities Impact Fee Update report to include an accessory dwelling unit land use category.

Client Contact: Keith Boggs, Assistant Executive Officer *(Retired, serving as independent consultant to the County)*
1010 10th Street, Suite 6800, Modesto, CA 95354
Tel #: (209) 652-1514 | Email: boggsk@stancounty.com

County of San Benito, CA
Development Impact Fee Update

Willdan has assisted the County of San Benito with their development impact fees since 2007. Most recently, we updated and expanded the impact fees charged by the County on new development. Willdan prepared the study and presented the results at a stakeholder meeting and before the County Board of Supervisors. The fee categories included: general government, library, road maintenance, park, fire, law enforcement, detention and information technology.

Client Contact: Dulce Alonso, Management Analyst
481 Fourth Street, 1st Floor, Hollister, CA 95023
Tel #: (831) 636-4000 | Email: dalonso@cosb.us

County of Riverside, CA
Comprehensive Impact Fee Study

Willdan assisted the County of Riverside with an update of its comprehensive impact fee program. The fee categories were broad and diverse including countywide facilities such as jail detention facilities and county parks and trails; unincorporated only facilities such as ***fire stations*** and libraries; and County planning area specific facilities including storm drain and traffic improvements. Other facilities needed to be differentiated between the Eastern and Western portions of the County due to separation by distance, as well as varying level of facilities by region.

The process was lengthy, involving significant efforts to inform staff of methodological differences between the Willdan methodology and the methodology of the previous consultant.

Willdan has recently, through competitive bid, been selected to update the Development Impact Fees.

Client Contact: Serena Chow, Administrative Services Manager
3403 10th Street, Suite 400, Riverside, CA 92501
Tel #: (951) 955-6619 | Email: schow@rivcoeda.org

City of Morgan Hill, CA
Development Impact Fee Study

Willdan was initially retained by the City of Morgan Hill in 2010 to conduct a development impact fee and nexus study, which included general government, fire, police, parks and recreation, library and storm drain fee categories. This project also included stakeholder outreach.

The City once again engaged Willdan to update their impact fees in October 2017, which was completed in July 2019. This update included the following facilities: traffic (roads and bikeways), water, sewer, drainage, police, fire, parks, library, and public facilities.

Client Contact: Dat Nguyen, Finance Director
17575 Peak Avenue, Morgan Hill, CA 95037
Tel #: (408) 779-7237 | Email: dat.nguyen@morgan-hill.ca.gov

City of Pismo Beach, CA
Development Impact Fee Study

Willdan assisted the City of Pismo Beach with an update to their impact fee program. The program included the following facilities: police, fire protection, park and recreation improvements, water system improvements, wastewater, traffic, and general government/administrative facilities. This project was warranted due to the amount of time that had elapsed since the prior update, coupled with the adoption of new and revised public facility master plans that complemented the updated impact fees.

Prior to fee program adoption, Willdan held a stakeholder meeting to inform the public about the project, and to solicit feedback from the development community.

Client Contact: Nadia Feeser, Administrative Services Director
760 Mattie Road, Pismo Beach, CA 93449
Tel #: (805) 773-7010 | Email: nfeeser@pismobeach.org

City of Fremont, CA
Comprehensive Impact Fee Update

Willdan's impact fee staff has a long-standing relationship with the City of Fremont. In 2014/2015, Willdan successfully updated their impact fee programs, which included an update of the City's transportation impact fee program and capital improvement program.

The City retained Willdan again in 2020 to update their impact fee program and the project was completed during the second quarter of 2021.

Client Contact: Michelle Silva-Salinas, Public Works Business Manager
3300 Capitol Avenue, Fremont, CA 94538
Tel #: (510) 979-5705 | Email: msilva-salinas@fremont.gov

Recent Studies

The following table lists Willdan's development impact fee clientele that have utilized our services in the past.

Willdan Financial Services Development Impact Fee Experience Partial Client List	
City of Alameda, CA	City of Parkland, FL
City of Antioch, CA	City of Petaluma, CA
City of Arcadia, CA	City of Pismo Beach, CA
City of Artesia, CA	City of Pittsburg, CA
City of Bakersfield, CA	City of Pleasant Hill, CA
City of Banning, CA	City of Pomona, CA
City of Bell Gardens, CA	City of Rancho Mirage, CA
City of Bellflower, CA	City of Redwood City, CA
City of Brea, CA	City of Rialto, CA
City of Calexico, CA	City of Richmond, CA
City of Calimesa, CA	City of Rio Rancho, NM
City of Carpinteria, CA	City of Riverbank, CA
City of Chino Hills, CA	City of Rolling Hills Estates, CA
City of Clovis, CA	City of Rosemead, CA
City of Coachella, CA	City of San Carlos, CA
City of Commerce, CA	City of San Fernando, CA
City of Compton, CA	City of San Jacinto, CA
City of Corona, CA	City of San Marcos, CA
City of Covina, CA	City of San Ramon, CA
City of Cudahy, CA	City of Santa Clara, CA
City of Dixon, CA	City of Sebastopol, CA
City of Dublin, CA	City of Selma, CA
City of El Monte, CA	City of Sierra Madre, CA
City of El Segundo, CA	City of Soledad, CA
City of Emeryville, CA	City of South Gate, CA
City of Fillmore, CA	City of South San Francisco, CA
City of Fountain Valley, CA	City of St. Helena, CA
City of Fremont, CA	City of Tehachapi, CA
City of Garden Grove, CA	City of Thousand Oaks, CA
City of Gilroy, CA	City of Tracy, CA
City of Gonzales, CA	City of Upland, CA
City of Goose Creek, SC	City of Visalia, CA
City of Guadalupe, CA	City of Wasco, CA
City of Greenfield, CA	Coachella Valley Association of Governments, CA
City of Grover Beach, CA	Contra Costa Fire Protection District, CA

Willdan Financial Services Development Impact Fee Experience Partial Client List	
City of Hawthorne, CA	County of Clay, FL
City of Healdsburg, CA	County of Kern, CA
City of Hercules, CA	County of Kings, CA
City of Hollister, CA	County of Los Angeles, CA
City of Huntington Beach, CA	County of Madera, CA
City of Huntington Park, CA	County of Merced, CA
City of Indian Wells, CA	County of Placer, CA
City of Irwindale, CA	County of Riverside, CA
City of Kingsburg, CA	County of Sacramento, CA
City of La Mesa, CA	County of San Benito, CA
City of La Verne, CA	County of San Diego, CA
City of Las Cruces, NM	County of San Joaquin, CA
City of Lake Elsinore, CA	County of San Luis Obispo, CA
City of Lake Forest, CA	County of Santa Barbara, CA
City of Lancaster, CA	County of Solano, CA
City of Lawndale, CA	County of Sonoma, CA
City of Livermore, CA	County of Stanislaus, CA
City of Long Beach, CA	County of Tulare, CA
City of McFarland, CA	County of Yolo, CA
City of Madera, CA	East Contra Costa Fire Protection District, CA
City of Manteca, CA	Kern Council of Governments, CA
City of Menifee, CA	Nevada County Consolidated Fire District, CA
City of Moreno Valley, CA	Rodeo-Hercules Fire Protection District, CA
City of Morgan Hill, CA	San Gorgonio Memorial Healthcare District, CA
City of Mountain View, CA	Stanislaus Council of Governments, CA
City of Murrieta, CA	Tehachapi Valley Rec. & Park District, CA
City of Newport Beach, CA	Town of Mead, CO
City of Oroville, CA	Town of Windsor, CA
City of Pacifica, CA	Tulare County Association of Governments, CA
City of Patterson, CA	Village of Taos Ski Valley, NM

Project Team

Our management and supervision philosophy for the project team is very simple: staff every position in sufficient numbers with experienced personnel to deliver a superior product and convey results to decision makers in meetings, on time and on budget.

With that philosophy in mind, we have selected experienced professionals for the County's engagement. We are confident that our team possesses the depth of experience that will successfully fulfill the desired work performance.

Napa County Project Team		
Key Team Member	**Project Role**	**Responsibility to the Engagement**
James Edison, JD, MPP **Managing Principal**	Principal-in-Charge	▪ Ensure client satisfaction, flow of communication, and management of the project ▪ Technical guidance ▪ Project oversight ▪ Quality assurance & control, and ▪ Meeting and presentation attendance
Carlos Villarreal, MPP **Principal Consultant**	Project Manager	▪ Collect, interpret, and disseminate key data ▪ Day to day contact ▪ Production of key elements of the analyses ▪ Model development ▪ Report preparation, and ▪ Meeting and presentation attendance

Proven Professionals

The Team's quality is often as important as the consulting firm's reputation. Willdan is known for its personal, customized service. Our team will work with the County's professional staff to provide the long-term service, that is our prime goal.

The team presented within this proposal has worked collectively on numerous projects, such as the one requested by the County; an established work practice between the team members has been forged, this proven long-standing system has benefited our clients.

Community Investment

Much of our success in developing impactful programs and studies is due to our experiences in meeting with citizen / stakeholder groups and elected officials. Our ability to explain technical information in a concise, understandable manner is a fundamental reason for our high degree of success. Willdan staff takes the time to ***include and inform the Community***.

Resumes

Resumes for Willdan's project team are presented on the following pages.

James Edison, JD, MPP, MA

Principal-in-Charge

Mr. James Edison specializes in the nexus between public and private, with expertise in public-private partnerships, and the benefits of economic development to municipalities and state, provincial, regional, and national governments. He possesses deep expertise in land use economics, with a specialty in finance and implementation, including fiscal impact and the public and private financing of infrastructure and development projects, both in the U.S. and internationally. Mr. Edison's public-sector experience includes local and regional economic impact studies; fiscal impact evaluations; new government formation strategies; and the creation of impact fees, assessments, and special taxes to fund infrastructure and public facilities. He has conducted numerous evaluations of the economic and fiscal impact of specific plans and consulted on a wide variety of land use planning topics related to community revitalization and the economic and fiscal impacts of development.

As a former bond attorney, Mr. Edison understands the legal underpinnings and technical requirements of public financing instruments and has advised both public and private clients on the use of individual instruments, and the interaction between those instruments and the needs of developers and project finance.

Education

Juris Doctorate, University of California, Berkeley, School of Law

Master of Public Policy, Goldman School of Public Policy, University of California, Berkeley

Bachelor of Arts, magna cum laude, Harvard University

Professional Registrations

Member of State Bar, California

Affiliations

Council of Development Finance Agencies

CFA Society of San Francisco

Congress for the New Urbanism

Urban Land Institute

Seaside Institute

International Economic Development Council

26 Years' Experience

Related Experience

City of Alameda, CA – Comprehensive Impact Fee Update: Mr. Edison led the Willdan team that updated the City of Alameda's impact fee programs, as well as created a separate impact fee program for Alameda Point, the former Alameda Naval Air Station.

City of Santa Clara, CA – Parks Fee Update: Mr. Edison served as principal-in-charge of the City's park impact fee update. This project included a demographic analysis and estimation of the cost of acquiring and improving public park land.

City of Fremont, CA – Comprehensive Impact Fee Update: Mr. Edison led the Willdan team in the successful update of the impact fee programs for the City of Fremont. The effort included an update of the City's transportation impact fee program and capital improvement program.

City of Manteca, CA – Fire Impact Fee Update: Mr. Edison served in the capacity of project manager for the update of the City's fire services impact fee program.

City of Carpinteria, CA – Development Impact Fee Update: Mr. Edison was the project manager for the City of Carpinteria's Development Impact Fee update study engagement. The study included updates to the following fees: highways and bridges, streets and thoroughfares, traffic control, parking, storm drain, general government, aquatic, park and recreation, and open space. The City has engaged Willdan again to update their impact fees.

City of McFarland, CA – Impact Fee Study Update: Mr. Edison was the principal-in-charge and technical advisor on the update to the City's development impact fee program. The study included the following facility fee categories; general government, law enforcement, park and recreation, fire protection, water, sewer, storm drain, and traffic.

County of San Benito, CA – Comprehensive Impact Fee Study: Mr. Edison served as technical advisor to the County's Impact Fee Study. The study included updates to the following fees: capital improvements, road equipment, fire mitigation, and park and recreation.

Stanislaus County Council of Governments, CA – Regional Transportation Fee Update: Mr. Edison worked on an update of the County's transportation impact fee program. Key tasks included a revised capital improvement program and fee model, along with a public participation process that ensures buy-in from the communities of Stanislaus County and the County government itself.

County of Tulare, CA – Countywide Impact Fees: Mr. Edison served as project manager for a study that involved the creation of an impact fee program for the County. The study included a range of facilities such as public protection, library, and parks, as well as a transportation facilities impact fee with different fees calculated for two zones in the County.

J. Edison
Resume Continued

County of Riverside, CA – Comprehensive Impact Fee Update: Mr. Edison led the effort to establish a comprehensive fee program for the County, including facilities fees for fire, police, parks, criminal justice, libraries, and traffic. He prepared the technical and analytical documents necessary to calculate the fee and establish the necessary nexus to collect it, as well as presented the fees during public hearings to the County Board of Supervisors. ***Furthermore, Mr. Edison is currently leading an update to the County's development impact fees for 2030.***

City of Moreno Valley, CA – Comprehensive Development Impact Fee Study: Mr. Edison was the principal-in-charge for the City's comprehensive impact update. Fee categories included arterial streets, traffic signals, interchanges, parks, recreation, fire, police, library, corporation yard, maintenance equipment, and animal shelter facilities.

City of Murrieta, CA – Master Facilities Plan and Development Impact Fee Calculation Report Update: Mr. Edison served as the principal-in-charge of the City's study to update their Master Facilities Plan and Development Impact Fee Calculation Report, to ensure that new development pays the capital costs associated with growth. ***Willdan was recently re-selected, through competitive bid, to update the Impact Fees.***

City of Indian Wells, CA – Development Impact Fee Study: Mr. Edison served as the principal-in-charge for the City Indian Wells' update to their development impact fees. The fee program was comprised of a variety of fee categories including transportation, public facilities, recreation, park, and storm drain.

City of Fountain Valley, CA – Development Impact Fee Update Study: Mr. Edison served as the project manager for the City of Fountain Valley's update to their development impact fees. Fees included the park impact fee, traffic improvement fee, transportation impact fee, utility infrastructure impact fee and general plan surcharge fee.

City of Fillmore, CA – North Fillmore Specific Plan Nexus Study: Mr. Edison is currently assisting the City with an analysis of development impact fees needed to finance public facilities necessary for the development of the North Filmore Specific Plan. Public facilities included in this analysis include water, sewer systems, recycled water, and streets.

City of Pismo Beach, CA – Development Impact Fee Update: Mr. Edison served in the role of principal-in-charge of an update to the City's impact fee program. The program included the following facilities: police, fire protection, park and recreation improvements, water system improvements, wastewater, traffic, and general government/administrative facilities. Prior to fee program adoption, a stakeholder meeting was held to inform the public about the project, and to solicit feedback from the development community.

City of Morgan Hill, CA – Development Impact Fee Update: Mr. Edison served as principal-in-charge of an update to the City's existing nexus study, which included general government, fire, police, parks and recreation, library, and storm drain fee categories. The project scope included stakeholder outreach.

Carlos Villarreal, MPP

Project Manager

Mr. Carlos Villarreal, a Financial Consulting Group Principal Consultant, is proposed to serve in the role of project manager due to his experience documenting nexus findings for development impact fees, preparing capital improvement plans, facilitating stakeholder involvement, and analyzing the economic impacts of fee programs. He has supported adoption of fee programs funding a variety of facility types.

Related Experience

Education

Master of Public Policy, Goldman School of Public Policy, University of California, Berkeley

Bachelor of Arts, Geography, University of California, Los Angeles; Minor in Public Policy and Urban Planning

Areas of Expertise

Fiscal Impact Analyses
Development Impact Fees
Public Facilities Financing Plans
GIS Analysis

18 Years' Experience

County of San Benito, CA – Comprehensive Impact Fee Study: As project manager, Mr. Villarreal assisted the County with the preparation of an updated and expanded impact fee program. The study included updates to the following fees: capital improvements, road equipment, fire mitigation, and park and recreation.

County of Stanislaus, CA – Impact Fee Study Update: Mr. Villarreal served in the role of project manager for a study updating the County's existing impact fee program. The program includes a range of facilities, like public protection, library, and parks. The study also included a transportation facilities impact fee, with different fees calculated for two zones in the County. Considerable stakeholder outreach was an integral component of this project.

City of Soledad, CA – Development Impact Fee Study Update: Mr. Villarreal managed the update of the City's impact fee program, specifically changes in demographics, growth projections, project costs, and facility standards. In particular, the City had to revise its capital facilities needs to accommodate a much lower amount of growth than what was projected before 2007. The resulting fees funded new development's share of planned facilities, while not overburdening development with unnecessary costs.

City of Morgan Hill, CA – Development Impact Fee Update: Mr. Villarreal served as lead analyst assisting with an update to the City's existing nexus study, including general government, fire, police, parks and recreation, library, and storm drain fee categories. The project scope included stakeholder outreach. The City engaged Willdan again to update the study and Mr. Villarreal served in the role of project manager.

City of Oroville, CA – Impact Fee Study Update: Mr. Villarreal served as project manager for a study updating the City's development impact fee program, including parks, law enforcement, general government, fire suppression, and traffic facilities. The fee program was adopted by the City Council in 2015. The City engaged Willdan again to update the 2015 study, and Mr. Villarreal served in the role of project manager.

City of McFarland, CA – Development Impact Fee Study Update: Mr. Villarreal served as project manager updating the City's development impact fee program. The study comprehensively updated the City's fee program, incorporating new facility master planning and infrastructure costs necessary to facilitate expected development in the City through 2040. The study included the following facility fee categories; general government, law enforcement, park and recreation, fire protection, water, sewer, storm drain, and traffic. The fees were adopted by the City Council in 2020.

County of Riverside, CA – Comprehensive Impact Fee Update: Mr. Villarreal was the lead analyst in the effort to establish a comprehensive fee program for the County, including facilities fees for fire, police, parks, criminal justice, libraries, and traffic. He assisted in the preparation of the technical and analytical documents necessary to calculate the fees and establish the necessary nexus. ***Mr. Villarreal is once again serving on the project team to update the County's impact fees through 2030.***

City of Moreno Valley, CA – Comprehensive Development Impact Fee Study: Mr. Villarreal served as the project manager for the City's comprehensive impact update. Fee categories included arterial streets, traffic signals, interchanges, parks, recreation, fire, police, library, corporation yard, maintenance equipment, and animal shelter facilities. In 2022 the City added a public arts fee and workforce development facility fee.

C. Villarreal
Resume Continued

City of Murrieta, CA – Master Facilities Plan and Development Impact Fee Calculation Report Update: Mr. Villarreal served as the project manager of the City's study to update their Master Facilities Plan and Development Impact Fee Calculation Report, to ensure that new development pays the capital costs associated with growth. ***Willdan was recently re-selected, through competitive bid, to update the Impact Fees.***

City of Long Beach, CA – Park Impact Fee Update: Willdan assisted with an update to the City's existing park impact fees, with Mr. Villarreal serving in the role of project manager. The project included updating demographic data and facility planning to properly update park facility standards. He used this information to then calculate impact fees for single family and multi-family residential dwelling units and prepare a nexus study documenting the revised fees and the required legal findings under the Mitigation Fee Act.

County of Los Angeles/City of Santa Clarita, CA – Law Enforcement Facilities Fee Study: Mr. Villarreal assisted with the development of an impact fee program to fund law enforcement facilities serving the City of Santa Clarita, and other Antelope Valley jurisdictions within the County of Los Angeles. The analysis involved the comparison of law enforcement facilities serving incorporated and unincorporated areas.

City of Pismo Beach, CA – Development Impact Fee Update: Mr. Villarreal served in the role of project manager for the City's impact fee project. The program included: police, fire protection, park and recreation improvements, water system improvements, wastewater, traffic, and general government/administrative facilities. Prior to fee program adoption, a stakeholder meeting was held to inform the public about the project, and to solicit feedback from the development community.

City of Carpinteria, CA – Development Impact Fee Update: Mr. Villarreal was the lead analyst to update the City of Carpinteria's impact fees, which included highways and bridges, streets and thoroughfares, traffic control, parking, storm drain, general government, aquatic, park and recreation, and open space. ***The City has engaged Willdan again to update their impact fees and Mr. Villarreal is serving in the role of project manager.***

Quality Control Procedures and Approach

Project Management Approach

At Willdan, we utilize a Project Management Process/Approach that ensures projects are completed on time, within budget and most importantly yield results that match our clients' expectations. We will document discussions leading to important policy decisions and/or the choice of critical assumptions used in constructing the analysis and model. Following key stakeholder discussions, we will schedule a call to summarize findings and direction with City staff, to make certain that we are in agreement with stated objectives, and that feedback is incorporated as appropriate.

Through the process of providing regular updates and conducting status conference calls, potential issues will be highlighted, discussed, and resolved. Any deviances from the project timeline will be identified and plans will be developed for course corrections. If necessary, changes in approach or strategy will be discussed with City staff, to meet the needs of Napa County. In doing this, we will ensure the project stays on track and evolves, based upon current thinking and outside dynamics.

Project Management				
Define the Project	Plan the Project	Manage the Project	Review the Project	Communicate the Project
▪ Identify the project scope, set objectives, list potential constraints, document assumptions. ▪ Define a course of action and develop an effective communication plan. ▪ Provide a forum for applying the team's collective expertise to solving difficult analytical issues that arise in complex projects.	▪ Collaborate with the project team and client staff and agree upon timeline to meet the estimated project timeline. ▪ Assign workload functions to appropriately qualified staff to ensure milestones are met, on time. ▪ Pre-schedule quality control meetings with project team to maintain the progressive motion of the project.	▪ Manage the execution of the project. ▪ Direct existing and upcoming project tasks. ▪ Control and monitor work in progress. ▪ Provide feedback to client and project team. ▪ Identify and resolve deviances from project timeline.	▪ Review all work product and deliverables. ▪ Utilize structured quality assurance process involving up to three levels of review at the peer level, project manager level. ▪ Procure executive officer level review.	▪ Communicate with the client regarding work status and progress. ▪ Ensure client is in receipt of regular status updates. ▪ Schedule regular conference calls to touch base. ▪ Inform client of roadblocks, work outside of projected scope.

Quality Assurance / Quality Control Process

Our quality control program is incorporated as a required element of Willdan's day-to-day activities. There are three levels of reviews incorporated for our deliverables:

1) Peer review;

2) Project Manager review; and

3) Final quality assurance manager review.

Peer reviews involve one analyst reviewing the work of another, while project manager reviews are conducted prior to delivery to the quality assurance manager. The quality assurance manager then performs a final review. This assures that our final product has been thoroughly evaluated for potential errors; thus, providing quality client deliverables, and high levels of integrity and outcomes.

The primary mission of our quality control plan is to provide staff with the technical and managerial expertise to plan, organize, implement, and control the overall quality effort, thereby ensuring the completion of a quality project within the time and budget established.

Quality Assurance Goals		
Goal	**Lead**	**Task**
Quality Assurance / Control Process	James Edison	▪ Establish a set of planned and systematic actions for maintaining a high level of quality in the professional services performed; ▪ Emphasize quality in every phase of work; ▪ Ensure efficient use of resources; ▪ Establish a consistent and uniform approach to the services performed; and ▪ Implement appropriate quality control measures for each work task of the project.
Quality Control Plan	James Edison; Carlos Villareal	▪ Contract deliverables; ▪ Specific quality control procedures; ▪ Special quality control emphasis; ▪ Budget and manpower requirements; ▪ Overall project schedule and budget; and ▪ Project documentation requirements.

3. Environmentally Sustainable Practices

Environmentally Friendly Practices

Willdan understands the importance of reducing the environmental impact of our operations and we promote a green working environment throughout Willdan as a whole. Provided below are a few examples of our participation in environmentally friendly practices.

Willdan Financial Services participates in the following ways:

Recycled Paper — Staff is encouraged to print only what is necessary to further our goal of a paper free environment. What is printed, and not kept for compliance with our clients and projects, is recycled.

Paper-Free Environment — For well over 20 years, Willdan has been working toward a paper-free office environment. In the past, individual Groups have received hundreds of hardcopy pages and paper statements via the mail. In an effort to curtail excessive amounts of wasted paper product material, Willdan has worked diligently over the years with our clients to gain online access to this data and encourage digital file sharing.

Invoicing — In 2010 Willdan began helping our clients further reduce their paper waste by transmitting invoices and payments electronically.

Willdan offices are connected nationwide via an internal online file-sharing system, further eliminating the need for paper file sharing, and in-turn reducing the environmental impact of shipping.

Recycling Used Office Products — Fifteen years ago, Willdan signed with an office supply company to pick up used batteries and paper for recycling. 2013 saw a new endeavor to remove and recycle old and obsolete printers to reduce our carbon footprint and reduce electric consumption.

Purchasing of Recycled Office Products — Whenever possible Willdan orders only products that are made with at least 30 percent or more of post-consumer recycled material.

Ecologically Friendly Printer Output — We utilize a printer setting default so that documents are printed double-sided rather than single-sided.

Ecologically Friendly Printer — Our printers create approximately 90 percent less post-consumer waste than standard printers. The Solid Ink Multi-Function Device (“MFD”) shows reduced Cumulative Energy Demand (“CED”) and Global Warming Potential (“GWP”), as compared to the color laser MFD. Expressed as a percent difference, the Solid Ink MFD exhibited a 9 percent lower CED than the laser MFD; and a 10 percent lower GWP. Over the product’s lifecycle, the studied Solid Ink MFD has a 9 percent lower Cumulative Energy Demand and a 10 percent lower Global Warming Potential.

Employee Participation — Willdan encourages its employees to recycle soda cans, plastic products and other paper products by supplying recycling bins in employee lunchrooms.

Willdan Energy Solutions

Willdan is an industry-leading energy solutions provider and sustainability consultant. Our core energy and sustainability services feature electric grid optimization, energy efficiency, and energy planning. We create customized, effective solutions to your unique energy needs and sustainability goals. Our innovative, industry-leading tools and processes support every stage of your project, from design through installation.

Our nationwide team specializes in energy engineering, renewable generation, electric vehicle fleets and infrastructure, program management, microgrids, financing, data analysis, software development, and other fields. Our award-winning results help position our clients as leaders in the industry.

To learn more about the projects that Willdan is leading and participating in to save our planet and conserve critical resources, please review https://www.willdan.com/sustainability/Willdan_SustainabilityReport2022_secured.pdf or visit https://www.willdan.com/index.aspx.

#DaylightHour

#DaylightHour is an annual social media campaign to promote using natural light in offices. Willdan offices participated from ***Anaheim, California to Manhattan, New York; and included offices in Kingston, NY, Los Angeles, CA, Milford, CT, Orlando, FL, Roseville, CA, Salt Lake City, UT, Ventura, CA, Temecula, CA, and Washington, DC.***

#DaylightHour 2023 event saved 217,655 kWh of energy—enough to power over 7,400 average U.S. homes for an entire day..

Daylight Hour will take place on Friday, June 20, 2024 on the summer solstice, when offices across the world will showcase their environmental commitment by turning off nonessential lights in daylit spaces, from noon to 1pm local time, and posting photos and other content to social media using the hashtag **#DaylightHour**. While doing all this, awareness will be raised regarding the availability of daylight in offices among a huge pool of industry stakeholders; https://daylighthour.org/.

Willdan Group, Inc. is in its fourteenth year of participation of **#DaylightHour;** and **has been named an OUTSTANDING ALUMNI**.

Professional Memberships

As a leader in our industry Willdan is an active member of the following organizations:

- Urban Land Institute (ULI)
- International Economic Development Council
- League of California Cities
- Congress for the New Urbanism
- American Public Power Association
- American Planning Association
- American Water Works Association
- Florida Section of the American Water Works Association
- California City Management Foundation
- California Special Districts Association
- California Society of Municipal Finance Officers
- PACENation
- Government Finance Officers Association of California, Arizona, Texas, Florida, North Carolina, South Carolina, and Virginia
- Municipal Management Association of Northern California
- Municipal Management Association of Southern California
- Special Districts Association of Colorado
- Virginia Local Government Management Association
- Growth & Infrastructure Consortium (GIC)
- National Association of Bond Lawyers
- Committee on Assessments, Special Taxes and Other Financing Facilities (CASTOFF)

Willdan staff regularly attends many of the seminars, conferences, and workshops held by these professional groups, to stay on top of the many issues faced by local agencies. In addition to these efforts, Willdan works closely with our legislative advocate who represents 50 clients before the California State Legislature and has played a major role over the last 30 years in landmark legislation on behalf of our clients. They assist us with proposed modifications to current legislation that would have a beneficial bearing on the administrative and formation procedures for special assessments and taxes.

Financial Consulting Services Vice President and Group Director Mr. Chris Fisher, along with Principal Consultant Mr. Jim McGuire, have served on several industry working groups, and have spoken at seminars on the subject of assessments and special/general benefit in light of the court cases and legislation that have come down over the past six to eight years. The working groups are focused on finding workable solutions and approaches that provide a means for public agencies to continue utilizing assessments, while ensuring that they are defensible and in compliance with the court decisions.

Willdan Financial Supported Charities/Events

We continue to be a supportive member of our community, as such we strive to serve and provide for those organizations and causes in our area. As community members, themselves, we encourage our team members to volunteer and support local needs as well. Willdan Financial Services supports the following charitable organizations:

- Compassion Community of Murrieta Annual Backpack Outreach
- Compassion Community of Murrieta Annual Thanksgiving Food Drive
- Marine Foundation Toys for Tots
- CSMFO Inland Empire Chapter Sponsorship
- City of Glendora, Kiwanis Club
- Susan G Komen, Race for the Cure
- Special Olympics, Torch Run MMASC
- City of Grand Terrace, CA, Tree Lighting Ceremony
- The Empowerment Center of Temecula Benefit Concert
- CITIPAC /LACD
- City of Mesquite, TX Rotary Club - 2019 Rodeo Road Rally
- Desert Rec Employee Appreciation

Willdan Group Inc.'s goal is to improve the quality of human life by helping all people realize their fullest potential. This includes the support of charitable organizations that provide recreational, social, health, educational opportunities, and recognition to people of all ages from children to seniors.

Gifts are generally made to charitable organizations that serve the philosophies of the foundation and are in the communities in which we do business, or where an employee of WGI resides. Willdan is comprised of its divisions: Engineering, Energy Solutions, and Financial Services.

Who We Support

- Boy Scouts of America
- CELSOC Scholarship Foundation
- Hurricane Katrina Relief
- Friends of Laguna Beach Dog Park
- Anaheim Kiwanis
- West Yorba Linda Little League
- Muscular Dystrophy Association
- The Leukemia & Lymphoma Society
- Friends of Maricopa Library
- Epilepsy Alliance of Orange County
- Scleroderma Foundation
- Orangewood Children's Home
- Big Bear Discovery Center
- Rhythm Regiment Drum Corps
- Amgen Tour of California, Amgen's Breakaway from Heart Disease initiative

Diversity, Equity, and Inclusion

Willdan is committed to cultivating internal and external workplaces that reflect a range of unique perspectives and offer opportunities for all. Our community and teams are made up of bright, talented, and driven people from all different backgrounds.

At Willdan, team members, applicants, and subconsultants are considered for all positions and projects without regard to age, ancestry, color, creed, disability, marital status, medical condition, national origin, citizenship, race, religion, sex, sexual orientation, gender, gender identity, gender expression, or any other legally protected status. WGI has a Diversity Equity & Inclusion Working Group with the following initiatives.

Willdan strives to utilize local, small, and DBE/MBE/WBE firms to provide services. Willdan is committed to meeting firm/client goals for participation by Disabled Veteran Business Enterprise (DVBE), Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), and Women Business Enterprise (WBE) firms. Willdan's internal policy includes the establishment of ongoing relationships with these firms, utilizing qualified subconsultants for meaningful participation, and actively seeking to broaden our resources. We have utilized the services of hundreds of firms throughout our years in business.

4. Scope of Work

This section outlines Willdan Financial Services' ("Willdan") understanding of the situation surrounding Napa County's ("County") desire to conduct a development impact fee study, as well as identify the project objectives and discusses the background regarding public facilities financing in California. Also outlined is an overview of our impact fee project approach.

Project Understanding

As part of the larger financial planning effort for Napa County General Plan, the County seeks to understand what the financial impacts of foreseeable future development will have on the County's public services and infrastructure, and to identify potential gaps in funding for those necessary improvements. The County desires to update impact fees to ensure a fair and reasonable fee structure, while meeting the requirements of the California *Mitigation Fee Act (California Government Code 66000 et seq*). The resulting fees will fund new development's share of planned facilities, while not overburdening development with unnecessary costs.

Listed below are the development impact fees that Willdan assumes will be included in this study:

- Affordable Housing Fees
- Connection Fees (water/sewer)
- In-lieu Fee for Small Woodland Conversion Projects
- Municipal Watershed Management
- Traffic Impact Fees

Project Objectives

The objective of this project is to update development impact fees pursuant to State law. To accomplish this objective, this study will:

- Develop a technically defensible fee justification, based on the reasonable relationship and deferential review standards;
- Review and facility standards, capital facilities plans and costs, and development and growth assumptions;
- Provide a schedule of maximum-justified fees by land use category; and
- Provide comprehensive documentation of assumptions, methodologies, and results, including findings required by the *Mitigation Fee Act*.

Public Facilities Financing in California

The changing fiscal landscape in California during the past 40 years has steadily undercut the financial capacity of local governments to fund infrastructure. Four dominant trends stand out:

1. The passage of a string of tax limitation measures starting with Proposition 13 in 1978 and continuing through the passage of Proposition 218 in 1996;
2. Declining popular support for bond measures to finance infrastructure for the next generation of residents and businesses;
3. Steep reductions in Federal and State assistance; and
4. Permanent shifting by the State of local tax resources to the State General Fund to offset deficit spending brought on by recessions.

Faced with these trends, many cities and counties have had to adopt a policy of "growth pays its own way." This policy shifts the burden of funding infrastructure expansion from existing rate and taxpayers onto new development. This funding shift has been accomplished primarily through the imposition of assessments, special taxes, and development impact fees, also known as public facilities fees. Assessments and special taxes require approval of property owners or registered voters and are appropriate when the funded facilities are directly related to the developing property. Development impact fees, on the other hand, are an appropriate funding source for facilities that benefit development jurisdiction-wide. Development fees need only a majority vote of the legislative body for adoption.

Summary of Approach

Willdan's methodology for calculating public facilities fees is both simple and flexible. Simplicity is important so that the development community and the public can easily understand the justification for the fee program. At the same time, we use our expertise to reasonably ensure that the program is technically defensible.

Flexibility is important, so we can tailor our approach to the available data, and the agency's policy objectives. Our understanding of the technical standards established by statutes and case law suggests that a range of approaches are technically defensible. Consequently, we can address policy objectives related to the fee program, such as economic development and affordable housing. Flexibility also enables us to avoid excessive engineering costs associated with detailed facility planning. We calculate the maximum justifiable impact fee and provide flexibility for the agency to adopt fees up to that amount.

Development impact fees are calculated to fund the cost of facilities required to accommodate growth. The four steps followed in an impact fee study include:

- **Estimate existing development and future growth:** Identify a base year for existing development and a growth forecast that reflects increased demand for public facilities;
- **Identify facility standards:** Determine the facility standards used to plan for new and expanded facilities;
- **Determine facilities required to serve new development and their costs:** Estimate the total amount and cost of planned facilities, and identify the share required to accommodate new development; and
- **Calculate fee schedule:** Allocate facilities costs per unit of new development to calculate the public facilities fee schedule.

We discuss key aspects of our approach to each of these steps in the subsections that follow.

Growth Projections

In most cases, we recommend use of long-range market-based projections of new development. By "long-range" we suggest 20 to 30 years to: capture the total demand often associated with major public facility investments; and support analysis of debt financing, if needed. In contrast to build out projections, market-based projections provide a more realistic estimate of development across all land uses. Build out projections typically overestimate commercial and industrial development because of the oversupply of these land uses relative to residential development.

Facility Standards

The key public policy issue in development impact fee studies is the identification of facility standards (second bullet above). Facility standards document a reasonable relationship between new development and the need for new facilities. Standards ensure that new development does not fund deficiencies associated with existing development.

Our approach recognizes three separate components of facility standards:

1. **Demand standards** determine the amount of facilities required to accommodate growth. Examples include park acres per thousand residents, square feet of library space per capita, or gallons of water per day. Demand standards may also reflect a level of service such as the vehicles-to-capacity (V/C) ratio used in traffic planning;
2. **Design standards** determine how a facility should be designed to meet expected demand, for example park improvement requirements and technology infrastructure for office space. Design standards are typically not explicitly evaluated as part of an impact fee analysis but can have a significant impact on the cost of facilities. Our approach incorporates current facility design standards into the fee program to reflect the increasing construction cost of public facilities; and
3. **Cost standards** are an alternate method for determining the amount of facilities required to accommodate growth based on facility costs per unit of demand. Cost standards are useful when demand standards were not explicitly developed for the facility planning process. Cost standards also enable different types of facilities to be analyzed based on a single measure (cost or value), useful when disparate facilities are funded by a single fee program. Examples include facility costs per capita, per vehicle trip, or cost per gallon of water per day.

Identifying New Development Facility Needs and Costs

We can take several different approaches to identify facility needs and costs to serve new development. Typically, this is a two-step process: 1) identify total facility needs; and 2) allocate to new development its fair share of those needs. Total facility needs are often identified through a master facility planning process that typically takes place concurrent with or prior to conducting the fee study. Engineered facility plans are particularly important in the areas of traffic, water, sewer, and storm drain due to the specialized technical analysis required to identify facility needs.

There are three common methods for determining new development's fair share of planned facilities costs: 1) the existing inventory method; 2) the planned facilities method; and 3) the system plan method. Often the method selected depends on the degree to which the community has engaged in comprehensive facility master planning to identify facility needs.

The formula used by each approach and the advantages and disadvantages of each method is summarized as follows:

Existing Inventory Method

The existing inventory method allocates costs based on the ratio of existing facilities to demand from existing development as follows:

$$\frac{\text{Current Value of Existing Facilities}}{\text{Existing Development Demand}} = \$/\text{unit of demand}$$

Under this method new development funds the expansion of facilities at the same standard currently serving existing development. By definition, the existing inventory method results in no facility deficiencies attributable to existing development. This method is often used when a long-range plan for new facilities is not available. Only the initial facilities to be funded with fees are identified in the fee study. Future facilities to serve growth are identified through an annual Capital Improvement Plan (CIP) and budget process, possibly after completion of a new facility master plan.

Planned Facilities Method

The planned facilities method allocates costs based on the ratio of planned facility costs to demand from new development as follows:

$$\frac{\text{Cost of Planned Facilities}}{\text{New Development Demand}} = \$/\text{unit of demand}$$

This method is appropriate when specific planned facilities can be identified that only benefit new development. Examples include street improvements to avoid deficient levels of service or a sewer trunk line extension to a previously undeveloped area. This method is appropriate when planned facilities would not serve existing development. Under this method new development funds the expansion of facilities at the standards used for the master facility plan.

System Plan Method

This method calculates the fee based on the ratio of the value of existing facilities plus the cost of planned facilities divided by demand from existing plus new development:

$$\frac{\text{Value of Existing Facilities + Cost of Planned Facilities}}{\text{Existing + New Development Demand}} = \$/\text{unit of demand}$$

This method is useful when planned facilities need to be analyzed as part of a system that benefits both existing and new development. It is difficult, for example, to allocate a new fire station solely to new development when that station will operate as part of an integrated system of fire stations that work together to achieve the desired level of service. Police substations, civic centers, and regional parks are examples of similar facilities.

The system plan method ensures that new development does not pay for existing deficiencies. Often, facility standards based on policies such as those found in General Plans are higher than existing facility standards. This method enables the calculation of the existing deficiency required to bring existing development up to the policy-based standard. The local agency must secure non-fee funding for that portion of planned facilities, required to correct the deficiency, to ensure that new development receives the level of service funded by the impact fee.

Calculating the Fee Schedule

At its simplest, the fee schedule uses the cost per unit of demand discussed in the last subsection to generate the fee schedule. This unit cost is multiplied by the demand associated with a new development project to calculate the fee for that project. The fee schedule uses different demand measures by land use category to provide a reasonable relationship between the type of development and the amount of the fee. We are familiar with a wide range of methods for identifying appropriate land use categories and demand measures depending on the particular study.

Related Approach Issues

Funding and Financing Strategies

In our experience, one of the most common problems with impact fee programs and with many CIPs is that the program or plan is not financially constrained to anticipated revenues. The result is a "wish list" of projects that generate community expectations that often cannot be fulfilled. Our approach is to integrate the impact fee program into the local agency's existing CIPs while encouraging those plans to be financially constrained to available resources. We clearly state the cost of correcting existing deficiencies, if any, to document the relationship between the fee program and the need for additional non-fee funding.

We can also address one of the most significant drawbacks of an impact fee program – the inability to support conventional public debt financing, so projects can be built before all fee revenues have been received. In collaboration with financial advisors and underwriters, we have developed specific underwriting criteria so that fees can be used to pay back borrowing if another source of credit exists. Typically, this approach involves the use of Certificates of Participation or revenue bonds that are calibrated so that they can be fully repaid using impact fee revenues.

Economic Development Concerns

The development community often is concerned that fees and other exactions will become too high for development to be financially feasible under current market conditions. Local agencies have several strategies to address this concern, including:

- Conducting an analysis of the total burden placed on development, by exactions, to see if feasibility may be compromised by the proposed fees;
- Gathering similar data on the total fee burden imposed by neighboring or competing jurisdictions;
- Developing a plan for phasing in the fees over several years to enable the real estate market to adjust;
- Providing options for developers to finance impact fees through assessments and other types of financing districts; and
- Imposing less than the maximum justified fee.

If less than the maximum justified fee is imposed, we will work with staff to identify alternative revenues sources for the CIP. The CIP should remain financially feasible to maintain realistic expectations among developers, policy-makers, and the public.

Stakeholder Participation

Stakeholder participation throughout the study supports a successful adoption process. Our approach is to create consensus first around the need for facilities based on agreed upon facility standards. Second, we seek consensus around a feasible funding strategy for these needs, leading to an appropriate role for impact fees.

Gaining consensus among various groups requires a balanced discussion of both economic development and community service objectives. Often, our approach includes formation of an advisory committee to promote outreach to and input from the development community and other stakeholders. We have extensive experience facilitating meetings to explain the program and gain input.

Program Implementation

Fee programs require a certain level of administrative support for successful implementation. Our final report will include recommendations for appropriate procedures, such as:

- Regularly updating development forecasts;
- Regularly updating fees for capital project cost inflation;
- Regularly updating capital facility needs based on changing demands;
- Developing procedures for developer credits and reimbursements; and
- Including an administrative charge in the fee program.

Work Plan

Willdan will work with the County to update its impact fees consistent with the Mitigation Fee Act and other relevant laws. We want to ensure that our scope of services is responsive to the County's needs and specific local circumstances. We will work with the County to revise our proposed scope based on input prior to approval of a contract, and as needed during the course of the study. This work plan assumes three fee categories.

Task 1: Identify Policy Issues

Objective: Identify and discuss potential policy issues raised by the study. Kick-off meeting with staff to review data needs, policy issues, and schedule.

Description: Review agency documents related to existing capital planning policies and funding programs including existing impact fees. Bring policy issues to County staff's attention, as appropriate, during the project and seek guidance prior to proceeding. Potential policy issues include:

- Changes in implementation resulting from AB 602;
- Changes in approach and nexus findings necessary to comply with AB 602;
- Potential new impact fees for consideration
- Adequacy of General Plan and other public facility planning policies (e.g., level of service standards); impact fee ordinances and resolutions, and prior nexus studies;
- Availability of existing public facility master plans and CIPs to identify needed facilities;
- Types of facilities to be funded by each fee;
- Land use categories for imposition of fees;
- Nexus approach to determining facility standards;
- Nexus approach to allocating cost burden among land uses, including need for separate fee zones;
- Potential alternative funding sources, if needed;
- Funding existing deficiencies, if identified; and
- Implementation concerns and strategies.

Deliverables: (1) Information requests; and (2) revised project scope and schedule (if needed).

Task 2: Identify Existing Development and Future Growth

Objective: (1) Identify estimates of existing levels of development; and (2) identify a projection of future growth consistent with current planning policy.

Description: Identify base year for estimating existing levels of development and for calculating facility standards based on existing facility inventories (see Task 3). Include entitled development that would be exempt from fee program.

Consult with County staff to identify growth projections to a defined long-range planning horizon (10 to 30 years). Projections provide a basis for determining the facilities needed to accommodate growth (see Task 4). Consider projections from regional metropolitan planning agencies and other available sources - County staff to provide estimates and projections by zone if needed.

Develop approach for converting land use data to measure of facility demand. For example, identify population and employment density factors to convert population and employment estimates to dwelling units and building square footage.

Select appropriate approach for each impact fee based on:

- Available local data on facility demand by land use category;
- Approaches used by other agencies; and
- Support for other agency policy objectives.

Changes to estimates and projections during subsequent tasks could cause unanticipated effort and require an amendment to the scope of services and budget. Obtain approval of estimates and projections from County staff prior to proceeding.

Task 3:	Determine Facility Standards
Note:	Conduct Tasks 3, 4, and 5 separately for each intended facility and fee type. Conduct tasks concurrently because of the effect of facility standards (Task 3), facility needs (Task 4), and alternative funding (Task 5) on the fee calculation.
Objective:	Determine standards to identify facilities required to accommodate growth.
Description:	Identify and evaluate possible facility standards depending upon the facility type, current facility inventory data, and available facility planning documents. Consider use of: (1) adopted policy standards (e.g., General Plan, master facility plans); (2) standards derived from existing facility inventories; or (3) standards derived from a list of planned facility projects. County staff to provide policies, inventories, and project lists. Willdan will work with the County to identify additional costs that might be eligible for funding by the DIF.

Task 4:	Determine Facilities Needs and Costs
Objective:	Identify the type, amount and cost of facilities required to accommodate growth and correct deficiencies, if any.
Description:	Quantify total planned facilities based on growth projection from Task 2 and facility standards from Task 3. Express planned facilities in general quantities such as acres of parkland, or as a specific list of capital projects from a master facility plan. Location of planned facilities may or may not be specified. If only a general description of planned facilities is available through the planning horizon, County staff to provide a list of specific capital projects for use of fee revenues during the short term (e.g., five years). Distinguish between: (1) facilities needed to serve growth (that can be funded by impact fees); and (2) facilities needed to correct existing deficiencies (that cannot be funded by impact fees). Use one of three cost allocation methods (existing inventory, system plan, or planned facilities). Gather planning-level data on new facilities costs based on lump sum project cost estimates, or unit costs and project quantities (acres, building square feet, lane miles, etc.). Consider recent County experience, local market data such as land transactions, and consultant team experience from prior projects. Inflate older cost estimates to base year using appropriate cost indices. The revised facility costs will form the basis of the capital improvement program needed for compliance with AB 602. ***This scope of work does not include additional engineering analysis, including traffic engineering, to identify total facility needs, existing deficiencies, or cost estimates. Any such engineering/design work can be provided under a separate contract with Willdan Engineering or a third party. However, Willdan can use rough descriptions and comparables to calculate a reasonable cost estimate sufficient for use in the DIF study.***

Task 5:	Identify Funding and Financing Alternatives
Objective:	Determine the extent of alternative (non-fee) funding available for new facilities.
Description:	If impact fees are going to only partially fund a capital project, the *Mitigation Fee Act* requires the agency report on the anticipated source and timing of the additional funding every five years. There are two types of alternative funding sources that we will identify: 1. Funding from non-impact fee sources to correct existing deficiencies; and 2. Funding from new development other than impact fees that must be credited against new development's impact fee contributions, possibly including taxes paid to finance facilities. Identify anticipated alternative funding based on information from County staff or note that funds are still to be identified based on a list of probable funding alternatives. If fees will fund debt service include financing costs in the total cost of facilities. Assume facilities to be funded predominantly on a pay-as-you-go basis. Scope does not include a cash flow analysis to analyze effect of timing of fee revenues on financing costs.

Task 6:	Affordable Housing Fee Analysis
Objective:	Conduct an update of the County's affordable housing in-lieu fee.
Description:	Review the County's current affordable housing in lieu fee (fee charged to residential development). Willdan will calculate the demand for affordable housing induced by the development of new residential units. Willdan will estimate the induced spending in the County and the employment generated by that spending. Willdan will then calculate the ability of the new employee households to afford housing within the County, in the form of any affordability gap. Willdan will calculate the funding needed to meet this gap and allocate it to projected new development to derive the affordable housing in lieu fee. The final report (Task 9) will contain an analysis specific to affordable housing fees, current income and housing pricing, and the cost of housing.
Deliverables:	Analysis will be documented in the Final Report.

Task 7:	Commercial Linkage Fee Analysis
Objective:	Update the County's commercial affordable housing fee, charged to non-residential development.
Description:	Using data from the California Employment Development Department (EDD) and US Census LEHD data, identify employment levels and types by major sector within Napa County. Prepare wage estimates on a sector-by-sector basis using Bureau of Labor Statistics (BLS). Sectors will be summarized by occupational classifications using Standard Occupation Codes (SOC). Using employment densities for each job type, estimate the number of workers that would be accommodated on a per square foot basis, the percentage of those workers who would form households, and the number of new households that would form by income category. Based on the housing market data in collected as a part pf the residential housing impact fee analysis, and the labor market analysis prepared in this task, develop pro forma and determine affordability gap per unit for each income level by industry and occupation. This will be used to determine the per-unit affordability gap by number of households in each job type, by income level to determine linkage fee on a per square foot basis by category of nonresidential development. The results of the analysis above will be included in the Final Report (Task 9).

Task 8:	Comparison Analysis
Objective:	Provide a comparison of the current and proposed impact fees to those of comparable/surrounding jurisdictions in Napa County and an assessment of the effect of fees on development feasibility.
Description:	Willdan will compare a total of four Napa County jurisdictions to be selected by the County. Willdan will also provide an assessment of the effect of the fees on project feasibility, typically using a ratio calculation to development value compared to industry benchmarks. Typically, Willdan prepares an analysis of fees charged to a series of prototype developments (such as residential, retail, etc.) to provide an "apples to apples" comparison, but the exact methodology will be determined in consultation with the County. This comparison will be limited to four other jurisdictions.

Task 9:	Calculate Fees and Prepare Report
Objective:	Provide technically defensible fee report that comprehensively documents project assumptions, methodologies, and results.
Description:	Generate fee schedule to apportion facility costs to individual development projects. Use facility costs per unit of demand multiplied by demand by land use category based on data developed in prior tasks. Prepare draft report tables for County staff to review, that document each step of the analysis, including schedule of maximum justified fees by facility type land use category and all other requirements of the Mitigation Fee Act. Following one (1) round of comments from County staff on the quantitative analysis and fee schedules, prepare administrative draft report.

Following one (1) round of comments on administrative draft, prepare public draft for presentation to interested parties, the public and elected officials. This public review draft will be presented and public stakeholder meetings and at a Board informational session. Prepare final report, if necessary, based on comments received on the public draft report. If requested, post the report on our website for public access. Note that as of January 2022, the Nexus study is adopted separately from the fees, and with a 30-day notice.

Fees will be calculating residential land uses in compliance with AB 602.

Provide legal counsel with copies of fee resolutions and ordinances used by other jurisdictions.

Deliverables: If necessary, we will provide up to two (2) bound copies of the draft report, one (1) unbound copy, one (1) Microsoft Word copy; and up to two (2) bound copies of the final report.

Task 10:	Meetings

Objective: The project manager or other necessary Willdan staff will attend project meetings. A member of the Impact Fee project team will attend up to four (4) in-person meetings and presentations throughout the County's engagement. Phone conferences are not considered meetings for the purposes of this scope.

Optional: Optional stakeholder and Board meetings may be requested by the County.

Staff Support

To complete our tasks, we will need the cooperation of Napa County staff. We suggest that the County assign a key individual to represent the County as the project manager who can function as our primary contact. We anticipate that the County's project manager will: Coordinate responses to requests for information; Coordinate review of work products; and Help resolve policy issues. Willdan will rely on the validity and accuracy of the County's data and documentation to complete the analysis. Willdan will rely on the data as being accurate without performing an independent verification of accuracy and will not be responsible for any errors that result from inaccurate data provided by the client or a third party.

Project Disclaimer

Napa County further represents, acknowledges, and agrees that:

(i) The County uses, or may use, the services of one or more municipal advisors registered with the U.S. Securities and Exchange Commission ("SEC") to advise it in connection with municipal financial products and the issuance of municipal securities;

(ii) The County is not looking to Willdan to provide, and County shall not otherwise request or require Willdan to provide, any advice or recommendations with respect to municipal financial products or the issuance of municipal securities (including any advice or recommendations with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues);

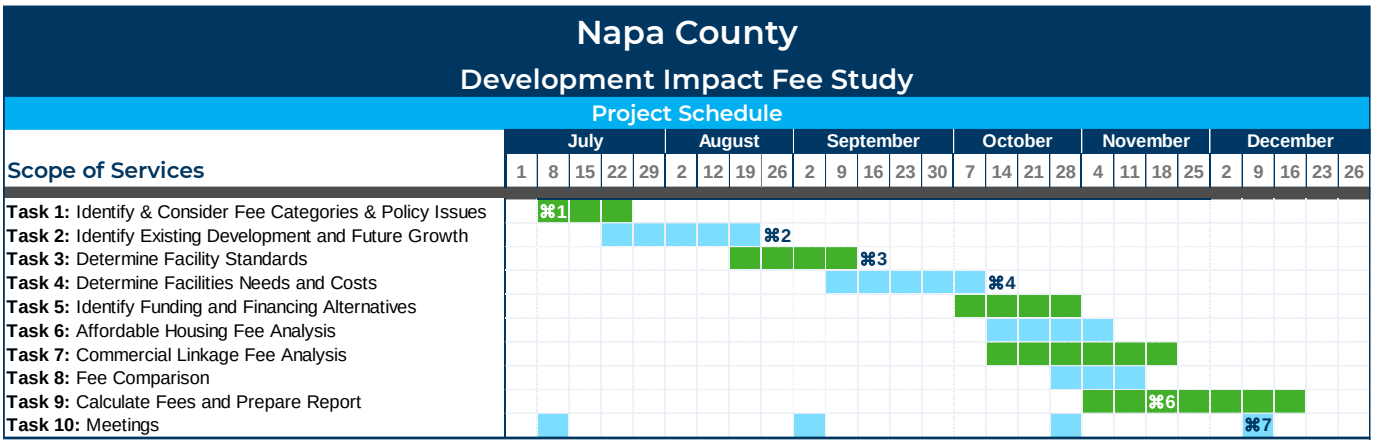
(iii) The provisions of this proposal and the services to be provided hereunder as outlined in the scope of services are not intended (and shall not be construed) to constitute or include any municipal advisory services within the meaning of Section 15B of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations adopted thereunder;

(iv) For the avoidance of doubt and without limiting the foregoing, in connection with any revenue projections, cash-flow analyses, feasibility studies and/or other analyses Willdan may provide the County with respect to financial, economic or other matters relating to a prospective, new or existing issuance of municipal securities of the County, (A) any such projections, studies and analyses shall be based upon assumptions, opinions or views (including, without limitation, any assumptions related to revenue growth) established by the County, in conjunction with such of its municipal, financial, legal and other advisers as it deems appropriate; and (B) under no circumstances shall Willdan be asked to provide, nor shall it provide, any advice or recommendations or subjective assumptions, opinions or views with respect to the actual or proposed structure, terms, timing, pricing or other similar matters with respect to any municipal financial products or municipal securities issuances, including any revisions or amendments thereto; and

(v) Notwithstanding all of the foregoing, the County recognizes that interpretive guidance regarding municipal advisory activities is currently quite limited and is likely to evolve and develop during the term of the potential engagement and, to that end, the County will work with Willdan throughout the term of the potential Agreement to ensure that the Agreement and the services to be provided by Willdan hereunder, is interpreted by the parties, and if necessary amended, in a manner intended to ensure that the County is not asking Willdan to provide, and Willdan is not in fact providing or required to provide, any municipal advisory services.

Project Schedule

Willdan anticipates time is of the essence for the County to begin this engagement. Typically, an impact fee study requires approximately six to seven months from notice to proceed to adoption. The proposed schedule can only be met with the cooperation of County staff. Delays in responding to our requests for data and review will result in corresponding delays to the project schedule. If that is the case, we will notify the County immediately of the possible impact on the schedule.



Deliverables:

- ⌘1: Information Request, Meeting Agenda, Revised Schedule, Summary of Policy Decisions
- ⌘2: Development Growth Projections (table format)
- ⌘3: Project List
- ⌘4: Cost Estimates for Identified Facilities
- ⌘5: Fee Comparison
- ⌘6: Draft Fee Tables & Text
- ⌘7: Administrative/Public Draft Report(s), Final Nexus Report, Slide Presentation

Cost Proposal

Development Impact Fee Study

Based upon the scope of work identified herein, Willdan proposes a ***fixed fee of $68,460*** for the County's Development Impact Fee Study, this fee assumes three fee categories. The table below provides a breakdown of the proposed fee by task and team member.

Napa County
Development Impact Fee Study
Fee Proposal

		J. Edison Principal-in-Charge	C. Villarreal Project Manager	Total	
		$ 240	$ 210	Hours	Cost
Scope of Services					
Task 1:	Identify & Consider Fee Categories & Policy Issues	8.0	20.0	28.0	$ 6,120
Task 2:	Identify Existing Development and Future Growth	8.0	18.0	26.0	5,700
Task 3:	Determine Facility Standards	8.0	16.0	24.0	5,280
Task 4:	Determine Facilities Needs and Costs	8.0	18.0	26.0	5,700
Task 5:	Identify Funding and Financing Alternatives	8.0	20.0	28.0	6,120
Task 6:	Affordable Housing Fee Analysis	18.0	32.0	50.0	11,040
Task 7:	Commercial Linkage Fee Analysis	16.0	32.0	48.0	10,560
Task 8:	Fee Comparison	4.0	16.0	20.0	4,320
Task 9:	Calculate Fees and Prepare Report	8.0	20.0	28.0	6,120
Task 10:	Meetings	12.0	22.0	34.0	7,500
Total – Development Impact Fee Study		**98.0**	**214.0**	**312.0**	**$ 68,460**

Notes

Please note the following:

- The fee denoted above includes attendance at up to four in-person meetings with County staff, stakeholders, and County Board Meetings.

  Attendance at more than four meetings and/or presentations will be billed at our current hourly rates, provided below, and actual expenses.
- Comprehensive written responses to resolve conflicts or preparation of more than one set of major revisions to the draft report, will be classified as Additional Services, and may require additional billing at hourly rates stated in the hourly rate schedule listed below. These additional fees shall only take effect once the fixed fee stated above has been exceeded.
- Our fixed fee includes all direct expenses associated with the project.
- We will invoice the County monthly based on percentage of project completed.
- County shall reimburse Willdan for any costs Willdan incurs, including without limitation, copying costs, digitizing costs, travel expenses, employee time and attorneys' fees, to respond to the legal process of any governmental agency relating to County or relating to the project. Reimbursement shall be at Willdan 's rates in effect at the time of such response.
- Optional/Additional Services beyond the listed Scope of Services may be authorized by the County and will be billed at our then-current hourly overhead consulting rates.

Hourly Rates

Provided below is Willdan's hourly rate table identifying current hourly rates for additional or optional services.

Willdan Financial Services Hourly Rate Schedule		
Position	Team Member	Hourly Rate
Vice President/Director		$250
Managing Principal	James Edison	$240
Principal Consultant	Carlos Villarreal	$210
Senior Project Manager		$185
Project Manager		$165
Senior Project Analyst		$135
Senior Analyst		$125
Analyst II		$110
Analyst I		$100

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EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

Hourly Rates
Provided below is Willdan's hourly rate table identifying current hourly rates for additional or optional services.

Willdan Financial Services Hourly Rate Schedule		
Position	**Team Member**	**Hourly Rate**
Vice President/Director		$250
Managing Principal	James Edison	$240
Principal Consultant	Carlos Villarreal	$210
Senior Project Manager		$185
Project Manager		$165
Senior Project Analyst		$135
Senior Analyst		$125
Analyst II		$110
Analyst I		$100

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15		Smith,			
1/1/15	Site visit/investigation 123 Main St, Napa.	Engineer	1.5	$165.00	247.50
1/1/15	Conf w/Owner	Smith, Engineer	1	$165.00	165.00
	AutoCad, Bldg X, 3rd Floor	Smith, Engineer	4	$165,00	660.00
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15		Smith,			
1/2/15	AutoCad Bldg X, 3rd Floor	Engineer	4	$165.00	660.00
	Conf w/Owner re 2nd Floor	Smith, Engineer	.5	$165.00	82.50
1/3/15	Mtg w/Jones re 2nd Floor; conf	Smith,			
1/3/15	w/Owner	Engineer	1.5	$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2nd Floor	Jones, PE	1.5	$195.00	292.50
				TOTAL	

July 16, 2024

Ms. Jasmine Elo
Management Analyst
County Executive Office
Napa County
1195 3rd Street
Napa, CA 94559

Re: Sheetz v. El Dorado County - Development Impact Fee Study Methodology

Dear Ms. Elo:

As requested, and in light of the Sheetz v. County of El Dorado Supreme Court decision, Willdan Financial Services ("Willdan") would like to affirm to the County of Napa that we have not made any changes to our approach and scope noted within the proposal submitted to the County on May 21, 2024.

Sheetz was a very narrow ruling that remanded the case back to California for further proceedings (they found that the fee program in question is not categorically exempt from a constitutional takings requirement, which we have never assumed). In fact, the question they decided was so obvious that the respondents conceded it at oral argument. The only question remaining was whether the court would go further; they did not.

To discuss this matter further please contact me at (800) 755-6864, or via email at JEdison@Willdan.com.

Sincerely,
WILLDAN FINANCIAL SERVICES

James Edison
Managing Principal

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1307

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Jasmine Elo, Management Analyst

SUBJECT: Acceptance of Report Regarding Fees Waived During FY 2023-24

RECOMMENDATION

Accept and file the Annual Report of fees waived by various County departments during FY 2023-24. (Fiscal Impact: $52,027 net expense; Various Funds; Budgeted; Discretionary)

BACKGROUND

Per Part 10 of the Napa County Fees for Services manual, "The County Executive Officer shall prepare annual reports regarding the nature, number and dollar amount of fees waived by the various County departments and shall present those reports to the Board of Supervisors for review."

The total fees waived during FY 2023-24 amount to $52,027 (see attached list).

Requested Action:

Accept and file the FY 2023-24 Annual Report of fees waived by various County departments.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	Various departments
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Fee waivers are covered as part of Napa County General Provisions, Section 10.020
Is the general fund affected?	Yes
Future fiscal impact:	None

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Waived Fees in Fiscal Year 2023-24	
Department	**Cost**
Assessor-Recorder-Clerk	$462.00
Library	$2,279.88
Planning, Building, & Environmental Services	$14,543.56
Public Works	$34,741.98
	Total: $52,027.42

Assessor-Recorder-Clerk

Date Fee Waived	Permit (or fee) #	Entity paying fee	Type	Org type	Cost
7/24/2023		Suzanne Foulkes	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
7/31/2023		P Brendan Kelly	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
7/31/2023		P Brendan Kelly	Assessor Building Record Additional Pages	Fire Victim	$0.40
8/4/2023		Customer/Public	Photowork	Fire Victim	$6.00
8/7/2023		Customer/Public	Recorder Map	Fire Victim	$12.00
8/8/2023		Customer/Public	Assessor Maps	Fire Victim	$2.00
8/29/2023		REB Engineering	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
8/29/2023		REB Engineering	Assessor Building Record Additional Pages	Fire Victim	$0.70
9/11/2023		Steven Goetz	Marriage Certificate By Executive Proclamation	Fire Victim	$17.00
9/13/2023		Michelle Martin Mitchell	Birth Certificate By Executive Proclamation	Fire Victim	$32.00
9/14/2023		William Kastner	Birth Certificate By Executive Proclamation	Fire Victim	$32.00
9/14/2023		Monica Cline	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
9/14/2023		Monica Cline	Assessor Building Record Additional Pages	Fire Victim	$1.20
9/19/2023		Tammy Wilson	Birth Certificate By Executive Proclamation	Fire Victim	$32.00
9/19/2023		Tom Christianson	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
9/19/2023		Tom Christianson	Assessor Building Record Additional Pages	Fire Victim	$0.40
9/20/2023		Customer/Public	Photowork	Fire Victim	$2.00
9/20/2023		Customer/Public	Photowork	Fire Victim	$2.00
9/20/2023		Customer/Public	Photowork	Fire Victim	$2.00
9/27/2023		Tami Gallagher	Birth Certificate By Executive Proclamation	Fire Victim	$32.00
9/28/2023		Rachel Lenihan	Assessor Building Record Copies Up 5 Pages	Fire Victim	$69.00
9/28/2023		Rachel Lenihan	Assessor Building Record Additional Pages	Fire Victim	$4.50
9/29/2023		Roger Stohr	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
1/11/2024		Bryan Henry	Marriage Certificate By Executive Proclamation	Victim of Fire Per ACL 20-18	$17.00
2/27/2024		James Allen	Birth Certificate By Executive Proclamation	Victim of Fire Per ACL 20-22	$32.00
3/4/2024		Robert Dukes	Birth Certificate By Executive Proclamation	Victim of Winter Storms Per ACL 24-03	$32.00
4/17/2024		Terry Neff (APN (034-020-007)	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
4/25/2024		Susan Bohrer	Photowork	Fire Victim	$4.00
4/29/2024		Emmeth Lee Tetz (APN 021-420-043)	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
4/29/2024		Emmeth Lee Tetz (APN 021-420-043)	Assessor Building Record Additional Pages	Fire Victim	$1.30
5/10/2024		Cody Cash	Birth Certificate By Executive Proclamation	Victim of Fire Per ACL 20-22	$32.00
5/17/2024		Nicola Decker	Birth Certificate By Executive Proclamation	Victim of Fire Per ACL 20-22	$32.00

Assessor-Recorder-Clerk

Date Fee Waived	Permit (or fee) #	Entity paying fee	Type	Org type	Cost
5/16/2024		Victim of Fire Per ACL 20-18	Death Certificate By Executive Proclamation	Victim of Fire Per ACL 20-18	$24.00
6/10/2024		Public	Photowork	Fire Victim	$8.00
6/11/2024		Paul Hastings (APN 021-410-016)	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
6/11/2024		Paul Hastings (APN 021-410-016)	Assessor Building Record Additional Pages	Fire Victim	$0.50
6/12/2024		Public (019-332-019)	Assessor Map	Fire Victim	$2.00
6/28/2024		Ruby Cruz (APN 039-080-033)	Assessor Building Record Copies Up 5 Pages	Fire Victim	$3.00
				FY 2023-24 Tot	**$462.00**

County Library

Date Fee Waived	Permit (or fee) #	Entity paying fee	Type	Org type	Cost
7/1/2023		Library Patron	Collection Agency		$10.00
7/1/2023		Library Patron	Collection Agency		$10.00
7/1/2023		Library Patron	Replacement Cost		$20.00
7/9/2023		Library Patron	Collection Agency		$10.00
7/12/2023		Library Patron	Replacement Cost		$28.98
7/18/2023		Library Patron	Collection Agency		$10.00
7/18/2023		Library Patron	Collection Agency		$10.00
7/18/2023		Library Patron	Replacement Cost		$12.00
7/18/2023		Library Patron	Replacement Cost		$12.00
7/18/2023		Library Patron	Replacement Cost		$19.00
7/18/2023		Library Patron	Replacement Cost		$10.00
7/18/2023		Library Patron	Replacement Cost		$16.50
7/18/2023		Library Patron	Replacement Cost		$25.00
7/19/2023		Library Patron	Replacement Cost		$26.00
7/26/2023		Library Patron	Collection Agency		$10.00
7/28/2023		Library Patron	Replacement Cost		$16.50
7/31/2023		Library Patron	Collection Agency		$10.00
7/31/2023		Library Patron	Other		$29.98
7/31/2023		Library Patron	Replacement Cost		$14.00
7/31/2023		Library Patron	Replacement Cost		$18.00
8/7/2023		Library Patron	Collection Agency		$10.00
8/7/2023		Library Patron	Replacement Cost		$7.00
8/7/2023		Library Patron	Replacement Cost		$23.00
8/7/2023		Library Patron	Replacement Cost		$20.00
8/7/2023		Library Patron	Replacement Cost		$30.00
8/7/2023		Library Patron	Replacement Cost		$15.00
8/7/2023		Library Patron	Replacement Cost		$15.00
8/12/2023		Library Patron	Collection Agency		$10.00
8/17/2023		Library Patron	Replacement Cost		$15.50
8/17/2023		Library Patron	Replacement Cost		$15.50
8/17/2023		Library Patron	Replacement Cost		$16.50
8/21/2023		Library Patron	Collection Agency		$10.00
8/22/2023		Library Patron	Collection Agency		$10.00
9/8/2023		Library Patron	Collection Agency		$10.00
9/8/2023		Library Patron	Collection Agency		$10.00
9/11/2023		Library Patron	Collection Agency		$10.00
9/11/2023		Library Patron	Collection Agency		$10.00
9/12/2023		Library Patron	Collection Agency		$10.00
9/12/2023		Library Patron	Replacement Cost		$45.00
9/12/2023		Library Patron	Collection Agency		$10.00
9/13/2023		Library Patron	Collection Agency		$10.00
9/16/2023		Library Patron	Other		$20.00
9/23/2023		Library Patron	Collection Agency		$10.00
9/26/2023		Library Patron	Replacement Cost		$27.00
10/04/23		Library Patron	Replacement Cost		$29.98
10/04/23		Library Patron	Collection Agency		$10.00
10/12/23		Library Patron	Replacement Cost		$14.98
10/12/23		Library Patron	Collection Agency		$10.00
10/13/23		Library Patron	Replacement Cost		$17.00
10/13/23		Library Patron	Collection Agency		$10.00
10/13/23		Library Patron	Collection Agency		$10.00
10/21/23		Library Patron	Replacement Cost		$13.00
11/05/23		Library Patron	Collection Agency		$10.00
11/07/23		Library Patron	Replacement Cost		$12.59
11/14/23		Library Patron	Collection Agency		$10.00

County Library

Date Fee Waived	Permit (or fee) #	Entity paying fee	Type	Org type	Cost
11/15/23		Library Patron	Collection Agency		$10.00
11/27/23		Library Patron	Collection Agency		$10.00
12/05/23		Library Patron	Collection Agency		$10.00
12/08/23		Library Patron	Collection Agency		$10.00
12/12/23		Library Patron	Replacement Cost		$45.00
12/12/23		Library Patron	Replacement Cost		$400.00
12/12/23		Library Patron	Replacement Cost		$45.00
12/22/23		Library Patron	Replacement Cost		$14.99
12/27/23		Library Patron	Replacement Cost		$20.50
12/27/23		Library Patron	Collection Agency		$10.00
1/2/2024		Library Patron	Collection Agency		$10.00
1/11/2024		Library Patron	Replacement Cost		$18.00
1/19/2024		Library Patron	Collection Agency		$10.00
1/22/2024		Library Patron	Replacement Cost		$70.00
1/22/2024		Library Patron	Replacement Cost		$16.95
1/22/2024		Library Patron	Replacement Cost		$45.00
1/22/2024		Library Patron	Replacement Cost		$30.00
1/23/2024		Library Patron	Collection Agency		$10.00
1/26/2024		Library Patron	Other		$5.00
2/2/2024		Library Patron	Collection Agency		$10.00
2/3/2024		Library Patron	Replacement Cost		$16.50
2/7/2024		Library Patron	Replacement Cost		$17.50
2/10/2024		Library Patron	Collection Agency		$10.00
2/17/2024		Library Patron	Collection Agency		$10.00
2/17/2024		Library Patron	Collection Agency		$10.00
2/20/2024		Library Patron	Replacement Cost		$4.99
2/21/2024		Library Patron	Collection Agency		$10.00
2/28/2024		Library Patron	Replacement Cost		$5.00
2/28/2024		Library Patron	Replacement Cost		$5.00
2/28/2024		Library Patron	Replacement Cost		$39.99
2/28/2024		Library Patron	Replacement Cost		$19.00
3/1/2024		Library Patron	Replacement Cost		$46.50
3/4/2024		Library Patron	Replacement Cost		$19.50
3/5/2024		Library Patron	Collection Agency		$10.00
3/5/2024		Library Patron	Replacement Cost		$18.50
3/5/2024		Library Patron	Replacement Cost		$44.99
3/5/2024		Library Patron	Replacement Cost		$47.00
3/5/2024		Library Patron	Replacement Cost		$13.99
3/5/2024		Library Patron	Replacement Cost		$55.00
3/5/2024		Library Patron	Replacement Cost		$40.00
3/5/2024		Library Patron	Replacement Cost		$45.00
3/5/2024		Library Patron	Replacement Cost		$5.00
3/5/2024		Library Patron	Replacement Cost		$26.00
3/13/2024		Library Patron	Collection Agency		$10.00
3/13/2024		Library Patron	Collection Agency		$10.00
3/19/2024		Library Patron	Collection Agency		$10.00
3/26/2024		Library Patron	Replacement Cost		$16.00
3/26/2024		Library Patron	Replacement Cost		$14.00
3/29/2024		Library Patron	Collection Agency		$10.00
3/29/2024		Library Patron	Replacement Cost		$19.98
3/29/2024		Library Patron	Replacement Cost		$14.99
3/29/2024		Library Patron	Replacement Cost		$20.00
				FY 2023-24 Total:	**$2,279.88**

Planning, Building and Environmental Services					
Date Fee Waived	**Permit (or fee) #**	**Entity paying fee**	**Type**	**Org type**	**Cost**
7/1/2023	605339	World's Best Corndog	Temp. Event	Non-Profit	$171.00
7/3/2023	605312	Fridays in the Park	Temp. Event	Non-Profit	$413.00
7/3/2023	605313	Napa County 4-H	Temp. Event	Non-Profit	$413.00
7/3/2023	605314	Napa County 4-H Camp	Temp. Event	Non-Profit	$406.00
7/6/2023	P23-00197	Reflect and Rejoice Gala	Temp. Event	Non-Profit	$153.92
7/26/2023	11174	Car Show	Temp. Event	Non-Profit	$413.00
7/26/2023	436288	Show & Shine	Temp. Event	Non-Profit	$413.00
8/3/2023	605385	Native Sons of the Golden West #6	Temp. Event	Non-Profit	$111.00
8/3/2023	605386	Friends of the Fair	Temp. Event	Non-Profit	$171.00
9/5/2023	317115	Calistoga Harvest Table	Temp. Event	Non-Profit	$413.00
9/13/2023	605466	American Canyon's Night out	Temp. Event	Non-Profit	$413.00
10/26/2023	605525	Calistoga Harvest Table	Temp. Event	Non-Profit	$413.00
11/10/2023	605566	Wine Country Kennel Club	Temp. Event	Non-Profit	$413.00
11/17/2023	605509	Gifts'N Tyme Holiday Faire	Temp. Event	Non-Profit	$413.00
11/30/2023	545001	AC 4-H	Temp. Event	Non-Profit	$111.00
11/30/2023	544984	2023 Magic of the Season	Temp. Event	Non-Profit	$413.00
12/1/2023	605586	Calistoga Christmas Fair	Temp. Event	Non-Profit	$413.00
12/12/2023	7907	Calistoga Farmers Market	Temp. Event	Non-Profit	$413.00
12/12/2023	10817	Napa Farmers Market-Sat	Temp. Event	Non-Profit	$669.00
12/12/2023	10816	Napa Farmers Market-Tue	Temp. Event	Non-Profit	$669.00
1/4/2024	11695	Napa Valley Tea	Temp. Event	Non-Profit	$406.00
2/15/2024	P24-00033	Cakebread Cellars	Temp. Event	Non-Profit	$153.92
2/15/2024	P24-00034	V. Sattui Henry Ranch	Temp. Event	Non-Profit	$153.92
2/15/2024	P24-00035	Napa Wine Company	Temp. Event	Non-Profit	$153.92
2/15/2024	P24-00038	Grgich Hills Estate	Temp. Event	Non-Profit	$153.92
3/4/2024	426074	Earth Day Napa	Temp. Event	Non-profit	$413.00
3/27/2024	605125	Cope's Kids Day	Temp. Event	Non-Profit	$413.00
4/8/2024	10973	Chef's Table	Temp. Event	Non-Profit	$171.00
4/8/2024	7908	St. Helena Farmers Market	Temp. Event	Non-profit	$413.00
4/24/2024	605156	Napa Bike Fest	Temp. Event	Non-Profit	$413.00
4/24/2024	605776	Culinary Institute of America	Temp. Event	Non-Profit	$406.00
4/26/2024	P24-00106	WineaPAWlooza	Temp. Event	Non-Profit	$153.92
5/7/2024	P24-00120	4th of July Celebration	Temp. Event	Non-Profit	$153.92
5/7/2024	605798	Clinton St. Community Fest	Temp. Event	Non-Profit	$413.00
5/13/2024	P24-00123	Frog's Leap Winery	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00124	Louis M. Martini Winery	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00125	Stags Leap Wine Cellars	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00126	Domaine Carneros	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00127	Maxville Winery	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00128	Hess Persson Estates	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00129	Hudson Ranch	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00130	Silverado Vineyards	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00131	Inglenook Winery	Temp. Event	Non-Profit	$153.92
5/13/2024	P24-00132	Markham Vineyards	Temp. Event	Non-Profit	$153.92
5/20/2024	605312	Fridays in the Park	Temp. Event	Non-profit	$413.00
6/5/2024	P24-00136	Outstanding in the Field Farm	Temp. Event	Non-Profit	$153.92
6/5/2024	544700	Juneteenth Celebration	Temp. Event	Non-Profit	$413.00
6/24/2024	606002	Harvest Freewill Baptist	Temp. Event	Non-Profit	$111.00
6/24/2024	605695	Farruggia Baking Co.	Temp. Event	Non-profit	$111.00
6/24/2024	605302	Star Spangled Social	Temp. Event	Non-profit	$413.00

FY 2023-24 Total: $14,543.56

Public Works					
Date Fee Waived	**Permit (or fee) #**	**Entity paying fee**	**Type**	**Org type**	**Cost**
7/12/2023	34584	Customer	Homeless	Government	$186.00
9/5/2023	W23-00434	NC Grounwater Sustain. Agency	Encroachment	Government	$465.88
9/5/2023	W23-00435	NC Grounwater Sustain. Agency	Encroachment	Government	$465.88
9/5/2023	43364	Customer	Waived Adoption fee due to capacity/bonded pair	Government	$40.00
9/12/2023	43407	Customer	Waived Adoption fee due to capacity	Government	$130.00
10/29/2023	44374	Customer	Homeless	Government	$166.00
11/15/2023	W23-00572	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
11/17/2023	W23-00586	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
11/18/2023	W23-00587	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
1/2/2024	Animal ID# 44803	Customer	Unable to pay for euthanasia and animal suffering	Government	$100.00
1/2/2024	W23-00646	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
1/10/2024	W24-00012	Napa Valley Marathon	Special Event	Non-Profit	$763.14
1/18/2024	W24-00013	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
1/18/2024	W24-00016	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
2/1/2024	W24-00044	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
2/6/2024	Animal ID# 45001	Customer	Homless - waive first offense	Government	$165.00
2/22/2024	Animal ID#42346	Customer	Supervisor waived fee - Protective Custody Horse	Government	$4,434.24
2/28/2024	Animal ID# 16933	Customer	Unable to pay for euthanasia and animal suffering	Government	$100.00
3/6/2024	W24-00079	Neighborhood Watch Signage	Encroachment	Resident	$465.88
3/20/2024	W24-00101	Vine Trail Traffic Studies	Encroachment	Private Industry	$465.88
3/20/2024	W24-00110	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
4/8/2024	Animal ID# 45674,45675	Customer	Homeless - waive first offense	Government	$372.00
4/10/2024	Animal ID# 44920	Customer	BOS - POW	Government	$90.00
4/23/2024	Animal ID# 45329	Customer	BOS - POW	Government	$10.00
4/24/2024	Animal ID# 45745	Customer	Homeless - waive first offense	Government	$371.00
5/3/2024	Animal IDs#45883, 45884, 45885	Customer/ $70.00 per dog	Brother passed away dogs brought to us by ASOs and brother unable to pay surrender fees.	Government	$210.00
5/3/2024	W24-00168	Geotech Asphalt Cores for PW Project	Encroachment	Private Industry	$465.88
5/8/2024	Animal ID# 46096	Customer	Homeless - waive first offense	Government	$161.00
5/21/2024	W24-00200	Rock The Ride	Special Event	Non-Profit	$763.14
5/23/2024	W24-00201	Napa Firewise Foundation	Encroachment	Non-Profit	$465.88
6/28/2024	W24-00261	Napa Valley Marathon	Special Event	Non-Profit	$763.14
1/1/24- 3/31/24	12 Dog Adoptions	Customer/ $150.00 per dog	Waived adoption fee promotion due to maximum capacity & one BOS meeting waived fee	Government	$1,800.00
1/1/24- 3/31/24	2 Cat Adoptions	Customer/ $90.00 per cat	Waived adoption fee promotion due to maximum capacity	Government	$180.00
1/1/24- 3/31/24	7 Kitten Adoptions	Customer/ $130.00 per kitten	Waived adoption fee promotion due to maximum capacity	Government	$910.00
1/1/24- 3/31/24	1 Puppy Adoption	Customer/ $195.00 per puppy	Waived adoption fee promotion due to maximum capacity	Government	$195.00
1/1/24- 3/31/24	1 Rabbit Adoption	Customer/ $40.00 per rabbit	Waived adoption fee promotion due to maximum capacity	Government	$40.00
12/1/23-12/31/23	34 Dog adoptions	Customer/ $150.00 per dog	Waived adoption fee promotion due to maximum capacity	Government	$5,100.00
12/1/23-12/31/23	21 Cat adoptions	Customer/ $90.00 per cat	Waived adoption fee promotion due to maximum capacity	Government	$1,890.00
12/1/23-12/31/23	59 Kitten Adoptions	Customer/ $130.00 per kitten	Waived adoption fee promotion due to maximum capacity	Government	$7,670.00
12/1/23-12/31/23	8 Puppy Adoptions	Customer/ $195.00 per puppy	Waived adoption fee promotion due to maximum capacity	Government	$1,560.00
12/1/23-12/31/23	1 Rabbit Adoption	Customer/ $40.00 per rabbit	Waived adoption fee promotion due to maximum capacity	Government	$40.00
12/1/23-12/31/23	1 Fowl Adoption	Customer/ $10.00 per fowl	Waived adoption fee promotion due to maximum capacity	Government	$10.00
				FY 23/24 Total:	**$34,741.98**

Napa County

Board Agenda Letter

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Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1365

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Daniel Sanchez, Senior Management Analyst

SUBJECT: 2023-24 Grand Jury Reports

RECOMMENDATION

Approve transmittal of the proposed responses to the 2023-24 Grand Jury Final Reports to the Presiding Judge as prescribed by Section 933 of the Penal Code. (No Fiscal Impact; Mandatory)

BACKGROUND

The County received the "Napa County's Communication with its Citizens," "Raising Awareness of Elder Abuse in Napa County," and "Skyline Academy at Juvenile Hall Delay and Disorganization" and "Hitting the Reset Button; Addressing Gangs in Napa County" Grand Jury reports. Staff prepared proposed responses to the findings and recommendations.

Staff will process any direction received from the Board and return any revised responses for further review. Upon Board approval, staff will transmit the responses to the Presiding Judge. Copies of the reports are on file with the Clerk of the Board or may be accessed online through the Napa County Superior Court's website.

Requested Action:

1. Approve transmittal of the proposed responses to the 2023-24 Grand Jury Final Reports to the Presiding Judge as prescribed by Section 933 of the Penal Code.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY
2023-2024

April 10, 2024

FINAL REPORT

Hitting the Reset Button;
Addressing Gangs in Napa County

"the child who is not embraced by the village will burn it down to feel its warmth"
(African Proverb)

Summary

Two gang affiliated Napa County attempted murders in 2023 provided the impetus for the Grand Jury to investigate the existence, composition, and activity of gangs in Napa County.

The consensus opinion of educators, police and prosecutors is that gang activity in Napa County is on the rise:

- Noted uptick in graffiti (tagging)
- Two gang related attempted murders in 2023, resulting in multiple incarcerations
- Juvenile gang prosecutions increased by 60% from 2021 – 2023. (10-16)

Gang activity in Napa County is primarily driven by two Mexican drug cartel affiliated gangs—Nortenos and Surenos. The group demonstrating the most activity changes over time, depending on numbers of incarcerated gang members:

- Membership includes 113 Nortenos and 70 Surenos.
- 177 adult gang members or associates are currently on probation for criminal activity.
- 24 known juvenile gang members are currently on probation.

Gang coordination among all County law enforcement and school administrators is currently conducted by the Napa Police Special Enforcement Unit (SEU) but without the structure and consistency which existed previously.

The Legacy Youth Program which targeted at risk youth within the Napa Valley Unified School District (NVUSD) was terminated in the 2020-2021 school year for a number of contributing reasons:

- Stakeholder feedback was mixed throughout Grand Jury investigations on the Legacy Program's effectiveness.
- Numerous nonprofit social programs currently exist, but none seem to be integrated into the NVUSD curriculum.

Gang participation appears to be starting at younger ages:

- Adult gang members recruit young gang members to conduct criminal activity due to lessened consequences as a minor.
- Napa Valley Schools have numerous court-directed probation students, many directly resulting from gang activity.

The Napa County Grand Jury recommendations that follow include:

- Reestablishment of a youth intervention program like Legacy, starting with students in the 5th grade
- Requirement of an annual strategic gang plan, created in collaboration with Napa Police Department's Special Enforcement Unit (SEU) and NVUSD

- Mandatory monthly attendance of gang task force meetings including all appropriate stakeholders – Education, School Resource Officers, Special Enforcement Unit, Juvenile and Adult Probation, Napa County Jail

Background

Although gang activity has always been evident in Napa County it became more evident when schools returned to full session after the Covid lockdown. The questions that needed further study were why and what is being done to combat this trend.

Some of the key facts that support this conclusion are:

- With school paused, youth in the community had more free time with less supervision and thus were looking for things to do.
- Gangs became an avenue where they could get a sense of belonging.
- Younger youth were back in their neighborhoods with little supervision and even fewer things to do.
- Recruitment of younger students by existing gang members leads to more of them becoming initiated in the gang lifestyle.
- When schools reopened this new lifestyle became more prevalent in schools at all grade levels.

Napa County has undergone a big change in demographics with a large increase in the Hispanic population especially in the makeup of the school age population. Currently, more than 75% of all elementary school age students are of Hispanic descent and make up the vast majority of impoverished, at-risk students. Given the fact that the two dominant gangs in Napa are Hispanic gangs this magnified the problem. Although we learned that gang activity “ebbs and flows” in our community it can be said that we are in a pattern of increased gang membership. This growth has made it a more difficult problem for school administrators as they try and deal with more active gang members on campus.

Another factor contributing to the increased activity is the increase in socioeconomically disadvantaged youth. In the last eight years, this number has increased by 50% with now 75% of elementary aged youth falling into this category. Most of these students come from homes that are single parent homes or homes where parents are working more than one job, hence less supervision outside of school hours.

Additionally, many new laws have been implemented that make it harder for law enforcement to deal with the problem by making penalties for juvenile offenders less severe. These same laws also have affected the way schools can deal with these same problems. It is more difficult to discipline students for disruptive behavior, much of which can be attributed to gang like behavior.

As gang activity is now on the rise, programs that have traditionally proved effective in dealing with these problems have been eliminated or scaled back. Some examples are:

- Legacy program which proved effective at Vintage HS.
- Vocational programs as not everyone needs to go to college.
- Sports programs.

Although there are numerous nonprofits in Napa County, their ability to reach the youth they need to serve seems often hampered by a lack of coordination and effective outreach to the people they want to serve. Given the prevalence of social media to the younger generation it seems using social media to reach them needs to be improved.

The gang problem continues to grow in Napa and is reaching a younger and younger audience which means that solutions needed to combat this must be geared toward this younger group.

Methodology

Approximately 28 interviews were conducted: including Police Chiefs from Napa, Calistoga, and St. Helena, School Resource Officers, members of the Napa County District Attorney's office, individuals from the Napa County Probation Department, Napa Valley Unified School District administrators, principals, and assistant principals, and Napa County Office of Education personnel.

The Jury toured public schools, community court schools, and Juvenile Detention Centers.

The Jury read California Supreme Court decisions, Ballot Measure Informational, Napa Valley Register news reports, the 2011 Napa County Gang and Youth Violence Master Plan, the 2008 and 2016 Napa County Grand Jury Reports on gangs in Napa County, the relevant portions of the Napa County Probation Department 2023-2024 Juvenile Justice Plan Report, documents from the Napa County District Attorney’s office, and the California Penal Code.

Statistics throughout the report were based on information from individual public school websites, the California Department of Education statistics, and the US Census Bureau.

Discussion

Demographics

Napa County is mostly rural, relying primarily on the wine industry for its commerce. It is bordered by Lake County, Sonoma County, Solano County, and Yolo County. It consists of 748 square miles. According to the 2020 Census Napa County has an approximate population of 138,019 or 184 persons per square mile as compared to the state’s average of 253.7 persons per square mile. There are five incorporated cities in Napa County: Napa (the most populous), American Canyon, Calistoga, St. Helena, and Yountville. The city of Napa has approximately 79,251 residents; American Canyon has approximately 21,843 residents; Calistoga has approximately 5,227 residents; St. Helena has approximately 5,420 residents; and Yountville has approximately 3,427 residents. 83% of Napa County’s population resides within these cities.

According to the 2020 Census, Napa County racial percentage numbers are:

- Whites (non-Hispanic): 50% (reduction from 2010 Census of 56%)
- Hispanics: 36% (increase from 2010 Census of 32%)
- Asians: 9.4% (increase from 2010 Census of 7%)
- African Americans: 2.4% (increase from 2010 Census of 2%)

These 2020 percentages differ in comparison to state racial percentages:

- Whites (non-Hispanic) 34.7% (40% in 2010)
- Hispanics 40.3% (38% in 2010)
- Asians 16.3% (13% in 2010)
- African Americans 6.5% (6% in 2010)

The percentage of poverty levels in Napa County in 2007 stood at approximately 8.6%, compared to the State's 12.4%. According to KidsData.org, the percentage of children living in poverty in 2019 was 7.0% (State:15.6%). In 2016, families living below self-sufficiency standard was 39.8% (State: 47.6%). It is also reported that in 2019, children living in food insecure households was 9.0% (State: 13.6%) but between 2016-2020 the percentage of children living in households with a broadband connected device was 95.5% (State: 93.2%).

According to KidsData.org, in 2021 there were 26,841 children under the age of 18 in Napa County and 16,024 children between the ages of 3 to 13. Of the total (26,841), Hispanics numbered 13,203 and Whites numbered 10,538. The following is statistical information regarding middle and high schools in central and southern Napa County from the California Department of Education. These statistics reflect the race percentages of the most populous groups, the percentage that are socioeconomically disadvantaged, the percentage that are homeless, and the percentage of English learners at each school.

The Department of Education School Dashboard's definition of socioeconomically disadvantaged is students who are eligible for free or reduced price meals or whose parents/guardians lack a high school diploma.

Napa County Office of Education 2020-2021	Hispanic	White	Filipino	Homeless	SocioEconomically Disadvantaged	English Learners
Camille Creek	79.8%	11.7%	-	30.9%	90.4%	25.5%

Napa Valley Unified School District 2022-2023	Hispanic	White	Filipino	Homeless	SocioEconomically Disadvantaged	English Learners
American Canyon Middle School	40.8%	11.8%	22.5%	1.1%	60.5%	16.9%
American Canyon High School	37.5%	10.3%	27.1%	1.6%	54.7%	8.3%
Napa High School	75.1%	21.6%	-	1.6%	75.0%	21.1%
New Technology High School	62.6%	30.6%	-	1.4%	69.7%	11.5%
Redwood Middle School	62.3%	33.1%	-	1.1%	65.7%	23.5%
Silverado Middle School	72.5%	22.5%	-	2.4%	78.1%	34.9%
Unidos Middle School	73.0%	23.4%	-	1.2%	60.4%	26.4%
Valley Oak High School	72.4%	21.4%	-	3.6%	82.1%	17.3%
Vintage High School	53.6%	40.4%	-	0.8%	55.3%	11.2%

All these numbers become significant for a number of reasons as discussed below.

The Death of Michael Arreguin
Napa's Wake-Up Call

The crime rates in Napa County have largely been lower than most communities in California. Napa has always been known as a bucolic vacation destination where visitors from around the world come to relax and taste world class wines. The wine industry has also led to many Hispanics coming to work in viticulture.

Napa County is a place where people seeking a calmer, beautiful area to live have taken up residency. This has sometimes led to a general attitude that bad things, especially gang-related ones, don't happen here. Between 1994 to 1998 there were instances of gangs committing assaults on one another and drive-by shootings that resulted in no deaths, so the general population remained largely unconcerned. That all changed after May 16, 1998.

In the afternoon of May 16, 1998 two people believed to be Nortenos gang members, Michael Arreguin and Garret Elshere, had stopped in front of a home unrelated to them on Brown Street because of a flat tire. Lacking the equipment to replace the tire, they stayed there ostensibly waiting for help. During their wait, two associates of the Surenos gang, Roberto Cendejas and Jose Marin saw them and reported to Surenos gang members that Nortenos were on Brown Street. Two cars of Surenos returned to Brown Street, where Arreguin and Elshere still waited.

Jose Marin drove the first car in which Jacob Hutchins, a white person from Alabama who had just recently arrived in Napa and began associating with Surenos, had a gun and was riding in the front passenger seat. Roberto Cendejas drove the other car in which Gonzalo Alcala had another gun. As the two cars passed by the Nortenos, both Hutchins and Alcala opened fire. Hutchins' bullet found its mark in Arreguin, killing him. Alcala's bullet hit the disabled car. All four Surenos were convicted and sentenced to life in prison. Two of the defendants, Hutchins and Cendejas, have been paroled and two defendants, Marin and Alcala, remain in prison.

People in Napa were horrified. What if others had been shot in the crossfire? What if bullets had entered that house on Brown Street? Napa took action largely focusing on gang interdiction and enforcement through intelligence gathering, investigation, arrests and prosecution.

The Gangs of Napa County

California Penal Code section 186.22(f) defines "'criminal street gang' as an ongoing, organized association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subdivision (e), having a common name or common identifying sign or symbol, and whose members collectively engage in, or have engaged in, a pattern of criminal gang activity."

The two most prevalent gangs in Napa County's history have been the Nortenos and the Surenos, whose roots and animosity can be traced back years ago to a confrontation between a member of

the Mexican Mafia and a member of Nuestra Familia in a California prison over a pair of shoes. The Surenos, derived from the Mexican Mafia, identify with the color blue and the number 13 (13th letter of the alphabet-M for Mexican Mafia) and were thought to be from south of Bakersfield and first generation. The Nortenos, derived from Nuestra Familia, identify with the color red and the number 14 (14th letter of the alphabet-N for Nuestra Familia) and were thought to be from north of Bakersfield and with deeper roots in California. Each has expressed their identity through clothing and tattoos. They each have also claimed their territory with tagging (graffiti). Each calls the other derogatory names: Surenos, or Southerners as they were sometimes known, refer to Nortenos, or Northerners as they were sometimes known, as “chaps”, “chapetes”, or “Buster” and Nortenos refer to Surenos as “scraps”, “scrapas”, or “surats”. Both gangs have historically been largely Hispanic.

Over the years, the fight, which began over a pair of shoes, has spread into communities across the state and even Napa County.

Napa County Gangs Today

The Nortenos and Surenos are the most prevalent gangs in Napa County. Now, they are represented in a number of “subsets”. Nortenos “subsets” are NSF (North Side Familia), NSL (North Side Locz), RS/125 (Riverside 125),and BPN (Brown Pride Nortenos). Surenos “subsets” are PBS (Pueblo Block Surenos) and BLS (Barrio Laurel Surenos). Today, it appears that whether or not someone came from north or south of Bakersfield or whether or not they are Hispanic is irrelevant in gang acceptance. However, approximately 90% of gang members and associates of those gangs are Hispanic.

Over the years, the waves of gang activity have “ebbed and flowed” according to almost all of the educators and law enforcement officials the Jury interviewed. They also believe that it is on the rise. Napa High School was reported to have the most gang activity of all the schools, other than Camille Creek. Law enforcement is seeing a level of sophistication and violence (even at middle schools) that is disturbing, as well as increased proliferation of guns (ghost guns). More middle students are wearing “colors” and acting defiantly and disrespectfully to authority. In 2023, there were two shootings that resulted in injuries to gang members. A third shooting occurred when a gang shot at a mobile home that was mistakenly believed to be occupied by opposing gang members. On February 16, 2024, two individuals, subsequently identified as 16- and 17-year-old Nortenos gang members, chased and shot at another individual. Fortunately, the victim was uninjured and the two Nortenos were arrested for Attempted Murder, Assault with a Deadly Weapon, Conspiracy, and the Criminal Street Gang Enhancement.

Gang fights at the high schools are increasing. Unfortunately, concerns about lawsuits and California Education Code sections 48900 and 48915 limit school administrators' ability to suspend or expel students for gang activity unless it involves certain specified offenses on campus.

The reasons that prosecutors, educators, probation officers, and law enforcement cite as the causes and reasons for this upsurge are varied:

- When Covid shut down schools, students had more free time and no supervision
- Lack of supervision due to a single parent household, or two parent households with those parents having to work long hours to survive
- Students not succeeding in the schools or were left thinking that they were being ignored joined to belong
- Joining a gang to have a sense of belonging
- Joining because of influence by older siblings (generational) in the home
- Wanting the party life and money that gang participation can produce
- The proliferation of social media

When Harvest Middle School closed (and reconfigured the student population at River Middle School) at the end of school year 2021-2022, sending more students to Silverado Middle School, it resulted in an increase in gang activity there last year. Administrators believe that was due to the mixing in of different student bodies. The transferred students were angry and depressed that their schools had been closed. The students at Silverado felt like they were being invaded. Gang activity at Silverado is still present. It is not at the level from the previous year. Despite that observation, law enforcement has observed disturbing behaviors at the middle schools, including Silverado.

Money is a major motivator for individuals to join gangs. Many of these at-risk youth come from homes that are impoverished, making the allure of making money enticing. The interviewees identified a number of ways that gang members acquire money. Currently the sale of vape pens, which can dispense THC, is high on the list of methods. Vape pens are almost undetectable due to their construction (plastic) and their small size. Even metal detectors cannot detect them which makes them easy to be brought on the school campuses for sale.

Gang members are also involved in theft, including skimming. Skimming is the tech method of stealing credit card information just by being relatively close to an individual with a radio skimmer. With one of those, the person can steal a victim's credit card information without that person knowing. The thief then uses the credit card information to obtain goods which can be resold for cash. Members have been observed wearing very expensive designer clothes with no obvious way to have purchased them. Law enforcement interviewees reported that gang members are very successful at the ways that they are making money.

Another disturbing trend is older gang members having or paying younger students to do their dirty work knowing that they would not get in serious trouble. One example that was given was an incident in which a 12-year-old child drove a car to Sacramento to get rid of a gun for an older gang member.

It is difficult to know just how many gang members there are in Napa County. The Jury attempted to obtain data illustrating those numbers, but they simply either don't exist anymore or are too difficult to obtain due to software issues. The Probation Department has reported per

Government Code section 30061(b)(4) that it uses California Justice Network (CJNet) "...a self-supported data management system designed to be able to collect, analyze, and report data…" While CJNet is currently being used for adult probationers, it is not yet being used for juvenile probationers.

Initially, CJNet had limitations regarding obtaining gang statistics from the District Attorney's office but recently it has implemented a "tag" system to better obtain gang data. For example, prior to the ability to "tag", the number of adult case data that could be readily obtained numbered for the two-year period of March, 2021 through December, 2023 was 12 total defendants without "P.C. 186.22 enhancement allegations and seven defendants with those enhancements alleged. With the "tag" the number of adult defendants with those enhancements number 24 for the three-year time period from December 20, 2020 to December 20, 2023.

In the future, the District Attorney and the Probation Department will be able to obtain specific numbers for defendants and crimes. District Attorney staff does not always know if a crime is gang related so they have their gang prosecutors review every one that may possibly be gang related, especially crimes involving guns. The District Attorney provided the Jury with the following statistics for juvenile petitions (charging documents) filed in Juvenile Court during years 2021 through 2023:

- 2021: 242 total juvenile petitions filed, 10 known to be gang related
- 2022: 279 total juvenile petitions filed, 14 known to be gang related
- 2023: 309 total juvenile petitions filed, 16 known to be gang related

Another reason for the lack of understanding of the number of gang members in Napa County is that gang members have become more tech savvy. They are moving to social media and not being so visible with their affiliations, i.e., not always boldly wearing their colors or other identifying elements. Additionally, CALGang, a state gang data reporting system, has been essentially eliminated. The District Attorney's office does not miss that source as it now relies on the work of law enforcement, prosecutors, and probation for the lines of communication that do exist in Napa County. Despite some difficulty the Jury was able to track down the following additional statistics:

- Number of adults Probation Department supervises: 1,484
- Number of known adult gang members Probation Department supervises: 112 active, 65 associates. Adult gang Probation Officer currently supervises 25.
- Number of juveniles Probation Department supervises: 136 (non-diversion)
- Number of known Juvenile gang members Probation Department supervises: 24
- Number of known, active adult Surenos in 2023: 70 (40% increase since 2016)
- Number of known, active adult Nortenos in 2023:113 (125% increase since 2016)
- In 2022, 39% of weapons violations were gang related
- 89% recidivism rate for gang members over five-year time period

Addressing the Gang Issue

Currently, representatives of law enforcement (police, prosecutors, probation officers) meet monthly to discuss gang issues including who is active/associated, who has been arrested, who is being released from custody, and specific crime intelligence. The most regular attendees currently are Napa Police Department (SEU-Special Enforcement Unit, which consists of four officers), District Attorney's office's prosecutors, and members of the Probation Department. The Napa Sheriff's Office, St. Helena Police Department, and Calistoga Police Department do not attend regularly, although they are members of Napa County's Major Crimes Task Force. That task force binds all law enforcement agencies to work together to solve major crime incidents when assistance is requested by a member agency.

During previous surges in gang activity (approximately 1998-2008) and even beyond, there were more regularly attended meetings by all law enforcement, probation, and members of the District Attorney's office to address gang crime.

Both the Napa Police Department and Napa Sheriff's Department have assigned School Resource Officers (SROs) to all middle and high schools in Napa City and American Canyon. There is also an SRO and Probation Officers at Camille Creek Community School. SROs are not on campuses to arrest students. Their duties and responsibilities include campus safety but they are there also to build relationships with the students. School administrators meet monthly with the SROs as well as with representatives of the District Attorney's office and Probation Department to discuss gang, truancy and other issues.

The Jury interviews revealed that there is a strong bond and level of cooperation between the SROs and the educators as both seek to help these students. However, the SROs believe that there needs to be more consistency in the way issues are handled and, in some cases, more discipline for bad behavior. Some educators believe that the way to handle the gang members is with more understanding and a softer approach. Whatever their approach, they all agree that more needs to be done to address these issues at younger ages (middle school and, in some instances even at elementary school), including educating the students and parents. As one educator put it, "Schools are the canaries in the coal mine." Finally, educators and law enforcement unanimously believe that, although Napa is a wealthy community, there is very little or nothing in the way of after-school activities to keep these at-risk youth engaged and off the streets.

The Impact of Propositions and Legislation on Criminal Justice: Handcuffing the Wrong Individuals?

In the last ten years, there has been a significant attempt by some to remake the criminal justice system in California, partially due to prison overcrowding. Some laws have been a positive step forward. However, the effort to make the criminal justice system run more fairly and to stop the overpopulation of the prisons may also be interfering with law enforcement's ability to deal with

crime and criminals. Some laws also may have had a counterproductive effect. The Jury examined some of those changes in law and their impact.

1. Proposition 47, referred to by some of its proponents as the "Safe Neighborhoods and Schools Act" (2014)

Proposition 47 reduced most theft crimes to misdemeanors where the value of the property "stolen" did not exceed $950, including fraud, forgery, bad checks, petty theft with a prior conviction for petty theft, or receiving stolen property. It reduced simple possession of drugs, which previously could be charged as a felony, to a misdemeanor unless the accused had a specified prior felony conviction. Proposition 47 was retroactive so persons either in prison for a conviction now reduced to a misdemeanor or persons who already had served a sentence for that crime could petition to be released from prison and have that conviction deemed a misdemeanor. One of the motivating factors behind this law was reduction of the prison population in order to comply with a prior federal court decision.

According to a report by the Public Policy Institute in 2018, analyzing the impact of Proposition 47, it concluded that there had been no "convincing evidence that violent crime increased". However, not surprisingly, it also found that after the law's implementation there was "an immediate" increase in property crime rates, especially in larceny. The report also referred to this increase as a "slight uptick." Law enforcement interviewees were unanimous in their conclusions that Proposition 47 has negatively impacted their ability to fight crime as evidenced by the rampant increase in theft of all forms. Gangs rely on theft as a means to make money and grow their memberships. To know that you can calculate how much you can steal and no matter how often without getting in much trouble, if any, is very attractive. At the time of this report there is a proposition for the November ballot and a bill before the legislature to roll back some of the theft provisions of Proposition 47.

2. Proposition 57: Public Safety and Rehabilitation Act (2016)

Proposition 57 gave prison inmates the ability to be considered for parole after serving their sentence for their primary, non-violent offense, instead of having to serve the additional time for any enhancements. It also increased credit earning possibilities for inmates, removed the possibility of prosecutors to directly charge juveniles with serious or violent crimes (as defined by law) as adults, and placed that decision solely in the hands of the court. Procedurally, the District Attorney must request that the juvenile accused be transferred to adult court for prosecution. After that happens, the judge holds an evidentiary hearing at which evidence is presented and arguments by counsel are made. The judge then determines if the juvenile should be transferred or remain charged in Juvenile Court as a juvenile. The factors that the judge relies on to make the decision are the severity of the offense, the juvenile's maturity, and likelihood of rehabilitation.

3. Proposition 64: The Adult Use of Marijuana Act (2016)

This law legalized personal use and cultivation of marijuana for adults 21 years of age or older and reduced penalties for adults and juveniles regarding specified offenses. There was also a provision that enabled those previously convicted to obtain relief in the form of resentencing, dismissal or sealing of convictions (both adult and juveniles). While it did not legalize juveniles' personal use it did make all charges infractions, except manufacture of hash and driving under the influence of marijuana. The only penalties that the court can now impose on a juvenile was lowered to 4 hours of drug education (counseling-to be provided at no cost) and community service (up to 30 days for good cause). The court is not required to impose drug education if not available or unnecessary.

According to the Center for Disease Control (CDC), in 2019, 37% of high school students reported lifetime use of marijuana and 22% reported use within the past 30 days. Those figures remained about the same for 2020. However, many young people reported marijuana vaping including "8% of eighth graders, 19% of 10th graders, and 22% of 12th graders."

The CDC, as well as the American Academy of Pediatrics, has reported that human brain development continues into the mid-20s and that marijuana use during adolescence can harm the brain. Some other effects noted by the CDC and the Mayo Clinic are: increase in potential mental health problems including depression, social anxiety, temporary psychosis (hallucinations and paranoia), or long-term psychosis (schizophrenia); difficulty thinking and problem-solving; problems with memory and learning; reduced coordination; difficulty maintaining attention; and problems with school and social life.

4. Senate Bill 203 (2020)

Prior to the implementation of Senate Bill 203 (January 1, 2021) all juveniles 15 years of age and younger were required to have actual consultation (live or other means) with an attorney before a waiver of Miranda rights could be obtained for a custodial interrogation (Welfare and Institutions Code section 625.6). Senate Bill 203 amended Welfare and Institutions Code section 625.6 to extend those rights to juveniles age 17 and younger. The obvious net effect is that law enforcement's ability to investigate crimes involving those juveniles has been greatly impacted. No competent attorney is ever going to let their juvenile client be interrogated.

5. Assembly Bill 1950 (2020)

This legislation reduced the amount of time that an adult could be kept on probation for many misdemeanors and felonies. Prior to its implementation in 2021, most misdemeanors carried three years of probation and felonies three to five years of probation. This legislation limited probation for misdemeanors to one year and felonies to two years. There are exceptions to the limits. For example, Driving Under the Influence, Domestic Violence, serious felonies as defined by the Penal Code, and financial crimes involving $25,000 or more remain subject to the previous terms of probation.

As expressed by the Probation Department, limiting the amount of time that a person can be on probation impedes their ability to "create lasting behavior change." "...[I]t takes time to help people change their lives as they move through the stages of change." Further, probation's job is to "help those on supervision through…evidence-based stages of change to allow them to learn new skills and tools to be able to modify their behavior." Probation points out that doing this requires a tremendous amount of "assessments, cognitive behavioral treatment, and substance abuse…" counseling. Assembly Bill 1950 "...hinders [their] ability to help people change…" Interestingly enough, prior law and practice permitted the early termination of probation terms if appropriate by the courts without this legislation.

6. Senate Bill 823: Juvenile Justice Realignment (2020)

Senate Bill 823 ordered that counties not transfer serious or violent offenders after July 1, 2021 to the State's Department of Juvenile Justice and requires counties to assume that responsibility. Previously, these serious offenders would be sent to one of four juvenile correctional facilities through the Department of Juvenile Justice [California Youth Authority (CYA)]. Those facilities are now closed.

Closing the state's Department of Juvenile Justice, and thus CYA, meant that the most serious and violent offenders would no longer be the responsibility of the state but rather individual counties, including Napa County. The state did provide (as well as other legislation) some funding for the county to assist with the change in housing and programming required. Previously, the most violent and serious offenders, murderers, rapists, robbers, etc. were regularly sent to CYA, and its secure prison-like facilities.

Napa County must now provide housing and programming for juvenile offenders 14 years or older who have committed serious or violent felonies. When they were no longer permitted to transfer juvenile offenders to the state, Napa County contracted with Sonoma County to house those serious or violent juveniles. Napa County is remodeling a part of Juvenile Hall to accommodate these serious or violent offenders. Juveniles can potentially be ordered to serve many years of confinement. Napa County is also creating a "Camp", which might also serve this need. Napa might have to provide housing and programming until an offender is 25 years old. The glaring reality is that local jurisdictions like Napa County were not set up to house these juvenile offenders.

7. Assembly Bill 90 (2017)

In 2017, Assembly Bill 90 was signed into law, taking effect on January 1, 2018. In California the entity called CALGang was an intelligence system that shared information among law enforcement agencies regarding gangsters, including membership and other identifying information. It was run by law enforcement. As a result of claims of inaccurate entries and failure to remove stale information regarding individuals, the legislature set out to correct these perceived inequities.

The result was Assembly Bill 90 which did a number of things. It transferred CALGang control to the Department of Justice, it created a moratorium on agencies reporting new information until a purge of the system was completed, and it placed other restrictions on its use including banning the transfer of information to the military, potential employers, or immigration. As a result, many law enforcement agencies across the state stopped using it, including Napa County. For all practical purposes, CALGang died as a result of Assembly Bill 90 and thus so did the ability for jurisdictions to easily share gang intelligence.

8. Assembly Bill 333 (2021): The Gutting of the Gang Enhancement

Effective January 1, 2022, Assembly Bill 333 (AB 333) rendered the gang sentencing enhancements difficult, if not nearly impossible to prove. In fact, there is one train of thought to not bother alleging the gang sentencing enhancement. The changes are reflected below as presented by one of our interviewees in law enforcement:

a. "Criminal Street Gang":

i. **Previous:** "any ongoing organization, ***association*** or group whose members ***individually or collectively*** engage in a pattern of criminal gang activity"

Now: "any ongoing ***organized association*** or group whose members ***collectively*** engage in a pattern of criminal gang activity"

Impact: May need to show some organization and that multiple gangsters in pattern crimes or multiple gangsters committing the same pattern crime

b. "Pattern of Criminal Gang Activity"

i. **Previous:** "last of those offenses within three years of a ***prior offense***" and "the offenses were committed on separate occasions, or ***by two or more persons***" and "the ***current offense can be a pattern offense***"

Now: "last of those offenses within three years of the ***current offense***" and "the offenses were committed on separate occasions ***by two or more members***", ***can no longer use certain crimes as prior offenses***, the offenses ***commonly benefit*** a Criminal Street Gang, the common benefit is ***more than reputation***, and the ***current offense cannot*** be used as a ***pattern offense***

Impact: Restricts the kinds of crimes committed as precursors (including the current underlying offense) and may eliminate prior case law that permitted the predicate offender from having to be a ***member*** of the gang, i.e., could have been a wannabe

ii. **Previous:** "for the ***benefit of*** …" and "to ***promote, further or assist***"

Now: language is the same but it "means to provide a ***common benefit*** which is "***more than reputational.***" (per CALJIC 14.01-jury instruction)

Impact: Examples now Includes: ***Financial gain, retaliation, targeting a perceived or actual gang rival, intimidation of witness or informant***

c. Penal Code section 1109: Bifurcation

i. **Previous:** Gang sentencing enhancements were proven during the same proceeding (trial) as the underlying offense. So, for example, the guilt of a gang member charged with assault with a deadly weapon and the "truth" of a gang sentencing enhancement would be determined in the same trial.

ii. **Now:** Mandatory ***bifurcation*** of the enhancement from the trial on guilt of the underlying crime or, in some cases, if requested by the defense.

iii. **Impact:** This means that District Attorneys are required to prosecute two separate trials: one trial determining guilt for the underlying crime and a second trial by the same jury to determine "truth" for the gang enhancement (unless there is some reason that the same jury can't hear the enhancement trial). This could very well impact the admissibility of gang evidence in the trial for the underlying offense.

9. Assembly Bill 1308 (2017) Senate Bill 394 (2017)

In 2017, the California legislature amended Penal Code section 3051. These bills changed parole laws for juveniles. Juveniles could no longer be sentenced to life without the possibility of parole and they would be eligible for parole after 25 years. Section 3051 was also changed to provide new parole eligibility rules for individuals who committed crimes under age 23 and directed the parole board to use special criteria and procedures in these cases.

Now, youth offenders are eligible for parole in California as follows, subject to certain exceptions: (1) those convicted of controlling offenses committed at age 25 or younger and sentenced to a determinate sentence are eligible after 15 years; (2) those convicted of controlling offenses committed at age 25 or younger and sentenced to less than 25 years to life are eligible after 20 years; (3) those convicted of controlling offenses committed at age 25 or younger and sentenced to 25 years to life will be eligible after 25 years.

Additionally, the parole board thereafter, is required to refer only to a "controlling offense" when determining eligibility—meaning the longest-term offense. The changes effectively eliminated consecutive sentences in determining parole eligibility. In addition, among other requirements, the statute requires the parole board to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law". The news of criminals' early parole possibilities is often devastating to the survivors or victims of serious crime since

they are typically advised at sentencing that their victimizers were going to be in prison much longer.

Some of the motivations behind the laws discussed in this section are well-meaning, such as reducing prison populations, reducing recidivism rates, getting services for adult and juvenile criminals close to home, and preventing abuses. However, some are counterproductive in efforts to reduce recidivism and addressing juvenile welfare and offenses. For example, as some of our interviewees noted, having gang criminals released from prison or jail earlier negatively impacts efforts to reduce gang participation as these gangsters are seen as negatively influencing the younger at-risk youth and gang members. Legalizing marijuana, and practically decriminalizing it for juveniles is counterproductive since we know that gang members are selling vape pens with THC and there is no question that the damage done to juvenile brains is a realistic concern. Making it more difficult to prosecute gang members and associates as well as preventing interrogations of juvenile criminals only make it easier for the gang members to get more at-risk youth involved in gangs. While it is true that there were abuses during the era of "3 Strikes" and "Tough on Crime", we don't want to throw out the baby with the bath water. Clearly the pendulum has swung the other way, and our at-risk youth may pay the price.

Intervention: Save the Child

The Napa County Probation Department reported in its 2023-2024 Juvenile Justice Plan report per Government Code section 30061(b)(4) that it had identified "...gang intervention and prevention as being the primary gap in services for juveniles. The County currently lacks a comprehensive strategy to address the challenges presented by the presence and activities of juvenile offenders who are affiliated or associated with criminal street gangs. "Furthermore, Probation had launched "strategic planning" to include two initiatives to "enhance services to gang affiliated youth". One idea they reported considering is to have Mobile Supervision to target areas of "high need" to bring services to those residents, including family members. The probation officers would partner with "community agencies" to accomplish this objective. The other idea they are considering is to "develop the camp program" for higher risk juvenile offenders and gang affiliates. Their stated objective would be to provide "evidence-based services in a secure setting" and to "keep them connected to family." However, the Probation Department does have cognitive counseling groups.

A common theme expressed by both educator and law enforcement interviewees was that Napa must begin education and intervention efforts earlier, in middle school (and some elementary schools) for students and parents. Also, after school programs that are sports related or other activities should be expanded. Parents must be educated earlier on how to identify when their children are getting involved in gangs. The Jury also heard this sentiment from more than one interviewee: Napa County is a wealthy community and there are very few after school programs to keep children off of the streets.

Educators and members of law enforcement alike also stated that vocational programs at the schools needed to be returned or expanded to the extent that any exist at the schools. Not every child is meant to go to college. “The best way to stop a bullet is a job.”

There are a number of efforts that are being made in Napa County to deal with the prevention of youth becoming or staying gang members. These are some of those efforts:

- The schools have wellness centers with counselors and social workers
- There are SROs at all schools to establish relationships with students and to provide school safety
- Napa Police Department has a Community Service Officer run diversion program with a dynamic officer
- The following entities also provide services:
    - Boys and Girls Club: after school programs and mentoring
    - Sheriff’s activity league: After school gym activities
    - Mariposa: Assist at-risk girls break out of poverty
    - Mentis: Affordable mental health assistance
    - 10,000 Degrees: Scholarship opportunities for low-income children
    - Aldea: Mental health assistance
    - Lelia: Grant to help children
    - Girls on the Run: Third grade through fifth grade team building
    - Focus: Helping families thrive
    - Check in, check out: One on one mentorship
    - Bridging brothers: Latino, to develop tools to navigate issues
    - Cope: Recognize negative thoughts, replace with positive thoughts
    - Abode: Housing support for homeless
    - Voices: Support for foster, probation, and homeless children
    - On the Move: Action in pursuit of social equity
    - Office Work Experience: Camille Creek only
    - Internships in Kitchen Work and Welding: Camille Creek only
    - Naviance: College and career assessment tool
    - Color Contract: Bans gang colors, not used at NVUSD (their attorneys believe it infringes on the student’s rights)
    - Mean Girls: Peer support groups
    - Puerta Abierta (Open Door): Latino health care and human services
    - Student Safety Plan: For at-risk youth

Although there are clearly a number of non-profit organizations providing services for at-risk youth and their families, the Jury was unable to find that there is any coordination between them, educators or their administrations, and law enforcement, at a time when gang activity is on the rise.

Camille Creek

Napa County Office of Education operates the Juvenile Hall school as well as Camille Creek Community School. Camille Creek was created as a result of the Department of Justice's mandate. Both schools are designed to "serve the educational needs of students who are under the protection or authority of the juvenile court or those who are referred from school districts due to truancy, behavioral issues or expulsion." Their objective is "to help students gain the social and academic skills they will need for employment or further education and the interpersonal skills they will need to maintain positive and meaningful relationships."

"The mission of Camille Creek Community School is to empower our county's most disenfranchised youth toward a productive future through restorative relationships, targeted instruction, and inspiring opportunities for growth."

The efforts at Camille Creek are impressive. There are committed administrators, teachers, an SRO, and Probation Officers assigned to the school. All are hands-on and determined to make a difference. There is a restorative justice program at the school which involves meeting with conflicting students and, possibly with their parents (and a social worker) to resolve disputes. There are two vocational programs there, culinary and welding education. They hope to expand both programs into internships. Currently, there are two students who have paid internships in welding at Nova Group in Napa.

Other efforts include the assigned probation officer to the Chamberlain class (students on probation supervision) who has taken students on field trips to different businesses to show opportunities, for example, and trips to the Senior Center to have the students teach the seniors how to use mobile devices. Both efforts are reported to have been successful. The school also gives rides to the Sheriff's Activity League gym, where students can participate in athletic after school activities. Finally, the school serves three meals a day to all students.

Camille Creek has statistics that indicate that they are on the right track. Indicators are strong parental contacts, the establishment of a wellness center, no expulsions, and reducing suspension rates. However, there have been limits on accomplishments. According to statistics provided by Camille Creek, current graduation rates are 59%. They are striving for a rate significantly higher. It should be noted that most students entering Camille Creek are lacking in school credits and their academic skills are not commensurate with their age levels.

Some of the interviewees noted that gang members and associates want to attend Camille Creek so that they can be with their "friends", explaining some of the bad behavior that gets them sent there. There are approximately 70 students currently enrolled at Camille Creek. Not surprisingly, there is a significant gang population in the student body. Administrators estimate that figure to be about "a third of the students…" and "approximately 10% of the students" sell drugs and possess guns (not on campus).

Law enforcement believes the percentage of gang members or associates is higher. Probation's estimate is 60% are gang members or associates. Currently all 12 students in the Chamberlain

class are believed to be involved in gangs, either as a member or associate. Probation and law enforcement are concerned that the high school level students are trying heavily to recruit the middle students there to join the gang. A concern was expressed that administrators and educators are inconsistent with the application of discipline.

Napa's Star Community Service Officer

One program of intervention that the Jury learned about is the Napa Police Department's Juvenile Diversion Program. This program diverts students who have been truant or committed minor criminal offenses from having Welfare and Institutions section 601 petitions (truant or runaway allegations) or 602 petitions (criminal violations) filed in Juvenile Court. Currently, that program is operated by an officer who is dedicated to making a difference in the lives of these at-risk children and their families.

Every person familiar with this program and that officer were effusive in their positive opinions of that officer. One interviewee even commented, "Lord help us if that person retires." That officer holds the youth they supervise accountable. They show up in their homes when the students don't show up in school. That officer works tirelessly with them and their families. They recommended that resources be increased in these communities, that the school social workers visit in these families' homes more often, and mentorship be increased.

The Legacy Program

The Legacy Youth Program was a school program meant to help build character development and educational success for underserved Hispanic youth, particularly young males. It was originally started in 2012 by an SRO at Vintage High School. "Camille Creek was [the] model used to develop the program." It initially began as an after-school program but needed to change because some participants "were on probation or had to take a bus." Thus, it became an elective class.

The program provided educational and leadership training. The idea was to work closely with students to keep their credits up, instilling pride. It was designed to keep the kids at that school rather than being sent to another school because they were failing. They developed a logo which they placed on tee shirts. The class became very popular and successful. It spread to Redwood and Harvest middle schools. The program became a victim of its success as more and more students wanted to participate, even ones that didn't need the training or attention. After the SRO went back to patrol, they became less able to help run the program, until they stopped completely. Throughout our interviews multiple individuals including educators and law enforcement commented on Legacy as being a success. However, there were multiple reasons brought up as to why the program was eventually canceled completely in the 2020-2021 school year. Other programs were created and utilized to replace Legacy but none have been as successful.

Findings

F1. The Jury found that gang activity and gang association in Napa County are on the rise.

F2. The Jury found that due to the employment demographics in Napa County, increasing numbers of children are left unsupervised. This situation was exacerbated by the Covid Pandemic.

F3. The Jury found current gang activity and recruitment is more apparent in middle school and even younger ages.

F4. The Jury found that despite it having been proved to be successful, vocational curriculum has been eliminated within the NVUSD.

F5. The Jury found that Napa County has little to no after school activities for teens and preteens. There is a need for organized free programs, including sports and other after school activities.

F6. The Jury found that gang activity is supported by illegal money-making opportunities which can be attractive to underprivileged youth.

F7. The Jury found that coordination and communication among law enforcement, educators, and local service providers is not effective.

F8. The Jury found that data on gang membership and activity is limited and ineffective at gang intervention and prevention.

F9. The Jury found that some state legislation and propositions passed by the voters are hindering law enforcement's ability to interdict gang crime and, in doing so, improve gangs' ability to make money, which attracts more gang members.

Commendations

C1. The Jury commends the Napa Police Department Special Enforcement Unit as well as the Napa County District Attorney's office's interdiction efforts to stop gang violence.

C2. The Jury commends the Napa Police Department's Juvenile Diversion Program and the dedication of its diversion officer.

C3. The Jury commends the Napa Police Department, Napa Sheriff's Department, the Napa Valley Unified School District, and the Napa County Office of Education for their School Resource Officer program and also acknowledges the dedication of the School Resource Officers assigned to the Napa County Schools.

C4. The Jury commends the Napa County Probation Department's officers assigned to Camille Creek who go beyond their duties to help at-risk youth as well as the officers assigned to supervise gang members and associates.

C5. The Jury commends the Napa Sheriff's Department for its Youth Activities League programs.

Recommendations

R1. By December 31, 2024, Napa Valley Unified School District and Napa County Office of Education will implement programs that focus on elementary and middle schools with gang prevention and parental education programs.

R2. By the fall of 2025, Napa Valley Unified School District and Napa County Office of Education restore free high school vocational curriculums (CTE- Career and Technology Education) and partner with local industries to align their course offerings with labor market needs.

R3. By the fall of 2025, Napa Valley Unified School District and Napa County Office of Education, to maximize OTS (out of school time), partner with non-profit stakeholders to provide enriching experiences that provide lasting developmental benefits.

R4. By December 31, 2024, Napa Valley Unified School District and Napa County Office of Education establish a bi-annual meeting between the Napa Valley Unified School District, Napa County Office of Education and business community organizations such as Rotary, Elks, Moose, Napa Chamber of Commerce, and the Napa County Hispanic Chamber of Commerce to create job opportunities, internships, and training for credits.

R5. By September 30, 2024, the Napa County Board of Supervisors and Napa City Council identify financial resources to support community efforts to help families in need.

R6. Beginning July 1, 2024, the Napa County Board of Supervisors and Napa City Council support legislation to roll back decriminalizing drug and theft crime.

R7. By December 31, 2024, the Napa Valley Unified School District and the Napa County Office of Education strengthen the current stakeholder task force (law enforcement and schools) including non-profits which specialize in gang prevention and intervention and local industries.

R8. By September 30, 2024, the City of Napa Police Department create a succession plan for the Community Service Officer role in the Juvenile Diversion Program, including program expansion.

R9. By December 31, 2025, the Napa County Sheriff, the City of Napa Police Department, the City of St. Helena Police Department, the City of Calistoga Police Department, the District Attorney's office and the Napa County Probation Department create an integrated

data collection system to improve the efficiency of trend monitoring associated with gangs and gang crimes.

Request for Responses

Board of Supervisors – R5, R6

Napa City Council – R5, R6

Napa County Sheriff – R9

Napa County District Attorney – R9

Invited Responses

City of Napa Police Chief – R8, R9

School Resource Officers – R8

NVUSD Director of Student Services – R1, R2, R3, R4, R7

Napa Valley Unified School District – R1, R2, R3, R4, R7

Napa County Office of Education – R1, R2, R3, R4, R7

Napa County Probation Department – R9

City of Calistoga Police Chief – R9

City of St. Helena Police Chief – R9

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY
2023-2024

March 27, 2024

FINAL REPORT

NAPA COUNTY'S COMMUNICATION WITH ITS CITIZENS

SUMMARY

Successful two-way communication with the public is an important component of a well-functioning county government. In this current digitally dependent communication society, there is a growing expectation that local government should quickly and reliably interact with citizen needs and be a trusted source of information.

Ultimately, the long-term success of government and citizen interaction depends on developing and maintaining public participation and trust. For communications to be most successful, efforts should accommodate diverse audiences, various user devices, and update website information regularly. Effective communication with citizens should involve clear messaging that is delivered via accessible and easy to use platforms.

Over the past year there have been significant changes in Napa County's senior communication staff and their interaction with citizens. County staff are implementing measures that are designed to enhance and expand citizen outreach efforts.

The County communications leadership relies upon the Office of Emergency Services (OES) Team and CAL FIRE/Napa County Fire for emergency citizen notification regarding preparedness, response and recovery on county-wide crisis issues such as wildfires, earthquakes, and floods.

The Grand Jury investigated methods by which Napa County is communicating with its citizens. The Jury was encouraged by the County's recent efforts to enhance interaction with citizens using multiple communication venues. The Jury found that Napa County communication personnel, tools, and strategies are improving but are still evolving and would benefit from a formally articulated vision.

The Jury found that there remain important emergency alert communication deficiencies that need to be addressed. The Jury found opportunities for improvement in notifications from the Office of Emergency Services (OES) and in the communication planning function of the Chief Executive Office (CEO).

The Jury made specific recommendations for improving communication with citizens. These recommendations include improvements in the Napa County emergency alert system and the development of an annual strategic plan covering all facets of two-way communication with Napa citizens.

Glossary

ADA	Americans with Disabilities Act
CEO	County Executive Office (CEO)
DPW	County Department of Public Works
EOC	Emergency Operations Center
FEMA	Federal Emergency Management Agency
ICS	Incident Command System
OES	Office of Emergency Services
PIO	Public Information Office(r)

RFP Request for Proposal

BACKGROUND

Napa County communicates with its citizens in numerous ways including websites, social media, emergency and non-emergency texts/emails, USPS mail, town hall meetings, and through local broadcast and print media. A Napa County Grand Jury Report published in 2016 reviewed the effectiveness of Napa County websites, identified some deficiencies, and made recommendations for improvement. The current Napa County Grand Jury elected to investigate the status of county government communication with citizens via its websites, as well as with two other significant communication modalities - the Office of Emergency Services (OES) and County Public Information Offices (PIO).

Websites

An important method for communication with citizens is the county websites - online platforms created and maintained to provide information, services, and resources to the public. These websites serve as a digital gateway to government services, policies, regulations, and other various forms of engagement.

Ideally, county websites are designed to facilitate transparency, communication, and interaction between the government and the public. They aim to provide easier access to government services, information, and resources, improving citizens' ability to engage with their government.

Some specific areas that Napa County interacts with its citizens through its websites are:

- Information: Government websites provide information on government officials, policies, laws, regulations, and public services. Search features help users find specific information quickly.
- Services: The websites can offer online services such as permit applications and county staff contact information.
- News and Updates: Government websites can include news and press releases to keep the public informed.
- Forms and Documents: Users can download current forms and official documents.

County library websites provide a variety of free digital resources and multiple other community services that enhance communication with local residents. They play a crucial role in promoting literacy, education, and community engagement and can facilitate citizen interaction with other county departments.

The best websites are designed to be accessible to all citizens, including those for whom English is a second language and for those with disabilities or special needs. This means adhering to federal accessibility standards and ADA guidelines. It is important to note that the features and designs of various county department websites may differ in order to address citizen needs in various locations.

County websites can play a significant role in promoting government fiscal transparency by providing access to actions, budgets, spending, and other related information. Websites can

include feedback features, such as contact forms or chat features, to allow citizens to reach out with questions or concerns.

County websites use applications and content management systems in order to create, manage, and update web content. These websites must be updated regularly and also adhere to legal and regulatory requirements related to privacy, accessibility, and other factors. Website security is a priority in order to protect sensitive data and to ensure that user information is safe.

Office of Emergency Services

A second system which Napa County uses to communicate with its citizens is through the Office of Emergency Services (OES) located in the Napa County Sheriff's Office. OES is responsible for coordinating and managing emergency and disaster preparedness, response, and recovery efforts at the local level as well as coordinating efforts with other agencies. This includes county emergency planning and resource management. OES has a mandate to ensure timely and accurate dissemination of urgent information to the public, emergency responders, and other county officials.

Communications Public Information Officers

A third element in Napa County for communication and dissemination of information to the people is through the County Public Information Officers (PIO). PIOs are responsible for ensuring that information, news, and updates from their government agency are communicated to the public and media in a timely and accurate manner. This includes press releases, official statements, and certain other forms of communication. PIOs typically interact with members of the media, including local journalists and reporters. They serve as a point of contact between the government agency and the press, facilitating interviews, providing information, and organizing press conferences.

The county websites, OES and Communications PIO are Napa County's primary methods of keeping the public informed about government activities, policies, public notices and initiatives. They play an important role in maintaining transparency, accountability, and providing effective public communication with the citizenry. The Grand Jury inquired into the county's current efforts to provide information to citizens, as well as citizens' ability to effectively communicate back to the county.

METHODOLOGY

The Jury reviewed county communications documents, multiple Napa County department websites and social media sites, other California county websites, county emergency alert systems, Public Information Office notices, conducted eleven in-person interviews, and attended meetings with other Napa County staff members:

- Napa County Communications Staff Organization Chart
- Review of Napa County internal communications strategic plan
- Napa County Emergency Operations Plan
- Review of national studies on effective government communication with citizens
- Review of the Guide to Citizen Engagement by Public Libraries

- Napa County Annual Report 2022
- Napa County Web data reports
- Napa County Sheriff Department Staff
- Napa Police Department
- Napa County District Attorney Office
- Napa County Board of Supervisors
- Napa County Senior Communications Staff
- Napa County Office of Emergency Services Staff
- Napa County website content staff in several departments
- Napa Valley Register articles on county communication with citizens
- Attended virtual town hall meetings
- Napa County websites
- Other California county websites
- Napa County News Releases
- Napa County Social Media Websites:
    1. Facebook.com/NapaCounty
    2. Nextdoor.com (various county sites)
    3. YouTube.com/@NapaCounty
    4. Twitter.com/CountyofNapa

DISCUSSION

Meaningful two-way contact with citizens is an important component of a well-functioning local government which can lead to increased awareness of local issues, trust in government, citizen engagement, and an overall sense of partnership between citizens and their government. Effective Napa County government communication with its citizens is an ongoing process requiring strategies that continuously adapt to changing technologies and public needs.

Over the past year there have been new developments in planning for county government communications with its citizens through efforts by the Napa County Executive Office Communications Staff. Under the leadership of the new County Executive Officer (CEO), new Deputy CEO – Communications, new Communications Public Information Officer/Legislative and Policy Analyst, the County Webmaster, and the website content and information services staff embedded in various county departments, the county is attempting to enhance capabilities and outreach efforts.

In addition to standard website maintenance and updating, the county undertook initiatives to improve distribution of essential information. The county communications staff has established connections with media, specifically with the editors of the Calistoga Tribune, Yountville Sun, Napa Valley Features, Napa Valley Register, news director of KVON/KVYN Radio, and the newly assigned Napa County reporter for the Santa Rosa Press Democrat. These efforts are designed to strengthen their relationships with local media and expand opportunities for effective communication.

County staff have collaborated to host emergency preparedness resource fairs and have hosted town halls and community events focused on a variety of subjects, including county facilities development, fire/emergency preparedness, storm damage, roads updates, flood control,

underground electric power lines, road pavement projects and transportation. Napa County has commenced the first phase of an extensive facilities planning process, and states it is committed to making this process inclusive and community-driven. In order to be successful, there should be a continuing effort by the County to increase citizen participation by making the events a more family-oriented entertainment venue.

Another method in use by the County is issuing news releases, social media posts, and videos to support various county initiatives, projects, and updates. For example, staff provided information on the Accessory Dwelling Unit Forgivable Loan Program and the approval of Napa Valley Sub-basin Groundwater Sustainability Plan.

County communication staff also collaborates with the OES team and Cal Fire/Napa County Fire, working on wildfire information outreach and other emergency preparedness. This includes use of both the text messaging app "Alert Napa County" and an outreach campaign through media releases, social media initiatives, and promotional videos to enhance public safety and community preparedness.

Recognizing the diversity of citizens in the community, the county prepared a bi-weekly translation schedule for emergency communications and increased the availability of emergency services translators, assuring that critical information reaches non-English speaking populations promptly.

COUNTY WEBSITES

Local government websites are now typically the first and primary source that citizens access to find information such as county staff contacts, documents, permit applications, and other government related items. Websites should be easy to navigate and search, feature commonly used services, and result in positive online experiences. The most visited websites in Napa County are: Napa County's home page, library, animal shelter, airport, job opportunities, and Department of Corrections.

County websites need to be updated regularly, well organized, content-rich, and highly searchable. Website content should be clear using plain language to improve citizen engagement and understanding. County website design requires awareness of local citizen needs, realizing that residents are a diverse group of users including people of several demographics. The goal of government website design should be to serve all people, including those with special needs and disabilities.

County website managers create and maintain the various websites of the county and its multiple departments. Their responsibilities include:

- Website Development and Design: Designing, developing, and updating the county website to ensure it is user-friendly, accessible, and meets the needs of the community.
- Content Management: Regularly updating and maintaining content on the website, including announcements, news, events, and other relevant information.
- Technical Maintenance: Ensuring the website's technical functionality, such as monitoring and resolving issues, updating software, and implementing security measures to protect against cyber threats.

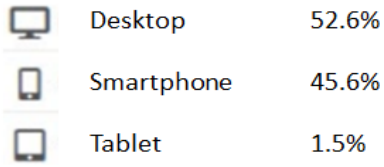
- User Support: Providing support to website users, addressing inquiries, and ensuring that online services are accessible to the public.
- Integration of Online Services: Collaborating with various county departments to integrate online services and forms, making it easier for residents to access and submit information.
- Social Media Integration: Coordinating the integration of social media channels to keep the community informed and engaged.
- Accessibility Compliance: Ensuring that the website complies with accessibility standards to make it usable for individuals with disabilities.
- Data Management: Managing data on the website, ensuring accuracy, and implementing data protection measures.
- Analytics and Reporting: Monitoring website traffic, analyzing user behavior, and providing reports to improve the site's performance and user experience.
- Collaboration with Departments: Working closely with various county departments to understand their needs and ensuring that the website reflects the county's overall goals and objectives.

Napa County was the recipient of a 2018 National Association of Government Web Professionals Pinnacle Award for website excellence. The Pinnacle Awards are an annual celebration of the best in government web communications, design, development, and innovation. These awards recognize the hard work and dedication of government web professionals who are committed to delivering exceptional digital experiences for their citizens. The Pinnacle Awards showcase excellence in several categories, including website design, mobile app development, and social media integration. Winners are selected by a panel of judges who are experts in government web development and design.

During our review of Napa County websites, the Jury found that the majority of the County's websites are well designed and functional, with notable improvement since the last Grand Jury Report on websites in 2016. The current Jury did come across a few websites with broken links and some cases of outdated information. In one case, an online permit application allowed entry of user data, but when attempting to submit, the website did not save or forward the data. The Jury found a few department websites that do not list staff contact information such as phone number or email address. A helpful feature found on some websites allows the user to contact a webmaster if a link did not work. Some websites contain a chat feature, where clicking on an icon initiates real time contact with county staff. Napa County Library's research librarians are responsible for staffing this chat feature. The Jury found that there is an opportunity to expand this feature into other county department websites.

County website designers must stay aware of how the online experience differs by user device and accommodate various user devices. Currently almost half of all traffic to county websites is on mobile devices (see below) and as more and more citizens demand on-the-go access to government services this number is expected to rise. With this in mind, Napa County needs to assure that access to websites remains mobile friendly and easily readable allowing simple navigation.

Devices Used to Access County Websites (July- Sept 2023):



NAPA COUNTY LIBRARY

The Napa Library has one of the most commonly visited websites in the county, with thousands of citizen interactions every month. The library website and its many programs provide a variety of free digital resources and many other services that enhance communication with local residents. It plays an important role in promoting literacy, education, and community engagement and facilitates citizen interaction with other county departments. Some common features and services found in the library by accessing its websites are:

- Book Collections: houses a diverse collection of books, including fiction, non-fiction, reference materials, and more. They often cater to various age groups and interests.
- Digital Resources: offers digital resources such as e-books, audiobooks, and online databases that patrons can access remotely.
- Computer and Internet Access: provides public computers with internet access, allowing patrons to browse the web, work on assignments, or use library-specific resources.
- Educational Programs: organizes educational programs and events, including workshops, lectures, book clubs, and activities for children. These programs foster learning and community engagement.
- Reference Services: Librarians are available to assist patrons with research, reference questions, information inquiries and technical issues.
- Media and Audiovisual Materials: offers a collection of DVDs, CDs, and other audiovisual materials for borrowing.
- Meeting Spaces: has meeting rooms that community groups or individuals can reserve for meetings, workshops, or events.
- Children's Services: has dedicated spaces and programs for children, including story hours, reading programs, and educational events.
- Community Engagement: serves as a community hub, hosting events that bring people together, such as author talks, cultural programs, and local exhibitions.
- Interlibrary Loan Services: if the library doesn't have a particular book or resource, it may be able to obtain it from another library through interlibrary loan services.

Napa County’s libraries are community hubs that bring people together and help connect people to essential services and resources. Local governments, libraries and citizens can work together to imagine and implement initiatives in their communities, taking advantage of the library’s existing role as a community anchor. Library communication with citizens is important for fostering community engagement, promoting library services, and ensuring that residents are aware of the resources and programs available to them. Free access to library technology and information databases increases digital information access for all citizens and supports the

information and communication needs of an increasingly digitally dependent information society.

OFFICE OF EMERGENCY SERVICES

During an emergency, it is important for the government to communicate quickly and effectively with the public. The Napa County Office of Emergency Services (OES), located in the Napa County Sheriff's Department, is the county's primary emergency notification and services leader. OES also manages the county Emergency Operations Center (EOC). This includes responding, directing, and coordinating resources and mutual aid assets across the county to support the communities and citizens. The Federal Emergency Management Agency (FEMA) provides OES with guidance on how to communicate during an emergency, including issuing alerts and warnings, evacuation directives, and information about response status, available assistance, and other matters that impact preparedness, response, and recovery.

Napa County recently transferred OES from the County Chief Executive's Office to the Napa County Sheriff's Department. This change was made recognizing that the Sheriff is the longtime county manager of the Emergency Operations Command (EOC) group. OES has appointed a Public Information Officer in the Sheriff's Department who oversees and helps coordinate emergency messaging along with the senior county communications staff and three OES county managers for the areas of preparedness, response, and recovery.

Their mandate includes responding, directing, and coordinating resources and mutual aid assets across the area to support the communities and its citizens:

- Emergency Planning: Developing and maintaining comprehensive emergency and disaster response plans that outline the roles and responsibilities of various agencies, organizations, and stakeholders during emergencies.
- Emergency Response: Coordinating the response efforts during emergencies, including the deployment of first responders, resources, and assets to the affected area. This may involve law enforcement, fire departments, medical services, and other relevant agencies.
- Resource Management: Identifying and managing critical resources, such as equipment, personnel, and supplies, to ensure an effective response to emergencies and disasters.
- Information and Communication: Establishing communication systems that enable timely and accurate dissemination of information to the public, emergency responders, and government officials.
- Public Awareness and Education: Educating the public on emergency preparedness and safety measures and providing guidance on what to do during various types of emergencies.
- Warning Systems: Operating alert and notification systems, including sirens, text alerts, and public announcements, to warn citizens of imminent threats or disasters.
- Coordination and Collaboration: Collaborating with local, state, and federal agencies, as well as non-governmental organizations and volunteer groups, to ensure a coordinated and efficient response to emergencies.
- Training and Exercises: Conducting regular drills, training exercises, and simulations to ensure that emergency responders and agencies are well-prepared for various disaster scenarios.

- Resource Coordination: Managing the allocation of resources and mutual aid agreements, where neighboring jurisdictions support each other during emergencies when additional resources are needed.
- Recovery and Rehabilitation: Assisting in the recovery phase after a disaster, which includes helping communities rebuild, providing financial assistance to individuals and businesses, and offering mental health services to those affected.
- Grant Management: Administering and distributing federal and state grants that support emergency management and preparedness efforts.
- Vulnerability Assessments: Identifying potential hazards and assessing vulnerabilities in the community to inform planning and mitigation efforts.
- Incident Command System (ICS): Implementing the Incident Command System, a standardized management system for emergencies and disasters that facilitates coordination and communication between agencies.

The OES keeps the EOC informed of their operations and status, helping to assist and coordinate large-scale preparedness among county decision makers, first responders, and other county services, employees, and citizens. When the county is experiencing an emergency situation, the EOC may be activated. If an EOC is opened, the latest information on an emergency situation will be posted on county websites and through citizen alerts via social media, texts and emails. OES is typically not involved in low-risk incidents but concentrates on events that impact the whole community that may involve a need for evacuations and/or sheltering.

NIXLE AND EVERBRIDGE

"Alert Napa County" is the county emergency notification system that sends digital messages when there is important safety information to communicate to residents. This includes situations such as severe weather, planned and unexpected road closures, missing persons, evacuations, natural disasters, and public health concerns. In the event of an emergency, public safety agencies such as Napa County Office of Emergency Services (OES), law enforcement agencies, fire agencies, city agencies and Office of Education are able to provide emergency information directly to subscribers. In order to receive these messages, citizens must enroll at the county website *Ready Napa County* (https://readynapacounty.org), where information is available on Everbridge, the county's current alert notification system.

The Jury found that many citizens have found the "Alert Napa County" enrollment process to be cumbersome and confusing. This is limiting the number of citizens receiving important alerts. Additionally, many citizens do not have the ability to customize alerts that are meaningful to them.

In recent years, "Alert Napa County" has notified citizens of imminent threats using the digital alert systems Nixle and Everbridge. Last year, Napa County transitioned from Nixle to Everbridge for its citizen and emergency responder emergency notifications, using mobile phone applications, text messages, emails and social media postings during local emergencies. Fire, law enforcement, and EMS agencies may also utilize Everbridge messaging for less critical events that do not result in a need for mass notification.

Below are agencies across Napa County that have used Nixle and/or Everbridge to provide information to the public:

- Napa County Office of Emergency Services: information about extreme weather (ex: Red Flag Warnings, heat emergencies, Flash Flood Warnings, etc..), emergency events (including evacuation orders and warnings), public health and safety advisories
- Evacuation instructions are currently issued through Everbridge by the Office of Emergency Services located in the Napa County Sheriff's Office.
- Napa County Sheriff's Office: police activity, traffic accidents, road closures, and emergency information as necessary
- Napa County Public Works: utilized to communicate planned and emergency road closures

The Jury's investigation found problems with the transition to and effectiveness of the current Everbridge alert notification system. After a contract was negotiated last year, it quickly became apparent that Everbridge was not fulfilling many of the features in its contract with Napa County, resulting in some Everbridge subscribers not reliably receiving emergency notifications. It is unclear exactly how many Everbridge Emergency Alerts are being reliably received by county residents.

In some instances, unreliable receipt of emergency notices is due to issues with the performance of the Everbridge app. Residents who have signed up for the app have experienced poor performance of the app or have not received a message at all. County OES Staff indicated that the transition last year from Nixle to Everbridge resulted in loss of resident contact information contained in Nixle. According to OES staff, these issues are being addressed with Everbridge staff in an ongoing attempt to improve this emergency notification system.

COUNTY COMMUNICATIONS PUBLIC INFORMATION OFFICE

Napa County has a new Communications and Public Information Officer (PIO) who is attempting to work closely with the County Executive Officer, elected officials, department heads and information services staff throughout the county to strategize, develop, and maintain the County's public information, social media and community engagement activities. The county executive office PIO has oversight for a number of county communications functions such as media relations, social marketing, public information activities and websites, emergency response and special events planning.

COUNTY DEPARTMENT OF PUBLIC WORKS

The County Department of Public Works (DPW) has oversight on multiple county services: maintenance and building of roads, county facilities and property, county airport, animal shelter, storm water and creek cleaning, county waste services, and resorts. DPW relies on the County PIO and OES to distribute information to the public, including planned road maintenance, emergency road closures and other DPW oversight issues that involve residents in the county. These messages are then distributed by the County PIO primarily via social media websites, and in some instances where large numbers of residents may be involved, via text or email alert notifications including Everbridge.

Citizens can communicate their questions or concerns to DPW staff via their website, email or phone calls. Citizen complaints or concerns are then reviewed and prioritized by DPW staff.

EFFECTIVE COMMUNICATION STRATEGIES

As a result of the Jury's investigations into Napa County's communication efforts, as well as examination of several other county websites and published studies on effective government communication, the Jury has identified a number of key principles and strategies for effective county government communication with citizens:

Clear and Accessible Information:

- Ensure that information is easily accessible through government websites, social media, and other relevant channels.
- Use simple language to make information understandable to a wide audience.

Timely Updates:

- Provide timely updates on government activities, policies, and events.
- Utilize various communication channels, such as websites, email newsletters, press releases, and social media to disseminate important information.

Two-Way Communication:

- Encourage citizen feedback through various means, including digital media, surveys, public forums, and town hall meetings.
- Respond to citizen inquiries and concerns promptly and constructively.

Transparency:

- Keep citizens informed by publishing reports and data on government processes, decision-making, and financial information.

Educational Campaigns:

- Raise awareness about important issues, such as public health or emergency preparedness and implement campaigns to educate citizens about their rights, responsibilities, and the services available to them.

Customize Communication to citizen groups:

- Tailor communication to different demographics and regions to ensure relevance and cultural sensitivity.
- Work with local community leaders and organizations to improve communication at the grassroots level.

Use and Update Technology:

- Leverage digital tools and platforms for online engagement and dissemination of information.
- Implement mobile apps for citizen inquiries and service delivery.

Crisis Communication:

- Have a well-defined crisis communication plan in place for emergencies and crises.
- Provide accurate, timely, and reassuring information to citizens during such situations through multiple communication modalities.

Collaboration with Media:

- Foster effective relationships with the media to ensure accurate and unbiased coverage of government activities.
- Hold regular press conferences and provide press releases to inform the public through the media.

Public Relations and Marketing:

- Develop public relations campaigns to promote government initiatives and successes.
- Use marketing techniques to engage citizens and raise awareness about important issues.

Access to Data:

- Publish current government data in open and understandable formats to encourage innovation and accountability.
- Collaborate with tech communities and organizations to develop useful applications and services.

Accountability and Evaluation:

- Develop metrics that monitor the effectiveness of government communication strategies for feedback and data analysis, making adjustments based on these results of evaluations and citizens' feedback.

Engagement in Social Media:

- Actively engage with citizens on social media platforms, promoting two-way communications with timely response to citizen questions and concerns.

Community Partnerships:

- Collaborate with non-governmental organizations, community groups, and civil society to enhance the reach and credibility of government messages.

Disabilities and Cultural Sensitivity:

- Recognize and respect the diversity of languages and cultures within the population.
- Provide information in multiple languages as needed.
- Provide access for citizens with disabilities and special needs.

In this current digitally dependent communication society, there is a growing expectation that local government should quickly and reliably interact with citizen needs and be a trusted source of information. Effective government communication with citizens should involve clear messaging that is delivered via accessible and easy to use platforms. Ultimately, the long-term success of government and citizen interaction depends on developing and maintaining public participation and trust. For communications to be most successful, efforts should accommodate diverse audiences, various user devices, and update website information regularly.

Napa County websites, the Office of Emergency Services, the Public Information Offices, and our libraries are key citizen communication entities endeavoring to keep the public well-informed about government activities, policies, initiatives, and local issues. The Jury found that these entities are playing an important role in maintaining transparency, accountability, and providing effective non-emergency communication, but there are areas in emergency notice systems that need to be improved. It is important for the County to periodically re-evaluate the effectiveness of their communication efforts and adjust strategies to stay successfully engaged with the citizenry.

FINDINGS

F1. Since the 2016 Napa County Grand Jury report on county websites, the county has increased its senior communication staff, appointed a webmaster, and implemented improved methods of communicating with citizens for routine, non-emergency notifications.

F2. Napa County has made some improvements to provide timely and accurate information to citizens through enhanced website design and performance.

F3. A sizable portion of Napa County website traffic is via mobile devices. Some website content is not optimized for smaller screened mobile devices.

F4. The county has not published to citizens a county strategic plan which outlines how to facilitate the distribution, efficiency, and quality of public information.

F5. Napa County's overall communication efforts, while focused on "telling Napa County's story", is not engaging the community in a two-way conversation which could facilitate citizen engagement.

F6. Napa County lacks a formally articulated plan to continuously re-evaluate and update its communication strategies adapting to changing digital messaging technologies in order to assure that messaging remains timely, effective, and relevant.

F7. The switch from Nixle to Everbridge did not go through an RFP or similar evaluation process which has led to disruptions in citizen alert contacts that have not been satisfactorily resolved.

F8. County emergency notifications using the alert technology Everbridge are not reliably reaching all enrolled citizens, and it is unknown exactly how many residents are receiving messages.

F9. The Everbridge emergency notification mobile app for phones and other mobile digital devices is not performing reliably for citizens.

F10. The enrollment process for Everbridge is cumbersome and not well understood by the citizenry.

F11. Everbridge has not fulfilled all of its contractual obligations with Napa County.

F12. Napa County's staff have improved measures to facilitate communication with citizen's diverse languages and for those having disabilities or special needs.

RECOMMENDATIONS

R1. By December 31, 2024, the Board of Supervisors direct county communications staff to annually implement and publish to county residents an updated strategic communication plan that results in timely and efficient two-way messaging with the public through digital, print, and broadcast media.

R2. By September 30, 2024, the Board of Supervisors direct county senior communications staff to meet with all county department heads to assess their communication needs so that they can message effectively and consistently with their target audiences.

R3. By September 30, 2024, the Board of Supervisors direct county department communications staff to create a monthly review of county social media accounts, websites, and other digital communication channels to assure that information stays current.

R4. By September 30, 2024, the Napa County Sheriff direct their communication staff to create a monthly review of their social media accounts, websites, and other digital communication channels to assure that information stays current.

R5. By December 31, 2024, the Board of Supervisors require all county and department websites to offer a live chat feature on each county department website to help citizens get quick answers to their questions and facilitate timely assistance.

R6. By December 31, 2024, the Board of Supervisors direct county communications staff to develop and make public the metrics and analytics which monitor county efforts to evaluate effective two-way communication strategies with citizens.

R7. By December 31, 2024, the Board of Supervisors have county communications staff ensure that county initiatives and programs are available to all of our citizens, including those who speak languages other than English and those with special needs or disabilities.

R8. By December 31, 2024, the Board of Supervisors establish a Napa County Communications Citizen Advisory Board with the goal of providing community input into Napa County communication priorities.

R9. By December 31, 2024, the Sheriff's Department OES prepare and execute updated plans to fix deficiencies in alert notification measures ensuring that accurate and timely emergency information is disseminated to the public and media when needed. This may require assessing alternative emergency notification system providers to resolve ongoing Everbridge deficiencies.

R10. By September 30, 2024, the Sheriff's Department OES collaborate with Napa County communication staff to address problems with the "Alert Napa County" citizen enrollment process including increased awareness of how to enroll, streamline the enrollment process, and improve citizen's ability to manage their own alert notification preferences.

Request for Responses

Board of Supervisors: R1, R2, R3, R5, R6, R7, R8

Napa County Sheriff: R4, R9, R10

Invited Responses

County Executive Officer: R1, R2, R3, R5, R6, R7, R8

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY
2023-2024

April 24, 2024

FINAL REPORT

Raising Awareness of Elder Abuse in Napa County

SUMMARY

If you live in Napa and you are not an elder, you probably know someone who is. The number of older Napans continues to grow. By 2030, one in three residents of Napa County will be over 60 years of age. As the number of elders increases, so does the need for additional elder care services and the potential for more elder abuse. Napa County needs an increased awareness and additional resources to reduce the incidence of elder abuse.

Elder Abuse is defined as an intentional or negligent act by any person that causes harm or a serious risk of harm to an adult over the age of 60 years. The prevailing perception is that elder abuse is physical, but self-neglect is a common and often unrecognized form of abuse, as are financial scams that prey on the vulnerability of elders. The reporting of elder abuse is a civic duty. For some in the community—professionals in financial institutions, health practitioners, and clergy, among others—the reporting is mandated by law.

In Napa County, Health and Human Services Comprehensive Services for Older Adults (HHSA CSOA) is responsible for providing services and mitigating elder abuse for elderly Napans not living in inpatient (generally nursing homes) facilities. Additionally, there are several nonprofit organizations in Napa County that work in concert with HHSA and focus on providing needed services to the elderly. Many like-minded Napans work and volunteer to bring these services to the elderly.

The elderly who are no longer able to safely care for themselves are often cared for in inpatient care facilities. Inspections and licensing of inpatient facilities fall under the jurisdiction of the State. Locally, the Ombudsman's office, staffed primarily by volunteers, oversees, and advocates for the inpatient residents.

The Jury heard many concerns about the quality of care in privately operated inpatient facilities. However, the County has limited power to intervene. The Jury believes there may be opportunity for greater involvement and potentially a protective presence by the local nonprofits in inpatient facilities.

Most professionals involved in elder abuse believe that all manners of elder abuse are under-reported. More public awareness and community involvement are needed to protect our elders.

The Jury reviewed local Community Partner nonprofit organizations providing vital services to the disabled, elderly and those in need. The Jury found their contributions to be extremely valuable to the community.

The Jury found that while numerous services are available to the elders, their broad scope and complexity make it difficult for individuals to find the resources they need. As a result, the Jury

provided seven key recommendations, including the directive to develop a “Healthy Aging Guide” for the elderly, their families and caregivers.

GLOSSARY

(HHSA) Napa County Health and Human Services Agency
(APS) Adult Protective Services
(CSOA) Comprehensive Services for Older Adults
(N/SAAA) Napa/Solano Area Agency on Aging
(NOAA) Napa County Older Adults Assessment
(LTCOP) Napa County Long Term Care Ombudsman Program
(IHSS) Napa County In-Home Support Services
(LTSS) Long-Term Services and Supports, a Subcommittee of California’s Master Plan for Aging

BACKGROUND

According to the 2022 US Census, just over one in four (28%) of Napa County residents are 60 plus years old. By 2030, one in three (33%) residents of Napa County will be over 60 years of age.

California has made elder abuse a priority. In 2019, Governor Gavin Newsom signed Executive Order N-14-19 calling for the development of the California Master Plan for Aging. After an extensive effort, this plan was launched in 2020. The plan calls for “Five Audacious Goals.” One of these goals is “Inclusion & Equity, Not Isolation.” There are six strategies for achieving this goal including “Protection from Abuse, Neglect & Exploitation.”

Data from the California Department of Social Services, Napa County Health and Human Services Administration (HHSA) indicates approximately 160 cases per month. Some of these are carried forward from previous months, some are new cases, and some are closed. Napa County HHSA 2022 Annual Report shows 1079 cases of elder and dependent care abuse cases were reported and 971 cases were confirmed. This data excludes abuse in inpatient care facilities (generally nursing homes) where Napa County has no regulatory oversight. These cases are reported to the Ombudsman’s office and investigated at the state level.

Inpatient care facilities are regulated by the state. The Jury has limited jurisdiction to investigate the state’s regulation of inpatient care facilities. The Jury learned of many instances of less-than-optimal care in these facilities and a system of state oversight that is not working. People with a loved one in an inpatient facility believed the only way they could ensure quality care was a frequent physical presence. The Jury believes there is an opportunity for one of the nonprofits serving Napa County to have volunteers visit and build connections with individuals in inpatient care facilities. The visits could be particularly helpful to individuals who don’t have

enough presence of family and friends to monitor their care. The Jury proposes a nonprofit serving Napa County establish an alliance with inpatient care facilities to develop a voluntary "Open Door Program" that allows visitations. Participation in the program might offer patients and loved ones assurance of the quality of the care being provided.

The Jury experienced a high level of frustration resulting from its lack of jurisdiction over inpatient care facilities. A preliminary inquiry indicated significant quality-of-care shortfalls.

Based on jury interviews, the inpatient quality of care issue is not just a County of Napa problem but a systemic problem at the state level. The state oversight of these facilities is not working. While the Jury has no authority, the Jury requests that the Little Hoover Commission investigate state oversight of inpatient care facilities with the objective of improving the quality of care in these facilities. If the Little Hoover Commission is unwilling to take on this issue, the Jury requests that Mark Ghaly, California Health and Human Services Secretary, in his role as the Leader of California's Master Plan on Aging, form a working group to investigate this issue and develop a comprehensive plan to improve the statewide quality of inpatient care.

Please see the appendix for a list of organizations in Napa County offering services to the elderly.

Elder abuse is believed to be significantly under reported. Often victims of elder abuse are reluctant to report abuse because they are embarrassed or fear that they will lose their independence. Some may be too isolated to report abuse or may be too reliant on their abuser to risk intervention. Estimates run as high as one in ten elderly or dependent care adults will be abused in any given year.

The 2022-24 Napa County Older Adult Assessment (NOAA), a comprehensive large sample survey, indicated 12% of older adults reported they were a victim of a fraud or scam and 8% reported they were a victim of emotional abuse or a crime.

Dependent adults fall under the same regulations and protections as elders. A dependent adult is someone 18 years or older with certain mental or physical disabilities that keep them from being able to perform typical activities or protect themselves. In this report, the term elder adult includes dependent adults.

The Jury conducted this investigation to raise awareness and identify opportunities for mitigating the incidence of Elder Abuse.

METHODOLOGY

This Report is based on interviews and an extensive review of state and local documents.

Interviews conducted include:

- Napa County Health and Human Services (4 interviews)
- Napa Ombudsman's Office (2 interviews)
- Napa County Nonprofits (4 interviews)
- Law Enforcement and District Attorney's Office (3 interviews)
- Medical Personnel associated with inpatient care (1 interview)

Documents reviewed include:

- Napa County Older Adult Assessment - A Comprehensive large sample survey conducted at the request of the Napa County Board of Supervisors the Napa County Commission on Aging, Napa County Health and Human Services Agency, Napa/Solano Area Agency on Aging and the Napa County Health Aging Population Initiative (HAPI). https://communityhealthnapavalley.org/wp-content/uploads/2023/12/NOAA-FINAL-Report-for-Public-Distrib-1.23.24.pdf
- Napa County Health and Human Services Agency (HHSA) 2022 and 2023 Annual Report as well as the Comprehensive Services for Older Adults 2021 - 2023 Strategic Plan.
- Napa County Aging and Disability Resource Guide
- California Penal Code: Elder, Disabled Adults - PEN § 368
- California Department of Social Services "SOC 242 - Adult Protective Services and County Block Grant Monthly Statistical Report" https://www.cdss.ca.gov/inforesources/research-and-data/disability-adult-programs-data-tables/soc-242
- California Department of Justice Division of Medi-Cal Fraud and Elder Abuse training materials "Your Legal Duty…Reporting Elder and Dependent Adult Abuse"
- California Master Plan on Aging https://mpa.aging.ca.gov/
- University of Southern California Center for Elder Justice https://eldermistreatment.usc.edu/national-center-on-elder-abuse/
- US Census Bureau

DISCUSSION

The Jury explored the work and services of the local nonprofit organizations, as well as the contributions of individuals in the Ombudsman's office. We wish to commend their valuable contribution to the community and acknowledge the dedication of those who work diligently and volunteer so generously.

Definition of Elder Abuse

Elder abuse is defined as physical abuse, neglect, emotional/mental abuse, and financial abuse.

Physical abuse is physical force that results in injury or death, commonly recognized as: hitting, kicking, pinching, grabbing, burning, misuse of medicines (over or under-utilization), punching, choking, slapping, twisting, force-feeding, misuse of chemicals or physical restraints.

Elder neglect is the failure of a caregiver or responsible other to provide basic necessities, including nutrition, shelter, hygiene, clothing, necessary medical care and safety. If the elderly is neglected and there is no formal or presumed caregiver, then it is self-neglect.

Self–neglect is when an elderly person is unable to safely care for themselves at home and no caregiver has been identified.

Emotional abuse is intentionally causing mental anguish by threatening, terrorizing, humiliating, isolating, or demeaning a person.

Financial abuse is using an older adult's money or assets contrary to their wishes, needs, or best interests, or for the abuser's personal gain. Financial abuse includes undue influence when a person of trust manipulates and takes advantage of a vulnerable elder to gain control of money, property, or life either directly or through power of attorney, trust, marriage, adoption, or inheritance.

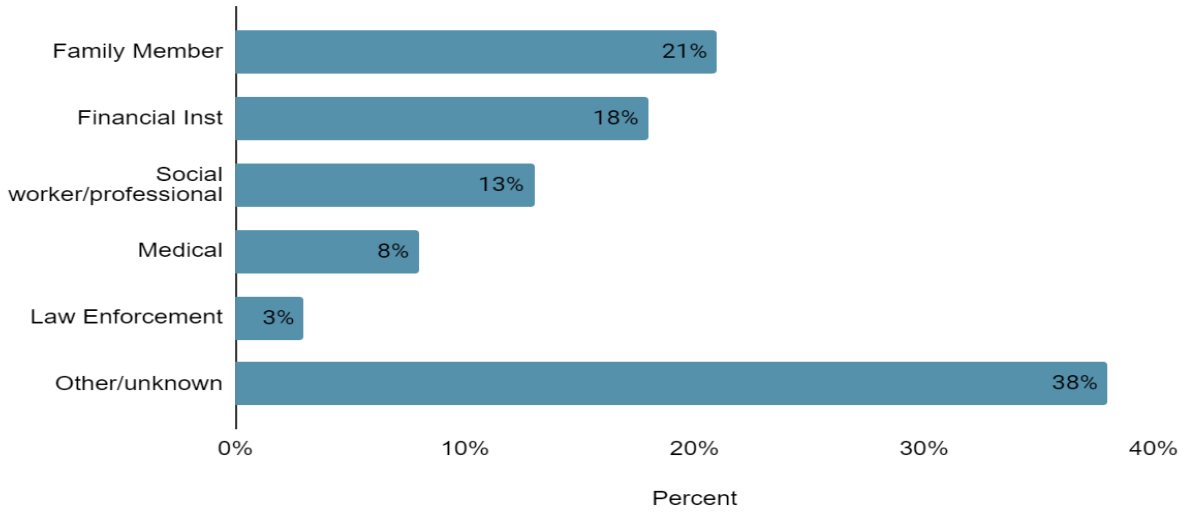
Elder abuse is defined in California Penal Code § 368.

The Reporting of Elder Abuse

Who Reports Elder Abuse?

In the NOAA survey respondents who said they experienced abuse or a crime reported that they told family members (69%), law enforcement (36%), a counselor, doctor or spiritual advisor (12%). Only 4% of respondents reported directly using Napa County APS.

Elder abuse is typically reported to APS by a family member or a "Mandatory Reporter."



Source: California Department of Social Services. The other/unknown percentage is most likely a combination of after-hours reporting, anonymous reporting, or cross reporting.

Who is a Mandatory Reporter?

California Welfare and Institutions Code § 15630 defines a mandatory reporter as a person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, a health practitioner, clergy member, employee of a county adult protective services agency, or a local law enforcement agency. A person in their professional capacity or within the scope of their employment, including those in a financial institution, who have observed or have knowledge of an incident that reasonably appears to be abuse are also mandatory reporters. Failure to report an abuse is a misdemeanor.

Mandatory reporters who are close to the front line of abuse (social workers, ER doctors, etc.) know how to recognize abuse when they see it and know how to report abuse. Those a bit further from the front line may be unable to recognize abuse and unsure how to report it. The Jury found no person or entity accountable for informing these mandatory reporters of their responsibility to report abuse or how to report if they suspect it. Recent lawsuits filed in Los Angeles and San Mateo Counties accused major banking institutions of failure to protect elders in losses of more than $2.2 million.

Elder Abuse is reported to Napa County Health and Human Services or law enforcement. If, after a preliminary investigation HHSA believes a crime has been committed, they will cross report to law enforcement. Generally, law enforcement will cross report to HHSA.

How is Elder Abuse Reported?

In Napa County, elder abuse is reported to Napa County Health and Human Services, Adult Protective Services (HHSA APS). Reports are made over the phone on a 24-hour hotline (707-253-4398 or 888-619-6913) or on-line. Elder abuse may also be reported to law enforcement. Law enforcement will generally cross report to HHSA APS if the abuse takes place in a non-inpatient facility. If the abuse takes place in an inpatient facility, law enforcement would generally cross report to the Ombudsman. If abuse appears to be of a criminal nature, APS or the Ombudsman would cross report to law enforcement.

When elder abuse is reported, the priority is to ensure the safety of the individual. The nature, the severity and the risk to the individual's safety dictate the speed of response.

When APS starts an abuse investigation, they first attempt to verify the abuse. If the abuse is verified, a social worker would marshal the appropriate resources to mitigate the abuse and arrange for the appropriate resources to yield a safe environment. Most (68%) elder abuse cases reported to HHSA APS are classified as self-neglect. This means the individual does not have the resources to ensure their own safety and no caregiver has been identified.

A Public Guardian/Conservator may be appointed if an individual is unable to provide their own basic food, clothing, and shelter needs. Additionally, if an individual is unable to manage their personal financial affairs or is susceptible to fraud or undue influence, a Public Guardian/Conservator may be appointed when there is no other trusted person available to act as conservator.

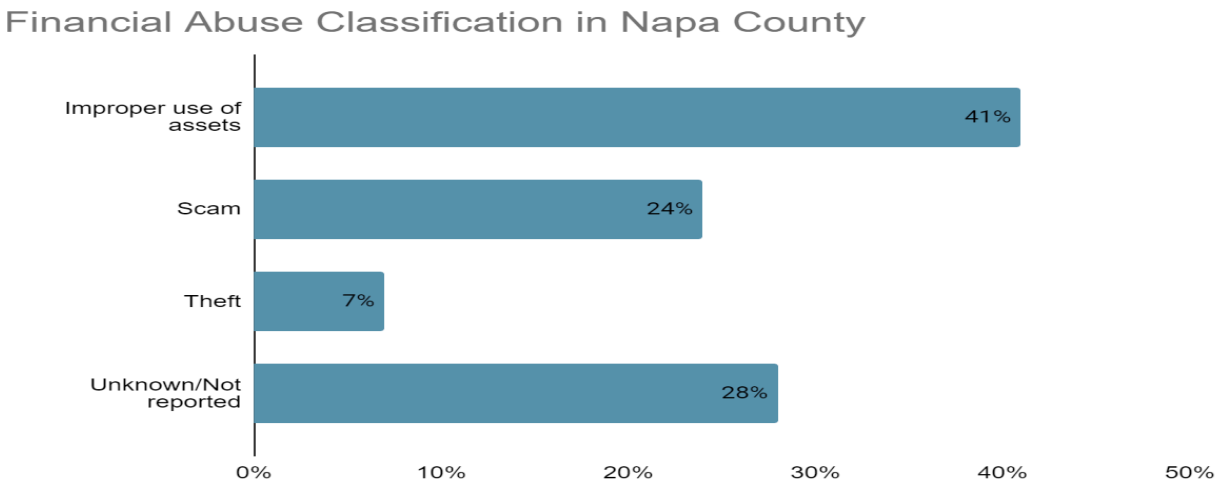
A request for a conservatorship can be initiated by Adult Protective Services or by a third party. Third parties include friends, family members, physicians, bankers, and law enforcement. An independent investigation is conducted to determine if conservatorship is necessary or if there are appropriate alternative services available.

Criminal and Financial Scams

A relatively small percentage of elder abuse cases are severe enough to be considered criminal. Many of these are financial elder abuse. For a criminal case to be successfully prosecuted, law enforcement must have sufficient evidence that a crime has been committed and the perpetrator can be brought to justice. In many financial scams, the perpetrator can be difficult to track down, especially if the scam has taken place electronically and the perpetrator is not located in the United States.

Financial fraud and scams are a major elder abuse issue for Napa County. As noted earlier 12% of older Napa County citizens report being the victim of a fraud or scam. Financial elder abuse

reported to Napa APS indicates that improper use of assets is the most common form of financial abuse and scams are the second most common.



Source: California Department of Social Services. The other/unknown percentage is most likely a combination of after-hours reporting, anonymous reporting, or cross reporting.

Financial scams can be particularly damaging because recovery is usually minimal. If a scam is conducted by electronic means, tracking down the perpetrator and recovering funds are unlikely. As criminals become more sophisticated, potential victims have an increasingly difficult time recognizing and avoiding a scam. There is a strong belief among those interviewed by the Jury that financial scams in Napa County, with the advent of artificial intelligence, are becoming much more prevalent and sophisticated. The only sure way to mitigate financial scams is to prevent them from happening. Educating people on how to recognize and not fall victim to a scam is a strong community need.

The Role of Caregivers

Most elderly have a strong desire to remain in their home and live independently. At some point, most elderly will require some level of in-home care to maintain an independent lifestyle. The majority of elder abuse cases reported to APS are a result of insufficient care. Cases reported as self-neglect are, by definition, a result of insufficient care.

Napa is one of two California counties with a registered caregiver program for independent caregivers. To register, a caregiver must provide results of a current TB test and pass a criminal background check. The Napa County database lists fewer than 35 registered caregivers. Caregivers who work through an agency are not included in the caregiver registration program. The Alzheimer Association estimates 11.5% of individuals (3,330 people) in Napa County over the age of 65 have Alzheimer disease. Each of these individuals require some form of caregiving. The registered caregiver program appears to be underutilized.

In Home Support Services are available through MediCal if specific financial and medical conditions are met. The In Home Support Services (IHSS) program is administered by Napa County HHSA CSOA. In 2023 Napa IHSS had a 20.5% increase in new referrals and helped 1,571 older and disabled adults safely stay in their own home. In total IHSS provided nearly two million hours of in-home care. However, many people don't meet the MediCal insurance requirements. The Bureau of Labor Statistics estimates that 14% of the US population over age 15 are an unpaid family or friend caregiver to the elderly. This would translate to approximately 15,000 people in Napa County.

Constellation of services for the elderly

Most people are ill prepared for the demands of aging or the role of caregiver. They lack clarity on what to expect, how to evaluate their situation, and how to assess their needs. They may face challenges managing the basics such as food, safe shelter, transportation, multiple prescriptions, medical equipment, and basic hygiene needs. As capabilities change due to declining physical and mental health, the emotional toll can also be high. Individuals can have difficulty navigating the resources and programs available and in determining what resources and services they can trust. Frequently, there is a lack of understanding of how to make the right choices for their care.

Elder Resources

There is a large constellation of resources and services available to older adults. Current resource guides are long and complicated and often require computer competency to navigate. The Napa County resource guide on the Napa County HHSA Comprehensive Services for Older Adults (CSOA) website is 50 pages long with 27 subcategories and nearly 250 hyperlinks. An assigned social worker will work with an individual and their family to identify resources from various agencies, businesses and nonprofits to help meet their needs. Even with a social worker 's help, navigating this constellation of service can be daunting. An elderly person or care giver may lack the technical expertise to locate the right care solutions and make good care decisions on their own. Additionally, administrative requirements may significantly increase the burden in accessing many of these resources. Providence Home Health Napa, a nonprofit organization, recognized this need and established an "Information and Assistance" line to help the elderly maintain independence and their quality of life.

The complexity and subsequent navigational difficulty of long-term support services is recognized as a problem at the state level. The Long-Term Services and Supports (LTSS) Subcommittee of California's Master Plan for Aging's first objective is "A system that all Californians Can Navigate. Specifically, California will have in place an understandable, easy-to-navigate LTSS system that includes both home and community based residential options. Californians will know how to quickly connect to services they need, no matter where they live or their economic status. People will find what they need wherever they enter - whether through the healthcare system, the public benefits system, the disabilities system including Regional

Centers, or the community-based system". Progress toward accomplishing this objective is not clear. The Master Plan for Aging January 2024 annual report references the most recent Long-Term Services and Supports Subcommittee stakeholders report from May 2020.

Simplifying and streamlining resource navigation remains a critical objective for the state. But a streamlined resource navigation system must tie to the local level where services are ultimately delivered. The county will need to make whatever the state delivers work locally. Engaging in the state's efforts sooner rather than later might help shape the outcome so that it increases the likelihood of success at the county level.

APS cannot force an individual to accept a service, an individual must consent. It is widely believed that elders are reluctant to report abuse or accept services for fear they will be removed from their home and placed in an inpatient facility. This is not true. APS cannot force an elder to accept a service or remove an elder from their home.

Providence Home Health Napa offers an "Information and Assistance" program that provides a gateway to services that assist the elderly in maintaining their long-term independence. Increasing the awareness and utilization of this program would undoubtedly result in better care. However, better integration of resources to the needs of individuals would also lead to improved care.

Strategies For Mitigating Elder Abuse

Based on interviews and research, five strategies for reducing the incidence of elder abuse emerge.

1. Breaking down access barriers to support and services to elders so they can maintain safe independent living arrangements before abuse can happen.
2. Promoting community engagement and inclusion to discourage isolation, so needs can be identified before the failure to meet these needs results in abuse.
3. Providing caregiver support and relief programs to encourage healthy relationships between caregivers and the elderly.
4. Educating the public on how to recognize and avoid financial scams.
5. Increasing community awareness and understanding of elder abuse through storytelling and reporting with the intent to encourage vigilance, reduce fear and stigma, and increase the utilization of services.

Napa County and Napa County nonprofits currently employ these strategies. Opportunities exist to increase the utilization of these strategies.

Strategy #1: Breaking Down Access Barriers to Getting Support

Barriers to getting support include:

- Lack of knowledge and ability to assess changing needs as a result of aging.

- Lack of awareness of the resources available and how to find them.
- Financial barriers limit access to resources.
- Physical barriers, most notably transportation to and from a resource.
- Technological barriers limit the ability to use and navigate the internet.
- Emotional barriers including the fear that accepting resources may lead to a loss of independent living and the feeling of not being deserving of services.

A large part of breaking down barriers is reaching and connecting with the elderly. The communication vehicle as well as the style and tone should be adapted to the elderly audience. For example, more traditional communication such as direct mail may be more effective than email blasts, social media, or websites.

Financial Barriers

HHSA CSOD and Veterans Affairs have an excellent record in helping secure resources for those in need. Furthermore, several nonprofits in Napa County have an excellent history of delivering financial support as well as nutritional support. Often, a relatively small amount of money can make a big difference in someone's life. A minimal amount of assistance to help in an unexpected setback can stave off financial calamity and subsequent homelessness. There are likely opportunities to help the elderly find their way to services designed to break down financial barriers.

Physical Barriers

There are some excellent transportation resources available in Napa County. Molly's Angels in particular should be lauded for the work they do in addressing transportation issues. There needs to be greater understanding of physical barriers from the perspective of the senior citizen. For example, Vine Transportation may be able to transport a senior to the St. Helena Hospital bus stop. But the distance from the bus stop to the hospital may be insurmountable. Similarly, while transportation from one's home might be available, for some the distance from their front door to the end of their driveway to get on the bus may be too much. Gaps in service also exist such as a lack of a soft handoff when an individual connects from one service to the next, or the needed assistance at a final destination. Soft handoff practices need to be supported and encouraged.

A related physical barrier may lie in the delivery of food that may be difficult to open or requires preparation, including opening a can. Looking at issues from an individual's capability to receive and utilize the service and finding workarounds is critical.

Technological Barriers

Challenges to obtaining services online include lack of broadband access, the necessary device to navigate the internet, and knowledge of how to use the internet. Font size and poor vision can also be a barrier. Much effort is going into solving these issues by getting appropriate technology

into the hands of elders. These efforts should continue to be supported. However, more human interactions may be necessary depending upon the individual.

Emotional Barriers

The Jury identified three significant emotional barriers to receiving services: fear of loss of independence, feeling unworthy of support, and a sense of exclusion. These barriers may be present in the mind of the individual needing support. The key to effecting change is building a better sense of trust and inclusion through outreach programs. For example, over two-thirds of seniors have not used a Senior Center in the last five years. This would suggest an opportunity for outreach programs.

Strategy #2: Increasing Community Engagement and Inclusion

A primary cause of abuse is isolation. The NOAA survey reports that just over half (54%) of seniors said they felt excellent or good about the community making older adults feel welcome and almost four out of ten (39%) said they felt excellent or good about the community valuing older adults. These results suggest an opportunity for improvement. There are a number of excellent outreach programs supported by nonprofits in Napa designed to increase engagement and decrease isolation. These programs need to be promoted and supported thereby helping Napa citizens understand their responsibility to look out for one another and keep each other safe. Communication would also increase engagement and reduce isolation.

Strategy #3: Caregiver Support Programs

Caregivers often suffer from exhaustion, loneliness, isolation, and depression, especially when caring for a loved one with a long-term or chronic illness such as Alzheimer's disease. This can lead to negligent care and even abuse. Support systems for caregivers are crucial. Providence Home Health Napa Valley offers support services for caregivers. The extent to which caregivers who take advantage of these services is unclear. Widespread promotion that encourages participation in these services would lead to improved elder care.

Strategy #4: Educating the Public on How to Recognize and Avoid Financial Scams

Financial scams are a problem nationwide and the elderly are particularly vulnerable. Making sure banks and other financial institutions are trained to spot unusual activity and understand their responsibilities as mandatory reporters is an important way to mitigate financial scams. Teaching the elderly to be suspicious of attempts at drawing them into financial scams and providing a supportive way to vet any concerns would reduce the incidence of financial elder abuse.

Strategy #5: Increase Awareness and Understanding of Elder Abuse

Raising awareness of elder abuse awareness would result in greater recognition and reporting of abuse among the public and mandatory reporters. Greater awareness would diminish fear and embarrassment while encouraging the use of support services.

FINDINGS

F1. The Jury found that Napa County has many dedicated people in county agencies and nonprofits who are working hard to help the elderly age gracefully.

F2. The Jury found that no one appears to be accountable for ensuring that all mandatory reporters know their responsibilities. Many do not have sufficient training to identify elder abuse. Many may not know the correct procedure for reporting elder abuse, exposing them to liability for failing to report.

F3. The Jury found that the constellation of services available to the elderly is broad and complex making it a challenge for some people to find the resources they need.

F4. The Jury found that information sources and service delivery are often online. Ongoing efforts to get technology into the hands of the elderly is hampered by their lack of computer literacy resulting in a continuing need for in-person information and services.

F5. The Jury found that services such as Providence Home Health Napa "Caregiver Resources" and "Information and Assistance" exist to meet the needs of the elderly and their caregivers. These services appear to be underutilized.

F6. The Jury found that more outreach is needed to make the community aware of elder abuse and available services.

F7. The Jury found that an affluent population makes Napa County particularly vulnerable to elder financial scams. Experts predict that emerging artificial intelligence technologies will make financial scams a bigger problem. The best deterrent to this type of fraud is for potential victims to have the capability and strategies to identify them beforehand.

F8. The Jury found that the elderly population in Napa County is increasing. As the elderly population increases, the demand for resources needed to keep them safe will also increase. Additional social workers and mental health therapists will be needed in the county.

F9. The Jury found that law enforcement training on how to identify and report elder abuse is limited.

COMMENDATIONS

The Jury explored the humanitarian work of local Community Partner nonprofit organizations providing vital services to the disabled, elderly and those in need. The Jury recognizes their invaluable contribution to the community and commend the dedication of all those who work diligently and volunteer so generously.

RECOMMENDATIONS

The Jury recommends:

R1. By September 30, 2024, HHSA develop and annually distribute a simple, brief card or letter to all mandatory reporters in Napa County. This form would inform them of their reporting responsibilities, and how to report and link to online resources for additional information.

R2. By December 31, 2024, HHSA develop a "Healthy Aging Guide" for Napa County to aid the elderly, families, and caregivers in understanding how to better assess their needs and locate the available resources. Such a guide needs to go far beyond the simple list approach of the current *Napa County Aging and Disability Resource Guide.* HHSA should utilize county partners such as the Library and County Communications staff as well as other avenues to distribute this to the people who need the information.

R3. By December 31, 2024, HHSA work in conjunction with the Commission on Aging, the Elder Abuse Task Force, and Healthy Aging Population Initiative (HAPI) to develop and implement a comprehensive communication plan aimed at both the elderly and the wider community. The objectives of this plan are to break down barriers for elder support, increase community engagement and inclusion, educate the community on recognizing and avoiding financial scams, and increase the awareness and understanding of elder abuse.

R4. HHSA continues ongoing work with the District Attorney's Office and nonprofit organizations to develop and enhance scam awareness and promote prevention campaigns. The objectives of these campaigns are to assist the elderly to recognize and avoid potential scams and know how to respond if faced with one.

R5. Beginning July 1, 2024, Napa County HHSA proactively increase their involvement in the California Master Plan for Aging to help shape future programs and be more aware of resources and grant availability.

R6. Beginning July 1, 2024, law enforcement establish periodic training that reinforces how to recognize and report elder abuse.

R7. By September 30, 2024, HHSA develop plans for hiring additional social workers and mental health professionals to meet the growing demand of the increasing elderly population.

REQUEST FOR RESPONSES

- Board of Supervisors: R1, R2, R3, R5, R6, and R7.
- Napa County Sheriff: R7.

INVITED RESPONSES

- Napa County Health and Human Services: R1, R2, R3, R4, R5, R6, and R7.
- City of Napa Chief of Police: R6.

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

APPENDIX

Napa County Agencies providing services to the Elderly

- Napa County Health and Human Services Agency (HHSA)
- Comprehensive Services for Older Adults (CSOA) (a division of HHSA)
- Adult Protective Services (APS) investigates reports of abuse, provides support services, collaborates with Community Partners
- Napa County Public Guardian/Conservator/Administrator- provides mandated conservatorship services
- Veterans Services - local veterans advocate, assists in obtaining Federal benefits
- In Home Supportive Services (IHSS) Assists eligible persons to remain safely at home, authorizes payment for care provider services.
- Long Term Care Ombudsman Program (LTCOP) - Provides complaint resolution and advocacy for residents in private care facilities. Maintains lists of local Residential Care and Skilled Nursing facilities
- Napa/Solano Area Agency on Aging (AAA) - responsible for planning and coordinating senior services
- Senior Centers- several locations throughout the County providing an assortment of services in health, recreational, and educational programs as well as meals, tax advice, informational, and support programs
- Vine Go Paratransit bus service by Napa Valley Transit Authority
- Registered Caregiver Program

Local Community Partners - Nonprofit Agencies

- Molly's Angels- Network of volunteers providing transportation, care calls, food redistribution, emergency food, and a wide range of assistance
- Share the Care - Manages a Stop Falls program, free durable medical equipment, home health supplies recycling and exchange program, home safety assessments, grab bar installation, home modification recommendations, dental care funding, friendly visitors, rides, well-being assessments, care/crisis management, and assistance with paperwork
- Community Action Napa Valley (CANV) provides Meals on Wheels, daily home-delivered meals and conversation, Food Bank monthly allotment, Senior Brown Bag Program, and Bi-monthly food allotment
- Providence- Community Health Napa Valley (formerly Collabria) offers Adult Day Health, PACE (Program for the All-inclusive Care of the Elderly), palliative and hospice care, and free caregiver training and education.
- Healthy Aging Population Initiative (HAPI) provides a variety of programs to help seniors remain living safely at home
- Elder Abuse Task Force- Coalition of County Representatives and Community Partners that collaborate on available resources and coordinate efforts among various agencies.
- Monarch Justice Center- provides advocacy, resources, and comprehensive support services for survivors
- Healthy Minds Healthy Aging - A prevention and early intervention program for early signs of depression and/or cognitive decline

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY
2023-2024

April 10, 2024

FINAL REPORT

SKYLINE ACADEMY AT JUVENILE HALL

DELAY AND DISORGANIZATION

SUMMARY

As required by California Penal Code Sec. 919 (b), the Jury performed its annual review of the Napa County Juvenile Hall (NCJH). After conducting interviews with directors and staff at NCJH, the Jury found that previous challenges continue to exist. Staffing shortages, an underutilized facility, and irregular development of a camp program are issues that have been highlighted in previous Grand Jury reviews.

The 2023-2024 Jury's primary concern is the delayed development of Skyline Academy. Despite approval in 2020, there has been little progress towards opening. Repeated requests for a detailed project plan and progress reports by the Jury were not fulfilled. Two tours of the facility months apart revealed that few of the planned changes to the physical space have been implemented. One room had been remodeled for use as an office.

By the conclusion of its investigation, the Jury was not able to determine if a formal project plan for the formation of the Skyline Academy camp program is being followed or even exists or, if there is any measure or documentation of progress.

Additionally, the Jury found little ownership of who is charged with making progress towards opening Skyline Academy. Without the appointment of a dedicated project manager this endeavor has little chance of success.

BACKGROUND

California Penal Code Sec. 919 (b) mandates a yearly inquiry into the management and conditions of all detention facilities in the County. Napa County Juvenile Hall (NCJH) qualifies as one of the two detention facilities in Napa County. It is administered by the Napa County Probation Department under the direction of the Chief Probation Officer and managed by a Superintendent and Assistant Superintendent.

Under Senate Bill 823, signed into law September 30, 2020 and effective July 1, 2021, all juvenile justice responsibilities were realigned from the State to the County. SB 823 initiated the closure of juvenile detention facilities at the state level and transferred custody of juvenile offenders to local counties throughout the State of California. The age level of jurisdiction for youth was raised to 21, 23, or 25, depending upon the offense.

The past several years have seen a reduction in the number of youth in Juvenile Hall due to the recent change in state policy of not incarcerating most juvenile offenders. While the Napa Juvenile Hall was designed to accommodate up to 60 youth detainees, the average daily population has been much below that for several years. In the past few years, the average daily population has ranged from 10 to 15.

Currently, the Juvenile Hall is divided into two wings. The Prospect Wing, used for short-term incarcerated youth and a second wing currently being converted to a camp program. Following lifting of covid restrictions, normal operations have been resumed.

A camp program is intended to provide services to youth in detention while allowing them to remain locally connected to families and community. On January 14, 2020, the New Horizons camp was approved by the Board of Supervisors as an alternative to sending local youth to Short Term Residential Treatment Programs outside the county. On January 27, 2020, the Napa County Chief Probation Officer signed a request to the Board of State and Community Corrections for approval of a camp allocation for the fiscal year. Documents provided to the Jury contain inconsistent past start-dates for New Horizons. By July 2022, New Horizons had been suspended due to Covid restrictions and a low population in Juvenile Hall.

Using the already approved New Horizons grant funds, plans were initiated to develop a new camp program in Juvenile Hall. The new camp, renamed Skyline Academy, was slated to open by the end of 2023. On its visit on January 29, 2024, the Jury found that only one room had been remodeled into a future office. Jury members were told that the camp might be opened by July 2024.

METHODOLOGY

For purposes of this report, the Grand Jury completed the following:

- Tour of entire Juvenile Hall
- Second tour of Camp Area of Juvenile Hall
- Interviews with Juvenile Hall Administrators
- Review of previous Napa County Grand Jury Reports from 2014 to 2023 ● Review of Board of State & Community Corrections May 23, 2023 Inspection Report ● Review of Contract with B.I. Correctional Services, Inc, approved by Board of Supervisors on February 26, 2024
- Review of Juvenile Justice Coordinating Council Meeting Minutes from September 20, 2023
- Review of Informational pamphlet for Skyline Academy
- Review of Board of Supervisors Approval for New Horizons January 14, 2020
- Review of Napa County Juvenile Justice Plan (2023-2024)
- Napa County Website, https://www.countyofnapa.org/bids.aspx?bidID=373

DISCUSSION

The 2023-24 Napa County Grand Jury reviewed the upcoming Skyline Academy camp program as part of its annual mandate to assess the management and conditions of the Juvenile Hall.

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Between October 2023 and February 2024, four interviews with representatives from Juvenile Hall and Probation were conducted and two on-site visits to the facility occurred. Skyline Academy was scheduled to open at the end of 2023. The Jury found no significant progress on the allocated space between site visits in October 2023 and January 2024. One room had been remodeled with intended use as a future office, and a pamphlet had been created.

Repeated inquiries, both email and telephonic, requesting specific documentation of current activity yielded minimal information. This lack of concern or willingness to provide verified evidence of progress or a working project plan is documented in the Methodology section and demonstrated in the chart below.

The Jury did receive documentation detailing the 2020 approval of the County ordinance for the original (now defunct) juvenile camp program New Horizons. On March 15, 2024, the Jury also received a two-page general spreadsheet budget for Skyline Academy. The information provided in this document did not include a complete record of budget spending, current allocations, or record of monies spent to date.

The Jury found a Request for Proposal (PRO102501) on the County website regarding the current camp Skyline Academy. The RFP describes the camp's purpose and function and asks approval to retain a Juvenile Treatment Provider to furnish the programming. On February 26, 2024, the Board of Supervisors approved a contract with B.I. Correctional Services, Inc. for the time period from March 1, 2024 to June 30, 2026 as the service provider.

Essentially, the Jury was unable to ascertain if a formal project plan for the creation of the Camp is being followed or even exists. The Jury was given no documentation of progress. From the Jury's perspective, the County would greatly benefit by more effective project management.

Record of requests for documentation includes, but is not limited to:

Date	Correspondence	Response
12/15/2023	Email to follow up on 11/29/23 Interview where it was agreed the Jury would be supplied with a formal project plan, progress, and the procedures being followed in the creation of the Camp. An additional request was made for any architectural drawings or renderings of the future Camp space	No Response
01/02/2024	Follow up to above email with same request	Out of office, return 07/24/2023, referred to another administrator
01/02/2024 01/08/2024	Email seeking documents listed above and included specific requests for documents verifying the funding grant, project plan, and timeline. Email seeking documents listed above and included specific requests for documents verifying the funding grant, project plan, and timeline.	01/03/2024 email response saying will comply, but no doc received; 01/05/2024 email with long discussion but no docs 1/9/2024 email, no docs, copy of another dept. email

01/12/2024	Email requesting documents on the original plan for the Camp describing its mission, any information on its evolution, and again requesting information on funding.	01/17/24 email response, no docs
03/04/2024	Email requesting expenses for construction, RFP cost for services to be rendered, relevant financial information, and documentation of expenses already allocated.	03/05/2024 email, will get it together, will be out of town for a week
03/07/2024	Email requesting final report from Shared Visions.	Response saying no report exists
03/09/2024	Email requesting previously promised CAD drawings of the facility plan.	No Response
03/12/2024	Second request asking for multiple docs that were requested at a prior interview.	Email response, docs will be available by end of week; two docs were received.

FINDINGS

F1. Although Skyline Academy was scheduled to open at the end of 2023, the Jury's investigation detected limited organized effort toward the opening, no urgency, and minimal forward progress.

F2. Repeated requests for details on the development of Skyline Academy went unmet, leading the Jury to conclude that no formal project plan is being implemented.

F3. The Jury found that normal operations in the Prospect wing of Juvenile Hall (which houses short-term youth) have been resumed following the suspension of Covid restrictions.

RECOMMENDATIONS

R1. By October 1, 2024, the Board of Supervisors direct the Napa County Probation Officer to develop and implement a detailed project plan for the Skyline Academy. The plan should formalize the project scope, be updated monthly, and provide a timeline, steps toward completion, assigned tasks, progress towards goals, available resources, and a budget.

R2. By October 1, 2024, the Board of Supervisors direct the Napa County Probation Officer to identify a project manager to be accountable for the timely and successful completion of Skyline

Academy.

REQUEST FOR RESPONSE

Board of Supervisors-R1, R2

Napa County Probation Officer-R1, R2

Superintendent of Juvenile Hall-R1, R2

Assistant Superintendent of Juvenile Hall-R1, R2

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NAPA COUNTY
RESPONSE TO THE GRAND JURY FINAL REPORT ON
HITTING THE RESET BUTTON; ADDRESSING GANGS IN NAPA COUNTY

AUGUST 6, 2024

RECOMMENDATIONS

Recommendation 5. By September 30, 2024, the Napa County Board of Supervisors and Napa City Council identify financial resources to support community efforts to help families in need.

Response, Board of Supervisors: The recommendation has been implemented.

In addition to implementing the recommendation, further analysis is required. Throughout the year, Napa County and the State of California may develop additional financial resources to support families in need.

Below is a current list of resources available to help families:

- CalWORKS: Temporary Cash assistance to eligible families with or expecting children
- General Assistance: Short-term financial assistance in the form of a loan for low-income residents without children
- Cash Assistance Program for Immigrants (CAPI): Cash assistance for aged, blind, or disabled non-citizens who are not eligible for SSI/SSP solely due to their immigration status
- Medi-Cal: Medical assistance program for low-income individuals that offers free or low-cost health coverage for children and adults
- Covered California: For persons not eligible to Medi-Cal, there is financial assistance through Covered California
- County Medical Services Program: Limited-term health coverage for uninsured low-income adults between ages 21-64 who are not eligible for Medi-Cal or Covered California
- CalFresh: Supplemental monthly food benefits to assist low-income households
- CalWORKS Housing Program: Assists CalWORKS families that are homeless or at risk of losing their housing, obtain sustainable housing
- Bringing Families Home: Assists Child Welfare Services families that are homeless or at risk of losing their housing to obtain sustainable housing
- WIC: Nutrition program that helps individuals who are pregnant and/or have children up to age 5
- Refugee Cash Assistance: Refugee Cash Assistance is available to certain groups and is available for up to 12-months from date of admission to the U.S.
- CalFresh Market Match: Doubles benefits with using CalFresh at local Farmers Markets
- Food Banks: The CANV Food Banks provides nutritious food to low-income individuals throughout Napa County
- Free Produce Markets: Free produce markets at various locations throughout the month providing farm fresh produce
- CANV Silver Fox: Provides food to low-income residents over 60 years of age
- Meals-On-Wheels: Delivers meals to homebound seniors
- Congregate Lunch Sites: Napa Senior Center, South Napa Shelter, and the Salvation Army provide congregate lunch and/or grab and go meals on various days
- Napa County Resource Guide 2023: Community Resources available to workers to provide customers as needed

The Board of Supervisors agrees with the Grand Jury's points regarding the impact of poverty as a significant factor influencing gang activity. Further work is needed to partner with local municipalities on housing, public safety support and addressing issues such as stress and poverty to help families create a welcoming and safe environment free of gang activity.

The Board of Supervisors commends the Grand Jury for its work. However, the Board would like to note that the report did not appear to include interviews with current or former gang members. Individuals with lived experience with gangs could have provided valuable insights into addressing this ongoing community concern.

The Board of Supervisors would also like to request that Grand Jury's reports note the source of their facts. While the Board understands the confidentiality of Grand Jury interviews, the sources of the Grand Jury's facts can be useful to further understanding the report's subject matter.

Recommendation 6: Beginning July 1, 2024, the Napa County Board of Supervisors and Napa City Council support legislation to roll back decriminalizing drug and theft crime.

Response, Board of Supervisors: The recommendation requires further analysis.

The Board took several positions in support of legislation to increase penalties for the possession or distribution of fentanyl in 2023. In December 2023, the Board of Supervisors adopted a legislative and regulatory platform setting its priorities for 2024. In addition to emphasizing the protection of victims' rights, the Board focused on youthful offenders: "Napa County supports the overarching goal of providing early interventions to reduce the causes of crime among individuals under the age of 26. The County should nonetheless retain local authority to impose appropriate consequences when early interventions prove ineffective." This language covers the recommendation specific to drug and theft crimes and other legislation addressing youth crime and reducing repeated instances of victimization, including by theft.

For 2024 and into the future, implementation of this recommendation will require ongoing analysis of existing and future legislation. Based on the Board's direction set forth above, staff currently track proposals related to theft and drug crimes introduced in the Legislature. The legislative process in California is ongoing for the 2024 session. Staff continue to analyze relevant measures based on Board direction and provide updates to the Board as appropriate. The Board will consider this analysis when formally taking positions on legislation relevant to decriminalization drug and theft crimes.

Further analysis of proposed measures will be required to implement this recommendation. For this reason, the Board anticipates retaining similar language in future legislative and regulatory platforms. The Board and staff will monitor future legislative proposals related to the decriminalization of drug and theft crime, conduct analysis, hear staff recommendations, and take positions as it finds appropriate.

Recommendation 9: By December 31, 2025, the Napa County Sheriff, City of Napa Police Department, City of St. Helena Police Department, City of Calistoga Police Department, the District Attorney's Office, and the Napa County Probation Department create an integrated data collection system to improve the efficiency of trend monitoring associated with gangs and gang crimes.

Response, Napa County Probation Department: The recommendation will not be implemented because it is not warranted or is not reasonable.

While Napa County Probation is dedicated to community safety and rehabilitation of offenders, legislative changes have shifted the landscape of data collection specific to gang activity. These changes include the dissolution of the CALGangs data system in 2017 with the passage of AB 90. In addition to dissolving CALGangs, AB 90 imposed increased restrictions and limitations on data collection. An integrated data system, as recommended, is subject to the provisions of Penal Code Section 186.34(a)(4) and Part 23 of Title 28 of the Code of Federal Regulation, which aim to ensure the protection of constitutional rights (civil rights and civil liberties) and further an individual's reasonable expectation of privacy. The current laws and regulations require significant costly systems and procedural burdens that would be challenging to implement.

Napa County is unique in its collaboration between departments. Our law enforcement departments have built solid relationships over time that allow for effective communication and partnerships. Napa County Probation has a dedicated gang officer in both its adult and juvenile probation units, focusing on the accountability and rehabilitation of known gang offenders. These officers work in concert with local law enforcement regularly to share information, address issues and concerns that arise, and communicate about trends in gang activity. The Napa County Probation Department is grateful to our local law enforcement agencies, who regularly collaborate and participate in fieldwork with probation officers to enhance community safety as it relates to gang activity.

The Board of Supervisors agree with the Chief Probation Officer.

NAPA COUNTY
RESPONSE TO THE GRAND JURY FINAL REPORT ON
"NAPA COUNTY'S COMMUNICATION WITH ITS CITIZENS"

AUGUST 20, 2024

FINDINGS

Finding 1. Since the 2016 Napa County Grand Jury report on county websites, the county has increased its senior communication staff, appointed a webmaster, and implemented improved methods of communicating with citizens for routine, non-emergency notifications.

The County Executive Officer (CEO) and Board of Supervisors agree with the finding.

The County has taken substantial steps towards enhancing its capabilities and expanding its outreach efforts. The County has implemented several improved methods for routine, non-emergency communications with its residents. The website has been redesigned to be more user-friendly and informative, making it easier for residents to find the information they need. Staff regularly issue news releases to keep the public informed about county activities and initiatives. The social media presence has been significantly expanded, allowing the County to engage with the community in real-time and provide timely updates. Additionally, video storytelling has been embraced to convey important messages and showcase county projects and events in a more dynamic and engaging manner. In addition to producing unique video features highlighting the county, a new monthly countywide newscast was launched in April 2024. This newscast aggregates important county news, programs and services, and engagement opportunities in a format that is digestible, educational, and engaging to the public. These efforts are part of the County's commitment to ensuring transparent, effective, and accessible communication with all Napa County residents.

Finding 2. Napa County has made some improvements to provide timely and accurate information to citizens through enhanced website design and performance.

The CEO and Board of Supervisors agree with the finding.

The ongoing process of digitizing services, evaluating content, and arranging graphics is a continuous endeavor. In addition to standard website maintenance and updates, the County has undertaken several initiatives to improve user experience and access to important information.

Key changes include:

- Updates to the website's terminology to make it more intuitive for users to navigate.
- Streamlined top-level navigation and the addition of a "How do I?" section.
- An expanded Newsroom to share timely, relevant information with residents.
- Reorganized content into thematic "buckets" to streamline access to related services.
- The launch of the 'Open Napa County' page under the 'Government' section, providing a centralized location for related public search services and enhancing public and staff user experience.

Additionally, various services previously only available in paper format have now been digitized. This includes the development and implementation of digital PDF applications in several departments, with more to come. The County launched the airport runway webcam, providing real-time updates to the public, and refreshed the web presence for Health & Human Services (HHSA) behavioral health, the Planning Department, and County Fire, ensuring accurate and up-to-date information.

Staff conducted an extensive review to identify outdated COVID-19 documents and incorporated initiatives such as the Affordable Accessory Dwelling Unit and Child Care Facility Forgivable Loan Programs. A version update to the County's software platform was also completed, ensuring smooth operations and effective communication.

Efforts to enhance the County's program in search engine optimization (SEO) and analytics are ongoing. These efforts aim to expand from countyofnapa.org to include other domains and functions such as readynapacounty.org, napalibrary.org, and livehealthynapacounty.org, as well as social media and other applications. This initiative will develop a program framework and foundation configured to support scalability and county-wide accessible data, ultimately supporting a holistic strategy and user experience.

Later this year, Napa County will embark on a comprehensive website redesign, incorporating further design and structural enhancements.

Finding 3. A sizable portion of Napa County website traffic is via mobile devices. Some website content is not optimized for smaller screened mobile devices.

The CEO and Board of Supervisors agree with the finding.

More than 50% of the County's web visitation is via mobile devices. Responsive design has evolved from solely responding to the change in device size to now encompassing a multitude of available data elements that reflect the user's experience. The evolution of responsive web design in 2024 heralds a new era of adaptability and innovation in web development. Beyond simply fitting content to different screens, responsiveness now includes a holistic approach to design that considers device types, emerging interfaces, user preferences, and accessibility standards. By embracing this evolution, the County can craft digital experiences that transcend boundaries and empower users in an increasingly interconnected world.

While most of the county's website content is optimized for smaller screened mobile devices, some third-party applications are not. The County will coordinate solutions with vendors to ensure that digital services are accessible and user-friendly across all devices.

Finding 4. The county has not published to citizens a county strategic plan which outlines how to facilitate the distribution, efficiency, and quality of public information.

The CEO and Board of Supervisors disagree partially with the finding.

The Communications team has written a strategic communications plan; however, while it is a public document, it has not been shared with residents as it is an internal working document intended to guide efforts in informing, educating, and engaging citizens in Napa County.

The primary purpose of the communications plan is to foster effective communication among the Napa County Board of Supervisors, the residents of Napa County, and the departments and staff of Napa County government. Public access to government and the free flow of information are essential pillars of the democratic process. Therefore, this plan is intended to streamline access and enhance transparency within Napa County Government.

In today's service delivery landscape, effective communication plays a vital role in disseminating information, raising awareness about government services and policies, advocating for change, and supporting decision-making processes. Public communication is of utmost importance in empowering the residents of Napa County with knowledge about their expectations from county government. By engaging in dialogue and encouraging meaningful participation, the community can actively contribute to the development and progress of the county.

OBJECTIVES:

1. Establish a cohesive and effective communication framework for Napa County that fosters collaboration, empowers employees, and ensures consistent messaging and branding.
2. Enhance Napa County's communication efforts to expand its reach, engage the community, and promote transparency through proactive and creative storytelling across various platforms.
3. Establish transparent and open channels of communication with the community of Napa County, fostering engagement, collaboration, and understanding.
4. Enhance internal communications within Napa County by fostering a sense of community, sharing information effectively, and facilitating engagement among employees.
5. Enhance Napa County's emergency response communication by developing comprehensive strategies that facilitate effective information dissemination, preparation, and collaboration during critical situations.
6. Align legislative goals with effective communication strategies to facilitate the development, understanding, and engagement of Napa County's legislative platforms and processes.

Residents can see the results of the strategic communications plan through the numerous initiatives and improvements the County has implemented, ensuring transparent, effective, and accessible communication with all Napa County residents.

Finding 5. Napa County’s overall communication efforts, while focused on “telling Napa County’s story,” is not engaging the community in a two-way conversation which could facilitate citizen engagement.

The CEO and Board of Supervisors disagree partially with the finding.

The County’s social media strategy is intended to actively engage the community, share updates, and encourage dialogue. Staff monitor and respond to comments, messages, and mentions on social media platforms in a timely and professional manner.

From strategizing and developing communications to disseminating content, staff seek opportunities to extend the conversation beyond a specific communication. This is achieved by consistently ending messages with a call to action, which may include directing the audience to learn more on a specific platform or website, taking a survey, or providing a number or email to continue the conversation.

Additionally, individual board members and staff regularly participate in and host events that promote face-to-face interactions among residents, enabling dialogue and a sense of belonging.
The County organizes public forums, town hall meetings, and online feedback platforms to gather community input and address concerns promptly and transparently.

The County has actively engaged in and hosted town halls and community events focused on various subjects, including fire/emergency preparedness, Mt. Veeder storm damage and roads updates, PG&E underground electric power lines, road pavement projects, and transportation. Each of these events provides an opportunity for two-way conversation.

Staff worked closely with CAL Fire/Napa County Fire and AP Triton, the consultants developing the Fire Master Plan, to engage the community through various communication channels, including hosting a Fire Master Plan Virtual Town Hall.

Engaging the community in a two-way conversation is a collaborative effort involving all departments and elected officials, not solely the responsibility of the Communications Department. Staff are committed to fostering an environment where community input is solicited, ensuring a more connected and engaged Napa County.

Finding 6. Napa County lacks a formally articulated plan to continuously re-evaluate and update its communication strategies adapting to changing digital messaging technologies in order to assure that messaging remains timely, effective, and relevant.

The CEO and Board of Supervisors agree with the finding.

The communications team pairs the county-wide communication plan with project and departmental plans to re-evaluate and update its communication strategies. This undertaking is completed in tandem with departmental subject matter experts to align with services, staff capacity, and public expectations.

For example, Napa County has launched a public website chat feature and a live streaming translation tool for Board of Supervisors meetings. The team continues to meet with vendors, participate in forums, and assess current solutions to propose to departments. Each department's specific communication tools fall under its jurisdiction due to unique compliance requirements, staff participation, and business practices.

The communication’s team’s strategy involves regular re-evaluation and updates with Napa County IT to stay current with technological advancements and continue to meet the community's needs effectively.

Finding 7. The switch from Nixle to Everbridge did not go through an RFP or similar evaluation process which has led to disruptions in citizen alert contacts that have not been satisfactorily resolved.

The CEO, Board of Supervisors, and Sheriff agree with the finding.

Napa County contracted with Nixle in 2014. In 2015, Everbridge acquired Nixle and, along with it, Napa County’s contract. Napa County extended, renewed, and/or amended this contract for several years. Although acquired by Everbridge, the emergency alert platform continued to be named “Nixle.” On October 4, 2022, the Board of Supervisors approved a three-year renewal of the County’s contract with Everbridge; at that time the Board was also informed that subscribers to the Nixle platform would be

moved to the Everbridge platform. Because the contract was with Everbridge and that contract was renewed, the change from the Nixle to the Everbridge platform did not require a separate RFP process.

At the time of the platform change, Everbridge verbally represented to Napa County that all the subscribers to Napa County messaging in Nixle would seamlessly be moved over to their Everbridge platform without the necessity to re-subscribe. Based on these representations and to maintain the large subscriber base in Nixle (approx. 186,000 subscribers), the County chose to continue the Everbridge contract and not seek other proposals via the traditional RFP process.

Problems and inconsistencies related to delivery of messages to original Nixle subscribers after the transition to Everbridge were noticed early on. At the time of the initial transition from Nixle to Everbridge, the County Office of Emergency Services (OES) was housed solely in the CEO's office. On July 1, 2023, the interim CEO, in his role as Director of Emergency Services, appointed the Sheriff as the Assistant Director of Emergency Services, pursuant to Napa County Ordinance 2.80.060. The OES staff physically moved offices from the downtown Napa administration building to the Napa Sheriff's Office in south Napa. The OES budget was transitioned into the Sheriff's Office overall budget, and day-to-day OES oversight and operations were put under the direction of the Sheriff's Office.

In the first meeting between OES and the administration team at the Sheriff's Office in July of 2023, the Sheriff's Office prioritized diagnosing the issue with the transition from the Nixle to the Everbridge platform. A County Information Technology (IT) expert was assigned to work closely with OES to identify the issue and work towards a solution. The Sheriff also briefed the CEO, Board of Supervisors, and County Counsel. County Counsel sent a demand letter to Everbridge as part of the plan to address the issue, which helped spur a meeting to resolve the problems. Within two weeks of the meeting between Everbridge representatives, IT, and OES staff, the Sheriff's Office learned that the Nixle platform subscribers were never moved into the Everbridge platform. Instead, Everbridge built a software solution to act as a "bridge" by which messaging in Everbridge would be sent over to the Nixle program and the original Nixle subscribers would then receive the message. The crux of the problem referred to in the Jury's finding is that the software bridge was not reliable.

In August, approximately one month after the issue was identified, Everbridge agreed to do and did a large data migration, moving the subscribers out of Nixle and into Everbridge so that the system would no longer rely on the software "bridge." OES conducted a test messaging campaign in August of 2023, which included 184,328 subscribers that were part of the large data migration. As part of the test, subscribers were asked to confirm receipt of the message.[1] 70,417 subscribers confirmed receipt, which is 38.2% of the contacts that the message went out to, representing a relatively large number of responses. Of note, in marketing, the average open rate is somewhere between 15% and 25% and asking someone to take action (i.e. text back to confirm receipt) results in responses ranging from 1.5% to 3%. For SMS campaigns, the open rate is around 65% with a click-through rate of about 20%. The takeaway from the August 2023 test was that more than 10 times what is typically expected of an email marketing campaign and nearly twice of what is expected of a SMS campaign was accomplished after Everbridge completed the data migration. This large response rate gives the County confidence that the data migration was successful.

[1] One key difference between the two systems is that messaging that solicits a response can be sent in Everbridge while Nixle does not have that capability.

While the August 2023 test campaign was successful and resolved the initial platform transition difficulties, the OES team and Everbridge continue to have regular meetings to improve the system's capabilities.

Finding 8. County emergency notifications using the alert technology Everbridge are not reliably reaching all enrolled citizens, and it is unknown exactly how many residents are receiving messages.

The Board of Supervisors and the Sheriff agree with the finding.

However, the County is interested in understanding the evidence the Jury used to support this finding that not all enrolled citizens are receiving messages after the August 2023 data migration. While there are known examples of this issue from before the large data migration in August of 2023, evidence that the problem continued afterward have not been found. The Nixle system did not have a "confirm receipt" feature similar to Everbridge, making it impossible to conduct a comparable test with Nixle. The Board of Supervisors and the Sheriff agree that the Everbridge notification system was not reliable at reaching all enrolled citizens prior to the data migration.

It is important to note that no system can guarantee an exact number of subscribers reached for any given communication. Factors such as cell phone coverage, mobile device settings, and whether mobile devices are on or off, without power, etc., can impact message delivery. Due to these factors, Napa County OES, the CEO's Office, and the Sheriff's Office have established redundancy systems. These include partnerships with local radio stations, community outreach for emergency broadcast information, Genasys software for evacuations, Hi-Lo Sirens during evacuations, door-to-door notifications in evacuated areas, traditional media outlets, and social media accounts managed by Napa County, Napa Sheriff's Office, County fire, and municipal partners.

While Everbridge certainly damaged trust during the initial transition from the Nixle platform, the current reach and data from both test alerts and real-world alerts indicate that the technology is now working at the same level of reliability as the previous opt-in service.

Finding 9. The Everbridge emergency notification mobile app for phones and other mobile digital devices is not performing reliably for citizens.

The Sheriff, OES, Board of Supervisors, and CEO disagree wholly with the finding.

During the investigation to identify why some previous Nixle subscribers were not reliably receiving alerts, the team discovered that the issue was related to the software "bridge" rather than a full data migration solution (as mentioned in the response to Finding 8). The team also learned that there were no reports of failures from users who downloaded and used the Everbridge mobile application.

The County does not agree that the system is currently not performing reliably and would be interested in any evidence or examples of subscribers who signed up through Everbridge, or whose subscriber information was part of the large data migration in 2023, not reliably receiving messages at this time. Upon obtaining such information, the County and Everbridge can investigate and correct any ongoing issue.

Finding 10. The enrollment process for Everbridge is cumbersome and not well understood by the citizenry.

The Board of Supervisors and the Sheriff agree with the finding.

The enrollment process prior to January 2024 was more cumbersome. However, as part of the continuing efforts between OES and Everbridge to improve the system's capabilities, beginning in January 2024, residents can now subscribe by simply texting their zip code to 888-777, which enrolls them into the Nixle platform. Everbridge now automatically ports over (data migration, not a software bridge) Nixle subscriber data into the Everbridge system on an hourly basis.

Before this new solution, residents using this simple subscriber method would only be added to Nixle, and the system would rely on the problematic software "bridge" mentioned in Response to Finding 7 or have their contact number or email manually entered into Everbridge by OES staff as they periodically checked the Nixle system for any new subscribers.

The Board and Sheriff are pleased that this enrollment issue has been resolved, and new subscribers should find the process efficient and effective.

Finding 11. Everbridge has not fulfilled all of its contractual obligations with Napa County.

The Board of Supervisors and the Sheriff disagree wholly with the finding.

The contract executed between Napa County and Everbridge has been reviewed by the County, with assistance from County Counsel, and no breach of contract has been identified at this time. As indicated in Response to Finding 7, the issues caused by the initial transition from the Nixle platform to the Everbridge platform were problematic, but the parties were able to promptly resolve those issues.

Should OES be made aware of any concerns or evidence supporting the Jury's concerns that issues are continuing, OES will promptly work with Everbridge to resolve them. Since July of 2023, the staff at Everbridge has been responsive to the County's concerns and have worked diligently on addressing the challenges identified by the OES team. We are confident that any ongoing issues will be similarly corrected by Everbridge.

Finding 12. Napa County's staff have improved measures to facilitate communication with citizen's diverse languages and for those having disabilities or special needs.

The CEO and Board of Supervisors agree with the finding.

Recognizing the diverse community the County serves, staff remain dedicated to ensuring effective communication for all residents. The Office of Emergency Services (OES) continues to prepare a bi-weekly translation schedule for emergency communications, guaranteeing that critical information reaches non-English speaking populations promptly. Additionally, staff have initiated work on creating a comprehensive language access plan. This endeavor involves close collaboration with members of the Board of Supervisors and department heads, with a goal of establishing guidelines and resources that promote inclusivity and accessibility in all county communications. By prioritizing language access, staff strive to enhance engagement and participation among diverse communities throughout Napa County.

RECOMMENDATIONS

Recommendation 1. By December 31, 2024, the Board of Supervisors direct county communications staff to annually implement and publish to county residents an updated strategic communication plan

that results in timely and efficient two-way messaging with the public through digital, print, and broadcast media.

Response, County Executive Officer: The recommendation will not be implemented because it is not warranted or reasonable.

The County Communications team already operates with a comprehensive communication plan that serves as a roadmap for our efforts. This plan is a fluid document, allowing us to tailor our strategies based on the specific message and target audience, new communication technologies, and evolving appetite of how people consume information. Our primary focus is on delivering tangible results that meet the community's needs, rather than detailing the process.

Our approach is dynamic and adaptable, ensuring that we can effectively communicate across various platforms including digital, print, and broadcast media. While we continually refine our strategies to enhance engagement and transparency, we believe that the community is more interested in the outcomes of our communication efforts rather than the intricacies of the plan itself. Our commitment remains to ensure timely, efficient, and effective two-way communication with the public, and we invite residents to experience the results of these efforts through our various communication channels.

The Board of Supervisors agrees with the County Executive Officer.

Recommendation 2. By September 30, 2024, the Board of Supervisors direct county senior communications staff to meet with all county department heads to assess their communication needs so that they can message effectively and consistently with their target audiences.

Response of the County Executive officer: The recommendation has been implemented.

The Deputy CEO - Communications regularly attends department head meetings to stay informed about departmental communication needs. All departments with staff serving in a PIO role are invited to participate in the County Communications Collaborative. For departments without a dedicated PIO, regular outreach is conducted through check-in emails and meetings to identify and support their communication needs.

The Board of Supervisors agrees with the County Executive Officer.

Recommendation 3. By September 30, 2024, the Board of Supervisors direct county department communications staff to create a monthly review of county social media accounts, websites, and other digital communication channels to assure that information stays current.

Response, County Executive Officer: The recommendation has been implemented.

County communications staff regularly reviews and maintains the accuracy of information across social media accounts, websites, and other digital communication channels. We have implemented a process for individual departments to review and provide feedback on a monthly basis, ensuring that all digital communications remain current and effective.

The Board of Supervisors agrees with the County Executive Officer.

Recommendation 4. By September 30, 2024, the Napa County Sheriff direct their communication staff to create a monthly review of their social media accounts, websites, and other digital communication channels to assure that information stays current.

Response, Sheriff: The recommendation has not yet been implemented.

The Sheriff will implement this recommendation within the timeframe identified by the Jury.

The Board of Supervisors agrees with the Sheriff.

Recommendation 5. By December 31, 2024, the Board of Supervisors require all county and department websites to offer a live chat feature on each county department website to help citizens get quick answers to their questions and facilitate timely assistance.

Response, County Executive Officer: The recommendation has been implemented.

Napa County has implemented a website chat feature on countyofnapa.org, staffed by the Napa County Library reference team. This chat tool supports both the public and county staff in locating services and answering questions.

Key features of the website chat tool include:

- Staffed by library staff who assist the public similarly to how they handle library reference questions, aiming to connect users to the necessary resources.
- Available on every page of the website.
- Supports three languages: English, Spanish, and Tagalog.
- Accessible seven days a week.
- When the chat tool is not actively staffed, users can leave a message that will be responded to during business hours.
- Compatible with both mobile devices and desktops.

This initiative ensures that citizens receive timely assistance and quick answers to their questions, enhancing the overall accessibility and responsiveness of county services.

The Board of Supervisors agrees with the County Executive Officer.

Recommendation 6. By December 31, 2024, the Board of Supervisors direct county communications staff to develop and make public the metrics and analytics which monitor county efforts to evaluate effective two-way communication strategies with citizens.

Response, County Executive Officer: The recommendation has been implemented.

The Communications team reviews metrics on a daily basis and provides an internal report on a monthly basis. Measuring communication success is essential to fine-tune strategies, engage audiences effectively, and drive results. Data-driven decision-making is a continuous process, utilizing multiple metrics and analytics tools to track and measure progress.

As we prepare for a redesign of the County's website, we are enhancing our program in search engine optimization (SEO), Google Analytics, and browser ads. This effort will expand from countyofnapa.org to

include other domains/functions such as readynapacounty.org, napalibrary.org, livehealthynapacounty.org, and potentially social media and other applications where we drive web traffic within our digital communications. The goal is to develop a program framework that supports scalability and provides county-wide accessible data to support a holistic strategy and improved user experience.

Key tools the County employs include:

- **Analytics**: Tracks website traffic and user behavior.
- **Social Media Insights**: Built-in analytics tools on social media platforms that track post-performance, audience demographics, and engagement.

Key metrics for measuring communication success include:

- **Engagement Metrics**: These help us understand how the audience interacts with our messages, such as open rates, click-through rates (CTR), and social media likes, shares, and comments.
- **Reach and Impressions**: These metrics measure how many people see our messages.

By leveraging these tools and metrics, staff aim to continually refine communication strategies to ensure they remain effective and relevant.

The Board of Supervisors agrees with the County Executive Officer.

Recommendation 7. By December 31, 2024, the Board of Supervisors have county communications staff ensure that county initiatives and programs are available to all our citizens, including those who speak languages other than English and those with special needs or disabilities.

Response, County Executive Officer: The recommendation will not be implemented because it is not warranted or is not reasonable.

Countywide Communications promotes and encourages accessibility but does not have oversight of all county initiatives and programs. However, we continually seek opportunities to implement more inclusive practices. Some of the areas where we have control and have implemented accessibility measures include:

- **Website Translation**: The County's website incorporates Google Translate to support multiple languages.
- **Social Media**: We translate social media posts to reach a broader audience.
- **Board Meetings**: We have implemented the Wordly AI language translation platform to offer live Spanish translation at all Board of Supervisors meetings.
- **ADA Compliance**: An ADA page on the website provides information and resources for individuals with special needs or disabilities.
- **Partnerships**: We work with the risk team to provide remediation for any person seeking services with special needs or disabilities.
- **Procurement**: Our procurement language includes requirements for ADA compliance and is in the process of adding language suggesting Spanish as a preferred language.

These initiatives demonstrate our commitment to making county programs and services accessible to all citizens, regardless of language or special needs.

The Board of Supervisors agrees with the County Executive Officer.

Recommendation 8. By December 31, 2024, the Board of Supervisors establish a Napa County Communications Citizen Advisory Board with the goal of providing community input into Napa County communication priorities.

Response of the County Executive Officer: The recommendation will not be implemented because it is not warranted or is not reasonable.

The communications team is staffed with professionals from diverse backgrounds, bringing over 70 years of combined experience. In 2023, we established the County Communications Collaborative to enhance communication strategies and practices within Napa County. This group meets monthly and includes full-time Public Information Officers (PIOs) and individuals with PIO responsibilities, allowing them to exchange insights, best practices, and innovative approaches in their communication efforts.

Additionally, county communications staff participate in the Napa County PIO Network, a collaborative group made up of representatives from various sectors, including:

- The county and each of the five jurisdictions
- Public safety (fire, police, sheriff)
- Education (Napa County Office of Education, Napa Valley Unified School District, Napa Valley College, Pacific Union College)
- Transportation (Napa Valley Transportation Authority, CalTrans, California Highway Patrol)
- Healthcare (Queen of the Valley, Kaiser, St. Helena Adventist)
- Nonprofit organizations (Community Organizations Active in Disaster)
- Other entities such as the Veteran's Home, Napa State Hospital, and PG&E

This network is committed to working together to elevate our collective impact in communicating with residents. County communications staff also are members of statewide and national associations and attend conferences and training programs to stay abreast of the latest communications tools and strategies, ensuring effective communication with stakeholders. Associations include CAPIO (California Public Information Officials), 3CMA (City-County Communications & Marketing Association), NAGC (National Association of Government Communicators), NACIO (National Association of County Information Officers), PRSA (Public Relations Society of America), and GSM (Government Social Media).

Our existing advisory boards and regular community meetings provide ample opportunities for constituent input. We regularly review questions, concerns, and issues raised by the public through the Board of Supervisors, their aides, and department heads. This feedback loop allows us to remain flexible and responsive to the evolving needs of the community.

We do not take a one-size-fits-all approach to communication. Instead, we remain nimble in our strategies to effectively address the diverse needs of our residents. Through our active participation in training and collaboration with other professionals, we continuously develop our skills and improve our communication practices.

The establishment of a separate Communications Citizen Advisory Board is therefore unnecessary, as our current structures and processes already facilitate robust community engagement and input into Napa County's communication priorities.

The Board of Supervisors agrees with the County Executive Officer.

Recommendation 9. By December 31, 2024, the Sheriff's Department OES prepare and execute updated plans to fix deficiencies in alert notification measures ensuring that accurate and timely emergency information is disseminated to the public and media when needed. This may require assessing alternative emergency notification system providers to resolve ongoing Everbridge deficiencies.

Response, Sheriff: This recommendation has been implemented.

Since July 2023, Everbridge has been responsive and continues to be responsive in improving the reliability and effectiveness of their platform. As indicated in Response to Finding 7, the most recent contract with Everbridge was a three-year renewal of the previous contract. Everbridge had acquired Nixle in 2015, and the renewed contract contemplated that, during this period, the County's subscribers would be migrated from the Nixle platform to the Everbridge platform. As the Jury found, however, this transition was not seamless. Beginning in July 2023, the issues were quickly identified and addressed, and now the system appears to be functioning properly.

Beginning in the spring 2025, the Sheriff will recommend to the Board of Supervisors to issue a Request for Proposals (RFP) for messaging services beyond October 2025 when the Everbridge contract expires. Everbridge can certainly submit a proposal as part of that process, and other providers will also be invited to submit proposals.

The Board of Supervisors agrees with the Sheriff.

Recommendation 10. By September 30, 2024, the Sheriff's Department OES collaborate with Napa County communication staff to address problems with the "Alert Napa County" citizen enrollment process including increased awareness of how to enroll, streamline the enrollment process, and improve citizen's ability to manage their own alert notification preferences.

Response of the Sheriff: This recommendation has been implemented.

As indicated in Response to Finding 10, beginning in January 2024, residents can now subscribe by simply texting their zip code to 888-777. Additionally, logging into their online account allows citizens to opt into the notices that they wish to receive. OES continues to work with Everbridge to ensure the platform functions correctly and is as user-friendly as possible.

The Board of Supervisors agrees with the Sheriff.

NAPA COUNTY
RESPONSE TO THE GRAND JURY REPORT
"RAISING AWARENESS OF ELDER ABUSE IN NAPA COUNTY"

August 20, 2024

INTRODUCTION

The report of the 2023-2024 Napa County Grand Jury, "Raising Awareness of Elder Abuse in Napa County" sets forth nine (9) findings and seven (7) recommendations to the Napa County Health and Human Services Agency (HHSA). This response addresses those findings and recommendations with the goal of providing additional clarifying information about efforts made by HHSA and other relevant partner agencies and organizations prior to this report, already underway, and planned to improve the lives of older adults in Napa County.

FINDINGS

Finding 1. The Jury found that Napa County has many dedicated people in county agencies and nonprofits who are working hard to help the elderly age gracefully.

The Director of Health and Human Services Agency agrees with this finding. County staff in HHSA, the District Attorney's Office, the Sherriff's office, and those working across the network of community-based organizations are dedicated to improving the lives of older adults in Napa County. The Director appreciates the grand jury for their thorough assessment and investigation of the issue of Elder Abuse and their recognition of the hard work being done across the County to support older adults, respond to incidents, prevent elder abuse, and more broadly to provide support to aging gracefully.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 2. The Jury found that no one appears to be accountable for ensuring that all mandatory reporters know their responsibilities. Many do not have sufficient training to identify elder abuse. Many may not know the correct procedure for reporting elder abuse, exposing them to liability for failing to report.

The Director of Health and Human Services Agency partially disagrees with this finding. There is no single entity that has legal jurisdiction over mandated reporting and instead the law imposes this responsibility on various entities, employers, and professions.

California law mandates that certain individuals report known or suspected instances of elder or dependent adult abuse. Specifically Welfare and Institutions Code section 15630 provides in relevant part that, "Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or local law enforcement agency is a mandated reporter." Reports of known or suspected abuse of elder and dependent adults within long-term care facilities and community care facilities fall under the jurisdiction of the Long-Term Care Ombudsman and law enforcement. Instances of such abuse occurring outside of any of these facilities are the jurisdiction of the county office of Adult Protective Services (APS) and law enforcement.

In carrying out this reporting responsibility, a wide range of employers and professions need to ensure the completion of mandated reporter training and report known or suspected instances of abuse, including but not limited to health practitioners, clergy members, bank/financial institution employees, animal control and code

enforcement employees, etc. California law mandates that long-term care facilities, community care facilities, and residential care facilities, for the elderly provide such training. The State Department of Health Care Services (DHCS) or the State Department of Social Services (CDSS) is charged with reviewing each long-term care facility to ensure compliance with these training requirements.

Here in Napa County, our HHSA Adult Protective Services (APS) program provides mandated reporter trainings in partnership with other agencies and institutions to help various employers and their staff comply with their legal obligations to know and report abuse. In Fiscal Year 2023-2024, our APS program conducted 13 trainings to local community-based organizations and law enforcement. In Fiscal Year 2024-2025, APS staff are planning to host a series of trainings for mandated reporters, inviting all known organizations who employ mandated reporters to help support their awareness and understanding regarding reporting processes and local contacts.

It is also worth noting that earlier this year, HHSA took the initiative to request, and the Board of Supervisors approved, the addition of another supervisory position in the APS program. This increase in staffing allows our APS program to expand upon elder abuse awareness and education with the goal of providing support to the wide array of mandated reporters. Additionally, HHSA recently posted a CDSS video regarding elder abuse on its website and shared the video link with agencies and institutions who employ mandated reporters.

Finally, although HHSA is not charged with legal or regulatory oversight of those agencies, as previously noted in the response to Finding 1, the Agency is an active participant in a collaborative network of entities who work together to ensure that older adults are protected from harm and receive the support they need.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 3. The Jury found that the constellation of services available to the elderly is broad and complex making it a challenge for some people to find the resources they need.

The Director of Health and Human Services Agency agrees with this finding. There are indeed a wide range of services available for older adults in Napa County, and this very rich array means there is a continual need to ensure awareness of and support in navigating them. Fortunately, because of the strategic and thoughtful approach of the many providers of such services, there are also continual efforts to address this issue.

First, HHSA helps to address this issue structurally by maintaining an integrated Comprehensive Services for Older Adults (CSOA) Division providing co-located services for older adults at a centralized location. Within the CSOA division, HHSA administers distinct state funded and regulated safety net programs for older adults including In-Home Supportive Services (IHSS), APS, and Public Guardian Services. These services are enhanced by co-located and embedded services for older adults provided by our Behavioral Health Division and Self Sufficiency Services Division. However, it is understood that the needs of older adults are far-reaching and often span beyond directly administered County-run programs.

That leads to the second important point. This issue cannot be adequately responded to without highlighting the important and critical fact that Napa County is also part of two-county Napa-Solano Area Agency on Aging (AAA). By way of background, the California Department of Aging (CDA) contracts with and oversees local AAAs that coordinate a variety of services for older adults, adults with disabilities, informal caregivers and family caregivers. AAAs address the needs and concerns of all older persons at the regional and local levels through funding under the Older Americans Act. AAAs coordinate and offer services that help older adults (age 60 and older) remain in their homes and provide core services related to nutrition, health and wellness, caregiver support, legal assistance, transportation, and supportive services.

Our Napa-Solano AAA operates under a Joint Exercise of Powers Agreement (JEPA) between Napa County and Solano County. Pursuant to the terms of the JEPA, the two counties agreed that the infrastructure needed to manage the AAA would be provided Solano County Health and Social Services who works in close partnership with Napa County HHSA and community-based organizations. Further, an Oversight Board exists as part of the AAA's governance structure and that Board includes representatives from both counties' Boards of Supervisors. Napa County HHSA provides a pro-rata share (based upon the population of older adults that reside in both counties) of the funding necessary to support the AAA's staff and program costs.

Noteworthy is the fact that AAA funded services include the provision of a service called "Information and Assistance," typically referred to as "I&A." Simply put, that service is specifically aimed at the very issue of assisting individuals to find needed services and resources. As part of our Napa-Solano AAA, the entity designated to provide I&A services in Napa County is Providence Community Health (throughout this Response, this refers to the entity formerly known as Collabria Care and hereinafter referred to as "Providence"). Unique to Napa County is the fact that the I&A program is enhanced by additional discretionary funding that this County provides directly to Providence through the intentional use of Tobacco Master Settlement Agreement (MSA) funds. For over two decades, HHSA has supported the County by carrying out a grant award process to help direct MSA funding to enhance community health, and most recently HHSA aligned this funding to operationalize areas identified in our Community Health Improvement Plan and Napa Older Adults Assessment[1].

It is worth noting that Providence has been the recipient of MSA funds to provide I&A for Napa County for several years starting in Fiscal Year 2021-2022 through to present. The HHSA Director is unaware of any other County using discretionary MSA funds to amplify the provision of I&A services in its community. The Director wishes to acknowledge the Napa County Board of Supervisors for setting these funds aside for over two decades to meet the County's most pressing needs. It is this type of forward thinking and investment of discretionary funding that has positioned the County well and HHSA is proud to manage the process that helps to prioritize the use of such funds, including that they be directed toward older adult services.

Responses to subsequent findings and recommendations further explain how the County and HHSA is working to continually address the issue of ensuring that people can find the resources they need in conjunction with critical partners.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 4. The Jury found that information sources and service delivery are often online. Ongoing efforts to get technology into the hands of the elderly is hampered by their lack of computer literacy resulting in a continuing need for in-person information and services.

The Director of Health and Human Services Agency agrees with this finding. Related to Finding 3, a challenge in accessing information about resources, highlighted in the recently published Napa Older Adults Assessment (NOAA), is providing information and access to low-income older adults who are isolated and lack convenient and immediate access to the internet. HHSA has made significant efforts to increase digital access for older adults including in his past year, securing an Access to Technology (ATT) Grant to distribute tablets and broadband access to eligible older adults in Napa County.

ATT Grant funding supported the distribution of Claris electronic pads that have helped 143 older adults remain connected by providing them this device and two years of broadband access free of charge. HHSA contracted with

[1] It is worth noting that the NOAA was supported by our Napa County Board of Supervisors and HHSA through significant investments of both general funds and Mental Health Services Act (MHSA) funding and is being carried out through a consultant and Providence (formerly Collabria Care). The NOAA work commenced in early 2023 and runs through 2024.

Providence specifically because they are the County's "Information & Assistance" (I&A) provider, and it makes sense to continue our goal of enhancing service alignment for overall clarity of vision and purpose. Notably, every device distributed came with initial setup support and information to get further digital literacy support through ongoing 'tech help' offered by the Napa County Library at all three locations in Napa, Yountville, and American Canyon. As of March 2024, older adults have logged nearly 231,798 minutes on tablets distributed through the ATT grant.

Finally, since the County cannot guarantee computer literacy for all older adult residents, HHSA agrees that it is critically important to continue prioritizing in-person information and services. As we know, there is value in face-to-face support. Currently, HHSA programs universally maintain in-person services and provide information in a variety of formats and languages to meet the needs of this population. Since March of this year, over 2,000 clients have presented in person to receive services at our CSOA location. HHSA stands ready to meet and support them.

Additionally, HHSA has recently committed resources to launching a new video with the shared goal of further elevating I&A in Napa County and directing residents to a single entity and phone number, thereby decreasing reliance upon navigating online resources to determine what is available. Because Providence is our local I&A provider, we are, of course, working in partnership with their staff on its production. The goal will be to share this video on the County's social media platforms, post it on HHSA's website, and have our community partners do the same.

As is hopefully evident through this response, HHSA and our community partners are aware of the need to address the underlying issue of providing information about the panoply of services that exist in our community to support older adults, including aspects of the digital divide that has been identified in the NOAA, and together multiple strategies and solutions have and will continue to be explored.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 5. The Jury found that services such as Providence Home Health Napa "Caregiver Resources" and "Information and Assistance" exist to meet the needs of the elderly and their caregivers. These services appear to be underutilized.

The Director of Health and Human Services Agency partially disagrees with this finding. As stated previously, the Napa-Solano AAA funds Providence Community Health ("Providence," formerly Collabria Care) to serve as Napa County's "Information and Assistance" (I&A) program provider. Napa County bolsters the provision of I&A in our County through the discretionary application of MSA funds that have been awarded to Providence through a competitive grant award process managed since Fiscal Year 2021-2022. The competitive grant award process and contracts are managed by HHSA.

To provide some important context, in Fiscal Year 2023-2024, the I&A program – funded largely by the Napa-Solano AAA and Napa County and delivered by Providence – served 2,315 individuals with 2,023 of those being unduplicated. In addition, Providence assisted 181 unique individuals with connections to Napa County's Caregiver Registry. The current I&A program operated by Providence consists of two social workers and a program manager; HHSA provides office space for one of the social workers allowing for their co-location within our CSOA division.

HHSA having recently completed the MSA grant process, it is worth noting that Napa County has increased its funding to enhance the I&A program over the next three fiscal years to meet the growing demands and increased utilization of this resource; per Providence's submitted budget, 43% of the funding to support the I&A program comes from the County's award of MSA funding.

The reported data from this program suggest that I&A services are indeed being utilized, and undoubtedly there are more older adults to reach. To that end, Providence recently featured this service in their newsletter that is distributed to 5,000 community members and is shared several times a year to approximately 11,000 emails. Providence has indicated to HHSA that they are willing to test other avenues for advertising and outreach.

HHSA has also dedicated internal resources and initiated a project engaging Providence to work with us to produce a video that will highlight their I&A program as the entry point to understanding and navigating available older adult services in Napa County. HHSA plans for this video to be completed by September 30, 2024. The video will be widely disseminated so that older adults and their caregivers know where to go to find what they need with a broader understanding of the services available to them.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 6. The Jury found that more outreach is needed to make the community aware of elder abuse and available services.

The Director of Health and Human Services Agency agrees with this finding. In 2023, the Elder Abuse Task Force was created, currently co-chaired by HHSA's APS Program Manager, a member of the Commission on Aging, the District Attorney's Office, and law enforcement. One of the purposes of this group is to facilitate and support outreach and education regarding elder abuse. It is also worth noting that on June 28, 2024, the District Attorney's Office, Molly's Angels, local law enforcement, and HHSA partnered to host an event called S.A.F.E. (Seniors Against Financial Exploitation) in St. Helena. The event was focused on elder abuse, specifically financial elder abuse, and included a wide range of participants and programming. Surveys conducted at the conclusion of the event support its success in furthering education and awareness with the goal of keeping our older adult residents safe.

Finally, there are increased outreach efforts by HHSA and APS program staff, including that HHSA has recently engaged its new Communications Manager and APS Supervisor to work together to develop a flyer regarding elder abuse that will be included, for a fee, in the upcoming property tax mailing in partnership with our Napa County Treasure Tax Collector. The Director of HHSA appreciates the support of our Napa County Treasurer Tax Collector. HHSA's internal goal is to have a flyer finalized by the end of August 2024 for inclusion in the mailing that will be sent out in the September/October timeframe. To the extent this finding refers to "available services," the response to Finding 5 is incorporated by reference.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 7. The Jury found that an affluent population makes Napa County particularly vulnerable to elder financial scams. Experts predict that emerging artificial intelligence technologies will make financial scams a bigger problem. The best deterrent to this type of fraud is for potential victims to have the capability and strategies to identify them beforehand.

The Director of Health and Human Services Agency partially disagrees with this finding. According to CDSS data on APS reports across the state, financial abuse accounts for 35% of all allegations of abuse; this compared to only 33% of the 525 APS referrals received so far in 2024 being for financial exploitation. While financial abuse is second only to self-neglect as a the most common allegation in Napa County, more data would need to be gathered and analyzed to determine the extent to which a relatively affluent population makes Napa County particularly vulnerable to elder financial scams. In fact, NOAA data suggests that low-income older adults (particularly those representing BIPOC population) experience financial abuse at a higher rate.

While more data is needed to understand root causes and risk factors, the Director agrees that the best deterrent for financial fraud is for potential victims to have the capability and strategies to identify the fraud beforehand. Unfortunately, in cases where an older adult is victimized through a scam, recovery of lost assets is uncommon. Therefore, the best way to address financial abuse of older adults is through education and prevention. Accordingly, the Director incorporates by reference the above response to Finding 6.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 8. The Jury found that the elderly population in Napa County is increasing. As the elderly population increases, the demand for resources needed to keep them safe will also increase. Additional social workers and mental health therapists will be needed in the county.

The Director of Health and Human Services Agency agrees with this finding. In 2040, it is projected that older adults 60+ will comprise 33% of the population compared to just 21% in 2020. Therefore, systems and services will have to respond to the needs of a growing older adult population. While additional social workers and mental health therapists may be a part of that response, and HHSA continually evaluates program staffing, a broader strategic approach to system design, service delivery, and coordination of services will also be needed to meet the coming need.

This is why HHSA continues to support work to operationalize priority areas identified in the NOAA. Through the previously discussed MSA grant process, Napa County awarded over $3M to projects over the next three years that target focus areas identified in the NOAA. Through those contracted services, HHSA is strategically working to move the needle on transportation, housing, healthcare, information and assistance, community engagement and connectedness, and caregiver support to meet the needs of a growing older adult population.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Finding 9. The Jury found that law enforcement training on how to identify and report elder abuse is limited.

The Director of Health and Human Services Agency disagrees with this finding and ultimately defers to law enforcement for their perspective. Through trainings delivered to organizations throughout the County, including directly to law enforcement agencies, HHSA APS is engaged with law enforcement regularly to support identification and reporting of elder abuse. As an example, in May staff delivered two trainings on elder abuse to the Calistoga Police Department.

The Napa County Sherriff's Office is deeply committed to combatting elder abuse with the support of the District Attorney's Office, and both offices participate on the Elder Abuse Task Force which is an outcome-focused group that convenes to support multiple facets of victim response, including preventing, intervening, and healing the trauma caused by elder abuse. More collaboration is planned as HHSA APS works to expand its trainings for mandated reporters, including law enforcement entities.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Recommendation 1. By September 30, 2024, HHSA develop and annually distribute a simple, brief card or letter to all mandatory reporters in Napa County. This form would inform them of their reporting responsibilities, and how to report and link to online resources for additional information.

Response, Director of Health and Human Services Agency

The recommendation has been implemented. HHSA's APS Program staff are in the process of finalizing a trifold hand-held card that contains information on elder abuse, including how to identify signs of abuse, to whom reports are made, and the timeframe for reporting. This will be made available on HHSA's website and provided to organizations identified as mandated reporters throughout the County. This will be completed by September 30, 2024.

Additionally, as previously noted, HHSA has updated its website for APS to include a CDSS video that briefly describes the responsibilities of mandated reporters. A link to our website and this video will be sent with additional information to organizations identified as mandated reporters in the County. Additionally, the Napa County HHSA APS program is expanding mandated reporter trainings to increase their frequency and establish a clear schedule with its County- and nonprofit-mandated reporting partners.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Recommendation 2. By December 31, 2024, HHSA develop a "Healthy Aging Guide" for Napa County to aid the elderly, families, and caregivers in understanding how to better assess their needs and locate the available resources. Such a guide needs to go far beyond the simple list approach of the current Napa County Aging and Disability Resource Guide. HHSA should utilize county partners such as the Library and County Communications staff as well as other avenues to distribute this to the people who need the information.

Response, Director of Health and Human Services Agency

This recommendation has not yet been implemented. This recommendation will be implemented by September 30, 2024. This response also includes efforts that go far beyond, as explained below. First, the Director agrees with the Grand Jury's Finding Number 3 that it can be a challenge for older adults and their caregivers to identify available resources, as there exists a broad constellation of services that can easily become overwhelming without support. This finding is also supported by data collected through the NOAA indicating the need for additional resources designed to aid elderly families and caregivers in how to access services.

HHSA in collaboration with the Napa/Solano Area Agency on Aging, Healthy Aging Population Initiative (HAPI), and Providence, the County's I&A provider, produces the "Napa County Aging and Disability Resource Guide" referenced in this recommendation. This guide is currently being revised and represents a significant collaborative effort to produce a single source of reference for older adults and caregivers to identify what services are available. It is an extremely useful tool. HHSA will work with the above partners to distribute this guide in accessible locations, such as the Napa County Library.

However, a comprehensive, organized list of available resources alone is not sufficient to support all older adults in accessing the services that meet their needs. Therefore, as previously noted, the County has further enhanced the provision of I&A in our community through a separate contract with Providence. This contract builds upon the AAA contract for I&A services with Providence to serve as the gateway to navigating older adult services throughout the County. A unique feature of our County's I&A program is that it is partially operated onsite at HHSA where space is provided within our Comprehensive Services for Older Adults divisions. Co-locating this entry point for navigating older adult services within HHSA helps to centralize referrals and coordination with HHSA's directly administered older adult programs.

HHSA is also bolstering its support to increase awareness about I&A by committing resources to producing a video that helps direct older adults and caregivers to a single navigation point of contact and provides a brief overview of the rich array of services available in our community. HHSA reached out to Providence to collaborate on the content of this video production. This should help to increase utilization of I&A and nicely supplements the Aging

and Disability Resource guide with easy-to-access personal system navigation and care coordination. HHSA is targeting that both the updated resource guide and video will be completed by September 30, 2024.

Finally, the Napa-Solano AAA Executive Director, the Independent Living Center (ILC) for Napa County (the Disability Services and Legal Center), and Providence have jointly submitted a Letter of Interest to the California Department of Aging (CDA) to pursue the creation of an Aging and Disability Resource Center (ADRC) for Napa County. The ADRC is a partnership model whereby AAAs and ILCs can collaborate, integrate resources, and develop efficiencies that help them respond to increasing consumer service needs and expectations, and higher service demands given the growing number of Californians seeking Long-Term Services and Supports (LTSS). ADRCs are designed to develop coordinated networks to assist older adults, people with disabilities and caregivers in navigating the complex system of LTSS using a "No Wrong Door" partnership model. HHSA is excited that the AAA, ILC, and Providence are pursuing an ADRC and looks forward to the enhanced support to residents of our community.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Recommendation 3. By December 31, 2024, HHSA work in conjunction with the Commission on Aging, the Elder Abuse Task Force, and Healthy Aging Population Initiative (HAPI) to develop and implement a comprehensive communication plan aimed at both the elderly and the wider community. The objectives of this plan are to break down barriers for elder support, increase community engagement and inclusion, educate the community on recognizing and avoiding financial scams, and increase the awareness and understanding of elder abuse.

Response, Director of Health and Human Services Agency

The recommendation requires further analysis. HHSA participates in the Commission on Aging meetings, Elder Abuse Task Force meetings, HAPI meetings and various NOAA workgroup meetings. HHSA appreciates the ability to work in conjunction with these groups and individuals to enhance communication on these important issues.

The Director also incorporates prior responses which explain that Providence serves as the County's Information & Assistance (I&A) provider. Therefore, they are a critical and central player in the development of any communication plan since the goal is to direct residents to a single point of contact for older adult services and resources. Similarly, it is important for HHSA to work in collaboration with our AAA Executive Director, particularly as an ADRC is being pursued to ensure alignment of messaging and effort. At the same time, consistent with HHSA's prior Strategic Plan for 2020-2023 and our current Strategic Plan for 2024-2026, we have dedicated resources to building awareness of programs and services through increased communications.

In 2022, HHSA began publishing a quarterly 'Be Well' publication and in 2023, HHSA was fortunate to add a Communication Manager to support enhanced communications across all mediums. That position has been recently filled as of July 1, 2024. In the Summer 2024 Issue of 'Be Well,' an article was included that shared information about our APS program, elder abuse, and how to recognize and report suspected elder abuse. With June being Elder Abuse Awareness Month, it is a natural and appropriate time to elevate awareness through a targeted communication plan. HHSA's Communications Manager will work with APS staff to carry out a multi-media campaign to elevate awareness and understanding of elder abuse. It is anticipated that this will include radio spots, informational pamphlets, mailers, and a social media campaign.

As mentioned previously, HHSA staff are already working with Providence to create a video that will be distributed online and through social media which will provide information on the I&A Program, how to access information, and where services are located. HHSA also recently added an APS Social Worker Supervisor to enhance programming, including additional community outreach, communication, and education in collaboration with HAPI, the Commission on Aging, and the Elder Abuse Task Force. Finally, HHSA is in the process of contracting

with Wine Down Media to support agencywide communications about its many programs, services, and relevant topics, and focusing on older adults is necessarily included in that investment.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Recommendation 4. HHSA continues ongoing work with the District Attorney's Office and nonprofit organizations to develop and enhance scam awareness and promote prevention campaigns. The objectives of these campaigns are to assist the elderly to recognize and avoid potential scams and know how to respond if faced with one.

Response, Director of Health and Human Services Agency

The recommendation has been implemented. On June 28 of this year, the Napa County District Attorney's Office, along with Molly's Angels of Napa Valley, and HHSA, hosted the S.A.F.E. (Seniors Against Financial Exploitation) workshop. This event highlighted the collaboration between agencies working to prevent and address financial exploitation of older adults in Napa County.

The morning session was open to older adults in the community and focused on financial abuse and scam prevention as well as healthy aging. Among the presenters were APS staff, the Long-Term Care Ombudsman, law enforcement, a gerontologist, and a panel of older adults who have experienced financial abuse. As mandated reporters, financial institutions play an important role in identifying and reporting abuse, and therefore, the afternoon session was geared toward staff from local financial institutions and focused on providing them information as to how to identify and report suspected financial elder abuse.

The event was a success with over 150 older adults in attendance and over 50 institutions represented. The feedback solicited about the event was very positive and there is interest in making this event an annual occurrence.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Recommendation 5. Beginning July 1, 2024, Napa County HHSA proactively increase their involvement in the California Master Plan for Aging to help shape future programs and be more aware of resources and grant availability.

Response, Director of Health and Human Services Agency

The recommendation has been implemented. By way of background, the California Master Plan for Aging (MPA) is a broad set of initiatives providing opportunities for local government agencies, AAAs, community-based organizations, and other healthcare providers to meet the needs of an aging population. The MPA sets forth five goals: *Housing for all Ages & Stages; Health Reimagined; Inclusion & Equity, Not Isolation; Caregiving that Works; and Affording Aging*. Within each of the five goals are four to six strategies that address Transportation, Elder Abuse, Caregiving, Income Security, and more.

First and foremost, it should be noted that HHSA has been at the forefront of providing the foundation to help shape these priorities for Napa County. As previously noted, HHSA worked directly with our community-based organizations and Commission on Aging staff to help bring the multi-year NOAA to fruition. Both the Director of HHSA and staff from the County Executive Office are part of the Project Oversight and Support Team and HHSA staff also participate in the Steering Committee, and over $400,000 in total funds from the County and HHSA (through the strategic alignment of Mental Health Services Act (MHSA) funding) has been leveraged to make the NOAA possible in the first place. This work is being carried out thoughtfully in conjunction with our AAA Executive

Director to help ensure alignment since the AAA plays a critical role and is required to develop a separate Four-Year Area Plan for Napa and Solano counties.

Second, HHSA also worked strategically and collaboratively to align the priority areas from its recently completed Community Health Assessment (CHA), done in conjunction with Providence, with the NOAA. Both the CHA and NOAA were presented to the Board of Supervisors on April 24, 2024. The presentation highlighted the fact that five priority areas emerged through our CHA and NOAA, consisting of *Housing, Economic Stability, Access to Health Services, Racial Equity & LGBTQ Inclusion, and Behavioral Health*, and within those areas, issues that were further elevated by the NOAA included Transportation, Fall Prevention, Food Access, Access to Dental Care, and Communications/Digital Inclusion. Noteworthy is the fact that these areas align with the priorities in the MPA.

Beyond an obvious alignment with our CHA and NOAA to the MPA, is the fact that HHSA, using the CHA and NOAA, is developing a Community Health Improvement Plan (CHIP) with the input of community stakeholders. Our CHIP is being operationalized through the launching of a multi-pronged funding opportunity leveraging MSA, MHSA, and Opioid Settlement Funds resulting in 36 contracts to community-based providers. A total of approximately $10.8 million in contracts that span two and three years each are directed specifically at community health, with $3 million of the $5 million in MSA funds directed at services for older adults. HHSA presented a summary of these investments and their alignment to our CHA, NOAA, and CHIP to the Board of Supervisors on June 4, 2024. This evidences that HHSA is aware of the available resources and has been very involved in addressing the priority areas in the MPA vis-à-vis our local work on our CHA, NOAA, and CHIP.

Further, a critical program within HHSA is our IHSS program. Effective May 2024, with the unanimous support of our Board of Supervisors, HHSA was able to increase the wages paid to our IHSS providers to $20 per hour for the essential caregiving support they provide to older and disabled adults allowing them to remain in their homes. This was a significant increase from $17.45 per hour and reflects the strategic investment by the County to help bolster caregiving resources in our community, including the provision of care by friends and family, all in alignment with the goals and strategies of the MPA.

HHSA also works collaboratively with Solano County as part of our Napa-Solano AAA. The Director of Napa County HHSA, in partnership with the Director of Solano County Health and Social Services, prioritized the recent addition of a new position within the AAA to enhance the staffing infrastructure. The additional staffing, which we anticipate being filled within the next six months, will help our AAA assist with the MPA work in Napa County, explore and develop new programs, including creation of an ADRC, and, as both counties have discussed, assist in writing grant proposals relating to aging services for both Solano and Napa County.

Finally, with this new Fiscal Year 2024-2025, HHSA added an HHSA Management Analyst position to the Agency. This position will report to the Director of HHSA and among the many Agencywide priorities, this position will be dedicated part-time to help bolster the support of the NOAA work, work with the AAA Executive Director and Deputy Director of HHSA-CSOA division, and community-based organizations to help support the provision of older adult services in Napa County. It is this type of forward thinking, marshalling of resources, and overwhelming investment in services by HHSA and the County that positions us well to continue meeting the needs of our aging population.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

Recommendation 6. Beginning July 1, 2024, law enforcement establish periodic training that reinforces how to recognize and report elder abuse.

Response, Director of Health and Human Services Agency

It has been clarified by the Napa County Grand Jury that this Recommendation is not directed to the Director of Health and Human Services Agency. Therefore, no response is provided.

Recommendation 7. By September 30, 2024, HHSA develop plans for hiring additional social workers and mental health professionals to meet the growing demand of the increasing elderly population.

Response, Director of Health and Human Services Agency

This recommendation has been implemented. While we recognize that the growing elderly population will require increasing staffing to meet their needs, we already have the requisite mechanisms in place to increase that staffing as circumstances change. Since 2017, HHSA has expanded the number of APS social workers from four to seven. Just this year, an additional Social Worker Supervisor was added to support the growing unit and resource increased outreach, training, and education on elder abuse. Our caseloads in Napa County are consistent with comparable counties, and we continue to maintain excellence in timeliness standards. The Grand Jury astutely recognizes that responding to and preventing elder abuse exists in a broad context and array of services and therefore, responding to the needs of a growing older adult population requires more than planning for additional staffing.

By way of background, the mental health services directly provided by HHSA for older adults includes our Older Adult Full-Service Partnership (OAFSP) program where the overall goal is to divert adults with serious mental illness (SMI) to be maintained in the community living as independently as possible. HHSA also provides case management support to older adults who are conserved and non-conserved. Our OAFSP program provides clients with assistance with housing, linkage to employment and education, linkage to medical services, caregiving resources, social security, transportation, food resources, and any other identified barriers. The embedded unit within our CSOA division is staffed by a Supervising Mental Health Counselor, four Mental Health Counselors, and one Senior Mental Health Worker. Although there is currently one vacancy, HHSA, in conjunction with its Behavioral Health division leadership, continually evaluates staffing needs to ensure programs are appropriately and efficiently resourced. HHSA will bring forward any needed requests for staffing in the normal course of business.

It is worth noting that HHSA also supports the provision of mental health services to older adults through numerous contracts with community-based providers. As previously explained, one of the many funding opportunities HHSA has made available over the years has included MSA grant awards and Requests for Proposals (RFPs) for services supported by MHSA funding. Through the MHSA RFP process, HHSA has been intentional in supporting community-based programs that support mental health services to older adults reflected in contracts totaling almost a million dollars over the next two years. These programs include Molly's Angels Comprehensive Assistance and Resources for the Elderly (CARE) program which will reduce social isolation and depression among older adults through wrap-around supportive services, Mentis' "Healthy Minds, Health Aging" program that provides therapeutic intervention for adults 60 years of age and older, a contract with Mentis to help implement Napa County's Strategic Plan for Suicide Prevention with benefits to older adults, and Up Valley Family Center's Senior Wellness Program providing individual and group counseling for older adults. While HHSA maintains staffing resources we are also continuously aligning and leveraging funding to meet the mental health and social service needs of Napa County's older adults in other ways.

The Board of Supervisors agrees with the Director of Health and Human Services Agency.

CONCLUSION

The Director of Health and Human Services Agency would like to acknowledge the work of the Grand Jury. Their detailed observations and recommendations point to many important areas relevant to addressing the

needs of our older adults. It is hoped that their concerns have been addressed in the discussion above, and we look forward to continuing this important work in conjunction with our partners.

NAPA COUNTY
RESPONSES TO THE GRAND JURY REPORT ON THE
SKYLINE ACADEMY AT JUVENILE HALL DELAY AND DISORGANIZATION

AUGUST 20, 2024

FINDINGS

Finding 1. Although Skyline Academy was scheduled to open at the end of 2023, the Jury's investigation detected limited organized effort toward the opening, no urgency, and minimal forward progress.

The Chief Probation Officer disagrees with the finding. Contrary to this finding, the Skyline Academy opened as a pilot program in Juvenile Hall in January 2024 and has since served seven in-custody youth with enhanced evidence-based programming, prosocial activities, and targeted interventions addressing criminogenic needs. This initiative required a substantial coordinated effort among multiple agencies, community partners, and stakeholders, all working towards a common goal.

The project's success necessitated extensive infrastructure work, including approvals, funding allocations, and conceptual designs. Construction in a detention facility demands multiple levels of legal compliance and design review, which naturally take time to work through county and state processes. The preparatory phase involved significant data mining, financial and resource reviews, and reallocation of staffing resources, alongside efforts to recruit for hard-to-fill positions.

Recognizing that the heart of every successful program lies in its people, the project emphasized staff involvement. Experts in their respective fields were given the opportunity to contribute through a committee-based approach, ensuring buy-in and long-term sustainability. The pilot program aimed to keep youth local, focusing on their rehabilitative goals, and provided staff and providers the chance to engage with the youth prior to the formal program launch. This approach allowed the youth to have a voice in their own rehabilitation process.

The pilot program has been serving seven Napa County youth who would have otherwise been transferred outside of the county, away from their families. The pilot program underscores the commitment to building a culture of support, safety, rehabilitation, and opportunity for the youth. The program continues to develop and is scheduled to formally open by the end of Summer 2024, reflecting a deep commitment to fostering a supportive and rehabilitative environment for youth in need.

Finding 2. Repeated requests for details on the development of Skyline Academy went unmet, leading the Jury to conclude that no formal project plan is being implemented.

The Chief Probation Officer partially disagrees with the finding. All requests for information made directly from the Chief Probation Officer were provided timely, which is the expectation, and all staff will be notified via memo of this standard. The definition or expectations of a formal project plan may be interpreted differently, as the focus was on designing and developing a program that meets the individual needs of youth, creating linkages to robust community supports, engaging a variety of stakeholders, organizing construction projects, completing contracts and requests for proposals, creating new logos, increasing youth literacy and educational opportunities through new tablets for youth and career-technical education, painting murals to soften the look of the facility, seeking ways to expand

opportunities for youth both inside and outside of the program, increasing mental health services, and creating programming infrastructure that is culturally relevant and in the native language of the youth and their families when possible.

The development and implementation of the pilot program involved numerous stakeholders and was structured through the department's strategic planning initiative, intentionally designed to leverage a committee structure. This collaborative approach ensured that subject matter experts within the department had the authority and ability to contribute to the design, creation, and implementation of the program, resulting in a more innovative and community-focused initiative.

The pilot phase was led by a committee of staff and has allowed for valuable learning and adjustments, ensuring that the final program is well-suited to the needs of the youth and families they serve. By fostering a collaborative environment and involving various experts in leadership roles, the program aims to deliver targeted and effective interventions for youth. The formal program documents are being finalized, with full implementation scheduled by the end of Summer 2024, reflecting a steadfast dedication to building a supportive, accountable, and rehabilitative culture for youth.

Finding 3. The Jury found that normal operations in the Prospect wing of Juvenile Hall (which houses short-term youth) have been resumed following the suspension of Covid restrictions.

The Chief Probation Officer agrees with the finding.

RECOMMENDATIONS

Recommendation 1. By October 1, 2024, the Board of Supervisors direct the Napa County Probation Officer to develop and implement a detailed project plan for the Skyline Academy. The plan should formalize the project scope, be updated monthly, and provide a timeline, steps toward completion, assigned tasks, progress towards goals, available resources, and a budget.

Response, Chief Probation Officer: This recommendation will not be implemented, because it is not warranted.

The Skyline Academy is scheduled to formally open by the end of Summer 2024, making this level of detailed project planning for implementation unnecessary. The program has been in a pilot phase since January 2024.

The need for this program arose, in part, from the rapid passage of Senate Bill 823, which realigned the Division of Juvenile Justice population in California from the state to the local level. This historic change required a complete redesign of how serious and violent youth were handled statewide. Napa County did not open a Secure Track Program, which is designed for youth who would have otherwise been sent to the state Division of Juvenile Justice. Napa County prioritizes the rehabilitation of youth while holding them accountable for their behaviors with the goal of rehabilitation prior to adulthood. Consequently, the County has not sent many youth to the state for care and could not sustain opening a Secure Track Program.

The Skyline Academy is designed to be a local program that meets the individualized needs of youth with the goal of preventing escalation into a Secure Track Program and enabling re-entry into the Napa

Community rehabilitated, with positive supports in place and a new opportunity to be a productive member of our society. The program will have set policies that meet Title 15 regulations as required by law, and a program handbook to ensure that youth, families, and staff understand the programmatic goals.

Additionally, the budget has been approved in a public meeting by the SB 823 subcommittee of the Juvenile Justice Coordinating Council for fiscal year 2024-2025. No additional staffing resources are requested for this program, as the Napa County Probation Department is allocating only previously existing positions to operate the Skyline Academy. For ongoing data collection and program evaluation, Napa County has partnered with the University of Cincinnati to assist in the design of programmatic data and outcomes.

The Board of Supervisors agree with the Chief Probation Officer.

Recommendation 2. By October 1, 2024, the Board of Supervisors direct the Napa County Probation Officer to identify a project manager to be accountable for the timely and successful completion of Skyline Academy.

Response, Chief Probation Officer: The recommendation has been implemented.

The Napa County Probation Department recruited and hired a Chief Deputy Probation Officer to oversee Juvenile Hall, who also serves as the project manager for the program. Additional support includes the Asisstant Chief Probation Officer and the Chief Deputy overseeing the Juvenile Division to ensure the program operates as intended both during the pilot phase and the formal operations phase.

The Board of Supervisors agree with the Chief Probation Officer.

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1397

TO: Board of Supervisors

FROM: Jason Martin, Deputy County Fire Chief

REPORT BY: Stacie McCambridge, Staff Services Manager

SUBJECT: Purchase 2023 Ford Expedition and Motorola Radios, Budget Transfer, and Sole Source from Cordelia Fire District

RECOMMENDATION

Approve a Budget Amendment to increase the appropriations by $70,000 in Fire Operations to purchase a 2023 Ford Expedition and 6 Motorola Dual Band Radios, waive competitive bidding requirements, and provide a sole source award to Cordelia Fire District for the vehicle. (Fiscal Impact: $70,000 Expense; Fire Fund, Not Budgeted: Discretionary)

[4/5 vote required]

BACKGROUND

In June of 2024, Cordelia Fire District notified the County Fire Department (Department) of their plans to consolidate with the neighboring City of Fairfield and the liquidation of District assets. The Department is interested in utilizing one of the assets, a 2023 Ford Expedition command vehicle with 6 Motorola dual band radios, speaker microphones, and bank charger (capable of Fairfield/Vacaville 800 MHZ). The vehicle includes a “code three” (lights and siren) package, command box, installed radios, and low mileage of 8,911 miles. This purchase provides a cost savings to the County of approximately $60,000, a 50% savings surpassing the savings that the County receives through the Enterprise lease agreement.

The 6 radios will be reinstalled in the current Battalion Chief 1416A vehicle, whose primary response area is within mid to southern Napa. This will ensure communications with the City of Vallejo and Fairfield, providing a cost savings of $25,000 due to existing licensing that come with the radios.

Department staff requests the approval of a Budget Amendment of $70,000 to purchase a 2023 Ford Expedition with 6 Motorola dual band radios. This vehicle will be an addition to the County Fire Marshal fleet assigned to the Napa County Fire Marshal. With the increase to staffing in the Fire Marshal’s Office, a request for an additional vehicle would have been made through the leasing program this year. The current leased vehicle assigned to the Fire Marshal’s Office will be used to offset the need for vehicles to compliment the new

positions found in the Training Bureau.

The Department would like to purchase these items from Cordelia Fire District without securing competitive bids. The vehicle is emergency response-ready, includes radios with licensed public safety frequency band capabilities, and allows for an approximate 50% savings to the County.

Requested Actions:

1. Approve a Budget Amendment increasing appropriations by $70,000 in Fire Operations Capital Assets (2100000-55400) offset by use of available fund balance, to transfer; and

2. Increase of capital assets in the amount of $70,000 for the purchase of a 2023 Ford Expedition command vehicle with 6 Motorola dual band radios.

3. Request waiver of competitive bidding requirements and sole source award for the purchase of a 2023 Ford Expedition from the Cordelia Fire District in the amount of $70,000 pursuant to County Ordinance Code 2.36.090.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	Funds to be transferred from Fire's Fund Balance.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	With the increase to staffing in the Fire Marshal's Office, a request for an additional vehicle would have been made through the leasing program this year. The current leased vehicle assigned to the Fire Marshal's Office will be used to offset the need for vehicles to compliment the new positions found in the Training Bureau.
Is the general fund affected?	No
Future fiscal impact:	The cost of maintaining the apparatus would be supported by the Fire Protection Fund (2100).
Consequences if not approved:	Fire would have made a request for this type of vehicle this year; the County would miss a cost saving of approximately $60,000, approximately a 50% savings surpassing the savings that we receive with the Enterprise Lease contract.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1300

TO: Board of Supervisors

FROM: Jennifer Yasumoto, Director of Health and Human Services Agency

REPORT BY: Gaby Angeles, Staff Services Analyst II

SUBJECT: Agreement No. 250159B with Mentis, Inc. (Early and Periodic Screening, Diagnostic and Treatment)

RECOMMENDATION

Approve and authorize Agreement No. 250159B with Mentis, Inc., for $1,520,000 for Fiscal Year 2024-2025, and each subsequent annual renewal, for the provision of Early and Periodic Screening, Diagnostic and Treatment program services. (Fiscal Impact: $1,520,000 Expense; Health and Human Services Agency Fund; Budgeted; Mandatory)

BACKGROUND

The County's Health and Human Services Agency (HHSA) operates a Mental Health Plan (MHP) through its agreement with the California Department of Healthcare Services (DHCS). The MHP is part of the Behavioral Health Division and requires that certain mental health services be provided to Medi-Cal beneficiaries in the County, including Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services.

Mentis, Inc,. has been providing mental health support to the Napa Valley Unified School District (NVUSD) population for many years. The County currently contracts with two other providers for these mandated EPSDT services and is adding a third provider to increase the overall capacity and flexibility to deliver services to youth-especially in school settings. Mentis is both an adult and child mental health provider of intense individualized specialty mental health programs to children and families in difficult situations. Contracted services will be provided through co-location at NVUSD and Napa County Office of Education (NCOE) sites throughout the Napa Valley. Services will also be provided at County-approved community settings and Mentis's clinical offices in the City of Napa.

Requested Action:

1. Approve and authorize Agreement No. 250159B with Mentis, Inc., for $1,520,000 for Fiscal Year 2024-2025,

and each subsequent annual renewal.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Health and Human Services Agency, Behavioral Health Division
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	This agreement contains a provision for automatic annual renewal. Appropriations have been included in the requested Fiscal Year 2024-2025 budget and future fiscal years will be budgeted accordingly.
Consequences if not approved:	If this agreement is not approved, there will be less capacity of mental health services for youth.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

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NAPA COUNTY AGREEMENT NO. 250159B
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the _____day of _____ 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **MENTIS, INC.**, a California nonprofit, hereinafter referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to below collectively as "Parties" and individually as "Party."

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services in order for CONTRACTOR to provide specialty Mental Health Services in the community and the Napa Valley Unified School District; and CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as "Sections" or "Paragraphs" interchangeably.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

NAPA COUNTY, a political subdivision of the State of California	**CONTRACTOR**
By _____ **JOELLE GALLAGHER, Chair of the Board of Supervisors** ATTEST: NEHA HOSKINS, Clerk of the Board By: _____ DATE APPROVED BY THE BOARD: _____ Processed by: _____ Deputy	Signature DocuSigned by: Robert Weiss F9FD6AF031AF41E... **ROB WEISS**, Executive Director Signature DocuSigned by: JULISSA MARCENCIA D1A7D315665945E... **JULISSA MARCENCIA**, Board Secretary

Maximum Amount of this Agreement: $1,520,000.00 Term Expires: June 30, 2025 Automatic renewal of term applies.	APPROVED AS TO FORM BY NAPA COUNTY COUNSEL By*: Rachel L. Ross (e-signature)* Date: August 9, 2024

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TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 250159B

SECTION 1. Contract Administration

For purposes of this Agreement, the following shall apply:

1.1 "Department" shall mean: Health and Human Services Agency

1.2 "Director" shall mean the person elected or appointed to the chief management position of the Department.

1.3 "Contract Administrator" shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY's Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94558.

1.4 The Program Manager for COUNTY shall be: Cassandra Eslami, Deputy Director of HHSA/Behavioral Health Director

1.5 The Contract Contact Person for CONTRACTOR shall be: Rob Weiss, Executive Director, 709 Franklin St., Napa, CA 94559

1.6 CONTRACTOR is a [ ] sole proprietor [ ] partnership [X] corporation [ ] public agency [ ] other (specify).

1.7 The source of funding for this Agreement shall be: Medi-Cal, Federal Financial Participation (FFP), HHSA General Fund, and/or Realignment Funds.

1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may amended from time to time:

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at **https://www.countyofnapa.org/DocumentCenter/** under "Departments/Health and Human Services/Administration/Contracts and Administration Documents" (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

SECTION 2. General Terms and Conditions.

Attached hereto and incorporated by this reference as Exhibit C is "SECTION 2. General Terms and Conditions – Version 12", which shall be referred to herein as the "General Terms and Conditions" and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

SECTION 3. Specific Terms and Conditions.

The following Specific Terms and Conditions provide additional terms and conditions or modify

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the General Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a conflict exists with a General Term and Condition.

3.1 The following Specific Terms and Conditions apply when CONTRACTOR's obligations under this Agreement involve the following as designated by an "X":

[X] (a) Contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (General Terms and Conditions Paragraph 2.8(b) applies).

[ ] (b) Construction or pre-construction related services (General Terms and Conditions Paragraph 2.19(e) applies).

[ ] (c) Work on or the supplying of any software systems or equipment containing or suspected of containing clocks or embedded chips functioning as or dependent upon the use of clocks or calendars (General Terms and Conditions Paragraph 2.29 applies).

[ ] (d) Services covered by a Federal Health Care Program (General Terms and Conditions Paragraph 2.31 applies).

[ ] (e) Services covered by a State Medi-Cal Specialty Mental Health Program (General Terms and Conditions Paragraph 2.32 applies).

[ ] (f) Mental Health Activities (General Terms and Conditions Paragraph 2.33 applies).

[ ] (g) Services involving the receipt, use or disclosure of protected health information: A determination has been made by COUNTY's Privacy Officer that CONTRACTOR shall not provide services under this Agreement as a Business Associate to COUNTY. General Terms and Conditions Paragraph 2.34(b) does not apply to this Agreement.

[ ] (h) Services provided under COUNTY's Managed Care Provider Program, which shall be subject to all the terms and conditions set forth in the Napa County Mental Health Managed Care Provider Manual, herein incorporated by reference and on file with the Clerk of the Napa County Board of Supervisors.

[ ] (i) Services as a provider for which CONTRACTOR has submitted a "Provider Application," which CONTRACTOR warrants that the information contained in said application is accurate and understands that any inaccuracies may be grounds for termination of this Agreement by COUNTY. CONTRACTOR authorizes COUNTY to consult with third parties, including but not limited, to the National Practitioner Data Bank or other applicable licensing boards.

[X] (j) Services involving the use or disclosure of personally identifiable information that are performed as a subcontractor under COUNTY's contract with another entity when that contract requires COUNTY to include its applicable terms in COUNTY's subcontracts. (General Terms and Conditions Paragraph 2.35 applies.)

[ ] (k) Services determined by the Department Director to be covered by Department's Code of Ethics. (General Terms and Conditions Paragraph 2.38 applies.) CONTRACTOR understands that, by entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR has received, read, and understands the Code of Ethics, and agrees to abide by the terms therein as applicable to CONTRACTOR's activities under this Agreement. Department shall provide CONTRACTOR with copies of Department's Code of Ethics prior to

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the execution of the Agreement. CONTRACTOR further understands that on an annual basis CONTRACTOR shall provide written certification to Department that CONTRACTOR has received, read, understands, and will abide by Department's Code of Ethics.

[X] (l) Services have been determined by the Department Director, or may be determined at a later date, that CONTRACTOR is a subrecipient or pass-through entity and is therefore required to meet all of the requirements found in 2 C.F.R. § 200.331. (General Terms and Conditions 2.40 applies.) COUNTY shall notify CONTRACTOR in accordance with General Terms and Conditions Paragraph 2.13 (Notices), of any change in designation as a subrecipient, and any subsequent increase to the amount of Federal funding CONTRACTOR shall receive under the terms of this Agreement. CONTRACTOR shall be bound thereby upon receipt of notice.

3.2 Source Funding.

(a) Change in Source Funding. Paragraph 1.7 may be unilaterally modified by COUNTY upon written notice to CONTRACTOR who shall be bound thereby immediately upon receipt. The Department Director is delegated the authority to modify Paragraph 1.7 and provide such written notice, but may exercise such authority only after consultation with, and concurrence of, the Napa County Counsel and the Napa County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Napa County Board of Supervisors to modify Paragraph 1.7.

(b) Amendment to Source Funding Agreement. If Paragraph 1.7 identifies a funding source agreement, then any amendment to the funding source agreement shall be automatically incorporated and made a part of this Agreement, effective in accordance with the amended funding source agreement. As a subcontractor of COUNTY, CONTRACTOR shall be bound by the applicable terms of the funding source agreement, and any amendments thereto.

3.3 Statement of Economic Interests. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with the disclosure obligations set forth in Paragraph 2.23(b).

3.4 COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits A and B, attached to this Agreement, provided that any such amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

SECTION 4. Incorporated Documents.

The following documents are incorporated herein by this reference and attached hereto and labeled as the following Exhibit letters:

Exhibit A: Scope of Work (attached)
Exhibit B: Compensation and Payment Schedule (attached)
Exhibit C: "Section 2, General Terms and Conditions, Version 12" (attached)
Exhibit D: Specialty Mental Health Services CalAIM and Payment Reform Contractor Boilerplate (attached)
Exhibit E: Medi-Cal Outpatient Rates (attached)

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EXHIBIT A
SCOPE OF WORK
Upon Approval through June 30, 2025
(and each subsequent annual automatic renewal)

I. Overview

As an organizational provider agency, CONTRACTOR shall provide administrative and direct Early Prevention, Screening, Detection and Treatment (EPSDT) program services to COUNTY'S Medi-Cal clients as defined in Title 9, Division 1, Chapter 11 of the California Code of Regulations (hereinafter "CCR"). CONTRACTOR may provide services to Napa County Medi-Cal eligible youth referred to CONTRACTOR by COUNTY Behavioral Health, Napa County schools, or other community-based organizations. CONTRACTOR shall also provide supplemental specialty mental health services (hereinafter referred to as Intensive Care Coordination [ICC], and Intensive Home-Based Services [IHBS]) to COUNTY's individuals receiving Medi-Cal in the CONTRACTOR's program, locations and/or co-locations. CONTRACTOR shall create and maintain sufficient documentation, as specified herein, to substantiate its claims for contract services authorized and actually provided.

II. Background

Early and Periodic Screening, Diagnosis and Treatment ("EPSDT") Supplemental Specialty Mental Health Services mean those services defined in CCR Title 22, Chapter 11, Section 51184.

EPSDT, IHBS, and ICC service delivery may be provided by co-location at a NCOE and/or NVUSD program sites in order to better meet the needs of eligible students. Services may also be provided in other community, home, or clinical settings as deemed appropriate by COUNTY.

EPSDT services, when offered under this contract, are fully governed by its provisions and limitations, as described herein.

III. Service Descriptions/Treatment Modalities

Assessment means a service activity which may include a clinical analysis of the history and current status of a beneficiary's mental, emotional, or behavioral disorder; relevant cultural issues and history; diagnosis; and the use of testing procedures.

Child & Family Team (CFT) means a group of individuals engaged in a variety of processes to identify the strengths and needs of the child/you and family, to help achieve positive outcomes for safety, permanency, and well-being. The CFT process should follow the principles, values, and practices of the Integrated Core Practice Model (ICPM), and reflect the culture and preferences of the child, youth, and family. In addition to the required participation of involved public agency representatives, the composition of the team is driven by family members'

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preferences and may include the child/youth, parents, caregivers, other family members, professionals, natural community supports, or other individuals identified by the family. The CFT typically conducts and coordinates its work through a CFT meeting, and activities include:

A. Define and reach identified goals for the child/youth.
B. Identify family member strengths and needs.
C. Develop a child/youth and family-centered plan that articulates strategies for achieving goals.
D. Monitor, recommend, and adjust services and connection to community resources.

Child & Family Team (CFT) Meeting means a functional structure for members of the Child & Family Team to meet and engage in thoughtful and effective planning. CFT meetings provide opportunities for children/youth and their families to participate in the development and implementation of individual case or treatment plans, or related services that are designed to meet their needs. CFT meetings promote collaboration and cooperation among child-serving individuals and agencies. For children and youth in the child welfare or juvenile probation systems, the placing agency is responsible for convening and engaging members of the CFT. For children and youth who are receiving ICC, IHBS, or TFC services, a CFT meeting must occur at least every 90 days. For children/youth in child welfare or juvenile probation systems who are not receiving ICC, IHBS, and TFC, the placing agency will convene a CFT meeting according to the needs of the child and family, but no less than once every six months.

Mental Health Services means those individual or group therapies and interventions that are designed to provide reduction of mental disability and improvement or maintenance of functioning consistent with the goals of learning, development, independent living and enhanced self-sufficiency and that are not provided as a component of adult residential services, crisis residential treatment services, crisis intervention, crisis stabilization, day rehabilitation, or day treatment intensive. Services activities may include but are not limited to assessment, plan development, therapy, rehabilitation, and collateral.

Significant Support Person means persons, in the opinion of the beneficiary or the person providing services, who have or could have a significant role in the successful outcome of treatment, including but not limited to the parent(s) or legal guardian(s) of the beneficiary who is a minor, the legal representative of the beneficiary who is not a minor, a person living in the same household as the beneficiary, the beneficiary's spouse, and relatives of the beneficiary.

Plan Development means a service activity that consists of development of client plans, approval of client plans, and/or monitoring of a beneficiary's progress.

Therapy means a service activity that is a therapeutic intervention that focuses primarily on symptom reduction as a means to improve functional impairments. Therapy may be delivered to

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an individual or group of beneficiaries and may include family therapy at which the beneficiary is present.

Rehabilitation is a service activity that includes assistance in improving, maintaining, or restoring an individual's or group of individuals' functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, support resources, and/or medication education.

Targeted Case Management means service activities related to locating, coordinating and monitoring necessary and appropriate services for a beneficiary related to the beneficiary's treatment. Targeted Case Management services must be provided in close coordination with other service providers to ensure each provider is focusing their work on a specific aspect of each individual's goals and/or objectives. COUNTY will not authorize CONTRACTOR to provide Targeted Case Management Services if the beneficiary is already receiving Napa County Behavioral Health Plan services from another Napa County Behavioral Health Plan provider. Additionally, CONTRACTOR will inquire of each individual served whether or not other service providers are assisting the beneficiary with the goals/objectives identified on their mental health treatment plan. If the individual being served confirms this as fact, CONTRACTOR shall contact other providers to ensure that CONTRACTOR is not duplicating other providers' efforts. If another provider confirms that it is providing similar assistance to help the individual with the same objective(s), then CONTRACTOR shall not provide Targeted Case Management services to the individual that target those objective(s).

Crisis Intervention Service, lasting less than 24 hours, to or on behalf of a youth for a condition which requires more timely response than a regularly scheduled visit. Service activities may include but are not limited to assessment, collateral, and therapy. Note that billing for crisis intervention services is limited to 8 hours per instance.

Intensive Care Coordination (ICC) is an intensive form of Targeted Case Management that facilitates implementation of the cross-system/multi agency collaborative services approach described in the Integrated Core Practice Model (ICPM). ICC services facilitate assessment, care planning, and coordination of services, including urgent services for children/youth. While the key service components of ICC are similar to Targeted Case Management (TCM), ICC differs in that it is intended for youth who are involved in multiple child-serving systems, have more intensive needs, and/or whose treatment requires cross-agency collaboration. ICC services are integrated into the Child and Family Team (CFT) process to ensure that the needs of the child/youth are appropriately and effectively met. ICC service components include:

A. Planning and assessment of strengths and needs
B. Service planning and implementation
C. Monitoring and adapting of services, referrals, strengths/needs, and plans

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D. Transition planning

Intensive Home-Based Services (IHBS) are individualized, strength-based interventions designed to ameliorate mental health conditions that interfere with a child or youth's functioning. Interventions are aimed at helping the child/youth build skills for successful functioning in the home and community, as well as improving the family's ability to help the child/youth function successfully. IHBS activities are expected to be more intensive on domains such as service frequency, services variety, etc. than the standard rehabilitative specialty mental health service provided to children/youth with less intensive needs. IHBS may be delivered during evenings, weekends, and holidays consistent with the identified needs of the child/youth and is consistent with a "whatever it takes" approach to service delivery. IHBS will be predominantly delivered outside an office setting, and in the home, school, or community. IHBS activities support the engagement and participation of the child/youth and their significant support persons. Service activities included in IHBS may include, but are not limited to:

A. Medically necessary skill-based interventions for the remediation of behaviors or improvement of symptoms, including but not limited to the implementation of a positive behavioral plan and/or modeling interventions for the child/youth's family and/or significant others to assist them in implementing the strategies;
B. Development of functional skills to improve self-care, self-regulation, or other functional impairments by intervening to decrease or replace non-functional behavior that interferes with daily living tasks or the avoidance of exploitation by others;
C. Development of skills or replacement behaviors that allow the child/youth to fully participate in the CFT and service plans including but not limited to the plan and/or child welfare service plan;
D. Improvement of self-management of symptoms, including self-administration of medications as appropriate;
E. Education of the child/youth and/or their family or caregiver(s) about, and how to manage the child/ youth's mental health disorder or symptoms.
F. Support of the development, maintenance and use of social networks including the use of natural and community resources;
G. Support to address behaviors that interfere with the achievement of a stable and permanent family life; Support to address behaviors that interfere with seeking and maintaining a job;
H. Support to address behaviors that interfere with a child/youth's success in achieving educational objectives in an academic program in the community; and
I. Support to address behaviors that interfere with transitional independent living objectives such as seeking and maintaining housing and living independently.

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IV. Provision of Services

CONTRACTOR shall provide EPSDT Specialty Mental Health Services throughout the County of Napa.

CONTRACTOR shall provide supplemental specialty mental health services (ICC and IHBS) in accordance with applicable letters, regulations and policies issued by the State Department of Health Care Services (hereinafter referred to as DHCS) including, but not limited to, "Medi-Cal Manual for Intensive Care Coordination (ICC), Intensive Home Based Services (IHBS), and including all subsequent and future DHCS letters and notices pertaining to provision of ICC and IHBS, which shall be incorporated by reference herein. All related Pathways to Wellbeing Letters and Information Notices to date can be found on the Pathways to Well-Being page listed on the cdss.gov website.

V. Prior Authorization and Referral for Outpatient SMHS

Prior authorization is not required for the following services/service activities:

A. Crisis Intervention
B. Crisis Stabilization
C. Mental Health Services, including initial assessment
D. Targeted Case Management
E. Intensive Care Coordination
F. Peer Support Services
G. Medication Support Services

Prior authorization or COUNTY referral is required for the following outpatient services:

A. Intensive Home-Based Services
B. Day Treatment Intensive
C. Day Rehabilitation

Authorization and Re-Authorization timeframes are as follows:

A. Intensive Home-Based Services – initial authorization will be for a maximum of 1 year. IHBS may be re-authorized for additional time based on documentation submitted by the provider that supports continued medical necessity for services.

COUNTY is responsible for authorizing and reauthorizing CONTRACTOR'S services consistent with Department of Health Care Services (DHCS) requirements specified in Napa County's DHCS Contract.

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For cases whom **COUNTY Access completes the initial comprehensive assessment** and refers to CONTRACTOR for ongoing services:

COUNTY ACCESS team will open the client episode in the electronic health record, including the following clinical assessment documentation and informing materials:

A. Napa County Health and Human Services Demographic Form
B. Napa County Health and Human Services Behavioral Health Comprehensive Assessment
C. Napa County Health and Human Services Mental Status Exam
D. Napa County Health and Human Services Diagnosis Form
E. Napa County Health and Human Services Behavioral Health Division Admission Agreement and Consent for Treatment
F. Napa County Health and Human Services Agency Cost of Behavioral Health Services
G. Acknowledgement of Receipt of Notice of Privacy Practices
H. Napa County Health and Human Services Behavioral Health Services Interpretive Services Disclosure Form
I. Napa County Behavioral Health Access Registration Forms Checklist

COUNTY Access staff will send notification through the electronic health record that a new client has been assigned to their program.

CONTRACTOR will:

A. Accept COUNTY Access team initial comprehensive assessment and intake documentation.
B. Provide first face-to-face mental health service as soon as possible, but no later than *10 calendar days* from receipt of the referral.
C. Complete any additionally required documentation, per Authorizations Guide, as soon as possible in order to initiate ongoing mental health services.
D. Close clients within the electronic health record who do not engage. Those who engage beyond *60 calendar days* of date of initial assessment, CONTRACTOR will contact COUNTY Access for guidance.

For cases whom **CONTRACTOR completes the initial assessment**

CONTRACTOR will:

A. Offer face-to-face initial screening appointment within *10 calendar days* of request for service.
   1. The first request for service occurs when the individual and/or guardian initiates the request or agrees to the offer of service made by the CONTRACTOR.
B. The time period for CONTRACTOR to complete an initial assessment and subsequent assessments for SMHS is up to clinical discretion; however, providers shall complete

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assessments within a reasonable time and in accordance with generally accepted standards of practice. CONTRACTOR will enter all required documentation into the electronic health record.

C. At the end of assessment, CONTRACTOR may choose to offer and provide SMHS that do not require prior authorization. If the CONTRACTOR is unable to provide services, a completed referral form may be sent to COUNTY Access (mhaccess@countyofnapa.org attention MH Access Supervisor) and entered into the electronic health record using the most current referral procedure.

D. For individuals who do not meet CONTRACTOR level of care:

1. If it is determined that the client does not meet criteria for services, provide client/family with a ***Notice of Adverse Benefit Determination*** **(NOABD)**.
2. Inform the client/family of the determination and refer/collaborate with the Managed Care Plan (MCP)/Carelon for services.
3. If the client/family accept the referral to MCP/Carelon, CONTRACTOR shall complete a Transition of Care Tool in the electronic health record, print and send to MHAccess@countyofnapa.org. COUNTY will send the Transition of Care Tool to the MCP.

All services provided by CONTRACTOR and subject to reimbursement hereunder are defined in accordance with CCR Title 9, Division 1, Chapter 11.

VI. Requests for Services

Requests for services can be directed to COUNTY ACCESS or the CONTRACTOR may complete the assessment. CONTRACTOR will document all referrals and intake admissions in a Request for Services log, which shall meet all COUNTY requirements and be provided to COUNTY'S staff upon request. At minimum the CONTRACTOR's Request for Services logs shall include:

A. The name of beneficiary;
B. The date of request;
C. The date the assessment is offered; and
D. The initial disposition of the request.

VII. Client Eligibility

CONTRACTOR shall be responsible for verifying beneficiary Napa County Medi-Cal status and eligibility for EPSDT and Medi-Cal services for all clients seen on or prior to the first appointment with the client and monthly thereafter until treatment ends in compliance with Napa County protocols. In addition to serving individuals whose county of origin/adjudication is Napa, children and their families with Medi-Cal aid codes 03, 04, and 4A may also be seen with the written consent of the Behavioral Health Director.

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These Medi-Cal aid codes are defined as follows:
03 ADOPTION ASSISTANCE PROGRAM (AAP). Covers children receiving Federal cash grants under Title IV-E to facilitate the adoption of hard-to-place children who would require permanent foster care placement without such assistance.
04 ADOPTION ASSISTANCE PROGRAM/AID FOR ADOPTION OF CHILDREN (AAP/AAC). Covers children receiving cash grants under the state-only AAP/AAC program.
4A OUT-OF-STATE ADOPTION ASSISTANCE PROGRAM (AAP). Covers children for whom there is a state-only AAP agreement between any state other than California and adoptive parents.

CONTRACTOR's Clinic Coordinator and Program Director will meet weekly to assess client eligibility. Once a client is deemed eligible, the Program Director or designee arranges for a face-to-face interview with the child and parents for an Intake Screening.

Should any client lose their Medi-Cal status during the course of treatment, CONTRACTOR shall notify COUNTY staff with designated responsibility for ongoing monitoring of this agreement. COUNTY will not be responsible for the cost of services offered by CONTRACTOR during any period of time during which child/family are ineligible for Medi-Cal. Ongoing monitoring of Medi-Cal eligibility status is the responsibility of CONTRACTOR throughout the cycle of care for the individuals and families served.

VIII. Notices of Action

CONTRACTOR shall follow COUNTY Behavioral Health timeliness standards for service delivery following request for services. Individuals who are not seen within these standards shall be issued a Notice of Adverse Benefit Determination (NOABD). Completed NOABD forms must be submitted to COUNTY MHP's Quality Coordinator within 2 business days from date of issue. In addition, If CONTRACTOR cannot serve the individual within the COUNTY BEHAVIORAL HEALTH PLAN timeliness standards for service delivery, CONTRACTOR will refer individual to COUNTY for mental health services.

IX. Staffing Requirements – General

A. Mental Health Therapy Services and Mental Health Assessment with Diagnosis Services shall be provided by a Physician, Psychologist, Licensed Clinical Social Worker, Marriage and Family Therapist, Marriage and Family Therapist- Intern, (MFTI), or an Associate Clinical Social Worker (ASW), but may also be provided by a graduate trainee in an approved graduate program of study, so long as each clinical service is delivered under a Licensed Practitioner of the Healing Arts, and each clinical document is co-signed by an LPHA. LPHA's include Educational Psychologists, Psychologists, Marriage and Family Therapists, Licensed Clinical Social Workers, and Psychiatrists.

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B. Other specialty mental health services may be provided by any person determined by COUNTY to be qualified to provide the service, consistent with state law.
C. Medi-Cal mental health services provided to Spanish speaking clients shall be provided by qualified bilingual and bicultural staff whenever possible.
D. CONTRACTOR shall participate in and abide by all COUNTY Behavioral Health credentialing policies and procedures.

X. Allowable Specialty Mental Health Services/Activities

Services/activities to be provided by CONTRACTOR as authorized by COUNTY under this Agreement shall include the following specialty mental health services:

A. Assessment
B. Plan Development
C. Targeted Case Management
D. Collateral
E. Individual Rehabilitation
F. Group Rehabilitation
G. Individual Therapy
H. Family Therapy
I. Group Therapy
J. Crisis Intervention
K. Intensive Care Coordination (ICC)
L. Intensive Home-Based Services (IHBS)
M. Child and Family Team (CFT)
N. Child and Family Team (CFT) Meetings

XI. Contact and Site Requirements

Mental Health Services may be either face-to-face, face-to-face telehealth, or by telephone with the beneficiary or significant support persons and may be provided anywhere in the community. Plan development may be provided in absence of face-to-face or telephone contact with the individual or significant support person, however, must always include participation of the individual and significant support person.

By definition, ICC may be provided to children/youth living and receiving services in the community (including Therapeutic Foster Care (TFC) as well as to children/youth who are currently in the hospital, group home, or other congregate or institutional placement. When ICC is provided in a hospital, psychiatric health facility, community treatment facility, group home or psychiatric nursing facility, it may be used solely for the purpose of coordinating placement of the child/youth on discharge from those Facilities and may be provided during the 30 calendar days immediately prior to the day of discharge, for a maximum of three nonconsecutive periods

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of thirty *(30) calendar days* or less per continuous stay in the facility as part of discharge planning.

IHBS may be provided in any setting where the child/youth is naturally located, including the home (biological, foster or adoptive), schools, recreational settings, childcare centers, and other community settings. IHBS are available wherever and whenever needed including weekends and evenings. IHBS are typically (but not only) provided by paraprofessionals under clinical supervision. IHBS may not be provided to children/youth in Group Homes. IHBS can be provided outside the Group Home setting to children/youth that are transitioning to a permanent home environment to facilitate the transition during single day and multiple day visits as part of a plan coordinated by a Child and Family Team.

XII. Non-reimbursable Services

The following services are not reimbursable under the terms of this Agreement:

A. Academic educational services.
B. Vocational services which have as a purpose actual work or work training.
C. Recreation.
D. Socialization is not reimbursable if it consists of generalized group activities which do not provide systematic individualized feedback to the specific targeted behaviors of the beneficiaries involved.
E. Transportation of a client to a service is not reimbursable.

XIII. Lockouts

CONTRACTOR may provide and document services under the following situations, however those services are not reimbursable as the setting the client resides in or the type and amount of service is non-reimbursable through Medi-Cal. Lockouts include the following:

A. Mental Health Services provided during the time a client is a resident of juvenile hall or another correctional facility.
B. Mental Health Services provided during the time a client is residing in a Crisis Residential Treatment program except on the day of admission.
C. Mental Health Services provided during the time a client is residing in an acute inpatient psychiatric hospital.
D. All Mental Health Services during the time an individual is a resident in a federally defined Institution for Mental Disease (IMD).

An exception to this lockout of reimbursable services is the first day of commitment in an acute care inpatient setting.

XIV. Medical Necessity Criteria for Children and Youth

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CONTRACTOR shall only seek Medi-Cal reimbursement for mental health services when the beneficiary being served meets the medical necessity requirements described herein, pursuant to Welfare and Institutions Code section 14184.402(a). For individuals 21 years of age or older, a service is "medically necessary" or a "medical necessity" when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain as set forth in Welfare and Institutions Code section 14059.5.

For beneficiaries under 21 years of age, a service is "medically necessary" or a "medical necessity" if the service meets the standards set forth in Section 1396d(r)(5) of Title 42 of the United States Code. This section requires provision of all Medicaid-coverable services necessary to correct or ameliorate a mental illness or condition discovered by a screening service, whether such services are covered under the State Plan. Furthermore, federal guidance from the Centers for Medicare & Medicaid Services (CMS) makes it clear that mental health services need not be curative or restorative to ameliorate a mental health condition. Services that sustain, support, improve, or make more tolerable a mental health condition are considered to ameliorate the mental health condition and are thus medically necessary and covered as an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services.

Services provided to a beneficiary must be medically necessary and clinically appropriate to address the beneficiary's presenting condition.

Procedures

Criteria for Beneficiaries under Age 21 to Access the Specialty Mental Health Services Delivery System

For enrolled beneficiaries under 21 years of age, COUNTY will provide all medically necessary SMHS required pursuant to Section 1396d(r) of Title 42 of the United States Code. Covered SMHS shall be provided to enrolled beneficiaries who meet **either of the following criteria**, (1) or (2) below:

A. The beneficiary has a condition placing them at high risk for a mental health disorder due to experience of trauma evidenced by any of the following: scoring in the high-risk range under a trauma screening tool approved by the department, involvement in the child welfare system, juvenile justice involvement, or experiencing homelessness.

OR

B. The beneficiary meets both of the following requirements in a) and b), below:
   1. The beneficiary has at least one of the following:
      a. A significant impairment;

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b. A reasonable probability of significant deterioration in an important area of life functioning;
c. A reasonable probability of not progressing developmentally as appropriate; or
d. A need for SMHS, regardless of presence of impairment, that are not included within the mental health benefits that a Medi-Cal managed care plan is required to provide.

AND

2. The beneficiary's condition as described in subparagraph (2) above is due to one of the following:
   a. A diagnosed mental health disorder, according to the criteria of the current editions of the DSM and the ICD;
   b. A suspected mental health disorder that has not yet been diagnosed; or
   c. Significant trauma placing the beneficiary at risk of a future mental health condition, based on the assessment of a licensed mental health professional.

If a beneficiary under age 21 meets the criteria as described in (1) above, the beneficiary meets criteria to access SMHS; it is not necessary to establish that the beneficiary also meets the criteria in (2) above.

Additional Coverage Requirements and Clarifications

This criteria for a beneficiary to access the SMHS delivery system (except for psychiatric inpatient hospital and psychiatric health facility services) set forth above shall not be construed to exclude coverage for, or reimbursement of, a clinically appropriate and covered mental health prevention, screening, assessment, treatment, or recovery service under any of the following circumstances:

A. Services were provided prior to determining a diagnosis, including clinically appropriate and covered services provided during the assessment process.
B. The prevention, screening, assessment, treatment, or recovery service was not included in an individual treatment plan.
C. The beneficiary has a co-occurring substance use disorder.

Per Welfare and Institutions Code section 14184.402(f)(1)(A), a mental health diagnosis is not a prerequisite for access to covered SMHS. This does not eliminate the requirement that all Medi-Cal claims, including SMHS claims, include a CMS approved ICD-10 diagnosis code.

XV. Discharge Summary

A Discharge Summary is to be completed at case closing. The purpose of the Discharge Summary is to capture essential elements of treatment – referring problem, treatment conducted, response to treatment, and disposition.

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XVI. EPSDT and TBS Notices at the Time of Admission to COUNTY Contracted Psychiatric Hospitals and Other Residential Facilities:

COUNTY and its contract providers are required to provide EPSDT and TBS notices to any full-scope Medi-Cal beneficiary who is under 21 years of age and their representative at the time of admission (or soon thereafter) or placement at:

A. COUNTY contracted hospital when it is an emergency admission;
B. Skilled Nursing Facility/Special Treatment Program offering MH treatment;
C. Mental Health Rehabilitation Center designated as an IMD;
D. Short-Term Residential Therapeutic Program (STRTP).

If a COUNTY beneficiary has been admitted to a contract hospital by a party other than COUNTY CSS, COUNTY providers will provide the notices to the beneficiary and their representative by faxing them to the hospital with a request for delivery. Exception: notifications may be delegated to Probation or CWS staff to deliver during an interagency placement meeting.

XVII. Program Reporting

CONTRACTOR staff shall provide data to COUNTY on a quarterly basis regarding:

A. Number of individuals screened for program
B. Number of individuals referred out to Carelon for mental health services
C. Demographic and language needs of all individuals served by the program
D. Pre and post summary data from the Child and Adolescent Needs and Strengths (CANS) or Adult Needs and Strengths Assessment (ANSA) for all individuals completing treatment through this program
E. PSC-35 data

XVIII. Performance Standards

In evaluating client records COUNTY will evaluate services with reference to applicable contract, state, and federal standards for service delivery and documentation. Without limiting this, HHSA will at a minimum evaluate services and documentation with reference to the standards set forth on the attached Service Descriptions standards in determining whether they qualify for payment under this agreement. This document and the other requirements contained in this agreement shall set forth the minimum standards that CONTRACTOR shall meet, and that COUNTY shall monitor.

In the event COUNTY revises the required standards in the course of the contract year, the revised standards shall be provided to the CONTRACTOR, along with an explanation of the impact of any changes on the CONTRACTOR.

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COUNTY and CONTRACTOR agree to work collaboratively to develop key service quality indicators and outcomes and identify sources of reliable data to measure them. In addition, attributes and characteristics of persons served and other information needed shall be identified.

CONTRACTOR shall provide COUNTY upon request, with documentation of CONTRACTOR's organizational capacity to conduct internal quality management activities, including chart audits. CONTRACTOR shall provide documentation of the measures in place to assess key quality factors (including appropriateness, efficacy, and effectiveness) and key risks (including client safety and adherence to funding standards). At minimum, CONTRACTOR shall be required to conduct internal case record reviews at least quarterly. CONTRACTOR shall submit timely reports of these internal monitoring activities, as well as reports on quarterly incidents, accidents, and client complaints as requested by COUNTY.

XIX. Orientation, Training and Technical Assistance

COUNTY will endeavor to provide CONTRACTOR with training and support in the skills and competencies to (a) conduct, participate in, and sustain the performance levels called for in the contract and (b) conduct the quality management activities called for by the contract.

COUNTY shall provide CONTRACTOR with all applicable standards for the delivery and accurate documentation of services. COUNTY shall make ongoing technical assistance available in the form of direct consultation to the CONTRACTOR upon CONTRACTOR's request to the extent that COUNTY has capacity and capability to provide this assistance. In so doing COUNTY is not relieving CONTRACTOR of its duty to provide training and supervision to its staff or to ensure that its activities comply with applicable regulations and other requirements included in the terms and conditions of this agreement. Any requests for technical assistance by CONTRACTOR regarding any part of this agreement shall be directed to the COUNTY's designated contract monitor.

CONTRACTOR shall require all new employees in positions designated as a "covered individuals" to complete four-hour compliance training within the first 30 days of their first day of work. CONTRACTOR shall require all covered individuals to attend at minimum, a four-hour compliance training annually. These trainings shall be conducted by COUNTY or, at COUNTY's discretion, by CONTRACTOR staff, or both, and may address any standards contained in this agreement. Covered individuals who are subject to this training are any CONTRACTOR staff who has or will have responsibility for, or who supervises any person who has responsibility for, ordering, prescribing, providing, or documenting client care or medical items or services.

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XX. Requirement Resources

California Department of Health Care Services - DHCS
California Code or Regulations (CCR)
California Welfare and Institutions Code (WIC)
CDSS - Pathways to Well-Being
BHIN 22-016
BHIN 21-073

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EXHIBIT B
COMPENSATION AND PAYMENT SCHEDULE
Upon Approval through June 30, 2025
(and each subsequent annual automatic renewal)

I. Compensation

A. Contract Total Price not to exceed **$1,520,000.00.**
B. Approved Specialty Mental Health Services performed, at any program site, shall be entered into COUNTY EHR. Services entered will be extracted from the EHR by COUNTY HHSA billing team and sent to CONTRACTOR as a report for review and approval. Upon CONTRACTOR service approval.

II. Payment Rates

COUNTY shall compensate CONTRACTOR for contract services provided and properly documented at current Napa County HHSA Medi-Cal base rates plus incentives, as defined in Exhibit E to the Agreement and posted on the Napa County HHSA website. Exhibit E shall control in the event of a conflict between Exhibit E and the information posted on the Napa County HHSA website.

A. A billing unit is defined as one minute of service. Only authorized service activities provided by eligible staff, while providing Medi-Cal eligible services to Napa County Medi-Cal eligible clients, shall qualify for payment. The following requirements apply for claiming of services:
    1. Accurate and precise number of minutes shall be reported and billed properly, by a qualified staff member.
    2. A maximum of 60 units of time may be reported or claimed for any single client during a one-hour period.
    3. Units of time reported or claimed shall not exceed hours worked by eligible staff.
    4. When a single staff member provides eligible service to, or on behalf of, more than one beneficiary at the same time, the staff member's time must be prorated to each beneficiary.
    5. When more than one staff member provides an eligible service to more than one beneficiary at the same time, the time utilized by all those providing the service shall be added together to yield the total claimable services. The total time claimed shall not exceed the actual time utilized for claimable services.
    6. All documentation of services provided to, or on behalf of, more than one beneficiary at the same time, or services provided by multiple staff members to one or more beneficiaries at the same time, must include clear indication of the clinical necessity for the chosen treatment approach.

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7. All documentation of services provided to, or on behalf of, more than one beneficiary at the same time, or services provided by multiple staff members to one or more beneficiaries at the same time, must clearly delineate the total minutes of the direct service and the combined number of clients served.

B. Total contract payments for the term shall not exceed the contract maximum, which is based on an estimate of services that may be performed during the contract period and shall not be considered a guaranteed sum.

III. Clients with Medi-CAL and Other Health Coverage (OHC)

Per Federal Regulation, providers must bill all Other Health Coverage (OHC) options prior to submitting claims to COUNTY for Medi-Cal reimbursement. The CONTRACTOR may bill the COUNTY for claims requiring OHC billing and the COUNTY will pre-pay the pending OHC claim. The CONTRACTOR must provide the Explanation of Benefits (EOB) or denial letter along with a copy of the original claim submitted to private insurance within 5 months from the date of service. If the EOB or denial letter is not received by the COUNTY within 5 months from the date of service, the COUNTY will offset the payment for the current period by this pre-paid amount.

The OHC insurer is considered the primary insurance and may pay all, part, or none of the cost of services. Any unreimbursed cost may be claimable to Medi-Cal.

It is in the best interest of the client and CONTRACTOR to submit claims to the OHC insurer in a timely manner. If no response or EOB is received from the OHC within 90-days from the date of claim submission, CONTRACTOR may presume denial from the OHC and submit a letter stating that no response was received from the OHC, along with a copy of the original claim submitted to the OHC.

The COUNTY makes every attempt to identify eligibility and notify CONTRACTOR if OHC eligibility exists. As eligibility verification for OHC can be inconsistent, it is also imperative that CONTRACTOR inquire with the client/guardian as to possible OHC and notify the COUNTY if OHC eligibility is discovered.

The COUNTY is unable to provide a comprehensive list of procedures and points of contact for OHC insurers as they are numerous and have individual requirements. Therefore, CONTRACTOR is responsible for obtaining the necessary information to fulfill its duty to bill OHC insurers. As able, the COUNTY will assist CONTRACTOR in finding contact information for OHC insurers, but the COUNTY is under no obligation to do so, and this does not alleviate CONTRACTOR from the sole responsibility to do so.

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IV. Required Submissions

A. Budget. Fifteen days prior to the beginning of the Fiscal Year, CONTRACTOR shall submit an estimated Budget consistent with the Fiscal Year contract maximum. CONTRACTOR shall include estimated FTEs, by standardized classification, and identify those providing Direct Client Care. The COUNTY shall supply a revised Budget Template which correlates to standardized classification fields.

B. Invoices. CONTRACTOR shall submit valid and accurate ***Monthly*** itemized invoices to BHInvoices@countyofnapa.org by the ***15th of each month*** for all authorized contract services provided in the preceding ***month***. CONTRACTOR shall use COUNTY HHSA billing team service report to review and approve. Upon CONTRACTOR service approval, CONTRACTOR shall submit approved services as an invoice on agency letterhead with total amount due and service month and year to BHInvoices@countyofnapa.org.

Validity and accuracy of invoice submission is critical to ensure timely payment of invoices for contracted services. Invoices will be paid within 60 days of receipt of invoices. If COUNTY staff requires any invoice follow-up, clarification, adjustment, or resubmission from CONTRACTOR, the 60-day timeframe for invoice payment resets to the date all outstanding issues are resolved, and the most recently received invoice is confirmed to be valid and accurate.

A. Annual Cost Report. COUNTY may require CONTRACTOR to submit an annual cost report, at no additional cost to COUNTY. If a cost report is required, CONTRACTOR will be notified, and the cost report will be due by August 31st following the end of the fiscal year. Failure to submit the cost report timely may result in the suspension of payments until the cost report is received by the COUNTY.

V. Other Limitations Affecting Payments

CONTRACTOR shall perform services and provide such documentation as required by all applicable State and Federal laws, rules, and regulations, and as described in Exhibit A of this Agreement. Other limitations affecting contract payments include, but are not limited to:

A. CONTRACTOR shall provide such documentation as required by COUNTY at any time in order to substantiate its claims for payment. COUNTY may elect to withhold payment for failure by CONTRACTOR to provide such documentation required by COUNTY.

B. Contractor's services and claims are subject to any audits conducted by COUNTY, the State of California or federal government, or other auditors. Any resulting audit exception shall be repaid to COUNTY by CONTRACTOR.

C. CONTRACTOR shall reimburse COUNTY for disallowances for payment or lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's failure to perform in accordance with this Agreement, including, but

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not limited to, CONTRACTOR's insufficient documentation of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal.

D. To the extent CONTRACTOR is required to reimburse the COUNTY under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services which CONTRACTOR provides, or demand reimbursement without offset.

E. CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties and fines which may be assessed under a Federal or State False Claims Act provision.

CONTRACTOR's failure to comply with this Agreement may lead at any time to withholding of payments and/or a termination of the Agreement based on breach of contract.

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EXHIBIT C

SECTION 2. GENERAL TERMS AND CONDITIONS --VERSION 12

2.1 **Term of the Agreement.**

(a) Term. The term of this Agreement shall commence on the date first written on page 1 and shall expire on the expiration date set forth on page 1 unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Other Termination) or 2.23(a) (Covenant of No Undisclosed Conflict).

(b) Automatic Renewal. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes), 2.21 (Access to Records/Retention), 2.31 (Compliance with Federal Health Care Program Requirements, 2.32 (Compliance with State Medi-Cal Specialty Mental Health Services Requirements), and 2.33 (Compliance with Mental Health Activities Requirements). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

2.2 **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A."

2.3 **Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in Exhibit "B". The maximum payment for the initial term of this Agreement, and the successive maximum payments for each subsequent automatically renewed term, shall each be that maximum amount set forth on page 1; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17

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(Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17 (Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

2.4 **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Contract Administrator upon request during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall

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include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

2.5 **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

2.6 **Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

2.7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

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(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 2.7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Health and Human Services Agency prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 2.7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 2.7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20

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10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 2.7.

(f) Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve CONTRACTOR, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2.8 **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then CONTRACTOR shall investigate by all lawful means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who

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will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background investigation.

2. Notwithstanding anything to the contrary in (a) or (c), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (b) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

(c) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

2.9 **Termination for Cause.**

(a) If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days written notice to the defaulting party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.10 **Other Termination.**

(a) This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination.

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(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, if and to the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR

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whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

2.12 **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

2.13 **Notices**.

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, all notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this subparagraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either party may change its address by notifying the other party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide notice to CONTRACTOR via facsimile of terms, which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

2.14 **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all

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employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

2.15 **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

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(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715, immediately in the following instances:

(A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;

(B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;

(C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or

(D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/or other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHSA Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement , CONTRACTOR warrants that they have reviewed "HHSA Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHSA Contractor Security Requirements" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

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2.16 **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

2.17 **Amendment/Modification.**

(a) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed $10,000), or by COUNTY's Purchasing Agent (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by "Exhibit A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

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2.18 **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its independent duty to be and to remain informed of all changes in such laws without reliance on COUNTY to provide notice of such changes.** Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

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(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and

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payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

(e) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 2.19 in all such subcontracts as obligations of the subcontractor.

(f) Notwithstanding any other provisions of this contract, CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement.

2.20 **Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to make all required withholdings on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

2.21 **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records, including clinical documentation, for at least ten (10) years after COUNTY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

2.22 **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement. The parties further warrant that the signatories to this Agreement are authorized to execute this Agreement on behalf of their respective parties and that any action necessary to bind each such party has been taken by that party prior to entering into this Agreement.

2.23 **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY

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may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

2.24 **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the general public.

2.25 **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

2.26 **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

2.27 **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

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2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa."

(b) **Compliance With Government Code Section 7550**. In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than $5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2.31 **Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be

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assessed are as follows: civil monetary penalties of $11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", **"**Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: www.countyofnapa.org.

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.32 **Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--Revision No. 1" for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

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(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR's actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.33 **Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

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(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.34 **Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

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2.35 **Compliance With COUNTY's Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY's contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY's contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

2.36 **Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on www.NapaHealthMatters.org for such services.

2.37 **Licensure Status**.

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing**.** For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

2.38 **Code of Ethics**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the

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HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at **www.countyofnapa.org** or may be obtained from HHSA upon written request.

2.39 **Electronic Billing System**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

2.40 **Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

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EXHIBIT D

Specialty Mental Health Services CalAIM and Payment Reform Contractor Boilerplate

This Agreement for mental health services is entered by and between Napa County a political subdivision of the State of California ("COUNTY"), and (CONTRACTOR) a California non-profit corporation licensed to provide mental health services.

RECITALS

WHEREAS, COUNTY is under contract with the State of California to provide or arrange for the provision of certain mandated services, including outpatient Specialty Mental Health Services (SMHS), for Medi-Cal beneficiaries served by the COUNTY; and

WHEREAS, COUNTY has determined that it will arrange for CONTRACTOR to provide mental health services to eligible beneficiaries; and

WHEREAS, CONTRACTOR has represented, through COUNTY's request for proposals or through another means acceptable to the COUNTY, that it is able and willing to provide such services;

NOW, THEREFORE, COUNTY and CONTRACTOR mutually agree as follows:

TERMS

Article 1. DEFINITIONS

1. BEHAVIORAL HEALTH INFORMATION NOTICE (BHIN)
   "Behavioral Health Information Notice" or "BHIN" means guidance from DHCS to inform counties and contractors of changes in policy or procedures at the federal or state levels. These were previously referred to as Mental Health and Substance Use Disorder Services Information Notices (MHSUDS IN). BHINs and MHSUDS INs are available on the DHCS website.
2. BENEFICIARY OR CLIENT
   "Beneficiary" or "client" mean the individual(s) receiving services.
3. DHCS
   "DHCS" means the California Department of Health Care Services.

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4. DIRECTOR

"Director" means the Director of the County Behavioral Health Department, unless otherwise specified.

Article 2. GENERAL PROVISIONS

1. TERM

This Agreement shall govern the period determined COUNTY.

2. SCOPE OF WORK

CONTRACTOR shall provide the services set forth in Exhibit A, "SCOPE OF WORK."

3. COMPENSATION

A. This Agreement shall be subject to any restrictions, limitations, and/or conditions imposed by COUNTY or state or federal funding sources that may in any way affect the fiscal provisions of, or funding for this Agreement. This Agreement is also contingent upon sufficient funds being made available by COUNTY, state, or federal funding sources for the term of the Agreement. If the federal or state governments reduce financial participation in the Medi-Cal program, COUNTY agrees to meet with CONTRACTOR to discuss renegotiating the services required by this Agreement.

B. Funding is provided by fiscal year. For purposes of this Agreement, the fiscal year begins July 1 and ends the following June 30. Any unspent fiscal year appropriation does not roll over and is not available for services provided in subsequent years.

C. The maximum financial obligation of the COUNTY under this Agreement shall not exceed the amount listed on Exhibit B of this Agreement per fiscal year, which is not a guaranteed sum but shall be paid only for services rendered and received.

4. CONFORMITY WITH STATE AND FEDERAL LAWS AND REGULATIONS

A. CONTRACTOR shall provide services in conformance with all applicable state and federal statutes, regulations and subregulatory guidance, as from time to time amended, including but not limited to:

1) California Code of Regulations, Title 9;
2) California Code of Regulations, Title 22;
3) California Welfare and Institutions Code, Division 5;

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4) United States Code of Federal Regulations, Title 42, including but not limited to Parts 438 and 455;
5) United States Code of Federal Regulations, Title 45;
6) United States Code, Title 42 (The Public Health and Welfare), as applicable;
7) Balanced Budget Act of 1997;
8) Health Insurance Portability and Accountability Act (HIPAA); and
9) Applicable Medi-Cal laws and regulations, including applicable sub-regulatory guidance, such as BHINs, MHSUDS INs, and provisions of COUNTY's, state or federal contracts governing client services.

Article 3. SERVICES AND ACCESS PROVISIONS

1. CERTIFICATION OF ELIGIBILITY

   CONTRACTOR will, in cooperation with COUNTY, comply with Section 14705.5 of California Welfare and Institutions Code to obtain a certification of a client's eligibility for SMHS under Medi-Cal.

2. ACCESS TO SPECIALTY MENTAL HEALTH SERVICES

   A. In collaboration with the COUNTY, CONTRACTOR will work to ensure that individuals to whom the CONTRACTOR provides SMHS meet access criteria, as per DHCS guidance specified in BHIN 21-073. Specifically, the CONTRACTOR will ensure that the clinical record for each client includes information as a whole indicating that client's presentation and needs are aligned with the criteria applicable to their age at the time-of-service provision as specified below.

   B. For enrolled clients under 21 years of age, CONTRACTOR shall provide all medically necessary SMHS required pursuant to Section 1396d(r) of Title 42 of the United States Code. Covered SMHS shall be provided to enrolled clients who meet either of the following criteria, (I) or (II) below. If a client under age 21 meets the criteria as described in (I) below, the beneficiary meets criteria to access SMHS; it is not necessary to establish that the beneficiary also meets the criteria in (II) below.

      I. The client has a condition placing them at high risk for a mental health disorder due to experience of trauma evidenced by any of the following: scoring in the high-risk range under a trauma screening tool approved by DHCS, involvement in

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the child welfare system, juvenile justice involvement, or experiencing homelessness.

II. The client has at least one of the following:
   a. A significant impairment
   b. A reasonable probability of significant deterioration in an important area of life functioning
   c. A reasonable probability of not progressing developmentally as appropriate.
   d. A need for SMHS, regardless of presence of impairment, that are not included within the mental health benefits that a Medi-Cal Managed Care Plan (MCP) is required to provide.

   AND the client's condition as described in subparagraph (II a-d) above is due to one of the following:

e. A diagnosed mental health disorder, according to the criteria in the current editions of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Classification of Diseases and Related Health Problems (ICD).

f. A suspected mental health disorder that has not yet been diagnosed.

g. Significant trauma placing the client at risk of a future mental health condition, based on the assessment of a licensed mental health professional.

C. For clients 21 years of age or older, CONTRACTOR shall provide covered SMHS for clients who meet both of the following criteria, (I) and (II) below:

I. The client has one or both of the following:
   a. Significant impairment, where impairment is defined as distress, disability, or dysfunction in social, occupational, or other important activities.
   b. A reasonable probability of significant deterioration in an important area of life functioning.

II. The client's condition as described in paragraph (I) is due to either of the following:
   a. A diagnosed mental health disorder, according to the criteria in the current editions of the DSM and ICD.
   b. A suspected mental disorder that has not yet been diagnosed.

3. ADDITIONAL CLARIFICATIONS

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A. Criteria

I. A clinically appropriate and covered mental health prevention, screening, assessment, treatment, or recovery service listed within Exhibit A of this Agreement can be provided and submitted to the COUNTY for reimbursement under any of the following circumstances:

a. The services were provided prior to determining a diagnosis, including clinically appropriate and covered services provided during the assessment process;

b. The service was not included in an individual treatment plan; or

c. The client had a co-occurring substance use disorder.

B. Diagnosis Not a Prerequisite

I. Per BHIN 21-073, a mental health diagnosis is not a prerequisite for access to covered SMHS. This does not eliminate the requirement that all Medi-Cal claims, including SMHS claims, include a current Centers for Medicare & Medicaid Services (CMS) approved ICD diagnosis code.

4. MEDICAL NECESSITY

A. CONTRACTOR will ensure that services provided are medically necessary in compliance with BHIN 21-073 and pursuant to Welfare and Institutions Code section 14184.402(a). Services provided to a client must be medically necessary and clinically appropriate to address the client's presenting condition. Documentation in each client's chart as a whole will demonstrate medical necessity as defined below, based on the client's age at the time-of-service provision.

B. For individuals 21 years of age or older, a service is "medically necessary" or a "medical necessity" when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain as set forth in Welfare and Institutions Code section 14059.5.

C. For individuals under 21 years of age, a service is "medically necessary" or a "medical necessity" if the service meets the standards set forth in Section 1396d(r)(5) of Title 42 of the United States Code.

5. COORDINATION OF CARE

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A. CONTRACTOR shall ensure that all care, treatment, and services provided pursuant to this Agreement are coordinated among all providers who are serving the client, including all other SMHS providers, as well as providers of Non-Specialty Mental Health Services (NSMHS), substance use disorder treatment services, physical health services, dental services, regional center services and all other services as applicable to ensure a client-centered and whole-person approach to services.
B. CONTRACTOR shall ensure that care coordination activities support the monitoring and treatment of comorbid substance use disorder and/or health conditions.
C. CONTRACTOR shall include in care coordination activities efforts to connect, refer and link clients to community-based services and supports, including but not limited to educational, social, prevocational, vocational, housing, nutritional, criminal justice, transportation, childcare, child development, family/marriage education, cultural sources, and mutual aid support groups.
D. CONTRACTOR shall engage in care coordination activities beginning at intake and throughout the treatment and discharge planning processes.
E. To facilitate care coordination, CONTRACTOR will request a HIPAA and California law compliant client authorization to share client information with and among all other providers involved in the client's care, in satisfaction of state and federal privacy laws and regulations.

6. CO-OCCURRING TREATMENT AND NO WRONG DOOR
   A. Per BHIN 22-011, Specialty and Non-Specialty Mental Health Services can be provided concurrently, if those services are clinically appropriate, coordinated, and not duplicative. When a client meets criteria for both NSMHS and SMHS, the client should receive services based on individual clinical need and established therapeutic relationships. Clinically appropriate and covered SMHS can also be provided when the client has a co-occurring mental health condition and substance use disorder.
   B. Under this Agreement, CONTRACTOR will ensure that clients receive timely mental health services without delay. Services are reimbursable to CONTRACTOR by COUNTY even when:

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I. Services are provided prior to determination of a diagnosis, during the assessment or prior to determination of whether SMHS access criteria are met, even if the assessment ultimately indicates the client does not meet criteria for SMHS.

II. If CONTRACTOR is serving a client receiving both SMHS and NSMHS, CONTRACTOR holds responsibility for documenting coordination of care and ensuring that services are non-duplicative.

Article 4. AUTHORIZATION AND DOCUMENTATION PROVISIONS

1. SERVICE AUTHORIZATION
   A. CONTRACTOR will collaborate with COUNTY to complete authorization requests in line with COUNTY and DHCS policy.
   B. CONTRACTOR shall have in place, and follow, written policies and procedures for completing requests for initial and continuing authorizations of services, as required by COUNTY guidance. A Screening Tool and Demographic Form shall be submitted to COUNTY for a 30 day assessment service authorization.
   C. CONTRACTOR shall respond to COUNTY in a timely manner when consultation is necessary for COUNTY to make appropriate authorization determinations.
   D. COUNTY shall provide CONTRACTOR with written notice of authorization determinations within the timeframes set forth in BHINs 22-016 and 22-017, or any subsequent DHCS notices.
   E. CONTRACTOR shall alert COUNTY when an expedited authorization decision (no later than 72 hours) is necessary due to a client's specific needs and circumstances that could seriously jeopardize the client's life or health, or ability to attain, maintain, or regain maximum function.
2. DOCUMENTATION REQUIREMENTS
   A. CONTRACTOR will follow all documentation requirements as specified in Article 4.2-4.8 inclusive in compliance with federal, state and COUNTY requirements.
   B. All CONTRACTOR documentation shall be accurate, complete, and legible, shall list each date of service, and include the face-to-face time for each service. CONTRACTOR shall document travel and documentation time for each service separately from face-to-face time and provide this information to COUNTY upon

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request. Services must be identified as provided in-person, by telephone, or by telehealth.

C. All services shall be documented utilizing COUNTY-approved templates and contain all required elements. CONTRACTOR agrees to satisfy the chart documentation requirements set forth in BHIN 22-019 and the contract between COUNTY and DHCS. Failure to comply with documentation standards specified in this Article require corrective action plans.

3. ASSESSMENT

A. CONTRACTOR shall ensure that all client medical records include an assessment of each client's need for mental health services.

B. CONTRACTOR will utilize the seven uniform assessment domains and include other required elements as identified in BHIN 22-019 and document the assessment in the client's medical record.

C. For clients aged 6 through 20, the Child and Adolescent Needs and Strengths (CANS), and for clients aged 3 through 18, the Pediatric Symptom Checklist-35 (PSC-35) tools are required at intake, every six months during treatment, and at discharge, as specified in DHCS MHSUDS INs 17-052 and 18-048. For clients aged 21+, the Adult Strengths and Needs Assessment are required at intake, every six months during treatment, and at discharge, as specified in COUNTY policy.

D. The time period for providers to complete an initial assessment and subsequent assessments for SMHS is 30 days however, CONTRACTOR's providers shall complete assessments within a reasonable time and in accordance with generally accepted standards of practice.

4. ICD-10

A. CONTRACTOR shall use the criteria set forth in the current edition of the DSM as the clinical tool to make diagnostic determinations and submit a diagnosis review form for service authorizations

B. Once a DSM diagnosis is determined, the CONTRACTOR shall determine the corresponding mental health diagnosis in the current edition of ICD. CONTRACTOR shall use the ICD diagnosis code(s) to submit a claim for SMHS to receive reimbursement from COUNTY.

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C. The ICD Tabular List of Diseases and Injuries is maintained by CMS and may be updated during the term of this Agreement. Changes to the lists of ICD diagnoses do not require an amendment to this Agreement, and County may implement these changes as provided by CMS.

5. PROBLEM LIST
   A. CONTRACTOR will create and maintain a Problem List for each client served under this Agreement. The problem list is a list of symptoms, conditions, diagnoses, and/or risk factors identified through assessment, psychiatric diagnostic evaluation, crisis encounters, or other types of service encounters.
   B. CONTRACTOR must document a problem list that adheres to industry standards utilizing at minimum current SNOMED International, Systematized Nomenclature of Medicine Clinical Terms (SNOMED CT®) U.S. Edition, September 2022 Release, and ICD-10-CM 2023.
   C. A problem identified during a service encounter may be addressed by the service provider during that service encounter and subsequently added to the problem list.
   D. The problem list shall include, but is not limited to, all elements specified in BHIN 22-019.
   E. COUNTY does not require the problem list to be updated within a specific timeframe or have a requirement about how frequently the problem list should be updated after a problem has initially been added. However, CONTRACTOR shall update the problem list within a reasonable time such that the problem list reflects the current issues facing the client, in accordance with generally accepted standards of practice and in specific circumstances specified in BHIN 22-019.

6. TREATMENT AND CARE PLANS
   A. CONTRACTOR is not required to complete treatment or care plans for clients under this Agreement, except in the circumstances specified in BHIN 22-019 and additional guidance from DHCS that may follow after execution of this Agreement.
7. PROGRESS NOTES
   A. CONTRACTOR shall create progress notes for the provision of all SMHS services provided under this Agreement.

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B. Each progress note shall provide sufficient detail to support the service code selected for the service type as indicated by the service code description.

C. Progress notes shall include all elements specified in BHIN 22-019, whether the note be for an individual or a group service.

D. CONTRACTOR shall complete progress notes within three business days of providing a service, with the exception of notes for crisis services, which shall be completed within 24 hours.

E. Providers shall complete a daily progress note for services that are billed on a daily basis, such as residential and day treatment services, if applicable.

8. TRANSITION OF CARE TOOL

A. CONTRACTOR shall use a Transition of Care Tool for any clients whose existing services will be transferred from CONTRACTOR to an Medi-Cal Managed Care Plan (MCP) provider or when NSMHS will be added to the existing mental health treatment provided by CONTRACTOR, as specified in BHIN 22-065, in order to ensure continuity of care.

B. Determinations to transition care or add services from an MCP shall be made in alignment with County policies and via a client-centered, shared decision-making process.

C. CONTRACTOR may directly use the DHCS-provided Transition of Care Tool, found at https://www.dhcs.ca.gov/Pages/Screening-and-Transition-of-Care-Tools-for-Medi-Cal-Mental-Health-Services.aspx, or obtain a copy of that tool provided by the COUNTY. CONTRACTOR may create the Transition of Care Tool in its Electronic Health Record (EHR). However, the contents of the Transition of Care Tool, including the specific wording and order of fields, shall remain identical to the DHCS provided form. The only exception to this requirement is when the tool is translated into languages other than English.

9. TELEHEALTH

A. CONTRACTOR may use telehealth, when it deems clinically appropriate, as a mode of delivering behavioral health services in accordance with all applicable COUNTY, state, and federal requirements, including those related to privacy/security, efficiency,

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and standards of care. Such services will conform to the definitions and meet the requirements included in the Medi-Cal Provider Manual: Telehealth, available in the DHCS Telehealth Resources page at: https://www.dhcs.ca.gov/provgovpart/Pages/TelehealthResources.aspx.

B. All telehealth equipment and service locations must ensure that client confidentiality is maintained.

C. Licensed providers and staff may provide services via telephone and telehealth as long as the service is within their scope of practice.

D. Medical records for clients served by CONTRACTOR under this Agreement must include documentation of written or verbal consent for telehealth or telephone services if such services are provided by CONTRACTOR. Such consent must be obtained at least once prior to initiating applicable health care services and consent must include all elements as specified in BHIN 22-019.

E. COUNTY may at any time audit CONTRACTOR's telehealth practices, and CONTRACTOR must allow access to all materials needed to adequately monitor CONTRACTOR's adherence to telehealth standards and requirements.

Article 5. CHART AUDITING AND REASONS FOR RECOUPMENT

1. MAINTENANCE OF RECORDS

   A. CONTRACTOR shall maintain proper clinical and fiscal records relating to clients served under the terms of this Agreement, as required by the Director, DHCS, and all applicable state and federal statutes and regulations. Client records shall include but not be limited to admission records, diagnostic studies and evaluations, client interviews and progress notes, and records of services provided. All such records shall be maintained in sufficient detail to permit evaluation of the services provided and to meet claiming requirements.

2. ACCESS TO RECORDS

   A. CONTACTOR shall provide COUNTY with access to all documentation of services provided under this Agreement for COUNTY's use in administering this Agreement. CONTRACTOR shall allow COUNTY, CMS, the Office of the Inspector General, the Controller General of the United States, and any other authorized federal and state

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agencies to evaluate performance under this Agreement, and to inspect, evaluate, and audit any and all records, documents, and the premises, equipment and facilities maintained by the CONTRACTOR pertaining to such services at any time and as otherwise required under this Agreement.

3. FEDERAL, STATE AND COUNTY AUDITS
   A. In accordance with the California Code of Regulations, Title 9, Chapter 11, Section 1810.380(a), COUNTY will conduct monitoring and oversight activities to review CONTRACTOR's SMHS programs and operations. The purpose of these oversight activities is to verify that medically necessary services are provided to clients, who meet medical necessity and criteria for access to SMHS as established in BHIN 21-073, in compliance with the applicable state and federal laws and regulations, and/or the terms of the Agreement between Contractor and County, and future BHINs which may spell out other specific requirements.
4. INTERNAL AUDITING
   A. CONTRACTORS of sufficient size as determined by COUNTY shall institute and conduct a Quality Assurance Process for all services provided hereunder. Said process shall include at a minimum a system for verifying that all services provided and claimed for reimbursement shall meet SMHS definitions and be documented accurately.
   B. CONTRACTOR shall provide COUNTY with notification and a summary of any internal audit exceptions, and the specific corrective actions taken to sufficiently reduce the errors that are discovered through CONTRACTORS's internal audit process. CONTRACTOR's shall provide this notification and summary to COUNTY in a timely manner.
5. CONFIDENTIALITY IN AUDIT PROCESS
   A. CONTRACTOR and COUNTY mutually agree to maintain the confidentiality of CONTRACTOR's client records and information, in compliance with all applicable state and federal statutes and regulations, including but not limited to HIPAA and California Welfare and Institutions Code, Section 5328. CONTRACTOR shall inform all of its officers, employees, and agents of the confidentiality provisions of all applicable statutes.

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B. CONTRACTOR's fiscal records shall contain sufficient data to enable auditors to perform a complete audit and shall be maintained in conformance with standard procedures and accounting principles.

C. CONTRACTOR's records shall be maintained as required by the Director and DHCS on forms furnished by DHCS or the COUNTY. All statistical data or information requested by the Director shall be provided by the CONTRACTOR in a complete and timely manner.

6. REASONS FOR RECOUPMENT

A. COUNTY will conduct periodic audits of CONTACTOR files to ensure appropriate clinical documentation, high quality service provision and compliance with applicable federal, state and county regulations.

B. Such audits may result in requirements for CONTRACTOR to reimburse COUNTY for services previously paid in the following circumstances:

I. Identification of Fraud, Waste or Abuse as defined in federal regulation

a. Fraud and abuse are defined in C.F.R. Title 42, § 455.2 and W&I Code, section 14107.11, subdivision (d).

b. Definitions for "fraud," "waste," and "abuse" can also be found in the Medicare Managed Care Manual available at www.cms.gov/Regulation-and-Guidance/Guidance/Manuals/Downloads/mc86c21.pdf

II. Overpayment of CONTRACTOR by COUNTY due to errors in claiming or documentation.

III. Other reasons specified in the SMHS Reasons for Recoupment document released annually by DHCS and posted on the DHCS BHIN website.

C. CONTRACTOR shall reimburse COUNTY for all overpayments identified by CONTRACTOR, COUNTY, and/or state or federal oversight agencies as an audit exception within the timeframes required by law or COUNTY or state or federal agency.

7. COOPERATION WITH AUDITS

A. CONTRACTOR shall cooperate with COUNTY in any review and/or audit initiated by COUNTY, DHCS, or any other applicable regulatory body. This cooperation may include such activities as onsite program, fiscal, or chart reviews and/or audits.

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B. In addition, CONTRACTOR shall comply with all requests for any documentation or files including, but not limited to, client and personnel files.
C. CONTRACTOR shall notify the COUNTY of any scheduled or unscheduled external evaluation or site visits when it becomes aware of such visit. COUNTY shall reserve the right to attend any or all parts of external review processes.
D. CONTRACTOR shall allow inspection, evaluation and audit of its records, documents and facilities for ten years from the term end date of this Agreement or in the event CONTRACTOR has been notified that an audit or investigation of this Agreement has been commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later pursuant to 42 C.F.R.§§ 438.3(h) and 438.230I(3)(i-iii).

Article 6. CLIENT PROTECTIONS

1. GRIEVANCES, APPEALS AND NOTICES OF ADVERSE BENEFIT DETERMINATION
   A. All grievances (as defined by 42 C.F.R. § 438.400) and complaints received by CONTRACTOR must be immediately forwarded to the COUNTY Behavioral Health Quality Coordinator or other designated persons via a secure method (e.g., encrypted email or by fax) to allow ample time for the Quality Management staff to acknowledge receipt of the grievance and complaints and issue appropriate responses.
   B. CONTRACTOR shall not discourage the filing of grievances and clients do not need to use the term “grievance” for a complaint to be captured as an expression of dissatisfaction and, therefore, a grievance.
   C. Aligned with MHSUDS IN 18-010E and 42 C.F.R. §438.404, the appropriate and delegated Notice of Adverse Benefit Determination (NOABD) must be issued by CONTRACTOR within the specified timeframes using the template provided by the COUNTY.
   D. NOABDs must be issued to clients anytime the CONTRACTOR has made or intends to make an adverse benefit determination that includes the reduction, suspension, or termination of a previously authorized service and/or the failure to provide services in a timely manner. The notice must have a clear and concise explanation of the

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reason(s) for the decision as established by DHCS and the COUNTY. The CONTRACTOR must inform the COUNTY immediately after issuing a NOABD.

E. Procedures and timeframes for responding to grievances, issuing, and responding to adverse benefit determinations, appeals, and state hearings must be followed as per 42 C.F.R., Part 438, Subpart F (42 C.F.R. §§ 438.400 – 438.424).

F. CONTRACTOR must provide clients any reasonable assistance in completing forms and taking other procedural steps related to a grievance or appeal such as auxiliary aids and interpreter services.

G. CONTACTOR must maintain records of grievances and appeals and must review the information as part of its ongoing monitoring procedures. The record must be accurately maintained in a manner accessible to the COUNTY and available upon request to DHCS.

2. Advanced Directives

CONTACTOR must comply with all COUNTY policies and procedures regarding Advanced Directives in compliance with the requirements of 42 C.F.R. §§ 422.128 and 438.6(i) (l), (3) and (4).

3. Continuity of Care

CONTRACTOR shall follow the COUNTY's continuity of care policy that is in accordance with applicable state and federal regulations, MHSUDS IN 18-059 and any BHINs issued by DHCS for parity in mental health and substance use disorder benefits subsequent to the effective date of this Agreement (42 C.F.R. § 438.62(b)(1)-(2).)

Article 7. PROGRAM INTEGRITY

1. GENERAL

As a condition of receiving payment under a Medi-Cal managed care program, the CONTRACTOR shall comply with the provisions of 42 C.F.R. §§ 438.604, 438.606, 438.608 and 438.610. (42 C.F.R. § 438.600(b)).

2. CREDENTIALING AND RE-CREDENTIALING OF PROVIDERS

A. CONTRACTOR must follow the uniform process for credentialing and recredentialing of service providers established by COUNTY, including disciplinary

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actions such as reducing, suspending, or terminating provider's privileges. Failure to comply with specified requirements can result in suspension or termination of a provider.

B. Upon request, the CONTRACTOR must demonstrate to the COUNTY that each of its providers are qualified in accordance with current legal, professional, and technical standards, and that they are appropriately licensed, registered, waivered, and/or certified.

C. CONTRACTOR must not employ or subcontract with providers debarred, suspended or otherwise excluded (individually, and collectively referred to as "Excluded") from participation in Federal Health Care Programs, including Medi-Cal/Medicaid or procurement activities, as set forth in 42 C.F.R. §438.610. See relevant section below regarding specific requirements for exclusion monitoring.

D. CONTRACTOR shall ensure that all of their network providers delivering covered services, sign and date an attestation statement on a form provided by County, in which each provider attests to the following:

   I. Any limitations or inabilities that affect the provider's ability to perform any of the position's essential functions, with or without accommodation;
   II. A history of loss of license or felony convictions;
   III. A history of loss or limitation of privileges or disciplinary activity;
   IV. A lack of present illegal drug use; and
   V. The application's accuracy and completeness

E. CONTRACTOR must file and keep track of attestation statements for all of their providers and must make those available to the COUNTY upon request at any time.

F. CONTRACTOR is required to sign an annual attestation statement at the time of Agreement renewal in which they will attest that they will follow COUNTY's Credentialing Policy and MHSUDS IN 18-019 and ensure that all of their rendering providers are credentialed as per established guidelines.

G. CONTACTOR is required to verify and document at a minimum every three years that each network provider that delivers covered services continues to possess valid credentials, including verification of each of the credentialing requirements as per the COUNTYS's uniform process for credentialing and recredentialing. If any of the

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requirements are not up-to-date, updated information should be obtained from network providers to complete the re-credentialing process.

3. SCREENING AND ENROLLMENT REQUIREMENTS
   A. COUNTY shall ensure that all CONTRACTOR providers are enrolled with the State as Medi-Cal providers consistent with the provider disclosure, screening, and enrollment requirements of 42 C.F.R. Part 455, subparts B and E. (42 C.F.R. § 438.608(b))
   B. COUNTY may execute this Agreement, pending the outcome of screening, enrollment, and revalidation of CONTRACTOR of up to 120 days but shall terminate this Agreement immediately upon determination that CONTRACTOR cannot be enrolled, or the expiration of one 120-day period without enrollment of the CONTRACTOR, and notify affected clients. (42 C.F.R. § 438.602(b)(2))
   C. CONTRACTOR shall ensure that all Providers and/or subcontracted Providers consent to a criminal background check, including fingerprinting to the extent required under state law and 42 C.F.R. § 455.434(a). CONTRACTOR shall provide evidence of completed consents when requested by the County, DHCS or the US Department of Health & Human Services (US DHHS).
4. COMPLIANCE PROGRAM, INCLUDING FRAUD PREVENTION AND OVERPAYMENTS
   A. CONTRACTOR shall have in place a compliance program designed to detect and prevent fraud, waste and abuse, as per 42 C.F.R. § 438.608(a)(1), that must include:
      I. Written policies, procedures, and standards of conduct that articulate the organization's commitment to comply with all applicable requirements and standards under the CONTRACTOR, and all applicable federal and state requirements.
      II. A Compliance Office (CO) who is responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements of this Agreement and who reports directly to the CEO and the Board of Directors.

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III. A Regulatory Compliance Committee on the Board of Directors and at the senior management level charged with overseeing the organization's compliance program and its compliance with the requirements under the Agreement.

IV. A system for training and education for the Compliance Officer, the organization's senior management, and the organization's employees for the federal and state standards and requirements under the Agreement.

V. Effective lines of communication between the Compliance Officer and the organization's employees.

VI. Enforcement of standards through well-publicized disciplinary guidelines.

VII. The establishment and implementation of procedures and a system with dedicated staff for routine internal monitoring and auditing of compliance risks, prompt response to compliance issues as they are raised, investigation of potential compliance problems as identified in the course of self-evaluation and audits, corrections of such problems promptly and thoroughly to reduce the potential for recurrence and ongoing compliance with the requirements under the Contract.

VIII. The requirement for prompt reporting and repayment of any overpayments identified.

B. CONTRACTOR must have administrative and management arrangements or procedures designed to detect and prevent fraud, waste and abuse of federal or state health care funding. CONTRACTOR must report fraud and abuse information to the COUNTY including but not limited to:

I. Any potential fraud, waste, or abuse as per 42 C.F.R. § 438.608(a), (a)(7),

II. All overpayments identified or recovered, specifying the overpayment due to potential fraud as per 42 C.F.R. § 438.608(a), (a)(2),

III. Information about changes in a client's circumstances that may affect the client's eligibility including changes in the client's residence or the death of the client as per 42 C.F.R. § 438.608(a)(3).

IV. Information about a change in the CONTRACTOR's circumstances that may affect the network provider's eligibility to participate in the managed care program, including the termination of this Agreement with the Contractor as per 42 C.F.R. § 438.608(a)(6).

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C. CONTRACTOR shall implement written policies that provide detailed information about the False Claims Act ("Act") and other federal and state laws described in section 1902(a)(68) of the Act, including information about rights of employees to be protected as whistleblowers.

D. CONTRACTOR shall make prompt referral of any potential fraud, waste or abuse to COUNTY or potential fraud directly to the State Medicaid Fraud Control Unit.

E. COUNTY may suspend payments to CONTRACTOR if DHCS or COUNTY determine that there is a credible allegation of fraud in accordance with 42 C.F.R. §455.23. (42 C.F.R. §438.608 (a)(8)).

F. CONTRACTOR shall report to COUNTY all identified overpayments and reason for the overpayment, including overpayments due to potential fraud. CONTRACTOR shall return any overpayments to the COUNTY within 60 calendar days after the date on which the overpayment was identified. (42 C.F.R. § 438.608 (a)(2), (c)(3)).

5. INTEGRITY DISCLOSURES

A. CONTRACTOR shall provide information on ownership and controlling interests, disclosures related to business transactions, and disclosures related to persons convicted of crimes in the form and manner requested by COUNTY, by the Effective Date, each time the Agreement is renewed and within 35 days of any change in ownership or controlling interest of Contractor. (42 C.F.R. §§ 455.104, 455.105, and 455.106.)

B. Upon the execution of this Contract, CONTRACTOR shall furnish COUNTY a Provider Disclosure Statement, which, upon receipt by COUNTY, shall be kept on file with COUNTY and may be disclosed to DHCS. If there are any changes to the information disclosed in the Provider Disclosure Statement, an updated statement should be completed and submitted to the County within 35 days of the change. (42 C.F.R. § 455.104.)

C. CONTRACTOR must disclose the following information as requested in the Provider Disclosure Statement:

I. Disclosure of 5% or More Ownership Interest:

a. In the case of corporate entities with an ownership or control interest in the disclosing entity, the primary business address as well as every business

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location and P.O. Box address must be disclosed. In the case of an individual, the date of birth and Social Security number must be disclosed.

b. In the case of a corporation with ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has a five percent (5%) or more interest, the corporation tax identification number must be disclosed.

c. For individuals or corporations with ownership or control interest in any subcontractor in which the disclosing entity has a five percent (5%) or more interest, the disclosure of familial relationship is required.

d. For individuals with five percent (5%) or more direct or indirect ownership interest of a disclosing entity, the individual shall provide evidence of completion of a criminal background check, including fingerprinting, if required by law, prior to execution of Contract. (42 C.F.R. § 455.434)

II. Disclosures Related to Business Transactions:

a. The ownership of any subcontractor with whom CONTRACTOR has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request.

b. Any significant business transactions between CONTRACTOR and any wholly owned supplier, or between CONTRACTOR and any subcontractor, during the 5-year period ending on the date of the request. (42 C.F.R. § 455.105(b).)

III. Disclosures Related to Persons Convicted of Crimes:

a. The identity of any person who has an ownership or control interest in the provider or is an agent or managing employee of the provider who has been convicted of a criminal offense related to that person's involvement in any program under the Medicare, Medicaid, or the Title XXI services program since the inception of those programs. (42 C.F.R. § 455.106.)

b. COUNTY shall terminate the enrollment of CONTRACTOR if any person with five percent (5%) or greater direct or indirect ownership interest in the disclosing entity has been convicted of a criminal offense related to the

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person's involvement with Medicare, Medicaid, or Title XXI program in the last 10 years.

D. CONTRACTOR must provide disclosure upon execution of CONTRACTOR, extension for renewal, and within 35 days after any change in CONTRACTOR ownership or upon request of COUNTY. COUNTY may refuse to enter into an agreement or terminate an existing agreement with CONTRACTOR if CONTRACTOR fails to disclose ownership and control interest information, information related to business transactions and information on persons convicted of crimes, or if CONTRACTOR did not fully and accurately make the disclosure as required.

E. CONTRACTOR must provide the COUNTY with written disclosure of any prohibited affiliations under 42 C.F.R. § 438.610. CONTRACTOR must not employ or subcontract with providers or have other relationships with providers Excluded from participation in Federal Health Care Programs, including Medi-Cal/Medicaid or procurement activities, as set forth in 42 C.F.R. §438.610.

Article 8. QUALITY IMPROVEMENT PROGRAM

1. QUALITY IMPROVEMENT ACTIVITIES AND PARTICIPATION

   A. CONTRACTOR shall comply with the COUNTYS's ongoing comprehensive Quality Assessment and Performance Improvement (QAPI) Program (42 C.F.R. § 438.330(a)) and work with the COUNTY to improve established outcomes by following structural and operational processes and activities that are consistent with current practice standards.

   B. CONTRACTOR shall participate in quality improvement (QI) activities, including clinical and non-clinical performance improvement projects (PIPs), as requested by the COUNTY in relation to state and federal requirements and responsibilities, to improve health outcomes and clients' satisfaction over time. Other QI activities include quality assurance, collection and submission of performance measures specified by the COUNTY, mechanisms to detect both underutilization and overutilization of services, client and system outcomes, utilization management, utilization review, provider appeals, provider credentialing and re-credentialing, and

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client grievances. CONTRACTOR shall measure, monitor, and annually report to the COUNTY its performance.

C. CONTRACTOR shall implement mechanisms to assess client/family satisfaction based on COUNTY's guidance. The CONTRACTOR shall assess client/family satisfaction by:
   I. Surveying client/family satisfaction with the CONTRACTOR's services at least annually.
   II. Evaluating client grievances, appeals and State Hearings at least annually.
   III. Evaluating requests to change persons providing services at least annually.
   IV. Informing the COUNTY and clients of the results of client/family satisfaction activities.

D. CONTRACTOR, if applicable, shall implement mechanisms to monitor the safety and effectiveness of medication practices. This mechanism shall be under the supervision of a person licensed to prescribe or dispense prescription drugs, at least annually.

E. CONTRACTOR shall implement mechanisms to monitor appropriate and timely intervention of occurrences that raise quality of care concerns. The CONTRACTOR shall take appropriate follow-up action when such an occurrence is identified. The results of the intervention shall be evaluated by the Contractor at least annually and shared with the County.

F. CONTRACTOR shall assist COUNTY, as needed, with the development and implementation of Corrective Action Plans.

G. CONTRACTOR shall collaborate with COUNTY to create a QI Work Plan with documented annual evaluations and documented revisions as needed. The QI Work Plan shall evaluate the impact and effectiveness of its quality assessment and performance improvement program.

H. CONTRACTOR shall attend and participate in the CCOUNTY's Quality Improvement Committee (QIC) to recommend policy decisions, review and evaluate results of QI activities, including PIPs, institute needed QI actions, and ensure follow-up of QI processes. CONTRACTOR shall ensure that there is active participation by the CONTRACTOR's practitioners and providers in the QIC.

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I. CONTRACTOR shall assist COUNTY, as needed, with the development and implementation of Corrective Action Plans.

J. CONTRACTOR shall participate, as required, in annual, independent external quality reviews (EQR) of the quality, timeliness, and access to the services covered under this agreement, which are conducted pursuant to Subpart E of Part 438 of the Code of Federal Regulations. (42 C.F.R. §§ 438.350(a) and 438.320)

2. NETWORK ADEQUACY

A. The CONTRACTOR shall ensure that all services covered under this Agreement are available and accessible to clients in a timely manner and in accordance with the network adequacy standards required by regulation. (42 C.F.R. §438.206 (a), (c)).

B. CONTRACTOR shall submit, when requested by COUNTY and in a manner and format determined by the COUNTY, network adequacy certification information to the COUNTY, utilizing a provided template or other designated format.

C. CONTRACTOR shall submit updated network adequacy information to the COUNTY any time there has been a significant change that would affect the adequacy and capacity of services.

D. To the extent possible and appropriately consistent with CCR, Title 9, §1830.225 and 42 C.F.R. §438.3 (l), the CONTRACTOR shall provide a client the ability to choose the person providing services to them.

3. TIMELY ACCESS

A. CONTRACTOR shall comply with the requirements set forth in CCR, Title 9, § 1810.405, including meeting COUNTY and State Contract standards for timely access to care and services, taking into account the urgency of need for services. The COUNTY shall monitor CONTRACTOR to determine compliance with timely access requirements and shall take corrective action in the event of noncompliance.

B. Timely access standards include:

I. CONTRACTOR must have hours of operation during which services are provided to Medi-Cal clients that are no less than the hours of operation during which the provider offers services to non-Medi-Cal clients. If the CONTRACTOR's provider only serves Medi-Cal clients, the provider must provide hours of

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operation comparable to the hours the provider makes available for Medi-Cal services that are not covered by the Agreement or another COUNTY.

II. Appointments data, including wait times for requested services, must be recorded and tracked by CONTRACTOR, and submitted to the COUNTY on a monthly basis in a format specified by the COUNTY. Appointments' data should be submitted to the COUNTY's Quality Management Department or other designated persons.

III. Urgent care appointments for services that do not require prior authorization must be provided to clients within 48 hours of a request. Urgent appointments for services that do require prior authorization must be provided to clients within 96 hours of request.

IV. Non-urgent non-psychiatry mental health services, including, but not limited to Assessment, Targeted Case Management, and Individual and Group Therapy appointments (for both adult and children/youth) must be made available to Medi-Cal clients within 10 business days from the date the client or a provider acting on behalf of the client, requests an appointment for a medically necessary service. Non-urgent psychiatry appointments (for both adult and children/youth) must be made available to Medi-Cal clients within 15 business days from the date the client or a provider acting on behalf of the client, requests an appointment for a medically necessary service.

V. Applicable appointment time standards may be extended if the referring or treating provider has determined and noted in the client's record that a longer waiting period will not have a detrimental impact on the health of the client.

VI. Periodic office visits to monitor and treat mental health conditions may be scheduled in advance consistent with professionally recognized standards of practice as determined by the treating licensed mental health provider acting within the scope of his or her practice.

4. PRACTICE GUIDELINES

A. CONTRACTOR shall adopt practice guidelines (or adopt COUNTY's practice guidelines) that meet the following requirements:

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I. They are based on valid and reliable clinical evidence or a consensus of health care professionals in the applicable field;
II. They consider the needs of the clients;
III. They are adopted in consultation with contracting health care professionals; and
IV. They are reviewed and updated periodically as appropriate (42 C.F.R.§ 438.236(b) and CCR, Title 9, Section 1810.326).

B. CONTRACTOR shall disseminate the guidelines to all affected providers and, upon request, to clients and potential clients (42 C.F.R. § 438.236(c)).

5. PROVIDER APPLICATION AND VALIDATION FOR ENROLLMENT (PAVE)
   A. CONTRACTOR shall ensure that all of its required clinical staff, who are rendering SMHS to Medi-Cal clients on behalf of Contractor, are registered through DHCS' Provider Application and Validation for Enrollment (PAVE) portal, pursuant to BHIN 20-071 requirements, the 21st Century Cures Act and the CMS Medicaid and Children's Health Insurance Program (CHIP) Managed Care Final Rule.
   B. SMHS licensed individuals required to enroll via the "Ordering, Referring and Prescribing" (ORP) PAVE enrollment pathway (i.e. PAVE application package) available through the DHCS PED Pave Portal, include: Licensed Clinical Social Worker (LCSW), Licensed Marriage and Family Therapist (LMFT), Licensed Professional Clinical Counselor (LPCC), Psychologist, Licensed Educational Psychologist, Physician (MD and DO), Physician Assistant, Registered Pharmacist/Pharmacist, Certified Pediatric/Family Nurse Practitioner, Nurse Practitioner, Occupational Therapist, and Speech-Language Pathologist. Interns, trainees, and associates are not eligible for enrollment.
6. REPORTING UNUSUAL OCCURRENCES
   A. CONTRACTOR shall report unusual occurrences to the Director. An unusual occurrence is any event which jeopardizes the health and/or safety of clients, staff and/or members of the community, including, but not limited to, physical injury and death.
   B. Unusual occurrences are to be reported to the COUNTY within timelines specified in COUNTY policy after becoming aware of the unusual event. Reports are to include the following elements:

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I. Complete written description of event including outcome;

II. Written report of CONTRACTOR's investigation and conclusions;

III. List of persons directly involved and/or with direct knowledge of the event.

C. COUNTY and DHCS retain the right to independently investigate unusual occurrences and CONTRACTOR will cooperate in the conduct of such independent investigations.

Article 9. FINANCIAL TERMS

1. CLAIMING
   A. CONTRACTOR shall submit claims to according to COUNTY's billing and transactional specifications within the timeframes established by COUNTY.
   B. Claims shall be complete and accurate and must include all required information regarding the claimed services.
   C. CONTRACTOR shall maximize the Federal Financial Participation (FFP) reimbursement by claiming all eligible Medi-Cal services and correcting denied services for resubmission in a timely manner as needed.
2. INVOICING
   A. CONTRACTOR shall invoice COUNTY for services monthly, in arrears, in the format directed by COUNTY. Invoices shall be based on claims for the prior month.
   B. Monthly payments for claimed services shall be based on the units of time assigned to each service invoiced set forth in the Provider Rate Table, Exhibit B, of this Agreement.
   C. COUNTY's payments to CONTRACTOR for performance of claimed services are provisional and subject to adjustment until the completion of all settlement activities. COUNTY's adjustments to provisional payments for claimed services shall be based on the terms, conditions, and limitations of this Agreement or the reasons for recoupment set forth in Article 5, Section 6.
4. ADDITIONAL FINANCIAL REQUIREMENTS
   A. COUNTY has the right to monitor the performance of this Agreement to ensure the accuracy of claims for reimbursement and compliance with all applicable laws and regulations.

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B. CONTRACTOR must comply with the False Claims Act employee training and policy requirements set forth in 42 U.S.C. 1396a(a)(68) and as the Secretary of the United States Department of Health and Human Services may specify.

C. CONTRACTOR agrees that no part of any federal funds provided under this Agreement shall be used to pay the salary of an individual per fiscal year at a rate in excess of Level 1 of the Executive Schedule at https://www.opm.gov/ (U.S. Office of Personnel Management), as from time to time amended.

D. Federal Financial Participation is not available for any amount furnished to an Excluded individual or entity, or at the direction of a physician during the period of exclusion when the person providing the service knew or had reason to know of the exclusion, or to an individual or entity when the COUNTY failed to suspend payments during an investigation of a credible allegation of fraud [42 U.S.C. section 1396b(i)(2)].

5. CONTRACTOR PROHIBITED FROM REDIRECTION OF CONTRACTED FUNDS

A. CONTRACTOR may not redirect or transfer funds from one funded program to another funded program under which CONTRACTOR provides services pursuant to this Agreement except through a duly executed amendment to this Agreement.

B. CONTRACTOR may not charge services delivered to an eligible client under one funded program to another funded program unless the client is also eligible for services under the second funded program.

6. FINANCIAL AUDIT REPORT REQUIREMENTS FOR PASS-THROUGH ENTITIES

A. If COUNTY determines that CONTRACTOR is a “subrecipient” (also known as a “pass-through entity”) as defined in 2 C.F.R. § 200 et seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et seq., as may be amended from time to time. CONTRACTOR shall observe and comply with all applicable financial audit report requirements and standards.

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B. Financial audit reports must contain a separate schedule that identifies all funds included in the audit that are received from or passed through the COUNTY. COUNTY programs must be identified by Agreement number, Agreement amount, Agreement period, and the amount expended during the fiscal year by funding source.

Article 10. ADDITIONAL FINAL RULE PROVISIONS

1. NON-DISCRIMINATION
   A. CONTRACTOR shall not discriminate against Medi-Cal eligible individuals in its county who require an assessment or meet medical necessity criteria for SMHS in the provision of SMHS because of race, color, religion, ancestry, marital status, national origin, ethnic group identification, sex, sexual orientation, gender, gender identity, age, medical condition, genetic information, health status or need for health care services, or mental or physical disability as consistent with the requirements of applicable federal law, such as 42 C.F.R. § 438.3(d)(3) and (4), BHIN 22-060 Enclosure 4 and state law.
   B. CONTRACTOR shall take affirmative action to ensure that services to intended Medi-Cal clients are provided without use of any policy or practice that has the effect of discriminating on the basis of race, color, religion, ancestry, marital status, national origin, ethnic group identification, sex, sexual orientation, gender, gender identity, age, medical condition, genetic information, health status or need for health care services, or mental or physical disability.
2. PHYSICAL ACCESSIBILITY

   In accordance with the accessibility requirements of section 508 of the Rehabilitation Act and the Americans with Disabilities Act of 1973, CONTRACTOR must provide physical access, reasonable accommodations, and accessible equipment for Medi-Cal clients with physical or mental disabilities.
3. APPLICABLE FEES
   A. CONTRACTOR shall not charge any clients or third-party payers any fee for service unless directed to do so by the Behavioral Health Director at the time the client is referred for services. When directed to charge for services, CONTRACTOR shall use the uniform billing and collection guidelines prescribed by DHCS.

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B. CONTRACTOR will perform eligibility and financial determinations, in accordance DHCS' Uniform Method of Determining Ability to Pay (UMDAP), for all clients unless directed otherwise by the Behavioral Health Director.

C. CONTRACTOR shall not submit a claim to, or demand or otherwise collect reimbursement from, the client or persons acting on behalf of the client for any specialty mental health or related administrative services provided under this CONTRACT, except to collect other health insurance coverage, share of cost, and co-payments (Cal. Code Regs., tit. 9, §1810.365(c).

D. The CONTRACTOR must not bill clients, for covered services, any amount greater than would be owed if the COUNTY provided the services directly as per and otherwise not bill client as set forth in 42 C.F.R. § 438.106.

4. CULTURAL COMPETENCE

All services, policies and procedures must be culturally and linguistically appropriate. CONTRACTOR must participate in the implementation of the most recent Cultural Competency Plan for the COUNTY and shall adhere to all cultural competency standards and requirements. CONTRACTOR shall participate in the COUNTY's efforts to promote the delivery of services in a culturally competent and equitable manner to all clients, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation, or gender identity.

5. CLIENT INFORMING MATERIALS

A. Basic Information Requirements

I. CONTRACTOR shall provide information in a manner and format that is easily understood and readily accessible to clients. (42 C.F.R. § 438.10(c)(1)) CONTRACTOR shall provide all written materials for clients in easily understood language, format, and alternative formats that take into consideration the special needs of clients in compliance with 42 C.F.R. § 438.10(d)(6). CONTRACTOR shall inform clients that information is available in alternate formats and how to access those formats in compliance with 42 C.F.R. § 438.10.

II. CONTRACTOR shall provide the required information in this section to each client receiving SMHS under this Agreement and upon request. (1915(b) Medi-

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Cal Specialty Mental Health Services Waiver, § (2), subd. (d), at p. 26., attachments 3, 4; Cal. Code Regs., tit. 9, § 1810.360(e).)

III. CONTRACTOR shall use DHCS/COUNTY developed beneficiary handbook and client notices. (42 C.F.R. §§ 438.10(c)(4)(ii), 438.62(b)(3))

IV. Client information required in this section may only be provided electronically by the CONTRACTOR if all of the following conditions are met:

a. The format is readily accessible;

b. The information is placed in a location on the CONTRACTOR's website that is prominent and readily accessible;

c. The information is provided in an electronic form which can be electronically retained and printed;

d. The information is consistent with the content and language requirements of this agreement;

e. The client is informed that the information is available in paper form without charge upon request and the Contractor provides it upon request within 5 business days. (42 C.F.R. § 438.10(c)(6).)

B. Language and Format

I. CONTRACTOR shall provide all written materials for potential clients and clients in a font size no smaller than 12 point. (42 C.F.R. 438.10(d)(6)(ii))

II. CONTRACTOR shall ensure its written materials that are critical to obtaining services are available in alternative formats, upon request of the client or potential client at no cost.

III. CONTRACTOR shall make its written materials that are critical to obtaining services, including, at a minimum, provider directories, beneficiary handbook, appeal and grievance notices, denial and termination notices, and the CONTRACTOR's mental health education materials, available in the prevalent non-English languages in the COUNTY. (42 C.F.R. § 438.10(d)(3))

a. CONTRACTOR shall notify clients, prospective clients, and members of the public that written translation is available in prevalent languages free of cost and how to access those materials. (42 C.F.R. § 438.10(d)(5)(i), (iii); Welfare

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& Inst. Code § 14727(a)(1); Cal. Code Regs. tit. 9 § 1810.410, subd. (e), para. (4))

IV. CONTRACTOR shall make auxiliary aids and services available upon request and free of charge to each client. (42 C.F.R. § 438.10(d)(3)- (4))

V. CONTRACTOR shall make oral interpretation and auxiliary aids, such as Teletypewriter Telephone/Text Telephone (TTY/TDY) and American Sign Language (ASL), available and free of charge for any language in compliance with 42 C.F.R. § 438.10(d)(2), (4)-(5).

VI. Taglines for written materials critical to obtaining services must be printed in a conspicuously visible font size.

C. Beneficiary Informing Materials

I. Each client must receive and have access to the beneficiary informing materials upon request by the client and when first receiving SMHS from CONTRACTOT. Beneficiary informing materials include but are not limited to:

a. Guide to Medi-Cal Mental Health Services
b. County Beneficiary Handbook (BHIN 22-060)
c. Provider Directory
d. Advance Health Care Directive Form (required for adult clients only)
e. Notice of Language Assistance Services available upon request at no cost to the client
f. Language Taglines
g. Grievance/Appeal Process and Form
h. Notice of Privacy Practices
i. Early & Periodic Screening, Diagnostic and Treatment (EPSDT) poster (if serving clients under the age of 21)

II. CONTRACTOR shall provide each client with a beneficiary handbook at the time the client first accesses services. The beneficiary handbook shall be provided to beneficiaries within 14 business days after receiving notice of enrollment.

III. CONTRACTOR shall give each client notice of any significant change to the information contained in the beneficiary handbook at least 30 days before the intended effective date of change as per BHIN 22-060.

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IV. Required informing materials must be electronically available on CONTRACTOR's website and must be physically available at the CONTRACTOR agency facility lobby for clients' access.

V. Informing materials must be made available upon request, at no cost, in alternate formats (i.e., Braille or Audio) and Auxiliary Aids (i.e., California Relay Service (CRS) 711 and American Sign Language) and must be provided to clients within five business days. Large print materials shall be in a minimum 18-point font size.

VI. Informing materials will be considered provided to the client if CONTRACTOR does one or more of the following:

a. Mails a printed copy of the information to the client's mailing address before the client first receives a specialty mental health service;

b. Mails a printed copy of the information upon the client's request to the client's mailing address;

c. Provides the information by email after obtaining the client's agreement to receive the information by email;

d. Posts the information on the CONTRACTOR's website and advises the client in paper or electronic form that the information is available on the internet and includes applicable internet addresses, provided that clients with disabilities who cannot access this information online are provided auxiliary aids and services upon request and at no cost; or,

e. Provides the information by any other method that can reasonably be expected to result in the client receiving that information. If CONTRACTOR provides informing materials in person, when the client first receives specialty mental health services, the date and method of delivery shall be documented in the client's file.

D. Provider Directory

I. CONTRACTOR must follow the COUNTY's provider directory policy, in compliance with MHSUDS IN 18-020.

II. CONTRACTOR must make available to clients, in paper form upon request and electronic form, specified information about the county provider network as per 42 C.F.R. § 438.10(h). The most current provider directory is electronically

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available on the COUNTY website and is updated by the COUNTY no later than 30 calendar days after information is received to update provider information. A paper provider directory must be updated as set forth in 42 C.F.R. § 438.10(h)(3)(i).

III. Any changes to information published in the provider directory must be reported to the COUNTY within two weeks of the change.

IV. CONTRACTOR will only need to report changes/updates to the provider directory for licensed, waivered, or registered mental health providers.

Article 11. DATA, PRIVACY AND SECURITY REQUIREMENTS

1. CONFIDENTIALITY AND SECURE COMMUNICATIONS
   A. CONTRACTOR shall comply with all applicable federal and state laws and regulations pertaining to the confidentiality of individually identifiable protected health information (PHI) or personally identifiable information (PII) including, but not limited to, requirements of the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, the California Welfare and Institutions Code regarding confidentiality of client information and records and all relevant County policies and procedures.
   B. CONTRACTOR will comply with all COUNTY policies and procedures related to confidentiality, privacy, and secure communications.
   C. CONTRACTOR shall not use or disclose PHI or PII other than as permitted or required by law.
2. ELECTRONIC PRIVACY AND SECURITY
   A. CONTRACTOR shall have a secure email system and send any email containing PII or PHI in a secure and encrypted manner. CONTRACTOR's email transmissions shall display a warning banner stating that data is confidential, systems activities are monitored and logged for administrative and security purposes, systems use is for authorized users only, and that users are directed to log off the system if they do not agree with these requirements.
   B. CONTRACTOR shall institute compliant password management policies and procedures, which shall include but not be limited to procedures for creating,

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changing, and safeguarding passwords. CONTRACTOR shall establish guidelines for creating passwords and ensuring that passwords expire and are changed at least once every 90 days.

C. Any Electronic Health Records (EHRs) maintained by CONTRACTOR that contain PHI or PII for clients served through this Agreement shall contain a warning banner regarding the PHI or PII contained within the EHR. CONTRACTOR's that utilize an EHR shall maintain all parts of the clinical record that are not stored in the EHR, including but not limited to the following examples of client signed documents: discharge plans, informing materials, and health questionnaire.

D. CONTRACTOR entering data into any county electronic systems shall ensure that staff are trained to enter and maintain data within this system.

3. BUSINESS ASSOCIATE AGREEMENT (BAA)

A. CONTRACTOR may perform or assist COUNTY in the performance of certain health care administrative duties that involve the use and/or disclosure of client identifying information as defined by HIPAA. For these duties, the CONTRACTOR shall be a Business Associate of the COUNTY and shall comply with the applicable provisions set forth in the HIPAA BAA, which must be signed and attached as an exhibit to this agreement.

B. CONTRACTOR shall follow all requirements listed within the BAA and shall comply with all applicable COUNTY policies, state laws and regulations and federal laws pertaining to breaches of confidentiality. CONTRACTOR agrees to hold the COUNTY harmless for any breaches or violations.

Article 12. CLIENT RIGHTS

CONTRACTOR shall take all appropriate steps to fully protect clients' rights, as specified in Welfare and Institutions Code Sections 5325 et seq; Title 9 California Code of Regulations (CCR), Sections 861, 862, 883, 884; Title 22 CCR, Sections 72453 and 72527; and 42 C.F.R. § 438.100.

Article 13. RIGHT TO MONITOR

1. COUNTY or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Auditor General, shall have absolute right

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to review and audit all records, books, papers, documents, corporate minutes, financial records, staff information, client records, other pertinent items as requested, and shall have absolute right to monitor the performance of CONTRACTOR in the delivery of services provided under this Contract. Full cooperation shall be given by the CONTRACTOR in any auditing or monitoring conducted, according to this agreement.

2. CONTRACTOR shall make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal enrollees, Medi-Cal-related activities, services, and activities furnished under the terms of this Contract, or determinations of amounts payable available at any time for inspection, examination, or copying by County, the State of California or any subdivision or appointee thereof, CMS, U.S. Department of Health and Human Services (HHS) Office of Inspector General, the United States Comptroller General or their designees, and other authorized federal and state agencies. This audit right will exist for at least ten years from the final date of the Agreement period or in the event the Contractor has been notified that an audit or investigation of this Agreement has commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later (42 CFR §438.230(c)(3)(I)-(ii)).
3. The COUNTY, DHCS, CMS, or the HHS Office of Inspector General may inspect, evaluate, and audit the Contractor at any time if there is a reasonable possibility of fraud or similar risk. The Department's inspection shall occur at the CONTRACTOR's place of business, premises, or physical facilities (42 CFR §438.230(c)(3)(iv)).
4. CONTRACTOR shall cooperate with COUNTY in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by COUNTY. Should COUNTY identify an issue or receive notification of a complaint or potential/actual/suspected violation of requirements, COUNTY may audit, monitor, and/or request information from CONTRACTOR to ensure compliance with laws, regulations, and requirements, as applicable.
5. COUNTY reserves the right to place CONTRACTOR on probationary status, as referenced in the Probationary Status Article, should CONTRACTOR fail to meet performance requirements; including, but not limited to violations such as high disallowance rates, failure to report incidents and changes as contractually required,

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failure to correct issues, inappropriate invoicing, untimely and inaccurate data entry, not meeting performance outcomes expectations, and violations issued directly from the State. Additionally, CONTRACTOR may be subject to Probationary Status or termination if contract monitoring and auditing corrective actions are not resolved within specified timeframes.

6. CONTRACTOR shall retain all records and documents originated or prepared pursuant to CONTRACTOR's performance under this Contract, including client grievance and appeal records, and the data, information and documentation specified in 42 C.F.R. parts 438.604, 438.606, 438.608, and 438.610 for a period of no less than ten years from the term end date of this Agreement or until such time as the matter under audit or investigation has been resolved. Records and documents include but are not limited to all physical and electronic records and documents originated or prepared pursuant to CONTRACTOT's or subcontractor's performance under this Agreement including working papers, reports, financial records and documents of account, client records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for clients.
7. CONTRACTOR shall maintain all records and management books pertaining to service delivery and demonstrate accountability for contract performance and maintain all fiscal, statistical, and management books and records pertaining to the program. Records should include, but not be limited to, monthly summary sheets, sign-in sheets, and other primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must also comply with the Code of Federal Regulations (CFR), Title II, Subtitle A, Chapter 11, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
8. All records shall be complete and current and comply with all Agreement requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of Agreement.

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9. CONTRACTOR shall maintain client and community service records in compliance with all regulations set forth by local, state, and federal requirements, laws and regulations, and provide access to clinical records by COUNTY staff.
10. CONTRACTOR shall comply with Medical Records/Protected Health Information Article regarding relinquishing or maintaining medical records.
11. CONTRACTOR shall agree to maintain and retain all appropriate service and financial records for a period of at least ten years from the date of final payment, the final date of the contract period, final settlement, or until audit findings are resolved, whichever is later.
12. In the event the Agreement is terminated, ends its designated term or CONTRACTOR ceases operation of its business, CONTRACTOR shall deliver or make available to COUNTY all financial records that may have been accumulated by Contractor or subcontractor under this Agreement, whether completed, partially completed or in progress within seven calendar days of said termination/end date.
13. CONTRACTOR shall provide all reasonable facilities and assistance for the safety and convenience of the County's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner that will not unduly delay the work of CONTRACTOR.
14. COUNTY has the discretion to revoke full or partial provisions of the Agreement, delegated activities or obligations, or application of other remedies permitted by state or federal law when the COUNTY or DHCS determines CONTRACTOR has not performed satisfactorily.

Article 14. SITE INSPECTION

1. Without limiting any other provision related to inspections or audits otherwise set forth in this Agreement, CONTRACTOR shall permit authorized COUNTY, state, and/or federal agency(ies), through any authorized representative, the right to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract support activities and the premises which it is being performed. CONTRACTOR shall provide all reasonable assistance for the safety and convenience of the authorized representative in

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the performance of their duties. All inspections and evaluations shall be made in a manner that will not unduly delay the work.

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EXHIBIT E
MEDI-CAL OUTPATIENT RATES
PER BILLABLE MINUTE

Psychiatrist	**$21.45**
Psychiatric Nurse Practitioner, Clinical Nurse Specialist	**$10.74**
Physician Assistant	**$9.69**
Registered Nurse	**$8.77**
Licensed Psychiatric Technician	**$4.98**
Licensed Vocational Nurse	**$4.61**
Psychologist (Licensed or Waivered)	**$6.26**
LPHA (MFT, LCSW, LPCC, OT) or LPHA (MFT, LCSW, LPCC, OT)(Licensed or Waivered)	**$5.69**
Mental Health Rehab Specialist	**$4.37**
Alcohol and Drug Counselor (Registered and Certified)	**$4.37**
Other Qualified Providers - Other Designated MH Staff that Bill Medi-Cal (inc. Certified Peer Professional)	**$4.21**

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1392

TO: Board of Supervisors

FROM: Jennifer Yasumoto, Director of Health and Human Services Agency

REPORT BY: Gaby Angeles, Staff Services Analyst II

SUBJECT: Agreement No. 250090B with OLE Health dba CommuniCare OLE

RECOMMENDATION

Approve and authorize Agreement No. 250090B with Ole Health dba CommuniCare OLE, for a maximum of $452,738 for the term of July 1, 2024 through June 30, 2027, for the provision of the Dental Access Program. (Fiscal Impact: $452,738 Expense; Health and Human Services Agency Fund and General Fund; Budgeted; Discretionary)

BACKGROUND

On June 4, 2024, the Board heard and approved Napa County HHSA staff recommendations for leveraging funding to support objectives of the Community Health Improvement Plan (CHIP), specifically approving the recommendations for Tobacco Master Settlement Agreement (MSA) grant awards. The CHIP is a 3-year plan that has been developed from data gathered from the Community Health Assessment (CHA) and Napa Older Adults Assessment (NOAA) processes. As an integrated agency administering social, public health, and behavioral health services and funding, HHSA strategically aligned three funding streams, Tobacco Master Settlement Agreement (MSA), Mental Health Services Act (MHSA), and Opioid Settlement Funds (OSF) to target the five priority areas identified in the CHIP: Access to Health Services, Housing, Race Equity and LGBTQ Inclusion, Economic Stability, and Behavioral Health. The MSA grant process evaluated and recommended projects aligned with the first four of these priority areas, and MHSA and OSF funds were directed to support the priority area of Behavioral Health.

On August 6, 2024, the Board considered 36 agreements totaling $10,824,956 to meet the needs expressed in the CHIP objectives. One of the 36 contracts included a contract with Ole Health for a maximum of $452,738 for the Dental Access Program. However, due to Board Member recusals regarding the contract with Ole Health, there were insufficient votes to approve the Ole Health agreement. The other 35 agreements were approved by the Board on August 6.

Requested Actions:

Approve and authorize the grant award to OLE Health, dba CommuniCare OLE, for a maximum of $452,738 for Dental Access Program for the term from July 1, 2024 through June 30, 2027, and terminate Agreement No. 240045B and replace it with Agreement No. 250090B.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Revenue and expenses from the National Tobacco Master Settlement Agreement are budgeted within the General Fund - Tobacco Settlement subdivision.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approval of the requested action is discretionary because there is no mandate to award the contracts; however, the County is under contract with the State to fulfill the requirements of the MHSA Prevention and Early Intervention and Community Services and Supports components. Services to be provided the contract is consistent with those requirements.
Is the general fund affected?	Yes
Future fiscal impact:	Appropriations have been included in the approved Fiscal Year 2024-2025 budget and future fiscal years will be appropriated accordingly.
Consequences if not approved:	If the Board does not approve the recommended contract funds will not be distributed to Ole to operationalize CHIP objectives.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not subject to the California Environmental Quality Act pursuant to State CEQA Guidelines section 15060(c)(2), as activities that will not result in a direct or a reasonably foreseeable indirect physical change in the environment.

NAPA COUNTY AGREEMENT NO. 250090B
GRANT AGREEMENT

THIS AGREEMENT is made and entered into as of this 6th day of August 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and **OLE HEALTH, dba COMMUNICARE OLE,** a California nonprofit corporation whose business address is 1141 Pear Tree Lane, Suite 100, Napa, CA 94558, hereinafter referred to as "GRANTEE."

RECITALS

WHEREAS, COUNTY has Tobacco Settlement Funds which may be used for any lawful purpose; and

WHEREAS, COUNTY recognizes that a significant number of Napa County adults and children are living at or below the Federal Poverty Level who cannot afford to pay for inpatient and outpatient services, including related prevention, education, and smoking cessation programs; and

WHEREAS, COUNTY wishes to use a portion of the Tobacco Settlement Funds to provide grants to respond to the areas of food insecurity, housing instability, physical healthcare for those who are vulnerable (age 65 or older, or those with underlying health conditions), as well as behavioral healthcare; and

WHEREAS, GRANTEE has submitted a Proposal to COUNTY, requesting a grant from COUNTY's Tobacco Settlement Funds to fund a Program, described in Exhibit "A," attached hereto and incorporated by reference herein, to serve this population; and

WHEREAS, on July 18, 2023, COUNTY and GRANTEE entered into Napa County Agreement No. 240045B for GRANTEE to provide a similar program with grant funding from COUNTY's Tobacco Settlement Funds which has yet to expire; and

WHEREAS, COUNTY and GRANTEE wish to terminate Agreement No. 240045B and replace it with this Agreement No. 250090B as of the effective date of this Agreement; and

NOW, THEREFORE, for valuable consideration, the adequacy of which is hereby acknowledged, COUNTY and GRANTEE agree as follows:

TERMS

1. **Term of the Agreement/Termination.**

(a) Term. The term of this Agreement shall commence on July 1, 2024 and shall expire on **June 30, 2027** unless terminated earlier in accordance with subparagraph 1(b), except that the obligations of GRANTEE under Paragraph 3 (Use of Funds, Return of Surplus), Paragraph 4 (Return of Funds), Paragraph 5 (Reporting), Paragraph 6 (Maintenance, Inspection, and Retention of Records) and Paragraph 14 (Confidentiality) shall survive the expiration or early termination date, and Paragraphs 11 (Insurance) and 12 (Indemnification) shall continue in

full force and effect after said expiration or early termination date as to any liability for acts and omissions occurring during the term of this Agreement.

(b) Early Termination. This Agreement may be terminated prior to the expiration date by either party for any reason and at any time after complying with the conflict resolution provision in Exhibit "A," by giving written notice of such termination to the other party and specifying the effective date thereof. The Napa County Executive Officer is delegated the authority to terminate this Agreement in accordance with this subparagraph on behalf of COUNTY.

(c) Termination of Prior Agreement. Agreement No. 240045B shall terminate effective August 6, 2024, releasing COUNTY and GRANTEE of their obligations thereunder except for those obligations identified in Paragraph 1(a) of Agreement No. 240045B as surviving early termination or as otherwise specified in this Agreement. COUNTY and GRANTEE hereby waive the conflict resolution provisions and prior notice of early termination set forth in Paragraph 1(b) of Agreement No. 240045B.

2. **Payment of Grant Funds.** COUNTY agrees and hereby directs the Auditor-Controller to issue and deliver to GRANTEE by County warrant the amount(s) as set forth in Exhibit "B", attached hereto and incorporated by reference herein. GRANTEE acknowledges that the term of this Agreement extends over multiple fiscal years, and that payment under this Agreement is contingent on the Board of Supervisors appropriating sufficient funding for this Agreement in those fiscal years. This Agreement may be terminated if sufficient funding is not appropriated by the Board of Supervisors for each fiscal year. GRANTEE is not obligated to provide the Program if sufficient funding is not appropriated for that fiscal year, nor is COUNTY obligated to pay GRANTEE any amounts not duly appropriated and authorized by the Board of Supervisors.

3. **Use of Funds by GRANTEE, Return of Surplus.** GRANTEE hereby agrees to use all grant funds conveyed to GRANTEE by COUNTY under this Agreement for the sole purpose of the Program set forth in Exhibit "A." Funds must be expended within the fiscal year, as according to the Grant Payment Date table in Exhibit "B", in order to comply with the rules of accrual-based accounting. If GRANTEE has not fully expended the grant funds by the date of expiration or other termination of the Agreement and the Agreement has not been amended by the parties to extend the term and, if necessary, modify the Program to allow for full expenditure of the funds, then GRANTEE shall return to COUNTY the remaining unspent funds within thirty (30) days after such expiration or other termination date.

4. **Return of Funds.** If GRANTEE fails to fulfill in a timely and proper manner GRANTEE's obligations under this Agreement or otherwise breaches this Agreement, or fails to complete the Program in a timely fashion, GRANTEE shall, upon written demand by the County Executive Officer, return to COUNTY all grant funds provided hereunder. If GRANTEE uses any portion of the grant funds provided under this Agreement for a purpose other than the Program, GRANTEE shall, upon written demand by the County Executive Officer, return to COUNTY the portion of such grant funds not used for the Program. Return of grant funds under this Paragraph shall occur within thirty (30) days of receipt by GRANTEE of written demand therefore from the County Executive Officer and shall include any interest earned thereon by

GRANTEE. Return of grant funds under this paragraph shall be in addition to any other remedies available to COUNTY by law.

5. Reporting. GRANTEE shall submit to COUNTY quarterly reports pursuant to the schedule set forth in Exhibit "B." Both reports must summarize activities of GRANTEE up to the end of the report period pertaining to progress of the Program and shall specifically include the number of services provided (if applicable), a statement of any expenditure of the funds provided hereunder as well as a general accounting of all revenues received and commitments or expenditures made for the Program from any public or private source. The final Program report shall include any performance indicators and/or outcome measures identified in the original application. Said reports shall be presented within thirty (30) days of the end of each quarter. Said reports shall be sent to: msa@countyofnapa.org.

6. **Maintenance, Inspection, and Retention of Records.** GRANTEE shall separately maintain financial and statistical records which fairly reflect the activities of GRANTEE pertaining to the Program and the actual costs thereof. Upon reasonable request by the County Executive Officer or the Auditor-Controller, GRANTEE shall make available for inspection and audit by representatives of COUNTY all books, financial records, program information and other records pertaining to the overall operations of GRANTEE in relation to the Program, and shall allow such representatives to review and inspect GRANTEE's facilities and program operations relating to the Program. Except where longer retention is required by any federal or state law, GRANTEE shall maintain all required records for no less than seven years after COUNTY makes the final payment required hereunder, all obligations of GRANTEE under this Agreement have been fulfilled, and all pending matters are closed, whichever is later.

7. **Licensing and Credentials.** During the term of this Agreement, GRANTEE hereby agrees to file with COUNTY copies of all required governmental or professional licenses and credentials for itself, its facilities, and for its employees and all other persons engaged in work in conjunction with the Program.

8. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. GRANTEE hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its obligations hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by GRANTEE of such conflict. For purposes of this subparagraph, the consent of COUNTY may be given by the County Executive Officer. GRANTEE further warrants that it is unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. GRANTEE agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by either party to the other under this Agreement. The County Executive Officer is delegated the authority to terminate this Agreement in accordance with this subparagraph on behalf of COUNTY.

(b) Statements of Economic Interest. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that GRANTEE's obligations under this Agreement are sufficiently limited in scope that GRANTEE is not a "consultant" for purposes of COUNTY's Conflict of Interest Code and therefore GRANTEE is not required to comply with the disclosure obligations contained therein.

9. **Independent Contractor.** GRANTEE shall perform this Agreement as an independent contractor. GRANTEE shall, at GRANTEE's own risk and expense, determine the method and manner by which obligations imposed on GRANTEE by this Agreement shall be performed; provided, however, that COUNTY may monitor GRANTEE's performance. GRANTEE and the officers, agents and employees of GRANTEE are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation, state and federal taxes, and employee benefits. As between the parties to this Agreement, GRANTEE shall be solely responsible for all such payments.

10. **Assignments or Subcontracts**. A consideration of this Agreement is the community reputation and special expertise, resources, and service program(s) of GRANTEE. For this reason, GRANTEE shall not assign any interest in this Agreement or subcontract any of the obligations GRANTEE is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. For purposes of this paragraph, the consent of COUNTY may be given by its County Executive Officer.

11. **Insurance.** GRANTEE shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, GRANTEE shall provide workers' compensation insurance for the performance of any GRANTEE's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. GRANTEE shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of GRANTEE or any officer, agent, or employee of GRANTEE under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of GRANTEE arising out of or in connection

with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with GRANTEE 's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If GRANTEE owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If GRANTEE or GRANTEE's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, GRANTEE shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced above shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by GRANTEE with the Health and Human Services Agency prior to commencement of performance of any of GRANTEE 's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in paragraph 11(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in paragraph 11(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, GRANTEE shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, GRANTEE shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of GRANTEE not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of GRANTEE under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, GRANTEE shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of GRANTEE by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or GRANTEE shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. GRANTEE agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 11.

(f) Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve GRANTEE, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

12. **Indemnification.** To the full extent permitted by law, GRANTEE shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of GRANTEE or its officers, agents, employees, volunteers, contractors and subcontractors when engaging in activities funded by this Agreement. GRANTEE shall notify COUNTY immediately in writing of any claim or damage related to activities performed with funding provided under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

13. **Compliance with Laws.** GRANTEE shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. When engaged in any activities funded under this Agreement, GRANTEE and its officers, employees, subcontractors and volunteers shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race,

color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. GRANTEE shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, GRANTEE shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to GRANTEE services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and GRANTEE and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. GRANTEE agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of GRANTEE performing any of the obligations under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. GRANTEE shall make the required documentation available upon request to COUNTY for inspection.

(c) Napa County "Waste Source Reduction and Recycled Product Content Procurement Policy" which is found in the Napa County Policy Manual Part I, Section 8D.

(d) Napa County "Discrimination, Harassment and Retaliation Prevention Policy," which is found in the Napa County Policy Manual Part I, Section 37K.

(e) Napa County "Drug and Alcohol Policy," which is found in the Napa County Policy Manual Part I, Section 37O.

(f) "Napa County Information Technology Use and Security Policy" which is found in the Napa County Policy Manual Part I, Section 31A. To this end, all employees and subcontractors of GRANTEE whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(g) Napa County "Workplace Violence Policy," which is found in the Napa County Policy Manual Part I, Section 37U.

(h) Inclusion in Subcontracts. To the extent any of the obligations required of GRANTEE under this Agreement are subcontracted to a third party, GRANTEE shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

14. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to GRANTEE which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. GRANTEE shall hold all such information as GRANTEE may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Director of Health and Human Services. Upon cancellation or expiration of this Agreement, GRANTEE shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that GRANTEE may retain for its files a copy of GRANTEE's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent GRANTEE is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), GRANTEE shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. GRANTEE shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by GRANTEE.

(2) GRANTEE shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, GRANTEE shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 14.

(3) GRANTEE agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information of which it becomes aware.

(4) GRANTEE will be responsible for all costs associated with GRANTEE's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of County Data. If GRANTEE will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, GRANTEE shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by GRANTEE shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited. Additionally the following is required:

(1) All desktop and laptop computers, as well other similar type computer systems, used by GRANTEE shall be encrypted using the same encryption algorithm described

above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

(2) Upon termination of this agreement, GRANTEE shall purge all COUNTY data from all GRANTEE's systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

(3) GRANTEE shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

15. **Notices**. All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	GRANTEE
Dr. Christine Wu, Dep. Dir. of PH	Alicia Hardy, CEO
Health & Human Services Agency	CommuniCare OLE
2751 Napa Valley Corporate Drive	1141 Pear Tree Lane, Suite 100
Napa, CA 94559	Napa, CA 94558

16. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

17. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

18. **Amendment/Modification.** COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits "A" and "B," attached to this Agreement, provided that any such amendment is in writing, and does not add new services to be provided or increase the maximum compensation available under this Agreement.

19. **Interpretation/Venue.** The headings used herein are for reference. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any state action hereunder shall be in the Superior Court of California, County of Napa, a unified court. The venue for any federal action shall be in the district court for the Northern District of California.

20. **No Waiver.** Waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

21. **Severability.** If any provision of this Agreement or portion thereof is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of the Agreement.

22. **Acknowledgment of Funds.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, GRANTEE shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa." For media advisories, press releases or other press material, GRANTEE shall use the funding language set forth in Exhibit "A."

23. **Entirety of Contract.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

24. **Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, this Agreement is executed by COUNTY, acting by and through the Chair of the Board of Supervisors, and by GRANTEE through its duly authorized officers.

OLE HEALTH dba COMMUNICARE OLE

By_____
ALICIA HARDY, Chief Executive Officer

NAPA COUNTY, a political subdivision of the State of California

By_____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: *Thomas C. Zeleny* Chief Deputy County Counsel Date: July 12, 2024	Date: _____ Processed By: _____ Deputy Clerk of the Board	By:_____

EXHIBIT A
MSA Scope of Work
OLE Health dba CommuniCare OLE
Dental Access Program
FY 2024-2025/ FY 2025-2026/ FY 2026-2027

1. **Program Name:** Dental Access Program

2. **Program Description and Services to be Provided** (include target population, outreach, program goals etc.)

   CommuniCare+OLE (CC+OLE) has three dental services locations in Napa County and is the safety-net provider for dental patients in the area. CC+OLE offers bilingual services in English and Spanish with culturally diverse staff. CC+ OLE dental patients are primarily low-income (80%) at or below 200% FPL, Latino (65%), and prefer to speak Spanish (52%), 21% are migrant/agricultural workers or their dependents, and covered by Medi-Cal/Denti-Cal.

   Four main elements of the CC+OLE program include 1) reducing challenges and barriers to care for patients with outstanding dental care plans; 2) increasing access to dental care for children by improving preventative dental health measures for expectant mothers, infants, and children including increasing the mothers' dental health awareness; 3) maintaining dentistry skill development enabling dentists to perform complex-level dental surgical procedures at the three dental services sites in Napa County; and 4) working with patients to identify and reduce social determinants of health that are barriers to the patients achieving wellness goals, provide resource referral assistance, warm handoffs to behavioral health and nutritionists, and assistance in scheduling appointments with internal and outside provider referrals.

3. **Activities, Outputs, and Deliverables:** GRANTEE will perform the following activities over the term of the contract:

Activities/Outputs	**Target**
Patients per year with outstanding dental plans will resume the completion of their plan to get full spectrum of dental needs met.	600
OB patients per year will make dental visits.	150
New pediatric patients per year will have their first dental visit at 6 months old or when they get their first tooth.	350
Adults per year will receive specialty dental services on site.	200
Screenings per year will be conducted in the dental services department.	4,320
Patients per year are provided with warm-handoffs or resources based on screening results and patients' needs.	100

Patients per year provided with assistance with Urgent/Stat appointments and referrals based on treatment needed.	200

4. **Outcomes:** GRANTEE will achieve the following outcomes during the grant period:

Targeted Outcomes	**Target**
Patients over 12 years old who come in for an appointment will complete depression and tobacco screenings by Year 3.	90%
Patients over 12 years old who come in for an appointment will complete nutrition screening by Year 3.	70%
Oral pathology patients will receive care management support to ensure follow-up with a specialist and receive results or treatment plan of action by Year 3.	90%
Increase dental access for low-income individuals by Year 3, including BIPOC, including children and older adults.	25%
Reduce the number of patients with delayed dental care by Year 3, as measured by dental patient tracking plan completion data.	30%

CONFLICT RESOLUTION AND MEDIATION

In the event COUNTY or GRANTEE encounter problems that significantly threaten to impede the fulfillment of the terms of this agreement, an ad hoc meeting may be called by either the Health and Human Services Director, or designee, or GRANTEE executive management, wherein problem resolution is attempted, if need be, with a third party agreeable to both. Prior to termination of contract, each party agrees to attempt such conflict resolution at least one time prior to termination of contract.

RECOGNITION OF COUNTY FUNDING

All press releases, media advisories and other press material referencing programs funded by The Tobacco Master Settlement Agreement (MSA) shall include the following tagline at the bottom of the release/advisory:

OLE Health dba CommuniCare OLE is funded by Napa County Tobacco Master Settlement Agreement (MSA) funds. It is one of several MSA programs implemented by the County of Napa, which strive to improve health outcomes for individuals and families throughout the community.

EXHIBIT B
GRANT PAYMENTS & REPORT TEMPLATE
OLE Health dba CommuniCare OLE
Dental Access Program

COUNTY shall issue warrants to GRANTEE for a total amount of $452,738 pursuant to the following schedule to fund the program and related expenses. The quarterly reports due as noted below shall each cover the activities conducted and expenditures made 1) during the previous quarter and 2) year-to-date ending on the last date of the quarter. GRANTEE shall use the MSA Quarterly and Full Year Activity Report and MSA Quarterly and Full Year Expenditure Report templates included below.

COUNTY shall not release the payment until GRANTEE delivers the report to the COUNTY covering the previous period and such report is approved by the COUNTY.

FISCAL YEAR 2024-25		
Quarterly and YTD Report Due	**Grant Payment Date**	**Grant Payment Amount**
August 6, 2024 for: 1) April 1, 2024 - June 30, 2024 2) Year-to-Date (carry-over from Agreement No. 240045B)	On or about August 20, 2024	$50,797
November 3, 2024 for July 1, 2024 – September 30, 2024	November 11, 2024	$50,797
February 3, 2025 for: 1) October 1, 2024 – December 31, 2024 2) Year-to-Date	February 10, 2025	$50,796
May 1, 2025 for: 1) January 1, 2025 - March 31, 2025 2) Year-to-Date	May 12, 2025	$50,796
August 1, 2025 for: 1) April 1, 2025 -June 30, 2025 2) Year-to-Date	N/A	N/A
FISCAL YEAR 2025-26		
Quarterly and YTD Report Due	**Grant Payment Date**	**Grant Payment Amount**
N/A	On or about August 11, 2025	$43,401
November 3, 2025 for July 1, 2025– September 30, 2025	November 10, 2025	$43,401
February 3, 2026 for: 1) October 1, 2025 – December 31, 2025	February 9, 2026	$43,401

2) Year-to-Date		
May 1, 2026 for: 1) January 1, 2026 - March 31, 2026 2) Year-to-Date	May 11, 2026	$43,401
August 3, 2026 for: 1) April 1, 2026 June 30, 2026 2) Year-to-Date	N/A	N/A
FISCAL YEAR 2026-27		
Quarterly and YTD Report Due	**Grant Payment Date**	**Grant Payment Amount**
N/A	On or about August 10, 2026	$18,987
November 2, 2026 for July 1, 2026–September 30, 2026	November 9, 2026	$18,987
February 3, 2027 for: 1) October 1, 2026 – December 31, 2026 2) Year-to-Date	February 8, 2027	$18,987
May 1, 2027 for: 1) January 1, 2027 - March 31, 2027 2) Year-to-Date	May 10, 2027	$18,987
August 3, 2027 for: 1) April 1, 2027 June 30, 2027 2) Year-to-Date	N/A	N/A

With the written approval of the Director of COUNTY's Health and Human Services Agency or designee, GRANTEE may modify the maximum amount of individual budget items in its final approved budget for each fiscal year for the program. For each fiscal year, the dollar amount of any individual budget item may be reduced without limitation, provided the total dollar amount for all budget items shall remain unchanged, such changes in the budget shall not add a new type of service to the program description, and the administrative cost line item shall remain unchanged. Such changes shall not be effective unless and until notice of consent by Health and Human Services Agency has been given to GRANTEE in writing. Funds may not be transferred between fiscal years.

MSA QUARTERLY & FULL YEAR ACTVITY REPORT

Reporting Period: _____

Summary of Activities Pertaining to the Contract (Narrative):

Activities/Outputs	FY Target	Qtr. 1 Total	Qtr. 2 Total	Qtr. 3 Total	Qtr. 4 Total	YTD Total
Number of OB patients who made dental visits.	150					
Number of new pediatric patients who had their first dental visit at 6 months old or when they get their first tooth.	350					
Number of adults who received specialty dental services on site.	200					
Number of patients provided with warm-handoffs or resources based on screening results and patients' needs.	100					
Number of patients per year provided with assistance with Urgent/Stat appointments and referrals based on treatment needed.	200					

Targeted Outcomes	Measures	FY Target	Qtr. Total	YTD Total
90% of patients over 12 years old who come in for an appointment will complete depression and tobacco screenings by Year 3.	Number of depression and tobacco screenings completed for patients age 12+ who came in for an appointment	4320		
	Number of patients age 12+ who came in for an appointment	4800		
70% of patients over 12 years old who come in for an appointment	Number of screenings completed for patients age 12+ who came in for an appointment	3360		

will complete nutrition screening by Year 3.	Number of patients age 12+ who came in for an appointment	4800		
90% oral pathology patients will receive care management support to ensure follow-up with a specialist and receive results or treatment plan of action by Year 3.	Number of patients who received care management support	324		
	Number of oral pathology patients	360		
25% increase dental access for low-income individuals by Year 3, including BIOPOC, including children and older adults.	Number of additional low-income patients	1750		
	Total number of low-income patients	7000		
30% reduction in the number of patients with delayed dental care by Year 3, as measured by dental patient tracking plan completion data.	Number of patients with outstanding dental plans who resumed the completion of their plan to get full spectrum of dental needs met	600		
	Number of patients with outstanding dental plans	2000		

MSA QUARTERLY & FULL YEAR EXPENDITURE REPORT

AGENCY:

PROGRAM:

AGREEMENT NUMBER:

STATEMENT OF EXPENDITURES:

Description	Approved Budget	Quarterly Expenditures	Year-to-Date Cumulative Expenditures	Remaining Budget
Personnel:				
Position 1				
Position 2				
Position 3				
Total Personnel				
Operating Expenses:				
Item 1				
Item 2				
Item 3				
Total Operating Expenses				
Program Expenses:				
Program Expense 1				
Program Expense 2				
Program Expense 3				
Total Program Expenses				
TOTAL EXPENSES				

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-969

TO: Board of Supervisors

FROM: Christine Briceño, Director of Human Resources

REPORT BY: Joy Cadiz, Staff Services Manager

SUBJECT: Agreement No. 240398B with ExamWorks

RECOMMENDATION

Approve and authorize Agreement No. 240398B with ExamWorks for the term of January 1, 2024, through June 30, 2024, to provide advisory medical record review, independent medical examinations, and/or reports, and pay for previous work regarding an independent medical examination. (Fiscal Impact: $80,000 annual expense; Fund dependent upon Department usage; Budgeted; Discretionary)

BACKGROUND

ExamWorks, LLC, has provided the County with sporadic medical record and examination services since 2019. The original agreement expired June 30, 2023, and the County has an outstanding invoice related to this work.

Requested Action:

Approve Agreement No. 240398B for a term of January 1, 2024 through June 30, 2024, to allow for invoice payment.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Individual County departments depending on usage.
Is it Mandatory or Discretionary?	Discretionary
Is the general fund affected?	No
Future fiscal impact:	None, as the contract term is effective January 1, 2024 to June 30, 2024.

Consequences if not approved:	The County will not be able to pay an outstanding invoice for services rendered.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of January, 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and ExamWorks, LLC, a Delaware limited liability corporation", whose mailing address is 3280 Peachtree Road NE, Suite 2625, Atlanta, GA 30305, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide advisory medical record review, independent medical examinations, and/or reports; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2024, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of eighty thousand dollars ($80,000) for professional services per fiscal year; provided, however, that such amounts shall not be

construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the Director of Human Resources who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Director of Human Resources upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage which shall be filed by CONTRACTOR with the Director of Human Resources prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) [Omitted.]

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees,

volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all negligence or intentional misconduct of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within thirty (30) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving thirty (30) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or

communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CONTRACTOR
Christine Briceno, Director of Human Resources	Sam Laws
1195 Third Street, Suite 100	11010 White Rock Road, Suite 120
Napa, CA 94559	Rancho Cordova, CA 95670

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Director of Human Resources. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, except as required by law, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Director of Human Resources.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this

Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages.

(1) Affected Work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work

performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing Wages Rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll Records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law,

CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By executing this Agreement, the COUNTY hereby determines in writing that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions.** [RESERVED]

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

EXAMWORKS

By_____
Brent Nalley, President of US IME

By_____
Sam Laws, General Manager

"CONTRACTOR"

NAPA COUNTY, a political subdivision of
the State of California

By_____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: *Susan B. Altman*, Deputy Date: August 2, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

CONTRACTOR to conduct independent medical exams, including but not limited to reviewing medical records and diagnostic studies, conducting physical examinations as needed, and/or preparing written reports based on medical opinion. Contractor further agrees to assist COUNTY with testimony preparation and testify as an expert witness when necessary.

COUNTY acknowledges that CONTRACTOR may contract with physicians and other medical professionals and providers ("Medical Professionals") who will perform all or a portion of the Professional Services. COUNTY acknowledges that any medical action or determination will be performed or made by a Medical Professional using his or her independent professional medical training, judgment and expertise and that, CONTRACTOR, which is not a medical professional and acts in an administrative capacity, does not control and shall not be responsible or liable for the actions or determinations of Medical Professionals. COUNTY acknowledges that Professional Services are advisory in nature and accordingly CONTRACTOR shall not have authority or responsibility for, or liability relating to, determining who is eligible to receive any type of benefit, the amount of any benefit to be paid under any insurance policy or plan, eligibility determinations, bill payment or denial determinations, claims processing determinations, employee payment determinations, treatment determinations or other similar determinations. All such authority and responsibility shall remain with COUNTY and COUNTY shall indemnify and hold CONTRACTOR harmless against any third party action against CONTRACTOR arising from any such determination.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

DESCRIPTION	SERVICE	FEE
RECORD REVIEW, INDEPENDENT MEDICAL EXAMINATION, AND/OR REPORT: Review medical records and diagnostic studies, conduct physical examination and/or prepare written report based on independent opinion.	Record Review*	$800 /hour
	Examination*	$800 /hour
	Report Preparation*	$800 /hour
*Minimum Charges: IME: Examination - 1 hour. IME report preparation - 1.5 hours. Record Review: Review of records - 1 hour. Report preparation - 1 hour (if written report requested). Supplemental Report: Review of additional records - .5 hour. Report preparation - .5 hour (if written report requested). Total times may exceed these minimum charges based on complexity of case.		
VERBAL CONSULTATION:	Consultation	$800 /hour
RUSH FEES: Preparation of expedited report within 20 days from date of examination. (Regular turn-around is 30 days)	0 - 2 Days	$500 /flat
	3 - 5 Days	$400 /flat
	6 - 10 Days	$300 /flat
	11 - 20 Days	$200 /flat
TESTIMONY FEES: Prepayment of trial and arbitration fees required 24 hours in advance of appearance. (A cancellation fee will be charged if canceled with less than 48hr notice.) It is the responsibility of the client retaining the consultant to have these fees paid.	Deposition	$1,000 /hour
	Arbitration/Video Deposition**(2-hr min)	$1,200 /hour
	Trial-Half Day	$5,000 /flat
	Trial-Full Day	$10,000 /flat
	Preparation	$800 /hour
NO SHOW / LATE CANCELLATION ON EXAMS: Scheduled evaluation appointment missed or canceled with less than 5 days notice. (Excludes weekends and holidays)	Late Cancellation Less than 5 Days	$800 /flat
NO SHOW / LATE CANCELLATION ON TESTIMONY: Scheduled testimony missed or canceled with less than 48 hours notice. (Excludes weekends and holidays)	Deposition	$750 /flat
	Verbal Consultation	$800 /flat
	Arbitration/Video Depo	$1,500 /flat
	Trial-Half Day	$2,500 /flat
	Trial-Full Day	$5,000 /flat
Research or other services provided by non-MD staff		$95 hour
TRAVEL: Hourly rate plus actual costs.		$250 /hour

**Video Deposition fees contemplates preservation of testimony for use in trial.
All invoices for services are due and payable on receipt

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15	Site visit/investigation 123 Main St,	Smith, Engineer	1.5	$165.00	247.50
1/1/15	Napa.	Smith, Engineer	1	$165.00	165.00
1/1/15	Conf w/Owner	Smith, Engineer	4	$165,00	660.00
	AutoCad, Bldg X, 3rd Floor				
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15	AutoCad Bldg X, 3rd Floor	Smith, Engineer	4	$165.00	660.00
1/2/15	Conf w/Owner re 2nd Floor	Smith, Engineer	.5	$165.00	82.50
1/3/15	Mtg w/Jones re 2nd Floor; conf w/Owner	Smith, Engineer	1.5	$165.00	247.50
1/3/15	Mtg w/Smith; conf w/Owner re 2nd Floor	Jones, PE	1.5	$195.00	292.50
				TOTAL	

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1306

TO: Board of Supervisors

FROM: Christine Briceño, Director of Human Resources

REPORT BY: Joy Cadiz, Staff Services Manager

SUBJECT: Resolution Amending Napa County Policy Manual Part I to add Section 37DD - Lactation Accommodation Policy

RECOMMENDATION

Adopt a Resolution to amend Napa County Policy Manual Part I to add Section 37DD - Lactation Accommodation Policy. (No Fiscal Impact)

BACKGROUND

Human Resources and County Counsel drafted a new Lactation Accommodation Policy in accordance with Federal and State law. In addition to providing reasonable break time to express milk, employers must provide a private lactation space, other than a bathroom, that must be near the employee's workplace, is shielded from view, and is free from intrusion when the employee is using the space. Further, the private lactation space must be safe, clean, and free from hazardous materials, and contain a surface to place a breast pump and personal items, a place to sit, and have access to electricity or alternative devices, including, but not limited to, extension cords or charging stations needed to operate an electric or battery-powered breast pump. Employers must also provide access to a sink with running water and a refrigerator suitable for storing milk. If a refrigerator is not feasible, the employer should provide another cooling device. For non-traditional worksites, the policy allows for an interactive process to identify reasonable accommodations to support an employee's ability to express milk at the workplace.

The Lactation Accommodation Policy includes instructions on how an employee can request an accommodation, how the employer will respond, and how an employee can file a complaint.

The County has fulfilled its meet and confer requirements with the employee bargaining groups.

Requested Action:

Adopt a resolution to amend the Napa County Policy Manual Part I to add Section 37DD - Lactation Accommodation Policy.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory
Consequences if not approved:	The County will not be in compliance with Federal and State laws.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO. 2024-

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING COUNTY POLICY MANUAL PART I TO ADD SECTION 37DD, LACTATION ACCOMMODATION POLICY, EFFECTIVE AUGUST 20, 2024

WHEREAS, Government Code Section 25300 provides that the Board of Supervisors shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees and that such action may be taken by ordinance or resolution; and

WHEREAS, the Director of Human Resources recommends that the County revise County Policy Manual Part I to add Section 37DD, Lactation Accommodation Policy, as set forth in Exhibit "A";

NOW, THEREFORE, BE IT RESOLVED, that the Napa County Board of Supervisors hereby approves the changes to the County Policy Manual Part I to add Section 37DD, Lactation Accommodation Policy, effective August 20, 2024, as set forth in Exhibit "A."

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 20th day of August 2024, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By*: Corey S. Utsurogi for Susan B. Altman* Date: 8/5/24	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

NAPA COUNTY LACTATION ACCOMMODATION POLICY

I. SUMMARY/PURPOSE

Napa County recognizes the importance of promoting an environment supportive of lactating employees, who are entitled to express milk during the workday in private, sanitary, and safe conditions.

II. POLICY

The County has a zero-tolerance policy of discrimination against lactating employees and will ensure lactating employees' rights under federal and state law are honored. This Lactation Accommodation Policy shall be disseminated to incoming employees as well as to employees requesting parental leave and returning from parental leave.

A. An Appropriate, Private Space to Express Milk

The County and its departments shall provide an appropriate, private space to lactating employees for expressing milk, including employees of subcontractors when the subcontractor makes a written request at least two business days in advance. All reasonable efforts shall be made to ensure the location for expressing milk is in close proximity to each lactating employee's work area.

The space shall be shielded from view, free from intrusion while the employee is expressing milk, and safe, clean, and free from hazardous materials as defined in Labor Code section 6382. The space shall be equipped with an electrical outlet, have comfortable seating, and have a surface for the employee to place their breast pump and personal items. The location may be the employee's usual workspace only if it meets the requirements of this paragraph.

Areas such as restrooms and closets are not appropriate spaces for expressing milk. When necessary, to provide closer proximity to the lactating employee's work area, storage rooms that do not contain noxious materials and that meet the requirements stated above, may be converted into acceptable private, secure spaces and serve as a lactation room. If a multipurpose room is used for both expression of milk and other uses, the exclusive use of the room for expression of milk shall take precedence.

The County shall ensure there is a sink with running water and a refrigerator suitable for storing milk (or another cooling device) available to the employee. For non-traditional worksites, the employee, their supervisor and/or the Human Resources Department will enter into a good-faith interactive process to identify reasonable accommodations to support an employee's ability to express milk in the workplace.

B. Reasonable Break Time to Express Milk

The employee's supervisor shall make time available for an employee to express milk. If possible, the lactation time should be the same as the employee's regular break time. If an employee needs a time other than their regularly scheduled break time, or additional time that exceeds their regularly scheduled break, their supervisor shall accommodate that request. Additional time for milk expression that extends beyond the employee's regular break time will be unpaid. However, at the employee's request and with their supervisor's approval, the beginning and/or ending time of employee's work shift *may* be adjusted to accommodate these breaks.

C. Information Provided to Employees

Each employee shall be provided a copy of this Policy when hired, when requesting parental leave, and after returning to work from such leave.

An employee has the right to request lactation accommodation. An employee who has need for lactation accommodation should inform their supervisor and/or County's Human Resources Department and discuss any relevant workload or scheduling issues, including any individual requirements for more frequent breaks or longer breaks for expression of milk.

Supervisors and/or Managers who receive a lactation accommodation request shall do the following:

1. Review available space in the division and prepare to provide appropriate nearby space and break time, as described in this Policy.
2. Contact Human Resources for advice and assistance if they are unable to locate appropriate space to meet an employee's request.
3. Respond promptly to the employee's request in writing detailing accommodations that will be made.

Employee complaints regarding this Policy or their department's response to a lactation accommodation request shall be made directly to the Department of Human Resources, which will attempt to resolve the complaint. When requested, Human Resources shall also provide advance guidance to departments to assist them with implementing this Policy. If a department cannot provide break time or a location that complies with this Policy, the department shall provide a written response to the employee explaining its efforts and the reasons it cannot comply.

D. Zero Tolerance

Expressing milk shall not constitute a source of discrimination in employment or in access to employment. This policy expressly prohibits any form of harassment toward a lactating employee. Such conduct that unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive working environment, is prohibited. Any incident of harassment of a lactating employee will be addressed in accordance with the County's policies and procedures for discrimination and harassment. This policy also prohibits all forms of retaliation, reprisal, or

threats of reprisal toward a lactating employee who requests or requires an accommodation for expression of milk.

E. Filing a Complaint

Employees who believe they have been denied a lactation accommodation or retaliated against for requesting an accommodation provided in this Policy have the right to file a complaint with the California Department of Industrial Relations at www.dir.ca.gov.

Employees who believe they have been denied a reasonable accommodation related to breastfeeding or subjected to discrimination, harassment, or retaliation in regard to breastfeeding should contact the Human Resources Department to file a complaint under Napa County Policy Manual Section 37K. A complaint may also be filed with the California Civil Rights Department at www.calcivilrights.ca.gov and/or the U.S. Equal Employment Opportunity Commission at www.eeoc.gov.

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1015

TO: Board of Supervisors

FROM: Jon Gjestvang, Chief Information Officer - Information Technology Services

REPORT BY: Elena Guzmán, Staff Services Analyst II

SUBJECT: Agreement No. 250075B with AMS and Sole Source Award for network configuration at Napa County Replacement Detention Facility.

RECOMMENDATION

Approve and authorize Agreement No. 250075B with AMS.NET, for a maximum of $29,800 through June 30, 2025 for professional services required for network configuration at the Napa County Replacement Detention Facility; and a waiver of competitive bidding requirement and sole source award (pursuant to Napa County Code Section 2.36.090). (Fiscal Impact: $29,800 Expense; Capital Projects Fund; Budgeted; Discretionary)

BACKGROUND

On May 22, 2018, the Board of Supervisors approved the financing plan for replacing the existing jail. On August 14, 2018, the Board awarded a professional services agreement with Lionakis for architectural and engineering services to design the replacement detention facility. Once the plans and specifications entitled 'Napa County Replacement Detention Facility Project, PW 20-100' were completed, the State approved them and authorized advertisement for bid. On September 22, 2022, Napa County opened bids. The lowest responsive bid from Broward Builders was over the estimated construction costs and on October 18, 2022, the Board approved the revised costs and awarded the contract to Broward Builders, Inc. of Woodland, California.

In order to complete project PW 20-100, the County must establish network configurations for the new site. Because of AMS.NET's expertise, intimate knowledge in previously creating proprietary core network configurations for the County and extensive work with Information Technology Services (ITS) it would be time consuming, inefficient and cost prohibitive to educate another vendor with the necessary knowledge for custom configurations necessary to run the network.

Requested Action: Approve a waiver of competitive bidding requirement and sole source award to AMS.NET

for Agreement No. 250075B with a contract maximum amount of $29,800 through June 30, 2025; for professional services necessary for the planning and network configuration of the core network at the Napa County Replacement Detention Facility building.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	New Jail Capital Improvement Project (CIP) #19005, Subdivision 3000505, Construction Services Account 52360.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approval of Agreement No. 250075B will allow ITS to utilize AMS.NET's thorough knowledge of previous County network configurations and planning expertise to complete the Napa County Replacement Detention Facility.
Is the general fund affected?	No
Future fiscal impact:	No fiscal impact beyond fiscal year 2024-2025.
Consequences if not approved:	If agreement is not approved, ITS would have to seek out other vendors familiar with current network infrastructure to provide configuration and planning services. Given the time sensitivity and technical expertise needed for this project, AMS.NET was the best choice to complete the project.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State of CEQA Guidelines) and therefore CEQA is not applicable.

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NAPA COUNTY AGREEMENT NO. 250075B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and AMS.NET, Inc., a Delaware corporation, whose business address is 502 Commerce Way, Livermore, CA 94551, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to install wireless internet services at the Napa County Replacement Jail building; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2025, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto and incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of TWENTY-NINE THOUSAND EIGHT

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HUNDRED DOLLARS ($29,800) for professional services; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than thirty (30) days to the Chief Information Officer who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Chief Information Officer upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

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6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. [**RESERVED**]

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Information Technology Services Department prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

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8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within TEN (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving FIVE (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least THIRTY(30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

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11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

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13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CONTRACTOR
Jon Gjestvang Napa County ITS 650 Imperial Way, Ste. 201 Napa, CA 94559 707-253-4089 jon.gjestvang@countyofnapa.org	David Zieker AMS.NET, Inc. 502 Commerce Way Livermore, CA 94551 925-245-6160 dzieker@ams.net

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such

information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Chief Information Officer. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is

encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Chief Information Officer.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

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(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. [RESERVED].

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa

County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. By executing this Agreement, the COUNTY hereby determines in writing that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions.** In addition to the criminal/background checks CONTRACTOR must run pursuant to Paragraph 8(b), above, COUNTY reserves the right to run its own background checks on any person working in the jail building. CONTRACTOR shall provide COUNTY with sufficient information to identify all employees, subcontractors or agents who will have access to the jail building so that COUNTY may perform its own background checks.

[Remainder of page intentionally left blank; signature page as follows.]

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IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

AMS.NET, INC.

By DocuSigned by: Robert Tocci
CE3CCF629E7B436...
ROBERT TOCCI, President

By DocuSigned by: Diana Monaghan
3232E6663BAC45D...
DIANA MONAGHAN, Secretary

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California

By _____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: *Ryan FitzGerald* (e-sign) County Counsel	Date: _____ Processed By:	By: _____
Date: July 26, 2024	_____ Deputy Clerk of the Board	

Docusign Envelope ID: C810E9CC-9919-4D89-8CB0-ED310945C63B

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

NAPA COUNTY REPLACEMENT JAIL BUILDING (located at 2210 Napa Vallejo Hwy, Napa, California 94558):

CISCO NETWORK MERAKI WIRELESS UPGRADE #Q-00080533

- **INSTALL**
  - Cisco Core Switch - Stackable.
  - PAN NG Firewall
- **TESTING AND CONFIGURATION**
  - Complete core configuration, routing, firewall, and segmentation tests as configurations are input.

II. SPECIAL TERMS AND CONDITIONS

- All work is quoted to be completed during normal working hours (M-F, 7am-4pm).
- Must sign in at builder's trailer to enter jobsite and must be accompanied by COUNTY staff
- Must wear Personal Protective Equipment (PPE) on location.

III. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

Docusign Envelope ID: C810E9CC-9919-4D89-8CB0-ED310945C63B

EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

DESCRIPTION	PER ATTACHED AMS.NET QUOTE #	PROFESSIONAL SERVICE SUB-TOTAL
Cisco Network Meraki Wireless Upgrade 3 Years Meraki AP Option (Napa County Jail Building)	#Q-00080533	$29,800.00
	TOTAL	**$29,800.00**

The maximum payments not to exceed TWENTY-NINE THOUSAND EIGHT HUNDRED DOLLARS ($29,800.00).

Docusign Envelope ID: C810E9CC-9919-4D89-8CB0-ED310945C63B

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15		Smith, Engineer			
1/1/15	Site visit/investigation 123 Main St, Napa.		1.5	$165.00	247.50
1/1/15	Conf w/Owner	Smith, Engineer	1	$165.00	165.00
	AutoCad, Bldg X, 3rd Floor	Smith, Engineer	4	$165,00	660.00
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15		Smith, Engineer			
1/2/15	AutoCad Bldg X, 3rd Floor		4	$165.00	660.00
	Conf w/Owner re 2nd Floor	Smith, Engineer	.5	$165.00	82.50
1/3/15	Mtg w/Jones re 2nd Floor; conf	Smith, Engineer			
1/3/15	w/Owner		1.5	$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2nd Floor	Jones, PE	1.5	$195.00	292.50
				TOTAL	

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1336

TO: Board of Supervisors

FROM: Jon Gjestvang, Chief Information Officer - Information Technology Services

REPORT BY: Elena Guzmán, Staff Services Analyst II

SUBJECT: Approval of Agreement No. 250096B with Pictometry for GIS Aerial Photography

RECOMMENDATION

Approve and authorize Agreement No. 250096B with Pictometry International Corporation for a maximum of $252,180 to provide aerial photography services through August 31, 2027 (Fiscal Impact: $252,180 Expense; Information Technology Services Fund; Budgeted; Discretionary).

BACKGROUND

Aerial photography is a vital type of information used in Geographic Information Systems (GIS). It is used as a basemap since it provides the most detailed information available about the land surface. It is also the most cost effective means of capturing infrastructure data such as roads and buildings. Additionally, it allows users to view field conditions without leaving their office. Appraisers can use the imagery to detect new building improvements and vineyards, while public safety officers can visualize incident locations. Unfortunately, like any photography, it represents the land surface at the exact point in time the photo was taken. As land surface changes over time, the aerial images become more and more inaccurate. For this reason, it is necessary to update the aerial images used in GIS on a regular basis.

On January 2018, the County entered into Agreement No. 180243B with Pictometry International Corporation (Pictometry) to provide aerial photography services necessary to update the GIS regional aerial land photos. The project was unexpectedly delayed due to unsuitable flying conditions, so the agreement was amended to extend the term from June 30, 2018 to June 30, 2019.

On January 2021, the County entered into Agreement No. 210266B with Pictometry to once again update the

County's aerial images.

It is now time to update the County's aerial images. As done in the previous agreements, GIS will continue to utilize the Los Angeles County agreement with Pictometry for competitive pricing and terms. The project plan is for the aerial images to be collected during the 2024 leaf-off season or leaf-on if necessary, using digital sensors to collect 4-band color data (for both natural color and color infrared uses) as well as 3D oblique coverage (for viewing the images at any height and angle). The resulting aerial images will have three-inch resolution (92 square miles mostly covering the urban area in Napa) and six-inch resolution with oblique (832 square miles) to cover the entire county. With the appropriate amount of overlap along the county boundary, the total square miles covered is 924.

The total cost of the Napa County project will be $252,180 with an annual cost of $84,060 for the next three years; this should meet the general GIS needs of the County, the incorporated jurisdictions and the public at large. The cities of American Canyon, Calistoga, Napa, St. Helena, and the Town of Yountville will be contributing a total of $47,215. The project costs are broken down as follows based on jurisdiction's total square miles and imagery preferences:

City of American Canyon $6,715.00

City of Calistoga $1,260.00

City of Napa $32,400.00

City of St. Helena $2,040.00

Town of Yountville $4,800.00

Napa County $204,965.00

Requested Action: Approve and authorize Agreement No. 250096B with Pictometry International Corporation for a maximum of $252,180 to provide aerial photography and quality assurance services for the term of August 20, 2024 through August 31, 2027, necessary to update the GIS regional aerial land photos.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Information Technology Services (ITS) fund.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Aerial photography is a vital type of information used in the Geographic Information System (GIS). As land surfaces change over time, the photos become more and more inaccurate. Due to higher resolution requirements of County departments and agencies, the County is unable to use aerial photography from services like Google. For this reason, it is necessary to update the aerial photography used in GIS on a regular basis.
Is the general fund affected?	No
Future fiscal impact:	ITS has allocated $20,000 annually to cover anticipated aerial photography costs and will continue to allocate for the next project.
Consequences if not approved:	Without approval of this project, County staff will be unable to utilize more accurate information used for various County applications.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

LAC EXTERNAL ENTITY AGREEMENT BETWEEN PICTOMETRY INTERNATIONAL CORP. DBA EAGLEVIEW ("EAGLEVIEW") AND NAPA COUNTY, CA ("CUSTOMER")

Whereas, EagleView is a party to an Agreement By and Between County of Los Angeles and EagleView for Digital Aerial Data dated December 2013 (the "LAC Agreement"); and

Whereas the LAC Agreement provides that an External Entity (as defined in the LAC Agreement) may license or otherwise acquire rights to digital aerial data outside of Los Angeles County pursuant to or based upon the pricing and/or other terms set forth in Exhibit C (Schedule for External Entities) of the LAC Agreement; and

Whereas, Customer meets the criteria necessary to be an External Entity; and

Whereas, Customer wishes to obtain certain EagleView products and services as an External Entity based upon the LAC Agreement;

Now therefore, Customer and EagleView hereby agree as follow

1. This order form ("Order Form"), in combination with certain provisions of the LAC Agreement identified below and the contract components listed below and attached hereto:

   Section A: Product Descriptions, Prices and Payment Terms
   Sector Map

   (all of which, collectively, constitute the "Napa County Agreement"), which sets forth the entire understanding between EagleView and Customer with respect to the subject matter hereof and supersedes all prior representations, agreements and arrangements, whether oral or written, relating to the subject matter hereof. Modifications to the Napa County Agreement must be made in writing and be signed by duly authorized officers of each party. Any purchase order or similar document issued by Customer in connection with this Napa County Agreement is issued solely for Customer's internal administrative purposes and the terms and conditions set forth on any such purchase order shall be of no force or effect as between the parties.

2. In the event of any conflict among any contract components comprising the Napa County Agreement, order of precedence for resolving such conflict shall be, from highest (i.e., supersedes all others) to lowest (i.e., subordinate to all others): Non-Standard Terms and Conditions (if any), Photogrammetric Product Specifications (if any), and Order Form (including provisions incorporated from the LAC Agreement).

3. All notices under the Napa County Agreement shall be in writing and shall be sent to the following respective addresses:

CUSTOMER NOTICE ADDRESS	EAGLEVIEW NOTICE ADDRESS
650 Imperial Way	25 Methodist Hill Drive
Napa, California 94559	Rochester, NY 14623
Attn: Andrew Eaman	Attn: Contract Administration
Phone: 7206354609	Phone: (585) 486-0093

   Either party may change their respective notice address by giving written notice of such change to the other party at the other party's then-current notice address. Notices shall be given by any of the following methods: personal delivery; reputable express courier providing written receipt; or postage-paid certified or registered United States mail, return receipt requested. Notice shall be deemed given when actually received or when delivery is refused.

4. All of the Napa County Agreement, including all licenses granted pursuant to it, shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not be assignable by either party except that (i) EagleView shall have the right to assign its right to receive Fees under the Napa County Agreement, provided no such assignment shall affect EagleView's obligations hereunder, and (ii) EagleView shall have the right to assign all its rights under the Napa County Agreement to any person or entity, provided the assignee has assumed all of EagleView's obligations under the Napa County Agreement.

5. Customer shall have the rights set forth in Section 10 of the LAC Agreement to use the products and services described in Section A to the Napa County Agreement.

6. The products and services described in Section A to the Napa County Agreement are provided to Customer subject to the provisions of Sections 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 39, 40, 41, 42, 43, 53, 54, 55, 56, 57, and 58 of the LAC Agreement as if those provisions were set forth herein, *mutatis mutandis.*

7. In consideration of, and subject to, payment by Customer of the Fees specified in Section A of the Napa County Agreement, EagleView agrees to provide Customer with access to and use of the products specified in Section A of the Napa County Agreement, subject to the terms and conditions set forth in the Napa County Agreement.

8. Customer hereby agrees to pay the Fees specified in Section A of the Napa County Agreement in accordance with the stated payment terms and accepts and agrees to abide by the terms of the Napa County Agreement.

The Napa County Agreement shall become effective upon execution by duly authorized officers of the Customer and EagleView and receipt by EagleView of such fully executed document, such date of receipt by EagleView being the "Effective Date."

PARTIES:

CUSTOMER	**EAGLEVIEW**
NAPA COUNTY, CA	**PICTOMETRY INTERNATIONAL CORP.**
a political subdivision of the State of California	a Delaware corporation
SIGNATURE:	**SIGNATURE:** Robert Locke
NAME:	**NAME:** Robert Locke
TITLE:	**TITLE:** President
DATE:	**EXECUTION DATE:** Aug 7, 2024
	DATE OF RECEIPT (EFFECTIVE DATE):

APPROVED AS TO FORM
Office of County Counsel

By: *Ryan FitzGerald* (e-sign)

Date: August 2, 2024

PL No.: 117915

SECTION A — PRODUCT DESCRIPTIONS, PRICES AND PAYMENT TERMS

Pictometry International Corp. dba EagleView
25 Methodist Hill Drive
Rochester, NY 14623

ORDER #
LC-10007413

BILL TO
Napa County, CA
Andrew Eaman
650 Imperial Way
Napa, California 94559
7206354609
andrew.eaman@countyofnapa.org

SHIP TO
Napa County, CA
Andrew Eaman
650 Imperial Way
Napa, California 94559
7206354609
andrew.eaman@countyofnapa.org

CUSTOMER ID	SALES REP
A1283097	Arjun Cardoza

PROJECT 1

QTY	PRODUCT NAME	PRODUCT DESCRIPTION	LIST PRICE	DISCOUNT PRICE %	AMOUNT[1]
847	Reveal Advanced Neighborhood	Provides high resolution, measurable oblique and orthogonal imagery at a Neighborhood level as well as Reveal Four Band Color Infrared, Reveal Certified Ortho, and Reveal TrueTouch add-on options. Oblique and orthogonal image frames collected at 6in GSD or better. Includes the delivery of two orthomosaics, a preliminary RGB orthomosaic and a final orthomosaic inclusive of the four band color infrared, certified, and true touch workflows. Both orthomosaics will be produced at 6in GSD including project-wide color and contrast balancing. The preliminary orthomosaic will utilize a fully automated photogrammetric process where visible seamlines may be present. The final orthomosaic is produced in accordance with state and local requirements and is produced to meet ASPRS Positional Accuracy Standards for Digital Geospatial Data (2014) for a 12in RMSEx / RMSEy Horizontal Accuracy Class. The final orthomosaic also includes corrections to address visible seamline edges between two (or more) adjacent orthophotos, misalignment of features on the ground (such as roads and buildings) > 24in, removal of image warping or smearing, and the reduction of building lean so that tall buildings do not obstruct transit features. Preliminary orthomosaic to be provided via online viewer (separate CONNECT account required), final orthomosaic provided via online viewer and offline in one file format, projection, and coordinate system selected by the customer from those which are supported by EagleView. Delivery extent based on an EagleView approved delivery grid shapefile. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 240.00		$ 203,280.00
3	CONNECT Gov 50 Package	CONNECT Gov 50 Package provides Customer with access to and use of Pictometry Connect - CA - 50, Pictometry Connect View - CA, and CONNECT ImageService CA as described elsewhere in this Agreement. *Product Parameters*:	$ 3,500.00	50%	$ 5,250.00

		Desktop Application:			
1	Pictometry Connect - EarlyAccess	Pictometry Connect - EarlyAccess provides authorized users the ability to login and access the imagery, as specified elsewhere in this agreement, immediately following its preliminary processing and quality control checks and prior to its final processing. Early Access imagery will become available in CONNECT Explorer incrementally as it is processed and it will remain available until final, fully processed imagery is made available through other means. This offering requires an active Pictometry CONNECT account and the current purchase of access to an imagery product. *Product Parameters*: Server Integration: Third-Party Integrator: Domain URL:	$ 10,000.00	100%	$ 0.00
1	RapidAccess - Disaster Response Program	RapidAccess - Disaster Response Program is an emergency response program offering flights after an emergency or disaster. Refer to the attached detailed description of the Disaster Response Program. Term commences on date of initial shipment of imagery for a project. The quantity represents the number of years in the DRP term.	$ 0.00		$ 0.00
1	Oblique Support Bundle	Includes digital copy of the Licensed Documentation for the License Software, one, two, or three hour End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, five, ten, or fifteen hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of one, two, or three years from the initial date of shipment of the EFS software, along with a copy of the updated documentation.	$ 0.00		$ 0.00
847	Reveal Certified Ortho Neighborhood	Certified Ortho upgrades a Reveal orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements. Orthomosaic imagery produced to meet ASPRS Positional Accuracy Standards for Digital Geospatial Data (2014) for a 12in RMSEx / RMSEy Horizontal Accuracy Class. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 30.00	100%	$ 0.00

847	Reveal TrueTouch Neighborhood	TrueTouch is the application of visual improvements to Reveal orthomosaic imagery. Features eligible for correction include visible seamline edges between two (or more) adjacent orthophotos, misalignment of features on the ground (such as roads and buildings) > 24in, removal of image warping or smearing, and the reduction of building lean so that tall buildings do not obstruct transit features. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 30.00	100%	$ 0.00
847	Reveal Four Band Color Infrared Neighborhood	Four Band Color Infrared includes the collection of Near-Infrared (NIR) band data along with Reveal RGB orthogonal imagery. NIR frame imagery produced at 6in GSD or better. Delivery of false color/CIR orthomosaic to be provided via online viewer (separate CONNECT account required), offline delivery available for false color/CIR ,and four band orthomosaic and tiles in one file format, projection, and coordinate system selected by the customer from those which are supported by EagleView. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 50.00	100%	$ 0.00
3	Pictometry Connect View - CA	Pictometry Connect View - CA (Custom Access) provides visualization-only access to the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web application or server based integration. Requires a customer-provided web application or server based application. With respect to imagery available through this product to third parties or the Public, Pictometry reserves the right to reduce the resolution of the imagery available. Term commences on date of activation. The quantity represents the number of years in the Connect term. *Product Parameters*: Admin User: Andrew Eaman Admin User Email: andrew.eaman@countyofnapa.org	$ 750.00	100%	$ 0.00

3	CONNECT ImageService CA	Provides access via a secure web mapping service to existing orthomosaics available within Customer's Connect account. This service allows for unlimited image request transactions pursuant to this Agreement. EagleView may review the usage and, in EagleView's sole discretion, limit further access by Customer to the Connect Image Service based on fair usage and bandwidth restrictions. The orthomosaic imagery provided by this service may be used on Customer's public and internal websites and applications as a basemap layer. The image service application including any links or API keys provided by EagleView may not be shared with users outside of the customer's organization. Customer must maintain an active paid EagleView Connect account in order to utilize the Connect Image Service. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 2,000.00	100%	$ 0.00
3	Pictometry for Esri Web AppBuilder	Pictometry for Esri Web AppBuilder is a server based widget for installation on Customer's server that allows users with valid Pictometry Connect accounts to access oblique and orthogonal imagery within web applications authored using Web AppBuilder for ArcGIS (Developer Edition) available separately from Esri. Requires a Pictometry Connect account. *Product Parameters*: Server Integration: Esri Web AppBuilder Third-Party Integrator: Domain URL: TBD	$ 1,990.00	100%	$ 0.00
3	Integrated Pictometry Application	Integrated Pictometry Applications are web based technologies that allow a developer to embed a web instance into a product / application that connects to a customers Licensed Pictometry-hosted imagery. Currently supports JavaScript / iFrame applications for both Visualization (External or Public Facing) use and/or Analytics (Internal with Measurement Tools) use. Requires a Pictometry Connect or Pictometry Connect PFW / View Account depending on use type. *Product Parameters*: Server Integration: IPA (Both Visualization & Analytics) Third-Party Integrator: Domain URL: TBD	$ 1,990.00	100%	$ 0.00
3	Pictometry Connect - CA - 50	Pictometry Connect - CA - 50 (Custom Access) provides up to 50 concurrent authorized users the ability to login and access the Pictometry-hosted custom imagery libraries specified elsewhere in this Agreement via a web-based, server-based or desktop integration. The default deployment is through web-based Pictometry Connect. Term commences on date of activation. The quantity represents the number of years in the Connect term. *Product Parameters*: Admin User: Andrew Eaman	$ 2,200.00	100%	$ 0.00

		Admin User Email: andrew.eaman@countyofnapa.org			
1	Oblique Imagery Bundle w/Three (3)Yrs of EFS Maint & Support	Includes digital copy of the Licensed Documentation for the License Software, two (2) End User Training Sessions, one (1) Advanced User Technical Training, one (1) Administration / IT Training Session, fifteen (15) hours of telephone support, one copy of Pictometry Electronic Field Study (EFS) software, latest version, on the storage media specified herein, and access to download updated versions of the EFS Licensed Software for a period of three years from the initial date of shipment of the EFS software, along with a copy of the updated documentation.	$ 0.00		$ 0.00
62	Reveal Advanced Property	Provides high resolution, measurable oblique and orthogonal imagery at a Property level as well as Reveal Four Band Color Infrared, Reveal Certified Ortho, and Reveal TrueTouch add-on options. Oblique and orthogonal image frames collected at 3in GSD or better. Includes the delivery of two orthomosaics, a preliminary RGB orthomosaic and a final orthomosaic inclusive of the four band color infrared, certified, and true touch workflows. Both orthomosaics will be produced at 3in GSD including project-wide color and contrast balancing. The preliminary orthomosaic will utilize a fully automated photogrammetric process where visible seamlines may be present. The final orthomosaic is produced in accordance with state and local requirements and is produced to meet ASPRS Positional Accuracy Standards for Digital Geospatial Data (2014) for a 6in RMSEx / RMSEy Horizontal Accuracy Class. The final orthomosaic also includes corrections to address visible seamline edges between two (or more) adjacent orthophotos, misalignment of features on the ground (such as roads and buildings) > 12in, removal of image warping or smearing, and the reduction of building lean so that tall buildings do not obstruct transit features. Preliminary orthomosaic to be provided via online viewer (separate CONNECT account required), final orthomosaic provided via online viewer and offline in one file format, projection, and coordinate system selected by the customer from those which are supported by EagleView. Delivery extent based on an EagleView approved delivery grid shapefile. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 600.00		$ 37,200.00

15	Reveal Essentials Property	Provides high resolution, measurable orthogonal imagery at a Property level. Orthogonal image frames collected at 3in GSD or better. Orthomosaic imagery produced at 3in GSD via a fully automated photogrammetric process which includes project-wide color and contrast balancing. Visible seamlines may be present. Delivery to be provided via online viewer (separate CONNECT account required) and offline in one file format, projection, and coordinate system selected by the customer from those which are supported by EagleView. Delivery extent based on an EagleView approved delivery grid shapefile. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 180.00		$ 2,700.00
15	Reveal Certified Ortho Property	Certified Ortho upgrades a Reveal orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements. Orthomosaic imagery produced to meet ASPRS Positional Accuracy Standards for Digital Geospatial Data (2014) for a 6in RMSEx / RMSEy Horizontal Accuracy Class. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 50.00		$ 750.00
15	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to Reveal orthomosaic imagery. Features eligible for correction include visible seamline edges between two (or more) adjacent orthophotos, misalignment of features on the ground (such as roads and buildings) > 12in, removal of image warping or smearing, and the reduction of building lean so that tall buildings do not obstruct transit features. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 50.00		$ 750.00
62	Reveal Certified Ortho Property	Certified Ortho upgrades a Reveal orthomosaic to an authoritative orthomosaic produced in accordance with state and local requirements. Orthomosaic imagery produced to meet ASPRS Positional Accuracy Standards for Digital Geospatial Data (2014) for a 6in RMSEx / RMSEy Horizontal Accuracy Class. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 55.00	100%	$ 0.00

62	Reveal TrueTouch Property	TrueTouch is the application of visual improvements to Reveal orthomosaic imagery. Features eligible for correction include visible seamline edges between two (or more) adjacent orthophotos, misalignment of features on the ground (such as roads and buildings) > 12in, removal of image warping or smearing, and the reduction of building lean so that tall buildings do not obstruct transit features. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 55.00	100%	$ 0.00
62	Reveal Four Band Color Infrared Property	Four Band Color Infrared includes the collection of Near-Infrared (NIR) band data along with Reveal RGB orthogonal imagery. NIR frame imagery produced at 3in GSD or better. Delivery of false color/CIR orthomosaic to be provided via online viewer (separate CONNECT account required), offline delivery available for false color/CIR ,and four band orthomosaic and tiles in one file format, projection, and coordinate system selected by the customer from those which are supported by EagleView. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 55.00	100%	$ 0.00
15	Reveal Four Band Color Infrared Property	Four Band Color Infrared includes the collection of Near-Infrared (NIR) band data along with Reveal RGB orthogonal imagery. NIR frame imagery produced at 3in GSD or better. Delivery of false color/CIR orthomosaic to be provided via online viewer (separate CONNECT account required), offline delivery available for false color/CIR ,and four band orthomosaic and tiles in one file format, projection, and coordinate system selected by the customer from those which are supported by EagleView. *Product Parameters*: Elevation Data Source: Public Avail - NED/USGS/GeoBase Leaf: Leaf Off: Less than 30% leaf cover	$ 150.00		$ 2,250.00
				SUBTOTAL	$252,180.00
Thank you for choosing EagleView as your service provider.				**TOTAL**	$ 252,180.00

[1]Amount per product = ((1-Discount %) * Qty * List Price)

Geofences:

CA Napa (Primary)
CA Solano
CA Sonoma

Geofences Products Affected:

CONNECT Gov 50 Package
Pictometry Connect - EarlyAccess

Pictometry Connect View - CA
CONNECT ImageService CA
Integrated Pictometry Application
Pictometry Connect - CA - 50

FEES; PAYMENT TERMS

All amounts due to EagleView pursuant to this Agreement ("Fees") are expressed in United States dollars and do not include any duties, taxes (including, without limitation, any sales, use, ad valorem or withholding, value added or other taxes) or handling fees, all of which are in addition to the amounts shown above and, to the extent applicable to purchases by Customer, shall be paid by Customer to EagleView without reducing any amount owed to EagleView unless documents satisfactory to EagleView evidencing exemption from such taxes is provided to EagleView prior to billing. To the extent any amounts properly invoiced pursuant to this Agreement are not paid within thirty (30) days following the invoice due date, such unpaid amounts shall accrue, and Customer shall pay, interest at the rate of 1.5% per month (or at the maximum rate allowed by law, if less). In addition, Customer shall pay EagleView all costs EagleView incurs in collecting past due amounts due under this Agreement including, but not limited to, attorneys' fees and court costs.

First Project

Year1	
Deposit/Due At Signing	$0.00
Due at Delivery/Activation	$84,060.00
Year2	
Due at Anniversary of Delivery/Activation	$84,060.00
Year3	
Due at Anniversary of Delivery/Activation	$84,060.00

PRODUCT PARAMETERS

RapidAccess—Disaster Response Program ("DRP")

A. Disaster Coverage Imagery – If Section A: Product Description, Prices and Payment Terms provides EagleView will provide DRP, then EagleView will, upon request of Customer, provide standard quality imagery of up to 200 square miles of affected areas (as determined by EagleView) upon the occurrence of any of the following events during any period Customer is eligible for DRP:

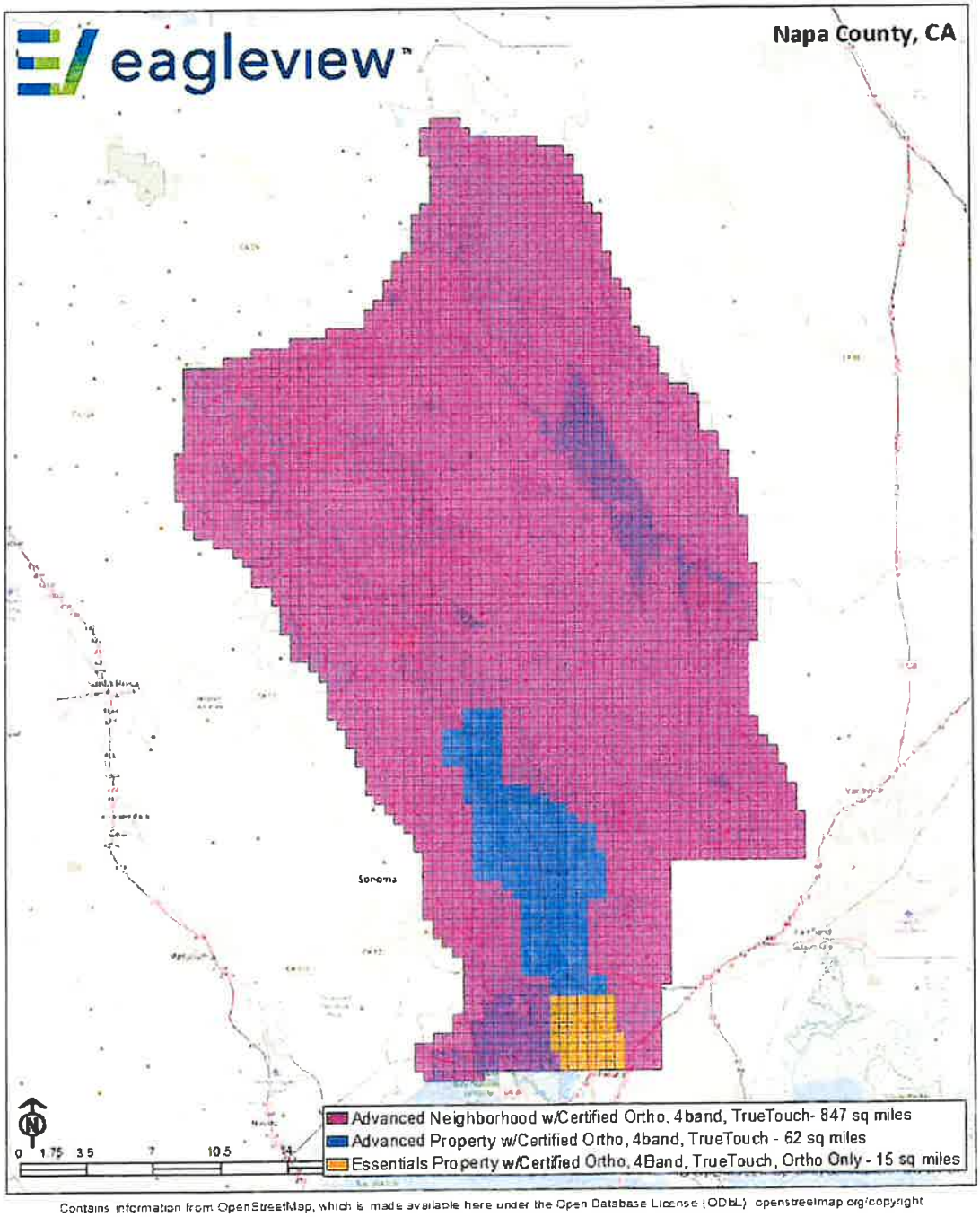
Hurricane: areas affected by hurricanes of Category 2 and higher.
Tornado: areas affected by tornados rated EF4 and higher.
Terrorist: areas affected by damage from terrorist attack.
Earthquake: areas affected by damage to critical infrastructure resulting from earthquakes measured at 6.0 or higher on the Richter scale.
☐ Tsunami: areas affected by damage to critical infrastructure resulting from tsunamis.
☐ Wildfire: areas affected by wildfire that include appraisable structures at a density of 100 structures per sq mi or greater

Imagery captured through DRP will be captured "as-is".

B. Discounted Rate – Coverage for areas affected by the events set forth above exceeding 200 square miles will be, subject to EagleView resource availability, offered to Customer at the then current DRP rates. Also, coverage for areas affected by hurricanes below Category II, tornadoes below EF4 or earthquakes rated below 6.0 on the Richter scale, flooding meeting or exceeding the major flood stage, wildfires impacting population centers, or other disasters as agreed to between the customer and EagleView, will be, subject to EagleView resource availability, offered to Customer at the then current DRP rates.

C. Online Services – Use of Pictometry ConnectExplorer™ – EagleView's DRP includes the use of Connect Explorer for a term of ninety (90) days from the date of delivery of the DRP imagery. Customer shall have access to the DRP imagery for as long as they maintain an active Connect account.

SECTOR MAP



Contains information from OpenStreetMap, which is made available here under the Open Database License (ODbL) openstreetmap.org/copyright

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1352

TO: Board of Supervisors

FROM: Jon Gjestvang, Chief Information Officer - Information Technology Services (ITS)

REPORT BY: Elena Guzmán, Staff Services Analyst II

SUBJECT: Resolution approving revisions and additions to County's Record Retention Schedules; Clerk of the Board and Public Works.

RECOMMENDATION

Adopt a Resolution approving revisions to the Clerk of the Board and Public Works retention schedules in Section 40 of the County Policy Manual effective August 20, 2024.

[4/5 vote required]

BACKGROUND

Pursuant to Section 26202 of the Government Code of the State of California (Section 26202), record retention schedules are used by public entities across the State of California and are an appropriate mechanism for the Board to proactively make the determination when various categories of records will no longer be necessary or required for County purposes. Under Section 26202, the Board may, by a four-fifths vote, authorize the destruction of records prepared or received pursuant to State or Federal statute where those records have been maintained for the required period of time and the Board has determined retention of those records is no longer necessary or required for County purposes.

Records Management, the County's records/archival and mail processing center (Records Center), use County storage space but also work with PRO-file, a business records management company, to store and archive records offsite. Records identified as historical by the departments are permanently archived and not subject to purging.

In order to ensure departments can continue transferring records for storage to the Records Center, it is necessary to regularly purge records that have expired retention periods. These Board approved retention schedules provide the mechanism to purge records without having to return to the Board each time; thereby

improving records management efficiency.

Today's recommended action is the adoption of a resolution approving revisions and additions to the record retention schedules for the Clerk of the Board and Public Works. This retention schedule supplements those previously adopted by the Board and will be maintained with Section 40 of the County Policy Manual. Maintaining the retention schedule with the policy will ensure all County departments are setting retention schedules and the Records Center is purging accordingly.

ITS staff will continue with other County departments' retention schedules and return to the Board for approval of updated retention schedules as necessary.

Requested Action: Adopt a Resolution approving revisions to the Clerk of the Board and Public Works retention

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO.

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, APPROVING ADDITION TO THE COUNTY'S RECORDS RETENTION SCHEDULE

WHEREAS, on September 10, 2002, Napa County Board of Supervisors approved the Napa County's Records Management Policy, now known as Napa County Policy Manual, Section 40; and

WHEREAS, on August 2, 2011, and June 5, 2018, Napa County Board of Supervisors approved amendments to the Napa County's Record Management Policy, known as Napa County Policy Manual, Section 40; and

WHEREAS, the County of Napa ("County") has an obligation to maintain County records in accordance with government laws and regulations and accepted records management practices; and

WHEREAS, there are significant costs to maintaining records beyond their useful life as such records otherwise take up space in the County's offices or at the Records Management Center and the County is billed for storing records at non-County operated facilities; and

WHEREAS, the purpose of a retention schedule is to establish a pattern for the orderly transfer, maintenance, and destruction of records on a continuing basis; and

WHEREAS, Sections 26200 *et seq.* of the Government Code provide the relevant procedures for destroying County records; and

WHEREAS, pursuant to Section 26201 of the Government Code the Board may authorize destruction or disposition of duplicate records, papers, or documents the originals or permanent photographic reproductions of which are on file with any officer or department of the County; and

WHEREAS, pursuant to Section 26205.1(a) of the Government Code the Board may delegate to County officers the authority to destroy any non-judicial public record, paper, or document if the record, paper, or document is photographed, micro photographed, microfilmed, or otherwise reproduced in accordance with State law, including, but not limited to, Section 12168.5 of Government Code; and

WHEREAS, pursuant to Section 26205.1(b) of the Government Code the Board may delegate to County officers the authority to destroy any record not prepared or received pursuant to State statute without creating an alternate copy or the need for those records to be listed on a Board approved records retention schedule; and

WHEREAS, pursuant to Section 26202 of the Government Code the Board may, by a four-fifths vote, authorize the destruction of records prepared or received pursuant to State or Federal statute where those records have been maintained for the required period of time and the Board has determined the retention of those records is no longer necessary or required for County purposes; and

WHEREAS, retention schedules are used by public entities across the State of California and are an appropriate mechanism for the Board to proactively make the determination under Section 26202 of the Government Code of the State of California as to when various categories of records will no longer be necessary or required for County purposes and thereby improve the efficiency of records management; and

WHEREAS, there are some County records that are required by law to be filed and preserved that the Board may not authorize destruction of and it is necessary and appropriate to identify those records and how long they must be retained; and

WHEREAS, the County's retention schedules are reviewed regularly by the appropriate departments and County Counsel's office and any necessary amendments are brought before the Board; and

WHEREAS, the Board of Supervisors has approved numerous additions and amendments to the County's retention schedules since the approval of Napa County Policy Manual, Section 40; and

WHEREAS, the Clerk of the Board of Supervisors and Public Works agreed to shift responsibility for preserving accepted and unaccepted bids and proposals from the Clerk of the Board of Supervisors to Public Works; and

WHEREAS, County Counsel reviewed the retention requirements for this category of records with Public Works and Public Works seeks authorization to destroy those records which have been maintained for the required period of time and which are no longer necessary or required for County purposes;

NOW, THEREFORE, BE IT RESOLVED by the Napa County Board of Supervisors as follows:

1. The foregoing recitals are true and correct.

2. County staff is authorized to destroy or dispose of duplicate records, papers, or documents the originals or permanent photographic reproductions of which are on file with any officer or department of the County.

3. Staff is authorized to destroy any non-judicial public record, paper, or document, including those records prepared or received pursuant to State or Federal law, if the record, paper or document is photographed, micro photographed, microfilmed, or otherwise reproduced in accordance with State law, including, but not limited to, Government Code section 12168.5

4. Pursuant to Section 26205.1(b) of the Government Code the Board hereby delegates to County department heads and their designees the authority to destroy any record not prepared or received pursuant to State statute without creating an alternate copy.

5. The total time periods for retention set forth in the attached retention schedules, which are attached as Exhibits "A" and "B", are hereby adopted by the Board and shall replace any previously approved retention periods and schedules relating to the same records.

6. Department heads have the authority to determine the appropriate medium in which a record may be stored and may amend the time periods set forth for retention in any specific medium so long they comply with State law and the overall retention period set by the Board in the attached schedule.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 20th day of August 2024, by the following vote:

AYES: SUPERVISORS _____

_____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
Joelle Gallagher, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: *Ryan FitzGerald* (e-sign) Deputy County Counsel Date: August 12, 2024 PL No.: 118235	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

EXHIBIT "A"

COUNTY OF NAPA RECORDS RETENTION

Program: Public Works				
Code	**Title**	**Description**	**Total Retention Time (Hard Copy & Electronic)**	**Remarks**
	Building Permits		2 years after finalizing	GC26202
	Building Plans		Life of building	H&S 19850
	Statement of Fees Collected		5 years	GC24356
	StoragelUse of Explosives		3 years	H&S 12121
	BID AND PROPOSAL DOCUMENTS ACCEPTED AND UNACCEPTED	May include proposal statements, noticed cost allocations, bidders forms, schedules for bids received, data sheets, bond and insurance checklist, bonds, proof in insurance, certification of affirmative action request, list of subcontractors.	2 years	GC26201.2

EXHIBIT "B"

Program: Clerk of the Board

Department	Division	Description	Explanation	Document Code	Security	Status	Records Retention	Legal Requirement	On Site	Records Center	Method of Disposition	Total	Remarks
*** For Litigation Hold records, suspend normal retention periods (retention begins after final action-settlement).** *** Destruction of duplicate copies is authorized pursuant to Government Code Section 26201.** *** Departments may keep records onsite longer in order to fill up the box before sending to the Records Center.** *** Records Retention Class: AU=audit plus (x) years, B=2 years, CL=closed plus (x) years, CU=current year plus (x) years, P=permanent** *** Any reference to retention periods for copies in the remarks sections are not legally binding retention periods, but internal timelines and practices to ensure efficiency in County operations.**													
		ABATEMENT OF PENALTIES	Appeals for abatement of tax penalties. May include claims for cancellation and refund of delinquent penalty applications, correspondence, notice statement list of entities for the State Board of Equalization (BOE).	COB-1	OV	CC	CU	CU+7YRS	3 YRS	4 YRS		CU+7YRS	R & T 483 allows for appeals to be filed with the Board of Supervisors (7) years retention recommended due to possible federal requirements. 2 years required - GC 26202 et seq..
		AGENDAS & AGENDA PACKETS	Agendas of the meetings and hearings of the BOS. May include agendas & staff reports for special districts and other entities governed by the BOS as well as special meeting notices, certificates of posting, original summaries, original communications and action agendas for Boards, Committees and Commissions. Includes Affidavits of Posting / Legal Advertising / Affidavits of Publications.	COB-4	ALL	CC	I	I	3 YRS	I	M	I	Agenda information is included in the minutes which are a permanent record. In addition the agendas are online and included in the agenda packets which are permanent. 2 years required - GC 26202 et seq..
		AGREEMENTS, CONTRACTS, LEASES (EXCL. CAPITAL IMPROVEMENT)	Original contracts and agreements approved by the BOS for the conduct of County business. Can include franchises, bonds, plans and specifications, accepted bids, reports and studies, correspondence, maps, memorandums, and printed materials. Basic contract or agreement contains name of contractor, contract number, date filed, description of work or service to be provided and signature of Chair of the BOS, Clerk and contractor. Approved to Form County.	COB-5	ALL	CC	CL	CL+10YRS	CL+3YRS	7 YRS	M	CL+10YRS	Includes leases, equipment, service or supplied. N10PU76B5; 48 CFR 2; GC 53066; CCP 337.2, 334; B&P 7042.5, 2 years required - GC 26202 et seq..
		AGREEMENTS, CAPITAL IMPROVEMENT or IMAGED	Construction	COB-6	ALL	CC	I	I	3 YRS	I	M	I	Construction *GC37090; 4004;H&S 19850; Source for study of Public Works and construction projects. May provide visual evidence or architectural designs and mechanical devices. 2 years required - GC 26202 et seq..
		ALLOWANCE BOOK (Registers of Claims, Claims allowed)	Records of allowances made by the BOS for claims against the county funds. May contain the claim number, dates received and filed, amounts allowed, name of fund, name of claimant, materials or service provided and fund totals. See claims.	COB-7	OV	CC	I	I	3 YRS	I	M	I	Books from the 1880's may be a source for information on early Government needs and planning, on wages and prices for goods and services and on local businesses 2 years required - GC 26202 et seq..
		APPEALS (ZONING USE PERMITS VARIANCE) CIVIL	Records of appeals made to the BOS. May include correspondence, reports, notices, exhibits, protests of decisions, petitions, appraisals, forms, transcripts, grievances, applications, and variances.	COB-8	ALL	CC	I	I	3 YRS	I	M	I	Becomes part of the agenda packet; CCP 583.320(a)(3); 2 years required - GC 26202 et seq..
		APPLICATION FOR RELIEF	Applications for adult and orphan aid. May contain nam e of applicant, age, residence, marital status, number, na mes and dates of birth of children, names, address, and r elationship of person with whom children reside, reason for request, amount and description of property, habits o f sobriety, and date filed.	COB-9	OV	CC	I	I	3 YRS	I	M	I	Useful for an understanding of early systems of social services and source for study of welfare patters, aid a mounts and reasons for relief requests. 2 years requir ed - GC 26202 et seq..
		APPLICATIONS FOR BOARDS, COMMITTEES AND COMMISSIONS-NOT SELECTED	NOT SELECTED	COB-10	OV	CC	CU	CU+2YRS	CU+2YRS	none		CU+2YRS	2 years required - GC 26202 et seq..
		APPLICATIONS FOR BOARDS, COMMITTEES AND COMMISSIONS- SELECTED	SELECTED	COB-11	OV	CC	CU	CU+5YRS	CU+5YRS	none		CU+5YRS	2 years required - GC 26202 et seq..
		ASSESSMENT APPEALS-FILES	BOS sitting as the Board of Equalization (BOE) hears appeals on property tax assessments. Files may include: application for change in property assessments, statements, arguments, memos, correspondence, notes, stipulations, maps, appraisals and Findings of Fact. Waivers (2- year time limit)	COB-13	OV	CC	CL	CL+5YRS	CL+5YRS	none	M	CL+5YRS	GC 25105.5 authorizes destruction of assessment appeals apps. Five years after final action; 2 years required - GC 26202 et seq.. Files to be held off-site once inactive.
		AUDIO TAPE RECORDINGS	Audio tape recordings of meetings and hearings of the BOS and all boards, commissions and special districts where the BOS sites as the governing body.	COB-14	OV	CC	CU	CU+2YRS	30 DAYS	none	S	CU+2YRS	Audio Tapes are saved until after the minutes are approved GC §54953.5(b)
		AUDIT REPORTS	Audits of county departments filed with the BOS.	COB-15	ALL	CC	I	I	3 YRS	I	M	I	Becomes part of the Agenda Packet; 2 years required - GC 26202 et seq.
		BOARD OF EQUALIZATION MINUTES	Minutes of the Board of Supervisors acting ex-office as the Board of Equalization (BOE). The sole function of the BOE is to decide on matters of property assessments. Contains date and place of meeting, names of property, nature of changes and corrections in assessment and names of members present. May include applications for reduction in tax assessments.	COB-17	ALL	CC	I	I	3 YRS	I	M	I	R & T Section 1611 requires County BOE to keep a record of its proceedings. 2 years required - GC 26202 et seq.
		BOARDS, COMMISSIONS & COMMITTESS	Appointed by the Board of Supervisors (BOS). May include oaths of office, and membership lists.	COB-18	OV	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq.
		BONDS AND TAX ANTICIPATION NOTES	Records pertaining to bonds, apportionments and tax anticipation notes. May include receipt for bonds, evidence of payment, prospectuses, orders to sell bonds, correspondence, reports, schedules, notices fillings.	COB-19	ALL	CC	CL	CL+10YRS	0	CL+10YRS	M	CL+10YRS	Statute of Limitations for municipal bonds are maturity, cancellation, or redemption + 10 years; Records destroyed 5 years after cancellation of bond GC 29940 - GC29942 permits BOS to destroy unused bonds 2 years after election authorizing their issuance. 2 years required - GC 26202 et seq., CCP 336(a), 337.5(2)
		BUDGETS, FINAL	Annual County budgets are prepared by the auditor and county administrator and presented to the BOS for review and approval. Should contain budget totals for each county office and agency, amount of funds requested and proposed, budget history information, salary ranges for county positions, and summaries of budget by fund, of estimated revenues, and of estimated fiscal requirements.	COB-20	ALL	CC	I	I	3 YRS	I	M	I	Part of the Agenda Packet; 2 years required - GC 26202 et seq.

		CITY SELECTION COMMITTEE, MEETINGS AND MINUTES	Minutes of regular meetings of the City Selection Committee. Committee is composed of representatives from local cities whose function is to select appointees to several county commissions. May include date and time of meetings, members attending, internal organizational matters, etc.	COB-22	ALL	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq.
		CONFLICT OF INTEREST CODES	Conflict of Interest Codes adopted for special districts, Grand Jury, boards and commissions, school districts and new County departments. May include resolution, Conflict of Interest Code and miscellaneous addenda.	COB-26	ALL	CC	I	I	3 YRS	I	M	I	Adopted by Resolution; 2 years required - M292 years required - GC 26202 et seq.
		GENERAL CORRESPONDENCE not related to agenda items	Communications to and from the BOS on a wide range of subjects relating to county affairs.	COB-29	OV	CC	CU	CU+2YRS	CU+2YRS	none	S	CU+2YRS	2 years required - GC 26202 et seq.
		EASEMENTS/DEEDS		COB-30	ALL	CC	I	I	1 YR	I	M	I	Certified copies are on file with the County Recorder. Originals are on file with the Clerk of the Board. 2 years required - GC 26202 et seq.
		ELECTIONS - HISTORICAL	Election records filed with the BOS. Generally includes statement of votes and election certifications.	COB-31	ALL	CC	I	I	3 YRS	I	M	I	Becomes part of the Agenda Packet; 2 years required - GC 26202 et seq.
		MINUTES	Minutes of the proceedings of the BOS and all boards, commissions and special districts where the BOS sits as the governing body. Included ordinances and resolutions, appointments and resignations of County officers and employees, statements of election results, lists of claims made against the County, and budget information. Generally contains date, time and place of meeting, names of members present and absent, nature of business, actions taken, and recorded vote of supervisors.	COB-42	ALL	CC	I	I	0	I	M	I	2 years required - GC 26202 et seq..
		OATHS OF OFFICE	Oaths of office for individuals in various County departments and those who sit on various boards and commissions.	COB-43	ALL	CC	I	I	3 YRS	I	M	I	*** GC 25100.5 Only oaths of office for advisory commissions are on file with BOS; 2 years required - GC 26202 et seq..
		ORDINANCES	Original ordinances of the County adopted by the BOS and governing body for special districts. May include date adopted, title, text ordinance number, zoning maps and the vote of the BOS.	COB-46	ALL	CC	I	I	3 YRS	I	M	I	GC 25102; 2 years required - GC 26202 et seq..
		SUMMONS or SUBPOENAS		COB-48	ALL	CC	CU	CU+2YRS	CU+2YRS	none		CU+2YRS	Only for those directed to the Clerk of the Board; 2 years required - GC 26202 et seq..
		PERMITS AND LICENSES	Records pertaining to the permits, licenses and waivers approved by the BOS. Includes Taxi Permits and Card Ro om Permits, applications.	COB-49	ALL	CC	CL	CL + 5 YRS	CL + 3 YRS	2 YRS		CL+5YRS	2 years required - GC 26202 et seq..
		PETITIONS	Petitions sent to the BOS protesting or requesting board action. May include signed petitions verified by th e County clerk. Does not include Referendum, Initiative o r Recall petitions.	COB-50	C	CC	CU	CU+2YR S	CU+2YRS	none		CU+2YRS	2 years required - GC 26202 et seq..
		POLICIES AND PROCEDURES	Policies, rulings and bylaws established or approved by the BOS. May include bylaws, statements, clippings, correspondence, reports guidelines, rules and regulations, standards, or orders amending policies.	COB-51	ALL	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq.. until superseded
		RECORDS OF BURIAL OF EX-UNION SOLDIERS	Records of burial of Union Civil War veterans made at county expense. Contain name, rank, company, civil occupation, and nativity of soldier, date of entry into service, date of discharge, dates and places of death and burial affiliations of Grand Army of the Republic, and amount of burial expenses. (Late 19th and early 20th century record now obsolete.)	COB-53	ALL	CC	I	I	3 YRS	I	M	I	Source of Genealogical Information; 2 years required - GC 26202 et seq.. M & V 948
		REGISTERS (RECORDS) OF ORPHANS AND HALF- ORPHANS	A record of applications for county aid for needy children. Contains date and number of application, name, sex, and age of child, name address, birthplace, and relationship of person caring for child, reason for request, and amount of property owned. (Early 20th century record now obsolete.)	COB-54	C	CC	I	I	3 YRS	I	M	I	*** Useful for treatment of need children in the 20th Century, for study of welfare system and reasons for applications. 2 years required - GC 26202 et seq..
		REPORTS, Reportable Actions TAKEN IN CLOSED SESSION	Reportable actions taken by the Board during Closed Session. Include vote of each Board member and abstentions.	COB-56	ALL	CC	I	2 YRS	PERM	none			If taken, Minutes of Closed Sessions are Permanent. 2 years required - GC 26202 et seq.. Reports may be filed with background information files.
		RESOLUTIONS	Resolutions are evidence of the formal opinion of determination of the BOS. Original resolutions passed by the BOS. Contains date passed, number and subject of resolutions, names of interested parties, names of members voting and nature of action.	COB-57	ALL	CC	I	I	3 YRS	I	M	I	GC 25102.1; 2 years required - GC 26202 et seq..
		ROAD BOOKS (ROAD RECORDS, ROAD ACCOUNTY ROAD PROCEEDINGS, ROAD REGISTERS)	Records of the BOS actions and deliberations on the planning, construction, and maintenance of County roads and related public works. Contains date of meeting, orders and resolutions presented and approved names of supervisors present, and actions taken. May include original maps and surveys, field notes, and other topographical documents. Road books are generally a 19th Century record now obsolete. Road books were maintained separately from minute books. Early volumes may have a separate index; later volumes are usually indexed to the minutes of the BOS.	COB-58	ALL	CC	I	I	3 YRS	I	M	I	Source for study of the development of County Transportation System. 2 years required - GC 26202 et seq..
		SCHOOL DISTRICT FILES - HISTORICAL	BOS records pertaining to county school district. May include notices, requests, correspondence, budgets, appointment information, mitigation reports, waivers, reports of the superintendent, statements, etc.	COB-59	ALL	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq..

		SUBDIVISION FILES	Records related to the creation of new subdivisions within the County. May include planning department reports, maps, notice of public hearings and related backup.	COB-62	ALL	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq..
		VIDEO TAPES / VIDEO RECORDINGS	Video tape recordings made during meetings and hearing of the BOS and other boards, commissions and special districts where the Board sits as the governing body.	COB-63	ALL	CC	CU	CU+2YRS	CU+2YRS	none		CU+2YRS	GC §26202.3, 34090.6 54953.5(b)

COUNTY OF NAPA RECORDS RETENTION

Program: Public Works				
Code	**Title**	**Description**	**Total Retention Time (Hard Copy & Electronic)**	**Remarks**
	Building Permits		2 years after finalizing	GC26202
	Building Plans		Life of building	H&S 19850
	Statement of Fees Collected		5 years	GC24356
	StoragelUse of Explosives		3 years	H&S 12121
	~~Unaccpted Bids or Proposals~~ BID AND PROPOSAL DOCUMENTS ACCEPTED AND UNACCEPTED	May include proposal statements, noticed cost allocations, bidders forms, schedules for bids received, data sheets, bond and insurance checklist, bonds, proof in insurance, certification of affirmative action request, list of subcontractors.	2 years	GC26201.2

Program: Clerk of the Board

Department	Division	Description	Explanation	Document Code	Security	Status	Records Retention Class	Legal Requirement	On Site	Records Center	Method of Disposition	Total	Remarks
*** For Litigation Hold records, suspend normal retention periods (retention begins after final action-settlement).** *** Destruction of duplicate copies is authorized pursuant to Government Code Section 26201.** *** Departments may keep records onsite longer in order to fill up the box before sending to the Records Center.** *** Records Retention Class: AU=audit plus (x) years, B=2 years, CL=closed plus (x) years, CU=current year plus (x) years, P=permanent** *** Any reference to retention periods for copies in the remarks sections are not legally binding retention periods, but internal timelines and practices to ensure efficiency in County operations.**													
		ABATEMENT OF PENALTIES	Appeals for abatement of tax penalties. May include claims for cancellation and refund of delinquent penalty applications, correspondence, notice statement list of entities for the State Board of Equalization (BOE).	COB-1	OV	CC	CU	CU+7YRS	3 YRS	4 YRS		CU+7YRS	R & T 483 allows for appeals to be filed with the Board of Supervisors (7) years retention recommended due to possible federal requirements. 2 years required - GC 26202 et seq..
		AGENDAS & AGENDA PACKETS	Agendas of the meetings and hearings of the BOS. May include agendas & staff reports for special districts and other entities governed by the BOS as well as special meeting notices, certificates of posting, original summaries, original communications and action agendas for Boards, Committees and Commissions. Includes Affidavits of Posting / Legal Advertising / Affidavits of Publications.	COB-4	ALL	CC	I	I	3 YRS	I	M	I	Agenda information is included in the minutes which are a permanent record. In addition the agendas are online and included in the agenda packets which are permanent. 2 years required - GC 26202 et seq..
		AGREEMENTS, CONTRACTS, LEASES (EXCL. CAPITAL IMPROVEMENT)	Original contracts and agreements approved by the BOS for the conduct of County business. Can include franchises, bonds, plans and specifications, accepted bids, reports and studies, correspondence, maps, memorandums, and printed materials. Basic contract or agreement contains name of contractor, contract number, date filed, description of work or service to be provided and signature of Chair of the BOS, Clerk and contractor. Approved to Form County.	COB-5	ALL	CC	CL	CL+10YRS	CL+3YRS	7 YRS	M	CL+10YRS	Includes leases, equipment, service or supplied. N10PU7685; 48 CFR.2; GC 53066; CCP 337.2, 334; B&P 7042.5, 2 years required - GC 26202 et seq..
		AGREEMENTS, CAPITAL IMPROVEMENT or IMAGED	Construction	COB-6	ALL	CC	I	I	3 YRS	I	M	I	Construction *GC37090; 4004;H&S 19850; Source for study of Public Works and construction projects. May provide visual evidence or architectural designs and mechanical devices. 2 years required - GC 26202 et seq..
		ALLOWANCE BOOK (Registers of Claims, Claims allowed)	Records of allowances made by the BOS for claims against the county funds. May contain the claim number, dates received and filed, amounts allowed, name of fund, name of claimant, materials or service provided and fund totals. See claims.	COB-7	OV	CC	I	I	3 YRS	I	M	I	Books from the 1880's may be a source for information on early Government needs and planning, on wages and prices for goods and services and on local businesses 2 years required - GC 26202 et seq..
		APPEALS (ZONING USE PERMITS VARIANCE) CIVIL	Records of appeals made to the BOS. May include correspondence, reports, notices, exhibits, protests of decisions, petitions, appraisals, forms, transcripts, grievances, applications, and variances.	COB-8	ALL	CC	I	I	3 YRS	I	M	I	Becomes part of the agenda packet; CCP 583.320(a)(3); 2 years required - GC 26202 et seq..
		APPLICATION FOR RELIEF	Applications for adult and orphan aid. May contain nam e of applicant, age, residence, marital status, number, na mes and dates of birth of children, names, address, and r elationship of person with whom children reside, reason for request, amount and description of property, habits o f sobriety, and date filed.	COB-9	OV	CC	I	I	3 YRS	I	M	I	Useful for an understanding of early systems of social services and source for study of welfare patters, aid a mounts and reasons for relief requests. 2 years requir ed - GC 26202 et seq..
		APPLICATIONS FOR BOARDS, COMMITTEES AND COMMISSIONS-NOT SELECTED	NOT SELECTED	COB-10	OV	CC	CU	CU+2YRS	CU+2YRS	none		CU+2YRS	2 years required - GC 26202 et seq..
		APPLICATIONS FOR BOARDS, COMMITTEES AND COMMISSIONS- SELECTED	SELECTED	COB-11	OV	CC	CU	CU+5YRS	CU+5YRS	none		CU+5YRS	2 years required - GC 26202 et seq..
		ASSESSMENT APPEALS-FILES	BOS sitting as the Board of Equalization (BOE) hears appeals on property tax assessments. Files may include: application for change in property assessments, statements, arguments, memos, correspondence, notes, stipulations, maps, appraisals and Findings of Fact. Waivers (2- year time limit)	COB-13	OV	CC	CL	CL+5YRS	CL+5YRS	none	M	CL+5YRS	GC 25105.5 authorizes destruction of assessment appeals apps. Five years after final action; 2 years required - GC 26202 et seq.. Files to be held off-site once inactive.
		AUDIO TAPE RECORDINGS	Audio tape recordings of meetings and hearings of the BOS and all boards, commissions and special districts where the BOS sites as the governing body.	COB-14	OV	CC	CU	CU+2YRS	30 DAYS	none	S	CU+2YRS	Audio Tapes are saved until after the minutes are approved GC §54953.5(b)
		AUDIT REPORTS	Audits of county departments filed with the BOS.	COB-15	ALL	CC	I	I	3 YRS	I	M	I	Becomes part of the Agenda Packet; 2 years required - GC 26202 et seq.
		~~BID AND PROPOSAL DOCUMENTS ACCEPTED AND UNACCEPTED~~	~~May include proposal statements, noticed cost allocations, bidders forms, schedules for bids received, data sheets, bond and insurance checklist, bonds, proof in insurance, certification of affirmative action request, list of subcontractors.~~	~~COB-16~~	~~ALL~~	~~CC~~	~~CU~~	~~CU+2YRS~~	~~CU+2YRS~~	~~none~~	~~S~~	~~CU+2YRS~~	~~Successful Bids & Proposals are filed with the Agreement or Contract; GS 26202.1 allows destruction of unaccepted bids after 2 years.~~ ~~GC 60202 allows destruction of unaccepted bids for special district projects after 2 years.~~ ~~Accepted bids are generally kept with contracts.~~

		BOARD OF EQUALIZATION MINUTES	Minutes of the Board of Supervisors acting ex-office as the Board of Equalization (BOE). The sole function of the BOE is to decide on matters of property assessments. Contains date and place of meeting, names of property, nature of changes and corrections in assessment and names of members present. May include applications for reduction in tax assessments.	COB-17	ALL	CC	I	I	3 YRS	I	M	I	R & T Section 1611 requires County BOE to keep a record of its proceedings. 2 years required - GC 26202 et seq.
		BOARDS, COMMISSIONS & COMMITTESS	Appointed by the Board of Supervisors (BOS). May include oaths of office, and membership lists.	COB-18	OV	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq.
		BONDS AND TAX ANTICIPATION NOTES	Records pertaining to bonds, apportionments and tax anticipation notes. May include receipt for bonds, evidence of payment, prospectuses, orders to sell bonds, correspondence, reports, schedules, notices fillings.	COB-19	ALL	CC	CL	CL+10YRS	0	CL+10YRS	M	CL+10YRS	Statute of Limitations for municipal bonds are maturity, cancellation, or redemption + 10 years; Records destroyed 5 years after cancellation of bond GC 29940 - GC29942 permits BOS to destroy unused bonds 2 years after election authorizing their issuance. 2 years required - GC 26202 et seq., CCP 336(a), 337.5(2)
		BUDGETS, FINAL	Annual County budgets are prepared by the auditor and county administrator and presented to the BOS for review and approval. Should contain budget totals for each county office and agency, amount of funds requested and proposed, budget history information, salary ranges for county positions, and summaries of budget by fund, of estimated revenues, and of estimated fiscal requirements.	COB-20	ALL	CC	I	I	3 YRS	I	M	I	Part of the Agenda Packet; 2 years required - GC 26202 et seq.
		CITY SELECTION COMMITTEE, MEETINGS AND MINUTES	Minutes of regular meetings of the City Selection Committee. Committee is composed of representatives from local cities whose function is to select appointees to several county commissions. May include date and time of meetings, members attending, internal organizational matters, etc.	COB-22	ALL	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq.
		CONFLICT OF INTEREST CODES	Conflict of Interest Codes adopted for special districts, Grand Jury, boards and commissions, school districts and new County departments. May include resolution, Conflict of Interest Code and miscellaneous addenda.	COB-26	ALL	CC	I	I	3 YRS	I	M	I	Adopted by Resolution; 2 years required - M292 years required - GC 26202 et seq.
		GENERAL CORRESPONDENCE not related to agenda items	Communications to and from the BOS on a wide range of subjects relating to county affairs.	COB-29	OV	CC	CU	CU+2YRS	CU+2YRS	none	S	CU+2YRS	2 years required - GC 26202 et seq.
		EASEMENTS/DEEDS		COB-30	ALL	CC	I	I	1 YR	I	M	I	Certified copies are on file with the County Recorder. Originals are on file with the Clerk of the Board. 2 years required - GC 26202 et seq.
		ELECTIONS - HISTORICAL	Election records filed with the BOS. Generally includes statement of votes and election certifications.	COB-31	ALL	CC	I	I	3 YRS	I	M	I	Becomes part of the Agenda Packet; 2 years required - GC 26202 et seq.
		MINUTES	Minutes of the proceedings of the BOS and all boards, commissions and special districts where the BOS sits as the governing body. Included ordinances and resolutions, appointments and resignations of County officers and employees, statements of election results, lists of claims made against the County, and budget information. Generally contains date, time and place of meeting, names of members present and absent, nature of business, actions taken, and recorded vote of supervisors.	COB-42	ALL	CC	I	I	0	I	M	I	2 years required - GC 26202 et seq..
		OATHS OF OFFICE	Oaths of office for individuals in various County departments and those who sit on various boards and commissions.	COB-43	ALL	CC	I	I	3 YRS	I	M	I	*** GC 25100.5 Only oaths of office for advisory commissions are on file with BOS; 2 years required - GC 26202 et seq..
		ORDINANCES	Original ordinances of the County adopted by the BOS and governing body for special districts. May include date adopted, title, text ordinance number, zoning maps and the vote of the BOS.	COB-46	ALL	CC	I	I	3 YRS	I	M	I	GC 25102; 2 years required - GC 26202 et seq..
		SUMMONS or SUBPOENAS		COB-48	ALL	CC	CU	CU+2YRS	CU+2YRS	none		CU+2YRS	Only for those directed to the Clerk of the Board; 2 years required - GC 26202 et seq..
		PERMITS AND LICENSES	Records pertaining to the permits, licenses and waivers approved by the BOS. Includes Taxi Permits and Card Ro om Permits, applications.	COB-49	ALL	CC	CL	CL + 5 YRS	CL + 3 YRS	2 YRS		CL+5YRS	2 years required - GC 26202 et seq..
		PETITIONS	Petitions sent to the BOS protesting or requesting board action. May include signed petitions verified by th e County clerk. Does not include Referendum, Initiative o r Recall petitions.	COB-50	C	CC	CU	CU+2YR S	CU+2YRS	none		CU+2YRS	2 years required - GC 26202 et seq..

		POLICIES AND PROCEDURES	Policies, rulings and bylaws established or approved by the BOS. May include bylaws, statements, clippings, correspondence, reports guidelines, rules and regulations, standards, or orders amending policies.	COB-51	ALL	- CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq.. until superseded
		RECORDS OF BURIAL OF EX-UNION SOLDIERS	Records of burial of Union Civil War veterans made at county expense. Contain name, rank, company, civil occupation, and nativity of soldier, date of entry into service, date of discharge, dates and places of death and burial affiliations of Grand Army of the Republic, and amount of burial expenses. (Late 19th and early 20th century record now obsolete.)	COB-53	ALL	CC	I	I	3 YRS	I	M	I	Source of Genealogical Information; 2 years required - GC 26202 et seq.. M & V 948
		REGISTERS (RECORDS) OF ORPHANS AND HALF- ORPHANS	A record of applications for county aid for needy children. Contains date and number of application, name, sex, and age of child, name address, birthplace, and relationship of person caring for child, reason for request, and amount of property owned. (Early 20th century record now obsolete.)	COB-54	C	CC	I	I	3 YRS	I	M	I	*** Useful for treatment of need children in the 20th Century, for study of welfare system and reasons for applications. 2 years required - GC 26202 et seq..
		REPORTS, Reportable Actions TAKEN IN CLOSED SESSION	Reportable actions taken by the Board during Closed Session. Include vote of each Board member and abstentions.	COB-56	ALL	CC	I	2 YRS	PERM	none			If taken, Minutes of Closed Sessions are Permanent. 2 years required - GC 26202 et seq.. Reports may be filed with background information files.
		RESOLUTIONS	Resolutions are evidence of the formal opinion of determination of the BOS. Original resolutions passed by the BOS. Contains date passed, number and subject of resolutions, names of interested parties, names of members voting and nature of action.	COB-57	ALL	CC	I	I	3 YRS	I	M	I	GC 25102.1; 2 years required - GC 26202 et seq..
		ROAD BOOKS (ROAD RECORDS, ROAD ACCOUNTY ROAD PROCEEDINGS, ROAD REGISTERS)	Records of the BOS actions and deliberations on the planning, construction, and maintenance of County roads and related public works. Contains date of meeting, orders and resolutions presented and approved names of supervisors present, and actions taken. May include original maps and surveys, field notes, and other topographical documents. Road books are generally a 19th Century record now obsolete. Road books were maintained separately from minute books. Early volumes may have a separate index; later volumes are usually indexed to the minutes of the BOS.	COB-58	ALL	CC	I	I	3 YRS	I	M	I	Source for study of the development of County Transportation System. 2 years required - GC 26202 et seq..
		SCHOOL DISTRICT FILES - HISTORICAL	BOS records pertaining to county school district. May include notices, requests, correspondence, budgets, appointment information, mitigation reports, waivers, reports of the superintendent, statements, etc.	COB-59	ALL	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq..
		SUBDIVISION FILES	Records related to the creation of new subdivisions within the County. May include planning department reports, maps, notice of public hearings and related backup.	COB-62	ALL	CC	I	I	3 YRS	I	M	I	2 years required - GC 26202 et seq..
		VIDEO TAPES / VIDEO RECORDINGS	Video tape recordings made during meetings and hearing of the BOS and other boards, commissions and special districts where the Board sits as the governing body.	COB-63	ALL	CC	CU	CU+2YRS	CU+2YRS	none		CU+2YRS	GC §26202.3, 34090.6 54953.5(b)

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1374

TO: Board of Supervisors

FROM: Brian D. Bordona - Director of Planning, Building, and Environmental Services

REPORT BY: Michael Parker - Planning Manager

SUBJECT: Budget Adjustment for Wildlife Conservation Commission

RECOMMENDATION

Approve a Budget Amendment to increase appropriations in Community Grants with use of fund balance to allow the Wildlife Conservation Commission to fund additional annual grant applications. (Fiscal Impact: $10,000 Expense; Not Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

The Wildlife Conservation Commission (WCC) is an eight-member commission that advises the Napa County Board of Supervisors on funding proposals that preserve and enhance Napa County wildlife and their habitats, pursuant to California Fish and Game Code §13103.

The Commission is comprised of four members representing the Public at Large, one Sportsperson/Angler, one Wildlife/Conservation representative, one youth representative between the age of 15 and 25, and one Planning Commission representative. The Commission is tasked with advancing the protection, conservation, propagation, and preservation of fish and wildlife in Napa County.

In August of every year, the WCC holds a regular meeting to conduct annual grant application reviews and to develop funding recommendations. The WCC receives $50,000 per fiscal year in General Fund monies to fund grant applications within Napa County. Additional funds are provided by the Department of Fish and Wildlife court fines and settlements, as well as local fines and settlements that are intended for this specific purpose. Receipt of court fines serve as an unstable, irregular source of regular for the WCC. Over the past few fiscal years, the WCC has built up a small fund balance from the receipt of these court fines.

For the 2024-25 Fiscal Year, the WCC planned on awarding $50,000 in grant awards. Due to an increase in court fines over the past few years and growing fund balance, the WCC and the Director of Planning, Building, and Environmental Services requests the Board approve a budget amendment increasing appropriations by $10,000 in Community Grants (Fund 2120, Org 2120000, Acct 54805), offset by use of available fund balance, for the purpose of distributing a combined total of $60,000 in grant awards in Napa County for Fiscal Year 2024-25.

Requested Action:

Approve a Budget Amendment to increase appropriations in Community Grants with use of fund balance to allow the Wildlife Conservation Commission to fund additional annual grant applications.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The WCC grants support wildlife conservation and other related projects consistent with State guidelines. Funding for grants is provided by the California Department of Fish and Wildlife court fines and local settlements that are intended for this specific purpose.
Is the general fund affected?	No
Future fiscal impact:	No future fiscal impact beyond the current fiscal year.
Consequences if not approved:	If this budget adjustment is not approved, the WCC fund balance will continue to go unused.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Napa County

Board Agenda Letter

1195 THIRD STREET
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Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1394

TO: Board of Supervisors

FROM: Brian D. Bordona - Director, Planning, Building & Environmental Services

REPORT BY: Christina Adamson - Deputy Director, Planning, Building & Environmental Services

SUBJECT: PBES Department Professional Development - Office Closure

RECOMMENDATION

Adopt and approve a temporary office closure on Thursday, September 19, 2024, from 11:00 a.m. to 2:00 p.m. for a department-wide team building, professional development luncheon. (No Fiscal Impact; Discretionary)

BACKGROUND

The Director of Planning, Building and Environmental Services (PBES) requests approval to close the PBES office from 11:00 a.m. to 2:00 p.m. on Thursday, September 19, 2024, to provide department-wide team building and professional development luncheon. The luncheon will be held at Kennedy Park in Napa.

With a department of over 100 employees and multiple divisions, and many long-term staff in new roles, and new team members, this luncheon would provide an opportunity for all Department staff to engage in team building activities to help promote internal communication and coordination between divisions, enhance individual skills, and strengthen the PBES team for the challenges that lie ahead. In addition, the Department continues to take on new programs and responsibilities in response to an ever-changing environment. The luncheon will provide opportunities for staff to address these issues, as well as provide a chance to celebrate accomplishments and reconnect with peers in colleagues throughout the Department.

To minimize disruption to the public and others who rely on PBES, stall will notify customers in advance of the anticipated closure hours. The closure will be noticed in the PBES lobby and on the Department website. The Department will also work with the County Public Information Officer to assist in providing a broader notification, where needed.

Requested Action:

Adopt and approve a temporary office closure on Thursday, September 19, 2024, from 11:00 a.m. to 2:00 p.m. for a department-wide team building, professional development luncheon.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

Is it Mandatory or Discretionary? Discretionary

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project by 14 California Code of Regulation 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

1195 THIRD STREET
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Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1413

TO: Board of Supervisors

FROM: Amanda Gibbs, Chief Probation Officer

REPORT BY: Ferlyn Buenafe, Probation Administrative Manager

SUBJECT: Agreement with Jan C. Bouch

RECOMMENDATION

Approve and authorize Agreement No. 250149B with Jan C. Bouch, for the term August 1, 2024 through June 30, 2025 to provide executive coaching and mentoring of Probation Supervisors and Managers. (Fiscal Impact: $58,000 Expense; General Fund; Budgeted; Discretionary)

BACKGROUND

Probation has been working with the Consultant to provide strategic planning initiatives with intended outcomes, guiding principles and supervisor training. This agreement allows Jan Bouch to continue to provide expert management consulting services to address strategies to strengthen the Department's leadership team. Ms. Bouch will work on a "project basis" under the direction of the Chief Probation Officer to assist individual supervisors and managers and other staff designated by the Chief to meet the expectations of their positions and to achieve the Department's long-range goals.

Requested Action:

Approve and authorize Agreement No. 250149B with Jan C. Bouch for a contract maximum of $58,000 for the term August 1, 2024 through June 30, 2025, with one (1) automatic annual renewal to provide executive coaching and mentoring to Probation Supervisors and Managers.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Probation, 1420000

Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Consultant has been working with the Department for several years providing Strategic Planning and Executive Coaching. Continued assistance will allow for continuity of objectives, goals, employee development, and ongoing improvement.
Is the general fund affected?	Yes
Future fiscal impact:	Funds to be budgeted accordingly in the future fiscal year.
Consequences if not approved:	If the Agreement is not approved, the successful work of the consultant the past several years may not be continued. Years of implementing strategic planning initiatives, organizational development, process improvements and mentoring could be delayed with a cease in service and weaken the collaborative efforts established, reducing efficiency, productivity and employee engagement.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO. 250149B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of August, 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and JAN C. BOUCH, PSY.D., "doing business as JUSTICE COACHING CENTER"; whose mailing address is 7588 Froman Avenue, Boise, ID, 83714, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide the Probation Department Strategic Planning, Guiding Principles, Supervisor Training and Executive Coaching; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2025, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed two (2) additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto, incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of FIFTY-EIGHT THOUSAND DOLLARS ($58,000) for professional services and expenses, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the PROBATION ADMINISTRATIVE MANAGER who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the CHIEF PROBATION OFFICER upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the NAPA COUNTY PROBATION DEPARTMENT prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within 10 days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party

in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least 30 days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of

maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CONTRACTOR
Napa County Probation Department	Justice Coaching Center, LLC
Probation Administrative Manager	Jan Bouch
212 Walnut Street	7588 Froman Avenue
Napa, CA 94559	Boise, ID 83712

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and

subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its CHIEF PROBATION OFFICER. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This

includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the CHIEF PROBATION OFFICER.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof

as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. **[RESERVED]**

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the

performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By executing this Agreement, the COUNTY hereby determines in writing that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions. [RESERVED]**

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

JAN C. BOUCH *doing business as*
JUSTICE COACHING CENTER, LLC

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

JAN C. BOUCH *doing business as*
JUSTICE COACHING CENTER, LLC

By _____
JAN C. BOUCH, PSY.D.
President and CFO

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California

By _____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: *Douglas Parker (via e-sign)* Deputy County Counsel Date: August 6, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services three primary phases to continue the development of supervisors and managers.

I. DESCRIPTION OF SERVICES

A. **Phase I**: One on one developmental and leadership coaching with designated COUNTY staff. Coaching will be provided by a professionally certified coach (PCC) or CONTRACTOR designee. Coaching is provided online with two (2) sessions per month. The coachee (s) and their supervisor will meet initially to ensure alignment of goals and outcomes.

B. **Phase II**: COUNTY Juvenile Hall Supervisors hold an immense amount of responsibility. CONTRACTOR to assist in changing culture and professionalism of the Juvenile Hall to align with mission and core values. To accomplish this, CONTRACTOR shall conduct an individual phone survey with each Supervisor. From the data collected, CONTRACTOR shall develop a plan for overall improvement and increased supervisory skills to ensure alignment with the COUNTY Probation values, mission, vision, and purpose.

   i) Provide executive coaching for the ongoing professional development of COUNTY Supervisors and Managers. COUNTY and CONTRACTOR to develop goals to be determined and agreed upon to facilitate improvements in the working environment.

   ii) CONTRACTOR to provide status to COUNTY Chief Probation Officer at intervals determined by COUNTY and CONTRACTOR for each COUNTY individual receiving services.

C. **Phase III**: Provide up to a two-day training course on emotional intelligence and the role of the Supervisor.

The scope includes at minimum 72 coaching calls, three (3) meetings with Juvenile Hall Supervisors, eight (8) days of training and travel, and preparation time.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also

contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

For the delivery of services in Exhibit "A", below is the fee schedule

Phase 1: $18,000

Phase 2: $29,000

Phase 3: $11,000

Total: $58,000

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15		Smith,			
1/1/15	Site visit/investigation 123 Main St, Napa.	Engineer	1.5	$165.00	247.50
1/1/15	Conf w/Owner	Smith, Engineer	1	$165.00	165.00
	AutoCad, Bldg X, 3rd Floor	Smith, Engineer	4	$165,00	660.00
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15		Smith,			
1/2/15	AutoCad Bldg X, 3rd Floor	Engineer	4	$165.00	660.00
	Conf w/Owner re 2nd Floor	Smith, Engineer	.5	$165.00	82.50
1/3/15	Mtg w/Jones re 2nd Floor; conf	Smith,			
1/3/15	w/Owner	Engineer	1.5	$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2nd Floor	Jones, PE	1.5	$195.00	292.50
				TOTAL	

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1192

TO: Board of Supervisors

FROM: Steven Lederer - Director of Public Works, Fleet Division

REPORT BY: Mercedes Meats - Supervising Staff Services Analyst

SUBJECT: Trade-In of County Surplus Equipment

RECOMMENDATION

Approve and authorize the disposal of one surplus piece of equipment by way of trade-in. (Fiscal Impact: $28,000 Revenue; Fleet; Not Budgeted; Discretionary)

BACKGROUND

The Public Works Director, Fleet Manager, and Purchasing Agent are recommending disposal of a 1995 Caterpillar Motor Grader 140G, Property No. 26459-0, Asset No. 100020 by way of trade-in for a $28,000 credit toward purchase of new equipment. This piece of equipment has outlived its useful life, has been or will be removed from service, and is no longer required for public use. With approval of today's action, the piece of equipment will be declared surplus and traded-in. The Purchasing Agent, with Board affirmation and approval, is authorized by Government Code Section 25363 and Section 9-6 of the County Purchasing Manual to accept advantageous trade-in allowances for County personal property that has been determined to be of no further public use.

Requested Actions:
1. Declare certain capital asset equipment as surplus and no longer required for public use;
2. Authorize the Auditor-Controller to remove these surplus assets from the capital asset listing; and
3. Affirm that the Purchasing Agent may exercise his authority to dispose of said fixed asset surplus property by accepting an advantageous trade-in allowance.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary

Discretionary Justification:	The piece of equipment recommended for surplus and trade-in has outlived its usefulness, has or will be removed from service, and is no longer required for public use. Trade-in allowance will be used towards new equipment for the roads division.
Is the general fund affected?	No
Future fiscal impact:	There is no future fiscal impact past the current fiscal year.
Consequences if not approved:	Accumulated surplus property would exceed existing storage capacity.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1299

TO: Board of Supervisors

FROM: Steven Lederer, Director of Public Works

REPORT BY: Mark Witsoe, Airport Manager

SUBJECT: Adopt a Resolution authorizing required actions necessary to apply for and accept Airport Improvement Program Matching Grant funds for the Taxiway K and 19R Runup Apron Rehabilitation Project (PW 24-04) from the California Department of Transportation, Aeronautics Division.

RECOMMENDATION

Adopt a Resolution authorizing the filing of an application, acceptance of allocation of funds, and execution of a grant agreement by the Director of Public Works with the California Department of Transportation Aeronautics Division in support of the Airport Improvement Program for a State Matching Grant for the Taxiway K and 19R Runup Apron Rehabilitation Project. (Fiscal Impact: $219,629 Revenue; Airport CIP Fund; Budgeted; Discretionary)

BACKGROUND

On April 23, 2024, the Board of Supervisors approved the required actions to execute a grant agreement with the Federal Aviation Administration (FAA), award a construction contract to O.C. Jones & Sons, Inc. of Berkeley, California for the Taxiway K and Runway 19R Runup Apron Rehabilitation Project, PW 24-04, for their low bid of $4,199,680, and execute Professional Service Contract 240342B with Mead & Hunt, Inc. for construction management services for this project.

The total cost of the project is $4,880,649, and 90%, ($4,392,584) is being offset by FAA Grant Agreement 3-06-0162-047-2024. The requested resolution is necessary to allow the Airport to apply for and accept State Matching funds in the amount of $219,629, which is 5% of the Federal grant amount. The remaining cost of $268,436 is budgeted from the Airport's Enterprise Fund. The resolution also authorizes the Director of Public Works to sign the State agreement and any other documents required to apply for and accept the grant funds.

FAA Grant Agreement 3-06-0162-047 for the Taxiway K and 19R Runup Apron Rehabilitation Project is expected in August of 2024. In order to meet project timelines, the State Matching Grant Application must be submitted within days of executing the FAA Grant Agreement. Once the State grant application process has

commenced and a state agreement has been executed, staff will issue a Notice to Proceed to Mead & Hunt, Inc. as well as O.C. Jones & Sons, Inc. for construction management services and construction mobilization, respectively. Adoption of the resolution authorizes the filing of the State grant application, accepting the allocation of funds for projects, executing the grant agreement, and authorizing the Director of Public Works to sign any documents necessary for the above actions.

Requested Action:

Adopt a Resolution authorizing the filing of an application, acceptance of allocation of funds, and execution of a grant agreement by the Director of Public Works with the California Department of Transportation Aeronautics Division in support of Airport Improvement Program (AIP) 3-06-0162-047-2024 for a State Matching Grant of $219,629 for the Taxiway K and 19R Runup Apron Rehabilitation Project.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Airport Enterprise Fund (5010- 43100) Project 24003
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Airport to receive a Grant Offer from the Federal Aviation Administration (FAA) in the amount of $4,392,584; 90% of the total project cost for the Taxiway K Reconstruction. Upon acceptance of a State Matching Grant, the Airport will receive additional Grant funds of $219,629, which is 5% of the FAA grant amount. The Airport Enterprise Fund will pay the remaining $268,436, bringing the total project cost to $4,880,649.
Is the general fund affected?	No
Future fiscal impact:	This Airport Improvement Project will take place during fiscal year 2024/25.
Consequences if not approved:	The Airport will not be able to apply for or accept $219,629 in State Matching Grant funds available through the CalTrans Aeronautics Division.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act [See Class 2 (“Replacement of Reconstruction”) which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR 15302].

RESOLUTION NO. 2024-_____

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS AUTHORIZING THE SUBMITTAL OF AN APPLICATION, ACCEPTANCE OF AN ALLOCATION OF FUNDS, AND EXECUTION OF A GRANT AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR AN AIRPORT IMPROVEMENT PROGRAM (AIP) MATCHING GRANT

WHEREAS, Napa County and the Federal Aviation Administration are parties to federal Airport Improvement Program (AIP) grant 3-06-0162-047-2024 for the Taxiway K and 19R Runup Apron Rehabilitation Project (the "project"); and

WHEREAS, the California Department of Transportation, pursuant to the Public Utilities Code section 21683.1, provides grants of up to 5% of Federal Aviation Administration grants to airports; and

WHEREAS, the California Department of Transportation requires the Board of Supervisors to adopt a resolution authorizing the submission of applications for AIP Matching grants;

NOW, THEREFORE BE IT RESOLVED that the Napa County Board of Supervisors:

1. Authorize the Director of Public Works to file an application for a state AIP Matching grant for this project;
2. Authorize the Director of Public Works to accept the allocation of state AIP Matching funds for the project;
3. Authorize the Director of Public Works to execute an AIP Matching Grant Agreement for this project; and

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4. Authorize the Director of Public Works to sign any documents required to apply for and accept these subject funds on behalf of Napa County.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the _____ day of _____, _____, by the following vote:

AYES: SUPERVISORS _____

_____

NOES: SUPERVISORS _____

ABSENT: SUPERVISORS _____

_____
JOELLE GALLAGHER,
Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: Neha Hoskins Clerk of the Board of Supervisors
By: */s/ Wendy M. Dau* Dep. County Counsel Date: July 26, 2024	Date: _____ Processed By: _____ Deputy Clerk of the Board	By: _____

1195 THIRD STREET
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Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1308

TO: Board of Supervisors

FROM: Steve Lederer - Director of Public Works, Public Works

REPORT BY: Mercedes Meats - Supervising Staff Services Analyst

SUBJECT: Electrical Maintenance and On-Call Services Professional Services Agreement

RECOMMENDATION

Approve and authorize Agreement No. 250070B with St. Francis Electric for a maximum of $150,000 per fiscal year, for the term of July 1, 2024 through June 30, 2027 with an automatic one-year renewal option for up to two additional years to provide Electrical Maintenance and On-Call Services for Napa County. (Fiscal Impact: $150,000 Expense; Roads and County Service Area No. 3 Funds; Budgeted; Discretionary)

BACKGROUND

The Department of Public Works issued a Request for Proposal (RFP) for Electrical Maintenance and On-Call Services to provide preventative maintenance, repair and inspection services for traffic signals, street lights, lighted crosswalks, flashing beacons, radar speed detection signs, safety lighting and any other lighting equipment on the county owned roadway network.

On May 14, 2024, staff released an RFP for Electrical Maintenance and On-Call Services and received three (3) responses. The firms were evaluated on the following criteria:

1. Responsiveness to RFP: breadth and depth of response, overall quality, responsiveness, and completeness.
2. Range of services provided by the firm.
3. Certifications held by the firm and licenses held by key staff.
4. Emergency response process, availability, and response time.
5. Environmentally sustainable business practices the company utilizes.
6. Rates for routine maintenance and on-call services.

After a review of responses, staff is recommending St. Francis Electric to enter into a professional services agreement with the County for future Electrical Maintenance and on-call service's needs.

St. Francis Electric is a San Leandro based electric company who specializes in transportation, traffic signals, lighting, specialty projects, underground construction, and 24/7 emergency on-call maintenance for public

safety lighting and traffic signals.

Requested Action:

1. Approve and authorize Agreement No. 250070B with St. Francis Electric for $150,000 per fiscal year for Electrical Maintenance and On- Call services.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Associated costs will be reflected in the Roads Operations (Fund 2040, Subdivision 2040000) and County Service Area No. 3 (CSA3) (Fund 2800, Subdivision 2800005) budgets.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The proposed Agreement will provide electrical maintenance and on-call services for all lighted equipment on county owned roadway network.
Is the general fund affected?	No
Future fiscal impact:	Costs have been budgeted in current year budget and will be included in subsequent year budgets.
Consequences if not approved:	Traffic signals, safety lighting, and other lighting equipment on the County Owned roadway will not be maintained and public safety will be jeopardized.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO. 250070B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, _____, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and ST. FRANCIS ELECTRIC, INC a California corporation, whose mailing address is 975 Carden Street, San Leandro, CA 94577, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide preventative maintenance, repair, and inspection services for traffic signals, street lights, lighted crosswalks, flashing beacons, radar speed detection signs, safety lighting and any other lighting equipment on the COUNTY owned roadway network; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2027, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed two (2) additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto, in addition to the RFP and CONTRACTOR's proposal, incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000) for professional services per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than thirty (30) days to the Public Works Administrative Manager who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Public Works Administrative Manager upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS

($1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. [RESERVED]

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Public Works Department prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure

such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own

use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CONTRACTOR
Napa County Department of Public Works	St. Francis Electric
1195 Third Street, Suite 101	975 Carden St.
Napa, CA 94559	San Leandro, CA 94577

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Director of Public Works. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon

request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Director of Public Works.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.

The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages.

(1) Affected Work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing Wages Rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll Records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the

subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties

relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions. [RESERVED]**

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

ST. FRANCIS ELECTRIC, LLC

By_____
GUY SMITH, PRESIDENT & SECRETARY

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California

By_____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: *Ryan FitzGerald* (e-sign) Deputy County Counsel Date: July 22, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:___ _____

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

Task 1. Routine Electrical Maintenance

COUNTY TRAFFIC SIGNALS

Six Times per Year Preventive Maintenance (Every Other Month);
- Check signal head for replacement.
- Check wiring.

Four Times per Year Tune-Up (Quarterly):
- Check Signal Timing
- Check equipment.

One Time per Year Service (Annually):
- Check queuing during the 4-6 PM peak traffic and provide report with any recommended timing changes.

COUNTY OWNED AND MAINTAINED STREET LIGHTS (LS-2)

Four Times per Year Preventive Maintenance (Quarterly)
- Check that luminaries are operating properly.
- Clean Solar panels.

One Time per Year Service (Annually):
- Check wiring and fuses.
- Provide report and any recommendations.

LIGHTED CROSSWALKS, FLASHING BEACONS, RADAR SPEED DETECTION SIGNS, SAFETY LIGHTING AND ANY OTHER LIGHTED EQUIPEMENT

Four Times per Year Tune-Up (Quarterly):
- Check lighting
- Clean solar panels

One Time per Year Service (Annually):
- Provide report and any recommendations.

COUNTY OWNED AND MAINTAINED STREET LIGHTS (CSA-3)

Four Times per Year Preventive Maintenance (Quarterly):
- Check that luminaires are operating properly.
- Clean solar panels

One Time per Year Service (Annually)
- Check wiring and fuses.
- Provide report and any recommendations.

Hours and Frequency of Service:

All routine work will be performed between the hours of 7:00am and 4:00pm Monday through Friday, excluding County holidays.

Should any equipment malfunction occur between routine examinations, CONTRACTOR shall provide call back service during regular working hours of regular working days at no additional charge.

If COUNTY authorized examinations, repairs or call back services are required, outside regular routine hours (7:00am and 4:00pm Monday through Friday, excluding COUNTY holidays) the CONTRACTOR will absorb the worked hours at regular hourly rates and will be reimbursed by the COUNTY for the difference between the regular hourly rate and the overtime or double time hourly rate as shown in Attachment C.

Non Routine and Emergency Services:

CONTRACTOR shall provide the COUNTY with authorized non-routine maintenance, authorized repair services and authorized emergency service for all systems as requested by the County's Director of Public Works or designee at the hourly rates and call out timing provided in Attachment C, plus parts. CONTRACTOR must have ability to provide portable stand-by power if required/requested by the COUNTY.

For any work requiring the use of a lift or crane, CONTRACTOR will need to work with COUNTY Risk Manager to ensure appropriate Insurance Coverage is provided.

Minimum Certifications and Licensing:
A California C10-Electrical Contractor License are required.

Task 2. Non -Routine Service

Complete other non-routine services on County's Street lights, traffic signals, lighted crosswalks, flashing beacons, radar speed detection signs, safety lighting and any other lighting equipment on the County's roadway network and for County Service Area #3 (CSA3) at the request and authorization of

the County's Director of Public Works or their designee. Compensation for these projects would be based on time/material.

Contractor Availability
Contractor is expected to be available to respond twenty-four (24) hours a day, seven (7) days per week, 365 days per year. Contractor will need to provide a phone number for the 24-hour service and have qualified technicians available to respond to all calls in a timely manner. Contractor must provide services within the specified response times below.

Response Times

Regular (Non-Emergency) Response Times	Task
48 Hours or Less	Street light outages or malfunctions, Safety street-lighting All other requests for electrical maintenance and repair of lighted crosswalks, flashing beacons, speed signs, and other lighting equipment
Emergency Response Times	Task
1 Hour or Less	Emergency and accident response
2 Hours or Less	Traffic signal outages or malfunctions Replacement of burned out or damaged traffic signals

Permanent repair work arising from normal maintenance and/or emergency response shall be completed as soon as possible and in all cases within 21 calendar days or less, unless extended by the County.

Staffing
Contractor shall be responsible for providing the appropriate types and skill levels of personnel, which is considered customary in the industry, required to accomplish the work. The Contractor must have Journeymen or Master Electricians on staff.

Vehicles
Contractor must provide appropriate vehicle(s) to be used by the Contractor's technicians in order to safely perform the tasks outlined in this scope of work. Vehicles will be equipped with appropriate safety features and equipment.

Parts and Materials
Contractor must possess, and have readily available in functioning order, all required tools, equipment, apparatus, facilities, and materials needed to perform all work necessary to maintain and repair the County's street lights, traffic signals, lighted crosswalks, speed feedback signs, and any other lighting equipment on any building, land, or property owned by the County in compliance with current Caltrans and County standards and specifications. All excess materials and equipment in the Contractor's inventory shall be the property and responsibility of the Contractor until such materials or equipment is used or installed in the County.

Replacement supplies, materials, and installed equipment will be manufactured by a reputable supplier. If discounts by suppliers are available to the Contractor, they shall be credited to the County. If supplies, materials, or installed equipment is obtained from supply or source owned by or in part by the Contractor, the price will not exceed current wholesale price for such materials and installed equipment. The County reserves the right to furnish supplies, materials, and installed equipment required for performance of the work.

The County shall reimburse the Contractor for supplies, materials, and installed equipment used for permanent repairs, in an amount equal to the cost of the materials including an agreed mark-up price. Reimbursement will occur only after the supplies, materials, and equipment is installed.
When entire parts or equipment become obsolete or are deteriorated beyond repair, report such conditions to the County and provide satisfactory evidence that replacement is necessary.
Maintenance activities that require periodic replacement of minor parts will not require County approval.

Salvaged/Non-Salvageable Equipment or Material
Contractor shall either hold in its storage facility, or deliver to a location designated by the County, any salvageable equipment or material as directed by the County. Similarly, Contractor shall properly dispose of any equipment or material declared non- salvageable at County's direction. Contractor shall try to utilize any salvaged equipment in good working condition if possible.

New Equipment or Material
When the County accepts new equipment into service, they will be included in the contract at the applicable unit rate, commencing on the date of acceptance of the installation. The Contractor shall, upon notification by the County, immediately commence servicing such equipment.

Warranty Service
New traffic signals, streetlights, and other electrical parts and materials are covered by the installing Contractor's material and workmanship warranty for one (1) year after acceptance. Where parts or material become defective during this warranty period, the Contractor shall notify the County so that the warranty may be exercised. The Contractor shall be responsible for exercising maintenance and replacement covered by the warranty. At expiration of the warranty, servicing of traffic signals, street lights, and other electrical devices shall be performed in accordance with these specifications. No additional, or separate, compensation shall be paid for warranty service work.

Protection of Property/Public Safety
The following should ensure public safety when during maintenance:
- Contractor will maintain public safety and minimize impacts to property.
- Confine operations to areas permitted by contract documents.
- Do not encumber site with excessive material or equipment.
- Do not impose any load on any structure that will damage or endanger structure.
- Take precautions necessary to prevent annoyance to occupants adjacent to or in the vicinity of the work.
- Contractor is solely responsible for conditions of the jobsite, including safety of all persons and property during performance of work.

This requirement will apply continuously and will not be limited to normal workin hours. Safety and sanitary provisions shall conform to applicable Federal, State, County, and local laws, regulations, ordinances, standards, and codes. Where any of these are in conflict the more stringent requirement

shall be followed. All public and private property, pavement or improvement shall be safely guarded from injury or loss in connection with this contract by the Contractor at all times. Should any facility, structure, or property be damaged during operations of the Contractor, he/she shall immediately notify the proper owner or authorities.

• The Contractor at his/her expense, shall rebuild, repair, restore, and make good to the County's satisfaction all injuries and damages resulting from his/her operations.
• During performance of the work, the Contractor shall erect and maintain necessary temporary fences, bridges, railings, lights, signals, barriers, or other safeguards (at Contractor's expense) as shall be appropriate under the circumstances in his/her judgment for the prevention of accidents; and he/she shall take other precautions as necessary for public safety including, but not limited to, traffic control per the California Manual of Uniform Traffic Control Devices.

Quality of Work
Contractor must follow all guidelines pertaining to electrical/street lighting in the County's Engineering Standards.
Ensure that any reports, and any deliverable to the County be delivered in a manner to ensure non-discrimination and equal access to County services and digital properties such as websites, documents, and applications by persons with a disability under the Americans with Disabilities Act (ADA) and under Section 508 of the Rehabilitation Act of 1973. Successful respondent shall ensure that any deliverable, including but not limited to, reports, documents, videos, multimedia productions, live broadcasts and any and all other web content and information communications technology are fully accessible and in compliance with federal accessibility standards and laws and with the COUNTY's Web Content Accessibility Standards. Examples of accessibility measures include, but are not limited to, providing closed captions, video descriptions, and 508 compliant players.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT "B"

COMPENSATION

CONTRACTOR shall provide routine maintenance and non-routine service as outlined in Exhibit A at the following fixed expenses and rates from commencement of this Agreement.

ROUTINE MAINTENANCE YEARS 1-3 JULY 1, 2024 – JUNE 30, 2027

Description of Service	Cost of Bi-Monthly Service (6)	Cost of Quarterly Service (4)	Cost of Annual Service (1)	Total
Traffic Signals	$1,050.00	$700.00	$700.00	$9,800.00
Street Lights (L-2)	N/A	$350.00	$350.00	$1,750.00
Other Lighting Equipment	N/A	$2,800.00	$2,800.00	$14,000.00
CSA 3	N/A	$350.00	$350.00	$1,750.00

**Annual pricing includes conflict monitor testing. Also includes battery backup & EVP testing (if applicable) for (4) traffic signals.

**Streetlight service includes night check

NON-ROUTINE SERVICE YEARS 1-3 JULY 1, 2024 – JUNE 30, 2027

Classification/ Job Title	Regular Rate (per hour, flat, or other)	Overtime Rate (per hour, flat, or other)	Double Time Rate (per hour, flat, or other)
Journeyman w/truck	$175.00	$215.00	$255.00
Foreman w/truck	$185.00	$232.00	$280.00
Laborer w/truck	$135.00	$160.00	$185.00
Operator w/crane	$205.00	$245.00	$285.00

1. Regular Hours: Monday to Friday (excluding COUNTY holidays) 7:00 AM to 3:30 PM.
2. Overtime Hours: Monday to Friday outside Regular Hours (as listed at point 1) and Saturday. Overtime hours after 8 hours up to 10 hours in a work day, or after 40 hours per week.
3. Double Time Hours: After 10 hours in a work day, 44 hours a week, on Sundays and COUNTY holidays.

Payment of California Prevailing Wage is required.

ROUTINE MAINTENANCE YEARS 4-5 JULY 1, 2027 – JUNE 30, 2029

Description of Service	Cost of Bi-monthly Service (6)	Cost of Quarterly Service (4)	Cost of Annual Service (1)	Total
Traffic Signals	$1,140.00	$760.00	$760.00	$10,640.00
Street Lights (L-2)	N/A	$380.00	$380.00	$1,900.00
Other Lighting Equipment	N/A	$3,040.00	$3,040.00	$15,200.00
CSA 3	N/A	$380.00	$380.00	$1,900.00

**Annual pricing includes conflict monitor testing. Also includes battery backup & EVP testing (if applicable) for (4) Traffic Signals

**Streetlight service includes night check

NON-ROUTINE SERVICE YEARS 4-5 JULY 1, 2027 – JUNE 30, 2029

Classification/Job Title	Regular Rate (per hour, flat, or other)	Overtime Rate (per hour, flat, or other)	Double Time Rate (per hour, flat, or other)
Journeyman w/truck	$190.00	$230.00	$270.00
Foreman w/truck	$200.00	$245.00	$295.00
Laborer w/truck	$147.00	$175.00	$195.00
Operator w/crane	$220.00	$260.00	$300.00

1. Regular Hours: Monday to Friday (excluding COUNTY holidays) 7:00 AM to 3:30 PM.
2. Overtime Hours: Monday to Friday outside Regular Hours (as listed at point 1) and Saturday. Overtime hours after 8 hours up to 10 hours in a work day, or after 40 hours per week.
3. Double Time Hours: After 10 hours in a work day, 44 hours a week, on Sundays and COUNTY holidays.

Payment of California Prevailing Wage is required.

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15		Smith,			
1/1/15	Site visit/investigation 123 Main St,	Engineer	1.5	$165.00	247.50
1/1/15	Napa.	Smith,	1	$165.00	165.00
	Conf w/Owner	Engineer	4	$165,00	660.00
	AutoCad, Bldg X, 3rd Floor	Smith,			
		Engineer			
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15		Smith,			
1/2/15	AutoCad Bldg X, 3rd Floor	Engineer	4	$165.00	660.00
	Conf w/Owner re 2nd Floor	Smith,	.5	$165.00	82.50
		Engineer			
1/3/15	Mtg w/Jones re 2nd Floor; conf	Smith,			
1/3/15	w/Owner	Engineer	1.5	$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2nd	Jones, PE	1.5	$195.00	292.50
	Floor				
				TOTAL	

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1341

TO: Board of Supervisors

FROM: Steve Lederer - Director of Public Works, Road Division

REPORT BY: Neil Waite - Engineering Technician II

SUBJECT: Sole Source Award, Budget Amendment and Establishment of a Capital Asset

RECOMMENDATION

Authorize the purchase of a capital asset for a Motorola Two-Way All-Band radio, sole source award to Motorola Solutions, and approve a Budget Amendment. (Fiscal Impact: $7,400 Expense; Roads Fund; Not Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

On May 29, 2024, Assistant Public Works Superintendent was issued a new Ford F250 truck, unit 239. The replacement vehicle is still in use in the Roads Equipment Fleet. The new F250 did not come equipped with a radio. Motorola Two-Way All-Band radio enables first responders to use a single mobile radio to exchange critical voice and data communications with multiple agencies and jurisdictions operating on different radio bands. There are several remote locations in the county where cellular signals are not available, nor does cellular technology allow for effective, multi-agency communication. A radio in the vehicle is necessary to coordinate daily operations and is critical during road and county related emergencies. Coordinated efforts to respond to emergencies and manage daily road operations would be greatly hampered without an effective communication device.

Requested Actions:

1. Establishment of capital asset in the amount of $7,400 for Motorola Two-Way All-Band radio;
2. Approve a Budget Amendment increasing Equipment appropriations in Roads Operation Budget (Fund 2040, Sub-Division 2040000, Account 55400) by $7,400 for the purchase of a Motorola Two-Way All Band radio offset by a decrease of $7,400 in Maintenance Equipment account within the Roads Operations budget (Fund 2040, Sub-Division 2040000, Account 52500); and
3. A waiver of competitive bidding requirement and sole source award to Motorola Solutions in the

amount of $7,400.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approval of the purchase will allow Assistant Superintendent of Public Works to effectively communicate for roads and emergency operations.
Is the general fund affected?	No
Future fiscal impact:	Future maintenance costs of Motorola Two-Way All-Band radio will be budgeted accordingly.
Consequences if not approved:	Coordinated efforts during normal and emergency Road's operations will be hampered without this Motorola Two-Way All-Band radio.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Cod of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1348

TO: Board of Supervisors

FROM: Steven Lederer, Director of Public Works

REPORT BY: Frank Lucido, Engineering Manager

SUBJECT: Approve Award of a Construction Contract and Budget Transfer for the "Redwood Road 5.76 Slide Repair Project", RDS 21-05

RECOMMENDATION

Award a Construction Contract to "E.E. Gilbert Construction, Inc." for the "Redwood Road 5.76 Slide Repair Project"; and approve a Budget Amendment. (Fiscal Impact: $166,377 Expense; Measure T Non-Operating Special Revenue Fund; Not Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

Heavy rains in February of 2017 oversaturated a portion of Redwood Road near mile post marker (MPM) 5.76 which serves a small number of residents, causing the edge of the roadway to slide into Redwood Creek and roadway distress for about 60 feet directly above the slide and another 80 feet adjacent to the slide area. On January 5, 2022, the board approved $555,746 from Measure T funds to start the investigation and design process for the project.

Two alternatives were considered for this project. The most expensive alternative has an estimated project cost of $1,800,000 and involves drilling deep into competent material, casting concrete piers and constructing a concrete roadway over the piers. While this option allows for a slightly wider roadway and can be constructed over the area that slid it is not recommended as it does not appear to provide good value for that expense. The roadway narrows in many places in the vicinity of the damage and having a localized area that is wider provides little advantage to passing traffic. Since most of the road in this area has not slid, there isn't a need to implement this more expensive option. The recommended option has an estimated project cost of $722,000. It involves drilling into competent material and creating a retaining wall of concrete piers. These piers will be tightly spaced to secure soil in the roadway and take advantage of the existing in place hillside materials. Because most of the work for this recommended option is on the roadway, it also has less impact to the creek

bank and environment. The Board authorized advertising this project on May 7, 2024 and bids were opened on August 1, 2024 with the following result:

E.E. Gilbert	Martinez, CA	$278,637
Cowan & Thompson	Martinez, CA	$279,492
Stacy Witbeck	Alameda, CA	$339,690
Valentine Corporation	San Rafael, CA	$346,369
Dexcore	Brea, CA	$361,353
Globe Engineering Development	Fairfield, CA	$369,120
Bridgeway Civil Constructors	Vacaville, CA	$406,500

Requested Actions:

1. Award the construction contract for the "Redwood Road 5.76 Slide Repair Project," RDS 21-05 to E.E. Gilbert for their low bid of $278,637; and
2. Approve a Budget Amendment for the following (4/5 vote required):
    a. Increase Transfer-Out appropriations by $166,377 in the Measure T Non-Operating Special Revenue Fund (Measure T SRF) (Fund 2440, Sub-Division 1220053, Account 56100) offset by use of its available fund balance to fund project S7315; and
    b. Increase Construction Services appropriations by $166,377 in project S7315 (Fund 2040, Sub-Division 2040500, Project S7315, Account 52360) offset by a Transfer-In revenue from Measure T.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approving this award and budget amendment will stabilize Redwood Road in the project area and avoid more costly repairs in the future.
Is the general fund affected?	No
Future fiscal impact:	No impact is expected in future fiscal years.
Consequences if not approved:	If the roadway isn't stabilized it will likely slide into Redwood Creek in the future, which not only affects water quality but greatly affects the cost of the repair and ability of residents above the area to drive in and out of their homes.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Categorical Exemption Class 1: It has been determined that this type of project does not have a significant effect on the environment

and is exempt from the California Environmental Quality Act. [See Class 1 ("Existing Facilities") which may be found in the guidelines for the implementation of the California Environmental Quality Act of 14 CCR §15301; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

NAPA COUNTY REDWOOD 5.76 STITCH PILE PROJECT BUDGET SUMMARY, RDS 21-05						
Program S7315						8/20/2024
Budget Item	**Budget Item Amount**	**Request Today**	**Board Appropriation To Date**	**Appropriation Amount Spent to Date**	**Appropriation % Spent to Date**	**Appropriation Amount Balance**
Construction Contract	$278,636	$278,636	$0	$0	0%	$0
25% Construction Contingency	$69,659	$69,659	$0	$0	0%	$0
Design and Engineering	$279,836	($168,410)	$448,246	$241,016	54%	$207,230
Design and Engineering Contingency 5%	$13,992	$13,992	$0	$0	0%	$0
Lands, TCE, Utility Relocating	$0	($60,000)	$60,000	$0	0%	$60,000
Construction Management	$25,000	$25,000	$0	$0	0%	$0
County Project Management/Administration	$40,000	$0	$40,000	$12,000	0%	$28,000
Enviro Survey, Geotech and Special Inspections, Construction Phase	$15,000	$15,000	$0	$0	0%	$0
Permits		($7,500)	$7,500	$0	0%	$7,500
TOTAL	$722,123	$166,377	$555,746	$253,016	0%	$302,730

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Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1305

TO: Board of Supervisors

FROM: Oscar Ortiz, Sheriff-Coroner

REPORT BY: Rollie Soria, Sheriff's Administrative Manager

SUBJECT: School Resource Officer Agreement with Napa County Office of Education

RECOMMENDATION

Approve and authorize revenue Agreement No. 170821B with Napa County Office of Education to provide a School Resource Officer at Juvenile Court and Camille Creek Community School. (Fiscal Impact: $201,938 Revenue; General Fund; Budgeted; Discretionary)

BACKGROUND

Since Fiscal Year 2014-2015, Sheriff's Office has provided Napa County Office of Education (NCOE) with a Deputy Sheriff as a School Resource Officer (SRO). The SRO provides campus safety at Juvenile Court and Camille Creek Community School. Juvenile Court and Camille Creek Community School, located on Imola Avenue in the unincorporated area of Napa County, services the educational needs of students who are under protection or authority of juvenile court or those who are referred from school districts due to truancy, behavioral issues, or expulsion. The goals of providing an SRO are to create a safe and drug free school, promote positive social skills and healthy development of youth. The SRO duties include substance abuse prevention, early intervention, violence prevention, implementation of safe school policies and community partnerships.

NCOE has once again requested renewal of the revenue agreement to provide funding to the Sheriff's Office, which offsets the cost to place a Deputy Sheriff as an SRO.

Requested Action:

Approve and authorize the Chair to sign revenue Agreement No. 170821B with the Napa County Office of

Education for a maximum $201,938 to place a Deputy Sheriff as a School Resource Officer at Juvenile Court and Camille Creek Community School during the 2024-2025 school year.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Sheriff's Operations Budget (Fund 1000, 1360000)
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	This item is discretionary in that there is no mandate for the Napa County Sheriff's Office to provide a Deputy Sheriff to serve as the School Resource Officer for NCOE. Under this agreement, NCOE reimburses the County for the full cost of services to be provided plus administrative overhead expenses.
Is the general fund affected?	Yes
Future fiscal impact:	This agreement is reviewed on an annual basis subject to NCOE funding. Appropriations are budgeted accordingly.
Consequences if not approved:	If this item is not approved, Sheriff's Office would not receive offsetting revenue to cover the expense of placing a Deputy Sheriff as a School Resource Officer at Juvenile Court and Camille Creek Community School.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulation 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY OFFICE OF EDUCATION
& NAPA COUNTY
Agreement No. 170821B

School Resource Officer Services Funding Agreement

This Agreement is made and entered into this 20th day of August, 2024, by and between the Napa County Office of Education, a public educational agency, whose business address is 2121 Imola Avenue, Napa, California 94599, hereinafter referred to as "NCOE" and Napa County, a political subdivision of the State of California, whose business address is 1195 Third Street, Room 310, Napa, California 94559, hereinafter referred to as "COUNTY."

RECITALS

Whereas, NCOE desires to have a COUNTY School Resource Officer (SRO) assigned to expand campus safety at Camille Creek Community School operated by the Napa County Office of Education located at 2121 Imola Avenue, Napa, California.

Whereas, the COUNTY School Resource Officer provides services to juveniles pursuant to California law; and

Whereas, COUNTY is willing and able to make the desired placement under the following terms and conditions.

TERMS

Now, therefore, the parties agree as follows:

1.) **Term:** The term of this Agreement shall commence on August 14, 2024 and end on June 16, 2025.

2.) County Obligations:

a.) During the term of this Agreement, COUNTY shall provide the services set forth in Exhibit "A," attached hereto and incorporated by reference herein.

b.) Submission of Payment Requests: Through its Sheriff's Office, COUNTY shall submit to NCOE written requests for payment on a quarterly basis in a form satisfactory to NCOE for services provided by COUNTY under paragraph 2(a).

3.) NCOE Obligations:

a.) Amount of payment for services: For the services provided by the COUNTY under this Agreement, NCOE shall pay COUNTY the cost in salary and benefits of the School Resource Officer (SRO) assigned in an hourly amount of $134, not to exceed a total maximum amount of 1,507 hours or TWO HUNDRED ONE THOUSAND NINE HUNDRED THIRTY-EIGHT dollars ($201,938). NCOE agrees to pay the COUNTY on a quarterly basis within 30 days of receipt of the invoice from COUNTY.

b.) Space and equipment to be provided: NCOE shall provide and pay for office space for the SRO provided for under this Agreement, including those things ordinarily associated with an office including but not limited to heat, a telephone, a desk, computer, printer and access to a FAX machine.

4.) Relationship to the Parties:

This Agreement shall not constitute, nor shall it be interpreted as constituting, an agreement for hire of the SRO by NCOE and any SRO providing services under this Agreement is, and shall continue to be, an employee of COUNTY under the supervision, management and control of COUNTY.

5.) Indemnification; Insurance:

a.) Indemnification: Both parties shall each defend, indemnify and hold harmless each other and their respective officers, employees and agents for and against any claim, action, loss, settlement or judgment arising out of the acts or failure to act of that party or its officers, employees or agents under the terms of this Agreement.

b.) Liability Insurance:

1.) General Liability: Each party shall obtain and maintain in full force and effect during the term of this Agreement, commercial comprehensive general liability insurance coverage (personal injury and property damage) or equivalent self-insurance or combination thereof, of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, issued by a company duly and legally licensed to transact business in the State of California, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of that party to any officer, agent or employee of that party under this Agreement except for acts or omissions performed in strict compliance with express direction by the other party's governing board, officers or personnel.

2.) Comprehensive Automobile Liability Insurance: Each party shall obtain and maintain in full force and effect during the term of this Agreement, a comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that party's activities under this Agreement of not less that THREE HUNDRED THOUSAND DOLLARS ($300,000) combined single limit per occurrence.

c.) Certificates of Coverage: When the foregoing coverages are provided by insurance rather than by self-insurance (written proof of which shall be provided to the other party), the coverage shall be evidenced by one or more certificates of coverage which shall be filed with the other party's Secretary or Clerk prior to reimbursement for performance of any of the party's duties under this Agreement; shall name the other party, its officers, employees, and agents as additional insured's; shall be kept current during the term of this Agreement; and shall provide that the other party shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change. Upon request by the other party, the party shall provide or arrange for the insurer to provide the other party with certified

copies of the actual insurance policies or relevant portions thereof within thirty (30) days of the request.

6.) Amendments/Modifications of Agreement:

Any requests for modifications to this Agreement shall be submitted in writing and approved by NCOE and the COUNTY.

7.) Interpretation/Venue: This Agreement is governed by California laws. Any enforcement action will be in Napa County.

8.) Termination, Notices:

Either party may terminate this Agreement for any reason by giving the other party no less than ten (10) working days advance written notice of the intent to do so. NCOE will be responsible for payment for all services rendered if the agreement is terminated early. Notice shall be deemed given for this purpose when deposited in the United States' mail, first class postage prepaid, and addressed to the following persons or their successors in office:

To COUNTY:
Oscar Ortiz, Sheriff
Napa County Sheriff's Office
1535 Airport Blvd.
Napa, California 94558

To NCOE:
Barbara Nemko, Superintendent
Napa County Office of Education
2121 Imola Avenue
Napa, California 94559

9.) No Waiver:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

10.) Severability:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

11.) Entirety of Contract:

This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEROF, the parties have executed this Agreement:

NAPA COUNTY OFFICE OF EDUCATION

By:_____
JOSHUA SCHULTZ, Deputy Superintendent

NAPA COUNTY, a political subdivision of
the State of California

By_____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: Neha Hoskins Clerk of the Board of Supervisors
By: S. Darbinian Date: July 29, 2024	Date: _____ Processed By: _____ Deputy Clerk of the Board	By:_____

EXHIBIT "A"

WORK TO BE PERFORMED

COUNTY shall provide NCOE with the following services:

1.) **Description of Services:**

Location: Napa County Court and Community School

Deputy Sheriff will act as a School Resource Officer (SRO) at the Napa County Office of Education Camille Creek Community School.

Duties promote:
Safe School Environment
Alcohol and Drug Prevention and Early Intervention
Violence Prevention and Early Intervention
Safe School Policies
Community Partnerships

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Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1375

TO: Board of Supervisors

FROM: Rollie Soria for Oscar Ortiz, Sheriff-Coroner

REPORT BY: Erin Corry, Staff Services Analyst II

SUBJECT: Agreement with Axon Enterprise, Inc. for Officer Safety Plan 10 Premium

RECOMMENDATION

Approve and authorize Agreement No. 250148B with Axon Enterprise, Inc. for body worn cameras, conducted energy devices, and fleet video systems and approval of a waiver for competitive bidding and sole source award. (Fiscal Impact: $3,042,638 Expense; General Fund; Budgeted; Discretionary)

BACKGROUND

In May of 2016, the Sheriff's Office implemented its body worn camera (BWC) program. On June 23, 2020, the Board approved Agreement No. 210016B with Axon Enterprise Inc. for the Axon Officer Safety Plan 7+ (Axon OSP 7+) BWC system. This agreement included hardware, software applications and updates, training and support, secure unlimited cloud-based storage of video and audio evidence, and video redaction software. In addition, Axon's agreement upgraded the Sheriff's Office conducted energy devices (CED) that worked in conjunction with the Axon BWC, ensuring equipment compatibility and increasing officer and public safety.

On December 15, 2020, the Board approved an amendment to Agreement No. 210016B to add interview room video equipment, which integrated with the existing Axon platform and could be uploaded to cloud-based storage. This system ensured that critical evidence could be quickly and easily available for review, eliminated compatibly issues and reduced personnel and evidence storage costs.

On October 18, 2022, the Board approved Agreement No. 230195B to replace the Sheriff's Office Panasonic in -car video system with the Axon Fleet 3 system that uses cloud-based software and storage, reducing on-site storage, back-up, retention, and maintenance costs.

The implementation of Axon public safety products has been successful in creating public trust by providing a level of transparency, improved investigation evidence collection, and increased officer and public safety. In addition, the implementation of Axon products has greatly reduced staff time to retrieve, redact, and make available, digital evidence (primarily video), and reduced the maintenance and storage cost associated with managing digital evidence. For these reasons, Sheriff's Office proposes to consolidate Agreement No.

210016B & 230195B. The consolidation of agreements will upgrade Axon OSP 7+ to Axon OSP 10 Premium and extend the agreement another 5 years. Axon OSP 10 Premium includes an upgrade of the current Taser 7 CED to Taser 10 CED. Taser 10 CED is more reliable, water resistant, and has a maximum range of 45 Ft, creating more time and distance to de-escalate and resolve conflicts. Axon OSP 10 Premium would also include a subscription to activate the Automatic License Plate Reader (ALPR) feature in the Axon Fleet 3 video system. ALPR technology is used by many law enforcement agencies and has become useful in identifying stolen vehicles or vehicles used in the commission of other crimes. In recent years, ALPR technology from various sources has helped the Sheriff's Office and neighboring agencies solve a variety of crimes to include shootings, burglaries, and felony assaults. ALPR is arguably the biggest advancement in crime solving & public safety technology since the development of fingerprints and DNA forensic science.

Credits in the amount of $156,992 from the remaining years on Agreement No. 210016B & 230195B will be applied to the new Agreement No. 250148B, reducing the overall cost. Agreement No. 250148B supersedes Agreement No. 210016B & 230195B.

Requested Actions:

1. Approve a waiver of competitive bidding and sole source award to Axon Enterprise, Inc. of Scottsdale, Arizona to provide the Axon Officer Safety Plan 10 Premium.
2. Approve and authorize Agreement No. 250148B for a maximum $3,042,638 with Axon Enterprise, Inc. for the term December 1, 2024, through November 30, 2029, to provide the Axon Officer Safety Plan 10 Premium.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Sheriff's Operations Budget - Org 1360000
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Sheriff's Office Axon body worn camera program has shown to increase public trust through transparency, improve evidence collection and increase law enforcement & public safety. The Axon in-car video system provides real-time awareness features and integrates with connected technology, including a subscription to the automated license plate reader function.
Is the general fund affected?	Yes
Future fiscal impact:	The 5-Year cost of the agreement is $3,042,638, which will be paid in five installments. The first payment in the amount of $612,402 will occur in FY 2024-2025. Four additional installment payments in the amount of $607,559 will occur in FY 2025-2026, 2026-2027, 2027-2028, and 2028-2029. These costs will be budgeted accordingly in the appropriate fiscal years.

Consequences if not approved:	If not approved, Sheriff's Office would not enter into a new agreement with Axon Enterprise, Inc. Sheriff's BWC, interview room video, and fleet video system would be eliminated. The Sheriff's Office would lose a vital law enforcement tool for evidence collection, investigations and sworn personnel training.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Docusign Envelope ID: 000F5A07-5E8D-48E5-9677-2A7DD1DBEEBE

Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the Customer listed below or, if no Customer is listed below, the customer on the Quote attached hereto ("**Customer**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) date of acceptance of the Quote ("**Effective Date**"). Axon and Customer are each a "**Party**" and collectively "**Parties**". This Agreement governs Customer's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement will govern all subsequent purchases by Customer for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Customer shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

1. **Definitions**.

   1.1. "**Axon Cloud Services**" means Axon's web services, including, but not limited to, Axon Evidence, Axon Records, Axon Dispatch, FUSUS services, and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

   1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.

   1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Customer's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

   1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2. **Term**. This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

   2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

   2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3. **Payment**. Axon invoices for Axon Devices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Axon invoices for Axon Cloud Services on an upfront yearly basis prior to the beginning of the Subscription Term and upon the anniversary of the Subscription Term Payment obligations are non-cancelable. Unless otherwise prohibited by law, Customer will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Customer is responsible for collection and attorneys' fees.

4. **Taxes**. Customer is responsible for sales and other taxes associated with the order unless Customer provides Axon a valid tax exemption certificate.

5. **Shipping**. Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Customer upon Axon's delivery to the common carrier. Customer is responsible for any shipping charges in the Quote.

6. **Returns**. All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7. **Warranty**.

   7.1. **Limited Warranty**. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Customer's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for thirty (30) months and ninety (90) days, respectively, from the date of Customer's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one- (1-) year hardware warranty through the

extended warranty term purchased.

7.2. **Disclaimer. All software and Axon Cloud Services are provided "AS IS," without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.**

7.3. **Claims**. If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.

7.3.1. If Customer exchanges an Axon Device or part, the replacement item becomes Customer's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Customer must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.

7.4. **Spare Axon Devices**. At Axon's reasonable discretion, Axon may provide Customer a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Customer submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Customer in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Customer does not utilize Spare Axon Devices for the intended purpose.

7.5. **Limitations**. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Customer resells Axon Devices.

7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Customer confirms and agrees that, in deciding whether to sign this Agreement, it has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**

7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**

7.6. **Online Support Platforms**. Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at www.axon.com/sales-terms-and-conditions.

7.7. **Third-Party Software and Services**. Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Customer and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at www.axon.com/sales-terms-and-conditions, if any.

7.8. **Axon Aid**. Upon mutual agreement between Axon and Customer, Axon may provide certain products and services to Customer, as a charitable donation under the Axon Aid program. In such event, Customer expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Customer agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Customer expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately upon notice to the Customer.

8. **Statement of Work**. Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Customer, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9. **Axon Device Warnings**. See www.axon.com/legal for the most current Axon Device warnings.

10. **Design Changes**. Axon may make design changes to any Axon Device or Service without notifying Customer or making the same change to Axon Devices and Services previously purchased by Customer.

11. **Bundled Offerings**. Some offerings in bundled offerings may not be generally available at the time of Customer's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Customer's election not to utilize any portion of an Axon bundle.

12. **Insurance**. Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.

13. **IP Rights**. Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Customer will not cause any Axon proprietary rights to be violated.

14. **IP Indemnification**. Axon will indemnify Customer against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Customer must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Customer or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.

15. **Customer Responsibilities**. Customer is responsible for (a) Customer's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Customer or a Customer end user; (c) disputes between Customer and a third-party over Customer's use of Axon Devices; (d) ensuring Axon Devices are destroyed and disposed of securely and sustainably at Customer's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.

16. **Termination**.

16.1. **For Breach**. A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured at the end of thirty (30) days. If Customer terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.

16.2. **By Customer**. If sufficient funds are not appropriated or otherwise legally available to pay the fees, Customer may terminate this Agreement. Customer will deliver notice of termination under this section as soon as reasonably practicable.

16.3. **Effect of Termination**. Upon termination of this Agreement, Customer rights immediately terminate. Customer remains responsible for all fees incurred before the effective date of termination. If Customer purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before

the end of the Term, Axon will invoice Customer the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices.Only if terminating for non-appropriation, Customer may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.

17. **Confidentiality**. "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Customer receives a public records request to disclose Axon Confidential Information, to the extent allowed by law, Customer will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

18. **General**.

18.1. **Force Majeure**. Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

18.2. **Independent Contractors**. The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, Customer, fiduciary, or employment relationship between the Parties.

18.3. **Third-Party Beneficiaries**. There are no third-party beneficiaries under this Agreement.

18.4. **Non-Discrimination**. Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

18.5. **Compliance with Laws**. Each Party will comply with all applicable federal, state, and local laws, including without limitation, import and export control laws and regulations as well as firearm regulations and the Gun Control Act of 1968.

18.6. **Assignment**. Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

18.7. **Waiver**. No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

18.8. **Severability**. If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

18.9. **Survival**. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, Customer Responsibilities and any other Sections detailed in the survival sections of the Appendices.

18.10. **Governing Law**. The laws of the country, state, province, or municipality where Customer is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

18.11. **Notices**. All notices must be in English. Notices posted on Customer's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Customer shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc. Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to legal@axon.com.

18.12 **Entire Agreement**. This Agreement, the Appendices, including any applicable Appendices not attached herein for the products and services purchased, which are incorporated by reference and located in the Master Purchasing and Services Agreement located at https://www.axon.com/sales-terms-and-conditions,Quote and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

NAPA COUNTY AGREEMENT NO. 250148B

AXON

Master Services and Purchasing Agreement

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

AXON:

Axon Enterprise, Inc.

Signature: DocuSigned by: Robert E. Driscoll, Jr. 55DAEBB131A4424...

Name: Robert E. Driscoll, Jr.

Title: Deputy General Counsel

Date: 8/8/2024 | 10:51 AM MST

CUSTOMER:

Signature: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM Office of County Counsel By: S. Darbinian Deputy County Counsel Date: July 29, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

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Axon Cloud Services Terms of Use Appendix

1. Definitions.

   a. "**Customer Content**" is data uploaded into, ingested by, or created in Axon Cloud Services within Customer's tenant, including media or multimedia uploaded into Axon Cloud Services by Customer. Customer Content includes Evidence but excludes Non-Content Data.

   b. "**Evidence**" is media or multimedia uploaded into Axon Evidence as 'evidence' by Customer. Evidence is a subset of Customer Content.

   c. "**Non-Content Data**" is data, configuration, and usage information about Customer's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Customer Content.

   d. "**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

   e. "**Provided Data**" means de-identified, de-personalized, data derived from Customer's TASER energy weapon deployment reports, related TASER energy weapon logs, body-worn camera footage, and incident reports.

   f. "**Transformed Data**" means the Provided Data used for the purpose of quantitative evaluation of the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

2. **Access**. Upon Axon granting Customer a subscription to Axon Cloud Services, Customer may access and use Axon Cloud Services to store and manage Customer Content. Customer may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Customer may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Customer may not upload non-TASER Data to Axon Evidence Lite.

3. **Customer Owns Customer Content**. Customer controls and owns all right, title, and interest in Customer Content. Except as outlined herein, Axon obtains no interest in Customer Content, and Customer Content is not Axon's business records. Customer is solely responsible for uploading, sharing, managing, and deleting Customer Content. Axon will only have access to Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4. **Security**. Axon will implement commercially reasonable and appropriate measures to secure Customer Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Customer Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum for its digital evidence or records management systems.

5. **Customer Responsibilities**. Customer is responsible for (a) ensuring Customer owns Customer Content; (b) ensuring no Customer Content or Customer end user's use of Customer Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to Axon Cloud Services.

   a. Customer will also maintain the security of end usernames and passwords and security and access by end users to Customer Content. Customer is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Customer regulation and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or Customer Content, or if account information is lost or stolen.

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b. To the extent Customer uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at https://www.youtube.com/static?template=terms.

6. **Privacy**. Customer's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at https://www.axon.com/legal/cloud-services-privacy-policy. Customer agrees to allow Axon access to Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7. **Axon Body Wi-Fi Positioning**. Axon Body cameras may offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Customer administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Customer chooses to use this service, Axon must also enable the usage of the feature for Customer's Axon Cloud Services tenant. Customer will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Customer's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Customer, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.

8. **Storage**. For Axon Unlimited Device Storage subscriptions, Customer may store unlimited data in Customer's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Customer additional fees for exceeding purchased storage amounts. Axon may place Customer Content that Customer has not viewed or accessed for six (6) months into archival storage. Customer Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.

9. **Third-Party Unlimited Storage**. For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon Evidence user license; (ii) is limited to data of the law enforcement Customer that purchased the Third-Party Unlimited Storage and the Axon Evidence end user or Customer is prohibited from storing data for other law enforcement agencies; and (iii) Customer may only upload and store data that is directly related to (1) the investigation of, or the prosecution of a crime, (2) common law enforcement activities, or (3) any Customer Content created by Axon Devices or Axon Evidence.

10. **Location of Storage**. Axon may transfer Customer Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Customer Content. If Customer is located in the United States, Canada, or Australia, Axon will ensure all Customer Content stored in Axon Cloud Services remains in the country where Customer is located. Ownership of Customer Content remains with Customer.

11. **Suspension**. Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Customer or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees incurred through suspension. Axon will not delete Customer Content because of suspension, except as specified in this Agreement.

12. **Axon Cloud Services Warranty**. Axon disclaims any warranties or responsibility for data corruption or errors before Customer uploads data to Axon Cloud Services.

13. **TASER Data Science Program**. Axon will provide a quantitative evaluation on the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

14. If Customer purchases the TASER Data Science Program, Customer grants Axon, its affiliates, and assignees an irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Provided Data solely for the purposes of this Agreement and to create Transformed Data. Customer shall own all rights and title to Provided Data. Axon shall own all rights and title to Transformed Data and any derivatives of Transformed Data.

15. Axon grants to Customer an irrevocable, perpetual, fully paid, royalty-free, license to use to TASER Data Science report provided to Customer for its own internal purposes. **The Data Science report is provided "as is" and without any warranty of any kind.**

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16. In the event Customer seeks Axon's deletion of Provided Data, it may submit a request to privacy@axon.com. Where reasonably capable of doing so, Axon will implement the request but at a minimum will not continue to collect Provided Data from Customer.

17. **Axon Records**. Axon Records is the software-as-a-service product that is generally available at the time Customer purchases an OSP 7 or OSP 10 bundle. During Customer's Axon Records Subscription Term, if any, Customer will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

    c. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")

    d. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

    e. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Customer purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Customer.

    f. Users of Axon Records at the Customer may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Customer exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.

18. **Axon Cloud Services Restrictions**. Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

    g. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;

    h. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;

    i. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;

    j. use Axon Cloud Services as a service bureau, or as part of a Customer infrastructure as a service;

    k. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;

    l. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;

    m. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or

    n. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.

19. **Axon Narrative.** AI-Assisted Report Writing feature. Axon may impose usage restrictions if a single user generates more than one hundred (100) reports per month for two or more consecutive months.

20. **After Termination**. Axon will not delete Customer Content for ninety (90) days following termination. There will be no functionality of Axon Cloud Services during these ninety (90) days other than the ability to retrieve Customer Content. Customer will not incur additional fees if Customer downloads Customer Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Customer Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Customer Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Customer Content from Axon Cloud Services.

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21. **Post-Termination Assistance**. Axon will provide Customer with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Customer Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.

22. **U.S. Government Rights**. If Customer is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Customer is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue use of Axon Cloud Services.

23. **Survival**. Upon any termination of this Agreement, the following sections in this Appendix will survive: Customer Owns Customer Content, Privacy, Storage, Axon Cloud Services Warranty, Customer Responsibilities and Axon Cloud Services Restrictions.

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Axon Customer Experience Improvement Program Appendix

1. **Axon Customer Experience Improvement Program (ACEIP)**. The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Customer Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Customer will be a participant in ACEIP Tier 1. If Customer does not want to participate in ACEIP Tier 1, Customer can revoke its consent at any time. If Customer wants to participate in Tier 2, as detailed below, Customer can check the ACEIP Tier 2 box below. If Customer does not want to participate in ACEIP Tier 2, Customer should leave box unchecked. At any time, Customer may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.

2. **ACEIP Tier 1.**

   2.1. When Axon uses Customer Content for the ACEIP Purposes, Axon will extract from Customer Content and may store separately copies of certain segments or elements of the Customer Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Customer Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1[1]. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Customer from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Customer request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Customer may revoke the consent granted herein to Axon to access and use Customer Content for ACEIP Purposes. Within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Customer. In addition, if Axon uses Customer Content for the ACEIP Purposes, upon request, Axon will make available to Customer a list of the specific type of Customer Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Customer Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Customer notice (by updating the list of Use Case at https://www.axon.com/aceip and providing Customer with a mechanism to obtain notice of that update or another commercially reasonable method to Customer designated contact) ("**New Use Case**").

   2.2. **Expiration of ACEIP Tier 1**. Customer consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Customer.

3. **ACEIP Tier 2**. In addition to ACEIP Tier 1, if Customer wants to help further improve Axon's services, Customer may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Customer

[1] For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.

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Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

☐ Check this box if Customer wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Customer into ACEIP Tier 2 until Axon and Customer agree to terms in writing providing for such participation in ACEIP Tier 2.

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Professional Services Appendix

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

1. **Utilization of Services**. Customer must use professional services as outlined in the Quote and this Appendix within six (6) months of the Effective Date.

2. **Axon Full Service (Axon Full Service)**. Axon Full Service includes advance remote project planning and configuration support and up to four (4) consecutive days of on-site service and a professional services manager to work with Customer to assess Customer's deployment and determine which on-site services are appropriate. If Customer requires more than four (4) consecutive on-site days, Customer must purchase additional days. Axon Full Service options include:

System set up and configuration • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories and custom roles based on Customer need • Register cameras to Customer domain • Troubleshoot IT issues with Axon Evidence and Axon Dock ("**Dock**") access • One on-site session included
Dock configuration • Work with Customer to decide the ideal location of Docks and set configurations on Dock • Authenticate Dock with Axon Evidence using admin credentials from Customer • On-site assistance, not to include physical mounting of docks
Best practice implementation planning session • Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies • Discuss the importance of entering metadata in the field for organization purposes and other best practices for digital data management • Provide referrals of other agencies using the Axon camera devices and Axon Evidence • Recommend rollout plan based on review of shift schedules
System Admin and troubleshooting training sessions Step-by-step explanation and assistance for Customer's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon instructor training (Train the Trainer) Training for Customer's in-house instructors who can support Customer's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations
Evidence sharing training Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies
End user go-live training and support sessions • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide
Post go-live review

3. **Body-Worn Camera Starter Service (Axon Starter)**. Axon Starter includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer's deployment and determine which Services are appropriate. If Customer requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Starter options include:

System set up and configuration (Remote Support) • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories & custom roles based on Customer need

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• Troubleshoot IT issues with Axon Evidence and Dock access
Dock configuration • Work with Customer to decide the ideal location of Dock setup and set configurations on Dock • Authenticate Dock with Axon Evidence using "Administrator" credentials from Customer • Does not include physical mounting of docks
Axon instructor training (Train the Trainer) Training for Customer's in-house instructors who can support Customer's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations
End user go-live training and support sessions • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

4. **Body-Worn Camera Virtual 1-Day Service (Axon Virtual)**. Axon Virtual includes all items in the BWC Starter Service Package, except one (1) day of on-site services.

5. **CEW Services Packages**. CEW Services Packages are detailed below:

System set up and configuration • Configure Axon Evidence categories & custom roles based on Customer need. • Troubleshoot IT issues with Axon Evidence. • Register users and assign roles in Axon Evidence. • **For the CEW Full Service Package**: On-site assistance included • **For the CEW Starter Package**: Virtual assistance included
Dedicated Project Manager Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Customer 4–6 weeks before rollout
Best practice implementation planning session to include: • Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies • Discuss the importance of entering metadata and best practices for digital data management • Provide referrals to other agencies using TASER CEWs and Axon Evidence • **For the CEW Full Service Package:** On-site assistance included • **For the CEW Starter Package:** Virtual assistance included
System Admin and troubleshooting training sessions On-site sessions providing a step-by-step explanation and assistance for Customer's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon Evidence Instructor training • Provide training on the Axon Evidence to educate instructors who can support Customer's subsequent Axon Evidence training needs. • **For the CEW Full Service Package:** Training for up to 3 individuals at Customer • **For the CEW Starter Package:** Training for up to 1 individual at Customer
TASER CEW inspection and device assignment Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.
Post go-live review **For the CEW Full Service Package**: On-site assistance included. **For the CEW Starter Package**: Virtual assistance included.

6. **Smart Weapon Transition Service**. The Smart Weapon Transition Service includes:

Archival of CEW Firing Logs Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Customer is replacing with newer Smart Weapon models.

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Return of Old Weapons
Axon's on-site professional service team will ship all old weapons back to Axon's headquarters. Axon will provide Customer with a Certificate of Destruction

*Note: CEW Full Service packages for TASER 7 or TASER 10 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7. **VR Services Package.** VR Service includes advance remote project planning and configuration support and one (1) day of on-site service and a professional services manager to work with Customer to assess Customer's deployment and determine which Services are appropriate. The VR Service training options include:

System set up and configuration (Remote Support) • Instructor-led setup of Axon VR headset content • Configure Customer settings based on Customer need • Troubleshoot IT issues with Axon VR headset
Axon instructor training (Train the Trainer) Training for up to five (5) Customer's in-house instructors who can support Customer's Axon VR CET and SIM training needs after Axon's has fulfilled its contracted on-site obligations
Classroom and practical training sessions Step-by-step explanation and assistance for Customer's configuration of Axon VR CET and SIM functionality, basic operation, and best practices

8. **Axon Air, On-Site Training.** Axon Air, On-Site training includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer's deployment and determine which Services are appropriate. If Customer's requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Air, On-Site training options include:

System set up and configuration (Remote Support) • Instructor-led setup of Axon Air App (ASDS) • Configure Customer settings based on Customer need • Configure drone controller • Troubleshoot IT issues with Axon Evidence
Axon instructor training (Train the Trainer) Training for Customer's in-house instructors who can support Customer's Axon Air and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations
Classroom and practical training sessions Step-by-step explanation and assistance for Customer's configuration of Axon Respond+ livestreaming functionality, basic operation, and best practices

9. **Axon Air, Virtual Training.** Axon Air, Virtual training includes all items in the Axon Air, On-Site Training Package, except the practical training session, with the Axon Instructor training for up to four hours virtually.

10. **Signal Sidearm Installation Service**.

    a. **Purchases of 50 SSA units or more**: Axon will provide one (1) day of on-site service and one professional services manager and will provide train the trainer instruction, with direct assistance on the first of each unique holster/mounting type. Customer is responsible for providing a suitable work/training area.

    b. **Purchases of less than 50 SSA units:** Axon will provide a 1-hour virtual instruction session on the basics of installation and device calibration.

11. **Out of Scope Services**. Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

12. **Delivery of Services**. Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Customer travel time by Axon personnel to Customer premises as work hours.

13. **Access Computer Systems to Perform Services**. Customer authorizes Axon to access relevant Customer

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computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.

14. **Site Preparation**. Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Customer or Axon), Customer must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Customer must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Customer when Axon generally releases it

15. **Acceptance**. When Axon completes professional services, Axon will present an acceptance form ("**Acceptance Form**") to Customer. Customer will sign the Acceptance Form acknowledging completion. If Customer reasonably believes Axon did not complete the professional services in substantial conformance with this Agreement, Customer must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within seven (7) calendar days of delivery of the Acceptance Form, Axon will deem Customer to have accepted the professional services.

16. **Customer Network**. For work performed by Axon transiting or making use of Customer's network, Customer is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Customer's network from any cause.

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Technology Assurance Plan Appendix

If Technology Assurance Plan ("**TAP**") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty**. The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan**. If Customer purchases an Officer Safety Plan ("**OSP**"), Customer will receive the deliverables detailed in the Quote. Customer must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term**. OSP 7 or OSP 10 begins on the date specified in the Quote ("**OSP Term**").
4. **TAP BWC Upgrade**. If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Customer purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
5. **TAP Dock Upgrade**. If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Customer originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Customer originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay**. Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Customer unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Customer.
7. **Upgrade Change**. If Customer wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Customer must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Customer desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device**. Within thirty (30) days of receiving a BWC or Dock Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Customer does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Customer.
9. **Termination**. If Customer's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
   - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
   - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
   - 9.3. Customer must make any missed payments due to the termination before Customer may purchase any future TAP or OSP.

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TASER Device Appendix

This TASER Device Appendix applies to Customer's TASER 10, OSP 10, OSP Plus, or OSP 10 Plus Premium purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan**. If the Quote includes "**Duty Cartridge Replenishment Plan**", Customer must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Customer may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training**. If the Quote includes a TASER On Demand Certification subscription, Customer will have on-demand access to TASER Instructor and TASER Master Instructor courses only for the duration of the TASER Subscription Term. Axon will issue a maximum of ten (10) TASER Instructor vouchers and ten (10) TASER Master Instructor vouchers for every thousand TASER Subscriptions purchased. Customer shall utilize vouchers to register for TASER courses at their discretion however Customer may incur a fee for cancellations less than 10 business days prior to a course date or failure to appear to a registered course. The voucher has no cash value. Customer cannot exchange voucher for any other device or service. Any unused vouchers at the end of the Term will be forfeited. A voucher does not include any travel or other expenses that might be incurred related to attending a course.
3. **Extended Warranty**. If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer's warranty plus the four- (4-) year extended term.
4. **Trade-in**. If the Quote contains a discount on CEW-related line items and that discount is contingent upon the trade-in of hardware, Customer must return used hardware and accessories associated with the discount ("**Trade-In Units**") to Axon within the below prescribed timeline. Customer must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Customer the value of the trade-in credit. Customer may not destroy Trade-In Units and receive a trade-in credit.

Customer Size	Days to Return from Start Date of TASER 10 Subscription
Less than 100 officers	60 days
100 to 499 officers	90 days
500+ officers	180 days

5. **TASER Device Subscription Term**. The TASER Device Subscription Term for a standalone TASER Device purchase begins on shipment of the TASER Device. The TASER Device Subscription Term for OSP 7/10 begins on the OSP 7/10 start date.
6. **Access Rights**. Upon Axon granting Customer a TASER Device Axon Evidence subscription, Customer may access and use Axon Evidence for the storage and management of data from TASER Devices devices during the TASER Device Subscription Term. Customer may not exceed the number of end users the Quote specifies.
7. **Customer Warranty.** If Customer is located in the US, Customer warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Customer use pursuant to a law enforcement agency transfer under the Gun Control Act of 1968.
8. **Purchase Order.** To comply with applicable laws and regulations, Customer must provide a purchase order to Axon prior to shipment of TASER 10.
9. **Apollo Grant (US only).** If Customer has received an Apollo Grant from Axon, Customer must pay all fees in the Quote prior to upgrading to any new TASER Device offered by Axon.
10. **Termination**. If payment for TASER Device is more than thirty (30) days past due, Axon may terminate Customer's TASER Device plan by notifying Customer. Upon termination for any reason, then as of the date of termination:

    10.1. TASER Device extended warranties and access to Training Content will terminate. No refunds will be given.
    10.2. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER Device plan.
    10.3. Axon will invoice Customer the remaining MSRP for TASER Devices received before termination. If terminating

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for non-appropriations, Axon will not invoice Customer if Customer returns the TASER Device, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of termination.

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Axon Auto-Tagging Appendix

If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Customer's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Customer's CAD or RMS.
2. **Support**. For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Customer maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Customer changes its CAD or RMS.
3. **Changes**. Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
4. **Customer Responsibilities**. Axon's performance of Auto-Tagging Services requires Customer to:
   - 4.1. Make available relevant systems, including Customer's current CAD or RMS, for assessment by Axon (including remote access if possible);
   - 4.2. Make required modifications, upgrades or alterations to Customer's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
   - 4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Customer safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
   - 4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
   - 4.5. Promptly install and implement any software updates provided by Axon;
   - 4.6. Ensure that all appropriate data backups are performed;
   - 4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
   - 4.8. Provide Axon with remote access to Customer's Axon Evidence account when required;
   - 4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Customer; and
   - 4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
5. **Access to Systems**. Customer authorizes Axon to access Customer's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.

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Axon Fleet Appendix

If Axon Fleet 2, Axon Fleet 3, or any future generation of Axon Fleet (collectively, "**Axon Fleet**") is included on the Quote, this Appendix applies.

1. **Customer Responsibilities**.

   1.1. Customer must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet as established by Axon during the qualifier call and on-site assessment at Customer and in any technical qualifying questions. If Customer's representations are inaccurate, the Quote is subject to change.

   1.2. Customer is responsible for providing a suitable work area for Axon or Axon third-party providers to install Axon Fleet systems into Customer vehicles. Customer is responsible for making available all vehicles for which installation services were purchased, during the agreed upon onsite installation dates, Failure to make vehicles available may require an equitable adjustment in fees or schedule.

2. **Cradlepoint**. If Customer purchases Cradlepoint Enterprise Cloud Manager, Customer will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Customer requires Cradlepoint support, Customer will contact Cradlepoint directly.

3. **Third-party Installer**. Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.

4. Wireless Offload Server.

   4.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.

   4.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.

   4.3. **Updates**. If Customer purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Customer is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.

   4.4. **WOS Support**. Upon request by Axon, Customer will provide Axon with access to Customer's store and forward servers solely for troubleshooting and maintenance.

5. Axon Vehicle Software.

   5.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "**Axon Vehicle Software**".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.

   5.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.

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6. **Acceptance Checklist**. If Axon provides services to Customer pursuant to any statement of work in connection with Axon Fleet, within seven (7) days of the date on which Customer retrieves Customer's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Customer will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.

7. **Axon Fleet Upgrade**. If Customer has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Customer with the same or like model of Fleet hardware ("**Axon Fleet Upgrade**") as scheduled on the Quote.

   7.1. If Customer would like to change models for the Axon Fleet Upgrade, Customer must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Customer is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.

   7.2. Within thirty (30) days of receiving the Axon Fleet Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Customer does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Customer.

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Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term**. If Customer purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Customer. If Customer purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Customer, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

2. **Scope of Axon Respond**. The scope of Axon Respond is to assist Customer with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Customer uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Customer on upgrading Customer's Axon Respond to better meet Customer's needs.

3. **Axon Body LTE Requirements**. Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Customer utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Customer's consent.

4. **Axon Fleet LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Customer is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Customer's LTE carrier.

5. **Axon Respond Service Limitations**. Customer acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

   5.1. With regard to Axon Body, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Customer expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Customer is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

6. **Termination**. Upon termination of this Agreement, or if Customer stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.

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Add-on Services Appendix

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term**. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Customer.

    1.1. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Customer, or (2) first day of the month following the Effective Date.

    1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

2. **Axon Community Request Storage**. For Axon Community Request, Customer may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Customer's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.

3. **Performance Auto-Tagging Data**. In order to provide some features of Axon Performance to Customer, Axon will need to store call for service data from Customer's CAD or RMS.

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Axon Auto-Transcribe Appendix

This Appendix applies if Axon Auto-Transcribe is included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Customer. If Customer purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Customer.

   1.1. If Customer cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.

2. **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Customer a set number of minutes, Customer may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Customer will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Customer additional fees for exceeding the number of purchased minutes. Axon Auto-Transcribe minutes expire one year after being provisioned to Customer by Axon.

3. **Axon Unlimited Transcribe.** Upon Axon granting Customer an Unlimited Transcribe subscription to Axon Auto-Transcribe, Customer may utilize Axon Auto-Transcribe with no limit on the number of minutes. Unlimited Transcribe includes automatic transcription of all Axon BWC and Axon Capture footage. With regard to Axon Interview Room, Axon Fleet, Axon Citizen, or third-party transcription, transcription must be requested on demand. Notwithstanding the foregoing, Axon may limit usage after 5,000 minutes per user per month for multiple months in a row. Axon will not bill for overages.

4. **Warranty.** Axon disclaims all warranties, express or implied, for Axon Auto-Transcribe.

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Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term**. The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Customer related to virtual reality (collectively, "**Virtual Reality Media**").
2. **Headsets**. Customer may purchase additional virtual reality headsets from Axon. In the event Customer decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Customer must purchase those headsets from Axon.
3. **License Restrictions**. All licenses will immediately terminate if Customer does not comply with any term of this Agreement. If Customer utilizes more users than stated in this Agreement, Customer must purchase additional Virtual Reality Media licenses from Axon. Customer may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Customer may not:
   - 3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;
   - 3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;
   - 3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;
   - 3.4. use trade secret information contained in Virtual Reality Media;
   - 3.5. resell, rent, loan or sublicense Virtual Reality Media;
   - 3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or
   - 3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.
4. **Privacy**. Customer's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at https://www.axon.com/axonvrprivacypolicy.
5. **Termination**. Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement.

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Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services or a subscription to Axon Cloud Services are included on the Quote.

1. **Definitions**.

   1.1. "**API Client**" means the software that acts as the interface between Customer's computer and the server, which is already developed or to be developed by Customer.

   1.2. "**API Interface**" means software implemented by Customer to configure Customer's independent API Client Software to operate in conjunction with the API Service for Customer's authorized Use.

   1.3. "**Axon Evidence Partner API, API or Axon API**" (collectively "**API Service**") means Axon's API which provides a programmatic means to access data in Customer's Axon Evidence account or integrate Customer's Axon Evidence account with other systems.

   1.4. "**Use**" means any operation on Customer's data enabled by the supported API functionality.

2. **Purpose and License**.

   2.1. Customer may use API Service and data made available through API Service, in connection with an API Client developed by Customer. Axon may monitor Customer's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Customer agrees to not interfere with such monitoring or obscure from Axon Customer's use of API Service. Customer will not use API Service for commercial use.

   2.2. Axon grants Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Customer's Use in connection with Customer's API Client.

   2.3. Axon reserves the right to set limitations on Customer's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

3. **Configuration**. Customer will work independently to configure Customer's API Client with API Service for Customer's applicable Use. Customer will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Customer will inform Axon promptly of any updates. Upon Customer's registration, Axon will provide documentation outlining API Service information.

4. **Customer Responsibilities**. When using API Service, Customer and its end users may not:

   4.1. use API Service in any way other than as expressly permitted under this Agreement;

   4.2. use in any way that results in, or could result in, any security breach to Axon;

   4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;

   4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;

   4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;

   4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;

   4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;

   4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;

   4.9. make available to a third-party, any token, key, password or other login credentials to API Service;

   4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or

   4.11. disclose Axon's API manual.

5. **API Content**. All content related to API Service, other than Customer Content or Customer's API Client content, is considered Axon's API Content, including:

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5.1. the design, structure and naming of API Service fields in all responses and requests;

5.2. the resources available within API Service for which Customer takes actions on, such as evidence, cases, users, or reports;

5.3. the structure of and relationship of API Service resources; and

5.4. the design of API Service, in any part or as a whole.

6. **Prohibitions on API Content**. Neither Customer nor its end users will use API content returned from the API Interface to:

6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;

6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;

6.3. misrepresent the source or ownership; or

6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).

7. **API Updates**. Axon may update or modify the API Service from time to time ("**API Update**"). Customer is required to implement and use the most current version of API Service and to make any applicable changes to Customer's API Client required as a result of such API Update. API Updates may adversely affect how Customer's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Customer to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.

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FUSUS Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Access**. Upon Axon granting Customer a subscription to FUSUS cloud services in the Quote, Customer may access and use FūsusONE Real Time Interoperability Solution services to for the purpose of viewing and managing Customer Content. Some Customer content contained in Axon's Evidence.com may not be accessible or transferable to the FUSUS cloud services.

2. **Product Limits**. The following limitations apply to the below products:

	Lite	Basic	Pro	Enterprise	Enterprise Plus
Total Number of Managed End Points	150	150	500	1500	4500
Max Number of Video Streams Connected	0	150	500	1500	4500
Indefinite Cloud Storage		2TB	5TB	10TB	30TB

Overages may result in additional fees or the need to upgrade product.

3. **Disclaimer**. Customer is responsible for use of any internet access devices and/or all third-party hardware, software, services, telecommunication services (including Internet connectivity), or other items used by Customer to access the service ("Third-Party Components") are the sole and exclusive responsibility of Customer, and that Axon has no responsibility for such Third-party Components, FUSUS cloud services, or Customer relationships with such third parties. Customer agrees to at all times comply with the lawful terms and conditions of agreements with such third parties. Axon does not represent or warrant that the FUSUS cloud services and the Customer Content are compatible with any specific third-party hardware or software or any other Third-Party Components. Customer is responsible for providing and maintaining an operating environment as reasonably necessary to accommodate and access the FUSUS cloud services.

4. **Data Privacy**. Axon may collect, use, transfer, disclose and otherwise process Customer Content in the context of facilitating communication of data with Customer through their use of FUSUS cloud services FUSUS app (iOS or Android interface), complying with legal requirements, monitoring the Customer's use of FUSUS systems, and undertaking data analytics. Customer Content saved in Axon Cloud Services is the sole property of Customer and may not be distributed by Axon to any third parties outside of the Customer's organization without the Customer's expressed written consent.

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Axon Channel Services Appendix

This Appendix applies if Customer purchases Axon Channel Service, as set forth on the Quote.

1. Definitions.

   1.1. "**Axon Digital Evidence Management System**" means Axon Evidence or Axon Evidence Local, as specified in the attached Channel Services Statement of Work.

   1.2. "**Active Channel**" means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.

   1.3. "**Inactive Channel**" means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.

2. **Scope**. Customer currently has a third-party system or data repository from which Customer desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Customer's third-party data into an Axon Digital Evidence Management System or the transfer of Customer data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work ("**Channel Services SOW**"). Channel Services will not delete any Customer Content. Customer is responsible for verifying all necessary data is migrated correctly and retained per Customer policy.

3. **Changes**. Axon is only responsible to perform the Services described in this Appendix and Channel Services SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

4. **Purpose and Use**. Customer is responsible for verifying Customer has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Customer is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Customer's network and systems to perform the Services described in the Channel Services SOW. Customer is responsible for facilitating this access per all laws and policies applicable to Customer.

5. **Project Management**. Axon will assign a Project Manager to work closely with Customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.

6. **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.

7. **Monitoring**. Axon may monitor Customer's use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Customer agrees not to interfere with such monitoring or obscure from Axon Customer's use of channel services.

8. **Customer's Responsibilities.** Axon's successful performance of the Channel Services requires Customer:

   8.1. Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);

   8.2. Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Customer (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Customer premises with laptop personal computers and any other materials needed to perform the Channel Services);

   8.3. Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;

   8.4. Ensure all appropriate data backups are performed;

   8.5. Provide Axon with remote access to the Customer's network and third-party systems when required for Axon to perform the Channel Services;

   8.6. Notify Axon of any network or machine maintenance that may impact the performance of the Channel Services; and

   8.7. Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators,

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and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).

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Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

1. **License Grant**. Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Customer a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Customer any right to enhancements or updates, but if such are made available to Customer and obtained by Customer they shall become part of the Software and governed by the terms of this Agreement.

2. **Third-Party Licenses**. Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Customer agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Customer terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.

3. **Restrictions on Use**. Customer may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Customer may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Customer may not rent, lease, sublicense, grant a security interest in or otherwise transfer Customer's rights to or to use the Software. Any rights not granted are reserved to Axon.

4. **Term**. For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Customer fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Customer.

5. **Title**. Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use.

6. **Copies**. The Software is copyrighted under the laws of the United States and international treaty provisions. Customer may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Customer. If Customer receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Customer to use the copy of media on an additional server.

7. **Actions Required Upon Termination**. Upon termination of the license associated with this Agreement, Customer agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Customer ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Customer's computer or computer system, Customer agrees not to access such media for the purpose of recovering the Software or online Software Documentation.

8. **Export Controls**. None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.

9. **U.S. Government Restricted Rights**. The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and Customer supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or

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subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.

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My90 Terms of Use Appendix

Definitions.

1.1. "**My90**" means Axon's proprietary platform and methodology to obtain and analyze feedback, and other related offerings, including, without limitation, interactions between My90 and Axon products.

1.2. "**Recipient Contact Information**" means contact information, as applicable, including phone number or email address (if available) of the individual whom Customer would like to obtain feedback.

1.3. "**Customer Data**" means

1.3.1. "My90 Customer Content" which means data, including Recipient Contact Information, provided to My90 directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology. My90 Customer Content does not include My90 Non-Content Data.

1.3.2. "My90 Non-Content Data" which means data, configuration, and usage information about Customer's My90 tenant, and client software, users, and survey recipients that is Processed (as defined in Section 1.6 of this Appendix) when using My90 or responding to a My90 Survey. My90 Non-Content Data includes data about users and survey recipients captured during account management and customer support activities. My90 Non-Content Data does not include My90 Customer Content.

1.3.3. "Survey Response" which means survey recipients' response to My90 Survey.

1.4. "**My90 Data**" means

1.4.1. "My90 Survey" which means surveys, material(s) or content(s) made available by Axon to Customer and survey recipients within My90.

1.4.2. "Aggregated Survey Response" which means Survey Response that has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to, a particular individual.

1.5. "**Personal Data**" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

1.6. "**Processing**" means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.

1.7. "**Sensitive Personal Data**" means Personal Data that reveals an individual's health, racial or ethnic origin, sexual orientation, disability, religious or philosophical beliefs, or trade union membership.

2. **Access**. Upon Axon granting Customer a subscription to My90, Customer may access and use My90 to store and manage My90 Customer Content, and applicable My90 Surveys and Aggregated Survey Responses. This Appendix is subject to the Terms and Conditions of Axon's Master Service and Purchasing Agreement or in the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern.

3. **IP address**. Axon will not store survey respondents' IP address.

4. **Customer Owns My90 Customer Content**. Customer controls or owns all right, title, and interest in My90 Customer Content. Except as outlined herein, Axon obtains no interest in My90 Customer Content, and My90 Customer Content is not Axon's business records. Except as set forth in this Agreement, Customer is responsible for uploading, sharing, managing, and deleting My90 Customer Content. Axon will only have access to My90 Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to My90 Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of My90 and other Axon products.

5. **Details of the Processing**. The nature and purpose of the Processing under this Appendix are further specified

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in Schedule 1 Details of the Processing, to this Appendix.

6. **Security**. Axon will implement commercially reasonable and appropriate measures to secure Customer Data against accidental or unlawful loss, access, or disclosure. Axon will maintain a comprehensive information security program to protect Customer Data including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; security education; and data protection. Axon will not treat Customer Data in accordance with FBI CJIS Security Policy requirements and does not agree to the CJIS Security Addendum for this engagement or any other security or privacy related commitments that have been established between Axon and Customer, such as ISO 27001 certification or SOC 2 Reporting.

7. **Privacy**. Customer use of My90 is subject to the My90 Privacy Policy, a current version of which is available at https://www.axon.com/legal/my90privacypolicy. Customer agrees to allow Axon access to My90 Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products including My90 and related services; and (c) enforce this Agreement or policies governing the use of My90 or other Axon products.

8. **Location of Storage**. Axon may transfer Customer Data to third-party subcontractors for Processing. Axon will determine the locations for Processing of Customer Data. For all Customer, Axon will Process and store Customer Data within the United States. Ownership of My90 Customer Content remains with Customer.

9. **Required Disclosures**. Axon will not disclose Customer Data that Customer shares with Axon except as compelled by a court or administrative body or required by any law or regulation. Axon will notify Customer if any disclosure request is received for Customer Data so Customer may file an objection with the court or administrative body, unless prohibited by law.

10. **Data Sharing**. Axon may share data only with entities that control or are controlled by or under common control of Axon, and as described below:

    10.1. Axon may share Customer Data with third parties it employs to perform tasks on Axon's behalf to provide products or services to Customer.

    10.2. Axon may share Aggregated Survey Response with third parties, such as other Axon customers, local city agencies, private companies, or members of the public that are seeking a way to collect analysis on general policing and community trends. Aggregated Survey Response will not be reasonably capable of being associated with or reasonably be linked directly or indirectly to a particular individual.

11. **License and Intellectual Property**. Customer grants Axon, its affiliates, and assignees the irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Customer Data for internal use including but not limited to analysis and creation of derivatives. Axon may not release Customer Data to any third party under this right that is not aggregated and de-identified. Customer acknowledges that Customer will have no intellectual property right in any media, good or service developed or improved by Axon. Customer acknowledges that Axon may make any lawful use of My90 Data and any derivative of Customer Data including, without limitation, the right to monetize, redistribute, make modification of, and make derivatives of the surveys, survey responses and associated data, and Customer will have no intellectual property right in any good, service, media, or other product that uses My90 Data.

12. **Customer Use of Aggregated Survey Response**. Axon will make available to Customer Aggregated Survey Response and rights to use for any Customer purpose.

13. **Data Subject Rights**. Taking into account the nature of the Processing, Axon shall assist Customer by appropriate technical and organizational measures, insofar as this is reasonable, for the fulfilment of Customer's obligation to respond to a Data Subject Request regarding any Personal Data contained within My90 Customer Content. If in regard to My90 Customer Content, Axon receives a Data Subject Request from Customer's data subject to exercise one or more of its rights under applicable Data Protection Law, Axon will redirect the data subject within seventy-two (72) hours, to make its request directly to Customer. Customer will be responsible for responding to any such request.

14. **Assistance with Requests Related to My90 Customer Content**. With regard to the processing of My90 Customer Content, Axon shall, if not prohibited by applicable law, notify Customer without delay after receipt, if Axon: (a) receives a request for information from the Supervisory Authority or any other competent authority regarding My90 Customer Content; (b) receives a complaint or request from a third party regarding the obligations of Customer or Axon under applicable Data Protection Law; or (c) receives any other communication which directly or indirectly pertains to My90 Customer Content or the Processing or protection of My90 Customer Content. Axon shall not respond to such requests, complaints, or communications, unless Customer has given Axon written

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instructions to that effect or if such is required under a statutory provision. In the latter case, prior to responding to the request, Axon shall notify Customer of the relevant statutory provision and Axon shall limit its response to what is necessary to comply with the request.

15. **Axon Evidence Partner Sharing**. If Axon Evidence partner sharing is used to share My90 Customer Content, Customer will manage the data sharing partnership with Axon and access to allow only for authorized data sharing with Axon. Customer acknowledges that any applicable audit trail on the original source data will not include activities and processing performed against the instances, copies or clips that has been shared with Axon. Customer also acknowledges that the retention policy from the original source data is not applied to any data shared with Axon. Except as provided herein, data shared with Axon may be retained indefinitely by Axon.
16. **Data Retention**. Phone numbers provided to Axon directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology will be retained for twenty-four (24) hours. Axon will not delete Aggregated Survey Response for four (4) years following termination of this Agreement. There will be no functionality of My90 during these four (4) years other than the ability to submit a request to retrieve Aggregated Survey Response. Axon has no obligation to maintain or provide Aggregated Survey Response after these four years and may thereafter, unless legally prohibited, delete all Aggregated Survey Response.
17. **Termination**. Termination of an My90 Agreement will not result in the removal or modification of previously shared My90 Customer Content or the potential monetization of Survey Response and Aggregated Survey Response.
18. **Managing Data Shared**. Customer is responsible for:
    18.1. Ensuring My90 Customer Content is appropriate for use in My90. This includes, prior to sharing: (a) applying any and all required redactions, clipping, removal of metadata, logs, etc. and (b) coordination with applicable public disclosure officers and related legal teams;
    18.2. Ensuring that only My90 Customer Content that is authorized to be shared for the purposes outlined is shared with Axon. Customer will periodically monitor or audit this shared data;
    18.3. Using an appropriately secure data transfer mechanism to provide My90 Customer Content to Axon;
    18.4. Immediately notifying Axon if My90 Customer Content that is not authorized for sharing has been shared. Axon may not be able to immediately retrieve or locate all instances, copies or clips of My90 Customer Content in the event Customer requests to un-share previously shared My90 Customer Content;
19. **Prior to enrollment in My90**. Prior to enrolling in My90, Customer will:
    19.1. determine how to use My90 in accordance with applicable laws and regulations including but not limited to consents, use of info or other legal considerations;
    19.2. develop a set of default qualification criteria of what My90 Customer Content may be shared with Axon; and
    19.3. assign responsibilities for managing what My90 Customer Content is shared with Axon and educate users on what data may or not be shared with Axon.
20. **Customer Responsibilities**. Customer is responsible for:
    20.1. ensuring no My90 Customer Content or Customer end user's use of My90 Customer Content or My90 violates this Agreement or applicable laws;
    20.2. providing, and will continue to provide, all notices and has obtained, and will continue to obtain, all consents and rights necessary under applicable laws for Axon to process Customer Data in accordance with this Agreement; and
    20.3. maintaining necessary computer equipment and Internet connections for use of My90. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to My90. Customer will also maintain the security of end usernames and passwords and security and access by end users to My90 Customer Content. Customer is responsible for ensuring the configuration and utilization of My90 meets applicable Customer regulations and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or My90 Customer Content or if

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account information is lost or stolen.

21. **Suspension**. Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of My90 immediately upon notice, if Customer or end user's use of or registration for My90 may (a) pose a security risk to Axon products including My90, or any third-party; (b) adversely impact My90, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees, if applicable, incurred through suspension. Axon will not delete My90 Customer Content or Aggregated Survey Response because of suspension, except as specified in this Agreement.

22. **My90 Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

    22.1. copy, modify, tamper with, repair, or create derivative works of any part of My90;

    22.2. reverse engineer, disassemble, or decompile My90 or apply any process to derive any source code included in My90, or allow others to do the same;

    22.3. access or use My90 with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;

    22.4. use trade secret information contained in My90, except as expressly permitted in this Agreement;

    22.5. access My90 to build a competitive product or service or copy any features, functions, or graphics of My90;

    22.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within My90; or

    22.7. use My90 to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

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Schedule 1- Details of the Processing

1. **Nature and Purpose of the Processing.** To help Customer obtain feedback from individuals, such as members of their community, staff, or officers. Features of My90 may include:

   1.1. Survey Tool where Customer may create, distribute, and analyze feedback from individuals it designates. Customer may designate members of the community, staff or officers from whom they would like to obtain feedback;

   1.2. Creation of custom forms for surveys. Customer may select questions from a list of pre-drafted questions or create their own;

   1.3. Distribution of survey via multiple distribution channels such as text message;

   1.4. Ability to access and analyze Survey Response. Axon may also provide Customer Aggregated Survey Responses which contain analysis and insights from the Survey Response;

   1.5. Direct integrations into information systems including Computer Aided Dispatch ("**CAD**"). This will enable Customer to share contact information easily and quickly with Axon of any individuals from whom it wishes to obtain feedback, enabling Axon to communicate directly with these individuals;

   1.6. Data Dashboard Beta Test ("**Data Dashboard**") where Survey Response and Aggregated Survey Response will be displayed for Customer use. Customer will be able to analyze, interpret, and share results of the Survey Response. My90 may provide beta versions of the Data Dashboard that are specifically designed for Customer to test before they are publicly available;

   1.7. Survey Responses will be aggregated and de-identified and may be subsequently distributed and disclosed through various mediums to: (1) Customer; (2) other Axon Customer; (3) private companies; and (4) members of the public. The purpose of disclosure is to provide ongoing insights and comparisons on general policing and community trends. Prior to disclosing this information, Axon will ensure that the Survey Response has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual; and

   1.8. Provide services and materials to engage Customer stakeholders, market the partnership to the public, and facilitate training.

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Axon Event Offer Appendix

If the Agreement includes the provision of, or Axon otherwise offers, ticket(s), travel and/or accommodation for select events hosted by Axon ("Axon Event"), the following shall apply:

1. **General**. Subject to the terms and conditions specified below and those in the Agreement, Axon may provide Customer with one or more offers to fund Axon Event ticket(s), travel and/or accommodation for Customer-selected employee(s) to attend one or more Axon Events. By entering into the Agreement, Customer warrants that it is appropriate and permissible for Customer to receive the referenced Axon Event offer(s) based on Customer's understanding of the terms and conditions outlined in this Axon Event Offer Appendix.
2. **Attendee/Employee Selection**. Customer shall have sole and absolute discretion to select the Customer employee(s) eligible to receive the ticket(s), travel and/or accommodation that is the subject of any Axon Event offer(s).
3. **Compliance**. It is the intent of Axon that any and all Axon Event offers comply with all applicable laws, regulations and ethics rules regarding contributions, including gifts and donations. Axon's provision of ticket(s), travel and/or accommodation for the applicable Axon Event to Customer is intended for the use and benefit of Customer in furtherance of its goals, and not the personal use or benefit of any official or employee of Customer. Axon makes this offer without seeking promises or favoritism for Axon in any bidding arrangements. Further, no exclusivity will be expected by either party in consideration for the offer. Axon makes the offer with the understanding that it will not, as a result of such offer, be prohibited from any procurement opportunities or be subject to any reporting requirements. If Customer's local jurisdiction requires Customer to report or disclose the fair market value of the benefits provided by Axon, Customer shall promptly contact Axon to obtain such information, and Axon shall provide the information necessary to facilitate Customer's compliance with such reporting requirements.
4. **Assignability**. Customer may not sell, transfer, or assign Axon Event ticket(s), travel and/or accommodation provided under the Agreement.
5. **Availability.** The provision of all offers of Axon Event ticket(s), travel and/or accommodation is subject to availability of funds and resources. Axon has no obligation to provide Axon Event ticket(s), travel and/or accommodation.
6. **Revocation of Offer**. Axon reserves the right at any time to rescind the offer of Axon Event ticket(s), travel and/or accommodation to Customer if Customer or its selected employees fail to meet the prescribed conditions or if changes in circumstances render the provision of such benefits impractical, inadvisable, or in violation of any applicable laws, regulations, and ethics rules regarding contributions, including gifts and donations.

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-547196-45511.915BM

Issued: 08/07/2024

Quote Expiration: 08/31/2024

Estimated Contract Start Date: 12/01/2024

Account Number: 115661

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Napa County Sheriff's Office - CA 1535 Airport Blvd Napa, CA 94558-6292 USA	Napa County Sheriff's Office - CA 1535 Airport Blvd Napa CA 94558-6292 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Brian Moutinho Phone: +1 9168062275 Email: bmoutinho@axon.com Fax:	Nicholas Billings Phone: (707) 253-4591 Email: nicholas.billings@countyofnapa.org Fax: (707) 253-4193

Quote Summary

Program Length	60 Months
TOTAL COST	$2,975,361.04
ESTIMATED TOTAL W/ TAX	$3,042,473.03

Discount Summary

Average Savings Per Year	$236,685.72
TOTAL SAVINGS	$1,183,428.62

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Payment Summary

Date	Subtotal	Tax	Total
Nov 2024	$595,072.20	$13,422.33	$608,494.53
Nov 2025	$595,072.21	$13,422.33	$608,494.54
Nov 2026	$595,072.21	$13,422.33	$608,494.54
Nov 2027	$595,072.21	$13,422.33	$608,494.54
Nov 2028	$595,072.21	$13,422.67	$608,494.88
Total	**$2,975,361.04**	**$67,111.99**	**$3,042,473.03**

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Quote Unbundled Price:	**$4,158,789.66**
Quote List Price:	**$3,281,115.06**
Quote Subtotal:	**$2,975,361.04**

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1			$1.00	$47,098.24	$47,098.24	$0.00	$47,098.24
100552	TRANSFER CREDIT - GOODS	1			$1.00	$109,893.80	$109,893.80	$8,516.77	$118,410.57
B00024	BUNDLE - UNLIMITED PREMIUM	25	60	$352.39	$292.48	$261.77	$392,655.00	$7,183.83	$399,838.83
Fleet3BRe	Fleet 3 Basic Renewal	57	60	$71.29	$96.41	$66.53	$227,532.60	$0.00	$227,532.60
M00014	BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100	60	$497.68	$352.06	$315.09	$1,890,540.00	$50,834.41	$1,941,374.41
A la Carte Hardware									
74056	AXON INTERVIEW - TOUCH PANEL WALL MOUNT	2			$245.55	$0.00	$0.00	$0.00	$0.00
11630	THIRD PARTY PROVIDED HARDWARE	1			$1.00	$0.00	$0.00	$0.00	$0.00
100775	AXON BODY 4 - MAGNETIC DISCONNECT CABLE	125			$39.00	$0.00	$0.00	$0.00	$0.00
50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2			$397.51	$0.00	$0.00	$0.00	$0.00
74059	AXON INTERVIEW - ENCLOSURE - MOTION SENSOR	2			$244.01	$0.00	$0.00	$0.00	$0.00
50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2			$243.31	$0.00	$0.00	$0.00	$0.00
50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2			$685.49	$0.00	$0.00	$0.00	$0.00
50322	AXON INTERVIEW - TOUCH PANEL PRO	2			$3,286.23	$0.00	$0.00	$0.00	$0.00
50294	AXON INTERVIEW - SERVER - LITE	2			$3,722.47	$3,722.47	$7,444.94	$576.98	$8,021.92
A la Carte Software									
50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	2	60		$1,500.00	$0.00	$0.00	$0.00	$0.00
50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	60		$111.75	$0.00	$0.00	$0.00	$0.00
50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	60		$1,750.00	$0.00	$0.00	$0.00	$0.00
50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	2	60		$28.21	$0.00	$0.00	$0.00	$0.00
50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	60		$32.98	$0.00	$0.00	$0.00	$0.00
50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	60		$28.21	$25.25	$1,514.88	$0.00	$1,514.88
50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	60		$32.98	$29.52	$3,542.06	$0.00	$3,542.06
50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	60		$111.75	$100.02	$24,003.92	$0.00	$24,003.92
80401	AXON FLEET 3 - ALPR LICENSE - 1 CAMERA	57	60		$66.61	$59.62	$203,886.72	$0.00	$203,886.72
BasicLicense	Basic License Bundle	11	60		$16.27	$14.54	$9,598.93	$0.00	$9,598.93
ProLicense	Pro License Bundle	4	60		$43.40	$43.33	$10,399.20	$0.00	$10,399.20
A la Carte Services									
85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2			$7,450.00	$0.00	$0.00	$0.00	$0.00
85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1			$6,786.00	$6,073.47	$6,073.47	$0.00	$6,073.47
101267	AXON VR - PSO - FULL INSTALLATION	1			$12,000.00	$12,000.00	$12,000.00	$0.00	$12,000.00
A la Carte Warranties									

73390	AXON FLEET - CRADLEPOINT ROUTER TRANSFERRED WARRANTY	57	37	$0.00	$0.00	$0.00	$0.00	$0.00
50448	AXON INTERVIEW - EXT WARRANTY	2	49	$28.74	$0.00	$0.00	$0.00	$0.00
50448	AXON INTERVIEW - EXT WARRANTY	3	12	$27.00	$24.17	$869.94	$0.00	$869.94
100942	AXON BODY 4 - EXT WARRANTY - CAMERA	3	60	$14.97	$13.40	$2,411.67	$0.00	$2,411.67
80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	57	60	$1.36	$1.22	$4,162.71	$0.00	$4,162.71
11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57		$213.00	$190.64	$10,866.48	$0.00	$10,866.48
11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57		$213.00	$190.64	$10,866.48	$0.00	$10,866.48
Total						**$2,975,361.04**	**$67,111.99**	**$3,042,473.03**

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100126	AXON VR - TACTICAL BAG	4	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	3	2	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	100	2	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	3	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	100	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100394	AXON TASER 10 - MAGAZINE - HALT TRAINING BLUE	8	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100395	AXON TASER 10 - MAGAZINE - LIVE TRAINING PURPLE	6	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100396	AXON TASER 10 - MAGAZINE - INERT RED	30	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100399	AXON TASER 10 - CARTRIDGE - LIVE	2000	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100400	AXON TASER 10 - CARTRIDGE - HALT	600	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100401	AXON TASER 10 - CARTRIDGE - INERT	300	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100611	AXON TASER 10 - SAFARILAND HOLSTER - RH	30	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100613	AXON TASER 10 - SAFARILAND HOLSTER - LH	70	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100623	AXON TASER - TRAINING - ENHANCED HALT SUIT V2	2	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100748	AXON VR - CONTROLLER - TASER 10	4	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100832	AXON VR - CONTROLLER - HANDGUN VR19H	4	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101122	AXON VR - HOLSTER - T10 SAFARILAND GREY - RH	1	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101123	AXON VR - HOLSTER - T10 SAFARILAND GREY - LH	3	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101294	AXON VR - TABLET	4	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101300	AXON VR - TABLET CASE	4	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101351	AXON RESPOND - FUSUSCORE - ELITE AI 2.0 44TB HDD STORAGE -T	1	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101356	AXON RESPOND - FUSUSCORE - PRO 2.0 4TB HDD STORAGE -T	4	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20018	AXON TASER - BATTERY PACK - TACTICAL	100	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20018	AXON TASER - BATTERY PACK - TACTICAL	3	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20018	AXON TASER - BATTERY PACK - TACTICAL	17	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20378	AXON VR - HEADSET - HTC FOCUS 3	4	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	1	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	1	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	74200	AXON TASER - DOCK - SIX BAY PLUS CORE	1	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80087	AXON TASER - TARGET - CONDUCTIVE PROFESSIONAL RUGGEDIZED	2	1	11/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80090	AXON TASER - TARGET FRAME - PROFESSIONAL 27.5 IN X 75	2	1	11/01/2024

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Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
		IN			
BUNDLE - UNLIMITED PREMIUM	100126	AXON VR - TACTICAL BAG	1	1	11/01/2024
BUNDLE - UNLIMITED PREMIUM	100748	AXON VR - CONTROLLER - TASER 10	1	1	11/01/2024
BUNDLE - UNLIMITED PREMIUM	100832	AXON VR - CONTROLLER - HANDGUN VR19H	1	1	11/01/2024
BUNDLE - UNLIMITED PREMIUM	101122	AXON VR - HOLSTER - T10 SAFARILAND GREY - RH	1	1	11/01/2024
BUNDLE - UNLIMITED PREMIUM	101294	AXON VR - TABLET	1	1	11/01/2024
BUNDLE - UNLIMITED PREMIUM	101300	AXON VR - TABLET CASE	1	1	11/01/2024
BUNDLE - UNLIMITED PREMIUM	20378	AXON VR - HEADSET - HTC FOCUS 3	1	1	11/01/2024
A la Carte	100775	AXON BODY 4 - MAGNETIC DISCONNECT CABLE	125	1	11/01/2024
A la Carte	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	1	11/01/2024
A la Carte	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	1	11/01/2024
A la Carte	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	1	11/01/2024
A la Carte	50294	AXON INTERVIEW - SERVER - LITE	2	1	11/01/2024
A la Carte	50322	AXON INTERVIEW - TOUCH PANEL PRO	2	1	11/01/2024
A la Carte	74056	AXON INTERVIEW - TOUCH PANEL WALL MOUNT	2	1	11/01/2024
A la Carte	74059	AXON INTERVIEW - ENCLOSURE - MOTION SENSOR	2	1	11/01/2024
A la Carte	11630	THIRD PARTY PROVIDED HARDWARE	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100399	AXON TASER 10 - CARTRIDGE - LIVE	300	1	11/01/2025
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100400	AXON TASER 10 - CARTRIDGE - HALT	800	1	11/01/2025
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73309	AXON BODY - TAP REFRESH 1 - CAMERA	103	1	04/01/2026
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	13	1	04/01/2026
BUNDLE - UNLIMITED PREMIUM	73309	AXON BODY - TAP REFRESH 1 - CAMERA	25	1	04/01/2026
BUNDLE - UNLIMITED PREMIUM	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	4	1	04/01/2026
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100399	AXON TASER 10 - CARTRIDGE - LIVE	300	1	11/01/2026
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100400	AXON TASER 10 - CARTRIDGE - HALT	800	1	11/01/2026
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100210	AXON VR - TAP REFRESH 1 - TABLET	4	1	05/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	4	1	05/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	4	1	05/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20373	AXON VR - TAP REFRESH 1 - HEADSET	4	1	05/01/2027
BUNDLE - UNLIMITED PREMIUM	100210	AXON VR - TAP REFRESH 1 - TABLET	1	1	05/01/2027
BUNDLE - UNLIMITED PREMIUM	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	1	1	05/01/2027
BUNDLE - UNLIMITED PREMIUM	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	1	1	05/01/2027
BUNDLE - UNLIMITED PREMIUM	20373	AXON VR - TAP REFRESH 1 - HEADSET	1	1	05/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100399	AXON TASER 10 - CARTRIDGE - LIVE	300	1	11/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100400	AXON TASER 10 - CARTRIDGE - HALT	800	1	11/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73310	AXON BODY - TAP REFRESH 2 - CAMERA	103	1	10/01/2028
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	13	1	10/01/2028
BUNDLE - UNLIMITED PREMIUM	73310	AXON BODY - TAP REFRESH 2 - CAMERA	25	1	10/01/2028
BUNDLE - UNLIMITED PREMIUM	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	4	1	10/01/2028
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100399	AXON TASER 10 - CARTRIDGE - LIVE	300	1	11/01/2028
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100400	AXON TASER 10 - CARTRIDGE - HALT	800	1	11/01/2028

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Basic License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	11	12/01/2024	11/30/2029
Basic License Bundle	73840	AXON EVIDENCE - ECOM LICENSE - BASIC	11	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100165	AXON EVIDENCE - STORAGE - THIRD PARTY UNLIMITED	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100590	AXON MY90 - LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100801	AXON RECORDS - OSP LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101180	AXON TASER - DATA SCIENCE PROGRAM	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101357	AXON RESPOND - FUSUSONE - BASIC LEVEL SAAS	1	12/01/2024	11/30/2029

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20248	AXON TASER - EVIDENCE.COM LICENSE	1	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20248	AXON TASER - EVIDENCE.COM LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73618	AXON COMMUNITY REQUEST	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73638	AXON STANDARDS - LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73680	AXON RESPOND PLUS - LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73739	AXON PERFORMANCE - LICENSE	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73746	AXON EVIDENCE - ECOM LICENSE - PRO	1	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	73746	AXON EVIDENCE - ECOM LICENSE - PRO	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	85760	AXON AUTO-TRANSCRIBE - UNLIMITED SERVICE	100	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	100165	AXON EVIDENCE - STORAGE - THIRD PARTY UNLIMITED	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	100590	AXON MY90 - LICENSE	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	100801	AXON RECORDS - OSP LICENSE	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73618	AXON COMMUNITY REQUEST	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73638	AXON STANDARDS - LICENSE	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73680	AXON RESPOND PLUS - LICENSE	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73739	AXON PERFORMANCE - LICENSE	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	73746	AXON EVIDENCE - ECOM LICENSE - PRO	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	85760	AXON AUTO-TRANSCRIBE - UNLIMITED SERVICE	25	12/01/2024	11/30/2029
Fleet 3 Basic Renewal	80400	AXON EVIDENCE - FLEET VEHICLE LICENSE	57	12/01/2024	11/30/2029
Fleet 3 Basic Renewal	80410	AXON EVIDENCE - STORAGE - FLEET 1 CAMERA UNLIMITED	114	12/01/2024	11/30/2029
Pro License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	12	12/01/2024	11/30/2029
Pro License Bundle	73746	AXON EVIDENCE - ECOM LICENSE - PRO	4	12/01/2024	11/30/2029
A la Carte	50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	2	12/01/2024	11/30/2029
A la Carte	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	12/01/2024	11/30/2029
A la Carte	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	2	12/01/2024	11/30/2029
A la Carte	50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	12/01/2024	11/30/2029
A la Carte	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	12/01/2024	11/30/2029
A la Carte	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	12/01/2024	11/30/2029
A la Carte	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	12/01/2024	11/30/2029
A la Carte	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	12/01/2024	11/30/2029
A la Carte	80401	AXON FLEET 3 - ALPR LICENSE - 1 CAMERA	57	12/01/2024	11/30/2029

Services

Bundle	Item	Description	QTY
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100105	AXON MY90 - PSO - SETUP	1
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100751	AXON TASER 10 - REPLACEMENT ACCESS PROGRAM - DUTY CARTRIDGE	100
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	7

Services

Bundle	Item	Description	QTY
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101193	AXON TASER - ON DEMAND CERTIFICATION	1
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	100
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80190	AXON EVIDENCE - CHANNEL SERVICES	1
BUNDLE - UNLIMITED PREMIUM	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	2
BUNDLE - UNLIMITED PREMIUM	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	25
A la Carte	101267	AXON VR - PSO - FULL INSTALLATION	1
A la Carte	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1
A la Carte	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80464	AXON BODY - TAP WARRANTY - CAMERA	3	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80464	AXON BODY - TAP WARRANTY - CAMERA	100	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	13	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	80464	AXON BODY - TAP WARRANTY - CAMERA	25	12/01/2024	11/30/2029
BUNDLE - UNLIMITED PREMIUM	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	4	12/01/2024	11/30/2029
Fleet 3 Basic Renewal	80495	AXON FLEET 3 - EXT WARRANTY - 2 CAMERA KIT	57	12/01/2024	11/30/2029
Fleet 3 Basic Renewal	80495	AXON FLEET 3 - EXT WARRANTY - 2 CAMERA KIT	1	12/01/2024	11/30/2029
A la Carte	100942	AXON BODY 4 - EXT WARRANTY - CAMERA	3	12/01/2024	11/30/2029
A la Carte	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57		
A la Carte	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57		
A la Carte	50448	AXON INTERVIEW - EXT WARRANTY	3	12/01/2024	11/30/2025
A la Carte	73390	AXON FLEET - CRADLEPOINT ROUTER TRANSFERRED WARRANTY	57	12/01/2024	12/31/2027
A la Carte	80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	57	12/01/2024	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	4	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100213	AXON VR - EXT WARRANTY - TABLET	4	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	100	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	3	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101007	AXON VR - EXT WARRANTY - CONTROLLER	4	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	4	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	100	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	17	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	3	11/01/2025	11/30/2029
BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	80396	AXON TASER - EXT WARRANTY - DOCK SIX BAY T7/T10	1	11/01/2025	11/30/2029
BUNDLE - UNLIMITED PREMIUM	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	1	11/01/2025	11/30/2029
BUNDLE - UNLIMITED PREMIUM	100213	AXON VR - EXT WARRANTY - TABLET	1	11/01/2025	11/30/2029
BUNDLE - UNLIMITED PREMIUM	101007	AXON VR - EXT WARRANTY - CONTROLLER	1	11/01/2025	11/30/2029
BUNDLE - UNLIMITED PREMIUM	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	1	11/01/2025	11/30/2029
A la Carte	50448	AXON INTERVIEW - EXT WARRANTY	2	11/01/2025	11/30/2029

Shipping Locations

Location Number	Street	City	State	Zip	Country
1	1535 Airport Blvd	Napa	CA	94558-6292	USA
2	1535 Airport Blvd	Napa	CA	94558-6292	USA

Payment Details

Nov 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	100552	TRANSFER CREDIT - GOODS	1	$21,978.76	$1,703.35	$23,682.11
Year 1	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	$9,419.65	$0.00	$9,419.65
Year 1	100775	AXON BODY 4 - MAGNETIC DISCONNECT CABLE	125	$0.00	$0.00	$0.00
Year 1	100942	AXON BODY 4 - EXT WARRANTY - CAMERA	3	$482.33	$0.00	$482.33
Year 1	101267	AXON VR - PSO - FULL INSTALLATION	1	$2,400.00	$0.00	$2,400.00
Year 1	11630	THIRD PARTY PROVIDED HARDWARE	1	$0.00	$0.00	$0.00
Year 1	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 1	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 1	50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	2	$0.00	$0.00	$0.00
Year 1	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	2	$0.00	$0.00	$0.00
Year 1	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	$302.98	$0.00	$302.98
Year 1	50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	$0.00	$0.00	$0.00
Year 1	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$0.00	$0.00	$0.00
Year 1	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$708.41	$0.00	$708.41
Year 1	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	$0.00	$0.00	$0.00
Year 1	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	$4,800.78	$0.00	$4,800.78
Year 1	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	$0.00	$0.00	$0.00
Year 1	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	$0.00	$0.00	$0.00
Year 1	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	$0.00	$0.00	$0.00
Year 1	50294	AXON INTERVIEW - SERVER - LITE	2	$1,488.99	$115.40	$1,604.39
Year 1	50322	AXON INTERVIEW - TOUCH PANEL PRO	2	$0.00	$0.00	$0.00
Year 1	50448	AXON INTERVIEW - EXT WARRANTY	2	$0.00	$0.00	$0.00
Year 1	50448	AXON INTERVIEW - EXT WARRANTY	3	$173.99	$0.00	$173.99
Year 1	73390	AXON FLEET - CRADLEPOINT ROUTER TRANSFERRED WARRANTY	57	$0.00	$0.00	$0.00
Year 1	74056	AXON INTERVIEW - TOUCH PANEL WALL MOUNT	2	$0.00	$0.00	$0.00
Year 1	74059	AXON INTERVIEW - ENCLOSURE - MOTION SENSOR	2	$0.00	$0.00	$0.00
Year 1	80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	57	$832.54	$0.00	$832.54
Year 1	80401	AXON FLEET 3 - ALPR LICENSE - 1 CAMERA	57	$40,777.32	$0.00	$40,777.32
Year 1	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	$1,214.69	$0.00	$1,214.69
Year 1	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	$0.00	$0.00	$0.00
Year 1	B00024	BUNDLE - UNLIMITED PREMIUM	25	$78,531.00	$1,436.76	$79,967.76
Year 1	BasicLicense	Basic License Bundle	11	$1,919.79	$0.00	$1,919.79
Year 1	Fleet3BRe	Fleet 3 Basic Renewal	57	$45,506.51	$0.00	$45,506.51
Year 1	M00014	BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100	$378,108.02	$10,166.82	$388,274.84
Year 1	ProLicense	Pro License Bundle	4	$2,079.84	$0.00	$2,079.84
Total				**$595,072.20**	**$13,422.33**	**$608,494.53**

Nov 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	100552	TRANSFER CREDIT - GOODS	1	$21,978.76	$1,703.35	$23,682.11
Year 2	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	$9,419.65	$0.00	$9,419.65
Year 2	100775	AXON BODY 4 - MAGNETIC DISCONNECT CABLE	125	$0.00	$0.00	$0.00
Year 2	100942	AXON BODY 4 - EXT WARRANTY - CAMERA	3	$482.33	$0.00	$482.33
Year 2	101267	AXON VR - PSO - FULL INSTALLATION	1	$2,400.00	$0.00	$2,400.00
Year 2	11630	THIRD PARTY PROVIDED HARDWARE	1	$0.00	$0.00	$0.00
Year 2	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 2	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 2	50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	2	$0.00	$0.00	$0.00
Year 2	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	2	$0.00	$0.00	$0.00
Year 2	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	$302.98	$0.00	$302.98
Year 2	50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	$0.00	$0.00	$0.00
Year 2	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$0.00	$0.00	$0.00
Year 2	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$708.41	$0.00	$708.41
Year 2	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	$0.00	$0.00	$0.00
Year 2	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	$4,800.78	$0.00	$4,800.78
Year 2	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	$0.00	$0.00	$0.00
Year 2	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	$0.00	$0.00	$0.00
Year 2	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	$0.00	$0.00	$0.00
Year 2	50294	AXON INTERVIEW - SERVER - LITE	2	$1,488.99	$115.40	$1,604.39
Year 2	50322	AXON INTERVIEW - TOUCH PANEL PRO	2	$0.00	$0.00	$0.00
Year 2	50448	AXON INTERVIEW - EXT WARRANTY	3	$173.99	$0.00	$173.99
Year 2	50448	AXON INTERVIEW - EXT WARRANTY	2	$0.00	$0.00	$0.00
Year 2	73390	AXON FLEET - CRADLEPOINT ROUTER TRANSFERRED WARRANTY	57	$0.00	$0.00	$0.00
Year 2	74056	AXON INTERVIEW - TOUCH PANEL WALL MOUNT	2	$0.00	$0.00	$0.00
Year 2	74059	AXON INTERVIEW - ENCLOSURE - MOTION SENSOR	2	$0.00	$0.00	$0.00
Year 2	80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	57	$832.54	$0.00	$832.54
Year 2	80401	AXON FLEET 3 - ALPR LICENSE - 1 CAMERA	57	$40,777.33	$0.00	$40,777.33
Year 2	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	$1,214.69	$0.00	$1,214.69
Year 2	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	$0.00	$0.00	$0.00
Year 2	B00024	BUNDLE - UNLIMITED PREMIUM	25	$78,531.00	$1,436.76	$79,967.76
Year 2	BasicLicense	Basic License Bundle	11	$1,919.79	$0.00	$1,919.79
Year 2	Fleet3BRe	Fleet 3 Basic Renewal	57	$45,506.51	$0.00	$45,506.51
Year 2	M00014	BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100	$378,108.02	$10,166.82	$388,274.84
Year 2	ProLicense	Pro License Bundle	4	$2,079.84	$0.00	$2,079.84
Total				**$595,072.21**	**$13,422.33**	**$608,494.54**

Nov 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	100552	TRANSFER CREDIT - GOODS	1	$21,978.76	$1,703.35	$23,682.11
Year 3	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	$9,419.65	$0.00	$9,419.65
Year 3	100775	AXON BODY 4 - MAGNETIC DISCONNECT CABLE	125	$0.00	$0.00	$0.00
Year 3	100942	AXON BODY 4 - EXT WARRANTY - CAMERA	3	$482.33	$0.00	$482.33
Year 3	101267	AXON VR - PSO - FULL INSTALLATION	1	$2,400.00	$0.00	$2,400.00
Year 3	11630	THIRD PARTY PROVIDED HARDWARE	1	$0.00	$0.00	$0.00
Year 3	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 3	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 3	50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	2	$0.00	$0.00	$0.00
Year 3	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	$302.98	$0.00	$302.98
Year 3	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	2	$0.00	$0.00	$0.00
Year 3	50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	$0.00	$0.00	$0.00
Year 3	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$0.00	$0.00	$0.00

Nov 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$708.41	$0.00	$708.41
Year 3	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	$4,800.78	$0.00	$4,800.78
Year 3	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	$0.00	$0.00	$0.00
Year 3	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	$0.00	$0.00	$0.00
Year 3	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	$0.00	$0.00	$0.00
Year 3	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	$0.00	$0.00	$0.00
Year 3	50294	AXON INTERVIEW - SERVER - LITE	2	$1,488.99	$115.40	$1,604.39
Year 3	50322	AXON INTERVIEW - TOUCH PANEL PRO	2	$0.00	$0.00	$0.00
Year 3	50448	AXON INTERVIEW - EXT WARRANTY	2	$0.00	$0.00	$0.00
Year 3	50448	AXON INTERVIEW - EXT WARRANTY	3	$173.99	$0.00	$173.99
Year 3	73390	AXON FLEET - CRADLEPOINT ROUTER TRANSFERRED WARRANTY	57	$0.00	$0.00	$0.00
Year 3	74056	AXON INTERVIEW - TOUCH PANEL WALL MOUNT	2	$0.00	$0.00	$0.00
Year 3	74059	AXON INTERVIEW - ENCLOSURE - MOTION SENSOR	2	$0.00	$0.00	$0.00
Year 3	80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	57	$832.54	$0.00	$832.54
Year 3	80401	AXON FLEET 3 - ALPR LICENSE - 1 CAMERA	57	$40,777.33	$0.00	$40,777.33
Year 3	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	$1,214.69	$0.00	$1,214.69
Year 3	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	$0.00	$0.00	$0.00
Year 3	B00024	BUNDLE - UNLIMITED PREMIUM	25	$78,531.00	$1,436.76	$79,967.76
Year 3	BasicLicense	Basic License Bundle	11	$1,919.79	$0.00	$1,919.79
Year 3	Fleet3BRe	Fleet 3 Basic Renewal	57	$45,506.51	$0.00	$45,506.51
Year 3	M00014	BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100	$378,108.02	$10,166.82	$388,274.84
Year 3	ProLicense	Pro License Bundle	4	$2,079.84	$0.00	$2,079.84
Total				**$595,072.21**	**$13,422.33**	**$608,494.54**

Nov 2027

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	100552	TRANSFER CREDIT - GOODS	1	$21,978.76	$1,703.35	$23,682.11
Year 4	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	$9,419.65	$0.00	$9,419.65
Year 4	100775	AXON BODY 4 - MAGNETIC DISCONNECT CABLE	125	$0.00	$0.00	$0.00
Year 4	100942	AXON BODY 4 - EXT WARRANTY - CAMERA	3	$482.33	$0.00	$482.33
Year 4	101267	AXON VR - PSO - FULL INSTALLATION	1	$2,400.00	$0.00	$2,400.00
Year 4	11630	THIRD PARTY PROVIDED HARDWARE	1	$0.00	$0.00	$0.00
Year 4	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 4	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 4	50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	2	$0.00	$0.00	$0.00
Year 4	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	2	$0.00	$0.00	$0.00
Year 4	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	$302.98	$0.00	$302.98
Year 4	50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	$0.00	$0.00	$0.00
Year 4	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$708.41	$0.00	$708.41
Year 4	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$0.00	$0.00	$0.00
Year 4	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	$4,800.78	$0.00	$4,800.78
Year 4	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	$0.00	$0.00	$0.00
Year 4	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	$0.00	$0.00	$0.00
Year 4	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	$0.00	$0.00	$0.00
Year 4	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	$0.00	$0.00	$0.00
Year 4	50294	AXON INTERVIEW - SERVER - LITE	2	$1,488.99	$115.40	$1,604.39
Year 4	50322	AXON INTERVIEW - TOUCH PANEL PRO	2	$0.00	$0.00	$0.00
Year 4	50448	AXON INTERVIEW - EXT WARRANTY	3	$173.99	$0.00	$173.99
Year 4	50448	AXON INTERVIEW - EXT WARRANTY	2	$0.00	$0.00	$0.00
Year 4	73390	AXON FLEET - CRADLEPOINT ROUTER TRANSFERRED WARRANTY	57	$0.00	$0.00	$0.00
Year 4	74056	AXON INTERVIEW - TOUCH PANEL WALL MOUNT	2	$0.00	$0.00	$0.00
Year 4	74059	AXON INTERVIEW - ENCLOSURE - MOTION SENSOR	2	$0.00	$0.00	$0.00

Nov 2027

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	57	$832.54	$0.00	$832.54
Year 4	80401	AXON FLEET 3 - ALPR LICENSE - 1 CAMERA	57	$40,777.33	$0.00	$40,777.33
Year 4	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	$1,214.69	$0.00	$1,214.69
Year 4	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	$0.00	$0.00	$0.00
Year 4	B00024	BUNDLE - UNLIMITED PREMIUM	25	$78,531.00	$1,436.76	$79,967.76
Year 4	BasicLicense	Basic License Bundle	11	$1,919.79	$0.00	$1,919.79
Year 4	Fleet3BRe	Fleet 3 Basic Renewal	57	$45,506.51	$0.00	$45,506.51
Year 4	M00014	BUNDLE - OFFICER SAFETY PLAN 10 PREMIUM	100	$378,108.02	$10,166.82	$388,274.84
Year 4	ProLicense	Pro License Bundle	4	$2,079.84	$0.00	$2,079.84
Total				**$595,072.21**	**$13,422.33**	**$608,494.54**

Nov 2028

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	100552	TRANSFER CREDIT - GOODS	1	$21,978.76	$1,703.37	$23,682.13
Year 5	100553	TRANSFER CREDIT - SOFTWARE AND SERVICES	1	$9,419.65	$0.00	$9,419.65
Year 5	100775	AXON BODY 4 - MAGNETIC DISCONNECT CABLE	125	$0.00	$0.00	$0.00
Year 5	100942	AXON BODY 4 - EXT WARRANTY - CAMERA	3	$482.33	$0.00	$482.33
Year 5	101267	AXON VR - PSO - FULL INSTALLATION	1	$2,400.00	$0.00	$2,400.00
Year 5	11630	THIRD PARTY PROVIDED HARDWARE	1	$0.00	$0.00	$0.00
Year 5	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 5	11641	AXON FLEET - CRADLEPOINT NETCLOUD ESSENTIALS RENEWAL - 1YR	57	$2,173.30	$0.00	$2,173.30
Year 5	50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	2	$0.00	$0.00	$0.00
Year 5	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	2	$0.00	$0.00	$0.00
Year 5	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	$302.98	$0.00	$302.98
Year 5	50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	$0.00	$0.00	$0.00
Year 5	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$0.00	$0.00	$0.00
Year 5	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	$708.41	$0.00	$708.41
Year 5	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	$0.00	$0.00	$0.00
Year 5	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	$4,800.78	$0.00	$4,800.78
Year 5	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	$0.00	$0.00	$0.00
Year 5	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	$0.00	$0.00	$0.00
Year 5	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	$0.00	$0.00	$0.00
Year 5	50294	AXON INTERVIEW - SERVER - LITE	2	$1,488.99	$115.38	$1,604.37
Year 5	50322	AXON INTERVIEW - TOUCH PANEL PRO	2	$0.00	$0.00	$0.00
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Year 5	ProLicense	Pro License Bundle	4	$2,079.84	$0.00	$2,079.84
Total				**$595,072.21**	**$13,422.67**	**$608,494.88**

Docusign Envelope ID: 000F5A07-5E8D-48E5-9677-2A7DD1DBEEBE

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at https://www.axon.com/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

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Exceptions to Standard Terms and Conditions

Agency has existing contract(s) originated via Quote(s): Q-258629, Q-269368, and Q-414566. (Napa County Agreement No. 210016B & 230195B).

Agency is terminating those contracts effective 09/01/2024, and so the new contract will supersede those contracts (210016B & 230195B). Any change in this date will result in modification of the program value which may result in additional fees or credits due to or from Axon.

The parties agree that Axon is applying a Net Transfer Debit of $156,992.04 to the quote for delivered but unpaid items.

Signature

Date Signed

8/7/2024

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1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1385

TO: Board of Supervisors

FROM: Sheriff Oscar Ortiz - Director of Emergency Services

REPORT BY: Angel Hernandez - Emergency Services Officer

SUBJECT: Resolution and Agreement for Participation in Fiscal Year 2022 UASI Grant Program

RECOMMENDATION

Adopt a Resolution; and approve and authorize grant agreement 250162B and related Budget Amendment to participate in the Urban Area Security Initiative (UASI) administered by Bay Area UASI FY22 grant funding for the performance period of July 1, 2024, to December 31, 2024 to enhance regional preparedness. (Fiscal Impact: $7,872 Revenue; General Fund; Not Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

UASI is a program under the Homeland Security Grant Program to enhance regional preparedness in major metropolitan areas throughout the United States. The UASI program directly supports expanding regional collaboration and is meant to assist participants in their creation of regional systems for prevention, protection, response, and recovery. The San Francisco Bay Area has been designated as one of the ten high-risk areas (Tier 1) in the United States. As a surrounding county, Napa County is included as a Bay Area UASI regional partner and is eligible to receive funds under this program. The City and County of San Francisco is the grantee for these funds and is responsible for executing subgrant agreements for the distribution of the funds to jurisdictions within the Region that apply by submitting project requests.

Napa Valley Community Emergency Response Team (CERT) is a community based and community supported volunteer organization staffed by local community members, which can deploy to assist the local community, such as during a large-scale disaster upon the request of the County Office of Emergency Services (OES) and/or Sheriff's Office. In 2024, Napa Valley CERT will host six basic trainings, two of which will be in Spanish, three skills trainings and facilitate an annual Full-Scale CERT Exercise on October 19, 2024.

The County has four established CERT teams with the intention to grow in areas like Calistoga, Angwin and Yountville.

Napa County applied for and was awarded grant funds in the amount of $7,872 to purchase four (4) CERT Team Equipment Kits and two (2) Command Posts for the County's Napa Valley Community Emergency Response Team (CERT). The purchase of four (4) CERT Team Equipment Kits and two (2) Command Posts for the County's CERT program to equip our teams with the proper training equipment to establish a command post during an activation and deployment of rescue operations.

The grant terms require the County to purchase the equipment prior to receiving reimbursement from the BAUASI grant funds. The County of Napa Office of Emergency Services manages and coordinates the program projects. The Undersheriff may initiate a reallocation of certain expenses to meet the needs of specific projects. The County of Napa Office of Emergency Services will, as required by 2 CFR 200.313(d), request CERT to physically inventory equipment purchased with FY22 UASI funds every two years and maintain appropriate inventory records. Staff requests approval of and authorization for the Undersheriff to execute reimbursement claims and any subsequent documentation that may be required following approval of the FY22 UASI grant application, including executing the agreement and any subsequent amendments, modifications which are within budgeted appropriations.

Requested Actions:

1. Adoption of a resolution approving participation in the federally funded Urban Area Security Initiative Grant Program for fiscal year 2022.
2. Approval of a budget amendment increasing appropriations for the OES Grants subdivision 1380005 Special Department Expense 53600 by $7,872 with offsetting revenues from FY22 UASI grant funding.
3. Authorization for the Chair to sign grant agreement number 250162B.
4. Authorization for the Assistant County Executive Officer and the Undersheriff to execute and submit any other documents necessary to accept and administer the program funds.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	To be budgeted in OES Grants Budget - 1380005
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	FY22 UASI grant funds will reimburse the OES Grants budget upon completion of the grant's performance period.
Is the general fund affected?	Yes

Future fiscal impact:	There is no future fiscal impact.
Consequences if not approved:	If not approved, OES will not participate in FY22 UASI.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO. 2024-_____

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AUTHORIZING PARTICIPATION IN THE FISCAL YEAR 2022 URBAN AREA SECURITY INITIATIVE GRANT PROGRAM AND ACCEPTANCE OF ALLOCATED FUNDS

WHEREAS, the United States Department of Homeland Security (DHS) consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined "Bay Area Urban Area" for the purpose of application for and allocation and distribution of federal Urban Areas Security Initiative program grant funds; and

WHEREAS, on May 13, 2022 the Department of Homeland Security released its funding announcement for the FY2022 Urban Area Security Initiative Grant Program; and

WHEREAS, in October 2023 the City and County of San Francisco as the fiscal agent for the Bay Area Urban Area Security Initiative (BAUASI) notified Napa County of the opportunity to participate in the FY2022 Urban Area Security Initiative Grant Program; and

WHEREAS, as a member jurisdiction of the BAUASI, Napa County is eligible to participate in the Grant Program; and

WHEREAS, the BAUASI requires a resolution of the Board of Supervisors (Board) and a fully executed agreement to be submitted in order to finalize the acceptance process; and

WHEREAS, the Napa County Office of Emergency Services submitted an application to BAUASI by the February 20, 2024 deadline and has tentatively been approved for a grant of up to $7,872.00 towards training materials and equipment for Napa Valley Community Emergency Response Teams (CERT);

NOW, THEREFORE, BE IT RESOLVED, by the Napa County Board of Supervisors as follows:

1. The Board approves the County's participation in the federally funded Fiscal Year 2022 BAUASI Grant Program, and confirms that the County has the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost, if any) to ensure proper planning, management and completion of the project described in the recitals above.

2. The Chair of the Board is authorized to sign the Agreement between Napa County and the City and County of San Francisco dated July 1, 2024, for the distribution of Fiscal Year 2022 Urban Area Security Initiative grant funds in the amount of $7,872.00.

3. The County Assistant Executive Officer and the Undersheriff are hereby authorized to prepare, execute, and submit any other documents and to take any other actions necessary to

obtain the grant funds provided by DHS and sub-granted through the City and County of San Francisco and for certifying compliance with the conditions of the grant.

4. The grant funds shall not be used to supplant expenditures controlled by Napa County or the Board.

5. The Board authorizes Napa County to indemnity the City and County of San Francisco from any liability arising from the use of the grant funds, as set forth in the Agreement.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 20th day of August, 2024, by the following vote:

AYES: SUPERVISORS _____

_____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: *Thomas C. Zeleny* Chief Deputy County Counsel	Date: _____ Processed By:	By: _____
Date: July 30, 2024 PL Doc. No. 117784	_____ Deputy Clerk of the Board	

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND THE COUNTY OF NAPA FOR THE DISTRIBUTION OF FY 2022 UASI GRANT FUNDS

THIS AGREEMENT is made this **JULY 1, 2024,** in the City and County of San Francisco, State of California, by and between the **COUNTY OF NAPA** ("SUBRECIPIENT") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("San Francisco" or "City"), in its capacity as fiscal agent for the Approval Authority, as defined below, acting by and through the San Francisco Department of Emergency Management ("DEM").

RECITALS

WHEREAS, The United States Department of Homeland Security ("DHS") consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined Bay Area Urban Area ("UASI Region") for the purpose of application for and allocation and distribution of federal Urban Areas Security Initiative ("UASI") program grant funds; and

WHEREAS, The Bay Area Urban Area Approval Authority ("Approval Authority") was established as the Urban Area Working Group ("UAWG") for the UASI Region, to provide overall governance of the homeland security grant program across the UASI Region, to coordinate development and implementation of all UASI program initiatives, and to ensure compliance with all UASI program requirements; and

WHEREAS, The UASI General Manager is responsible for implementing and managing the policy and program decisions of the Approval Authority, directing the work of the UASI Management Team personnel, and performing other duties as determined and directed by the Approval Authority, and

WHEREAS, San Francisco has been designated as the grantee for UASI funds granted by the DHS through the California Office of Emergency Services ("Cal OES") to the UASI Region, with responsibility to establish procedures and execute subgrant agreements for the distribution of UASI program grant funds to jurisdictions selected by the Approval Authority to receive grant funding; and

WHEREAS, San Francisco has been designated to serve as the fiscal agent for the Approval Authority, and to establish procedures and provide all financial services for distribution of UASI program grant funds within the UASI Region; and

WHEREAS, Pursuant to grant allocation decisions by the Approval Authority, the UASI Management Team has asked San Francisco to distribute a portion of the regional UASI grant funds to SUBRECIPIENT on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 **Specific Terms**. Unless the context requires otherwise, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) "**ADA**" shall mean the Americans with Disabilities Act (including all rules and regulations there under) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

(b) "**Authorized Expenditures**" shall mean expenditures for those purposes identified and budgeted in Appendix A, attached hereto and incorporated by reference as though fully set forth herein.

(c) "**Event of Default**" shall have the meaning set forth in Section 7.1.

(d) "**Fiscal Quarter**" shall mean each period of three calendar months commencing on July 1, October 1, January 1, and April 1, respectively.

(e) "**Grant Funds**" shall mean any and all funds allocated or disbursed to SUBRECIPIENT (Unique Entity ID: **YLX2B1GBX891**) under this Agreement. This Agreement shall specifically cover funds allocated or disbursed from Cal OES Grant No. 2022-0043 Cal OES ID No. 075-95017, CFDA No. 97.067, per Cal OES award notice dated October 24, 2022.

(f) "**Grant Plan**" shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter, and the budget and requirements, described in Appendix A and the WebGrants system. If SUBRECIPIENT requests any modification to the Grant Plan, SUBRECIPIENT shall submit a written request to the UASI General Manager with the following information: Scope of change requested, reason for change, proposed plan for change, summary of approved and requested modifications to the Grant Plan, and any necessary approvals in support of change (e.g., EHP).

(g) "**Indemnified Parties**" shall mean: (i) San Francisco, including all commissions, departments including DEM, agencies, and other subdivisions of San Francisco; (ii) San Francisco's elected officials, directors, officers, employees, agents, successors, and assigns; and (iii) all persons or entities acting on behalf of the foregoing.

(h) "**Losses**" shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(i) "**Reimbursement Request**" shall have the meaning set forth in Section 3.10(a).

1.2 **Additional Terms**. The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of City. The terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of City. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable or satisfactory to, City. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation." The use of the term "subcontractor," "subgrantee," "successor" or "assign" herein refers only to a subcontractor, subgrantee, successor or assign expressly permitted under Article 8.

1.3 **References to this Agreement**. References to this Agreement include: (a) any and all appendices, exhibits, schedules, and attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 10.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," "herein" or "hereto" refer to this Agreement as a whole.

1.4 **Reference to laws.** Any reference in this Agreement to a federal or state statute, regulation, executive order, requirement, policy, guide, guideline, information bulletin, or instruction shall mean that statute, regulation, executive order, requirement, policy, guide, guideline, information bulletin, or instruction as is currently in effect and as may be amended, modified or supplemented from time to time.

ARTICLE 2
ALLOCATION AND CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON SAN FRANCISCO'S OBLIGATIONS

2.1 **Risk of Non-Allocation of Grant Funds**. This Agreement is subject to all federal and state grant requirements and guidelines, including DHS and Cal OES requirements, guidelines, information bulletins, and instructions, the decision-making of the Cal OES and the Approval Authority, the terms and conditions of the grant award; the approved application, and to the extent applicable the budget and fiscal provisions of the San Francisco Charter. The Approval Authority shall have no obligation to allocate or direct disbursement of funds for this Agreement in lieu of allocations for new or other agreements. SUBRECIPIENT acknowledges and agrees that grant decisions are subject to the discretion of the Cal OES and Approval Authority. Further, SUBRECIPIENT acknowledges and agrees that the City shall have no obligation to disburse grant funds to SUBRECIPIENT until City and SUBRECIPIENT have fully and finally executed this Agreement. SUBRECIPIENT acknowledges and agrees that if it takes any action, informal or formal, to appropriate, encumber or expend Grant Funds before final allocation decisions by Cal OES and the Approval Authority, and before this Agreement is fully and finally executed, it assumes all risk of possible non-allocation or non-reimbursement of funds, and such acknowledgement and agreement is part of the consideration of this Agreement.

2.2 **Certification of Controller; Guaranteed Maximum Costs**. No funds shall be available under this Agreement without prior written authorization certified by the San Francisco Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code:

(a) San Francisco's obligations hereunder shall not at any time exceed the amount approved in the grant award and/or by the Approval Authority, and certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by San Francisco ordinances governing emergency conditions, San Francisco and its employees and officers, and the UASI Management Team and its personnel, are not authorized to request SUBRECIPIENT to perform services or to provide materials, equipment and supplies that would result in SUBRECIPIENT performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement, unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. San Francisco is not required to pay SUBRECIPIENT for services, materials, equipment or supplies that are provided by SUBRECIPIENT that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by San Francisco.

(c) San Francisco and its employees and officers, and the UASI Management Team and its personnel, are not authorized to offer or promise to SUBRECIPIENT additional funding for this Agreement that would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. San Francisco is not required to honor any offered or promised additional funding that exceeds the maximum provided in this Agreement that requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

(d) The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

2.3 **SUPERSEDURE OF CONFLICTING PROVISIONS.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

ARTICLE 3
PERFORMANCE OF THE AGREEMENT

3.1 **Duration of Term**. The term of this Agreement shall commence on **JULY 1, 2024,** and shall end at 11:59 p.m. San Francisco time on **DECEMBER 31, 2024**.

3.2 **Maximum Amount of Funds**. In no event shall the amount of Grant Funds disbursed hereunder exceed **SEVEN THOUSAND SEVEN HUNDRED SEVENTY-TWO DOLLARS ($7,872).** The City will not automatically transfer Grant Funds to SUBRECIPIENT upon execution of this Agreement. SUBRECIPIENT must submit a Reimbursement Request under Section 3.10 of this Agreement, approved by the UASI Management Team and City, before the City will disburse Grant Funds to SUBRECIPIENT.

3.3 **Use of Funds**.

(a) General Requirements. SUBRECIPIENT shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in the Grant Plan. SUBRECIPIENT shall not use or expend Grant Funds for any other purpose, including but not limited to, for matching funds for other federal grants/cooperative agreements, lobbying or intervention in federal regulatory or adjudicatory proceedings, or to sue the federal government or any other government entity. SUBRECIPIENT shall not permit any federal employee to receive Grant Funds.

(b) Modification of Grant Plan. Under Sections 1.1(f) and 10.2 of this Agreement, SUBRECIPIENT may submit a written request to modify the Grant Plan. SUBRECIPIENT shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to such a request for modification until (1) the General Manager or designee has provided written approval for the request and (2) the parties have finally executed a modification of this Agreement under Section 10.2, to reflect the modified Grant Plan. In addition, if the modification request requires approval from the Approval Authority and/or Cal OES, as determined by the General Manager, SUBRECIPIENT shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to the modification request without approval from the Approval Authority and/or Cal OES.

(c) No Supplanting. SUBRECIPIENT shall use Grant Funds to supplement existing funds, and not replace (supplant) funds that have been appropriated for the same purpose.

(d) Obligations. SUBRECIPIENT must expend Grant Funds in a timely manner consistent with the grant milestones, guidance and assurances; and make satisfactory progress toward the goals, objectives, milestones and deliverables in this Agreement.

3.4 **Grant Assurances; Other Requirements; Cooperation with Monitoring**.

(a) SUBRECIPIENT shall comply with all Grant Assurances included in Appendix B, attached hereto and incorporated by reference as though fully set forth herein. SUBRECIPIENT shall require all subgrantees, contractors and other entities receiving Grant Funds through or from SUBRECIPIENT to execute a copy of the Grant Assurances, and shall ensure that they comply with those Grant Assurances.

(b) In addition to complying with all Grant Assurances, SUBRECIPIENT shall comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority. SUBRECIPIENT shall require and ensure that all subgrantees, contractors and other entities receiving Grant Funds through or from SUBRECIPIENT comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority.

(c) SUBRECIPIENT shall promptly comply with all standards, specifications and formats of San Francisco and the UASI Management Team, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and compliance with this Agreement. SUBRECIPIENT shall cooperate in good faith with San Francisco and the UASI Management Team in any evaluation, inspection, planning or monitoring activities conducted or authorized by DHS, Cal OES, San Francisco or the UASI Management Team. For ensuring compliance with non-supplanting requirements, upon request by City or the UASI Management Team, SUBRECIPIENT shall supply documentation certifying that a reduction of non-federal resources occurred for reasons other than the receipt or expected receipt of Grant Funds.

3.5 **Administrative, Programmatic and Financial Management Requirements.** SUBRECIPIENT shall establish and maintain administrative, programmatic and financial management systems and records in accordance with federal and State of California requirements. This provision requires, at a minimum, that SUBRECIPIENT comply with the following non-exclusive list of regulations commonly applicable to DHS grants, as applicable to this Agreement and the Grant Plan:

(a) Administrative Requirements:

1. 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).

(b) Cost Principles:

1. 2 CFR Part 200, Subpart E - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133);
2. Federal Acquisition Regulations (FAR), Part 31.2 *Contract Principles and Procedures, Contracts with Commercial Organizations*.

(c) Audit Requirements:

1. 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).

3.6 **Technology Requirements.**

(a) National Information Exchange Model ("NIEM"). SUBRECIPIENT shall use the latest NIEM specifications and guidelines regarding the use of Extensible Markup Language ("XML") for all awards of Grant Funds.

(b) Geospatial Guidance. SUBRECIPIENT is encouraged to use Geospatial technologies, which can capture, store, analyze, transmit and/or display location-based information (i.e., information linked to a latitude and longitude), and to align any geospacial activities with the guidance available on the Federal Emergency Management Agency ("FEMA") website.

(c) Criminal Intelligence Systems Operating Policies. Any information technology system funded or supported by Grant Funds shall comply with 28 CFR Part 23, *Criminal Intelligence Systems Operating Policies*, if applicable.

(d) SUBRECIPIENT is encouraged to use the DHS guidance in *Best Practices for Government Use of CCTV: Implementing the Fair Information Practice Principles*, if Grant Funds are used to purchase or install closed circuit television (CCTV) systems or to support operational CCTV systems.

3.7 **Procurement Requirements.**

(a) General Requirements. SUBRECIPIENT shall follow its own procurement requirements as long as those requirements comply with all applicable federal and State of California statutes, regulations, requirements, policies, guides, guidelines and instructions.

(b) Specific Purchases. If SUBRECIPIENT is using Grant Funds to purchase interoperable communication equipment, SUBRECIPIENT shall consult DHS's SAFECOM's coordinated grant guidance, which outlines standards and equipment information to enhance interoperable communication. If SUBRECIPIENT is using Grant Funds to acquire critical emergency supplies, prior to expending any Grant Funds, SUBRECIPIENT shall submit to the UASI Management Team for approval by Cal OES a viable inventory management plan, an effective distribution strategy, sustainment costs for such an effort, and logistics expertise to avoid situations where funds are wasted because supplies are rendered ineffective due to lack of planning.

(c) Bond requirement. SUBRECIPIENT shall obtain a performance bond for any equipment items over $250,000 or any vehicle, aircraft or watercraft financed with Grant Funds.

3.8 **Subgrantee and Contractor Requirements.**

(a) SUBRECIPIENT shall ensure and independently verify that any subgrantee, contractor or other entity receiving Grant Funds through or from SUBRECIPIENT is not debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs, under Executive Orders 12549 and 12689, as implemented at 2 CFR Part 3000. SUBRECIPIENT shall obtain documentation of eligibility before disbursing Grant Funds to any subgrantee, contractor or other entity. SUBRECIPIENT shall maintain documentary proof of this verification in its files. SUBRECIPIENT shall establish procedures for the effective use of the "Excluded Parties List System," to assure that it does not provide Grant Funds to excluded parties. SUBRECIPIENT shall also establish procedures to provide for

effective use and/or dissemination of the list to assure that its grantees and subgrantees, including contractors, at any tier do not make awards in violation of the non-procurement debarment and suspension common rule.

(b) SUBRECIPIENT shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from SUBRECIPIENT complies with the requirements of 44 CFR Part 18, *New Restrictions on Lobbying*; and

(c) SUBRECIPIENT shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from SUBRECIPIENT complies with the requirements of 2 CFR Part 3001, *Requirements for Drug-Free Workplace (Financial Assistance).*

3.9 **Monitoring Grant Performance.**

(a) City and the UASI Management Team are both authorized to perform periodic monitoring reviews of SUBRECIPIENT's performance under this Agreement, to ensure that the Grant Plan goals, objectives, performance requirements, timelines, milestone completion, budgets and other criteria are being met. Programmatic monitoring may include the Regional Federal Preparedness Coordinators, or other federal or state personnel, when appropriate. Monitoring may involve a combination of desk-based reviews and on-site monitoring visits, inspection of records, and verifications of grant activities. These reviews will involve a review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The reviews may include, but are not limited to:

1. Evaluating eligibility of expenditures;
2. Comparing actual grant activities to those approved by the Approval Authority and specified in the Grant Plan;
3. Ensuring that any advances have been deposited in an interest bearing account and disbursed in accordance with applicable guidelines; and
4. Confirming compliance with: Grant Assurances; information provided on performance reports and payment requests; and needs and threat assessments and strategies.

(b) SUBRECIPIENT is responsible for monitoring and auditing the grant activities of any subgrantee, contractor or other entity receiving Grant Funds through or from SUBRECIPIENT. This requirement includes but is not limited to mandatory on-site verification visits.

(c) If after any monitoring review, the DHS or Cal OES makes findings that require a Corrective Action Plan by SUBRECIPIENT, the City shall place a hold on all Reimbursement Requests from SUBRECIPIENT until the findings are resolved.

3.10 **Disbursement Procedures**. San Francisco shall disburse Grant Funds to SUBRECIPIENT as follows:

(a) SUBRECIPIENT shall submit to the UASI Management Team, in the manner specified for notices pursuant to Article 9, a document ("Reimbursement Request") substantially in the form attached as Appendix C, attached hereto and incorporated by reference as though fully set forth herein. The UASI Management Team shall serve as the primary contact for SUBRECIPIENT regarding any Reimbursement Request.

(b) The UASI Management Team will review all Reimbursement Requests for compliance with this Agreement and all applicable guidelines and requirements. The UASI Management Team will

return to SUBRECIPIENT any Reimbursement Request that is submitted and not approved by the UASI Management Team, with a brief statement of the reason for the rejection of the Reimbursement Request.

(c) The UASI Management Team will submit any Reimbursement Request that is approved by the UASI Management Team to DEM. City through DEM shall review the Reimbursement Request for compliance with this Agreement and all applicable guidelines and requirements. City shall return to the UASI Management Team any Reimbursement Request that is not approved by City, with a brief explanation of the reason for the rejection of the Reimbursement Request.

(d) If a rejection relates only to a portion of the expenditures itemized in any Reimbursement Request, City shall have no obligation to disburse any Grant Funds for any other expenditures itemized in such Reimbursement Request unless and until SUBRECIPIENT submits a Reimbursement Request that is in all respects acceptable to the UASI Management Team and to City.

(e) If SUBRECIPIENT is not in compliance with any provision of this Agreement, City may withhold disbursement of Grant Funds until SUBRECIPIENT has taken corrective action and currently complies with all terms and conditions of the Agreement.

3.11 **Disallowance**. SUBRECIPIENT agrees that if it claims or receives reimbursement from City for an expenditure that is later disallowed by the State of California or the federal government, SUBRECIPIENT shall promptly refund the disallowed amount to City upon City's written request. At its option, City may offset all or any portion of the disallowed amount against any other payment due to SUBRECIPIENT hereunder or under any other Agreement with SUBRECIPIENT. Any such offset with respect to a portion of the disallowed amount shall not release SUBRECIPIENT from SUBRECIPIENT's obligation hereunder to refund the remainder of the disallowed amount.

3.12 **Sustainability**. Grant Funded programs that contain continuing personnel and operating expenses, over and above planning and implementation costs, must be sustained once the Grant Funding ends. If Equipment is purchased with grant funds the equipment must be sustained through the useful life of equipment. By executing this Agreement, SUBRECIPIENT acknowledges its responsibility and agrees to sustain continuing programs beyond the Grant Funding period. SUBRECIPIENT acknowledges and agrees that this sustainability requirement is a material term of the Agreement.

3.13 **EHP Requirements.**

(a) Grant Funded projects must comply with the federal Environmental and Historic Preservation ("EHP") program. SUBRECIPIENT shall not initiate any project with the potential to impact environmental or historic properties or resources until Cal OES and FEMA have completed EHP reviews and approved the project. Examples of projects that may impact EHP resources include: communications towers, physical security enhancements, new construction, and modifications to buildings, structures and objects that are 50 years old or greater. SUBRECIPIENT shall notify the UASI Management Team of any project that may require an EHP review. SUBRECIPIENT agrees to provide detailed project information to FEMA, Cal OES and/or the UASI Management Team, to cooperate fully in the review, and to prepare any documents requested for the review. SUBRECIPIENT shall comply with all conditions placed on the project as the result of the EHP review, and implement any treatment or mitigation measures deemed necessary to address potential adverse impacts. With prior approval of the UASI Management Team, SUBRECIPIENT may use Grant Funds toward the costs of preparing documents and/or implementing treatment or mitigation measures. Any change to the approved project scope of work will require re-evaluation for compliance with EHP requirements. If ground disturbing activities occur during project implementation, SUBRECIPIENT shall notify the UASI Management Team and ensure monitoring of ground disturbance. If any potential archeological resources are

discovered, SUBRECIPIENT shall immediately cease construction in that area and notify the UASI Management Team, which will notify the appropriate State Historic Preservation Office. If SUBRECIPIENT is using Grant Funds for a communication tower project, SUBRECIPIENT shall complete its Federal Communication Commission ("FCC") EHP process before preparing its Cal OES/FEMA EHP materials, and shall include the FCC EHP materials in the Cal OES/FEMA submission.

(b) Any construction or other project that SUBRECIPIENT initiates without the necessary EHP review and approval will not be eligible for reimbursement. Failure of SUBRECIPIENT to meet federal, State, and local EHP requirements, obtain applicable permits, or comply with any conditions that may be placed on the project as the result of FEMA's and/or Cal OES's EHP review will result in the denial of Reimbursement Requests.

3.14 **National Energy Conservation Policy and Energy Policy Acts**. SUBRECIPIENT shall comply with the following requirements:

(a) Grant Funds may not be used in contravention of the Federal buildings performance and reporting requirements of Executive Order 13123, part 3 of Title V of the National Energy Conservation Policy Act (42 USC §8251 et seq.), or Subtitle A of Title I of the Energy Policy Act of 2005; and

(b) Grant Funds may not be used in contravention of Section 303 of the Energy Policy Act of 1992 (42 USC §13212).

3.15 **Royalty-Free License**. SUBRECIPIENT understands and agrees that FEMA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for federal government purposes: (a) the copyright in any work developed using Grant Funds; and (b) any rights of copyright that SUBRECIPIENT purchases or acquires using Grant Funds. SUBRECIPIENT shall consult with the UASI Management Team and FEMA regarding the allocation of any patent rights that arise from, or are purchased with, Grant Funds.

3.16 **Publication Statements**. SUBRECIPIENT shall ensure that all publications created or developed under this Agreement prominently contain the following statement: "This document was prepared under a grant from the Federal Emergency Management Agencies Grant Programs Directorate (FEMA/GPD) within the US Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA/GPD or the US Department of Homeland Security."

ARTICLE 4
REPORTING REQUIREMENTS; AUDITS

4.1 **Regular Reports**. SUBRECIPIENT shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the UASI Management Team or by City, in form and substance satisfactory to the UASI Management Team or City. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

4.2 **Notification of Defaults or Changes in Circumstances**. SUBRECIPIENT shall notify the UASI Management Team and City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; (b) any change of circumstances that would cause any of the representations or warranties contained in Article 5 to be false or misleading at any time during the term of this Agreement; and (c) any change of circumstances or events that would cause SUBRECIPIENT to be out of compliance with the Grant Assurances in Appendix B.

4.3 **Books and Records**. SUBRECIPIENT shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds. Without limiting the scope of the foregoing, SUBRECIPIENT shall establish and maintain accurate financial books and accounting records relating to Authorized Expenditures and to Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. SUBRECIPIENT shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than three (3) years after expiration of this Agreement or until any final audit by Cal OES has been fully completed, whichever is later.

4.4 **Inspection and Audit**. SUBRECIPIENT shall make available to the UASI Management Team and to City, and to UASI Management Team and City employees and authorized representatives, during regular business hours, all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by SUBRECIPIENT under Section 4.3, and allow access and the right to examine those items. SUBRECIPIENT shall permit the UASI Management Team and City, and UASI Management Team and City employees and authorized representatives, to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of the UASI Management Team and City pursuant to this Section shall remain in effect so long as SUBRECIPIENT has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4. The DHS, the Comptroller General of the United States or designee, and Cal OES shall have the same inspection and audit rights as the City and UASI Management Team. SUBRECIPIENT shall cooperate with any federal or state audit.

4.5 **Audit Report.** If the amount specified in Section 3.2 of this agreement is $750,000 or more, SUBRECIPIENT shall submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with GAO's *Government Auditing Standards*, and 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. SUBRECIPIENT shall submit its audit report to the UASI Management Team no later than six months after the end of SUBRECIPIENT's fiscal year.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

SUBRECIPIENT represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

5.1 **No Misstatements**. No document furnished or to be furnished by SUBRECIPIENT to the UASI Management Team or to City in connection with this Agreement, any Reimbursement Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

5.2 **Eligibility to Receive Federal Funds**. By executing this Agreement, SUBRECIPIENT certifies that it is eligible to receive federal funds, and specifically certifies as follows:

(a) SUBRECIPIENT is not suspended, debarred or otherwise excluded from participation in federal assistance programs, as required by Executive Order 12549 and 12689, "Debarment and Suspension" and implemented at 2 CFR Part 3000.

(b) SUBRECIPIENT complies with 31 U.S.C. §1352, *Limitation on use of appropriated funds to influence federal contracting and financial transactions*, as implemented at 44 CFR Part 18 and 6 CFR Part 9.

(c) SUBRECIPIENT complies with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §701 et seq., as implemented in 2 CFR Part 3001, and will continue to provide a drug-free workplace as required under that Act and implementing regulations.

(d) SUBRECIPIENT is not delinquent in the repayment of any federal debt. See OMB Circular A-129.

SUBRECIPIENT acknowledges that these certifications of eligibility to receive federal funds are material terms of the Agreement.

5.3 **NIMS Compliance.** To be eligible to receive Grant Funds, SUBRECIPIENT must meet National Incident Management System ("NIMS") compliance requirements, and report full NIMS compliance via the National Incident Management System Capability Assessment Support Tool ("NIMSCAST"). By executing this Agreement, SUBRECIPIENT certifies that it is in full NIMS compliance, and that it has reported that compliance via the NIMSCAST. SUBRECIPIENT shall provide documentation of its NIMS compliance to the UASI Management Team. SUBRECIPIENT acknowledges that this certification is a material term of the Agreement.

ARTICLE 6
INDEMNIFICATION AND GENERAL LIABILITY

6.1 **Indemnification**. SUBRECIPIENT shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by SUBRECIPIENT's performance of this Agreement, including, but not limited to, the following: (a) a material breach of this Agreement SUBRECIPIENT; (b) a material breach of any representation or warranty of SUBRECIPIENT contained in this Agreement; (c) any personal injury or death caused, directly or indirectly, by any act or omission of SUBRECIPIENT or its employees, subgrantees or agents; (d) any loss of or damage to property caused, directly or indirectly, by any act or omission of SUBRECIPIENT or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by SUBRECIPIENT, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to SUBRECIPIENT by an Indemnified Party; (f) any tax, fee, assessment or other charge for which SUBRECIPIENT is responsible under Section 10.4; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished by SUBRECIPIENT or its employees, subgrantees or agents to such Indemnified Party in connection with this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and San Francisco's costs of investigating any claims against San Francisco.

6.2 **Duty to Defend; Notice of Loss**. SUBRECIPIENT acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 6.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 6.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to SUBRECIPIENT by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give SUBRECIPIENT prompt notice of any Loss under Section 6.1 and SUBRECIPIENT shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of SUBRECIPIENT if representation of such

Indemnified Party by the counsel retained by SUBRECIPIENT would be inappropriate due to conflicts of interest between such Indemnified Party and SUBRECIPIENT. An Indemnified Party's failure to notify SUBRECIPIENT promptly of any Loss shall not relieve SUBRECIPIENT of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs SUBRECIPIENT's ability to defend such Loss. SUBRECIPIENT shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if SUBRECIPIENT contends that such Indemnified Party shares in liability with respect thereto.

6.3 **Incidental and Consequential Damages**. Losses covered under this Article 6 shall include any and all incidental and consequential damages resulting in whole or in part from SUBRECIPIENT's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

6.4 **LIMITATION ON LIABILITY OF SAN FRANCISCO**. CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 7
EVENTS OF DEFAULT AND REMEDIES; TERMINATION FOR CONVENIENCE

7.1 **Events of Default**. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement**. Any statement, representation, certification or warranty contained in this Agreement, in any Reimbursement Request, or in any other document submitted to the UASI Management Team or to City under this Agreement is found by the UASI Management Team or by City to be false or misleading.

(b) **Failure to Perform Other Covenants**. SUBRECIPIENT fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by SUBRECIPIENT as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(c) **Failure to Comply with Applicable Laws**. SUBRECIPIENT fails to perform or breaches any of the terms or provisions of Article 12.

(d) **Voluntary Insolvency**. SUBRECIPIENT (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of SUBRECIPIENT or of any substantial part of SUBRECIPIENT's property or (v) takes action for the purpose of any of the foregoing.

(e) **Involuntary Insolvency**. Without consent by SUBRECIPIENT, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian,

receiver, trustee or other officer with similar powers with respect to SUBRECIPIENT or with respect to any substantial part of SUBRECIPIENT's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of SUBRECIPIENT.

7.2 **Remedies upon Event of Default**. Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination**. City may terminate this Agreement by giving a written termination notice to SUBRECIPIENT and, on the date specified in such notice, this Agreement shall terminate and all rights of SUBRECIPIENT hereunder shall be extinguished. In the event of such termination, City will pay SUBRECIPIENT for Authorized Expenditures in any Reimbursement Request that was submitted and approved by the UASI Management Team and by City prior to the date of termination specified in such notice.

(b) **Withholding of Grant Funds**. City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether SUBRECIPIENT has previously submitted a Reimbursement Request or whether the UASI Management Team and/or City has approved the disbursement of the Grant Funds requested in any Reimbursement Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to SUBRECIPIENT after cure of applicable Events of Default shall be disbursed without interest.

(c) **Return of Grant Funds**. City may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by SUBRECIPIENT in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

7.3 **Termination for Convenience.**

(a) City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving SUBRECIPIENT written notice of termination. The notice shall specify the date on which termination shall become effective.

(b) Upon receipt of the notice, SUBRECIPIENT shall commence and perform, with diligence, all actions necessary on the part of SUBRECIPIENT to effect the termination of this Agreement on the date specified by City and to minimize the liability of SUBRECIPIENT and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the UASI Management Team.

(c) Within 30 days after the specified termination date, SUBRECIPIENT shall submit to the UASI Management Team an invoice for all Authorized Expenses incurred through the termination date. For Authorized Expenses incurred after receipt of the notice of termination, City will only reimburse SUBRECIPIENT if the Authorized Expenses received prior approval from the UASI Management Team as specified in subparagraph (b).

(d) In no event shall City be liable for costs incurred by SUBRECIPIENT or any of its contractors or subgrantees after the termination date specified by City.

(e) City's payment obligation under this Section shall survive termination of this Agreement.

7.4 **Remedies Nonexclusive**. Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

ARTICLE 8
ASSIGNMENTS

8.1 **No Assignment by SUBRECIPIENT**. SUBRECIPIENT shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of SUBRECIPIENT hereunder without the prior written consent of the UASI Management Team; provided, however, that any contractor or subgrantee specifically referenced in Appendix A shall not require the consent of Management Team. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of SUBRECIPIENT involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of SUBRECIPIENT or a sale or transfer of substantially all of the assets of SUBRECIPIENT shall be deemed an assignment for purposes of this Agreement.

8.2 **Agreement Made in Violation of this Article**. Any agreement made in violation of Section 8.1 shall confer no rights on any person or entity and shall automatically be null and void.

8.3 **SUBRECIPIENT Retains Responsibility**. SUBRECIPIENT shall in all events remain liable for the performance by any subgrantee contractor, or assignee of all of the covenants, terms and conditions in this Agreement.

ARTICLE 9
NOTICES AND OTHER COMMUNICATIONS

9.1 **Requirements**. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via e-mail:

If to San Francisco:

San Francisco Department of Emergency Management
City Hall - 1 Dr Carlton B Goodlett Pl, Room 344
San Francisco, CA 94102
Attn: Mary Ellen Carroll, Executive Director
maryellen.carroll@sfgov.org

If to the UASI Management Team:

UASI Management Team
1663 Mission Street, Suite #320
San Francisco, CA 94103
Attn: Craig Dziedzic, General Manager
craig.dziedzic@sfgov.org

If to SUBRECIPIENT:

Napa County, Office of Emergency Services
1535 Airport Blvd
Napa, CA 94558
ATTN: Dodd Cullen, Undersheriff
CULLEN.DODD@countyofnapa.org

9.2 **Effective Date**. All communications sent in accordance with Section 9.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

9.3 **Change of Address**. From time to time any party hereto may designate a new address or recipient for notice for purposes of this Article 9 by written notice to the other party and the UASI Management Team.

ARTICLE 10
MISCELLANEOUS

10.1 **No Waiver**. No waiver by San Francisco of any default or breach of this Agreement shall be implied from any failure by the UASI Management Team or San Francisco to take action on account of such default if such default persists or is repeated. No express waiver by San Francisco shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by San Francisco of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the UASI Management Team or San Francisco of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

10.2 **Modification**. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement; provided, however, that the General Manager or designee may establish alternate procedures for modification of the Appendix A and the Grant Plan.

10.3 **Governing Law; Venue**. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

10.4 **SUBRECIPIENT to Pay All Taxes**. SUBRECIPIENT shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Grant Plan, the Grant Funds or any of the activities contemplated by this Agreement.

10.5 **Headings**. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

10.6 **Entire Agreement**. This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. The following Appendices are attached to and a part of this Agreement:

- Appendix A, Authorized Expenditures and Timelines
- Appendix B, Grant Assurances
- Appendix C, Form of Reimbursement Request

10.7 **Certified Resolution of Signatory Authority**. Upon request of San Francisco, SUBRECIPIENT shall deliver to San Francisco a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of SUBRECIPIENT.

10.8 **Severability**. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.9 **Successors; No Third-Party Beneficiaries**. Subject to the terms of Article 8, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 6, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

10.10 **Survival of Terms**. The obligations of SUBRECIPIENT and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 4.3 and 4.4, Article 6, this Article 10, and the Grant Assurances of Appendix B.

10.11 **Further Assurances**. From and after the date of this Agreement, SUBRECIPIENT agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

10.12 **Disclosure of Subawards and Executive Compensation.** Pursuant to the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282) as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (P.L. 110-252), full disclosure to the public of entities or organizations receiving federal funds is now required. As defined by the Office of Management and Budget (OMB), all new Federal awards of $25,000 or more as of October 1, 2010, are subject to FFATA reporting requirements. The Transparency Act definition of "Federal awards" includes not only prime awards for grantees, cooperators, and contractors, but also awards to sub-recipients. If applicable, SUBRECIPIENT must provide the following information on SUBRECIPIENT letterhead within 30 days of receipt of this Agreement.

1. Subawards greater than $25,000:

   a) Name of entity receiving award;
   b) Amount of award;
   c) Funding agency;
   d) The Catalog of Federal Domestic Assistance program number;

e) Award title (descriptive of the purpose of the funding action);
f) Location of the entity and primary location of performance including city, state, and Congressional district;
g) Dun & Bradstreet (D&B) DUNS Number of the entity, and its parent if applicable; and,
h) Total compensation and names of top five executives (same thresholds as for prime recipients).

2. The Total compensation and names of the top five executives if:

a) 80% or more of annual gross revenues are from Federal awards (contracts, sub-contracts and Federal financial assistance), and $25,000,000 or more in annual gross revenues from Federal awards; and,
b) Compensation information is not already available through reporting to the Securities and Exchange Commission.

10.13 **Cooperation with UASI Programs and Activities**.

(a) Subject to reasonable terms and conditions, SUBRECIPIENT agrees to participate in UASI-sponsored exercises, and to make available equipment acquired with Grant Funds for use as part of such exercises.

(b) To the extent permitted by law, SUBRECIPIENT agrees to share with the Approval Authority informational work products (such as plans, reports, data, etc.) created or acquired using Grant Funds.

(c) SUBRECIPIENT agrees to provide input towards the development of the regional Threat and Hazard Identification and Risk Assessment (THIRA) and Stakeholder Preparedness Review (SPR) as requested by UASI.

(d) SUBRECIPIENT agrees to complete the 2021 Nationwide Cybersecurity Review (NCSR), enabling agencies to benchmark and measure progress of improving their cybersecurity posture. The Chief Information Officer (CIO), Chief Information Security Officer (CISO) or equivalent for each recipient should complete the NCSR. If there is no CIO or CISO, the most senior cybersecurity professional should complete the assessment.

(e) SUBRECIPIENT agrees to provide a preference for the purchase of goods, products or materials produced in the United States in accordance with 2 CFR Part 200, Section 322.

ARTICLE 11
INSURANCE

11.1 **Types and Amounts of Coverage.** Without limiting SUBRECIPIENT's liability pursuant to Article 6 of this Agreement, SUBRECIPIENT shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

11.2 **Additional Requirements for General and Automobile Coverage.** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

11.3 **Additional Requirements Regarding Workers' Compensation.** Regarding Workers' Compensation, SUBRECIPIENT hereby agrees to waive subrogation which any insurer of SUBRECIPIENT may acquire from SUBRECIPIENT by virtue of the payment of any loss. SUBRECIPIENT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the SUBRECIPIENT, its employees, agents and subcontractors.

11.4 **Additional Requirements for All Policies.** All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in Article 9, Notices and Other Communications.

11.5 **Required Post-Expiration Coverage.** Should any of the required insurance be provided under a claims-made form, SUBRECIPIENT shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

11.6 **General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

11.7 **Lapse in Insurance.** Should any required insurance lapse during the term of this Agreement, requests for reimbursement originating after such lapse may not be processed, in the City's sole discretion, until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

11.8 **Evidence of Insurance.** Before commencing any operations or expending any Grant Funds under this Agreement, SUBRECIPIENT shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

11.9 **Effect of Approval.** Approval of the insurance by City shall not relieve or decrease the liability of SUBRECIPIENT hereunder.

11.10 **Insurance for Subcontractors and Evidence of this Insurance.** If a subcontractor or subgrantee will be used to complete any portion of this Agreement, SUBRECIPIENT shall ensure that the subcontractor or subgrantee shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the SUBRECIPIENT as additional insureds.

11.11 **Authority to Self-Insure.** Nothing in this Agreement shall preclude SUBRECIPIENT from self-insuring all or part of the insurance requirement in this Article. However, SUBRECIPIENT shall provide proof of self-insurance, in a form acceptable to San Francisco, in the amounts of each line of self-insurance.

ARTICLE 12
COMPLIANCE

12.1 **Nondiscrimination**. In the performance of this Agreement, SUBRECIPIENT agrees not to discriminate against any employee, San Francisco employee working with SUBRECIPIENT or any subgrantee of SUBRECIPIENT, applicant for employment with SUBRECIPIENT or subgrantee of SUBRECIPIENT, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

12.2 **Conflict of Interest**. Through its execution of this Agreement, SUBRECIPIENT acknowledges that it is familiar with the provisions of Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement. SUBRECIPIENT agrees that it will promptly notify City in writing of all violations of State or Federal criminal law involving fraud, bribery, or gratuities affecting or involving the use of Grant Funds.

12.3 **Compliance with ADA**. SUBRECIPIENT acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. SUBRECIPIENT shall not discriminate against any person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

12.4 **Prohibition on Political Activity with City Funds**. In accordance with San Francisco Administrative Code Chapter 12G, SUBRECIPIENT may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. SUBRECIPIENT agrees to comply with San Francisco Administrative Code Chapter 12G and any implementing rules and regulations promulgated by San Francisco's Controller. The terms and provisions of Chapter 12G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, San Francisco may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit SUBRECIPIENT from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider SUBRECIPIENT's use of profit as a violation of this section.

12.5 **Submitting False Claims; Monetary Penalties**. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY AND COUNTY OF SAN FRANCISCO:

SAN FRANCISCO DEPARTMENT OF EMERGENCY MANAGEMENT

By:

_____
MARY ELLEN CARROLL
EXECUTIVE DIRECTOR

Approved as to Form:
David Chiu
City Attorney

By: _____
Christina Fletes-Romo
Deputy City Attorney

COUNTY OF NAPA:

By:

_____
JOELLE GALLAGHER
CHAIR OF THE BOARD OF SUPERVISORS

Federal Tax ID #: 94-600000525

Approved as to Form:
Office of the County Counsel

By: _____
Thomas C. Zeleny
Deputy County Counsel

Approved by the Napa County Board of Supervisors

Date:_____

Processed by: _____
Deputy Clerk of the Board

Attest: Neha Hoskins
Clerk of the Board of Supervisors

By:_____

Appendix A — Authorized Expenditures and Timelines

ENTITY: **County of Napa**

Total allocation to be spent on the following solution areas:

Webgrants Grants Number	**Program Description**	**Due Dates**	**Solution Areas**	**Amount**
Project Title: CERT Training				
	Funds to provide comprehensive training materials for CERT trainings in 2024.	Project Completion date: 12/31/2024	***Training***	PROJECT NOT TO EXCEED $7,872
		TOTAL ALLOCATION		**TOTAL NOT TO EXCEED: $7,872**

TRAINING

Reimbursement for Training Requires:

- An approved EHP memo, if applicable.
- Training course expenses may include backfill/overtime, travel, tuition, per diem or other grant eligible expenses. Grant eligible training expenses are published in the FY 2020 Homeland Security Grant Program Guidance.
- When seeking reimbursement for grant eligible training expenses, SUBRECIPIENT must submit completed ledger page indicating course title, feedback number, sub category (e.g., OT, BF, Course Development).
- Provide registration receipts and agendas.
- Provide copies of sign in sheets (must have supervisor's signature).

- **All requests for reimbursements must be submitted within 30 days of project completion unless an earlier deadline is set in this Appendix. SUBRECIPIENT should submit reimbursement requests on a quarterly basis, as applicable.**
- **Authorized expenditures must fall into one of the following categories: Planning, Organization, Equipment, Training, or Exercises. Descriptions of authorized expenditures are in the following documents:**
- *FY 2022 Homeland Security Grant Program Notice of Funding Opportunity*: https://www.fema.gov/grants/preparedness/homeland-security/fy-22-nofo
- *California Supplement to the Federal Funding Opportunity Announcement*, dated September 2022, available at https://www.caloes.ca.gov/wp-content/uploads/Grants/Documents/FY-2022-HSGP-State-Supplement.pdf as *"FY 2022 Homeland Security Grant Program California Supplement to the Federal Notice of Funding Opportunity."*
- *Authorized Equipment List: http://www.fema.gov/authorized-equipment-list*
- *Cal OES Rules and Regulations, including the Recipient Handbook: https://www.caloes.ca.gov/wp-content/uploads/Grants/Documents/2022_Subrecipient_Handbook.pdf*
- ***Any equipment purchased under this Agreement must match the UASI 2022 Grant Application Workbook. Any modification to the inventory list in that Workbook must receive prior written approval from by the Bay Area UASI Program Manager.***

- ***No Management and Administration expenses are allowed, unless expressly identified and authorized in this Appendix.***

- ***Sustainability requirements may apply to some or all of the grant funded projects or programs authorized in this Appendix. See Agreement, ¶3.12.***

- ***All EHP documentation must be submitted and approved prior to any expenditure of funds requiring EHP submission.***

Appendix B-- Grant Assurances

Name of Jurisdiction: COUNTY OF NAPA ("SUBRECIPIENT")

Name of Authorized Agent: Dodd Cullen, Undersheriff

Address: 1535 Airport Blvd

City: Napa State: CA Zip Code: 94558

Telephone Number: 707-253-4233

Fax Number: 707-253-4233

E-Mail Address: CULLEN.DODD@countyofnapa.org

As the duly authorized representative of the SUBRECIPIENT, I hereby certify that SUBRECIPIENT has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

I further acknowledge that SUBRECIPIENT is responsible for reviewing and adhering to all requirements within the:

(a) Applicable Federal Regulations (see below);
(b) Federal Program Notice of Funding Opportunity (NOFO);
(c) Federal Preparedness Grants Manual;
(d) California Supplement to the NOFO; and
(e) Federal and State Grant Program Guidelines.

Federal Regulations
Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the Office of Management and Budget (OMB) and can be found at http://www.whitehouse.gov/omb/.

State and federal grant award requirements are set forth below. SUBRECIPIENT hereby agrees to comply with the following:

1. **Proof of Authority**
   SUBRECIPIENT will obtain proof of authority from the city council, governing board, or authorized body in support of this project. This written authorization must specify that SUBRECIPIENT and the city council, governing board, or authorized body agree:

   (a) To provide all matching funds required for the grant project and that any cash match will

be appropriated as required;

(b) Any liability arising out of the performance of this agreement shall be the responsibility of SUBRECIPIENT and the city council, governing board, or authorized body;
(c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body;
(d) SUBRECIPIENT is authorized by the city council, governing board, or authorized body to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost, if any) to ensure proper planning, management and completion of the project described in this application; and
(e) Official executing this agreement is authorized by SUBRECIPIENT.

This Proof of Authority must be maintained on file and readily available upon request.

2. Period of Performance

The period of performance is specified in the Award. SUBRECIPIENT is only authorized to perform allowable activities approved under the award, within the period of performance.

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, SUBRECIPIENT certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

SUBRECIPIENT will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501- 1508

and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, SUBRECIPIENT agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.214 and codified in 2 C.F.R. Part 180, Debarment and Suspension, SUBRECIPIENT will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. SUBRECIPIENT certifies that it and its principals, recipients, or subrecipients:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
(d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where SUBRECIPIENT is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

SUBRECIPIENT will comply with all state and federal statutes relating to non-discrimination, including:

(a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
(b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded

educational program or activity;

(c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;

(d) Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. §§ 12101- 12213), which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs;

(e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;

(f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;

(g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)— be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);

(h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;

(i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;

(j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;

(k) DHS policy to ensure the equal treatment of faith-based organizations, under which all SUBRECIPIENTs and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;

(l) SUBRECIPIENT will comply with California's Fair Employment and Housing Act (FEHA) (California Government Code §§12940, 12945, 12945.2), as applicable. FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave, military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions;

(m) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and

(n) The requirements of any other nondiscrimination statute(s) that may apply to this application.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), SUBRECIPIENT certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

SUBRECIPIENT will comply with state and federal environmental standards, including:

(a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
(b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
(c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
(d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
(e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
(f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
(g) Executive Order 11514 which sets forth national environmental standards;
(h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
(i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
(j) The Endangered Species Act of 1973, (P.L. 93-205);
(k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
(l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
(m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

SUBRECIPIENT shall not be: 1) in violation of any order or resolution promulgated by the

State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

8. **Audits**
   For subrecipients expending $750,000 or more in federal grant funds annually, SUBRECIPIENT will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. **Cooperation and Access to Records**
   SUBRECIPIENT must cooperate with any compliance reviews or investigations conducted by DHS. In accordance with 2 C.F.R. § 200.337, SUBRECIPIENT will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. SUBRECIPIENT will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

10. **Conflict of Interest**
    SUBRECIPIENT will establish safeguards to prohibit SUBRECIPIENT's employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. **Financial Management**
    False Claims for Payment - SUBRECIPIENT will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subrecipient, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

12. **Reporting - Accountability**
    SUBRECIPIENT agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating $30,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

13. **Whistleblower Protections**
    SUBRECIPIENT also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304

and § 4310.

14. Human Trafficking

SUBRECIPIENT will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

SUBRECIPIENT will comply with the following federal labor standards:

(a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and

(b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

SUBRECIPIENT must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, the SUBRECIPIENT will:

(a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;

(b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(c) Assist the awarding agency in assuring compliance with Section 106 of the

(d) National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.); and

(e) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, SUBRECIPIENT will:

(a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;

(b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and

(c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

SUBRECIPIENT is required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

20. California Public Records Act and Freedom of Information Act

SUBRECIPIENT acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. SUBRECIPIENT should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

HOMELAND SECURITY GRANT PROGRAM (HSGP) – PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

22. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

23. Best Practices for Collection and Use of Personally Identifiable Information (PII)
DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publicly-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

24. Copyright
All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

25. Duplication of Benefits
Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

26. Energy Policy and Conservation Act
All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

27. Federal Debt Status
All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

28. Fly America Act of 1974
All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B- 138942.

29. Hotel and Motel Fire Safety Act of 1990
In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all

SUBRECIPIENTs must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

30. Non-supplanting Requirement

All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non- federal sources.

31. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

32. SAFECOM

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

33. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

34. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds $10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

35. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

36. Use of DHS Seal, Logo, and Flags

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

37. Performance Goals

In addition to the Biannual Strategy Implementation Report submission requirements outlined in the Preparedness Grants Manual, subrecipients must demonstrate how the grant-funded project addresses the core capability gap associated with each project and identified in the Threat and Hazard Identification and Risk Analysis or Stakeholder Preparedness Review or sustains existing capabilities, as applicable. The capability gap reduction or capability sustainment must be addressed in the Project Description of the BSIR for each project.

38. Applicability of DHS Standard Terms and Conditions to Tribes

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. SUBRECIPIENT recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the SUBRECIPIENT, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by SUBRECIPIENT and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2021, Version 11.4, hereby incorporated by reference, which can be found at: https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions.

The undersigned represents that he/she is authorized by SUBRECIPIENT to enter into this agreement for and on behalf of SUBRECIPIENT.

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Appendix C -- Form of Reimbursement Request

REIMBURSEMENT REQUEST

Date: _____

UASI Management Team
1663 Mission Street, Suite 320
San Francisco, CA 94102

Re: FY 22 UASI Grant Reimbursement Request

Pursuant to Section 3.10 of the “Agreement between the City and County of San Francisco and the COUNTY OF NAPA for the Distribution of FY 2022 UASI Grant Funds” (the "Agreement"), dated JULY 1, 2024 between the COUNTY OF NAPA (“SUBRECIPIENT”) and the City and County of San Francisco, SUBRECIPIENT hereby requests reimbursement as follows:

Total Amount of Reimbursement Requested in this Request:	$_____
Maximum Amount of Funds Specified in Section 3.2 of the Agreement:	$_____
Total of All Funds Disbursed Prior to this Request:	$_____

SUBRECIPIENT certifies that:

(a) The total amount of funds requested pursuant to this Reimbursement Request will be used to reimburse SUBRECIPIENT for Authorized Expenditures, which expenditures are set forth on the attached Schedule 1, to which are attached true and correct copies of all required documentation of such expenditures.

(b) After giving effect to the disbursement requested pursuant to this Reimbursement Request, the Funds disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 3.2 of the Agreement, or the not to exceed amounts specified in Appendix A for specific projects and programs.

(c) The representations, warranties and certifications made in the Agreement are true and correct in all material respects as if made on the date hereof, and SUBRECIPIENT is in compliance with all Grant Assurances in Appendix B of the Agreement. Furthermore, by signing this report, SUBRECIPIENT certifies to the best of their knowledge and belief that the report is true, complete and accurate and expenditures, disbursements, and cash receipts are for the purpose and objectives set forth in the terms and conditions of the federal award. SUBRECIPIENT is aware that any false, fictitious or fraudulent information or the omission of any material fact, may subject SUBRECIPIENT to criminal civil or administrative penalties for fraud, false statements, false claims or otherwise.

(d) No Event of Default has occurred and is continuing.

(e) The undersigned is an officer of SUBRECIPIENT authorized to execute this Reimbursement Request on behalf of SUBRECIPIENT.

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

SCHEDULE 1 TO REQUEST FOR REIMBURSEMENT

The following is an itemized list of Authorized Expenditures for which reimbursement is requested:

Project	Payee	Amount	Description	If final claim for project, check box
				☐
				☐
				☐
				☐

The following are attached as part of this Schedule 1 (Please check items that are applicable):

Planning:

- ☐ Invoice/Payroll Charges
- ☐ Payroll Register
- ☐ Cleared Check Payment
- ☐ Job Description
- ☐ Functional Timesheets
- ☐ Deliverables/Progress Reports

Organization:

- ☐ Invoice/Payroll Charges
- ☐ Payroll Register
- ☐ Cleared Check Payment
- ☐ Job Description
- ☐ Functional Timesheets
- ☐ Deliverables/Progress Reports

Equipment:

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ Purchase Order
- ☐ Packing Slip
- ☐ EHP Approval
- ☐ Watercraft or Aviation
- ☐ Sole Source
- ☐ Performance Bond
- ☐ Equipment Ledger (Please submit electronic copy to Grants Specialist)

Training:

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ Training Feedback Number
- ☐ EHP Approval
- ☐ Certificates/Proof of Participation
- ☐ Sign In Sheet
- ☐ Agenda

Exercise:

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ After Action Report
- ☐ EHP Approval
- ☐ Overtime Authorization

For inquiries/questions, please contact:

_____ Phone #: _____ Email: _____

Print Name

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1292

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Becky Craig, Assistant County Executive Officer

SUBJECT: Pay-off Re-Entry Facility Lease with State

RECOMMENDATION

Adopt a Resolution authorizing the execution of a Termination Agreement and related documents; and provide payment to defease the County's portion of the State lease for the Re-Entry Facility. (Fiscal Impact: $16 million; Capital Improvement Projects Fund; Budgeted; Discretionary)

BACKGROUND

The County authorized agreements with the Board of State Community Corrections ("BSCC") in 2013 to provide a portion of construction funding for the Re-Entry Facility. The State Public Works Board ("SPWB") issued leasehold revenue bonds in 2020 and 2023 reimbursing the County $13,474,000 of the total $17 million project cost. Per the enacting legislation, SB 1022, the facility is restricted to operate as a level four detention facility. With COVID and wildfires, the County was granted temporary waivers to use the facility for alternate purposes and subsequently for winter shelter. Once the County was prepared to occupy the facility in 2022, the population of 10-15 eligible inmates didn't warrant the expense of operating a 72-bed facility. The State has granted a temporary waiver since September 2023 for the County to use the facility as an Intensive Navigation Center operated by the Probation Department.

The Board of Supervisors directed staff to initiate discussion with BSCC and SPWB to permanently repurpose the facility; however, the State cannot authorize an alternate use because the issued leasehold revenue bonds include covenants restricting the facility's use. Pay-off (or "defeasance") of the County's portion of the bonds and termination of the lease are an option to affect the County's interest. The State Department of Finance ("DOF") used consultants to prepare the necessary pay-off documents and recommended our request to SPWB on August 9, 2024. The SPWB voted 5-0 in the affirmative.

The DOF provided a preliminary pay-off estimate totaling $15-$17 million to prepare the recommended

budget. The amount covers principal, interest, and fees to reverse the lease. Upon closure of the transaction, the facility will have no restrictions and may be used for any County-directed purpose. Staff recommends the County permanently locate Probation programming to the site due to its proximity to the Replacement Jail. This outcome was anticipated when the Facilities Master Plan was prepared last year, and Probation's space needs were excluded from the final recommendation. Next steps will include hiring an architect to design tenant improvements and bid documents. A preliminary project budget is estimated at $5 million.

Requested Actions:

1. Receive presentation

2. Adopt Resolution

Procedural Requirements:

1. Staff report

2. Public comment

4. Motion, second, discuss, and vote

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Capital Improvement Project 25005
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Repurpose facility from Detention to Navigation and Rehabilitation
Is the general fund affected?	No
Future fiscal impact:	Tenant Improvements will be needed for Probation's relocation and operations. A separate project will be presented.
Consequences if not approved:	Another location will be leased or constructed for the Probation Department.
Additional Information	Click or tap here to enter text.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO. 2024-_____

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AUTHORIZING EXECUTION OF A TERMINATION AGREEMENT OF SB 1022 FUNDING FOR STAFF SECURE CRIMINAL JUSTICE FACILITY

WHEREAS, on October 15, 2013 the Board of Supervisors adopted Resolution No. 2013-124 authorizing application for SB 1022 funding to build a staff secure criminal justice facility; and

WHEREAS, the State Public Works Board issued leasehold revenue bonds in 2020 to fund criminal justice facilities; and

WHEREAS, the County completed construction of the 72 bed re-entry facility located at 2300 Napa Vallejo Highway ("Facility") for a total project cost of $17,000,000; and

WHEREAS, the State reimbursed the County in the amount of $13,474,000 towards the County's cost of the facility; and

WHEREAS, SB 1022 restricted the use of the Facility to operate as a level four detention facility; and

WHEREAS, due to COVID and wildfires, the County was granted temporary waivers to use the Facility for alternate purposes; and

WHEREAS, when the County was prepared to occupy the Facility in 2022, the current population of 10-15 inmates eligible to occupy the Facility did not warrant the expense of operating a 72-bed facility; and

WHEREAS, the State has granted a temporary waiver since 2023 for the County to use the Facility as an intensive navigation center by the County Probation Department; and

WHEREAS, the State has not been able to permanently authorize the repurposing of the Facility for alternate use because the issued leasehold revenue bonds include covenants restricting the Facility's use; and

WHEREAS, on August 9, 2024 the State Public Works Board approved the County's paying off its portion of the bonds and termination of the lease; and

WHEREAS, the preliminary pay-off estimate from the State to terminate the lease is approximately $15-$17 million, including principal, interest, and fees; and

WHEREAS, upon closure of the pay-off and lease termination transaction, the Facility will no longer have any restrictions and may be used for any County-directed purpose.

NOW, THEREFORE, BE IT RESOLVED by the Napa County Board of Supervisors that this Resolution shall supersede Resolution No. 2013-124; and

BE IT FURTHER RESOLVED, the Board approves the proposed transaction with the State to pay-off the bonds and authorizes the Chair to execute the Termination Agreement and any other documents needed to effectuate the pay-off of the bonds; and

BE IT FURTHER RESOLVED, the Board directs staff to begin the process of adapting the Facility to a different use.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 20th day of August, 2024, by the following vote:

AYES:	SUPERVISORS	_____
		_____
NOES:	SUPERVISORS	_____
ABSTAIN:	SUPERVISORS	_____
ABSENT:	SUPERVISORS	_____

_____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: _/S/ Sheryl L. Bratton_____ County Counsel Date: __8/15/2024_____	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

STRADLING YOCCA CARLSON & RAUTH
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: Lawrence Chan, Esq.

[Space above for Recorder's use.]

TERMINATION AGREEMENT AND RESTRICTIVE COVENANT

Dated _____, 2024

(NAPA COUNTY JAIL PROJECT)
(NAPA COUNTY)

NO DOCUMENTARY TRANSFER TAX DUE.
This Termination Agreement and Restrictive Covenant is recorded for the benefit of the State of California and is exempt from California documentary transfer tax pursuant to Section 11928 of the California Revenue and Taxation Code and from recording fees pursuant to Sections 6103, 27383 and 27388.1(a)(2)(D) and (d)(2) of the California Government Code.

BOARD OF STATE AND COMMUNITY CORRECTIONS

TERMINATION AGREEMENT AND RESTRICTIVE COVENANT

THIS TERMINATION AGREEMENT AND RESTRICTIVE COVENANT (this "Agreement") is dated _____, 2024 and is effective as of the date hereof, by and between the BOARD OF STATE AND COMMUNITY CORRECTIONS OF THE STATE OF CALIFORNIA (the "Department"), an entity of state government of the State of California, the STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA (the "Board"), an entity of state government of the State of California, and the County of Napa (the "County"), a political subdivision of the State of California.

R E C I T A L S :

WHEREAS, pursuant to Chapter 3.13 of Part 10b of Division 3 of Title 2 of the California Government Code (commencing at Section 15820.92), the Board is authorized to finance the acquisition, design, and construction of an adult local criminal justice facility;

WHEREAS, in accordance with the Law, the County has constructed an adult local criminal justice facility (the "Project"), which is located at 2200 Napa Vallejo Highway, Napa, California 94558 on the real property described and depicted in Exhibit A hereto (the "Site"), fee title to which is owned by the County;

WHEREAS, the Project was completed on December 20, 2018 (the "Completion Date") and includes, among other improvements, the addition of housing capacity located in newly constructed buildings (the "Housing Capacity");

WHEREAS, the County, as landlord, and the Department, as tenant, entered into that certain Ground Lease, dated as of January 17, 2017, and recorded on March 8, 2017 in the Official Records of the County as Document No. 2017-0005900 (the "Ground Lease"), pursuant to which the County leased the Site to the Department;

WHEREAS, in connection with the execution of the Ground Lease, the Department and the County also entered into that certain Easement Agreement for Grants of Access, Utilities and Repairs, dated as of January 17, 2017 and recorded on March 8, 2017 in the Official Records of the County as Document No. 2017-0005901 (the "Easement Agreement") pursuant to which the County granted to the Department and the Board certain easements in certain property as described in Exhibit B hereto (the "Easement Property");

WHEREAS, the Department, as lessor, and the Board, as lessee, entered into that certain Site Lease, dated as of April 15, 2020, and recorded in the official records of the County on June 19, 2020 as Document No. 2020-0014304 (the "Site Lease"), pursuant to which the Department leased the Site to the Board;

WHEREAS, the Site and the Project (together, the "Facility") were leased by the Board, as lessor, to the Department, as lessee, pursuant to that certain Facility Lease, dated as of April 15, 2020, and recorded in the official records of the County on June 19, 2020 as Document No. 2020-0014305 (the "Facility Lease");

WHEREAS, the Facility was subleased by the Department, as sublessor, to the County, as sublessee, pursuant to that certain Facility Sublease, dated as of April 15, 2020, and recorded in the

official records of the County on June 19, 2021 as Document No. 2020-0014306 (the "Facility Sublease");

WHEREAS, pursuant to the Facility Lease, in order to finance and refinance certain costs of the Project, the Board caused to be made available to the Department a portion of the proceeds of its Lease Revenue Bonds 2020 Series B (Various Capital Projects) (the "Bonds"), issued pursuant to the terms of an indenture dated as of April 1, 1994, as amended by the Tenth Supplemental Indenture, dated as of September 1, 1996, by the Forty-Second Supplemental Indenture, dated as of October 1, 2002, by the Fifty-Second Supplemental Indenture, dated as of October 15, 2004, and by the Ninety-Third Supplemental Indenture, dated as of October 12, 2009, as supplemented by the One Hundred Fifty-Third Supplemental Indenture, dated as of April 15, 2020, each by and between the Board and the Treasurer of the State of California, as trustee;

WHEREAS, the portion of the Bonds issued to finance and refinance the Project have been defeased, and the revenues, rentals and receipts from the operation of the Facility are no longer required or pledged for the payment of the Bonds;

WHEREAS, the Ground Lease, the Easement Agreement, the Site Lease, the Facility Lease and the Facility Sublease were terminated and discharged concurrently with the defeasance of the portion of the Bonds issued to finance and refinance the Project on the date hereof in accordance with their terms and the provisions of this Agreement; and

WHEREAS, the Department, the Board and the County desire to provide recorded notice of the fact of the termination of the Ground Lease, the Easement Agreement, the Site Lease, the Facility Lease and the Facility Sublease, and of a restrictive covenant in favor of the Board that restricts the lease of the Housing Capacity for any correctional purposes in accordance with the provisions of Government Code Section 15820.926(b), and to confirm that fee title to the Site remains in the County and fee title to the Project vests in the County as described herein;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Waiver of County.

(a) The undersigned officer of the County is duly authorized to execute this Agreement on behalf of the County, in its capacity as landlord under the Ground Lease, as grantor under the Easement Agreement, and as sublessee under the Facility Sublease.

(b) The County acknowledges that it has received adequate notice of the end of the term of the Site Lease and hereby waives the requirement in Section 2 of the Site Lease that ten days must pass after the date on which all Bonds and other indebtedness of the Board incurred to pay for the Project shall be paid and retired and agrees that the term of the Site Lease has ended on the date hereof with the execution and delivery of this Agreement.

2. Waiver of Department.

(a) The undersigned officer of the Department is duly authorized to execute this Agreement on behalf of the Department, in its capacity as tenant under the Ground Lease, as grantee under the Easement Agreement, as lessor under the Site Lease, as lessee under the Facility Lease and as sublessor under the Facility Sublease.

(b) The Department acknowledges that it has received adequate notice of the end of the term of the Site Lease and hereby waives the requirement in Section 2 of the Site Lease that ten days must pass after the date on which all Bonds and other indebtedness of the Board incurred to pay for the Project shall be paid and retired and agrees that the term of the Site Lease has ended on the date hereof with the execution and delivery of this Agreement.

3. Waiver of Board.

(a) The undersigned officer of the Board is duly authorized to execute this Agreement on behalf of the Board, in its capacity as lessee under the Site Lease and lessor under the Facility Lease.

(b) The Board acknowledges that it has received adequate notice of the end of the term of the Site Lease and hereby waives the requirement in Section 2 of the Site Lease that ten days must pass after the date on which all Bonds and other indebtedness of the Board incurred to pay for the Project shall be paid and retired and agrees that the term of the Site Lease has ended on the date hereof with the execution and delivery of this Agreement.

4. Termination of Ground Lease, Easement Agreement, Site Lease, Facility Lease and Facility Sublease. The County, the Board and the Department hereby acknowledge and agree that, effective on the date hereof, the Ground Lease, the Easement Agreement, the Facility Lease and the Facility Sublease have been terminated and discharged in accordance with their terms and that the Site Lease has been terminated and discharged in accordance with its terms and the terms of this Agreement. The County, the Board and the Department hereby further acknowledge and agree that the Ground Lease, the Easement Agreement, the Site Lease, the Facility Lease and the Facility Sublease are of no further force or effect and the Board and the Department have no further interest in the Facility pursuant to the terms of the Ground Lease, the Easement Agreement, Site Lease, the Facility Lease and the Facility Sublease.

5. Vesting and Jurisdiction of Facility. Given the defeasance of the Bonds, in accordance with Section 14 of the Facility Lease, the fee title to the Improvements (as defined in the Ground Lease), including the Project is vested with the County, subject to the Restrictive Covenant in Section 6 below. Title to the Site remains in the County.

6. Restrictive Covenant; Enforcement.

(a) Pursuant to Government Code Section 15820.926(b), the County hereby certifies, covenants and agrees that: (i) the County will not lease any Housing Capacity for any correctional purposes to any public or private entity, with the exception of state agencies (as defined in Government Code Sections 11000 and 11263) for a period of ten years beyond the Completion Date (such period ending on December 20, 2028); and (ii) the County shall in each instance of a proposed lease of any Housing Capacity for any correctional purposes to a state agency (as defined in Government Code Sections 11000 and 11263), other than the State Department of State Hospitals, obtain the prior written consent of the Board. The County obligations in this Section 6(a) shall be referred to as the "Restrictive Covenant."

(b) Prior to December 20, 2028, the County shall give written notice to the Board of its intention to lease any Housing Capacity for any correctional purposes to a state agency, other than the State Department of State Hospitals, at least ninety (90) days before the effective date of any proposed lease. The written notice shall be delivered to the Board in accordance with Section 8 below.

(c) The Restrictive Covenant shall be a burden encumbering the Site and be binding on the County and its successors, its assigns, and every successor in interest to the Site and each portion thereof (collectively the "County Parties").

(d) The Board shall have the right to enforce the Restrictive Covenant by all appropriate legal and equitable proceedings. The County acknowledges and agrees that: (i) a legal remedy may not be an adequate remedy for a breach of the Restrictive Covenant by the County Parties, (ii) monetary damages may be difficult or impossible to ascertain and that the Board is likely to suffer irreparable harm in the event of a breach of the Restrictive Covenant, and (iii) the Board may seek injunctive relief or other equitable remedy to enforce the Restrictive Covenant. Any purported lease of any Housing Capacity that is made in violation of the Restrictive Covenant shall be **null and void** and of no force or effect whatsoever.

(e) If the Board institutes an action to enforce the Restrictive Covenant or if an action is commenced by the Board because of any breach of the Restrictive Covenant, the prevailing party in such action shall be entitled to recover its costs and reasonable attorney's fees incurred in such action.

(f) The County represents and warrants that the Housing Capacity has not been leased for any correctional purposes to any public or private entity as of the effective date of this Agreement.

(g) The Restrictive Covenant shall be of no further force and effect after December 20, 2028.

7. Indemnification. The County reaffirms and agrees that the obligation of the County to indemnify, defend, and hold harmless the Indemnified Parties (as defined in the Facility Sublease), as set forth in Section 20 of the Facility Sublease, is incorporated herein by this reference and survives the termination of the Facility Sublease. The County acknowledges and agrees that such obligation to indemnify, defend, and hold harmless the Indemnified Parties extends to any and all claims and losses accruing and resulting from or arising out of the breach or alleged breach of this Agreement, including but not limited to, the Restrictive Covenant.

8. Notices. All approvals, authorizations, consents, demands, designations, notices, offers, requests, statements or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the Department:
Board of State and Community Corrections
of the State of California
2590 Venture Oaks Way
Sacramento, CA 95833
Attention: Executive Officer

To the Board:
State Public Works Board
915 "L" Street, 9th Floor
Sacramento, CA 95814
Attention: Executive Director

To the Participating County: Napa County
1195 Third Street, Suite 101
Napa, CA 94559
Attention: Public Works Director

The address to which notices shall be mailed as aforesaid to any party may be changed by written notice given by such party to the others as hereinabove provided.

9. Further Assurances. By executing this Agreement, the County, the Board and the Department intend to remove evidence of each of the Ground Lease, the Easement Agreement, the Site Lease and the Facility Lease from the title of the Site and the Easement Property, as applicable, and confirm title to the Site remains with the County and fee title to the Improvements, including the Project, is vested with the County, subject to the Restrictive Covenant. The County, the Board and the Department agree to execute any other documentation that may be necessary to effectuate the foregoing.

10. Recordation of Termination Agreement. The notarization of the signatures of the signatories to this Agreement is for the purpose of recordation of this Agreement in the official records of the County. This Agreement shall be recorded in the official records of the County solely for the purpose of giving constructive notice of this Agreement to third parties as provided under State law. The failure of any signatory to obtain and affix a notarization to this Agreement shall not affect the validity of this Agreement. The date of recordation of this Agreement shall not change, alter or modify the effective date of this Agreement as set forth above or the effectiveness of any provision of this Agreement.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement. The signature and acknowledgment pages from each counterpart may be removed and attached to a single document in order to create one original instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the County, the Department and the Board have caused this Termination Agreement and Restrictive Covenant to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

COUNTY OF NAPA

By: _____
Joelle Gallagher
Chair, Napa County Board of Supervisors

BOARD OF STATE AND COMMUNITY CORRECTIONS OF THE STATE OF CALIFORNIA

By: _____
Katheleen T. Howard
Executive Officer

STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA

By: _____
Sally Lukenbill
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF NAPA)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____
SIGNATURE OF NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____
SIGNATURE OF NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____
SIGNATURE OF NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION OF SITE

NAPA COUNTY JAIL PROJECT

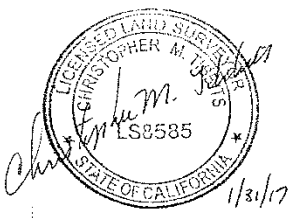
4762.0
SB 1022 Boundary
August 23, 2016

EXHIBIT A

All that real property situated in the County of Napa, State of California, and described as follows:

Commencing at the point of intersection of the Southern line of Parcel "A" as shown on the parcel map entitled, "Parcel Map of a Division of the Lands of Basalt Rock Company, Inc.," filed December 21, 1979 in Book 11 of Parcel Maps at Page 11, Napa County Records, with the Eastern line of State Highway Route 12 and 29 as shown on said Parcel Map; thence along the Southern line of said Parcel "A", along a curve concave to the northeast having a radius of 40.0 feet and to which a radial line bears South 86°10'03" West, through a central angle of 64°10'03" a distance of 44.80 feet; thence South 68°00'00" East, 159.43 feet to the beginning of a curve concave to the northeast having a radius 950.00 feet; thence 122.41 feet southeasterly along said curve through a central angle of 07°22'58" to the **Point of Beginning**; thence leaving said Point of Beginning and said Southern line of Parcel "A", North 14°48'09" East, 1.57 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 18.00 feet and to which a radial line bears South 09°09'04" West; thence 27.65 feet northerly along said curve through a central angle of 88°00'21" to the beginning of a compound curve concave to the west having a radius of 179.00 feet; thence 147.59 feet northerly along said curve through a central angle of 47°14'33" to the beginning of a non-tangent reverse curve concave to the northeast having a radius of 57.50 feet and to which a radial line bears South 24°52'53" West; thence 44.33 feet northwesterly along said curve through a central angle of 44°10'09" to the beginning of a non-tangent reverse curve concave to the southwest having a radius of 179.00 feet and to which a radial line bears North 40°01'45" East; thence 18.25 feet northwesterly along said curve through a central angle of 05°50'26"; thence North 23°25'49" East, 39.09 feet; thence South 65°24'56" East, 0.45 feet to the beginning of a non-tangent curve concave to the north having a radius of 1.00 feet and to which a radial line bears South 24°35'04" West; thence 1.52 feet northeasterly along said curve through a central angle of 87°03'38"; thence North 25°48'33" East, 13.61 feet; thence North 70°09'21" East, 13.77 feet; thence North 19°50'39" West, 16.00 feet; thence North 70°09'21" East, 44.59 feet; thence South 75°18'58" East, 22.29 feet; thence South 44°14'21" East, 14.13 feet; thence North 46°58'04" East, 74.27 feet to the beginning of a curve concave to the northwest having a radius of 48.00 feet; thence 39.36 feet along said curve through a central angle of 46°59'03"; thence North 71°08'41" East, 37.25 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 48.00 feet and to which a radial line bears South 64°05'28" West; thence 61.11 feet southeasterly along said curve through a central angle of 72°56'47"; thence North 81°08'41" East, 48.07 feet to the beginning of a curve concave to the northwest having a radius of 18.00 feet; thence 19.23 feet northeasterly along said curve through a central angle of 61°12'47"; thence North 90°00'00" East, 34.64 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 8.90 feet and to which a radial line bears South 79°33'13" West; thence 12.82 feet southeasterly along said curve through a central angle of 82°30'48"; thence North 81°08'41" East, 117.49 feet; thence South 08°51'27" East, 367.56 feet; thence South 28°32'49" West, 149.30 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 250.00 feet; thence 168.46 feet westerly and northwesterly along said curve through a central angle of 38°36'28"; thence continuing along said curve 1.54 feet northwesterly through a central angle of 0°21'08" to the southeast corner of said Parcel "A" and the beginning of a reverse curve concave to the southwest having a radius of 250.00 feet and to which a radial line bears South 01°13'54" East; thence leaving said corner northwesterly along said curve in the southern line of said Parcel "A", 135.61 feet through a central angle of 31°04'47" to the beginning of a reverse curve concave to the north having a radius of 950.00 feet; thence 132.12 feet northwesterly along said curve through a central angle of 07°58'06" to the **Point of Beginning.**

END DESCRIPTION



MAP OF SITE AND EASEMENT PROPERTY

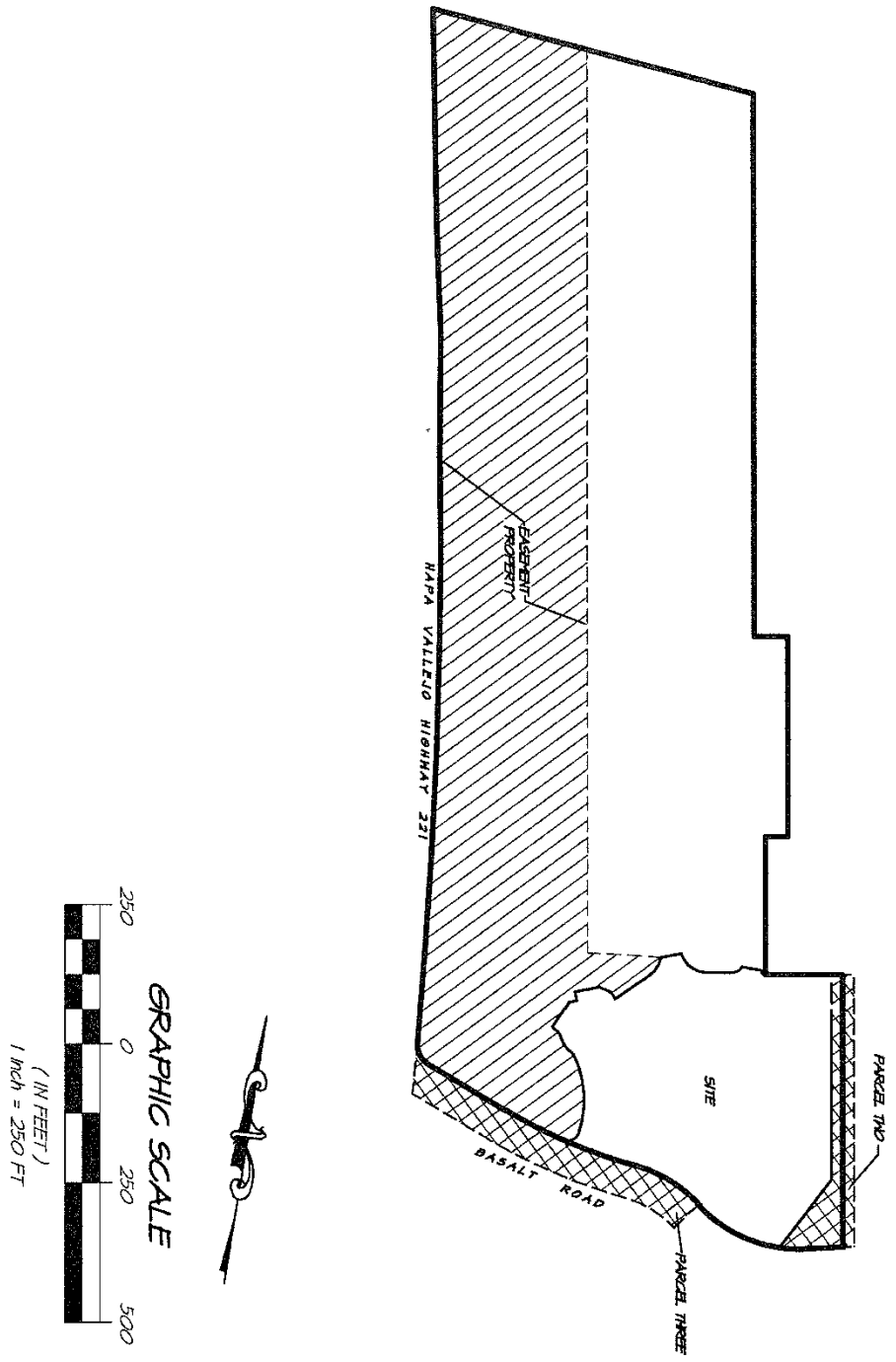


EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT PROPERTY

NAPA COUNTY JAIL PROJECT

EXHIBIT A
UTILITY EASEMENT

An easement for utilities, over that real property situated in the County of Napa, State of California, and described as follows:

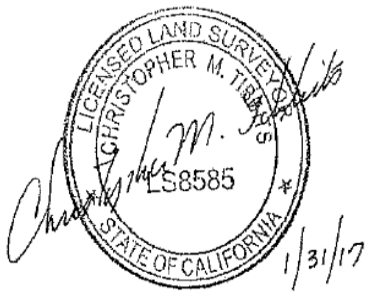
Beginning at the point of intersection of the Southern line of Parcel "A" as shown on the parcel map entitled, "Parcel Map of a Division of the Lands of Basalt Rock Company, Inc.," filed December 21, 1979 in Book 11 of Parcel Maps at Page 11, Napa County Records, with the Eastern line of State Highway Route 12 and 29 as shown on said Parcel Map; thence along the Southern line of said Parcel "A", along a curve concave to the northeast having a radius of 40.0 feet and to which a radial line bears South 86°10'03" West, through a central angle of 64°10'03" a distance of 44.80 feet; thence South 68°00'00" East, 159.43 feet to the beginning of a tangent curve concave to the northeast having a radius 950.00 feet; thence 122.41 feet southeasterly along said curve through a central angle of 07°22'58"; thence leaving said Southern line of Parcel "A", North 14°48'09" East, 1.57 feet to the beginning of a non-tangent curve concave to the northwest having a radius of 18.00 feet and to which a radial line bears South 09°09'04" West; thence 27.65 feet northerly along said curve through a central angle of 88°00'21" to the beginning of a compound curve concave to the west having a radius of 179.00 feet; thence 147.59 feet northerly along said curve through a central angle of 47°14'33" to the beginning of a non-tangent reverse curve concave to the northeast having a radius of 57.50 feet and to which a radial line bears South 24°52'53" West; thence 44.33 feet northwesterly along said curve through a central angle of 44°10'09" to the beginning of a non-tangent reverse curve concave to the southwest having a radius of 179.00 feet and to which a radial line bears North 40°01'45" East; thence 18.25 feet northwesterly along said curve through a central angle of 05°50'26"; thence North 23°25'49" East, 39.09 feet; thence South 65°24'56" East, 0.45 feet to the beginning of a non-tangent curve concave to the north having a radius of 1.00 feet and to which a radial line bears South 24°35'04" West; thence 1.52 feet northeasterly along said curve through a central angle of 87°03'38"; thence North 25°48'33" East, 13.61 feet; thence North 70°09'21" East, 13.77 feet; thence North 19°50'39" West, 16.00 feet; thence North 70°09'21" East, 44.59 feet; thence South 75°18'58" East, 22.29 feet; thence South 44°14'21" East, 14.13 feet; thence North 46°58'04" East, 74.27 feet to the beginning of a curve concave to the northwest having a radius of 48.00 feet; thence 39.36 feet along said curve through a central angle of 46°59'03"; thence South 84°43'15" West, 132.04 feet; thence North 08°51'19" West, 1623.01 feet to the Northern line of said Parcel "A"; thence along said Northern line, North 83°57'40" West, 285.98 feet to the northwest corner of said Parcel "A"; thence leaving said northwest corner and along the western line of said Parcel "A", South 09°41'37" East, 379.89 feet; thence South 11°07'37" East, 200.06 feet; thence South 08°21'37" East, 214.22 feet to the beginning of a curve concave to the west having a radius of 10,080.00 feet; thence 1,065.74 feet southerly along said curve through a central angle of 06°03'28" to the **Point of Beginning**.

END DESCRIPTION

PARCEL TWO

BEGINNING at the southwest corner of Parcel A as shown on the map entitled, "Parcel Map a division of a portion of the Lands of Basalt Rock Company, Inc.", filed October 9, 1980 in Book 11 of Parcel Maps at page 78 in the office of the County Recorder of Napa County, State of California; thence North 78° 08' 07" East 20.03 feet; thence North 9° 03' 07" West 488.57 feet; thence South 80° 56' 53" West 40.00 feet; thence South 9° 03' 07" East 367.55 feet; thence South 28° 21' 00" West 154.23 feet to the southerly line of said Parcel A also being the beginning of a non-tangent curve concave to the north having a radius of 250.00 feet and to which a radial line bears South 0° 20' 28" East; thence 50.28 feet along said curve through a central angle of 11° 31' 26"; thence North 78° 08' 07" East 63.62 feet to the Point of Beginning.

End Description



PARCEL THREE

Commencing at the southwest corner of Parcel A as shown on the map entitled, "Parcel Map a division of a portion of the Lands of Basalt Rock Company, Inc.", filed October 9, 1980 in Book 11 of Parcel Maps at page 78 in the office of the County Recorder of Napa County, State of California; thence South 78° 08' 07" West 63.62 feet to the beginning of a non-tangent curve concave to the north having a radius of 250.00 feet and to which a radial line bears South 11° 51' 55" East; thence 217.93 feet along said curve through a central angle of 49° 56' 44" to the **Point of Beginning** also being the beginning of a reverse curve concave to the south having a radius of 250.00 feet; thence 137.15 feet along said curve through a central angle of 31° 25' 55"; to the beginning of a reverse curve concave to the north having a radius of 950.00 feet; thence 254.53 feet along said curve through a central angle of 15° 21' 05"; thence North 68° 00' 00" West 159.43 feet to the beginning of a curve concave to the northeast having a radius of 40.00 feet; thence 44.80 feet along said curve through a central angle of 64° 10' 03" to the east line of State Highway 221; Also being the beginning of a non-tangent curve concave to the west having a radius of 10,080.00 feet and to which a radial line bears North 86° 10' 03" East; thence along said east line 91.54 feet along said curve through a central angle of 0° 31' 13"; thence leaving said east line South 68° 00' 00" East 155.92 feet to the beginning of a curve concave to the north having a radius of 1010.00 feet; thence 270.61 feet along said curve through a central angle of 15° 21' 05"; to the beginning of a reverse curve concave to the south having a radius of 190.00 feet; thence 104.23 feet along said curve through a central angle of 31° 25' 55"; thence North 38° 04' 50" East 60.00 feet to the **Point of Beginning**.

End Description

REQUEST FOR APPROVAL TO PROCEED OR ENCUMBER FUNDS

Department Name: Board of State and Community Corrections requests action related to the following project.

1. **Project Title:** Napa County Adult Local Criminal Justice Facility, SB 1022

   DGS/Dept. Project Number: N/A **FI$Cal Project ID:** 0000747

2. **Project Authority to be Encumbered (if necessary):**

Ch.42/12, BSCC G.C. Sect. 15820.92-15820.926 (SB 1022)
5227-801-0668, 0000747

3. **Requested Action(s):**
   (Example: Approve Working Drawings and Proceed to Bid)

-Approval to defease and redeem a portion of the outstanding Series 2020B Bonds for the Napa County SB 1022 Adult Local Criminal Justice Facility jail project at the June 14, 2024 SPWB Meeting.

Ryan Okimura Digitally signed by Ryan Okimura Date: 2024.04.26 11:43:26 -07'00'
Project Director **Date**

Aaron R. Maguire Digitally signed by Aaron R. Maguire Date: 2024.04.26 13:14:28 -07'00'
Department Director/Designee **Date**

State Public Works Board/Department of Finance Use Only

1. **Legacy Project ID, if necessary:**

2. **Approval:**

   ☐ Department of Finance.

   ☐ Authority Delegated by the Public Works Board.

   ☒ Public Works Board.

3. **Comments:**

The State Public Works Board voted 5-0 on August 9, 2024 to adopt resolution to defease the 2020B Bonds for the Napa County Adult Justice Facility project.

8/9/2024
State Public Works Board/Department of Finance **Date**

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1199

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Jennifer Palmer, Director of Housing & Homeless Services

SUBJECT: Napa Valley Housing Needs Assessment report

RECOMMENDATION

Receive a presentation regarding the "Napa Valley Housing Needs Assessment". (No fiscal impact)

BACKGROUND

Generation Housing (Gen H) is a non-profit organization focused on providing public education for decision-makers and policymakers about housing policy solutions to improve the housing system. Gen H conducts research, develops reports, and acts as a regional convener aligning diverse local interests around effective housing solutions to meet local and regional housing goals.

On September 12, 2023, the Board of Supervisors approved Agreement No 240143B with Generation Housing to develop two reports:

1. State of Housing in Napa Valley Report: A comprehensive report covering housing stock and cost, density, land use, homebuilding, population shifts and demographic breakdowns of housing cost burden and overcrowding. The report aims to educate the public, community leaders, and policymakers so that the community can collectively and collaboratively make informed, evidence-based decisions on policy, projects, and funding addressing the existing housing shortage.

2. Napa Valley Housing Needs Assessment: A second report providing an independent and objective evaluation of current and projected housing needs aligned to the regional housing inventory. The report considers how current housing availability is addressed by 6th Cycle Housing Element sites inventories in each of Napa Valley's jurisdictions and utilizes insights into existing transit and job centers, and projected demographic and job sector growth to match future needs to supply. The regional approach to the data and analysis allows the County, and the individual jurisdictional entities within the County, to understand housing as a coordinated effort across jurisdictions, helping to assign housing typologies to geographical areas best served by those projects in alignment with principles of equity, sustainability, and regional commitments to climate action.

Requested action: receive a presentation on the content of the Napa Valley Housing Needs Assessment.

Procedural Requirements:

No Action Required

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	There is no mandate to receive a presentation on the report.

Click or tap here to enter text.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

GENERATION HOUSING NAPA VALLEY

Napa Valley Housing Needs Assessment

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Future Housing Need	8
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Napa Valley Housing Needs Assessment

Introduction

Napa Valley's housing market experiences pressures common to nearly all Bay Area counties. The Valley is both a stable center of employment and a highly desirable place to live, attracting higher-earning residents looking to enjoy the region's rich amenities at the same time as it draws skilled workers into its core hospitality, agricultural, manufacturing, and healthcare sectors. But while the former group, which includes wealthier retirees and professionals who work outside of the Valley, might be able to keep up in an ever-tightening housing market, the latter finds it increasingly difficult to live in the same place they work, despite the Valley's historic housing affordability in comparison to peers like San Mateo, San Francisco, and Santa Clara County.[1]

Today, those most readily able to live in Napa Valley are not necessarily part of its workforce. The subsequent impact on its housing market is significant: Housing prices, unconstrained by the needs of Napa Valley's workforce, have risen beyond the reach of low- and moderate-income households. Relatedly, the aging and depreciation of older housing stock that many places typically rely upon to maintain affordable homes for workforce households has not materialized.[2] Instead, median rents in Napa Valley have doubled since 2005 and median home prices have increased nearly 400% since 1990.[3] Napa Valley is demonstrating how, absent decisive action on housing supply and costs, real estate markets in amenity-rich destinations can wholly transform in the timespan of just one generation.

This report on Housing Needs in Napa Valley first estimates the deficit in housing production since 2000, based on what the Valley would have needed to maintain typical historic population growth. We then explore future housing needs by estimating how many young adult households, workforce households, and households with children are now missing and must be accommodated moving forward.

The evolution of Napa Valley's housing market preceded by nearly a full decade the transformation wrought by the tech boom across the greater Bay Area. Napa Valley's young adults experienced delays in households now typical of the region at least a decade before the rest of the state. Likewise, its drops in rates of homeownership among moderate and lower income residents preceded similar declines in cities like San Francisco, resulting in the loss of thousands of workforce households. Finally, the decline of workers living within county lines can be seen in Napa Valley several years before the Bay Area region as a whole saw large increases in workers living out-of-county and commuting in.

Despite comparative and historical affordability of its housing stock, the Valley's more modestly priced homes were no match for demand from higher earning residents. And if Napa Valley's durable workforce exerted little leverage on existing home prices despite increasing demand for their services, the Bay Area as a whole stood minimal chance of remaining a home for moderate and lower income households during its own transformation. Fortunately, many counties are beginning to act.

The Valley's response to its housing need can take inspiration from other Bay Area counties and cities that are seeking to curb out-migration to the Central Valley or out of state, as well as the decline in households with children and the increase in cost burden. But it must take on rising housing prices that stem from its unique economic transformation into a global, amenity-rich destination. In the past two decades, as we show in this report, the threat to Napa Valley's workforce residents and hiring pools has been temporarily mitigated by more affordable, regional housing markets. As these neighboring cities themselves see rising home prices, the regional hiring pool as a whole may experience even greater cost burden.

Napa Valley's Current Housing Deficit

Underbuilding caused a deficit of homes between 2000 and the present, the majority of them for lower income residents. The convergence of underproduction with the region's rise to fame as a global destination resulted in a severe mismatch between the demand for workforce housing and the available supply.

- Napa Valley has a twenty-year housing deficit of roughly 9,700 homes that should have been built to accommodate natural population growth. This includes nearly all of the 1,300 homes lost to wildfires between 2017 and 2020 that were not rebuilt.
- 65% of the 9,700 unit shortfall originates from a shortage of affordable homes not built during this period for lower income households.
- Napa Valley added around 8,200 housing units to its overall stock of 55,000 units during this period, of which 1,777 are now deed-restricted LIHTC affordable homes available to lower income households.

Napa Valley's Future Housing Need

In addition to a deficit accrued since 2000 of nearly 9,700 units, Napa Valley's future need is determined by delayed household formation among existing residents and workers. If rates of headship, homeownership, and workers living within the Valley had remained at historical averages, we can estimate the extent of delayed or prohibited household formation over the last two decades. If these households seek homes in the coming years, we anticipate that:

- More rental and for-sale units will be needed in coming years for the nearly 8,000 fewer young adult households that have formed compared to historical averages.
- 3,000 renter households, who delayed making the transition to owner-occupied units compared to 2005 rates, must be accommodated.
- There are 13,000 missing lower-moderate and below moderate earning households (i.e., those earning below $100,000) since 2015, including 4,100 who failed to maintain households as a result of out-migration or have returned to co-share arrangements with families or other renters.
- Napa Valley will need homes for an estimated 3,500 new workers in the low- and lower-moderate income categories concentrated in the hospitality, beverage manufacturing, agricultural, and health services sectors.

What Napa Valley Needs from its Housing

Napa Valley is already outperforming some forecasts. For example, a 2021 Caltrans report predicted that "housing production is expected to average 250 to 300 homes per year from 2021 to 2026, consisting primarily of single-family homes."[4] The Valley as a whole has defied these trends, correcting some of the lack of diversity of housing. Units in the pipeline for the 6th RHNA Cycle will make an even larger dent in this deficit. But needs remain:

- Napa Valley has lost 6,000 owner-occupied homes affordable to moderate- and low-income households, primarily concentrated in the City of Napa and American Canyon.
- Napa Valley has 5,700 homes occupied by Above Moderate earners who are paying under 20% of their income on rental and owner-occupied units that cost $2,000 or less per month — a modest price more closely matched to moderate- and low-income households.
- 3,500 large bedroom units are currently occupied by 1-person households that could alleviate overcrowding among lower earners.
- 80% of its 3-bedroom homes are for sale, the highest rate in the North Bay, restricting rental options for larger families.
- Nearly all of Napa Valley's 1-bedroom units are for rent, compared to 15% of 1-bedrooms in Marin County, meaning the Valley supplies very few condos or small homes to own that could serve as entry-level ownership options.

Recommendations: The Challenge of Affordable Housing in Amenity-Rich Destinations

Napa Valley faces a unique set of challenges to ensure housing is affordable to its lower and moderate earning workforce. As some analysts have framed it, amenity-rich destinations experience "symptoms of [their own] successful economic development strategy."[5] When industries staffed by hospitality, agricultural, and manufacturing workers attract potential residents who are not part of the workforce, regions should expect to see a greater than average share of homeseekers who are not necessarily bound by the region's median incomes. The housing market that results is largely unconstrained by the incomes of workers in its predominant industries. And in places that have an additional pull other than jobs, meeting the job/housing balance is harder because many come for reasons other than employment.

At the same time, Napa Valley's workforce pool is sheltered in the short term by virtue of more affordable cities outside of the Valley but close enough to workplaces. If housing prices push people out, jobs keep them nearby. As a result, workers may leave Napa Valley but not the regional workforce pool. Cities like Vacaville and Fairfield and counties like Lake County act as pressure relief valves that let Napa Valley maintain its workforce even as prices rise, putting fewer checks on housing prices within the Valley.

In these volatile contexts, policy plays a key role in keeping prices down. But inaction is a policy response as well. Studies have shown that in amenity-rich destinations like Napa Valley where home conversions to short term rentals for tourists dominate new rental options, such changes are indicative of a greater emphasis on "increasing house prices [rather than] increasing supply quantities."[6] Yet without relief, high demand among visitors will continue to incentivize a number of transformative market effects, from higher shares of second homes on the vacancy market to the "conversion of housing into rentals."[7]

All of this means that local governments of regions with luxury real estate are susceptible to demands that originate far beyond their region. They can experience changes that are unbound by regional workforce trends and rarely pegged to changes in nearby urban employment centers, meaning that Napa Valley cannot bank on regional market incentives to keep its prices affordable.[8]

Finally, its most common asset — owner-occupied homes — are most vulnerable to these types of transformations. While conversions may impact all sorts of homes by tenure or location, industry analysts have found the increase in vacation homes and condos has its greatest impact on moderate priced owner-occupied units, the ones most likely to serve as entry level homes, thereby short-circuiting "the normal path to homeownership."[9]

The 2000–2010 period was critical in this transformation — not only for the rise in demand among higher earning residents, but also for what can be learned from the North Bay's policy responses as a whole. Between 2000 and 2010 Napa Valley saw the largest increase in rates of rental cost burden among any Bay Area county, with a 13 percentage point increase, bringing it above the nine county Bay Area average for the first time.[10] This was driven by large increases in burden for the lowest quartiles of earners during that period.[11] At the same time, its annual per capita permitting dropped at faster rates than neighboring counties, ceding one of the primary levers the Valley could use to stabilize prices. Among limited supply, workforce households competed against higher earners for limited openings, leading to displacement. As major analyses of similar amenity-rich market transformations have shown, in constrained markets with high levels of competition for moderately affordable housing, you see what housing policy experts call a housing ladder or bridge. When the highest-priced housing gets even more expensive — as happens rapidly in hot markets like amenity destinations — some buyers will shift into the tier below. These buyers can outbid people who were stretching to purchase homes in this tier, and they will shift into the tier below.[12]

As we find, Napa Valley experiences some of the highest rates of misalignment in the North Bay, with nearly 5,700 modestly priced homes occupied by above moderate households. During this process, surrounding regions have absorbed what would otherwise be higher rates of cost burden, overcrowding, and out-migration among those who cannot outbid higher earners. This effectively acts as a pressure relief valve that tempers demand for Napa Valley residences while also enabling it to maintain a healthy workforce. The highest net out-migration was to regional neighbors of Solano County, Lake County, Sonoma County, and Sacramento County.[13] The challenge now is that prices in the nearby cities are also rising, meaning that Napa Valley may not have this relief valve for as long.[14]

Current Deficit: Napa Valley Is Short 9,700 Homes

We estimate that Napa Valley has a twenty-year housing deficit of roughly 9,700 homes that should have been built to accommodate population growth, but were not. The large majority of the deficit in homes we see today, 65 percent, has disproportionately impacted lower-income households who have been unable to secure affordable housing.

We note that our deficit estimate greatly exceeds Napa Valley's 2023–2031 Regional Housing Needs Allocation (RHNA) of 3,844 units, even despite our deficit number not including future housing need. However, RHNA should be viewed as a state-mandated minimum housing goal, and we believe our number better estimates Napa Valley's true, long-run housing need.

The average annual rate of production in the last 20 years is considerably lower than prior decades and the last decade has been the worst decade for homebuilding in modern history. Napa Valley permitted only a quarter of the average annual rate of homes in the 2010s compared to the 1980s and a third of what it produced in the 2000s. Underproduction of housing stock preceded stagnant population growth.

The decline in housing permitting over this period occurred concurrently with two major losses to the region's housing stock, exacerbating anticipated deficits. Between 2017 and 2020, Napa County lost nearly 1,300 homes to wildfires, only 304 of which have been rebuilt as of July 2024, according to The Napa Valley Register. Over a longer period of time the Valley lost thousands of units to rental conversion and second homes, depleting already low vacancy rates. Both of these losses appear durable in the short term and are thus factored into our assessment of total deficit.

We model this housing shortfall leveraging average annual population growth rates from 2000 to 2020, which enables an estimate for how many households Napa Valley should have formed compared to the number of current households by income level. Projected growth includes in its inputs job growth, city boundaries, environmental assets, among other relevant factors that impact housing.

Table 1. Napa Valley's Current Housing Deficit

Source: U.S. Census Bureau and Generation Housing calculations

	Below Area Median Income	Above Area Median Income	Total
Households in 2000	22,701	22,701	45,402
Households in 2020	24,869	24,869	49,738
Projected Households in 2020	31,678	31,678	63,356
Projected Growth in Households	8,977	8,977	17,954
Units Produced	6,411	1,777	8,188
Unit Deficit	2,566	7,200	9,766

Table 1 shows that Napa Valley was projected to increase to roughly 64,000 households by 2020, which would have netted 17,953 new households.[15] In actuality, Napa Valley had about 49,000 households in 2020, or an increase of only 4,300.

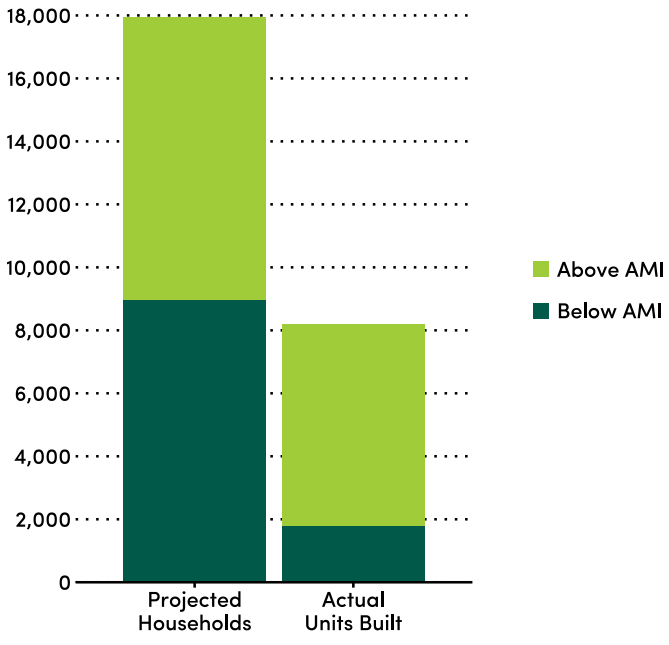
Napa Valley permitted around 8,188 housing units, of which 1,777 are deed-restricted LIHTC (Low-Income Housing Tax Credit, the federal program that accounts for the majority of legally designated affordable rental housing) affordable homes available to lower income households, or about 3% of the total current stock.

The net difference between the number of homes permitted relative to the growth projections for this period resulted in a housing shortfall estimate of 9,766 units.

Figure 1 compares projected household growth to actual housing units permitted, splitting both by income level. We find that 65% of the 9,700 unit shortfall originates from a shortage of affordable homes not built during this period for lower income households — a policy choice that displaces or bars those households from Napa Valley.

Figure 1. Projected Household Growth vs. Permitted Units, 2000–2020

Source: Generation Housing calculations



Future Housing Need: What Napa Valley Must Plan for

Housing estimates based on population growth targets are helpful in assigning baseline goals. But measures linked to net migration and job growth alone are based largely on the loss of potential residents rather than on the unmet needs of existing residents. Unmet housing need includes residents who cannot form their own household, who live in overcrowded conditions, who work in Napa Valley but live outside of it, or those who cannot secure a home for purchase. Future housing projections based on population growth can also be misleading at moments of population stagnation; when future estimates are low, it may appear that more housing is not needed to satisfy growth.[16]

Such totals underestimate the need for growth among residents who already live or work in Napa Valley but have delayed or been prohibited from forming households. Unmet — or latent — need helps estimate who would likely form a household if units were available and affordable. Future estimates based on these measures are relatively predictive because they are consistent with salient life-cycle milestones including age, family status, and income that are strongly correlated with housing need. For example, the formation of a new household is strongly linked to young adulthood while the need for larger bedroom sizes is predicted by family status. Later career stability is linked with homeownership. These needs are also durable and consistent across regions. Hence, comparing these measures between Napa Valley and the state shed good insight into how its residents are differently impacted by housing costs.

Finally, these measures are helpful in determining future need because groups who have delayed forming a new household will need housing in the coming years. In this section, we estimate lags in headship by age (a measure of the rate of household formation), delayed transition to ownership by age, and out-of-Valley workforce migration to better predict what housing need will be in the future.

What we call unmet or latent need can be observed anecdotally, from waitlists for affordable housing units to competition for market-rate sales and rentals, for example. In Napa Valley, we find household growth for different segments of the population has not always kept pace with population change or job growth. In housing markets with severe constraints where the total number of homes is not the only constraint on household formation, the distribution of housing stock acts as an equally strong layer or element of constraint. We therefore measure growth in latent housing need irrespective of actual household formation. We measure it through low headship rate, lag in homeownership, displacement, and housing cost misalignment. In short, it is a way of detecting the need among current residents that is not currently met but will contribute to demand in the near future.

Napa Valley Needs Homes for 13,000 Younger Adult Households

Housing need varies according to the different stages of one's life, which explains how we can observe rising demand at the same time that population growth is stagnant or even decreasing. The headship rate, defined as the percentage of individuals in a population who are the heads of their own households, is a way of measuring this need.

For example, if half of Napa Valley's residents were the head of their household (and the other half of residents lived with one of those householders), then the Valley would have a 50% headship rate.

Headship rates typically start to rise among individuals as they enter their mid- to late-twenties, corresponding with the period they seek to move out from a parent or guardian, or start a family. But they can also be delayed by limited availability of renter opportunities, high rents, and cost burden. The Urban Institute found that when housing costs began to rise precipitously between 2000 and 2010, the most affected age group were those in the 25- to 44-year-old range. Today they are 35 to 54 years old, and lag in headship rate behind previous generations.[17]

Napa Valley's rates of headship for its younger adults reflect this trend. Figure 2 shows that they have declined to rates far below their historical averages, reflecting even greater constraints on the ability of young residents to form new households. When residents born in the 1960s were 20–24 years old, their headship rate was 22%. For residents born in the 1990s, their headship rate at the same age was just 10%. Similarly, when residents born in the 1990s were 25–29 years old (many in this group are in their 30s today), their headship rate was 26%, 10 percentage points below the rate of those born in the 1960s when they were also 25–29 years old. Other birth decades lag behind too: Even residents born in the 1970s and 1980s are finding it more difficult to form their own households than those born in the 1960s.

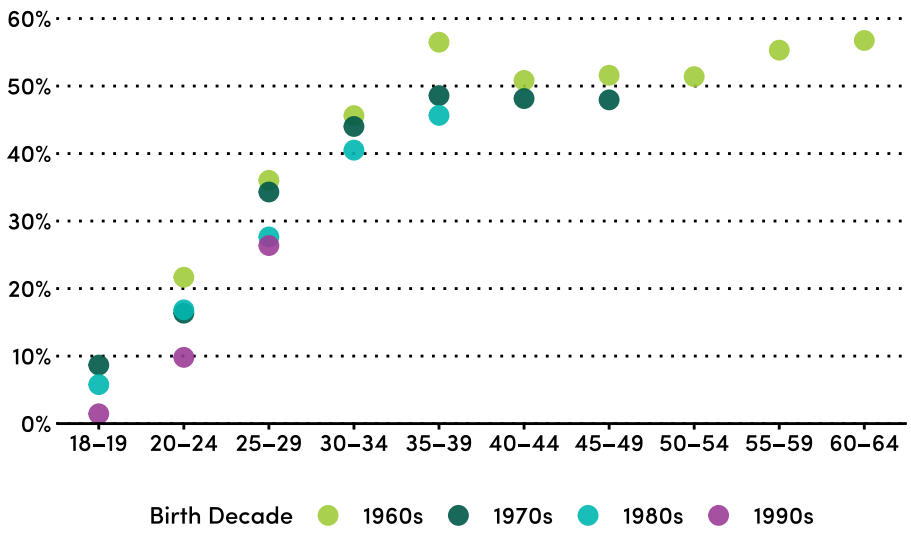
Note on interpretation: This graph can be understood in two primary ways. First, we can study headship trends over one's lifetime. For example, by focusing on the population born in the 1960s, we can see how the lime green dots trace out a curve of generally increasing headship as one gets older. The second way we can study this graph is by focusing on a specific age group. For example, individuals 20–24 years old had a headship rate of 22% if they were born in the 1960s, but only 10% if they were born in the 1990s.

In Napa Valley, headship rates may be affected by declining shares of the housing stock whose prices fall below $1,500 per month. As late as 2015, rental units between $1,000 and $1,499 formed the bulk of all rental units with a total stock of 5,000. Today, there are half as many units in that price range and nearly 2,000 additional units priced $2,000 to $2,999.[18] As a result, young adults may stay with parents longer, live with roommates, or dwell in semi-permanent situations such as couchsurfing or sleeping in cars.[19]

If we assume that younger adults (ages 20–29) born in the 1990s would have formed new households at the same rate as residents born in the 1960s did, then the number of younger

Figure 2. Observed Headship Rates by Age and Decade of Birth

Source: IPUMS USA and U.S. Census Bureau



adult households should have been 70% higher. Specifically, there are nearly 13,000 households that residents born in the 1990s would have formed but failed to, almost certainly due the inability to afford starting their own household. The Joint Center for Housing Studies at Harvard has estimated that a surge in new households in the coming decade will be driven by these young adults. Even holding for growth in the underlying population alone, "older millennials [are] now forming the households that had been delayed earlier in the decade."[20]

Napa Valley Needs 3,000 Ownership Opportunities for Households Who Delayed Homeowning

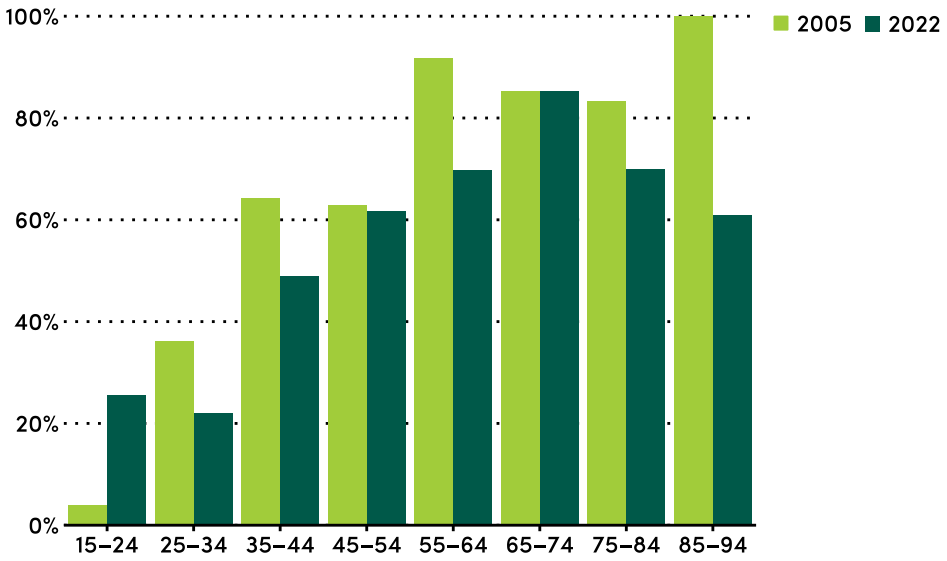
The high cost of housing can make it difficult for household formation in a subsequent manner — by limiting the number of residents who make the leap from renter to homeowner. Napa Valley has some of the highest homeownership rates in the Bay Area. But homeownership has gotten rarer for younger households in recent years. Figure 3 shows that between 2005 and 2022 rates of homeownership among young households dropped significantly for those between ages of 25 and 45. Households aged 25 to 34 saw a decline in homeownership rates from 36% to 22% while households aged 35 to 45 saw a similar 15 percentage point decline.

Napa Valley's home ownership lag includes slightly older groups as well, likely as a consequence of an earlier period of ownership stagnation. Napa Valley's home prices surged earlier than neighboring locales such that by 2010 its cities were outpacing other likely destinations for workers. By that year over half of all City of Napa residents had a home value that was 4 times their income — rates only reached in neighboring Fairfield, Vacaville, and Vallejo after 2020.[21] Residents in their mid-40s during this period may have delayed ownership, leading to lower rates of homeownership among today's 55- to 64-year-old households.[22]

Delays in homeownership are likely to contribute to future need. The Terner Center at UC Berkeley estimates that "had housing prices in California risen from 2000 to 2021 in line with those in the rest of the country, about half (48 percent) of California's decline in homeownership rate over the period could have been averted."[23] A similar adjustment to Napa Valley's home prices would likely see similar increases given the higher-than-average prices here.[24] If homeownership in Napa Valley were to reach levels consistent with 2005 rates, we would expect an across the board jump of 10 percentage points among all households up to age 65. This group of delayed homeowners include 3,000 households fewer than those in 2005 who will likely need home ownership opportunities in the near future.

Figure 3. Homeownership Rate by Age of Householder, 2005 vs. 2022

Source: IPUMS USA and U.S. Census Bureau



Napa Valley Needs Housing for 8,000 Missing Workforce Households

Napa Valley's workforce residents may face the greatest barrier to maintaining a household in the Valley. Figure 4 shows that since 2005, Napa Valley lost 8,000 households making less than $100,000.[25] This decline could be attributed to either out-migration among workforce residents or an inability among these residents to maintain an independent household, instead opting to co-share, return to living with families, or find roommates.

Large increases in rent and home costs (typically of $1,500 or more) such as those seen in Napa Valley have been shown to suppress "headship by lowering marriage and partnership rates, while simultaneously raising the fraction living with family members."[26] Staggering cost increases that outpace median pay increases may have led to households ultimately leaving the Valley.

The result is that households earning below $100,000 are far more underrepresented than they were 15 years ago (income is not adjusted for inflation since housing costs are a large component of Consumer Price Index calculations and adjustment would nullify the effect of rising housing costs). By contrast, higher earning households have become more prevalent and have found stability within the Valley. Napa Valley lies somewhere between Solano County, where household incomes have remained more stable, and San Francisco, which has seen the region's highest decline in low- and moderate-income households during this period.

Jobs and Income to Housing Need[27]

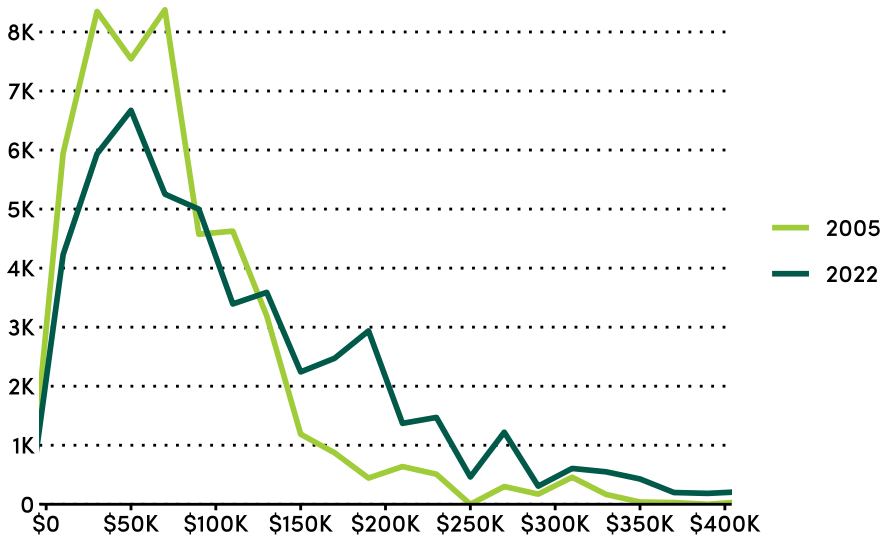
Napa Valley, like other amenity-rich destinations, depends more so than other Bay Area counties on the hospitality, agricultural, and manufacturing workforce to sustain the industries that are largely responsible for its economy. And like its peers that attract non-workforce residents seeking to take advantage of these amenities and natural beauty, the resulting rise in housing costs serving higher-earning residents threatens workforce housing, contributing to a limited local labor supply.

This same effect has been seen in resort towns like Colorado's Telluride, for example, whose tourism-centered workforce has been gradually displaced to locales such as Montrose, Colorado, a three-hour daily commute, as homes are converted to high end luxury units and second homes.[28] Sustaining these industries both supports its labor force and contributes to higher than average housing costs that reduces the very labor supply these industries depend on. Without action, the trends we note in this section will worsen.

The percentage of agricultural and production employment is higher in Napa Valley than other Bay Area locales,[29] meaning that it has a slightly different profile of income to home price ratios.

Figure 4. Distribution of Household Income, 2005 vs. 2022

Source: IPUMS USA and U.S. Census Bureau



Historically, home prices have more closely matched these industries. But as values have grown to match incomes among its regionally low out-commuter population, of whom the vast majority (nearly 75%) are high earners making above the AMI, home prices have increased to unaffordable levels for the region's moderate to below moderate workforce.[30]

Although not all wage earners in these core industries are moderate or below moderate earners, numerous interviews with child care employers, hospital caregivers, and industry sectors representatives summarized the critical role played by entry-level occupations within each of these sectors. Regional hospitals must attract caregivers and nurses' aides who support registered nurses but do not typically earn above $100,000. Schools rely on new teachers who are just starting out and are earning their degree simultaneously with a new role. Child care providers likewise depend on entry-level staff to fill core functions. These workforce participants, many of whom fill in-person roles, ensure the viability of Napa Valley's core sectors but do not earn enough to live within the Valley.

In this section we assess how Napa Valley must build for anticipated increases in hires in overwhelmingly lower level income occupations; second, it must serve the already existing need among workers who have decided to live outside of the Valley at rates far above regional peers.

Finally, we conduct a unique household income to housing costs assessment to determine whether current above moderate residents in Napa Valley occupy homes that might be affordable to moderate and even low-income households.

Napa Valley Will Need Homes for 3,500 Low- and Lower-Moderate Income Workers

Napa Valley's wine and tourism industry is so strong that it anticipates greater workforce demand in coming years, an upturn it has largely sustained since the second year of the pandemic. According to Caltrans, the rebound in these sectors outperformed expectations even in the early return-to-work stage of the pandemic. At the time, it predicted that "employment gains in 2021 will be largest in leisure services, which will recover 2,500 of the jobs that were lost in 2020."[31]

Table 2. Top 10 Industries in Napa Valley

Source: Lightcast

Industry (3-digit NAICS)	2022 Jobs	2028 Jobs	2022-2028 Change	2022-2028 % Change	Average Earnings	2028 Location Quotient
Beverage & Tobacco Product Manufacturing	12,555	13,061	506	4%	$103,867	75.22
Food Services & Drinking Places	6,929	8,270	1,340	19%	$46,704	1.30
Local Government	5,840	5,691	-149	-3	$115,010	0.81
Accommodation	4,022	4,955	932	23%	$58,316	5.27
State Government	3,980	4,091	110	3%	$114,537	1.55
Administrative & Support Services	3,435	3,437	2	0%	$55,664	0.66
Support Activities for Agriculture & Forestry	3,363	4,018	654	19%	$65,737	13.53
Social Assistance	3,018	3,685	667	22%	$39,931	1.39
Specialty Trade Contractors	2,896	2,911	16	1%	$87,991	0.95
Ambulatory Health Care Services	2,859	3,330	471	16%	$109,792	0.71

More recently, a new Lightcast study (Table 2) projects that Food Services and Drinking Places and Accommodation — industries with lower paying median wages — are "the industries expecting the highest growth in upcoming years, with a combined total of 2,272 new jobs by 2028."[32] Demand for these frontline roles could be so high that there will be worker shortages. But this may be driven by challenges hiring. Lightcast also finds that "eight of the top 10 occupations in Napa [Valley] earn median wages below $40,000 (and fall below $30,000 when adjusted for Napa [Valley]'s cost of living)." And because retail and hospitality employees are already "raising concerns about their long-term financial wellness and are looking for increased support from their employers," high housing may play a role in shrinking the available, local labor force.[33]

Sectors related to the wine industry with higher median wages, including Beverage Manufacturing ($103,867) and Support Activities for Agriculture ($65,737) which include specialists in crops and cultivation, will also increase, adding a combined 1,154 workers. Finally, the Valley will also add critical roles in the health care sector including moderate earners in Ambulatory and Health Services ($109,792).

4,100 Workforce Households Moved Out of Napa Valley

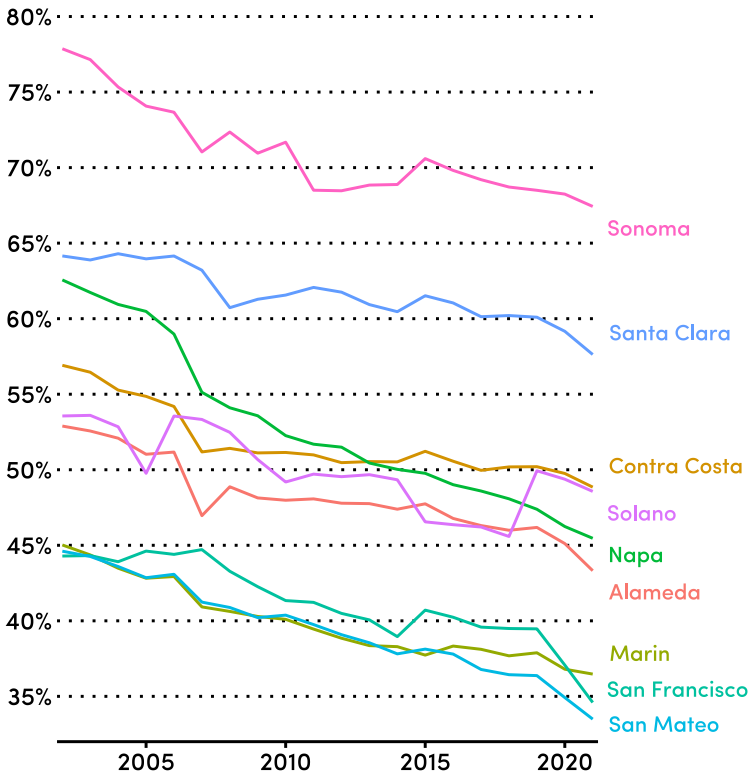
Napa Valley's hiring pool in key sectors is already depleted due to a growing share of out-of-Valley workers. Therefore, the total need for workforce housing must include a segment of the population that likely deferred household formation within Napa Valley to relocate to more affordable markets.

To adequately accommodate future need, the Valley must address this displaced workforce. Of course, estimating the number of households that would have stayed is difficult. Yet historical data on workforce households prior to the rise of housing costs can help set benchmark totals.

Napa Valley has seen the largest drop in in-county workers (Figure 5) — workers who live in the county they work in, as opposed to workers who do not live in the county they work in — among all Bay Area counties, seeing a roughly 17 percentage point drop in resident workers as a share of all

Figure 5. Percentage of Workers Who Reside In the County They Work In, 2002–2021

Source: U.S. Census Bureau, LEHD Origin-Destination Employment Statistics



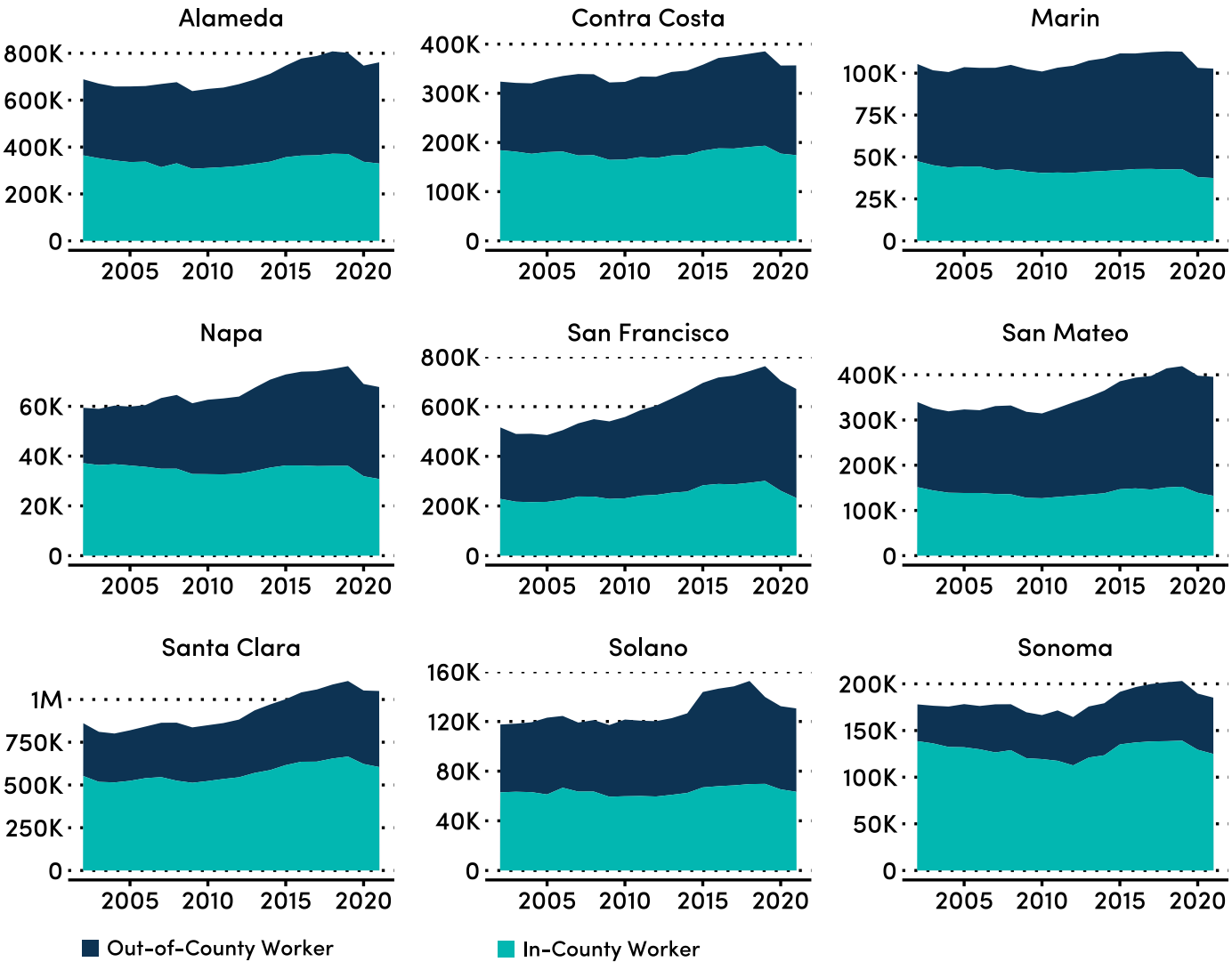
workers since 2002. The decline was steepest around 2006 and dropped below 50% for the first time around 2013. In other words, more than half of Napa Valley's workforce now lives outside of Napa Valley, in counties like Solano, Sonoma, and Contra Costa. Although Napa Valley began the millennium with the third highest share of in-county workers, it has now dropped below Contra Costa and Solano Counties and sits just above Alameda County.

This view of relocation data helps illustrate the total workers who now live outside of the Valley. Figure 6 shows that Napa Valley's out-of-county workforce has grown from roughly 20,000 workers in 2002 to 37,000 by 2021. The 18,000 person increase in out-of-county workers (or 90% increase) represents a sizable share of Napa Valley's total workforce increase, many of whom have sought more affordable housing. If the share of in-county workers had remained constant at 2002 rates (63% instead of today's 46%) we would expect to see closer to 25,500 out-of-county workers, or 11,500 fewer than today's total. Assuming a fixed person per household size of 2.8 members, this would mean an additional 4,100 households.

Our estimate for future need combines both the projected workforce increase with existing rates of relocation outside of the Valley. If Napa Valley adds around 4,500 new workers by 2028 with a rate of 56% who live outside the Valley, we expect the total

Figure 6. Total Workers Living In-County vs. Out-of-County, 2002–2021

Source: U.S. Census Bureau, LEHD Origin-Destination Employment Statistics



out-of-Valley workers to increase by 2,520 workers, reaching just above 40,500 out-of-Valley workers out of 72,500 total workers by 2028. If Napa Valley were to restore the rate of in-Valley workers to its 2002 levels of 63% instead of today's 44%, it would increase the total in-Valley workers by 2028 from 32,000 to 45,675 or an increase of roughly 13,000 workers.

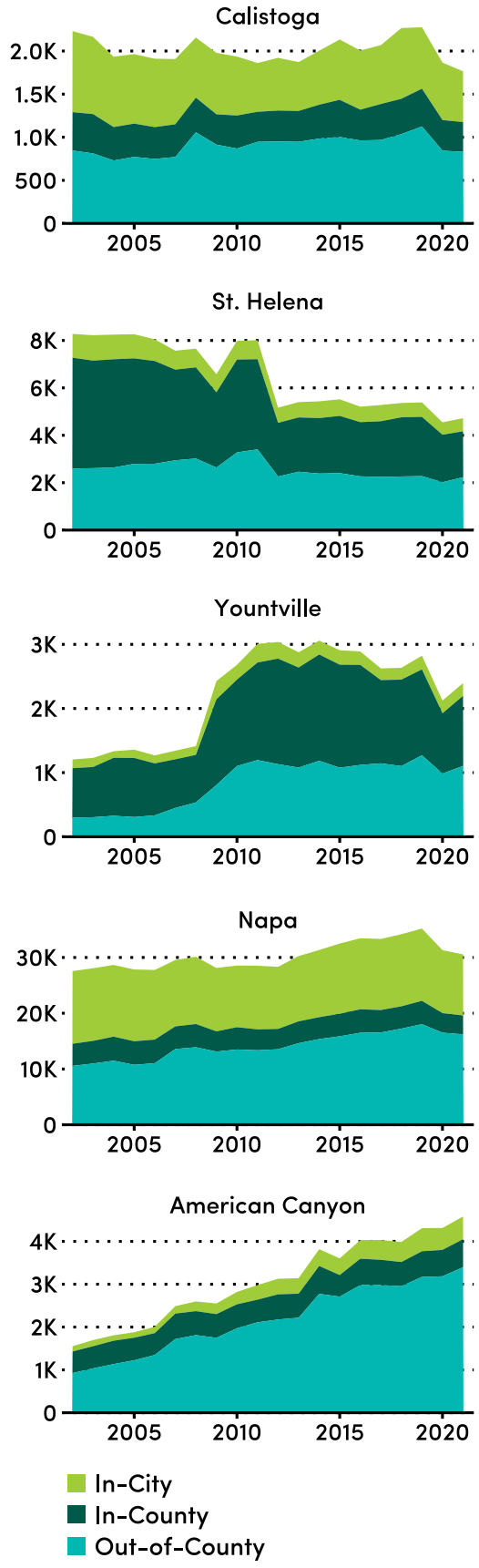
Figure 7 shows that outside of the City of Napa and Calistoga, very few of Napa Valley's workers reside in the city or town where they work. Most cities' share of workers residing outside of the city has remained relatively constant since the turn of the millennium, meaning very few new workers are able to find places to reside in the city where they work. The share of workers residing outside of each city has either grown or, in the case of American Canyon, comprise the vast majority of all new additions to the workforce. American Canyon, for example, has increased its job totals since 2002 from 1,500 to 4,200 workers, nearly 2,000 of which reside outside of the city and Valley. Nearly all of Yountville's new workers since 2010 reside outside of the city.

The City of Napa and Calistoga are exceptions but even in their cases the majority of their workforce resides outside of the city. Nearly 2 in 3 workers in the City of Napa live outside the city, the majority of whom live outside of Napa Valley. Calistoga has seen a consistent share of its workforce live outside of the town since 2002.

The need to offer modestly priced units for this workforce is even more critical as surrounding destinations grow costlier. In the prior two decades, Solano and Lake Counties have served as relief valves for Napa Valley's employers whose workers are able to remain in the workforce by living just outside of the Valley. This has in effect enabled Napa Valley's hiring pool to remain sustainable even as housing costs rise. But as the gap in affordability between these counties and Napa Valley's housing market closes, that pool may shrink. For example, Figure 8 demonstrates

Figure 7. Total Workers Living In-City, In-County, and Out-of-County for Napa Valley Cities

Source: U.S. Census Bureau, LEHD Origin-Destination Employment Statistics



that Solano's share of rents that are affordable to median Napa Valley earners has shrunk at rates similar to that of Napa Valley itself in recent years. Total units priced from $1,000 to $1,499 have dropped from 19,000 to 9,000 between 2015 and 2022. There are now 27,000 units priced above $2,000, up from only 6,000 in 2015.

5,700 Units Affordable to Low- and Moderate-Income Households Are Occupied by Above Moderate-Income Owners

Napa Valley's supply of modestly priced rents and for-sale properties has declined, altering the distribution of homes and shrinking the supply of housing priced for workforce households. Whereas in 2010, 70% of all renters were paying below $1,500 in monthly rent — a range roughly affordable to those earning $60,000 a year — by 2022 that proportion had shrunk to 25% of all renters. Today, total renters paying just under $1,999 (affordable to those earning just below 80% AMI) has dropped to 28% of the rental population.[34]

Yet unlike counties where newer builds dominate workforce housing, Napa Valley has an existing stock of modestly priced homes that it developed to meet its agricultural and manufacturing jobs before the turn of the millennium. The problem is that these more modestly priced options tend to be occupied by higher earning households at significant rates.

Figure 9 shows that Napa Valley, like the other North Bay counties, sees the lowest share of residents paying more than 30% of their income towards housing among above moderate income households. But it also sees the highest regional rates of above moderate households who pay the lowest share of income towards housing, typically less than 20%. Above moderate households make up 41% of all households in Napa Valley, but make up 68% of all those paying less than 15% of income on housing, occupying homes whose values or prices may be suited to more moderate earners. One-third of above moderate households in Napa Valley pay under 10% of their income towards housing compared to 22% of above moderate earners in Solano County and 24% of above moderate earners in Sonoma County.

While a goal for most households should be to pay under 30% of their income on housing costs, this is unlikely when modestly priced homes are occupied by a region's highest earners. In addition, higher earners can manage cost-burden more easily. Thus, one goal of jurisdictions should be to ensure housing units are occupied by households whose incomes most closely match their cost. In Napa Valley, roughly 9,000 above moderate households (e.g. 1-person households earning over $108,000 annually or 4-person households earning over $155,000 annually) are paying under 15% of their income on housing costs. Many are occupying units that would be affordable for a moderate and lower-income household.

Figure 8. Distribution of Rental Costs in Solano County, 2008–2012 to 2018–2022

Source: U.S. Census Bureau

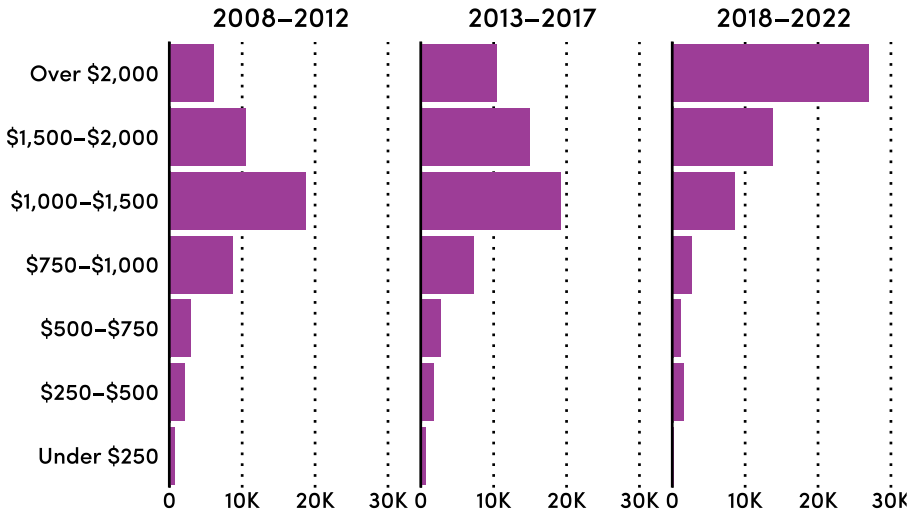


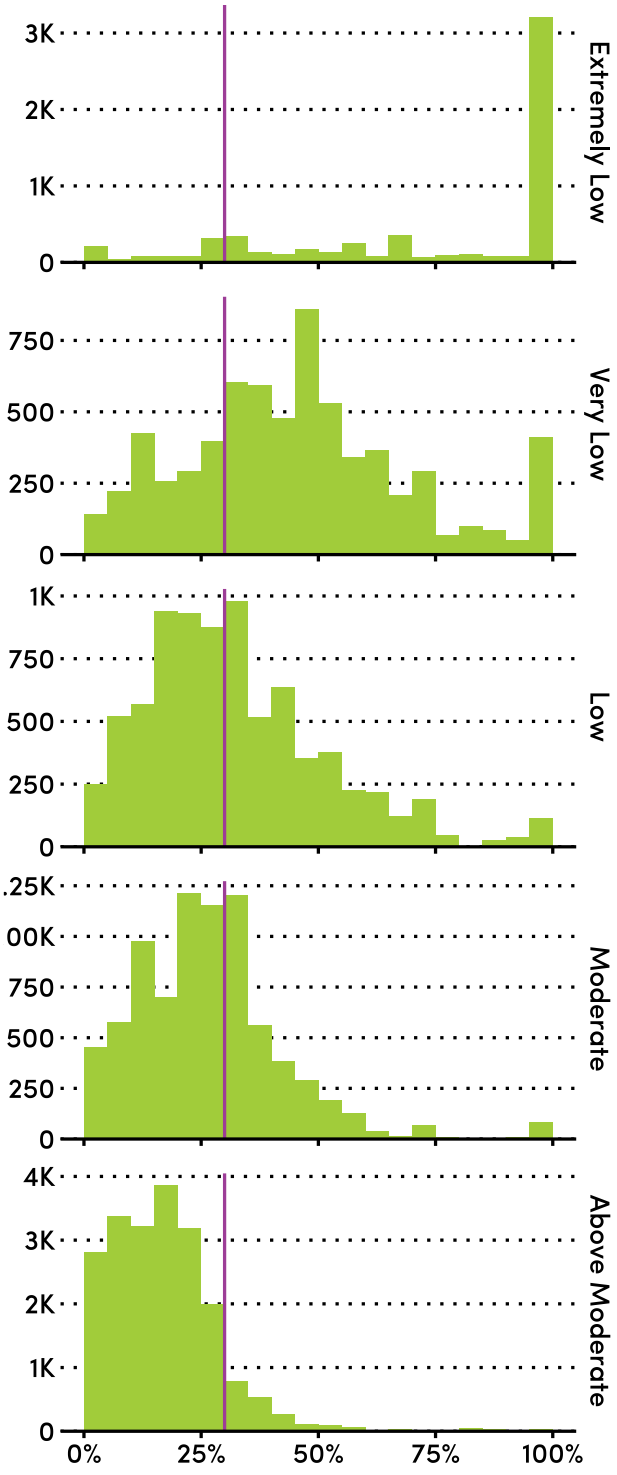
Figure 10 shows the costs of all units occupied by above moderate households who pay less than 30% of their income on housing (i.e. the underburdened). We find that roughly 5,700 above moderate earners paying under this 30% threshold (or 1 in 10 households in Napa Valley) occupy units that cost $2,000 or less per month. That price in monthly housing costs would be considered "affordable" (that is, under 30% of monthly income) to a 1-person moderate-income household or a 2-person low-income household. Currently, 38% of all moderate-income households are cost burdened and half of all low-income households are cost burdened. This represents 5,700 units whose modest price is more closely matched to moderate- and low-income households.

Exploring this relationship between income and housing cost in Napa Valley further, we find that earnings have little bearing on the cost of housing: you may make a lot, but the cost of your housing is not necessarily going to be higher. In Figure 11 we compare unit costs occupied by above moderate earners who pay 20% or less of their income towards housing to those occupied by moderate- and low-income households. The distribution is nearly mirrored. The total number of low income households who occupy units that cost $1,500 per month on housing matches the total number of above moderate households who occupy those same units. Nearly 1,800 units that cost $1,000 are occupied by above moderate households while 1,000 of those same units are occupied by moderate households. Fewer units that cost $500 are occupied by extremely low income households than by above moderate earners who earn nearly twice as much.

This misalignment interferes with the ability of a jurisdiction to utilize its assets to ensure its stock of modestly priced homes and rental units go to the people who they will have the biggest impact on. Yet because above moderate earners may lack options to upgrade or, in the case of older and wealthier households, to downsize, they may not free up homes that could be affordable to younger

Figure 9. Total Households by Income Level and Percentage of Income Spent on Housing

Source: IPUMS USA and U.S. Census Bureau



and more moderate earning households, keeping Napa Valley's comparatively affordable stock out of reach of its moderate and below moderate earners.

Housing and Pipeline Inventory

Napa Valley must utilize a combination of its existing assets in both the owner and rental class as well target its new permits to rectify what we identify are three serious deficits by housing typology: declining share of modestly priced homes for the workforce; insufficient supply of larger rental units for families as well as smaller ownership opportunities (such as condos) to serve as entry level ownership opportunities; and a greater supply of smaller units to help restore unit size as a salient tool in drawing down prices.

Constraints on the housing market in Napa Valley emerge from an overall shortage as well as the Valley's distribution of home prices, types, sizes, and tenure. In this section we assess the overall stock in order to identify primary needs; we then prioritize the types of projects in the existing pipeline that best meet gaps in the housing stock. While we recommend a dual approach that seeks to utilize Napa Valley's comparatively affordable ownership stock, our recommendations on pipeline projects recognize that building to the highest areas of need is not the only, or even the primary, way to correct past deficits. New builds are not always suited to correcting high prices, for example. "As building costs increase, a greater portion of construction occurs at the higher end of the market, despite greater demand for low-cost

Figure 10. Distribution of Monthly Housing Costs, Above Moderate Income Households Paying 30% of Income or More on Housing vs. Those Paying Less Than 30%

Source: IPUMS USA and U.S. Census Bureau

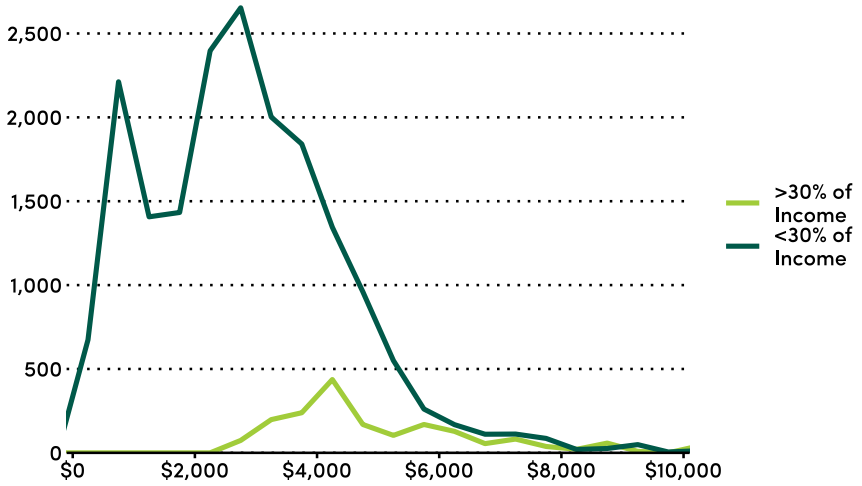
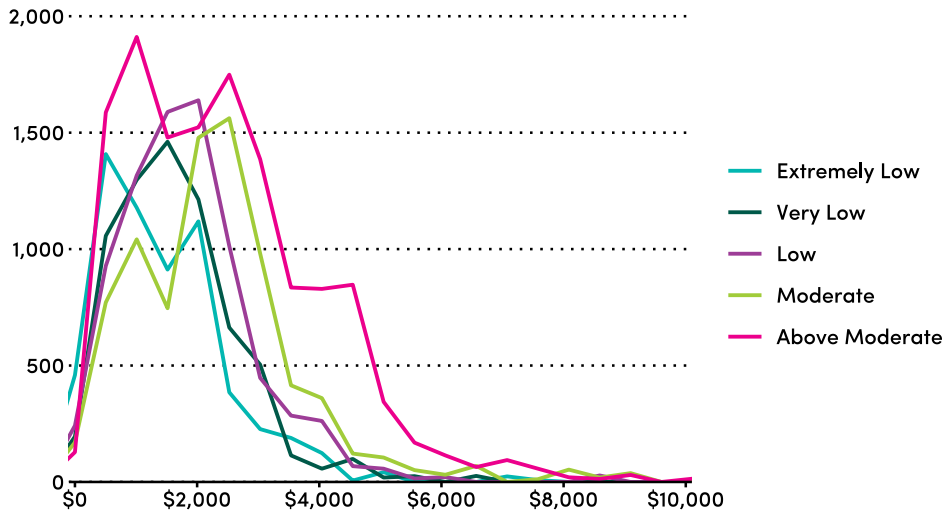


Figure 11. Distribution of Monthly Housing Costs, Above Moderate Households Paying 20% of Income or Less on Housing vs. All Other Households

Source: IPUMS USA and U.S. Census Bureau



homes. This mismatch disproportionately drives up housing costs at the lower end of the market, where demand significantly exceeds supply."[35]

Likewise, pricing in constrained markets is hard to predict, especially among assets with existing shortages such as 1-bedroom homes for sale or rent. Typically, the larger the home, the higher the cost. But in markets with severe shortages among smaller homes, prices for smaller units may be just as high as those slightly larger given the demand relative to supply.

Napa Valley Has Lost 6,000 Owner-Occupied Homes Affordable to Low- and Moderate-Income Households

The cost trends in Napa Valley are traceable across nearly every jurisdiction. Despite different production outputs, the number of owner-occupied and rental homes affordable to moderate and below households is shrinking. The region as a whole has seen its share of homes priced between $300,000 to $400,000 — i.e., those affordable to households earning approximately $90,000 after a 20% down payment — decrease by one-fifth of its total stock since 2008-2012; likewise it has lost 2,000 homes valued between $200,000 to $300,000 in the same time. Those units would be affordable to households earning $66,000 after a 20% down payment. The Valley as a whole has also lost two-thirds of its rental units priced $750 to $1,500 since 2008-2012. These would have been affordable to households earning between $36,000 and $54,000 (between 40-60% of Area Median Income).

American Canyon and the City of Napa, the two largest jurisdictions in the Valley, have seen the largest drops in these segments of their ownership stock. Figure 12 shows that American Canyon's 2,100 homes valued between $200,000 and $400,000 in the period 2008-2012 have dwindled to under 500 today. And in the slightly higher median market of the City of Napa total homes valued between $300,000 and $500,000 have dropped from just over 6,000 in 2008-2012 to under 1,500 today. Among the region's smaller towns, St. Helena has seen the biggest increase in its share of homes over $1 million. They now comprise over 75% of all owner-occupied homes. Calistoga and Yountville, which had more even price distribution in the period 2008-2012, today see bifurcation of the market between luxury and low-income homes that are primarily mobile homes.

3,500 Large Units Currently Occupied by 1-Person Households Could Alleviate Overcrowding Among Lower Earners

Napa Valley's largest stock of homes are sized at 3- and 4-bedrooms. Nearly 30,000 of its 55,000 units are 3-bedrooms or larger. These are well-suited for the Valley's 20,000 households with three or more people. Yet many of these larger units are occupied by smaller-sized households. For example, 10,900 of the Valley's 3-bedroom units are occupied by 2 or fewer residents. Because 2-person and smaller households are overwhelmingly above moderate earners, many lower income earners with larger families may be unable to occupy the larger homes they need. We estimate the Valley could free up 3,500 larger units currently occupied by 1-person households to help meet the need among several thousand moderate and below earners who are currently living in overcrowded conditions.[36]

We also find there are narrow options within tenure types, forcing larger families to own even if they cannot afford to. Two- to four-bedroom houses form the bulk of the housing stock, with only 7,500 housing units under 2-bedrooms. But the availability of larger sizes is even more limited if one is renting, meaning rentals are primarily available for smaller households.

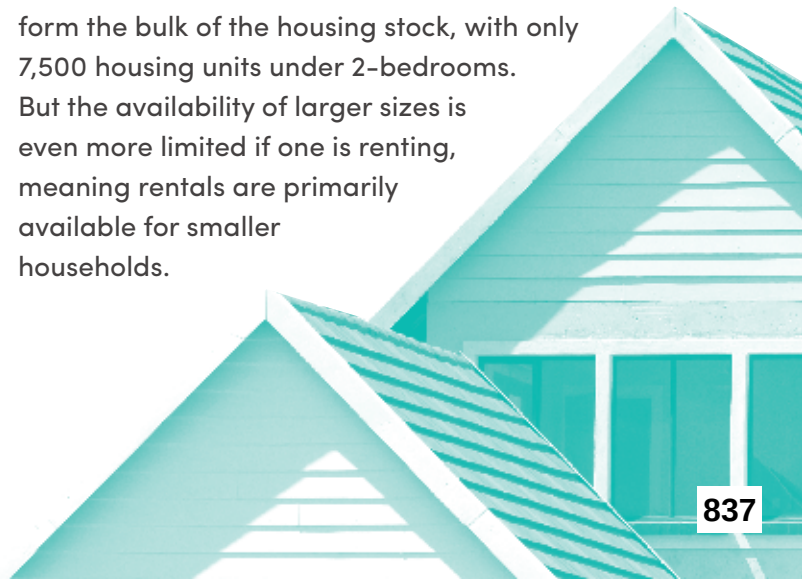
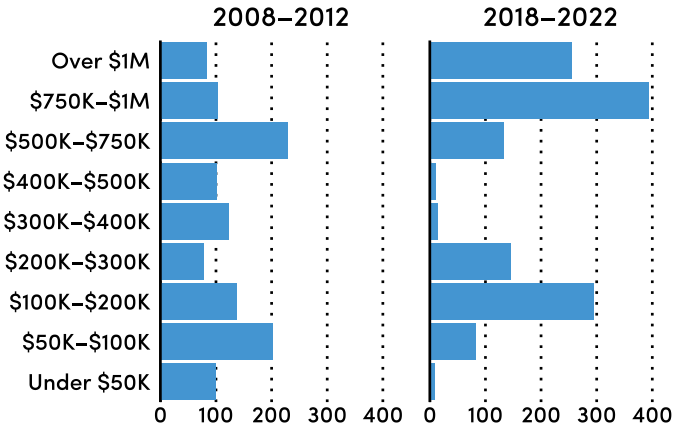


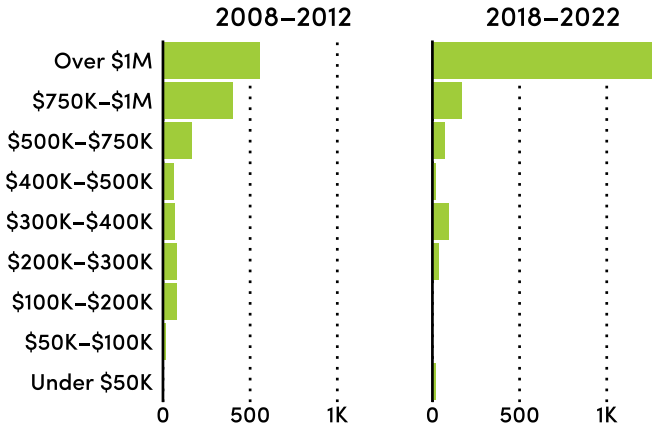
Figure 12. Distribution of Home Values by City, 2008–2012 vs. 2018–2022

Source: U.S. Census Bureau

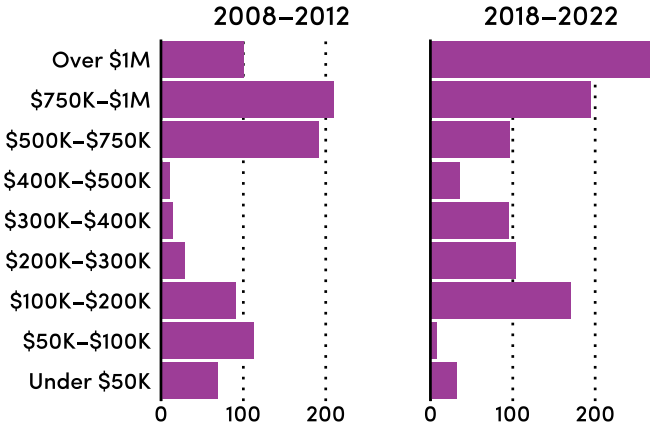
Calistoga



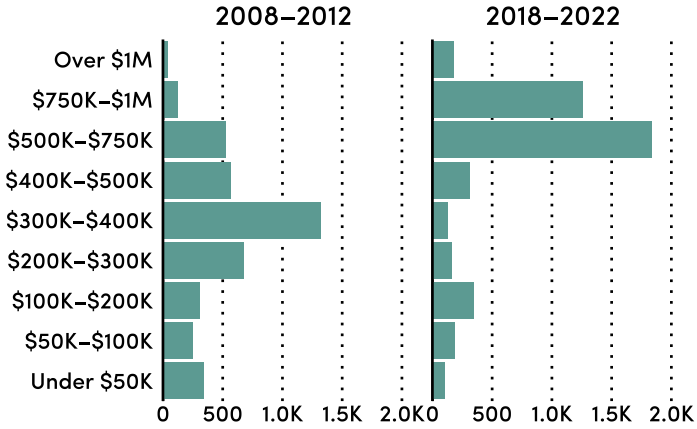
St. Helena



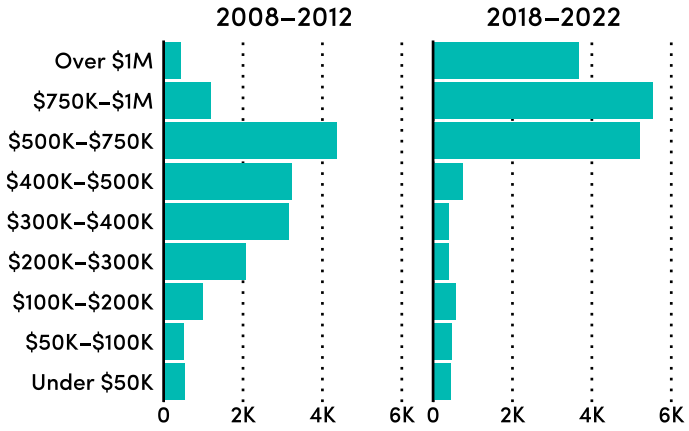
Yountville



Napa



American Canyon



As shown in Figure 13, of the nearly 20,000 3-bedroom homes, 4 in 5 are owner-occupied as opposed to rentals, restricting rental options for larger families. The smaller the home, the more likely it is to be a rental unit.

At the other end of the spectrum, very few smaller units are for sale. Nearly all 1-bedroom units are for rent, meaning Napa Valley supplies very few condos or small homes to own. This has consequences for the options available for larger households like families: larger households are pushed to buy even if they cannot afford for-sale options. Because smaller for-sale homes are typically lower in cost, these could represent entry level or modestly priced options for younger households if they were built or freed up. In the following chart, we capture evidence for a sentiment expressed across qualitative interviews that it remains difficult to buy small or rent big within the Valley.

From the price and sizing charts across all North Bay counties (Figure 14), we note the following: Napa Valley's housing stock is across-the-board

Figure 13. Total Households by Tenure and Bedroom Count

Source: U.S. Census Bureau

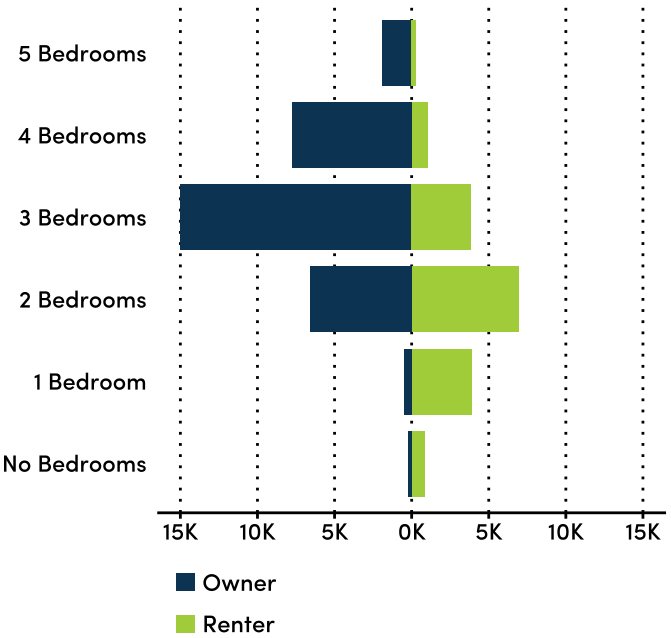
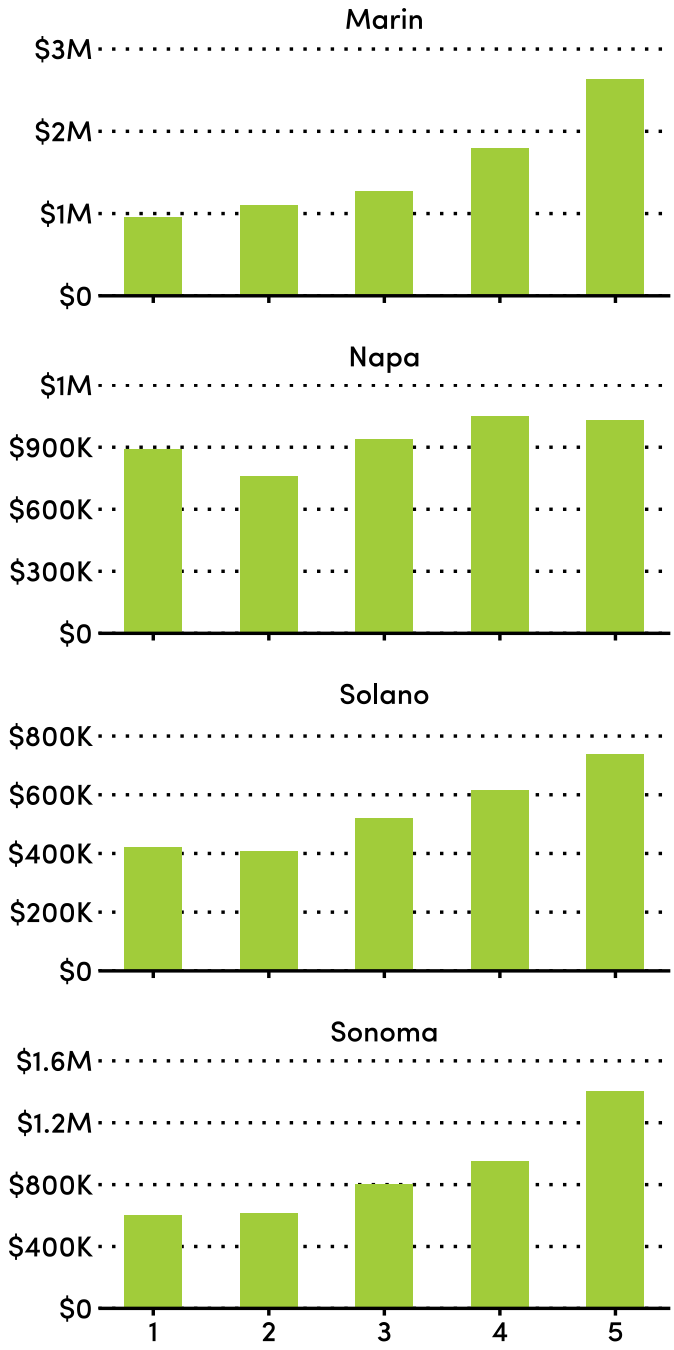


Figure 14. Home Value by Bedroom Count for the North Bay Counties

Source: IPUMS USA and U.S. Census Bureau

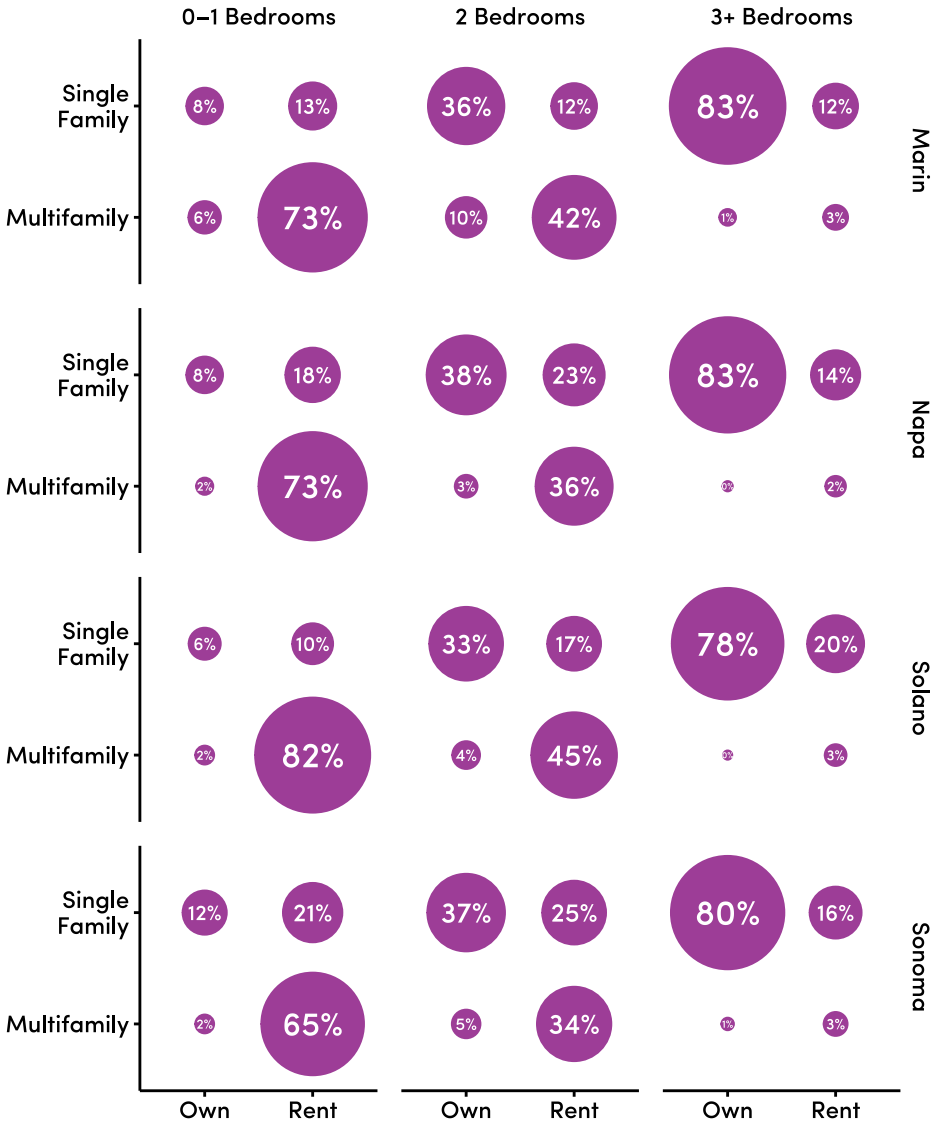


pricier for owning than it is in Solano County and Sonoma County, but this difference in price is especially notable for smaller ownership opportunities like 1- and 2- bedrooms where homes are typically half the price in Solano County and roughly $100,000 cheaper in Sonoma County. This could be because Napa Valley has a larger share of its 1- and 2-bedrooms within single family units rather than multifamily. For example, 25% of its 1-bedrooms to own or rent are in single family homes compared to 18% of Solano County's 1-bedrooms and 21% of Marin County's 1-bedrooms. Likewise, a full 60% of its 2-bedroom ownership or rental properties are located in costlier single family homes compared to just 48% of Solano County's 2-bedrooms and 49% of Marin County's. This has the risk of driving prices up for smaller households seeking entry level homes: a smaller share of its total 1- to 2-bedrooms are for sale than similar sizes in Marin County and Sonoma County.

Figure 15 shows that only 9% of all 0- to 1-bedroom homes are available for sale in Napa Valley compared to 14% of all 1-bedrooms in Marin County, so there are fewer small units for sale as apartments or condos, which are typically cheaper. Even more than that, nearly all for sale 1-bedrooms

Figure 15. Breakdown of Units by Bedroom Count and Type of Structure for the North Bay Counties

Source: IPUMS USA and U.S. Census Bureau



in Napa Valley are located in single family units, whereas Marin County's 1-bedrooms are more evenly split between single family and multifamily units. Yet if you need bigger home sizes for larger families, you are more likely to have to buy in Napa Valley than elsewhere: in total, 83% of its 3-or-more-bedroom homes are for sale, the highest rate in the North Bay. Only 16% of all 3-bedrooms can be rented in Napa Valley whereas in Solano County it is 23% or nearly 1 in 4 homes.

Unit Size Is Not Strongly Correlated with Affordability

Napa Valley's ability to regulate or control costs through smaller units — typically one lever jurisdictions can utilize to manage prices — is diminished by severe constraints on the availability of smaller units. In typical housing markets, stakeholders can use the size of units to manage costs, such as in regions where land values are high. This allows providers to reasonably reduce rents based on the features of the unit; it helps residents to have a choice in spending to match their budget; and it enables cities to utilize their entitlement authority to exercise some levers of cost control by facilitating or favoring smaller unit production.

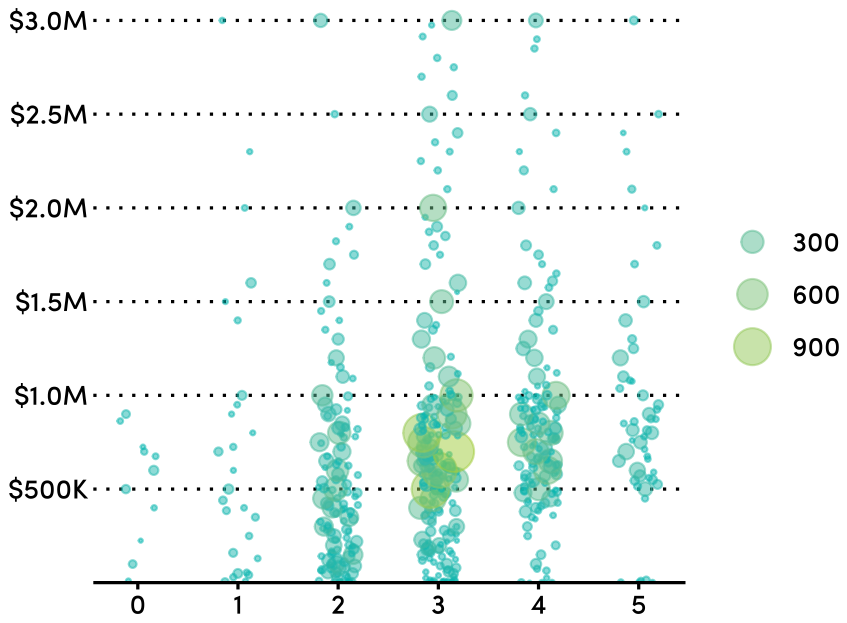
In Napa Valley and other highly constrained markets, however, the relationship between the size of a home and its cost is less predictable.

In Figure 16, we note the wide range of prices among similar sized bedroom types along with lower degrees of heterogeneity between units of different sizes. For example, 2-bedroom homes display a wider and less clustered degree of pricing while 3-bedroom homes "cluster" in price along a significant range of values. A large number of 3-bedroom homes cost significantly less than 2-bedroom homes and many cost the same as the average 4-bedroom home.

Constraints on the supply of homes, especially among owner-occupied units, make it less likely for size to dictate cost in the ownership market; and when demand for smaller units outpaces supply, some smaller units may cost just as much as, if not more than, slightly larger units. With demand rising for the limited annual supply, new prices for similar-sized homes may jump rapidly, inflating the range of costs for homes even accounting for location and amenities.

Figure 16. Total Housing Units by Price Point and Bedroom Count

Source: IPUMS USA and U.S. Census Bureau



Priority Pipeline Projects

Napa Valley's main goals must be to stem the flow of working age residents, households with children, and low- and moderate earners outside of the Valley. This means it must counter the loss of owner-occupied units priced at modest or entry-level ranges while at the same time adding more below AMI rental units sized for larger households to allow households with children to stay on the rental market and accumulate savings. New builds can play a role in increasing the diversity of stock at the lower end of the market primarily through deed-restricted affordability but new deed-restricted moderate-priced units will also help to free up lower-income units currently occupied by higher earners.[37] Preservation of deed-restricted units is also key to maintaining affordability for homes that would otherwise convert into market-rate housing.

The Valley's pipeline are those projects on sites with planned, pending, under review, approved, or under construction residential developments.

Exemplary Low-income Rental Housing Serving Larger Workforce Families

Unit Totals	Project Description (status of project pending permit or funding)	City / Town
88 Low Income	**Heritage House / Valle Verde** This project yields strong potential for its focus on smaller affordable units but not to the exclusion of larger units. 20 1-bedroom units and 58 studio units will be accompanied by 12 larger units which will be a mix of 2- and 3-bedroom units affordable to low-income families. The project will offer space for families, farmworker housing, and permanent supportive housing in one development.	**Napa**
11 Low Income	**SoCo Napa Apartments (formerly Pietro Place)** This infill residential project, completed in late 2023, provides a mix of 1- and 2-bedroom units for lower income residents and families with options for both rental and sale. It is located within walking distance of several schools, major groceries, and the Soscol Center Business Park.	**Napa**
122 Very Low, 62 Low Income	**Lemos Pointe** Three bedroom affordable units (up to 1,050 square feet) alongside smaller 400 square feet studios allow this development to serve larger families and single person households at below-market rates.	**American Canyon**
10 Very Low, Low- and Moderate Income	**951 & 963 Pope St. (In process)** This workforce housing project offers very low-, low- and moderate-income renters two-bedroom/one-bathroom units across several duplexes. The project will create a true "workforce village" for residents vital to the local workforce. The project is located within close walking distance of public transit, downtown businesses, a grocery store, schools, and parks.	**St. Helena**
76 Low Income	**Monarch Landing (In process)** Infill affordable housing will provide 77 one-, two-, three- and four-bedroom affordable apartments for local families and workforce households from Napa Valley Community Housing. The apartments are a combination of flats and townhomes with an additional assembly room, teaching kitchen, computer lab & outdoor play areas. Its location near amenities such as the South Napa Market Place and employers such as the Napa State Hospital and Napa Valley College will help the development serve workforce households.	**Napa**
24 Very Low, 37 Low Income	**1855 Lincoln Avenue Apartments** These 100% affordable units are priority residences for Calistoga workforce residents followed by those who live and work elsewhere in Napa Valley. The units consist of 38 one-bedroom units, 20 two-bedroom units, and 20 three-bedroom units in order to accommodate larger families as well.	**Calistoga**

Exemplary Moderate Income Housing Addressing Workforce Needs

Unit Totals	Project Description (status of project pending permit or funding)	City / Town
	Terrace Drive Subdivision A unique single family residential project priced for moderate income earners to provide entry level options.	**Napa**
49 Moderate Income	**Wine Train Housing (In process)** This workforce housing will serve employees of the dining and accommodation project by Noble House, as part of the city's efforts to pair employee housing with new hotels. The infill project will provide 35 studios, 14 one-bedroom apartments, four three-bedrooms and two four-bedrooms to accommodate both single and family-sized households. It is similar to two other workforce housing complexes — one for employees of a Jackson Hole, Wyoming resort.	**Napa**
408 Moderate Income	**Residence @ Napa Junction** This project will provide a massive injection of moderate priced multifamily rental units (including 46 units for households earning below 50% AMI) by creating a subdivision with landscaping and shared amenities. The development will prioritize walkability with its enhanced density.	**American Canyon**
16 Moderate Income	**HHS Site (In process)** 16 ownership units restricted to moderate income households bring needed inventory to a market typically dominated by rental property.	**Napa**
44 Moderate, 56 Low Income	**Napa Pipe (In process)** The Napa Pipe project is a proposed mixed-use neighborhood located on an 150-acre industrial property that will offer 44 moderate units along with 56 low-income units. Small block sizes along with a town center surrounded by restaurant, retail, and housing uses will allow for increased walkability.	**Napa**

Assessment of Site Inventory: Capacity to Accommodate Moderate and Below Moderate Housing

North Bay counties, and Napa Valley especially, face unique challenges identifying new sites on which to develop. Historically small towns bounded on most sides by strong agricultural preservation boundaries — and occasionally segmented by agriculture-zoned parcels within city limits — have scarce land other than the rural-urban boundaries on which to develop. This can exert strong pressure on city staff to identify infill sites — or sites that are proximate to existing residential or commercial development and/or sited on land that may currently be underutilized but is contiguous with existing development.[38] These may include parking lots, commercial lots that are no longer functional, open lots that have never been developed, and lots that are adjacent to the edges of a rural-urban boundary but still lie within a city's sphere of influence.

Even when potential sites are identified within the bounds established by strong agricultural preservation ordinances like Measure J, other barriers work against the conversion of parcels to uses like denser housing.[39] For example, while multifamily housing may be permissible in more than one zoning region, they are very rarely given by-right permission, meaning that lower density housing typically wins out where it is not explicitly prohibited. Height restrictions and floor area ratio guidelines further reduce the likelihood of hitting maximum densities.

In the following assessment of jurisdictions' Site Inventories as required by the state for inclusion in their 6th Cycle Housing Element, we find that cities are most successful when asserting zoning allowances that broaden the criteria for what counts as underutilized land. The reward for such an approach is an accumulation of sites that do

not typically require new infrastructure, that contribute to density instead of urban sprawl, and that allow residents to be more centrally located near existing resources and transit options — all of which can be performed without rezoning. This may mean expanding the definition of what appear to be good candidates for infill development. St. Helena and Yountville, for example, have very little underutilized or vacant land that present as obvious sites for residential development. Yet, as we assess below, St. Helena officials have leveraged their foresight and policy authority to make judgments about whether current uses are satisfying need and identifying ways that zoning and land use can be repurposed to get more from sites for housing. This requires thinking beyond historical uses of land and reimagining sites as future homes for a new generation of families.

As we show in this section, jurisdictions are beginning to exhibit willingness to rethink zoning and current land use. The City of Napa and St. Helena in particular are proactively identifying sites and leveraging new laws, zoning authority, and additional land ownership incentives to conceive existing properties as sites for denser residential development. Yountville and Calistoga are using these tools albeit on fewer plots, and we encourage them to replicate successful repurposing actions to better prepare for the next eight years. Several cities are considering ownership models, including through churches, nonprofits, and acquisition of public lands, in order to offer discounted values to affordable housing developers.

Zoning reform, while not always necessary on land that is zoned for residential but not currently serving its full purpose, can also be an effective tool for opening up opportunities on land that may be deemed unfeasible for residential development. A recent study by California YIMBY found that if regions were to undo burdensome zoning restrictions on the majority of their sites, they would not only open up the potential for residential development but make space for land that, as they calculate, is already market-ready for housing.

In exploring what they call "conversion rates" among California's counties, they find that, excluding protected farmlands, wetlands, and zones at high risk of fire, "the lowest conversion rates of housing development opportunities were found along the perimeter of the Bay Area and along the Central Coast" where zoning regulations remain major inhibitors of new, market-rate housing. As California YIMBY concludes, "both regions face enormous housing demand but have issued few housing development permits in recent Years. Examples include counties like Marin, Napa, Monterey, and Santa Barbara leaving areas with ample market-feasible housing opportunities untouched."[40]

While we find that Napa Valley's jurisdictions have begun to course-correct in recent years, running counter to some of the trends identified by California YIMBY's estimations, we also conclude that the zoning measures that most prohibit new housing include growth management ordinances, historically restrictive emphases on single family zoning, and underuse of existing high-density zoning for low-density development.

We find that the jurisdictions' site inventories reflect a wide array of strategies albeit unevenly deployed: cities are making effective use of infill sites located near their cores to site the majority of its moderate and below moderate housing but are

still missing opportunities to upzone underutilized lots that allow for denser housing. Several are tapping new laws to promote the reuse of existing sites dedicated to church and quasi-public facilities such as educational sites. But there remains much potential to acquire discounted land to offer heavy cost reductions to affordable developers.

This all-of-the-above approach to land use will be critical to meeting the significant increase in Napa Valley's state-mandated housing permits for the next eight years. The City of Napa will see a 219% increase over its required 835 homes last cycle; Calistoga and Yountville will both see over 300% increases; and St. Helena will see the largest increase, from 31 new permits last cycle to 256 this cycle. These numbers are historical departures and will require jurisdictions to think broadly in identifying both feasible space as well as locations that best serve residents. Additionally, the bulk of new permitting must address housing needs for Low and Very Low income residents, to which the state applies special scrutiny to ensure residents are well served by access to amenities and high value resources and are not located in environmentally risky sites or segregated in historically low-income neighborhoods.

With the exception of American Canyon, who will hit its RHNA obligations with projects that are already in their pipeline (see above), each town and city will depend on assessments of existing plots of land that are vacant or underutilized in order to meet their totals. To address these needs, each jurisdiction, in collaboration with property owners and developers, has identified potential sites for redevelopment or new development entirely.

Site Inventory

Sites & Plans for Development

Current & Future Land Use/Zoning:
Parking into Housing

Jurisdictions Making Effective Use:
City of Napa

The wholesale utilization of parcels and plots for parking, especially in downtown cores, is an artifact of high parking minimums on commercial and new residential construction that are a staple of every municipal code in the county. Eliminating costly and heavy-handed parking mandates is one approach to promoting better land use. But cities can also begin the conversion process of adapting underutilized parking lots into housing now. While some local merchants may raise concerns on the impact to local business, studies have found that travelers who used public transit or walked in downtown centers spent more on local businesses per month than those who traveled by car.

City of Napa:
With the need to develop close to its core in order to reduce sprawl, the City must get creative in identifying limited infill sites. The immediate area outside of its downtown is not dominated by parking as much as its regional peers, but some large parking sites remain that are within largely residential areas. The City is identifying some of its largest parcels devoted to parking that are suited for moderate and lower income development. A parking lot at 725 Coombs will become 30 Low Income units and the lot at 1752 Third St will become 27 moderate units. These will function well within existing residential land.

Sites & Plans for Development *(continued)*

Current & Future Land Use/Zoning:

Church, religious site, or non-profit ownership and conversion to low- and moderate-income housing

Jurisdictions Making Effective Use:
City of Napa,
Yountville
St. Helena

The region is taking advantage of trending interest in developing residential capacity on church sites as well as exploring options to secure the purchase of lands by nonprofit developers. Both uses allow greater predictability and control over home prices. Religious institutions, empowered by the recently passed state law Affordable Housing on Faith Lands Act (SB 4), face fewer barriers to add or redevelop property for affordable housing and cities are attracting attention where zoning already allows for residential development. Close partnerships with these institutions and nonprofits allow a city to streamline its review process and offer land at discounted rates for affordable developers, easing feasibility for hard-to-pencil units. Even if no rezoning is needed, cities can facilitate the transfer of ownership to nonprofits or religious institutions and work with by-right approval options, as long as homes are consistent with all objective building standards.

City of Napa:
The first site, located at the Crosswalk Community Church at 2590 First Street, has been identified after interest by the church to develop underutilized land rather than redeveloping the existing structures. The size of the lot is estimated to provide for 50 Low Income units. The second, a much smaller site currently inhabited by the Napa Valley Korean SDA Church, in the largely residential area on Highland Drive, has been identified as underutilized. Although zoned for single family development, the site has been identified as accommodating redevelopment, upping the density to include 24 moderate income units.

Yountville:
Yountville has engaged in discussions over its Site 2 at 6406 Washington Street owned by the Diocese of Santa Rosa and affordable developers. The Church has been open to the idea of an affordable housing project on the land at the southern edge of the Town's border currently used as agricultural space. Santa Rosa-based Burbank Housing is seeking to take advantage of SB4 to develop a site that, while not central, is located near the 10 bus route.

St. Helena:
St. Helena has pursued several options to transfer purchase of land to nonprofit developers to better guarantee that sites are likely to yield affordable housing. The City's Site 5 on Main St. between Mills Lane and Dowdell Lane, currently a service commercial zone along a prime corridor, has been secured by a local affordable housing non-profit with an exclusive option to purchase the property to develop affordable housing. The proposal emerges from a unique, City-approved development agreement with the Farmstead Hotel to add affordable housing units as part of its development.

Sites & Plans for Development *(continued)*

Current & Future Land Use/Zoning:
Adaptive reuse of public and quasi-public sites

Jurisdictions Making Effective Use:
City of Napa,
St. Helena

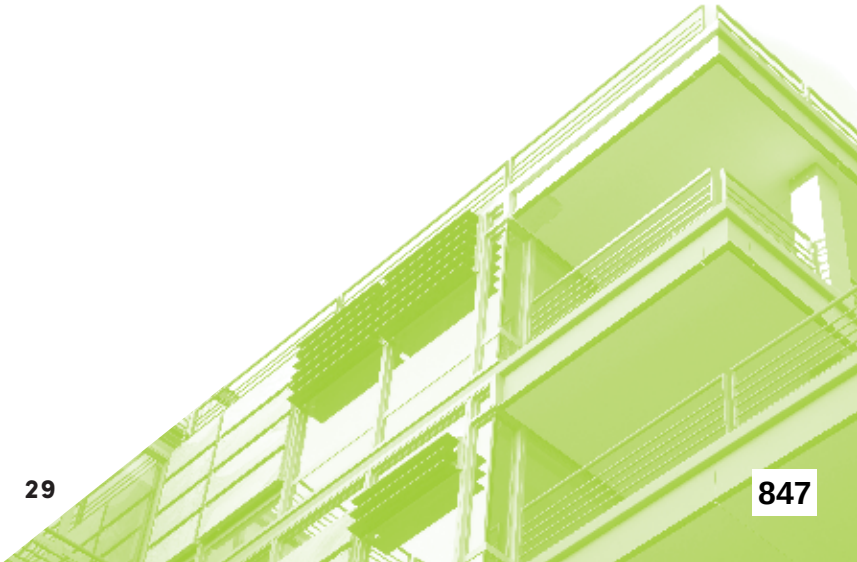
Jurisdictions with Opportunity to Implement:
Calistoga

In cities with high housing costs where the cost of land plays a significant role in driving up prices, jurisdictions are incentivized to look for discounted land. Public lands with facilities like schools, libraries, police or fire stations, or community centers can provide that opportunity because they can be acquired at discounted prices. And because California law requires local agencies disposing of surplus public land to give first priority to affordable housing, public land is prime for serving these types of projects. The discounted rates reduce development costs significantly for these hard-to-finance assets. Jurisdictions can either co-locate housing next to existing uses or sell to developers for affordable housing.[41]

City of Napa:
School districts typically own large parcels of land within urban areas. Located within residential zones and built out with amenities such as ball fields, gymnasium, and pools, they offer opportunities for housing that is dense and highly resourced. In the City of Napa, the community has been highly involved in converting the former Harvest Middle School into low-income housing while preserving several of its amenities for the community. The highest and best use for the campus at 2449 Old Sonoma Road was determined to be for residential development at forums hosted by the Napa Valley Unified School District. The school district is working with some potential buyers to buy and develop a large portion into residential units.

St. Helena:
St. Helena is exploring the conversion of several sites to housing. Site 1 at 1480 Main Street has infill residential potential along with access to amenities. Currently owned by the St. Helena Fire Department, the vacant components of the site could be redeveloped into a modest 6 units. The proposed plan is exemplary of converting available space, even if small, into housing. Likewise, its Site 3 on Adams Street, while not on public land, contains 1.3 acres that could be dedicated to shared use between affordable housing and other public facilities such as a new City Hall and Police station. This represents a creative rethinking of available land not simply for housing but for dual purposes that still benefits residents.

Calistoga:
Calistoga has two significant-sized public land uses to its south and north-central neighborhoods. The south lot, adjoining Washington Street, is underutilized while the northern lot shared by the Calistoga Speedway, arts center, and a golf course may offer co-location opportunities next to existing uses. Although not public land, Calistoga can also investigate opportunities to acquire, redevelop, or otherwise designate the disused airport commercial land towards the south of the city.



Sites & Plans for Development *(continued)*

Current & Future Land Use/Zoning:

Infill on large, underutilized lots requiring change to zoning or land use

Jurisdictions Making Effective Use:
City of Napa, Yountville, Napa County

Jurisdictions with Opportunity to Implement:
Calistoga

The identification of larger lots for conversion is harder than smaller ones due to overlapping zoning requirements and the difficulty in establishing contiguous land usage. In addition, smaller towns typically do not have larger, contiguous sites to utilize. Yet when they do, they remain some of the best options for more aggressive reuse and planning.

City of Napa:
The City of Napa is thinking big in this regard by eyeing sites beyond small zoned lots to create dense, centralized areas of housing in some cases near or next to commercial property. Taking advantage of major corridors that will afford ease of travel and proximity to transit routes as well as proximity to commercial amenities will help absorb these units without adding longer vehicle miles traveled to the immediate surroundings.

Big areas of vacant land such as those located at the north end of Hartle Court and the adjoining properties at West Imola Ave and Gasser Drive have been identified as prime candidates for large numbers of Low Income housing units. The north end of Hartle Court (125 Low income units) combined with W. Imola Avenue sites including 950 W. Imola (56 LI units) and 1801 Imola (17 LI units) make use of a great open space that is also adjacent to amenities including grocery stores and commercial development. The region should effectively accommodate the roughly 200 units given the high number of stores located nearby.

Infill comes in other forms including underutilized lots currently used for agricultural purposes. The lot at El Centro Ave and Via La Paz near Salvador is a vacant vineyard and potentially prime residential. The site allows for 4,000 square foot lots for single family infill but this plan will see it converted to 73 moderate income units of medium residential density.

Napa County:
The County must find ways to convert mostly rural unincorporated land into higher density housing. The County has identified at least two, large underutilized areas for housing to meet demand. 10 acres at Spanish Flat at Lake Berryessa could be converted to 100 units of low-income housing. The housing will accompany growth in resorts near Lake Berryessa and the site will accommodate subsequent demand for housing in the region. Five acres south of the City of Napa along Foster Road also has the potential to be converted to 100 low-income housing units, making use of space within the City's rural-urban limit. The site has historically been used for agricultural purposes but such uses are no longer intensive and the site holds promise for housing that may eventually be annexed by the City itself.

Yountville:
Yountville's Site 1 at Washington and Webber Streets is currently used as a vegetable garden for the restaurant French Laundry and remains one of the larger available lots suited for redevelopment. The site includes a specific requirement that 13 affordable units must be developed as a part of the approved Inn (hotel) to serve local accommodation and food serving staff.

Calistoga:
Compared to Napa Valley's smaller cities and towns, Calistoga has the most underutilized or vacant space, much of which is located along key corridors like Lincoln Avenue that are zoned for Community Commercial or at the southern and northern ends of its borders that are zoned for rural residential. The City will be using its Sites B-E off the Lincoln Avenue Corridor for several low income developments.But large portions of rural residential remain untapped, including on land adjacent to existing residential. These do not include public or quasi-public land, meaning they will require negotiation and inquiries into interest with owners.

Sites & Plans for Development *(continued)*

Current & Future Land Use/Zoning: Upzoning from Single Family to Multifamily

Jurisdictions Making Effective Use:
City of Napa, St. Helena

Jurisdictions with Opportunity to Implement:
Calistoga, Yountville

Cities and towns with strong agricultural preservation boundaries and limited infill on vacant or underutilized parcels must instead turn to upzoning — or the process of increasing allowable density on sites zoned for low-density uses (like single family residential) or sites zoned for denser housing but currently used for low density purposes.

City of Napa:
The City is exploring some current single family infill for conversion to slightly denser moderate units. But these are limited. 746 La Homa Drive, a 1.5-acre parcel zoned for multifamily residences but currently used for single family, will be converted to 47 Low income units. 1620 & 1623 Silverado Trail, two lots of single family infill, will be converted to 20 and 17 Low income units, respectively. The City may seek more opportunities like these to see immense return on density and taxable value per acre.

St. Helena:
With very few vacant lots, St. Helena is leaning into existing residential zones that have not maximized their use. St. Helena has very little land zoned for low density. But like so many cities in the Bay Area, much of the land use on these parcels is by single family homes. St. Helena is taking steps to correct this historical over-abundance of single family homes through land use upgrades on existing high density residential plots that are underutilized or in use for alternative purposes. Site 7 at 821 Pope Street site is underutilized High Density Residential with one existing single-family residence and large undeveloped areas on-site with a capacity for 20 low- and moderate income units. The city is also planning to accommodate a requested upgrade at Site 11 (1637 Spring St.) to double the number of housing units through a change to the land use designation. Finally, Sites 10 at Spring St. between Hudson Ave. and Valley View St. and Site 8 at 882 and 886 College Avenue are considered underutilized as they have residential land use designations but are currently used as vineyards and other agricultural purposes. Focus Groups showed interest in High Density Residential uses on this residentially zoned parcel in the form of townhomes, which is compatible with the surrounding residential neighborhoods.

Calistoga:
In places like Calistoga, efforts to limit the development of single family homes as the dominant housing type have been less successful: although single family detached homes are not permitted in most of the higher density districts, they typically beat out multifamily rental housing which is only permitted by right in the R-3 zoning districts. At the same time, the City's growth management systems have historically prevented much new buildout, although under SB 330 the Growth Management System has been removed from the Housing Element.

Yountville:
Yountville likewise allows multifamily development in multiple parts of the Town but, as its Housing Element found, design restrictions have likely acted as constraints on their development — hastening the need for more assertive land use conversions. For example, all multifamily projects and duplexes are subject to two stories maximum. This, along with the maximum FAR standard in the RM-2 zone, were found to "constrain the size of units that could be developed."

Closing

Napa Valley's housing needs are urgent and unique. The Valley not only needs to correct for decades of low housing production, but to do so in the wake of skyrocketing housing demand driven by the growth of its strong winemaking and hospitality industries. While this growth has been a boon for the region's economy, it has pushed out many of the workers that make it all possible — farmworkers, hospitality staff, healthcare providers, educators, and so on. As Napa Valley ramps up its efforts to address housing undersupply and unaffordability, it also needs to ensure it builds a diversity of housing options that cover the entire spectrum of need: starter homes for younger adults, homes near employment for workers and commuters, larger homes for families with children, affordable homes for low- and middle-income households, and ownership opportunities for renters. Oftentimes, these are the same individuals and households, meaning that building for one group serves all groups.

Jurisdictions recognize this need and have already taken steps to meet the challenge, but more can and must be done. Current pipeline projects are heartening, but most jurisdictions will need to keep or increase their pace of housing production just to meet their RHNA minimums. And from there, they must consider what kind of additional production is required to address Napa Valley's true housing need. Fortunately, opportunities for development abound, as evidenced by the review of each jurisdiction's site inventory. This is in spite of the Valley's strong agricultural preservation boundaries, which, instead of being viewed as an obstacle to growth, is better understood as guidance: when facing a housing shortage, the best way out is up. With clear-eyed policy-making and broad support from constituents, Napa Valley can build enough housing for the workers and residents that sustain its economy and community, without sacrificing the natural beauty that defines it.

For further reading on housing need and production, please consult the 6th Cycle Housing Elements (2023–2031) for each jurisdiction below:

- American Canyon
- Calistoga
- City of Napa
- County of Napa
- St. Helena
- Yountville

Endnotes

1 Bay Area Council Economic Institute (April 2019). City of Napa Economic Development Action Strategy. p.3.

2 Housing and Urban Development Office of Policy Development and Research (June 2020). Impacts of Filtering and Rent Control on Housing Supply. "Upward filtering" happens when "supply inelasticity — because of limited or costly land, regulatory barriers, and demand factors such as desirable amenities — and employment opportunities that attract more educated, higher-income workers drive upward filtering and gentrification."

3 Compass (April 2024). Napa County Real Estate April 2024 Report. The 1990 median home price of nearly $182,000 has seen a 30 year increase of 399% to now $910,000.

4 Caltrans (2021). Napa County Economic Forecast. p.7.

5 Headwaters Economics (May 2023). Amenity Trap: How high-amenity communities can avoid being loved to death.

6 Cunha, António Manuel and Júlio Lobão (August 2021). The effects of tourism on housing prices: applying a difference-in-differences methodology to the Portuguese market.

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8 Office for National Statistics (Sept 2021). House prices in tourist hotspots increasingly out of reach for young and low paid. See also BAM (Dec 2022) Top 10 Markets for Luxury Second Homes which finds "the luxury real estate market is still in a league of its own.

9 Travel Weekly (October 2022): Tourism's Housing Crunch: A shortage of affordable housing is making it difficult for workers in tourism-dependent communities to find places to live.

10 Bay Area Equity Atlas. Housing burden: Nine-County Bay Area vs. Napa County, CA, 2000-2020

11 Ibid.

12 Headwaters Economics (May 2023). Amenity Trap: How high-amenity communities can avoid being loved to death.

13 Lightcast (April 2023). Workforce Alliance of the North Bay: Labor Market Analysis & Strategy. p.13.

14 Generation Housing analysis of U.S. Census data.

15 Landis, John D. and Michael Reilly (2003). How We Will Grow: Baseline Projections of the Growth of California's Urban Footprint through the Year 2100. Citing California Dept of Finance projections from 2000.

16 The significant miscalculation of most population forecasts for California prior to 2005 points in part to the unexpected unaffordability of housing and its impact on net population migration.

17 Urban Institute (2021). The Future of Headship and Homeownership

18 Generation Housing (2024). Napa Valley State of Housing Report. p.25.

19 Center for California Real Estate (2022). Who Gets to Call California Home?. For example, studies have shown that in California, 76.9% of total rental households are formed between ages of 20–29, yet the state lags behind the U.S. as a whole in terms of when renter formation peaks.

20 Joint Center for Housing Studies (2023). The Surge in Household Growth and What It Suggests About the Future of Housing Demand.

21 Generation Housing analysis of U.S. Census data: "Financial characteristics of housing units with a mortgage".

22 Napa Valley Features (2023). The Napa Valley needs a reality check. According to estimations, the median home cost of $900k with a presumed 20% down payment of $180,000 would consume nearly 85% of the monthly salary of Napa Valley's median earners, making it nearly impossible for many residents on these incomes to consider a home purchase.

23 Terner Center for Housing Innovation (May 2023). The First Step Is The Hardest: California's Sliding Homeownership Ladder, p.19.

24 As of 2023, according to Zillow, the average home value in Napa County had surged to $903,189, up from around $550,000 in 2015, a 40% increase.

25 Following other major assessments of housing to income ratios, please note that income figures in the following analysis are not inflation adjusted. This is because typical inflation adjustments use housing as a major component of ongoing Consumer Price Index calculations. If income is inflation adjusted to include housing costs, the enormous impact that housing has on income distribution would be eliminated from the analysis.

26 Federal Reserve Board (April 2013). The Long and the Short of Household Formation.

27 The calculations in this section seek to improve on limitations in the standard jobs-to-housing ratio assessment utilized by organizations such as ABAG to determine housing need. For example, in ABAG's assessment, Napa County has more low-wage jobs than low-wage residents, where low-wage refers to jobs paying less than $25,000 per year. The county also has more high-wage residents than high-wage jobs, where high-wage refers to jobs paying more than $75,000 per year. However, more than one-person households who earn just above $75,000 are actually designated as Low Income earners by state AMI standards and thus, in some instances, eligible for deed-restricted affordable housing. This means that ABAG's criteria for low-wage earners risks undercounting affordable housing need. We seek to correct this in order to offer a full picture of need in Napa County.

28 High Country News (May 2023). Western resort towns risk being 'loved to death'.

29 Bay Area Council Economic Institute (April 2019). City of Napa Economic Development Action Strategy.

30 Ibid.

31 Caltrans (2021). Napa County Economic Forecast. p.1.

32 Lightcast (April 2023). Workforce Alliance of the North Bay: Labor Market Analysis & Strategy. p.8.

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37 Federal Reserve of Minneapolis (March 2024). How new apartments create opportunities for all. "New units help keep current prices down for everyone by opening up new opportunities for low- and moderate-income renters over a few short years through a chain of residential moves."

38 Planetizen. What is Infill Development? See this for a helpful description of infill development.

39 Measure J, adopted by Napa County voters in the late 1990s, requires voter approval for any reclassification or subdivision of agricultural land, though it may currently conflict with state SB 330 law.

40 California YIMBY Education Fund (2023). Housing Underproduction in California. They estimate a "conversion rate" for each city and county that compares historical rates of housing permitting to potential market-feasible housing development opportunities, assuming no limitations due to zoning.

41 Home for All San Mateo. Public Land For Affordable Housing.

Appendix: Data Sources

United States Census Bureau

The United States Census Bureau conducts censuses and surveys on the American people and economy, including the U.S. decennial census and the American Community Survey. We use data from the Census surveys and programs listed below.

American Community Survey (ACS: The American Community Survey is a regular demographic survey of American households that began in 2005. We primarily use the 2018–2022 ACS 5-Year estimates, at both the county and jurisdictional level, but we also rely on ACS 1-Year estimates and ACS 5-Year estimates from earlier time periods.

Decennial Census: The U.S. decennial census is the constitutionally mandated census of all Americans conducted every decade, most recently in 2020. We use data from the 2000, 2010, and 2020 census.

Longitudinal Employer-Household Dynamics (LEHD: The Longitudinal Employer-Household Dynamics program collects detailed data on employers and employees at various geographic levels and across different job sectors. We specifically use LEHD Origin-Destination Employment Statistics data from 2002–2021 about jobs and workers located within Napa County.

Population Estimates Program: The Population Estimates Program produces population and housing unit estimates for regions and jurisdictions of different sizes across the United States. We use decennial totals and intercensal estimates for population and housing units for the years 2010–2022.

IPUMS USA

IPUMS is a census and survey database produced by the Institute for Social Research and Data Innovation at the University of Minnesota that integrates various census data across both time and space. IPUMS USA is an IPUMS program that collects and harmonizes United States census microdata, or information on individual census respondents. We use sample microdata from the 2018–2022 ACS 5-Year and from the 2005 to 2022 ACS 1-Year.

Steven Ruggles, Sarah Flood, Matthew Sobek, Daniel Backman, Annie Chen, Grace Cooper, Stephanie Richards, Renae Rodgers, and Megan Schouweiler. IPUMS USA: Version 15.0 [dataset]. Minneapolis, MN: IPUMS, 2024. https://doi.org/10.18128/D010.V15.0

U.S. Department of Housing and Urban Development

Building Permits Database: The U.S. Department of Housing and Urban Development collects data on privately owned residential construction and stores it in their Building Permits Database. We use annual data on permit-issuing entities in Napa County for the years 1980–2023.

Annual Homeless Assessment Report: This report outlines the key findings of annual Point-In-Time (PIT) counts and Housing Inventory Count (HIC) nationwide. Specifically, it provides national, state, and CoC-level PIT and HIC estimates of homelessness, as well as estimates of chronically homeless persons, homeless veterans, and homeless children and youth. We utilized the 2007–2022 Point-in-Time Estimates by Continuum-of-Care providers.

Othering and Belonging Institute

The Othering and Belonging Institute collects data on zoning designations from jurisdictions' General Plan land use documents and zoning map shapefiles provided by the Association of Bay Area Governments, municipal planning departments, or downloaded from ESRI's ArcGIS HUB. The data was made available as part of their Racial Segregation in the San Francisco Bay Area publication series from 2019 to 2021 through their Zoning Report titled "Single-Family Zoning in the San Francisco Bay Area: Characteristics of Exclusionary Communities" (October 7, 2020). We use data on Napa County from their GIS sampling of land area by zoning designations.

California Department of Housing and Community Development (HCD)

HCD collects data on all housing development applications, entitlements, building permits, and completions within California jurisdictions for the 5th and 6th cycle Housing Elements. It makes that data available through their Annual Progress Reports (APR). We use data on Regional Housing Needs Allocation (RHNA) and construction and permitting activity for Napa County jurisdictions dating back to 2018.

Bureau of Labor Statistics

The Occupational Employment and Wage Statistics (OEWS) program produces employment and wage estimates annually for approximately 830 occupations. These estimates are available for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas; national occupational estimates for specific industries are also available. We use May 2022 State Occupational Employment and Wage Estimates for Napa County and the City of Napa.

Novogradac

The LIHTC Mapping Tool is based on the U.S. Department of Housing and Urban Development's LIHTC Database, which was last revised as of May 2023. Data includes project address, number of units and low-income units, number of bedrooms, year the credit was allocated, year the project was placed in service, whether the project was new construction or rehab, type of credit provided, and other sources of project financing. We drew on mapping data for Napa County.

Salary.com

The Cost of Living Calculator compares the cost of living in one location to the cost of living in a new location using the Consumer Price Index (CPI) and salary differentials of over 300+ US cities. We utilized this tool to estimate the cost of living across California and Oregon cities with local wine industries and to derive the salaries needed to maintain standards of living across locations.

Regional Housing Elements

The Housing Element of the General Plan identifies a city's housing conditions and needs, establishes the goals, objectives, and policies that are the foundation of the city's housing strategy, and provides an array of programs to create sustainable, mixed-income neighborhoods across each city. We utilized the 6th Cycle Housing Element plans from each jurisdiction to identify the number of Extremely Low and Very Low Income households estimated to live within each jurisdiction.

Appendix: Report Contributors

PRINCIPAL AUTHOR AND POLICY ANALYST
Joshua Shipper, PhD
Director of Special Initiatives, Generation Housing

Joshua comes to Generation Housing with community-based, academic, and policy experience working to understand how each generation defines what equity looks like for them. After helping to identify solutions to the growing racial wealth gap and home financialization trends shaping communities like West Oakland prior to 2010, Joshua completed his PhD in Political Science at the University of Michigan, Ann Arbor in 2018. There he focused on American politics, race, and equity policy, contributing to survey and quantitative research on American attitudes shaping policies on wealth, taxation, and education. Applying those insights to politics and policy, Joshua taught political science courses in the Midwest while working to reform state funding for affordable housing with Wisconsin State Assemblywoman Francesca Hong.

Now having returned to the Bay Area, he has most recently served as the Director of Data & Grants at the Committee on the Shelterless where he helped support evidence-based, housing-first solutions to homelessness in Sonoma County including through Project Homekey and CalAIM.

PRINCIPAL AUTHOR AND DATA ANALYST
Max Zhang
Research Manager, Generation Housing

Max joins the Generation Housing team with professional and academic experience in data analysis. A recent graduate from the University of California, Berkeley, majoring in both Statistics and Economics, Max has worked on improving transparency and reproducibility in policy analysis with the Berkeley Initiative for Transparency in the Social Sciences and studied pandemic unemployment insurance and Proposition 13 tax revenue impacts at the Berkeley Institute for Young Americans. As a part of Generation Housing, Max is furthering a long-standing passion for effective, socially oriented policy by placing the power of modern data analysis tools in the hands of housing advocates.

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Studio B Creative
Studio B is a full service graphic design agency. They distill their clients' communications into beautiful succinct designs that get noticed and understood. Specializing in: integrated marketing campaigns blending branding, print, web, video and digital media. www.studioB-creative.com

Appendix: About Generation Housing

OUR STORY

Generation Housing is an independent nonprofit organization created in the wake of the 2017 Sonoma Complex Fires to advocate for more diverse housing at all income levels in Sonoma County. Despite some policy advancements, there are still roadblocks and opposition to the development of much-needed housing. Generation Housing was incubated and is directed by cross-sector leaders representing healthcare, education, environment, and business who agree that a housing advocacy organization to promote housing policy and educate the public is a crucial missing component in our local housing development.

Generation Housing educates policymakers and the public about this critical intersectional relationship between housing and quality of life to increase public and political will for housing development, and to inspire and activate a counter voice to NIMBYism. Generation Housing rallies support for smart housing projects and helps to develop and champion solutions that reduce procedural and financial barriers to housing development.

Generation Housing's work is strategically guided by its Mission, Vision, and Guiding Principles, which include values of equity and environmental sustainability, and a commitment to cross-sector collaboration.

Vision

We envision vibrant communities where everyone has a place to call home and can contribute to an equitable, healthy, and resilient North Bay.

Mission

Generation Housing champions opportunities to increase the supply, affordability, and diversity of homes throughout the North Bay. We promote effective policy, sustainable funding resources, and collaborative efforts to create an equitable, healthy, and resilient community for everyone.

GUIDING PRINCIPLES

People

Everyone deserves to have a place to call home – a mix of ages, races, ethnicities, and socioeconomic status contributes to our economic and social vibrancy.

Sustainability

We support development of energy efficient and climate resilient homes and communities that offer access to jobs, schools, parks, and other needed amenities.

Place

Vibrant walkable urban areas, rich agriculture economy, and environmental stewardship require thoughtful, sustainable housing development.

Impact

Safe, stable, affordable housing near community services is integral to economic mobility, educational opportunity, and individual, family, and community health.

Collaboration

We are committed to working collaboratively and transparently – conducting positive advocacy, aligning efforts along the points of agreement, and working across sectors to create actionable and lasting solutions.

Housing Options

Our communities need a range of housing types, sizes, materials, and affordability levels.

Appendix: Acknowledgements

BOARD

Jorge Inocencio, Board Chair
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Harman Dhillon, Board Vice Chair
Owner, Teri Meher Inc.

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Report Commissioned by the Napa County Board of Supervisors:
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Ryan Gregory (District 2)
Anne Cottrell (District 3), Vice Chair
Alfredo Pedroza (District 4)
Belia Ramos (District 5)

The Napa County Board of Supervisors, as part of its prioritization of the housing deficit within the county, sought out a rapid assessment of how rising home prices and limited availability had been impacted by underproduction in the last decade — and how in turn the shortage has affected residents' ability to afford to live in Napa County's jurisdictions. Its goal is to utilize this assessment to set baseline metrics, determine and drive local implementation of the Housing Element plan, and prioritize its grantmaking strategy in the years to come. This assessment is one part of the Board of Supervisors' plans to prepare the county for the potential utilization and expenditure of a nine-county general obligation bond measure on the November 2024 ballot that will unlock $10–$20 billion for affordable housing and homelessness solutions. Each county will determine how best to distribute funds to target highest need housing and support effective developments. It additionally seeks a tool that benefits advocates of housing throughout the county, generating shared language around — and key figures attesting to — the need to make the strongest possible case for housing now.

Special Thank You To:
This report would not have been possible without the guidance, leadership, and overall support of Jennifer Palmer, Director of Housing & Homeless Services with Napa County. Jennifer initiated and drove the effort to conduct a unified assessment of the jurisdictions' housing needs in order to understand the challenge as a regional rather than exclusively local task. As a testament to her collaborative approach, Jennifer assembled a Steering Committee of local advocates, industry leaders, and sector employers to establish a uniquely cross-public and private alliance on housing needs. The members, each of whom had seen firsthand how high housing prices made it difficult for their clients, employees, and workforce to live and work in Napa County, were instrumental to tailoring this assessment to the unique history, workforce profile, and housing needs of the county's key sectors including its accommodation, farm and agriculture, beverage manufacturing, health care, and childhood care & education employees.

Additional Support Provided By:
This report received input from numerous stakeholders within the county on needs ranging from quantitative and qualitative data to logistical support conducting interviews. Without them, the assessment would not have been the rich document it is, authentic to Napa County's needs and emblematic of its collaborative approach to solutions. Ryan O'Connell, How To ADU; Stephanie Gaul, Housing Manager at City of Napa; Charlotte Kuduk, Human Resources Business Partner at Providence Queen of the Valley Medical Center; Steph Shieh, Manager of Early Learning Programs & Provider Services at Community Resources for Children; Selena Polston, Principal at Selena Polston Consulting; Leo Buc, Principal at Breakaway Political; Michael Walker, Senior Planner at City of Napa; Alma Garibay, Relations Coordinator at Napa Valley Vintners; Julio Olguin, Executive Director at St. Helena Preschool for All; Milli Pintasci, Executive Director at Le Petit Elephant.

GENERATION HOUSING NAPA VALLEY

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A project of Tides Center, a 501(c)(3) nonprofit organization

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Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1325

TO: Board of Supervisors

FROM: Steven Lederer, Director of Public Works

REPORT BY: Steven Lederer, Director of Public Works

SUBJECT: Public Hearing to Consider Adoption of a Resolution Adjusting Rates for Collection of Solid Waste, Recyclables, Green Waste and Food Waste for the Unincorporated Area of Garbage Zone One

RECOMMENDATION

PUBLIC HEARING - Zone One Rates

Adopt a Resolution adjusting rates effective October 1, 2024, for the residential and commercial operational cost associated with the collection of solid waste, recyclables, green waste, and food waste applicable to the Unincorporated Area of Garbage Zone One, a service which is provided by Napa County Recycling and Waste Services, LLC. (Fiscal Impact: $16,200 net revenue; Zone One; Budgeted; Discretionary)

BACKGROUND

This item is specifically exempt from the voting requirements of Article XIIIC of the California Constitution because these fees are imposed by a private third party, Napa County Recycling and Waste Services, LLC (NCRWS), under the Franchise Agreement as granted by the County to NCRWS on May 3, 2005 and amended and restated on December 19, 2017. Pursuant to Government Code section 66016, the resolution, data, and rates to be considered were made available to the public.

On May 30, 2024, the County received an application for an adjustment of rates for the operational cost associated with the collection of solid waste, recycling, green waste, and food waste services from Napa County Recycling and Waste Services, LLC (NCRWS).

The Department of Public Works completed their review of the request pursuant to Amendment No. 4 to

Franchise Agreement No. 180215B (Franchise Agreement). In accordance with the approved Franchise Agreement, commercial rates are recommended to increase by an average of 2.5%. Residential rates would increase from 16% for a 96 gallon cart to 35.4% for a 20 gallon cart. The proposed residential and commercial rates are set forth in Exhibit A of the attached Resolution.

NCRWS Rate Package - Summary:

On May 30, 2024 the Public Works Department received an application for an adjustment of rates for the operational cost associated with the collection of solid waste, recycling, green waste, and food waste from NCRWS in Garbage Zone One (Zone One), which serves much of the south county. The Public Works Department completed their review of the application, pursuant to Article 6 - Contractor Compensation and Customer Rates, of the amended and restated Franchise Agreement between the County and NCRWS. Under Article 6, NCRWS is entitled to request one rate adjustment annually. Per the amended and restated Franchise Agreement, the County shall adjust rates, either up or down, to reflect:

1. Contractor Compensation adjusted for agreed upon profit and inflation; and,
2. Actual changes in any of the pass-through components (Solid Waste Tip Fee, Green Waste Tip Fee, Net Recycling Processing Fee, Food Waste Tip Fee, and the Carpet Tip Fee) of each rate. The impact of changes to the pass through costs is applied to each rate and is dependent on the services rendered, resulting in different percentages for different rates.

Contractor Compensation and Pass-Through components of the proposed rates are described more fully below.

1. Contractor Compensation at 2.4% for agreed upon profit and CPI (capped at 5% per Section 6.2C of our agreement)
2. Increase in the Solid Waste disposal fee from $72/ton to $73/ton
3. Increase in the Green Waste tip fee from $49/ton to $55/ton
4. Increase in the Carpet Waste tip fee from $55/ton to $59/ton.
5. Increase in the Food Waste Tip Fee from $57/ton to $65/ton
6. Increase in the Recycling Processing fee from a CREDIT of $55/ton to a CHARGE of $25/ton.

The large increase in residential rates is driven almost entirely by increased pass through costs charged by the City of Napa’s Materials Diversion Facility (MDF). More than $10/cart is related to increased costs for processing green waste and food waste, and the collapse of recycling markets, resulting a charge for processing recyclables, versus the credit that we received last year.

Comparing Zone 1 rates to others in the County:

Zone 1, 35 gallon cart=$52.34

UVDS, County unincorporated, 32 gallon cart=$57.87

City of Napa, 35 gallon cart=$38.29 (this is a 2022 rate, and the City is planning to propose a substantial increase in the near future).

The public was notified of the public hearing and consideration of the resolution to increase rates for the collection of solid waste and recyclables. The public notices were and/or will be published (newspaper and website) in the Napa Valley Register on August 10, 2024 and August 15, 2024. The public notice indicates that all relevant documents regarding the proposed rate increase will be available at the Clerk of the Board. Pursuant to the amended and restated Franchise Agreement, NCRWS has posted the change of rates on their website and will be providing all customers with written notice of approved rate adjustments with their September bill.

PROCEDURAL REQUIREMENTS

1. Open Public Hearing.
2. Staff reports.
3. Public comment.
4. Close Public Hearing.
5. Motion, second, discussion and vote on the item.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Fund 2180-Zone 1 Garbage
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approving the rates allows for recovery of costs for performing a critical service and an increase in franchise fee revenue consistent with the terms of the franchise agreement.
Is the general fund affected?	No
Future fiscal impact:	The County receives franchise fee revenue that equals 10% of the fee revenue collected by NCRWS. The franchise fees are utilized to reimburse the County for expenses incurred related to Zone 1. This action would increase the County's franchise fee commensurate with increased revenue generated by the increased fees.

Consequences if not approved:	The County will not receive the additional franchise fee revenue generated by the proposed increase to offset costs incurred by the County on behalf of Zone 1 rate payers. The County would also be in breach of its contract with NCRWS.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: ENVIRONMENTAL DETERMINATION: These fees are not subject to the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations, Section 15273(a)(1) and (2).

RESOLUTION NO. 2024-___

A RESOLUTION OF THE BOARD OF SUPERVISORS OF NAPA COUNTY, STATE OF CALIFORNIA, INCREASING RATES FOR THE COLLECTION OF SOLID WASTE, RECYCLABLE MATERIALS, GREEN WASTE AND FOOD WASTE APPLICABLE TO GARBAGE ZONE ONE

WHEREAS, the California Integrated Waste Management Act of 1989 (Public Resources Code sections 40000 et seq.) requires local agencies to make adequate provision for Solid Waste handling within their jurisdictions; and

WHEREAS, under the provisions of Chapter 8.48 of the County Code, County has granted to Napa County Recycling & Waste Services, LLC ("NCRWS") an exclusive franchise for the handling, collection, transportation, recycling and disposal of solid waste in Garbage Zone One of the County, and has set rates associated with the collection and disposal services performed by NCRWS under the franchise; and

WHEREAS, in accordance with the provisions of the franchise agreement, NCRWS has applied to the Board for a review and revision of certain rates, and the Board finds there is a need to increase rates for collection of solid waste, recyclable materials, green waste and food waste; and

WHEREAS, Chapter 12.5 of Part 1 of Division 2 of Title 5 of the California Government Code (commencing with Section 54985) and Chapter 8 of Division 1 of Title 7 of the California Government Code (commencing with section 66016) authorize the County to establish fees to recover the cost of providing a service; and

WHEREAS, pursuant to Government Code section 66016, at least ten days prior to the date this resolution is to be considered, data was made available to the public indicating the amount of the fee, or estimated fee, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service; and

WHEREAS, pursuant to Government Code section 66016, at least fourteen days prior to the date this resolution is to be considered, notice was mailed to those persons who had requested same; and

WHEREAS, notice of the hearing on the proposed fee was published twice in the manner set forth in section 6062a as required by section 66018, subdivision (a), of the Government Code.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors hereby changes the rates for solid waste, recyclable materials, green waste and food waste as listed in Exhibit "A", attached hereto and incorporated by reference herein, to commence on October 1, 2024.

BE IT FURTHER RESOLVED that the Board finds this resolution is categorically exempt from the California Environmental Quality Act pursuant to Title 14, California Code of Regulations, section 15273(a)(1) and (2).

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Board of Supervisors of Napa County, State of California, at a regular meeting of the Board held on the 20th day of August, 2024, by the following vote

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: *Ryan FitzGerald* (e-sign) Deputy County Counsel Date: July 29, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: August 20, 2024 Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

EXHIBIT "A"

NAPA COUNTY RECYCLING & WASTE SERVICES, LLC

Residential Cart Collection
Proposed Rates in Dollars per Container per Month

	Contractor Compensation Fee Component	Solid WasteTip Fee Component	Green Waste Tip Fee Component	Net Recycling Processing Fee Component	Tip Fee Food Waste Component	Total Rate	Rate Change
Solid Waste Cart							
20 gallon	$ 29.03	$ 2.73	$ 5.80	$ 5.96	$ 0.21	$ 48.59	35.35%
35 gallon	$ 30.35	$ 4.77	$ 5.80	$ 5.96	$ 0.22	$ 52.34	32.23%
65 gallon	$ 43.96	$ 8.86	$ 5.80	$ 5.96	$ 0.43	$ 72.25	22.34%
96 gallon	$ 64.29	$ 12.95	$ 5.80	$ 5.96	$ 0.65	$ 99.62	16.08%

NAPA COUNTY RECYCLING & WASTE SERVICES, LLC

Commercial/Multi-Family/Mobile Homes Cart and Bin Collection
Proposed Rates in Dollars per Container per Month

Service Description	Monthly Bin Rental Component	Contractor Compensation Component (4)	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Monthly Rate	Rate Change
35 gallon container	n/a	$ 43.37	$ 4.77	$ 0.68	$ 54.25	2.38%
65 gallon container	n/a	$ 54.94	$ 9.53	$ 1.37	$ 73.16	2.38%
96 gallon container, 1 pickup per week	n/a	$ 91.12	$ 14.31	$ 2.73	$ 120.18	2.42%
96 gallon container, 2 pickup per week	n/a	$ 153.29	$ 28.60	$ 5.47	$ 208.17	2.43%
96 gallon container, 3 pickup per week	n/a	$ 186.52	$ 42.91	$ 8.20	$ 264.03	2.44%
96 gallon container, 4 pickup per week	n/a	$ 190.85	$ 56.47	$ 10.93	$ 286.94	2.46%
96 gallon container, 5 pickup per week	n/a	$ 224.13	$ 71.52	$ 13.66	$ 343.68	2.46%
96 gallon container, 6 pickup per week	n/a	$ 318.01	$ 85.82	$ 16.40	$ 466.92	2.45%
1 cubic yards, 1 pickup per week	$ 30.00	$ 260.31	$ 51.27	$ 27.33	$ 409.90	2.58%
1.5 cubic yards, 1 pickup per week	$ 30.00	$ 323.93	$ 76.90	$ 40.99	$ 524.24	2.69%
2 cubic yards, 1 pickup per week	$ 35.00	$ 477.25	$ 92.28	$ 54.65	$ 732.42	2.71%
3 cubic yards, 1 pickup per week	$ 35.00	$ 694.19	$ 143.55	$ 68.31	$ 1,045.61	2.66%
4 cubic yards, 1 pickup per week	$ 40.00	$ 723.12	$ 194.81	$ 81.98	$ 1,155.45	2.67%
6 cubic yards, 1 pickup per week	$ 45.00	$ 1,099.10	$ 287.10	$ 95.64	$ 1,696.49	2.57%
1 cubic yards, 2 pickup per week	$ 30.00	$ 520.65	$ 102.53	$ 54.65	$ 786.47	2.69%
1.5 cubic yards, 2 pickup per week	$ 30.00	$ 647.89	$ 153.80	$ 81.98	$ 1,015.19	2.78%
2 cubic yards, 2 pickup per week	$ 35.00	$ 954.44	$ 184.56	$ 109.30	$ 1,425.89	2.78%
3 cubic yards, 2 pickup per week	$ 35.00	$ 1,388.35	$ 287.10	$ 136.63	$ 2,052.30	2.71%
4 cubic yards, 2 pickup per week	$ 40.00	$ 1,446.18	$ 389.63	$ 163.95	$ 2,266.41	2.72%
6 cubic yards, 2 pickup per week	$ 45.00	$ 2,198.21	$ 574.20	$ 191.28	$ 3,342.98	2.61%
1 cubic yards, 3 pickup per week	$ 30.00	$ 780.96	$ 153.80	$ 81.98	$ 1,163.04	2.73%
1.5 cubic yards, 3 pickup per week	$ 30.00	$ 971.83	$ 230.70	$ 122.96	$ 1,506.10	2.81%
2 cubic yards, 3 pickup per week	$ 35.00	$ 1,431.69	$ 276.84	$ 163.95	$ 2,119.42	2.81%
3 cubic yards, 3 pickup per week	$ 35.00	$ 2,082.53	$ 430.64	$ 204.94	$ 3,059.02	2.73%
4 cubic yards, 3 pickup per week	$ 40.00	$ 2,169.33	$ 584.45	$ 245.93	$ 3,377.45	2.74%
6 cubic yards, 3 pickup per week	$ 45.00	$ 3,297.34	$ 861.29	$ 286.91	$ 4,989.49	2.62%

NAPA COUNTY RECYCLING & WASTE SERVICES, LLC
Commercial/Multi-Family/Mobile Homes Cart and Bin Collection
Proposed Rates in Dollars per Container per Month

Service Description	Monthly Bin Rental Component	Contractor Compensation Component (4)	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Monthly Rate	Rate Change
1 cubic yards, 4 pickup per week	$ 30.00	$ 1,041.27	$ 205.08	$ 109.30	$ 1,539.60	2.75%
1.5 cubic yards, 4 pickup per week	$ 30.00	$ 1,295.79	$ 307.61	$ 163.95	$ 1,997.05	2.83%
2 cubic yards, 4 pickup per week	$ 35.00	$ 1,908.94	$ 369.13	$ 218.60	$ 2,812.96	2.82%
3 cubic yards, 4 pickup per week	$ 35.00	$ 2,776.69	$ 574.20	$ 273.25	$ 4,065.72	2.74%
4 cubic yards, 4 pickup per week	$ 40.00	$ 2,892.39	$ 779.26	$ 327.90	$ 4,488.39	2.75%
6 cubic yards, 4 pickup per week	$ 45.00	$ 4,396.47	$ 1,148.39	$ 382.55	$ 6,636.01	2.63%
1 cubic yards, 5 pickup per week	$ 30.00	$ 1,301.58	$ 256.33	$ 136.63	$ 1,916.15	2.76%
1.5 cubic yards, 5 pickup per week	$ 30.00	$ 1,619.72	$ 384.50	$ 204.94	$ 2,487.96	2.84%
2 cubic yards, 5 pickup per week	$ 35.00	$ 2,386.16	$ 461.41	$ 273.25	$ 3,506.47	2.83%
3 cubic yards, 5 pickup per week	$ 35.00	$ 3,470.88	$ 717.74	$ 341.56	$ 5,072.42	2.74%
4 cubic yards, 5 pickup per week	$ 40.00	$ 3,615.51	$ 974.08	$ 409.88	$ 5,599.41	2.75%
6 cubic yards, 5 pickup per week	$ 45.00	$ 5,495.60	$ 1,435.48	$ 478.19	$ 8,282.52	2.63%
1 cubic yards, 6 pickup per week	$ 30.00	$ 1,619.72	$ 307.61	$ 163.95	$ 2,356.98	2.76%
1.5 cubic yards, 6 pickup per week	$ 30.00	$ 1,943.68	$ 461.41	$ 245.93	$ 2,978.91	2.84%
2 cubic yards, 6 pickup per week	$ 35.00	$ 2,863.38	$ 553.68	$ 327.90	$ 4,199.96	2.84%
3 cubic yards, 6 pickup per week	$ 35.00	$ 4,165.09	$ 861.29	$ 409.88	$ 6,079.17	2.75%
4 cubic yards, 6 pickup per week	$ 40.00	$ 5,495.57	$ 1,168.90	$ 491.85	$ 7,995.91	2.70%
6 cubic yards, 6 pickup per week	$ 45.00	$ 6,594.70	$ 1,722.59	$ 573.83	$ 9,929.02	2.64%

NAPA COUNTY RECYCLING & WASTE SERVICES, LLC
Commercial/Multi-Family/Mobile Homes Bin Collection - Customer Owned
Proposed Rates in Dollars per Container per Month

Service Description	Monthly Bin Rental Component	Contractor Compensation Component (4)	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Monthly Rate	Rate Change
1 cubic yards, 1 pickup per week	$ -	$ 260.31	$ 51.28	$ 27.33	$ 376.57	2.81%
1.5 cubic yards, 1 pickup per week	$ -	$ 323.93	$ 76.90	$ 41.00	$ 490.91	2.88%
2 cubic yards, 1 pickup per week	$ -	$ 477.25	$ 92.28	$ 54.65	$ 693.54	2.86%
3 cubic yards, 1 pickup per week	$ -	$ 694.19	$ 143.54	$ 68.32	$ 1,006.73	2.76%
4 cubic yards, 1 pickup per week	$ -	$ 723.13	$ 194.81	$ 81.98	$ 1,111.02	2.78%
6 cubic yards, 1 pickup per week	$ -	$ 1,099.09	$ 287.10	$ 95.65	$ 1,646.48	2.65%
1 cubic yards, 2 pickup per week	$ -	$ 520.64	$ 102.54	$ 54.65	$ 753.14	2.81%
1.5 cubic yards, 2 pickup per week	$ -	$ 647.90	$ 153.80	$ 81.98	$ 981.86	2.88%
2 cubic yards, 2 pickup per week	$ -	$ 954.42	$ 184.56	$ 109.30	$ 1,386.98	2.86%
3 cubic yards, 2 pickup per week	$ -	$ 1,388.36	$ 287.10	$ 136.63	$ 2,013.42	2.76%
4 cubic yards, 2 pickup per week	$ -	$ 1,446.18	$ 389.64	$ 163.95	$ 2,221.97	2.78%
6 cubic yards, 2 pickup per week	$ -	$ 2,198.20	$ 574.20	$ 191.28	$ 3,292.97	2.65%
1 cubic yards, 3 pickup per week	$ -	$ 780.95	$ 153.80	$ 81.98	$ 1,129.69	2.81%
1.5 cubic yards, 3 pickup per week	$ -	$ 971.83	$ 230.70	$ 122.97	$ 1,472.78	2.88%
2 cubic yards, 3 pickup per week	$ -	$ 1,431.70	$ 276.84	$ 163.95	$ 2,080.55	2.86%
3 cubic yards, 3 pickup per week	$ -	$ 2,082.55	$ 430.64	$ 204.95	$ 3,020.15	2.76%
4 cubic yards, 3 pickup per week	$ -	$ 2,169.34	$ 584.44	$ 245.93	$ 3,333.00	2.78%
6 cubic yards, 3 pickup per week	$ -	$ 3,297.33	$ 861.29	$ 286.92	$ 4,939.49	2.65%
1 cubic yards, 4 pickup per week	$ -	$ 1,041.26	$ 205.07	$ 109.30	$ 1,506.26	2.81%
1.5 cubic yards, 4 pickup per week	$ -	$ 1,295.80	$ 307.61	$ 163.95	$ 1,963.74	2.88%
2 cubic yards, 4 pickup per week	$ -	$ 1,908.95	$ 369.13	$ 218.60	$ 2,774.09	2.86%
3 cubic yards, 4 pickup per week	$ -	$ 2,776.72	$ 574.20	$ 273.25	$ 4,026.85	2.76%
4 cubic yards, 4 pickup per week	$ -	$ 2,892.39	$ 779.26	$ 327.90	$ 4,443.95	2.78%
6 cubic yards, 4 pickup per week	$ -	$ 4,396.47	$ 1,148.39	$ 382.55	$ 6,586.01	2.65%
1 cubic yards, 5 pickup per week	$ -	$ 1,301.57	$ 256.33	$ 136.63	$ 1,882.81	2.81%
1.5 cubic yards, 5 pickup per week	$ -	$ 1,619.70	$ 384.51	$ 204.95	$ 2,454.62	2.88%
2 cubic yards, 5 pickup per week	$ -	$ 2,386.15	$ 461.40	$ 273.25	$ 3,467.56	2.86%
3 cubic yards, 5 pickup per week	$ -	$ 3,470.86	$ 717.74	$ 341.57	$ 5,033.53	2.76%
4 cubic yards, 5 pickup per week	$ -	$ 3,615.52	$ 974.08	$ 409.88	$ 5,554.97	2.78%
6 cubic yards, 5 pickup per week	$ -	$ 5,495.61	$ 1,435.48	$ 478.20	$ 8,232.54	2.65%
1 cubic yards, 6 pickup per week	$ -	$ 1,619.70	$ 307.61	$ 163.95	$ 2,323.62	2.80%
1.5 cubic yards, 6 pickup per week	$ -	$ 1,943.68	$ 461.40	$ 245.93	$ 2,945.57	2.88%
2 cubic yards, 6 pickup per week	$ -	$ 2,863.37	$ 553.69	$ 327.90	$ 4,161.07	2.86%
3 cubic yards, 6 pickup per week	$ -	$ 4,165.07	$ 861.30	$ 409.88	$ 6,040.27	2.76%
4 cubic yards, 6 pickup per week	$ -	$ 5,495.56	$ 1,168.89	$ 491.85	$ 7,951.45	2.71%
6 cubic yards, 6 pickup per week	$ -	$ 6,594.69	$ 1,722.58	$ 573.83	$ 9,879.00	2.65%

NAPA COUNTY RECYCLING & WASTE SERVICES, LLC

Commercial Solid Waste Compactor Service
Proposed Rates in Dollars per Daily Pickup

Service Description	Per Day Compactor Rental	Contractor Compensation Fee Component	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Daily Rate	Rate Change
Per Cubic Yard:						
7 YD	$ -	$ 380.87	$ 129.19	$ 38.29	$ 609.27	2.65%
8 YD	$ -	$ 380.87	$ 147.64	$ 43.76	$ 635.85	2.67%
9 YD	$ -	$ 380.87	$ 166.10	$ 49.23	$ 662.45	2.70%
10 YD	$ -	$ 634.82	$ 184.56	$ 54.65	$ 971.14	2.62%
11 YD	$ -	$ 634.82	$ 203.01	$ 60.17	$ 997.78	2.64%
12 YD	$ -	$ 634.82	$ 221.47	$ 65.64	$ 1,024.36	2.65%
13 YD	$ -	$ 634.82	$ 239.92	$ 71.11	$ 1,050.94	2.67%
14 YD	$ -	$ 634.82	$ 258.38	$ 76.58	$ 1,077.52	2.68%
15 YD	$ -	$ 634.82	$ 287.10	$ 81.98	$ 1,115.43	2.68%
16 YD	$ -	$ 634.82	$ 306.30	$ 87.52	$ 1,142.92	2.70%
17 YD	$ -	$ 634.82	$ 325.44	$ 92.99	$ 1,170.27	2.71%
18 YD	$ -	$ 706.26	$ 364.20	$ 98.46	$ 1,298.79	2.68%
19 YD	$ -	$ 706.26	$ 384.51	$ 103.83	$ 1,327.32	2.69%
20 YD	$ -	$ 745.98	$ 410.14	$ 109.30	$ 1,406.01	2.68%
21 YD	$ -	$ 745.98	$ 413.46	$ 114.87	$ 1,415.89	2.71%
22 YD	$ -	$ 745.98	$ 433.14	$ 120.34	$ 1,443.84	2.72%
23 YD	$ -	$ 745.98	$ 452.83	$ 125.81	$ 1,471.79	2.73%
24 YD	$ -	$ 745.98	$ 472.52	$ 131.28	$ 1,499.74	2.74%
Over 25 cy - per one cubic yard disposal fee increments	$ -	$ -	$ 30.76	$ 5.47	$ 40.26	2.64%
25 YD	$ -	$ 745.98	$ 492.17	$ 136.63	$ 1,527.52	2.74%
30 YD	$ -	$ 745.98	$ 645.96	$ 163.95	$ 1,728.77	2.73%
34 YD	$ -	$ 745.98	$ 769.00	$ 185.81	$ 1,889.76	2.72%
40 YD	$ -	$ 745.98	$ 953.57	$ 218.60	$ 2,131.28	2.71%

Residential/Commercial/Multi-Family/Mobile Homes - Temporary Bin Collection
Proposed Rates in Dollars per pickup

Service Description	Monthly Bin Rental Component	Contractor Compensation Component (4)	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Monthly Rate	Rate Change
1 CY	$ 6.93	$ 57.77	$ 11.84	$ -	$ 85.05	2.00%
1.5 CY	$ 6.93	$ 71.88	$ 17.76	$ -	$ 107.30	2.02%
2 CY	$ 8.08	$ 105.89	$ 21.31	$ -	$ 150.32	2.07%
3 CY	$ 8.08	$ 154.04	$ 33.16	$ -	$ 216.97	2.10%
4 CY	$ 9.24	$ 160.46	$ 44.99	$ -	$ 238.55	2.06%
6 CY	$ 10.39	$ 243.87	$ 66.30	$ -	$ 356.19	2.09%

NAPA COUNTY RECYCLING & WASTE SERVICES, LLC

Commercial Solid Waste Drop Box Service
Proposed Rates in Dollars per Daily Pickup

Service Description	Per Day Drop Box Rental	Contractor Compensation Fee Component	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Daily Rate	Rate Change
Per Cubic Yard:						
10 YD	$ 5.00	$ 386.16	$ 92.28	$ 27.33	$ 567.52	2.56%
20 YD	$ 5.00	$ 413.96	$ 166.11	$ 54.65	$ 710.79	2.72%
25 YD	$ 5.00	$ 441.76	$ 205.08	$ 68.31	$ 800.16	2.77%
30 YD	$ 5.00	$ 441.76	$ 249.16	$ 81.98	$ 864.32	2.81%
40 YD	$ 5.00	$ 497.33	$ 332.20	$ 109.30	$ 1,048.70	2.86%

Maximum Commingled and Green Waste Recycling Fee

Service Description		Total Daily Rate	Rate Change
Per Cubic Yard:			
10 YD	50% of solid waste rate	$ 283.76	2.56%
20 YD		$ 355.40	2.72%
25 YD		$ 400.08	2.77%
30YD		$ 432.16	2.81%
40YD		$ 524.35	2.86%

Commercial Carpet Drop Box Service
Rates in Dollars per Daily Pickup

Service Description	Per Day Drop Box Rental	Contractor Compensation Fee Component (4)	Carpet Tip Fee Component	Tip Fee Food Waste Component	Total Daily Rate	Rate Change
Per Cubic Yard:						
20 YD	$ 5.00	$ 413.96	$ 173.91	$ -	$ 658.74	3.22%
25 YD	$ 5.00	$ 441.76	$ 214.49	$ -	$ 734.72	3.31%
30 YD	$ 5.00	$ 441.76	$ 260.86	$ -	$ 786.24	3.45%
40 YD	$ 5.00	$ 497.33	$ 347.82	$ -	$ 944.61	3.57%

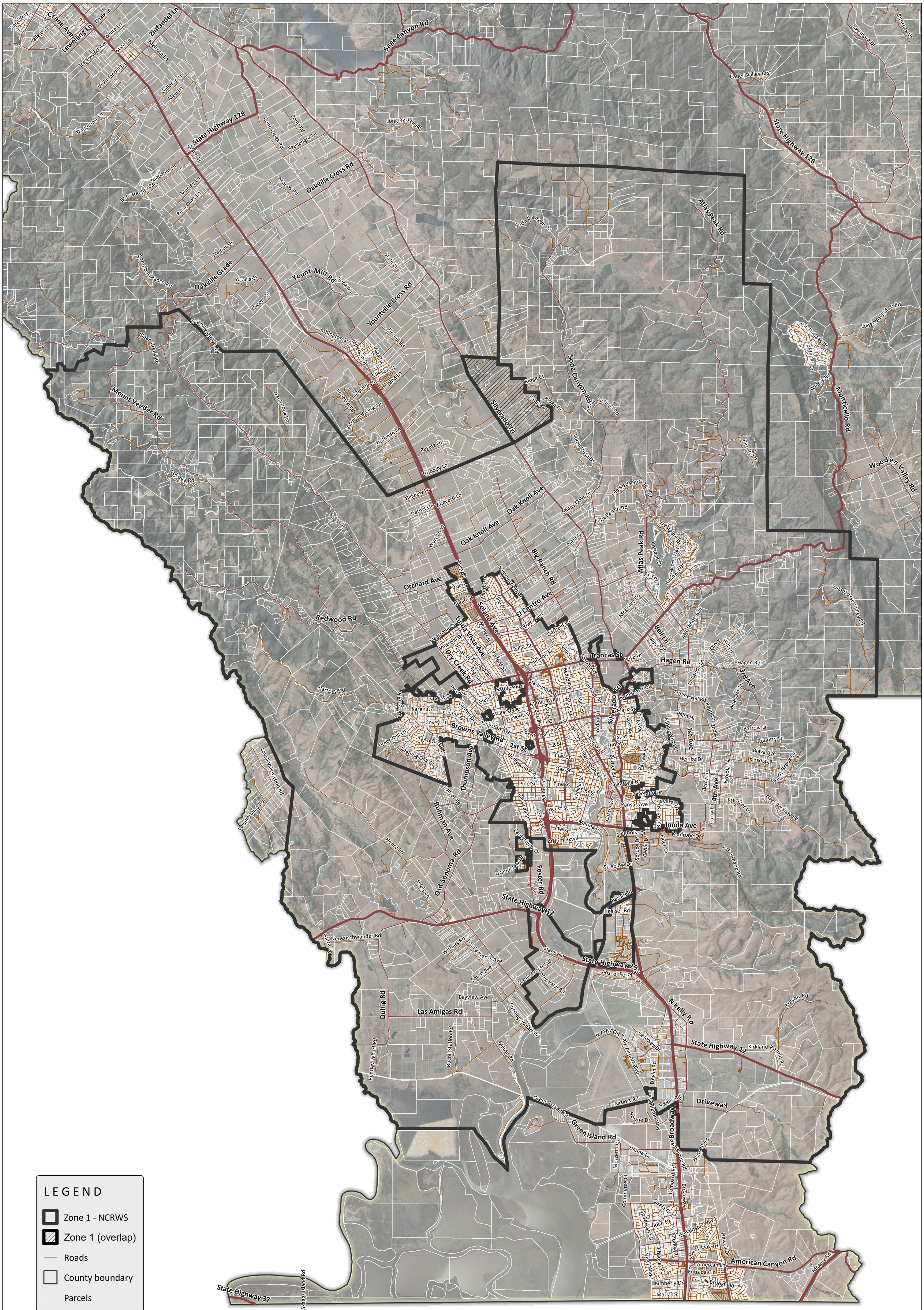
NAPA COUNTY RECYCLING & WASTE SERVICES, LLC
On-Call Services
Proposed Rates in Dollars per Container per Pickup

Service Description	Rental	Contractor Compensation Fee Component (2)	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Rate	Rate Change
Extra Pickup:						
Kitchen Bag	$ -	$ 7.91	$ 0.52	$ -	$ 9.36	2.31%
35 gallon cart	$ -	$ 23.65	$ 1.53	$ -	$ 27.98	2.31%
65 gallon cart	$ -	$ 33.37	$ 3.08	$ -	$ 40.49	2.29%
96 gallon cart	$ -	$ 41.67	$ 5.12	$ -	$ 51.99	2.26%
1 CY bin	$ -	$ 69.50	$ 15.37	$ -	$ 94.31	2.19%
1.5 CY bin	$ -	$ 69.50	$ 20.51	$ -	$ 100.01	2.15%
2 CY bin	$ -	$ 83.38	$ 25.63	$ -	$ 121.12	2.14%
3 CY bin	$ -	$ 111.18	$ 30.77	$ -	$ 157.71	2.16%
4 CY bin	$ -	$ 138.98	$ 41.01	$ -	$ 199.99	2.15%
6 CY bin	$ -	$ 194.53	$ 71.77	$ -	$ 295.89	2.11%
On-call bulky items pickup	$ -	$ 27.80	n/a	$ -	$ 30.89	2.37%
E-Waste bundled pickup	$ -	$ -	n/a	$ -	$ -	
Commercial Roundtrip Charge for On-Call Businesses:						
Up to 35 gallons	$ -	$ 27.80	n/a	$ -	$ 30.89	2.37%
Up to 6 cubic yards	$ -	$ 83.37	n/a	$ -	$ 92.63	2.37%
More than 6 cubic yards	$ -	$ 138.96	n/a	$ -	$ 154.40	2.37%

NAPA COUNTY RECYCLING & WASTE SERVICES, LLC

Special Services
Proposed Rates in Dollars per Container per Pickup

Service Description	Rental	Contractor Compensation Fee Component (2)	Solid Waste Tip Fee Component	Tip Fee Food Waste Component	Total Rate	Rate Change
Miscellaneous:						
Yard waste Service, extra toter over 4	$ -	$ 16.67	$ -	$ -	$ 18.52	2.37%
Clean or Exchange Bin	$ -	$ 166.73	$ -	$ -	$ 185.25	2.37%
Move Drop Box	$ -	$ 166.73	$ -	$ -	$ 185.25	2.37%
Heavy Waste Surcharge per cubic yard in excess of 400 pounds per yard	$ -	$ 16.67	$ 55.36	$ -	$ 80.04	1.62%
Contaminated Cart or Bin:						
Residential		$ 32.25			$ 35.83	2.37%
Commercial		$ 64.49			$ 71.66	2.37%
Rental Rates:						
Daily rental - roll off after 5 days	$ 10.00	$ -	$ -	$ -	$ 11.11	0.00%
Long Walk Charges (4):						
5 feet to 130 feet	$ -	$ 33.36	n/a	$ -	$ 37.06	2.37%
131 feet to 330 feet	$ -	$ 44.48	n/a	$ -	$ 49.42	2.37%
331 feet to 660 feet	$ -	$ 55.60	n/a	$ -	$ 61.77	2.37%
661 feet to 1056 feet	$ -	$ 66.69	n/a	$ -	$ 74.10	2.37%
1057 feet to 2000 feet	$ -	$ 83.37	n/a	$ -	$ 92.63	2.37%
over 2000 feet	$ -	$ 111.17	n/a	$ -	$ 123.52	2.37%
Other Charges:						
Backyard charge	$ -	$ 27.80	n/a	$ -	$ 30.89	2.37%
Key charges (5)	$ -	$ 27.80	n/a	$ -	$ 30.89	2.37%
Enclosure charges (6)	$ -	$ 13.90	n/a	$ -	$ 15.44	2.37%
Gate service charges (7)	$ -	$ 13.90	n/a	$ -	$ 15.44	2.37%
Maximum charge (8)	$ -	$ 13.90	n/a	$ -	$ 15.44	2.37%
Deposits (9):						
Residential	$ -	$ 277.90	n/a	$ -	$ 308.78	2.37%
Commercial	$ -	$ 1,389.46	n/a	$ -	$ 1,543.85	2.37%



LEGEND

- Zone 1 - NCRWS
- Zone 1 (overlap)
- Roads
- County boundary
- Parcels

GARBAGE ZONE 1 (NCRWS)

0 2,000 4,000 8,000 Feet

[2020-08-25] Disclaimer: This map was prepared for informational purposes only. No liability is assumed for the accuracy of the data delineated hereon.

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-1186

TO: Board of Supervisors

FROM: Brian D. Bordona, Director of Planning, Building and Environmental Services

REPORT BY: Kelli Cahill, Planner III

SUBJECT: Sentinel LLC/Inglenook Residence Appeal

RECOMMENDATION

PUBLIC HEARING 9:00 AM- Sentinel LLC/Inglenook Residence Appeal

Move to continue the public hearing for an appeal filed by Water Audit California (Appellant) to the Napa County Planning Commission's decision on November 15, 2023, to approve a Use Permit Exception to the Conservation Regulations (No. P22-00404-UP) filed by Adobe Associates, Inc. on behalf of Niebaum-Coppola Estate Winery LP (Applicant) to allow a private access road to encroach into the creek setback in order to serve existing agricultural structures and a potential future residence. (No Fiscal Impact)

(CONTINUED FROM JUNE 11, 2024. APPELLANT, APPLICANT, AND STAFF REQUEST A CONTINUANCE TO NOVEMBER 12, 2024, AT 9:00 AM.)

BACKGROUND

The matter before the Board involves an appeal filed by the Appellant to decisions made by the Napa County Planning Commission on November 15, 2023, to: (1) adopt a Mitigated Negative Declaration; and (2) Approve Use Permit Exception to the Conservation Regulations No. P22-00404, to allow improvements to a private access road serving existing agricultural structures and a future residence to encroach into the minimum required 45- to 55-foot creek setback from the top of bank of Bear Creek.

The project site is approximately three miles from the City of St. Helena municipal boundary, has a General Plan land use designation of Agriculture, Watershed and Open Space (AWOS), and is located in the Agricultural Watershed (AW) zoning district, APN 027-200-017 and 027-210-032.The project is along an

existing private driveway to a parcel utilized for agricultural storage that includes several existing barns where a future residence is proposed (027-200-017). The proposed driveway improvements involving road widening is proposed along the existing driveway where portions are located within the setback of Bear Creek.

On November 27, 2023, a timely Notice of Intent to Appeal was filed by the Appellant, and on December 11, 2023, the Appellant submitted a timely Appeal Packet. The public hearing was opened on February 27th and continued to March 12th, June 11th, and August 20th. Staff, Appellant, and Applicant request that hearing be continued to November 12, 2024, at 9:00 AM to allow Applicant and Appellant additional opportunity to resolve the appeal.

Staff, Appellant and Applicant presentations and public testimony will not occur at the August 20, 2024, or the November 12, 2024 hearings. Documents associated with No. P22-00404-UP and this appeal record (No. P23-00356 -APL) are available for review in the Napa County Department of Planning, Building and Environmental Services, and at https://experience.arcgis.com/experience/e689ed72576041f2ad40b3e8c0f25206/#data_s=id%3AdataSource_1-Current_PBES_Projects_Public_8744%3A1175.

Requested Actions:

1. Chair introduces the item and opens the public hearing;

2. Motion by a Board member, second by another Board member, and a vote by the Board to continue the hearing to November 12, 2024, at 9:00 a.m.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	No
Where is it budgeted?	All County staff costs associated with this Appeal will be fully reimbursed by the Applicant on a time and materials basis as set forth in County Fee Policy 80.037 (c).
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	None
Consequences if not approved:	The Applicant and the Appellant will be unable to explore a potential resolution.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Mitigated Negative Declaration. According to the proposed Mitigated Negative Declaration, the proposed project may have potentially significant environmental impacts to Biological Resources. The project site is not included on a list of hazardous materials sites enumerated under Government Code Section 65962.5.

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 8/20/2024 | **File ID #:** 24-642

TO: Board of Supervisors

FROM: Brian D. Bordona, Director of Planning, Building & Environmental Services

REPORT BY: Trevor Hawkes, Supervising Planner

SUBJECT: Duckhorn Vineyards Winery Use Permit Major Modification Appeal

RECOMMENDATION

PUBLIC HEARING 2:00 PM - Duckhorn Vineyards Winery Appeal (Use Permit Major Modification No. P19-00097-MOD)

Conduct a public hearing to consider the appeals filed by Appellant John Murphy on behalf of Preserve Lodi Lane and Appellant Water Audit California concerning Napa County Planning Commission's decision on May 3, 2023, to approve the Duckhorn Vineyards Winery Use Permit Major Modification Application No. P19-00097 and adopt the Revised Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. (No Fiscal Impact) (CONTINUED FROM NOVEMBER 7, 2023)

BACKGROUND

The matter before the Board involves an appeal filed by Appellant John Murphy on behalf of Preserve Lodi Lane (Appellant PLL or PLL) (**Attachment A**) and an appeal filed by Appellant Water Audit California (Appellant WAC or WAC) (**Attachment B**) to the Planning Commission's approval of the Duckhorn Vineyards Winery expansion (the Project, Duckhorn or Winery) submitted by Duckhorn Wine Company, DBA Duckhorn Vineyards (Applicant or DVW). The Commission's approval authorized an expansion to Duckhorn's existing pre-WDO winery to allow construction of new production and hospitality facilities, a modification to the Winery's visitation and marketing program, an increase in annual wine production from 160,000 gallons to 300,000 gallons per year, and related infrastructure and winery facilities. No changes were approved to the existing number of employees or hours of operation.

The pre-WDO Winery is located on a 30.34-acre parcel, at the corner of Lodi Lane and Silverado Trail, located at 1000 Lodi Lane, St. Helena (Assessor's Parcel Numbers 022-130-010, 022-100-033, 022-100-034 and 022-100-035).

On May 17, 2023, timely notices of intent to appeal were filed by Appellant PLL and Appellant WAC and timely appeal packets were submitted on June 1, 2023. (Please see **Attachments A and B**). The Appeal hearing

was opened on July 25, 2023, and continued to November 7, 2023, at which time it was continued to a date uncertain. The hearing was re-noticed for August 20, 2024. Documents associated with the Project and this appeal record (No. P23-00163), technical studies, the Appeal packets submitted by PLL and WAC, the Mitigated Negative Declaration (MND) and revised MND, the Planning Commission transcript, correspondence and related documents are available for review on the Planning, Building and Environmental Services' (PBES) Current Projects Explorer page at: <https://pbes.cloud/index.php/s/NPMqspgZ9HKSBir> or at the PBES Department located at 1195 Third Street, 2nd Floor, Napa, CA 94559.

PROCEDURAL REQUIREMENTS

1. Chair introduces item and invites any ex parte communications or new Levine Act disclosures, if any, from Board members. No timely requests were received to overturn the Chair's previous "good cause" ruling so it stands.
2. Staff Report presentation.
3. Chair opens the public hearing and invites testimony from Appellant PLL and PLL's witnesses as previously disclosed on the witness list and in the order noted on the witness list attached as Attachment C.
4. Chair then invites testimony from Appellant WAC and WAC's witnesses as previously disclosed on the witness list and in the order noted on the witness list attached as Attachment D.
5. Chair invites any other interested members of the public to testify regarding the Appeals.
6. Chair invites Applicant and Applicant's witnesses as previously disclosed on the witness list and in the order noted on the witness list attached as Attachment E.
7. Chair then invites each of the Appellants to have final rebuttal (time permitting).
8. Chair closes the public hearing.
9. A motion of intent is made and seconded to deny, uphold, and/or remand the Appeals. Staff recommends that the Board adopt separate motions of intent for each appeal.
10. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Because of the current workload, good cause exists for County Counsel's office to have up to ninety days to prepare the Resolution of Findings and Decision on Appeal. Consequently, Staff recommends that the Board direct County Counsel's office to return to the Board on November 12, 2024, with the proposed Resolution for the Board's consideration and adoption.

Discussion:

On or about March 26 2019, Applicant applied for a Use Permit Major Modification to an existing 160,000 gallon a year pre-WDO winery to establish the majority of wine production activities on the West Property through the construction of a 58,042 sq. ft. facility, referred to as the West Winery, including a 90,000-gallon fire protection water tank, two (2) 158,000-gallon irrigation water storage tanks, a 24,000-gallon domestic water tank, landscaping, driveways and other winery improvements. The existing winery's domestic water system and newly developed and expanded process and sanitary wastewater systems on the East Property would be connected to the new development on the West Property through Directional Boring of utility pipes underneath the Napa River.

There are 18 other existing wineries located on the Napa Valley floor within a one-mile radius of the subject property. (Refer to Attachment L - Winery Comparison Analysis of the Planning Commission Staff Report of May 3, 2023).

On April 3, 2023, the Public Notice for the Planning Commission hearing and Notice of Intent to adopt a

Mitigated Negative Declaration was mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet. Notice was also provided to those persons on the general CEQA document notification list and the City of St. Helena. The Notice was published in the Napa Valley Register on April 3, 2023.

On May 3, 2023, the Planning Commission held a public hearing to consider approval of the Project. Several letters and emails were received prior to the hearing and comments at the hearing focused on the following issues: 1) Size of the proposed building, 2) Removal of trees, 3) Groundwater, 4) Biological Resources, 5) Noise, 6) Light, 7) Boring under the Napa River, 8) Aesthetics, 9) Air Quality and Greenhouse Gas Emissions, 10) Flooding and 11) Stormwater.

Planning Commissioners Phillips, Whitmer and Mazotti unanimously (3:0) voted to approve the Duckhorn project.

The Project's approval letter with the final adopted conditions of approval (COA) was forwarded to the Applicant on May 4, 2023 (the adopted COA are in **Attachment F**).

The appeal hearing was originally scheduled for November 7, 2023, however on October 23, 2023, Applicant requested that the hearing be continued to a date uncertain to allow Applicant to consider Project revisions based on comments received from neighbors. Appellants PLL and WAC and staff supported Applicant's request for a continuance.

On November 7, 2023, the Board granted Applicant's request and continued the hearing to a date uncertain to allow Applicant to revise the Project.

On February 27, 2024, Applicant submitted the following Project revisions to staff, Appellant PLL and Appellant WAC:

(1) a 10% reduction in daily visitation from a maximum of 219 visitors per day to a maximum of 197 visitors per day;
(2) a 10% reduction in the total square footage of the West Winery building, from 58,042 sq. ft. to 52,237 sq. ft.;
(3) drilling of a new groundwater well, located and designed in a manner that it will satisfy the County's Well & Spring Interference Evaluation Criteria (Tier 2) and Groundwater/Surface Water Interaction Criteria (Tier 3) of the County's 2015 Water Availability Analysis (WAA) Guidelines and;
(4) a 10% reduction in annual draw volume and pumping rate for the existing project well (Well #1). DVW also submitted an updated WAA to reflect the new well and reduced groundwater use.

Staff reviewed the revised Project description, updated WAA, and determined that because the project is being reduced, there are no new or different environmental impacts and that the requirements for recirculation under CEQA Guidelines section 15073.5 are not triggered. For clarity purposes only, staff prepared the attached revised the Mitigated Negative Declaration (MND) to reflect the limited project revisions and information in the updated WAA (**Attachment G**).

On May 29, 2024, the revised MND was circulated to PLL and WAC for review and comment and an opportunity to provide additional evidence and/or legal arguments related only on the topics that have been revised which are: (1) reduced visitation; (2) reduced size of the West building; (3) drilling of a new well; and (4) the updated WAA. Comments submitted by PLL are attached as **Attachment H** and WAC's comments are

attached as **Attachment I**.

Public notices of this appeal hearing were mailed and provided to all parties who received notice of the Planning Commission hearing on July 31, 2024. The notice ran in the newspaper on July 31, 2024.

Findings:

When reviewing the proposed Project, the Planning Commission based its decision on a series of Findings, as required under both County Code and State law. The Board of Supervisors must also consider all of the same Findings in reaching its decision. To uphold the Planning Commission's approval of the Project and denial of the appeal, the Board must determine that the Project is consistent with each of the following Findings. Alternatively, to deny the Project and grant the appeal, the Board must determine that the Project is not consistent with at least one (or more) of the Findings or the County General Plan.

CEQA:

1. The Board of Supervisors has read and considered the Revised Mitigated Negative Declaration prior to taking action on said Revised Mitigated Negative Declaration and the proposed Project.
2. The Revised Mitigated Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
3. The Revised Mitigated Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).
4. There is no substantial evidence in the record as a whole that the Project as mitigated will have a significant effect on the environment.
5. There is no evidence in the record as a whole that the proposed Project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed Project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

Use Permit:

1. The Board of Supervisors has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.
2. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the County Code (zoning regulations) have been met.
3. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.
4. The proposed use complies with applicable provisions of the County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.
5. The proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Exception to the Road and Street Standards:

1. The exception will preserve unique features of the natural environment which include, but are not limited to, steep slopes, heritage oak trees, or other trees of at least 6"dbh and found by the decision-

maker to be of significant importance, but do not include man-made environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.

2. Grant of the Road and Street Standards Exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

Pre-Hearing Conference:

To clarify the County's procedural requirements and expectations regarding land use appeals, the Board of Supervisors requires the parties attend a mandatory pre-hearing conference with a representative of the County Counsel's office and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list is treated as a member of the public and allotted the usual three minutes of speaking time.

A pre-hearing conference was held on July 11, 2023, with Appellant WAC, Appellant PLL, Applicant's counsel, then Chair Ramos and a Deputy County Counsel. At that time, Appellants and Applicant agreed to provide a list of their respective witnesses along with the subject matter of testimony and time estimates in advance of the hearing. The Chair informed the Appellants that each Appellant is allocated a maximum of 30 minutes per Appellant and the Applicant is allocated a maximum of 60 minutes for their presentation, allocated at their discretion. A summary of the witness information by name, subject matter of testimony, and time estimates that was provided by Appellants and the Applicant is provided in **Attachments C, D, and E**.

Appellants and Applicant also agreed to provide the Chair in advance of the hearing with any requests for "good cause" to either supplement the record with new information and/or requests to have the Appeal heard de novo (e.g., a fresh hearing). Appellant PLL's "good cause" request is attached as **Attachment J**. Appellant WAC's "good cause" request is attached as **Attachment K**. Applicant submitted an opposition to the requests in **Attachment L**.

A copy of the Determination of Good Cause decision issued by the Chair is attached as **Attachment M**. Pursuant to County Code Section 2.88.090 (B), the Chair's decision is final unless a party requests that a majority of the Board overrule the decision. None of the parties made a timely request to overrule the Chair's decision so it stands.

At the pre-hearing conference, Appellants further agreed to provide any supplemental information, not to exceed five pages per Appellant, and Applicant agreed to a limit of twenty pages for any additional information. The supplemental information provided by Appellant PLL is attached as **Attachment N**, from Appellant WAC as **Attachment O** and as **Attachment P** from Applicant. The information is also available for review online at: <https://pbes.cloud/index.php/s/NPMqspgZ9HKSBir>. Correspondence received since the Planning Commission hearing and through August 8, 2024, is also available for review online at that same link and is attached as **Attachment Q**. Any additional correspondence received after August 8th (the date this report was finalized) will also be uploaded to that link.

Appeal:

Staff has summarized Appellant PLL's grounds of Appeal, Staff's response to PLL's Appeal is in **Attachment R**. Appellant WAC's grounds of appeal along with Staff's responses is in **Attachment S**. Staff recommends the Board review the actual Appeal for further details.

REQUESTED ACTIONS:

1) Conduct a public hearing to consider the Appeals.

2) Take tentative action to deny the PLL and WAC Appeals in their entirety and uphold the Planning Commission's approval of the Project.

3) Direct staff to revise the COA to include a revised cap on the daily visitation, new production building size, rate of groundwater extraction and volume of groundwater, and the construction of a new project groundwater well.

4) Refer the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeals and direct County Counsel to return on November 12, 2024, with the proposed Resolution for adoption.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	Yes

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Revised Mitigated Negative Declaration. According to the proposed Revised Mitigated Negative Declaration, the proposed project would not have any potentially significant environmental impacts after implementation of mitigation measures. Mitigation measures are proposed for the following areas: Biological Resources and Cultural Resources. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

Attachment A

Preserve Lodi Lane's Appeal Packet

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY CLERK OF THE BOARD'S OFFICE
1195 Third Street, Suite 310, Napa, California, 94559 (707) 253-4421

RECEIVED
JUN 01 2023
NAPA COUNTY
EXECUTIVE OFFICE
9:19am

APPEAL PACKET COVER SHEET
(Section 2.88.050 of Napa County Code)

Deadline for filing with the Clerk of the Board's office: no later than 2 p.m. on the 10th working day after the filing of the Notice of Intent to Appeal. (Napa County Code sec. 2.88.050(A).)

TO BE COMPLETED BY APPELLANT
(Please type or print legibly)

#P19.00067-MOD

Action Being Appealed: PLANNING COMMISSION APPROVAL of Ducklehorn USE PERMIT

Permittee Name: DUCKHORN VINEYARDS WINERY

Permittee Address: 1000 LODI LANE (No.) ST. HELENA (Street) CA (City) 94574 (State) (Zip)

Project Site Address/Location (if different from Permittee Address):
(No.) (Street) (City) (State) (Zip)

Assessor's Parcel No.: APN 022-13-10; APN 022-100-033; APN 022-100-031; APN 022-100-035

Permit Number: P19-00067-MOD; WAIVING P19 00098 **Date of Decision:** MAY 3, 2023

Nature of Permit or Decision: FOR MOD APPROVAL

Appellant's Name: JOHN D. MURPHY

Appellant's legal status (check one): ☐ Individual ☐ Corporation/registered nonprofit
☒ Individual on behalf of unofficial organization (e.g., neighborhood group, special interest group, etc.)
Specify organization name: _____

Telephone #: (415) 290-2350 **Fax #:** (___) N/A

E-Mail Address: jdmilesmd@comcast.net

Mailing Address: 1115 LODI LANE (No. Street) ST. HELENA (City) CA (State) 94574 (Zip)

Appellant's Qualification as Interested Person:
ADJACENT PROPERTY OWNER
project applicant, adjacent property owner, other (describe)

Primary Point(s) of Contact for Appellant: ☒ **Check here if Appellant is sole point of contact and will be the prehearing conference representative**

Contact # 1 Name: JOHN MURPHY
Telephone # (415) 290-2350 **Email:** jdmilesmd@comcast.net
Mailing Address: 1115 LODI LANE (No. Street) ST. HELENA (City) CA (State) 94574 (Zip)

☒ **Check here if this contact will be your representative at the prehearing conference**

Contact # 2 Name: AMY MUETH

Telephone # (310) 358-2405 Email: AMA@BKSHLAW.COM

Mailing Address: 2200 PACIFIC COAST HWY STE 318 HERMOSA BEACH CA 90254
No. Street City State Zip

☑ Check here if this contact will be your representative at the prehearing conference

Attach additional sheet(s) for additional contacts if needed.

Reason for Appeal. Be specific – **factual or legal basis for such grounds of appeal must be expressly stated or they are waived.** At a minimum, you must include: (1) identification and description of the specific factual or legal determination(s) made as part of the decision that are the focus of the appeal; and (2) express assertion of all arguments, contentions, and facts that form the grounds for your appeal. If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, or that there was a lack of a fair and impartial hearing, this must be expressly stated. ***(attach additional sheets and/or supporting documentation if necessary)***

SEE ATTACHMENT

Are you appealing a decision relating to real property? (check one) ☐ Yes ☑ No
If Yes, please ensure that you attach the required Ownership Report, including list of owners and Assessor's map page(s) as indicated on the Checklist.

Evidence of payment of required fees (check one): ☑ **Attached** ☐ **Will be submitted later***

* Pursuant to Napa County Code sec. 2.88.050, evidence of payment **must** be received by the Clerk of the Board no later than the 2 p.m. deadline.

JUNE 1, 2023

Signature of Appellant	Date	Print Name
	~~5/31/2023~~	JOHN MURPHY

Preserve Lodi Lane

Sang-Froid Vineyards
1115 Lodi Lane
St. Helena, California 94574
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APPEAL PACKET SUBMITTED JUNE 1, 2023 By John D. Murphy, Preserve Lodi Lane

Appeal of Planning Commission Approval of Duckhorn Vineyards Winery Use Permit Major Modification #P19-00097-MOD & Variance #P19 00098.* (See reference page at conclusion of Appeal Packet.)

I. INTRODUCTION

The Napa County Planning Commission explicitly endorsed Planning, Building, and Environmental Services (PBES) institutionalized prejudice towards citizens both concerned with or directly affected by the May 3, 2023 decision to grant Duckhorn Vineyards Winery's Use Permit Major Modification (P19-00097-MOD & Variance (P19-00098) and adopted a Mitigated Negative Declaration (MND). Because of the PBES bureaucratic appeal maze having a chilling effect on substantive public participation in the decision-making process, the Duckhorn Vineyards Winery Use Permit Major Modification application was approved without material consideration of written and verbal public opinions and concerns, particularly from citizens living within 1000 feet of Duckhorn Vineyards Winery.

The Duckhorn project includes the construction of 61,362 square feet production and office facilities; water tanks holding 420,000 gallons; 8,839 square feet expansion of Estate House to 18,162 square feet; development of separate process and sanitary wastewater systems on both East and West Properties connected by Directional Boring under the Napa River; increase in parking spaces from 68 to 96; conversion and expansion of a 23,000 square foot bio-retention pond; permanent destruction of 3.55 acres of Agricultural Preserve (WP) vineyard; removal of approximately 49 trees including heritage oaks; increased wine production from 160,000 to 300,000 gallons; abandonment of Duckhorn's existing Winery Definition Ordinance (WDO) entitlement of 50 visitors per week for "Public Tours and Tastings" for a total of 219 visitors daily by appointment; private tours and tastings for up to 20 guests 120 times annually; wine with food pairings for up to 25 guests 36 times annually; large events for up to 600 guests twice annually; auction-related events for up to 250 guests twice annually; the widening of the east end of Lodi Lane to allow for the striping of a left-hand turn lane onto Duckhorn property; and the construction of an approximately 1000 foot long, 20 foot wide, paved road from Lodi Lane to the new production facility approximately 200 feet from a family residence

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APPEAL PACKET SUBMITTED MAY 31, 2023 By John D. Murphy and Preserve Lodi Lane

Appeal of Planning Commission Approval of Duckhorn Vineyards Winery Use Permit Major Modification #P19-00097-MOD & Variance #P19 00098.* (See reference page at conclusion of Appeal Packet.)

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required accommodate 53 foot long tanker and other large trucks utilizing the road to the proposed production facility day and night.*

The Napa County Planning Commission observed the 30-day requirement period for the collection of public commentary, but prejudicially scheduled the public hearing on the Duckhorn's Permit Major Modification MND the day following the closure of the comment period without ever responding to the written opinions and concerns of the public. None of the three of the five commission members nor the PBES Senior Planner authoring the Duckhorn Letter of Intent at the hearing failed to evidence any awareness of having read or responded to either written or verbal public opinions and concerns so as to make it a transparent part of the public record of their deliberation that resulted in the Duckhorn approval decision.

Members of the public were restricted to three minutes each during the hearing to voice concerns and opinions, but Planning Commissioners Whitmer, Dameron, and Phillips, and PBES Senior Planner Trevor Hawkes, failed to either acknowledge or respond to these verbal or previously submitted written citizen comments thus affirming institutional animus toward the public by failing to incorporate it in their legally mandated objective evaluation of the Duckhorn Use Permit Major Modification proposal.

The Planning Commissioners' institutionalized disregard of public opinion in its decision-making about Duckhorn means that the only way Napa County citizens can ensure that their opinions and concerns about the Duckhorn approval are a material part of the decision-making is to pay $1000.00 to Napa County for the filing of an appeal. This payment and adherence to the highly detailed and unendingly complex procedure for citizens unfamiliar with the PBES public participation process, intentionally disenfranchises the Napa County citizens from their ready right and ability to participate substantively in the Planning Commission's decision-making in transparent contradiction to the county's historical assertion that it both embodies and observes a "Tradition of Stewardship" to the public.

II. CORPORATE AND NAPA COUNTY GOVERNMENT SIEGE OF LODI LANE

Lodi Lane Bookends: Inn at the Abbey and Duckhorn Vineyards Winery

Jackson Family Investments, headquartered in Sonoma County, purchased Freemark Abbey winery at Highway 29 by the "tee" intersection of Lodi Lane half a mile north of St. Helena's city limits in 2006, and then in 2013, a derelict wine tasting facility and run-down motel turned into single family residences occupying a portion of Agricultural Preserve (AP) land at the corner of Highway 29 and Lodi Lane .

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The unwholesome appearance of the long-standing shuttered tasting room and former motel rooms converted to single family residences inspired one Lodi Lane resident to award it the honorific "***Squalor Holler.***"

In 2016, TSG Consumer Partners, a private equity company in San Francisco, purchased Duckhorn Vineyard Winery located at the "tee" intersection of Lodi Lane and Silverado Trail from the private equity company GI Partners, who had purchased it in 2007 from namesake owners Dan and Margaret Duckhorn.

Freemark Abbey and Duckhorn wineries that bookend Lodi Lane at Highway 29 and Silverado Trail, due to arguably preferential political treatment by PBES in excluding contemporaneous traffic impact study from either the EIR mandated for Jackson's proposed *Inn at the Abbey*, or *Duckhorn's* transformation from a charming rural winery into industrial monument to the wine industry, placed Lodi Lane residents under siege.

In early 2019, both *Freemark Abbey* owner Jackson and *Duckhorn* owner TSG, submitted applications for Use Permit Major Modifications at Napa County Planning, Building, and Environmental Services (PBES), which if approved, will transform historically rural Lodi Lane into a corporate wine industry behemoth generating formidable profits to corporate owners who, arguably, are not taxpaying residents of Napa County.

TSG Consumer Partners—a highly successful publicly-traded $20 billion dollar company—seeks to transform Duckhorn Vineyards Winery into a manufacturing colossus occupying Napa County's Agricultural Preserve (AP) through the construction of a 60,000 some thousand square foot production facility that allows for the increase in wine gallonage from 160,000 to 300,000 annually; increasing visitors from some 37,000 to some 88,000 annually; doubling the classic *Duckhorn* Estate House tasting facility from about 10,000 square feet to 18,000 plus square feet; removing 49 trees including heritage oaks; widening Lodi Lane between a broken-down one-lane bridge built in 1930 and Silverado Trail to accommodate a left-hand turn lane; and the construction of a two-lane, 20 foot wide, approximately 1,000 feet long, paved road to accommodate 53-foot long Duckhorn tankers rumbling back-and-forth to the new wine production icon both day and night. The new road is only 200 feet from an occupied rural residence and contiguous to a mature, healthy, highly productive vineyard.*

PBES required an Environmental Impact Report (EIR) be conducted of the *Inn at the Abbey* in observance of the California Environmental Quality Act (CEQA), but determined that the *Inn at the Abbey*—at Napa County's 70 percent occupancy rate—could annually serve 57,670 hotel and resort guests arriving and departing in 28,825 passenger vehicles (2 per car); hundreds of employees (and their vehicles) required at to serve a luxury inn and resort; tens of thousands of visitors wine tasting, eating at the restaurant, enjoying a 4000 square foot rooftop bar and lounge, shopping at retail

stores, and attending conference center meetings; using the spa and fitness center; and the arrival and departure of thousands of service and delivery vehicles would have "less than significant' impact on traffic whether it be on Highway 29, Silverado Trail, or Lodi Lane, and excluded any present-day traffic impact studies.

The PBES "less than significant" conclusion about *Inn at the Abbey*'s impact on traffic means that—without being forced to pay a $1000.00 for an appeal—public opinion and concerns about the traffic impact of the colossal *Duckhorn* expansion was not included in the decision-making process of the Napa County Planning Commission or and therefore from consideration by the Board of Supervisors.

PBES primary reliance on dated traffic studies as the basis of excluding present-day evaluation of the traffic impact of both *Inn at the Abbey* and *Duckhorn* violates the Napa County Traffic Impact Study (TIS) requirements* that such studies required to be completed within two-years prior to the submission of a Use Permit Major Modification application.

Even more compelling is the simultaneous PBES apparent failure to include the examination of the cumulative impact of traffic arising from major use modifications at wineries in immediate proximity to both the proposed *Inn at the Abbey* and *Duckhorn* by its findings that both *Inn at the Abbey* and *Duckhorn* traffic would have "less than significant impact" upon existing traffic.

The PBES *Duckhorn* "less than significant" traffic finding also excludes any consideration of *Duckhorn's* generation of traffic in the context of *Inn at the Abbey* traffic, including 53-foot-long Duckhorn tanker trucks designated to use the "tee" intersection of Lodi Lane and Highway 29 to access and depart the proposed Duckhorn wine production colossus because of the nearly 100-year-old (1930) broken-down bridge that commonly floods closing Lodi Lane in the event extended heavy rain .

Historical Goings-On at Lodi Lane

In 1939, the land at Highway 29 and Lodi Lane, presently occupied by *Freemark Abbey* winery, was purchased by three real estate developers, Charles Freeman, Mark Foster, and Albert "Abbey" Ahern who named it ***Freemarkabbey***.

Following its sale years later, *Abbey* sniggered apart from fellow founders *"Free"* and *"mark,"* establishing and financially benefiting from the false public historical impression that a religious abbey once occupied the property.

Physical Glory of the Proposed Inn at the Abbey

A four-level 79 room boutique luxury hotel and resort rising to a height of 45 feet constructed on a hill prominently rising above flat agricultural land; underground

parking for 54 vehicles; 149 surface parking places; 50 rooms on the north side of Lodi Lane and 29 rooms on the south side; pool and plunge pool, spa and fitness center, 4000 square foot rooftop bar and lounge; conference center, wine tasting facilities; reception hall; retail outlets; outside gathering lawn areas; and back-room service areas.*

Hand-in-Hand: Inn at the Abbey and Duckhorn Vineyards Winery

The PBES exclusion of a present-day traffic evaluation from the *Inn at the Abbey* EIR, allowed the Napa County Planning Commission to ignore the opinions and concerns of not only Lodi Lane residents; all those living within 1000 feet of the *Inn at the Abbey;* and every Napa citizen in the required objective evaluation of the Duckhorn proposal in observance of *CEQA*.

The prejudicial PBES institutionalized political decision about the impact of the Lodi Lane *Inn at the Abbey* traffic serendipitously eliminated the inclusion of the *Inn at the Abbey* EIR from the present-day evaluation of the impact of traffic from Planning Commission's deliberation of the Duckhorn Winery's Use Permit Major Modification.

Duckhorn incorporated the *Inn at the Abbey* traffic studies completed between 2015 and 2019 as part of the factual basis for the PBES finding that the Duckhorn proposal would have "less than significant impact" on traffic thus excluding it from the Planning Commission's consideration of the Duckhorn proposal.*

What amounts to the political exclusion of the traffic impact of the *Inn at the Abbey* on both sides of Lodi Lane at the "tee" intersection of State Highway 29 on the health and safety of the citizenry should the Duckhorn proposal be approved by the Napa County Board of Supervisors, manifests shameless disregard for environmental law and violation of county government's generic responsibilities for public health, welfare, and safety while recklessly exposing Napa County taxpayers to open-ended financial liability in the event of loss or life or limb arising from institutionally dismissed structural traffic hazards on Highway 29 at Lodi Lane.

III. THERE IS SUBSTANTIAL PUBLIC EVIDENCE TO SUPPORT A FAIR ARGUMENT THAT THE DUCKHORN PROJECT MAY HAVE SIGINIFICANT TRAFFIC IMPACTS

Heart-Pounding Traffic Negotiation at Lodi Lane and HWY 29

Preserve Lodi Lane members and supporters are primarily area residents and community members within 1000 feet of the *Duckhorn* project with first-hand personal knowledge of local traffic conditions, hazards, and safety on Lodi Lane and the tee-intersections at Highway 29 and Silverado Trail. The personal observations and experiences of *Preserve Lodi Lane* members and supporters constitute substantive fact-base evidence that was prejudicially excluded by PBES in their evaluation of the

Duckhorn proposal as the direct result of the institutionalization of prejudicial public participation procedures enforced by PBES.

As set forth in the attached legal opinion from the highly experienced CEQA attorneys at Carstens, Black, and Minteer LLP, based on the substantial evidence provided by extensive personal observations, a fair argument has been established for necessitating an EIR for the Duckhorn proposal.

Preserve Lodi Lane members and supporters have personally experienced and observed that each time a driver desires to make a right or left-hand turn on State Highway 29 from Lodi Lane, he or she routinely nose their vehicle into the northbound traffic lane in the heart-pounding search of an unobstructed sightline to traffic abruptly appearing out of blind curves both the north and south of Lodi Lane at 50 mph and speeds above the posted speed limit. From Lodi Lane south, Highway 29 slopes down slightly some 600 feet to a blind curve bordered by massive trees with thick foliage obscuring vehicles approaching at 50 mph together with intermittent cyclists and the occasional pedestrian.

If the driver of a vehicle seeking to make a right-hand turn from Lodi Lane onto Highway 29 occupies the space next to a driver making a left-hand turn—also being forced to nose into the northbound traffic lane to obtain an unobstructed sightline—his or her vehicle will block the left-hand turn driver's sightline to traffic approaching from the north at 50 mph and above, forcing them to nose further in the traffic lane or wait until the right-hand driver has completed their turn. Such delays create a physical obstruction and causes the formation of traffic queues on Lodi Lane, which if containing more than four vehicles, will block the proposed southern entrance to the *Inn at the Abbey* on the north side of Lodi Lane. *Preserve Lodi Lane* members and supporters have personally observed and experienced these transparent traffic safety hazards that engender accidents and near misses while often resulting in often heart-pounding anxiety necessitating the preparation of an EIR to replace the Planning Commission approval of the Duckhorn MND. (See attachment 3.)

[For example, 53-foot-long Duckhorn tanker trucks will occupy the entire space used for passenger car simultaneous right and left lanes on Lodi Lane, and create static vehicle queues while searching for enough space and time for a massive, very slow-moving tanker truck to safely enter 50 mph Highway 29. The Duckhorn project dramatically increases the potential for collisions between glacially moving tanker trucks who also have views of high-speed Highway 29 both north and south traffic compromised by blind curves, vehicles turning left onto Lodi Lane from Highway 29; separate vehicles simultaneously turning both left and right from Lodi Lane onto Highway 29; a transit stop in proximity to the principal ***entrance to the Inn at the Abbey; and cyclists and pedestrians using the Vine Trail contiguous to the Highway 29 Inn at the Abbey property and crossing the tee-intersection at Lodi Lane.]***

Both the Lodi Lane right and left-hand driver's sightline to southbound traffic is also blocked if more than two vehicles are queued in the Highway 29 left-hand turn lane into Lodi Lane. The Highway 29 left-hand drivers' rear-view north is impaired by an upward slope to a crest with a slight curve in the twelve-foot-wide southbound lane obscuring vehicles appearing suddenly at 50 mph and faster.

When a delivery truck, van, or SUV occupies either the right or left-hand shared lane on Highway 29, all passenger vehicle drivers are discouraged from nosing into the northbound lane to obtain an unobstructed sightline, and will remain in place until the larger vehicle has successfully completed its turn. The length of time waiting to make a safe turn will quickly produce vehicle queues that will block the planned southern entrance to the Inn at the Abbey on the north side of Lodi Lane, and impede *Inn at the Abbey* guests, visitors, employees, *Inn* service carts, and bicyclists from crossing from the south side of Lodi Lane to the north side.

At the same time a vehicle posed to make a left-hand turn from Lodi Lane onto Highway 29 thus blocking the sightline of the driver next to them trying to make a right-hand turn, the vehicle of the driver making the right-hand turn also blocks the sightline north of the driver making the left-hand turn. Both Lodi Lane drivers' sightlines are further compromised by vehicles queued in the Highway 29 left-hand turn lane onto Lodi Lane preventing an unobstructed view of southbound traffic approaching at 50 mph or more over the crest of a curve on an upward slope north.

[Despite Duckhorn's proposed 88,000 plus visitors adding some 44,000 vehicles (at 2 persons a vehicle) to the Lodi Lane traffic load along with hundreds of 53-foot-long tanker trucks driving from to and from the proposed 62,000 square foot plus production and office colossus, was determined by PBES to have "less than significant impact" on traffic.* This PBES conclusion is contradicted by the personal experience of *Preserve Lodi Lane* members and local supporters.]

IV. THE VINE TRAIL

If the traffic impact of the Inn at the Abbey and Duckhorn Vineyards Winery isn't significant enough for the Napa County PBES, the construction of an extension of the Vine Trail on Highway 29 from St. Helena to Calistoga primarily for bicyclists must be considered.

The Vine Trail will contiguously occupy the space both north and south property line of the proposed Inn at the Abbey on Highway 29 crossing Lodi Lane. When the Vine Trail is operative, drivers using Lodi Lane to turn either north or south on Highway 29—both likely having nosed into the northbound traffic lane in an increasingly frustrating—**particularly with the extended presence of Duckhorn's 53-foot-long tanker trucks**—and intense search for physically uncompromised sightlines, will physically impede the passage of Vine Trail bicyclists and pedestrians—along with *Inn*

at the Abbey guests, visitors, employees, and guest service carts attempting to use the crosswalk. Pedestrians and cyclists will be forced to stop or dangerously negotiate passage in front of vehicles nosed into the northbound traffic lane, or even more threatening, between queued vehicles.

The Planning Commission approved *Duckhorn* MND exacerbates an indisputable threat to public health, welfare, and safety at the tee-intersection of Lodi Lane and Highway 29.

Entering Lodi Lane from North Highway 29

Aggravating physical hazards at the "tee" intersection of Lodi Lane and Highway 29, is the placement of a southbound left-hand turn lane on Highway 29 onto Lodi Lane. *Preserve Lodi Lane* members and supporters have personally observed southbound drivers headed toward St. Helena, when negotiating their left-hand turn onto Lodi Lane, nose their vehicle forward and block vehicles attempting to turn left on Highway 29. If there is more than one vehicle in the Highway 29 left hand turn queue into Lodi Lane, the next vehicle instantly replaces the vehicle that turned left onto Lodi Lane, maintaining the physical blockade of drivers wanting to turn left often resulting in lengthy vehicle queues.

First-time drivers turning left onto Lodi Lane from the southbound turn lane on Highway 29 are arguably unlikely to have a working knowledge of the Vine Trail, either because they are simply unaware of its existence, or more realistically., because approaching cyclists are often concealed by vehicles traveling north on Highway 29. If more than three vehicles occupy the left-hand-turn lane onto Lodi Lane, they are likely to stop or impede southbound Highway 29 traffic on a 12-foot-wide traffic lane.

[If one or more Duckhorn tanker trucks occupies the left-hand turn lane onto Lodi Lane, the wait of drivers attempting to turn left will be extended again creating lengthy traffic queues establishing an adverse traffic safety condition for hotel guests, Vine Trail bicyclists and pedestrians, and hotel employees servicing the 29 room *Inn at the Abbey* south campus on Lodi Lane.]

V. DATED INN AT THE ABBEY AND DUCKHORN TRAFFIC STUDIES

The eight-year-old 2017 State Highway 29 and Lodi Lane *Inn at the Abbey* traffic study found that 15,000 vehicles pass Lodi Lane on Highway 29 each week-day, and 13,000 on week-ends, some 4,848,000 annually. In 2017, the *Inn at the Abbey* traffic study estimated that 350,400 vehicles use Lodi Lane annually.*

The combined Highway 29 and Lodi Lane annual traffic load is **5,198,400.**

The PBES *Inn at the Abbey* Notice of Preparation in 2019 concluded the following about its impact on traffic despite the addition of thousands of guest vehicles arriving and departing multiple times during the usually required minimum two-day stay—with the addition of numerous arrivals and departures for wine tastings and restaurant patronage:

> "Upon the addition of project-related traffic to existing volumes, both study sections (Lodi Lane at both Highway 29 and Silverado trail) would be expected to operate acceptably at the same level as existing traffic. Further, the delays would be less than significant than those under Permitted Conditions and a traffic light would not be warranted. Striping left and right-hand turn lanes (Lodi Lane at Highway 29) would reduce conditions to "less than significant." (*Inn at the Abbey Notice of Preparation is included as Attachment 2.)*

The Napa County PBES *Inn at the Abbey* Notice of Preparation, by finding that the new hotel would have "less than significant impact" on traffic allowed them to exclude tens of thousands of vehicles arriving and departing daily after wine tasting; conference attendance, retail shopping, restaurant and rooftop bar and lounge patronage, and use of fitness center and spa, plus thousands of employee vehicles necessary for the optimum operation of a boutique luxury hotel; and the daily addition of thousands of service and support vehicles required at Napa County's 70 percent hotel occupancy rate. A Napa Board of Supervisors *Duckhorn* approval would add an estimated 44,000 passenger vehicles and hundreds of 53-foot-long tanker trucks to the *Inn at the Abbey* traffic load at Lodi Lane and Highway 29.

Despite this massive increase in traffic load, no present-day traffic study was required by Napa County PBES for either the *Inn at the Abbey* or *Duckhorn*. PBES chose not assess the cumulative impacts of traffic load, safety, and hazards arising from the *Inn at the Abbey* and *Duckhorn* projects.

<u>Napa County Traffic Impact Study (TIS) Policy</u>

- "A TIS is required if the project exceeds the county's screening criteria of 40 or more daily vehicle trips."
- "The project is likely to substantially alter physical or operational conditions on a county roadway, bridge, bikeway, sidewalk, or transportation facility."
- The county traffic engineer deems a TIS necessary if there is evidence the project's unique location might lead to (traffic) impacts."
- "A TIS is valid for two years."
- Data Study: "Most recent two years."

The following more than two-year-old traffic studies were employed by both the *Inn at the Abbey* and *Duckhorn* to generate PBES findings of "less than significant Impact" on traffic in violation of the following Napa County's Traffic Impact Study (TIS) requirements:

- 2016 Collision Data on California State Highways, California Department of Transportation, 2018.
- City of Napa Traffic Study Guidelines, City of Napa, 2004
- County of Napa Administrative Draft, Traffic Impact Study Guidelines, County of Napa, 2020.
- Highway Capacity 6th Edition, Transportation Resource Board, 2020
- Highway Design Manual 6th Edition, California Department of Transportation, 2017.
- Napa County Bicycle Plan, Napa Valley Transportation Authority, 2019
- Napa County General Plan, County of Napa, 2013.
- Napa County Road and Street Standards, 2016.
- Statewide Integrated Traffic Records System, CHP, 2014-2019.
- Technical Advisory on Evaluating Transportation Impacts om CEQA, Governor's Office of Planning and Research, 2018.
- Traffic Impact Study for the *Inn at the Abbey*, W-Trans, 2019.

Napa County PBES reliance on mostly four-to-five-year-old traffic safety hazard analysis materially failed to analyze present-day traffic health and safety issues at either the project level or cumulatively in light of the Permit Major Modifications at virtually every winery in proximity to Lodi Lane at the tee-intersections at Highway 29 and Silverado.

<u>Wineries Within One Half Mile of Duckhorn Granted Use Permit Major Modifications Within Last Five Years</u>

Ballentine
Ravena
Grace Family
Brasswood
Titus

Trinchero
Elhers
Charles Krug
Faust Haus (new winery)

Preserve Lodi Lane incorporates by reference Use Permit Major Modification date available from Napa County's Current Project Explorer website obtainable from the Current Projects Explorer (countyofnapa.org).*

The cumulative impact of these Permit Major Modifications in increased numbers of permitted visitors, employees, and their vehicles were apparently excluded by PBES with the designation of the traffic impact of the *Inn at the Abbey* and *Duckhorn* had "Less than significant impact in violation of CEQA.

VI. LODI LANE/HIGHWAY 29 STRUCTURAL HAZARDS NEGATIVELY IMPACTING BOTH INN AT THE ABBEY AND DUCKHORN TRAFFIC.

1. Two Highway 29 12-foot-wide travels lanes with contiguous bike paths both North and South crossing the Lodi Lane tee-intersection.

2. Highway 29 North and South slops on blind curves approximately 600 feet south and 500 feet north of Lodi Lane.

3. An unsignalized tee-intersection at Highway 29 and Lodi Lane subject to substantial increases in vehicular—including 53-foor long tanker trucks—cyclists, pedestrians, service and delivery vehicles, including public transit vehicles, bifurcating the Inn at the Abbey on Lodi Lane calculated to generate tens of thousands of hotel and resort guests, visitors, employees, service and delivery vehicles, and 53-foot-long wine tanker trucks.

4. Single Lodi Lane turn lane capable of accommodating simultaneous right and left-hand turns that when occupied contemporaneously, physically obstruct driver sightlines both north and south.

5. Drivers forced to make U-turns on 30-foot wide, two lane, on 45 mph Lodi Lane to access Inn at the Abbey entrances.

6. Drivers attempting to turn both left and right from Lodi Lane onto Highway 29, compelled to physically nose vehicles into the northbound Highway 29 50 mph traffic lane to obtain unobstructed sightlines in search for vehicles approaching both north and south.

7. Drivers of all vehicles—including 53-foot long Duckhorn tanker trucks—will be required to stop for cyclists and pedestrians utilizing the Vine Trail contiguous to the Inn at the Abbey and Lodi Lane, and Inn at the Abbey guests staying at Inn at the Abbey hotel rooms planned to be constructed on south Lodi Lane,

8. A public transit stop on Highway 29 just south of the main entrance to the Inn at the Abbey that when occupied by a bus, obstructs the view of drivers, cyclists, pedestrians, and vehicles traveling north at 50 mph causing speed reduction and possible stoppage blocking northbound traffic.

9. A public transit stop on the west boundary of 24-foot-wide Highway 29 across from the main entrance to the Inn at the Abbey, absent a crosswalk for Inn guests, employees, or amenity patrons who will be forced to negotiate Highway 29 traffic suddenly appearing at the crest of a rise at 50 mph.

10. Thousands of Inn at the Abbey guests, visitors and employees crossing Lodi Lane on foot or service carts night and day 365 days a year to access the Inn at the Abbey restaurant, winery, conference rooms, retail stores, pool, spa, rooftop bar and lounge.

11. A large fleet of guest service vehicles required to move guests and their luggage from the reception building to rooms located on the south boundary of Lodi Lane at Highway 29.

12. Thousands of service and delivery vehicles required to use Lodi Lane to turn left on the Inn at the Abbey service entrance contiguous to the west boundary of the Inn at the Abbey.

The Duckhorn project's traffic safety impacts at the tee-intersection of Highway 29—excluded by PBES along with the assessment of the cumulative traffic safety impacts arising from Permit Major Modifications at wineries in immediate proximity to Duckhorn both exacerbate the threat to public health and welfare and violate the elemental responsibility of government to ensure and protect the health and safety of its citizenry on its highways, roads, and bridges.

VII. DISTANCE BETWEEN DUCKHORN INDUSTRIAL PARK AND RESIDENTIAL PROPERTY

The PBES Duckhorn Letter of Intent asserts that the location of the proposed production facility is less than 500 feet from the nearest residence and therefore satisfies Napa County winery set-back policy. The only Napa County winery set-back policy is that it is required to be six-hundred feet from Hwy 29, Silverado Trail, and all arterial county roads (which includes Lodi Lane). The PBES basis for approving the production site fails to include a proposed some 1000 foot-long, 20-foot-wide paved road necessary to allow 53-foot long *Duckhorn* tanker trucks to access and exit the proposed production facility that is only 200 feet from an occupied Lodi Lane residence is an intrinsic element of the proposed production structure since it is the sole access and exit choice available and therefore violates the 500-foot setback requirement claimed by PBES.

The Planning Commission approved Duckhorn MND failed to assess the impacts of constructing a new wine production facility together with a new entrance and exit

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road physically required to reach the facility that is 200 feet from an occupied residence. The MND noise analysis fails to address either the noise from the production facility, or the noise of 53-foot-long tanker and delivery trucks that are likely to utilize the new road night and day. Since the new road is only 200 feet from an occupied residence, an EIR is required.

VIII. DUCKHORN MITIGATED NEGATIVE DECLARATION (MND) MUST BE BASED ON AN ENVIRONMENTAL IMPACT REPORT (EIR)

Based on the lengthy personal experience of Lodi Lane residents and people living within 1000 feet of the Duckhorn property with structural traffic safety threats at the tee-intersections of Highway 29 and Silverado Trail, establishes a fair argument that the Planning Commission approval Duckhorn MND must be the subject of an EIR.

VIX. Public Document References

- All documents cited in this appeal support packet are designated public by Napa County and obtained through the County of Napa Planning, Building, and Environmental Services through the utilization of its Current Projects Explorer (countyofnapa.org/Current Projects Explorer).

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May 31, 2023

Napa County Board of Supervisors
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Napa, CA 94559

Re: Support for Preserve Lodi Lane Appeal of Duckhorn Vineyards Winery Use Permit Major Modification #P19-00097-MOD

Honorable Supervisors:

I have reviewed Preserve Lodi Lane's enclosed appeal of Duckhorn Vineyards Winery Use Permit Major Modification #P19-00097-MOD ("Duckhorn Project"). It is my opinion, as an experienced practitioner under the California Environmental Quality Act ("CEQA"), based on the evidence presented in Preserve Lodi Lane's appeal, that an environmental impact report should be prepared for the Duckhorn Project.

Because issuing a mitigated negative declaration ("MND") truncates the CEQA process with often minimal environmental review, CEQA's "legal standards reflect a preference for requiring an EIR to be prepared." (*Mejia v. City of Los Angeles* (2005) 130 Cal. App. 4th 322, 332.) An agency proposing to rely upon an MND must make the analysis accompanying the proposed MND as complete and comprehensive as possible. (*Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal. App. 3d 249, 263.) When considering whether to require preparation of a full EIR or allow review culminating in an MND instead, a court will examine whether there is substantial evidence in the record to support a fair argument that the stated mitigation measures may not achieve the goal of reducing impacts below a level of significance. (*Citizen's Com. To Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157.) ***An EIR must be prepared instead of an MND when there is substantial evidence to support a fair argument that the project may have significant adverse environmental impacts***. (Public Resources Code § 21151.) "The fair argument standard is a 'low threshold' test for requiring the preparation of an EIR." (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.) If ***any*** substantial evidence of a potential environmental impact after the agency's proposed mitigation measures are implemented exists, then preparation of an MND is not appropriate, even if substantial evidence exists

Thus, for the reasons set forth in the Preserve Lodi Lane appeal, preparation of an EIR is required for the Duckhorn Project.

Sincerely,

Amy Minteer

Attachment B

Water Audit California's
Appeal Packet

A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY CLERK OF THE BOARD'S OFFICE
1195 Third Street, Suite 310, Napa, California, 94559 (707) 253-4421

RECEIVED
JUN -1 2023
12:13 PM
NAPA COUNTY
EXECUTIVE OFFICE

APPEAL PACKET COVER SHEET
(Section 2.88.050 of Napa County Code)

Deadline for filing with the Clerk of the Board's office: no later than 2 p.m. on the 10th working day after the filing of the Notice of Intent to Appeal. (Napa County Code sec. 2.88.050(A).)

TO BE COMPLETED BY APPELLANT
(Please type or print legibly)

Action Being Appealed: The May 3, 2023, decision of the Napa County Planning Commission's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program ("MMRP") and approval of Use Permit Major Modification Application P19-00097-MOD

Permittee Name: Duckhorn Vineyards Winery CA (State) 94574 (Zip)

Permittee Address: 1000 Lodi Lane St. Helena CA 94574
(No. Street City State Zip)

Project Site Address/Location (if different from Permittee Address):
(No. Street City)

Assessor's Parcel No.: 022-130-010, 022-100-033, 022-100-034 and 022-100-035

Permit Number: P19-00097 - MOD **Date of Decision:** May 3, 2023

Nature of Permit or Decision: **Adoption of Mitigated Negative Declaration and Approval of P19-00097-MOD**

Appellant's Name: Water Audit California

Appellant's legal status (check one): ☐ Individual ☒ Corporation/registered nonprofit
☐ Individual on behalf of unofficial organization (e.g., neighborhood group, special interest group, etc.)
Specify organization name: _____ **Fax #:** (_) _____

Telephone #: (530) 575-5335

E-Mail Address: legal@waterauditca.org

Mailing Address: 952 School Street, PMB 316 Napa, CA 94559
(City State No. Street Zip)

Appellant's Qualification as Interested Person: Submitted Comment and Testified during hearing on May 3, 2023, no financial interest
project applicant, adjacent property owner, other (describe)

Primary Point(s) of Contact for Appellant: ☒ **Check here if Appellant is sole point of contact and will be the prehearing conference representative**

Contact # 1 Name: William McKinnon, Water Audit California
Telephone # (530) 575-5335 **Email:** legal@waterauditca.org
Mailing Address: 952 School Street, PMB 316 Napa, CA 94559
(No. Street City State Zip)

☒ **Check here if this contact will be your representative at the prehearing conference**

Contact # 2 Name: Valerie Stephan
Telephone # (_____) _____ **Email: vstephan@waterauditca.org**
Mailing Address: 952 School Street, PMB 316 Napa, CA 94559
No. Street City State Zip

☐ **Check here if this contact will be your representative at the prehearing conference**

Attach additional sheet(s) for additional contacts if needed.

Reason for Appeal. Be specific – **factual or legal basis for such grounds of appeal must be expressly stated or they are waived.** At a minimum, you must include: (1) identification and description of the specific factual or legal determination(s) made as part of the decision that are the focus of the appeal; and (2) express assertion of all arguments, contentions, and facts that form the grounds for your appeal. If the basis of the appeal will be, in whole or in part, that there was a prejudicial abuse of discretion on the part of the approving authority, or that there was a lack of a fair and impartial hearing, this must be expressly stated. ***(attach additional sheets and/or supporting documentation if necessary)***

Please see attached

Are you appealing a decision relating to real property? (check one) ☒ Yes ☐ No
If Yes, please ensure that you attach the required Ownership Report, including list of owners and Assessor's map page(s) as indicated on the Checklist.

Evidence of payment of required fees (check one): ☒ **Attached** ☐ **Will be submitted later***

* Pursuant to Napa County Code sec. 2.88.050, evidence of payment **must** be received by the Clerk of the Board no later than the 2 p.m. deadline.

Signature of Appellant	Date	Print Name
	4/1/23	William McKinnon, Attorney for Water Audit California

APPEAL FEE SCHEDULE WORKSHEET

(October 2018)

		Required * Select one ▶		COSTS	TOTAL
1	**NOTICE BY MAIL (COB)**				
	100 addresses or less		▶	$49.00	49 —
	101 to 400 addresses		▶	$173.00	
	Over 400 addresses		▶	$261.00	
	Costs associated w notice by mail/per address	# 42	*	.54/Per Add.	22.68
2	**NOTICE BY PUBLICATION (COB)**				
	Cost of publication in newspaper		*	**$198.00**	198 —
	Costs associated with notice of publication		*	**$63.00**	63 —
	Preparation of agenda		*	**$60.00**	60 —
	Court Reporter per diem (if requested)			actual cost	
3	**COST OF RECORD ON APPEAL (COB)**				
	250 pages or less		▶	$91.00	91 —
	Over 250 pages		▶	$184.00	
	Duplication of record - $3 first 5 pages (.60 per page)			$3.00	
	Duplication of record - $.10 each additional page		#	$0.10	
	Transcript cost			actual cost	
	Maps and special needs			actual cost	
4	**FEES (DEPARTMENT)**				
	Notice of Intent - Appeal to the Board of Supervisors			$1,000.00	1,000 —
	Based on record or de novo Applicable Department_____				
	GRAND TOTAL				$1,483.68
	Date and amount previously received			5/17/2023	$1,000 —
	Balance due and form of payment				$ 483.68

I understand the breakdown of the fees charged.

Linda Gates — 6/1/23

Signature — Date

Water Audit California
952 School St # 316
Napa CA 94559-2826

0103

DATE: 6/1/23

90-4187
1211

PAY TO THE ORDER OF Napa Co Treasurer - Tax Collector $ 483.68

Four hundred eighty-three & 68/100 DOLLARS

Bank of Marin
1715 Second Street
Napa, CA 94559

Memo Ducklorn

⑈121141877⑈ 25798400⑈ 0103

RECEIPT DATE 6/1/2023 No. 415600

RECEIVED FROM Water Audit California $ 483.68

Four hundred, eighty-three and 68/100 DOLLARS

○ FOR RENT Appeal Packet - Ducklorn Vineyards
⊗ FOR P19-00097-MOD

ACCOUNT		
PAYMENT	Ck 0103	
BAL. DUE		

○ CASH
⊗ CHECK
○ MONEY ORDER
○ CREDIT CARD

FROM _____ TO _____

BY _____ 3-11

CHECKLIST FOR APPEAL PACKET

Did you remember to include the following:

a. ____ Name and address of the permittee or the subject of the decision being appealed, along with identifying information about the permittee and/or subject property.

b. ____ Name and address of appellant.

c. ____ Appellant's status as an individual or entity.

d. ____ Basis for Appellant's qualification as an interested person.

e. ____ Names, addresses, telephone numbers, and email addresses of the Appellant's primary point(s) of contact and the designated representative(s) of the Appellant for the mandatory prehearing conference.

f. ____ Identification and description of the specific factual or legal determination(s) made as part of the decision that are the focus of the appeal.

g. ____ A description of all asserted grounds for the appeal and all arguments, contentions and facts that you believe support the appeal and/or show that the decision was in some manner erroneous.

h. If the decision involved real property, an Ownership Report prepared by a title company, engineer, architect, radius search service, or ownership listing service, that includes the following:

1. _____ A list, from within the past 6 months, that identifies by name, address, and assessor's parcel number, the owners of all real property located within 1,000 feet of any and all portions of the real property that is the subject of the appeal.

2. ____ A copy of the Assessor's Map Book Pages that show all real property which is the subject of the appeal and all properties to which the list of property owners within 1,000 feet of the subject property.

To ensure that your Ownership Report contains the necessary components and is provided in the proper format, please provide the following instructions to the preparing company or individual:

INSTRUCTIONS FOR OWNERSHIP REPORT

Please prepare an original and two copies of the property owners' list as follows:

1. Type the property owners' names, parcel numbers and mailing addresses on an 8½" by 11" sheet of Avery #5160 Laser Labels so that this information can be readily used in mailing by the Clerk of the Board of Supervisors.
2. Submit a full page copy of the assessors' map book page(s) and a copy of the latest equalized assessment roll used to compile the property owners' list. Please indicate the location of all parcels listed, by check mark or colored parcel number circled on the pages.

i. ____ Evidence that payment of the relevant fees has been made with the Napa County Treasurer-Tax Collector. Evidence of payment must be obtained and provided to the Clerk of the Board's office prior to the 2 p.m. deadline. If you are unsure of the fees due, you must contact the Clerk of the Board's office to obtain a fee estimate and make the appropriate payment prior to the 2 p.m. deadline.

j. ____ If you are filing by email, you must submit to the Clerk of the Board's office, prior to the 2 p.m. deadline, a copy of the signature page of the Appeal Packet Cover Sheet with your original ("wet") signature.

HOW TO FILE THE APPEAL PACKET

The completed Notice of Intent to Appeal and evidence of payment must be ***received*** by the Clerk of the Board's office ***prior to*** the 2 p.m. deadline.

By Hand Delivery	**By Mail**
Deliver the completed form and evidence of payment to: Napa County Clerk of the Board County Administration Building, 3rd Floor 1195 Third Street, Suite 310 Napa, CA 94559	Mail the completed form and evidence of payment to: Napa County Clerk of the Board Attention: 2.88 Appeals County Administration Building 1195 Third Street, Suite 310 Napa, CA 94559
By Email	
Scan the signed completed form and attach it, along with evidence of payment, as PDF format to an email addressed to: clerkoftheboard@countyofnapa.org. If filing by email, you must additionally provide by hand delivery or mail a copy of the signature page of this Appeal Packet Cover Sheet with your original ("wet") signature. ****You are responsible for ensuring that delivery is effective. Any errors or misspellings of the clerk's email address shall not be cause for extending the deadline.****	

Please Note: County staff is ***not authorized*** to grant any exceptions, including any extension of the deadlines or alterations of the fees, to the requirements for the Appeal Packet as set forth in Napa County Code Chapter 2.88. It is your responsibility to ensure that you have complied with all requirements and that the Clerk of the Board's office receives your Appeal Packet, supporting documentation, and evidence of payment prior to the 2 p.m. deadline. County staff cannot provide advice or legal assistance with this or any other appeal process.

WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION
952 SCHOOL STREET #316 NAPA CA 94559
VOICE: (707) 681-5111
EMAIL: LEGAL@WATERAUDITCA.ORG

June 1, 2023

Napa County Board of Supervisors
1195 Third Street, Ste. 310
Napa, CA 94559

APPEAL PACKET - ADDITIONAL SHEETS
(Appellant Water Audit California)

Appealing Duckhorn Vineyards Winery - May 3, 2023, decision of the Napa County Planning Commission's adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and approval of Use Permit Major Modification Application P19-00097-MOD

Appellant Name and Contact Information:

Water Audit California
952 School Street, PMB 316
Napa, California 94559
Legal@WaterAuditCA.org
530-575-5335

Grounds for Appeal

Water Audit California ("Water Audit") hereby appeals the May 3, 2023, decision of the Napa County Planning Commission's adoption of the Mitigated Negative Declaration ("MND") and Mitigation Monitoring and Reporting Program ("MMRP") and approval of Use Permit Major Modification Application P19-00097-MOD (collectively the "Application"), as captioned above. Water Audit appeals on its own behalf, on behalf of the general public and in the public interest. Water Audit has standing to appeal based on the submission of comment and testimony during the May 3, 2023 hearing. (see Napa County Code sec. 2.88.010 (G).)

Water Audit asserts that there was not a fair and impartial hearing. Critical issues were not considered, and evidence was withheld or misrepresented as discussed below.

There was no inquiry into potential injury to the public trust. Critical findings underlying the MND are not supported by the evidence. There is long term and extensive evidence of existing environmental injury; the projected water demand for the project is greater than the groundwater recharge from the site; and the proposed project will consume more water than the existing facility.

As separate and additional grounds for reversal of the Application, it is submitted that the proposed sole source of potable water has not been approved or reviewed by Department of Health or Division of Drinking Water and the City of St. Helena has not reviewed or commented on the project, and therefore there has not been a full and complete review of the project as required by the California Environmental Quality Act ("CEQA"). It is further submitted that the adopted Recommended Findings (Use Permit Major Modification Application Attachment ("Attachment") A - Recommended Findings ("Findings") have failed to include a mandatory term of mitigation required by the California Department of Fish and Wildlife ("CDFW") and therefore the project poses a potential adverse effect on wildlife resources. Finally, to the extent that the project seeks to rely upon the importation of grapes, it does not comply with the terms of the Agricultural Land Preserve or the Williamson Act.

Introduction

Water Audit is a public benefit organization dedicated to advocating for the public trust. Our interest in this matter is greater than the decision regarding this project alone. This matter, and the existing environmental condition, are representative consequences of the failure of Napa County to perform its duties to protect the public trust.

The essential idea of the public trust doctrine is that the government holds and protects certain natural resources in trust for the public benefit. (See *Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387, 452, 456; *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441; *Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 521.)

Public trust theory has its roots in the Roman and common law (*United States v. 11.037 Acres of Land* (N.D. Cal. 1988) 685 F. Supp. 214, 215.) and its principles underlie the entirety of the State of California. Upon its admission to the United States in 1850, California received the title to its tidelands, submerged lands, and lands underlying inland navigable waters as trustee for the benefit of the public. (*People v. California Fish Co.* (*California Fish*) (1913) 166 Cal. 576, 584; *Carstens v. California Coastal Com.* (1986) 182 Cal.App.3d 277, 288.) The People of California did not surrender their public trust rights; the state holds land in its sovereign capacity in trust for public purposes. (*California Fish, Ibid.)*

The courts have ruled that the public trust doctrine requires the state to administer, *as a trustee*, all public trust resources for current and future generations, specifically including the

public trust in surface waters and the life that inhibits our watercourses. These trust duties preclude the state from alienating those resources into private ownership, and requires the state to protect the long-term preservation of those resources for the public benefit. (*National Audubon, supra.* 33 Cal.3d 419, 440-441; *Surfrider Foundation v. Martins Beach 1, LLC* (2017) 14 Cal.App.5th 238, 249-251; *Public Resources Code § 6009.1.*) The public trust fulfills the basic elements of a trust: intent, purpose, and subject matter. (*Estate of Gaines* (1940) 15 Cal.2d 255, 266.) It has both beneficiaries, the people of the state, and trustees, the agencies of the state entrusted with public trust duties.

The beneficiaries of the public trust are the people of California, and it is to them that the trustee owes fiduciary duties. As Napa County is a legal subdivision of the state, it must deal with the trust property for the beneficiary's benefit. No trustee can properly act for only some of the beneficiaries – the trustee must represent them all, taking into account any differing interests of the beneficiaries, or the trustee cannot properly represent any of them. (*Bowles v. Superior Court* (1955) 44 C2d 574.) This principle is in accord with the equal protection provisions of the Fourteenth Amendment to the US Constitution.

A public trust trustee **"may not approve of destructive activities without giving due regard to the preservation of those [public trust] resources."** (*Center for Biological Diversity, Inc. v. FPL Group, Inc.* ("*Bio Diversity*") (2008) 166 Cal.App.4th 1349, 1370, fn. 19, 83 Cal.Rptr.3d 588.) [Emphasis added]

Common law imposes public trust considerations upon the County's decisions and actions pertaining to trust assets. (*Biological Diversity, supra.* 166 Cal.App.4th 1349; *Environmental Law Foundation v. State Water Resources Control Board* ("ELF") (Cal. Ct. App. 2018) 26 Cal.App.5th 844.) The courts have recognized the State's responsibility to protect public trust uses whenever feasible. (*See*, e.g., *National Audubon, supra.* 33 Cal.3d 419, 435; *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585, 631; *California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187, 289.) Napa County, under *Public Resources Code, section 6009.1*, has an affirmative duty to administer the natural resources held by public trust solely in the interest of the people of California.

The public trust doctrine requires Napa County, as a trustee, to manage its public trust resources (including water) so as to derive the maximum benefit for its citizenry. Even if the water at issue has been put to beneficial use, it can be taken from one user in favor of another need or use. The public trust doctrine holds that no water rights in California are truly "vested" in the traditional sense of property rights.

There can be no vested rights in water use that harm the public trust. Regardless of the nature of the water right in question, no water user in the State "owns" any water. Instead, a right to water grants the holder thereof only the right to use water, an "usufructuary right". The owner of "legal title" to all water is the State in its capacity as a trustee for the benefit of the public. All water rights are usufructuary only and confer no right of private ownership in the water or the watercourse, which belongs to the State. (*People v. Shirokow* (1980) 26 Cal.3d 301 at 307.)

The Standard for Review

There is more than a fair argument that injury *could* occur as a result of the proposed Duckhorn project and that a full Environmental Impact Report (EIR) is one of the likely remedies. "The foremost principle under CEQA is that the Legislature intended the Act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511.)

> In describing the scope of judicial review of an agency's application of the fair argument standard, the Supreme Court has stated: "**If there [is] substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it [can] be "fairly argued" that the project might have a significant environmental impact.** Stated another way, if the [reviewing] court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed "in a manner required by law.' " " (*Citation omitted.)* "**The fair argument standard thus creates a low threshold for requiring an EIR, reflecting the legislative preference for resolving doubts in favor of environmental review.** [Citation.]" *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 675-7 (Emphasis added)

1. A "Finding" requires a hearing that considers evidence. Critical Findings underlying the MND are not supported by the evidence.

A planning commission hearing is quasi-judicial in nature. A commission has a duty to hear and weigh evidence and make a finding of facts ("Finding") at the conclusion of its deliberations.

> Although such boards do not have the character of an ordinary court of law or equity, they frequently are required to exercise judicial functions in the course of the duties enjoined upon them. *In Robinson v. Board of Suprs.* (1979) 16 Cal. 208 the court says: 'It is sufficient if they are invested by the legislature with power to decide on the property or rights of the citizen. In making their decision they act judicially whatever may be their public character. (*Nider v. Homan* (1939) 32 Cal. App. 2d 11, 16.)

Through *Government Code, section 65800 et seq.*, the Legislature conveyed to the County the authority to adopt regulations and ordinances to promote the general welfare of the State's residents by control over zoning matters. *Government Code, section 65101* states in part: "The legislative body [i.e. the Board of Supervisors] may create one or more planning commissions each of which shall report directly to the legislative body." The Napa County Planning Commission performs the function of a planning agency.

Notwithstanding the State's sweeping assignment of powers, the County remains subordinate to the control and direction of the senior levels of government. Specifically, *Napa Ordinances Title 18* requires that the County's actions conform to state law. Courts have held that substantial evidence must support the award of a variance in order to ensure that legislative requirements have been satisfied. (See *Siller v. Board of Supervisors* (1962) 58 Cal.2d 479, 482; *Bradbeer v. England* (1951) 104 Cal.App.2d 704, 707.) To be admissible, evidence must be relevant, material, and competent. Evidence is considered "competent" if it complies with certain traditional notions of reliability. To be admissible and competent, evidence must be present.

In 2005 the Napa Department of Public Works, Division of Environmental Health published a memorandum regarding Use Permits and Regulated Water Systems ("2005 Regulated Water System Memo") and the required Technical, Managerial, and Financial Capacity Worksheet ("Worksheet") for Planning staff review of non-community water systems. The Worksheet was subsequently revised in 2018.

> The purpose of this memo is to provide information regarding requirements for regulated water system permitting. The Division of Environmental Health has a contract with the California State Water Resources Control Board (Water Board) to administer the small water system program. Public water systems are required to be permitted by Water Board or the local delegated agency.

The Worksheet provides a water availability analysis shall be done for a ten-year period; the Bartelt WAA projected for only one year. (Attachment H - Water Availability Analysis_Tier 1) The Worksheet calls for examination of existing well logs. The Bartelt WAA did not discuss the topic, relying solely on statistical norms. (see *Id.*) The Worksheet calls for groundwater logs. Although the Bartelt WAA asserted that reference had been made to such logs, they are not part of the Application or the public record. (see *Id.*) Duckhorn avowed that it has been submitting extraction records to Napa County, (see proceedings from Planning Commission May 3, 2023 Hearing.) but no records were available to Water Audit's public records request.

More importantly, the Worksheet calls for a characterization of the water quality. Bartelt wrote: "Water quality results were not available for the irrigation wells prior to completion of this WAA. Water quality results for the 'Domestic Well #1' that provides water to the NTNCWS were not reviewed because it is assumed the water system complies with all Federal, State, and local laws governing public water systems." (Attachment H, p. 5.)

The Bartelt WAA states that "Annual Consumer Confidence Reports (CCR) have been submitted to the State and/or County..." (Attachment H, p. 5.) That statement is not true. In fact, not once in the last six years has a fully conforming CCR been filed. In 2017, 2018, 2019 and 2022 no reports were filed. In 2020 and 2021 reports were filed but not certified. (see Exhibit 1.)

The Worksheet requires planning staff to evaluate "the feasibility of consolidation with other (existing) systems. The Bartelt WAA again does not address the topic (see Attachment H). This Worksheet was referenced in the Bartelt WAA, but not submitted for public or planning commission review, "Refer to the Technical, Managerial, and Financial (TMF) Capacity worksheet for additional information on the existing public water system (PWS) and proposed modifications included with the Use Permit Modification Application." (see Attachment H, p. 3) Water Audit only obtained a copy of the Technical, Managerial, Financial ("TMF") Capacity Worksheet document in response to a Public Records request. The TMF is dated 2019, and addresses the subject by stating:

> The closest large-scale municipal water system is operated by the City of Saint Helena. This municipal water system is not located within the vicinity of the proposed water system for the Duckhorn Vineyards Winery project. It is infeasible to consolidate with any existing water systems at this time. If municipal water service becomes available in the future, it is anticipated that the onsite well will continue to be utilized for wine production and any municipal water service would be utilized for domestic purposes. There is no anticipated consolidation with other (existing) water systems near the site. (TMF, p. 4.)

In fact, the recently approved use permit from applicant Freemark Abbey project "Inn at the Abbey" is located at the other end of Lodi Lane and has a connection to City of St. Helena water. (See Exhibit 2.) It was an abuse of discretion not to discuss this alternative. See City of St. Helena following.

According to Attachment H, at p.2:

> "[a} Tier 2 well interference analysis need only be conducted when 'substantial evidence in the record indicates the need to do so under the California Environmental Quality Act (CEQA).'[1] [2] At the request of Napa County Planning, Building, and Environmental Services Division, **a Tier 2 and Tier 3 Water Availability Analysis was prepared by Wagner & Bonsignore and has subsequently been submitted to Napa County.**" (emphasis added)

The Applicant directly states in the record that "[t]he DVW project team has conducted extensive analyses of anticipated groundwater usage and potential effects on adjacent wells and the Napa River. Specifically, in addition to the standard Tier 1 Water Availability Analysis, Tier 2 & 3 analyses have been conducted as outlined in the County of Napa Water Availability Analysis Guidelines (May 2015) ... The complete Tier 1, Tier 2 and Tier 3 analyses are included as part of the documents submitted in support of the Modification application." (Attachment D - Use Permit Major Modification Application, p. 6.)

Subsequent to the May 3, 2023 hearing, Water Audit submitted a Public Record Act request to Napa County on May 4, 2023, which stated "Please provide to Water Audit California a copy of the WAGNER & BONSIGNORE Tier 2 and Tier 3 Water Availability Analysis Report. See agenda packet page 379: 'At the request of Napa County Planning, Building, and Environmental Services Division, a Tier 2 and Tier 3 Water Availability Analysis was prepared by Wagner &

Bonsignore and has subsequently been submitted to Napa County.'"

On May 24, 2023, the County responded "After conducting a reasonable search, Napa County did not locate any records responsive to your request. Thus, we have closed your request."

In spite of the above representations of Duckhorn and Bartelt, a Tier 2 or Tier 3 Analysis was not a part of the record that was considered by the Commission on May 3, 2023, nor is it available as a public record. Therefore, the Commission erred when it approved the Application as it relied on statements, presented as facts, when evidence supporting those statements is not a part of the record. Thus, the record does not meet basic evidentiary rule requirements as a part of regulated decision making.

2. The MND fails to consider substantial evidence of existing environmental injury.

In rejecting the need for a Tier 2 and Tier 3 analysis, the Planning Department spokesperson opined that it was not necessary under Water Availability Analysis Guidelines ("WAA 2015") as there was no evidence of existing environmental injury. (see proceedings from Planning Commission May 3, 2023 Hearing.) The Application and Napa County did not present or discuss any of the extensive study data that shows injury to the public trust that has been assembled over nearly thirty years.

The relationship between groundwater extraction and Napa River flows was reported in November 1994 when the City of St. Helena (CSH) commissioned a report from Richard C. Slade and Associates titled *Hydrological Assessment for Water Well Feasibility for City of St. Helena,*

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1 From Table 2A from the Napa County Water Availability (WAA - 2015) - Design, Construction and Guidance Document.

2 Substantial evidence in support of present environmental injury was not considered. See following.

Napa Valley, California ("Hydrological Assessment"). It considered the conditions proximate to Pope Street and the Napa River, approximately two miles downstream from Duckhorn. Similar geological conditions exist in both locations.

The *Hydrological Assessment* presented information and conclusions that indicate a hydrologic connection between the groundwater system and surface water contained in the Napa River. It concluded that there is a surface water/groundwater interface by which the Napa River recharges the groundwater system pumped by production wells, even if the wells are screened only in the deeper volcanic rocks. It reports that production wells screened and/or gravel packed in the alluvium can nevertheless draw directly from the alluvium that is in direct contact with the Napa River.

Over a decade ago, the County's consulting engineers, Luhdorff and Scalmanini Consulting Engineers (LSCE) informed a citizen's advisory committee of the diminution of surface flows by groundwater extraction. In its April 2014 final report to the Board of Supervisors the Groundwater Resources Advisory Committee (GRAC) recognized the potential problem of extractions dewatering surface waters and voted to ignore the issue. The majority of GRAC members recommended the County maintain the existing WAA [water availability analysis] process, not revise the well-to-well interference criterion, and not add a new criterion for well-to-surface water interference.

In September 2014, the Legislature adopted the Sustainable Groundwater Management Act (SGMA); Wat. Code, section 10720 et seq. The valley portion of Napa County was identified as a priority sub-basin. Duckhorn is within the defined sub-basin. SGMA required Napa County to either submit evidence by the end of 2017 that the County was sustainable in its groundwater utilization (herein an "Alt Plan"), or form a groundwater sustainability agency (GSA) to develop and implement a groundwater sustainability plan (GSP) to avoid undesirable results and mitigate overdraft.[3]

In 2015, Napa County adopted Water Availability Analysis Guidelines (WAA 2015). While the WAA provided for review of larger wells that were proposed to be located proximate to watercourses, the provisions were not vigorously enforced. Water Audit frequently reviewed applications where blue water streams and water courses have been simply left off submittals; their omission unnoted by staff.

Also in 2015, LSCE reported to the Napa County Watershed Information and Conservation Council ("WIIC") an example site of the dewatering surface waters by groundwater extraction earlier report to the GRAC: the cause of the Napa River drying at Pope Street in St. Helena. In two slides, LSCE showed the relationship between groundwater extraction, a lower groundwater level, and a dry river. The site presented is approximately two miles downstream of the project, and has similar hydrogeological characteristics.

REDACTED
per Chair's Good Cause Determination

In 2016, LSCE recommended that Napa County install additional monitoring of groundwater/surface water interactions in areas where data was lacking. No additional monitoring was installed.

In 2017, Napa County submitted an *Alt Plan* that claimed stable groundwater levels over a 28-year base period. In the Alt Plan LSCE avoided discussing substantively the issue of potential injury to the public trust or interference with groundwater dependent ecosystems (GDE). Under SGMA, GDEs are ecological communities or species that depend on groundwater emerging from aquifers or groundwater occurring near the ground surface (*GSP Regulation, section 351, subdv. (m)*).

The Alt Plan was rejected by the Department of Water Resources ("DWR") in November 2019. As the DWR Rejection ("Rejection") largely mirrors current difficulties, the agency's comments are recited at length.

The DWR stated that the County's sustainability indicators section conflated "three requirements of the sustainable management criteria set out in the GSP Regulations: undesirable results, [UR] minimum thresholds, [MT] and measurable objectives [MO]." For clarity they were explained by the DWR as follows:

- 23 CCR § 354.28(c)(1) specifies that the MT for chronic lowering of groundwater levels shall be based on groundwater elevations indicating a depletion of supply that may lead to undesirable results;
- 23 CCR § 354.28(c)(2) specifies that the minimum threshold for depletions of interconnected surface water shall be the rate or volume of surface water depletions caused by groundwater use that has adverse impacts on beneficial uses of the surface water and may lead to undesirable results; and
- 23 CCR § 354.32 requires that each basin be monitored, and that a monitoring network include monitoring objectives, monitoring protocols, and data reporting requirements be developed that shall promote the collection of data of sufficient quality, frequency, and distribution to characterize groundwater and related surface water conditions in the basin and evaluate changing conditions.

[3] GSAs are charged with procedural and substantive obligations designed to balance the needs of the various stakeholders in groundwater in an effort to preserve, and replenish to the extent possible, this diminishing and critical resource. (Water Code, sections 10721, subds. (u), (v), (x)(6), 10723.2, 10725.2, 10725.4, 10726.2, 10726.4, 10726.5.)

The DWR Rejection noted that the sub-basin was inadequately monitored: only eight wells had ten years of reporting, and surface water ground water interfaces were inadequately measured. More importantly for the purposes of this appeal, the DWR reported the County established that there were diminished baseline flows that had to be taken into consideration.

> Of the representative monitoring wells used for groundwater levels, storage, and depletions of interconnected surface water, 10 of the wells did not have 10 or more years of data. These 10 wells are the multi-completion wells installed in 2014, specifically for monitoring surface water-groundwater interactions. …
>
> … the County proposes that historically diminished baseflow, although it could be considered an undesirable result, should not be disqualifying because SGMA does not require an agency to address undesirable results that occurred before, and have not been corrected by, January 1, 2015.
>
> While it is true that SGMA does not require undesirable results prior to 2015 to be remediated, the presence of undesirable results before 2015 undermines the County's claim that it has operated the Napa Valley Subbasin without undesirable results.

The DWR Rejection said in part: "The [Alt Plan] notes that the historical occurrence of diminished baseflow could be considered an undesirable result but claims that this possibility is basically immaterial inasmuch as SGMA does not require an alternative to address undesirable results that occurred before, and have not been corrected by, January 1, 2015." This is the same existing injury argument that Napa County has used to decline to discuss Tier 2 and Tier 3 review of groundwater extraction.

> The DWR response to Napa County is informative:
>
> The County pivots on this point, taking language from SGMA and employing it to make two arguments. The County notes that a GSP is not required to address undesirable results that occurred before, and have not been corrected by, January 1, 2015, and that a groundwater sustainability agency has discretion to set measurable objectives and the timeframes for achieving any objectives for those undesirable results. The County applies both provisions to its situation. …
>
> At any rate, **the 2015 baseline for undesirable results is simply a limitation on what conditions must be addressed; it does not operate as an exoneration of the undesirable result itself**. SGMA may not require a basin to reverse the effect of undesirable results to pre-SGMA conditions, but if undesirable results occurred during the 10-year period of the Alternative, that basin cannot demonstrate that it operated within its sustainable yield. (Emphasis added)

In early 2020, Water Audit wrote to the Napa Board of Supervisors urging them to consider public trust issues and highlighting portions of LSCE reports that indicated adverse surface water groundwater interface. The County was advised of its duty to the public trust. Caution and increased monitoring were recommended. A public Forum was held to deliver the message. The response from the County has been for the Director of Planning (current acting CEO) to repeatedly deny any responsibility for sufficient stream flows.

In 2022, a Napa County Groundwater Sustainability Plan ("GSP") was prepared and filed that represented the Basin to be operated within sustainable limits and without GDE injury requiring remediation. Notice that the GSP was approved was received by Napa County in January 2023.

Because the drying of the Napa River at CSH predated 2015, the GSP continued to document the drying reach but no longer considered the drying reach a reportable injury under SGMA. (See GSP 6-50 and Figure 6-18. See also: *Calculated Depth to Groundwater at Napa River Thalweg within One Mile of Monitored Wells*, Spring 2010, Figure 121; Spring 2015; GSP Figure 6-122, Spring 2019, GSP Figure 6-123-a; *Surface Water-Groundwater Hydrograph Site 5*: Napa River at Pope Street, GSP Figure 6-18.)

Although a pre-2015 injury may not be remediated under SGMA, the courts have held that even long-standing injuries are subject to public trust review. (See *Audubon, supra.* 33 Cal.3d 419; *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585 *(Cal Trout I); California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187 *(Cal Trout II); ELF, supra.* 26 Cal.App.5th 844.)

In March 2023, LSCE authored a report entitled the *Napa County Groundwater Sustainability Annual Report – Water Year 2022.* (herein "*LSCE 2023*") It states that from 2015 to 2022 the County monitored from 13 to 15 representative monitoring sites in proximity to CSH. (*LSCE 2023*, Table 6.3.)

Over pumping of groundwater impairs groundwater dependent ecosystems. (*LSCE 2023,* Figure 4-2.) The saturated thickness of the alluvial aquifer substantially increased in most parts of the Subbasin between Spring 2021 and Spring 2022 with a predominant range of one foot to 10 feet (*LSCE 2023*, Figure 6-21). **Notable declines in saturated thicknesses (five to seven feet) occurred in some areas north of St. Helena**, i.e. in the area of the Duckhorn project. (*LSCE 2023*, p. 74.)

LSCE 2023 contains the admission that, contrary to the representation of Napa County's sustainable conduct in the GSP, groundwater extraction has exceeded sustainable limits in five of the last seven years.

The *LSCE 2023* report states:

> Groundwater pumping was a total of about 18,790 AF in WY [water year] 2022, exceeding the MT [minimum threshold] for reduction of groundwater storage.
> Additionally, groundwater pumping in WY 2022 results in 18,023 AF as the seven-year groundwater pumping average. **The seven-year groundwater pumping average in WY 2022 qualifies as an undesirable result in the Subbasin.** (Emphasis added)

The information is readily available to determine whether Duckhorn is causing or will cause injury to the public trust. Bartlet's WAA states "At the request of Napa County Planning, Building, and Environmental Services Division, a Tier 2 and Tier 3 Water Availability Analysis was prepared

by Wagner & Bonsignore and has subsequently been submitted to Napa County." (Attachment H, p. 2.)

See also:

"The DVW project team has conducted extensive analyses of anticipated groundwater usage and potential effects on adjacent wells and the Napa River. Specifically, **in addition to the standard Tier 1 Water Availability Analysis, Tier 2 & 3 analyses have been conducted as outlined in the County of Napa Water Availability Analysis Guidelines (May 2015). The report reaches the following conclusions:**

- From review of the Tier 1 WAA analysis and discussions with Duckhorn Vineyards, the only well with a planned increase in pumping demand is Domestic Well #1, which will provide water supply for the new winery facilities. Of the four remaining onsite wells, Irrigation Wells #1 and #3 are planned for abandonment, Well #2 will have reduced pumping demand (from removal of vineyard and possible processed water use for irrigation), and Well #4 will have no change in annual demand.

- From the well logs, geologic maps and reports reviewed, and our analysis, groundwater pumping influence from onsite Domestic Well #1 and Well #4 under confined aquifer conditions, appears to have a potential to reach neighboring wells. However, our analysis indicates the effects would be relatively minor and within the default values given on Table F-1 of the County WAA Guidance Document.

- Review of the well completion report for Domestic Well #1 indicates that it draws water supply from tuffaceous units of the Sonoma Volcanics. The Napa River is incised into young alluvial deposits that extend to a depth of 40 feet and were sealed off from the volcanics during well construction. No direct connection to the overlying alluvium is indicated in the well log.

- Analysis of potential streamflow depletion using the USGS program STRMDEP08 indicates that pumping from the project well (Domestic Well #1) might have a small effect on the Napa River if some infiltration were to occur through a leaky aquitard. However, the effects when pumping at the water system design output of 12 gpm appears to be very small and not likely measurable, if it is occurring.

The complete Tier 1, Tier 2 and Tier 3 analyses are included as part of the documents submitted in support of the Modification application."

The DWR has stated that the reported depletions of interconnected surface water also have significant and unreasonable adverse impacts. *LSCE 2023* reported an undesirable result when the representative monitoring site in the proximity of the Duckhorn project fell below the minimum threshold. (LSCE 2023.)

This withholding of evidence precludes the ability to challenge conclusions allegedly found on this data. For example, the assertion "No direct connection to the overlying alluvium is indicated in the well log" appears to be in direct contradiction to the conclusion in the Slade report that production wells screened and/or gravel packed in the alluvium can nevertheless draw directly from the alluvium that is in direct contact with the Napa River. This conflicting professional opinion can be resolved by qualified expert review of Tier 2 and Tier 3 analyses.

3. The Proposed Water Demand exceeds groundwater recharge.

On its face, the 14.0 acre-feet proposed water demand by Duckhorn is in excess of current limits. The current water use criteria for a parcel located within the "Napa Valley Floor" area is defined as 0.3 acre-feet per acre per year, or 9.7± acre-feet per year for the project.[4]

Water supply resiliency is a threshold of significance for land use change or development projects. This project requires an EIR that must first answer the question posed by *CEQA, Section G, XVIII Utilities and Service Systems (d).*: "Would the project have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?"

The public trust imposes a second related question for its trustees: "Can existing uses continue, or must they be abated to mitigate injury to the public trust?"

Although the winery has been in operation since 1976, no tangible evidence is disclosed in the Application of actual historical or present water use; the Application relies exclusively on statistical norms. "The groundwater demand generated ... is estimated to remain the same." (Attachment H, p. 7) "The total estimated water usage for the existing and proposed uses for the project is calculated based on the *Guidelines for Estimating Residential and Non-residential Water Use."* (Attachment H, p. 5)

"When the well's dry, we know the worth of water." *-Benjamin Franklin*

4. The evidence shows the proposed project will consume more water than the existing facility.

The adopted Findings summarily state that water saving features would reduce the overall groundwater use of the project.

> The project is considered not to have potential to significantly impact groundwater resources. Because the projected water demand for the project is below the estimated water availability acre feet per year for the parcel, the requested Use Permit is consistent with General Plan Goals CON-10 and CON-11, as well as the policies mentioned above that support reservation and sustainable use of groundwater for agricultural and related purposes. The project will not require a new water system or other improvements and will not have a negative impact on local groundwater. (Attachment A, p. 6.)

Attachment H, at Table III, estimates a total water demand of 14.00 acre-feet, with tasting room visitation at 0.74 acre-feet per year, and events and marketing at 0.42 acre-feet per year, for a combined total of 1.16 acre-feet per year. The estimates allow not a gallon of water for kitchen use for the tens of thousands of meals anticipated to be served annually.

---

4 Without making allowance for the removal of nearly 25% of groundwater recharge on land impaired by buildings and parking.

5. The failure to provide notice to the Department of Drinking Water and the City of St. Helena has prevented full and complete review of the project as required by the CEQA.

State Clearing House records (SCH No. 2023030759) indicate that notice was not given to two relevant state agencies: The Division of Drinking Water and the City of St. Helena. Accordingly, there has not been a full and complete review of the project as required by CEQA.

A. Division of Drinking Water

The proposed sole source of potable water has not been approved or reviewed by Department of Health or Division of Drinking Water. The *2005 Regulated Water System Memo* warns planning staff:

> There is a possibility that existing wells may not meet the construction requirements for a regulated water system. If the source does not meet the requirements, a new water supply will have to be developed, which must be reflected in the feasibility report. Prior to issuance of a building permit, the new water supply must be developed and full plans for the water system must be submitted and approved by this division.

Although in narrative the Applicant avows that there are no changes anticipated in the potable water system, a more detailed review reveals that the Division of Drinking Water ("DDW") should have been given the opportunity to review the Application.

The Bartelt WAA states that the Duckhorn system is a NTNCWS (non-transient non-community water system). (Attachment H, p. 5) The *Water Code* provides that this is a regulated public water system.

Water quality standards are to protect the public health or welfare and to enhance the quality of water. DDW regulates public water systems; oversees water recycling projects; permits water treatment devices; supports and promotes water system security.

Duckhorn represents that the project is in compliance with Department of Health standards for a "non-transient non-community" water system, a classification is based upon the representation that Duckhorn employs less than 25 people. (Attachment H, p. 3.) It also represented "The approved number of 56 employees, which includes 45 full-time employees, five (5) part-time employees, and six (6) harvest/seasonal employees" (Attachment H, p.1) However, in response to a 2017 Napa County survey of employers, 228 people were reported to be employed.

Duckhorn is one of only three sites in the Napa Valley reporting arsenic exceedances, a situation that LSCE states is not attributable to groundwater conditions. (*LSCE 2023*, ES-9.) Contrary to representations that there are no reportable quantities of hazardous wastes on the property, Duckhorn filed substantial disclosures in 2012, and offers no explanation why similar quantities of similar hazardous materials are not present now.

While it is true that a domestic water well was approved, there is no evidence that the present well proposed to be the sole source of water is an approved public water system well. In

fact, the evidence suggests a nomenclature shell game with public health. Careful attention is required.

Historically, Duckhorn operated under the trade name St. Helena Wine Company. Early operations were commenced at the same site, 3072 Silverado Highway, at the corner of Silverado Trial and Lodi Lane. Napa County Department of Public Health records show that in 1976 it approved one of two existing wells for potable water uses on the site:

> Water Supply - Water will be supplied by two wells on the property. A bacteriological analysis of the older well located next to Silverado Trail was made in October of 1970 and was satisfactory. The newer well next to the river was installed under inspection by this office on June 18, 1975. This supply has not been analyzed for quality. The quantity of water from the wells is adequate.

In 1986, the original approved domestic well was destroyed. The new well drilled, and the sole source of water for the public water system (Attachment H, p. 22) is stated on its face to be an irrigation well. There is no record of approval of the current well for potable use. It is unknown whether it is capable of legally performing that task.

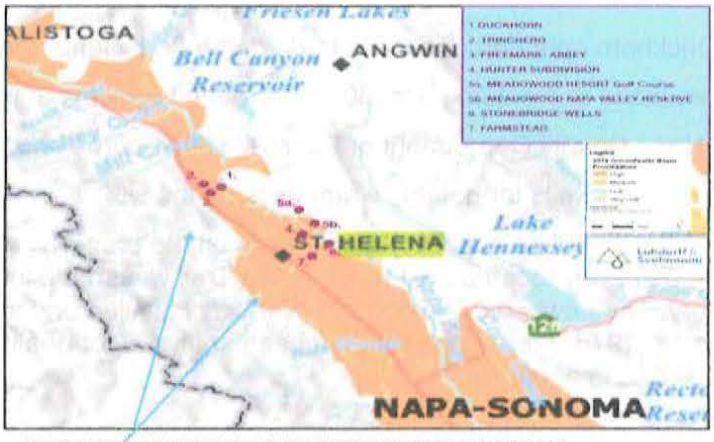
The Bartelt WAA (Attachment H, p. 5) directs the public to the drinking water Consumer Confidence Reports maintained by the Water Board. Review of those records reveals that Duckhorn filed no reports for three years, during the period of 2017 through 2019, and that the reports submitted in 2021 and 2022 are missing their mandatory certification. Not once in six years has a fully compliant report been filed (see Exhibit 1.)

There is no indication that DDW has been notified that the project's entire potable water supply will be provided by one well, or that the well is potentially drawing from the Napa River aquitard. (Attachment D, p. 26); See *Cal. Code of Regulations* tit. 22 (*Cal Regs*), *section 64413.1, subd. (3)*, which requires that special water treatment consideration be given to treat groundwater derived in part from a surface water source.) Furthermore, California Code of Regulations, section 64554, subdivision (c) provides that "Community water systems using only groundwater shall have a minimum of two approved sources before being granted an initial permit."

For the foregoing reasons, it is submitted that the DDW must be given notice of the Application.

B. The City of St. Helena.

The City of St. Helena has not reviewed or commented on the project as occurred in the with the 1976 Use Permit. The Duckhorn project is within the vicinity of several recently approved projects that potentially impact a public trust interest. Any increase in the project's water consumption may have an adverse impact on the City's efforts to mitigate injuries to the public trust.



Napa County Annual Groundwater Sustainability Plan Water Year 2022 page 155 Figure 1-3
California Department of Water Resources Groundwater Basin Prioritizations - Closeup
Figure 1-3 does not identify York Creek or Sulphur Creek by name.

6. The MND does not include a necessary term of mitigation requested by CDFW.

The project proposes drilling horizontally under the Napa River to move water and wastewater from side to side of the property. (Attachment K - Horizontal Directional Drilling Exhibit.) While certain CDFW mitigation issues were included in the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Attachment C - Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program), one critical matter was not. CDFW requested that a term of mitigation be included requiring a "frac out plan" to indicate the manner of protecting the Napa River from the mud slurry and lubricating fluids generated by drilled the horizontal conduits.

Correspondence from CDFW implies that such an agreement had been made.

> Thank you for including a mitigation measure in the MND requiring the Project to submit an LSA notification for the directional drilling that would occur under the Napa River. Please include a frac-out plan with the LSA notification. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency. (Attachment O – Additional Public Comments, p. 5.)

While Chair Whitmer rather petulantly asserted that the CDFW requests for mitigation would be honored (see proceedings from Planning Commission May 3, 2023 Hearing.) CDFW was not included in Attachment B - Recommended Conditions of Approval and Final Agency Approval Memos, and its request for a frac plan is not in Attachment C - Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

It appears from correspondence with the Water Board that Duckhorn intends to argue that as the horizontal bore hole originates and terminates outside the boundaries of the Napa River a *Fish and Game Code, section 1602* permit is not required. In that instance, absent an express

requirement in the Mitigated Declaration, it is possible that the frac material will enter the river and environmental injury will certainly occur.

7. To the extent that Duckhorn seeks to process grapes from outside Napa County, the project does not comply with the terms of the Agricultural Land Preserve or the Williamson Act.

The Williamson Act (*Government Code, section 51200 et seq.*) enables Napa County to enter into contracts with private landowners for the purpose of restricting specific parcels to agricultural use. The primary intent of the program is to preserve agricultural land. In return for voluntarily restricting their land, landowners receive beneficial property tax assessments. The Williamson Act is designed to conserve the economic resources of the County by maximizing the amount of agricultural land preserved to maintain the local agricultural economy.

In 2017 Duckhorn expanded its Williamson Act contract by lot line adjustment to encompass the entirety of the project site.

Wineries are *prima facie* an acceptable land use in the Agricultural Land Preserve, but Duckhorn proposes to import grapes from another county to make up to 25% of its production.

In that respect the project is not an ancillary to Napa agriculture, and in fact this project diminishes the amount of farmed land in the County.

During the hearing, banter was conducted about saving fuel by not having to truck grapes out of county for processing. (see proceedings from Planning Commission May 3, 2023 Hearing.) No discussion was had regarding the anticipated fuel consumed by trucking *into Napa* grapes from outside the County. (*Id.*) Winery capacity that is surplus to local needs is of no use to Napa County agricultural interests and is therefore inconsistent with the Williamson Act.

8. Prior Use Permit agreements have obliged Duckhorn to provide a left-hand turn lane on Silverado Trail.

On July 24, 1980, the Napa Public Works Department wrote:

> We stated in our May 28, 1976 letter to the Commission regarding, approved Use Permit #U-827576 that a left turn lane would be required at such time as the winery started public tours and tastings. The applicant as a condition of this application is to install a left turn lane on the Silverado Trail to channelize northbound traffic wishing to enter the facility.

On December 11, 1980, Napa Public Works wrote:

> The applicant is to enter into a deferred improvement agreement with the county to install a left turn storage lane on the Silverado Trail to channelize North bound traffic wishing to enter the facility, at such time as public tours and tasting are offered.

On November 26, 1982, Daniel J. Duckhorn wrote:

I refer you to the last paragraph of the December 11, 1980 letter to Planning from your Department. The requirement' specifically states that such left turn lane will be installed at such time as public tours and tastings are offered.

Conclusion

We manage what we measure.

For the foregoing reasons, Water Audit respectfully prays that the decision adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approval of Use Permit Major Modification Application P19-00097-MOD be reversed and that Duckhorn be instructed to prepare an Environmental Impact Report if it should choose to proceed with the proposed project.

Respectfully,

William McKinnon
General Counsel
Water Audit California

EXHIBIT 1

REDACTED

First American Title™	Property Owner's Notice Guarantee
	ISSUED BY **First American Title Insurance Company**
Guarantee	GUARANTEE NUMBER **5022800-0006842E**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

FIRST AMERICAN TITLE INSURANCE COMPANY
a Nebraska corporation, herein called the Company

GUARANTEES
the Assured named in Schedule A of this Guarantee

against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A.

First American Title Insurance Company

Kenneth D. DeGiorgio
President

Greg L. Smith
Secretary

By: _____
Authorized Countersignature

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First American Title™	Property Owner's Notice Guarantee
	ISSUED BY **First American Title Insurance Company**
Schedule A	GUARANTEE NUMBER **5022800-0006842E**

File No.: **T0021585-006-006-KD**

Date of Guarantee: **May 31, 2023 at 7:30 AM**

Amount of Liability: **$1,000.00** Fee: **$500.00**

1. Name of Assured:

   County of Napa

2. ASSURANCES:

   a. According to the last equalized Assessment Roll ("Assessment Roll") in the office of Assessors/Tax Collector as of the Date of Guarantee,

      i. The persons listed below as "Assessed Owner" are shown on the Assessment Roll as owning real property within 1,000 feet of the land identified on the Assessment Roll as Assessor's Parcel Number(s): **022-100-033, 022-100-034, 022-100-035, 022-130-010**

      ii. The Assessor's Parcel Number and any addresses shown below are as shown below are as shown on the Assessment Roll.

021-351-001-000
EVAN KLETTER
5180 GOLDEN FOOTHILL PKWY
#210
EL DORADO HILLS CA 95762

021-353-012-000
CENTA LLC
PO BOX 2222
SAINT HELENA CA 94574

021-353-013-000
LEE E TITUS & SONS LTD
PO BOX 608
SAINT HELENA CA 94574-0608

021-390-002-000
CHARLES WADE CHAMBERS TR
18740 KOSICH DR
SARATOGA CA 95070

021-390-003-000
LOU & ANN IVANOVIC
9 BOURNEMOUTH RD
SAINT HELENA CA 94574

021-390-004-000
VAIL K & CAROL V MILLER
3629 RED OAK RD
OREGONIA OH 45054

021-390-005-000
VAIL K & CAROL V MILLER
3629 RED OAK RD
OREGONIA OH 45054

021-390-009-000
TREVOR HEALY & MARIE GOULD
25215 STEWART PL
CARMEL CA 93923

021-390-012-000
VAILIMA ESTATES HOMEOWNERS ASSN
PO BOX 526
SAINT HELENA CA 94574-5026

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021-390-014-000
VAILIMA ESTATES MUTUAL WATER CO
PO BOX 526
SAINT HELENA CA 94574-5026

021-390-016-000
KENNETH B & SARAH WOODBERRYTRAUNER TR
2684 GREEN ST
SAN FRANCISCO CA 94123

021-390-017-000
NAPA B & B LLC
1300 1ST ST STE 368
NAPA CA 94559-2956

022-100-008-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-100-010-000
SUTTER HOME WINERY INC
PO BOX 248
SAINT HELENA CA 94574

022-100-011-000
JOHN & KATHLEEN PAGENDARM
1105 EHLERS LN
SAINT HELENA CA 94574-9708

022-100-013-000
KORTE RANCH LP
1105 EHLERS LN
SAINT HELENA CA 94574

022-100-016-000
CITY OF CALISTOGA
1232 WASHINGTON ST
CALISTOGA CA 94515-1440

022-100-017-000
CITY OF CALISTOGA
1232 WASHINGTON ST
CALISTOGA CA 94515-1440

022-100-026-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-100-029-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-130-026-000
FRANK R & JOANNA L SCULATTI TR
701 ROSSI RD
SAINT HELENA CA 94574-9647

021-390-001-000
RONALD M & HELAINE D KATZ
PO BOX 410 A
ST HELENA CA 94574

021-390-010-000
E RICHARD JONES TR
3884 SILVERADO TRL
CALISTOGA CA 94515

022-120-003-000
DAVID PAUL & NANCY ANNE YEWELL TR
1119 EHLERS LN
SAINT HELENA CA 94574

022-130-003-000
DAVID C WIGNALL
KATHERINE P ARCANIN TR
1154 LODI LANE
SAINT HELENA CA 94574-9713

022-130-008-000
LLOYD H OWEN
307 BERKELEY PARK BLVD
KENSINGTON CA 94707

022-130-009-000
LLOYD H OWEN
307 BERKELEY PARK BLVD
KENSINGTON CA 94707

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022-220-024-000
JOHN D MURPHY
& PAULA L KEY TR
1115 LODI LN
SAINT HELENA CA 94574-9713

022-130-011-000
LOOKING GLASS VINEYARD LLC
1104 ADAMS ST STE 104
SAINT HELENA CA 94574

022-130-014-000
ALBERT MICHAEL IN AHERN TR
PO BOX 460329 DEPT 909
HOUSTON TX 77056

022-130-022-000
NOT A BAD VIEW LLC
400 SPEAR ST STE 106
SAN FRANCISCO CA 94105

022-130-023-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

022-130-024-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

022-130-025-000
CLAYTON W & KELLY M BAVOR TR
264 BAY RD
ATHERTON CA 94027

022-220-003-000
MAD FAMILY VINEYARD LLC
30974 WALDEN DR
WESTLAKE OH 44145

022-220-018-000
WILLIAM & LUCY HAMILTON LLC
2351 DELONG RD
LEXINGTON KY 40515

022-220-019-000
JOHN H BERGGRUEN TR
40 FLORENCE ST
SAN FRANCISCO CA 94133

022-220-021-000
JOHN H BERGGRUEN TR
40 FLORENCE ST
SAN FRANCISCO CA 94133

022-220-022-000
JOHN MICHAEL &
PAMELA LYNN ZISSIMOS TR
55 S KNOLL RD
MILL VALLEY CA 94941-2464

022-220-023-000
CENTA LLC
PO BOX 2222
SAINT HELENA CA 94574

022-220-025-000
VINEYARD 29 LLC
PO BOX 93
SAINT HELENA CA 94574

022-220-029-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

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GUARANTEE EXCLUSIONS AND CONDITIONS (06-05-14)

EXCLUSIONS FROM COVERAGE

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

(a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
(b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or (2) that result in no loss to the Assured.
(c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
(d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
(e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
(f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
(g) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

GUARANTEE CONDITIONS

1. **Definition of Terms.**
The following terms when used in the Guarantee mean:
(a) the "Assured": the party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company.
(b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
(c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
(d) "Public Records": those records established under California statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
(e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
(f) "Amount of Liability": the Amount of Liability as stated in Schedule A.

2. **Notice of Claim to be Given by Assured.**
The Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. **No Duty to Defend or Prosecute.**
The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured to Cooperate.
Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:
(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4 (b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
(b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the

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right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. **Proof of Loss or Damage.**
   (a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
   (b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.
6. **Options to Pay or Otherwise Settle Claims: Termination of Liability.**
   In case of a claim under this Guarantee, the Company shall have the following additional options:
   (a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.
   (b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that that the Company is obligated to pay; or
   (c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

   Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.
7. **Limitation of Liability.**
   (a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.
   (b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
   (c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.
   (d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.
8. **Reduction of Liability or Termination of Liability.**
   All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.
9. **Payment of Loss.**
   (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

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(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

10. **Subrogation Upon Payment or Settlement.**
Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured.
The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.
If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

11. **Arbitration.**
Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is $2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

12. **Liability Limited to This Guarantee; Guarantee Entire Contract.**
(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. **Severability**
In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14. **Choice of Law; Forum**
(a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located.
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
(b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. **Notices, Where Sent.**
All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Claims.NIC@firstam.com Phone: 888-632-1642 Fax: 877-804-7606.

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DUPLICATE ORIGINAL

First American Title™	Property Owner's Notice Guarantee
	ISSUED BY **First American Title Insurance Company**
Guarantee	GUARANTEE NUMBER **5022800-0006842E**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

FIRST AMERICAN TITLE INSURANCE COMPANY
a Nebraska corporation, herein called the Company

GUARANTEES
the Assured named in Schedule A of this Guarantee

against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A.

First American Title Insurance Company

Kenneth D. DeGiorgio
President

Greg L. Smith
Secretary

By: _____
Authorized Countersignature

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First American Title™	Property Owner's Notice Guarantee
	ISSUED BY **First American Title Insurance Company**
Schedule A	GUARANTEE NUMBER **5022800-0006842E**

File No.: **T0021585-006-006-KD**

Date of Guarantee: **May 31, 2023 at 7:30 AM**

Amount of Liability: **$1,000.00** Fee: **$500.00**

1. Name of Assured:

   County of Napa

2. ASSURANCES:

   a. According to the last equalized Assessment Roll ("Assessment Roll") in the office of Assessors/Tax Collector as of the Date of Guarantee,

      i. The persons listed below as "Assessed Owner" are shown on the Assessment Roll as owning real property within 1,000 feet of the land identified on the Assessment Roll as Assessor's Parcel Number(s): **022-100-033, 022-100-034, 022-100-035, 022-130-010**

      ii. The Assessor's Parcel Number and any addresses shown below are as shown below are as shown on the Assessment Roll.

021-351-001-000
EVAN KLETTER
5180 GOLDEN FOOTHILL PKWY
#210
EL DORADO HILLS CA 95762

021-353-012-000
CENTA LLC
PO BOX 2222
SAINT HELENA CA 94574

021-353-013-000
LEE E TITUS & SONS LTD
PO BOX 608
SAINT HELENA CA 94574-0608

021-390-002-000
CHARLES WADE CHAMBERS TR
18740 KOSICH DR
SARATOGA CA 95070

021-390-003-000
LOU & ANN IVANOVIC
9 BOURNEMOUTH RD
SAINT HELENA CA 94574

021-390-004-000
VAIL K & CAROL V MILLER
3629 RED OAK RD
OREGONIA OH 45054

021-390-005-000
VAIL K & CAROL V MILLER
3629 RED OAK RD
OREGONIA OH 45054

021-390-009-000
TREVOR HEALY & MARIE GOULD
25215 STEWART PL
CARMEL CA 93923

021-390-012-000
VAILIMA ESTATES HOMEOWNERS ASSN
PO BOX 526
SAINT HELENA CA 94574-5026

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021-390-014-000
VAILIMA ESTATES MUTUAL WATER CO
PO BOX 526
SAINT HELENA CA 94574-5026

021-390-016-000
KENNETH B & SARAH WOODBERRYTRAUNER TR
2684 GREEN ST
SAN FRANCISCO CA 94123

021-390-017-000
NAPA B & B LLC
1300 1ST ST STE 368
NAPA CA 94559-2956

022-100-008-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-100-010-000
SUTTER HOME WINERY INC
PO BOX 248
SAINT HELENA CA 94574

022-100-011-000
JOHN & KATHLEEN PAGENDARM
1105 EHLERS LN
SAINT HELENA CA 94574-9708

022-100-013-000
KORTE RANCH LP
1105 EHLERS LN
SAINT HELENA CA 94574

022-100-016-000
CITY OF CALISTOGA
1232 WASHINGTON ST
CALISTOGA CA 94515-1440

022-100-017-000
CITY OF CALISTOGA
1232 WASHINGTON ST
CALISTOGA CA 94515-1440

022-100-026-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-100-029-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-130-026-000
FRANK R & JOANNA L SCULATTI TR
701 ROSSI RD
SAINT HELENA CA 94574-9647

021-390-001-000
RONALD M & HELAINE D KATZ
PO BOX 410 A
ST HELENA CA 94574

021-390-010-000
E RICHARD JONES TR
3884 SILVERADO TRL
CALISTOGA CA 94515

022-120-003-000
DAVID PAUL & NANCY ANNE YEWELL TR
1119 EHLERS LN
SAINT HELENA CA 94574

022-130-003-000
DAVID C WIGNALL
KATHERINE P ARCANIN TR
1154 LODI LANE
SAINT HELENA CA 94574-9713

022-130-008-000
LLOYD H OWEN
307 BERKELEY PARK BLVD
KENSINGTON CA 94707

022-130-009-000
LLOYD H OWEN
307 BERKELEY PARK BLVD
KENSINGTON CA 94707

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022-220-024-000
JOHN D MURPHY
& PAULA L KEY TR
1115 LODI LN
SAINT HELENA CA 94574-9713

022-130-011-000
LOOKING GLASS VINEYARD LLC
1104 ADAMS ST STE 104
SAINT HELENA CA 94574

022-130-014-000
ALBERT MICHAEL IN AHERN TR
PO BOX 460329 DEPT 909
HOUSTON TX 77056

022-130-022-000
NOT A BAD VIEW LLC
400 SPEAR ST STE 106
SAN FRANCISCO CA 94105

022-130-023-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

022-130-024-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

022-130-025-000
CLAYTON W & KELLY M BAVOR TR
264 BAY RD
ATHERTON CA 94027

022-220-003-000
MAD FAMILY VINEYARD LLC
30974 WALDEN DR
WESTLAKE OH 44145

022-220-018-000
WILLIAM & LUCY HAMILTON LLC
2351 DELONG RD
LEXINGTON KY 40515

022-220-019-000
JOHN H BERGGRUEN TR
40 FLORENCE ST
SAN FRANCISCO CA 94133

022-220-021-000
JOHN H BERGGRUEN TR
40 FLORENCE ST
SAN FRANCISCO CA 94133

022-220-022-000
JOHN MICHAEL &
PAMELA LYNN ZISSIMOS TR
55 S KNOLL RD
MILL VALLEY CA 94941-2464

022-220-023-000
CENTA LLC
PO BOX 2222
SAINT HELENA CA 94574

022-220-025-000
VINEYARD 29 LLC
PO BOX 93
SAINT HELENA CA 94574

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SANTA ROSA CA 95403

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(d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
(e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
(f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
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(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
(d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the

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   (a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
   (b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.
6. **Options to Pay or Otherwise Settle Claims: Termination of Liability.**
   In case of a claim under this Guarantee, the Company shall have the following additional options:
   (a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.
   (b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that that the Company is obligated to pay; or
   (c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

   Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.
7. **Limitation of Liability.**
   (a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.
   (b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien or, encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
   (c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.
   (d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.
8. **Reduction of Liability or Termination of Liability.**
   All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.
9. **Payment of Loss.**
   (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

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(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

10. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

11. Arbitration.

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is $2,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

12. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. Severability

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14. Choice of Law; Forum

(a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, California 92707. Claims.NIC@firstam.com Phone: 888-632-1642 Fax: 877-804-7606.

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021-351-001-000
EVAN KLETTER
5180 GOLDEN FOOTHILL PKWY #210
EL DORADO HILLS CA 95762

021-353-012-000
CENTA LLC
PO BOX 2222
SAINT HELENA CA 94574

021-353-013-000
LEE E TITUS & SONS LTD
PO BOX 608
SAINT HELENA CA 94574-0608

021-390-002-000
CHARLES WADE CHAMBERS TR
18740 KOSICH DR
SARATOGA CA 95070

021-390-003-000
LOU & ANN IVANOVIC
9 BOURNEMOUTH RD
SAINT HELENA CA 94574

021-390-004-000
VAIL K & CAROL V MILLER
3629 RED OAK RD
OREGONIA OH 45054

021-390-005-000
VAIL K & CAROL V MILLER
3629 RED OAK RD
OREGONIA OH 45054

021-390-009-000
TREVOR HEALY & MARIE GOULD
25215 STEWART PL
CARMEL CA 93923

021-390-012-000
VAILIMA ESTATES HOMEOWNERS ASSN
PO BOX 526
SAINT HELENA CA 94574-5026

021-390-014-000
VAILIMA ESTATES MUTUAL
WATER CO
PO BOX 526
SAINT HELENA CA 94574-5026

021-390-016-000
KENNETH B & SARAH
WOODBERRYTRAUNER TR
2684 GREEN ST
SAN FRANCISCO CA 94123

021-390-017-000
NAPA B & B LLC
1300 1ST ST STE 368
NAPA CA 94559-2956

022-100-008-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-100-010-000
SUTTER HOME WINERY INC
PO BOX 248
SAINT HELENA CA 94574

022-100-011-000
JOHN & KATHLEEN PAGENDARM
1105 EHLERS LN
SAINT HELENA CA 94574-9708

022-100-013-000
KORTE RANCH LP
1105 EHLERS LN
SAINT HELENA CA 94574

022-100-016-000
CITY OF CALISTOGA
1232 WASHINGTON ST
CALISTOGA CA 94515-1440

022-100-017-000
CITY OF CALISTOGA
1232 WASHINGTON ST
CALISTOGA CA 94515-1440

022-100-026-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-100-029-000
NEW VAVIN INC
3222 EHLERS LN
SAINT HELENA CA 94574

022-130-026-000
FRANK R & JOANNA L SCULATTI TR
701 ROSSI RD
SAINT HELENA CA 94574-9647

021-390-001-000
RONALD M & HELAINE D KATZ
PO BOX 410 A
ST HELENA CA 94574

021-390-010-000
E RICHARD JONES TR
3884 SILVERADO TRL
CALISTOGA CA 94515

022-120-003-000
DAVID PAUL & NANCY ANNE YEWELL TR
1119 EHLERS LN
SAINT HELENA CA 94574

022-130-003-000
DAVID C WIGNALL
KATHERINE P ARCANIN TR
1154 LODI LANE
SAINT HELENA CA 94574-9713

022-130-008-000
LLOYD H OWEN
307 BERKELEY PARK BLVD
KENSINGTON CA 94707

022-130-009-000
LLOYD H OWEN
307 BERKELEY PARK BLVD
KENSINGTON CA 94707

022-220-024-000
JOHN D MURPHY
& PAULA L KEY TR
1115 LODI LN
SAINT HELENA CA 94574-9713

022-130-011-000
LOOKING GLASS VINEYARD LLC
1104 ADAMS ST STE 104
SAINT HELENA CA 94574

022-130-014-000
ALBERT MICHAEL IN AHERN TR
PO BOX 460329 DEPT 909
HOUSTON TX 77056

022-130-022-000
NOT A BAD VIEW LLC
400 SPEAR ST STE 106
SAN FRANCISCO CA 94105

022-130-023-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

022-130-024-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

022-130-025-000
CLAYTON W & KELLY M BAVOR TR
264 BAY RD
ATHERTON CA 94027

022-220-003-000
MAD FAMILY VINEYARD LLC
30974 WALDEN DR
WESTLAKE OH 44145

022-220-018-000
WILLIAM & LUCY HAMILTON LLC
2351 DELONG RD
LEXINGTON KY 40515

022-220-019-000
JOHN H BERGGRUEN TR
40 FLORENCE ST
SAN FRANCISCO CA 94133

022-220-021-000
JOHN H BERGGRUEN TR
40 FLORENCE ST
SAN FRANCISCO CA 94133

022-220-022-000
JOHN MICHAEL &
PAMELA LYNN ZISSIMOS TR
55 S KNOLL RD
MILL VALLEY CA 94941-2464

022-220-023-000
CENTA LLC
PO BOX 2222
SAINT HELENA CA 94574

022-220-025-000
VINEYARD 29 LLC
PO BOX 93
SAINT HELENA CA 94574

022-220-029-000
JACKSON FAMILY
INVESTMENTS III LLC
421 AVIATION BLVD
SANTA ROSA CA 95403

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-351-001-000	2022	021-351-001-000

Additional Info

Desc			
Situs1	3101 SILVERADO TRL ST HELENA CA		
Original Asmt	021-351-001-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	25.73
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/28/2022 10:56:42 AM	3/23/2023 11:54:57 AM	
Total Due	$21,046.15	$21,046.15	$42,092.30
Total Paid	$21,046.15	$21,046.15	$42,092.30
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	KLETTER EVAN TR ETAL
Owner	KLETTER EVAN TR ETAL

Address

5180 GOLDEN FOOTHILL PKWY SUITE 210
EL DORADO HILLS CA 95762

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-353-012-000	2022	021-353-012-000

Additional Info

Desc			
Situs1			
Original Asmt	021-353-012-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	25.24
Status	C	Tra	085001
Taxability	050	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/24/2022 12:02:07 PM	10/24/2022 12:02:07 PM	
Total Due	$6,155.74	$6,155.74	$12,311.48
Total Paid	$6,155.74	$6,155.74	$12,311.48
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	CENTA LLC
Owner	CENTA LLC

Address

PO BOX 2222
ST HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Critical Note

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-353-013-000	2022	021-353-013-000

Additional Info

Desc			
Situs1	2969 SILVERADO TRL ST HELENA CA		
Original Asmt	021-353-013-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	31.77
Status	C	Tra	085001
Taxability	051	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 11:06:24 AM	4/10/2023 10:11:04 AM	
Total Due	$40,310.05	$40,310.05	$80,620.10
Total Paid	$40,310.05	$40,310.05	$80,620.10
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	LEE E TITUS & SONS LTD
Owner	LEE E TITUS & SONS LTD

Address

PO BOX 608
SAINT HELENA CA 94574-0608

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Critical Note

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-002-000	2022	021-390-002-000

Additional Info

Desc			
Situs1	13 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-002-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	2.25
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/15/2022 1:46:23 PM	11/15/2022 1:46:24 PM	
Total Due	$6,319.26	$6,319.26	$12,638.52
Total Paid	$6,319.26	$6,319.26	$12,638.52
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	CHAMBERS CHARLES WADE TR
Owner	CHAMBERS CHARLES WADE TR

Address

18740 KOSICH DR
SARATOGA CA 95070

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-003-000	2022	021-390-003-000

Additional Info

Desc			
Situs1	9 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-003-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	2	Acres	4.96
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/7/2022	4/6/2023	
Total Due	$14,934.69	$14,934.69	$29,869.38
Total Paid	$14,934.69	$14,934.69	$29,869.38
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	IVANOVIC LOU & ANN
Owner	IVANOVIC LOU & ANN

Address

9 BOURNEMOUTH RD
SAINT HELENA CA 94574

Cortac

Agency	5211
Lender No.	88880
Loan No.	1165061333
Name	CHASE - TAX DEPT
Phone	(888) 828-9200

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Default Summary Roll Changes Bankruptcy Liens Fees Critical Note

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-004-000	2022	021-390-004-000

Additional Info

Desc			
Situs1	7 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-004-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	5.13
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/1/2022 3:18:56 PM	11/1/2022 3:18:56 PM	
Total Due	$10,759.63	$10,759.63	$21,519.26
Total Paid	$10,759.63	$10,759.63	$21,519.26
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	MILLER VAIL K & CAROL V
Owner	MILLER VAIL K & CAROL V

Address

3629 RED OAK RD
OREGONIA OH 45054

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-005-000	2022	021-390-005-000

Additional Info

Desc			
Situs1	5 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-005-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	5.13
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/1/2022 3:18:57 PM	11/1/2022 3:18:57 PM	
Total Due	$21,976.52	$21,976.52	$43,953.04
Total Paid	$21,976.52	$21,976.52	$43,953.04
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	MILLER VAIL K & CAROL V
Owner	MILLER VAIL K & CAROL V

Address

3629 RED OAK RD
OREGONIA OH 45054

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-009-000	2022	021-390-009-000

Additional Info

Desc			
Situs1	2 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-009-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	2	Acres	5.30
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/21/2022 7:59:57 PM	10/21/2022 7:59:57 PM	
Total Due	$15,341.21	$15,341.21	$30,682.42
Total Paid	$15,341.21	$15,341.21	$30,682.42
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	HEALY TREVOR ANTHONY & GOULD MARIE
Owner	HEALY TREVOR ANTHONY & GOULD MARIE

Address

25215 STEWART PL
CARMEL CA 93923

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-012-000	2022	021-390-012-000

Additional Info

Desc			
Situs1			
Original Asmt	021-390-012-000		
Event Date		Printed Date	9/15/2022 9:01:55 AM
Doc No.		Doc Date	
Supl Count	0	Acres	1.01
Status	V	Tra	085001
Taxability	070	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
Due/Paid Date			
Total Due	$0.00	$0.00	$0.00
Total Paid	$0.00	$0.00	$0.00
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	VAILIMA ESTATES HOMEOWNERS ASSN
Owner	VAILIMA ESTATES HOMEOWNERS ASSN

Address

P O BOX 526
ST HELENA CA 94574-5026

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-014-000	2022	021-390-014-000

Additional Info

Desc			
Situs1			
Original Asmt	021-390-014-000		
Event Date		Printed Date	9/15/2022 9:01:55 AM
Doc No.		Doc Date	
Supl Count	0	Acres	0.02
Status	V	Tra	085001
Taxability	003	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
Due/Paid Date			
Total Due	$0.00	$0.00	$0.00
Total Paid	$0.00	$0.00	$0.00
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	VAILIMA ESTATES MUTUAL WATER CO
Owner	VAILIMA ESTATES MUTUAL WATER CO

Address

P O BOX 526
ST HELENA CA 94574-5026

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Critical Note

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-016-000	2022	021-390-016-000

Additional Info

Desc			
Situs1	3 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-016-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	5.11
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 2:42:29 PM	3/28/2023 12:58:56 PM	
Total Due	$5,821.12	$5,821.12	$11,642.24
Total Paid	$5,821.12	$5,821.12	$11,642.24
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	TRAUNER DONALD L & JOAN BURTON TR
Owner	TRAUNER KENNETH B & WOODBERRYTRAUNER SARAH TR

Address

2684 GREEN ST
SAN FRANCISCO CA 94123

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Critical Note

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-017-000	2022	021-390-017-000

Additional Info

Desc			
Situs1	3100 SILVERADO TRL ST HELENA CA		
Original Asmt	021-390-017-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	1.94
Status	C	Tra	085001
Taxability	801	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/2/2022 3:16:22 PM	1/31/2023 11:45:01 AM	
Total Due	$4,741.42	$4,741.42	$9,482.84
Total Paid	$4,741.42	$4,741.42	$9,482.84
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	NAPA B&B LLC
Owner	NAPA B&B LLC

Address

1300 1ST ST STE 368
NAPA CA 94559-2956

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-008-000	2022	022-100-008-000

Additional Info

Desc			
Situs1	3220 N ST HELENA HWY ST HELENA CA		
Original Asmt	022-100-008-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	22.09
Status	C	Tra	085001
Taxability	001	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/7/2022 12:34:25 PM	4/7/2023 2:51:12 PM	
Total Due	$8,904.24	$8,904.24	$17,808.48
Total Paid	$8,904.24	$8,904.24	$17,808.48
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	NEW VAVIN INC
Owner	NEW VAVIN INC

Address

3222 EHLERS LN
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-010-000	2022	022-100-010-000

Additional Info

Desc			
Situs1	3070 ST HELENA HWY ST HELENA CA		
Original Asmt	022-100-010-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	21.03
Status	C	Tra	085001
Taxability	001	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 2:41:56 PM	4/10/2023 11:27:54 AM	
Total Due	$206,952.61	$206,952.61	$413,905.22
Total Paid	$206,952.61	$206,952.61	$413,905.22
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	SUTTER HOME WINERY INC
Owner	SUTTER HOME WINERY INC

Address

PO BOX 248
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-011-000	2022	022-100-011-000

Additional Info

Desc			
Situs1	1105 EHLERS LN ST HELENA CA		
Original Asmt	022-100-011-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	14.73
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/9/2022 12:47:55 PM	4/6/2023 2:33:50 PM	
Total Due	$12,052.39	$12,052.39	$24,104.78
Total Paid	$12,052.39	$12,052.39	$24,104.78
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	PAGENDARM JOHN R & KATHLEEN A TR
Owner	PAGENDARM JOHN R & KATHLEEN A TR

Address

1105 EHLERS LN
SAINT HELENA CA 94574-9708

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-013-000	2022	022-100-013-000

Additional Info

Desc			
Situs1			
Original Asmt	022-100-013-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	20.22
Status	C	Tra	085001
Taxability	001	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/9/2022 12:47:56 PM	12/9/2022 12:47:56 PM	
Total Due	$7,476.51	$7,476.51	$14,953.02
Total Paid	$7,476.51	$7,476.51	$14,953.02
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	KORTE RANCH LP
Owner	KORTE RANCH LP

Address

1105 EHLERS LN
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-016-000	2022	022-100-016-000

Additional Info

Desc			
Situs1			
Original Asmt	022-100-016-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	1.67
Status	C	Tra	085001
Taxability	200	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/28/2022 11:39:52 AM	10/28/2022 11:39:52 AM	
Total Due	$128.19	$128.19	$256.38
Total Paid	$128.19	$128.19	$256.38
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	CALISTOGA CITY OF
Owner	CALISTOGA CITY OF

Address

1232 WASHINGTON ST
CALISTOGA CA 94515-1440

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-017-000	2022	022-100-017-000

Additional Info

Desc			
Situs1			
Original Asmt	022-100-017-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	3.75
Status	C	Tra	085001
Taxability	200	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/28/2022 11:39:52 AM	10/28/2022 11:39:52 AM	
Total Due	$254.91	$254.91	$509.82
Total Paid	$254.91	$254.91	$509.82
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	CALISTOGA CITY OF
Owner	CALISTOGA CITY OF

Address

1232 WASHINGTON ST
CALISTOGA CA 94515-1440

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-026-000	2022	022-100-026-000

Additional Info

Desc			
Situs1			
Original Asmt	022-100-026-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	10.35
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/7/2022 12:34:24 PM	4/7/2023 2:51:10 PM	
Total Due	$5,661.28	$5,661.28	$11,322.56
Total Paid	$5,661.28	$5,661.28	$11,322.56
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	NEW VAVIN INC
Owner	NEW VAVIN INC

Address

3222 EHLERS LN
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-100-029-000	2022	022-100-029-000

Additional Info

Desc			
Situs1	3200 EHLERS LN ST HELENA CA		
Original Asmt	022-100-029-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	13.83
Status	C	Tra	085001
Taxability	001	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/7/2022 12:34:24 PM	4/7/2023 2:51:11 PM	
Total Due	$71,298.10	$71,298.10	$142,596.20
Total Paid	$71,298.10	$71,298.10	$142,596.20
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	NEW VAVIN INC
Owner	NEW VAVIN INC

Address

3222 EHLERS LN
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-026-000	2022	022-130-026-000

Additional Info

Desc			
Situs1	1112 LODI LN ST HELENA CA		
Original Asmt	022-130-026-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	5.57
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/5/2022 2:25:48 PM	4/5/2023 3:47:52 PM	
Total Due	$7,253.92	$7,253.92	$14,507.84
Total Paid	$7,253.92	$7,253.92	$14,507.84
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	SCULATTI FRANK R & JOANN L TR
Owner	SCULATTI FRANK R & JOANN L TR

Address

701 ROSSI RD
SAINT HELENA CA 94574-9647

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-001-000	2022	021-390-001-000

Additional Info

Desc			
Situs1	11 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-001-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	2.92
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/5/2022 12:04:05 PM	3/23/2023 10:26:00 AM	
Total Due	$6,317.30	$6,317.30	$12,634.60
Total Paid	$6,317.30	$6,317.30	$12,634.60
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	KATZ RONALD M & HELAINE D
Owner	KATZ RONALD M & HELAINE D

Address

PO BOX 410 A
ST HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
021-390-010-000	2022	021-390-010-000

Additional Info

Desc			
Situs1	4 BOURNEMOUTH RD ST HELENA CA		
Original Asmt	021-390-010-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	5.03
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/11/2022 12:50:05 PM	4/3/2023 11:27:33 AM	
Total Due	$15,892.79	$15,892.79	$31,785.58
Total Paid	$15,892.79	$15,892.79	$31,785.58
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	JONES E RICHARD TR ETAL
Owner	JONES E RICHARD TR ETAL

Address

3884 SILVERADO TRL
CALISTOGA CA 94515

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Critical Note

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-120-003-000	2022	022-120-003-000

Additional Info

Desc			
Situs1	1119 EHLERS LN ST HELENA CA		
Original Asmt	022-120-003-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	2.44
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 9:46:59 AM	4/10/2023 12:09:44 PM	
Total Due	$11,323.47	$11,323.47	$22,646.94
Total Paid	$11,323.47	$11,323.47	$22,646.94
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	YEWELL DAVID PAUL & NANCY ANNE TR
Owner	YEWELL DAVID PAUL & NANCY ANNE TR

Address

1119 EHLERS LN
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Critical Note

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-003-000	2022	022-130-003-000

Additional Info

Desc			
Situs1	1154 LODI LN ST HELENA CA		
Original Asmt	022-130-003-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	1.11
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 3:06:31 PM	4/10/2023 12:41:24 PM	
Total Due	$9,131.79	$9,131.79	$18,263.58
Total Paid	$9,131.79	$9,131.79	$18,263.58
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	WIGNALL DAVID C & ARCANIN KATHERINE P TR
Owner	WIGNALL DAVID C & ARCANIN KATHERINE P TR

Address

1154 LODI LANE
ST HELENA CA 94574-9713

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-008-000	2022	022-130-008-000

Additional Info

Desc			
Situs1			
Original Asmt	022-130-008-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	4.85
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/23/2022 3:19:09 PM	11/23/2022 3:19:09 PM	
Total Due	$330.04	$330.04	$660.08
Total Paid	$330.04	$330.04	$660.08
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	OWEN LLOYD H
Owner	OWEN LLOYD H

Address

307 BERKELEY PARK BLVD
KENSINGTON CA 94707

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-009-000	2022	022-130-009-000

Additional Info

Desc			
Situs1			
Original Asmt	022-130-009-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	4.04
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/23/2022 3:11:28 PM	11/23/2022 3:11:28 PM	
Total Due	$309.32	$309.32	$618.64
Total Paid	$309.32	$309.32	$618.64
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	OWEN LLOYD H
Owner	OWEN LLOYD H

Address

307 BERKELEY PARK BLVD
KENSINGTON CA 94707

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-024-000	2022	022-220-024-000

Additional Info

Desc			
Situs1	1115 LODI LN ST HELENA CA		
Original Asmt	022-220-024-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	5.38
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/7/2022 3:03:56 PM	4/3/2023 1:32:55 PM	
Total Due	$43,993.15	$43,993.15	$87,986.30
Total Paid	$43,993.15	$43,993.15	$87,986.30
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	MURPHY JOHN D & KEY PAULA L TR
Owner	MURPHY JOHN D & KEY PAULA L TR

Address

1115 LODI LN
SAINT HELENA CA 94574-9713

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-011-000	2022	022-130-011-000

Additional Info

Desc			
Situs1	1148 LODI LN ST HELENA CA		
Original Asmt	022-130-011-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	2	Acres	6.15
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/9/2022 3:27:24 PM	1/31/2023 11:34:33 AM	
Total Due	$5,566.09	$5,566.09	$11,132.18
Total Paid	$5,566.09	$5,566.09	$11,132.18
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	SMITH DAVID L ETAL
Owner	LOOKING GLASS VINEYARD LLC

Address

1104 ADAMS ST STE 104
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-014-000	2022	022-130-014-000

Additional Info

Desc			
Situs1	3050 N ST HELENA HWY ST HELENA CA		
Original Asmt	022-130-014-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	7.79
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/8/2022 12:34:38 PM	2/15/2023 2:26:36 PM	
Total Due	$1,939.40	$1,939.40	$3,878.80
Total Paid	$1,939.40	$1,939.40	$3,878.80
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	AHERN ALBERT MICHAEL IN TR ETAL
Owner	AHERN ALBERT MICHAEL IN TR ETAL

Address

PO BOX 460329 DEPT 909
HOUSTON TX 77056

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-022-000	2022	022-130-022-000

Additional Info

Desc			
Situs1	1152 LODI LN ST HELENA CA		
Original Asmt	022-130-022-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	2.81
Status	C	Tra	085001
Taxability	001	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/18/2022 11:13:21 AM	4/4/2023 1:25:31 PM	
Total Due	$79,038.69	$79,038.69	$158,077.38
Total Paid	$79,038.69	$79,038.69	$158,077.38
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	NOT A BAD VIEW LLC
Owner	NOT A BAD VIEW LLC

Address

400 SPEAR ST STE 106
SAN FRANCISCO CA 94105

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-023-000	2022	022-130-023-000

Additional Info

Desc			
Situs1	3022 N ST HELENA HWY ST HELENA CA		
Original Asmt	022-130-023-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	3.11
Status	C	Tra	085001
Taxability	001	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 10:48:30 AM	4/10/2023 3:42:14 PM	
Total Due	$36,467.23	$36,467.23	$72,934.46
Total Paid	$36,467.23	$36,467.23	$72,934.46
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	JACKSON FAMILY INVESTMENTS III LLC
Owner	JACKSON FAMILY INVESTMENTS III LLC

Address

421 AVIATION BLVD
SANTA ROSA CA 95403

Cortac

Agency
Lender No.
Loan No.
Name
Phone

LogOff Main New Search | Print

Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-024-000	2022	022-130-024-000

Additional Info

Desc			
Situs1	1160 LODI LN ST HELENA CA		
Original Asmt	022-130-024-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	5.32
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 10:48:30 AM	4/10/2023 3:42:15 PM	
Total Due	$38,408.30	$38,408.30	$76,816.60
Total Paid	$38,408.30	$38,408.30	$76,816.60
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	JACKSON FAMILY INVESTMENTS III LLC
Owner	JACKSON FAMILY INVESTMENTS III LLC

Address

421 AVIATION BLVD
SANTA ROSA CA 95403

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-130-025-000	2022	022-130-025-000

Additional Info

Desc			
Situs1	1136 LODI LN ST HELENA CA		
Original Asmt	022-130-025-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	1.04
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/24/2022 11:17:51 AM	10/24/2022 11:17:51 AM	
Total Due	$29,301.68	$29,301.68	$58,603.36
Total Paid	$29,301.68	$29,301.68	$58,603.36
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	BAVOR CLAYTON W JR & KELLY M TR
Owner	BAVOR CLAYTON W JR & KELLY M TR

Address

264 BAY RD
ATHERTON CA 94027

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-003-000	2022	022-220-003-000

Additional Info

Desc			
Situs1	1156 YORK LN ST HELENA CA		
Original Asmt	022-220-003-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	2	Acres	8.00
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/7/2022	2/3/2023 9:38:38 AM	
Total Due	$7,431.14	$7,431.14	$14,862.28
Total Paid	$7,431.14	$7,431.14	$14,862.28
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	VANDENBOSCH BRUNO AND CHRISTINE TR
Owner	M A D FAMILY VINEYARD LLC

Address

30974 WALDEN DR
WESTLAKE OH 44145

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-018-000	2022	022-220-018-000

Additional Info

Desc			
Situs1	1095 LODI LN ST HELENA CA		
Original Asmt	022-220-018-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	1.37
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/20/2022 12:22:46 PM	3/28/2023 2:46:34 PM	
Total Due	$27,529.54	$27,529.54	$55,059.08
Total Paid	$27,529.54	$27,529.54	$55,059.08
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	WILLIAM AND LUCY HAMILTON LLC
Owner	WILLIAM AND LUCY HAMILTON LLC

Address

2351 DELONG RD
LEXINGTON KY 40515

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-019-000	2022	022-220-019-000

Additional Info

Desc			
Situs1	1101 LODI LN ST HELENA CA		
Original Asmt	022-220-019-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	2.97
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/9/2022 6:50:30 AM	4/7/2023 8:09:14 AM	
Total Due	$3,888.02	$3,888.02	$7,776.04
Total Paid	$3,888.02	$3,888.02	$7,776.04
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	BERGGRUEN JOHN H TR
Owner	BERGGRUEN JOHN H TR

Address

40 FLORENCE ST
SAN FRANCISCO CA 94133

Cortac

Agency
Lender No.
Loan No.
Name
Phone

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-021-000	2022	022-220-021-000

Additional Info

Desc			
Situs1	1105 LODI LN ST HELENA CA		
Original Asmt	022-220-021-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	7.92
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/9/2022 6:54:25 AM	4/7/2023 8:09:15 AM	
Total Due	$12,447.53	$12,447.53	$24,895.06
Total Paid	$12,447.53	$12,447.53	$24,895.06
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	BERGGRUEN JOHN H TR
Owner	BERGGRUEN JOHN H TR

Address

40 FLORENCE ST
SAN FRANCISCO CA 94133

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-022-000	2022	022-220-022-000

Additional Info

Desc			
Situs1	1085 LODI LN ST HELENA CA		
Original Asmt	022-220-022-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	1	Acres	1.16
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	11/19/2022 2:13:55 PM	4/3/2023 2:15:34 PM	
Total Due	$24,518.93	$24,518.93	$49,037.86
Total Paid	$24,518.93	$24,518.93	$49,037.86
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	ZISSIMOS JOHN MICHAEL & PAMELA LYNN TR
Owner	ZISSIMOS JOHN MICHAEL & PAMELA LYNN TR

Address

55 S KNOLL RD
MILL VALLEY CA 94941-2464

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-023-000	2022	022-220-023-000

Additional Info

Desc			
Situs1			
Original Asmt	022-220-023-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	12.97
Status	C	Tra	085001
Taxability	050	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/24/2022 12:02:06 PM	10/24/2022 12:02:06 PM	
Total Due	$2,175.05	$2,175.05	$4,350.10
Total Paid	$2,175.05	$2,175.05	$4,350.10
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	CENTA LLC
Owner	CENTA LLC

Address

PO BOX 2222
ST HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

LogOff Main New Search | Print

Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-025-000	2022	022-220-025-000

Additional Info

Desc			
Situs1			
Original Asmt	022-220-025-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	1.45
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	10/19/2022 11:46:11 AM	2/22/2023 12:42:26 PM	
Total Due	$319.52	$319.52	$639.04
Total Paid	$319.52	$319.52	$639.04
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	VINEYARD 29 LLC
Owner	VINEYARD 29 LLC

Address

PO BOX 93
SAINT HELENA CA 94574

Cortac

Agency	
Lender No.	
Loan No.	
Name	
Phone	

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Default Summary Roll Changes Bankruptcy Liens Fees Notes

Roll Year: Current

Assessment Info

Assessment No.	Tax Year	Parcel Number
022-220-029-000	2022	022-220-029-000

Additional Info

Desc			
Situs1	1157 LODI LN ST HELENA CA		
Original Asmt	022-220-029-000		
Event Date		Printed Date	9/15/2022 4:07:01 PM
Doc No.		Doc Date	
Supl Count	0	Acres	1.34
Status	C	Tra	085001
Taxability	000	Bill Type	SP
Roll Category	CS	Roll Type	S
Default No.		Default Date	

Taxes	1st	2nd	Total
	PAID	PAID	
Due/Paid Date	12/12/2022 10:30:54 AM	4/10/2023 3:42:10 PM	
Total Due	$6,258.35	$6,258.35	$12,516.70
Total Paid	$6,258.35	$6,258.35	$12,516.70
Balance	$0.00	$0.00	$0.00

Owner/Assessee

Assessee	JACKSON FAMILY INVESTMENTS III LLC
Owner	JACKSON FAMILY INVESTMENTS III LLC

Address

421 AVIATION BLVD
SANTA ROSA CA 95403

Cortac

Agency
Lender No.
Loan No.
Name
Phone

COUNTY ASSESSOR'S PARCEL MAP

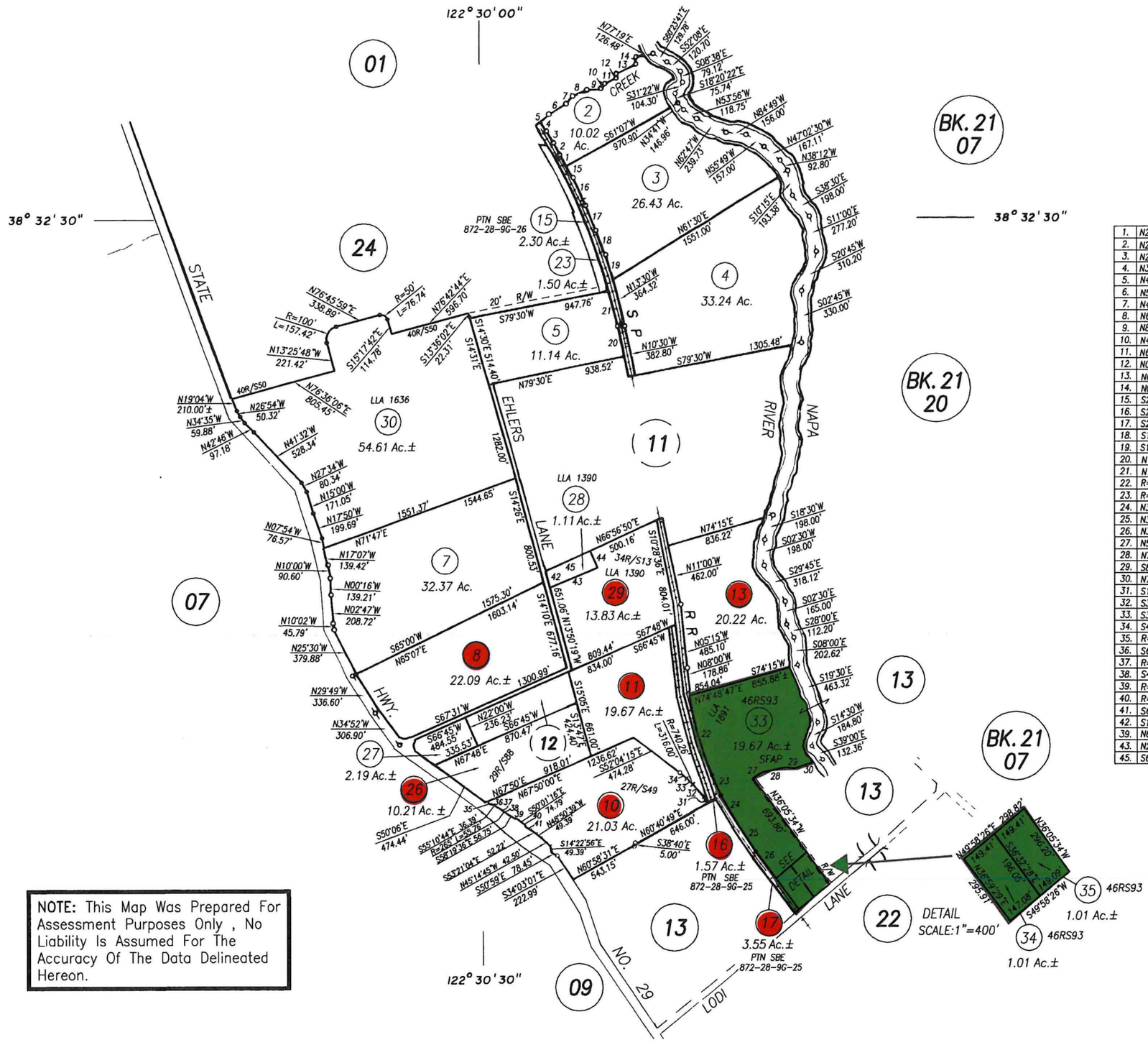
CARNE HUMANA RANCHO

R.M. BK. D PAT., PG. 127

Tax Area Code
85001

22–10

1"= 800'



1.	N27°39'34"W	99.54'
2.	N28°34'W	100.40'
3.	N29°13'42"W	100.39'
4.	N30°34'12"W	88.56'
5.	N47°36'E	86.15'
6.	N57°47'E	150.20'
7.	N41°58'E	83.85'
8.	N66°46'E	104.25'
9.	N83°24'E	112.47'
10.	N46°44'E	40.35'
11.	N62°36'E	95.24'
12.	N02°27'W	30.24'
13.	N65°51'E	166.40'
14.	N07°03'E	54.50'
15.	S26°51'E	97.00'
16.	S24°40'E	235.31'
17.	S22°15'E	196.33'
18.	S19°44'E	201.15'
19.	S17°42'E	197.75'
20.	N12°00'W	248.16'
21.	N14°30'W	266.64'
22.	R=2840'	L=642.50'
23.	R=2511.21'	L=164.08'
24.	N30°14'29"W	244.20'
25.	N33°14'29"W	264.00'
26.	N36°59'29"E	199.09'
27.	N59°32'E	81.90'
28.	N78°07'E	184.47'
29.	S83°24'E	62.77'
30.	N73°12'E	225.50'
31.	S18°57'40"E	7.94'
32.	S36°46'20"E	136.14'
33.	S37°38'39"E	73.06'
34.	S47°26'02"E	62.79'
35.	R=25'	L=12.82'
36.	S61°16'51"E	17.77'
37.	R=65'	L=17.03'
38.	S46°16'17"E	7.96'
39.	R=30'	L=17.90'
40.	R=25'	L=26.40'
41.	S60°00'26"E	31.13'
42.	S13°50'19"E	131.70'
39.	N66°56'50"E	380.00'
43.	N23°03'10"W	130.00'
45.	S66°56'50"W	358.91'

PTN 100-30 RS	6-9-10
100-05 CORR	12-31-14
100-31 & 32 COC	8-5-16
100-33,34,35 LLA	6-6-17
100-33,34,35 RS	12-29-17
100-29 CORR	12-31-18
REVISION	DATE

1955

NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

22–10

COUNTY ASSESSOR'S PARCEL MAP

PTN. CARNE HUMANA RANCHO

Tax Area Code
85001

22–13

1" = 200'

1.	N07°15'40"E	28.28'
2.	R=109.85'	L=25.01'
3.	R=75.46'	L=27.90'
4.	R=75.46'	L=43.45'
5.	N49°58'26"E	19.70'
6.	N52°15'40"E	38.26'
7.	N37°44'20"W	81.62'
8.	N37°45'47"W	35.26'
9.	N52°15'40"E	45.95'
10.	N37°44'20"W	18.08'

10

09

22

14 7.79 Ac.

11 6.16 Ac.

23 LLA 1129 3.11 Ac.

27 LLA 1962 1.03 Ac.±

28 LLA 1962

24 LLA 1129 5.32 Ac.±

3 1.11 Ac.±

44R/S16

22 2.81 Ac.±

LLA 1657

26 5.57 Ac.±

42R/S45

25 1.04 Ac.±

8 4.86 Ac.

9 4.04 Ac.

LLA 1891

10 10.67 Ac.± SFAP

ROUTE 29

HWY.

STATE

LODI

LANE

TRAIL

SILVERADO

Napa River

S P R.R.

SELY

BK. 21
35

130–25 & 26 LLA	10–5–10
130–25 RS	8–5–13
130–22 COC	9–15–14
130–22 RS	10–14–14
130–10 LLA	6–6–17
130–27 & 28 LLA	12–26–19
REVISION	DATE

1955–62

NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

R.M. BK. D PAT., PG. 127

22–13

COUNTY ASSESSOR'S PARCEL MAP

CARNE HUMANA RANCHO

SEC. 24. T.8N., R.6W., M.D.B.&M.

Tax Area Code
85001

21–35

21–07

1" = 600'

NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

1.	R=140'	L=73.30'	46.	N60°01'W	36.74'
2.	N62°15'W	83.92'	47.	N60°01'W	65.00'
3.	R=75'	L=93.63'	48.	S88°57'52"E	90.00'
4.	N15°00'E	155.07'	49.	N01°02'08"E	50.00'
5.	N15°00'E	163.49'	50.	N79°30'08"W	91.24'
6.	R=500'	L=29.09'	51.	S86°44'09"W	90.10'
7.	N18°20'E	99.81'	52.	N83°39'24"W	96.80'
8.	R=100'	L=18.33'	53.	S88°29'41"W	98.86'
9.	N28°50'E	15.00'	54.	N22°21'44"E	45.00'
10.	R=80'	L=40.72'	55.	N59°03'20"W	110.27'
11.	N32°00'W	20.00'	56.	N59°03'20"W	58.79'
12.	R=135'	L=81.60'	57.	N32°32'20"E	10.84'
13.	S02°38'W	20.00'	58.	R=1030'	L=216.60'
14.	R=115'	L=50.25'	59.	R=970'	L=214.52'
15.	S62°20'E	217.42'	60.	N59°03'20"W	58.47'
16.	R=120'	L=129.15'	61.	N59°03'20"W	150.16'
17.	S00°40'E	115.60'	62.	N50°31'19"W	82.48'
18.	N75°40'E	L=82.19'	63.	R=20'	L=27.33'
19.	R=118'	L=221.04'	64.	N77°09'37"E	85.24'
20.	S75°04'24"E	140.96'	65.	N26°11'21"E	77.26'
21.	S45°35'21"W	215.04'	66.	N19°08'06"E	150.08'
22.	N89°22'58"W	204.00'	67.	N32°21'15"E	50.99'
23.	S86°39'17"W	66.56'	68.	N04°58'02"E	99.39'
24.	S86°39'17"W	226.73'	69.	N42°50'10"E	86.43'
25.	S86°30'27"W	283.44'	70.	N09°27'02"E	133.60'
26.	R=392'	L=177.73'	71.	N88°57'40"W	107.99'
27.	N36°17'W	32.50'	72.	S88°57'40"E	118.00'
28.	N36°17'W	7.81'	73.	R=20'	L=34.45'
29.	N29°49'04"E	373.60'	74.	N51°29'55"W	152.53'
30.	N36°20'48"E	201.00'	75.	N48°15'09"W	32.43'
31.	N29°29'25"E	250.05'	76.	N32°32'20"E	24.13'
32.	N31°12'03"E	394.63'	77.	S56°37'49"W	245.24'
33.	N12°49'57"W	105.12'	78.	S84°52'20"W	57.71'
34.	S48°42'45"E	175.32'	79.	S65°32'52"W	61.38'
35.	S09°01'25"E	154.32'	80.	S67°48'40"W	78.89'
36.	S00°35'40"W	253.84'	81.	S80°13'59"W	21.61'
37.	S23°54'W	119.41'	82.	S87°40'54"W	23.24'
38.	S09°24'35"W	132.56'	83.	S75°48'09"W	58.27'
39.	N28°55'35"E	330.82'	84.	S44°57'W	197.44'±
40.	N30°18'E	226.00'	85.	N36°17'W	63.13'±
41.	N54°23'35"W	277.41'	86.	S49°03'53"E	180.40'
42.	N67°38'16"W	15.00'	87.	N75°53'08"W	140.96'
43.	N67°38'16"W	90.40'			
44.	N82°55'22"W	119.19'			
45.	N60°01'W	130.11'			

	3-8-83
	8-28-84
	9-19-84
356-01 COC	8-3-04
352-40 & 41 LLA	12-17-13
REVISION	DATE

1962

21–35

COUNTY ASSESSOR'S PARCEL MAP

PTN. CARNE HUMANA RANCHO

21–39

Tax Area Code
85001

21–35

1" = 200'

NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

1.	R=20'	L=31.42'
2.	R=142'	L=122.83'
3.	N40°26'E	29.17'
4.	R=98'	L=73.58'
5.	R=53'	L=44.40'
6.	N40°50'W	30.61'
7.	N12°00'E	86.09'
8.	R=153'	L=55.19'
9.	N08°40'W	105.01'
10.	R=372'	L=97.39'
11.	R=20'	L=16.53'
12.	R=42'	L=200.30'
13.	R=42'	L=70.43'
14.	R=42'	L=62.82'
15.	R=42'	L=68.14'
16.	R=20'	L=16.53'
17.	R=328'	L=85.87'
18.	R=197'	L=71.06'
19.	R=97'	L=81.26'
20.	R=20'	L=31.30'
21.	R=20'	L=28.57'
22.	R=142'	L=106.61'
23.	R=98'	L=85.38'
24.	R=20'	L=30.32'
25.	N36°19'35"W	32.27'

	10–23–70
	12–11–70
	9–19–84
	2–25–85
390–16 & 17 LLA	4–2–12
REVISION	DATE

1970

VAILIMA ESTATES UNIT NO. 1, R.M. BK. 9, PG. 71–72

21–39

COUNTY ASSESSOR'S PARCEL MAP

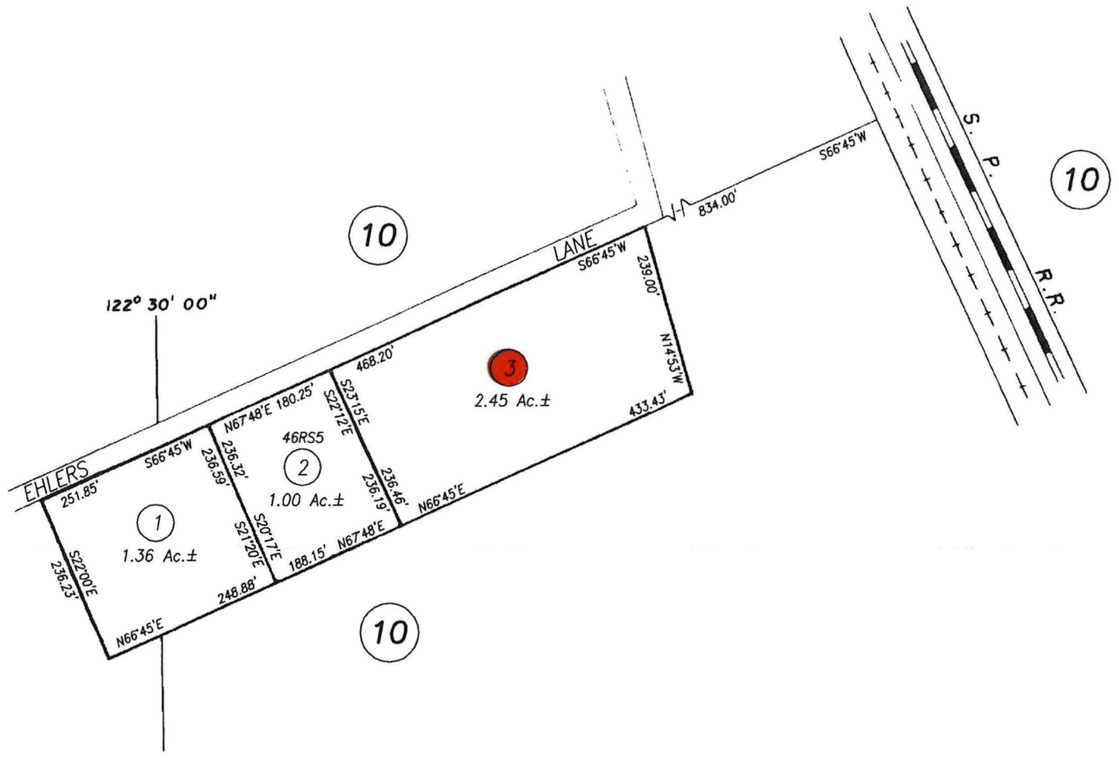
PTN. CARNE HUMANA RANCHO

R.M. BK. D PAT., PG. 127

Tax Area Code
85001

22–12

1"= 200'



120–02 RS	2–15–17
REVISION	DATE

1955–62

NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

22–12

COUNTY ASSESSOR'S PARCEL MAP

22–22

Tax Area Code
85001

BK. 21
35

NOTE: This Map Was Prepared For Assessment Purposes Only , No Liability Is Assumed For The Accuracy Of The Data Delineated Hereon.

1.	S35°27'28"W	3.84'
2.	N54°32'32"W	44.77'
3.	S35°37'30"W	8.21'
4.	N47°37'05"E	30.00'
5.	N43°30'19"E	50.00'

220–04 & 05 RS	7–23–99
220–30 & 31 LLA	2–24–00
220–31 RS	3–23–00
ST NAME CORR	10–8–04
220–28 PTN TO RD	4–21–05
220–22 RS	5–6–13
REVISION	DATE

1955-62

CARNE HUMANA RANCHO, R.M. BK. D PAT., PG. 127
LODI HOME TRACT, R.M. BK. 1, PG. 41

22–22

Attachment C

Appellant PLL Witness List

Appeal of Duckhorn Vineyards Winery
Use Permit Major Modification P19-00097

Witness List for Appellants Preserve Lodi Lane and John Murphy

Witness	Subject Matter	Time
1. John Murphy	Traffic, traffic hazards, cumulative impacts, impacts to residents	7 minutes
2. Nancy Yewell	Traffic, traffic hazards, cumulative impacts, impacts to residents	3 minutes
3. Dave Yewell	Traffic, traffic hazards, cumulative impacts, impacts to residents	3 minutes
4. Joann Sculatti	Traffic, traffic hazards, cumulative impacts, impacts to residents	3 minutes
5. Frank Sculatti	Traffic, traffic hazards, cumulative impacts, impacts to residents	3 minutes
6. Amy Minteer	Legal requirements	6 minutes
Rebuttal		5 minutes

Attachment D

Appellant WAC Witness List

WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION
952 SCHOOL STREET #316 NAPA CA 94559
VOICE: (707) 681-5111
EMAIL: LEGAL@WATERAUDITCA.ORG

October 10, 2023

To: Napa County Board of Supervisors
1195 Third Street, Ste. 310
Napa, CA 94559

Submitted via email to: Laura.Anderson@countyofnapa.org, Chris.apallas@countyofnapa.org, Clerkoftheboard@countyofnapa.org, acm@cbcearthlaw.com, jdmilesm@comcast.net, jjdm1@icloud.com, adam@keatslaw.org, anglin@htralaw.com

Water Audit California Appeal of the Duckhorn Vineyards Winery - May 3, 2023, decision of the Napa County Planning Commission's to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and approve Use Permit Major Modification Application P19-00097-MOD.

2nd Appellant Order of Go - Appellant Water Audit California intends to call the following witnesses, in the following order, to testify at the time of the appeal hearing, scheduled on November 7, 2023.

Order	Witness Name	Subject Matter	Length of Testimony
1	William McKinnon	Legal Requirements	6 minutes
2	Dr. Peter B. Moyle	See attached Exhibit A	2 minutes
3	Dr. Kerrigan Börk	See attached Exhibit B, in particular re SGMA	5 minutes
4	Dr. Graham Fogg	See attached Exhibit C	5 minutes
5	Dr. Ted Grantham	See attached Exhibit D	5 minutes
6	Rebuttal		7 minutes

William McKinnon
Attorney for Water Audit California

The Napa River as Habitat For Native Fishes and Shrimp
Dr. Peter Moyle
August 18, 2023

Napa River views. Upper left: Below Oakville Crossroad bridge, August 12, 1993. The river was flowing at about 5 cfs - 7 species of native fishes were abundant in deep pools. R.A. Leidy; Upper right: Zinfandel Lane Bridge at Calistoga, June 8, 2021. Coastal roach were observed in concrete-lined pools. A. Manfree; Lower left: Dry Napa River below the Pope Street bridge, St Helena, June 8, 2021. This was a drought year and only a few juvenile native fishes (2 species) were found in a small bedrock pool. It is doubtful they survived the summer. A. Manfree; Lower right, Flood Management Project Bypass in Napa, February 27, 2019. A. Manfree.

The Napa River is a defining element of the Napa Valley and the health of its assemblage of native fishes is a key indicator of the health of the river. Fishes and other biota have declined as the surface flows have been depleted and channels have been altered (Napolitano, Potter, and Whyte 2007). The river and its tributaries nevertheless still support native fishes where year-round flowing water is present. Here we first briefly describe the river as it is today, discuss the effects on stream flows of dams, groundwater pumping, and geomorphic change, and then review the status of native fishes. Finally, we discuss ways to improve conditions for native fishes (and shrimp) in the Napa watershed, recognizing that thriving native fishes require a healthy, flowing river, which is good for people as well.

The Napa River

The Napa River is a relatively small and short [89 km] stream flowing into the San Francisco Estuary. Historically, it was perennial, given the lack of historical accounts of a dry river, with the lowest flows in late summer and fall. In winter, however, when heavy rains pound the surrounding Coast Range, the river carries high flood waters water that once spread across its floodplains on the Valley floor. The annual hydrology is naturally highly variable, given its dependence on rain fall and water stored in aquifers as dictated by the region's Mediterranean climate. See concurrently filed memorandums of Drs. Graham Fogg and Ted Grantham.

Most of the time, the Napa River was, and is, a pleasant, productive, and permanent component of the Napa Valley ecosystem. Having avoided the draconian flood control measures, such as the monster levees implemented in many other US streams and rivers, the river still manages to meander through the Valley, lined with a thin band of riparian trees, despite having a deeply incised channel. It still has flows that support native fish populations in places.

But the water that keeps the river flowing is in high demand and much of it is diverted, stored behind dams, or pumped from the ground. So, when the river stops flowing, as it does at times, the native fishes must leave the dry areas or die. Reaches with low flows in late summer/fall may also become too warm to be suitable for steelhead and freshwater shrimp. The decline in habitat for native fishes is related to large-scale changes in the Napa watershed, especially those associated with dams, geomorphic alterations, and groundwater pumping.

Dams and geomorphic constraints

There are over 400 dams in the Napa River watershed that are located on tributary or river channels and that capture winter precipitation in the watershed and store precipitation for later use (Napolitano et al. 2007). Most of these dams are small and create ponds whose water is often important for individual vineyards or farms. About thirty percent of the watershed land area is behind both large and small dams, with reservoirs that provide water for cities as well as vineyards. The dams are needed for storage because most precipitation comes in a few large winter storms (via atmospheric rivers), from which high flows become floods.

The larger dams primarily provide water for municipal use but can also be important for providing flows to streams below, which then provides habitat for fish, including steelhead. However, some of the larger dams in the watershed block access to cool water habitat in streams on the east side of the Valley (e.g., dams on Bell Canyon, Conn [Hennessey Reservoir], Rector, and Milliken creeks). Habitat for fishes is also present in tributaries to the reservoirs above the dams.

Presumably, the historic seasonal floods of the river were important for recharging the ground water and providing wetland habitat, but as the Napa Valley became more

developed and the river more constrained, seasonal flooding became regarded as a serious problem, rather than an asset. Once catastrophic flood flows became managed by infrastructure, authorized in 1998, that is famous because it leaves ‘room for the river’ (Opperman et al. 2017). The river and its tributaries nevertheless still suffer from the geomorphic constraints of old, ‘grey’ (concrete) infrastructure, fish passage barriers, and the conversion of floodplain to agricultural and urban uses. The Napa River and its tributaries have deeply incised channels over much of their lengths. In many places, channels are lined with rip-rap and banks feature small rock levees. Such features tend to move high flows out of the system rapidly, reducing flow benefits to fish and wildlife (e.g. a broad riparian zone).

Ground water

Although reliable statistics seem to be lacking (See Fogg and Graham, supra), well pumps that suck up groundwater are an important source of water for the Napa region. Although the Napa County Sustainable Groundwater Management Plan has set a sustainable limit of 15,000 acre-feet a year, up to 24,000 acre-feet of water per year are extracted to irrigate 48,000 acres of vineyards, putting the watershed outside of sustainable limits for five of the last seven years. Most of this water comes from pumping groundwater; agricultural demands constitute 85% of groundwater. Potable water pumping from the City of St. Helena’s Stonebridge wells account for all but a fraction of the remaining extractions.

Although the systematic collection and analysis of well data for the Napa Valley is lacking, it seems logical to assume that wells for all purposes, especially those located close to a stream, can deprive the river of the underground inflow that historically maintained summer surface flows. In recent years, the abundance, location, and size of such wells is associated with the cessation of flows in some reaches (e.g. Napa River above and through St. Helena, lower Conn Creek).

For native fishes and other aquatic organisms to thrive in the Napa River, they need a flow regime that contains features of the natural (historic) flow regime (refs). A key component of streams in a Mediterranean climate region, such as the Napa Valley, is a ‘living stream’, from headwaters to estuary, with perennial flows. Historically, the best evidence indicates that the Napa River was a perennial stream. Data from the stream flow gauge on the Napa River at St. Helena, maintained by the US Geological Survey from 1929 to present, show that years with no summer flows began at the turn of the century when the second Stonebridge well was drilled. (See Graham, supra.)

But despite ongoing changes, even during the severe droughts of the 1930s, the river flowed until recent years. The reduced flows in the river and its tributaries and the long-term decline of the fishes, especially listed steelhead, coincide with the construction of wells.

Napa Fishes

There are records of 36 species of native fishes from the Napa River and its upper estuary (Leidy 2007, Napa RCD 2008, 2020) but only 15 are found today on a regular basis in the river and tributaries. These include 4 anadromous (sea-run) species that use the river in most years for spawning and the rearing of young (Pacific lamprey, western river lamprey, rainbow trout/steelhead, and Chinook salmon). Another 11 are freshwater fishes that are year-round residents in the watershed (brook lamprey, resident rainbow trout, Pomo riffle sculpin, prickly sculpin, coastal roach, Sacramento pikeminnow, Sacramento blackfish, hardhead, Sacramento sucker, tule perch, and threespine stickleback). This memorandum report focuses primarily on resident and anadromous fishes, plus the California freshwater shrimp.

The following fish species are of greatest interest because they are most likely to be affected by water management:

- **Central California Coast steelhead** (*Oncorhynchus mykiss*) is federally listed as a threatened species (1997, re-affirmed in 2006 and 2014). They are a Distinct Population Segment of rainbow trout (*Oncorhynchus mykiss*) that are anadromous, with spawning and juvenile rearing in the river, especially, its larger tributaries. They are managed separately from resident rainbow trout that are primarily found above barriers in tributaries, and do not go to sea. There has been no change in status since listing, so a continued decline to extinction is likely if present trends continue. Neapolitano et al (2007) state (p 7): *"We reviewed available information to conclude that there has been a significant decline in the distribution and abundance of steelhead and coho salmon in the Napa River and its tributaries since the late 1940s"* (U.S. Fish and Wildlife Service, 1968; Anderson, 1969; and Leidy et al., 2005). The U.S. Fish and Wildlife Service (1968) estimates that the Napa River watershed once supported runs of 6,000–8,000 steelhead, and 2,000–4,000 coho salmon, and that by the late 1960s, coho salmon were extinct in the watershed, and the steelhead run had reduced to about 1,000 adults. At present, the steelhead run is estimated at less than a few hundred adults (Emig sand Rugg, pers. com., 2000 and Leidy et al., 2005). This statement still holds today, although steelhead spawners may be even fewer than reported.

- **Fall-run Chinook salmon (***O. tshawytscha*) spawn and rear in the Napa River in most years, if flows are adequate. There is debate about whether these fish represent the southernmost population of Southern Oregon-Northern California Evolutionary Significant Unit (ESU) of this species (listed by federal government as threatened) or are strays from Central Valley ESU hatcheries. Either way, they *are* ecologically and aesthetically important to the river and are likely to disappear under present management.

- **Pacific lamprey** (*Entosphenus tridentatus*) are also anadromous and spawn in the Napa River, where the larvae live in silty backwaters for up to seven years.

They are considered a Species of Special Concern by the California Department of Fish and Wildlife (CDFW). Their status in the Napa watershed is poorly understood.

- **Coastal roach** (*Hesperoleucus venustus subditus*) is a newly re-described species/subspecies that lives only in San Francisco Bay tributaries and the Russian River. It is highly tolerant of poor water quality and appears to be still common in the Napa watershed (NRCD 2020).

- **Hardhead** (*Mylopharodon conocephalus*) is a large (up to 50+ cm) soft-rayed fish that is endemic to Central California, including the Russian and Napa Rivers. It was once common in the deep pools of the middle reaches of the main river (Leidy 2007), but its current status is uncertain. The Napa River and Russian River populations are the only ones known outside of the Central Valley. It is listed as a *Species of Special Concern* by CDFW.

- **Pomo riffle sculpin** (*Cottus ohlone pomo*) is a newly described species and subspecies that occurs mainly in cool headwater streams tributary to northern San Francisco Bay and the Russian River (Moyle et al. 2022). It is presumably still locally common in the upper Napa River, especially in small, cool tributaries (Leidy 2007). Its current status is not well-documented, but it is considered a *Species of Special Concern* (as *C. gulosus*) by CDFW.

- **California freshwater shrimp** (*Syncaris pacifica*) is listed as *Endangered* by the U.S. Fish and Wildlife Service (USFWS) (1988). They are/were known from the mainstem upper Napa River and from Huichica Creek, a tributary to the estuary, but their current status is not well documented. "*Syncaris pacifica* occurs only in lowland freshwater streams, in pool areas away from the mainstream flow, often among roots, branches, or undercut banks. They have never been found at elevations higher than 380 feet (125 m)" (Martin and Wicksten 2004) Considering its endangered status, information on the current status of this species in the Napa watershed is badly needed.

The Napa Valley has been thoroughly domesticated in the past 150 years (Grossinger 2011). Little remains of the original wild landscape on the Valley floor, whether aquatic, riparian, or terrestrial, although some relatively unaltered habitat remains in the upper reaches of tributary streams. The river's water is in high demand due to the expanding vineyards and tourism, and due to growing direct human use, from drinking to washing wine bottles. It is therefore quite surprising that remnants of the native fish fauna are still present, an assemblage of species that need clear, cool flowing water and deep pools to persist. That small numbers of anadromous salmon, steelhead, and lampreys still use the river and its tributaries to complete their life histories is a positive sign. However, numbers are much reduced from historic abundance, given their decline statewide and condition of potential habitat (e.g., dry reaches of tributaries). This decline was recognized by the California Regional Water Quality Control Board in 1990 when it classified the Napa River as *impaired* because of sediment, noting that habitat for

steelhead and Chinook salmon had been degraded by sedimentation of spawning and rearing habitat, by channel incision, by low summer base flows, and by poor access to suitable habitat (Napolitano, Potter, and Whyte 2007). Habitat quality continues to be relatively poor for most native fishes.

Causes of native fish decline

Providing habitat for fish has been a secondary consideration. The most important ingredient for stream fish habitat is often lacking or in short supply: flowing water. Dry or non-flowing sections of riverbed are present during many years.

This makes it urgent to systematically determine the factors contributing to loss of flows and to find ways to increase summer/fall flows. Without a systematic program to determine causes of fish decline and ways to stabilize or increase native fish populations, the further decline and extirpation of native fishes is certain. One thing we also know for sure: the native fishes need water to survive.

Here are some suggestions for actions to reverse trends:

1. Immediately begin a systematic *annual* monitoring program for fishes and aquatic invertebrates to determine status and trends, using Leidy (2007) as the starting point. This effort would have to include developing a stable funding source.

2. Conduct special investigations throughout the watershed to demonstrate habitat benefits to fish from restoration projects, including those related to flood management. Such evaluations seem to be largely lacking, even for listed steelhead and freshwater shrimp.

3. Implement an active adaptive management program to benefit aquatic species. Such a program would involve habitat improvements to tributary streams (including flows and removal of barriers) as well as in the mainstem Napa River.

4. Monitor to the greatest extent possible groundwater extraction and levels and surface water flows.

5. Develop and implement a *Share the Water* plan through a water district that maximizes efficiency of use of existing water throughout the watershed, without increasing total use.

6. Recognize that improving aquatic habitats throughout the watershed will require a long-term commitment to engage in many, often small, habitat restoration projects, following the example of Water Audit California (see Appendix) and based on Public Trust obligations.

Conclusions

The Napa River and tributaries still provide habitats that support native fishes and, presumably, shrimp. A monitoring program is needed that evaluates, among other things, the efficacy of restoration projects on fish and shrimp populations and the determination of factors that affect flow in the river and its tributaries, especially ground water pumping (wells). The presence of two endangered species is a cause for action; steelhead and freshwater shrimp maintain small populations that could disappear from the watershed within a few years, absent improved habitat, fish passage, and flows.

.

For steelhead, improving habitat for in-migrating adults and out-migrating juveniles in the mainstem is essential to increase survival. In addition, removing or modifying barriers in 30-40 tributary streams would greatly improve access to long-lost spawning and rearing areas. A flow regime that would benefit steelhead and other fishes would first include preserving natural high winter/spring flows to attract adult spawners and move juveniles out to sea. But for shrimp and steelhead, and other fishes, the most significant need is to improve flows in summer/fall low-flow period. These flows are what the river needs to be a year-round 'living stream' from headwaters to the estuary, even during periods of drought, along with management of diverse habitat to support resident native fishes and for juvenile rearing of salmon, steelhead, and lamprey.

Having an actual living stream would mean, among other things, improving the flow regime in many places, including tributaries, in part by reducing diversions from the Napa River and tributary streams. Particularly important is developing fish-friendly summer flows; this would require restoring stream inflows from tributaries and from reducing groundwater pumping in or near the river's riparian zone. A thorough understanding of the relationship between groundwater pumping and surface flows, through measuring and monitoring, is needed to create a balance of flows for the river ecosystem vs. water for commercial purposes.

The presence of recent and ongoing restoration projects demonstrates that there is some movement, if often reluctant, towards a healthier river and sustainable populations of native fishes. Nevertheless, a systematic, multi-faceted program of habitat restoration, monitoring, and maintenance is needed if native fishes and shrimp are to survive through coming years, and then thrive, especially in the face of climate change.

Napa River just below Evey Lane, above the City of Calistoga.
August 31, 2018. Amber Manfree

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Appendix: Water Audit California and Fish

Water Audit California [https://waterauditca.org/] has been aware of the threats to the native fishes and other Public Trust issues in the Napa watershed for some time. Water Audit has been using legal actions to have local governments pay more attention these issues, especially on tributaries to the Napa River, which provide water that increases flows of the Napa River itself. This is part of a larger effort to remediate the effects of commercial development in the entire Napa River watershed. Recent examples of Water Audit's work are listed below (Börk and Manfree 2023). A common theme of these actions is to ensure that Public Trust requirements are followed in protecting these streams, no matter how small, and their biota, especially steelhead and other fish.

- 2016. An agreement was signed to release environmental water from Bell Canyon to Bell Canyon Creek, a tributary to the Napa.

- 2016. An agreement was signed to provide water releases from Rector Dam to Rector Creek, for fish habitat.

- 2020. Water Audit facilitated the removal of York Creek, restoring access to steelhead habitat.

- 2021. An agreement was signed to rewater Cayetano Creek with releases from Lake Marie dam.

Each of these agreements/actions benefits fish and reflects an obligation for local governments to provide environmental water under the Public Trust Doctrine, primarily as codified under Section 5937 of the Fish and Game Code (Börk and Manfree 2021).

Groundwater Pumping and Napa River Low Flows
Dr. Graham Fogg
August 18, 2023

Groundwater Pumping

Groundwater data together with low flow data in the Napa River (“River”) near St. Helena (USGS Gage Station 11456000) strongly indicate detrimental effects of groundwater pumping on the River in recent decades. Specifically, the gage data demonstrate a dramatic and somewhat abrupt increase in low flow events circa 2000, with the minimum 7-day flows reducing uniformly to zero during 2006-2022, and a steady and massive increase in the number of annual zero-flow days after 2000. These post-2000 increases in low flow occurrences are consistent with post-1998 increases in Napa Valley Subbasin pumping from wells, as illustrated in Fig. 7-13 from the basin GSP (Fig. 1).

Groundwater pumping (Fig. 1, purple line) clearly increased post ~1998.[1] Importantly, the increase in groundwater production does not coincide with a decrease in precipitation in the basin. Precipitation exhibits no systematic or statistically significant decrease during the decades in question. Hence, the pumping trends are not simply a climate change response.

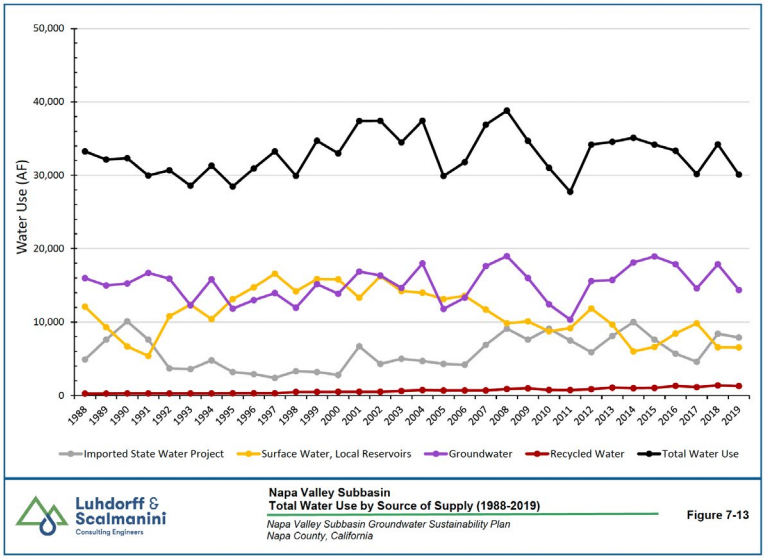

Figure 1. Napa Valley Subbasin water use by source of supply.

[1] In particular, note the extended period of lower pumping in the decade preceding 2000, and the big increases in pumping during post-2000 drought periods.

Cause-Effect Relationship

The streamflow and groundwater data clearly point to a cause-effect relationship between river flows and groundwater pumping that is relevant in the context of Sustainable Groundwater Management Act (SGMA) and the Napa Subbasin Groundwater Sustainability Plan (GSP). This suggests the need for a tighter cap on pumping to protect the Napa River groundwater dependent ecosystem (GDE) . Furthermore, there is a need for additional data and analysis to identify specific subregions where the problems are most acute. However, some, but not all, of the needed data is already provided in the GSP.

For example, Figure 6-123a from the GSP (Fig. 2 below), compares groundwater levels near the river with elevation of the river thalweg (channel bottom), providing an excellent way of identifying areas with the greatest potential for surface water loss to groundwater. There are numerous unmapped reaches in Figure 2 due to lack of groundwater level data, however, demonstrating the need to improve upon the analysis by adding more groundwater data, which should be obtainable from the numerous wells in the basin. In Figure 2, dark blue and dark green river reaches means the groundwater levels at the river are likely above the thalweg, indicating potentially gaining conditions. Light green, tan and red means the groundwater levels at the river are likely below the thalweg, indicating potentially losing conditions.

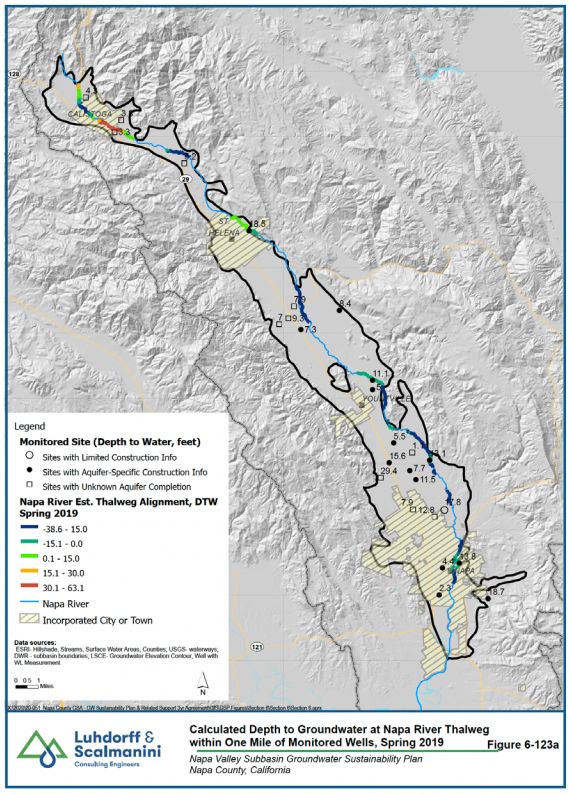

Figure 2. Partial mapping of the difference between near-river groundwater elevations and the river thalweg elevation. Long river reaches lacking any of the bold blue- to red-colors are due to lack of groundwater level data.

In and upstream of St. Helena three things stand out in Figure 2[2]: (1) losing reaches in and around Calistoga (light green, tan, red), (2) a losing reach in northern St. Helena (light green), and (3) a general lack of groundwater data on this map between St. Helena and Calistoga. There are also long reaches lacking groundwater data downstream of St. Helena. Additional monitoring of wells near the river, including both shallow and deep wells, would help fill in the blanks in maps like Figure 2, greatly facilitating an effective and transparent management of groundwater and river flows.

Maps of depth to groundwater (depth to the water table), such as Figure 6-6 of the 2022 Annual Report (Fig. 3 below), also provide important insight into areas where groundwater impacts are likely most acute. Similar to Figure 2, however, this map shows major stretches of the river lacking the necessary groundwater level data.

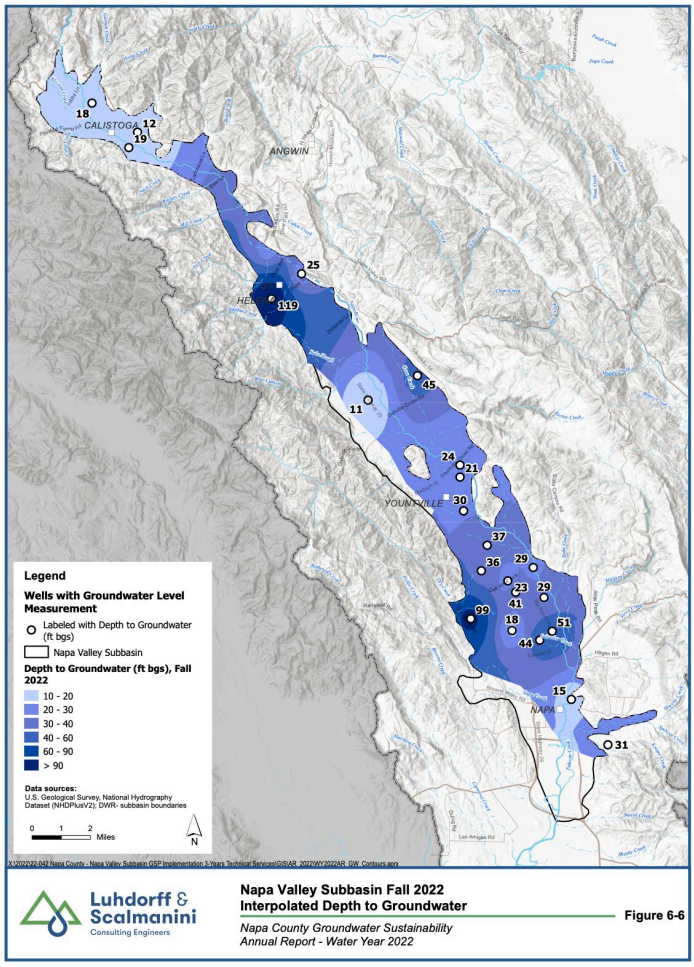

Figure 3. Interpolated depth to groundwater, Fall 2022.

[2] The GSP has maps for other years, but the 2019 map is the most recent.

Conclusion

In conclusion, both shallow and deep groundwater pumping in this basin, including pumping from deep, so-called confined aquifer wells, can each significantly affect the river flows. Specifically, groundwater pumping is adversely affecting the Napa River, particularly during low flow periods.

An expanded groundwater monitoring program that makes transparent both the groundwater levels and groundwater pumping amounts is needed to effectively manage and protect both the groundwater and the Napa River GDE.

Flow Analysis for Napa River Streamflow Gauge at St. Helena, California
Dr. Ted Grantham
August 18, 2023

Station Information

The U.S. Geological Survey has monitored streamflow on the Napa River at Pope Street in St. Helena since 1929 (Gauge Station #11456000). The gauge has operated continuously to the present day except for two notable breaks in the period of record: between 1932 and 1939 and between 1995 and 2000 (**Figure 1**). This gauge is the closest historical record to the proposed Duckhorn project at Lodi Lane and the Napa River, and the proposed Hunter subdivision in the City of St. Helena.

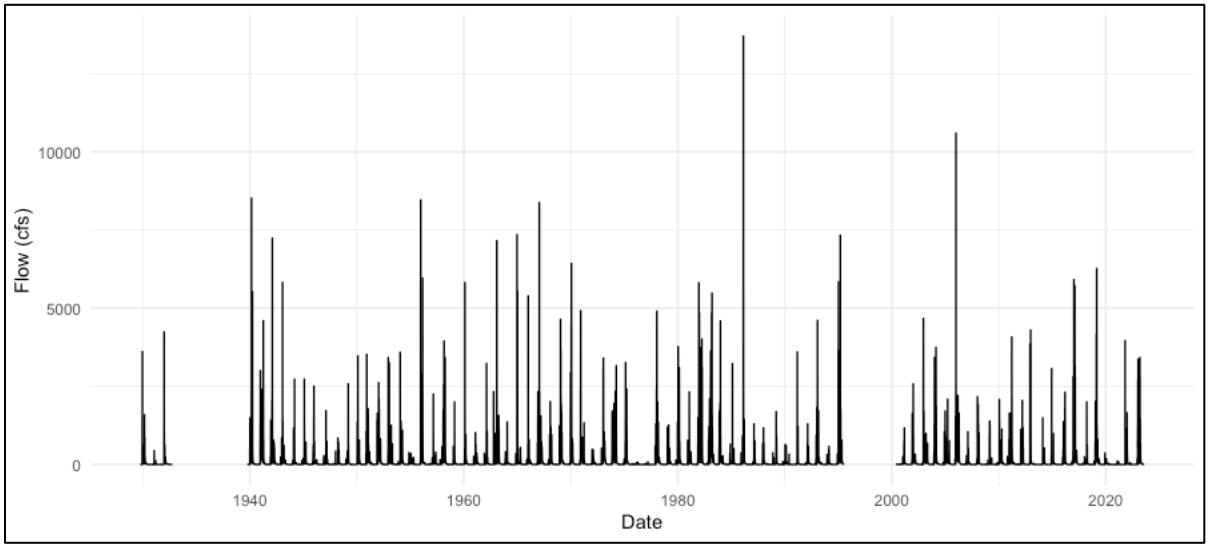

Figure 1. Daily streamflow in the Napa River
Near St. Helena (USGS Gauge Station # 11456000) between 1929 and 2023.

There are several metrics that are used to characterize low flows in streams. One is average 7-day minimum flows, calculated as the 7-day rolling-average of the lowest flows observed each year. Another common metric used is the number of zero flow days, calculated as the number of days in the dry season in which flows fall below 0.1 cfs, which is considered the limit of measurement accuracy for streams during low-flow conditions.

Minimum 7-day flows observed in the Napa River near St. Helena vary over the historical period of record but show a distinctive decline in the past 20 years (**Figure 2**).

The minimum 7-day flow has consistently been zero since 2006, indicating that the Napa River at the gauge now runs dry every year. Although the Napa has ceased to flow in the past, these occurrences have been rare and have never occurred in more than two consecutive years prior to 2006. Statistical analyses confirm that there is a significant negative trend in minimum 7-day flows.

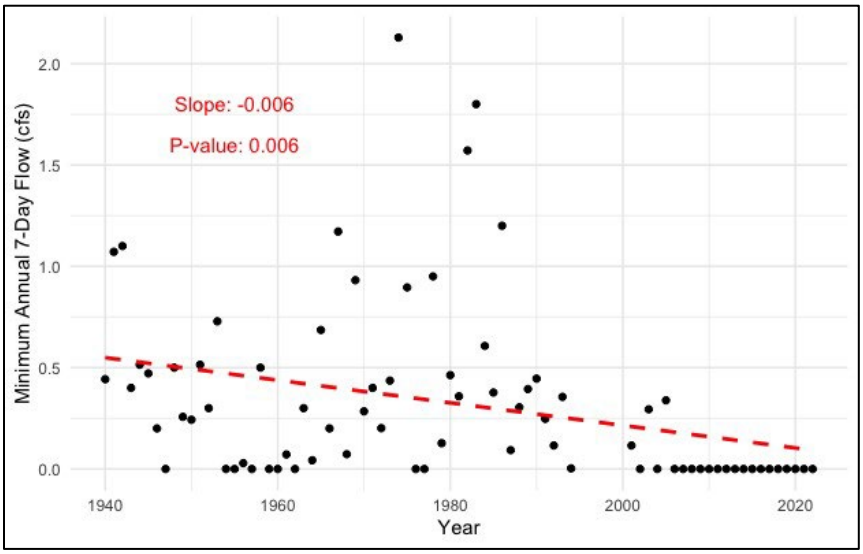

Figure 2. Minimum 7-day flows at the Napa River
Near St. Helena (USGS Gage Station # 11456000) between 1940 and 2022.
For minimum 7-day flows there is a negative (downward) slope that is statistically significant. We can therefore state that there is a significant decreasing trend in minimum 7-day flows, although that is also evident by the extended period of zero flows.

The observed record of zero-flow days shows similar patterns of river drying since 2000 (**Figure 3**). For most of the period record, zero flows rarely occurred, with the exception of drought years in the late 50's and in 1976-77. Since 2005, there have been 20 or more zero-flow days occurring in the river. There is a significant, increasing trend in the number of zero-flow days observed in the river. Since 2001, the number of zero days has been increasing at an average rate of 7 days per year.

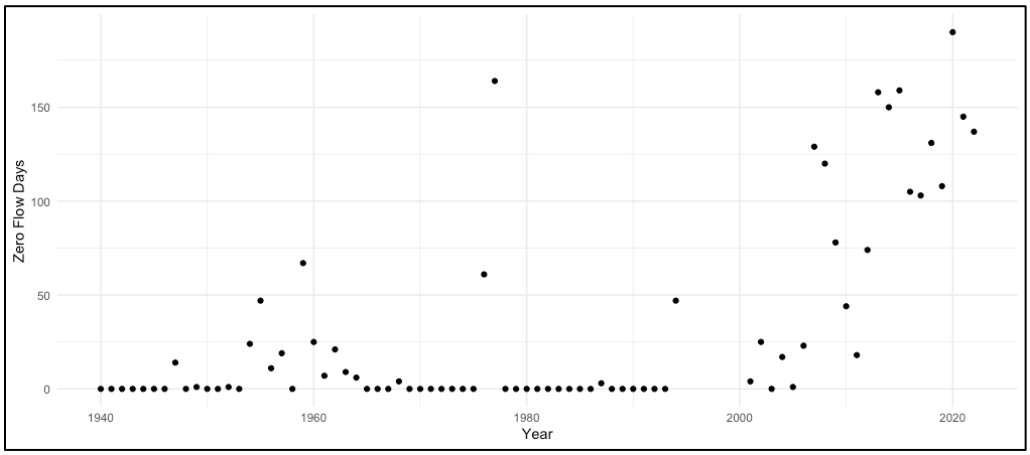

Figure 3. Annual, zero-flow days at the Napa River
near St. Helena (USGS Gauge Station # 11456000) between 1940 and 2022.

While recent drought is likely contributing to low-flow conditions, regional climate does not explain observed drying of the Napa River. **Figure** 4 is a record of total annual precipitation in the region since 1940:

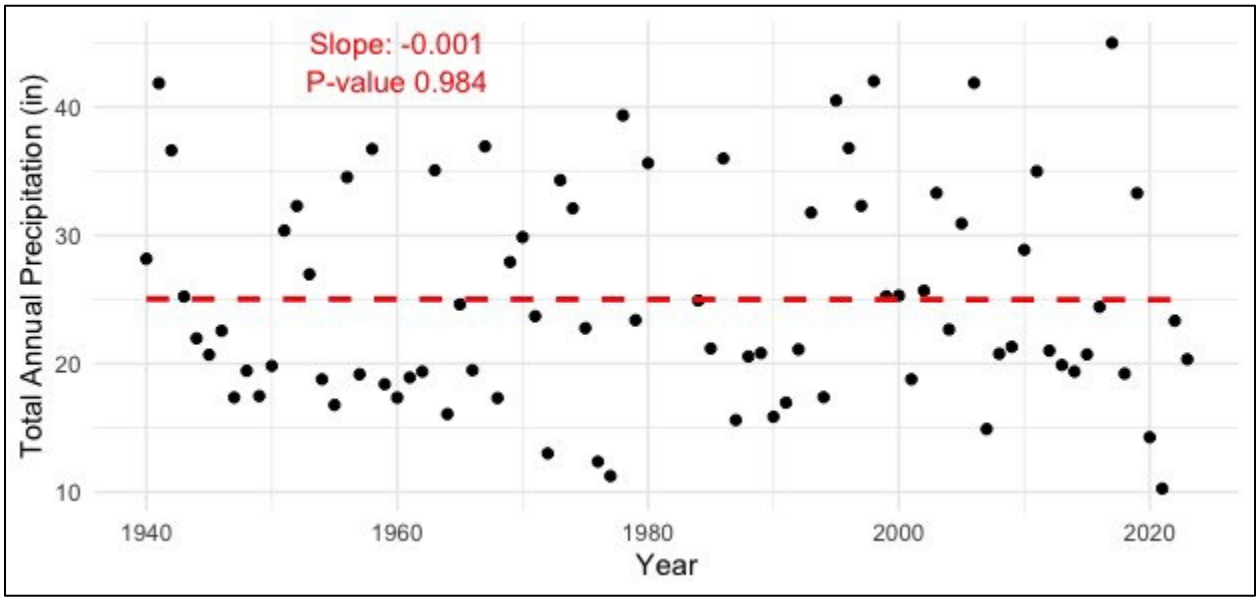

Figure 4. Total annual precipitation recorded in Napa Valley Between 1940 – 2022, measured at the Napa Fire Department station.
This chart sets annual precipitation by year with slope and p-value. If the p-value is less than 0.05 the slope can be interpreted as a statistically significant trend. Here the relationship is not statistically significant and there is no trend in the data (i.e. over the study period precipitation is unchanged).

Unlike Napa River streamflow, there is not a significant trend in precipitation. Total precipitation is highly variable over the period record, but is not decreasing. Prior to 2000, Napa River low flows are positively correlated with annual precipitation. In wet years, minimum-7 days flows are higher and there are fewer zero flow days than in dry years. But after 2000, streamflow is decoupled from precipitation: despite the fact that the region has experienced several wet years since 2000, minimum flows are consistently zero.

Conclusion

Collectively, these results suggest that water withdrawals at or near the streamflow gauge at Pope Street in St. Helena are dewatering the Napa River. The effects of these withdrawals on dry-season flows are evident around 2000 and appear to be increasing in magnitude since that time. This gauge is the closest historical record to the proposed Duckhorn project at Lodi Lane and the Napa River, and the proposed Hunter subdivision in the City of St. Helena.

Attachment E

Applicant's Witness List

HolmanTeague
real estate law • land use law • business law • climate change law

October 10, 2023

Laura Anderson
Napa County Counsel's Office
1195 Third Street
Napa, California 94559

Delivery via email to: Laura.Anderson@countyofnapa.org

RE: Applicants' Witness List - Appeals of the Planning Commission approval of the Duckhorn Vineyards Use Permit Modification Project (P19-00097-MOD)

Ms. Anderson:

Per the Chair's direction, Permittee Duckhorn Vineyards submits its list of anticipated witnesses, subject matter of witness testimony, and estimated duration of testimony:

Witness	Subject Matter	Estimated Duration
Rob Anglin	Overview, standard of review, responses to grounds of appeal	15-20 minutes
Dalene Whitlock (Traffic Engineer, W-Trans)	Traffic Impact Study	10-15 minutes
David Peterson CEG, CHg (Hydrogeologist and Engineering Geologist, Wagner & Bonsignor)	Tier 2 & 3 Water Availability Analysis	10-15 minutes
Zach Rasmussen (Duckhorn Executive Vice President – C.O.O.)	Background and need for project and winery's evolution over time	5-10 minutes

Permittee also will have George Monteverdi and Paul Bartelt, P.E. (Engineer, Bartelt Engineering) available to respond to questions from the Board.

Respectfully,

Rob Anglin

cc: Clerk of the Board
William McKinnon
Amy Minteer

Attachment F

Planning Commission adopted
Conditions of Approval

PLANNING COMMISSION HEARING MAY 3, 2023
CONDITIONS OF APPROVAL

DUCKHORN VINEYARDS WINERY MAJOR MODIFICATION
P19-00097-MOD
1000 LODI LANE, ST. HELENA, CA 94574
(APN 022-130-010, 022-100-033, -034, -035)

This permit encompasses and shall be limited to the project commonly known as **Duckhorn Vineyards Winery**, located at **1000 Lodi Lane**. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as "Reserved" and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses shall be limited to:

1.1 An Exception to the Napa County Road and Street Standards from a Left Turn Lane Warrant for east bound traffic on Lodi Lane entering the East Property driveway.

1.2 Approval to modify an existing 160,000 gallon per year winery, to allow the following:

a. Construction of a new 58,042 sq. ft. facility ('West Winery') on the West Property (APN 022-100-033) containing 54,722 sq. ft. of production space and 3,320 sq. ft. of office and accessory uses, a 90,000 gallon fire protection water tank, two 158,000 gallon irrigation storage water tanks, a 24,000 gallon domestic water tank, landscaping, driveways, and other winery improvements;

b. Construction of a 8,839 sq. ft. expansion to the existing Estate House on the East Property (APN 022-130-010) for a total floor space of 18,162 sq. ft. At build out the Estate House will consist of 17,810 sq. ft. of accessory space and 352 sq. ft. of production space;

c. Removal of the existing combined process and sanitary wastewater system on the East Property and the development of separate process and sanitary wastewater systems on both the East and West Properties connected through Directional Boring under the Napa River;
d. Increasing onsite parking spaces from 68 to 96;
e. Demolition of the existing Tank Shed, Chai's 1, 2, 3 & 4 on the East Property;
f. Demolition of a single-family residence (Red House), portions of the existing gravel driveway and other agricultural and single-family dwelling improvements on the West Property and APN 022-100-034;
g. Conversion and expansion of a 16,900 sq. ft. agricultural pond on the West Property to a 20,300 sq. ft. bio-retention pond;
h. Removal of approximately 3.55 acres of vineyard on the West Property;
i. Removal of approximately 49 trees;
j. Increase in maximum annual permitted wine production from 160,000 gallons to 300,000 gallons;
k. Visitation and tours and tastings as set forth in Conditions of Approval (COAs) Nos. 4.1 through 4.2 below;
l. Marketing as set forth in Conditions of Approval Nos. 4.1 and 4.3 below; and
m. Temporary relocation of approved hospitality activities (Tours and Tastings, Marketing Events, AB 2004 on-premise consumption) in and around the Estate House to the 2,067 sq. ft. of ground floor accessory space and adjacent outdoor areas of the proposed West Winery during the expansion of the Estate House. Hospitality activities to return to the Estate House and East Property upon approval of a Final Certificate of Occupancy for the Estate House.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or change in winery use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution

of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a $500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS

Consistent with the County Code, tours and tastings and marketing may occur at a winery only where such activities are accessory and "clearly incidental, related, and subordinate to the primary operation of the winery as a production facility."

Tours and tastings (defined below) may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant.

Retail sales of wine shall be permitted as set forth in the County Code.

4.2 TOURS AND TASTINGS/VISITATION

Tours and tastings shall be by appointment only and shall be limited to the following:

a. Frequency: 7 days per week, Monday through Sunday
b. Maximum number of persons per day: 219
c. Maximum number of persons per week: 1,533
d. Hours of visitation: 10:00 A.M. to 4:00 P.M.
e. Voluntary abandonment of pre-WDO Public Tours and Tastings entitlement of 50 visitors per week and 30 on the busiest day.

"Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings. To the maximum extent feasible, scheduling of visitors shall not occur during peak travel times 4:00 P.M. to 6:00 P.M.

A log book (or similar record) shall be maintained to document the number of visitors to the winery (for either tours and tastings or marketing events), and the dates of the visits. This record of visitors shall be made available to the Planning, Building and Environmental Services (PBES) Department upon request.

4.3 MARKETING

Marketing events shall be limited to the following:

a. **Private Tours and Tastings (A)**
   1. Frequency: 120 times per year
   2. Maximum number of persons: 20
   3. Time of Day: 10:00 A.M. to 11:00 P.M. with quiet cleanup till 12:00 A.M.

b. **Private Tours and Tastings (B)**
   1. Frequency: 80 times per year
   2. Maximum number of persons: 20
   3. Time of Day: 10:00 A.M. to 10:00 P.M. with quiet cleanup till 11:00 P.M.

c. **Wine with Food Pairings (A)**
   1. Frequency: 36 times per year
   2. Maximum number of persons: 25
   3. Time of Day: 10:00 A.M. to 11:00 P.M. with quiet cleanup till 12:00 A.M.

d. **Wine with Food Pairings (B)**
   1. Frequency: 4 times per year
   2. Maximum number of persons: 25
   3. Time of Day: 10:00 A.M. to 10:00 P.M. with quiet cleanup till 11:00 P.M.

e. **Medium Events**
   1. Frequency: 40 times per year
   2. Maximum number of persons: 60
   3. Time of Day: 10:00 A.M. to 10:00 P.M. with quiet cleanup till 11:00 P.M.

f. **Large Events**
   1. Frequency: 3 times per year
   2. Maximum number of persons: 400
   3. Time of Day: 10:00 A.M. to 10:00 P.M. with quiet cleanup till 11:00 P.M.

g. **Auction-related Event**
   1. Frequency: 1 time per year
   2. Maximum number of persons: 250

3. Time of Day: 10:00 A.M. to 11:00 P.M. with quiet cleanup till 12:00 A.M.

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to the County Code. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery's Use Permit. To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of cost recovery, and any business content unrelated to wine must be limited.

Careful consideration shall be given to the intent of the event, the proportion of the business event's non-wine-related content, and the intensity of the overall marketing plan (County Code).

All expanded marketing event activity, excluding quiet clean-up, shall cease by 10:00 P.M. If any event is held which will exceed the available on-site parking, the permittee shall prepare an event-specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

Auction Napa Valley (ANV) events need not be included in a participating winery's marketing plan because they are covered by ANV's Category 5 Temporary Permit. The winery may utilize any ANV event authorized in this permit for another charitable event of similar size.

4.4 ON-PREMISES CONSUMPTION

In accordance with State law and the PBES Director's July 17, 2008 memo, "Assembly Bill 2004 (Evans) & the Sale of Wine for Consumption On-Premises," on-premises consumption of wine produced on-site and purchased from the winery may occur solely in the Estate House Porch and Landscape Gardens west of the Estate House. On-Premise consumption may also occur temporarily within 2,067 sq. ft. of the ground floor accessory space and adjacent outdoor areas of the 'West Winery' facility during expansion of the Estate House. Any and all visitation associated with on-premises consumption shall be subject to the maximum per person weekday and weekend daily tours and tastings visitation limitation and/or applicable limitations of permittee's marketing plan set forth in COA Nos. 4.2 and 4.3 above.

4.5 RESIDENCE OR NON-WINERY STRUCTURES [RESERVED]

4.6 GRAPE SOURCE

At least 75% of the grapes used to make the winery's still wine or the still wine used by the winery to make sparkling wine shall be grown within Napa County provided that 50,000 gallons of the winery's production is not subject to the County's 75% grape source rule. However, if the winery expands beyond its winery development area, at least 75% of the grapes used to make the winery's still wine or sparkling wine that is produced as a result of the expansion shall be grown within Napa County. The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the annual production is from Napa County grapes. The report shall recognize the Agriculture Commission's format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the PBES Department upon request, but shall be considered proprietary information and not available to the public.

4.7 COMPLIANCE REVIEW

Permittee shall obtain and maintain all permits (use permits and modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) Grape Crush Inquiry data, all of which are required to produce and sell wine. In the event the required ABC and/or TTB permits and/or licenses are suspended or revoked, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are reinstated.

Visitation log books, visitor reports, custom crush client records, and any additional documentation determined by Staff to be necessary to evaluate compliance may be requested by the County for any code compliance. The permittee (and their successors) shall be required to participate fully in the winery code compliance review process.

4.8 RENTAL/LEASING

No winery facilities, or portions thereof, including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons producing and/or storing wine at the winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this Permit or pursuant to the Temporary Events Ordinance (County Code Chapter 5.36).

4.9 GROUND WATER MANAGEMENT – WELLS [RESERVED]

4.10 AMPLIFIED MUSIC

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

4.11 TRAFFIC

To the maximum extent feasible, scheduling of reoccurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times (4:00pm – 6:00pm). All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

4.12 PARKING

The location of visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and approved marketing events. In no case shall parking impede emergency vehicle access or public roads.

4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES

Please contact the Building Division with any questions regarding the following:

In accordance with the California Building Code (CBC), no change shall be made in the use of occupancy of an existing building unless the building is made to comply with the requirements of the current CBC for a new building.

4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES

Please contact the Fire Department with any questions regarding the following:

The permittee and/or designee shall obtain a tent permit from the Fire Department for any temporary structures utilized for authorized marketing events allowed per COA No. 4.3 above.

4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM

The installation, operation and maintenance of the bio-retention pond shall be in conformance with the Napa County Mosquito Abatement District's program for eliminating mosquito sources and managing mosquito-breeding areas in order to reduce mosquitoes to a tolerable and healthful level.

4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS

a. All lighting shall be permanently maintained in accordance with the lighting and building plans approved by the County. Lighting utilized during harvest activities is exempt from this requirement.

b. All landscaping and outdoor screening, storage, and utility structures shall be permanently maintained in accordance with the landscaping and building plans approved by the County. No stored items shall exceed the height of the screening. Exterior winery equipment shall be maintained so as to not create a noise disturbance or exceed noise thresholds in the County Code.

c. The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.

d. Designated trash enclosure areas shall be made available and properly maintained for intended use.

4.17 NO TEMPORARY SIGNS

Temporary off-site signage, such as "A-Frame" signs, is prohibited.

4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

a. Engineering Services Division operational conditions as stated in their Memorandum dated May 6, 2021.

b. Environmental Health Division operational conditions as stated in their Memorandum dated November 10, 2021.

c. Department of Public Works operational conditions as stated in their Memorandum dated July 22, 2021.

d. Fire Department operational conditions as stated in their Inter-Office Memo dated September 17, 2020.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES [RESERVED]

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT [RESERVED]

a. The permittee shall not increases production levels, tours and tastings, marketing events or allow on-premise consumption activities in conformity with AB 2004 (Evans Bill), as described in COA Nos. 1.1.a and 4.2 and 4.3 herein, prior to completion of the Lodi Lane roadway asphalt resurfacing, improvements and restriping enumerated in COA No. 9.5 as well as the

proposed onsite wastewater treatment systems. The applicant will provide copies of their completed encroachment and environmental health permits to the PBES Planning Division prior to commencement of the above mentioned activities.

b. Groundwater Management - The parcel shall be limited to 14 acre-feet of groundwater per year for all water consuming activities (utilizing wells) on the parcels comprising the winery. A Groundwater Demand Management Program shall be developed and implemented for the property as outlined in COA 6.15(a) below.

In the event that changed circumstances or significant new information provide substantial evidence that the groundwater system referenced in the Use Permit would significantly affect the groundwater basin, the PBES Director shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the County Code and to protect public health, safety, and welfare.

4.21 PREVIOUS CONDITIONS

The permittee shall comply with the following previous conditions of approval for the winery use as consolidated into the attached document as Exhibit A. To the extent there is a conflict between a previous condition of approval identified in the attached document and these conditions, the more stringent condition shall control.

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. The permittee shall comply

with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies at the time of submittal and may be subject to change. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

a. Engineering Services Division plan review/construction/ preoccupancy conditions as stated in their Memorandum dated May 6, 2021.

b. Environmental Health Division plan review/construction/ preoccupancy conditions as stated in their Memorandum dated November 10, 2021.

c. Department of Public Works plan review/construction/ preoccupancy conditions as stated in their Memorandum dated July 22, 2021.

d. Fire Department plan review/construction/ preoccupancy conditions as stated in their Inter-Office Memo dated September 17, 2020.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the permit.

6.2 BUILDING DIVISION – GENERAL CONDITIONS

a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.

b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a "J" number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.

c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL

a. Two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the CBC.

b. All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations; on timers; and shall incorporate the use of motion detection sensors to the greatest extent practical. All lighting shall be shielded or placed such that it does not shine directly on adjacent properties or impact vehicles on adjacent streets. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Lighting utilized during harvest activities is exempt from this requirement.

6.4 LANDSCAPING – PLAN SUBMITTAL

a. Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the building permit application package for the Planning Division's review and approval prior to the issuance of any building permit associated with this Use Permit. The plan shall be prepared pursuant to the County's Water Efficient Landscape Ordinance (Chapter 18.118 of the County Code) requirements in effect at the time of building permit application submittal, as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.

b. Plant materials shall be purchased locally when practical, and to the greatest extent possible, the plant materials shall be the same native plants found in Napa County. The Agricultural Commissioner's office shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.

c. No trees greater than 6" diameter at breast height shall be removed, except for those identified on the submitted site plan. Any Oak trees removed as a result of the project shall be replaced at a 2:1 ratio and shown on the landscaping plans for the Planning Division's review and approval. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.

d. Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and any off-site residence from which these areas can be viewed.

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.

b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING

All project site addresses shall be determined by the PBES Director, and be reviewed and approved by the United States Post Office. The PBES Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of l numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

6.9 HISTORIC RESOURCES

All permitted work performed on any historic resources shall follow the latest edition of the Secretary of the Interior's Standards for Historic Preservation and Guidelines for Treatment of Historic Properties (Standards). Written verification that such work meets the Standards shall be submitted by a qualified historic architect for review and approval by the PBES Department prior to issuance of any grading or building permit.

6.10 DEMOLITION ACTIVITIES

a. Final demolition plans of the single-family residence shall be submitted for building permit issuance. A site plan prepared by a qualified professional shall denote streams, stream setbacks, existing and proposed improvements and slopes. No new construction or earthmoving activities

are allowed within established stream setbacks unless specifically approved as part of this permit in COA No. 1.0 (Scope) above. As determined by the PBES Director or designee, temporary construction fencing shall be placed at the stream setback line to prevent unauthorized encroachments.

b. A landscape plan or restoration plan for the demolition area (existing residential and accessory structures) shall be submitted showing how the area will be restored to its natural vegetation state to the extent feasible. The landscape plan shall be approved by the PBES Director or designee prior to installation.

6.11 VIEWSHED – EXECUTION OF USE RESTRICTION [RESERVED]

6.12 PERMIT PREREQUISITE MITIGATION MEASURES

The permittee shall comply with the following permit prerequisite mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project:

a. **MM BIO-1; Northern Spotted Owl:** A qualified biologist shall conduct an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If breeding NSO are detected during surveys, a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and July 31 each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.

Method of Monitoring: Prior to issuance of the grading/building permits, a report by a qualified biologist shall be submitted to the Napa County Planning, Building & Environmental Services Department including the results of the three focused nesting spotted owl surveys. If an active nest was identified on site the report shall include nest buffers and monitoring.

Responsible Agency: PBES

b. **MM BIO-2; Raptors and Nesting Birds:** For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with potential to occur at the project site and experienced with conducting pre-construction nesting bird and raptor surveys) shall conduct pre-construction surveys for nesting birds and raptors, within all suitable habitat on the project site, and all suitable nesting habitat within 500 feet of the Project site. The preconstruction survey shall be conducted no earlier than seven (7) days prior to vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than seven (7) days from the survey date, or if there is a lapse in Project activities of seven (7) days or more during the nesting season surveys shall be repeated. A copy of the survey report shall be provided to the Napa County Planning Division and the CDFW prior to commencement of work.

   In the event that nesting birds are found, the qualified biologist shall determine adequate no-disturbance buffer distances from all active nests based on the species and in consultation with the County Planning Division and the U.S. Fish and Wildlife Service (USFWS) and/or CDFW prior to initiation of project activities.

   All active nests shall be monitored by a qualified biologist for the first week during Project activities to ensure the established buffer distances are adequate to avoid disturbances to the nest. If the qualified biologist observes bird behavior that may indicate nest disturbance, the qualified biologist shall have the authority to immediately cease Project activities. In this event, the qualified biologist shall consult with CDFW regarding larger buffer distances, and buffer zones shall be refenced accordingly, prior to resuming Project activities. If larger buffer distances cannot be established, Project activities shall be delayed until the nest is no longer active (i.e. the young have fledged the nest and can feed independently, or the nest fails due to natural causes), as determined by a qualified biologist.

   Exclusion buffers shall be fenced with temporary construction fencing (or the like), the installation of which shall be verified by Napa County Planning Division prior to the commencement of any earthmoving and/or

development activities. Exclusion buffers shall remain in effect until the young have fledged or nest(s) are otherwise determined inactive by a qualified biologist.

Alternative methods aimed at flushing out nesting birds prior to pre-construction surveys, whether physical (i.e., removing or disturbing nests by physically disturbing trees with construction equipment), audible (i.e., utilizing sirens or bird cannons), or chemical (i.e., spraying nesting birds or their habitats) would be considered an impact to nesting birds and is prohibited. Any act associated with flushing birds from project areas should undergo consultation with the Napa County Planning Division, USFWS and/or CDFW prior to any activity that could disturb nesting birds.

Method of Monitoring: If construction/earthmoving activity is to occur between February 1 and August 31 the survey prepared by a qualified biologist shall be submitted to Planning Division staff prior to issuance of the grading/building permits.

Responsible Agency: PBES

c. **MM BIO-3; Lake or Streambed Alteration Agreement:** The applicant shall submit a Notification of Lake or Streambed Alteration with the California Department of Fish and Wildlife for the horizontal directional drilling and installation of utility lines under the Napa River. Issuance of a Streambed Alteration Agreement or demonstration that CDFW determined that the agreement was unnecessary shall be provided to the Planning, Building & Environmental Services department prior to issuance of building permits associated with the drilling.

Method of Monitoring: A Streambed Alteration Agreement or other notification from CDFW determining the permit is unnecessary for this project will be submitted prior to the issuance of permits associate with the installation of utility lines under the Napa River.

Responsible Agency: PBES

d. **MM CUL-1; Archeological Testing:** Prior any earthmoving activities, the permittee shall retain an archeologist to perform further archeological testing on the areas of development to determine whether the sites are eligible for listing in the California Registry of Historic Resources or whether they meet the definition of a “unique archeological resource” as defined in Public Resource Code 21083.2. Standard archeological testing procedures (i.e. auger excavation, test units, mechanical trenching) shall be utilized to define the nature and extent of the potential resource, as well as obsidian hydration analysis to establish chronology. A geoarchaeological study shall be prepared to develop soil profiles and investigate stratigraphy within the excavation areas to define and distinguish disturbed and intact soils and interpret soil development and

past disturbances. At the conclusion of the geoarchaeological study a report shall be prepared and submitted to the County, by a professional who meets the Secretary of the Interior's professional qualification standards demonstrating that the testing and geoarchaeological study have been conducted to sufficient standards and whether the sites are eligible for listing on the California Registry of Historic Resources or meets the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. The applicant shall comply with all recommendations from the report.

Method of Monitoring: Prior to issuance of any grading, demolition or building permits pursuant to this approval a report shall be prepared, by a professional who meets the Secretary of the Interior's professional qualification standards, demonstrating that the testing and geoarchaeological study described under MM CUL-1 have been conducted to sufficient standards and whether the sites are eligible for listing on the California Registry of Historic Resources or meets the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. In the event that the sites are found to be eligible for listing on the California Registry of Historic Resources or if they would meet the definition of a "unique archeological resource", the report will also outline the steps the County must take to consider potential adverse impacts under Public Resource Code 21084.1 and 21083.2(i) or the treatment of a "unique archeological resource" under the provisions of Public Resource Code 21083.2.

Responsible Agency: PBES

e. **MM CUL-2; Archeological Monitoring:** The permittee shall retain a professional, who meets the Secretary of the Interior's professional qualification standards, who shall be onsite to conduct archaeological monitoring during project related ground disturbing activities. Monitoring procedures shall proceed as follows:

- Monitoring shall involve the observation of ground-disturbing activities in areas that have the potential to contain artifacts or subsurface archaeological features, as well as the inspection of excavation spoils to verify the presence or absence of artifacts. At times, grading of fill soil taken from a known sensitive area will be monitored as well. Monitoring shall occur during the entire work day, and daily while ground-disturbing activities are taking place in culturally sensitive areas.

- During monitoring, if the archaeologist observes artifacts or potential archaeological features, the equipment and/or personnel that encountered the archaeological material will be stopped so that the archaeological monitor can inspect the area and associated soils to determine the presence or absence and potential significance of the archaeological materials encountered.

- When artifacts or subsurface archaeological features are encountered, archaeological materials shall be photographed and the location recorded. A field number shall be assigned to each artifact. Artifacts shall be placed in labeled bags that fully protect them from damage. Work will be allowed to resume once the archaeological monitor removes the artifact(s) and determines that further artifacts or an archaeological feature are not present.

- Equipment stoppages will only involve the equipment that encountered archaeological material. During temporary equipment stoppages, the archaeologist will efficiently accomplish all necessary tasks so that work can continue.

- A Daily Monitoring Record form shall be completed for each day that archaeological monitoring occurs. The form shall be used to record daily monitoring activities, such as construction personnel, procedures and equipment, dimensions of excavated areas, soil description and stratigraphy, and cultural material observed. Photographs will also be taken throughout monitoring.

Method of Monitoring: Prior to issuance of any grading, demolition or building permits pursuant to this approval the applicant will provide to the Planning, Building & Environmental Services division the contact information for the archaeologist conducting onsite monitoring of project related ground disturbing activities. Archaeological monitoring shall continue until such time that the archaeologist determines that further ground disturbing activities will not adversely impact potentially significant archaeological resources. The Planning, Building & Environmental Services division shall be contacted at the conclusion of monitoring activities.

Responsible Agency: PBES

f. **MM BIO-4; Bat Habitat Assessment and Surveys:** Prior to Project activities, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked.

Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a Qualified Biologist conducts night emergence surveys or completes

visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a Qualified Biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

If roosting bats are detected in anthropogenic structures that will be impacted by Project activities, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.

Method of Monitoring: 30 to 60 days prior to issuance of the grading or demolition permits, a bat habitat assessment, prepared by a qualified biologist, shall be submitted to the Napa County Planning, Building & Environmental Services Department documenting potential roosting habitat. If roosting habitat is documented in trees identified for removal than removal using the two-step removal process shall only take place during the seasonal periods of bat activity between March 1 through April 15 and September 1 through October 15 or subsequent to a qualified biologist conducting night emergence surveys or visual examinations that establish absence of roosting bats.

If the bat habitat assessment documents roosting habitat in anthropogenic structures impacted by project activities a bat avoidance and exclusion plan shall be implemented and CDFW shall be consulted.

Responsible Agency: PBES

g. **MM BIO-5; Special-Status Species Survey:** A qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of special-status species, including, but not limited to, western pond turtle, foothill yellow-legged frog, and California giant salamander. If any special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted with regarding avoidance and minimization measures to avoid and minimize impacts to special-status species. Permittee shall implement the avoidance and minimization measures if required by CDFW.

Method of Monitoring: 48 hours prior to issuance of the grading permits the results of the pre-construction survey conducted by a qualified biologist shall be

submitted to the Napa County Planning, Building & Environmental Services Department.

Responsible Agency: PBES

h. **MM BIO-6; Foothill Yellow-Legged Frog Surveys:** A qualified biologist shall provide a foothill yellow-legged frog survey methodology for CDFW review and written approval at least 30 days prior to conducting Project activities, unless otherwise approved in writing by CDFW. Project activities shall not begin until foothill yellow-legged frog surveys have been completed using a methodology approved by CDFW. Survey methodology shall target all life stages and shall include carefully searching under rocks, within vegetation such as sedges and other clumped vegetation, under undercut banks, and in any area with persistent moisture no less than 50 feet from both sides of the streambed, where appropriate, and at least 500 feet upstream and downstream of the Project area. Surveys should be conducted at different times of day and under variable weather conditions, if possible. Surveys should avoid windy days (15 miles per hour or greater), as ripples in the water make it more challenging to detect frogs. A final survey shall be conducted within 24 hours prior to starting Project activities.

   Prior to starting Project activities, a qualified biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology. The results of the surveys shall be submitted to and approved in writing by CDFW prior to starting Project activities. The Permittee shall install exclusionary fencing and prepare and implement a foothill yellow-legged frog Habitat Improvement Plan if foothill yellow-legged frog or their eggs are found, if required and approved by CDFW and prior to starting Project activities.

   Survey methodology and surveys are not required if the stream is dry and there are no areas of persistent summer moisture present in or within 500 feet upstream and downstream of the Project area.

Method of Monitoring: 30 days prior to grading permit issuance a foothill yellow-legged frog survey shall be provided to CDFW for review and written approval. The results of all surveys shall be submitted to the Planning, Building & Environmental Services Department prior to issuance of a grading permit.

Responsible Agency: PBES, CDFW

i. **MM BIO-7; Western Pond Turtle Surveys:** No more than two weeks prior to the commencement of ground-disturbing activities, a qualified biologist shall perform surveys for western pond turtles and their nests within aquatic and upland habitat at the Project site, unless otherwise approved in writing by CDFW. An additional survey shall occur no more than 48 hours prior to Project activities. If a pond turtle or nest site is detected at

any time, CDFW shall be notified immediately. Survey results shall be submitted to CDFW prior to construction activities. All western pond turtles observed on-site shall be avoided and allowed to leave the Project activity area of their own volition or shall be relocated, by a qualified biologist, to appropriate habitat within the same stream the individual was found. Any turtle nest sites shall be avoided with an appropriate buffer identified by a qualified biologist and accepted in writing by CDFW. The Permittee shall prepare and implement a Western Pond Turtle Habitat Improvement Plan, if western pond turtles or their nests are found, if required and approved by CDFW.

Method of Monitoring: 2 weeks prior to issuance of grading permits a qualified biologist will begin western pond turtle surveys. No less than 48 hours prior to issuance of a grading permit the results of the surveys will be provided to CDFW and the Planning, Building & Environmental Services Department. If Western Pond Turtle or their nest are identified CDFW will be consulted.

Responsible Agency: PBES, CDFW

j. **MM BIO-8; Pre-Project Special-Status Plant Surveys:** A qualified biologist shall conduct a habitat assessment for special-status plants on and adjacent to the Project site, and if habitat is present, shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur, prior to the start of Project construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants). The habitat assessment and survey results must be accepted by CDFW in writing prior to Project construction. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts cannot be avoided, the Project shall mitigate impacts at a minimum 3:1 mitigation to impact ratio through compensatory habitat, restoration, monitoring, and maintenance, or a combination thereof, following a plan approved in writing by CDFW. The plan may include preparing, funding, and implementing a long-term management plan in perpetuity.

Method of Monitoring: Prior to issuance of grading permits the project applicant will provide to the Planning, Building and Environmental Services Department confirmation of CDFW's approval of the habitat assessment and survey results.

Responsible Agency: PBES, CDFW

k. **MM BIO-9; Valley Oak Riparian Forest Restoration and Preservation:** A qualified biologist shall evaluate if Valley Oak Riparian Forest will be

impacted by the Project and the evaluation must be approved in writing by CDFW prior to Project construction. Any permanently impacted Valley Oak Riparian Forest shall be mitigated through restoration of this habitat type at a minimum 3:1 mitigation to impact ratio for acreage impacted. Restoration shall occur on-site to the extent feasible. If off-site restoration is necessary, it shall be as close to the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration shall occur in the same year as the impacts. The restoration area shall be monitored for a minimum of five years until success criteria are met. Trees within the Valley Oak Riparian Forest will be removed shall be replaced at the following mitigation to impact ratios, unless otherwise approved in writing by CDFW:

Oak trees:
- 1:1 replacement for trees up to 3 inches diameter at breast height (DBH);
- 4:1 replacement for trees greater than 3 inches and up to 7 inches DBH;
- 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH; and
- 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks.

Non-oak trees:
- 1:1 replacement for non-native trees;
- 1:1 replacement for native trees up to 3 inches DBH;
- 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH; and
- 6:1 replacement for trees greater than 15 inches DBH.

Method of Monitoring: Prior to the issuance of grading permits the applicant will provide to the Planning, Building and Environmental Services Department confirmation of CDFW's review of the Valley Oak Riparian Forest impact evaluation and if impacts were identified the associated restoration plan review and approved by CDFW. Prior to issuance of a certificate of occupancy for the Estate House expansion evidence of any restored acreage will be provided to the Planning, Building & Environmental Services Department.

Responsible Agency: PBES, CDFW

6.13 PARCEL CHANGE REQUIREMENTS [RESERVED]

6.14 FINAL MAPS [RESERVED]

6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS

a. Groundwater Demand Management Program
   1. The permittee shall install a meter on each well serving the parcel. Each meter shall be placed in a location that will allow for the

measurement of all groundwater used on the project parcel. Prior to the issuance of a grading or building permit for the winery or expanding any operations as approved under this modification, the permittee shall submit for review and approval by the PBES Director a groundwater demand management plan which includes a plan for the location and the configuration of the installation of a meter on all wells serving the parcel.

2. The Plan shall identify how best available technology and best management water conservation practices will be applied throughout the parcel.

3. The Plan shall identify how best management water conservation practices will be applied where possible in the structures on site. This includes but is not limited to the installation of low flow fixtures and appliances.

4. As a groundwater consuming activity already exists on the property, meter installation and monitoring shall begin immediately and the first monitoring report is due to the County within 120 days of approval of this modification.

5. For the first twelve months of operation under this permit, the permittee shall read the meters at the beginning of each month and provide the data to the PBES Director monthly. If the water usage on the property exceeds, or is on track to exceed, 14.0 acre-feet per year, or if the permittee fails to report, additional reviews and analysis and/or a corrective action program at the permittee's expense shall be required and shall be submitted to the PBES Director for review and action.

6. The permittee's wells shall be included in the Napa County Groundwater Monitoring program if the County finds the well suitable.

7. At the completion of the reporting period per 6.15(a)(5) above, and so long as the water usage is within the maximum acre- feet per year as specified above, the permittee may begin the following meter reading schedule:

    i. On or near the first day of each month the permittee shall read the water meter, and provide the data to the PBES Director during the first weeks of April and October. The PBES Director, or the Director's designated representative, has the right to access and verify the operation and readings of the meters during regular business hours.

b. Oak trees planted in compliance with COA 6.4(C) will be native oak species.

7.0 PROJECT CONSTRUCTION

Permittee shall comply with the following during project construction:

7.1 SITE IMPROVEMENTS

Please contact Engineering Services with any questions regarding the following.

a. GRADING AND SPOILS

All grading and spoils generated by construction of the project facilities shall be managed per Engineering Services direction. Alternative locations for spoils are permitted, subject to review and approval by the PBES Director, when such alternative locations do not change the overall concept, and do not conflict with any environmental mitigation measures or conditions of approval.

b. DUST CONTROL

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.

c. AIR QUALITY

During all construction activities the permittee shall comply with the most current version of BAAQMD Basic Construction Best Management Practices including but not limited to the following, as applicable:

1. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The BAAQMD's phone number shall also be visible.

2. Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) two times per day.

3. Cover all haul trucks transporting soil, sand, or other loose material off-site.

4. Remove all visible mud or dirt traced onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

5. All vehicle speeds on unpaved roads shall be limited to 15 mph.

6. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

7. Idling times shall be minimized either by shutting off equipment when not in use or reducing the maximum idling time to five (5) minutes (as required by State Regulations). Clear signage shall be provided for construction workers at all access points.

8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. Any portable engines greater than 50 horsepower or associated equipment operated within the BAAQMD's jurisdiction shall have either a California Air Resources Board (ARB) registration Portable Equipment Registration Program (PERP) or a BAAQMD permit. For general information regarding the certified visible emissions evaluator or the registration program, visit the ARB FAQ http://www.arb.ca.gov/portable/perp/perpfact_04-16-15.pdf or the PERP website http://www.arb.ca.gov/portable/portable.htm.

d. STORM WATER CONTROL
The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the California Regional Water Quality Control Board.

7.2 ARCHEOLOGICAL FINDING
In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during project development, all work in the vicinity must be halted, and the Napa County Coroner informed, so that the Coroner can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the permittee shall comply with the requirements of Public Resources Code Section 5097.98.

7.3 CONSTRUCTION NOISE
Construction noise shall be minimized to the greatest extent practical and feasible under State and local safety laws, consistent with construction noise levels permitted by the General Plan Community Character Element and the County Noise Ordinance. Construction equipment muffling and hours of operation shall be in compliance with the County Code. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site, if at all practicable. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such

as on a neighboring road or at the base of a hill), such activities shall only occur daily between the hours of 8 am to 5 pm.

7.4 CONSTRUCTION MITIGATION MEASURES [RESERVED]

a. **MM CUL-2; Archaeological Monitoring:** The permittee shall retain a professional, who meets the Secretary of the Interior's professional qualification standards, who shall be onsite to conduct archaeological monitoring during project related ground disturbing activities. Monitoring procedures shall proceed as follows:

- Monitoring shall involve the observation of ground-disturbing activities in areas that have the potential to contain artifacts or subsurface archaeological features, as well as the inspection of excavation spoils to verify the presence or absence of artifacts. At times, grading of fill soil taken from a known sensitive area will be monitored as well. Monitoring shall occur during the entire work day, and daily while ground-disturbing activities are taking place in culturally sensitive areas.

- During monitoring, if the archaeologist observes artifacts or potential archaeological features, the equipment and/or personnel that encountered the archaeological material will be stopped so that the archaeological monitor can inspect the area and associated soils to determine the presence or absence and potential significance of the archaeological materials encountered.

- When artifacts or subsurface archaeological features are encountered, archaeological materials shall be photographed and the location recorded. A field number shall be assigned to each artifact. Artifacts shall be placed in labeled bags that fully protect them from damage. Work will be allowed to resume once the archaeological monitor removes the artifact(s) and determines that further artifacts or an archaeological feature are not present.

- Equipment stoppages will only involve the equipment that encountered archaeological material. During temporary equipment stoppages, the archaeologist will efficiently accomplish all necessary tasks so that work can continue.

- A Daily Monitoring Record form shall be completed for each day that archaeological monitoring occurs. The form shall be used to record daily monitoring activities, such as construction personnel, procedures and equipment, dimensions of excavated areas, soil description and stratigraphy, and cultural material observed. Photographs will also be taken throughout monitoring.

Method of Monitoring: Prior to issuance of any grading, demolition or building permits pursuant to this approval the applicant will provide to the Planning, Building & Environmental Services division the contact information for the archaeologist conducting onsite monitoring of project related ground disturbing activities. Archaeological monitoring shall continue until such time that the archaeologist determines that further ground disturbing activities will not adversely impact potentially significant archaeological resources. The Planning, Building & Environmental Services division shall be contacted at the conclusion of monitoring activities.

Responsible Agency: PBES

7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL [RESERVED]

8.0 TEMPORARY CERTIFICATE OF OCCUPANCY - PREREQUISITES

A Temporary Certificate of Occupancy (TCO) may be granted pursuant to the County Code to allow the commencement of production activities prior to completion of all project improvements. Permittee shall comply with the following before a TCO is granted:

8.1 TEMPORARY OCCUPANCY

All life and safety conditions shall be addressed prior to issuance of a TCO by the County Building Official. TCOs shall not be used for the occupancy of hospitality buildings and shall not exceed the maximum time allowed by the County Code which is 180 days. Departments and/or agencies with jurisdiction over the project are authorized as part of the TCO process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES

Permittee shall comply with the following before a Final Certificate of Occupancy is granted by the County Building Official, which upon granting, authorizes all use permit activities to commence.

9.1 FINAL OCCUPANCY

All project improvements, including compliance with applicable codes, conditions, and requirements of all Departments and Agencies with jurisdiction over the project, shall be completed.

9.2 SIGNS

Detailed plans, including elevations, materials, color, and lighting for any winery identification or directional signs shall be submitted to the Department for administrative review and approval prior to installation. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this permit approval. All signs shall meet the design standards as set forth in the County Code. At least one legible sign shall be placed at the property entrance with the words “Tours and Tasting by Prior Appointment Only” to inform the public of same. Any off-site signs allowed shall be in conformance with the County Code.

9.3 GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Fire Department to assure that the design allows large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at all times. If the gate is part of an entry structure an additional permit shall be required pursuant to the County Code and in accordance with the Napa County Roads and Street Standards. A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed, and approved as part of this permit approval.

9.4 LANDSCAPING

Landscaping shall be installed in accordance with the approved landscaping plan.

9.5 ROAD OR TRAFFIC IMPROVEMENT REQUIREMENTS

The permittee shall construct asphalt resurfacing of Lodi Lane from 20 feet east of the Napa River bridge to 20 feet west of the stop sign facing Silverado Trail, Improvements to the driveway access points from the Duckhorn Vineyards Winery property onto Lodi Lane and restriping of the improvements area to meet NCRSS design standards. The design of the roadway improvements shall be submitted to the Public Works Department for review and approval. The roadway improvements shall be designed in substantial conformance with the submitted site plan, and other submittal materials and shall comply with all requirements of the County Code and Napa County Road and Street Standards.

9.6 DEMOLITION ACTIVITIES

All demolition activities associated with the single-family residence shall be completed, landscaping installed, and debris cleared from the subject parcel.

9.7 GRADING SPOILS

All spoils shall be removed in accordance with the approved grading permit and/or building permit.

9.8 MITIGATION MEASURES APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY

a. **MM BIO-9; Valley Oak Riparian Forest Restoration and Preservation:** A qualified biologist shall evaluate if Valley Oak Riparian Forest will be impacted by the Project and the evaluation must be approved in writing by CDFW prior to Project construction. Any permanently impacted Valley Oak Riparian Forest shall be mitigated through restoration of this habitat type at a minimum 3:1 mitigation to impact ratio for acreage impacted. Restoration shall occur on-site to the extent feasible. If off-site restoration is necessary, it shall be as close to the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration shall occur in the same year as the impacts. The restoration area shall be monitored for a minimum of five years until success criteria are met. Trees

within the Valley Oak Riparian Forest will be removed shall be replaced at the following mitigation to impact ratios, unless otherwise approved in writing by CDFW:

Oak trees:
- 1:1 replacement for trees up to 3 inches diameter at breast height (DBH);
- 4:1 replacement for trees greater than 3 inches and up to 7 inches DBH;
- 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH; and
- 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks.

Non-oak trees:
- 1:1 replacement for non-native trees;
- 1:1 replacement for native trees up to 3 inches DBH;
- 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH; and
- 6:1 replacement for trees greater than 15 inches DBH.

Method of Monitoring: Prior to the issuance of grading permits the applicant will provide to the Planning, Building and Environmental Services Department confirmation of CDFW's review of the Valley Oak Riparian Forest impact evaluation and if impacts were identified the associated restoration plan review and approved by CDFW. Prior to issuance of a certificate of occupancy for the Estate House expansion evidence of any restored acreage will be provided to the Planning, Building & Environmental Services Department.

Responsible Agency: PBES, CDFW

9.9 OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIIFICATE OF OCCUPANCY

a. The Permittee will install directional signage at the driveway exits of the West and East properties directing vehicle traffic traveling south to utilize Silverado Trail and vehicle traffic traveling north to utilize State Route 29.

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Planning, Building & Environmental Services

1195 Third Street, Suite 210
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www.countyofnapa.org

David Morrison
Director

MEMORANDUM

To:	Trevor Hawkes, Planning	From:	Daniel Hornett, Engineering
Date:	May 6, 2021	Re:	P19-00097 Duckhorn APN: 022-130-010 & 022-100-033

The Engineering Division has reviewed the use permit application P19-00097 for the Winery located on assessor's parcel numbers 022-130-010 and 022-100-033. Based upon the information provided in the application, Engineering finds the application **complete** and recommends the following conditions of approval:

EXISTING CONDITIONS

1. The Existing Parcel is in a designated 100-year FEMA Flood Zone and Regulatory Floodway

RECOMMENDED APPROVAL CONDITIONS:

OPERATIONAL CHARACTERISTICS

1. The facility is designated as a discharger that discharges stormwater associated with industrial activity to waters of the United States. Therefore, the facility shall maintain or apply for coverage under the State Water Resources Control Board's Industrial General Permit (IGP), including meeting all applicable provision and protocols of the IGP. If the facility fails to meet the discharge prohibitions of the IGP, Napa County may require the facility to make the necessary improvements to eliminate all exposures to stormwater of the pollutant(s) for which the water body is impaired.

PREREQUISITES FOR ISSUANCE OF PERMITS

2. Any roadway, access driveway, and parking areas, proposed new or reconstructed shall meet the requirements as outlined in the latest edition of the Napa County Road & Street Standards for Commercial development at the time of use permit approval. The property owner shall obtain a grading permit for all proposed roadway improvements.

3. All on site civil improvements including but not limited to the excavation, fill, general grading, drainage, curb, gutter, surface drainage, storm drainage, parking and drive isles, shall be constructed according to plans prepared by a registered civil engineer, which will be reviewed and approved by the Engineering Division of the Napa County Planning, Building, and

Environmental Services Department (PBES) **prior to the commencement** of any on site land preparation or construction. Plans shall be wet signed and submitted with the building and/or grading permit documents at the time of permit application. A plan check fee will apply.

4. Grading and drainage improvements shall be constructed according to the current Napa County Road and Street Standards, Chapter 16.28 of the Napa County Code, and Appendix J of the California Building Code.

5. **Prior to issuance of a building permit** the owner shall submit the necessary documents for Erosion Control as determined by the area of disturbance of the proposed development in accordance with the Napa Countywide Stormwater Pollution Prevention program Erosion and Sediment Control Plan Guidance for Applicant and Review Staff dated December 2014.

6. **Prior to issuance of a building permit** the owner shall prepare a Regulated Project Stormwater Control Plan (SCP) in accordance with the latest edition of the BASMAA Post-Construction Manual for review and approval by the Engineering Division in PBES.

7. **Prior to issuance of a building permit**, an Operation and Maintenance Plan shall be submitted and tentatively approved by the Engineering Division in PBES. **Before final occupancy** the property owner must legally record the "Operation and Maintenance Agreement", approved by the Engineering Division in PBES.

8. No person shall deposit or remove any material, excavate, construct, install, alter or remove any structure within, upon or across a Special Flood Hazard Area, nor otherwise alter the hydraulic characteristics of a Special Flood Hazard Area **without first obtaining a floodplain permit** pursuant to Chapter 16.04 of the Napa County Code and in conformance with county Code and 44 CFR Section 60.3.

9. **Prior to issuance of a building, grading permit, or floodplain management permit** the floodproofing plan for the Estate House building must re-certified by a professional engineer to provide evidence and assurance that new construction is adequately protected from flood damage and no alterations, proposed or otherwise, have compromised the water tightness of the building envelope and that staff and operators are properly trained to administer the floodproofing plan and procedures in the event of an emergency. The recertification shall include:

   a) Written verification that the building envelope is watertight;
   b) Written certification that the Engineer of Record's design and construction are in accordance with American Society of Civil Engineers ASCE 24-05 requirements to meet FEMA criteria;
   c) A comprehensive Maintenance Plan for the entire structure including the materials used for floodproofing, shields, gates, etc.;
   d) An Emergency Action Plan for the installation of flood shields and other measures;
   e) Written certification that all components and systems when installed meet the requirements of ASCE 24-05;
   f) Documentation or certification from the Authority Having Jurisdiction (permitting official) that they have reviewed and inspected the structure with all floodproofing measures in place and provide evidence of approved final inspection and certificate of occupancy.

10. **Prior to issuance of a building, grading permit, or floodplain management permit** for construction in the regulatory floodway, the owner shall submit a complete application for a floodplain management permit. A complete submittal shall include, but is not limited to:

    a) A detailed cost estimate of the proposed improvements or alterations;
    b) A list of any prior improvements to the structure that occurred within the a ten (10) year period dating back from the time of the floodplain permit application and their associated costs;
    c) A complete list of the historical and current valuations of the structure only, not including land values.
    d) Floodproofing plan
    e) Floodproofing operations and maintenance plan
    f) Hydraulic study
    g) No-rise certification

PREREQUISITES DURING PROJECT CONSTRUCTION

11. Required on-site pre-construction meeting with the Napa County PBES Engineering Division **prior to start of construction.**

PREREQUISITES FOR TEMPORARY CERTIFICATE OF OCCUPANCY

12. All roadway improvements shall be completed **prior to execution** of any new entitlements approved under this Use Permit Modification. **** If no temporary occupancy is requested, then this becomes a requirement prior to final occupancy.**

13. Completed Elevation certificate (FEMA Form 086-0-33) shall be submitted and approved by the Engineering Division **prior to execution** of any new entitlements.

14. Completed Floodproofing Certificate for Non-Residential Structures (FEMA Form 086-0-34) shall be submitted and approved by the Engineering Division **prior to execution** of any new entitlements.

PREREQUISITES FOR FINAL CERTIFICATION OF OCCUPANCY

15. Operations and Maintenance Agreement for post construction Stormwater facilities must be legally recorded.

16. Site shall be completely stabilized to the satisfaction of the County Engineer prior to Final Occupancy.

Any changes in use may necessitate additional conditions for approval.

If you have any questions regarding the above items, please contact Daniel Hornett from Napa County Planning, Building, and Environmental Services Department, Engineering Division, at (707)299-1358 or by email at Daniel.Hornett@countyofnapa.org

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Planning, Building & Environmental Services

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David Morrison
Director

MEMORANDUM

To:	Trevor Hawkes, Project Planner	From:	Kim Withrow, Environmental Health Supervisor
Date:	November 10, 2021	Re:	Duckhorn Vineyards Winery APN: 022-130-010 SFAP w/ 022-100-033 Project #: P19-00097

This Division has reviewed an application requesting approval to increase production, construct a new winery building, increase visitation, and construct a new wastewater system among other items as described and depicted in application materials. This Division has no objection to approval of the application with the following conditions of approval:

Prior to building permit issuance:

1. The water supply and related components must continue to comply with the California Safe Drinking Water Act and Related Laws. Expansion of the facility will require plan review and approval prior to approval of building permits. The technical report must be completed by a licensed engineer with experience in designing water systems. Prior to occupancy, an amended domestic water supply permit must be obtained from this Division. The applicant must comply with all required monitoring and reporting and all water supply permit conditions.

2. Complete plans and specifications for any food preparation, service area(s), storage area(s) and the employee restrooms must be submitted for review and approval by this Division prior to issuance of any building permits for said areas. An annual food permit will be required.

3. Plans for the proposed alternative sewage treatment system(s) shall be designed by a licensed Civil Engineer or Registered Environmental Health Specialist and be accompanied by complete design criteria based upon local conditions. No building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system(s) will be approved until such plans are approved by this Division.

Process water discharges to land must comply with the State Water Resources Control Board General Waste Discharge Requirements for Winery Process Water. The permitting process in place at the time the application is submitted must be followed. Currently enrollment under the order would be processed by the Regional Water Quality Control Board.

4. A permit to construct the proposed alternative sewage treatment system(s) must be secured from this Division prior to approval of a building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system(s).

5. Temporary tasting facilities shall be connected to utilities (small public water system and wastewater system) with approved materials. Temporary facilities must be constructed and operated in accordance with the California Food Facilities Law (CalCode) and the California Safe Drinking Water Act and Related Laws.

Upon final occupancy and thereafter:

6. Some proposed food service will be catered; therefore, catered food must be prepared and served by a Napa County permitted caterer. If the caterer selected does not possess a valid Napa County Permit to operate, refer the business to this Division for assistance in obtaining the required permit prior to providing any food service.

7. The applicant shall provide portable toilet facilities for guest use during events of more than 250 persons as indicated in the septic feasibility report/use permit application. The portable toilet facilities must be pumped by a Napa County permitted pumping company.

8. Within 30 (thirty) days of initiation of the use or change of tenants, an updated Hazardous Materials Business shall be submitted to http://cers.calepa.ca.gov/ and approved by this Division.

9. All diatomaceous earth/bentonite must be disposed of in an approved manner. If the proposed septic system is an alternative sewage treatment system the plan submitted for review and approval must address bentonite disposal.

10. All solid waste shall be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors and odors.

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Department of Public Works

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Steven Lederer
Director

MEMORANDUM

To:	PBES Staff	From:	Ahsan Kazmi, P.E. Senior Traffic Engineer
Date: Updated:	July 22, 2021 April 10, 2023	Re:	Duckhorn Vineyards (P19-00097) Conditions of Approval

This memorandum on the Conditions of Approval is prepared at the request of Planning, Building, and Environmental Services (PBES) staff regarding the Use Permit Modification Application # P19-00097, APN# 022-130-010 & 022-100-033, for the proposed Duckhorn Vineyards located at 1000 Lodi Lane, in the County of Napa.

In preparation of this memorandum, we have reviewed the following documents:

- *Traffic Impact Study for the Duckhorn Vineyards Use Permit Modification,* dated June 10, 2021, prepared by W-Trans.
- *Traffic Demand Management Plan,* submitted July 2021, prepared by Duckhorn Vineyards.

After careful evaluation and review of the documents, we believe that the report provides sufficient information to develop conditions for the project.

The Department of Public Works established the following conditions of approval related to the Use Permit Application Number P19-00097:

Proposed Roadway Improvements

1. Asphalt resurfacing of Lodi Lane from 20 feet east of the Napa River bridge to 20 feet west of the stop sign facing Silverado Trail.

2. Improvements to the driveway access points from the Duckhorn Vineyards Winery property onto Lodi Lane.

3. Restriping of the improvement area to meet Napa County Road and Streets Standards design standards.

Timing

Due to the uncertain nature of future development and County-initiated roadway improvements, the timing of the Proposed Improvements will likely adhere to one of the following scenarios:

4. If development approved by the current P19-00097 is completed prior to the commencement of the County-initiated roadway improvements, then Duckhorn Wine Company (DWC) will contract with, and pay, a licensed third-party road construction firm to complete the Proposed Improvements. The Proposed Improvements will be completed in accordance with a plan approved by Napa County prior to work initiation.

5. If the County-initiated roadway improvements are initiated prior to completion of the development work approved by Pl9-00097, then DWC will pay a prorated portion of the cost of the County-initiated roadway improvements, not to exceed $100,000.00 (One hundred thousand dollars).

Right-Turn Lane:

6. The applicant/permittee shall install a dedicated right-turn lane at the westbound approach at SR 29/Lodi Lane.

Traffic Calming Improvements:

7. The project applicant/permittee shall install a northbound speed feedback sign on Silverado Trail and coordinate with the County of Napa to install a speed feedback sign in the south bound direction near Glass Mountain Road.

Transportation Demand Management (TDM) Program

8. The project applicant/permittee shall implement the measures in the Transportation Demand Management (TDM) plan in order to meet the County's greenhouse gases emission reduction goals by 15 percent.

9. The project applicant/permittee shall appoint a staff person appointed as Transportation Demand Management (TDM) coordinator to facilitate employees reducing solo vehicle commuting and report to County staff on January 15th of each year (annual basis) on the status on the strategies implemented.

On Street Parking

10. Parking within the public right-of-way is prohibited during visitation, large marketing and/or temporary events.

Site Improvements

11. The project applicant/permittee shall install at least ten bicycle parking spaces on site.

12. The project applicant/permittee shall improve the turning radii at the west project driveway, per the Napa County Road and Street Standards to accommodate large trucks and vehicles.

Landscape Maintenance

13. Landscaping at the project driveway shall be maintained to not interfere with sight lines requires for safe stopping distance on the public-right-of-way. No items that are wide than 18 inches can be taller than 30 inches other than street trees and traffic control devices. Street trees should be deciduous and have branches lower than 4 feet in height up kept once the tree is established.

Encroachment Permit

14. An encroachment permit will be required for any improvements in the County's Right-of-Way. For the application submittal process contact the Roads Division at 707-944-0196. The improvements shall be constructed in compliance with the Napa County Road & Street Standards. The Registered Civil Engineer, upon completion of the improvements, must certify to the Department of Public Works that the improvements are made in accordance with all conditions of approval, including any related land use permit conditions and the approved improvement plans. Completion of improvements and certification shall be completed prior to occupancy or establishment of use. Any improvements located on Caltrans Right-of-Way will require a separate coordination and permitting process.

Please contact Ahsan Kazmi, P.E. Senior Traffic Engineer at **Ahsan.Kazmi@countyofnapa.org** or call (707) 259-8370 if you have any questions.

Napa County Fire Department
Fire Marshal's Office
Hall of Justice, 2nd Floor
1125 3rd Street
Napa, CA 94559

Office: (707) 299-1466

Adam Mone
Fire Plans Examiner

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MEMORANDUM

TO: Planning	DATE: 9/17/2020
FROM: Adam Mone, Plans Examiner	
SUBJECT: **P19-00097 Duckhorn Vineyards**	APN: **022-130-010-000**

The Napa County Fire Marshal's Office has reviewed the submittal package for the above proposed project. The Fire Marshal approves the project as submitted with the following conditions of approval:

1. All construction and use of the facility shall comply with all applicable standards, regulations, codes and ordinances at time of Building Permit issuance.

2. Beneficial occupancy will not be granted until all fire department fire and life safety items have been installed, tested and finaled.

3. Projects shall have an approved water supply for fire protection be made available as soon as combustible material arrives on the site. All underground fire lines, pump and tank plans are required to be a separate submittal from the building or civil plans.

4. Separate submittals required for Underground Fire Lines, Fire Pump, Automatic Fire Sprinklers, Fire Alarm Systems, Kitchen Hood Extinguishing Systems, High Piled Storage (any combustible stored over 12 feet in height).

5. All buildings, facilities, and developments shall be accessible to fire department apparatus by way of approved access roadways and/or driveways. The fire access road shall comply with the requirements of the Napa County Road & Street Standards.

6. Access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities. Provide an engineered analysis of the proposed roadway noting its ability to support apparatus weighing 75,000 lbs.

7. Provide fire department access roads to within 150 feet of any exterior portion of the buildings as measured by an approved route around the exterior of the building or facility.

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Adam Mone
Fire Plans Examiner

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MEMORANDUM

8. Roadways shall be a minimum of 20 feet in width with a 2 foot shoulder and 15 foot vertical clearance.

9. Driveways shall be a minimum of 10 feet in width with a 4 foot shoulder and 15 foot vertical clearance.

10. Turnouts shall be a minimum of 12 feet in width, 30 foot in length and 25 foot taper on each end.

11. Turnarounds are required on driveways and dead end roadways.

12. Grades for all roadways and driveways shall not exceed 16 percent.

13. Roadway radius shall not have an inside radius of less than 50 feet. And additional surface width of 4 feet shall be added to curves of 50-100 feet radius and 2 feet to curves of 100-200 feet radius.

14. Gates for driveways and/or roadways shall comply with the California Fire Code, section 503.5 and the Napa County Road & Street Standards and CA Fire Safe Regulations for projects within SRA.

15. Commercial - Water storage (for buildings not served by a public water system) and fire flow calculations shall be provided by a Certified State Licensed Civil Engineer, C-16 licensed contractor, or registered engineer indicating compliance with California Fire Code Appendix B and the Napa County Municipal Code.

16. Commercial - Approved steamer hydrants shall be installed within 250 feet of any exterior portion of the building as measured along vehicular access roads. Private fire service mains shall be installed, tested and maintained per NFPA 24.

17. Commercial - Fire Department Connections (FDC) for automatic sprinkler systems shall be located fully visible and recognizable from the street or fire apparatus access roads. FDC shall be located within 50 feet of an approved fire hydrant.

18. Commercial - The minimum main size of all fire hydrants shall be 6 inches in diameter. Piping shall be installed with C-900 class 200 piping or ductile iron or equivalent per NFPA 24 for the installation of Underground Fire Protection Mains

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MEMORANDUM

19. Commercial - Developments in excess of 10,000 square feet require looped fire mains of a minimum of ten (10) inch diameter to supply fire hydrants spaced at a maximum of 300-foot intervals.

20. An automatic fire sprinkler system shall be installed in accordance with provisions set forth in the California Fire Code as amended by the County of Napa and the applicable National Fire Protection Association Standard. Automatic fire sprinkler systems shall be designed by a fire protection engineer or C-16 licensed contractor.

21. All buildings shall comply with California Fire Code, Chapter 10 Means of Egress requirements. Including but not limited to; exit signs, exit doors, exit hardware and exit illumination.

22. Provide 100 feet of defensible space around all structures.

23. Provide 10 feet of defensible space fire hazard reduction on both sides of all roadways of the facility.

24. Emergency responder radio coverage **in** new buildings. All new buildings shall have approved radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building.

Please note that the comments noted above are based on a Fire Marshal review only. There may be additional comments or information requested from other County Departments or Divisions reviewing this application submittal package. Napa County Fire Marshal's Office Development Guidelines can be found @ www.countyofnapa.org/firemarshal. Should you have any questions of me, contact me at (707)299-1466 or email at adam.mone@countyofnapa.org

Exhibit A

DUCKHORN VINEYARDS WINERY MAJOR MODIFICATION
P19-00097-MOD
1000 LODI LANE, ST. HELENA, CA 94574
(APN 022-130-010, 022-100-033, -034, -035)

PREVIOUS CONDITIONS

4.21 The permittee shall comply with the following previous conditions of approval for the facility as consolidated in this document. To the extent there is a conflict between a previous condition of approval identified in this document and the Recommended Conditions of Approval, the more stringent condition shall control.

A. USE PERMIT No. U-827576

Findings

1. The proposed winery operations would include crushing, fermentation, storage and bottling of wine. ~~A maximum production of 36,000 gallons[1] per year is anticipated through a gradual buildup over a seven-year period. Initial production is anticipated to be 20,000 gallons per year. The winery would operate Monday through Friday from 8:00 A.M. to 5:00 P.M. would be six full-time employees and two part-time employees connected with the operation.~~ ~~The winery would not be open to the public for tours and tastings.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. U-28081, No. #96346-MOD COA 1 & No. #P05-00199-MOD COA 1

Conditions of Approval

1. ~~The permit be limited to a three-year period. The property owner may seek renewal.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. U-28081

5. ~~No public tastings or tours be allowed.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. U-28081

6. ~~A minimum of ten (10) off-street parking spaces be provided on a dust-free, all-weather surface approved by Public Works.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. U-28081 COA 3

B. USE PERMIT No. U-28081

[1]Maximum annual wine production would be reduced to 2,500 gallons by a request from the applicant on April 25, 1978.

Conditions of Approval

1. ~~Annual wine production of 36,000 gallons.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. U-428586 COA 1

3. ~~Provision for a minimum of 23 off-street parking spaces on a dust free, all-weather surface approved by Public Works.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. #95168-MOD COA 1

Mitigation Measures

1. ~~Immediate installation of a sign readable from Silverado Trail at the winery entrance to the subject property reading "No Tours or Tastings'. Said sign shall be maintained in a readable condition until such time as this winery is opened for Tours or tasting, at which time it shall be removed, and the improvements required under Condition 2 below installed.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. #96346-MOD COA 1

2. ~~Installation prior to opening of this winery for tours or tasting of a north-bound left turn lane on Silverado Trail at the subject winery's entrance whose design is acceptable to the Napa County Public Works Department. Associated acceleration and deceleration tapers shall be installed at the same time on the west side of Silverado Trail at the site entrance.~~

SUPERSEDED BY USE PERMIT MODIFICAITON No. #96346-MOD COA 1

C. USE PERMIT No. U-428586

Conditions of Approval

1. The permit shall be limited to the construction of 3,908 square feet of winery building for barrel storage and fermentation tanks and ~~the increase in the annual production capacity to 50,000 gallons.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. #96346-MOD COA 1

D. USE PERMIT No. #95168-MOD

Conditions of Approval

1. This approval is only to modify Use Permit #U-428586 to relocate the winery entrance from the Silverado Trail to Lodi Lane ~~and add a parking area with 8 new spaces (for a total of 40 approved parking spaces on site).~~

SUPERSEDED BY USE PERMIT MODIFICATION P19-00097-MOD COA 1.2.d

E. USE PERMIT No. #96346-MOD

Conditions of Approval

1. The Use Permit Modification shall be limited to 1.) ~~increasing the annual production from 50,000 to 110,000 gallons;~~ 2.) constructing a 7,880 sq. ft. building for office, marketing activities and public tasting; 3.) recognizing the existing marketing activities; 4.) ~~increasing the number of full-time employees from the 7 approved to 16 and part-time employees from the 2 approved to 3;~~ and 5.) modifying the condition requiring the left turn lane to recognize the relocated winery access off of Lodi Lane. The project shall conform to the approved site plan, floor plan and elevations. Any other expansions or changes in use, construction or design shall be subject to the approval of the Zoning Administrator or the County Planning Commission.

   SUPERSEDED BY USE PERMIT MODIFICATION No. #P05-0040-MOD COA 2 & USE PERMIT No. #P05-00199-MOD COA 1

2. ~~Visitors to the winery for public tours and tastings shall be limited to 50 per week and 30 on the busiest day.~~ A visitor log shall be maintained by the winery and shall be made available to the County upon request. ~~The public tasting area shall be limited to the 672 sq.ft. tasting room and the 240 sq.ft. entry area.~~ The reception area, conference area and the terrace shall only be used for the permitted marketing activity. Signage reading "private-no entry" and or a moveable barrier shall be used to accomplish this.

   SUPERSEDED BY USE PERMIT MODIFICATION No. #98122-MOD COA 1 & P19-00097-MOD COA 4.2

5. ~~At least 75% of the grapes used to make the winery's 60,000 gallon per year increase in production shall be grown within the County of Napa per County Code Section 18.104.250 C. The applicant shall report to the Department on an annual basis the source of grapes verifying that 75% of his approved additional production is from Napa County grapes. The report shall include the Assessor's Parcel Number and the grape tonnage. The report shall be proprietary and not available to the public. For the public record, the applicant shall annually submit to the Department for the file a statement regarding compliance with the sourcing requirement and indicating the percentage of Napa County grapes utilized.~~

   SUPERSEDED BY USE PERMIT MODIFICATION No. #P05-00199-MOD COA 5

8. ~~The marketing events shall be limited to the following and shall end before 11 P.M with all personnel involved with the event off the premises by 12 midnight: (these are existing activities which are not proposed to be increased. Food service may be included at any of these activities.)~~
   a. ~~5 to 7 wine marketing events per year averaging 25 persons per event; these are private, industry-related marketing and hospitality events including the Napa Valley Wine Auction, trade customer hospitality, etc.~~
   b. ~~8 to 10 invitational tastings per month with 2-20 persons; these are prearranged trade customer tours and tastings.~~

SUPERSEDED BY USE PERMIT MODIFICATION No. #P05-00199-MOD COA 2 & P19-00097-MOD COA 4.3

F. USE PERMIT No. #98122-MOD
Conditions of Approval

1. The permit is limited to modify #96346-MOD to revise the office, tasting, and retail sales building design and layout, reducing the overall building area to 7,060 sq.ft. and increasing the proposed public tasting area to 1000 sq.ft., consistent with the application materials and plans and elevations on file.

6. ~~No public wine tasting shall be permitted in the designated "entry/reception" area or on the terrace/veranda adjacent to the tasting room on three sides. Signs shall be prominently displayed and maintained in all four directions of potential exit from the designated tasting room to this effect.~~

SUPERSEDED BY USE PERMIT MODIFICATION P19-00097-MOD COA 4.2

G. USE PERMIT No. #P05-00040-MOD
Conditions of Approval

2. ~~Increase number of full-time employees by 12 FTEs;~~

SUPERSEDED BY USE PERMIT MODIFICATION No. #P05-00199-MOD COA 1

H. USE PERMIT No. #P05-00199-MOD
Conditions of Approval

1. SCOPE: The permit shall be limited to:
   - ~~Increase wine production to no more than 160,000 gallons per year.~~
   - Increase the number of full-time employees from 28 to 45 (with 5 part-time employees and 6 seasonal workers)
   - Increase winery operations from six days a week to seven days a week
   - Expand hours of operation from 8 a.m. - 5 p.m. to 6 a.m. - 7 p.m., except during crush.
   - Establish retail sales and tours and tasting by appointment only.

2. MARKETING: Marketing events shall be limited as follows:
   - ~~36 private wine and food events per year for a maximum of 25 guests at each event. This replaces condition of approval 8(a) approved with 96346-MOD that allowed 5 to 7 marketing events per year averaging 25 guests per event.~~
   - ~~2 wine industry/consumer events per year for a maximum of 600 guests at each event;~~
   - ~~2 Wine Auction related events per year for a maximum of 250 guests at each event.~~

~~Condition of approval 8(b) approved with 96346-MOD allowing 8 to 10 tastings per month with 2 to 20 invited guests remains in effect.~~

~~"Marketing of wine" means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of Wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis and may include food service without charge except to the extent of cost recovery when provided in association with such education and development but shall not include cultural and social events unrelated to such education and development. (Ord.1104 § 11, 1996: Ord. 947 § 9 (part), 1990: prior code § 12071). Evening, marketing events shall cease by 11:00 PM with personnel involved with the event off the premises by midnight. Start and finish time of activities shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 5:30 PM.~~

SUPERSEDED BY USE PERMIT MODIFICATION P19-00097-MOD COA 4.3

3. ~~Tours and Tastings~~

   a. ~~Tours and tastings are limited to a maximum of 82 persons/day with an average of 576 persons/week, (48 private tours and tastings per week for a maximum of 12 guests at each appointment). "Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to members of the wine trade, persons invited by a winery who have pre-established business or personal relationships with the winery or its owners, and persons who have made unsolicited prior appointments for tours or tastings. (Ord. 947 § 9 (part), 1990: prior code § 1.2010). Tours and tastings shall complete by 4:00 PM. Retail sale of wines shall complete by 4:30 PM and shall be limited to those wines set forth in Napa County Code Sec. 18.16.030(G)(5)(c). A logbook (or similar record) shall be maintained which documents the number of visitors to the winery, and the dates of their visit. This record of visitors shall be made available to the Department upon request.~~

   b. ~~In addition to condition 3(a), above, public tours and tasting without an appointment, for an average of 50 persons per week (30 on the busiest day), remains in effect.~~

SUPERSEDED BY USE PERMIT MODIFICATION P19-00097-MOD COA 4.2

5. Grape Source

   At least 75% of the grapes used to make 110,000 gallons per year of the wine produced at the facility shall be grown within the County of Napa. This total represents the 50,000 gallon per year increase approved by this modification (file #P05-0199-MOD) plus the 60,000 gallon per year increase approved in 1997 (see 96346-MOD). The applicant shall report to the Department on an annual basis by

December 31 the source of grapes verifying that 75% of the approved production is from Napa County grapes. The report shall include the Assessor's Parcel Number and the grape tonnage. The report shall be proprietary and not available to the public. For the public record, the applicant shall annually submit to the Department for the file a statement regarding compliance with the sourcing requirement and indicating the percentage of Napa County grapes utilized.

9. Traffic
Reoccurring and scheduled vehicle trips to and from the site for employees, deliveries, and visitors will not occur during peak (4-6 PM) travel times to the maximum extent possible. All road improvements on private property required per the Department of Public Works shall be maintained in good working condition.

I. USE PERMIT No. #P11-00426-MOD
Conditions of Approval

1. Recognize newly installed landscaping and allowing for the existing events and tastings to occur within the newly planted area

Duckhorn Vineyards Winery Use Permit Major Modification No. P19-00097-MOD
Mitigation Monitoring and Reporting Program

Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
Impact BIO-1: Spotted Owl. Spotted owls are known to occur in the area and could also nest near the project site. Construction, earthmoving, and disturbance activities associated with the project could disturb spotted owl nests. Therefore, the following measures shall be implemented to reduce potential impacts to these special status species.	**MM BIO-1:** A qualified biologist shall conduct an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If breeding NSO are detected during surveys, a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and July 31 each year. Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW. If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.	Prior to issuance of the grading/building permits, a report by a qualified biologist shall be submitted to the Napa County Planning, Building & Environmental Services Department including the results of the three focused nesting spotted owl surveys. If an active nest was identified on site the report shall include nest buffers and monitoring.	P	PD	PC ___/___/___
Impact BIO-2: Nesting Birds. Suitable potential nesting habitat for raptors, as well as other migratory nesting birds, is present on or adjacent to the Project. These birds are protected under the Migratory Bird Treaty Act (50 CFR 10.13) and their nest, eggs, and young are protected under California CDFG Code §3503, 3503.5, 3800, and 3513. Any project-related impacts on the nesting success of these species would	**MM BIO-2:** For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with potential to occur at the project site and experienced with conducting pre-construction nesting bird and raptor surveys) shall conduct pre-construction surveys for nesting birds and raptors, within all suitable habitat on the project site, and all suitable nesting habitat within 500 feet of the Project site. The preconstruction survey shall be conducted no earlier than seven (7) days prior to vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than	If construction/earthmoving activity is to occur between February 1 and August 31 the survey prepared by a qualified biologist shall be submitted to Planning Division staff prior to issuance of the grading/building permits.	P	PD	PC ___/___/___

Notes: P = Permittee, PD = Planning Division, PC = Prior to Project Commencement, OG = Ongoing, FI = Final Inspection

Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
be considered a significant adverse impact. These impacts could be mitigated to a level considered less than significant by Mitigation Measure BIO-2.	seven (7) days from the survey date, or if there is a lapse in Project activities of seven (7) days or more during the nesting season surveys shall be repeated. A copy of the survey report shall be provided to the Napa County Planning Division and the CDFW prior to commencement of work. In the event that nesting birds are found, the qualified biologist shall determine adequate no-disturbance buffer distances from all active nests based on the species and in consultation with the County Planning Division and the U.S. Fish and Wildlife Service (USFWS) and/or CDFW prior to initiation of project activities. All active nests shall be monitored by a qualified biologist for the first week during Project activities to ensure the established buffer distances are adequate to avoid disturbances to the nest. If the qualified biologist observes bird behavior that may indicate nest disturbance, the qualified biologist shall have the authority to immediately cease Project activities. In this event, the qualified biologist shall consult with CDFW regarding larger buffer distances, and buffer zones shall be refenced accordingly, prior to resuming Project activities. If larger buffer distances cannot be established, Project activities shall be delayed until the nest is no longer active (i.e. the young have fledged the nest and can feed independently, or the nest fails due to natural causes), as determined by a qualified biologist. Exclusion buffers shall be fenced with temporary construction fencing (or the like), the installation of which shall be verified by Napa County Planning Division prior to the commencement of any earthmoving and/or development activities. Exclusion buffers shall remain in effect until the young have fledged or nest(s) are otherwise determined inactive by a qualified biologist. Alternative methods aimed at flushing out nesting birds prior to pre-construction surveys, whether physical (i.e., removing or disturbing nests by physically disturbing trees with construction equipment), audible (i.e., utilizing sirens or bird cannons), or chemical (i.e., spraying nesting birds or their habitats) would be considered an impact to nesting birds and is prohibited. Any act associated with flushing birds from project areas should undergo consultation with the Napa County Planning Division, USFWS and/or CDFW prior to any activity that could disturb nesting birds.				

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Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
Impact BIO-3: Lake or Streambed Alteration Agreement. The applicant intends to extend utility lines underneath the Napa River, which is identified as a Freshwater Emergent Wetland. Utility extension may require a Lake or Streambed Alteration Agreement with the California Department of Fish & Wildlife. Mitigation Measure Bio-3 will ensure that the applicant demonstrates compliance with the state regulatory agency prior to issuance of a Building Permit to extend the utility lines beneath the river.	**MM BIO-3:** The applicant shall submit a Notification of Lake or Streambed Alteration with the California Department of Fish and Wildlife for the horizontal directional drilling and installation of utility lines under the Napa River. Issuance of a Streambed Alteration Agreement or demonstration that CDFW determined that the agreement was unnecessary shall be provided to the Planning, Building & Environmental Services department prior to issuance of building permits associated with the drilling.	A Streambed Alteration Agreement or other notification from CDFW determining the permit is unnecessary for this project will be submitted prior to the issuance of permits associate with the installation of utility lines under the Napa River.	P	PD	PC ___/___/___
Impact CUL-1: Obsidian artifacts and Prehistoric activities To better understand if the obsidian artifacts in the Project Area can contribute information about the prehistoric activities associated with the procurement and processing of obsidian, it is recommended that further testing be conducted. Further testing should focus on the areas that are chosen for development, but may also include areas outside of the proposed development areas if needed to determine eligibility and integrity.	**MM CUL-1:** Prior any earthmoving activities, the permittee shall retain an archeologist to perform further archeological testing on the areas of development to determine whether the sites are eligible for listing in the California Registry of Historic Resources or whether they meet the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. Standard archeological testing procedures (i.e. auger excavation, test units, mechanical trenching) shall be utilized to define the nature and extent of the potential resource, as well as obsidian hydration analysis to establish chronology. A geoarchaeological study shall be prepared to develop soil profiles and investigate stratigraphy within the excavation areas to define and distinguish disturbed and intact soils and interpret soil development and past disturbances. At the conclusion of the geoarchaeological study a report shall be prepared and submitted to the County, by a professional who meets the Secretary of the Interior's professional qualification standards demonstrating that the testing and geoarchaeological study have been conducted to sufficient standards and whether the sites are eligible for listing on the California Registry of Historic Resources or meets the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. The applicant shall comply with all recommendations from the report.	Prior to issuance of any grading, demolition or building permits pursuant to this approval a report shall be prepared, by a professional who meets the Secretary of the Interior's professional qualification standards, demonstrating that the testing and geoarchaeological study described under MM CUL-1 have been conducted to sufficient standards and whether the sites are eligible for listing on the California Registry of Historic Resources or meets the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. In the event that the sites are found to be eligible for listing on the California Registry of Historic Resources or if they would meet the definition of a "unique archeological resource", the report will also outline the steps the County must take to consider	P	PD	PC ___/___/___

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Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
		potential adverse impacts under Public Resource Code 21084.1 and 21083.2(i) or the treatment of a "unique archeological resource" under the provisions of Public Resource Code 21083.2.			
Impact CUL-2: Archaeological Monitoring Given the number of artifacts that have been identified within the Project Area and the high potential of encountering buried archaeological resources, archaeological monitoring of Project-related ground-disturbing activities shall be required.	The permittee shall retain a professional, who meets the Secretary of the Interior's professional qualification standards, who shall be onsite to conduct archaeological monitoring during project related ground disturbing activities. Monitoring procedures shall proceed as follows: • Monitoring shall involve the observation of ground-disturbing activities in areas that have the potential to contain artifacts or subsurface archaeological features, as well as the inspection of excavation spoils to verify the presence or absence of artifacts. At times, grading of fill soil taken from a known sensitive area will be monitored as well. Monitoring shall occur during the entire work day, and daily while ground-disturbing activities are taking place in culturally sensitive areas. • During monitoring, if the archaeologist observes artifacts or potential archaeological features, the equipment and/or personnel that encountered the archaeological material will be stopped so that the archaeological monitor can inspect the area and associated soils to determine the presence or absence and potential significance of the archaeological materials encountered. • When artifacts or subsurface archaeological features are encountered, archaeological materials shall be photographed and the location recorded. A field number shall be assigned to each artifact. Artifacts shall be placed in labeled bags that fully protect them from damage. Work will be allowed to resume once the archaeological monitor	Prior to issuance of any grading, demolition or building permits pursuant to this approval the applicant will provide to the Planning, Building & Environmental Services division the contact information for the archaeologist conducting onsite monitoring of project related ground disturbing activities. Archaeological monitoring shall continue until such time that the archaeologist determines that further ground disturbing activities will not adversely impact potentially significant archaeological resources. The Planning, Building & Environmental Services division shall be contacted at the conclusion of monitoring activities.	P	PD	PC ___/___/___ OG ___/___/___

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Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
	removes the artifact(s) and determines that further artifacts or an archaeological feature are not present. • Equipment stoppages will only involve the equipment that encountered archaeological material. During temporary equipment stoppages, the archaeologist will efficiently accomplish all necessary tasks so that work can continue. • A Daily Monitoring Record form shall be completed for each day that archaeological monitoring occurs. The form shall be used to record daily monitoring activities, such as construction personnel, procedures and equipment, dimensions of excavated areas, soil description and stratigraphy, and cultural material observed. Photographs will also be taken throughout monitoring.				
Impact BIO-4: Bat Habitat Assessment and Surveys Mature trees and buildings scheduled for removal could provide suitable roosting habitat for pallid bat and Townsend's big-eared bat. These bats are experiencing population declines in California (Brylski et al. 1998). Bats are long-lived and have a low reproductive rate (Johnston 2004); therefore, each mortality can have a protracted effect on the reproductive rate of the population. If special-status bats are roosting on-site and the Project would result in removal of roosting habitat, impacts to special-status bats would be potentially significant.	Prior to Project activities, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a Qualified Biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a Qualified Biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed. If roosting bats are detected in anthropogenic structures that will be impacted by Project activities, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when	30 to 60 days prior to issuance of the grading or demolition permits, a bat habitat assessment, prepared by a qualified biologist, shall be submitted to the Napa County Planning, Building & Environmental Services Department documenting potential roosting habitat. If roosting habitat is documented in trees identified for removal than removal using the two-step removal process shall only take place during the seasonal periods of bat activity between March 1 through April 15 and September 1 through October 15 or subsequent to a qualified biologist conducting night emergence surveys or visual examinations that establish absence of roosting bats. If the bat habitat assessment documents roosting habitat in anthropogenic structures impacted by project activities a bat avoidance and exclusion plan shall	P	PD	PC ___/___/___

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Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
	temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.	be implemented and CDFW shall be consulted.			
Impact BIO-5: Special-Status Species Survey The Project could impact aquatic habitat or upland dispersal habitat or refugia for special status Herpetofauna through vegetation removal and grading activities, potentially injuring or killing them. Western pond turtles can move more than four miles up or down stream; therefore, the Project area is within the mobility range of western pond turtle observations (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015). Foothill yellow-legged frogs have been documented moving up to 500 feet from the wetted channel of a stream across upland habitat (CDFW 2018). Based on the above, if special-status herpetofauna occurs within the Project area, Project impacts to special-status herpetofauna would be potentially significant.	A qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of special-status species, including, but not limited to, western pond turtle, foothill yellow-legged frog, and California giant salamander. If any special-status species are discovered during the survey, Project activities shall not begin until CDFW has been consulted with regarding avoidance and minimization measures to avoid and minimize impacts to special-status species. Permittee shall implement the avoidance and minimization measures if required by CDFW.	48 hours prior to issuance of the grading permits the results of the pre-construction survey conducted by a qualified biologist shall be submitted to the Napa County Planning, Building & Environmental Services Department.	P	PD	PC ___/___/___

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Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
Impact BIO-6: Foothill Yellow-Legged Frog Surveys The Project could impact aquatic habitat or upland dispersal habitat or refugia for special status Herpetofauna through vegetation removal and grading activities, potentially injuring or killing them. Western pond turtles can move more than four miles up or down stream; therefore, the Project area is within the mobility range of western pond turtle observations (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015). Foothill yellow-legged frogs have been documented moving up to 500 feet from the wetted channel of a stream across upland habitat (CDFW 2018). Based on the above, if special-status herpetofauna occurs within the Project area, Project impacts to special-status herpetofauna would be potentially significant.	A qualified biologist shall provide a foothill yellow-legged frog survey methodology for CDFW review and written approval at least 30 days prior to conducting Project activities, unless otherwise approved in writing by CDFW. Project activities shall not begin until foothill yellow-legged frog surveys have been completed using a methodology approved by CDFW. Survey methodology shall target all life stages and shall include carefully searching under rocks, within vegetation such as sedges and other clumped vegetation, under undercut banks, and in any area with persistent moisture no less than 50 feet from both sides of the streambed, where appropriate, and at least 500 feet upstream and downstream of the Project area. Surveys should be conducted at different times of day and under variable weather conditions, if possible. Surveys should avoid windy days (15 miles per hour or greater), as ripples in the water make it more challenging to detect frogs. A final survey shall be conducted within 24 hours prior to starting Project activities. Prior to starting Project activities, a qualified biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology. The results of the surveys shall be submitted to and approved in writing by CDFW prior to starting Project activities. The Permittee shall install exclusionary fencing and prepare and implement a foothill yellow-legged frog Habitat Improvement Plan if foothill yellow-legged frog or their eggs are found, if required and approved by CDFW and prior to starting Project activities. Survey methodology and surveys are not required if the stream is dry and there are no areas of persistent summer moisture present in or within 500 feet upstream and downstream of the Project area.	30 days prior to grading permit issuance a foothill yellow-legged frog survey shall be provided to CDFW for review and written approval. The results of all surveys shall be submitted to the Planning, Building & Environmental Services Department prior to issuance of a grading permit.	P	PD, CDFW	PC ___/___/___
Impact BIO-7: Western Pond Turtle Surveys The Project could impact aquatic habitat or upland dispersal habitat or refugia for special status Herpetofauna through vegetation removal and grading activities, potentially injuring or killing them. Western pond turtles can move more than four miles up or down stream; therefore, the Project area is within the mobility range of western pond turtle observations (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic	No more than two weeks prior to the commencement of ground-disturbing activities, a qualified biologist shall perform surveys for western pond turtles and their nests within aquatic and upland habitat at the Project site, unless otherwise approved in writing by CDFW. An additional survey shall occur no more than 48 hours prior to Project activities. If a pond turtle or nest site is detected at any time, CDFW shall be notified immediately. Survey results shall be submitted to CDFW prior to construction activities. All western pond turtles observed on-site shall be avoided and allowed to leave the Project activity area of their own volition or shall be relocated, by a qualified biologist, to appropriate habitat within the same stream the individual was found. Any turtle nest sites shall be avoided with an appropriate buffer identified by a qualified biologist and accepted in writing by CDFW. The Permittee shall prepare and implement a Western Pond Turtle Habitat Improvement Plan, if western pond turtles or their nests are found, if required and approved by CDFW.	2 weeks prior to issuance of grading permits a qualified biologist will begin western pond turtle surveys. No less than 48 hours prior to issuance of a grading permit the results of the surveys will be provided to CDFW and the Planning, Building & Environmental Services Department. If Western Pond Turtle or their nest are identified CDFW will be consulted.	P	PD, CDFW	PC ___/___/___

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Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
habitat (Purcell et al. 2017; Zaragoza et al. 2015). Foothill yellow-legged frogs have been documented moving up to 500 feet from the wetted channel of a stream across upland habitat (CDFW 2018). Based on the above, if special-status herpetofauna occurs within the Project area, Project impacts to special-status herpetofauna would be potentially significant.					
Impact BIO-8: Pre-Project Special-Status Plant Surveys Several special-status plants, including, but not limited to, Greene's narrow-leaved daisy (Erigeron greenei) and Calistoga ceanothus (Ceanothus divergens) have the potential to occur at the Project site. If special-status plants are present and not detected by appropriate surveys, the Project may result in potential significant impacts through crushing and killing plants and impacting viable seeds in the soil.	A qualified biologist shall conduct a habitat assessment for special-status plants on and adjacent to the Project site, and if habitat is present, shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur, prior to the start of Project construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants). The habitat assessment and survey results must be accepted by CDFW in writing prior to Project construction. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts cannot be avoided, the Project shall mitigate impacts at a minimum 3:1 mitigation to impact ratio through compensatory habitat, restoration, monitoring, and maintenance, or a combination thereof, following a plan approved in writing by CDFW. The plan may include preparing, funding, and implementing a long-term management plan in perpetuity.	Prior to issuance of grading permits the project applicant will provide to the Planning, Building and Environmental Services Department confirmation of CDFW's approval of the habitat assessment and survey results.	P	PD, CDFW	PC ___/___/___

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Potential Environmental Impact	Adopted Mitigation Measure	Monitoring and Reporting Actions and Schedule	Implementation	Monitoring	Reporting & Date of Compliance/ Completion
Impact BIO-9 Valley Oak Riparian Forest Restoration and Preservation The Project site appears to include Valley Oak (Quercus lobata) Riparian Forest Alliance. The Valley Oak Riparian Forest Alliance is considered a sensitive natural community (CDFG 2010; Standiford et al. 1996; CIWTG).3 Rare natural communities have limited distribution and are often vulnerable to Project impacts (CDFW 2009). Research suggests that valley oak trees are not regenerating enough for eventual replacement (Zavaleta et al. 2007). Therefore, trees removed by the Project may never be replaced, and loss of regenerating trees may further reduce the ability of valley oak riparian forests to persist. Introduced alien annual grasses that limit available moisture appear to be a causal factor (Danielson and Halvorson 1991). Other factors may include fire suppression, cattle grazing and herbivory of oak shoots by cattle and native mammals (Zack et al. 2002). Based on the foregoing, if the Project removes Valley Oak Riparian Forest, then impacts to this sensitive natural community would be potentially significant.	A qualified biologist shall evaluate if Valley Oak Riparian Forest will be impacted by the Project and the evaluation must be approved in writing by CDFW prior to Project construction. Any permanently impacted Valley Oak Riparian Forest shall be mitigated through restoration of this habitat type at a minimum 3:1 mitigation to impact ratio for acreage impacted. Restoration shall occur on-site to the extent feasible. If off-site restoration is necessary, it shall be as close to the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration shall occur in the same year as the impacts. The restoration area shall be monitored for a minimum of five years until success criteria are met. Trees within the Valley Oak Riparian Forest will be removed shall be replaced at the following mitigation to impact ratios, unless otherwise approved in writing by CDFW: Oak trees: • 1:1 replacement for trees up to 3 inches diameter at breast height (DBH); • 4:1 replacement for trees greater than 3 inches and up to 7 inches DBH; • 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH; and • 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks. Non-oak trees: • 1:1 replacement for non-native trees; • 1:1 replacement for native trees up to 3 inches DBH; • 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH; and • 6:1 replacement for trees greater than 15 inches DBH.	Prior to the issuance of grading permits the applicant will provide to the Planning, Building and Environmental Services Department confirmation of CDFW's review of the Valley Oak Riparian Forest impact evaluation and if impacts were identified the associated restoration plan review and approved by CDFW. Prior to issuance of a certificate of occupancy for the Estate House expansion evidence of any restored acreage will be provided to the Planning, Building & Environmental Services Department.	P	PD, CDFW	PC ___/___/___ FI ___/___/___

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Attachment G

Revised Mitigated Negative Declaration (MND)

COUNTY OF NAPA
PLANNING, BUILDING AND ENVIRONMENTAL SERVICES DEPARTMENT
1195 THIRD STEET SUITE 210
NAPA, CA 94559
(707) 253-4417

Initial Study Checklist (Revised)
(form updated January 2019)

1. **Project Title**: Duckhorn Vineyards Winery, Use Permit Major Modification #P19-00097-MOD ~~& Variance #P19-00098~~

2. **Property Owner:** Duckhorn Wine Company dba Duckhorn Vineyards Winery. 1000 Lodi Lane, St. Helena, CA 94574

3. **County Contact Person, Phone Number and email:** Trevor Hawkes, Supervising Planner. Planning, Building & Environmental Services, 1195 Third Street, Second Floor. Napa, CA 94559. Phone: 707-254-4388 or email: trevor.hawkes@countyofnapa.org

4. **Project Location and Assessor's Parcel Number (APN):** The project is located on four (4) parcels approximately 32.35 acres in size within the AP (Agricultural Preserve) zoning district at 1000 Lodi Lane, St. Helena, CA 94574. APN's 022-130-010, 022-100-033, 022-100-034 and 022-100-035.

5. **Project sponsor's name and address:** George H Monteverdi, Principle, Monteverdi Consulting, PO Box 6079, Napa, CA 94581. Phone: 707-761-2516 or email: george@monteverdiconsulting.com

6. **General Plan description:** APN 022-130-010 (referred to as the East Property) primarily has a General Plan designation of Agricultural Resource (AR) with a small portion of the south-western corner designated Agriculture, Watershed, and Open Space (AWOS). APN 022-100-033 (referred to as the West Property), 022-100-034 and 022-100-035 have a General Plan Designation of AR.

7. **Zoning:** AP (Agricultural Preserve)

8. **Background/Project History:** On August 4, 1976, the Napa County Planning Commission approved Use Permit #U-827576 to convert a portion of an existing greenhouse to a winery with a maximum production capacity of 36,000 gallons over a 7-year period. The winery was approved to operate from 8:00AM to 5:00PM Monday through Friday with ten parking spaces, six (6) full time employees and two (2) part-time employees. The permit was limited to a three (3) year period with the possibility of renewal. No public tours and tastings were approved. In the intervening time prior to the permit being considered 'used', the applicant would receive two extensions of the time period to act on the permit as well as a reduction in wine production capacity from 36,000 to 2,500 gallons per year and relocation of the proposed production area from a bay of an existing greenhouse to an adjacent 1,200 sq. ft. building.

   Subsequent to the approval of the original Use Permit, the permittee has received approval for the following modifications:

   On November 19, 1980, the Planning Commission approved Use Permit Modification #U-28081 to increase the production capacity to 36,000 gallons per year, construct an additional 11,200 sq. ft. of building space, and a minimum of 23 parking spaces. The application included a Variance request #V-18081 to allow a reduced roadway setback along Silverado Trail from the required 600 feet from centerline to allow expansion of winery buildings. The application included a request for public tours and tastings subsequent to the completion of physical improvements, however no hospitality area was identified. A mitigation measure requiring the installation of a northbound left-turn lane on Silverado Trail was included as a prerequisite prior to initiation of public tours and tastings.

   On July 2, 1986, the Planning Commission approved U-428586 to increase the production capacity to 50,000 gallons per year and expand the area within the winery building for barrel storage and fermentation tanks by 3,908 sq. ft.

   On April 15, 1994, the Zoning Administrator approved Use Permit Modification #93369-MOD to construct a 2,500 sq. ft. barrel building attached to an existing structure and a 544 sq. ft. expansion to enclose the fermentation tanks.

   On September 2, 1994, the Zoning Administrator approved Use Permit Modification #94053-MOD to allow relocation of a water storage tank pad and placement of a 31,000 gallon tank.

   On December 4, 1995, the Zoning Administrator approved Use Permit Modification #95168-MOD to relocate the winery driveway

entrance from Silverado Trail to Lodi Lane and add eight (8) new parking spaces for a total of 40 parking spaces.

On May 7, 1997, the Planning Commission approved Use Permit Modification 96346-MOD to increase production to 110,000 gallons, construct a 7,880 sq. ft. building for office, marketing and public tastings, recognize marketing activities, increase employees from seven (7) to 16, and abandoning the previous condition requiring a left turn lane on Silverado Trail to recognize the relocated winery access off of Lodi Lane. Visitors for public tours and tastings were limited to 50 per week and 30 on the busiest day. The public tasting area was limited to a 672 sq. ft. tasting room and a 240 sq. ft. entry area. The 75% rule was applied to the increase of 60,000 gallons. The modification includes a marketing plan allowing five (5) to seven (7) private industry events per year for 25 guests and 10 invitational tastings per month for up to 20 guest (prearranged trade customer tours and tastings).

On June 5, 1998, the Zoning Administrator approved Use Permit Modification #97488-MOD allowing the conversion of a 235 sq. ft. mezzanine to winery office/lab use.

On December 18, 1998, the Zoning Administrator approved Use Permit Modification #98122-MOD and Variance #98123-VAR. The permit revised the office, tasting, and retail sales building design and layout (approved under #96346-MOD), reducing the overall building area to 7,060 sq. ft. and increasing the public tasting area to 1,000 sq. ft. No public wine tasting was permitted in the entry/reception area or on the terrace/veranda. The Variance allowed the building to be detached from the existing winery and constructed 90 feet from Silverado Trail.

On April 23, 1999, the Zoning Administrator approved Use Permit Modification #98373-MOD to replace an existing 2,760 sq. ft. greenhouse with a new 3,705 sq. ft. winery production building including a 2,730 sq. ft. first floor and 975 sq. ft. of upstairs office space; relocate an existing water tank and install a temporary winery office trailer.

On February 23, 2005, the Director approved Use Permit Modification P05-0040 to convert existing attic storage in Chai #5 to administrative office space; increase the number of full-time employees to 12; and reclassify blending room in Chai #7 from accessory to production.

On October 5, 2005, the Planning Commission approved Use Permit Modification P05-00199-MOD to increase wine production to 160,000 gallons per year, expand wastewater systems, increase employees from 28 to 45 full-time with five (5) part-time and six (6) seasonal; increase operations to seven (7) days per week; expand hours of operation to 6 a.m. to 7 p.m., except during crush; tours and tastings by appointment; and approve a marketing plan. The marketing plan consisted of: 36 events with food for 25 guests (replaced previous seven events for 25 guests); two (2) wine events for 600 guests; two (2) auction events for 250 guests; 10 private tastings per month up to 20 guests. Visitation consisted of: a maximum of 82 visitors per day with an average of 576 persons/week (48 private tours and tastings per week for a maximum of 12 guests at each appointment). Tours and Tastings completed by 4:00 p.m. and retail sales of wine completed by 4:30 p.m. The winery's existing entitlement of 50 public tours and tastings (no more than 30 on the busiest day) remained in effect. The 75% rule was expanded to include the additional wine production for a total of 110,000 gallons per year.

On March 20, 2012, the Director of Planning, Building & Environmental Services approved Very Minor Modification P11-00426-VMM to recognize new landscape area, and allow tastings and marketing events to occur within the garden area.

On November 12, 2019, the Director of Planning, Building & Environmental approved Very Minor Modification P19-00375-VMM to allow reconfiguration of accessory spaces on the second floor of the existing Estate House.

Existing Characteristics: Prior to the submittal of the Use Permit Major Modification application a Lot Line Adjustment (LLA) was completed merging the East Property (APN 022-130-010, 10.67 acres) and the recently purchased West Property (APN 022-100-033, 19.67 acres) for a total parcel size of approximately 30.44 acres. This parcel contains the existing 160,000 gallon per year winery consisting of 27,637 sq. ft. of grape processing, fermentation and storage space distributed across seven production buildings (referred to as "Chai's") and a covered crush pad, a 4,185 sq. ft. tank shed, 1,045 sq. ft. of winery maintenance space in two structures and 9,323 sq. ft. of office and hospitality in the "Estate House", which includes an attached outdoor porch and a garden.

9. **Description of Project:** Approval of a Use Permit Major Modification to an existing 160,000 gallon per year winery to allow the following:
   a. Construction of a new ~~58,042~~52,237 sq. ft. facility ('West Winery') on the West Property (APN 022-100-033) containing ~~5448,722~~ 917 sq. ft. of production space and 3,320 sq. ft. of office and accessory uses, a 90,000 gallon fire protection water tank, two 158,000 gallon irrigation storage water tanks, a 24,000 gallon domestic water tank, landscaping, driveways, and other winery improvements;
   b. Construction of a 8,839 sq. ft. expansion to the existing Estate House on the East Property (APN 022-130-010) for a total floor space of 18,162 sq. ft.. At build out the Estate House will consist of 17,810 sq. ft. of accessory space and 352 sq. ft. of production space;
   ~~b.~~c. Construction of a new project well on the West Property, located and designed to satisfy Well & Spring Interference Evaluation Criteria (Tier 2) and Groundwater/Surface Water Interaction Criteria (Tier 3) of the County's Water Availability Analysis Guidelines (adopted May 2025)(the County's WAA);

~~c.~~d. Removal of the existing combined process and sanitary wastewater system on the East Property and the development of separate process and sanitary wastewater systems on both the East and West Properties connected through Directional Boring under the Napa River;

~~d.~~e. Increasing onsite parking spaces from 68 to 96;

~~e.~~f. Demolition of the existing Tank Shed, Chai's 1, 2, 3 & 4 on the East Property;

~~f.~~g. Demolition of a single-family residence (Red House), portions of the existing gravel driveway, two wells, and other agricultural and single-family dwelling improvements on the West Property and APN 022-100-034;

~~g.~~h. Conversion and expansion of a 16,900 sq. ft. agricultural pond on the West Property to a 20,300 sq. ft. bio-retention pond;

~~h.~~i. Removal of approximately 3.55 acres of vineyard on the West Property;

~~i.~~j. Removal of approximately 49 trees;

~~j.~~k. Increase in maximum annual permitted wine production from 160,000 gallons to 300,000 gallons;

~~k.~~l. Increase the existing daily "By Appointment" Tours and Tastings of 82 visitors and voluntarily abandon the winery's existing pre-Winery Definition Ordinance (WDO) entitlement of 50 visitors per week (no more than 30 on the busiest day) for "Public Tours and Tastings" for a total of ~~219~~ 197 daily visitors for By Appointment Tours and Tastings (~~110~~ 99 visitors per day for Tours and Tastings without food, ~~109~~ 98 per day for Tours and Tastings with food);

~~l.~~m. Modification of the existing Marketing Plan allowing Private Tours and Tastings events for up to 20 guests 120 times annually, Wine with Food Pairings events for up to 25 guests 36 times annually, Large events for up to 600 guests twice annually, and Auction-related events for up to 250 guests twice annually as follows:

i. 200 Private Tours and Tastings annually for up to 20 guests;
ii. 40 Wine with Food Pairings annually for up to 25 guests;
iii. 40 Medium Events annually for up to 60 guests;
iv. Three (3) Large Events annually for up to 400 guests; and
v. One (1) Auction-related event for up to 250 guests;

~~m.~~n. Addition of on-premise consumption activities in conformity with AB 2004 (Evans Bill) on the Estate House porch and landscaped gardens west of the Estate House; and

~~n.~~o. Temporary relocation of approved hospitality activities (Tours and Tastings, Marketing Events, AB 2004) in and around the Estate House to the 2,067 sq. ft. of ground floor accessory space and adjacent outdoor areas of the proposed West Winery during the expansion of the Estate House. Hospitality activities to return to the Estate House and East Property upon approval of a Final Certificate of Occupancy for the Estate House.

~~A Variance application (P19-00098) is also requested to allow the expansion of the existing Estate House approximately 100 feet from the center line of Silverado Trail. Napa County code requires a 600 foot winery setback from Silverado Trail (N.C.C. § 18.104.230.A.1)~~

An Exception to the Napa County Road and Street Standards is also requested from a Left Turn Lane Warrant for east bound traffic on Lodi Lane entering the East Property driveway in order to avoid significant environmental impacts by preserving unique features of the natural environment.

10. **Describe the environmental setting and surrounding land uses.**
The project site is located on the Napa Valley Floor, approximately a half mile northwest of the boundaries of the City of St. Helena. The project includes four (4) parcels, encompassing approximately 32.35 acres. APN 022-130-010, referred to as the East Property, is approximately 10.67 acres in size and includes an existing winery, driveway, vineyards, and other improvements typical to production and hospitality facilities of wineries as well as agricultural operations. APN 022-100-033, referred to as the West Property, is approximately 19.67 acres in size and includes an existing single-family residence, vineyards, a driveway, a pond and various other agricultural improvements. APN 022-100-034 is approximately 1.01 acres in size and includes existing vineyards and a driveway. APN 022-100-035 is approximately 1.01 acres in size and includes existing vineyards. Access for the East Property is achieved from a driveway accessed from Lodi Lane, approximately 200 feet from the intersection of Lodi Lane and Silverado Trail. Access for the West Property is also achieved from a accessing a driveway from Lodi Lane, approximately 1,380 feet from the intersection of Lodi Lane and Silverado Trail, and driving through APN 022-100-034. The subject properties form a 'horseshoe' configuration, property lines abut each other along the Napa River which splits the two properties (along the northwestern boundary of the East Property and along the northeastern boundary of the West Property. Heading further south the two properties are divided by two properties of approximately 4.9 acres (APN's 022-130-008 & 022-130-009). The West Property also abuts the former Southern Pacific right-of-way on its west side. The site is generally flat with slopes between zero (0) and five (5) percent in the vineyard and winery areas, and slopes of five (5) to 15 percent along the sections of the Napa River. Highest elevation on the site is approximately 245 feet amsl while the lowest elevation on the site is approximately 230 feet amsl. All three (3) properties are primarily agriculture or built up, with Riparian Forest (California Bay – Coast Live Oak – Walnut – Ash) running along the stretch of the Napa River in the northern sections of the West and East properties and along a drainage ditch on the north side of Lodi Lane where the road abuts the property line of APN 022-100-034. A small portion of Valley Oak woodland extends into the West Property just south of the existing pond. Soil types include Bale loam, 0 to 2 percent slopes and Forward-Kidd complex, 11 to 60 percent slopes. Due to the location of the Napa River, the entire East Property and a majority of the West Property lie within the boundaries of the 100-year FEMA Flood Zone and Regulatory Floodway. The project site is outside of the State Responsibility Area (SRA).

Land uses in the area are dominated by large lot residential properties, wineries, and vineyards. The existing winery is located approximately 500 feet to the southwest and approximately 160 feet downhill of the nearest neighboring residence located east of Silverado Trail. The proposed West Winery would be approximately 580 feet to the southeast of the nearest residence.

11. **Other agencies whose approval is required** (e.g., permits, financing approval, or participation agreement).
The project would also require various ministerial approvals by the County, including but not limited to building permits, grading permits, waste disposal permits, and an encroachment permit, in addition to meeting CalFire standards. Permits may also be required by the Department of Alcoholic Beverage Control and Bureau of Alcohol, Tobacco, & Firearms, and the California Department of Fish and Wildlife.

    Responsible (R) and Trustee (T) Agencies

    Other Agencies Contacted

12. **Tribal Cultural Resources.** Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, is there a plan for consultation that includes, for example, the determination of significance of impacts to tribal cultural resource, procedures regarding confidentiality, etc.?

    On July 14, 2021, County Staff sent invitations to consult on the proposed project to Native American tribes who had a cultural interest in the area and who as of that date had requested to be invited to consult on projects, in accordance with the requirements of Public Resources Code section 21080.3.1 and as advised in the Cultural Resource Study submitted for the project. The Yocha Dehe Wintun Nation responded and declined comment as the project site is not located within their aboriginal territories. No other responses were received within 30-days of the tribe's receipt of the invitations.

    Note: Conducting consultation early in the CEQA process allows tribal governments, lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to tribal cultural resources, and reduce the potential for delay and conflict in the environmental review process. (See Public Resources Code section 21080.3.2.) Information may also be available from the California Native American Heritage Commission's Sacred Lands File per Public Resources Code section 5097.96 and the California Historical Resources Information System administered by the California Office of Historic Preservation. Please also note that Public Resources Code section 21082.3(c) contains provisions specific to confidentiality.

ENVIRONMENTAL IMPACTS AND BASIS OF CONCLUSIONS:

The conclusions and recommendations contained herein are professional opinions derived in accordance with current standards of professional practice. They are based on a review of the Napa County Environmental Resource Maps, the other sources of information listed in the file, and the comments received, conversations with knowledgeable individuals; the preparer's personal knowledge of the area; and, where necessary, a visit to the site. For further information, see the environmental background information contained in the permanent file on this project.

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a *(SUBSEQUENT)* NEGATIVE DECLARATION will be prepared.

☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Trevor Hawkes — Signature

May 29, 2024 — Date

Name: Trevor Hawkes
Napa County
Planning, Building and Environmental Services Department

I.	**AESTHETICS.** Except as provided in Public Resources Code Section 21099, would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☒
b)	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
c)	In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from a publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☐	☐	☒	☐
d)	Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☒	☐

Discussion:

a/b/c Visual resources are those physical features that make up the environment, including landforms, geological features, water, trees and other plants, and elements of the human cultural landscape. A scenic vista, then, would be a publicly accessible vantage point such as a road, park, trail, or scenic overlook from which distant or landscape-scale views of a beautiful or otherwise important assembly of visual resources can be taken-in. As generally described in the Environmental Setting and Surrounding Land Uses section above, this area is defined by a mix of wineries, vineyards, and large lot rural residential uses. The project consists of the development of a new ~~58,042~~52,237 sq. ft. winery facility, a 8,839 sq. ft. expansion to an existing building, the demolition of a tank shed, four (4) Chai's, a single-family residential building, removal of 3.55 acres of vineyards and removal of 49 trees. Neither parcel is within an area considered a scenic vista, nor does it preclude views of a scenic vista. The project does not endanger any scenic resources within a state scenic highway, such as trees, rock outcroppings or historic buildings, because the project is not viewable from a designated state scenic highway. The project also does not substantially degrade the existing visual character or quality or public views of the site from Lodi Lane or Silverado Trail. The project is the development of a new winery facility and associated winery infrastructure, compliant with the County General Plan and typical of land uses in the surrounding area.

d. The proposed West Winery facility and expansion of the existing Estate House may result in the use of additional lighting that may have the potential to impact nighttime views. Pursuant to standard Napa County conditions of approval for wineries, the existing outdoor lighting for the winery is required to be shielded and directed downwards, with only low level lighting allowed in parking areas. As designed and operating subject to the County's standard condition of approval, below, the project would not have a significant impact resulting from new sources of outside lighting.

6.3 LIGHTING – PLAN SUBMITTAL

a. Two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the CBC.

b. All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations; on timers; and shall incorporate the use of motion detection sensors to the greatest extent practical. All lighting shall be shielded or placed such that it does not shine directly on adjacent properties or impact vehicles on adjacent streets. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards.

4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS

a. All lighting shall be permanently maintained in accordance with the lighting and building plans approved by the

County. Lighting utilized during harvest activities is exempt from this requirement.

Mitigation Measures: None are required.

II.	AGRICULTURE AND FOREST RESOURCES.[1] Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Important (Farmland) as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☒	☐
b)	Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☒	☐
c)	Conflict with existing zoning for, or cause rezoning of, forest land as defined in Public Resources Code Section 12220(g), timberland as defined in Public Resources Code Section 4526, or timberland zoned Timberland Production as defined in Government Code Section 51104(g)?	☐	☐	☒	☐
d)	Result in the loss of forest land or conversion of forest land to non-forest use in a manner that will significantly affect timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, or other public benefits?	☐	☐	☒	☐
e)	Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use?	☐	☐	☒	☐

Discussion:

a/b/e As shown on the Napa County Important Farmland Map 2002 prepared by the California Department of Conservation District, Division of Land Resource Protection, pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, the project site includes areas designated as Prime Farmland (mostly vineyard areas), Unique Farmland (southwestern vineyard area on the East Property), Urban/Built Up (Red House and a portion of the area of the proposed West Winery) and Other Land (Napa River). A Napa County Agricultural Preserve Contract (P17-00160) was made and entered into by the County and the property owner on December 5, 2017, restricting uses on the property other than agriculture and agriculture adjacent uses such as a single family dwelling unit, farm management, etc. The project proposes to remove approximately 3.55 acres of vineyard from the area of the proposed West Winery and along the area of improvement to accommodate widening of the driveway for the West Property and APN 022-100-034. General Plan Agricultural Preservation and Land Use policies AG/LU-2 and AG/LU-13 recognize wineries, and any use consistent with the Winery Definition Ordinance and clearly accessory to a winery, as agriculture. As a result, this application will not result in the conversion of special status farmland to a non-agricultural use. The proposed project would not conflict with existing zoning for agricultural uses. There are no other changes included in this proposal that would result in the conversion of Farmland beyond the immediate project site.

c/d The project site is zoned Agricultural Preserve (AP), which allows wineries upon grant of a use permit. According to the Napa County Environmental resource maps the project site does contain a small portion of Oak Woodland south of the single-family residence proposed for demolition and a Riparian Forest exists along the extent of the Napa River and along the frontage of APN 022-100-034 and

[1] "Forest land" is defined by the State as "land that can support 10-percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources, including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits." (Public Resources Code Section 12220(g)) The Napa County General Plan anticipates and does not preclude conversion of some "forest land" to agricultural use, and the program-level EIR for the 2008 General Plan Update analyzed the impacts of up to 12,500 acres of vineyard development between 2005 and 2030, with the assumption that some of this development would occur on "forest land." In that analysis specifically, and in the County's view generally, the conversion of forest land to agricultural use would constitute a potentially significant impact only if there were resulting significant impacts to sensitive species, biodiversity, wildlife movement, sensitive biotic communities listed by the California Department of Fish and Wildlife, water quality, or other environmental resources addressed in this checklist.

Lodi Lane. Improvements through these areas are minor, consisting of tree removal at the West Property entrance and along the existing gravel driveway in order to improve the driveway to a paved code compliant driveway. Thus the proposed project does not conflict with existing zoning for, or cause rezoning of, forest land as defined in Public Resources Code Section 12220(g), timberland as defined in Public Resources Code Section 4526, or timberland zoned Timberland Production as defined in Government Code Section 51104(g) nor will the project conflict with existing zoning for, or cause rezoning of forest land, timberland, or timberland zoned Timberland Production.

Mitigation Measures: None are required

III.	AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☒	☐
b)	Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	☐	☐	☒	☐
c)	Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐
d)	Result in other emissions (such as those leading to odors adversely affecting a substantial number of people)?	☐	☐	☒	☐

Discussion:

On June 2, 2010, the Bay Area Air Quality Management District's (BAAQMD) Board of Directors unanimously adopted thresholds of significance to assist in the review of projects under the California Environmental Quality Act. These thresholds are designed to establish the level at which BAAQMD believed air pollution emissions would cause significant environmental impacts under CEQA and were posted on BAAQMD's website and included in BAAQMD's updated CEQA Guidelines (updated May 2012). The thresholds are advisory and may be followed by local agencies at their own discretion.

The thresholds were challenged in court. Following litigation in the trial court, the court of appeal, and the California Supreme Court, all of the thresholds were upheld. However, in an opinion issued on December 17, 2015, the California Supreme Court held that CEQA does not generally require an analysis of the impacts of locating development in areas subject to environmental hazards unless the project would exacerbate existing environmental hazards. The Supreme Court also found that CEQA requires the analysis of exposing people to environmental hazards in specific circumstances, including the location of development near airports, schools near sources of toxic contamination, and certain exemptions for infill and workforce housing. The Supreme Court also held that public agencies remain free to conduct this analysis regardless of whether it is required by CEQA.

In view of the Supreme Court's opinion, local agencies may rely on thresholds designed to reflect the impact of locating development near areas of toxic air contamination where such an analysis is required by CEQA or where the agency has determined that such an analysis would assist in making a decision about the project. However, the thresholds are not mandatory and agencies should apply them only after determining that they reflect an appropriate measure of a project's impacts. These Guidelines may inform environmental review for development projects in the Bay Area, but do not commit local governments or BAAQMD to any specific course of regulatory action.

BAAQMD published a new version of the Guidelines dated May 2017, which includes revisions made to address the Supreme Court's opinion. The May 2017 Guidelines update does not address outdated references, links, analytical methodologies or other technical information that may be in the Guidelines or Thresholds Justification Report. The Air District is currently working to revise any outdated information in the Guidelines as part of its update to the CEQA Guidelines and thresholds of significance.

a/b. The mountains bordering Napa Valley block much of the prevailing northwesterly winds throughout the year. Sunshine is plentiful in Napa County, and summertime can be very warm in the valley, particularly in the northern end. Winters are usually mild, with cool temperatures overnight and mild-to-moderate temperatures during the day. Wintertime temperatures tend to be slightly cooler in the northern end of the valley. Winds are generally calm throughout the county. Annual precipitation averages range from about 24 inches

in low elevations to more than 40 inches in the mountains.

Ozone and fine particle pollution, or PM2.5, are the major regional air pollutants of concern in the San Francisco Bay Area. Ozone is primarily a problem in the summer, and fine particle pollution in the winter. In Napa County, ozone rarely exceeds health standards, but PM2.5 occasionally does reach unhealthy concentrations. There are multiple reasons for PM2.5 exceedances in Napa County. First, much of the county is wind-sheltered, which tends to trap PM2.5 within the Napa Valley. Second, much of the area is well north of the moderating temperatures of San Pablo Bay and, as a result, Napa County experiences some of the coldest nights in the Bay Area. This leads to greater fireplace use and, in turn, higher PM2.5 levels. Finally, in the winter easterly winds often move fine-particle-laden air from the Central Valley to the Carquinez Strait and then into western Solano and southern Napa County (BAAQMD, In Your Community: Napa County, April 2016)

The impacts associated with implementation of the project were evaluated consistent with guidance provided by BAAQMD. Ambient air quality standards have been established by state and federal environmental agencies for specific air pollutants most pervasive in urban environments. These pollutants are referred to as criteria air pollutants because the standards established for them were developed to meet specific health and welfare criteria set forth in the enabling legislation. The criteria air pollutants emitted by development, traffic and other activities anticipated under the proposed development include ozone, ozone precursors oxides of nitrogen and reactive organic gases (NOx and ROG), carbon monoxide (CO), nitrogen dioxide (NO2), and suspended particulate matter (PM10 and PM2.5). Other criteria pollutants, such as lead and sulfur dioxide (SO2), would not be substantially emitted by the proposed development or traffic, and air quality standards for them are being met throughout the Bay Area.

BAAQMD has not officially recommended the use of its thresholds in CEQA analyses and CEQA ultimately allows lead agencies the discretion to determine whether a particular environmental impact would be considered significant, as evidenced by scientific or other factual data. BAAQMD also states that lead agencies need to determine appropriate air quality thresholds to use for each project they review based on substantial evidence that they include in the administrative record of the CEQA document. One resource BAAQMD provides as a reference for determining appropriate thresholds is the *California Environmental Quality Act Air Quality Guidelines* developed by its staff in 2010 and as updated through May 2017. These guidelines outline substantial evidence supporting a variety of thresholds of significance.

As mentioned above, in 2010, the BAAQMD adopted and later incorporated into its 2011 CEQA Guidelines project screening criteria (Table 3-1 – Operational-Related Criteria Air Pollutant and Precursors Screening Level Sizes) and thresholds of significance for air pollutants, which have now been updated by BAAQMD through May 2017. Given the size of the entire project, which is approximately 73,587~~9,392~~ sq. ft. of floor area dedicated to production uses with 23,120 sq. ft. of space dedicated to tasting/hospitality uses compared to the BAAQMD's screening criterion of 47,000 sq. ft. (high quality restaurant) and 541,000 sq. ft. (general light industry) for NOX (oxides of nitrogen), the project would contribute an insignificant amount of air pollution and would not result in a conflict or obstruction of an air quality plan. (Please note: a high quality restaurant is considered comparable to a winery tasting room for purposes of evaluating air pollutant emissions, but grossly overstates emissions associated with other portions of a winery, such as office, barrel storage and production, which generate fewer vehicle trips. Therefore, a general light industry comparison has also been used for other such uses.) The project falls below the screening criteria as noted above, and consequently will not significantly affect air quality individually or contribute considerably to any cumulative air quality impacts.

c/d. In the short term, potential air quality impacts are most likely to result from earthmoving and construction activities required for project construction related to the West Winery building, Estate House expansion, building demolition, access driveway improvements, and other infrastructure associated with winery operations. Earthmoving and construction emissions would have a temporary effect; consisting mainly of dust generated during grading and other construction activities, exhaust emissions from construction related equipment and vehicles, and relatively minor emissions from paints and other architectural coatings. The Air District recommends incorporating feasible control measures as a means of addressing construction impacts. If the proposed project adheres to these relevant best management practices identified by the Air District and the County's standard conditions of project approval, construction-related impacts are considered less than significant:

7.1 SITE IMPROVEMENTS

c. AIR QUALITY

During all construction activities the permittee shall comply with the most current version of BAAQMD Basic Construction Best Management Practices including but not limited to the following, as applicable:

1. *Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The BAAQMD's phone number shall also be visible.*
2. *Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) two times per day.*
3. *Cover all haul trucks transporting soil, sand, or other loose material off-site.*
4. *Remove all visible mud or dirt traced onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.*
5. *All vehicle speeds on unpaved roads shall be limited to 15 mph.*

6. *All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.*
7. *Idling times shall be minimized either by shutting off equipment when not in use or reducing the maximum idling time to five (5) minutes (as required by State Regulations). Clear signage shall be provided for construction workers at all access points.*
8. *All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. Any portable engines greater than 50 horsepower or associated equipment operated within the BAAQMD's jurisdiction shall have either a California Air Resources Board (ARB) registration Portable Equipment Registration Program (PERP) or a BAAQMD permit. For general information regarding the certified visible emissions evaluator or the registration program, visit the ARB FAQ http://www.arb.ca.gov/portable/perp/perpfact_04-16-15.pdf or the PERP website http://www.arb.ca.gov/portable/portable.htm.*

Furthermore, while earthmoving and construction on the site would generate dust particulates in the short-term, the impact would be less than significant with dust control measures as specified in Napa County's standard condition of approval relating to dust:

7.1 SITE IMPROVEMENTS

b. DUST CONTROL

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.

While the Air District defines public exposure to offensive odors as a potentially significant impact, wineries are not known operational producers of pollutants capable of causing substantial negative impacts to sensitive receptors. The nearest residence to the proposed new winery building is approximately 580 feet to the north and the nearest residence to the expansion of the existing Estate House is approximately 500 feet to the east, but also 160 higher in elevation and on the opposite side of Silverado Trail. Construction-phase pollutants would be reduced to a less than significant level by the above-noted standard condition of approval. The project would not create pollutant concentrations or objectionable odors affecting a substantial number of people. Impacts would be less than significant.

Mitigation Measures: None are required.

IV. **BIOLOGICAL RESOURCES.** Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service?	☐	☒	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?	☐	☐	☒	☐
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, Coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☒	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☒	☐

e)	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☒	☐
f)	Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☒

Discussion:

a/b. The project consists of the development of a new ~~58,042~~52,237 sq. ft. winery facility, a 8,839 sq. ft. expansion to an existing building, the demolition of a tank shed, four (4) Chai', a single-family residential building, removal of 3.55 acres of vineyards, removal of 49 trees and related improvements. As described in the Environmental Setting description the site is generally flat with slopes between zero (0) and five (5) percent in the vineyard and winery areas, and slopes of five (5) to 15 percent along the sections of the Napa River. Highest elevation on the site is approximately 245 feet amsl while the lowest elevation on the site is approximately 230 feet amsl. According to the Napa County Environmental Mapping (GIS - Vegetation layer) all four (4) properties are primarily agriculture or built up, with Riparian Forest (California Bay – Coast Live Oak – Walnut – Ash) running along the stretch of the Napa River in the northern sections of the West and East properties and along Lodi Lane where the road abuts the property line of APN's 022-100-034 and 022-100-035. A small portion of Valley Oak woodland extends into the West Property just south of the existing pond. According to the GIS layer – Natural Diversity Database (CNDDB) no sensitive plant species have been identified on or adjacent to the property.

The GIS layer – CNDDB Owl Habitat, shows the potential for owl habitat to occur on all three parcels where vegetation clearing activities associated with the project will take place. The general attributes of Northern Spotted Owl (NSO) include dense, multi-layered canopy of several tree species of varying size and ages with open spaces among the lower branches to allow flight under the canopy. NSO habitat also tends to include abundant logs, snags/cavity trees with broken tops or platform-like substrates. While this habitat does not generally describe the small vegetation areas identified for removal under the project's demolition plan, because this species is known to occur nearby, spotted owls could nest in trees in the vicinity, especially where the tree canopy is denser. Thus mitigation measure **BIO-1** would reduce impacts to northern spotted owls to less than significant impact. Because of the number of trees identified for removal (49) and the general heights mitigation measure **BIO-2** would reduce impacts to nesting birds or raptors protected under the migratory bird treaty and/or California Fish and Game code to a less than significant impact.

c. The National Wetlands Inventory identifies the Napa River as a Freshwater Emergent Wetland. There are no other identified state or federally protected wetlands located within or adjacent to the project. The project would not have a substantial adverse effect on the Napa River. No development is proposed adjacent to the Napa River which would potentially remove, fill, or interrupt the river hydrologically. The project does propose to connect existing water and wastewater systems on the East Property to the proposed development on the West Property through the application of Horizontal Directional Drilling, also referred to as Directional Boring, which will allow for the extension of piping system underneath the Napa River in order to avoid potential environmental impacts. Prior to the application being found complete by Napa County, the applicant's engineer contacted the California Department of Fish and Wildlife (CDFW), the California Regional Water Quality Control Board (RWQCB) and the United States Army Corp of Engineers in relation to the proposed Directional Boring project. RWQCB and the United States Army Corp of Engineers both informed the applicant that permits would not be required from their agencies for the Directional Boring. It is unclear at this time whether permits from CDFW could be required. For this reason, and in order to mitigate any potentially significant impacts to the Napa River, mitigation measure **BIO-3** requires the applicant to obtain a Lake or Streambed Alteration (LSA) agreement or demonstrate that CDFW has determined that an LSA agreement is unnecessary, prior to the issuance of building permits.

d. As described in the Environmental Setting description land uses in the area are dominated by large lot residential properties, wineries, and vineyards. Given the surrounding land uses and the project as proposed would not interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursey site since no wildlife corridors or nursery sites are impacted from the project. Impacts would be less than significant.

e. The proposed project would not conflict with any local policies or ordinances protecting biological resources. Construction and earthmoving activities related to the driveway, West Winery building and related infrastructure on the West Property and APN 022-100-034 will require the removal of approximately 21 trees, 14 of which are native oak species. These oaks species are located either directly adjacent to the existing driveway entrance, which requires widening in order to meet County Code, or scattered around the existing single family residence and pond. The other seven (7) trees are not species that are generally protected. All trees planned for removal on the West Property are located in areas where the applicant proposes to develop an expanded code compliant driveway to access the West Winery building. The project is not expected to conflict with General Plan policy CON-24, which requires replacement of lost oak woodland or preservation at a 2:1 ratio where it is infeasible to retain. To comply with Con-24,the applicant's planting plan for the West Property includes approximately 37 oak tree species (15 gallon or 24' box sizes), largely planted along the west and south parcel boundaries. There are 28 trees planned to be removed from the East Property, but these trees are primarily existing landscape trees and none are classified as oak species. Impacts would be less than significant.

f. The proposed project would not conflict with the provisions of an adopted Habitat Conservation Plans, Natural Community Conservation Plans or other approved local, regional or state habitat conservation plans because there are no plans applicable to the subject site. No impacts would occur.

Mitigation Measures:

MM BIO-1: A qualified biologist shall conduct an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between March 15 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls, dated (revised) January 9, 2012. Surveys shall be conducted in accordance with Section 9 of the survey protocol, Surveys for Disturbance-Only Projects. If breeding NSO are detected during surveys, a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 15 and July 31 each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.

Method of Monitoring: Prior to issuance of the grading/building permits, a report by a qualified biologist shall be submitted to the Napa County Planning, Building & Environmental Services Department including the results of the three focused nesting spotted owl surveys. If an active nest was identified on site the report shall include nest buffers and monitoring.

MM BIO-2: For earth-disturbing activities occurring between February 1 and August 31, (which coincides with the grading season of April 1 through October 15 – NCC Section 18.108.070.L, and bird breeding and nesting seasons), a qualified biologist (defined as knowledgeable and experienced in the biology and natural history of local avian resources with potential to occur at the project site and experienced with conducting pre-construction nesting bird and raptor surveys) shall conduct pre-construction surveys for nesting birds and raptors, within all suitable habitat on the project site, and all suitable nesting habitat within 500 feet of the Project site. The preconstruction survey shall be conducted no earlier than seven (7) days prior to vegetation removal and ground disturbing activities are to commence. Should ground disturbance commence later than seven (7) days from the survey date, or if there is a lapse in Project activities of seven (7) days or more during the nesting season surveys shall be repeated. A copy of the survey report shall be provided to the Napa County Planning Division and the CDFW prior to commencement of work.

In the event that nesting birds are found, the qualified biologist shall determine adequate no-disturbance buffer distances from all active nests based on the species and in consultation with the County Planning Division and the U.S. Fish and Wildlife Service (USFWS) and/or CDFW prior to initiation of project activities.

All active nests shall be monitored by a qualified biologist for the first week during Project activities to ensure the established buffer distances are adequate to avoid disturbances to the nest. If the qualified biologist observes bird behavior that may indicate nest disturbance, the qualified biologist shall have the authority to immediately cease Project activities. In this event, the qualified biologist shall consult with CDFW regarding larger buffer distances, and buffer zones shall be refenced accordingly, prior to resuming Project activities. If larger buffer distances cannot be established, Project activities shall be delayed until the nest is no longer active (i.e. the young have fledged the nest and can feed independently, or the nest fails due to natural causes), as determined by a qualified biologist.

Exclusion buffers shall be fenced with temporary construction fencing (or the like), the installation of which shall be verified by Napa County Planning Division prior to the commencement of any earthmoving and/or development activities. Exclusion buffers shall remain in effect until the young have fledged or nest(s) are otherwise determined inactive by a qualified biologist.

Alternative methods aimed at flushing out nesting birds prior to pre-construction surveys, whether physical (i.e., removing or disturbing nests by physically disturbing trees with construction equipment), audible (i.e., utilizing sirens or bird cannons), or chemical (i.e., spraying nesting birds or their habitats) would be considered an impact to nesting birds and is prohibited. Any act associated with flushing birds from project areas should undergo consultation with the Napa County Planning Division, USFWS and/or CDFW prior to any activity that could disturb nesting birds.

Method of Monitoring: If construction/earthmoving activity is to occur between February 1 and August 31 the survey prepared by a qualified biologist shall be submitted to Planning Division staff prior to issuance of the grading/building permits.

MM BIO-3: The applicant shall submit a Notification of Lake or Streambed Alteration with the California Department of Fish and Wildlife for the horizontal directional drilling and installation of utility lines under the Napa River. Issuance of a Streambed Alteration Agreement or demonstration that CDFW determined that the agreement was unnecessary shall be provided to the Planning, Building & Environmental Services department prior to issuance of building permits associated with the drilling.

Method of Monitoring: A Streambed Alteration Agreement or other notification from CDFW determining the permit is unnecessary for this project

will be submitted prior to the issuance of permits associate with the installation of utility lines under the Napa River.

V.	CULTURAL RESOURCES. Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Cause a substantial adverse change in the significance of a historical resource pursuant to CEQA Guidelines §15064.5?	☐	☒	☐	☐
b)	Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines §15064.5?	☐	☒	☐	☐
c)	Disturb any human remains, including those interred outside of dedicated cemeteries?	☐	☐	☒	☐

Discussion:

a/b. Evans & De Shazo, Inc. (EDS) was contracted by the applicant to provide a Cultural Resource Study for the proposed Duckhorn Winery Project located at the three (3) project parcels. The study covers three components in the review of the proposed project's potential impacts to cultural resources; A Sacred Sites inventory request, a records search with the Northwest Information Center, and a Field Survey.

A Sacred Sites inventory request was made to the Native American Heritage Commission (NAHC) on July 14, 2017, to determine if there are any Sacred Sites located within or near to the Project Area and to obtain a list of Native American tribes and individuals to contact for further information. A search of the Sacred Sites file conducted by the NAHC on July 26, 2017 did not indicate the presence of a Native American Sacred Site within or in the immediate vicinity of the Project Area. The NAHC provided a list of local Native Americans organizations and individuals to contact who may have specific knowledge about other Native American resources or cultural places located near the Project Area. Four tribes are listed: the Cortina Indian Rancheria of Wintun Indians, Middletown Rancheria, Mishewal-Wappo Tribe of Alexander Valley, and Yocha Dehe Wintun Nation. A letter was sent to each of the tribes on July 31, 2017. On August 4, 2017, a response was received from Stephanie L. Reyes, Tribal Historic Preservation Officer (THPO) for Middletown Rancheria. The letter stated the following:

> *"The Middletown Rancheria (Tribe) is in receipt of your letter dated July 31, 2017, regarding the property at 1000 Lodi Lane, St. Helena, Napa County, California. Though we have no specific comments at this time, should any new information or evidence of human habitation be found as the project progresses, we request that all work cease and that you contract us immediately. We do have a process to protect such important and sacred resources".*

As of the date of this report, no additional comments have been received.

A Record Search was conducted at the NWIC on July 17, 2017 (NWIC File #17-0068). According to information on file at the NWIC, only the southeastern portion APN 022-130-010 has been previously surveyed for cultural resources; the remaining portion of the property has not previously been surveyed. The portion of the Duckhorn Winery property that was subject to a previously cultural resource study includes a 10-acre portion of APN 022-130-010 that was surveyed in 1980 for the proposed Duckhorn Winery (Flynn 1980 / S-2325). The survey resulted in the identification of both worked and unworked obsidian in a rhyolitic matrix as well as alluvial soils. It was noted that "much of the obsidian was found within fill soil used for the driveway. This material was no doubt derived from cut and fill operations along the flank of Napa Glass Mountain for the building of Silverado Trail" (Flynn 1980). The record search at the NWIC also revealed that there are twelve (12) previously recorded cultural resources located within one quarter-mile of the Project Area.

The field survey resulted in the identification of large number of primary and secondary obsidian flakes, flake tools, and bifaces in all stages of manufacture, as well as naturally-occurring obsidian that is associated with the adjacent Glass Mountain obsidian source. While obsidian flakes and tools were observed throughout all three parcels, areas having a higher concentration of obsidian artifacts were observed. Within APN 022-100-031, a high concentration (50+ flakes per square meter) of obsidian artifacts was observed along the north/south oriented dirt and gravel access road that bisects the vineyard at the north end of the parcel; and within APN 022-100-032, a high concentration (50+ flakes per square meter) of obsidian artifacts was observed in the area where a building was recently demolished that extends into the adjacent vineyard to the east and south. Two areas having a higher concentration of obsidian artifacts were also observed within APN 022-130-010, including within the vineyard south of the estate house (25+ flakes per square meter), and within the thin strip of exposed soil at the north end of the parcel (50+ flakes per square meter).

Overall, the large amount of obsidian and the concentrated areas of obsidian observed within all three parcels appear to indicate that the entire property was used as an obsidian quarry and workshop area in prehistoric times, and reflects use of a broader cultural landscape that includes obsidian quarry locations, obsidian workshop areas, midden deposits indicating long-term habitation and areas in between that contain evidence of an thriving economy centered around the procurement and processing of Glass Mountain obsidian by Native Americans in prehistoric times. This indicates that the broad scatter of obsidian artifacts, and concentrations thereof, observed within the Duckhorn Winery properties has the potential to yield information that is important to the prehistory of the local area and California. Therefore, the resource appears to have the potential to be eligible for listing on the California Register of Historical Resources (CRHR) under Criterion 4, and also as a unique archaeological resource. However, due to past land use activities that includes agriculture, winery buildings, and road construction and maintenance, much of the obsidian has been damaged over the years as a result of these activities, and in many instances, it is difficult to discern between the culturally-modified obsidian and the naturally occurring obsidian that has been damaged in more recent times. Therefore, integrity, or the ability for the resource to convey significance under Criterion 4 of the CRHR, is a potential issue that warrants further investigation. Due to the presence of a potentially significant prehistoric resource within the project area, Mitigation Measure **CUL-1** requires further investigations of the development areas prior to issuance of grading, demolition or building permits. Mitigation Measure **CUL-2** requires archeological monitoring during ground disturbing activities.

Even with the inclusion of MM CUL-1 & 2, in the event that any archaeological materials are encountered during earth-disturbing activities when an archaeologist is not present the project would be expected to comply with standard Condition of Approval 7.2, listed below, and construction of the project would be required to cease, and a qualified archaeologist would be retained to investigate the site. Compliance with both cultural resource mitigation measures and the project's conditions of approval are expected to keep potential impacts to cultural resources from being potentially significant.

7.2 ARCHEOLOGICAL FINDING

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during project development, all work in the vicinity must be halted, and the Napa County Coroner informed, so that the Coroner can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the permittee shall comply with the requirements of Public Resources Code Section 5097.98.

c. No human remains have been encountered on the property and no information has been encountered that would indicate that this project would encounter human remains. If human remains are encountered during project development, construction of the project is required to cease, and the requirements of Condition of Approval 7.2, listed above, would apply.

Mitigation Measures:

MM CUL-1: Prior any earthmoving activities, the permittee shall retain an archeologist to perform further archeological testing on the areas of development to determine whether the sites are eligible for listing in the California Registry of Historic Resources or whether they meet the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. Standard archeological testing procedures (i.e. auger excavation, test units, mechanical trenching) shall be utilized to define the nature and extent of the potential resource, as well as obsidian hydration analysis to establish chronology. A geoarchaeological study shall be prepared to develop soil profiles and investigate stratigraphy within the excavation areas to define and distinguish disturbed and intact soils and interpret soil development and past disturbances. At the conclusion of the geoarchaeological study a report shall be prepared and submitted to the County, by a professional who meets the Secretary of the Interior's professional qualification standards demonstrating that the testing and geoarchaeological study have been conducted to sufficient standards and whether the sites are eligible for listing on the California Registry of Historic Resources or meets the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. The applicant shall comply with all recommendations from the report.

Method of Monitoring: Prior to issuance of any grading, demolition or building permits pursuant to this approval a report shall be prepared, by a professional who meets the Secretary of the Interior's professional qualification standards, demonstrating that the testing and geoarchaeological study described under MM CUL-1 have been conducted to sufficient standards and whether the sites are eligible for listing on the California Registry of Historic Resources or meets the definition of a "unique archeological resource" as defined in Public Resource Code 21083.2. In the event that the sites are found to be eligible for listing on the California Registry of Historic Resources or if they would meet the definition of a "unique archeological resource", the report will also outline the steps the County must take to consider potential adverse impacts under Public Resource Code 21084.1 and 21083.2(i) or the treatment of a "unique archeological resource" under the provisions of Public Resource Code 21083.2.

MM CUL-2: The permittee shall retain a professional, who meets the Secretary of the Interior's professional qualification standards, who shall be onsite to conduct archaeological monitoring during project related ground disturbing activities. Monitoring procedures shall proceed as follows:

- Monitoring shall involve the observation of ground-disturbing activities in areas that have the potential to contain artifacts or subsurface archaeological features, as well as the inspection of excavation spoils to verify the presence or absence of artifacts. At times, grading of fill soil taken from a known sensitive area will be monitored as well. Monitoring shall occur during the entire

work day, and daily while ground-disturbing activities are taking place in culturally sensitive areas.

- During monitoring, if the archaeologist observes artifacts or potential archaeological features, the equipment and/or personnel that encountered the archaeological material will be stopped so that the archaeological monitor can inspect the area and associated soils to determine the presence or absence and potential significance of the archaeological materials encountered.
- When artifacts or subsurface archaeological features are encountered, archaeological materials shall be photographed and the location recorded. A field number shall be assigned to each artifact. Artifacts shall be placed in labeled bags that fully protect them from damage. Work will be allowed to resume once the archaeological monitor removes the artifact(s) and determines that further artifacts or an archaeological feature are not present.
- Equipment stoppages will only involve the equipment that encountered archaeological material. During temporary equipment stoppages, the archaeologist will efficiently accomplish all necessary tasks so that work can continue.
- A Daily Monitoring Record form shall be completed for each day that archaeological monitoring occurs. The form shall be used to record daily monitoring activities, such as construction personnel, procedures and equipment, dimensions of excavated areas, soil description and stratigraphy, and cultural material observed. Photographs will also be taken throughout monitoring.

Method of Monitoring: Prior to issuance of any grading, demolition or building permits pursuant to this approval the applicant will provide to the Planning, Building & Environmental Services division the contact information for the archaeologist conducting onsite monitoring of project related ground disturbing activities. Archaeological monitoring shall continue until such time that the archaeologist determines that further ground disturbing activities will not adversely impact potentially significant archaeological resources. The Planning, Building & Environmental Services division shall be contacted at the conclusion of monitoring activities.

VI.	**ENERGY.** Would the project:	**Potentially Significant Impact**	**Less Than Significant With Mitigation Incorporation**	**Less Than Significant Impact**	**No Impact**
a)	Result in potentially significant environmental impact due to wasteful, inefficient or unnecessary consumption of energy resources during project construction or operation?	☐	☐	☒	☐
b)	Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	☐	☐	☐	☒

Discussion:

a. The proposed project would comply with Title 24 energy use requirements and would not result in significant environmental impacts due to wasteful, inefficient or unnecessary consumption of energy resources during project construction or operation. Impacts would be less than significant.

b. The proposed project would not conflict with the provisions of a state or local plan for renewable energy or energy efficiency because there are no plans applicable to the subject site. No impacts would occur.

Mitigation Measures: None are required.

VII.	**GEOLOGY AND SOILS.** Would the project:	**Potentially Significant Impact**	**Less Than Significant With Mitigation Incorporation**	**Less Than Significant Impact**	**No Impact**
a)	Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				

i)	Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☒	☐
ii)	Strong seismic ground shaking?	☐	☐	☒	☐
iii)	Seismic-related ground failure, including liquefaction?	☐	☐	☒	☐
iv)	Landslides?	☐	☐	☒	☐
b)	Result in substantial soil erosion or the loss of topsoil?	☐	☐	☒	☐
c)	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☒	☐
d)	Be located on expansive soil creating substantial direct or indirect risks to life or property? Expansive soil is defined as soil having an expansive index greater than 20, as determined in accordance with ASTM (American Society of Testing and Materials) D 4829.	☐	☐	☒	☐
e)	Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☒	☐
f)	Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☒	☐	☐

Discussion:

a. i) There are no known faults on the project site as shown on the most recent Alquist-Priolo Earthquake Fault Zoning Map. As such, the proposed project would result in a less than significant impact with regards to rupturing a known fault.

ii) All areas of the Bay Area are subject to strong seismic ground shaking. Construction of the project will be required to comply with all the latest building standards and codes, including the California Building Code that would reduce any potential impacts to a less than significant level.

iii) No subsurface conditions have been identified on the project site that indicated a susceptibility to seismic-related ground failure or liquefaction. Although the project site is identified as having a high liquefaction potential according to the Napa County Environmental Resource Maps (liquefaction layers), compliance with the latest edition of the California Building Code for seismic stability would result in less than significant impacts.

iv) According to the Napa County Environmental Resource Maps (Landslides line, polygon, and geology layers) there are known landslide areas on the subject site.

b. The proposed improvements would occur on slopes of zero (0) to five (5) percent. The project would require incorporation of best management practices and would be subject to the Napa County Stormwater Ordinance which addresses sediment and erosion control measures and dust control, as applicable. Impacts would be less than significant.

c/d. According to preliminary geologic mapping of the St. Helena Quandrangle performed by the California Geologic Survey (CGS-2004), the property is underlain by terrace deposits of the Holocene era. There are no active faults or potentially active faults through the project site. No slope instability or unstable landforms are mapped beneath or near the vicinity of the project. Based on the Napa County Environmental Sensitivity Maps (liquefaction layer) the project site has a high susceptibility for liquefaction on the entirety of the property. Development will be required to comply with all the latest building standards and codes, including the California Building Code that would reduce any potential impacts to the maximum extent possible.

e. According to the Onsite Wastewater Dispersal Feasibility Study for Duckhorn Vineyards Winery prepared by Bartelt Engineering in August 2022, the project site and proposed system would have adequate disposal capacity to serve the project. The Division of Environmental Health reviewed this report and concurred with its findings. Impacts would be less than significant.

f. A Cultural Resource Study of the Duckhorn Property was completed by Evans & De Shazo on August 21, 2017. The study included a

record search and review with the Northwest Information Center (NWIC), a Native American Sacred Sites inventory and consultation, and a field survey. Implementation of mitigation measure **MM CUL-1** and standard condition of approval 7.2 identified in Section V above would reduce potential impacts to a less than significant level.

Mitigation Measures: None are required

VIII.	**GREENHOUSE GAS EMISSIONS**. Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Generate a net increase in greenhouse gas emissions in excess of applicable thresholds adopted by the Bay Area Air Quality Management District or the California Air Resources Board which may have a significant impact on the environment?	☐	☐	☒	☐
b)	Conflict with a county-adopted climate action plan or another applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☒	☐

Discussion:

On April 20, 2022, the BAAQMD adopted updated thresholds of significance for climate impacts (CEQA Thresholds for Evaluating the Significance of Climate Impacts, BAAQMD April 2022)[2]. The updated thresholds to evaluate GHG and climate impacts from land use projects are qualitative and geared toward building and transportation projects. Per the BAAQMD, all other projects should be analyzed against either an adopted local Greenhouse Gas Reduction Strategy (i.e., Climate Action Plan (CAP)) or other threshold determined on a case-by-case basis by the Lead Agency. If a project is consistent with the State's long-term climate goals of being carbon neutral by 2045, then a project would have a less-than-significant impact as endorsed by the California Supreme Court in Center for Biological Diversity v. Department of Fish & Wildlife (2015) 62 Cal. 4th 204). There is no proposed construction-related climate impact threshold at this time. Greenhouse gas (GHG) emissions from construction represent a very small portion of a project's lifetime GHG emissions. The proposed thresholds for land use projects are designed to address operational GHG emissions which represent the vast majority of project GHG emissions.

Napa County has been working to develop a Climate Action Plan (CAP) for several years. In 2012, a Draft CAP (March 2012) was recommended using the emissions checklist in the Draft CAP, on a trial basis, to determine potential greenhouse gas (GHG) emissions associated with project development and operation. At the December 11, 2012, Napa County Board of Supervisors (BOS) hearing, the BOS considered adoption of the proposed CAP. In addition to reducing Napa County's GHG emissions, the proposed plan was intended to address compliance with CEQA for projects reviewed by the County and to lay the foundation for development of a local offset program. While the BOS acknowledged the plan's objectives, the BOS requested that the CAP be revised to better address transportation-related greenhouse gas, to acknowledge and credit past accomplishments and voluntary efforts, and to allow more time for establishment of a cost-effective local offset program. The BOS also requested that best management practices be applied and considered when reviewing projects until a revised CAP is adopted to ensure that projects address the County's policy goal related to reducing GHG emissions. In addition, the BOS recommended utilizing the emissions checklist and associated carbon stock and sequestration factors in the Draft CAP to assess and disclose potential GHG emissions associated with project development and operation pursuant to CEQA.

In July 2015, the County re-commenced preparation of the CAP to: i) account for present day conditions and modeling assumptions (such as but not limited to methods, emission factors, and data sources), ii) address the concerns with the previous CAP effort as outlined above, iii) meet applicable State requirements, and iv) result in a functional and legally defensible CAP. On April 13, 2016, the County, as the part of the first phase of development and preparation of the CAP, released Final Technical Memorandum #1: 2014 Greenhouse Gas Emissions Inventory and Forecast, April 13, 2016. This initial phase included: i) updating the unincorporated County's community-wide GHG emissions inventory to 2014, and ii) preparing new GHG emissions forecasts for the 2020, 2030, and 2050 horizons. On July 24, 2018, the County prepared a Notice of Preparation of a Draft Focused EIR for the Climate Action Plan. The review period was from July 24, 2018, through August 22, 2018. The Draft Focused EIR for the CAP was published May 9, 2019. Additional information on the County CAP can be obtained at the Napa County Department of Planning, Building and Environmental Services or online at https://www.countyofnapa.org/589/Planning-Building-Environmental-Services. The County's draft CAP was placed on hold when the Climate Action Committee (CAC) began meeting on regional GHG reduction strategies in 2019. The County is currently preparing an updated CAP to provide a clear framework to determine what land use actions will be necessary to meet the State's adopted GHG reduction goals, including a quantitative and measurable strategy for achieving net zero emissions

[2] https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/updated-ceqa-guidelines, April 2022

by 2045.

For the purposes of this assessment the carbon stock and sequestration factors identified within the 2012 Draft CAP are utilized to calculate and disclose potential GHG emissions associated with agricultural "construction" and development and with "ongoing" agricultural maintenance and operation, as further described below. The 2012 Draft CAP carbon stock and sequestration factors are utilized in this assessment because they provide the most generous estimate of potential emissions. As such, the County considers that the anticipated potential emissions resulting from the proposed project that are disclosed in this Initial Study reasonably reflect proposed conditions and therefore are considered appropriate and adequate for project impact assessment.

Regarding operational emissions, as part of the statewide implementation of Senate Bill (SB) 743, the Governor's Office of Planning and Research (OPR) settled upon automobile vehicle miles of travel (VMT) as the preferred metric for assessing passenger vehicle-related impacts under CEQA and issued revised CEQA Guidelines in December 2018, along with a Technical Advisory on Evaluating Transportation Impacts in CEQA to assist practitioners in implementing the CEQA Guidelines revisions. The CEQA Guidelines and the OPR Technical Advisory concluded that, absent substantial evidence otherwise, the addition of 110 or fewer daily trips could be presumed to have a less than significant VMT impact. The County maintains a set of Transportation Impact Study Guidelines (TIS Guidelines) that define situations and project characteristics that trigger the need to prepare a TIS. The purpose of a TIS is to identify whether the project is likely to cause adverse physical or operational changes on a County roadway, bridge, bikeway or other transportation facility, to determine whether the project should be required to implement or contribute to improvement measures to address those changes, and to ensure that the project is developed consistent with the County's transportation plans and policies. Per the County's current TIS Guidelines, a project is required to prepare a TIS if it generates 110 or more net new daily vehicle trips. The TIS Guidelines also include VMT analysis requirements for projects based on trip generation, which includes a screening approach that provides a structure to determine what level of VMT analysis may be required for a given project. For a new project that would generate less than 110 net new daily vehicle and truck trips, not only is the project not required to prepare a TIS, it is also presumed to have a less-than-significant impact for VMT. However, applicants are encouraged to describe the measures they are taking and/or plan to take that would reduce the project's trip generation and/or VMT. Projects that generate more than 110 net new passenger vehicle trips must conduct a VMT analysis and identify feasible strategies to reduce the project's vehicular travel; if the feasible strategies would not reduce the project's VMT by at least 15%, the conclusion would be that the project would cause a significant environmental impact.

a/b. Overall increases in Greenhouse Gas (GHG) emissions in Napa County were assessed in the Environmental Impact Report (EIR) prepared for the Napa County General Plan Update and certified in June 2008. GHG emissions were found to be significant and unavoidable in that document, despite the adoption of mitigation measures incorporating specific policies and action items into the General Plan.

Consistent with the General Plan action items, Napa County participated in the development of a community-wide GHG emissions inventory and "emission reduction framework" for all local jurisdictions in the County in 2008-2009. This planning effort was completed by the Napa County Transportation and Planning Agency in December 2009, and served as the basis for development of a refined inventory and emission reduction plan for unincorporated Napa County.

The County requires project applicants to consider methods to reduce GHG emissions consistent with Napa County General Plan Policy CON-65(e). Pursuant to State CEQA Guidelines Section 15183, this assessment focuses on impacts that are "peculiar to the project," rather than the cumulative impacts previously assessed, because this Initial Study assesses a project that is consistent with an adopted General Plan for which an EIR was prepared. GHGs are the atmospheric gases whose absorption of solar radiation is responsible for the greenhouse effect, including carbon dioxide (CO2), methane, ozone, and the fluorocarbons, which contribute to climate change. CO2 is the principal GHG emitted by human activities, and its concentration in the atmosphere is most affected by human activity. It also serves as the reference gas to which to compare other GHGs. For the purposes of this analysis potential GHG emissions associated with winery 'construction' and 'development' and with 'ongoing' winery operations have been discussed.

GHG emissions from construction represent a very small portion of a project's lifetime GHG emissions. The BAAQMD recommended thresholds do not include a construction-related climate impact threshold at this time. One time "Construction Emissions" associated with the project include: emissions associated with the energy used to develop and prepare the project area, construction, and construction equipment, and worker vehicle trips (hereinafter referred to as Equipment Emissions). The physical improvements associated with this project include the construction of an approximately ~~58,042~~52,237 sq. ft. new winery building (West Winery), a 8,839 sq. ft. expansion of an existing building (Estate House), domestic water tanks, driveways, landscaping and other winery related improvements. As discussed in Section III. Air Quality, construction emissions would have a temporary effect and BAAQMD recommends incorporating feasible control measures as a means of addressing construction impacts. If the proposed project adheres to relevant best management practices identified by the BAAQMD and the County's standard conditions of project approval, construction-related impacts are considered less than significant. See Section III. Air Quality for additional information.

The BAAQMD proposed thresholds for land use projects are designed to address "Operational" GHG emissions which represent the vast majority of project GHG emissions. Operational emissions associated with a winery generally include: i) any reduction in the amount of carbon sequestered by existing vegetation that is removed as part of the project compared to a "no project" scenario (hereinafter referred to as Operational Sequestration Emissions); and ii) ongoing emissions from the energy used to maintain and operate the winery,

including vehicle trips associated with employee and visitor trips (hereinafter referred to as Operational Emissions).

As noted above, Napa County has not adopted a qualified GHG reduction strategy or an air quality plan, therefore projects will be evaluated per the BAAQMD recommended minimum design elements.

Specifically for buildings, the project must not:

- Include natural gas appliances or natural gas plumbing (in both residential and nonresidential development); and
- Result in any wasteful, inefficient, or unnecessary electrical usage as determined by the analysis required under CEQA section 21100(b)(3) and CEQA Guidelines section 15126.2(b).

The project will be required, through conditions of project approval, to prohibit the use of natural gas appliances or plumbing. Additionally, at the time of construction the project will be required to comply with the California Building Code, which is currently being updated to include regulations to assist in the reduction of air quality impacts associated with construction, such as prohibiting natural gas appliance and plumbing. The new construction will be required to install energy efficient fixtures complying with CA Building Code Title 24 standards. See section VI. Energy for additional information on energy usage.

Specifically for transportation, the project must:

- Achieve compliance with electric vehicle requirements in the most recently adopted version of CALGreen Tier 2, and
- Achieve a reduction in project-generated vehicle miles traveled (VMT) below the regional average consistent with the current version of the California Climate Change Scoping Plan (currently 15 percent) or meet a locally adopted Senate Bill 743 VMT target reflecting the following recommendations:
    - Residential projects: 15 percent below the existing VMT per capita;
    - Office projects: 15 percent below the existing VMT per employee; or
    - Retail projects: no net increase in existing VMT.

The project will be required to comply with the recently adopted version of CALGreen Tier 2. Project approval will include a condition of approval to ensure this is reviewed and implemented at the time of construction through adherence to the California Building Code.

As discussed above and in section XVII. Transportation, the County maintains TIS Guidelines that include VMT analysis requirements for projects based on trip generation. The project trip generation numbers required completion of a traffic study and VMT analysis. The project TIS, prepared by W-Trans, dated June 10, 2021, includes the applicant's proposal for a Traffic Demand Management (TDM) Plan for reducing vehicle miles traveled. See section XVII. Transportation for additional detail.

The applicant currently implements some GHG reduction strategies through an existing VMT reduction plan which includes employee incentives and current vineyard certification as "Napa Green Land". As a function of this Use Permit Major Modification the applicant intends to implement further GHG reduction strategies These include exceeding Title 24 energy efficiency standards with new construction; reuse of process wastewater for vineyard irrigation, the installation of water efficient fixtures; designing new construction to achieve low-impact development; the installation of water efficient landscaping; and limiting the amount of grading and tree removal. Existing vineyards on the newly acquired West Property are also intended to be certified as "Napa Green Land".

New development resulting from this project will utilize energy conserving lighting and water efficient fixtures. A condition of approval will be included to require implementation of the checked Voluntary Best Management Practices Measures submitted with the project application. If the proposed project adheres to these relevant design standards identified by BAAQMD, the requirements of the California Building Code, and the County's conditions of project approval, impacts are considered less than significant.

Mitigation Measures: None are required

IX.	**HAZARDS AND HAZARDOUS MATERIALS.** Would the project	**Potentially Significant Impact**	**Less Than Significant With Mitigation Incorporation**	**Less Than Significant Impact**	**No Impact**
a)	Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☒	☐

b)	Create a significant hazard to the public or the environment through reasonable foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☒	☐
c)	Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒
d)	Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e)	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?	☐	☐	☐	☒
f)	Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☒	☐
g)	Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wild-land fires?	☐	☐	☒	☐

Discussion:

a. The proposed project will not involve the transport of hazardous materials other than those small amounts normally used in winery operations. A Business Plan will be filed with the Environmental Health Division should the amount of hazardous materials reach reportable levels. However, in the event that the proposed use or a future use involves the use, storage or transportation of greater the 55 gallons or 500 pounds of hazardous materials, a use permit and subsequent environmental assessment would be required in accordance with the Napa County Zoning Ordinance prior to the establishment of the use. During construction of the project some hazardous materials, such as building coatings/ adhesives/ etc., will be utilized. However, given the quantities of hazardous materials and the limited duration, they will result in a less than significant impact.

b. Hazardous materials such as diesel, maintenance fluids, and paints would be used onsite during construction. Should they be stored onsite, these materials would be stored in secure locations to reduce the potential for upset or accident conditions. The proposed project consists of the continued operations of an existing winery that would not be expected to use any substantial quantities of hazardous materials. Therefore, it would not be reasonably foreseeable for the proposed project to create upset or accident conditions that involve the release of hazardous materials into the environments. Impacts would be less than significant.

c. There are no schools located within one-quarter mile from the existing or proposed winery buildings. According to Google Earth, the nearest school to the project site is the Culinary Institute of America at Greystone, located approximately 1 mile to the south. No impacts would occur.

d. Based on a search of the California Department of Toxic Substances Control database, the project site does not contain any known EPA National Priority List sites, State response sites, voluntary cleanup sites, or any school cleanup sites. No impact would occur as the project site is not on any known list of hazardous materials sites.

e. No impact would occur as the project site is not located within an airport land use plan.

f. The proposed access driveway improvements and on-site circulation configuration meets Napa County Road and Street Standards. The applicant has submitted ~~a~~an exception request to the Napa County Road and Street standards for the Left Turn Lane Warrant which was triggered for the existing driveway at the East Property for east bound traffic. That exception request has been reviewed by the Director of Public Works and received tentative approval. The project has been reviewed by the County Fire Department and Engineering Services Division and found acceptable, as conditioned. Therefore, the proposed project would not obstruct emergency vehicle access and impacts would be less than significant.

g. The project would not increase exposure of people and/or structures to a significant loss, injury or death involving wild land fires. The proposed driveway improvements would provide adequate access to Lodi Lane. The project would comply with current California Department of Forestry and California Building Code requirements for fire safety. Impacts would be less than significant.

Mitigation Measures: None are required

X.	HYDROLOGY AND WATER QUALITY. Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?	☐	☐	☒	☐
b)	Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	☐	☐	☒	☐
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces which would:				
	i) result in substantial erosion or siltation on- or off-site?	☐	☐	☒	☐
	ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☒	☐
	iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☒	☐
	iv) impede or redirect flood flows?	☐	☐	☒	☐
d)	In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☒	☐
e)	Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☐	☐	☐	☒

Discussion:

On April 21, 2021, Governor Gavin Newsom declared a drought emergency in the state of California and as of July 8, 2021, 50 counties are under the drought state of emergency, including Napa County. The Governor directed the Department of Water Resources to increase resilience of water supplies during drought conditions. On June 8, 2021, the Napa County Board of Supervisors adopted a resolution declaring a Proclamation of Local Emergency due to drought conditions which are occurring in Napa County. On October 19, 2021, the Governor issued a proclamation extending the drought emergency statewide. The County requires all discretionary permit applications (such as use permits and ECPAs) to complete necessary water analyses in order to document that sufficient water supplies are available for the proposed project and to implement water saving measures to prepare for periods of limited water supply and to conserve limited groundwater resources.

In March 2022, Governor Newsom enacted Executive Order N-7-22, which requires prior to approval of a new groundwater well (or approval of an alteration to an existing well) in a basin subject to the Sustainable Groundwater Management Act and that is classified as medium- or high-priority, obtaining written verification from the GSA (Groundwater Sustainability Agency) managing the basin that groundwater extraction would not be inconsistent with any sustainable groundwater management program established in any applicable GSP (Groundwater Sustainability Plan) and would not decrease the likelihood of achieving sustainability goals for the basin covered by a GSP, or that it is determined first that extraction of groundwater from the new/proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure. ~~Because the project contains existing wells which are not being altered, Executive Order N-7-22 does not apply.~~

On March 8, 2022 and August 9, 2022, the Napa County Board of Supervisors adopted resolutions proclaiming a continued state of Local Emergency due to the 2021-2022 drought. On June 7, 2022, the Napa County Board of Supervisors provided direction regarding interim procedures to implement Executive Order N-7-22 for issuance of new, altered or replacement well permits and discretionary projects that would increase groundwater use during the declared drought emergency. The direction limits a parcel's groundwater allocation to 0.3 acre feet per acre

per year, or no net increase in groundwater use if that threshold is exceeded already for parcels located in the GSA Subbasin. For parcels not located in the GSA Subbasin (i.e., generally located in the hillsides), a parcel-specific Water Availability Analysis would suffice to assess potential impacts on groundwater supplies. Although the Governor, through Executive Order No. N-5-23, rolled back some of the drought emergency provisions in late March 2023, due to current water conditions, the Governor's Emergency Order N-7-22 remains in place and the remaining criteria for the County's interim actions and procedures also remain. On May 30, 2023, the Napa County Board of Supervisors terminated the Local Emergency due to the 2021-2022 drought but acknowledged that there are still adverse conditions that will continue to affect the Napa Valley groundwater subbasin and the need to continue groundwater management efforts including the interim actions and procedures still exists. Because the parcel is located within the GSA Subbasin, and the existing uses exceed the 0.3 acre feet per acre per year calculation, the applicant has designed a water and wastewater system that will be able to achieve a no net increase in groundwater use.

a. The project would not violate any water quality standards or waste discharge requirements. According to the Onsite Wastewater Dispersal Feasibility Study prepared by Bartelt Engineering (Revised August 2022), the applicant proposes to remove the existing combined process and sanitary wastewater system and replace it with separated process and sanitary wastewater systems capable of accommodating the wastewater flows under the proposed project. Process wastewater is proposed to be pretreated then surface applied as vineyard irrigation, while sanitary wastewater is proposed to be pretreated before being dispersed through a subsurface drip dispersal field. Both systems will utilize pump and lift stations to transfer wastewater between the East and West properties through forcemains bored under the Napa River and along vineyard avenues. The proposed systems have been sized to handle daily and peak wastewater flows of the proposed project. No disposal of wastewater effluent (either PW or SS) will occur within 100 feet of any existing or proposed wells. The Onsite Wastewater Dispersal Feasibility Study has been provided to the Division of Environmental Health who reviewed the report and concurred with its findings. Impacts would be less than significant.

b. The parcel is located within the GSA Subbasin so the 0.3 acre feet per acre per year calculation was used to determine the groundwater allocation for the project. All ~~three~~ four parcels (East and West Properties plus APN 022-100-034 & -035) combine for a total 32.34 acres and a groundwater allocation of 9.7 acre feet per acre per year under the BOS interim guidance for implementing Executive Order N-7-22. According to the submitted plans there are five (5) existing wells on the East and West Properties. The East Property contains Domestic Well #1, currently used for domestic water use at the existing winery facilities, and Well #4, primarily used for vineyard irrigation and landscaping. The West property contains Well #2, which was used for domestic water uses at the existing single-family residence and vineyard irrigation, as well as Wells #1 and #3, which have been out of service and are planned to be destroyed as part of the project.

The existing water use associated with the winery, vineyards, and residence is estimated to be 14.04 acre feet per year. Because the existing water use exceeds the 0.3 acre feet per acre per year allocation, the applicant is required to design a project which can achieve a no net increase over existing conditions. The proposed project would demolish the existing single-family residence on the West Property, include a reduction in vineyard from 15.67 acres to 12.12 acres and include increases in wine production, visitation and marketing events. The project also proposes to replace the existing combined process and sanitary wastewater system on the East Property and develop separate process and sanitary wastewater systems across the East and West properties which will be connected through forcemains bored under the Napa River. Process wastewater is proposed to be treated and beneficially reused for vineyard irrigation and heat protection on the West Property. This reuse of process wastewater is expected to reduce water demand by 4.65 af/yr. Total estimated water use for the existing and proposed project is calculated based on the Guidelines for Estimating Residential and Non-residential Water Use from the County's WAA~~Napa County Water Availability Analysis Guidelines (2015)~~ and summarized in the table below.

Source of Demand	Existing (acre-ft.)	Proposed (acre-ft.)	Difference (acre-ft.)
Primary Residence	.75	0	-0.75
Vineyard	7.84	~~4.19~~4.31	-3.~~65~~53
Process Water	3.44	6.45	3.01
Domestic & Landscaping	.8	1.50	.7
Employees	.7	.7	0
Tasting Room Visitation	.27	~~.7~~4.66	~~.5~~.39
Events and Marketing, with onsite catering	.24	~~.42~~.38	.~~18~~14
Total	**14.04**	**14**	**-0.04**

~~A Tier II and Tier III WAA analyses may be required for project wells within 500 feet of non-project wells or if project wells within 1,500 feet of significant stream channels. Non-project wells are located within 500 feet of wells #1 (domestic well) and Well #4 (East Property vineyard and landscaping), but because total water use on the parcel is estimated to decrease over existing conditions by approximately 0.04 acre feet per year a Tier II and Tier III analysis is not required for this project.~~Tier II Analysis (Wagner & Bonsignore, May 2022) was also conducted for potential impacts to neighboring wells. Domestic Well #1 is located approximately 430 feet from a neighboring well on APN 021-351-001 and Well #4 is located approximately 200 feet from a neighboring well on APN 021-353-012. Utilizing

information from well completion reports, pumping rates, and geological maps Wagner & Bonsignore estimated the lateral pumping influence for both Domestic Well #1 and Well #4. For Domestic Well #1 pumping the well at 12 or 115 gpm under confined aquifer conditions might result in a zone of pumping influence extending about 370 feet from the well. Under this scenario the pumping influence would not be expected to extend to the neighboring well. While Wagner and Bonsignore was not able to obtain pumping yield for Well #4, well logs for the neighboring well were used to estimate a recorded drawdown of 37 feet at a discharge rate of 130 gpm. Based on their calculations the neighboring well could expect an approximate drawdown of 6.0 feet from pumping Well #4 at 130 gpm under confined aquifer conditions. The County's ~~Napa County~~ WAA ~~guidelines~~ allow for a default maximum of 15 feet in drawdown before impacts are considered to be significant to neighboring wells.

A Tier III Analysis (Wagner & Bonsignore, May 2022) was also performed for the Domestic Well #1. Based on a review of the well log, Domestic Well #1 penetrates 40 feet of near-surface sand and gravel alluvium, underlain by bedrock units of the Sonoma Volcanics to the full depth of the well at 460 feet. Groundwater would therefor appear to be derived entirely from the Sonoma Volcanics and not in the same aquifer as the Napa River. Wagner and Bonsignore's calculation of lateral pumping influence for Domestic Well #1 suggests that even under unconfined conditions would only extend about 65 feet from the well, which isn't far enough to reach the surface water of the Napa River.

Despite the findings of the Tier II & III Analysis by Wagner & Bonsignore the applicant also proposes to alter the nature and extent of groundwater extraction for the project. A new well on the West Property will be located over 500 feet from the Napa River and over 500 feet from any well on adjacent property (Refer to Revised Tier I WAA, January 2024, Well Interference Exhibit, Page 15). The well would be constructed with a minimum surface seal depth of greater than 50 feet, perforations starting at a depth of greater than 100 feet and operated at a pumping rate of less than 10 gpm. The ~~Napa~~ County's WAA ~~Water Availability Analysis Guidelines~~ provides screening criteria for groundwater/surface water interaction which states that if distance, construction, and operational standards are met, the well would not result in ~~be expected to preclude~~ any significant adverse effects on surface waters. The applicant's proposed drilling location, construction and operational standards fall within the screening criteria for Table 3; very low capacity pumping rates and thus the new well would not be expected to cause adverse impacts on the Napa River (~~Napa~~ the County's WAA ~~Water Availability Analysis, May 2015~~, Page 12).

The applicant intends to have the newly proposed well supply 3.89 af/yr (180,755 gallons) of the requested winery process water and .9 af/yr of the domestic and landscaping water. Domestic Well #1, which currently supplies 100% of the 3.44 af/yr of winery process water (160,000 gallons), will see its allocation of the total supplied winery process water reduced to 2.56 af/yr (119,245 gallons). Cumulatively Domestic Well #1 total drawdown allocation for the project is expected to be reduced by .55 af/yr from 5.45 af/yr to 4.90 af/yr. The applicant also intends to reduce the pumping rate of Domestic Well #1 from 12 gpm to 10.8 gpm.

	Existing (af/yr)	Proposed (af/yr)	Change (af/yr)
Domestic Well #1	5.45	4.90	-.55
Irrigation Well #4	2.03	2.88	.85
Well #2	6.56	1.43	-5.13
Proposed Project Well #2	N/A	4.79	4.79

The public trust doctrine requires the state and its legal subdivisions to "consider," give "due regard," and "take the public trust into account" when considering actions that may adversely affect a navigable waterway. (Environmental Law Foundation v. State Water Resources Control Bd. ; San Francisco Baykeeper, Inc. v. State Lands Com.) There is no "procedural matrix" governing how an agency should consider public trust uses. (Citizens for East Shore Parks v. State Lands Com.) Rather, the level of analysis "begins and ends ~~Staff has considered impacts to public trust resources in the event the project wells may be connected to a navigable waterway. Staff determined that because the project applicant has demonstrated that there will be no net increase in groundwater extraction over existing uses, there are no adverse impacts to trust resources which would result from issuance of this permit. Applicants have reasonably demonstrated no net increase of groundwater extraction over existing demand by abandoning an existing single family residence, reductions in total vineyard irrigated and reuse of process wastewater for vineyard irrigation. County has satisfied its duty to consider impacts to trust resources and no further analysis is required.~~with whether the challenged activity harms a navigable waterway and thereby violates the public trust." (Environmental Law Foundation, 26 Cal.App.5th at p. 403.). ~~As demonstrated in the Environmental Law Foundation vs State Water Resources Control Board Third District~~
~~Appellate Court Case, that arose in the context of a lawsuit over Siskiyou County's obligation in administering groundwater well permits and management program with respect to Scott River, a navigable waterway (considered a public trust resource), the court affirmed that the public trust doctrine is relevant to extractions of groundwater that adversely impact a navigable waterway and that Counties are obligated to consider the doctrine, irrespective of the enactment of the Sustainable Groundwater Management Act (SGMA).~~ Considering various groundwater elements of the project which include; the conclusion by hydrologic engineers Wagner & Bonsignore of no direct connection to the overlaying alluvium indicated in the well log, the construction of a new well meeting Napa County Tier III screening requirements, and the 10% reduction in pumping rate and drawdown from Domestic Well #1, the County reasonably concludes that no harm to (or less-than significant impacts on) public trust resources would result from the proposed project.

The project will include the County's project specific Condition of Approval setting a limitation on groundwater use for the parcel to 14 af/yr and requiring well monitoring. The condition would also include the potential to modify/alter permitted uses on site should groundwater resources become insufficient to supply the use.

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT

a. Groundwater Management - The parcel shall be limited to 14 ~~acre-feet~~af/yr of groundwater per year for all water consuming activities (utilizing wells) on the parcel. A Groundwater Demand Management Program shall be developed and implemented for the property as outlined in COA 6.15(a) below.

In the event that changed circumstances or significant new information provide substantial evidence[3] that the groundwater system referenced in the Use Permit would significantly affect the groundwater basin, the PBES Director shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the County Code and to protect public health, safety, and welfare.

6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS

a. Groundwater Demand Management Program
   1. The permittee shall install a meter on each well serving the parcel. Each meter shall be placed in a location that will allow for the measurement of all groundwater used on the project parcel. Prior to the issuance of a grading or building permit for the winery or expanding any operations as approved under this modification, the permittee shall submit for review and approval by the PBES Director a groundwater demand management plan which includes a plan for the location and the configuration of the installation of a meter on all wells serving the parcel.
   2. The Plan shall identify how best available technology and best management water conservation practices will be applied throughout the parcel.
   3. The Plan shall identify how best management water conservation practices will be applied where possible in the structures on site. This includes but is not limited to the installation of low flow fixtures and appliances.
   4. ~~As a groundwater consuming activity already exists on the property, m~~Meter installation and monitoring of all wells shall begin ~~immediately~~ subsequent to completion of the Lodi Lane asphalt resurfacing enumerated in COA 9.5 as well as the proposed onsite wastewater treatment system enumerated in COA 1.2.c. T~~and t~~he first monitoring report is due to the County within 120 days of ~~approval of this modification~~completion of those project components.
   5. For the first twelve months of operation under this permit, the permittee shall read the meters at the beginning of each month and provide the data to the PBES Director monthly. If the water usage on the property exceeds, or is on track to exceed the maximum groundwater usage values in i through v below,~~, 14.0 acre-feet per year,~~ or if the permittee fails to report, additional reviews and analysis and/or a corrective action program at the permittee's expense shall be required and shall be submitted to the PBES Director for review and action.
      i. Annual cumulative groundwater usage for all wells on the property shall not exceed 14.0 af/yr.
      ii. Annual groundwater usage for Domestic Well #1 shall not exceed 4.90 af/yr.
      iii. Annual groundwater usage for Irrigation Well #4 shall not exceed 2.88 af/yr.
      iv. Annual groundwater usage for Well #2 shall not exceed 1.43 af/yr.
      v. Annual groundwater usage for Proposed Project Well #2 shall not exceed 4.79 af/yr.
   6. The permittee's wells shall be included in the Napa County Groundwater Monitoring program if the County finds the well suitable.
   7. At the completion of the reporting period per 6.15(a)(5) above, and so long as the water usage is within the maximum acre- feet per year as specified above, the permittee may begin the following meter reading schedule:
      i. On or near the first day of each month the permittee shall read the water meters, and provide the data to the PBES Director during the first weeks of April and October. The PBES Director, or the Director's designated representative, has the right to access and verify the operation and readings of the meters during regular business hours.

9.9 OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY

a. All required meters shall be installed and all groundwater usage monitoring required in COA 4.20(a) and 6.15(a) above shall commence prior to issuance of a final certificate of occupancy.

c/d. All proposed work would take place on flat areas of prior disturbance. The project would not substantially alter the drainage pattern on site or cause a significant increase in erosion or siltation on or off the project site. Improvement plans prepared prior to the issuance of a building permit would ensure that the proposed project does not increase runoff flow rate or volume as a result of project

[3] Substantial evidence is defined by case law as evidence that is of ponderable legal significance, reasonable in nature, credible and of solid value. The following constitute substantial evidence: facts, reasonable assumptions predicated on facts; and expert opinions supported by facts. Argument, speculation, unsubstantiated opinion or narrative, or clearly inaccurate or erroneous information do not constitute substantial evidence.

implementation. General Plan Policy CON-50 requires discretionary projects, including this project, to meet performance standards designed to ensure peak runoff in 2-, 10-, 50-, and 100-year events following development is not greater than predevelopment conditions. The proposed project would implement standard stormwater quality treatment controls to treat runoff prior to discharge from the project site. The incorporation of these features into the project would ensure that the proposed project would not create substantial sources of polluted runoff. In addition, the proposed project does not have any unusual characteristics that create sources of pollution that would degrade water quality. The parcel is not located in an area that is known to be subject to inundation by tsunamis, seiches, or mudflows.

The site lies within the boundaries of the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area 100 Year "Zone AE". The project has been reviewed by the Engineering Division and will be conditioned to meet the requirement the Floodplain Management Ordinance (FMO) outlined in Chapter 16.04 of the Napa County Code. The FMO requires that any new construction or substantial improvements to the existing structure shall be constructed using methods and practices that minimize the potential for and impact of flood damage. All new and replacement water supply systems shall be designed to minimize or eliminate the potential for infiltration of floodwater into the system. New and replacement sanitary sewage systems shall be designed to minimize or eliminate the potential for infiltration of floodwaters into the systems and for the discharge from the systems into floodwaters. On-site waste disposal systems shall be located so as to avoid the potential for their impairment, or their causing contamination during flooding. Impacts would be less than significant.

e. On January 26, 2023 the County's Groundwater Sustainability Plan (GSP) was approved by the Department of Water Resources (DWR). As discussed above, although the winery operational changes would increase water use (production increase, increases in visitation and annual marketing guests), the project includes the reductions in groundwater use through the demolition of an existing single-family residence, reduction in vineyard acres, and the application of treated process wastewater in vineyard irrigation such that the project is designed to slightly reduce water use and maintain "no net increase". The project would not result in an impact to groundwater use and would therefore comply with the GSP. Water quality would be maintained through standard stormwater quality treatment control measures and compliance with Engineering Division Conditions of Approval. No impacts would occur.

Mitigation Measures: None are required.

XI. **LAND USE AND PLANNING.** Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Physically divide an established community?	☐	☐	☒	☐
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☒	☐

Discussion:

a/b. The project would not occur within an established community, nor would it result in the division of an established community.

The project complies with the Napa County Code and all other applicable regulations ~~with the exception of a Variance application (P19-00098) requested to allow expansion of the existing Estate House within the required 600-foot winery setback for Silverado Trail. As shown in the "Variance Request for Duckhorn Vineyards Winery Use Permit Modification" exhibit prepared by Duckhorn Vineyards Winery in June of 2021, strict application of the required setbacks would prevent expansion of the existing Estate House due to parcel size and configuration encumbered by multiple regulatory setbacks (winery setbacks, creek setbacks for the Napa River).~~.

The subject parcel is located in the AP (Agricultural Preserve) zoning district, which allows wineries and uses accessory to wineries subject to use permit approval. The proposed project is compliant with the physical limitations of the Napa County Zoning Ordinance, including the Winery Definition Ordinance (WDO), with the exception of the required 600-foot setback from Silverado Trail (N.C.C. 18.104.230; Wineries located in open space areas – setbacks). The County has adopted the WDO to protect agriculture and open space and to regulate winery development and expansion in a manner that avoids potential negative environmental effects.

Agricultural Preservation and Land Use Policy AG/LU-1 of the 2008 General Plan states that the County shall, "preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County." The property's General Plan land use designations are AWOS (Agriculture, Watershed, and Open Space) and AR (Agricultural Resource) which allow "agriculture, processing of agricultural products, and single-family dwellings." More specifically, General Plan Agricultural Preservation

and Land Use Policy AG/LU-2 recognizes wineries and other agricultural processing facilities, and any use clearly accessory to those facilities, as agriculture. The project would allow for the continuation of agriculture as a dominant land use within the county and is consistent with the Napa County General Plan.

The continued use of the property for the "fermenting and processing of grape juice into wine" (NCC §18.08.640) supports the economic viability of agriculture within the county consistent with General Plan Agricultural Preservation and Land Use Policy AG/LU-4 ("The County will reserve agricultural lands for agricultural use including lands used for grazing and watershed/ open space…") and General Plan Economic Development Policy E-1 (The County's economic development will focus on ensuring the continued viability of agriculture…).

The General Plan includes two policies requiring wineries to be designed generally of a high architectural quality for the site and its surroundings. Proposed architectural design of the Estate house expansion addition maintains the existing architectural design, but incorporate stone finish and utilizes earth tone colors in compliance with Napa County Use Permit standard conditions for Colors (COA 6.5). The proposed West Winery building on the West Property would architecturally be similar to a barn type structure similar to other structures of similar use and would utilize earth tone colors as well. The average midpoint roofline for the expanded Estate House would be approximately 28 feet above grade and the maximum height would be 38 feet (chimney), and the maximum building height for the proposed new winery on the West Property would be 25.5 feet. As such, the project would fit within the context of its surroundings. Impacts would be less than significant.

Mitigation Measures: None are required

XII.	**MINERAL RESOURCES.** Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b)	Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

Discussion:

a./b. Historically, the two most valuable mineral commodities in Napa County in economic terms have been mercury and mineral water. More recently, building stone and aggregate have become economically valuable. Mines and Mineral Deposits mapping included in the Napa County Baseline Data Report (Mines and Mineral Deposits, BDR Figure 2-2) indicates that there are no known mineral resources nor any locally important mineral resource recovery sites located on the project site. No impacts would occur.

Mitigation Measures: None are required.

XIII.	**NOISE.** Would the project result in:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☐	☒	☐
b)	Generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☒	☐

c)	For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

Discussion:

a/b. The project would result in a temporary increase in noise levels during grading and construction activities for the proposed West Winery building, existing Estate House expansion, building demolition, driveway and other infrastructure expansion. Construction activities would be limited to daylight hours using properly muffled vehicles. Noise generated during this time is not anticipated to be significant. As such, the project would not result in potentially significant temporary construction noise or vibration impacts. The nearest residence to the proposed new winery building is approximately 580 feet to the north and the nearest residence to the expansion of the existing State House is approximately 500 feet to the east, but also 160 higher in elevation and on the opposite side of Silverado Trail. Due to this distance there is a low potential for impacts related to construction noise to result in a significant impact. Further, construction activities would occur during the period of 7am-7pm on weekdays, during normal hours of human activity. All construction activities would be conducted in compliance with the Napa County Noise Ordinance (Napa County Code Chapter 8.16). The proposed project would not result in long-term significant construction noise impacts. Conditions of approval identified below would require construction activities to be limited to daylight hours, vehicles to be muffled, and backup alarms adjusted to the lowest allowable levels. Impacts would be less than significant.

"7.3 CONSTRUCTION NOISE

Construction noise shall be minimized to the greatest extent practical and feasible under State and local safety laws, consistent with construction noise levels permitted by the General Plan Community Character Element and the County Noise Ordinance. Construction equipment muffling and hours of operation shall be in compliance with the County Code. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site, if at all practicable. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur daily between the hours of 8 am to 5 pm."

The project proposes to increase daily visitation, by increasing their existing By Appointment Tours and Tastings of 82 visitors per day and voluntarily combining their existing Pre-WDO Public Tours and Tastings of 50 visitors per week (no more than 30 visitors on the busiest day) for a proposed total of ~~219~~ 197 daily visitors for By Appointment Tours and Tastings. The project also proposes to modify their existing marketing program as described under Project Description (I). The applicant also proposes to allow for activities in conformity with AB 2004 (Evans Bill) on the Estate House porch and the landscaped gardens west of the Estate House. Finally the applicant proposes that all approved hospitality activities, including those consistent with AB 2004, would be allowed temporarily within the proposed West Winery, and in its vicinity during the redevelopment of the Estate House on the East Property. All hospitality activities and AB 2004 activities would return to the Estate House and surrounding vicinity once a certificate of occupancy has been procured for the Estate House expansion.

Additional regulations contained within County Code Chapter 8.16 establish exterior noise criteria for various land uses in the County. As described in the Project Setting, above, land uses that surround the proposed parcel are predominantly large lot residential properties, wineries, and vineyards; of these land uses, the residential land use is considered the most sensitive to noise. Based on the standards in County Code section 8.16.070, noise levels, measured at the exterior of a residential structure or residential use on a portion of a larger property, may not exceed 50 decibels for more than half of any hour in the window of daytime hours (7:00 a.m. to 10:00 p.m.) within which the applicant proposes to conduct events. Noise impacts of the proposed project would be considered bothersome and potentially significant if sound generated by it had the effect of exceeding the standards in County Code more than 50 percent of the time (i.e., more than 50 decibels for more than 30 minutes in an hour for a residential use). The nearest off-site residence to the proposed West Winery is approximately 580 feet to the east. The nearest off-site residence to the existing but expanded Estate House is approximately 500 feet to the east but also 160 feet higher in elevation and on the opposite side of Silverado Trail. Under the proposed project, the largest outdoor event that would occur on the parcel would have an attendance of no more than 400 guests, and all events would end by 10:00 p.m., with quiet clean-up conducted afterwards. Winery operations would occur between 6:00 a.m. and 7:00 p.m. (production, excluding harvest) and 10:00 am to 4:00 pm (hospitality). The potential for the creation of significant noise from visitation is significantly reduced, since the tasting areas are predominantly within the winery building itself, with the exception of the patio and garden areas. Continuing enforcement of Napa County's Noise Ordinance by the Division of Environmental Health and the Napa County Sheriff, including the prohibition against amplified music, should further ensure that marketing events and other winery activities do not create a significant noise impact. Events and non- amplified music, including clean-up are required to finish by 10:00 p.m. Amplified music or sound systems would not be permitted for outdoor events as identified in Standard Condition of Approval 4.10 below. Temporary events would be subject to County Code Chapter 5.36 which regulates proposed temporary events.

"4.10 AMPLIFIED MUSIC

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings."

The proposed project would not result in long-term significant permanent noise impacts.

c. The project site in not located within the influence area of the Napa County Airport, according to the Airport Land Use Compatibility Plan. No impacts would occur.

Mitigation Measures: None are required

XIV.	**POPULATION AND HOUSING.** Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b)	Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☒	☐

Discussion:

a. The proposed project does not include a direct inducement of population growth, because the proposed project does not include an increase in full-time or part-time seasonal employment or onsite workforce housing. The proposed project also does not indirectly induce population growth through the extension of infrastructure or other services/improvements necessary to sustain population growth. No impacts would occur.

b. The project proposes to demolish an existing single-family residence on the East Property. The dwelling unit is currently vacant and the existing Agricultural Preserve zoning district would potentially allow up to three dwelling units to be constructed on the East Property by-right (single-family residence, Accessory Dwelling Unit, Junior Accessory Dwelling Units). Therefore, the project would not displace substantial numbers of existing housing or numbers of people necessitating the construction of replacement housing elsewhere. Impacts would be less than significant.

Mitigation Measures: None are required

XV.	**PUBLIC SERVICES.** Would the project result in:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
	i) Fire protection?	☐	☐	☒	☐

ii)	Police protection?	☐	☐	☒	☐
iii)	Schools?	☐	☐	☒	☐
iv)	Parks?	☐	☐	☒	☐
v)	Other public facilities?	☐	☐	☒	☐

Discussion:

Public services are currently provided to the project site and the additional demand placed on existing services would be marginal. Fire protection measures are required as part of the development pursuant to Napa County Fire Marshall conditions and there will be no foreseeable impact to emergency response times with the adoption of standard conditions of approval. The Fire Department and Engineering Services Division have reviewed the application and recommend approval as conditioned. School impact mitigation fees, which assist local school districts with capacity building measures, will be levied pursuant to building permit submittal. The proposed project will have little to no impact on public parks. County revenue resulting from any building permit fees, property tax increases, and taxes from the sale of wine will help meet the costs of providing public services to the property. The proposed project will have a less than significant impact on public services.

Mitigation Measures: None are required

XVI.	**RECREATION.** Would the project:	**Potentially Significant Impact**	**Less Than Significant With Mitigation Incorporation**	**Less Than Significant Impact**	**No Impact**
a)	Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☒	☐
b)	Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☒

Discussion:

a/b. The project would not significantly increase the use of recreational facilities, nor does the project include recreational facilities that may have a significant adverse effect on the environment.

Mitigation Measures: None are required.

XVII.	**TRANSPORTATION.** Would the project:	**Potentially Significant Impact**	**Less Than Significant With Mitigation Incorporation**	**Less Than Significant Impact**	**No Impact**
a)	Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?	☐	☐	☒	☐

b)	Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?	☐	☐	☒	☐
c)	Substantially increase hazards due to a geometric design feature, (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☒	☐
d)	Result in inadequate emergency access?	☐	☐	☒	☐
e)	Conflict with General Plan Policy CIR-14, which requires new uses to meet their anticipated parking demand, but to avoid providing excess parking which could stimulate unnecessary vehicle trips or activity exceeding the site's capacity?	☐	☐	☒	☐

Discussion:

a. As proposed the project would not conflict with any plans, ordinances or policies addressing the circulation system. Existing pedestrian and transit facilities serving the site are limited, though given the rural location of the project site and anticipated demand for these modes, this is considered an acceptable condition. There is an existing Class II bike lane on Silverado Trail and along with the shared use of Lodi Lane with motorist and planned facilities consisting of the Vine Trail and a Class III bike route on SR 29 there is adequate access for bicyclists. The project has been conditioned by the Napa County Public Works Department to provide a maximum of 10 bicycle parking spots to provide for adequate bicycle storage, as recommended in the project's Traffic Impact Study (June 10, 2021). CalFire and Engineering divisions have reviewed the proposed plans for access and circulation and found them to be in compliance with the Napa County Road and Street Standards. The applicant has also submitted a request for an exception to the Napa County Road and Street Standards for a Left Turn Lane Warrant that was found to be triggered for the East Property driveway by the additional trips from the expansion of hospitality operations. The RSS exception request has been tentatively approved by the Director of Public Works. Impacts would be less than significant.

b. The date of analysis for the project's Traffic Impact Study predates the establishment of Napa County thresholds of significance related to Vehicle Miles Traveled (VMT) and guidance documents. The Traffic Impact Study assessed VMT based on guidance provided by the California Governor's Office of Planning and Research (OPR) in the publication *Transportation Impacts (SB 743) CEQA Guidelines Update and Technical Advisory*. The OPR Technical Advisory identifies several criteria that may be used to identify certain types of projects that are unlikely to have a significant VMT impact and can be "screened" from further analysis. One of the screening criteria pertains to small projects, which OPR defines as generating fewer than 110 new vehicle trips per day on average. OPR specifies that VMT should be based on a typical weekday and should take into consideration seasonal fluctuations. The proposed project is anticipated to result in 120 new daily vehicle trips on harvest Friday and 108 new daily vehicle trips on a non-harvest Friday, though based on count data collected at the existing driveway the winery generates approximately 36 percent fewer trips on the other weekdays compared to Friday. Adjusting the number of net new trips anticipated on Friday to a typical weekday average, and accounting for a two-month harvest season, the project would be expected to result in approximately 79 new daily trips per weekday over the course of the year. Since this is below the small project threshold of 110 trips, it is reasonable to conclude that the project can be presumed to have a less than significant impact on VMT. The change in VMT from truck trips no longer traveling to Duckhorn's production facility in Hopland and instead utilizing the new winery building on the East Property was not calculated but is expected to generate a reduction in overall VMT associated with the operations of the production facility. Impacts would be less than significant.

c/d. The proposed project does not contain any incompatible uses. The project's Traffic Impact Study found that the addition of trips to the project triggered a Left Turn Lane Warrant for east bound traffic on Lodi Lane accessing the East Property Driveway. Design requirements and feasibility for a left turn lane accessing the East Property Driveway were explored in the Traffic Impact Study and determined that widening of Lodi Lane to incorporate an LTL design would result in either (1) the placement of significant cubic yards of soil into the floodway and floodplain of the Napa River, and (2) the removal of heritage oaks and other large, native trees along Lodi Lane. The applicant has submitted a request for exception to the Napa County Road and Street Standards and that request has been reviewed and tentatively approved by the Director of Public Works. The applicant's exception request includes an analysis of whether the addition of new trips to the East Property Driveway could exacerbate any existing safety issues if an LTL is not provided. As contained in the TIS collisions analysis, there were no collisions reported on Lodi Lane during the five-year study period between October 1, 2014, and September 30, 2019, even though an LTL is warranted based on existing traffic volumes. Therefore, it is reasonable to conclude that there are no documented safety issues associated with motorist turning left into the driveway for the East Property without a left turn lane. The proposed project is expected to generate five new left-turn movements over existing volumes during the peak hour on Fridays and Saturdays, resulting in a new total of 14 left turns during each hour. This equates to approximately one left-turn every 4.3 minutes, when averaged over the course of an hour. Based on an analysis using the American Association of State Highway and Transportation Officials (AASHTO's) *Policy on the Geometric Design of Highways and Streets* LTL warrant methodology, which is based on safety issues, an LTL would not be needed at the Duckhorn driveway for volumes of less than approximately 237 left turn movements (one every 15 seconds). Because the Duckhorn proposal is expected to produce one additional left-turn movement every 4.3 minutes during

peak hour, the modest increase in project traffic would not create any new safety issues.

e. The project was analyzed to determine whether the proposed parking supply would be sufficient for the anticipated daily demand during harvest conditions. The project site, as proposed, would have a total of 96 parking spaces between both parcels. To accommodate the daily parking demand for the winery and tasting room, there should be at least one space provided for every employee, as well as parking stalls for about 25 percent of the expected daily tasting room visitors. During harvest, there would be up to 56 full- and part-time employees and a maximum of ~~219~~ 197 daily visitors to the tasting room. Assuming the County's standard occupancy rate of 2.8 guests per vehicle, a total of ~~78~~ 70 guest~~s~~ vehicles would visit the site over the course of the day. Therefore, the proposed project would need at least 76 parking spaces, consisting of 56 for employees and ~~20~~ 18 for guests assuming one-quarter of the guests would be there at any one time. The proposed supply of 96 spaces would be adequate to accommodate the approximate day-to-day peak demand. Impacts would be less than significant.

Mitigation Measures: None are required.

XVIII. **TRIBAL CULTURAL RESOURCES.** Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k); or	☐	☒	☐	☐
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1? In applying the criteria set forth in subdivision (c) of Public Resources Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	☐	☒	☐	☐

Discussion:

a/b. Outreach to Native American tribes who may have a cultural interest in the area where made on two separate occasions; first on July 31, 2017, letters were sent in association with the Cultural Resource Study conducted by Evans & De Shazo to the Cortina Indian Rancheria of Wintun Indians, Middletown Rancheria, Mishewal-Wappo Tribe of Alexander Valley, and Yocha Dehe Wintun Nation requesting if the tribes had specific knowledge of about Native American resources or cultural places near the project area, Inc, and later on July 14, 2021, in accordance with the requirements of Public Resources Code section 21080.3.1 (AB 52). The Middletown Rancheria responded to the July 31, 2017, letter thanking the applicant for contacting them, requested to be notified immediately if new information or evidence of human habitation was found but had no specific comments at that time. A letter was received from the Yocha Dehe Wintun Nation in response to letters sent out in accordance with AB 52 declining to comment due to the project being outside of their aboriginal territories.

A field survey of the project area was conducted that identified a large number of primary and secondary obsidian flakes, flake tools, and bifaces in all stages of manufacture, as well as naturally-occurring obsidian that is associated with the adjacent Glass Mountain obsidian source. The overall large amount of obsidian and the concentrated areas of obsidian observed within all three parcels appear to indicate that the entire property was used as an obsidian quarry and workshop area in prehistoric times, and reflects use of a broader cultural landscape that includes obsidian quarry locations, obsidian workshop areas, midden deposits indicating long-term habitation and areas in between that contain evidence of an thriving economy centered around the procurement and processing of Glass Mountain obsidian by Native Americans in prehistoric times. This indicates that the broad scatter of obsidian artifacts, and concentrations thereof, observed within the Duckhorn Winery properties has the potential to yield information that is important to the prehistory of the local area and California. Therefore, the resource appears to have the potential to be eligible for listing on the California Register of Historical Resources (CRHR) under Criterion 4, and also as a unique archaeological resource. However, due to past land use activities that includes agriculture, winery buildings, and road construction and maintenance, much of the obsidian has been damaged over the years as a result of these activities, and in many instances, it is difficult to discern between the culturally-modified obsidian and the naturally occurring obsidian that has been damaged in more recent times. Therefore, integrity, or the ability for the resource to convey significance under Criterion 4 of the CRHR, is a potential issue that warrants further investigation. Due to the presence of a potentially significant prehistoric resource within the project area, Mitigation Measure **CUL-1** has been proposed which requires further investigations of the

development areas prior to issuance of grading, demolition or building permits. Mitigation Measure **CUL-2** has also been proposed which requires archeological monitoring during ground disturbing activities.

Mitigation Measures: Refer to Section V. Cultural Resources for proposed mitigation

XIX.	**UTILITIES AND SERVICE SYSTEMS.** Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Require or result in the relocation or construction of a new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?	☐	☐	☒	☐
b)	Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	☐	☐	☒	☐
c)	Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☒	☐
d)	Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	☐	☐	☒	☐
e)	Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	☐	☐	☒	☐

Discussion:

a. As discussed in Section X. Hydrology and Water Quality the applicant proposes to remove the existing combined process and sanitary wastewater systems and developed new and expanded separate process and sanitary wastewater systems that will span both the East and West properties and connect via Horizontal Directional Drilling (HDD) of forcemains under the Napa River. The HDD is not expected to cause impacts to the Napa River and is regularly used to construct pipelines under rivers, wetlands, ravines and transportation corridors. The applicant has been in contact with the California Department of Fish and Wildlife and will submit notification of Lake or Streambed Alteration for a Standard Agreement to the department to determine if a Streambed Alteration Agreement is necessary prior to construction. Impacts would be less than significant.

b. As discussed in Section X. Hydrology and Water Quality the parcel is located within the GSA Subbasin. Using the 0.3 acre-feet allocation, the 32.34 acre parcel the water availability allocation would be 9.7 af/yr. The existing water use associated with the winery, vineyards, and residence is 14.04 af/yr. Because the existing water use exceeds the water availability allocation, the project is required to achieve a no net increase in groundwater demand. The increase in production, employees, and visitation results in an increase in water use of 4.36 af/yr, however the applicant intends to demolish an existing single-family residence and develop a new process wastewater system that will reuse treated wastewater for vineyard irrigation. The demolition of the single-family residence, the removal of vineyard, and the reuse of treated wastewater for vineyard irrigation is expected to reduce groundwater demand for the project ~~by~~ to 4.040 af/yr. This results in an overall reduction of 0.4 af/yr. Impacts would be less than significant.

c. Wastewater would be treated on-site and would not require a wastewater treatment provider. Impacts would be less than significant.

d/e. According to the Napa County Baseline Data Report, all of the solid waste landfills where Napa County's waste is disposed have more than sufficient capacity related to the current waste generation The project would comply with federal, state, and local statutes and regulations related to solid waste. Therefore, impacts would be less than significant.

Mitigation Measures: None are required.

XX.	**WILDFIRE.** If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Substantially impair an adopted emergency response plan or emergency evacuation plan?	☐	☐	☒	☐
b)	Due to slope, prevailing winds and other factors, exacerbate wildfire risks and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	☐	☐	☒	☐
c)	Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	☐	☐	☒	☐
d)	Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	☐	☐	☒	☐

Discussion:

a-d. The proposed project is located within a non-wildland/non-urban fire hazard severity zone and in the Napa County Local Responsibility Area (LRA district). There are no project features that would substantially impair an adopted emergency response plan or emergency evacuation plan. The project site is generally flat with slopes ranging from 0-5% and is located on the valley floor with access from Lodi Lane which can provide access to both Silverado Trail and Highway 29. The project would comply with current California Department of Forestry and California Building Code requirements for fire safety. Impacts would be less than significant.

Mitigation Measures: None are required.

XXI.	**MANDATORY FINDINGS OF SIGNIFICANCE**	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
a)	Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☒	☐
b)	Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☒	☐
c)	Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☒	☐

Discussion:

a. The project does not have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community or substantially reduce the number or restrict the range of a rare or endangered plant or animal species. Development and ground disturbance activities associate with the proposed project are primarily in areas where previous disturbance has taken place. For the few areas where tree removal is proposed mitigation measures **BIO-1** and **BIO-2** are proposed on the off chance that Northern Spotted Owl or nesting bird and raptors species could be using the trees as nesting habitat during vegetation removal and ground disturbance. The applicant plans to horizontally bore utility connections for water and wastewater under the Napa River, while it is not known at this time whether a Lake and Streambed Alteration Agreement with the California Department of Fish and Game will be required, **BIO-3** has been proposed which requires the applicant to provide an LSA permit or other documentation that the permit was not required, prior to issuance of permits associated with the drilling.

   As identified in Section V. Cultural Resources, the parcel is located in area that has been surveyed for and found to contain archaeological resources. Mitigation measures **CUL-1** & **CUL-2** have been proposed to reduce any potential impacts to the major periods of California's history and prehistory to below a level of significance. Impacts are anticipated to be less than significant.

b. The project does not have impacts that are individually limited, but cumulatively considerable. Potential impacts to air quality, greenhouse gas emissions, hydrology, and traffic are discussed in the respective sections above and were determined to have a less than significant impact. As discussed in Section VIII. Green House Gas and Section XVII. Transportation, potential impacts to air pollution and GHG emissions are being addressed through meeting BAAQMD recommended design elements, with the addition of Greenhouse Gas Voluntary Best Management Practices, and VMT reduction strategies. The applicant intends to implement a number of greenhouse gas reduction strategies including exceeding Title 24 energy efficiency standards, connection to a recycled water system, installation of water efficient fixtures, employing low-impact development practices, installation water efficient landscaping, and limiting the amount of grading and tree removal. The vineyards on the East Property are already certified as "Napa Green Land" and the applicant intends to implement the program for the vineyards on the west property. Section X. Hydrology includes detail on the Water Availability Analysis which demonstrates that the proposed project would result in a decrease of 0.4 af/yr over the existing levels. The Traffic Impact Study detailed in Section XVII. Transportation concluded that the proposed project would not have significant impacts on the County roadway system. The project includes appointment of a TDM Coordinator and TDM program to implement operational procedures to reduce daily and overall trips and resulting vehicle miles traveled. All records of the TDM activities will be kept and provided to the County as required. Potential cumulative impacts would be less than significant.

c. All potential impacts identified in this Negative Declaration are less than significant with the exception of Cultural Resources, for which Mitigation measure are proposed. The impacts to Cultural Resources identified in this Negative Declaration are not expected to cause substantial adverse effects on human beings and the impacts can be mitigated to a less than significant impact with the implementation of Mitigation Measures **CUL-1** and **CUL-2**. Therefore, the proposed project would not result in significant environmental effects that cause substantial adverse effects on human beings either directly or indirectly. Impacts would be less than significant.

Mitigation Measures: None are required.

Attachment H

PLL's response to revised
MND

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On behalf of Preserve Lodi Lane, I provide comments on the Revised Mitigated Negative Declaration ("MND") for the Revised Duckhorn Vineyards Winery Use Permit Major Modification #P19-00097-MOD ("Project"). Based on the evidence presented in Preserve Lodi Lane's appeal, comments herein, and in the appeal and comments submitted by Water Audit, an environmental impact report ("EIR") should be prepared for the Project.

I. Requirement for Recirculated MND

The Project was revised to slightly reduce the winery facility and production space, but also to include the construction of a new groundwater well. The January 2024 Water Availability Assessment ("WAA") for the Project identifies for the first time that to comply with County water usage requirements, the Project will need to reclaim at least 4.65 acre feet of water per year for irrigation use. (WAA p. 7.) The WAA also discloses the need for a new public water system to serve the proposed production facility. (WAA p. 4.) New information has also recently been disclosed to the public that a massive levee was constructed on the east bank of the Napa River on the Project site. CEQA requires recirculation of the MND due to the identified substantive project revisions and new information made available "after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption." (Guidelines, §15073.5.) The County prepared a revised MND and all comments on this revised document must be part of the administrative record for the Duckhorn Project and can be used to present grounds for noncompliance with CEQA. (Pub. Resources Code, §21177, subd (a).)

II. The County Should Send Revised Project Back to the Planning Commission.

The Planning Commission is the County's decision-making body for major modification of use permits, such as the one required for the Project, with the Board of Supervisors having only appellate authority. (County Code §18.124.130.H.) The County's Local Procedures for Implementing the California Environmental Quality Act provide that the Planning Commission is responsible for adopting the MND when it is the decision-making body. (Section 301, incorporated by reference: https://www.countyofnapa.org/DocumentCenter/View/3341/CEQA-Guidelines-PDF?bidId=.) The Project should be sent back to the Planning Commission for consideration of the Revised MND and the substantive project revisions consistent with the County's Code and Implementing Procedures, and with recent precedent for the proposed Benjamin Ranch Project.

III. An EIR is Required for the Duckhorn Project.

The Revised MND and initial study for the Duckhorn Project fails as an informational document and thus violate CEQA because they wholly fail to address traffic safety and geometric

hazard impacts associated with the Project. (*Ctr. for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal. App. 4th 1156, 1170.) Preserve Lodi Lane previously provided detailed personal observations of existing traffic hazards that would be exacerbated by the increased traffic levels from the Project and the addition of tanker trucks to hazardous intersections, with additional information included in their comments below that provide substantial evidence to support a fair argument that the Project may have significant traffic hazard impacts (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735) and may exacerbate existing hazardous conditions. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 388.) There are existing hazards for pedestrians and cyclists along Lodi Lane, and the Project will exacerbate those existing hazards.

The Revised MND relies on outdated traffic studies that are 5 to 10 years old, no longer addressing the Project's impacts as compared to existing conditions or cumulative impacts as required by CEQA. An undisclosed number of the approximately 20 wineries within a one-mile radius of Lodi Lane have proposed and/or have had approved permit modifications for significant expansions since the last traffic study was prepared. (See Preserve Lodi Lane comments.) Since Preserve Lodi Lane filed its appeal, additional winery projects have been proposed in the area, including the Battuello Vineyard Microwinery Use Permit. The Revised MND fails to address the cumulative traffic and traffic safety impacts of the Project, in particular the cumulative impacts with the Inn and the Abbey project that is now moving forward after a significant delay and thus fails to comply with CEQA's requirements. (Guidelines, §15064, subd. (h)(1).) Cumulatively considerable environmental effects require a mandatory finding of significance. (Guidelines, §15065, subd. (a)(3).)

The Project must also achieve no net increase in water usage because it exceeds the County's current groundwater use criteria of 9.7 acre-feet/year for the site, but the Revised MND fails to disclose that use of reclaimed water is required to do so. Without reclaimed water, the Project would have a significant water use impact, but the Revised MND does not impose mitigation that establishes how the Project will avoid this significant impact or whether a reclaimed water system would have impacts. (Guidelines, §15126.4, subd. (a)(1)(D).) Without analysis of how a project would eliminate impacts "[c]ompliance with the law is not enough to support a finding of no significant impact under the CEQA." (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 17.) Assumption of water reduction without disclosing how improperly "compress[es] the analysis of impacts and mitigation" and thus "disregards the requirements of CEQA." (*Lotus v. Depart. of Transportation* (2014) 223 Cal.App.4th 645, 656.) The Revised MND also fails to include the baseline condition of the existing levee on the Project site. (Guidelines, §15125, subd. (a).)

Sincerely,

Amy Minteer

Preserve Lodi Lane Comments on Duckhorn Project

The traffic studies used to validate the MND were conducted at points in time that by definition, exclude the required present-day CEQA cumulative traffic impact assessment:

> Traffic Count – **2017**; Lodi Lane Traffic Count – **2019**; Silverado Trail/Lodi Lane Collision Count – **2014-2019**; Harvest Traffic Count – September **2017**; Traffic Growth Factor Count – **2015-2017**; Trip Generation Report – **2019**; Vehicle Miles Traveled (VMT) – **2018**

Since 2015, a significant number of some 20 wineries within 1 mile of the Project site applied for and were granted use permit modifications for increases in gallonage; physical production facilities; hospitality facilities; number of wine tasting and food pairing patrons; employees; and parking facilities. All approvals after 2017 were not included in the CEQA-mandated cumulative traffic study.

Duckhorn documented in its MND that 18 of the 20 wineries within 1 mile of Lodi Lane serve approximately 5,000 visitors a week during the primary wine-tasting season between March and October, both arriving and leaving in 2,500 vehicles (2 occupants); 10,000 vehicles a month; or 80,000 vehicles annually. The 2017 Duckhorn traffic study estimated that approximately 1,000 vehicles a week utilize Lodi Lane, or 52,000 yearly. To this aggregate 132,000 vehicles must be added approximately 20,000 vehicles (2 occupants) of the proposed Inn at the Abbey guests at Lodi Lane at State Route 29 (70 percent occupancy of proposed 79 rooms); 7,000 Wine Country Inn (one single family home from the proposed Inn at the Abbey) guest vehicles of approximately 14,000 annual guests in 29 rooms at the 70 percent occupancy rate; and the Duckhorn-estimated 45,000 vehicles (2 occupants) of some 90,000 plus annual wine tasting guests.

To the now 184,000-vehicle total must be added:

1) Thousands of daily patrons of the proposed Inn at the Abbey rooftop terrace; bar and lounge; restaurant; conference center; spa, pool and fitness facility; and Freemark Abbey wine tasting facility;
2) Employees of Inn at the Abbey, Wine Country Inn, and Duckhorn Portfolio;
3) Wine tanker and semi-trucks supporting the proposed Duckhorn Portfolio 52,000 feet plus wine production factory; and
4) Service and delivery trucks supporting the wine tasting and food pairing hospitality services.

A 2017 W-Trans traffic study of SR Route 29 calculated that nearly 5 million vehicles cross the Lodi Lane tee-intersection annually.

Despite the fact that rural Lodi Lane is used daily by local residents and Wine Country Inn guests to walk , run, bicycle—confined to its narrow east and west-paved lanes due to the absence of usable shoulders—the Duckhorn traffic study concluded that a pedestrian and cyclist pathway would “not be appropriate.” The exponential increase in vehicular traffic, particularly tanker and semi-trucks supporting the Duckhorn wine production facility, will make Lodi Lane unsafe for all pedestrian, runner, and cyclist use in perpetuity.

A striped left-hand turn lane for the original Duckhorn Winery at the tee-intersection of Lodi Lane and Silverado was approved by Napa County public works decades before Duckhorn Portfolio assumed ownership, but was rejected as part of their MND application.

A material structural geometric hazard continues to be unaddressed in the MND. Drivers coming north on Silverado Trail from the City of St. Helena at 40 miles per hour emerge from a blind curve approximately 170 feet from Lodi Lane that takes approximately 3 seconds at 40 miles per hour to reach on a two-lane road without safe shoulders.

Attachment I

WAC's response to revised
MND

WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION
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June 28, 2024

Napa County Board of Supervisors
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Submitted via email to:

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Re: Water Audit California Review of the Revised MND

On behalf of Water Audit California ("Water Audit"), I provide comments on the Revised Mitigated Negative Declaration ("MND") for the Revised Duckhorn Vineyards Winery Use Permit Major Modification #P19-00097-MOD ("Revised Duckhorn Project").

A primary basis for Water Audit's June 1, 2023 appeal was the reliance of the project on a water supply from a well located immediately adjacent to the Napa River. It was argued by Water Audit that the well required a Tier 3 watercourse interference survey pursuant to Napa County's water availability protocol, and that the absence of the study required rejection of the mitigated negative declaration. Water Audit introduced evidence that the study was required, and that there was evidence of potential interference. Further, it was argued that groundwater extraction was impermissibly close to a wastewater field, and that the water system did not comply with transient drinking water system standards.

The applicant has subsequently produced a Tier 3 study, proposed to relocate the well and introduce new operating protocols, and to comply with the requirements of a public water system. Of necessity, that will in turn require new approvals by agencies of the state, and compliance with contemporary standards of location, construction and operation. Arguably the study, proposed new well and recertification could remedy the issue of water supply, but this appeal proceeding is not the appropriate venue for such reconsideration.

As set forth in the concurrently filed comments of co-appellant Preserve Lodi Lane, which are hereby incorporated in full as if set forth in full at this location, the Board of Supervisors (BoS) is sitting as an appellate panel. As such, its review is limited to the record put before the Planning Commission (Commission). (see Napa County Code Chapter 2.88, specifically 2.88.010(K); 2.88.090(A) and (B).) Napa Ordinance 2.68.060 provides that the Commission is to be the “decision-making” body for actions such as in consideration here.

Pursuant to the law and established protocols, the BoS may reject the appeals, sustain one or more appeal and remand the matter for Commission reconsideration of the MND, or grant the appeals and advise the applicant of the need to prepare a full Environmental Impact Report (EIR). Respectfully, it is not within the BoS’s appellate jurisdiction to make findings contrary to the Commission on evidence that was not originally before the Commission unless the evidence was reasonably unavailable at the original hearing and leave is granted for late submission. (see Napa County Code 2.88.090(B).) To state the obvious, if appellants are precluded from introduction of crucial and determinative new evidence, so too should be applicants.

There is no evidence that the Tier 3 study could not have been available at the Commission hearing. In fact, the County was in possession of the information in advance of the hearing, and according to the applicant, unilaterally chose to withhold the information from public view. Pursuant to the Chair’s deadline of August 18, 2023 deadline, the applicant did not timely seek and the Chair of the BoS did not grant leave to introduce evidence of the changes in water supply, and therefore such evidence is

not properly part of the appellate package. So too the alleged evidence of the proposed use of recycled water to bring the project within the limits of water use for the project.

Simply put, even if, arguendo, the new evidence is supportive of an affirmative MND decision, that decision must be made by the Commission in the first instance. By attempting to circumvent the usual and required procedure, the public generally and Water Audit particularly are being deprived of their right to comment. This truncated procedure does not substitute for the public's unconstrained right to comment orally and in writing to the Commission on matters of both law and evidence. (see The Brown Act, Government Code, section 54950 et seq.)

Further, a MND cannot be granted when there is evidence of potential environmental injury. In the presence of such evidence the project advocate shall be required to prepare an EIR. The recent changes in the application are a *prima facie* admission by the applicant of risks sought to be alleviated by CEQA that require an EIR.

For the foregoing reasons Water Audit respectfully prays that this matter be returned to the Commission for either reconsideration of the MND, or alternatively and preferably, for the preparation of a full EIR.

Respectfully submitted,

William McKinnon
General Counsel
Water Audit California
Direct: 530.575-5335

Attachment J

PLL's Good Cause Request to
Augment the Record

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August 17, 2023

Via Email and FedEx

Napa County Board of Supervisors
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Napa, CA 94559

Re: Appeal of Planning Commission Approval of Duckhorn Vineyards Winery Use Permit Major Modification P19-00097; Augmentation of Record on Appeal

Honorable Supervisors:

On behalf of Preserve Lodi Lane and John Murphy (Appellants), we request the Board augment the record in the appeal of the Planning Commission approval of the Duckhorn Vineyards Winery Use Permit Major Modification (P19-00097). Good cause exists for the record to be augmented with new evidence in support of issues identified in Preserve Lodi Lane and John Murphy's appeal packet (Appeal Packet) because this evidence either did not exist at the time of the appeal or it was referenced in the appeal, but a physical copy was not attached to the appeal.

1. **Additional Cumulative Project.**

Appellants identified a number of cumulative projects within one half mile of Duckhorn that were granted a use permit major modification in the last five years. Subsequent to the submission of the Appeal Packet on June 1, 2023, additional information became available about another cumulative project in the area near Duckhorn. As identified in the attached project description document (**Attachment 1**), the Napa de Oro Winery has applied to increase annual production from 5,000 gallons to 20,000 gallons. They are also seeking to allow public tours, tastings and marketing events. The winery trip generation form for the Napa de Oro project shows it will generate 21,355 new annual trips. (**Attachment 2**.) These additional trips are cumulatively considerable along with the trips generated by Duckhorn, Inn at the Abbey

and other cumulative projects identified in the Appeal Packet. They will add to cumulative traffic congestion and traffic safety hazards.

Good cause exists to add the Napa de Oro project description document (**Attachment 1**) and winery trip generation document (**Attachment 2**) to the record for this Appeal. These documents were not made available on the County's Current Projects Explorer website (https://www.countyofnapa.org/2876/Current-Projects-Explorer) until June 2023 ***after*** the Appeal Packet was filed. Thus, these documents could not have been produced as part of the Appeal Packet in the exercise of reasonable diligence.

2. **Documentation Referenced in Appeal Packet.**

The Appeal Packet extensively discussed the dated traffic study prepared for the proposed Inn at the Abbey project. The Appeal Packet also incorporated this and other documentation for the Inn at the Abby project into the record, thus is should already be included in the record for the Duckhorn Project. For ease of reference by the Board, the following attachments are included as part of the record for the Appeal:

- Inn at the Abbey Initial Study (**Attachment 3**)
- Inn at the Abbey Traffic Impact Study (**Attachment 4**)
- Inn at the Abbey Traffic Impact Study Addendum (**Attachment 5**)

Conclusion

For all of the reasons set forth herein, we urge the Board to augment the record for this appeal with the attached evidence and the evidence set forth above.

Thank you for your time and consideration in this matter.

Sincerely,

Amy Minteer

Enclosures:

Attachment 1: Napa de Oro Project Description

Attachment 2: Napa de Oro Trip Generation

Attachment 3: Inn at the Abbey Initial Study

Attachment 4: Inn at the Abbey Traffic Impact Study

Attachment 5: Inn at the Abbey Traffic Impact Study Addendum

ATTACHMENT 1

USE PERMIT APPLICATION

PROJECT DESCRIPTION
NAPA DE ORO WINERY

APPLICANT:
Summit Engineering, Inc
575 W. College Ave, Suite 201
Santa Rosa, CA 95401

OWNER:
Napa de Oro
1015 Big Tree Rd
St. Helena, CA 94574

APN: 022-060-011, -010

ACREAGE: +/- 10 acres

Existing conditions:
The site is in zoning district agricultural preserve (AP) and has the general plan designation of agricultural resource. The site has an average slope of 1% from north to south. The surrounding land uses to the north, east, and south are vineyards. The land uses to the west are vineyards and a winery. The nearest residence is about 600 feet east of the parcel boundary. The Napa River abuts the eastern property line, and the FEMA floodway cuts across the southeastern corner of the property. Most of the parcel is within the 100-year flood zone. The property contains an existing +/-1,250 sq ft winery, a +/- 850 sq ft storage barn, and parking for up to five vehicles along the southern parcel boundary.

Proposed project:
The proposed project is to maximize the winery uses under the Napa County small winery exemption. Napa de Oro proposes to increase annual production from 5,000 gallons to 20,000 gallons per year. The grapes will be sourced from onsite vineyards or other sources in Napa County. The existing winery and storage barn are proposed to be demolished and replaced with two buildings totaling +/- 7,489 sq ft connected by a +/- 1,205 sq ft covered crush pad. The existing 469 sq ft mechanical yard is proposed to be enclosed and attached to the northern end of the facility. The maximum height of the winery building will be 25 ft.

The main point of access to the winery will be from an access road to the south of the proposed winery with a secondary access off Big Tree Road. The winery is outside of the 300 ft road setback and FEMA floodway. The winery is outside of the 20-foot side yard setback.

The proposed number of employees is three full-time and two part-time. Public tours and tastings by appointment are requested for an average of 25 visitors daily and up to 30 visitors daily, Monday through Sunday from 10am to 5pm. Napa de Oro requests 11 marketing events per year with a maximum of 30 attendees. Marketing events will occur between Friday and Sunday from 10am to 9pm with cleanup concluding by 10pm and will include events such as wine promotional dinner and lunches, VIP barrel tastings, and two industry wide events that are two days each. Daily tours and tastings will be closed and unavailable during marketing events.

Daily tasting and tours will not have food pairings. All marketing events will be catered. We calculated parking requirements for visitors and employees at a rate of 1 stall per employee and 1 stall per 2.5 guests. Based upon this calculation, we propose to have a total of 17 parking spaces onsite for winery guest and employee use. Parking will be placed along the driveway, west of the tasting room. There is an existing parking area in the eastern parcel boundary setback. This parking area will be revised to include an accessible parking space and route to the winery building. The revision will not increase the existing parking square footage.

A minimum of 75% of the grapes used to create the wine will be sourced from Napa County. At least 30 tons of grapes will be produced on-site from parcels 022-060-011 and 022-060-010. The remaining 25% of grapes will be brought in from nearby Napa County vineyards.

The total annual water demand of Napa de Oro for process, domestic, and irrigation uses is projected to be 3.06 ac-ft/yr., which is equivalent to the assumed water allocation of 3.06 ac-ft/yr. at the 0.3 ac-ft/ac/year allotment for Napa Valley Floor properties. The anticipated peak daily potable water demand for the property will be met by the existing on-site wells. For more details, please see the Water Availability Analysis associated with this application.

Process wastewater will go through an on-site wastewater treatment system that includes a settling tank, septic tank, textile filter, and discharge pumps at a peak design flowrate of 1,000 gallons per day(gpd). Treated process wastewater will be then temporarily stored in an approximately 10,000-gallon polyethylene storage tank for use as either vineyard drip irrigation or for hold and haul disposal. The treatment system will be located on the northwest side of the property. Domestic wastewater produced at the winery will be treated and disposed of in a standard septic system to the west of the winery at a design flowrate of 150 gpd. For more details, please see the Wastewater Feasibility Study associated with this application.

ATTACHMENT 2

A Tradition of Stewardship
A Commitment to Service

WINERY TRIP GENERATION WORKSHEET

Planning, Building & Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559-3082
(707) 253-4417

Clear Form

PROJECT DESCRIPTION

Winery Name: Napa De Oro Winery **Date Prepared:** 3/6/23

Existing Entitled Winery		Harvest	Non-Harvest
Number of Full Time Employees*	Weekday	0	0
	Weekend	0	0
Number of Part Time Employees*	Weekday	0	0
	Weekend	0	0
Maximum Daily Visitation	Weekday	0	0
	Weekend	0	0
Annual Gallons of Production		5,000	5,000
Annual Tons of Grape Haul		31.3	N/A
Number of Visitors at the Largest Event that occurs two or more times per month, on average	Weekday	0	0
	Weekend	0	0

Proposed Winery		Harvest	Non-Harvest
Number of Full Time Employees*	Weekday	3	3
	Weekend	3	3
Number of Part Time Employees*	Weekday	2	2
	Weekend	2	2
Maximum Daily Visitation	Weekday	30	30
	Weekend	30	30
Annual Gallons of Production		20,000	20,000
Annual Tons of Grape Haul		125.0	N/A
Number of Visitors at the Largest Event that occurs two or more times per month, on average	Weekday	30	30
	Weekend	30	30

*Number of full time and part time employees should represent the max number of employees that will be working on any given day (including all vendors and contractors employed for the largest event that occurs two or more times per month on average).

Napa De Oro Winery
TRIP GENERATION

Existing Winery					Harvest	Non-Harvest
Maximum Daily Weekday Traffic (Friday)						
	Harvest	*Non-Harvest*				
FT Employees	0	0	3.05 one way trips/employee	FT Employee Daily Trips	0.0	0.0
PT Employees	0	0	1.9 one way trips/employee	PT Employee Daily Trips	0.0	0.0
Max Visitors	0	0	2.6 visitors/vehicle for 2 one way trips	Max Visitor Daily Trips	0.0	0.0
Max Event	0	0	2.6 visitors/vehicle for 2 one way trips	Max Event Daily Trips	0.0	0.0
Gallons of Production	5,000		0.000018 truck trips	Production Daily Trips	0.1	0.1
Tons of Grape Haul#	31.3		0.013889 truck trips	Grape Haul Daily Trips	0.4	0.0
				Total Weekday Daily Trips	1	1
				Total Weekday Peak Hour Trips*	1	1
Maximum Daily Weekend Traffic (Saturday)						
	Harvest	*Non-Harvest*				
FT Employees	0	0	3.05 one way trips/employee	FT Employee Daily Trips	0.0	0.0
PT Employees	0	0	1.9 one way trips/employee	PT Employee Daily Trips	0.0	0.0
Max Visitors	0	0	2.8 visitors/vehicle for 2 one way trips	Max Visitor Daily Trips	0.0	0.0
Max Event	0	0	2.8 visitors/vehicle for 2 one way trips	Max Event Daily Trips	0.0	0.0
Gallons of Production	5,000		0.000018 truck trips	Production Daily Trips	0.1	0.1
Tons of Grape Haul#	31.3		0.013889 truck trips	Grape Haul Daily Trips	0.4	0.0
				Total Weekend Daily Trips	1	1
				Total Weekend Peak Hour Trips*	1	1
Maximum Annual Traffic						
				Total Annual Trips**	365	

Proposed Winery					Harvest	Non-Harvest
Maximum Daily Weekday Traffic (Friday)						
	Harvest	*Non-Harvest*				
FT Employees	3	3	3.05 one way trips/employee	FT Employee Daily Trips	9.2	9.2
PT Employees	2	2	1.9 one way trips/employee	PT Employee Daily Trips	3.8	3.8
Max Visitors	30	30	2.6 visitors/vehicle for 2 one way trips	Max Visitor Daily Trips	23.1	23.1
Max Event	30	30	2.6 visitors/vehicle for 2 one way trips	Max Event Daily Trips	23.1	23.1
Gallons of Production	20,000		0.000018 truck trips	Production Daily Trips	0.4	0.4
Tons of Grape Haul#	125.0		0.013889 truck trips	Grape Haul Daily Trips	1.7	0.0
				Total Weekday Daily Trips	62	60
				Total Weekday Peak Hour Trips*	14	13
Maximum Daily Weekend Traffic (Saturday)						
	Harvest	*Non-Harvest*				
FT Employees	3	3	3.05 one way trips/employee	FT Employee Daily Trips	9.2	9.2
PT Employees	2	2	1.9 one way trips/employee	PT Employee Daily Trips	3.8	3.8
Max Visitors	30	30	2.8 visitors/vehicle for 2 one way trips	Max Visitor Daily Trips	21.4	21.4
Max Event	30	30	2.8 visitors/vehicle for 2 one way trips	Max Event Daily Trips	21.4	21.4
Gallons of Production	20,000		0.000018 truck trips	Production Daily Trips	0.4	0.4
Tons of Grape Haul#	125.0		0.013889 truck trips	Grape Haul Daily Trips	1.7	0.0
				Total Weekend Daily Trips	58	57
				Total Weekend Peak Hour Trips*	18	17
Maximum Annual Traffic						
				Total Annual Trips**	21,720	

Net New Trips		Harvest	Non-Harvest
Maximum Weekday Traffic (Friday)			
If total net new daily trips is greater than 40, a TIS is required	**Net New Weekday Daily Trips**	61	59
	Net New Weekday Peak Hour Trips*	13	12
Maximum Weekend Traffic (Saturday)			
If total net new daily trips is greater than 40, a TIS is required	**Net New Weekend Daily Trips**	57	56
	Net New Weekend Peak Hour Trips*	17	16
Maximum Annual Traffic			
Please Prepare a Traffic Impact Study	**Net New Annual Trips****	21,355	

#Trips associated with Grape Haul represent harvest season only.

*Weekday peak hour trips are calculated as 38% of daily trips associated with visitors and production plus one trip per employee. Weekend peak hour trips are calculated as 57% of daily trips associated with visitors and production plus one trip per employee.

**Annual trips represent a conservative calculation that assumes 11 weeks of harvest, all weekdays are Fridays, all weekends are Saturdays, and assumes that the largest event that occurs two or more times per month on average occurs every day.

ATTACHMENT 3

COUNTY OF NAPA
PLANNING, BUILDING AND ENVIRONMENTAL SERVICES DEPARTMENT
1195 THIRD STREET, SUITE 210
NAPA, CA 94559
(707) 253-4417

Initial Study Checklist

1. **Project Title:** Inn at the Abbey, Use Permit Major Modification Application No. P19-00038-MOD
2. **County Contact Person, Phone Number and Email:** Trevor Hawkes, Planner III, (707) 253-4388, Trevor.Hawkes@countyofnapa.org
3. **Project Location and Assessor's Parcel No. (APN):** 3018/3020 N. St. Helena Highway; 3010 N. St. Helena Highway; 3022 N. St. Helena Highway; 1189 Lodi Lane (also known as 3000 State Route [SR] 29); and 1157, 1160, 1165, 1179, and 1191 Lodi Lane; APNs 022-130-027, 022-130-028, 022-130-023, 022-130-024, 022-220-028, and 022-220-029
4. **Project Sponsor's Name and Address:** Jackson Family Investments III, LLC, Geoff Scott, 421 Aviation Boulevard, Santa Rosa, CA 95403
5. **Property Owner:** Jackson Family Investments III, LLC
6. **General Plan Designation:** Agriculture, Watershed & Open Space (AWOS)
7. **Zoning:** Commercial Limited (CL) and Agricultural Watershed (AW)
8. **Background/Project History:** The property that is the subject of this application is a 15-acre site composed of six parcels located at Lodi Lane along SR 29, approximately one-half mile north of the city limits of St. Helena, in unincorporated Napa County (Figure 1). The project site includes land zoned for CL and AW uses.
   The project site is currently used as the Freemark Abbey Winery complex and has been used for a blend of agricultural and commercial uses since the 1960s. There are also six residences on the site. For more than 50 years, the site has been entitled for multiple winery, retail, restaurant, and motel uses through several use permits and modifications. Current operations include the Freemark Abbey Winery production and wine tasting facilities, retail uses, a restaurant, a café, a motel, and residential units (Figure 2).
9. **Description of Project:** The applicant has submitted a use permit major modification request (P19-00038-MOD) to demolish three structures (a restaurant, a commercial building, and a motel) and redevelop the site with a 79-room hotel and associated guest amenities, including a spa with treatment rooms, a fitness studio, a rooftop lounge and back-of-house uses totaling approximately 78,400 square feet (sq. ft.) (Figure 3). Other site features would include a parking garage, a swimming pool, a plunge pool, and an outdoor lawn area. The existing residences would be used for on-site employee housing. Major modification of a use permit by Napa County is a discretionary action subject to the California Environmental Quality Act (CEQA). The applicant is also seeking approval of a development agreement with Napa County.
   The 15-acre project site includes six parcels owned by the project applicant. Three of these parcels are zoned for AW, two are zoned CL, and one parcel includes both AW and CL zoning. The four parcels located north of Lodi Lane are referred to as the "North Parcel," and the two parcels south of Lodi Lane are known as the "South Parcel." The North Parcel totals 1.84 acres of land zoned CL and 8.43 acres of land zoned AW. The South Parcel includes 1.70 acres zoned CL and 4.83 acres zoned AW.

Source: Adapted by Ascent Environmental in 2020

Figure 1 Project Location

Source: Adapted by Ascent Environmental in 2020.

Figure 2 Existing Project Site

Source: Adapted by Ascent Environmental in 2020.

Figure 3 Proposed Site Plan

The project would involve demolition of three buildings totaling 10,048 sq. ft. These buildings are currently used as a restaurant, retail wine shop, art gallery, and five-room motel. Demolition activities would also include removal of asphalt concrete driveways and parking areas, as well as concrete slabs.

The proposed hotel would include 79 rooms that would be split between the North Parcel (50 rooms) and the South Parcel (29 rooms). The existing Stone Building on the North Parcel is currently used for winery, retail, retail wine, and restaurant uses. Under the proposed project, there would be no physical change to the building's structure, but the interior may require minor renovations to serve as the hotel's main lobby, which may include a retail component, meeting space, and/or a bar/lounge component. Current barrel storage, wine lab, and bottle storage spaces in this building would be removed, and this space would be used for hotel conference space and back-of-house needs. The Stone Building has nearly 13,000 sq. ft. of floor space split between the basement and ground levels.

The project involves constructing a new North Hotel Building on the North Parcel in approximately the same location as the existing restaurant building, which would be demolished as part of this project. The North Hotel Building would have approximately 55,000 sq. ft. of floor area. Of this amount, approximately 21,000 sq. ft. would be used for the 50 guest rooms, and the remaining 34,000 sq. ft. would be used for the spa, retail operations, a rooftop terrace and other public areas, circulation, and back-of-house uses. An underground parking garage would be located below the North Hotel Building and would include 54 stalls for valet parking. The North Hotel Building would be a split-level structure with four levels, with a maximum building height of 45 feet.

On the South Parcel, the existing restaurant and five-room motel buildings would be demolished and replaced with a two-story South Hotel Main Building, a two-story South Hotel Barn Building, a freestanding single-story fitness studio, and two separate two-story bungalow buildings. The South Hotel Main Building would include 11 guest rooms, a support kitchen, a library, and back-of-house uses for a total of approximately 11,100 sq. ft. The South Hotel Barn Building would include 12 guestrooms totaling approximately 7,500 sq. ft. and an adjacent plunge pool. The 350-sq. ft. fitness studio would be proximate to the plunge pool. A lawn area would be located between the South Hotel Main Building and the South Hotel Barn Building. Each of the two bungalow buildings would include three rooms for a total of approximately 4,000 sq. ft. between the two buildings. Buildings on the South Parcel would be connected by a series of walkways, breezeways, patios, courtyards, and landscaped areas. The South Parcel also includes six existing on-site residential dwelling units that would be used to house workers employed on the property.

Overall, the project would involve 10,048 sq. ft. of demolition and 78,481 sq. ft. of new construction. Current uses on the project site have 55 employees, and the project is expected to add 48 new employees for the new hotel use, for a total of 103 employees at the project site.

The City of St. Helena has provided water service to the project site since at least the 1930s. Under an agreement modification executed in March 2000, Freemark Abbey Winery receives up to 2.7 million gallons per year (mgy), or 8.3 acre-feet per year (AFY), of water from the City of St. Helena. The North Parcel uses water from two on-site groundwater wells and a connection to the City of St. Helena water system. A separate public water system serves the South Parcel. The project would integrate the proposed hotel development on the South Parcel with the public water system on the North Parcel. The projected annual water demand, including demand for irrigation, the winery process, and domestic water, is 7.1 mgy, or 21.79 AFY. Up to 2.7 mgy, or 8.3 AFY, of water from the City of St. Helena would reduce the demand on project wells to 4.4 mgy, or 13.5 AFY. The daily average well water demand would be 12,055 gallons with a peak demand estimate (200 percent of average) of 24,110 gallons.

The North Parcel currently collects and conveys its wastewater to a Combined Wastewater Management System (CWMS). This system, known as the Markham CWMS, is located on the adjacent Markham Vineyards property and is operated under a waste discharge order approved by the San Francisco Regional Water Quality Control Board. The CWMS currently serves Markham Vineyards, Freemark Abbey, the Culinary Institute, and Wine Country Inn. The Freemark Abbey allocation under the CWMS is 4.0 mgy. Domestic wastewater from the North Parcel, which is estimated to be 3.5 mgy, would be disposed of through the Markham CWMS.

The South Parcel's existing commercial and residential use buildings are served by on-site wastewater treatment systems. Historically, uses in the CL-zoned areas of the South Parcel have disposed of 0.93 mgy of wastewater in systems on the AW-zoned areas of the site. This legacy of shared wastewater disposal would be preserved with the new development. Wastewater from the new South Parcel hotel buildings would be disposed of through discharge to the existing underground septic system and disposal to a new on-site gray water treatment system. The existing shared septic system, which has a capacity is 0.55 mgy, would serve an existing residence at the south end of the parcel (0.13 mgy) and would be used to dispose of black water from the proposed hotel and meeting space (0.42 mgy). Gray water from the hotel would be reclaimed for landscape irrigation (0.60 mgy). A maximum of 0.51 mgy of gray water would be used for irrigation on the AW-zoned areas of the site to maintain the historic balance of 0.93 mgy of CL-zoned wastewater on AW-zoned areas of the site. The gray water treatment would meet NSF 350 requirements for gray water systems in jurisdictions with no local requirements for these systems. Treated gray water would be stored and reused through surface drip irrigation on-site.

Runoff from the project site flows via roof gutters and surface flow to on-site storm drains and natural flow lines that ultimately discharge to the Napa River. The project would include improvements throughout the project site to install new bioretention basins, vegetated buffer strips, and self-retaining areas. The project design incorporates low-impact development design strategies, including stormwater treatment elements, minimization of impervious surfaces, and stormwater control measures. Additionally, the project would be subject to the National Pollutant Discharge Elimination System (NPDES) General Permit because more than 1 acre of land would be disturbed through project construction activities. Pursuant to the NPDES General Permit, a stormwater pollution prevention plan (SWPPP) would be developed and implemented at the project site. In addition to the SWPPP, source control best management practices (BMPs) would be designed and implemented as recommended by the California Stormwater Quality Association's BMP handbooks.

Project information is available online at https://www.countyofnapa.org/2876/Current-Projects-Explorer. Project materials, including the application and technical reports, can be viewed online at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

10. **Describe the Environmental Setting and Surrounding Land Uses:** The project site is located on six parcels totaling approximately 15 acres owned by Jackson Family Investments III, LLC. It includes vineyards, winery operations, wine tasting, retail sales, a restaurant, a café, a five-room motel, commercial buildings, and six residential structures. Vineyards and wineries surround much of the project site, with scattered residential units, including a small mobile home park, located west across SR 29 from the project site. SR 29 and the Vine Trail border the western edge of the project site, and Lodi Lane bisects the site as it travels east from SR 29. The project site and surrounding properties are generally flat.
11. **Tribal Cultural Resources:** Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code Section 21080.3.1? If so, has consultation begun?

    Note: Conducting consultation early in the CEQA process allows tribal governments, lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to tribal cultural resources, and reduce the potential for delay and conflict in the environmental review process. (See Public Resources Code Section 21083.3.2.) Information may also be available from the California Native American Heritage Commission's Sacred Lands File per Public Resources Code Section 5097.96 and the California Historical Resources Information System administered by the California Office of Historic Preservation. Please also note that Public Resources Code Section 21082.3(c) contains provisions specific to confidentiality.

    Consultation with Native American tribes pursuant to Public Resources Code Section 21080.3.1 has been initiated. On March 19, 2020, Napa County extended invitations to consult to Middletown Rancheria, Mishewal Wappo, and Yocha Dehe Wintun Nation. Middletown Rancheria has requested consultation on the project and has been in contact with County staff. The Yocha Dehe Wintun Nation responded to the letter, informing the County that the project was not within the aboriginal territories and the tribe declined to comment on the project. The letter to the Mishewal Wappo was returned to the County, and County staff is attempting to resend the letter to the

tribe. The outcome of the consultation process will be discussed in the draft environmental impact report (EIR) for this project.

12. Other Agencies Whose Approval Is Required (e.g., Permits, Financing Approval, or Participation Agreement):

State

- **Bay Area Air Quality Management District:** Authority to construct (for devices that emit air pollutants); permit to operate.
- **California Regional Water Quality Control Board, Region 2 (San Francisco):** Permits for the on-site gray water treatment and reuse system.

Local

- **Napa County:** Approval of a use permit major modification and various ministerial approvals, including building permits and grading permits. The applicant is also seeking approval of a development agreement.

ENVIRONMENTAL IMPACTS AND BASIS OF CONCLUSIONS:

The conclusions and recommendations contained herein are professional opinions derived in accordance with current standards of professional practice. They are based on a review of the Napa County Environmental Resource Maps, the other sources of information listed in the file, and the comments received, conversations with knowledgeable individuals; the preparer's personal knowledge of the area; and, where necessary, a visit to the site. For further information, see the environmental background information contained in the permanent file on this project.

On the basis of this initial evaluation:

☐ I find that the project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT (EIR) is required.

☒ I find that the project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, or 2) has been addressed by mitigation measures based on the analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the project, nothing further is required.

Signature Trevor Hawkes Date 7/23/2020

Name Trevor Hawkes, Planner III

Napa County Planning, Building and Environmental Services Department

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. Aesthetics.				
Except as provided in Public Resources Code Section 21099 (where aesthetic impacts shall not be considered significant for qualifying residential, mixed-use residential, and employment centers), would the project:				
a) Have a substantial adverse effect on a scenic vista?	☒	☐	☐	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☒	☐	☐	☐
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage points.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	☒	☐	☐	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☒	☐	☐	☐

DISCUSSION

a-c) The project site is located in a vineyard setting surrounded by rural residences, vineyards, and winery operations, and it contains relatively flat topography. Existing development on the property includes vineyards, winery operations, retail and restaurant buildings, a motel, and residential units. The project would include construction and operation of a 79-room hotel and associated guest amenities, such as a spa, fitness room, and pool. Maximum building height for new structures would be 45 feet. Three buildings would be demolished as part of the project. The project would be visible from off-site public viewpoints, including along adjacent SR 29 and the Vine Trail.

Scenic vistas of Napa Valley ridgelines and vineyards are located east and west of the project site. There are no designated scenic resources in the project vicinity. However, SR 29 is a County-designated scenic road and is eligible for designation as a state scenic highway (Caltrans 2020).

Although the project site is currently developed with existing commercial and residential buildings, implementing the project would result in a change in the visual character of the project site by replacing generally single-story commercial development with multiple multilevel structures and by increasing the overall number of structures on-site. The project design is intended to maintain and complement the existing rural character of unincorporated Napa County and the existing winery operations; however, construction and operation of the project would result in a change to the visual character of and views within the project area and could contribute to aesthetic impacts. Project renderings are included in the project plan set available for review on the County website. Therefore, this is a potentially significant impact and will be analyzed further in the EIR.

d) The project site includes sources of nighttime lighting associated with existing uses. The project would introduce additional nighttime lighting consistent with the hotel use on-site. This new source of light could contribute to adverse effects on nighttime views in the area. This is a potentially significant impact and will be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
II. Agriculture and Forest Resources.				
In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997, as updated) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.				
Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☒	☐	☐	☐
b) Conflict with existing zoning for agricultural use or a Williamson Act contract?	☐	☐	☒	☐
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?	☐	☐	☐	☒
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
e) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?	☒	☐	☐	☐

DISCUSSION

a) The project site includes lands designated as Prime Farmland and Urban and Built-Up Land by the Farmland Mapping and Monitoring Program (California Department of Conservation 2016a). Because the project site includes Prime Farmland, this impact would be potentially significant and will be analyzed in detail in the EIR.

b) The project site is not subject to a Williamson Act contract (California Department of Conservation 2015). The project site includes lands zoned for AW and CL, with the proposed 79-room hotel and associated guest amenities to be constructed in the CL-zoned parcels. Some site improvements may occur in the AW-zoned land, but they would not interfere with existing agricultural uses. Therefore, impacts related to conflicts with agricultural zoning would be less than significant. This issue will not be analyzed further in the EIR.

c, d) The site is developed with existing buildings, including a winery, restaurant, retail wine shop, art gallery, and small motel, and it is not used or zoned for timber harvest. Although minimal tree removal may be required for the project, no forestland exists on the site. Therefore, there would be no impact on forestland. This issue will not be analyzed further in the EIR.

e) The project would include several new buildings, including the proposed hotel and associated facilities, but would not result in any direct impacts on agricultural resources. Given the proximity of the Prime Farmland and agricultural uses to the proposed development, construction and operation of the 79-room hotel and associated amenities could affect the agricultural uses. Therefore, this impact would be potentially significant and will be analyzed in detail in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
III. Air Quality.				
Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied on to make the following determinations.				
Are significance criteria established by the applicable air district available to rely on for significance determinations?	☒ Yes	☐ No		
Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☒	☐	☐	☐
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	☒	☐	☐	☐
c) Expose sensitive receptors to substantial pollutant concentrations?	☒	☐	☐	☐
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	☒	☐	☐	☐

The project applicant has submitted an air quality and greenhouse gas assessment, which will be utilized in preparation of the Draft EIR. Project materials, including the application and technical reports, can be found on the County website at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

DISCUSSION

a) Construction of the project would result in construction- and operation-related emissions of criteria air pollutants. These project-generated emissions could potentially exceed significance criteria established by the Bay Area Air Quality Management District (BAAQMD) and could potentially conflict with BAAQMD regulations and air quality plans. This potentially significant impact will be analyzed further in the EIR.

b) In Napa County, ozone and particulate matter are the most problematic pollutants (Napa County 2007:4.8-6). Construction of the project would result in construction- and operation-related emissions of criteria air pollutants, including ozone and particulate matter, for which the County is currently in nonattainment (BAAQMD 2017). These project-generated emissions, along with emissions from other development in the region, could potentially exceed significance criteria established by BAAQMD for criteria air pollutants. This potentially significant impact will be analyzed further in the EIR.

c) Construction and operation of the project would generate pollutants near existing rural residences. Use of diesel equipment during construction would be limited in scope and duration. After construction, automobiles would be the primary source of air pollutants. Further analysis of the potential for these anticipated emissions to affect area residents is necessary to determine whether a significant impact would result. This issue will be analyzed in detail in the EIR.

d) Construction of the project would not be expected to generate substantial objectionable odors. The project would involve the operation of a 79-room hotel and associated hotel facilities, as well as a retail space, two pools, a parking garage, and on-site employee housing. None of these uses is expected to generate substantial objectionable odors. However, the project would include on-site bioretention basins, vegetated buffer strips, and self-retaining water areas, all of which could result in operational odor emissions. This potentially significant impact will be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. Biological Resources. Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service?	☒	☐	☐	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service?	☐	☐	☐	☒
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☒	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☒	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☒	☐	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☒

DISCUSSION

a) The project site is in a rural area. The project would involve demolition and construction adjacent to existing agricultural uses and west of the Napa River. Special-status plant or wildlife species could potentially occur in the project area and could be directly or indirectly affected by demolition of existing structures or project construction and operation. Further analysis of the potential for the site and surrounding area to support special-status species is necessary to determine whether a significant impact would result. This issue will be analyzed further in the EIR.

b) The project site is fully developed with existing uses and is in an area identified as developed and agricultural cropland (Napa County 2007:4.5-4). No riparian habitat or sensitive natural communities are located on the project site. Therefore, the project would have no impact on riparian habitat or sensitive natural communities. This issue will not be analyzed further in the EIR.

c) The project would be constructed in an area that is currently entirely paved and disturbed, and it would not include disturbance of or placement of fill into any waterways. As discussed further in Section X, "Hydrology and Water Quality," the existing hydrology of the site would be maintained, and the site's contribution to surface water flows into the Napa River would not be affected. Therefore, this impact would be less than significant. This issue will not be analyzed further in the EIR.

d) As discussed above, the project would be located on a property that is currently disturbed, paved, and used for winery, commercial, retail, and restaurant uses. Because the site has been previously developed with buildings and parking areas, implementation of the project is not anticipated to interfere substantially with the movement of any native resident or migratory fish or wildlife species, or with established wildlife corridors, nor would it impede the use of native wildlife nursery sites. This impact would be less than significant and will not be analyzed further in the EIR.

e) The Napa County General Plan Conservation Element contains natural resource goals and policies that specifically address protection of biological resources. Construction of the project would be confined to existing disturbed areas within the project boundaries, and it is not anticipated to result in impacts on biological resources or conflict with any policies pertaining to the protection of such resources. However, further analysis is necessary to determine whether a significant impact would result. This issue will be analyzed further in the EIR.

f) The project site is not located in any habitat conservation or natural community conservation plan area (Napa County 2007:4.5-13). Therefore, the project would not conflict with a habitat conservation or natural community conservation plan. This issue will not be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
V. Cultural Resources. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?	☒	☐	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?	☐	☒	☐	☐
c) Disturb any human remains, including those interred outside of dedicated cemeteries?	☐	☒	☐	☐

DISCUSSION

a) A cultural resources study (Tom Origer & Associates 2019) prepared for the project site indicates that the existing buildings on-site are not historic resources. However, a review of the indicates that physical evidence of human activities more than 45 years old may be recorded for purposes of inclusion in the Office of Historic Preservation's filing system. Because some of the buildings are more than 45 years old, impacts related to historical resources on-site could be potentially significant. This issue will be analyzed further in the EIR.

b) Known cultural or archaeological resources are located on the project site, and many regions of Napa County are highly sensitive for the presence of archaeological resources because of the settlement pattern of indigenous populations (Napa County 2007:4.12-17). Such archaeological resources could be undisturbed beneath the project site, and removal of the existing surface material during grading and excavation activities could expose (and possibly damage or destroy) sensitive resources. This impact would be potentially significant. Implementing Mitigation Measure CUL-1, described below, would reduce this impact to less than significant. Therefore, this issue will not be analyzed further in the EIR.

d) No human remains have been found previously on the project site. However, the potential for human remains to occur below the ground surface in the project area is currently unknown. Implementation of the project would involve soil disturbance during construction, which could result in impacts on any interred on-site human remains. This impact would be potentially significant. Implementing Mitigation Measure CUL-1, described below, would reduce this impact to less than significant. Therefore, this issue will not be analyzed further in the EIR.

Mitigation Measure CUL-1:

- In accordance with State CEQA Guidelines Subsection 15064.5(f), if site contractors encounter cultural resources during ground-disturbing activities of the project, the permittee and his or her contractors shall halt work within 50 feet of the find and immediately contact a qualified archaeologist (36 Code of Federal Regulations Part 61) to assess the significance of the find. Construction activities could continue in other areas. If the discovery proves to be significant, additional work, such as data recovery excavation, may be warranted and would be discussed in consultation with the applicant, Napa County, and/or any other relevant regulatory agency, as appropriate.

- If site contractors encounter human remains during ground-disturbing activities of the project, the permittee and his or her contractors shall immediately notify the Napa County coroner of the find to determine whether an investigation of the cause of death is required and/or if the remains are of Native American origin. Pursuant to Public Resources Code Section 5097.98, if such remains are of Native American origin, the coroner will notify the Native American Heritage Commission, which will determine and notify a most likely descendent (MLD). The MLD shall complete the inspection of the site within 48 hours of notification and may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

- The permittee shall ensure that all persons working on-site shall be bound by contract and instructed in the field to adhere to these provisions and restrictions.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
VI. Energy. Would the project:				
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	☒	☐	☐	☐
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	☒	☐	☐	☐

DISCUSSION

a, b) Project construction and operation activities would require energy resources, such as fuel and electricity. The EIR will include calculation of potential energy use for construction and operation (mobile and stationary sources). This issue is potentially significant and will be analyzed in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
VII. Geology and Soils. Would the project:				
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to California Geological Survey Special Publication 42.)	☐	☐	☒	☐
ii) Strong seismic ground shaking?	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☒	☐
iv) Landslides?	☐	☐	☒	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☒	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse?	☐	☐	☒	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994, as updated), creating substantial direct or indirect risks to life or property?	☐	☐	☒	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	☐	☐	☒	☐
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☒	☐	☐

The project applicant has submitted a geotechnical report, which will be utilized in preparation of the Draft EIR. Project materials, including the application and technical reports, can be found on the County website at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

DISCUSSION

a) The project site is not located in an Alquist-Priolo active fault zone; however, several active faults are located in the region, including the Green Valley, West Napa, and Rogers Creek Faults (California Department of Conservation 2016b). The project would include construction of several buildings associated with hotel, retail, and residential uses that would be occupied by humans. The buildings would be constructed in conformance

with the standards contained in California Building Code Title 24, which identifies specific design requirements to reduce damage from strong seismic ground shaking, ground failure, landslides, soil erosion, and expansive soils. The project itself would not increase the risk of seismic events or exacerbate hazards from such events. Therefore, this impact would be less than significant and will not be analyzed further in the EIR.

b) The project would involve soil disturbance, including grading and excavation activities, associated with construction of new hotel and other on-site buildings, as well as the underground parking garage. Potential impacts related to erosion are discussed further in Section X, "Hydrology and Water Quality," below, and can be addressed using common and accepted practices to manage runoff and prevent pollution of stormwater. With incorporation of standard measures required by the County, in addition to conformance with standards required through SWPPP and BMP implementation, the effect of soil disturbance during construction would be less than significant. Project design includes minimization of impervious surfaces and stormwater control measures, as well as incorporation of landscaping, lawn, gravel, and decomposed granite and permeable paved surfaces that would reduce the potential for erosive stormwater flows. Therefore, the potential for the project to result in substantial erosion or loss of topsoil during operation would be less than significant. This issue will not be analyzed further in the EIR.

c) As described for item a) above, the project site is located in a seismically active area. However, the project site and the surrounding area are flat. For this reason, the project would not be expected to be prone to landslides, lateral spread, subsidence, liquefaction, or collapse. Furthermore, the project would not increase the risk of such events. Therefore, this impact would be less than significant and will not be analyzed further in the EIR.

d) Expansive soils are soils that are high in clays or silts and that swell and shrink with wetting and drying, respectively. This shrinking and swelling can result in differential ground movement, which can cause damage to foundations. However, proper fill selection, moisture control, and compaction during construction can prevent these types of soils from causing significant damage. In compliance with Section 1803 of the California Building Code, the project applicant would be required to arrange for soil investigations to be performed by a registered engineer to determine the presence of expansive soils before construction. If the project site is determined to contain expansive soils, the project applicant would be required to provide design and construction solutions to reduce the risks associated with unstable and expansive soils. Therefore, the project would result in less-than-significant impacts related to expansive soils, and this issue will not be analyzed further in the EIR.

e) The North Parcel of the project site is served by the existing Markham CWMS, whereas the South Parcel is served by on-site wastewater treatment systems. No new septic tanks are proposed as part of the project. The project does, however, propose a gray water treatment system wherein reclaimed gray water would be treated and reused on-site for landscape irrigation. The project applicant has submitted a geotechnical report that concluded that the project site is suitable from a geotechnical perspective for the planned improvements (Miller Pacific 2019:8). Because site soils would be appropriate for the planned project, this impact would be less than significant. This issue will not be analyzed further in the EIR.

f) No known paleontological resources are located on the project site; however, the potential for discovery of such resources exists because of the high biodiversity in the Napa Valley region (Napa County 2007:4.12-17). This impact would be potentially significant because paleontological resources could be discovered during project construction. Implementing Mitigation Measure GEO-1, described below, would reduce effects on previously unknown paleontological resources if any are discovered during project construction. With implementation of this mitigation, the impact would be less than significant. Therefore, this issue will not be analyzed further in the EIR.

Mitigation Measure GEO-1

- If site contractors discover paleontological resources during ground-disturbing activities of the project, the permittee and his or her contractors shall halt work in that area and within 50 feet of the find and immediately contact a qualified paleontologist to evaluate the find. Construction activities could continue in other areas. If the discovery proves to be significant under Society of Vertebrate Paleontology criteria, additional work, such as fossil recovery excavation, may be warranted and would be discussed in consultation with the applicant, Napa County, and/or any other relevant regulatory agency, as appropriate.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
VIII. Greenhouse Gas Emissions. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☒	☐	☐	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☒	☐	☐	☐

The project applicant has submitted an air quality and greenhouse gas assessment, which will be utilized during preparation of the Draft EIR. Project materials, including the application and technical reports, can be found on the County website at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

DISCUSSION

a) Construction and operation of the project would result in the emission of greenhouse gases (GHGs), which could contribute considerably to cumulative climate change impacts. This potentially significant impact will be analyzed further in the EIR.

b) The emission of GHGs associated with project construction and operation could conflict with General Plan policies and local and regional plans for reduction of GHG emissions. This potentially significant impact will be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
IX. Hazards and Hazardous Materials. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☒	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and/or accident conditions involving the release of hazardous materials into the environment?	☐	☐	☒	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?	☐	☐	☐	☒
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury, or death involving wildland fires?	☐	☐	☒	☐

DISCUSSION

a) Construction and operation of the project would not be expected to involve the use of or generate large quantities of hazardous materials. However, construction activities, including demolition, would involve the use of commercially available hazardous materials, such as solvents, gasoline, and oil. During operation, hazardous materials, such as cleaners, solvents, and fuels, would be used during hotel operations. The use of hazardous materials and disposal of hazardous wastes are subject to numerous laws and regulations at all levels of government. Although it is not anticipated that the routine use of these materials, handled in accordance with laws and regulations, would create a significant hazard to the public or the environment, the facility operator would be required to file a hazardous materials business plan with the County Environmental Health Division if the quantity of hazardous materials on-site reach reportable levels during construction or,

subsequently, as part of hotel operations. This impact would be less than significant and will not be analyzed further in the EIR.

b) Data on historic and documented releases of hazardous materials in the surrounding area were obtained through internet searches, including review of the State Water Resources Control Board GeoTracker database, the U.S. Environmental Protection Agency Envirofacts/Enviromapper website, and the state Cortese list via the California Department of Toxic Substances Control (DTSC) EnviroStor database (DTSC 2020). No hazards were identified on-site. However, buildings on the project site that would be demolished may be constructed of materials containing lead and/or asbestos. Removal of these materials must be done in compliance with applicable local, state, and federal laws regarding the safe removal and disposal of materials. This impact would be less than significant and will not be analyzed further in the EIR.

c) No schools are located within 0.25 mile of the project site. Therefore, there would be no impact on nearby schools. This issue will not be analyzed further in the EIR.

d) As described for b) above, the project site does not contain known hazards, and it is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. Therefore, there would be no impact related to hazardous materials sites. This issue will not be analyzed further in the EIR.

e) The project site is not located within 2 miles of a public airport and is not located in an airport land use plan. No impact would occur; therefore, this issue will not be analyzed further in the EIR.

f) As described for e) above, the project site is not located in the vicinity of a private airstrip or within 2 miles of a private airstrip. No impact would occur; therefore, this issue will not be analyzed further in the EIR.

g) The project, which includes construction of multiple structures on-site, would be required to comply with standard County conditions of approval related to the provision of adequate access for emergency vehicles and secure evacuation routes.

The Napa County Emergency Operations Plan (EOP) outlines procedures, including those related to establishing the leadership roles and responsibilities of various agency staff, that guide local preparedness, response, recovery, and resource management efforts associated with occurrence of a natural disaster, significant emergency, or other threats to public safety. The project would not modify any County-owned roads or access points to the project site from SR 29.

No component of the implementation of the EOP would be impaired by the proposed project, nor would the project impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan. This impact would be less than significant. Therefore, this issue will not be analyzed further in the EIR. See Section XV, "Public Services," for more detailed discussion regarding emergency response.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
X. Hydrology and Water Quality. Would the project:				
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality?	☒	☐	☐	☐
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?	☒	☐	☐	☐
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
i) Result in substantial on- or offsite erosion or siltation;	☒	☐	☐	☐
ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;	☒	☐	☐	☐
iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	☒	☐	☐	☐
iv) Impede or redirect flood flows?	☒	☐	☐	☐
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☐	☒
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☒	☐	☐	☐

The project applicant has submitted a stormwater control plan, which will be utilized during preparation of the Draft EIR. Project materials, including the application and technical reports, can be found on the County website at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

DISCUSSION

a; c-i, ii, iii, iv)

All earth-disturbing activities during construction would be subject to the County's Stormwater Ordinance, which requires applicants and contractors to implement measures to prevent erosion, sedimentation, and waste materials from entering waterways both during and after any construction activities. With implementation of the SWPPP and the County's BMPs, which comply with regional water quality control board requirements, the project would not have the potential to significantly affect water quality and discharge standards during construction.

During operation, the project has the potential to generate polluted runoff associated with storage of cleaning chemicals, as well as vehicle leaks. The Napa County Post-Construction Runoff Management Requirements and Provision E.12 (Post-Construction Stormwater Management Plan) of the Small Municipal Regional Stormwater Permit, Order No. 2013-0001-DWQ, include postconstruction stormwater BMPs. The goal of Provision E.12 is to include appropriate source control, site design, and stormwater treatment measures in development projects to address both soluble and insoluble stormwater runoff pollutant discharges and prevent increases in runoff flows from new development and redevelopment projects.

The project applicant has submitted a technical report regarding stormwater and the project's anticipated provisions for stormwater and water quality. A peer review of this technical report will be conducted, and the resulting impact analysis will be included in the EIR. Because operation of the project has the potential to result in impacts related to water quality, this issue is potentially significant and will be analyzed in the EIR.

b, e) The project would use a combination of public water provided by the City of St. Helena, groundwater, and gray water. The project applicant has submitted a report documenting the availability of water for the project. This report will be evaluated and used for the analysis in the EIR. Because the project would require groundwater, the project could decrease groundwater supplies. Therefore, this issue is potentially significant and will be analyzed in the EIR.

d) According to Napa County Geographic Information System online interactive mapping, the project site is not located in or adjacent to a floodway and is in an area of minimal flood hazard. Also, the terrain of the project site and surrounding area is generally flat. The project site is not in a flood hazard, tsunami, or seiche zone, thereby reducing the risk of release of pollutants from inundation in one of those zones. There would be no impact related to being in a flood hazard, tsunami, or seiche zone; therefore, this issue will not be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XI. Land Use and Planning. Would the project:				
a) Physically divide an established community?	☐	☐	☐	☒
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?	☒	☐	☐	☐

DISCUSSION

a) The project would be located on private property in a rural agricultural portion of the Napa Valley. Because the project would be limited to construction and operation within a previously developed property situated between residences and vineyards, the project would not divide an established community. Therefore, there would be no impact. This issue will not be analyzed further in the EIR.

b) Requests for discretionary permits in Napa County are subject to review for compliance and consistency with a variety of policy and regulatory programs that have been adopted to avoid or reduce the severity of potential environmental effects. Such regulations include the General Plan policies and adopted mitigation measures of the General Plan EIR; area specific plans, where applicable; subdivision, zoning, and other ordinances incorporated into the Napa County Code; and various other resolutions and policy documents adopted by County decision-making bodies. The project is subject to review for compliance and consistency with the County zoning ordinance and General Plan EIR mitigation measures adopted as policies in the General Plan. This impact is potentially significant; therefore, the EIR will analyze the project's consistency with applicable plans, policies, and regulations.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XII. Mineral Resources. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	☐	☐	☐	☒

DISCUSSION

a, b) Napa County contains four active mines (rock quarries), two of which are not presently being mined but serve only as mineral storage areas. These quarries produce construction materials. The only significant mine currently in operation in Napa County is the Syar Napa Quarry, operated by Syar Industries, which is more than 20 miles south of the project site (WICC 2005).

The project site is not located in a mapped mineral resource zone. No loss of availability of a known mineral resource that would be of value to the region and the residents of the state would occur. There are no locally important mineral resource recovery sites delineated on a local general plan, specific plan, or other land use plan that includes the project area. Therefore, there would be no impact related to mineral resources. This issue will not be analyzed further in EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIII. Noise. Would the project result in:				
a) Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or in other applicable local, state, or federal standards?	☒	☐	☐	☐
b) Generation of excessive groundborne vibration or groundborne noise levels?	☒	☐	☐	☐
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

The project applicant has submitted an environmental noise and vibration assessment, which will be utilized during preparation of the Draft EIR. Project materials, including the application and technical reports, can be found on the County website at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

DISCUSSION

a) Project construction would result in a temporary increase in noise levels. Construction-related noise sources would include both mobile and stationary on-site equipment (e.g., bulldozers, backhoes, front end loaders, graders, pavers, generators, and compressors), as well as impact tools. Construction would also generate vehicle noise associated with the delivery of building supplies and hauling away of construction debris. Construction activities would be limited to daylight hours using properly muffled vehicles; noise generated during this time is not anticipated to be significant. All construction activities would be required to be conducted in compliance with the Napa County Noise Ordinance (County Code Chapter 8.16), which establishes noise limits for construction activities during permissible hours and prohibits nonemergency noise-generating construction activities between the hours of 7:00 p.m. and 7:00 a.m.

The Napa County Noise Ordinance sets the maximum permissible received sound level for a rural residence at 45 decibels (dB) between the hours of 10:00 p.m. and 7:00 a.m. Although the 45-dB limitation is strict (45 dB is roughly equivalent to the sound generated by a quiet conversation), the area surrounding the subject property is not densely developed. The project's consistency with applicable County regulations and the potential to expose people working or residing in the area to excessive noise levels will be analyzed in the EIR.

The project would include a 79-room hotel, retail space, a spa, and other hotel-associated facilities. Occupants of nearby rural residences located north, east, south, and west of the project site could be affected by the traffic noise and noise generated from operation of the project, as well as any periodic events that could be hosted on-site. The project applicant has submitted an environmental noise and vibration assessment, which will be used in the analysis of project impacts. This potentially significant impact will be analyzed further in the EIR.

b) Equipment used during demolition and construction of the project may generate ground-borne vibration that could affect existing sensitive land uses. This impact would be potentially significant and will be analyzed further in the EIR.

c) The project site is not within an airport land use plan and is more than 17 miles east of the nearest major airport, Charles M. Schultz – Sonoma County Airport. Additionally, the project site is more than 24 miles north of the Napa County Airport. The project site is outside of the boundaries of both the Sonoma County Airport Land Plan and the Napa County Airport Land Use Plan. No impact would result; therefore, this issue will not be analyzed further in the EIR.

	ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIV.	Population and Housing. Would the project:				
a)	Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☒	☐	☐	☐
b)	Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c)	Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒

DISCUSSION

a) The project includes the construction of a new hotel and associated guest amenities, including a spa, a fitness studio, and gathering spaces. The six residential units on the project site would be retained to house employees during project operation. New employment positions generated by project construction and operation would likely be filled by workers already in the region. Napa County, like much of California, has a shortage of housing, particularly housing for employees in the region who must often commute from outside the county. Because it is possible that the new jobs generated by the project could attract workers to the area, there is the potential to induce population growth. This potentially significant impact will be analyzed in the EIR.

b, c) The project would not remove any existing homes. Therefore, the project would have no impact related to the displacement of homes or people. This issue will not be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XV. Public Services. Would the project:				
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the public services:				
Fire protection?	☒	☐	☐	☐
Police protection?	☒	☐	☐	☐
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒

DISCUSSION

a) The project does not include new residential units, so it would not generate new residents. Because residents are associated with additional demand for schools and park facilities, these public services would not be affected by the project.

The project would include operation of a new 79-room hotel and associated guest amenities. Although police and fire staffing ratios are generally associated with the number of new residents, additional commercial development may also generate additional need for fire and police services. Because the demand for fire or law enforcement protection may increase with implementation of the project, this impact would be potentially significant and will be analyzed further in the EIR.

	ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVI.	Recreation. Would the project:				
a)	Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☒	☐
b)	Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	☐	☐	☐	☒

DISCUSSION

a) The project would not increase the number of residents in the area, but it would increase the number of employees at the project site. As previously discussed, new employment at the project site would be filled by workers currently living in the Napa County region; thus, an increase in recreational use resulting from employment generated at the site is not anticipated, and impacts related to the use of existing recreational facilities would be less than significant. This issue will not be analyzed further in the EIR.

b) The project does not include public recreational facilities. Therefore, there would be no impact related to the construction or expansion of public recreational facilities. The project includes on-site recreational facilities (e.g., pool, fitness center, and spa) that would be used exclusively by hotel guests. Because these private on-site facilities are part of the project description, their construction would not result in physical effects not discussed in this initial study. This issue will not be analyzed further in the EIR.

	ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII.	**Transportation. Would the project:**				
a)	Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?	☒	☐	☐	☐
b)	Conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?	☒	☐	☐	☐
c)	Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
d)	Result in inadequate emergency access?	☒	☐	☐	☐

The project applicant has submitted a traffic impact study, which will be utilized during preparation of the Draft EIR. Project materials, including the application and technical reports, can be found on the County website at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

DISCUSSION

a, d) The project site is located east of SR 29 and occupies property north and south of Lodi Lane. Primary access would be provided by existing entrances on SR 29 and Lodi Lane. The project includes a paved driveway and turnaround/drop-off area adjacent to the North Hotel Building, as well as on the southeastern portion of the site near the South Hotel Main Building. Because the project site offers multiple entrance and egress points and is located on a major county road (SR 29) and a large arterial (Lodi Lane), emergency vehicle access is currently provided and would continue to be maintained through project construction and operation.

The project applicant has provided a traffic impact study, which includes analysis of alternative transportation modes, access, and circulation. This study will be used to evaluate project impacts in the EIR. This potentially significant impact will be analyzed further in the EIR.

b) CEQA Guidelines Section 15064.3(b) sets forth criteria for analyzing transportation impacts and determining level of significance. The appropriate metric to be used to determine whether a project would result in significant transportation impacts is vehicle miles traveled (VMT). The project would induce VMT from worker commute trips and guest trips to and from the project site. Therefore, this impact is potentially significant and will be analyzed in the EIR.

c) The project does not include any changes to existing road, bicycle, or pedestrian infrastructure and would not introduce any transportation design features that would be considered hazardous. The Vine Trail bike path is located along the project site frontage on SR 29. The project would not add additional points of ingress and egress from SR 29 and would therefore not increase hazards to users of the Vine Trail. If any modification to site access points is needed, such modifications would be required to comply with California Department of Transportation and County standards. Therefore, the project will not result in any impacts related increased traffic hazards or incompatible uses, and this issue will not be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XVIII. Tribal Cultural Resources.				
Has a California Native American Tribe requested consultation in accordance with Public Resources Code Section 21080.3.1(b)?	☒ Yes	☐ No		
Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k)?	☒	☐	☐	☐
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe?	☒	☐	☐	☐

DISCUSSION

a, b) Assembly Bill (AB) 52, signed by Governor Edmund G. Brown, Jr., in September 2014 and effective on July 1, 2015, established a new class of resources under CEQA: "tribal cultural resources." AB 52, as provided in Public Resources Code Sections 21080.3.1, 21080.3.2, and 21082.3, requires that lead agencies undertaking CEQA review must, upon receiving a written request from a California Native American tribe, begin tribal consultation after the lead agency determines that the application for the project is complete or before the release of an EIR or notice of intent to adopt a negative declaration or mitigated negative declaration.

The requirements of AB 52 apply to the project and its EIR process. On March 19, 2020, Napa County extended invitations to consult to Middletown Rancheria, Mishewal Wappo, and Yocha Dehe Wintun Nation. Middletown Rancheria has requested consultation on the project and has been in contact with County staff. The Yocha Dehe Wintun Nation responded to the letter, informing the County that the project was not within the aboriginal territories and the tribe declined to comment on the project. The letter to the Mishewal Wappo was returned to the County, and County staff is attempting to resend the letter to the tribe.. Because consultation is ongoing, this impact is potentially significant and will be analyzed in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XIX. Utilities and Service Systems. Would the project:				
a) Require or result in the relocation or construction of construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunication facilities, the construction or relocation of which could cause significant environmental effects?	☒	☐	☐	☐
b) Have insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?	☒	☐	☐	☐
c) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has inadequate capacity to serve the project's projected demand, in addition to the provider's existing commitments?	☒	☐	☐	☐
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?	☐	☐	☒	☐
e) Fail to comply with federal, state, and local management and reduction statutes and regulations related to solid waste?	☐	☐	☒	☐

The project applicant has submitted a water availability analysis and wastewater feasibility report, which will be utilized during preparation of the Draft EIR. Project materials, including the application and technical reports, can be found on the County website at: https://pbes.cloud/index.php/s/5ybiJ33kpd7S7Yf.

DISCUSSION

a) The project includes a 79-room hotel with associated guest amenities such as lounge space, a spa with treatment rooms, a main pool and a small plunge pool, a parking garage, a rooftop terrace, a fitness room, an outdoor lawn and gathering space, back-of-house uses, and on-site employee housing. Although the project would use existing infrastructure for water supply, wastewater/stormwater conveyance, and electricity where feasible, it is possible that existing water conveyance infrastructure would be upgraded and/or replaced. As previously described, the project would integrate the proposed hotel development on the South Parcel with the public water system on the North Parcel. Additionally, a new on-site gray water treatment system would be constructed to treat wastewater produced by the South Parcel hotel buildings. The gray water treatment would meet NSF 350 requirements for gray water systems in jurisdictions with no local requirements for these systems. The project would also involve construction of new stormwater management infrastructure, including installation of new bioretention basins, vegetated buffer strips, and self-retaining areas.

The potential environmental effects of construction activities on the project site are evaluated throughout this initial study as part of the proposed project. Any utility-related construction activities would occur in compliance with BMPs set forth in the NPDES General Permit and as recommended by the California

Stormwater Quality Association's BMP handbooks. The potentially significant impact related to construction or relocation of new or expanded utility infrastructure will be analyzed further in the EIR.

b) Existing water supply is provided by two on-site groundwater wells and a connection to the City of St. Helena water system on the North Parcel, whereas a separate public water system serves the South Parcel. Implementation of the project would generate increased water demand from the existing entitlement of 2.7 mgy (8.3 AFY) to 7.1 mgy (21.79 AFY). Therefore, the net increase in water demand would be 4.4 mgy (13.5 AFY). This projection includes demand for irrigation, the winery process, and domestic water. As previously described, project implementation would integrate the proposed hotel development on the South Parcel with the public water system, on the North Parcel. The project applicant has submitted a water availability analysis, which will be used in the EIR. Because the project would increase water demand, this issue is potentially significant and will be analyzed in the EIR.

c) As previously described, wastewater at the North Parcel is served by the Markham CWMS. The South Parcel's existing commercial and residential use buildings are served by on-site wastewater treatment systems. Through project implementation, domestic wastewater from the North Parcel would continue to be disposed of through the Markham CWMS while wastewater from the new South Parcel hotel buildings would be disposed of through discharge to the existing underground septic system and disposal to a new on-site gray water treatment system. Any treated gray water would be stored and reused through surface drip irrigation on-site. The impact related to wastewater is potentially significant and will be analyzed further in the EIR.

d, e) The project would include demolition of three buildings on the site. These structures total 10,048 sq. ft. Demolition activities would also include removal of existing asphalt concrete driveways and parking areas, as well as concrete slabs. In addition, operation of the project would result in the production of waste related to the proposed hotel and associated facilities, as well as retail uses. The nearest waste disposal site is the Clover Flat Landfill, which is approximately 4 miles north of the project site. Upper Valley Disposal and Recycling, which is located approximately 4.75 miles southeast of the project site, provides waste, recycle, and compost services in the county. Waste disposed of at this facility is ultimately disposed of at the Clover Flat Landfill, which is permitted to receive 600 tons of waste per day. As of September 2012, the landfill had a remaining capacity of more than 4.5 million cubic yards. The landfill is expected to remain in operation until the end of 2047 (CalRecycle 2019). In accordance with Section 5.408 of the California Green Building Standards Code, the project would implement a construction waste management plan for recycling and/or salvaging for reuse a minimum of 65 percent of construction and demolition debris generated during project construction. Additionally, project implementation would comply with all federal, state, and local regulations related to the disposal of waste. This less-than-significant impact will not be analyzed further in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XX. Wildfire.				
Is the project located in or near state responsibility areas or lands classified as high fire hazard severity zones?	☒ Yes	☐ No		
If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a) Substantially impair an adopted emergency response plan or emergency evacuation plan?	☒	☐	☐	☐
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	☒	☐	☐	☐
c) Require the installation of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	☒	☐	☐	☐
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	☒	☐	☐	☐

DISCUSSION

a-d) The project site is not within a State Responsibility Area (SRA) or on lands classified as High Fire Hazard Severity Zones, but there are SRA areas opposite the project site, on the other side of SR 29 (CAL FIRE 2007). Although the project site is in a Local Responsibility Area and not in a High Fire Hazard Severity Zone, wildfire activity in the Napa Valley is of concern for all development. Because of the project site's proximity to SRAs, impacts related to wildfire are potentially significant and will be analyzed in the EIR.

ENVIRONMENTAL ISSUES	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
XXI. Mandatory Findings of Significance.				
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of an endangered, rare, or threatened species, or eliminate important examples of the major periods of California history or prehistory?	☒	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)	☒	☐	☐	☐
c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	☒	☐	☐	☐

DISCUSSION

a) Additional evaluation is necessary to determine whether the project would affect sensitive and special-status biological resources. This potentially significant impact will be analyzed further in the EIR.

b) Generally, because of the limited scope of the project, implementation would not result in cumulatively considerable contributions to the cumulative effects of development in the area. Evaluation of the project's contribution to cumulative impacts related to agricultural resources, aesthetics, air quality and GHG emissions, biological resources, cultural and tribal cultural resources, energy, hydrology and water quality, noise, population and housing, public services and utilities, transportation, and wildfire will be evaluated after the project impacts are characterized in the EIR. This potentially significant impact will be analyzed further in the EIR.

c) The EIR will evaluate environmental effects that could cause substantial adverse effects on human beings associated with the operation of this project, either directly or indirectly. This potentially significant impact will be analyzed further in the EIR.

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ATTACHMENT 4

Traffic Impact Study for the Inn at the Abbey

Prepared for the County of Napa

Submitted by
W-Trans

August 16, 2019

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Executive Summary

The proposed project is the development of a 79-room hotel on the existing Freemark Abbey Winery site located at 3022 St. Helena Highway North (SR 29) in the County of Napa. The site is currently occupied by a winery, tasting room, restaurant, café, and retail space, and hosts events, all of which would remain with the project. The site has additional permitted uses consisting of a second restaurant, a motel, a retail wine shop, an art gallery, and commercial retail space that would be replaced by the proposed resort. Altogether, the site is permitted for 1,586 daily trips including 158 trips during the weekday p.m. peak hour and 240 trips during the weekend midday peak hour, though based on driveway counts collected in April 2017, the existing uses generate 366 daily trips on average including 32 weekday p.m. peak-hour trips and 33 weekend midday peak-hour trips, meaning the site is operating well below permitted levels.

The proposed hotel would be expected to result in 645 new daily trips on average, including 33 trips during the weekday p.m. peak hour and 57 trips during the weekend midday peak hour; however, when added to the existing trips, the site would still generate 575 less daily trips on average than if all the permitted uses were operational, including 93 fewer trips during the weekday p.m. peak hour and 150 fewer trips during the weekend midday peak hour.

The study area included the intersections of Lodi Lane with SR 29 and Silverado Trail. Analysis indicates that under Existing Conditions, which includes traffic associated with all the existing uses on-site, the study intersections are currently operating acceptably overall and on all side-street approaches based on both Caltrans and County of Napa standards. Upon the addition of project-related traffic to existing volumes, both study intersections would be expected to continue operating acceptably at the same levels of service as Existing Conditions. Further, the delays would be less than those experienced under Permitted Conditions and a traffic signal would not be warranted.

Under Future Conditions, the intersection of Silverado Trail/Lodi Lane would be expected to continue operating acceptably during both peak hours based on County standards, without or with the addition of project-related traffic. SR 29/Lodi Lane would be expected to operate acceptably overall during both peak hours based on Caltrans standards; however, operation on the Lodi Lane approach would be expected to deteriorate to LOS E, which would be considered unacceptable based on County standards. The project would be responsible for more than ten percent of the anticipated increase in traffic on the Lodi Lane approach by the year 2030 so the project's impact would be considered *significant*. Striping to provide separate left- and right-turn lanes on the Lodi Lane approach to SR 29 would reduce the project's impacts under Future Conditions to *less-than-significant*, and this improvement is recommended as a project mitigation. Despite the large growth expected to occur by the future year 2030, a traffic signal would not be warranted under the anticipated future volumes, without or with the addition of project-generated traffic.

The existing storage length in the southbound left-turn lane on SR 29 at Lodi Lane is adequate to accommodate the addition of project traffic under all evaluated scenarios. Neither a right-turn lane nor right-turn taper would be warranted at the main entrance on SR 29; however, a left-turn lane would be warranted under the anticipated future volumes, without or with the proposed project. Rather than constructing a left-turn lane that complies with Caltrans highway design standards, which would require a transition length of 600 feet and relocating the alignment of SR 29 to avoid the historic stone wall along the property frontage, it is recommended that left-turn movements be prohibited at the main entrance; drivers accessing the site from the north should use the existing left-turn lane at Lodi Lane to enter the site.

Pedestrian, bicycle, and transit facilities are adequate to serve the project site given the location and anticipated demand and the applicant has been coordinating with NVVTC and NVTA to ensure that sufficient right-of-way is being dedicating along the project frontage to accommodate the planned Vine Trail alignment. Adequate sight distance is available along SR 29 and Lodi Lane to accommodate all turns into and out of site driveways. Based on shared parking concepts, the proposed parking supply of 198 spaces would be adequate for the peak demand of 196 spaces.

Introduction

This report presents an analysis of the potential traffic impacts that would be associated with the proposed development of a hotel on the Freemark Abbey Winery site located at 3022 St. Helena Highway North (State Route (SR) 29) in the County of Napa. The traffic study was completed in accordance with the criteria established by the County of Napa and is consistent with standard traffic engineering techniques.

Prelude

The purpose of a traffic impact study is to provide County staff and policy makers with data that they can use to make an informed decision regarding the potential traffic impacts of a proposed project, and any associated improvements that would be required to mitigate these impacts to a level of insignificance as defined by the County's General Plan or other policies. Vehicular traffic impacts are typically evaluated by determining the number of new trips that the proposed use would be expected to generate, distributing these trips to the surrounding street system based on existing travel patterns or anticipated travel patterns specific to the proposed project, then analyzing the impact the new traffic would be expected to have on critical intersections or roadway segments. Impacts relative to access for pedestrians, bicyclists, and to transit are also addressed.

Project Profile

The proposed project includes the development of a 79-room hotel on the existing Freemark Abbey site, which is occupied by a winery, tasting room, restaurant, café, and retail space and is permitted for additional uses, although not operating, consisting of a second restaurant, a motel, a retail wine shop, an art gallery, and commercial retail space. No changes are proposed to the existing uses; however, the proposed hotel would be constructed in lieu of the permitted uses that are not in operation. As proposed, 50 rooms would be in a single building on the parcel north of Lodi Lane and 29 rooms would be located south of Lodi Lane. The site would continue to be accessed via the existing driveways on SR 29 and Lodi Lane, though the driveway to the southern parcel would be modified to include a one-way drive aisle with a designated drop-off area. Parking would be provided in a combination of surface lots and an underground parking garage.

The location of the project site is shown in Figure 1.

Permitted Traffic Levels

Because the Freemark Abbey site is permitted for additional uses beyond the existing winery, tasting room, restaurant, café, and retail space, trips associated with all the permitted uses (both existing and non-operational) were calculated to develop volumes that would be expected if all the use permits were fully implemented and the site was operating at full capacity. While only existing uses are relevant to the environmental review process, the permitted traffic levels were developed for the purpose of comparing traffic volumes for what is already permitted to what is proposed. The site is permitted for the following existing uses and intensities, though not all are fully operational:

- 60,000-gallon winery (existing);
- Public tasting room (existing);
- 6,500 square-foot restaurant (existing);
- 950 square-foot café (existing);
- 985 square feet of retail wine space (existing);
- 5-room motel;
- 5,100 square-foot restaurant;

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Traffic Impact Study for the Inn at the Abbey

Figure 1– Study Area and Lane Configurations

- 1,800 square-foot retail wine shop;
- 1,700 square-foot art gallery; and
- 3,500 square feet of commercial retail space.

Trip Generation

The anticipated trip generations for all the permitted uses except the winery and tasting room were estimated using standard rates published by the Institute of Transportation Engineers (ITE) in *Trip Generation Manual*, 9th Edition, 2012. Rates for "Quality Restaurant" (Land Use #931) and "Motel" (Land Use #320) were applied to the restaurant and motel uses, respectively, while rates for "Specialty Retail Center" (Land Use #310) were applied to the café, commercial retail space, art gallery, and wine shop as this was determined to be the most similar land use. It should be noted that because none of these land uses include rates for the weekend midday peak hour, the rates for the weekday p.m. peak hour of the generator were applied to the weekend midday peak hour. The trip generation for the winery and tasting room was developed using the Napa County Winery Traffic Information/Trip Generation Sheet, which is provided in Appendix A. Based on these rates and sources, the site is permitted for a total of 1,586 daily trips, including 158 trips during the weekday p.m. peak hour and 240 trips during the weekend midday peak hour. These results are summarized in Table 1.

Table 1 – Trip Generation Summary for Existing and Permitted Uses

Land Use	Units	Daily		Weekday PM Peak			Weekend MD Peak		
		Rate	Trips	Trips	In	Out	Trips	In	Out
Winery & Tasting Room*	n/a	n/a	119	45	15	30	66	33	33
Quality Restaurant	11.600 ksf	89.95	1,043	87	58	29	126	74	52
Motel	5 rooms	5.63	28	2	1	1	3	2	1
Specialty Retail	8.395 ksf	44.32	396	24	11	13	45	25	20
Total Permitted			**1,586**	**158**	**85**	**73**	**240**	**134**	**106**

Note: * = Developed using the County of Napa Winery Traffic Information/ Trip Generation Sheet; ksf = 1,000 square feet

Transportation Setting

Operational Analysis

Study Area and Periods

The study area consists of the sections of SR 29 between York Lane and Ehlers Lane, Lodi Lane between SR 29 and Silverado Trail, Silverado Trail between Bournemouth Road and Glass Mountain Road, the project access points, and the following intersections:

1. SR 29/Lodi Lane
2. Silverado Trail/Lodi Lane

Operating conditions during the weekday p.m. and weekend midday peak periods were evaluated to capture the highest potential impacts for the proposed project as well as the highest volumes on the local transportation network. The weekday p.m. peak period occurs between 4:00 and 6:00 p.m. and typically reflects the highest level of congestion during the homeward bound commute; the weekend midday peak period generally occurs between 12:00 and 2:00 p.m. At the study intersections the weekday p.m. peak hour occurred between 4:15 and 5:15 p.m. and the weekend midday peak hour occurred between 12:45 and 1:45 p.m.

Study Intersections

For the purposes of this study, SR 29 and Silverado Trail were considered to run north-south and Lodi Lane was considered to run east-west.

SR 29/Lodi Lane is an unsignalized tee-intersection stop-controlled on the westbound Lodi Lane approach. A left-turn lane is provided on the southbound SR 29 approach and the Lodi Lane approach has a flared right-turn lane with storage space to accommodate approximately two vehicles.

Silverado Trail/Lodi Lane is an unsignalized tee-intersection stop-controlled on the eastbound Lodi Lane approach. The eastbound approach has a flared right-turn lane with storage space to accommodate approximately one vehicle.

The locations of the study intersections and the existing lane configurations and controls are shown in Figure 1.

Study Roadways

SR 29 adjacent to the project site predominantly runs north-south and has two 12-foot travel lanes with a posted speed limit of 50 miles per hour (mph). The roadway is mostly straight adjacent to the site; however, there is a horizontal curve approximately 500 feet north of the site and the roadway has about a four percent grade in the northbound direction. Along the project frontage the roadway varies in width between approximately 36 and 46 feet depending on the width of the shoulders and the presence of a left-turn lane. Based on traffic counts collected in April 2017 specifically for this study, the average daily traffic (ADT) along the project frontage is approximately 15,600 on weekdays and 13,600 on weekend days.

Lodi Lane is a two-lane roadway that runs northeast-southwest between SR 29 and Silverado Trail, though as noted above the roadway was considered to run east-west for the purpose of this study. The roadway is approximately 30 feet wide and has a posted speed limit of 40 mph. Based on traffic counts collected in April 2017 specifically for this study, the ADT adjacent to the site is approximately 1,100 on weekdays and 900 on weekend days.

Silverado Trail is a two-lane roadway that winds its way northwest-southwest mostly parallel to SR 29 throughout the Napa Valley. The segment between Bournemouth Road and Glass Mountain Road has a 12-foot travel lane and five-foot bike lane in each direction, is approximately 34 feet wide, and has a posted speed limit of 50 mph, though the horizontal curves to the south of Lodi Lane have a posted advisory speed of 40 mph and the curve to the north has a posted advisory speed of 35 mph.

Collision History

The collision history for the study area was reviewed to determine any trends or patterns that may indicate a safety issue. Collision rates for the study intersections and roadway segments were calculated based on records available from the California Highway Patrol as published in their Statewide Integrated Traffic Records System (SWITRS) reports. The most current five-year period available is January 1, 2014 through December 31, 2018.

As presented in Table 2, the calculated collision rates for the study intersections were compared to average collision rates for similar facilities statewide, as indicated in *2014 Collision Data on California State Highways*, California Department of Transportation (Caltrans). The intersection of SR 29/Lodi Lane had a collision rate below the statewide average indicating that the intersection is operating acceptably with regards to safety; however, the intersection of Silverado Trail/Lodi Lane has a collision rate substantially higher than the statewide average which warranted further analysis.

Table 2 – Collision Rates at the Study Intersections

Study Intersection	Number of Collisions (2014-2018)	Calculated Collision Rate (c/mve)	Statewide Average Collision Rate (c/mve)
1. SR 29/Lodi Ln	3	0.13	0.16
2. Silverado Trail/Lodi Ln	5	0.46	0.16

Note: c/mve = collisions per million vehicles entering

Further review of the individual collisions that occurred at Silverado Trail/Lodi Lane revealed that of the five total collisions, three were rear-ends attributed to unsafe speeds and four of the five occurred in the northbound direction. The other two collisions were an overturn attributed to unsafe speed and a broadside. Physical improvements such as installation of a left-turn lane are not feasible due to lack of right-of-way and geographic constraints, including drainage facilities on one side and a hill on the other. Consideration was given to installation of all-way stop-controls but doing so would result in LOS F operation so is not recommended. The two horizontal curves to the south of the intersection have a posted advisory speed of 40 mph and there is approximately 300 feet of stopping sight distance available in the northbound direction while traversing the curves, which is the exact amount recommended by Caltrans for speeds of 40 mph, so adequate stopping sight distance is provided for vehicles traveling at the advisory speed. However, if motorists travel at speeds above the posted advisory speed, sight distance is less than the recommended minimum. Installation of a speed feedback sign near the curves would make motorists more aware of their speed and encourage them to travel at a more appropriate speed for the amount of stopping sight distance available. It is recommended that the applicant work with County staff to install a speed feedback sign on Silverado Trail in the northbound direction between the driveway to Melka Estates Winery and the horizontal curve. Additionally, increased enforcement may reduce unsafe speeds on Silverado Trail and consequently the frequency of rear-end collisions.

Collision rates for the study segments are compared to statewide averages for similar facilities in Table 3. SR 29 experienced collisions at a below-average rate and Silverado Trail had a calculated collision rate higher than the statewide average; there were no collisions reported on Lodi Lane during the evaluation period. The collision rate calculations for the study intersections and segments are provided in Appendix B.

Table 3 – Collision Rates for the Study Roadway Segments			
Study Roadway Segment	**Number of Collisions (2014-2018)**	**Calculated Collision Rate (c/mvm)**	**Statewide Average Collision Rate (c/mvm)**
1. SR 29 – York Ln to Ehlers Ln	12	0.55	1.16
2. Lodi Ln – SR 29 to Silverado Trail	0	0.00	1.16
3. Silverado Trail – Bournemouth Rd to Glass Mtn Rd	15	2.10	1.20

Note: c/mvm = collisions per million vehicles miles

Of the 15 total collisions that occurred on the study segment of Silverado Trail, more than half had unsafe speed as the primary collision factor, which is consistent with the collisions that occurred at the intersection of Silverado Trail/Lodi Lane. Five collisions were attributed to improper turning or wrong side of the road and are likely due to the fact that the 0.7-mile roadway segment has five horizontal curves. Installation of a speed feedback sign near the Melka Estates Winery driveway would not just help to reduce collisions at the Lodi Lane intersection, but along the segment in general.

Alternative Modes

Pedestrian Facilities

Pedestrian facilities include sidewalks, crosswalks, pedestrian signal phases, curb ramps, curb extensions, and various streetscape amenities such as lighting, benches, etc. As might be expected given the rural location of Freemark Abbey Winery, a connected pedestrian network is lacking, though such facilities would not be appropriate in this setting with the exception of a regional trail to which connectivity would be appropriate.

Bicycle Facilities

The *Highway Design Manual*, Caltrans, 2012, classifies bikeways into three categories:

- **Class I Multi-Use Path** – a completely separated right-of-way for the exclusive use of bicycles and pedestrians with cross flows of motorized traffic minimized.
- **Class II Bike Lane** – a striped and signed lane for one-way bike travel on a street or highway.
- **Class III Bike Route** – signing only for shared use with motor vehicles within the same travel lane on a street or highway.

There are existing Class II bike lanes on Silverado Trail in the project study area and there are plans to provide Class II bike lanes on SR 29 along the project frontage and a Class I trail (the Vine Trail) parallel to SR 29 that would ultimately connect Vallejo to Calistoga. A 12.5-mile segment of the Vine Trail has already been constructed between south Napa and Yountville; the Napa Valley Vine Trail Coalition (NVVTC) has stated that they are hoping to complete the rest of the trail network by 2022. The existing and planned bicycle and transit facilities serving the site are shown in Figure 2. Table 4 summarizes the existing and planned bicycle facilities in the project vicinity, as contained in the *NCTPA Countywide Bicycle Plan*, Napa County Transportation and Planning Agency (NCTPA), 2012. It should be noted that the Napa Valley Transportation Authority (NVTA) has retained a consultant firm that is currently in the process of updating the countywide bike plan. A draft version of the updated plan was prepared in February 2019 and is available on the NVTA website, but the plan has not yet been adopted so the 2012 plan was used for this analysis.

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Figure 2– Alternative Modes

W-Trans

Table 4 – Planned Bicycle Facilities Summary				
Status **Facility**	**Class**	**Length (miles)**	**Begin Point**	**End Point**
Existing				
Silverado Trail	II	2.9	Bale Ln	Deer Park Rd
Planned				
Vine Trail	I	47.0	Calistoga	Vallejo
SR 29	II	1.8	Deer Park Rd	Bothe State Park

Source: *NCTPA Countywide Bicycle Plan*, Napa County Transportation and Planning Agency, 2012

Transit Facilities

Transit Services throughout Napa County are provided by Napa Valley Transit (VINE). VINE Route 10 provides service between Napa Valley College and Calistoga seven days a week and stops on SR 29 just north of the site in the southbound direction and along the project frontage in the northbound direction. Both stops are equipped with benches and the stop north of the site has an overhead shelter.

All vehicles used by VINE are wheelchair accessible and conform to standards set forth by the Americans with Disabilities Act (ADA). However, dial-a-ride, also known as paratransit or door-to-door service, is available for those who are unable to independently use the transit system due to a physical or mental disability. VINE Go is VINE's paratransit service and is designed to serve the needs of individuals with disabilities in the cities of Calistoga, St. Helena, Napa, American Canyon, the Town of Yountville and the unincorporated areas of Napa County. Reservations are required and, while can be made the same day of the trip, are recommended to be made in advance.

Capacity Analysis

Intersection Level of Service Methodologies

Level of Service (LOS) is used to rank traffic operation on various types of facilities based on traffic volumes and roadway capacity using a series of letter designations ranging from A to F. Generally, Level of Service A represents free flow conditions and Level of Service F represents forced flow or breakdown conditions. A unit of measure that indicates a level of delay generally accompanies the LOS designation.

The study intersections were analyzed using the two-way stop-controlled methodology published in the *Highway Capacity Manual* (HCM), Transportation Research Board, 2010. This source contains methodologies for various types of intersection control, all of which are related to a measurement of delay in average number of seconds per vehicle. The "Two-Way Stop-Controlled" intersection capacity methodology determines a level of service for each minor turning movement by estimating the level of average delay in seconds per vehicle. Results are presented for individual movements together with the weighted overall average delay for the intersection.

The ranges of delay associated with the various levels of service are indicated in Table 5.

Table 5 – Two-Way Stop-Controlled Intersection Level of Service Criteria	
LOS A	Delay of 0 to 10 seconds. Gaps in traffic are readily available for drivers exiting the minor street.
LOS B	Delay of 10 to 15 seconds. Gaps in traffic are somewhat less readily available than with LOS A, but no queuing occurs on the minor street.
LOS C	Delay of 15 to 25 seconds. Acceptable gaps in traffic are less frequent, and drivers may approach while another vehicle is already waiting to exit the side street.
LOS D	Delay of 25 to 35 seconds. There are fewer acceptable gaps in traffic, and drivers may enter a queue of one or two vehicles on the side street.
LOS E	Delay of 35 to 50 seconds. Few acceptable gaps in traffic are available, and longer queues may form on the side street.
LOS F	Delay of more than 50 seconds. Drivers may wait for long periods before there is an acceptable gap in traffic for exiting the side streets, creating long queues.

Reference: *Highway Capacity Manual*, Transportation Research Board, 2010

Traffic Operation Standards

Napa County

In the Circulation Element of the *Napa County General Plan*, the following policies have been adopted:

- **Policy CIR-31** – *The County seeks to provide a roadway system that maintains current roadway capacities in most locations and is efficient in providing local access.*

- **Policy CIR-38** – *The County seeks to maintain operations of roads and intersections in the unincorporated County area that minimize travel delays and promote safe access for all users. Operational analysis shall be conducted according to the latest version of the Highway Capacity Manual and as described in the current version of the County's Transportation Impact Study Guidelines. In general, the County seeks to maintain Level of Service (LOS) D on arterial roadways and at signalized*

intersections, as the service level that best aligns with the County's desire to balance its rural character with the needs of supporting economic vitality and growth.

In situations where the County determines that achieving LOS D would cause an unacceptable conflict with other goals and objectives, minimizing collisions and the adequacy of local access will be the County's priorities. Mitigating operational impacts should first focus on reducing the project's vehicular trips through modifying the project definition, applying TDM strategies, and/or applying new technologies that could reduce vehicular travel and associated delays; then secondarily should consider physical infrastructure changes. Proposed mitigations will be evaluated for their effect on collisions and local access, and for their effectiveness in achieving the maximum potential reduction in the project's operational impacts (see the County's Transportation Impact Study Guidelines for a list of potential mitigation measures).

The following roadway segments are exceptions to the LOS D standard described above:

- *State Route 29 in the unincorporated areas between Yountville and Calistoga: LOS F is acceptable.*
- *Silverado Trail between State Route 128 and Yountville Cross Road: LOS E is acceptable.*
- *State Route 12/121 between the Napa/Sonoma county line and Carneros Junction: LOS F is acceptable.*
- *American Canyon Road from I-80 to American Canyon City Limit: LOS E is acceptable.*

To provide a more quantitative method of adhering to the above standards, the County refers to G*uidelines for Interpretation of General Plan Circulation Policies on Significance Criteria* (Fehr & Peers, 2015). The document establishes thresholds of significance for road segments and different intersection control types. The memorandum states a project would cause a significant impact requiring mitigation if, for existing conditions:

- *A signalized intersection operates at LOS A, B, C, or D during the selected peak hours without Project trips, and the LOS deteriorates to LOS E or F with the addition of Project trips; or*

- *A signalized intersection operates at LOS E or F during the selected peak hours without Project trips, and the addition of Project trips increases the total entering volume by one percent or more.*
  - *Project Contribution % = Project Trips ÷ Existing Volumes*

- *An unsignalized intersection operates at LOS A, B, C, or D during the selected peak hours without Project trips, and the LOS deteriorates to LOS E or F with the addition of Project traffic; the peak hour traffic signal warrant criteria should also be evaluated and presented for informational purposes; or*

- *An unsignalized intersection operates at LOS E or F during the selected peak hours without Project trips, and the project contributes one percent or more of the total entering traffic for all-way stop-controlled intersections, or ten percent or more of the traffic on a side-street approach for side-street stop-controlled intersections; the peak hour traffic signal criteria should also be evaluated and presented for informational purposes. Both of those volumes are for the stop-controlled approaches only. Each stop-controlled approach that operates at LOS E or F should be analyzed individually*
  - *<u>All-Way Stop-Controlled Intersections</u> – The following equation should be used if the all-way stop-controlled intersection operates at LOS E or F without the Project:*
    - *Project Contribution % = Project Trips ÷ Existing Volumes*
  - *<u>Side-Street Stop-Controlled Intersections</u> – The following equation should be used if the side-street stop-controlled intersection operates at LOS E or F without the Project:*
    - *Project Contribution % = Project Trips ÷ Existing Volumes*

- *An arterial segment operates at LOS A, B, C or D during the selected peak hours without Project trips, and deteriorates to LOS E or F with the addition of Project trips; or*

- *An arterial segment operates at LOS E or F during the selected peak hours without Project trips, and the addition of Project trips increases the total segment volume by one percent or more. The following equation should be used if the arterial segment operates at LOS E or F without the Project:*
    - *Project Contribution % = Project Trips ÷ Existing Volumes*

Further, a project would cause a significant impact requiring mitigation if, for cumulative (future) conditions, the Project's volume is equal to, or greater than five percent of the difference between cumulative (future) and existing volumes.

- <u>Cumulative Conditions</u> – A *Project's contribution to a cumulative condition would be calculated as the Project's percentage contribution to the total growth in traffic. This calculation applies to arterials, signalized intersections, and unsignalized intersections.*
    - *Project Contribution % = Project Trips ÷ (Cumulative Volumes – Existing Volumes)*

Caltrans

The Caltrans standard was used for the intersection of SR 29/Lodi Lane. In the *Guide for the Preparation of Traffic Impact Studies*, Caltrans indicates that they endeavor to maintain operation at the transition from LOS C to LOS D. Based on previous discussions with Caltrans staff, it is understood that the standard is to be applied to the overall average intersection delay, and *not* that associated with any single movement or approach. Under this approach, if one movement experiences very high delay and has moderate to high traffic volumes, the overall delay and level of service should reflect the critical nature of this condition. However, if one movement is expected to experience high delay, but has very low traffic volumes, the overall intersection operation will likely still meet Caltrans standards.

Existing Conditions

The Existing Conditions scenario provides an evaluation of current operation based on existing traffic volumes during the weekday p.m. and weekend midday peak periods. This condition does not include project-generated traffic volumes. Traffic volumes at the study intersections and driveways were obtained in April 2017 during clear weather conditions and normal site operations. Count data was also collected in August 2017 to capture harvest activity; however, three of the four peak periods had volumes the same as or lower than the April volumes, so to provide conservative results the spring counts were retained for the analysis.

Peak hour factors (PHFs) were calculated based on the counts obtained and used in the levels of service calculations, except where the calculated PHF was below 0.90, in which case 0.90 was used as a "floor" to avoid overly conservative results. It should be noted that based on the counts, the calculated PHF at SR 29/Lodi Lane was 0.98 during the p.m. peak hour which is considered high but is due to the fact that the demand at the intersection is consistent throughout the hour. Additionally, the percentage of heavy vehicles at each intersection was calculated based on data collected during harvest in September 2017. For the purpose of this study, heavy vehicles were considered to be trucks hauling grapes or those with five or more axles. The data indicates that heavy vehicles represent four percent of all vehicles through the intersection of SR 29/Lodi Lane during the weekday p.m. peak hour and two percent during the weekend midday peak hour. At Silverado Trail/Lodi Lane, heavy vehicles represent two and three percent of vehicles during the weekday p.m. and weekend midday peak hours, respectively. The PHF's are included in the traffic counts in Appendix C along with a summary of the existing volumes collected at the site's driveways and the heavy vehicle data.

Intersection Levels of Service

The Lodi Lane approach to SR 29 is operating at LOS C and the Lodi Lane approach to Silverado Trail is operating at LOS B, during both peak hours. The Existing traffic volumes are shown in Figure 3. A summary of the

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Figure 3– Traffic Volumes

intersection level of service calculations is contained in Table 6, and copies of the Level of Service calculations for all evaluated scenarios are provided in Appendix D.

Table 6 – Existing Peak Hour Intersection Levels of Service

Study Intersection *Approach*	Weekday PM Peak		Weekend MD Peak	
	Delay	LOS	Delay	LOS
1. SR 29/Lodi Ln	0.8	A	1.2	A
Westbound (Lodi Ln) Approach	*22.3*	*C*	*24.3*	*C*
2. Silverado Trail/Lodi Ln	1.1	A	1.2	A
Eastbound (Lodi Ln) Approach	*10.9*	*B*	*12.3*	*B*

Notes: Delay is measured in average seconds per vehicle; LOS = Level of Service; Results for minor approaches to two-way stop-controlled intersections are indicated in *italics*

Because County LOS standards state that signal warrants should be evaluated for unsignalized intersections, a signal warrants analysis was performed for both intersections during both peak hours. Chapter 4C of the *California Manual on Uniform Traffic Control Devices for Streets and Highways* (CA-MUTCD) provides guidance on when a traffic signal should be considered based on nine different warrants, or criteria. For the purposes of this study, Warrant 3, the Peak Hour volume warrant, which determines the need for traffic control based on the highest volume hour of the day, was used as an initial indication of traffic control needs. The use of this signal warrant is common practice for planning studies. Based on Existing volumes, a traffic signal is not warranted at either of the study intersections during either of the peak hours evaluated. A copy of the signal warrants analysis for all evaluated scenarios in included in Appendix E.

Future Conditions

Future volumes for the horizon year 2030 were calculated based on output from the *Napa Solano Travel Demand Model*, maintained by the Solano Transportation Authority (STA). Base year (2010) and future (2030) segment volumes for the weekday p.m. peak hour were used to calculate growth factors for SR 29, Silverado Trail and Lodi Lane; it is noted that Lodi Lane is not included in the model, so the growth anticipated on Deer Park Road was assumed to be representative of Lodi Lane which is conservative in nature.

The growth factors projected by the model were then adjusted to account for the seven years of growth that occurred between the 2010 base year and 2017 existing volumes and multiplied by the existing counts to project likely Future weekday p.m. turning movement volumes at the study intersections. The same growth factors used for the weekday p.m. peak hour were used for the weekend midday peak hour as the model does not contain information for weekend days. A spreadsheet indicating derivation of the growth factors used to develop future volumes is provided in Appendix C.

Intersection Levels of Service

Under the anticipated Future volumes, the study intersections are expected to continue operating acceptably overall; however, the side street approach at SR 29/Lodi Lane would be expected to operate at LOS E during both peak hours. This operation would be considered acceptable under Caltrans standards, which apply to the overall operation of the intersection, but would be considered unacceptable based on the County of Napa's LOS standards. Despite the substantial growth anticipated by the travel demand model, a traffic signal would still not be warranted at either of the study intersections based on volumes during either of these peak hours. Operating conditions are summarized in Table 7 and future volumes are shown in Figure 3.

Table 7 – Future Peak Hour Intersection Levels of Service					
Study Intersection ***Approach***		**Weekday PM Peak**		**Weekend MD Peak**	
		Delay	**LOS**	**Delay**	**LOS**
1.	SR 29/Lodi Ln	1.3	A	1.5	A
	Westbound (Lodi Ln) Approach	***39.5***	***E***	***37.6***	***E***
2.	Silverado Trail/Lodi Ln	0.8	A	1.3	A
	Eastbound (Lodi Ln) Approach	*19.7*	*C*	*34.0*	*D*

Notes: Delay is measured in average seconds per vehicle; LOS = Level of Service; Results for minor approaches to two-way stop-controlled intersections are indicated in *italics;* **Bold Text** = Deficient operation

Project Description

As proposed, the project includes the development of a 79-room hotel on the existing Freemark Abbey site, which is occupied by a winery, tasting room, restaurant, café, and retail space and is permitted for additional uses, although not operating, consisting of a second restaurant, a motel, a retail wine shop, an art gallery, and commercial retail space. No changes are proposed to the existing uses or to events; however, the site would forgo the additional permitted uses not currently in operation to make room for the proposed hotel. As proposed in the site plan, 50 rooms would be located on the parcel north of Lodi Lane and 29 rooms would be located south of Lodi Lane. The site would continue to be accessed via the existing driveways on SR 29 and Lodi Lane, though the driveway to the southern parcel would be modified to include a one-way drive aisle with a designated drop-off area. Self-parking would be provided in surface lots and valet parking would occur in an underground parking garage.

The proposed project site plan is shown in Figure 4 and the locations of the project driveways are highlighted in Figure 5.

Trip Generation

Existing

Based on driveway counts collected in April 2017, the existing winery, tasting room, restaurant, café, and retail uses collectively generate an average of 366 trips per day, including 32 trips during the weekday p.m. peak hour and 33 trips during the weekend midday peak hour.

Proposed

To estimate the anticipated trip generation associated with the proposed hotel, standard rates for "Resort Hotel" (Land Use #330) were applied; however, it is noted that the manual does not include weekday daily or weekend peak hour rates for "Resort Hotel" so rates for "Hotel" (Land Use #310) were used for these periods. Based on these rates, the proposed project would be expected to generate an average of 645 trips per day, including 33 weekday p.m. peak hour trips and 57 trips during the weekend peak hour. When added to the existing trips, this translates to a total of 1,011 trips per day for the project site, including 65 trips during the a.m. peak hour and 90 trips during the p.m. peak hour. It is worth noting that this would be 575 fewer daily trips on average than if all the permitted uses were operational, including 93 less trips during the weekday p.m. peak hour and 150 less trips during the weekend midday peak hour. The existing and proposed trip generations are summarized in Table 8.

Source: Girvin Associates, Inc. 10/17

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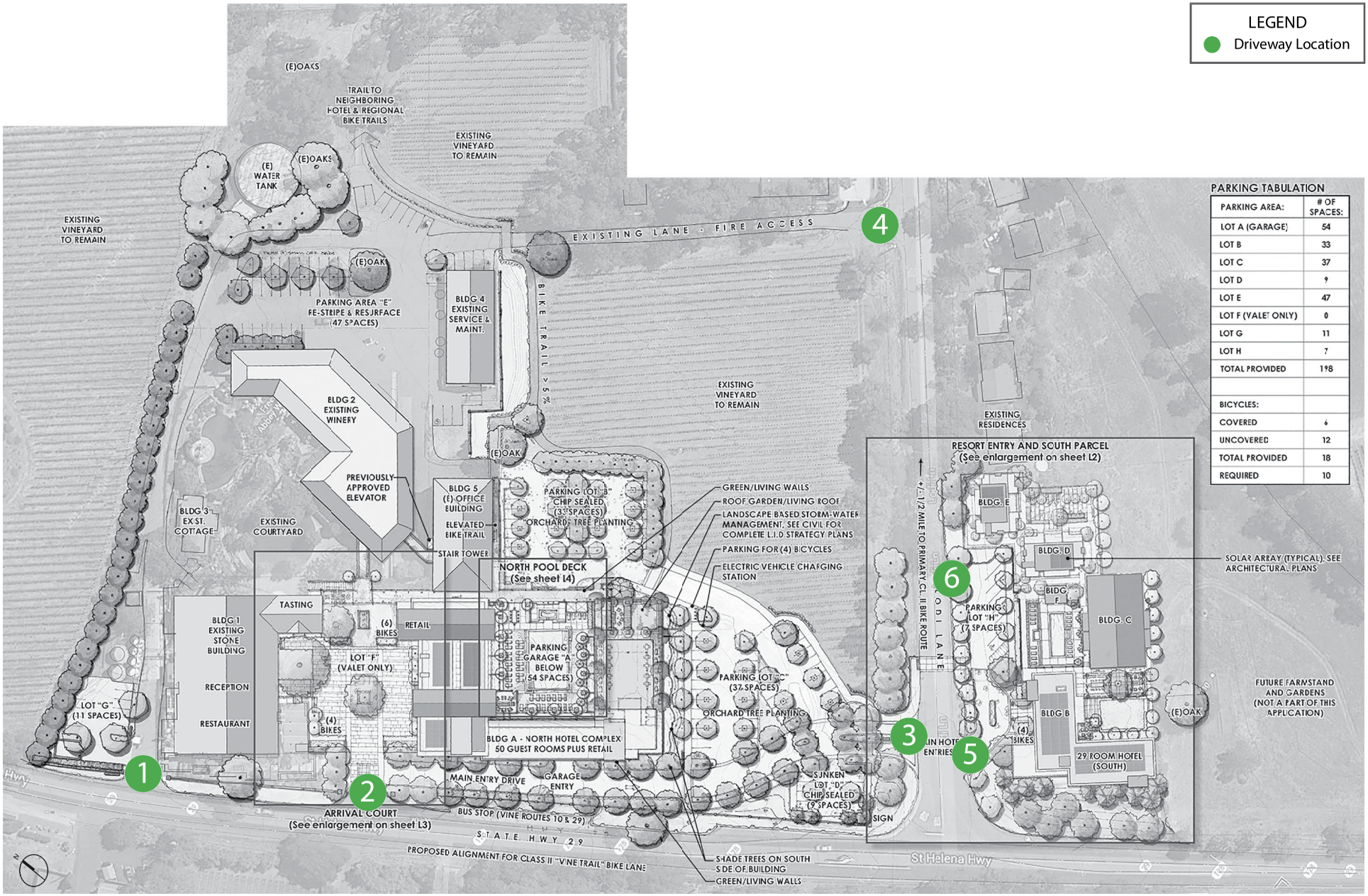
Figure 4 – Site Plan

W-Trans



Source: Girvin Associates, Inc. 10/17

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Figure 5 – Project Driveway Locations

W-Trans

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Table 8 – Trip Generation Summary for Existing and Proposed Uses									
Land Use	**Units**	**Daily**		**Weekday PM Peak**			**Weekend MD Peak**		
		Rate	**Trips**	**Trips**	**In**	**Out**	**Trips**	**In**	**Out**
Existing									
Winery/Tasting Room/Restaurant/ Café/Retail*			366	32	13	19	33	21	12
Proposed									
Resort Hotel	79 rooms	-	-	33	14	19	-	-	-
Hotel	79 rooms	8.17	645	-	-	-	57	32	25
Total Proposed			645	33	14	19	57	32	25
Existing + Proposed			**1,011**	**65**	**27**	**38**	**90**	**53**	**37**

Note: * = Based on actual driveway counts collected in April 2017

Trip Distribution

The pattern used to allocate new project trips to the street network was determined by reviewing existing turning movements at the study intersections as well as anticipated travel patterns for patrons of the uses. The applied distribution assumptions are shown in Table 9.

Table 9 – Trip Distribution Assumptions	
Route	**Percent**
SR 29 (To/From North)	30%
SR 29 (To/From South)	50%
Silverado Trail (To/From North)	5%
Silverado Trail (To/From South)	15%
TOTAL	**100%**

Intersection Operation

Existing plus Project Conditions

Upon the addition of project-related traffic to the Existing volumes, the study intersections are expected to continue operating acceptably at the same levels of service as under Existing Conditions. These results are summarized in Table 10 and project traffic volumes are shown in Figure 3.

Table 10 – Existing and Existing plus Project Peak Hour Intersection Levels of Service

	Study Intersection *Approach*	Existing Conditions				Existing plus Project			
		Weekday PM Peak		Weekend MD Peak		Weekday PM Peak		Weekend MD Peak	
		Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS
1.	SR 29/Lodi Ln	0.8	A	1.2	A	1.1	A	1.6	A
	Westbound (Lodi Ln) Approach	*22.3*	*C*	*24.3*	*C*	*23.5*	*C*	*27.5*	*C*
2.	Silverado Trail/Lodi Ln	1.1	A	1.2	A	1.2	A	1.3	A
	Eastbound (Lodi Ln) Approach	*10.9*	*B*	*12.3*	*B*	*11.0*	*B*	*12.3*	*B*

Notes: Delay is measured in average seconds per vehicle; LOS = Level of Service; Results for minor approaches to two-way stop-controlled intersections are indicated in *italics*

Finding – The study intersections are expected to continue operating acceptably at the same levels of service upon the addition of project-generated traffic to existing volumes and a traffic signal would not be warranted at either intersection.

Future plus Project Conditions

Upon the addition of project-related traffic to the anticipated future volumes, the study intersections are expected to continue operating at LOS A overall and the Lodi Lane approach to SR 29 would continue to operate at LOS E during both peak hours while the Lodi Lane approach to Silverado Trail would continue to operate at LOS C during the weekday p.m. peak hour and LOS D during the weekend midday peak hour. The Future plus Project operating conditions are summarized in Table 11.

Table 11 – Future and Future plus Project Peak Hour Intersection Levels of Service

	Study Intersection *Approach*	Future Conditions				Future plus Project			
		Weekday PM Peak		Weekend MD Peak		Weekday PM Peak		Weekend MD Peak	
		Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS
1.	SR 29/Lodi Ln	1.3	A	1.5	A	1.6	A	2.1	A
	Westbound (Lodi Ln) Approach	***39.5***	***E***	***37.6***	***E***	***43.7***	***E***	***44.3***	***E***
	Restripe to Provide RT Lane	-	-	-	-	***37.2***	***E***	***37.0***	***E***
2.	Silverado Trail/Lodi Ln	0.8	A	1.3	A	0.9	A	1.5	A
	Eastbound (Lodi Ln) Approach	*19.7*	*C*	*34.0*	*D*	*20.2*	*C*	*34.9*	*D*

Notes: Delay is measured in average seconds per vehicle; LOS = Level of Service; Results for minor approaches to two-way stop-controlled intersections are indicated in *italics;* **Bold Text** = Deficient operation; Shaded cells = Cells with recommended improvements

Finding – Upon the addition of project-related traffic to Future volumes, the intersection of Silverado Trail/Lodi Lane would be expected to operate acceptably during both peak hours based on County standards. SR 29/Lodi Lane would be expected to operate acceptably during both peak hours based on Caltrans standards; however, the Lodi Lane approach would continue to operate at LOS E which would be considered unacceptable based on County standards. The project would be responsible for more than ten percent of the anticipated growth on the Lodi Lane approach by the year 2030, so the project's impact would be considered *significant* based on the County

standards applied. A traffic signal would still not be warranted at either intersection during either of the peak hours evaluated.

Recommendation – To mitigate the project's impact on the Lodi Lane approach to SR 29 under Future Conditions, it is recommended that the project restripe the approach to provide a dedicated right-turn lane. As seen in Table 11 above, doing so would reduce the delay on the Lodi Lane approach to less than the delay expected under Future Conditions without the project.

Queuing

Queuing in the southbound left-turn lane on SR 29 at Lodi Lane was evaluated to determine if the existing storage length would be adequate for the maximum anticipated queue. The two-way stop-controlled intersection queuing methodology developed by the Oregon Department of Transportation is the most current widely used methodology available and is accepted by Caltrans District 4. Based on Future plus Project volumes, which represents worst-case conditions, the maximum queue in the southbound left-turn lane was determined to be 75 feet, or three vehicles, during both the weekday evening and weekend midday peak hours, which could be accommodated within the existing turn pocket. The Queuing calculations are provided in Appendix E.

Queuing was also evaluated at the western driveway on Lodi Lane (Driveway 3) to see if there would be adequate space on eastbound Lodi Lane between the driveway and SR 29 to accommodate potential queuing from those waiting to turn left into the project site. Based on the same worst-case Future plus Project volumes, the maximum queue on eastbound Lodi Lane was determined to be 50 feet, or two vehicles, at the driveway during both the weekday p.m. and weekend midday peak hours. As proposed, there would be approximately 90 feet of stacking space on Lodi Lane eastbound between SR 29 and Driveway 3 which would be adequate room for queuing to occur without spilling into SR 29.

Finding – The existing storage capacity of 90 feet, or approximately three to four vehicles, in the southbound left-turn lane on SR 29 at Lodi Lane is adequate for the maximum anticipated queue under Future plus Project Conditions. Additionally, there would be adequate space for queues to form on Lodi Lane eastbound at Driveway 3 without spilling into SR 29.

Alternative Modes

Pedestrian Facilities

Given its rural location, lack of existing facilities, and the nature of the project site, project patrons are not expected to want to walk to the site. However, given the sprawling layout of the site and the presence of Lodi Lane separating the northern parcel from the southern parcel, there is a need for a connected pedestrian network within the site and from one side of Lodi Lane to the other.

Based on the project site plan, the existing and proposed facilities on-site would be connected via sidewalks and dedicated pedestrian paths. Additionally, there would be a crosswalk on Lodi Lane to facilitate pedestrian crossings between the northern and southern parcels. As shown in the site plan, the crosswalk would be located 150 feet east of SR 29, which would provide adequate stopping sight distance for drivers turning onto Lodi Lane from SR 29. Additionally, the crosswalk as proposed would include a Rectangular Rapid Flashing Beacon (RRFB) system that would provide a strobe-like warning to drivers when pedestrians are in the crosswalk.

Finding – The lack of pedestrian facilities serving the project site on SR 29 and Lodi Lane are consistent with the surrounding area and expected for the type of land use; however pedestrian facilities within the site and connecting facilities are adequate.

Bicycle Facilities

Because of the proximity to the future Vine Trail, which would mostly run parallel to SR 29 between Vallejo and Calistoga, the project has included bicycle facilities to ensure the site is accessible for bicyclists. The project would provide a total of 18 bicycle parking spaces on-site, six of which would be covered and a connection to the future Vine Trail is planned but is not yet finalized. The applicant has been working with the Napa Valley Vine Trail Coalition (NVVTC) and the Napa Valley Transportation Authority (NVTA) to ensure that sufficient right-of-way is being dedicated along the project frontage to accommodate the Vine Trail alignment. Although the current bike plan identifies the need for Class II bike lanes on SR 29 along the project frontage, the bike lanes have been removed and replaced with a Class III bike route in the February 2019 draft version of the updated bike plan. The Class III bike route would not require any additional right-of-way to be dedicated by the project beyond the Vine Trail, but the Class II bike lanes would so it is recommended that the applicant coordinate with NVVTC and NVTA to monitor the progress of the bike plan update and the status of the planned facilities on SR 29. The applicant has discussed constructing the section of the Vine Trail along the property frontage as part of the hotel project and obtaining credits toward the required traffic impact fees.

Finding – The shared use of minor streets, along with the planned projects in the vicinity, would provide adequate access for bicyclists.

Recommendation – The applicant should continue to work with NVVTC and NVTA to ensure that sufficient right-of-way is being dedicated for the planned facilities along the project frontage. If the planned facilities are not constructed before the hotel project, the applicant should explore the option of constructing the bike facilities as part of the project and obtaining traffic impact fee credits.

Bicycle Storage

Although the County does not specify bicycle parking requirements for wineries, since the project site is occupied with uses that do have specific requirements (Restaurant and Hotel), the site was evaluated based on Chapter 18.110 of the County's Municipal Code, "Off Street Parking and Loading Facilities." The County requires all

nonresidential uses that provide more than ten vehicle parking spaces to provide at least ten bicycle parking spaces. Additionally, if the site is required to provide 20 or more vehicle spaces then one-half of the total provided bicycle parking spaces should be covered.

Finding – The proposed bicycle parking supply exceeds County requirements.

Transit

The existing transit stops on SR 29 adjacent to the site are within acceptable walking distance and are adequate for the anticipated demand, though there are currently no amenities for transit riders such as a shelter or bench at the northbound stop on the east side of the highway. Although the southbound transit stop on SR 29 is on the opposite side of the highway as the project site, the stop has been accessed safely by pedestrians for some time and there is nothing proposed by the project that would impact its accessibility or safety. While it is understood that pedestrians may experience delays waiting for a gap in traffic to cross SR 29, installation of a crosswalk adjacent to the project site is not advised as it would generally result in less safe conditions for pedestrians due to the false sense of security associated with crosswalks. Pedestrians tend to be less cautious about watching approaching traffic when entering a crosswalk versus crossing without one. The existing condition wherein pedestrians understand that they must carefully observe oncoming traffic is therefore considered the best safety option for this specific location. The Vine Trail is planning a crossing north of the project site that will ultimately provide controlled pedestrian and bicycle access to the west side of SR 29, and although the specific location is undetermined, it will be in the vicinity so could be used by those uncomfortable with crossing adjacent to the project site.

Finding – Transit facilities serving the project site are adequate.

Recommendation – As part of the frontage improvements, a shelter and bench should be added to the transit stop on the east side of SR 29.

Access and Circulation

Site Access

The northern parcel has four existing driveways, two on SR 29 and two on Lodi Lane, all of which would remain with the project; the southern parcel is currently served by a single driveway that would be replaced with two new driveways. The project driveways are shown in Figure 5 and are numbered to correspond with the existing count data contained in Appendix C. Driveways 1 and 4 would primarily be used by employees, while the remaining driveways would be used by employees and guests. Driveways 2 and 3 would be the main entrances to the site and Driveway 2 would be the designated entrance for valet parking. Driveways on the northern parcel would be connected by a drive aisle that would provide access to the surface parking lots located south and east of the proposed resort as well as the underground parking garage. The southern parcel would include a one-way drive aisle, to which proposed Driveway 5 would be the entrance and the proposed Driveway 6 would be the exit. The drive aisle would include a designated drop-off area and access to surface parking on the northern edge of the parcel; no other vehicular circulation would be provided on the southern parcel.

Finding – Site access and circulation are expected to operate acceptably.

Sight Distance

At driveways, a substantially clear line of sight should be maintained between the driver of a vehicle waiting at the crossroad and the driver of an approaching vehicle. Adequate time must be provided for the waiting vehicle to either cross, turn left, or turn right, without requiring the through traffic to radically alter their speed.

Sight distances along SR 29 and Lodi Lane at the main driveways (2 and 3 as shown in Figure 5) were evaluated based on sight distance criteria contained in the *Highway Design Manual* (HDM) published by Caltrans. The recommended sight distances for minor street approaches that are either a private road or a driveway are based on stopping sight distance. Both use the approach travel speeds as the basis for determining the recommended sight distance. Sight distance should be measured from a 3.5-foot height at the location of the driver on the minor road to a 4.25-foot object height in the center of the approaching lane of the major road. Setback for the driver on the crossroad should be a minimum of 15 feet, measured from the edge of the traveled way.

For the posted 50-mph speed limit on SR 29, the recommended stopping sight distance is 430 feet. Based on a review of field conditions, sight distance at Driveway 2 extends more than 500 feet to the south and approximately 440 feet to the north to Byrd Hill Road. Because sight distance to the north is close to the recommended amount, radar speed samples were obtained in the southbound direction on SR 29 to determine if the available sight distance is adequate for actual travel speeds. Based on radar samples, the 85th percentile speed in the southbound direction is 49 mph, so the available sight distance is adequate for actual approach speeds. The speed survey data is included in Appendix F.

For the posted 40-mph speed limit on Lodi Lane, the recommended sight distance is 300 feet. Based on a review of field conditions, sight distance at Driveway 3 extends approximately 350 feet to the east, which is adequate for the posted speed limit, but is limited due to the presence of tall grass along the project frontage. To the west, sight distance was measured with respect to the proximity of the driveway to SR 29. Because of its position, sight distance must extend onto SR 29 to avoid potential conflicts with drivers pulling out of the driveway and drivers turning onto Lodi Lane from SR 29. Based on a review of field conditions, sight distance extends approximately 200 feet on SR 29 to the south and approximately 150 feet to the north, which would be adequate for speeds of 30 and 25 mph, respectively. Oncoming traffic would be navigating a turn and would be expected to travel well below 25 mph.

Finding – Adequate sight distance is available in each direction along SR 29 and Lodi Lane to accommodate all turns, though landscaping could affect sight lines.

Recommendation – To ensure that sight lines remain adequate, any landscaping along the street frontages should be planted and maintained such that it is less than three feet or more than seven feet in height to maximize clear sight lines.

Emergency Access

As proposed in the site plan, all drive aisles meet County design standards and the driveways would be of enough width to accommodate emergency response vehicles.

Finding – Emergency access is adequate.

Access Analysis

Left-Turn Lane Warrants

The need for a left-turn lane on SR 29 at Driveway 2 was evaluated based on criteria contained in the *Intersection Channelization Design Guide*, National Cooperative Highway Research Program (NCHRP) Report No. 279, Transportation Research Board, 1985, as well as a more recent update of the methodology developed by the Washington State Department of Transportation. The NCHRP report references a methodology developed by M. D. Harmelink that includes equations that can be applied to expected or actual traffic volumes to determine the need for a left-turn pocket based on safety issues. Based on our research and discussions with Caltrans staff, this methodology is consistent with the "Guidelines for Reconstruction of Intersections," August 1985, which was referenced in Section 405.2, Left-turn Channelization, of previous editions of the Caltrans HDM, though this reference has been deleted from the most recent edition of this manual.

The need for left-turn channelization in the form of a left-turn pocket was evaluated for Existing and Future Conditions without, and with, the proposed project during both peak hours. A left-turn lane would not be warranted during either of the peak hours under Existing volumes without or with the project; however, due to the large growth anticipated on SR 29, a left-turn lane would be warranted during both peak hours without or with the proposed project based on Future volumes. The required turn-lane dimensions based on Chapter 400 of the HDM are included in Appendix G.

Finding – Based on the anticipated Future volumes during weekday evening and weekend midday peak hours, a left-turn lane would be warranted on SR 29 at Driveway 2 without or with the proposed project.

Recommendation Because the site has multiple access points, rather than constructing a left-turn lane that meets current Caltrans highway design standards it is recommended that left-turns be prohibited at Driveway 2. The applicant should install signage in the southbound direction that reads "Freemark Abbey Winery and Resort Use Lodi Lane" or something similar to be reviewed and approved by County and Caltrans staff before installation. Additionally, a mini "pork-chop" island should be installed at Driveway 2 to restrict access to right-turn movements only at this location.

Right-Turn Lane Warrants

The need for a right-turn lane or taper at Driveway 2 was also evaluated and would consist of a lane installed to the right of the travel lane and would be a minimum of ten feet wide, plus a shoulder where not adjacent to a curb. A right-turn taper is a shoulder area that gets progressively wider as the motorist drives toward the intersection. Both improvements are meant to provide an area for motorists turning right to move out of the traffic lane without impeding through traffic.

The need for a right-turn lane or taper on SR 29 at Driveway 2 was evaluated using Existing and Future volumes both with and without the project. Based on these scenarios, no additional facilities in the form of either a right-turn lane or right-turn taper would be warranted during either of the peak hours. The turn lane analysis sheets are contained in Appendix G.

Finding – Neither a right-turn lane nor right-turn taper would be warranted at Driveway 2 on SR 29.

Transportation Demand Management

Transportation Demand Management (TDM) measures aim to reduce single-occupancy vehicle trips, parking demand, and total vehicle miles traveled (VMT) through use of alternative modes of transportation and more efficiently planned trips. Although VMT analysis is not required as part of the California Environmental Quality Act (CEQA) review process until July 2020, in recognition of the statewide goal to reduce VMT the applicant has included numerous TDM measures as part of the project. Due to the project's rural location, the site does not have as many options to reduce VMT as one located in an urban environment, but the site is accessible via bicycle and transit and would employ a relatively large number of people so there is potential to reduce vehicular trips and parking demand with implementation of a TDM program.

Proposed TDM Program

The project's TDM Program would provide information, encouragement, and access to non-motorized travel options to reduce the number of vehicle trips, shifting these trips to other modes and thus reducing VMT. The following measures are proposed as part of the project and are consistent with the goals of Caltrans' *Smart Mobility 2010: A Call to Action for the New Decade*. It is recommended that the incentives offered as part of the program be available for the first two years of operation, after which the effectiveness of the program should be reevaluated and modified, if needed.

- **Carpool Incentives:** The project site would have up to 112 employees on-site across all uses at peak times so there is a substantial opportunity for employees to carpool to work, especially considering that the winery, tasting room, hotel, and restaurant would require numerous employees to work the same shift. Financial incentives can be an effective way to encourage employees to carpool to work. The applicant would provide an incentive of $50 per month to employees who agree to carpool to work a minimum of 75 percent of the time. This program would be offered to the existing employees as well as new employees of the hotel.

- **Preferred Parking:** Providing dedicated parking stalls for those employees that carpool to work can be an effective incentive to encourage employees to carpool. As part of the program, the applicant would reserve five parking spaces immediately adjacent to the wine production building for use by carpool vehicles only.

- **Guaranteed Ride Home:** One of the reasons that many employees do not carpool to work is the fear of being stranded should they need to leave in an emergency. Employees who carpool to work should be guaranteed a ride home in the case of an emergency or unique situation. As part of the V-Commute program offered by the Napa Valley Transportation Authority (NVTA), employees who carpool or commute via alternative modes are be able to use a taxi, rental car, Lyft, Uber, or other means to get home in an emergency and are reimbursed for the full cost of the service. The program is available to all who work or attend college in Napa County and is free to join, but registration is required. As part of the project's TDM program, employees would be provided information about V-Commute and would be encouraged to register for the service.

- **Subsidized Transit Passes:** The project site is conveniently located next to two Vine Transit stops on SR 29 and is therefore accessible via transit. Employees wishing to use transit to reach the site would be provided a monthly pass for Vine Transit free of charge.

- **Bicycle Trip-end Facilities:** The proposed project includes long-term covered bicycle storage for six bicycles and an additional 12 normal spaces to accommodate a total of 18 bicycles, which exceeds County requirements. Showers and changing rooms would be provided on-site to further encourage employees to ride their bicycles to and from work.

VMT Reduction

Based on the California Air Pollution Officers Association (CAPCOA) report *Quantifying Greenhouse Gas Mitigation Measures*, CAPCOA 2010, it is estimated that the inclusion of voluntary commute trip reduction measures with incentives to carpool can reduce a project's total VMT by approximately 1.0 to 6.2 percent. CAPCOA also estimates that the anticipated range of effectiveness for implementation of a subsidized transit program is a VMT reduction of anywhere between 0.3 and 20.0 percent. According to the CAPCOA report, the provision of long-term bicycle storage has a minimal effect on trip generation but supports the greater trip reduction program by providing opportunities for non-motorized travel. The report does not address VMT reduction associated with connectivity to a Class I regional trail, but because the project site would be located on the Vine Trail, it is reasonable to expect some reduction in VMT due to employees and guests accessing the site via bicycle, especially when combined with the on-site trip-end bicycle facilities proposed.

Parking

Because the County of Napa does not specify parking rates for wineries or tasting rooms, the project was analyzed to determine whether the proposed parking supply would be sufficient based on the anticipated peak parking demand. The project site, as proposed, would provide a total of 198 parking spaces via a combination of self and valet parking; self-parking would be provided in multiple surface lots and valet parking would occur in an underground parking garage.

Parking demand for new developments is typically projected using empirically-derived rates established by agencies or organizations; these standardized, single-use parking demand rates do not consider the potential for "shared parking" and assume that each separate use located on the same site must provide its own contained parking supply. The concept of shared parking is based on the fact that different land uses often experience peak parking demand at different times, be it by time of day or even month of the year and is particularly applicable to the proposed project as it includes multiple components that would experience their respective peak demands at different times. Without taking shared parking demand into consideration, an oversupply of parking could result in expanses of empty asphalt on the project site.

Shared Parking Demand

A parking demand methodology that considers "shared parking" principles can significantly improve the accuracy of determining actual parking demand. The Urban Land Institute (ULI) publication *Shared Parking*, 2nd Edition, 2005, includes state-of-the-practice methodologies for determining parking demand based on the various components of a specific project. The ULI shared parking methodology focuses on temporal data, determining when the overall peak demand for various land uses occurs, including what time of day, whether it is a weekday or weekend, and what month of the year. The recommended parking supply is then tied to that maximum demand period. The ULI model considers the proposed mix of land uses, including quantities of each type of use.

Initial analysis determined that for the proposed project the peak parking demand for the site as a whole would be anticipated to occur midday on a weekend during the months of July and August. This time period reflects conditions when check-out and check-in would be occurring at the hotel, the restaurant would be open for lunch, the winery would be operating, and the tasting room and retail operations would be busiest. Additionally, it would be possible for a special event to be occurring during this time period which would further increase demand.

To determine the maximum demand for the hotel and restaurant uses the ULI *Shared Parking Model* was used, which, in addition to temporal demand, considers mode adjustment and non-captive ratios. Mode adjustment is the estimated number of employees and visitors who will access the site using a mode of transportation other than a private automobile, such as biking, walking, and transit. The model can also apply a non-captive ratio, which is the number of people who will travel from outside the site to the various land uses. Since this is a mixed-use project, it is reasonable to assume that some parking demand may be reduced as patrons park once and then visit multiple land uses. For example, a hotel guest may visit the winery and eat at the restaurant, which would not require an additional parking space for each subsequent land use beyond the first one. The model starts by assuming that 100 percent of people accessing the site will travel by a private automobile and are traveling from outside the site; deductions are then applied based on commuting behaviors, land uses, and regional knowledge of the area being studied.

For employees of the hotel, restaurant, café, and retail uses, mode adjustments were determined based on the US Census 2014 American Community Survey (ACS) using commuting to work patterns for Census Tract 2015, which is the census tract in which the project site is located. This data showed that approximately 86 percent of residents living in Census Tract 2015 drive alone to and from work. Approximately 14 percent of resident's commute via other means such as walking, bicycling, carpooling, transit, etc. The mode adjustment was therefore reduced by

14 percent, which equates to a mode adjustment of 86 percent. Similarly, because many patrons of the restaurant are anticipated to be hotel guests, it was assumed that 30 percent of the restaurant patrons would come from within the project site; the other 70 percent would travel to the site for the sole purpose of visiting the restaurant. Based on these assumptions, the ULI model anticipates a parking demand of 113 total spaces between the restaurant, hotel, retail, and cafe on a weekend in July and/or August from 12:00 noon to 1:00 p.m. A summary of the ULI estimated shared parking demand by time of day is included in Appendix H.

The parking demand for the other uses on-site were developed based on site-specific characteristics, as the ULI model does not have data that can be used to analyze wineries, tasting rooms, or special events. To determine the demand generated by the tasting room, it was assumed that 2.8 persons would occupy each vehicle on average and that 57 percent of the total daily visitors would be on-site during the peak hour; both assumptions are consistent with the County of Napa Winery Traffic Information/Trip Generation Sheet. Further, it was assumed that 30 percent of the tasting room guests would be generated from the hotel or restaurant and would not require an additional parking space. To determine the demand generated by a 100-person event, the County's standard event occupancy rate of three persons per vehicle was used. Lastly, it was assumed that 0.86 parking spaces would be needed per employee, as mentioned above relative to the data for Census Tract 2015 that indicates that approximately 86 percent of employees drive alone to work.

Based on these assumptions and the anticipated operational parameters for each specific use provided by the project applicant, the site would need to provide a total of 196 parking spaces to accommodate the peak demand, which would occur on weekends in July and August from approximately 12:00 noon to 1:00 p.m. A summary of the parking analysis is included in Table 12.

Table 12 – Peak Demand Parking Analysis

Land Use	Units	Employee Demand	Guest Demand	Total Demand
Hotel	79 rooms, 32 empl	28	29	57
Restaurant	6,500 sf, 30 empl	26	25	51
Café and Retail	1,935 sf, 2 empl	2	3	5
Winery and Tasting Room	54 daily guests, 25 empl	22	8	30
Maintenance, Valet Parking, & Spa Empl	14 empl	12	-	12
Special Event	100 guests, *9 empl	8	33	41
Total Peak Demand		*98*	*98*	*196*
Proposed Parking Supply				**198**

Notes: empl = employee; sf = square feet; *Events would require a total of 22 employees, 13 of which would already be on-site for their regular shift

Finding – Based on shared parking concepts, the proposed parking supply of 198 spaces would be adequate to meet the peak demand of 196 spaces.

Conclusions and Recommendations

Conclusions

- The proposed project is expected to generate an average of 645 new daily vehicle trips, including 33 trips during the weekday evening peak hour and 57 trips during the weekend midday peak hour. When added to the existing trips, the site would still generate 575 less daily trips on average than if all the permitted uses were operational, including 93 fewer trips during the weekday p.m. peak hour and 150 fewer trips during the weekend midday peak hour.

- The study intersections of Lodi Lane with SR 29 and Silverado Trail are currently operating acceptably at LOS A overall during both peak hours. Upon the addition of project-related traffic to the Existing volumes, the study intersections would continue operating at the same levels of service during both peak hours.

- Upon the addition of project-related traffic to Future volumes, the intersection of Silverado Trail/Lodi Lane would be expected to operate acceptably during both peak hours based on County standards. The impact of adding project-generated traffic would therefore be *less-than-significant*.

- Under Future Conditions, SR 29/Lodi Lane would be expected to operate acceptably overall during both peak hours based on Caltrans standards; however, the Lodi Lane approach would operate at LOS E which would be considered unacceptable based on County standards. The project would be responsible for more than ten percent of the anticipated growth on the Lodi Lane approach by the year 2030 so the project's impact would be considered *significant*. Striping to provide separate left- and right-turn lanes on the Lodi Lane approach to SR 29 would reduce the project's impacts under Future Conditions to *less-than-significant*.

- Volumes would not meet peak hour signal warrants at SR 29/Lodi Lane or Silverado Trail/Lodi Lane under Existing or Future Conditions, without or with the project.

- The existing storage length in the southbound left-turn lane on SR 29 at Lodi Lane is adequate to accommodate the proposed project under all evaluated scenarios. There would be adequate space for stacking to occur on Lodi Lane at Driveway 3 without spilling into SR 29.

- Pedestrian, bicycle, and transit facilities are adequate to serve the anticipated demand.

- As proposed in the project site plan, site access and circulation are expected to operate acceptably for both passenger and emergency response vehicles.

- Adequate sight distance is available in each direction along SR 29 and Lodi Lane to accommodate all turns into and out of site driveways.

- Neither a right-turn lane nor right-turn taper would be warranted at Driveway 2 on SR 29. A left-turn lane would be warranted with or without the proposed project under the anticipated Future volumes; however, would not be necessary if left turns are prohibited at this location.

- Based on shared parking concepts, the proposed parking supply of 198 spaces would be adequate for the peak demand of 196 spaces.

Recommendations

- To mitigate the project's impact on the Lodi Lane approach to SR 29 under Future Conditions, it is recommended that the project restripe the approach to provide a dedicated right-turn lane. This improvement would reduce the delay on the Lodi Lane approach to less than the delay expected under Future Conditions without the project.

- The applicant should install signage or other appropriate measures in the southbound direction on SR 29 that prohibits left-turns at Driveway 2. All southbound left-turns into the site should occur via the existing left-turn lane at Lodi Lane. Additionally, the applicant should construct a mini pork-chop island or other similar features to delineate that only right-turns are allowed at Driveway 2.

- The applicant should be responsible for installing a speed feedback sign on Silverado Trail in the northbound direction between the driveway to Melka Estates Winery and the horizontal curve. The exact location of the sign should be coordinated with County staff.

- The applicant should continue to work with NVVTC and NVTA to ensure that sufficient right-of-way is being dedicated for the planned bicycle facilities along the project frontage. If the facilities are not constructed before the hotel project, the applicant should consider constructing the facilities as part of the project in exchange for traffic impact fee credits.

- As part of the project, a shelter and bench should be installed at the northbound transit stop along the property frontage with SR 29.

- To ensure that existing sight lines remain adequate, any landscaping within the vision triangles at the driveways on SR 29 or Lodi Lane should be planted and maintained such that it is less than three feet or more than seven feet in height to maximize clear sight lines.

- As proposed, the project should implement the TDM measures identified in this report, including carpool incentives, a guaranteed ride home program, subsidized transit passes, and bicycle trip-end facilities.

Study Participants and References

Study Participants

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Appendix A

Winery Traffic Information/Trip Generation Sheet

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Winery Traffic Information / Trip Generation Sheet

Project Name: Inn at the Abbey Project Scenario: Permitted

Traffic during a Typical Weekday

Number of FT employees: 25	x 3.05 one-way trips per employee	=	76	daily trips.
Number of PT employees: 0	x 1.90 one-way trips per employee	=	0	daily trips.
Average number of weekday visitors: 54	/ 2.6 visitors per vehicle x 2 one-way trips	=	42	daily trips.
Gallons of production: 60000	/ 1,000 x .009 truck trips daily[3] x 2 one-way trips	=	1	daily trips.
	Total	=	119	**daily trips.**
	Number of total weekday trips x .38	=	45	**PM peak trips.**

Traffic during a Typical Saturday

Number of FT employees (on Saturdays): 25	x 3.05 one-way trips per employee	=	76	daily trips.
Number of PT employees (on Saturdays): 0	x 1.90 one-way trips per employee	=	0	daily trips.
Average number of weekend visitors: 54	/ 2.8 visitors per vehicle x 2 one-way trips	=	39	daily trips.
	Total	=	115	**daily trips.**
	Number of total Saturday trips x .57	=	66	**PM peak trips.**

Traffic during a Crush Saturday

Number of FT employees (during crush): 25	x 3.05 one-way trips per employee	=	76	daily trips.
Number of PT employees (during crush): 0	x 1.90 one-way trips per employee	=	0	daily trips.
Average number of weekend visitors: 54	/ 2.8 visitors per vehicle x 2 one-way trips	=	39	daily trips.
Gallons of production: 60000	/ 1,000 x .009 truck trips daily x 2 one-way trips	=	1	daily trips.
Avg. annual tons of grape on-haul: 500	x .11 truck trips daily [4] x 2 one-way trips	=	7	daily trips.
	Total	=	123	**daily trips.**
	Number of total Saturday trips x .57	=	70	**PM peak trips.**

Largest Marketing Event- Additional Traffic

Number of event staff (largest event): 9	x 2 one-way trips per staff person	=	18	trips.
Number of visitors (largest event): 100	/ 2.8 visitors per vehicle x 2 one-way trips	=	71	trips.
Number of special event truck trips (largest event): 0	x 2 one-way trips	=	0	trips.

[3] Assumes 1.47 materials & supplies trips + 0.8 case goods trips per 1,000 gallons of production / 250 days per year (see *Traffic Information Sheet Addendum* for reference).
[4] Assumes 4 tons per trip / 36 crush days per year (see *Traffic Information Sheet Addendum* for reference).

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Appendix B

Collision Rate Calculations

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Intersection Collision Rate Calculations

Inn at the Abbey

Intersection # 1: SR 29 & Lodi Ln

Date of Count: Tuesday, June 25, 2019

Number of Collisions: 3
Number of Injuries: 2
Number of Fatalities: 0
ADT: 12800
Start Date: January 1, 2014
End Date: December 31, 2018
Number of Years: 5

Intersection Type: Tee
Control Type: Stop & Yield Controls
Area: Rural

$$\text{collision rate} = \frac{\text{Number of Collisions x 1 Million}}{\text{ADT x 365 Days per Year x Number of Years}}$$

$$\text{collision rate} = \frac{3 \times 1{,}000{,}000}{12{,}800 \times 365 \times 5}$$

	Collision Rate	Fatality Rate	Injury Rate
Study Intersection	**0.13 c/mve**	**0.0%**	**66.7%**
Statewide Average*	**0.16 c/mve**	**1.7%**	**39.2%**

ADT = average daily total vehicles entering intersection
c/mve = collisions per million vehicles entering intersection
* 2014 Collision Data on California State Highways, Caltrans

Intersection # 2: Silverado Trail & Lodi Ln

Date of Count: Tuesday, June 25, 2019

Number of Collisions: 5
Number of Injuries: 2
Number of Fatalities: 0
ADT: 6000
Start Date: January 1, 2014
End Date: December 31, 2018
Number of Years: 5

Intersection Type: Tee
Control Type: Stop & Yield Controls
Area: Rural

$$\text{collision rate} = \frac{\text{Number of Collisions x 1 Million}}{\text{ADT x 365 Days per Year x Number of Years}}$$

$$\text{collision rate} = \frac{5 \times 1{,}000{,}000}{6{,}000 \times 365 \times 5}$$

	Collision Rate	Fatality Rate	Injury Rate
Study Intersection	**0.46 c/mve**	**0.0%**	**40.0%**
Statewide Average*	**0.16 c/mve**	**1.7%**	**39.2%**

ADT = average daily total vehicles entering intersection
c/mve = collisions per million vehicles entering intersection
* 2014 Collision Data on California State Highways, Caltrans

SEGMENT COLLISION RATE CALCULATIONS

Inn at the Abbey

Location: SR 29 - York Ln to Ehlers Ln

Date of Count: Tuesday, June 25, 2019
ADT: 15,000

Number of Collisions: 12
Number of Injuries: 5
Number of Fatalities: 0
Start Date: January 1, 2014
End Date: December 31, 2018
Number of Years: 5

Highway Type: Conventional 2 lanes or less
Area: Rural
Design Speed: ≤55
Terrain: Rolling/Mountain

Segment Length: 0.8 miles
Direction: North/South

$$\frac{\text{Number of Collisions x 1 Million}}{\text{ADT x 365 Days per Year x Segment Length x Number of Years}}$$

$$\frac{12 \times 1{,}000{,}000}{15{,}000 \times 365 \times 0.8 \times 5}$$

	Collision Rate		Fatality Rate	Injury Rate
Study Segment	**0.55**	**c/mvm**	**0.0%**	**41.7%**
Statewide Average*	**1.16**	**c/mvm**	**2.2%**	**44.8%**

ADT = average daily traffic volume
c/mvm = collisions per million vehicle miles
* 2014 Collision Data on California State Highways, Caltrans

Location: Lodi Ln - SR 29 to Silverado Trail

Date of Count: Tuesday, June 25, 2019
ADT: 1,000

Number of Collisions: 0
Number of Injuries: 0
Number of Fatalities: 0
Start Date: January 1, 2014
End Date: December 31, 2018
Number of Years: 5

Highway Type: Conventional 2 lanes or less
Area: Rural
Design Speed: ≤55
Terrain: Flat

Segment Length: 0.5 miles
Direction: East/West

$$\frac{\text{Number of Collisions x 1 Million}}{\text{ADT x 365 Days per Year x Segment Length x Number of Years}}$$

$$\frac{0 \times 1{,}000{,}000}{1{,}000 \times 365 \times 0.5 \times 5}$$

	Collision Rate		Fatality Rate	Injury Rate
Study Segment	**0.00**	**c/mvm**	**0.0%**	**0.0%**
Statewide Average*	**1.16**	**c/mvm**	**2.4%**	**40.1%**

ADT = average daily traffic volume
c/mvm = collisions per million vehicle miles
* 2014 Collision Data on California State Highways, Caltrans

SEGMENT COLLISION RATE CALCULATIONS

Inn at the Abbey

Location: Silverado Trail - Bournemouth Rd to Glass Mountain Rd
Date of Count: Tuesday, June 25, 2019
ADT: 5,600

Number of Collisions: 15
Number of Injuries: 3
Number of Fatalities: 0
Start Date: January 1, 2014
End Date: December 31, 2018
Number of Years: 5

Highway Type: Conventional 2 lanes or less
Area: Rural
Design Speed: ≤55
Terrain: Rolling/Mountain

Segment Length: 0.7 miles
Direction: North/South

$$\frac{\text{Number of Collisions x 1 Million}}{\text{ADT x 365 Days per Year x Segment Length x Number of Years}}$$

$$\frac{15 \times 1{,}000{,}000}{5{,}600 \times 365 \times 0.7 \times 5}$$

	Collision Rate	Fatality Rate	Injury Rate
Study Segment	**2.10 c/mvm**	**0.0%**	**20.0%**
Statewide Average*	**1.20 c/mvm**	**2.2%**	**44.8%**

ADT = average daily traffic volume
c/mvm = collisions per million vehicle miles
* 2014 Collision Data on California State Highways, Caltrans

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Appendix C

Traffic Count Data, Existing Driveway Volumes, Heavy Vehicle Data, Future Volumes Projections

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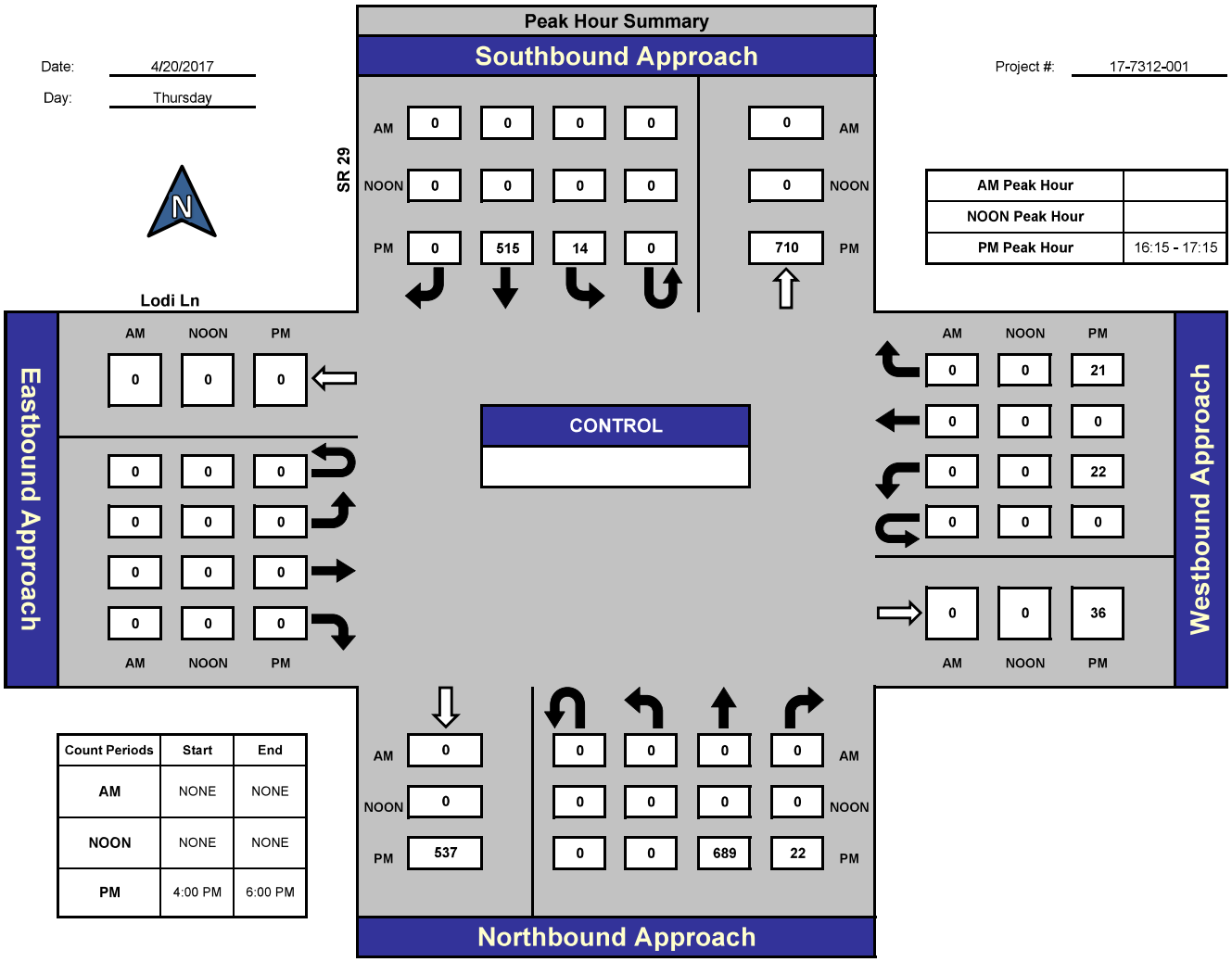
SR 29 & Lodi Ln

Date: 4/20/2017
Day: Thursday

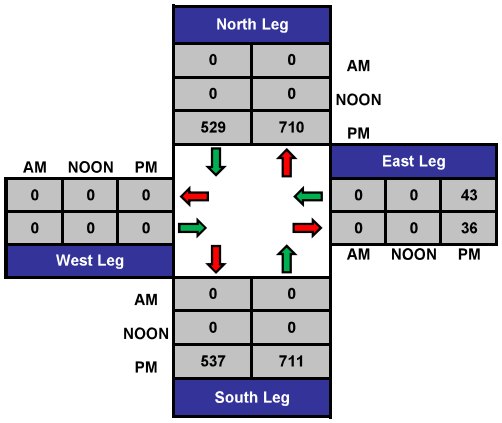
Project #: 17-7312-001



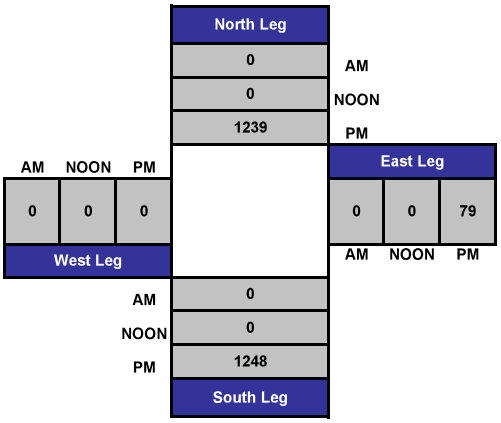
AM Peak Hour	
NOON Peak Hour	
PM Peak Hour	16:15 - 17:15

Count Periods	Start	End
AM	NONE	NONE
NOON	NONE	NONE
PM	4:00 PM	6:00 PM

Total Ins & Outs



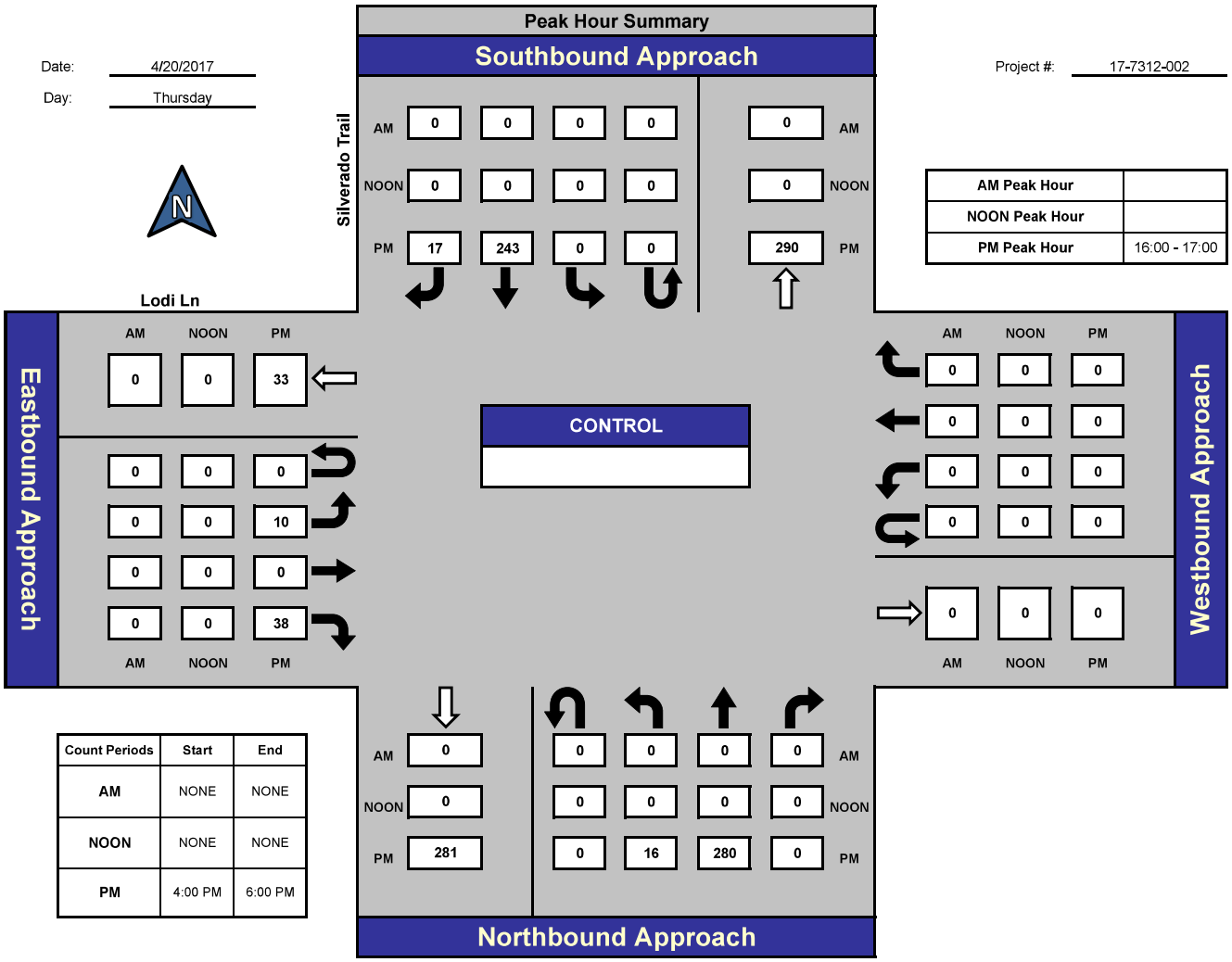
Total Volume Per Leg



Silverado Trail & Lodi Ln

Date: 4/20/2017
Day: Thursday

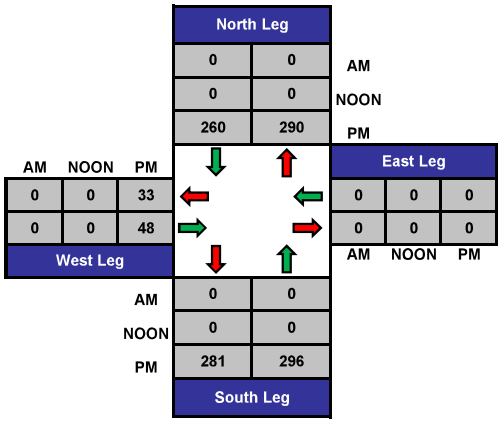
Project #: 17-7312-002



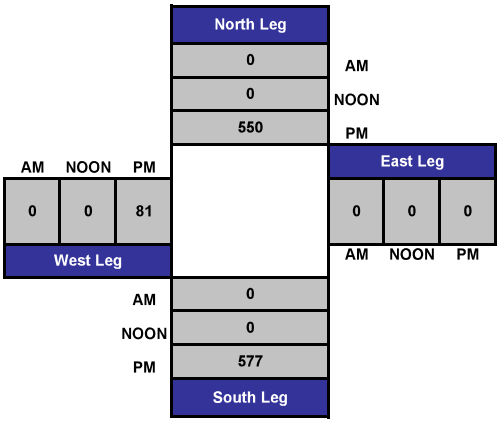
AM Peak Hour	
NOON Peak Hour	
PM Peak Hour	16:00 - 17:00

Count Periods	Start	End
AM	NONE	NONE
NOON	NONE	NONE
PM	4:00 PM	6:00 PM

Total Ins & Outs



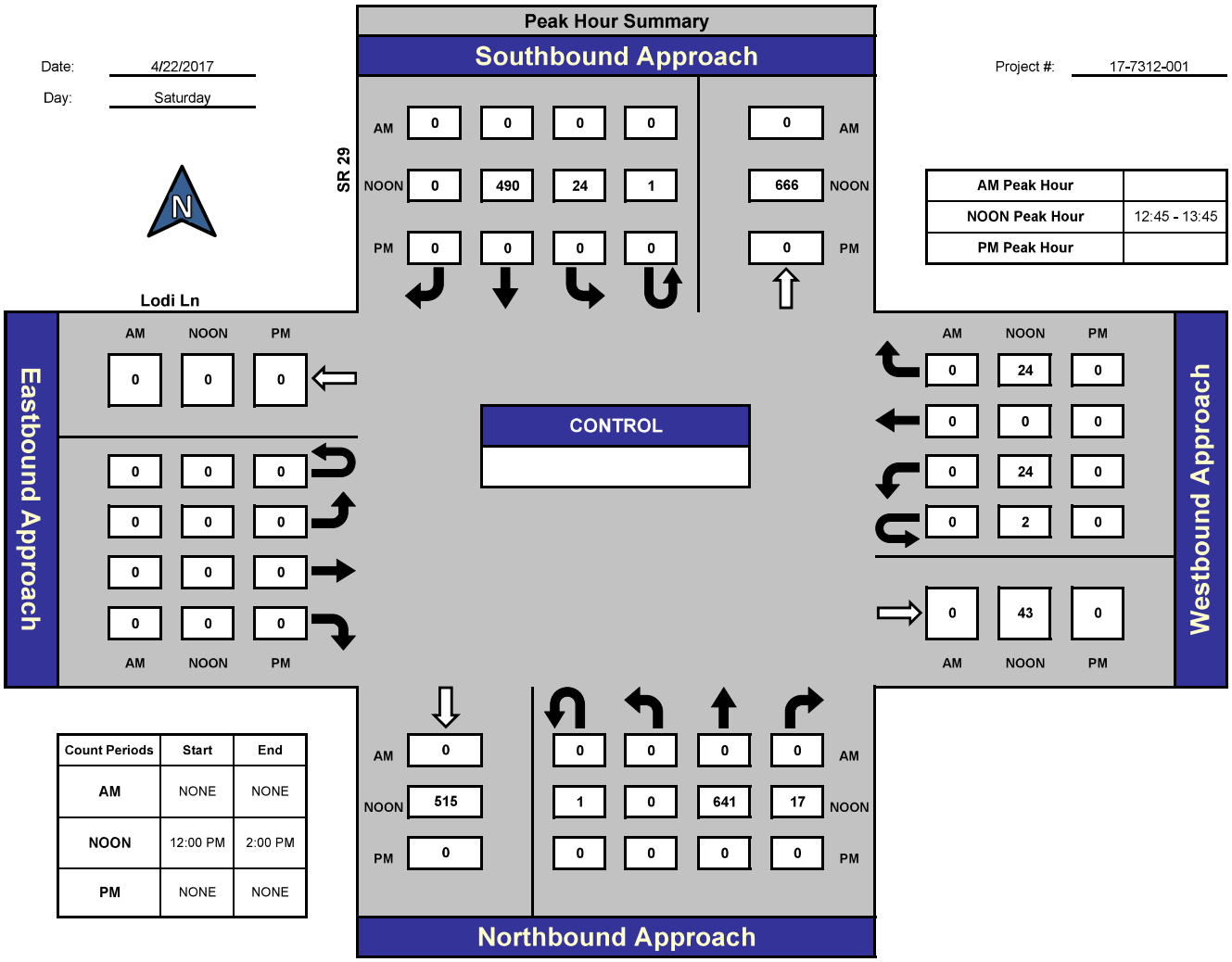
Total Volume Per Leg



SR 29 & Lodi Ln

Date: 4/22/2017
Day: Saturday

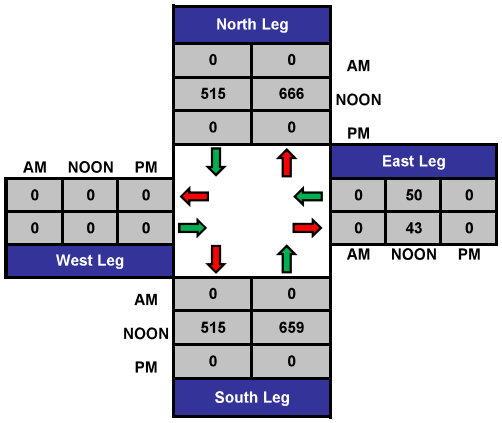
Project #: 17-7312-001



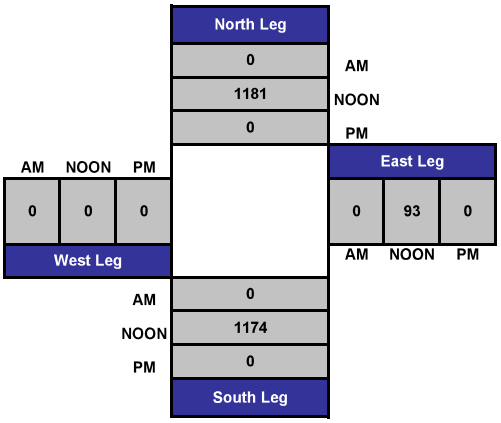
AM Peak Hour	
NOON Peak Hour	12:45 - 13:45
PM Peak Hour	

Count Periods	Start	End
AM	NONE	NONE
NOON	12:00 PM	2:00 PM
PM	NONE	NONE

Total Ins & Outs



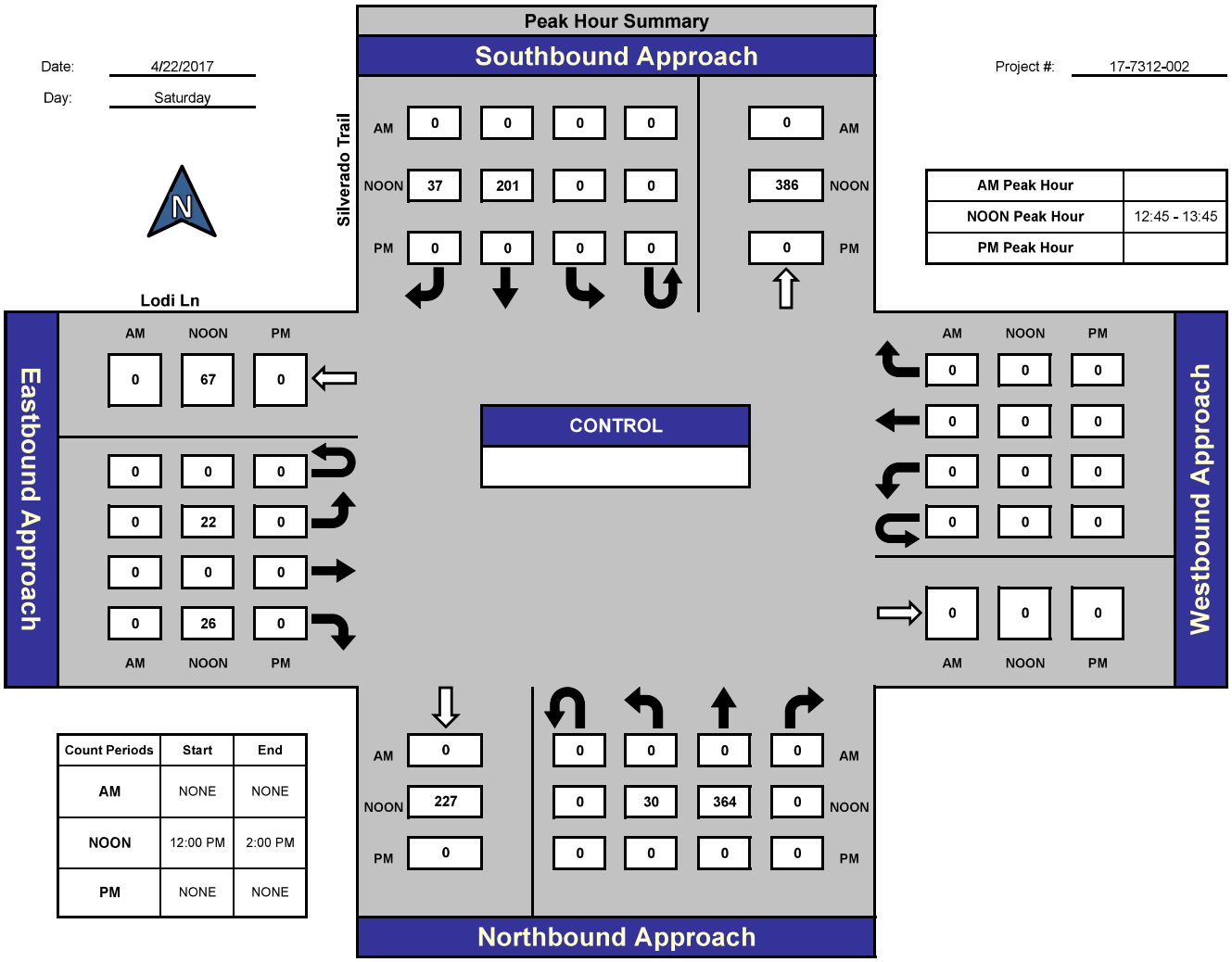
Total Volume Per Leg



Silverado Trail & Lodi Ln

Date: 4/22/2017
Day: Saturday

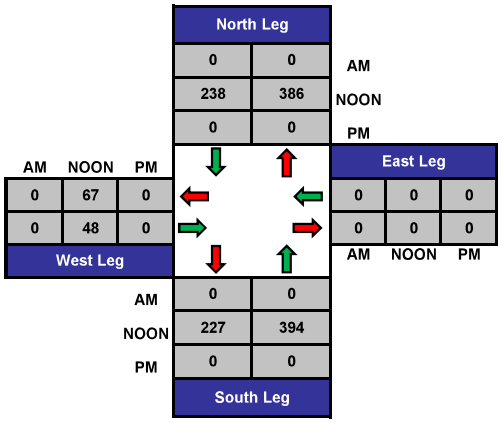
Project #: 17-7312-002



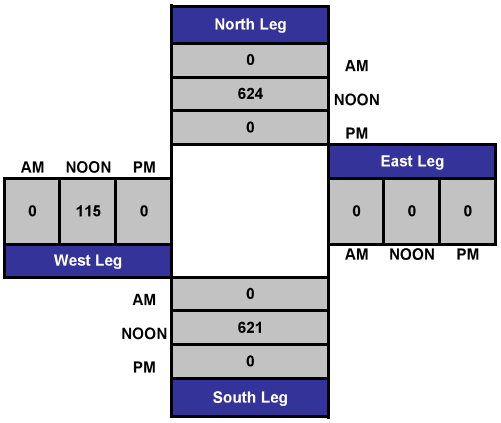
AM Peak Hour	
NOON Peak Hour	12:45 - 13:45
PM Peak Hour	

Count Periods	Start	End
AM	NONE	NONE
NOON	12:00 PM	2:00 PM
PM	NONE	NONE

Total Ins & Outs



Total Volume Per Leg



Prepared by NDS/ATD

VOLUME

SR 29 N/O Lodi Ln

Day: Thursday
Date: 4/20/2017

City: St Helena
Project #: CA17_7313_001

DAILY TOTALS	NB	SB	EB	WB	Total
	7,731	7,523	0	0	15,254

AM Period	NB		SB		EB	WB	TOTAL		PM Period	NB		SB		EB	WB	TOTAL	
00:00	5		4				9		12:00	155		106				261	
00:15	7		5				12		12:15	130		114				244	
00:30	5		6				11		12:30	141		117				258	
00:45	5	22	4	19			9	41	12:45	134	560	121	458			255	1018
01:00	4		4				8		13:00	140		131				271	
01:15	4		5				9		13:15	131		135				266	
01:30	2		8				10		13:30	123		130				253	
01:45	1	11	5	22			6	33	13:45	137	531	142	538			279	1069
02:00	2		5				7		14:00	155		122				277	
02:15	5		2				7		14:15	145		131				276	
02:30	4		1				5		14:30	153		138				291	
02:45	4	15	5	13			9	28	14:45	139	592	121	512			260	1104
03:00	3		4				7		15:00	176		132				308	
03:15	5		5				10		15:15	187		133				320	
03:30	3		8				11		15:30	163		186				349	
03:45	9	20	3	20			12	40	15:45	175	701	181	632			356	1333
04:00	6		5				11		16:00	168		141				309	
04:15	7		13				20		16:15	179		140				319	
04:30	13		10				23		16:30	176		128				304	
04:45	21	47	19	47			40	94	16:45	180	703	137	546			317	1249
05:00	20		26				46		17:00	179		131				310	
05:15	20		26				46		17:15	202		101				303	
05:30	32		46				78		17:30	183		120				303	
05:45	35	107	86	184			121	291	17:45	159	723	101	453			260	1176
06:00	62		104				166		18:00	118		116				234	
06:15	80		119				199		18:15	107		94				201	
06:30	88		139				227		18:30	94		99				193	
06:45	85	315	174	536			259	851	18:45	87	406	92	401			179	807
07:00	76		105				181		19:00	72		67				139	
07:15	101		128				229		19:15	57		71				128	
07:30	77		159				236		19:30	80		53				133	
07:45	88	342	133	525			221	867	19:45	53	262	60	251			113	513
08:00	101		134				235		20:00	59		71				130	
08:15	97		156				253		20:15	64		56				120	
08:30	100		144				244		20:30	43		50				93	
08:45	122	420	124	558			246	978	20:45	47	213	31	208			78	421
09:00	111		128				239		21:00	40		47				87	
09:15	120		121				241		21:15	43		35				78	
09:30	106		114				220		21:30	27		26				53	
09:45	117	454	141	504			258	958	21:45	32	142	26	134			58	276
10:00	110		108				218		22:00	25		23				48	
10:15	123		99				222		22:15	39		23				62	
10:30	105		96				201		22:30	27		17				44	
10:45	137	475	127	430			264	905	22:45	14	105	18	81			32	186
11:00	124		112				236		23:00	24		12				36	
11:15	127		101				228		23:15	21		14				35	
11:30	101		97				198		23:30	18		10				28	
11:45	137	489	92	402			229	891	23:45	13	76	13	49			26	125
TOTALS		2717		3260				5977	TOTALS		5014		4263				9277
SPLIT %		45.5%		54.5%				39.2%	SPLIT %		54.0%		46.0%				60.8%

DAILY TOTALS	NB	SB	EB	WB	Total
	7,731	7,523	0	0	15,254

AM Peak Hour	11:45	07:30				11:45	PM Peak Hour	16:45	15:30				15:15
AM Pk Volume	563	582				992	PM Pk Volume	744	648				1334
Pk Hr Factor	0.908	0.915				0.950	Pk Hr Factor	0.921	0.871				0.937
7 - 9 Volume	762	1083	0	0		1845	4 - 6 Volume	1426	999	0	0		2425
7 - 9 Peak Hour	08:00	07:30				08:00	4 - 6 Peak Hour	16:45	16:00				16:15
7 - 9 Pk Volume	420	582	0	0		978	4 - 6 Pk Volume	744	546	0	0		1250
Pk Hr Factor	0.861	0.915	0.000	0.000		0.966	Pk Hr Factor	0.921	0.968	0.000	0.000		0.980

Prepared by NDS/ATD

VOLUME

SR 29 N/O Lodi Ln

Day: Friday
Date: 4/21/2017

City: St Helena
Project #: CA17_7313_001

DAILY TOTALS	NB	SB	EB	WB	Total
	8,130	7,814	0	0	15,944

AM Period	NB		SB		EB	WB	TOTAL		PM Period	NB		SB		EB	WB	TOTAL	
00:00	9		12				21		12:00	126		122				248	
00:15	8		5				13		12:15	150		138				288	
00:30	7		4				11		12:30	138		124				262	
00:45	11	35	3	24			14	59	12:45	156	570	107	491			263	1061
01:00	6		5				11		13:00	143		164				307	
01:15	1		2				3		13:15	157		116				273	
01:30	5		2				7		13:30	134		129				263	
01:45	2	14	5	14			7	28	13:45	151	585	142	551			293	1136
02:00	2		3				5		14:00	139		124				263	
02:15	4		2				6		14:15	161		135				296	
02:30	7		2				9		14:30	163		123				286	
02:45	4	17	5	12			9	29	14:45	190	653	147	529			337	1182
03:00	3		7				10		15:00	180		160				340	
03:15	3		3				6		15:15	173		129				302	
03:30	7		9				16		15:30	177		158				335	
03:45	5	18	7	26			12	44	15:45	177	707	144	591			321	1298
04:00	9		6				15		16:00	178		154				332	
04:15	8		7				15		16:15	172		154				326	
04:30	16		11				27		16:30	185		149				334	
04:45	26	59	19	43			45	102	16:45	175	710	151	608			326	1318
05:00	14		31				45		17:00	191		135				326	
05:15	20		34				54		17:15	190		132				322	
05:30	28		53				81		17:30	165		141				306	
05:45	34	96	100	218			134	314	17:45	163	709	126	534			289	1243
06:00	50		113				163		18:00	121		114				235	
06:15	77		118				195		18:15	129		109				238	
06:30	89		166				255		18:30	81		66				147	
06:45	70	286	128	525			198	811	18:45	96	427	93	382			189	809
07:00	73		111				184		19:00	83		70				153	
07:15	82		100				182		19:15	75		68				143	
07:30	100		143				243		19:30	72		63				135	
07:45	75	330	154	508			229	838	19:45	56	286	47	248			103	534
08:00	106		137				243		20:00	58		69				127	
08:15	91		135				226		20:15	52		52				104	
08:30	90		131				221		20:30	86		39				125	
08:45	110	397	153	556			263	953	20:45	56	252	45	205			101	457
09:00	115		133				248		21:00	61		43				104	
09:15	115		137				252		21:15	52		37				89	
09:30	121		105				226		21:30	41		27				68	
09:45	120	471	130	505			250	976	21:45	41	195	45	152			86	347
10:00	132		99				231		22:00	40		41				81	
10:15	140		107				247		22:15	39		32				71	
10:30	129		112				241		22:30	27		26				53	
10:45	127	528	104	422			231	950	22:45	35	141	24	123			59	264
11:00	141		105				246		23:00	34		20				54	
11:15	133		130				263		23:15	29		15				44	
11:30	134		104				238		23:30	24		16				40	
11:45	128	536	145	484			273	1020	23:45	21	108	12	63			33	171
TOTALS		2787		3337				6124	TOTALS		5343		4477				9820
SPLIT %		45.5%		54.5%				38.4%	SPLIT %		54.4%		45.6%				61.6%

DAILY TOTALS	NB	SB	EB	WB	Total
	8,130	7,814	0	0	15,944

AM Peak Hour	11:45	07:30					11:45		PM Peak Hour	16:30	15:30					16:00		
AM Pk Volume	542	569					1071		PM Pk Volume	741	610					1318		
Pk Hr Factor	0.903	0.924					0.930		Pk Hr Factor	0.970	0.965					0.987		
7 - 9 Volume	727	1064	0	0			1791		4 - 6 Volume	1419	1142	0	0			2561		
7 - 9 Peak Hour	08:00	07:30					08:00		4 - 6 Peak Hour	16:30	16:00					16:00		
7 - 9 Pk Volume	397	569	0	0			953		4 - 6 Pk Volume	741	608	0	0			1318		
Pk Hr Factor	0.902	0.924	0.000	0.000			0.906		Pk Hr Factor	0.970	0.987	0.000	0.000			0.987		

Prepared by NDS/ATD

VOLUME

SR 29 N/O Lodi Ln

Day: Saturday
Date: 4/22/2017

City: St Helena
Project #: CA17_7313_001

DAILY TOTALS	NB	SB	EB	WB	Total
	7,308	7,172	0	0	14,480

AM Period	NB		SB		EB	WB	TOTAL		PM Period	NB		SB		EB	WB	TOTAL	
00:00	17		17				34		12:00	160		125				285	
00:15	8		10				18		12:15	156		136				292	
00:30	5		11				16		12:30	142		118				260	
00:45	10	40	8	46			18	86	12:45	153	611	138	517			291	1128
01:00	10		15				25		13:00	177		129				306	
01:15	7		8				15		13:15	168		97				265	
01:30	4		9				13		13:30	170		149				319	
01:45	3	24	13	45			16	69	13:45	146	661	143	518			289	1179
02:00	8		5				13		14:00	177		144				321	
02:15	1		8				9		14:15	144		141				285	
02:30	6		6				12		14:30	171		168				339	
02:45	4	19	3	22			7	41	14:45	175	667	122	575			297	1242
03:00	4		5				9		15:00	159		181				340	
03:15	3		2				5		15:15	178		160				338	
03:30	5		6				11		15:30	166		187				353	
03:45	3	15	7	20			10	35	15:45	168	671	201	729			369	1400
04:00	8		8				16		16:00	160		191				351	
04:15	5		3				8		16:15	143		136				279	
04:30	6		5				11		16:30	124		168				292	
04:45	9	28	14	30			23	58	16:45	142	569	139	634			281	1203
05:00	11		9				20		17:00	134		156				290	
05:15	15		24				39		17:15	135		156				291	
05:30	19		23				42		17:30	106		135				241	
05:45	26	71	64	120			90	191	17:45	125	500	133	580			258	1080
06:00	40		72				112		18:00	111		127				238	
06:15	43		51				94		18:15	108		105				213	
06:30	36		63				99		18:30	73		93				166	
06:45	64	183	49	235			113	418	18:45	62	354	88	413			150	767
07:00	53		41				94		19:00	65		83				148	
07:15	49		58				107		19:15	53		64				117	
07:30	50		71				121		19:30	55		71				126	
07:45	58	210	67	237			125	447	19:45	55	228	69	287			124	515
08:00	61		58				119		20:00	48		47				95	
08:15	66		54				120		20:15	61		77				138	
08:30	75		69				144		20:30	42		64				106	
08:45	95	297	79	260			174	557	20:45	49	200	67	255			116	455
09:00	109		77				186		21:00	40		107				147	
09:15	105		104				209		21:15	40		46				86	
09:30	111		92				203		21:30	39		38				77	
09:45	145	470	97	370			242	840	21:45	30	149	51	242			81	391
10:00	146		82				228		22:00	50		34				84	
10:15	104		87				191		22:15	47		38				85	
10:30	129		110				239		22:30	22		47				69	
10:45	144	523	105	384			249	907	22:45	35	154	21	140			56	294
11:00	128		112				240		23:00	30		34				64	
11:15	140		105				245		23:15	31		21				52	
11:30	124		110				234		23:30	20		19				39	
11:45	168	560	102	429			270	989	23:45	23	104	10	84			33	188
TOTALS		2440		2198				4638	TOTALS		4868		4974				9842
SPLIT %		52.6%		47.4%				32.0%	SPLIT %		49.5%		50.5%				68.0%

DAILY TOTALS	NB	SB	EB	WB	Total
	7,308	7,172	0	0	14,480

AM Peak Hour	11:45	11:45			11:45	PM Peak Hour	14:30	15:15			15:15
AM Pk Volume	626	481			1107	PM Pk Volume	683	739			1411
Pk Hr Factor	0.932	0.884			0.948	Pk Hr Factor	0.959	0.919			0.956
7 - 9 Volume	507	497	0	0	1004	4 - 6 Volume	1069	1214	0	0	2283
7 - 9 Peak Hour	08:00	08:00			08:00	4 - 6 Peak Hour	16:00	16:00			16:00
7 - 9 Pk Volume	297	260	0	0	557	4 - 6 Pk Volume	569	634	0	0	1203
Pk Hr Factor	0.782	0.823	0.000	0.000	0.800	Pk Hr Factor	0.889	0.830	0.000	0.000	0.857

Prepared by NDS/ATD

VOLUME

SR 29 N/O Lodi Ln

Day: Sunday
Date: 4/23/2017

City: St Helena
Project #: CA17_7313_001

DAILY TOTALS	NB	SB	EB	WB	Total
	5,982	6,682	0	0	12,664

AM Period	NB		SB		EB	WB	TOTAL		PM Period	NB		SB		EB	WB	TOTAL	
00:00	19		19				38		12:00	113		131				244	
00:15	16		13				29		12:15	121		143				264	
00:30	15		7				22		12:30	129		151				280	
00:45	12	62	13	52			25	114	12:45	141	504	117	542			258	1046
01:00	17		13				30		13:00	129		153				282	
01:15	7		5				12		13:15	122		146				268	
01:30	4		6				10		13:30	116		159				275	
01:45	5	33	4	28			9	61	13:45	133	500	126	584			259	1084
02:00	4		2				6		14:00	141		152				293	
02:15	3		8				11		14:15	138		117				255	
02:30	2		5				7		14:30	117		134				251	
02:45	6	15	4	19			10	34	14:45	140	536	143	546			283	1082
03:00	3		5				8		15:00	131		148				279	
03:15	2		4				6		15:15	136		151				287	
03:30	3		3				6		15:30	126		140				266	
03:45	0	8	10	22			10	30	15:45	130	523	138	577			268	1100
04:00	1		5				6		16:00	120		160				280	
04:15	0		5				5		16:15	103		139				242	
04:30	6		6				12		16:30	104		124				228	
04:45	8	15	7	23			15	38	16:45	104	431	145	568			249	999
05:00	9		7				16		17:00	121		124				245	
05:15	6		8				14		17:15	84		133				217	
05:30	9		11				20		17:30	86		123				209	
05:45	10	34	22	48			32	82	17:45	90	381	146	526			236	907
06:00	34		14				48		18:00	71		124				195	
06:15	17		22				39		18:15	96		104				200	
06:30	20		29				49		18:30	64		84				148	
06:45	34	105	29	94			63	199	18:45	63	294	70	382			133	676
07:00	54		24				78		19:00	39		73				112	
07:15	46		27				73		19:15	54		68				122	
07:30	50		51				101		19:30	64		49				113	
07:45	38	188	49	151			87	339	19:45	59	216	58	248			117	464
08:00	57		49				106		20:00	49		61				110	
08:15	60		75				135		20:15	37		52				89	
08:30	81		87				168		20:30	56		29				85	
08:45	136	334	67	278			203	612	20:45	50	192	51	193			101	385
09:00	83		105				188		21:00	40		38				78	
09:15	100		119				219		21:15	38		23				61	
09:30	107		120				227		21:30	30		26				56	
09:45	97	387	132	476			229	863	21:45	38	146	26	113			64	259
10:00	105		120				225		22:00	29		21				50	
10:15	98		144				242		22:15	20		20				40	
10:30	103		131				234		22:30	28		21				49	
10:45	117	423	125	520			242	943	22:45	20	97	17	79			37	176
11:00	108		146				254		23:00	19		10				29	
11:15	128		147				275		23:15	17		10				27	
11:30	133		142				275		23:30	11		11				22	
11:45	130	499	134	569			264	1068	23:45	12	59	13	44			25	103
TOTALS		2103		2280				4383	TOTALS		3879		4402				8281
SPLIT %		48.0%		52.0%				34.6%	SPLIT %		46.8%		53.2%				65.4%

DAILY TOTALS	NB	SB	EB	WB	Total
	5,982	6,682	0	0	12,664

AM Peak Hour	11:15	11:00			11:00	PM Peak Hour	14:00	15:15			14:45
AM Pk Volume	504	569			1068	PM Pk Volume	536	589			1115
Pk Hr Factor	0.947	0.968			0.971	Pk Hr Factor	0.950	0.920			0.971
7 - 9 Volume	522	429	0	0	951	4 - 6 Volume	812	1094	0	0	1906
7 - 9 Peak Hour	08:00	08:00			08:00	4 - 6 Peak Hour	16:15	16:00			16:00
7 - 9 Pk Volume	334	278	0	0	612	4 - 6 Pk Volume	432	568	0	0	999
Pk Hr Factor	0.614	0.799	0.000	0.000	0.754	Pk Hr Factor	0.893	0.888	0.000	0.000	0.892

Prepared by NDS/ATD

VOLUME

Lodi Ln E/O SR 29

Day: Thursday
Date: 4/20/2017

City: St Helena
Project #: CA17_7313_002

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	499	571	1,070

AM Period	NB	SB	EB		WB		TOTAL		PM Period	NB	SB	EB		WB		TOTAL	
00:00			0		1		1		12:00			9		12		21	
00:15			0		0		0		12:15			6		17		23	
00:30			2		0		2		12:30			6		15		21	
00:45			0	2	0	1	0	3	12:45			7	28	15	59	22	87
01:00			1		0		1		13:00			16		6		22	
01:15			0		0		0		13:15			10		13		23	
01:30			0		0		0		13:30			12		11		23	
01:45			0	1	0		0	1	13:45			14	52	4	34	18	86
02:00			0		0		0		14:00			7		6		13	
02:15			1		1		2		14:15			12		14		26	
02:30			2		1		3		14:30			9		12		21	
02:45			0	3	0	2	0	5	14:45			10	38	11	43	21	81
03:00			0		0		0		15:00			12		17		29	
03:15			0		0		0		15:15			6		10		16	
03:30			0		0		0		15:30			4		21		25	
03:45			2	2	0		2	2	15:45			11	33	10	58	21	91
04:00			1		0		1		16:00			10		19		29	
04:15			2		1		3		16:15			8		9		17	
04:30			0		0		0		16:30			10		10		20	
04:45			0	3	0	1	0	4	16:45			3	31	8	46	11	77
05:00			0		0		0		17:00			11		13		24	
05:15			2		2		4		17:15			12		10		22	
05:30			1		1		2		17:30			10		11		21	
05:45			1	4	2	5	3	9	17:45			10	43	8	42	18	85
06:00			6		3		9		18:00			7		6		13	
06:15			4		3		7		18:15			2		8		10	
06:30			9		2		11		18:30			7		4		11	
06:45			10	29	5	13	15	42	18:45			5	21	4	22	9	43
07:00			4		5		9		19:00			5		5		10	
07:15			3		6		9		19:15			5		9		14	
07:30			6		4		10		19:30			2		4		6	
07:45			11	24	13	28	24	52	19:45			1	13	1	19	2	32
08:00			7		9		16		20:00			4		3		7	
08:15			11		10		21		20:15			4		3		7	
08:30			8		12		20		20:30			4		4		8	
08:45			9	35	17	48	26	83	20:45			4	16	2	12	6	28
09:00			5		9		14		21:00			4		1		5	
09:15			11		8		19		21:15			0		4		4	
09:30			9		11		20		21:30			3		1		4	
09:45			6	31	13	41	19	72	21:45			3	10	0	6	3	16
10:00			6		12		18		22:00			6		2		8	
10:15			10		16		26		22:15			2		1		3	
10:30			9		8		17		22:30			2		1		3	
10:45			6	31	6	42	12	73	22:45			2	12	1	5	3	17
11:00			8		12		20		23:00			2		0		2	
11:15			11		8		19		23:15			1		0		1	
11:30			6		16		22		23:30			0		1		1	
11:45			9	34	7	43	16	77	23:45			0	3	0	1	0	4
TOTALS				199		224		**423**	**TOTALS**				300		347		**647**
SPLIT %				47.0%		53.0%		**39.5%**	**SPLIT %**				46.4%		53.6%		**60.5%**

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	499	571	1,070

AM Peak Hour				07:45		09:30		**08:00**	**PM Peak Hour**				13:00		15:15		**14:15**
AM Pk Volume				37		52		**83**	**PM Pk Volume**				52		60		**97**
Pk Hr Factor				0.841		0.813		**0.798**	**Pk Hr Factor**				0.813		0.714		**0.836**
7 - 9 Volume	0	0		59		76		**135**	**4 - 6 Volume**	0	0		74		88		**162**
7 - 9 Peak Hour				07:45		08:00		**08:00**	**4 - 6 Peak Hour**				17:00		16:00		**17:00**
7 - 9 Pk Volume	0	0		37		48		**83**	**4 - 6 Pk Volume**	0	0		43		46		**85**
Pk Hr Factor	0.000	0.000		0.841		0.706		**0.798**	**Pk Hr Factor**	0.000	0.000		0.896		0.605		**0.885**

Prepared by NDS/ATD

VOLUME

Lodi Ln E/O SR 29

Day: Friday
Date: 4/21/2017

City: St Helena
Project #: CA17_7313_002

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	537	646	1,183

AM Period	NB	SB	EB		WB		TOTAL		PM Period	NB	SB	EB		WB		TOTAL	
00:00			1		0		1		12:00			12		16		28	
00:15			0		0		0		12:15			14		17		31	
00:30			1		1		2		12:30			9		21		30	
00:45			0	2	0	1	0	3	12:45			11	46	16	70	27	116
01:00			0		0		0		13:00			11		14		25	
01:15			0		0		0		13:15			9		7		16	
01:30			0		0		0		13:30			16		9		25	
01:45			1	1	0		1	1	13:45			15	51	8	38	23	89
02:00			0		0		0		14:00			8		14		22	
02:15			0		0		0		14:15			7		16		23	
02:30			2		1		3		14:30			9		9		18	
02:45			1	3	0	1	1	4	14:45			13	37	12	51	25	88
03:00			0		0		0		15:00			15		13		28	
03:15			0		0		0		15:15			12		13		25	
03:30			1		0		1		15:30			5		15		20	
03:45			0	1	0		0	1	15:45			6	38	24	65	30	103
04:00			1		1		2		16:00			8		14		22	
04:15			2		0		2		16:15			20		14		34	
04:30			3		4		7		16:30			8		15		23	
04:45			0	6	1	6	1	12	16:45			9	45	14	57	23	102
05:00			0		0		0		17:00			5		15		20	
05:15			0		0		0		17:15			10		10		20	
05:30			0		2		2		17:30			8		10		18	
05:45			5	5	2	4	7	9	17:45			9	32	5	40	14	72
06:00			9		2		11		18:00			9		4		13	
06:15			4		6		10		18:15			8		6		14	
06:30			6		3		9		18:30			3		4		7	
06:45			11	30	2	13	13	43	18:45			2	22	4	18	6	40
07:00			1		2		3		19:00			8		3		11	
07:15			3		14		17		19:15			3		0		3	
07:30			6		10		16		19:30			4		5		9	
07:45			9	19	11	37	20	56	19:45			4	19	0	8	4	27
08:00			8		12		20		20:00			2		3		5	
08:15			9		11		20		20:15			6		2		8	
08:30			3		7		10		20:30			2		3		5	
08:45			6	26	23	53	29	79	20:45			4	14	4	12	8	26
09:00			12		11		23		21:00			8		3		11	
09:15			8		14		22		21:15			3		4		7	
09:30			10		9		19		21:30			2		0		2	
09:45			8	38	6	40	14	78	21:45			4	17	2	9	6	26
10:00			6		27		33		22:00			2		2		4	
10:15			5		17		22		22:15			2		2		4	
10:30			10		6		16		22:30			4		2		6	
10:45			13	34	8	58	21	92	22:45			3	11	1	7	4	18
11:00			11		10		21		23:00			1		2		3	
11:15			6		15		21		23:15			0		1		1	
11:30			15		14		29		23:30			2		0		2	
11:45			5	37	16	55	21	92	23:45			0	3	0	3	0	6
TOTALS				202		268		**470**	**TOTALS**				335		378		**713**
SPLIT %				43.0%		57.0%		**39.7%**	**SPLIT %**				47.0%		53.0%		**60.3%**

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	537	646	1,183

AM Peak Hour			11:30	11:45	**11:45**	**PM Peak Hour**			13:00	12:00	**12:00**
AM Pk Volume			46	70	**110**	**PM Pk Volume**			51	70	**116**
Pk Hr Factor			0.767	0.833	**0.887**	**Pk Hr Factor**			0.797	0.833	**0.935**
7 - 9 Volume	0	0	45	90	**135**	**4 - 6 Volume**	0	0	77	97	**174**
7 - 9 Peak Hour			07:30	08:00	**08:00**	**4 - 6 Peak Hour**			16:00	16:15	**16:00**
7 - 9 Pk Volume	0	0	32	53	**79**	**4 - 6 Pk Volume**	0	0	45	58	**102**
Pk Hr Factor	0.000	0.000	0.889	0.576	**0.681**	**Pk Hr Factor**	0.000	0.000	0.563	0.967	**0.750**

Prepared by NDS/ATD

VOLUME

Lodi Ln E/O SR 29

Day: Saturday
Date: 4/22/2017

City: St Helena
Project #: CA17_7313_002

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	436	524	960

AM Period	NB	SB	EB		WB		TOTAL		PM Period	NB	SB	EB		WB		TOTAL	
00:00			1		0		1		12:00			5		18		23	
00:15			0		0		0		12:15			7		19		26	
00:30			1		0		1		12:30			5		7		12	
00:45			0	2	0		0	2	12:45			12	29	8	52	20	81
01:00			0		0		0		13:00			6		13		19	
01:15			0		0		0		13:15			6		13		19	
01:30			2		0		2		13:30			12		9		21	
01:45			0	2	1	1	1	3	13:45			10	34	8	43	18	77
02:00			1		0		1		14:00			10		14		24	
02:15			1		0		1		14:15			4		9		13	
02:30			0		0		0		14:30			6		5		11	
02:45			1	3	1	1	2	4	14:45			8	28	12	40	20	68
03:00			0		0		0		15:00			12		11		23	
03:15			0		0		0		15:15			5		15		20	
03:30			0		0		0		15:30			9		12		21	
03:45			0		0		0		15:45			13	39	11	49	24	88
04:00			0		0		0		16:00			11		7		18	
04:15			0		0		0		16:15			13		12		25	
04:30			0		0		0		16:30			6		8		14	
04:45			0		0		0		16:45			7	37	14	41	21	78
05:00			0		0		0		17:00			8		11		19	
05:15			1		0		1		17:15			11		10		21	
05:30			0		0		0		17:30			8		6		14	
05:45			2	3	2	2	4	5	17:45			6	33	4	31	10	64
06:00			1		2		3		18:00			14		12		26	
06:15			1		0		1		18:15			5		6		11	
06:30			5		1		6		18:30			3		2		5	
06:45			7	14	2	5	9	19	18:45			4	26	3	23	7	49
07:00			3		5		8		19:00			10		5		15	
07:15			2		7		9		19:15			3		3		6	
07:30			0		5		5		19:30			4		6		10	
07:45			3	8	4	21	7	29	19:45			7	24	3	17	10	41
08:00			8		8		16		20:00			8		3		11	
08:15			9		3		12		20:15			7		2		9	
08:30			7		5		12		20:30			3		2		5	
08:45			5	29	5	21	10	50	20:45			5	23	4	11	9	34
09:00			1		12		13		21:00			0		3		3	
09:15			9		7		16		21:15			2		2		4	
09:30			6		7		13		21:30			4		3		7	
09:45			8	24	9	35	17	59	21:45			2	8	3	11	5	19
10:00			7		16		23		22:00			3		1		4	
10:15			9		10		19		22:15			3		3		6	
10:30			9		15		24		22:30			2		1		3	
10:45			5	30	8	49	13	79	22:45			0	8	2	7	2	15
11:00			6		15		21		23:00			0		0		0	
11:15			6		14		20		23:15			3		2		5	
11:30			5		17		22		23:30			0		2		2	
11:45			11	28	13	59	24	87	23:45			1	4	1	5	2	9
TOTALS				143		194		**337**	**TOTALS**				293		330		**623**
SPLIT %				42.4%		57.6%		**35.1%**	**SPLIT %**				47.0%		53.0%		**64.9%**

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	436	524	960

AM Peak Hour			09:45	11:30	**11:30**	**PM Peak Hour**			15:30	12:00	**15:00**
AM Pk Volume			33	67	**95**	**PM Pk Volume**			46	52	**88**
Pk Hr Factor			0.917	0.882	**0.913**	**Pk Hr Factor**			0.885	0.684	**0.917**
7 - 9 Volume	0	0	37	42	**79**	**4 - 6 Volume**	0	0	70	72	**142**
7 - 9 Peak Hour			08:00	07:15	**08:00**	**4 - 6 Peak Hour**			16:00	16:15	**16:15**
7 - 9 Pk Volume	0	0	29	24	**50**	**4 - 6 Pk Volume**	0	0	37	45	**79**
Pk Hr Factor	0.000	0.000	0.806	0.750	**0.781**	**Pk Hr Factor**	0.000	0.000	0.712	0.804	**0.790**

Prepared by NDS/ATD

VOLUME

Lodi Ln E/O SR 29

Day: Sunday
Date: 4/23/2017

City: St Helena
Project #: CA17_7313_002

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	401	384	785

AM Period	NB	SB	EB		WB		TOTAL		PM Period	NB	SB	EB		WB		TOTAL	
00:00			0		1		1		12:00			4		7		11	
00:15			0		3		3		12:15			6		12		18	
00:30			0		0		0		12:30			6		14		20	
00:45			0		0	4	0	4	12:45			8	24	4	37	12	61
01:00			1		1		2		13:00			10		7		17	
01:15			1		0		1		13:15			5		4		9	
01:30			1		0		1		13:30			10		11		21	
01:45			0	3	0	1	0	4	13:45			8	33	7	29	15	62
02:00			0		0		0		14:00			14		8		22	
02:15			2		0		2		14:15			7		3		10	
02:30			0		0		0		14:30			4		13		17	
02:45			1	3	1	1	2	4	14:45			5	30	7	31	12	61
03:00			0		0		0		15:00			15		7		22	
03:15			0		2		2		15:15			7		6		13	
03:30			0		0		0		15:30			4		11		15	
03:45			1	1	0	2	1	3	15:45			9	35	9	33	18	68
04:00			0		0		0		16:00			4		4		8	
04:15			0		0		0		16:15			10		5		15	
04:30			0		0		0		16:30			5		5		10	
04:45			0		0		0		16:45			6	25	5	19	11	44
05:00			0		0		0		17:00			4		6		10	
05:15			0		0		0		17:15			4		4		8	
05:30			1		1		2		17:30			4		6		10	
05:45			1	2	1	2	2	4	17:45			8	20	3	19	11	39
06:00			0		1		1		18:00			4		10		14	
06:15			0		1		1		18:15			2		4		6	
06:30			1		0		1		18:30			1		3		4	
06:45			2	3	2	4	4	7	18:45			5	12	1	18	6	30
07:00			2		1		3		19:00			1		3		4	
07:15			2		1		3		19:15			6		4		10	
07:30			4		2		6		19:30			2		7		9	
07:45			3	11	7	11	10	22	19:45			4	13	1	15	5	28
08:00			7		5		12		20:00			2		1		3	
08:15			5		8		13		20:15			3		1		4	
08:30			14		10		24		20:30			8		0		8	
08:45			9	35	16	39	25	74	20:45			1	14	1	3	2	17
09:00			4		6		10		21:00			7		3		10	
09:15			13		5		18		21:15			4		2		6	
09:30			13		6		19		21:30			3		0		3	
09:45			12	42	9	26	21	68	21:45			1	15	0	5	1	20
10:00			14		9		23		22:00			1		0		1	
10:15			8		7		15		22:15			3		0		3	
10:30			8		10		18		22:30			3		2		5	
10:45			8	38	7	33	15	71	22:45			2	9	0	2	2	11
11:00			11		17		28		23:00			1		0		1	
11:15			8		12		20		23:15			0		0		0	
11:30			5		12		17		23:30			0		0		0	
11:45			7	31	9	50	16	81	23:45			1	2	0		1	2
TOTALS				169		173		342	TOTALS				232		211		443
SPLIT %				49.4%		50.6%		43.6%	SPLIT %				52.4%		47.6%		56.4%

DAILY TOTALS	NB	SB	EB	WB	Total
	0	0	401	384	785

AM Peak Hour			09:15		11:00		09:15		PM Peak Hour			13:30		12:00		13:30	
AM Pk Volume			52		50		81		PM Pk Volume			39		37		68	
Pk Hr Factor			0.929		0.735		0.880		Pk Hr Factor			0.696		0.661		0.773	
7 - 9 Volume	0	0	46		50		96		4 - 6 Volume	0	0	45		38		83	
7 - 9 Peak Hour			08:00		08:00		08:00		4 - 6 Peak Hour			16:00		16:15		16:15	
7 - 9 Pk Volume	0	0	35		39		74		4 - 6 Pk Volume	0	0	25		21		46	
Pk Hr Factor	0.000	0.000	0.625		0.609		0.740		Pk Hr Factor	0.000	0.000	0.625		0.875		0.767	

FREEMARK ABBEY DRIVEWAY COUNT SUMMARY

SPRING 2017

PEAK HOUR VOLUMES

	Thursday			Friday			Saturday			Sunday		
	Total	**In**	**Out**	**Total**	**In**	**Out**	**Total**	**In**	**Out**	**Total**	**In**	**Out**
1 SR 29 North	4	1	3	1	0	1	2	2	0	1	1	0
2 SR 29 South	10	4	6	19	7	12	23	14	9	13	7	6
3 Lodi Ln West	10	2	8	11	7	4	7	4	3	5	3	2
4 Lodi Ln East	3	1	2	6	3	3	1	1	0	0	0	0
	27	**8**	**19**	**37**	**17**	**20**	**33**	**21**	**12**	**19**	**11**	**8**

Weekday PM Peak Average	**32**	**13**	**19**
Saturday MD Peak Average	**33**	**21**	**12**

DAILY VOLUMES

	Thursday			Friday			Saturday			Sunday		
	Total	**In**	**Out**	**Total**	**In**	**Out**	**Total**	**In**	**Out**	**Total**	**In**	**Out**
1 SR 29 North	34	14	20	39	17	22	19	9	10	20	10	10
2 SR 29 South	148	75	73	184	84	100	225	105	120	155	76	79
3 Lodi Ln West	99	51	48	126	71	55	114	63	51	107	57	50
4 Lodi Ln East	56	30	26	65	33	32	30	16	14	17	8	9
	337	**170**	**167**	**414**	**205**	**209**	**388**	**193**	**195**	**299**	**151**	**148**

Daily Average **366**

Napa County Peak Hour Heavy Vehicle Percentages

September and October - 2017 and 2018

1. SR29/Lodi Ln		**Vehicles**	**5+ Axle Trucks**	**Grape Trucks**	**Total Trucks**	**%Total Trucks**
22-Sep-17 Friday	7:45-8:45 AM	1090	59	27	86	8.00
	3:45-4:45 PM	1474	43	10	53	**4.00**
23-Sep-17 Saturday	1:00-2:00 PM	1407	18	8	26	**2.00**
	3:00-4:00 PM	1430	30	1	31	2.00

2. Silverado Trail/Lodi Ln		**Vehicles**	**5+ Axle Trucks**	**Grape Trucks**	**Total Trucks**	**%Total Trucks**
22-Sep-17 Friday	8:00-9:00 AM	470	12	13	25	5.00
	3:45-4:45 PM	750	10	4	14	**2.00**
23-Sep-17 Saturday	1:00-2:00 PM	592	13	4	17	**3.00**
	2:15-3:15 PM	663	11	4	15	2.00

Note: All volumes are total volumes through intersection.

Source: Crane Transportation Group

GROWTH FACTOR CALCULATIONS

Facility	PM 2010	PM 2030	PM Growth Factor	Adjusted for 2017	
SR 29	1819	2772	1.52	1.34	
Silverado Trail	276	1012	3.67	2.74	
Deer Park Rd	918	1174	1.28	1.18	Applied to Lodi Ln

*PM Growth Factors used to calculate the PM and Wknd 2030 volumes from existing volumes

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Appendix D

Intersection Level of Service Calculations

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Intersection	
Int Delay, s/veh	0.8

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	22	21	689	22	14	515
Future Vol, veh/h	22	21	689	22	14	515
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	98	98	98	98	98	98
Heavy Vehicles, %	4	4	4	4	4	4
Mvmt Flow	22	21	703	22	14	526

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1268	714	0	0	725	0
Stage 1	714	-	-	-	-	-
Stage 2	554	-	-	-	-	-
Critical Hdwy	6.44	6.24	-	-	4.14	-
Critical Hdwy Stg 1	5.44	-	-	-	-	-
Critical Hdwy Stg 2	5.44	-	-	-	-	-
Follow-up Hdwy	3.536	3.336	-	-	2.236	-
Pot Cap-1 Maneuver	184	428	-	-	869	-
Stage 1	482	-	-	-	-	-
Stage 2	572	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	181	428	-	-	869	-
Mov Cap-2 Maneuver	181	-	-	-	-	-
Stage 1	482	-	-	-	-	-
Stage 2	563	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	22.3	0	0.2
HCM LOS	C		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	252	869	-
HCM Lane V/C Ratio	-	-	0.174	0.016	-
HCM Control Delay (s)	-	-	22.3	9.2	-
HCM Lane LOS	-	-	C	A	-
HCM 95th %tile Q(veh)	-	-	0.6	0.1	-

Intersection	
Int Delay, s/veh	1.1

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	10	38	16	280	243	17
Future Vol, veh/h	10	38	16	280	243	17
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	90	90	90	90	90	90
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	11	42	18	311	270	19

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	627	280	289	0	-	0
Stage 1	280	-	-	-	-	-
Stage 2	347	-	-	-	-	-
Critical Hdwy	6.42	6.22	4.12	-	-	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	2.218	-	-	-
Pot Cap-1 Maneuver	447	759	1273	-	-	-
Stage 1	767	-	-	-	-	-
Stage 2	716	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	439	759	1273	-	-	-
Mov Cap-2 Maneuver	439	-	-	-	-	-
Stage 1	754	-	-	-	-	-
Stage 2	716	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	10.9	0.4	0
HCM LOS	B		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	1273	-	659	-	-
HCM Lane V/C Ratio	0.014	-	0.081	-	-
HCM Control Delay (s)	7.9	0	10.9	-	-
HCM Lane LOS	A	A	B	-	-
HCM 95th %tile Q(veh)	0	-	0.3	-	-

Intersection	
Int Delay, s/veh	1.2

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	26	24	642	17	25	490
Future Vol, veh/h	26	24	642	17	25	490
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	91	91	91	91	91	91
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	29	26	705	19	27	538

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1307	715	0	0	724	0
Stage 1	715	-	-	-	-	-
Stage 2	592	-	-	-	-	-
Critical Hdwy	6.42	6.22	-	-	4.12	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	-	-	2.218	-
Pot Cap-1 Maneuver	176	431	-	-	879	-
Stage 1	485	-	-	-	-	-
Stage 2	553	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	171	431	-	-	879	-
Mov Cap-2 Maneuver	171	-	-	-	-	-
Stage 1	485	-	-	-	-	-
Stage 2	536	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	24.3	0	0.4
HCM LOS	C		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	241	879	-
HCM Lane V/C Ratio	-	-	0.228	0.031	-
HCM Control Delay (s)	-	-	24.3	9.2	-
HCM Lane LOS	-	-	C	A	-
HCM 95th %tile Q(veh)	-	-	0.9	0.1	-

Intersection	
Int Delay, s/veh	1.2

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	22	26	30	364	201	37
Future Vol, veh/h	22	26	30	364	201	37
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	93	93	93	93	93	93
Heavy Vehicles, %	3	3	3	3	3	3
Mvmt Flow	24	28	32	391	216	40

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	691	236	256	0	-	0
Stage 1	236	-	-	-	-	-
Stage 2	455	-	-	-	-	-
Critical Hdwy	6.43	6.23	4.13	-	-	-
Critical Hdwy Stg 1	5.43	-	-	-	-	-
Critical Hdwy Stg 2	5.43	-	-	-	-	-
Follow-up Hdwy	3.527	3.327	2.227	-	-	-
Pot Cap-1 Maneuver	409	801	1303	-	-	-
Stage 1	801	-	-	-	-	-
Stage 2	637	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	396	801	1303	-	-	-
Mov Cap-2 Maneuver	396	-	-	-	-	-
Stage 1	776	-	-	-	-	-
Stage 2	637	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	12.3	0.6	0
HCM LOS	B		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	1303	-	545	-	-
HCM Lane V/C Ratio	0.025	-	0.095	-	-
HCM Control Delay (s)	7.8	0	12.3	-	-
HCM Lane LOS	A	A	B	-	-
HCM 95th %tile Q(veh)	0.1	-	0.3	-	-

Intersection	
Int Delay, s/veh	1.3

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	26	25	923	26	17	690
Future Vol, veh/h	26	25	923	26	17	690
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	4	4	4	4	4	4
Mvmt Flow	26	25	923	26	17	690

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1660	936	0	0	949	0
Stage 1	936	-	-	-	-	-
Stage 2	724	-	-	-	-	-
Critical Hdwy	6.44	6.24	-	-	4.14	-
Critical Hdwy Stg 1	5.44	-	-	-	-	-
Critical Hdwy Stg 2	5.44	-	-	-	-	-
Follow-up Hdwy	3.536	3.336	-	-	2.236	-
Pot Cap-1 Maneuver	106	319	-	-	715	-
Stage 1	378	-	-	-	-	-
Stage 2	476	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	103	319	-	-	715	-
Mov Cap-2 Maneuver	103	-	-	-	-	-
Stage 1	378	-	-	-	-	-
Stage 2	465	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	39.5	0	0.2
HCM LOS	E		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	154	715	-
HCM Lane V/C Ratio	-	-	0.331	0.024	-
HCM Control Delay (s)	-	-	39.5	10.2	-
HCM Lane LOS	-	-	E	B	-
HCM 95th %tile Q(veh)	-	-	1.3	0.1	-

Intersection	
Int Delay, s/veh	0.8

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	12	45	19	767	666	20
Future Vol, veh/h	12	45	19	767	666	20
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	12	45	19	767	666	20

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	1481	676	686	0	-	0
Stage 1	676	-	-	-	-	-
Stage 2	805	-	-	-	-	-
Critical Hdwy	6.42	6.22	4.12	-	-	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	2.218	-	-	-
Pot Cap-1 Maneuver	138	453	908	-	-	-
Stage 1	505	-	-	-	-	-
Stage 2	440	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	133	453	908	-	-	-
Mov Cap-2 Maneuver	133	-	-	-	-	-
Stage 1	487	-	-	-	-	-
Stage 2	440	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	19.7	0.2	0
HCM LOS	C		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	908	-	301	-	-
HCM Lane V/C Ratio	0.021	-	0.189	-	-
HCM Control Delay (s)	9	0	19.7	-	-
HCM Lane LOS	A	A	C	-	-
HCM 95th %tile Q(veh)	0.1	-	0.7	-	-

Intersection	
Int Delay, s/veh	1.5

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	31	28	860	20	30	657
Future Vol, veh/h	31	28	860	20	30	657
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	31	28	860	20	30	657

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1587	870	0	0	880	0
Stage 1	870	-	-	-	-	-
Stage 2	717	-	-	-	-	-
Critical Hdwy	6.42	6.22	-	-	4.12	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	-	-	2.218	-
Pot Cap-1 Maneuver	119	351	-	-	768	-
Stage 1	410	-	-	-	-	-
Stage 2	484	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	114	351	-	-	768	-
Mov Cap-2 Maneuver	114	-	-	-	-	-
Stage 1	410	-	-	-	-	-
Stage 2	465	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	37.6	0	0.4
HCM LOS	E		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	168	768	-
HCM Lane V/C Ratio	-	-	0.351	0.039	-
HCM Control Delay (s)	-	-	37.6	9.9	-
HCM Lane LOS	-	-	E	A	-
HCM 95th %tile Q(veh)	-	-	1.5	0.1	-

Intersection	
Int Delay, s/veh	1.3

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	26	31	35	997	551	44
Future Vol, veh/h	26	31	35	997	551	44
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	3	3	3	3	3	3
Mvmt Flow	26	31	35	997	551	44

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	1640	573	595	0	-	0
Stage 1	573	-	-	-	-	-
Stage 2	1067	-	-	-	-	-
Critical Hdwy	6.43	6.23	4.13	-	-	-
Critical Hdwy Stg 1	5.43	-	-	-	-	-
Critical Hdwy Stg 2	5.43	-	-	-	-	-
Follow-up Hdwy	3.527	3.327	2.227	-	-	-
Pot Cap-1 Maneuver	110	517	976	-	-	-
Stage 1	562	-	-	-	-	-
Stage 2	329	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	101	517	976	-	-	-
Mov Cap-2 Maneuver	101	-	-	-	-	-
Stage 1	517	-	-	-	-	-
Stage 2	329	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	34	0.3	0
HCM LOS	D		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	976	-	180	-	-
HCM Lane V/C Ratio	0.036	-	0.317	-	-
HCM Control Delay (s)	8.8	0	34	-	-
HCM Lane LOS	A	A	D	-	-
HCM 95th %tile Q(veh)	0.1	-	1.3	-	-

Intersection	
Int Delay, s/veh	1.1

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	27	25	692	26	16	519
Future Vol, veh/h	27	25	692	26	16	519
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	98	98	98	98	98	98
Heavy Vehicles, %	4	4	4	4	4	4
Mvmt Flow	28	26	706	27	16	530

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1282	720	0	0	733	0
Stage 1	720	-	-	-	-	-
Stage 2	562	-	-	-	-	-
Critical Hdwy	6.44	6.24	-	-	4.14	-
Critical Hdwy Stg 1	5.44	-	-	-	-	-
Critical Hdwy Stg 2	5.44	-	-	-	-	-
Follow-up Hdwy	3.536	3.336	-	-	2.236	-
Pot Cap-1 Maneuver	181	425	-	-	863	-
Stage 1	478	-	-	-	-	-
Stage 2	567	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	178	425	-	-	863	-
Mov Cap-2 Maneuver	178	-	-	-	-	-
Stage 1	478	-	-	-	-	-
Stage 2	556	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	23.5	0	0.3
HCM LOS	C		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	247	863	-
HCM Lane V/C Ratio	-	-	0.215	0.019	-
HCM Control Delay (s)	-	-	23.5	9.3	-
HCM Lane LOS	-	-	C	A	-
HCM 95th %tile Q(veh)	-	-	0.8	0.1	-

Intersection	
Int Delay, s/veh	1.2

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	11	41	18	280	243	18
Future Vol, veh/h	11	41	18	280	243	18
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	90	90	90	90	90	90
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	12	46	20	311	270	20

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	631	280	290	0	-	0
Stage 1	280	-	-	-	-	-
Stage 2	351	-	-	-	-	-
Critical Hdwy	6.42	6.22	4.12	-	-	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	2.218	-	-	-
Pot Cap-1 Maneuver	445	759	1272	-	-	-
Stage 1	767	-	-	-	-	-
Stage 2	713	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	437	759	1272	-	-	-
Mov Cap-2 Maneuver	437	-	-	-	-	-
Stage 1	752	-	-	-	-	-
Stage 2	713	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	11	0.5	0
HCM LOS	B		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	1272	-	657	-	-
HCM Lane V/C Ratio	0.016	-	0.088	-	-
HCM Control Delay (s)	7.9	0	11	-	-
HCM Lane LOS	A	A	B	-	-
HCM 95th %tile Q(veh)	0	-	0.3	-	-

Intersection	
Int Delay, s/veh	1.6

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	33	29	648	27	31	495
Future Vol, veh/h	33	29	648	27	31	495
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	91	91	91	91	91	91
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	36	32	712	30	34	544

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1339	727	0	0	742	0
Stage 1	727	-	-	-	-	-
Stage 2	612	-	-	-	-	-
Critical Hdwy	6.42	6.22	-	-	4.12	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	-	-	2.218	-
Pot Cap-1 Maneuver	168	424	-	-	865	-
Stage 1	478	-	-	-	-	-
Stage 2	541	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	161	424	-	-	865	-
Mov Cap-2 Maneuver	161	-	-	-	-	-
Stage 1	478	-	-	-	-	-
Stage 2	520	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	27.5	0	0.5
HCM LOS	D		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	227	865	-
HCM Lane V/C Ratio	-	-	0.3	0.039	-
HCM Control Delay (s)	-	-	27.5	9.3	-
HCM Lane LOS	-	-	D	A	-
HCM 95th %tile Q(veh)	-	-	1.2	0.1	-

Intersection	
Int Delay, s/veh	1.3

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	23	30	35	364	201	39
Future Vol, veh/h	23	30	35	364	201	39
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	93	93	93	93	93	93
Heavy Vehicles, %	3	3	3	3	3	3
Mvmt Flow	25	32	38	391	216	42

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	704	237	258	0	-	0
Stage 1	237	-	-	-	-	-
Stage 2	467	-	-	-	-	-
Critical Hdwy	6.43	6.23	4.13	-	-	-
Critical Hdwy Stg 1	5.43	-	-	-	-	-
Critical Hdwy Stg 2	5.43	-	-	-	-	-
Follow-up Hdwy	3.527	3.327	2.227	-	-	-
Pot Cap-1 Maneuver	402	800	1301	-	-	-
Stage 1	800	-	-	-	-	-
Stage 2	629	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	387	800	1301	-	-	-
Mov Cap-2 Maneuver	387	-	-	-	-	-
Stage 1	770	-	-	-	-	-
Stage 2	629	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	12.3	0.7	0
HCM LOS	B		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	1301	-	547	-	-
HCM Lane V/C Ratio	0.029	-	0.104	-	-
HCM Control Delay (s)	7.8	0	12.3	-	-
HCM Lane LOS	A	A	B	-	-
HCM 95th %tile Q(veh)	0.1	-	0.3	-	-

Intersection	
Int Delay, s/veh	1.6

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	31	29	926	30	19	694
Future Vol, veh/h	31	29	926	30	19	694
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	4	4	4	4	4	4
Mvmt Flow	31	29	926	30	19	694

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1673	941	0	0	956	0
Stage 1	941	-	-	-	-	-
Stage 2	732	-	-	-	-	-
Critical Hdwy	6.44	6.24	-	-	4.14	-
Critical Hdwy Stg 1	5.44	-	-	-	-	-
Critical Hdwy Stg 2	5.44	-	-	-	-	-
Follow-up Hdwy	3.536	3.336	-	-	2.236	-
Pot Cap-1 Maneuver	104	317	-	-	711	-
Stage 1	376	-	-	-	-	-
Stage 2	472	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	101	317	-	-	711	-
Mov Cap-2 Maneuver	101	-	-	-	-	-
Stage 1	376	-	-	-	-	-
Stage 2	459	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	43.7	0	0.3
HCM LOS	E		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	151	711	-
HCM Lane V/C Ratio	-	-	0.397	0.027	-
HCM Control Delay (s)	-	-	43.7	10.2	-
HCM Lane LOS	-	-	E	B	-
HCM 95th %tile Q(veh)	-	-	1.7	0.1	-

Intersection	
Int Delay, s/veh	1.4

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	31	29	926	30	19	694
Future Vol, veh/h	31	29	926	30	19	694
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	75	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	4	4	4	4	4	4
Mvmt Flow	31	29	926	30	19	694

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1673	941	0	0	956	0
Stage 1	941	-	-	-	-	-
Stage 2	732	-	-	-	-	-
Critical Hdwy	6.44	6.24	-	-	4.14	-
Critical Hdwy Stg 1	5.44	-	-	-	-	-
Critical Hdwy Stg 2	5.44	-	-	-	-	-
Follow-up Hdwy	3.536	3.336	-	-	2.236	-
Pot Cap-1 Maneuver	104	317	-	-	711	-
Stage 1	376	-	-	-	-	-
Stage 2	472	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	101	317	-	-	711	-
Mov Cap-2 Maneuver	101	-	-	-	-	-
Stage 1	376	-	-	-	-	-
Stage 2	459	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	37.2	0	0.3
HCM LOS	E		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	WBLn2	SBL	SBT
Capacity (veh/h)	-	-	101	317	711	-
HCM Lane V/C Ratio	-	-	0.307	0.091	0.027	-
HCM Control Delay (s)	-	-	55.7	17.5	10.2	-
HCM Lane LOS	-	-	F	C	B	-
HCM 95th %tile Q(veh)	-	-	1.2	0.3	0.1	-

Intersection	
Int Delay, s/veh	0.9

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	13	48	21	767	666	21
Future Vol, veh/h	13	48	21	767	666	21
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	13	48	21	767	666	21

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	1486	677	687	0	-	0
Stage 1	677	-	-	-	-	-
Stage 2	809	-	-	-	-	-
Critical Hdwy	6.42	6.22	4.12	-	-	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	2.218	-	-	-
Pot Cap-1 Maneuver	137	453	907	-	-	-
Stage 1	505	-	-	-	-	-
Stage 2	438	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	132	453	907	-	-	-
Mov Cap-2 Maneuver	132	-	-	-	-	-
Stage 1	485	-	-	-	-	-
Stage 2	438	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	20.2	0.2	0
HCM LOS	C		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	907	-	298	-	-
HCM Lane V/C Ratio	0.023	-	0.205	-	-
HCM Control Delay (s)	9.1	0	20.2	-	-
HCM Lane LOS	A	A	C	-	-
HCM 95th %tile Q(veh)	0.1	-	0.8	-	-

Intersection	
Int Delay, s/veh	2.1

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	38	33	866	30	36	662
Future Vol, veh/h	38	33	866	30	36	662
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	38	33	866	30	36	662

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1615	881	0	0	896	0
Stage 1	881	-	-	-	-	-
Stage 2	734	-	-	-	-	-
Critical Hdwy	6.42	6.22	-	-	4.12	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	-	-	2.218	-
Pot Cap-1 Maneuver	114	346	-	-	757	-
Stage 1	405	-	-	-	-	-
Stage 2	475	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	109	346	-	-	757	-
Mov Cap-2 Maneuver	109	-	-	-	-	-
Stage 1	405	-	-	-	-	-
Stage 2	452	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	44.3	0	0.5
HCM LOS	E		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	SBL	SBT
Capacity (veh/h)	-	-	160	757	-
HCM Lane V/C Ratio	-	-	0.444	0.048	-
HCM Control Delay (s)	-	-	44.3	10	-
HCM Lane LOS	-	-	E	A	-
HCM 95th %tile Q(veh)	-	-	2	0.1	-

Intersection	
Int Delay, s/veh	1.8

Movement	WBL	WBR	NBT	NBR	SBL	SBT
Lane Configurations						
Traffic Vol, veh/h	38	33	866	30	36	662
Future Vol, veh/h	38	33	866	30	36	662
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	75	-	-	90	-
Veh in Median Storage, #	0	-	0	-	-	0
Grade, %	0	-	0	-	-	0
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	2	2	2	2	2	2
Mvmt Flow	38	33	866	30	36	662

Major/Minor	Minor1		Major1		Major2	
Conflicting Flow All	1615	881	0	0	896	0
Stage 1	881	-	-	-	-	-
Stage 2	734	-	-	-	-	-
Critical Hdwy	6.42	6.22	-	-	4.12	-
Critical Hdwy Stg 1	5.42	-	-	-	-	-
Critical Hdwy Stg 2	5.42	-	-	-	-	-
Follow-up Hdwy	3.518	3.318	-	-	2.218	-
Pot Cap-1 Maneuver	114	346	-	-	757	-
Stage 1	405	-	-	-	-	-
Stage 2	475	-	-	-	-	-
Platoon blocked, %			-	-		-
Mov Cap-1 Maneuver	109	346	-	-	757	-
Mov Cap-2 Maneuver	109	-	-	-	-	-
Stage 1	405	-	-	-	-	-
Stage 2	452	-	-	-	-	-

Approach	WB	NB	SB
HCM Control Delay, s	37	0	0.5
HCM LOS	E		

Minor Lane/Major Mvmt	NBT	NBR	WBLn1	WBLn2	SBL	SBT
Capacity (veh/h)	-	-	109	346	757	-
HCM Lane V/C Ratio	-	-	0.349	0.095	0.048	-
HCM Control Delay (s)	-	-	54.8	16.5	10	-
HCM Lane LOS	-	-	F	C	A	-
HCM 95th %tile Q(veh)	-	-	1.4	0.3	0.1	-

Intersection	
Int Delay, s/veh	1.5

Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Vol, veh/h	27	35	40	997	551	46
Future Vol, veh/h	27	35	40	997	551	46
Conflicting Peds, #/hr	0	0	0	0	0	0
Sign Control	Stop	Stop	Free	Free	Free	Free
RT Channelized	-	None	-	None	-	None
Storage Length	0	-	-	-	-	-
Veh in Median Storage, #	0	-	-	0	0	-
Grade, %	0	-	-	0	0	-
Peak Hour Factor	100	100	100	100	100	100
Heavy Vehicles, %	3	3	3	3	3	3
Mvmt Flow	27	35	40	997	551	46

Major/Minor	Minor2		Major1		Major2	
Conflicting Flow All	1651	574	597	0	-	0
Stage 1	574	-	-	-	-	-
Stage 2	1077	-	-	-	-	-
Critical Hdwy	6.43	6.23	4.13	-	-	-
Critical Hdwy Stg 1	5.43	-	-	-	-	-
Critical Hdwy Stg 2	5.43	-	-	-	-	-
Follow-up Hdwy	3.527	3.327	2.227	-	-	-
Pot Cap-1 Maneuver	108	516	975	-	-	-
Stage 1	561	-	-	-	-	-
Stage 2	326	-	-	-	-	-
Platoon blocked, %				-	-	-
Mov Cap-1 Maneuver	98	516	975	-	-	-
Mov Cap-2 Maneuver	98	-	-	-	-	-
Stage 1	509	-	-	-	-	-
Stage 2	326	-	-	-	-	-

Approach	EB	NB	SB
HCM Control Delay, s	34.9	0.3	0
HCM LOS	D		

Minor Lane/Major Mvmt	NBL	NBT	EBLn1	SBT	SBR
Capacity (veh/h)	975	-	181	-	-
HCM Lane V/C Ratio	0.041	-	0.343	-	-
HCM Control Delay (s)	8.8	0	34.9	-	-
HCM Lane LOS	A	A	D	-	-
HCM 95th %tile Q(veh)	0.1	-	1.4	-	-

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Appendix E

Signal Warrants Analysis

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Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Existing

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.26 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 43 vph

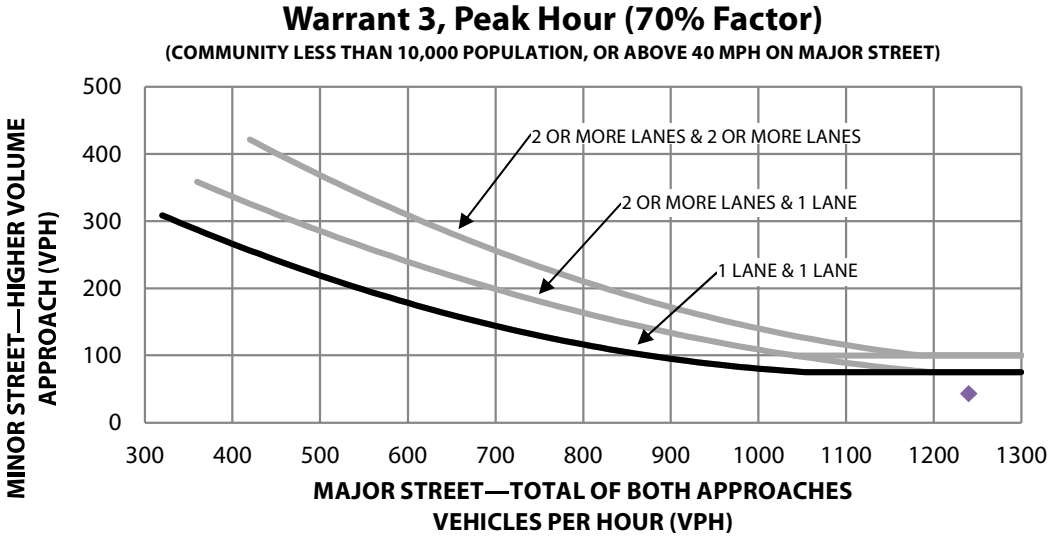
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1283 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Existing

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.14 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 48 vph

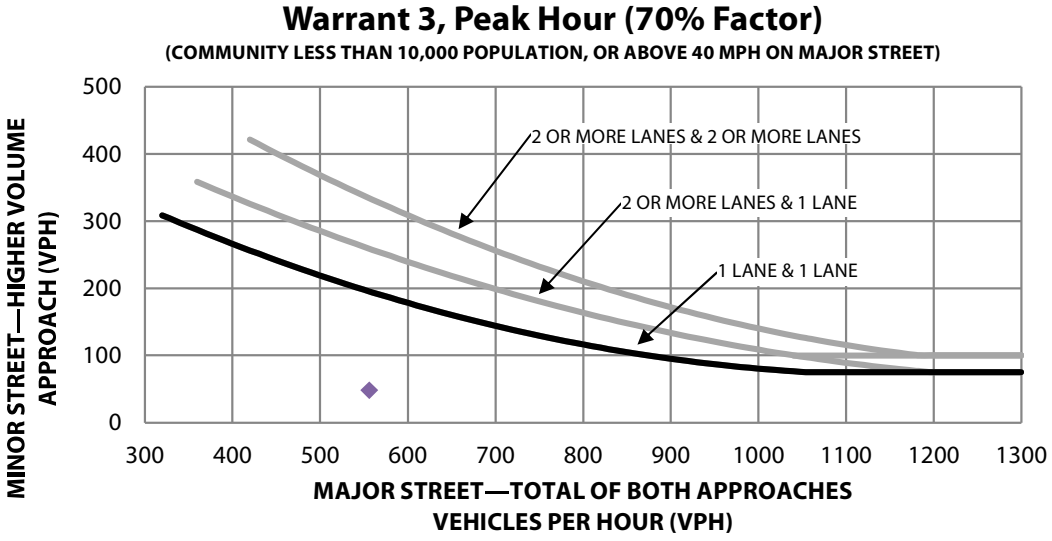
Condition A3 — Not Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 604 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: MD Existing

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.34 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 50 vph

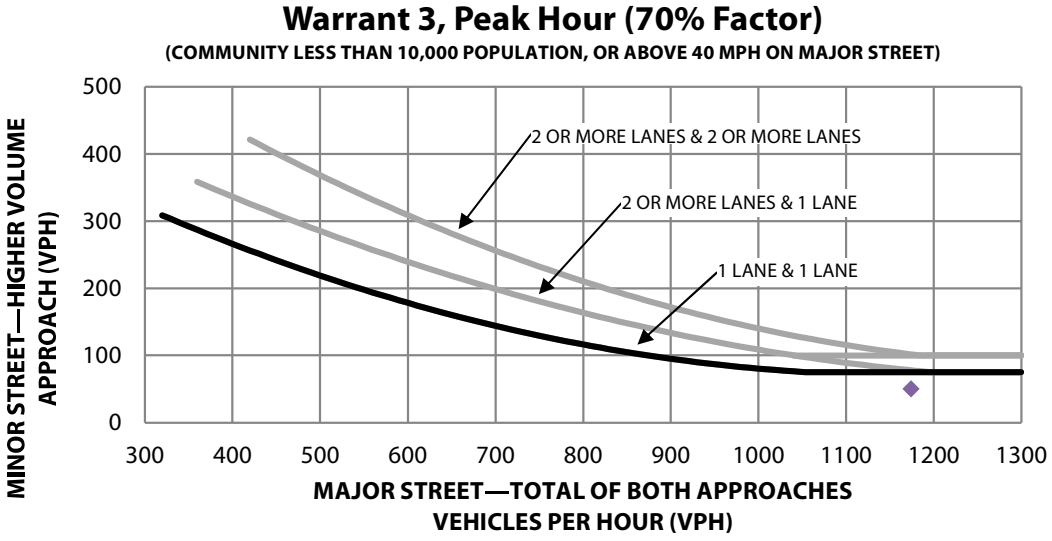
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1224 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Saturday, April 22, 2017
Scenario: Wknd MD Existing

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.16 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 48 vph

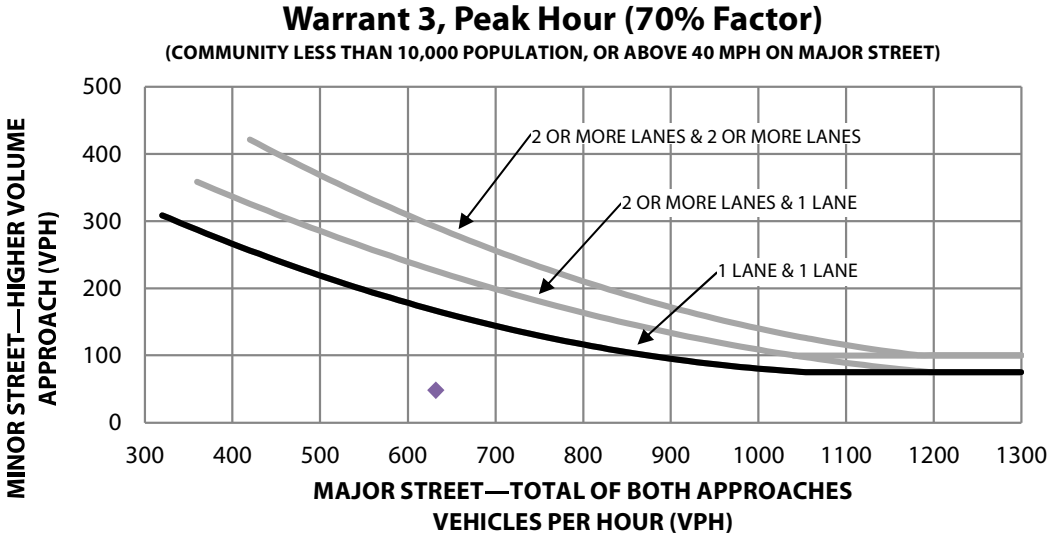
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 680 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Permitted

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.47 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 69 vph

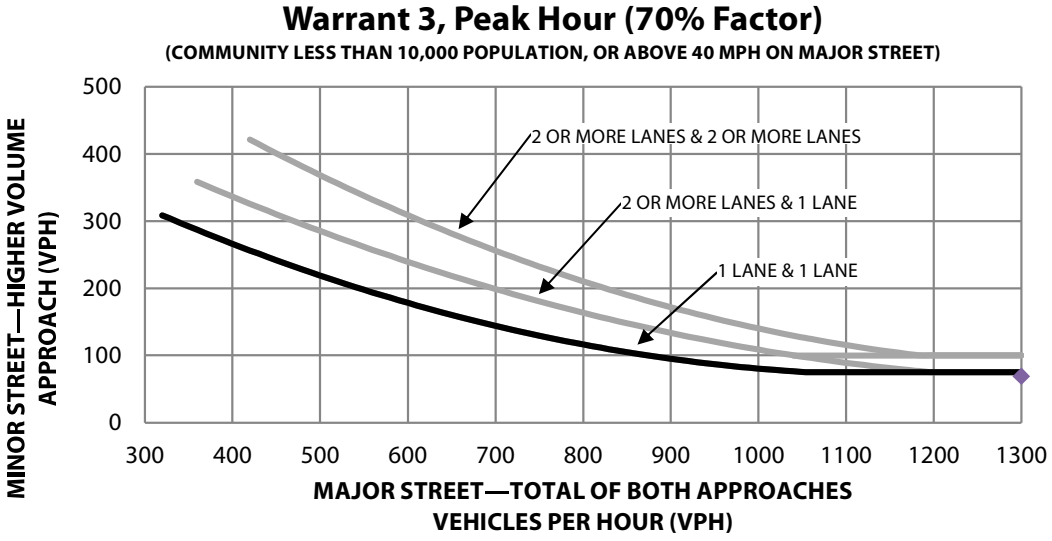
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1369 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Perrmitted

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.18 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 59 vph

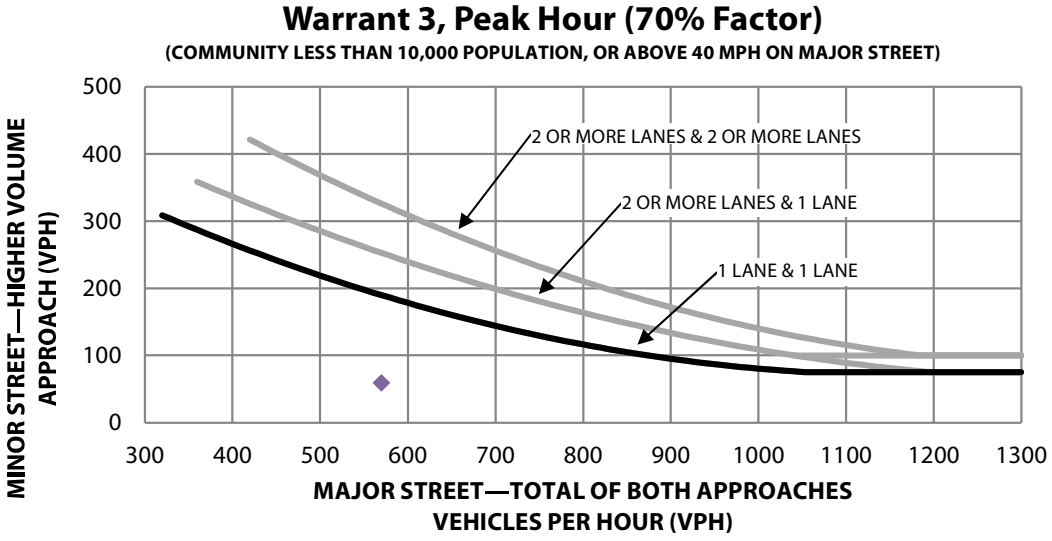
Condition A3 — Not Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 629 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

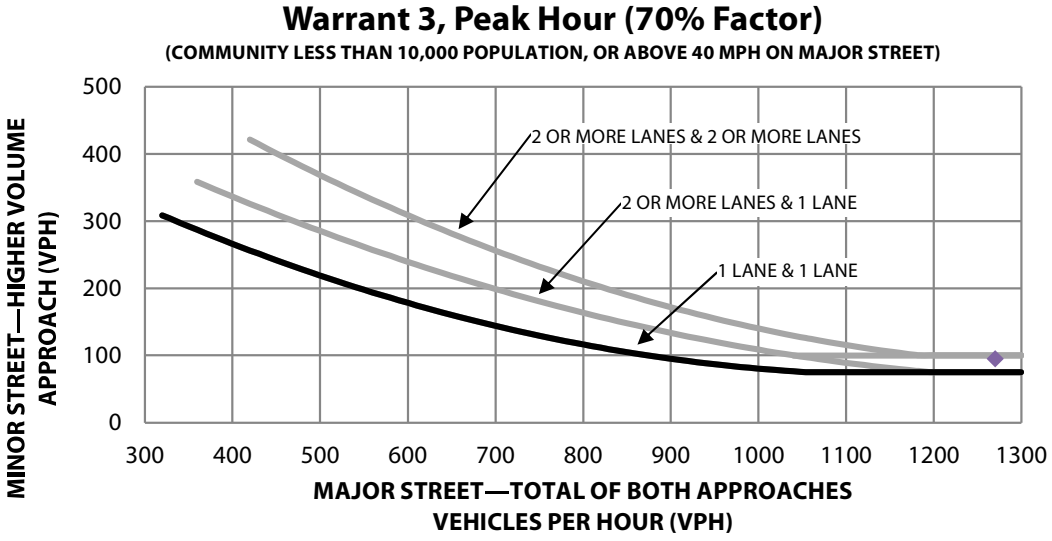
Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: MD Permitted

Warrant 3 Met?: Met when either Condition A or B is met	**Yes**
Condition A: Met when conditions A1, A2, and A3 are met	Not Met
Condition A1	Not Met
The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach	
Minor Approach Delay: 0.78 vehicle-hours	
Condition A2	Not Met
The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes	
Minor Approach Volume: 95 vph	
Condition A3	Met
The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches	
Total Entering Volume: 1365 vph	
Condition B	Met
The plotted point falls above the curve	



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Saturday, April 22, 2017
Scenario: Wknd MD Permitted

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.23 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 67 vph

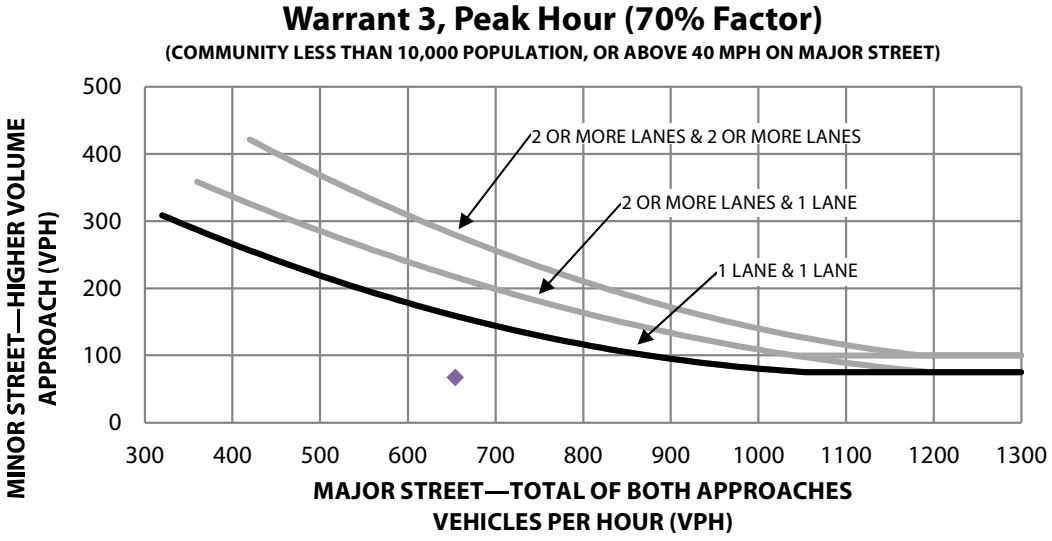
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 721 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Future

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.55 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 51 vph

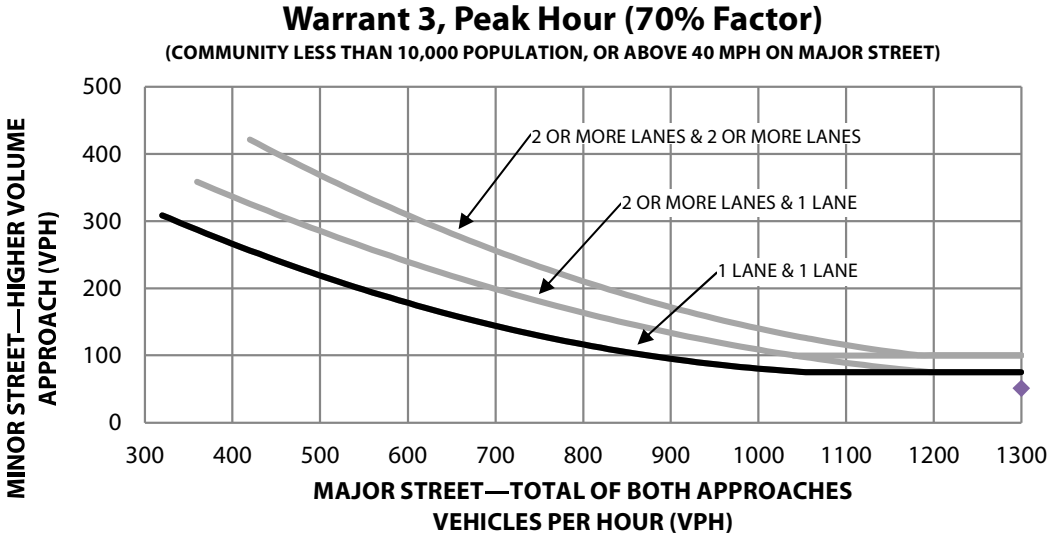
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1707 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Future

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.28 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 57 vph

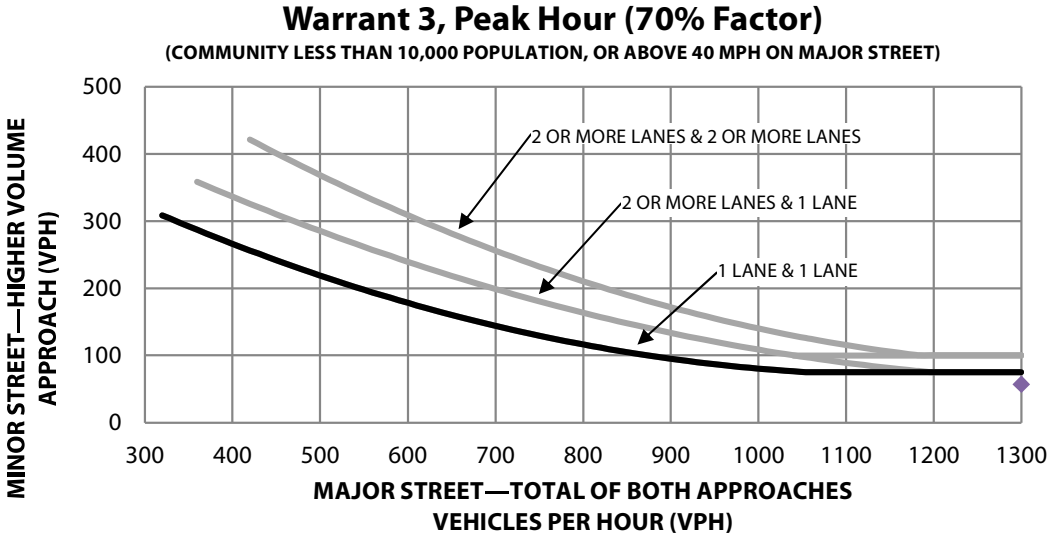
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1529 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: MD Future

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.62 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 59 vph

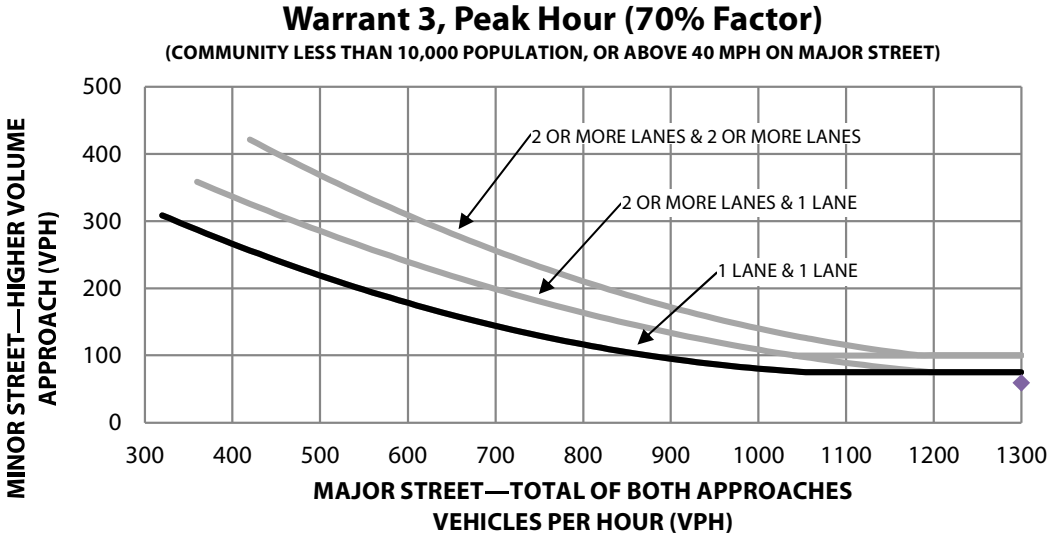
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1626 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Saturday, April 22, 2017
Scenario: Wknd MD Future

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.48 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 57 vph

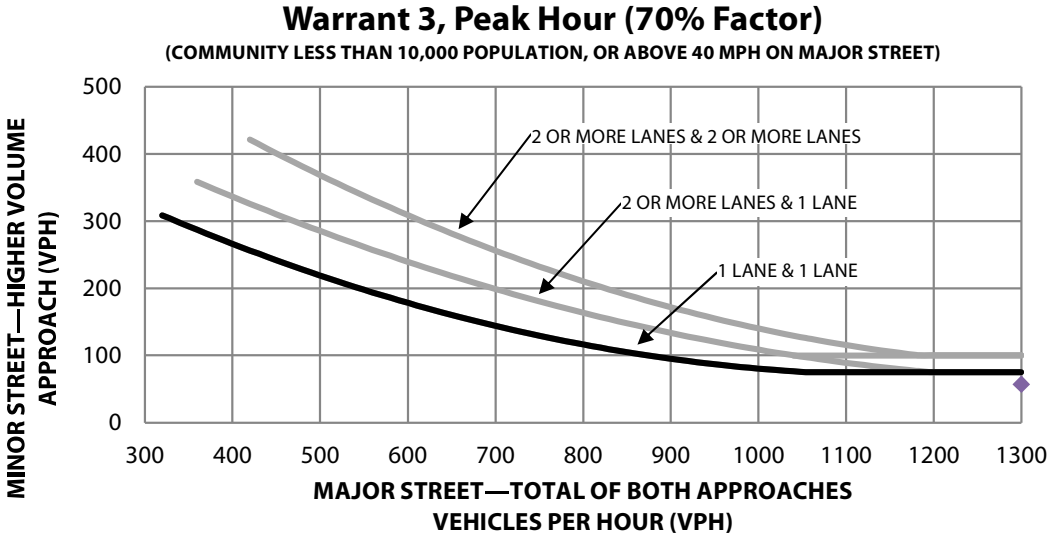
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1684 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Existing + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.34 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 52 vph

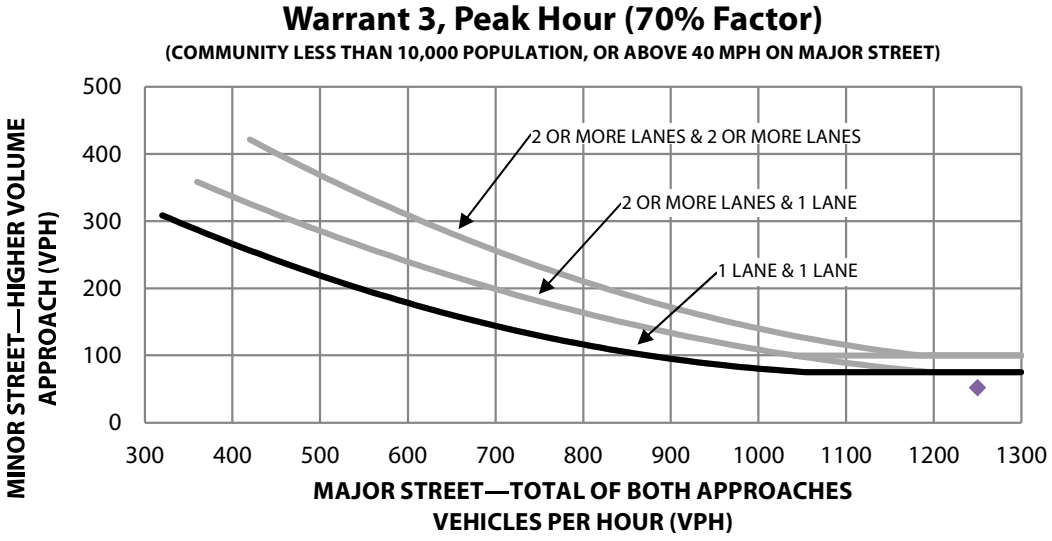
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1302 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Existing + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.15 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 52 vph

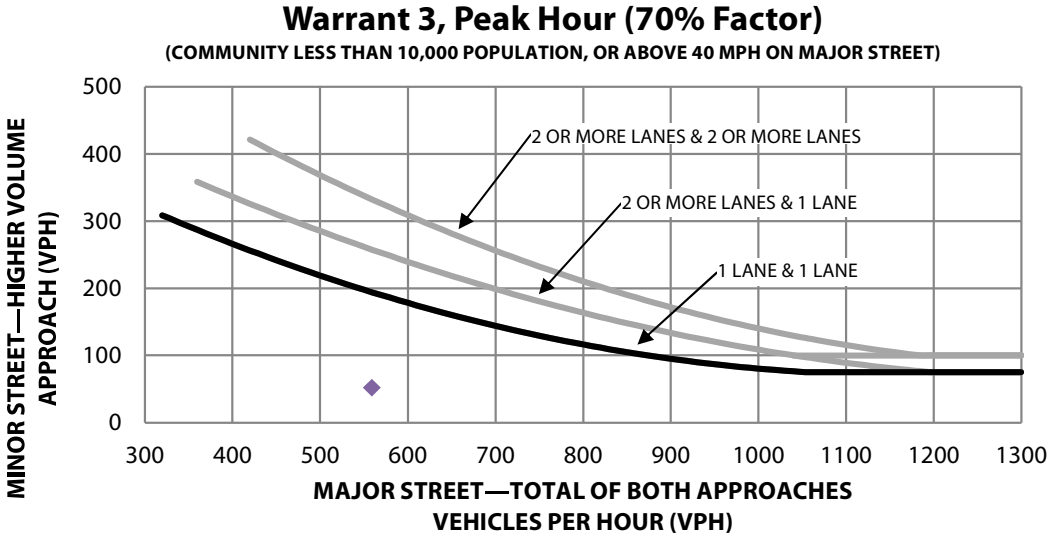
Condition A3 — Not Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 611 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: MD Existing + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.47 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 62 vph

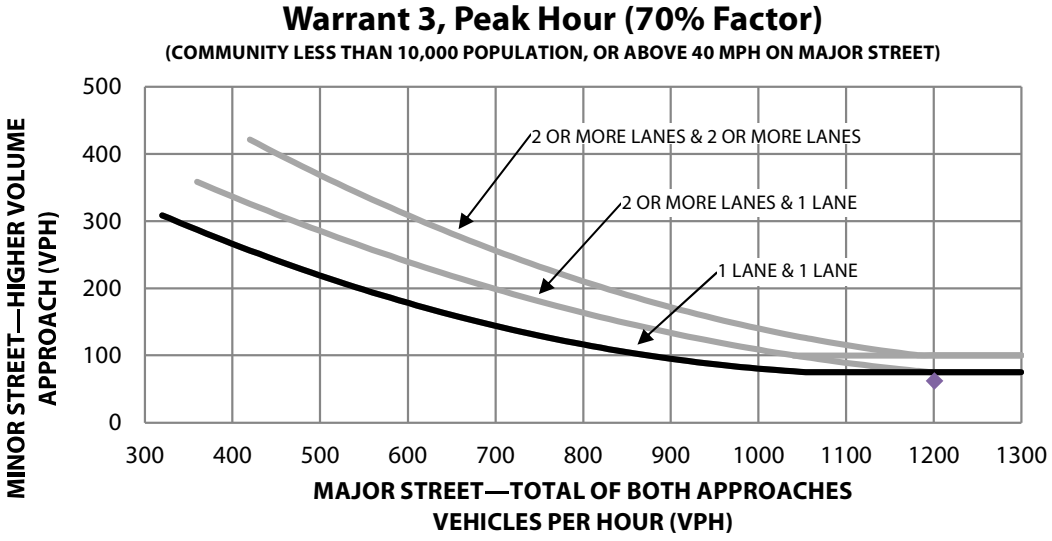
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1263 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Saturday, April 22, 2017
Scenario: Wknd MD Existing + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.18 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 53 vph

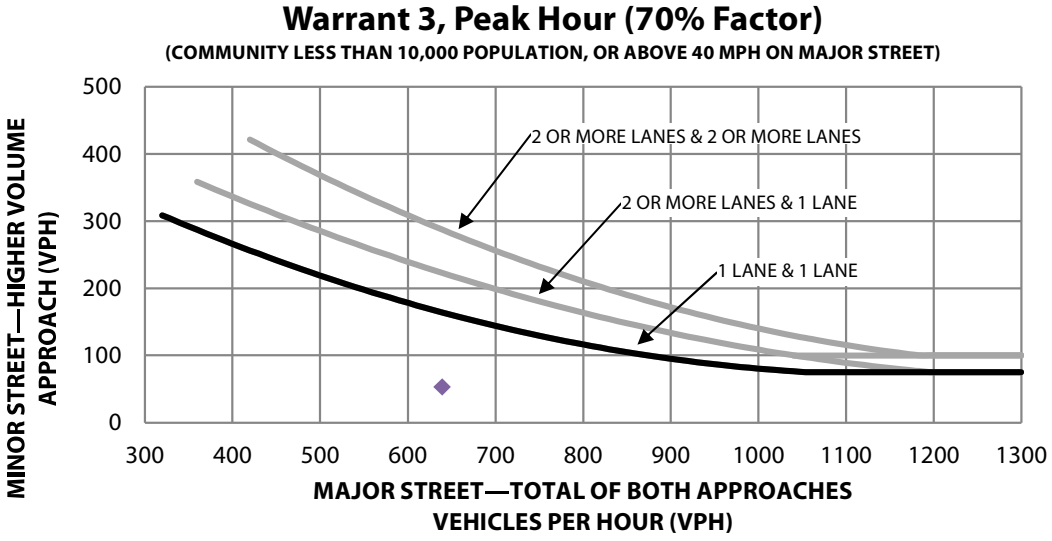
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 692 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Future + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.72 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 60 vph

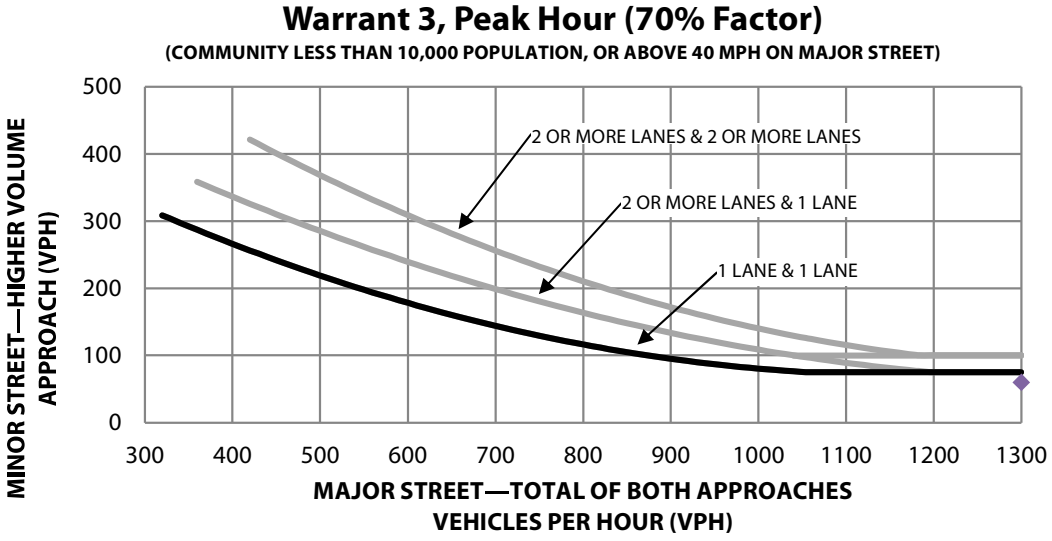
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1729 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: PM Future + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.3 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 61 vph

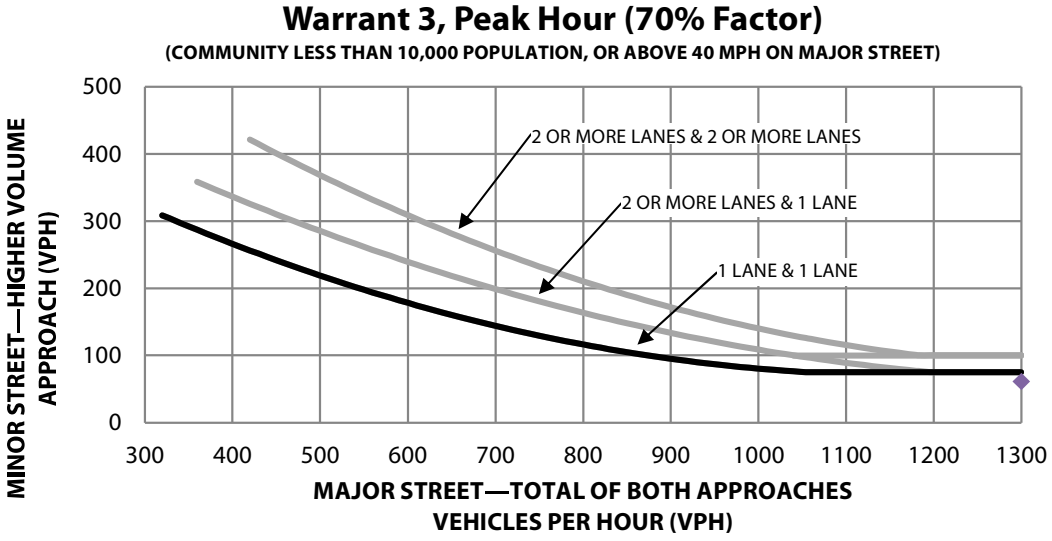
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1536 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

SR 29 & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 1

	Major Street	Minor Street
Street Name	SR 29	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Thursday, April 20, 2017
Scenario: MD Future + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.87 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 71 vph

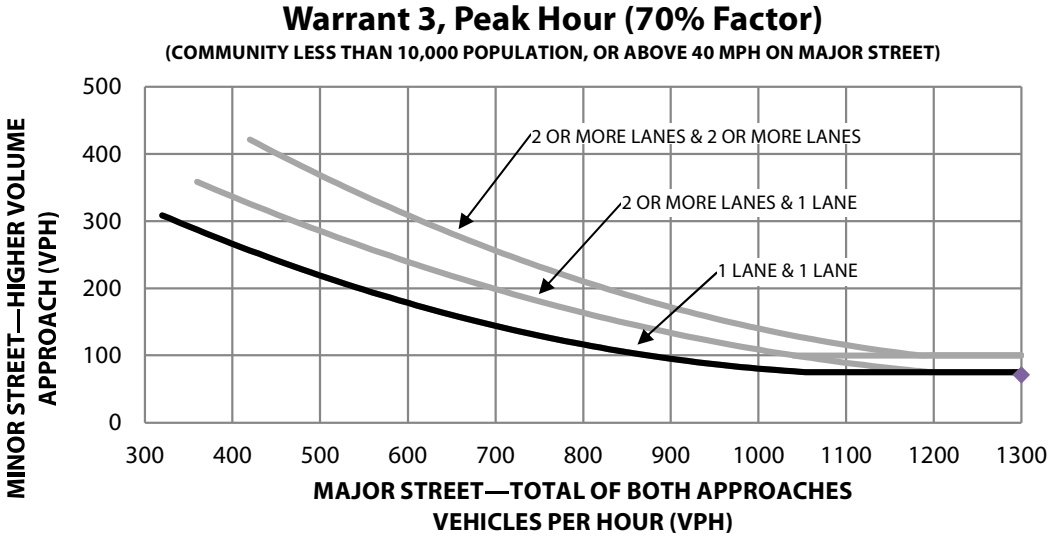
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1665 vph

Condition B — Not Met

The plotted point falls above the curve



Warrant 3: Peak-Hour Volumes and Delay

Silverado Trail & Lodi Ln
County of Napa

Project Name: Inn at the Abbey

Intersection: 2

	Major Street	Minor Street
Street Name	Silverado Trail	Lodi Ln
Direction	N-S	E-W
Number of Lanes	1	1
Approach Speed	50	40

Population less than 10,000? No
Date of Count: Saturday, April 22, 2017
Scenario: Wknd MD Future + Project

Warrant 3 Met?: Met when either Condition A or B is met — **No**

Condition A: Met when conditions A1, A2, and A3 are met — Not Met

Condition A1 — Not Met

The total delay experienced by traffic on one minor street approach (one direction only) controlled by a STOP sign equals or exceeds four vehicle-hours for a one lane approach, or five vehicle-hours for a two-lane approach

Minor Approach Delay: 0.53 vehicle-hours

Condition A2 — Not Met

The volume on the same minor street approach (one direction only) equals or exceeds 100 vph for one moving lane of traffic of 150 vph for two moving lanes

Minor Approach Volume: 62 vph

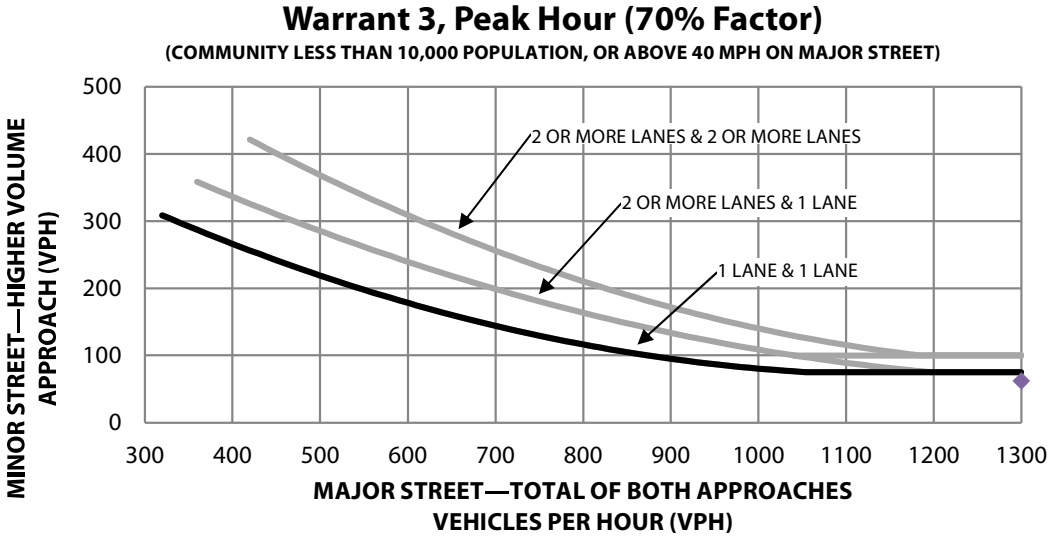
Condition A3 — Met

The total entering volume serviced during the hour equals or exceeds 800 vph for intersections with four or more appraches or 650 vph for intersections with three approaches

Total Entering Volume: 1696 vph

Condition B — Not Met

The plotted point falls above the curve



Appendix F

Queuing Calculations

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Queue Length Estimation at Two-Way STOP Controlled Intersection

Project Information

Analyst:	CJN	Agency/Co.:	W-Trans
Analysis Time Period:	Weekday PM	Project ID:	NAX062
Date Performed:	5/30/2017	Scenario	PM Future + Project
Jurisdiction:	County of Napa		
Intersection:	SR 29/Lodi Ln		
East/West Street:	Lodi Ln		
North/South Street:	SR 29		

Instructions

Step 1 Input Volumes on **Volumes** sheet

Lane Group Code :			
	MJL	1	Major street separate left turn lane / TWLT
	MNLTR	2	Minor street shared left, through and right lane
	MNLR	3	Minor street shared left, and right lane
	MNL	4	Minor street separate left turn lane
	MNR	5	Minor street separate right turn lane

Step 2 Calculate Input Parameters

Calculate Lane Group Volumes, % Heavy Vehicles, and Conflicting Volumes (2.0% default)

Identify the presence of an upstream signal within 1/4 mile on major approches (Signal, 0 default)

Identify the presence of a separate LT lane / TWLT on major street approaches (LT, 1 default)

Verify the input ranges to feed into the models (see QueueLengthsModels sheet)

Step 3 **Obtain** queue lengths in feet from **Results** column

Note: ***Round off queue lengths to the next highest 25 feet when reporting***

Input							Results
Approach	Lane Group, Code	Volume, veh/hr	% Heavy Vehicles	Conflicting Volume,veh/hr	Signal (0 or 1)	Left Turn Lane (0 or 1)	Queue Length Feet
EB	MNLTR	0					
EB	MNLR	0					
EB	MNL	0					
EB	MNR	0					
WB	MNLTR	60	2.0%	4287	0	0	**75**
WB	MNLR	60	2.0%	2614	0	0	**75**
WB	MNL	31	2.0%	1673	0	0	**100**
WB	MNR	29	2.0%	941	0	0	**75**
NB	MJL	0					
SB	MJL	19	2.0%	956	0	1	**75**

Queue Length Estimation at Two-Way STOP Controlled Intersection

Project Information

Analyst:	CJN	Agency/Co.:	W-Trans
Analysis Time Period:	Weekend Midday	Project ID:	NAX062
Date Performed:	5/30/2017	Scenario	PM Future + Project
Jurisdiction:	County of Napa		
Intersection:	SR 29/Lodi Ln		
East/West Street:	Lodi Ln		
North/South Street:	SR 29		

Instructions

Step 1 Input Volumes on **Volumes** sheet

Lane Group Code :			
	MJL	1	Major street separate left turn lane / TWLT
	MNLTR	2	Minor street shared left, through and right lane
	MNLR	3	Minor street shared left, and right lane
	MNL	4	Minor street separate left turn lane
	MNR	5	Minor street separate right turn lane

Step 2 Calculate Input Parameters

Calculate Lane Group Volumes, % Heavy Vehicles, and Conflicting Volumes (2.0% default)

Identify the presence of an upstream signal within 1/4 mile on major approches (Signal, 0 default)

Identify the presence of a separate LT lane / TWLT on major street approaches (LT, 1 default)

Verify the input ranges to feed into the models (see QueueLengthsModels sheet)

Step 3 **Obtain** queue lengths in feet from **Results** column

Note: ***Round off queue lengths to the next highest 25 feet when reporting***

Input							Results
Approach	Lane Group, Code	Volume, veh/hr	% Heavy Vehicles	Conflicting Volume,veh/hr	Signal (0 or 1)	Left Turn Lane (0 or 1)	Queue Length Feet
EB	MNLTR	0					
EB	MNLR	0					
EB	MNL	0					
EB	MNR	0					
WB	MNLTR	71	2.0%	4111	0	0	**75**
WB	MNLR	71	2.0%	2496	0	0	**75**
WB	MNL	38	2.0%	1615	0	0	**100**
WB	MNR	33	2.0%	881	0	0	**75**
NB	MJL	0					
SB	MJL	36	2.0%	896	0	1	**75**

Appendix G

Speed Survey Data

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SPEED SURVEY CALCULATIONS Inn at the Abbey	
Roadway:	**SR 29**
Direction of Travel:	**SB**
Speed Samples:	41
	45
	54
	37
	39
	50
	45
	42
	34
	43
	41
	34
	44
	41
	48
	42
	50
	42
	52
	36
	41
	43
	37
	40
	41
Average Speed:	42.5
85th Percentile Speed:	**48.8**
High Speed:	54.0

*Note: All speeds in miles per hour (mph).

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Appendix H

Turn Lane Warrants and Dimensions

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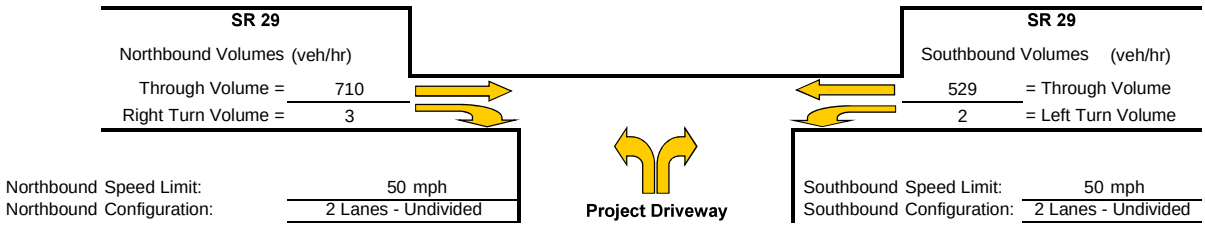
Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: PM Existing

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	713
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

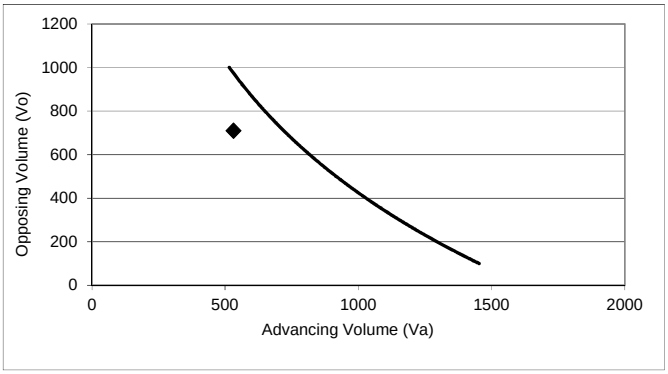
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	713
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	0.4 %
Advancing Volume Threshold	AV	720 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

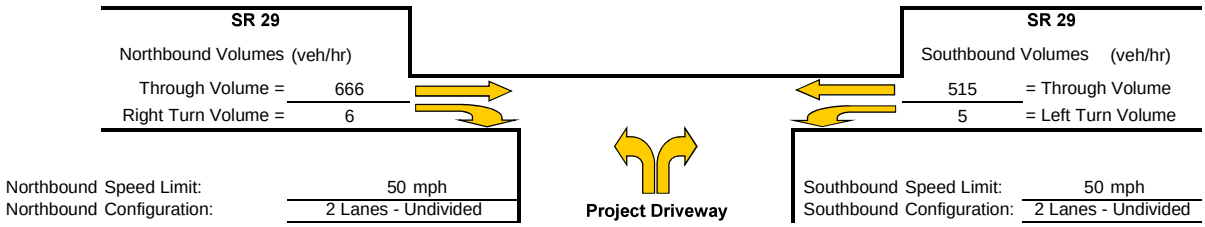
Left Turn Lane Warranted: **NO**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements*, January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: Wknd Existing

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	672
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

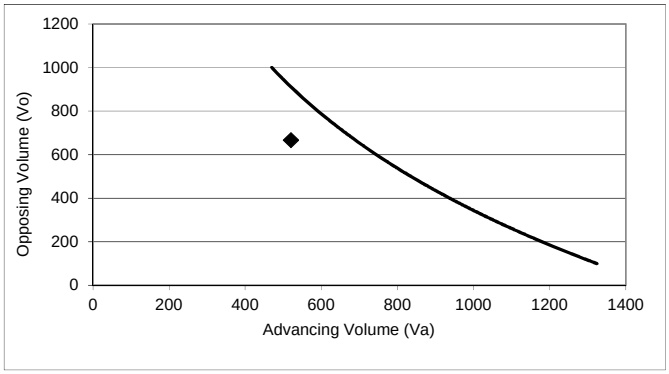
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	672
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	1.0 %
Advancing Volume Threshold	AV	690 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

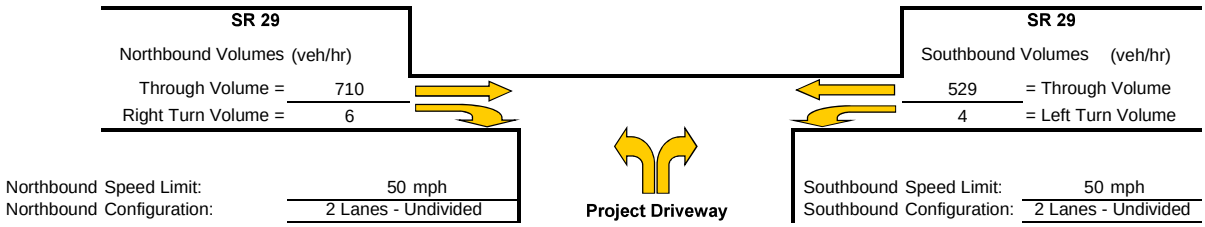
Left Turn Lane Warranted: **NO**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements* , January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: PM Existing + Project

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	716
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

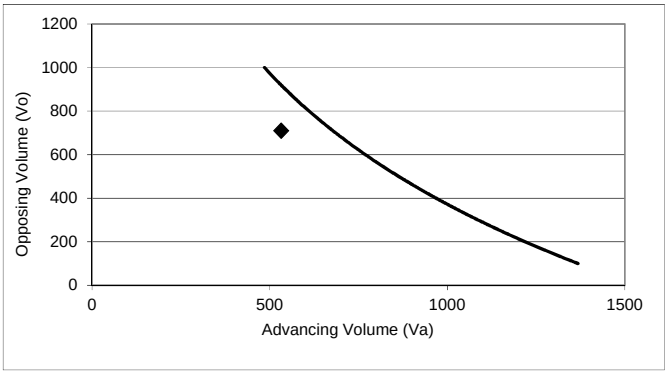
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	716
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	0.8 %
Advancing Volume Threshold	AV	678 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

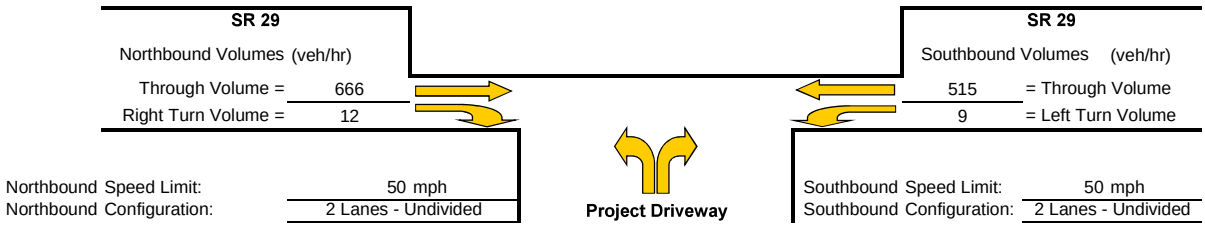
Left Turn Lane Warranted: **NO**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements* , January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: Wknd Existing + Project

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	678
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

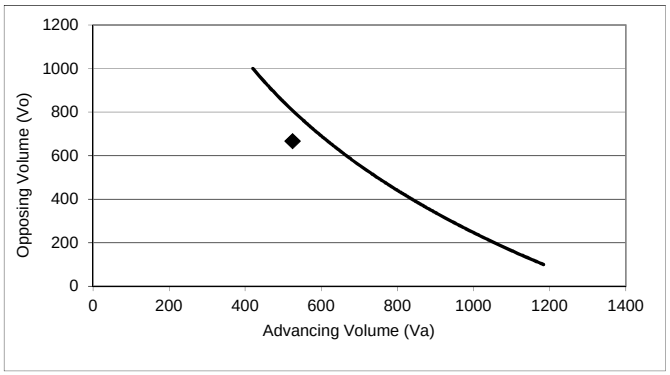
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	678
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	1.7 %
Advancing Volume Threshold	AV	617 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

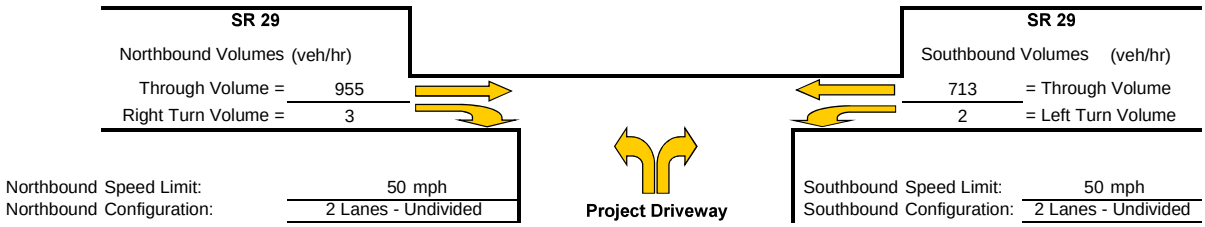
Left Turn Lane Warranted: **NO**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements* , January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: PM Future

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	958
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

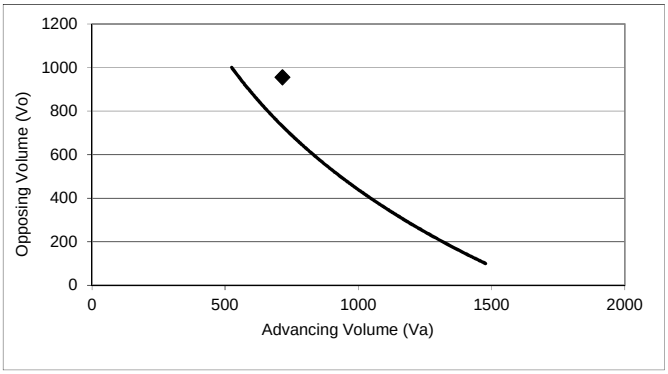
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	958
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	0.3 %
Advancing Volume Threshold	AV	552 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

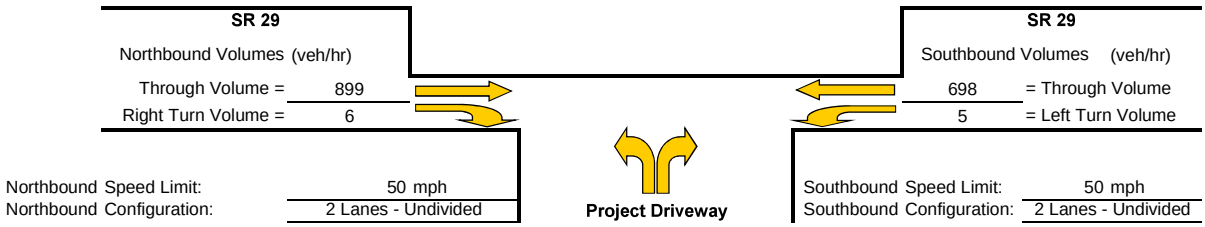
Left Turn Lane Warranted: **YES**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements* , January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: Wknd Future

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	905
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

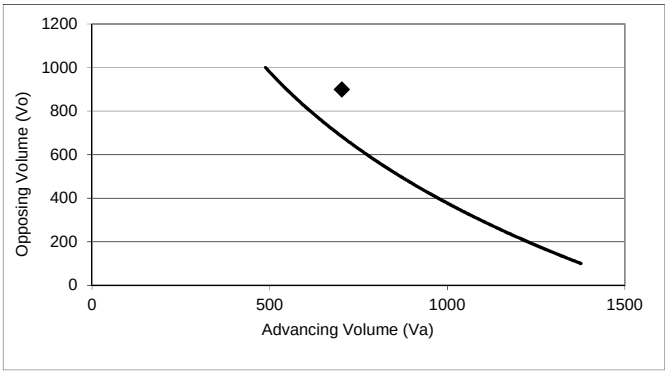
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	905
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	0.7 %
Advancing Volume Threshold	AV	549 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

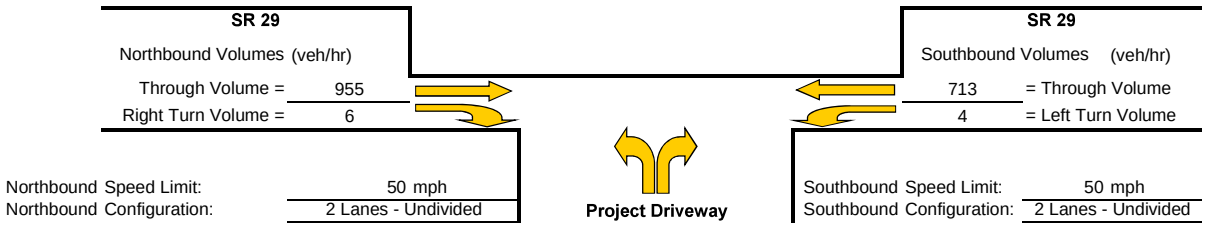
Left Turn Lane Warranted: **YES**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements* , January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: PM Future + Project

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	961
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

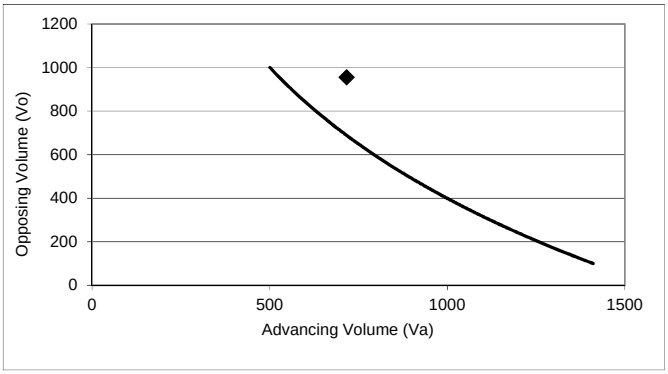
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	961
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	0.6 %
Advancing Volume Threshold	AV	527 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

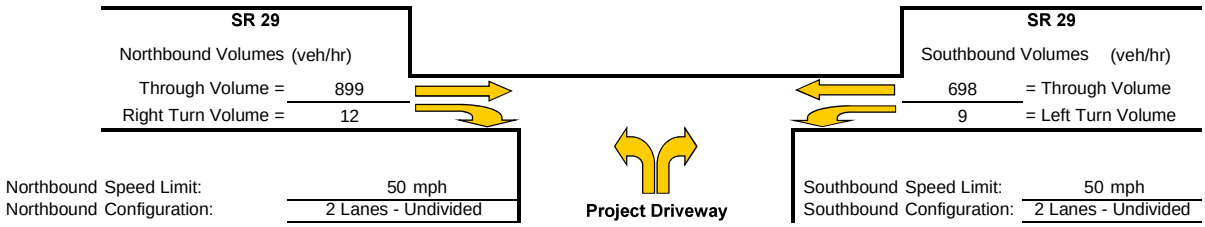
Left Turn Lane Warranted: **YES**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements* , January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Turn Lane Warrant Analysis - Tee Intersections

Study Intersection: SR 29/Project Driveway
Study Scenario: Wknd Future + Project

Direction of Analysis Street: North/South
Cross Street Intersects: From the East



Northbound Speed Limit: 50 mph
Northbound Configuration: 2 Lanes - Undivided

Southbound Speed Limit: 50 mph
Southbound Configuration: 2 Lanes - Undivided

Northbound Right Turn Lane Warrants

1. Check for right turn volume criteria

NOT WARRANTED Less than 40 vehicles

2. Check advance volume threshold criteria for turn lane

Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	911
If AV<Va then warrant is met		-

Right Turn Lane Warranted: **NO**

Northbound Right Turn Taper Warrants
(evaluate if right turn lane is unwarranted)

1. Check taper volume criteria

NOT WARRANTED - Less than 20 vehicles

2. Check advance volume threshold criteria for taper

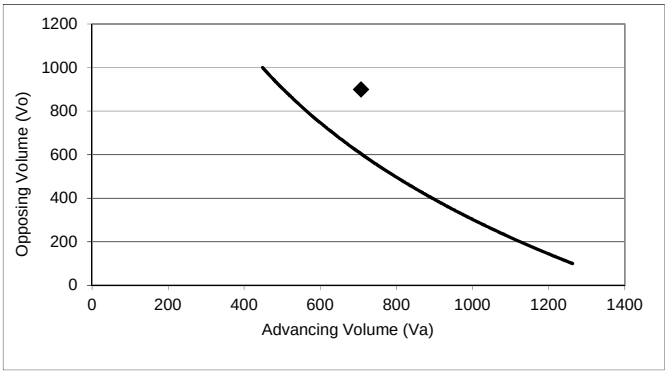
Advancing Volume Threshold	AV =	-
Advancing Volume	Va =	911
If AV<Va then warrant is met		-

Right Turn Taper Warranted: **NO**

Southbound Left Turn Lane Warrants

Percentage Left Turns	%lt	1.3 %
Advancing Volume Threshold	AV	503 veh/hr

If AV<Va then warrant is met



◆ Study Intersection
Two lane roadway warrant threshold for: 50 mph
Turn lane warranted if point falls to right of warrant threshold line

Left Turn Lane Warranted: **YES**

Methodology based on Washington State Transportation Center Research Report *Method For Prioritizing Intersection Improvements* , January 1997.
The right turn lane and taper analysis is based on work conducted by Cottrell in 1981.
The left turn lane analysis is based on work conducted by M.D. Harmelink in 1967, and modified by Kikuchi and Chakroborty in 1991.

Left Turn Channelization Dimensions

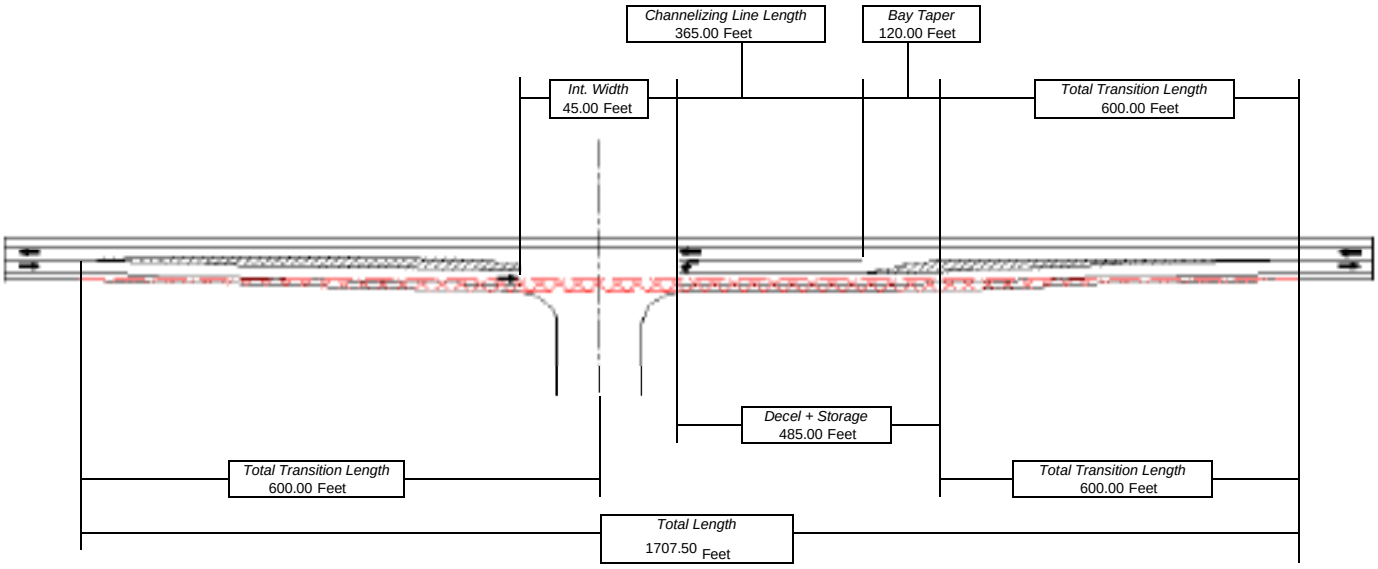
3 Leg Intersection - Widening on One Side for Rural, Semi-Rural and High Speed/Volume Urban Areas

Project Name: **Inn at the Abbey**

Location: **SR 29/Project Driveway**

Design Speed:	50 mph
Turn Pocket Width:	12.0 feet
Design Queue:	2 veh
Decelerate From:	50 mph
Intersection Width: *(Stopline to Stopline)*	45 feet
Bay Taper Length =	120 feet

Stacking Length =	50 feet
Deceleration =	435 feet
Transition =	600 feet
Total Length of Widening =	1708 feet
Area Of Widening=	11850 sf



W-Trans

5/23/2018

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Appendix I

Shared Parking Summary

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SHARED PARKING SUMMARY

Inn at the Abbey
Hotel, Restaurant, and Retail Shared Parking Demand

July
Weekday Estimated Peak-Hour Parking Demand

Monthly Adj.	6 AM	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM	7 PM	8 PM	9 PM	10 PM	11 PM	12 AM	Overall Pk 12 PM	AM Peak Hr 8 AM	PM Peak Hr 12 PM	Eve Peak Hr 9 PM
TOTAL DEMAND	68	76	93	78	75	73	113	113	87	75	76	87	97	95	102	103	98	91	85	113	93	113	103
																				113	93	113	103

Footnote(s):

July
Weekend Estimated Peak-Hour Parking Demand

	6 AM	7 AM	8 AM	9 AM	10 AM	11 AM	12 PM	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM	7 PM	8 PM	9 PM	10 PM	11 PM	12 AM	Overall Pk 9 PM	AM Peak Hr 8 AM	PM Peak Hr 12 PM	Eve Peak Hr 9 PM
TOTAL DEMAND	76	83	96	80	74	74	113	113	88	77	80	90	103	105	113	115	109	103	96	115	96	113	115
																				115	96	113	115

Footnote(s):

ATTACHMENT 5

REDACTED

Attachment K

WAC's Good Cause Request
to Augment the Record

WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

952 SCHOOL STREET #316 NAPA CA 94559

VOICE: (707) 681-5111

EMAIL: LEGAL@WATERAUDITCA.ORG

August 18, 2023

Napa County Board of Supervisors
1195 Third Street, Ste. 310
Napa, CA 94559

Submitted via email to:

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jdmilesm@comcast.net
jjdm1@icloud.com
adam@keatslaw.org
anglin@htralaw.com

Re: Submittal of good cause request and good cause basis for augmenting the record with extrinsic evidence

Appellant Water Audit California ("Water Audit") is appealing the Duckhorn Vineyards Winery - May 3, 2023, decision of the Napa County Planning Commission's to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and approve Use Permit Major Modification Application P19-00097-MOD. Water Audit is asserting the need for an EIR.

Pursuant to the July 11, 2023, pre-hearing conference instructions, the County Policy Manual, PART I: SECTION 8B, the Napa County Appeal Handbook, and Napa County Code sec. 2.88.090(B), Water Audit California ("Water Audit") submits the following and requests that the Napa County Board of Supervisors augments the record for consideration with this new evidence and testimony of expert witnesses on existing issues not already contained in the record on appeal.

The basis for the request is for the Board of Supervisors to consider evidence of the legality of the Napa County policy of declining to consider the impacts of existing public trust injuries.

Standard for Review

A negative declaration is inadequate and an Environmental Impact Report (EIR) is required when substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment. If the initial study uncovers substantial evidence that any aspect of the project may cause a significant effect on the environment, the agency must prepare a full EIR. (*Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310 and *Farmland Prot. Alliance v. Cnty. of Yolo* (2021) 71 Cal.App.5th 300.)

An EIR is required whenever "it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." (*City of Ukiah v. County of Mendocino* (1987) 196 Cal.App.3d 47; See also *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004 and *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748.) The case of *Visalia Retail, LP v. City of Visalia* ((2018) 20 Cal.App.5th 1) provides additional guidance on the definition of "significant effect on the environment" and the types of evidence that may or may not be considered "substantial evidence" for the purposes of the California Environmental Quality Act (CEQA).

Facts

The proceedings thus far herein have not considered the environmental impact of groundwater extraction utilized by the Duckhorn project. This is because of the Napa County policy to not consider the impact of earlier extraction decisions on the public trust. Respectfully, this is an incorrect statement of the law as it fails to correct the cumulative impact of past decisions. The public trust requires consideration of injury and mitigation when development decisions are being made. Past authorizations are not exempt from review.

CEQA is concerned with significant effects on the environment (§ 21100, subd. (b); See Cal. Code Regs., tit. 14, § 15382.) “The state as sovereign retains continuing supervisory control over its navigable waters.” (*Nat'l Audubon Soc'y v. Superior Ct.*, (1983) 33 Cal. 3d 419, 445.) This principle “prevents any party from acquiring a vested right to appropriate water in a manner harmful to the interests protected by the public trust.” (*Id.*) Further, “The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” (Id, at 446.)

County Planning Commission Hearing DUCKHORN Agenda Packet dated April 27, 2023, PDF page 22 (*Staff Report page 12 of 15)* states:

> Staff has considered impacts to public trust resources in the event the project wells may be connected to a navigable waterway. Staff determined that **because the project applicant has demonstrated that there will be no net increase in groundwater extraction over existing uses, there are no adverse impacts to trust resources which would result from issuance of this permit.** Applicants

> have reasonably demonstrated no net increase of groundwater extraction over existing demand by abandoning an existing single-family residence, reductions in total vineyard irrigated and reuse of process wastewater for vineyard irrigation. **The County has satisfied its duty to consider impacts to trust resources and no further analysis is required.** (Emphasis added.)

In the subject hearing Mr. Hawkes reiterated this policy: “[T]he project demonstrates no net increase in groundwater extraction, so no adverse impacts to trust resources with the Napa River.” (*Transcript of Hearing,* May 3, 2023, page 11:26)

At the subject hearing, counsel for Appellant challenged the assertion that the County did not have a duty to consider the impacts and potential mitigation of existing extractions. “[T]hose waters are public trust waters and there is no such thing as an injury to the public trust that can become grandfathered, that can exist forever. Mistakes happened in the past, but we are obliged to correct them now …” (*Transcript of Hearing,* May 3, 2023, page 11:26.)

The planning commission chose to ignore Appellant and adopted the reasoning of the Staff Report verbatim.

Water Audit is required by the law to prospectively assume that the County will comply with the law. Evidence Code section 664 provides in part: "It is presumed that official duty has been regularly performed." The rebuttable presumption under Evidence Code section 664 "effectuates the policy of relieving governmental officials from having to justify their conduct whenever it is called into question." (*Jackson v. City of Los Angeles* (1999) 69 Cal.App.4th 769, 782.) Appellant was entitled to rely upon the County of Napa to properly obey the law, and when it did not, good cause arose to consider extrinsic expert testimony.

California defines rebuttable presumptions as those affecting the burden of producing evidence and those affecting burden of proof. That the presumption is rebuttable means "there is a further burden placed upon the party adversely affected by the burden to go forward with sufficient proof to defeat the presumption. (*People e v. Gallardo* (1994) 22 Cal.App.4th 489, 496,” (as cited in *Hamilton v. Gourley* (2002) 103 Cal.App.4th 351, 362.)

Water Audit has consulted with four experts that are each of the opinion that the County of Napa is in error regarding its public trust duties. Accordingly, there is good cause to admit their evidence that:

(1) The Napa River proximate to the Duckhorn project has diverse and significant public trust components that the County of Napa has continuing trustee duties to protect;

(2) The County of Napa has a continuing legal duty in planning decisions to review existing groundwater extractions, determine potential injury and

consider best efforts at mitigation;

(3) That water extractions authorized by Napa County are causing groundwater depletion that is contributing to diminution of public trust flows; and

(4) The drying of the subject reach of the Napa River is being caused by groundwater extraction, not by climatic or weather change.

Proposed Supplemental Evidence

Attached hereto as Exhibits A to D, are summaries of the anticipated testimony of the proposed supplemental witnesses:

Dr. Karrigan Börk is an acting professor of law at the University of California Davis specializing in environmental law. Dr. Börk's report and curriculum vita are attached hereto as Exhibit A. In synopsis, Dr. Börk opines that subdivisions of the state have a duty to consider the public trust interest when making decisions impacting water that is imbued with the public trust. He asserts that the question of whether groundwater-related decisions must consider the public trust "begins and ends with whether the challenged activity harms a navigable waterway." He opines that the public trust *requires* reconsideration of past or ongoing water use decisions where those decisions were made without any consideration of the impact upon the public trust.

Dr. Peter B. Moyle is a Distinguished Professor Emeritus of the University of California Davis and co-founder of the Center of Watershed Sciences. His report and curriculum vita are attached hereto as Exhibit B. In synopsis, Dr. Moyle opines that for native fishes and other aquatic organisms to thrive in the Napa River, they need a flow regime that contains features of the natural flow. Data from the nearest stream flow gauge on the Napa River at St. Helena show that years with no summer flows have persisted since 2000. Fishes are much reduced from historic abundance, in large part due to degradation of potential habitat (e.g., by dry reaches).

Dr. Graham Fogg is a Professor of Hydrogeology in the Department of Land, Air and Water Resources at UC Davis. Dr. Fogg's report and curriculum vita are attached hereto as Exhibit C. In synopsis, Dr. Fogg opines that the streamflow and groundwater data clearly point to a cause-effect relationship between river flows and groundwater pumping. Further, Dr. Fogg opines that there is inadequate monitoring in Napa County to make a full assessment of potential public trust injuries, but nevertheless he concludes: "I strongly assert that both shallow and deep groundwater pumping in this basin, including pumping from deep, so-called confined aquifer wells, can each significantly affect the river flows."

Dr. Ted Grantham is an Associate Professor at the University of California Berkeley. Dr. Grantham's report and curriculum vita are attached hereto as Exhibit D. In synopsis, Dr. Grantham opines that minimum flows observed in the Napa River near St. Helena show a distinctive decline in the past 20 years. The minimum 7-day flow has consistently been zero since 2006, indicating that the Napa River at the gauge now runs dry every year. Although the Napa River has ceased to flow in the past, these occurrences have been rare and have never occurred in more than two consecutive years prior to 2006. Since 2001, the number of zero days has been increasing at an average rate of 7 days per year. He concludes that water withdrawals at or near the streamflow gauge are dewatering the Napa River. The effects of these withdrawals on dry-season flows are evident around 2000 and appear to be increasing in magnitude since that time. There is a significant, increasing trend in the number of zero-flow days observed in the river.

Good cause

Accordingly, there is good cause to consider extrinsic evidence of the legality and impact of the Napa County policy of declining to consider the impacts of existing public trust injuries during the planning process.

It is anticipated that the testimony of these witnesses will be approximately 5 minutes per person, for a cumulative total of twenty minutes of the thirty minutes allotted for the presentation of Appellant.

Respectfully submitted,

William McKinnon
General Counsel
Water Audit California
Direct: 530.575-5335

EXHIBIT A

REDACTED

EXHIBIT B

REDACTED

EXHIBIT C

REDACTED

EXHIBIT D

REDACTED

Attachment L

Applicant's Objections to
Good Cause Requests

HolmanTeague

real estate law • land use law • business law

September 27, 2023

Laura Anderson
Napa County Counsel's Office
1195 Third Street
Napa, California

Delivery via email to: *laura.anderson@countyofnapa.org*

RE: Duckhorn Appeals – Permittee's Objection to Appellants' Submission of New Grounds of Appeal

Ms. Anderson:

Permittee objects to the submission made by Water Audit California ("WAC") on September 26, 2023 because it introduces new grounds of appeal not contained in the appeal packet. WAC's September 26th submission includes legal argument regarding the Endangered Species Act (ESA) and California Endangered Species Act (CESA). These statutory authorities were not refenced or raised in WAC's appeal packet. "Any grounds of appeal, assertions, or legal or factual arguments that are not set forth in the appeal packet shall be waived." (Napa County Code §2.88.050(C)(6)). Given that Permittee's deadline for submitting its brief is contemporaneous with WAC's deadline, WAC's addition of new grounds of appeal puts Permittee at a disadvantage in addition to violating the above cited code section.

Permittee requests that WAC be prevented from adding the new grounds of appeal and legal arguments based on the ESA and CESA. Thank you.

Respectfully,

Rob Anglin

cc: William McKinnon
Amy Minteer

Attachment M

Chair's Good Cause
Determination

A Tradition of Stewardship
A Commitment to Service

Board of Supervisors

1195 Third St.
Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4421
Fax: (707) 253-4176

Belia Ramos
Chair

DETERMINATION OF GOOD CAUSE REQUEST TO AUGMENT THE DOCUMENTARY RECORD REGARDING THE DUCKHORN VINEYARDS WINERY APPEAL HEARING

September 20, 2023

TO: Amy C. Minteer, Esq. on behalf of Appellant Preserve Lodi Lane
William McKinnon, Esq. on behalf of Appellant Water Audit California
Rob Anglin, Esq. on behalf of Applicant Duckhorn Wine Company

FROM: Chair Belia Ramos

RE: Duckhorn Vineyards Winery Appeal Hearing – Good Cause Determination

---

As the Chair of the Napa County Board of Supervisors, I have received and reviewed the following: Appellant Preserve Lodi Lane's (Appellant PLL or PLL) August 17, 2023, request to augment the record with five additional documents and Appellant Water Audit California's (Appellant WAC or WAC) August 18, 2023, request to augment the record with opinion testimony of four expert witnesses on existing issues related to the appeal grounds. I have also reviewed Applicant's August 18, 2023 objections to such requests. The Chair's determination to augment the record on appeal requires a finding of "good cause" meaning that the proposed evidence, in the exercise of reasonable diligence, could not have been produced to, or was improperly withheld or excluded from, the Planning Commission. My decision on the requests and objections is set forth below.

APPELLANT PLL'S GOOD CAUSE REQUESTS:

1) Appellant PLL requests to augment the record with a project description document from the Napa de Oro Winery. Appellant PLL requests that the record be augmented to allow new information in the form of a project description document for the Napa de Oro Winery. PLL asserts that good cause exists because the document was not made available on the County's Current Projects Explorer website until after the Appeal Packet was filed on June 1, 2023, and there was no reasonable way to produce the document as part of the Appeal Packet.

Joelle Gallagher District 1 | **Ryan Gregory** District 2 | **Anne Cottrell** District 3 | **Alfredo Pedroza** District 4 | **Belia Ramos** District 5

Decision and Rationale: Granted. The Napa de Oro Winery application and project description was first submitted to the Planning, Building and Environmental Services (PBES) Department on July 28, 2022. However, a revised May 10, 2023 resubmittal was not submitted until July 24, 2023, and therefore could not have with reasonable diligence been produced to the Planning Commission at or in advance of the hearing on May 3, 2023. Good cause exists to augment the record with the Napa de Oro Winery May 10, 2023 project description.

2) Appellant PLL requests to augment the record with a winery trip generation worksheet from the Napa de Oro Winery project (Trip Worksheet). Appellant PLL requests that the record be augmented to allow new information in the form of a winery trip generation worksheet for the Napa de Oro Winery project. PLL asserts that good cause exists because the document was not made available on the County's Current Projects Explorer website until after the Appeal Packet was filed and there was no reasonable way to produce the document as part of the Appeal Packet or to the Planning Commission.

Decision and Rationale: Granted. The Chair notes that although the Trip Worksheet is dated March 6, 2023, it was not submitted to the PBES Department until July 24, 2023 and therefore could not have, with reasonable diligence, been presented to the Planning Commission prior to the May 3, 2023 hearing. Good cause exists to augment the record with the Trip Worksheet dated March 6, 2023.

3) Appellant PLL requests to augment the record with the Inn at the Abbey Initial Study. Appellant PLL requests that the record be augmented to allow additional information in the form of the Inn at the Abbey Initial Study document. Appellant PLL asserts that good cause exists because PLL's Appeal Packet discussed the traffic study prepared for the proposed Inn at the Abbey project incorporating it into the record, and it should therefore already be included in the record for the Duckhorn Project.

Decision and Rationale: The Chair finds that the Inn at the Abbey Initial Study is already part of the record on appeal that will be provided to the Board. This document was referenced in Appellant PLL's Appeal Packet.

4) Appellant PLL requests to augment the record with the Inn at the Abbey Traffic Impact Study prepared by W-Trans dated August 16, 2019 (2019 Traffic Study). Appellant PLL requests that the record be augmented to allow additional information in the form of the 2019 Traffic Study. Appellant PLL asserts that good cause exists because the PLL's Appeal Packet discussed the traffic study prepared for the proposed Inn at the Abbey project incorporating it into the record, and it should therefore already be included in the record on appeal.

Decision and Rationale: The Chair finds that the Inn at the Abbey 2019 Traffic Study is already part of the record on appeal that will be provided to the Board. The contents of this document were referenced in the Traffic Impact Study for the Duckhorn Vineyards Use Permit Major Modification prepared by W-Trans dated June 10, 2021.

5) Appellant PLL requests to augment the record with the Inn at the Abbey Traffic Impact Study Addendum dated February 3, 2020 (the 2020 Traffic Addendum). Appellant PLL requests that the record be augmented to allow additional information in the form of the 2020 Traffic Addendum. Appellant PLL asserts that good cause exists because PLL's Appeal Packet discussed the traffic study prepared for the proposed Inn at the Abbey project incorporating it into the record, and it should therefore already be included in the record for the Duckhorn project.

Decision and Rationale: Denied. The 2020 Traffic Addendum is dated February 3, 2020, and has been publicly available on the County's Current Project Explorer website since July 23, 2020. PLL has failed to demonstrate why the 2020 Traffic Addendum could not have, with reasonable diligence, been presented to the Planning Commission prior to the May 3, 2023 hearing. Also, the 2020 Traffic Addendum is not referenced or incorporated in either the Traffic Impact Study or the Initial Study/Mitigated Negative Declaration that was prepared for the Duckhorn project. Good does not exist to augment the record with the Traffic Addendum.

APPELLANT WAC'S GOOD CAUSE REQUESTS:

6) Appellant WAC requests to augment the record with a legal opinion from Dr. Karrigan Börk entitled "The Public Trust Doctrine" dated August 18, 2023 (the Börk Analysis). Appellant WAC requests that the record be augmented to allow the Börk Analysis regarding the County's legal duty to consider the public trust interest when making decisions impacting water that is imbued with the public trust.

Decision and Rationale: The Börk Analysis is legal opinion and analysis of the public trust doctrine and its interplay with the Sustainable Groundwater Act (SGMA). It is not evidence and therefore the Börk Analysis is not properly the subject of a good cause determination. Because the Börk Analysis is legal argument it will be treated as supplemental argument and counted towards Appellant WAC's five-page limit established at the pre-hearing conference for submittal of additional written information or legal argument in support of WAC's appeal.

7) Appellant WAC requests to augment the record with expert opinion and testimony from Dr. Peter Moyle entitled "The Napa River as Habitat for Native Fishes and Shrimp" dated August 18, 2023 (the Moyle Opinion). Appellant WAC requests that the record be augmented to allow the Moyle Opinion opining that native fishes and other aquatic organisms need a flow regime that contains features of natural flows to thrive in the Napa River. Appellant WAC asserts that good cause exists because Napa County erred in its public trust duties when it failed to review existing groundwater extractions, consider potential injury, and consider best efforts at mitigation.

Decision and Rationale: Denied as to the good cause request but allowed as a summary of WAC's witness list and witness testimony.

The County agrees that it has a duty under the public trust doctrine to consider impacts to public trust resources. In fact, both the Planning Commission staff report (page 13) and the Mitigated Negative Declaration (MND)(page 21) acknowledged the County's duty and consideration of public trust resources. WAC's disagreement with the County involves how that duty is satisfied. The Chair finds that Appellant WAC has asserted this disagreement as its good cause justification. This disagreement is among the very grounds of appeal that will be heard and considered by the Board including, but not limited to, the County's public trust duty and consideration of public trust resources, the environmental impact of groundwater extraction utilized by the Duckhorn project and the Planning Commission's consideration of all the same.

Appellant WAC had ample notice and opportunity to provide the Moyle Opinion to the Planning Commission. On April 3, 2023, Notice of the Public Hearing and Intent to Adopt the MND was published in the Register some 30 days before the hearing on May 3rd. The Planning Commission staff report was posted to the County's website on April 27, 2023, almost a week prior to the hearing date. WAC was aware of the hearing as evidenced by counsel for WAC's testimony at the Planning Commission hearing regarding public trust. Counsel for WAC did not inform the Commission that WAC had retained Dr. Moyle to prepare an opinion on the flow regime needed for native fish and aquatic organisms to thrive in the Napa River. Nor did counsel request a continuance of the matter so as to provide the Commission with the Moyle Opinion. Furthermore, the Duckhorn application P19-00097-MOD is specifically identified and described in WAC's prior litigation with the County that was filed on June 2, 2021.

Appellant WAC has failed to identify why, in the exercise of reasonable diligence, the Moyle Opinion could not have been provided to the Planning Commission for consideration particularly when judicial records reveal that WAC has been aware of the Duckhorn application since at least June 2021. Nevertheless, the Chair further finds that because Dr. Moyle has been identified as one of Appellant WAC's witnesses and since the Moyle Opinion is related to WAC's appeal grounds, the Moyle Opinion will be treated as a summary of Dr. Moyle's expected testimony and credentials, and it will be included in the materials provided to the Board of Supervisors as part of the agenda item for the November 7, 2023 appeal hearing. Applicant will have the opportunity to argue how much weight and relevance the Moyle Opinion should be given by the Board at the appeal hearing.

8) Appellant WAC requests to augment the record in the form of witness testimony and an opinion from Dr. Graham Fogg entitled "Groundwater Pumping and Napa River Low Flows" dated August 18, 2023 (the Fogg Opinion). Appellant WAC requests that the record be augmented to allow the Fogg Opinion regarding the cause-effect relationship between river flows and groundwater pumping and that there is inadequate monitoring in Napa County to make a full assessment of potential public trust injuries. Appellant WAC asserts that good cause exists because Napa County erred in its public trust duties when it failed to review existing groundwater extractions, consider potential injury, and consider best efforts at mitigation.

Decision and Rationale: Denied as to the good cause request but allowed as a summary of WAC's witness list and witness testimony.

The Chair incorporates here by reference the same rationale as set forth above regarding the Moyle Opinion. The Chair finds that Dr. Fogg has been identified as one of Appellant WAC's witnesses and since the Fogg Opinion is related to WAC's appeal grounds, the Fogg Opinion will be treated as a summary of Dr. Fogg's expected testimony and credentials, and it will be included in the materials provided to the Board of Supervisors as part of the agenda item for the November 7, 2023 appeal hearing. Applicant will have the opportunity to argue how much weight and relevance the Fogg Opinion should be given by the Board at the appeal hearing.

9) Appellant WAC requests to augment the record in the form of witness testimony and an opinion from Dr. Tedd Grantham entitled "Flow Analysis for the Napa River Streamflow Gauge at St. Helena, California" dated August 18, 2023 (the Grantham Opinion).
Appellant WAC requests that the record be augmented to allow the Grantham Opinion regarding the decline in the minimum flows in the Napa River near St. Helena in the past 20 years. Appellant WAC asserts that good cause exists because Napa County erred in its public trust duties when it failed to review existing groundwater extractions, consider potential injury, and consider best efforts at mitigation.

Decision and Rationale: Denied as to the good cause request but allowed as a summary of WAC's witness list and witness testimony.

The Chair incorporates here by reference the same rationale as set forth above regarding the Moyle Opinion and Fogg Opinion. The Chair finds that Dr. Grantham has been identified as one of Appellant WAC's witnesses and since the Grantham Opinion is related to WAC's appeal grounds, the Grantham Opinion will be treated as a summary of Dr. Grantham's expected testimony and credentials, and it will be included in the materials provided to the Board of Supervisors as part of the agenda item for the November 7, 2023 appeal hearing. Applicant will have the opportunity to argue how much weight and relevance the Grantham Opinion should be given by the Board at the appeal hearing.

APPLICANT'S OBJECTION TO WAC'S APPEAL PACKET SUBMISSION AND REQUEST FOR CONFIRMATION.

10) Applicant Objects to Two Slides Depicted on Page 9 and Exhibit 1 of WAC's Appeal Packet. Applicant objects to two slides depicted on page 9 and the reports and agreement included in Exhibit 1 of WAC's Appeal Packet and requests that they be excluded from the record on appeal because Appellant WAC has failed to make a good cause request for them to be included. The two slides on page 9 are from a presentation to the Napa County Watershed Information and Conservation Council in 2015 and Exhibit 1 includes printouts of Consumer Confidence Reports from 2017 to 2022 and a recorded Water Agreement from 2000.

Decision and Rationale: Sustained. The Chair finds that the two slides and Exhibit 1 reports and agreement were not provided to the Planning Commission and therefore are not part of the record on appeal. The Chair further finds that Appellant WAC has not articulated why, in the

exercise of reasonable diligence, the two slides (which are from a presentation to the Napa County Watershed Information and Conservation Council in 2015) and the Exhibit 1 printouts of Consumer Confidence Reports from 2017 to 2022 and a recorded Water Agreement from 2000 could not have been provided to the Planning Commission for consideration. As detailed above, Chair further finds that as detailed above, WAC was expressly aware of the Duckhorn project in June 2021. These documents were available to WAC well before (and in one case decades before) the Planning Commission hearing. The Chair finds that good cause does not exist to augment the record with the two slides depicted on page 9 of WAC's Appeal Packet or the Exhibit 1 printouts of the Consumer Confidence Reports from 2017 to 2022 and the recorded Water Agreement from 2000.

11) Applicant requests confirmation that the record on appeal includes the Tier 2 and 3 Water Availability Analysis.

Response: Confirmed. Napa County Code Section 2.88.010 (K) defines the "record on appeal" as all written materials, staff reports, statements, testimony, information and evidence that were considered by the decision maker, either directly or indirectly, in arriving at the decision being appealed.

The Applicant's Tier 2 and 3 Water Availability Analysis is part of the record on appeal as defined by Napa County Code. Although County staff concluded that the Duckhorn project's reduction in water use did not necessitate the Tier 2 and 3 analysis, the report was referenced and cited in the Tier 1 analysis submitted to the Planning Commission. Staff and Applicant's consultant George Monteverdi also repeatedly referenced the Tier 2 and 3 analysis and its resulting findings at the Planning Commission hearing. Because the Tier 2 and 3 analysis was relied upon (both directly and indirectly) by the Planning Commission in making its decision, that analysis is part of the "record on appeal" as defined by Napa County Code.

RIGHT TO REQUEST AN OVERRULE.

Pursuant to County Code Section 2.88.090 (B), at the beginning of the appeal hearing, prior to opening the public hearing, the Chair shall announce any decision regarding the introduction of extrinsic evidence to the record and the whole Board, by majority vote, may overrule any such decision upon request by an appellant or the permittee. The Chair set a deadline of September 26, 2023 for either Appellants or Applicant to inform County Counsel's office in writing of their request that the whole Board overrule the Chair's determinations set forth herein. Upon receipt of such request, the parties shall each be given three minutes to verbally address the Board at the appeal hearing on their request to overrule the Chair. No written arguments are allowed.

Attachment N

PLL's Supplemental Argument

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September 25, 2023

Via Email: clerkoftheboard@countyofnapa.org

Napa County Board of Supervisors
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Re: Appeal of Planning Commission Approval of Duckhorn Vineyards Winery Use Permit Major Modification P19-00097; Additional Written Information

Honorable Supervisors:

On behalf of Preserve Lodi Lane and John Murphy (Appellants), we provide the following additional information in support of the appeal of the Planning Commission approval of the Duckhorn Vineyards Winery Use Permit Major Modification (P19-00097).

1. The Fair Argument Applies in Determining Whether an EIR is Required.

With limited exceptions, CEQA requires preparation of an EIR whenever there is substantial evidence supporting a fair argument that a proposed project ***may*** have a significant effect on the environment. (Pub. Resources Code §21080, subd. (c)(1), (c)(2), (d); 14 Cal. Code. Regs. ("Guidelines") §15070(a), (b)(2); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 926-29.) The fair argument standard to require an EIR is a "low threshold" test, as resolution of doubts should be resolved in favor of environmental review. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83-84.) Whether a fair argument exists is a question of law, not fact, precluding deference to a lead agency's determination. (*Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1331 (*Grand Terrace*).) If any substantial evidence in the record supports a fair argument the project may have a significant effect on the environment, the lead agency shall prepare an EIR, despite other evidence that the project will not have a significant effect. (Pub. Resources Code §21151(a); Guidelines §15064(f)(1)-(2); *No Oil, supra,* 13 Cal.3d 68, 75.)

Additionally, an agency's lack of investigation "may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) "Where an agency. . . fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate." (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591, 1597, citations omitted.) Failure to adequately analyze all of a project's potentially significant impacts or provide evidence to support conclusions reached in the initial

study is a failure to comply with the law.

2. Traffic Hazard Must be Considered

Under CEQA, the County was required to assess whether the Project may have traffic hazard impacts. (CEQA Guidelines, App. G, section XVII(c).) The traffic impact report relied solely upon collision reports to claim there is no significant traffic hazard impact. This is inadequate for several reasons.

First, as detailed in Appellants' Appeal Packet, area residents have provided personal observations of existing traffic hazards along Lodi Lane and its tee-intersections with Hwy 29 and Silverado Trail. These personal observations provide substantial evidence to support a fair argument that the Project may have significant traffic hazard impacts necessitating preparation of an EIR. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735 [residents' testimony on local traffic hazards is substantial evidence]; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1151.) Appellants have identified hazards caused by blind curves north and south of Lodi Lane along Hwy 29, adding to the existing traffic safety impacts.

Additionally, the County was required to analyze any existing environmental impacts that the Project might exacerbate. (Guidelines § 15126.2(a); see also *California Building Industry Assn. v. Bay Area Air Quality Management Dist*. (2015) 62 Cal.4th 369, 388; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.) Residents have identified hazardous existing conditions and collision reports show higher than average collision rates at the intersection of Lodi Lane and Silverado Trail. The Project would add numerous trips along Lodi Lane heading toward both the Silverado Trail and Hwy 29 intersections, exacerbating the existing hazards and increasing the potential for additional collisions.

In addition to passenger vehicle trips, the Project would also increase the number of tanker truck trips along Lodi Lane. The lengthier time these vehicles take for turns would further exacerbate existing traffic hazards at the Lodi Lane intersections. These tanker truck trips, along with the increase passenger vehicle trips, could also increase hazards on the narrow section of Lodi Lane with a one-lane bridge.

Moreover, the Project driveway meets the County warrants for installing a left-turn lane. The Project applicant obtained an exemption from this requirement to limit tree removal, but this does not eliminate the need to address this lack of warranted turn lane when addressing traffic safety impacts.

Further, the Circulation Element of the County's General Plan includes Policy CIR-38, which is intended in part to "promote safe access for all users." This policy requires mitigation for a project's vehicular trips when a level of service (LOS) D is not maintained on roadway intersections. The intersection of Lodi Lane and Hwy 29 operates an unacceptable LOS F and would be made worse by the Project; thus, mitigation is required.

The Traffic Impact Study included recommendations to 1) install a speed feedback sign on Silverado Trail; and 2) restripe the westbound approach at Hwy 29/Lodi Lane to include a

dedicated right turn lane. However, neither of these recommendations to address traffic safety and congestion impacts were included as mitigation measures and are thus improperly unenforceable. (CEQA Guidelines, §15126.4, subd. (a)(2).)

3. The MND Fails to Adequately Address Cumulative Impacts.

Appellants' Appeal Packet identifies the need to adequately address the cumulative traffic and traffic safety impacts in the MND. Of particular concern is the cumulative impacts with the nearby Inn at the Abbey proposed project. The Appeal Packet identifies additional cumulative projects and Appellants' Supplemental Evidence Request identified several more recent cumulative projects that must be considered. The MND was required to assess whether "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines § 15064, subd. (h)(1).) "The primary determination is whether it was reasonable and practical to include the projects and whether, without their inclusion, the severity and significance of the cumulative impacts were reflected adequately." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723.) Preparation of an EIR is mandatory when there are cumulatively considerable significant impacts. (CEQA Guidelines, §15065, subd. (a)(3).)

Here, it was clearly reasonable and practical to include the Inn at the Abbey project in the traffic and traffic safety analysis. As identified in the Appeal Packet, these include cumulative traffic safety impacts for cyclists utilizing the Vine Trail and guests at the Inn at the Abbey that will need to cross Lodi Lane as pedestrians at or near the Hwy 29 intersection. The failure to do so, particularly with regard to traffic hazards caused by even more vehicles at the above-identified intersections, "enlarge[s] the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

4. The Traffic Analysis is Outdated.

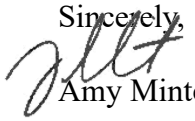
As identified in Appellants' Appeal Packet, the Traffic Impact Study prepared for this study is not only inadequate because it fails to include an assessment of traffic hazards, but it is also significantly outdated. The County has established traffic impact study guidelines, but has failed to require compliance with them for this Project or the cumulatively considerable Inn at the Abbey project. These guidelines require a traffic impact study to be less than two years old so that the analysis is not based on stale data. Here, the Traffic Impact Study is four to five years old. The outdated report does not provide the necessary evidentiary support to claim this Project would have less than significant traffic and traffic safety impacts at either a project or cumulative level.

Conclusion

For all of the reasons set forth herein and those set forth in the Appeal Packet, we urge the Board to grant this appeal with the attached evidence and the evidence set forth above.

Thank you for your time and consideration in this matter.

Sincerely,



Amy Minteer

Attachment O

WAC's Supplemental
Argument

WATER AUDIT CALIFORNIA

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September 26, 2023

To: Napa County Board of Supervisors
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Submitted via email to: Laura.Anderson@countyofnapa.org, Chris.apallas@countyofnapa.org, Clerkoftheboard@countyofnapa.org, acm@cbcearthlaw.com, jdmilesm@comcast.net, jjdm1@icloud.com, adam@keatslaw.org, anglin@htralaw.com

Re: Water Audit California Additional Written Information

On behalf of Appellant Water Audit California ("Water Audit"), we provide the following additional information in support of Water Audit's appeal.

Protected Fish

A. Napa River

The Napa River is a keystone watershed for native fishes and other aquatic animals. Historically and presently, the Napa River supports the greatest steelhead spawning runs of any tributary to the San Francisco Bay estuary. Chinook salmon have recently returned to the watershed, and native fishes such as Pacific, western river, and brook lamprey, hitch, and Sacramento splittail are also present. Other special status aquatic animals relying on surface water resources in Napa County are California freshwater shrimp, California giant salamander, foothill yellow-legged frog, and northwestern pond turtle.

B. Tributaries

The occurrence of steelhead trout (*Oncorhynchus mykiss* or *O.mykiss*) is well documented in the Napa River watershed ("watershed") (Napa RCD 2005). Watershed steelhead belong to the Central California Coast Distinct Population Segment and were federally listed as threatened in 1997 (Stillwater 2018). The watershed has some of the most significant anadromous fish streams within San Francisco Bay. (Napa RCD 2005).

O.mykiss exhibit anadromous and resident life history strategies. Steelhead is the term for the anadromous life history, and rainbow trout is the term for the resident life history. Evidence suggests that the two forms are capable of interbreeding, and that either can produce offspring that exhibit the alternate form. Both life history forms are present in the watershed. (Napa RCD, Upper York Creek Ecosystem Restoration Project 2020-21 Annual Monitoring Report, p. 2.)

Endangered Species Act

Under the Federal Endangered Species Act of 1973 ("ESA"), steelhead found in the Napa River watershed belong to the Central California Coast evolutionarily significant unit ("ESU"). This steelhead population is reproductively isolated from other populations, represents an important component of the evolutionary legacy of the species, and has broad protections under both state and federal law.

The ESA of 1973 expressly states that endangered and threatened "species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." (16 U.S.C. § 1531(a)(3).) Further, the Supreme Court has observed that "[t]he plain intent of Congress in enacting this statute was to halt and reverse the trend toward species extinction, whatever the cost," and that, under the act, "[it] intended endangered species [are] to be afforded the highest of priorities." (*Tenn. Valley Auth. v. Hill*, (1978) 437 U.S. 153, 174, 184.)

A. Critical Habitat

Federally designated critical steelhead habitat[1] includes all of the Napa River reaches and estuarine areas accessible to steelhead[2].

[1] Critical habitat: Identifies specific areas occupied by threatened or endangered species at the time of their listing that contain physical or biological features essential to conservation of the species and that may require special management considerations or protection.

[2] Napa River Basin Limiting Factors Analysis, Final Technical Report (2002) https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/wq_control_plans/1995wqcp/exhibits/doi/doi-exh-45n.pdf

Although preserving certain state rights under the ESA (16 U.S.C. § 1531 et seq.), those rights are limited as outlined by the Constitution. (see *Hughes v. Oklahoma* (1979) 441 U.S. 322.) Specifically, the rights of states to regulate the taking of certain species of wildlife can be restricted in cases where such species and/or their habitat has been determined to be under the jurisdiction of ESA protections and regulations. (*Id*.)

Congress's intent that habitat plays a vital role in species conservation and protection, is found in the first listed statutory criterion, "the present or threatened destruction, modification, or curtailment of [the species'] habitat or range." (16 U.S.C. § 1533(a)(1)(A).) Providing additional clarity of the legislative intent of the ESA, Congress explicitly outlined that protection of habitat was an essential component of preventing species' extinction and ensuring species recovery:

> Man can threaten the existence of species of plants and animals in any of a number of ways. … The most significant of those has proven also to be the most difficult to control: the destruction of critical habitat. ... There are certain areas which are critical which can and should be set aside. It is the intent of this legislation to see that our ability to do so, at least within this country, is maintained. (H.R. Rep. No. 412, 93d Cong., 1st Sess. 5 (1973).)

Critical habitat is defined under the ESA to include both:

> (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.
>
> (16 U.S.C. § 1532(5)(A).)

The ESA expressly defines critical habitat to include both "specific areas within the geographical area occupied by the species" at the time of listing "and specific areas outside the geographical area occupied by the species." (16 U.S.C. §1532(5)(A)(i)-(ii); see *Crooks v. Harrelson*, (1930) 282 U.S. 55, 58 (used in its "ordinary sense," conjunctive term "and" requires "not one or the other, but both".)

Furthermore, the Ninth Circuit has repeatedly found that federal agencies consider site-specific, localized, and cumulative impacts on critical habitat impacts. (See *Pac. Coast Fed'n of Fishermen's Ass'n v. NMFS* (9th Cir. 2001) 265 F.3d 1028, 1036-37 (NMFS was required to consider aggregate effect of multiple logging projects in making Section 7 determination); *Gifford Pinchot Task F. v. U.S. Fish W* (9th Cir. 2004) 378 F.3d 1059 ("Focusing solely on a vast scale can mask multiple site-specific impacts that, when aggregated, do pose a significant risk to a species."); *Nat'l Wildlife Fed'n v. NMFS*, (9th Cir. 2008) 524 F.3d 917, 930-31, 934-35 (NMFS violated ESA by failing to consider short-term effects of dam operations on listed salmon species).)

B. Unauthorized Take

Taking of wildlife under the ESA "means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19).) As harm

has been defined to include the use of land and/or water in ways that may indirectly impact listed species, those activities can be a form of "take" and are prohibited under the ESA. (See *Babbitt v. Sweet Home Chapt. of Cmtys. for a Great Oregon* (1995) 515 U.S. 687 (upholding the Secretary of Interior's definition of "harm": an act, including "significant habitat modification or degradation . . . which actually kills or injures wildlife"); See also 50 C.F.R. § 17.3 (defining that "[h]arass in the definition of "take" in the Act means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering[, and [h]arm in the definition of "take" in the Act means an act which actually kills or injures wildlife".) Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering."). (*Id*.)

"Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species." (50 C.F.R. § 402.02.)

"Harm is further defined by the U.S. Fish and Wildlife Service ("FWS") to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined by FWS as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. [50 CFR §17.3]." (ESA Section 7 Consultation Handbook, 1998, p. xix.)

In *Wishtoyo v United Water*, the court found that the plaintiffs were "entitled to a declaratory judgment that Defendant United's operation and maintenance of Vern Freeman Dam ("VFD"), including its operation and maintenance of the fish ladder at the VFD, and United's diversion of water from the VFD, constituted unauthorized "take" of the Distinct Population Segment of Southern California Steelhead ("Steelhead") in violation of section 9 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1538." (*Wishtoyo Foundation v. United Water Conservation District*, Dist. Court, CD California 2018, Amended Judgment and Permanent Injunction.)

Sustainable Groundwater Management Act (SGMA)

In September 2014, the Legislature adopted SGMA; Water Code, section 10720 et seq. The valley portion of Napa County was identified as a priority sub-basin.

The Department of Water Resources ("DWR") has stated that:

> 23 CCR § 354.28(c)(1) specifies that the MT[3] for chronic lowering of groundwater levels shall be based on groundwater elevations indicating a depletion of supply that may lead to undesirable results;
>
> 23 CCR § 354.28(c)(2) specifies that the minimum threshold for depletions of interconnected surface water shall be the rate or volume of surface water depletions caused by groundwater use that has adverse impacts on beneficial uses of the surface water and may lead to undesirable results; and

[3] Management criteria set out in the GSP Regulations: undesirable results, [UR] minimum thresholds, [MT] and measurable objectives [MO]. (DWR, 2019.)

> 23 CCR § 354.32 requires that each basin be monitored, and that a monitoring network include monitoring objectives, monitoring protocols, and data reporting requirements be developed that shall promote the collection of data of sufficient quality, frequency, and distribution to characterize groundwater and related surface water conditions in the basin and evaluate changing conditions.

(see DWR's rejection of Napa County's Alt Plan, September 2019.)

Furthermore, DWR has provided instruction for addressing undesirable results that occurred before, and have not been corrected by, January 1, 2015:

> **the 2015 baseline for undesirable results is simply a limitation on what conditions must be addressed; it does not operate as an exoneration of the undesirable result itself.** SGMA may not require a basin to reverse the effect of undesirable results to pre-SGMA conditions, but if undesirable results occurred during the 10-year period of the Alternative, that basin cannot demonstrate that it operated within its sustainable yield. (Emphasis added) (DWR, 2019.)

Although a pre-2015 injury may not require remediation under SGMA, the courts have held that even long-standing injuries are subject to public trust review. (See *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419; *California Trout, Inc. v. State Water Resources Control Bd.* (1989) 207 Cal.App.3d 585; *California Trout, Inc. v. Superior Court* (1990) 218 Cal.App.3d 187; *Envtl. Law Found. v. State Water Res. Control Bd.* (2018) 26 Cal.App.5th 844.)

The Public Trust Doctrine

The public trust doctrine imposes independent and unavoidable obligations on trustee agencies overseeing groundwater extraction. California precedent makes clear that subdivisions of the state[4] have "a duty to consider the public trust interest[5] when making decisions impacting water that is imbued with the public trust,"[6] and merely complying with the SGMA does not discharge that duty.[7]

Although SGMA requirements and a trustee's obligations under the public trust differ in several ways, a key difference lies in the treatment of past harms from groundwater pumping. SGMA provides that a groundwater sustainability "plan [(GSP)] may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015."[8] In contrast, the public trust requires reconsideration of past or ongoing water use decisions where those decisions were made "without any consideration of the impact upon the public trust."[9]

Thus, compliance with public trust duties is not discretionary, it is obligatory.

In this case, the beneficiaries of the public trust are the people of California, and it is to them that the trustee owes fiduciary duties. As Napa County is a legal subdivision of the state, it must

---

4 *Env't L. Found. (ELF) v. State Water Res. Control Bd.* (SWRCB) (2018), 26 Cal. App. 5th 844, 868 ("Although the state as sovereign is primarily responsible for administration of the trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and may not approve of destructive activities without giving due regard to the preservation of those resources.") (internal quotation marks omitted).

5 The Napa River and its tributaries, and the fish within those water ways, are protected public trust resources.

6 *Id*. at 863.

7 *Id*. at 868.

8 Cal. Wat. Code, § 10727.2(b)(4)(b).

9 *Nat'l Audubon Soc'y v. Superior Ct.* (1983) 33 Cal. 3d 419, 426.

deal with the trust property for the beneficiary's benefit. No trustee can properly act for only some of the beneficiaries – for example the trustee must represent them all, taking into account any differing interests of the beneficiaries, or the trustee cannot properly represent any of them. (*Bowles v. Superior Court* (1955) 44 C2d 574.) This principle is in accord with the equal protection provisions of the Fourteenth Amendment to the US Constitution.

Furthermore, there can be no vested rights in water use that harm the public trust. Regardless of the nature of the water right in question, no water user in the State "owns" any water. Instead, a water right grants the holder thereof only the right to use water, a "usufructuary right". The owner of "legal title" to all water is the State in its capacity as a trustee for the benefit of the public. Both riparian and appropriative rights are usufructuary only and confer no right of private ownership in the watercourse, which belongs to the State. (*People v. Shirokow* (1980) 26 Cal.3d 301 at 307.)

If at any time the trustee determines that a use of water other than the then current use would better serve the public trust, the State has the power and the obligation to reallocate that water in accordance with the public's interest. Even if the water at issue has been put to beneficial use (and relied upon) for decades, it can be taken from one user in favor of another need or use. The public trust doctrine therefore means that no water rights in California are "vested" in the traditional sense of property rights.

Furthermore, the courts have recognized the State's responsibility to protect public trust uses whenever feasible. (See, e.g., *Audubon*, supra, 33 Cal.3d 419; *California Trout*, supra, 207 Cal.App.3d 585, 631; *California Trout*, supra, 218 Cal.App.3d 187, 289.) As such, the California Endangered Species Act ("CESA") requires trustees to provide mitigation measures or alternatives (see CESA 2052.1) and pursue "reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy" (CESA 2053.)

Conclusion

For all of the reasons set forth herein and those set forth in the Appeal Packet, we urge the Board to grant this appeal with the evidence set forth above.

Respectfully,

William McKinnon
General Counsel Water Audit California
Direct: 530.575-5335

Attachment P

Applicant's Supplemental Argument

September 26, 2023

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Napa, California 94559

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RE: Appeals of the Planning Commission approval of the Duckhorn Winery Project (P19-00097-MOD)

Chair Ramos and Supervisors:

As counsel for Duckhorn Wine Company ("Permittee" or "Duckhorn"), I submit this letter brief in opposition to the separate appeals filed by John Murphy on behalf of Preserve Lodi Lane ("PLL") and by Water Audit California ("WAC").

Introduction

Since Duckhorn's application was submitted in March 2019, it has involved extensive review by County staff, technical studies, and multiple site visits. Prior to the hearing on May 3, 2023, Planning Commissioners Megan Dameron,[1] David Whitmer,[2] and Heather Phillips[3] all toured the site. After reviewing the submitted materials and following a publicly noticed hearing, the Planning Commission unanimously approved a use permit modification and exception to the Road and Street Standards and certified a mitigated negative declaration for the project.

These appeals challenge the Planning Commission's decision with grounds of appeal with inaccurate assertions of the law and facts. Other grounds of appeal would have the Board believe that the Planning Commission was "asleep at the switch" without proper evidentiary support for its decision. As the voluminous record before the Planning Commission demonstrates, County staff and the Planning Commission considered all of the substantial evidence before it and made the correct decision supported by that evidence.

[1] Transcript of videorecorded proceedings of the Napa County Planning Commission meeting of May 3, 2023 in re Item 8A Duckhorn Vineyards Winery Use Permit Major Modification P19-00097-MOD ("Transcript") page 55, lines 10-12.
[2] Transcript page 57, lines 6-7.
[3] Transcript page 16, lines 15-16.

Standard of Review

"In hearing the appeal, the board shall exercise its independent judgment in determining whether the decision appealed was correct."[4] The appeals before the Board are limited to the grounds for appeal described in the appellants' appeal packets, and "[a]ny issue not raised by the appellant in the appeal packet shall be deemed waived."[5] "[T]he decision of the board on appeal shall be based on a review of the documentary record ...."[6]

Appellants' assertions of a potentially significant impact must be based on substantial evidence that the impact will result from the project.[7] For areas involving technical expertise, substantial evidence means the opinion of experts based on supporting facts.[8] Speculation, dire predictions, and argument are not substantial evidence.[9]

Responses to grounds of appeal asserted by WAC

WAC appealed the Planning Commission's approval of use permit modification P19-00097 and its associated Initial Study - Mitigated Negative Declaration ("IS/MND").[10] Appellant WAC's enumerated grounds of appeal are addressed below with the same numbering used in WAC's Appeal Packet dated June 1, 2023.

1. *"Critical Findings underlying the [Initial Study - Mitigated Negative Declaration] are not supported by the evidence."*[11]

Under this ground, WAC makes three separate arguments. First, that Duckhorn's existing water system does not comply with State law because WAC was unable to download Consumer Confidence Reports ("CCRs") for Duckhorn's water system for years between 2017 and 2022. Second, WAC argues that the Commission should have further evaluated connection to the City of St. Helena's municipal water supply. Third, WAC argues that a Tier 2 & 3 Water Availability Analysis ("WAA") was required for this project. Each argument is addressed below.

CCRs

WAC's asserted grounds is based entirely on the fact that CCRs are not available for download from the CA Drinking Water Watch website maintained by the California Division of Drinking

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[4] Napa County Code ("NCC") §2.88.090(A).
[5] NCC §2.88.050(A)(4).
[6] NCC §2.88.090(A). Pursuant to the Chair's determination dated September 20, 2023, the record has been augmented with the project description and trip generation worksheet from the pending Napa De Oro Winery use permit application, which was submitted to Napa County after the Planning Commission's May 3, 2023 hearing.
[7] 14 Cal. Code Reg. §§15064(f), 15384(b).
[8] 14 Cal. Code Reg. §§15064(f)(5), 15384(a); *Joshua Tree Downton Business Alliance v. County of San Bernardino* (2016) 1 Cal.App5th 677, 691 (opinion of resident lawyer/business owner did not constitute substantial evidence because the commenter was not qualified to opine on whether the project would cause urban decay); *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 894 (opinions rendered by nonexperts on noise impacts was not substantial evidence).
[9] 14 Cal. Code Reg. §§15064(f), 15384(b).
[10] WAC's Appeal Packet Form is stamped received by Napa County on June 1, 2023.
[11] WAC Appeal Packet page 4.

Water. [12] Based on this unavailability, WAC incorrectly concludes that Duckhorn's water system is out of compliance with the California Drinking Water Act. As noted in WAC's Appeal Packet and clearly explained on Napa County's website, the Environmental Health Division has contracted with the State to administer the Safe Drinking Water Act's permitting requirements for systems with fewer than 200 service connections.[13] The Duckhorn winery has maintained a regulated public water system for many years, which is why Environmental Health's comment memo states "[t]he water supply and related components *must continue to comply* with the California Safe Drinking Water Act and Related Laws."[14] Inherent in this statement is that Duckhorn has been complying. This compliance is confirmed on the Drinking Water Watch website, which lists no open violations for Duckhorn's system.[15] If WAC had spent a few more minutes on the CA Drinking Water Watch website, it could have confirmed this compliance and reviewed details from water quality testing.[16]

Napa County Environmental Health has reviewed and confirmed the Duckhorn's water system is in compliance and that this evidence of compliance is reflected on the CA Drinking Water Watch website. For these reasons, WAC's assertion that CCRs were not filed or that the Duckhorn system is out of compliance based on this website is baseless. The Planning Commission rightly relied upon the review and comment of Napa County Environmental Health, which is tasked by the State to monitor and regulate Duckhorn's public water system.

St. Helena Water Service

WAC argues it was "abuse of discretion" for the Planning Commission to not discuss the alternative of connecting the project to the City of St. Helena's municipal water supply.[17] WAC is incorrect here for two reasons. First, an alternatives analysis is required for significant impacts studied in an EIR,[18] and an alternatives analysis is not a requirement for a negative declaration.[19] This is logical because the lead agency would first identify the significant impact and then look at alternatives to lessen or avoid that significant impact. Given that the project's IS/MND finds no significant impacts, an alternatives analysis is not required under CEQA. Second, the City's laws

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[12] https://www.waterboards.ca.gov/resources/data_databases/drinking_water.html. As the website states "Drinking Water Watch is a public web portal to view public water systems (PWS) location, facilities, sources, and samples. The dataset provides multiple CSV extracts for all PWS, all water source facilities, and all sample points. The data on the web portal is sourced from US EPA database Safe Drinking Water Information System (SDWIS) as well as the Drinking Water Quality results hosted on the EDT Library dataset."

[13] "The Napa County Public Water System Program is in place to ensure that safe and potable drinking water is available by identifying risk factors that contribute to acute and chronic illness and working with water system operators to minimize these risks. Napa County has a contract with the California State Water Resources Control Board to oversee water systems with less than 200 service connections."
(https://www.countyofnapa.org/1913/Public-Water-Systems)

[14] Memorandum from Kim Withrow to Trevor Hawkes regarding P19-00097-MOD dated November 10, 2021 (emphasis supplied).

[15]https://sdwis.waterboards.ca.gov/PDWW/JSP/Violations.jsp?tinwsys_is_number=9295&tinwsys_st_code=CA.

[16] Those results are available online here:
https://sdwis.waterboards.ca.gov/PDWW/JSP/WSamplingResultsByStoret.jsp?SystemNumber=2800024&tinwsys_is_number=9295&FacilityID=001&WSFNumber=36328&SamplingPointID=001&SystemName=DUCKHORN+VINEYARDS&SamplingPointName=WELL+1&Analyte=&ChemicalName=&begin_date=&end_date=&mDWW=.

[17] WAC Appeal Packet page 6.

[18] 14 Cal. Code Reg. §15126.6.

[19] 14 Cal. Code Reg. §§15071.

prohibit new outside connections to its municipal water system.[20] The Planning Commission did not abuse its discretion by declining to discuss an unlawful alternative. We also note that counsel for WAC did not raise this topic with the Commission.[21] If WAC believes that the Commission should have discussed this alternative, WAC should have at least mentioned the topic during the hearing.

Tier 2 & 3 WAA

The Planning Commission was advised by County staff that the project's reduction in water use meant that the project did not require a Tier 2 & 3 WAA.[22] WAC asserts this position is in error. However, Permittee did supply a Tier 2 & 3 WAA that was referenced and cited in the Permittee's Tier 1 analysis submitted to the Planning Commission.[23] Duckhorn's representative repeatedly referenced the Tier 2 & 3 WAA and its resulting findings at the Planning Commission when responding to comments from WAC's counsel.[24] Even if the Board disagrees with County staff's statements that no Tier 2 & 3 WAA was required due to the reduction in water use, WAC's argument fails because a Tier 2 & 3 WAA was prepared and its results were presented to the Planning Commission.[25]

2. *"The [Mitigated Negative Declaration] fails to consider substantial evidence of existing environmental injury."*[26]

WAC's argument under this ground of appeal spends a great deal of time describing Napa County groundwater policy generally before arguing that PBES staff's position to not require a Tier 2 & 3 analysis was error. As stated above, a Tier 2 & 3 WAA was prepared by David H. Peterson, CEG, CHg of Wagner & Bonsignore, and that analysis shows that the project does not have an impact to surface water flows of the Napa River.[27] While PBES staff felt that the Tier 2 & 3 WAA was unnecessary, Duckhorn prepared, submitted, and discussed that analysis in this permitting

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[20] St. Helena Municipal Code §13.04.050(H).

[21] See Transcript page 48, line 2 to page 49, line 12. Counsel for WAC never once mentioned connection to a municipal water source as an alternative.

[22] Transcript page 52 lines 12-18.

[23] Page 2 of the Tier 1 Water Availability Analysis prepared by Bartelt Engineering dated August 2022 and designated as Attachment H to the Staff Report to the Planning Commission.

[24] Transcript page 28, lines 12-21 and page 50, lines 17-22. Because the Tier 2 & 3 WAA certainly was relied upon (both directly and indirectly) by the Planning Commission in making its decision, that analysis is part of the "record on appeal" as defined by Napa County Code §2.88.010(K) as confirmed by the Chair's Good Cause Determination dated September 20, 2023.

[25] WAC may argue that it should have been provided with this analysis prior to the Planning Commission hearing. The failure to obtain the report earlier is WAC's own fault. WAC requested the report less than 18 hours prior to the Planning Commission hearing by using an incorrect email address for the Planning Commission clerk. The public notice for this project provided the assigned planner's contact information. As WAC has been aware of the Duckhorn project for two years, WAC could have sought the document sooner by contacting the project planner. (See page 28, lines 15-16 and page 42 line 5 of the Verified Complaint for Negligent Breach of Trustee Duties; For Declaratory Judgement Petition for Writ Mandate; Preliminary and Permanent Injunction filed June 2, 2021 in *Water Audit California v. The County of Napa*, Napa Superior Court Case No. 21CV000784.) The Duckhorn project was not only listed among other project but was individually identified and described in WAC's complaint.)

[26] WAC Appeal Packet page 7.

[27] Tier 2 and 3 Water Availability Analysis prepared by David H. Peterson , CEG, CHg dated May 10, 2022, pages 8-9.

process. WAC's arguments under this ground of appeal muddle together the requirements CEQA and the public trust doctrine each of which are addressed below.

CEQA

PBES staff's position that a Tier 2 and 3 WAA was not required was on the project's reduction in groundwater use.[28] Under CEQA, potential impacts of a project are measured from the baseline of existing conditions.[29] The existing groundwater pumping for vineyard and winery purposes is part of the existing baseline against which impacts are measured. The potential impact being asserted by WAC is that groundwater pumping may impact surface water flows. Because the project reduces groundwater pumping, the project could not increase this potential impact over the baseline condition. Moreover, Duckhorn's Tier 2 and 3 WAA confirms that the project will not result in such an impact. WAC has presented no contrary evidence that the project will result in a negative impact over the baseline condition.

The anticipated testimony from WAC's advisory board members does not provide evidence of a potentially significant impact resulting from this project. The short summaries from Dr.s Moyle, Grantham, and Fogg address the Napa River generally, not this project.[30] The only direct reference to the Duckhorn project comes from Dr. Grantham's expected testimony where he notes the existing condition of a downstream gauge in St. Helena reflecting impacts from groundwater pumping. Dr. Grantham does not provide a connection between Duckhorn's well and the readings in the St. Helena gauge. As Dr. Moyle's summary notes, the City of St. Helena utilizes the "Stonebridge" wells as part of its municipal water system, and there certainly are other wells between Lodi Lane and St. Helena. To articulate a potentially significant impact under CEQA, expert testimony must relate to an impact of the project.[31] At most, the expected testimony from WAC describes a baseline condition elsewhere.

It is important to remember the existing baseline condition is a winery with no restriction on annual groundwater use. That baseline is changed by the Commission's conditions of approval. Under the Planning Commission's approval, Condition 4.20.b. provides that total groundwater use may not exceed 14 acre feet per year. Condition 6.15.a. requires that all Duckhorn's wells be metered and included in the County's groundwater monitoring program. In the event that groundwater use becomes a problem constituting a nuisance, Condition 4.20.b. provides that Napa County may initiate modification or revocation of the use permit. In contrast, a denial of the project would continue the existing higher levels of groundwater use that would not be subject to metering or inclusion in the County's groundwater monitoring program. The Planning Commission's conditions of approval will truly manage what is measured.

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[28] Tier 1 WAA page 6.

[29] CEQA Guidelines §15125(a)(1); *Fat v. County of Sacramento* (2002) 97 Cal.App. 4th 1270; *Citizens for East Shore Parks v. State Lands Comm.* (2011) 202 Cal.Ap.4th 549, 559.

[30] Staff Report page 12; IS/MND page 21.

[31] *Gentry v. City of Murrieta* (1995) 36 Cal.App.3d 1359, 1422 (letter from engineering profession about groundwater impacts was not substantial evidence because it lacked specific information about the project).

The Public Trust Doctrine

The public trust doctrine does not apply to groundwater itself.[32] "Rather, the public trust doctrine applies if the extraction of groundwater adversely impacts a navigable waterway to which the public trust doctrine does apply."[33] Napa County's obligation is to take the public trust into account and to protect the public trust from adverse impacts where feasible.[34] As explained above, the expected testimony from WAC contains no analysis specific to Duckhorn's project and any impact from Duckhorn's past or proposed activities. Instead, those materials discuss general interactions and possible impacts on a county-wide basis. In contrast, the project's Tier 1 WAA and Tier 2 and 3 WAA provide substantial evidence that the project reduces groundwater use and that this groundwater extraction does not impact surface water flows of the Napa River.

WAC discusses county-wide groundwater policy at length but provides no analysis specific to this project. This is true of WAC's submissions from its advisory board member Dr. Börk whose legal analysis is directed at whether SGMA displaces the public trust doctrine. Neither Permittee nor County staff have taken the position that SGMA displaces the public trust doctrine, and the answer to that legal question does not provide factual support for WAC's assertion that Napa County has failed to consider its public trust obligations. In fact, the Planning Commission expressly considered potential impacts to the public trust in its Staff Report and IS/MND.[35]

WAC's core assertion is that the County must further reduce Duckhorn's existing water use (by some unspecified amount) to comply with public trust doctrine. WAC supports its assertion with the statement that "[t]here can be no vested rights in water use that harm the public trust."[36] Contrary to WAC's assertion, groundwater rights do exist in California.[37] WAC's desired outcome of stripping Duckhorn of its water rights (where water use is being reduced and the Tier 2 & 3 WAA analysis shows no impact to the Napa River) is not feasible and would conflict with Duckhorn's established water rights. As the above cited caselaw directs, the public trust doctrine requires that the County consider "if the extraction of groundwater adversely impacts a navigable waterway." Because Duckhorn provided substantial evidence that no such adverse impacts exist, the County has fulfilled its public trust doctrine obligations, and this ground of appeal should be rejected.

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[32] *Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 865.
[33] *Ibid.*
[34] *National Audubon Society v. Superior Court* (1983) 33 Cal.3 419, 446.
[35] We consider the summaries "short" because the bulk of WAC's submission (89 of the 111 pages) are WAC's cover letter and the resumes and publication lists of Dr.s Börk, Moyle, Grantham, and Fogg.
[36] WAC Appeal Packet page 4. WAC cites no statutory or caselaw authority for this statement.
[37] Water rights in California are usufructuary, meaning that rights holders possess a right to the use of water. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1237 fn. 7.) The adoption of the Sustainable Groundwater Management Act of 2014 did not alter the existing system of California groundwater rights. (Cal. Water Code §10720.5)

3. *"The Proposed Water Demand exceeds groundwater recharge."*[38]

WAC incorrectly quotes Napa County's Well Permit Standards in asserting this ground of appeal. The 2015 WAA adopted by the Board states an assumed recharge rate of 1 acre foot/acre.[39] That standard was changed to 0.3 acre feet per acre ***or no net increase*** pursuant to the Well Permit Standards dated January 6, 2023.[40] This project meets the no net increase requirement by reducing groundwater use.

WAC's apparent goal is to challenge the existing uses at Duckhorn. In evaluating a proposed project, Napa County can and must address the potential impacts resulting from that project. The U.S Constitution, California Constitution, and CEQA provide that Napa County's ability to impose conditions, exactions, and mitigation must have a connection (or nexus) to an impact and be roughly proportional to that impact.[41] As noted above, the proposed project results in the reduction of water use that is capped at 14 acre feet/year. The project also provides recycling of process wastewater and the ongoing monitoring of the project's wells. Duckhorn knows the worth of water, which is why groundwater use is being ***reduced*** and the project would recycle winery process wastewater for re-use as vineyard irrigation.[42] Duckhorn's Tier 2 & 3 WAA demonstrates that its reduced water use will not have an impact on Duckhorn's neighbors or the Napa River.

4. *"The evidence shows the proposed project will consume more water than the existing facility."*[43]

This ground of appeal is based entirely on WAC's incorrect assertion that the Tier 1 WAA does not include water use for food service at marketing events. However, the Tier 1 water demand analysis does include water use resulting from event food service.[44] Those water demand figures (based on an amount of water per visitor being served) comply with Napa County's standards for water and wastewater associated with food service. WAC's factual assertion is incorrect, and this ground of appeal must be rejected.

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[38] WAC Appeal Packet page 13.
[39] Water Availability Analysis Policy adopted by the Board May 2015, page 7 Table 2A.
[40] Napa County's Well Permit Procedures dated January 6, 2023 are available online here: https://www.countyofnapa.org/DocumentCenter/View/25905/Well-Permit-Standards-and-WAA-Requirements--January-6-2023?bidId=.
[41] The CEQA Guidelines state "[a] lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.)" (14 Cal. Code Reg. §1041(a).)
[42] See Tier 1 WAA and Project Description included in Attachment D to the Planning Commission Staff Report.
[43] WAC Appeal Packet page 13.
[44] Tier 1 WAA, Table III.

5. *"The failure to provide notice to the Department of Drinking Water and the City of St. Helena has prevented full and complete review of the project as required by the CEQA."*[45]

WAC asserts that CEQA requires notice to the California Department of Drinking Water ("DDW") and the City of St. Helena. Each contention is addressed below.

DDW

Duckhorn's project was noticed to the State Clearinghouse.[46] That DDW did not comment is not evidence that DDW did not receive notice. DDW is not a responsible agency or trustee agency under CEQA,[47] and DDW may have declined to comment because it has contracted with Napa County Environmental Health to oversee public water systems. Under this ground of appeal, WAC also asserts that references from the 1970's and 80's documents support its contention that the water system is unsafe. Again, WAC's contention is baseless. Records from 50 years ago do not reflect the current state of the wells or the regulated public water system. More importantly, Napa County Environmental Health oversees this water system which is subject to regular testing requirements.

City of St. Helena

WAC's argues that the Planning Commission failed to obtain comments from the City of St. Helena, and WAC assumes (without evidentiary support) that the City did not receive notice and has not reviewed the Duckhorn project materials. WAC notes that the City commented on Duckhorn's 1976 use permit (i.e. 46 years ago). There is no requirement for Napa County to expressly confirm that the City has reviewed and understands this project given that the City will not be providing municipal services.[48] WAC states that an increase in the Duckhorn project's water use may impact the City's undefined efforts to mitigate injuries to the public trust. However, this project ***reduces*** groundwater use and has been demonstrated not to impact surface water flows. Also, the City does not appear to share WAC's view of its public trust responsibilities given its defense of WAC's lawsuit against the City.[49]

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[45] WAC Appeal Packet page 14.
[46] The Initial Study and MND is available on the State Clearinghouse website here: https://files.ceqanet.opr.ca.gov/286607-1/attachment/PkJAN-6v0aIrrhOqiUdMX4mxsG-oSyXWBXOJJb9wVsvVbjZAqoz-SYH32GeZ-Xy3nDHOMADU6vIdajF60
[47] DDW is not responsible for a discretionary permit for the project and is not listed as a trustee agency in the CEQA Guidelines. (14 Cal. Code Reg. §§15381, 15386(a))
[48] The City prohibits new outside connections to its municipal water system. (St. Helena Municipal Code §13.04.050(H))
[49] *Water Audit California v. City of Saint Helena,* Napa Superior Court Case No 21CV000859 (Voluntary Dismissal filed August 2022).

6. *"The [Mitigated Negative Declaration] does not include a necessary term of mitigation requested by CDFW."*[50].

Again, WAC makes an incorrect and unsupported assumption to argue error by the Planning Commission. The California Department of Fish and Wildlife ("CDFW") requested a notice and frac-out plan[51] before drilling under the Napa River.[52] The Planning Commission's condition of approval ensure that notice and a frac-out plan will be provided to CDFW. There is no CDFW requested mitigation that was not included. WAC assumes that CDFW will not be provided with a notice and states incorrectly that "Duckhorn intends to argue that as the horizontal bore hole originates and terminates outside the boundaries of the Napa River[,] a Fish and Game Code 1602 permit [also known as a lake and streambed alteration agreement or LSA] is not required."[53] While CDFW doesn't need the Planning Commission's condition to enforce its jurisdiction,[54] the Planning Commission did require consultation with CDFW in the following condition of approval:

> **MM BIO-3; Lake or Streambed Alteration Agreement:** The applicant shall submit a Notification of Lake or Streambed Alteration with the California Department of Fish and Wildlife for the horizontal directional drilling and installation of utility lines under the Napa River. Issuance of a Streambed Alteration Agreement or demonstration that CDFW determined that the agreement was unnecessary shall be provided to the Planning, Building & Environmental Services department prior to issuance of building permits associated with the drilling.[55]

As required by the above condition, Duckhorn will provide a notice to CDFW with a frac-out plan as requested. This requirement was clearly stated during the Planning Commission hearing that WAC's counsel participated in via phone. Specifically, Trevor Hawkes stated:

> And the only item that came up with CDFW was the potential based upon the elevation that they may drill down to go underneath the Napa River on whether or not they would need to get a lake and streambed alteration agreement, which is why we added that mitigation measure on there. And *I know that also that they're going to require the applicant to submit a frac-out plan when they submit to CDFW* to see if they need the lake and streambed alteration agreement.[56]

Because no CDFW requested mitigation is excluded and CDFW will receive notice and a frac-out plan, this ground of appeal lacks any merit and should be rejected.

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[50] WAC Appeal Packet page 16.
[51] A frac-out plan is a set of procedures to follow in the unlikely event that the HDD drilling enters the waterbody or spills drilling materials.
[52] CDFW comment letter dated April 27, 2023, page 2. The exact language of the request was "[p]lease include a frac-out plan with the LSA notification."
[53] WAC Appeal Packet page 16 [bracketed materials added]. WAC's arguments also cite Chair Whitmer's comments that he would appreciate CDFW comments earlier in the process as CDFW's comments on this project arrived shortly before the hearing. However, nothing that Chair Whitmer said can be remotely understood to mean that CDFW's requests would not be honored. (See Transcript page 59, lines 1-13)
[54] California Fish and Game Code §1600 *et seq*. grants CDFW independent jurisdiction to enforce its provisions.
[55] Condition of Approval 6.12.c. included in Attachment B of the Staff Report to the Planning Commission.
[56] Transcript page 18, lines 19-26 (emphasis supplied).

7. *"To the extent that Duckhorn seeks to process grapes from outside Napa County, the project does not comply with the terms of the Agricultural Land Preserve or the Williamson Act."*[57]

The project site is under Williamson Act contract,[58] and WAC makes the unsupported assertion that the Williamson Act requires a winery to process only Napa County grapes. WAC provides no citation to the Williamson Act, Napa County's Williamson Act Rules, or caselaw to support its assertion that the Agricultural Land Preserve or Williamson Act prohibit agricultural processing of out-of-county fruit. The Duckhorn project complies with Napa County's grape source rule,[59] and is a compatible use under the Williamson Act and Napa County's Williamson Act Rules.[60] Duckhorn is fully compliant with Napa County's 75% grape source rule. Duckhorn's representative testified at the Planning Commission that Napa County fruit currently being processed in Hopland, California will instead be processed at the project site.[61] WAC wishes to create a 100% grape source requirement based on the Williamson Act, but no such requirement exists. For the foregoing reasons, the Board should uphold the Planning Commission's unanimous approval and find that the project's compliance with Napa County's 75% does not violate the Williamson Act.

8. *"Prior Use Permit Agreements have obligated Duckhorn to provide a left-turn lane on Silverado Trail."*[62]

Citing Public Works memos from the 1980's, WAC asserts that prior use permits required a left turn lane that is unbuilt. Whether intentionally or inadvertently, WAC's research into Duckhorn's past use permits is incomplete. The condition of approval requiring a left-turn lane was removed through use permit 95168-MOD in which the winery's entrance was moved from Silverado Trail to Lodi Lane.[63] For this project, the Planning Commission considered appropriate traffic improvements based on the project's Traffic Impact Study and peer review by the Department of Public Works. Because the outdated memos cited by WAC were amended in 1995, this ground of appeal lacks merit and should be rejected.

While no turn lane was required, that does not mean no traffic related improvements are included in this project. As conditioned by the Department of Public Works, traffic improvements are included in the project as reflected in the following conditions:

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[57] WAC Appeal Packet page 17.
[58] The Williamson Act allows Napa County and landowners to enter contracts committing the contracted property to agriculture and compatible uses.
[59] NCC §18.104.250(C).
[60] A winery is an agricultural use under Napa County zoning and the Williamson Act. Government Coode § 51201(e) defines a compatible use as those determined by the County to be compatible with agriculture. Napa County defines "agriculture" as including winery activities (NCC §18.04.08.040) and includes wineries as compatible uses for Williamson Act purposes. Napa County's Williamson Act Rules Rule 4 and are available online here: https://www.countyofnapa.org/DocumentCenter/View/3772/Williamson-Act-Rules-Type-A-PDF?bidId=.
[61] Transcript page 22, lines 23-26.
[62] WAC Appeal Packet page 17.
[63] See item 2 on page 1 of the staff report for 95168-MOD dated December 1, 1995.

> The permittee shall construct asphalt resurfacing of Lodi Lane from 20 feet east of the Napa River bridge to 20 feet west of the stop sign facing Silverado Trail, Improvements to the driveway access points from the Duckhorn Vineyards Winery property onto Lodi Lane and restriping of the improvements area to meet NCRSS design standards. The design of the roadway improvements shall be submitted to the Public Works Department for review and approval. The roadway improvements shall be designed in substantial conformance with the submitted site plan, and other submittal materials and shall comply with all requirements of the County Code and Napa County Road and Street Standards.[64]
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> ...
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> The Permittee will install directional signage at the driveway exits of the West and East properties directing vehicle traffic traveling south to utilize Silverado Trail and vehicle traffic traveling north to utilize State Route 29.[65]
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> ...
>
> The applicant/permittee shall install a dedicated right-turn lane at the westbound approach at SR 29/Lodi Lane.[66]
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> ...
>
> The project applicant/permittee shall install a northbound speed feedback sign on Silverado Trail and coordinate with the County of Napa to install a speed feedback sign in the south bound direction near Glass Mountain Road.[67]

The Planning Commission required these improvements with the advice of the Department of Public Works. WAC' assertion that prior use permit conditions remain unfulfilled is incorrect and does not represent error on the Commission's part.

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[64] Condition 9.5 in Attachment B of the Staff Report to the Planning Commission.

[65] Condition 9.9.a. included in Attachment B to the Staff Report to the Planning Commission.

[66] Item 6 of DPW's July 22, 2021 memo as updated on April 10, 2023. The requirements of DPW's memo are conditions of approval pursuant to condition 4.18c.

[67] Item 7 of DPW's July 22, 2021 memo as updated on April 10, 2023. The requirements of DPW's memo are conditions of approval pursuant to condition 4.18c.

Responses to grounds of appeal asserted by Murphy/PLL[68]

The Appeal Packet submitted by Appellant John D. Murphy on behalf of PLL challenges the Planning Commission's approval of use permit modification P19-00097-MOD. Because Appellant Murphy's grounds of appeal are not expressly identified and numbered, the apparent grounds are addressed below and numbered in order of appearance in the Appeal Packet dated May 31, 2023.[69]

1. *Commissioners and PBES Planners failed to "evidence any awareness of having read or responded to either written or verbal public opinions and concerns..."*[70]

This ground of appeal is simply not true. PBES staff attached public comments to the staff report for the Commission,[71] and Commissioners asked questions expressly based on those comments.[72] Trevor Hawkes also specifically mentioned public comments in his presentation of the project.[73] Chair Whitmer thanked each commenter, and the other Commissioners acknowledged and addressed public comments in their deliberations.[74] Commissioners did not think the public comments provided reasons to deny or delay the project, but PBES staff and Commissioners certainly read and considered the public comments presented on this project.

2. *Members of the public were limited to three minutes to address the Commission.*[75]

Mr. Murphy did not address the Planning Commission, so this ground appears to be asserted on behalf of unnamed PLL members. The Commission does limit speaking time to 3 minutes, which is clearly stated on the Commission's agenda.[76] Because speaking limits at California public meetings have been expressly upheld by California courts,[77] Mr. Murphy's ground of appeal fails based on the law. More importantly, Chair Whitmer did not cut-off or stop any speaker from addressing the Planning Commission, and no speaker complained to the Commission that the three minute limit was insufficient. All speakers who appeared at the hearing (either in-person or on the phone) were able to address the Planning Commission, and no speaker had their comments abbreviated or limited.

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[68] Because PLL is not an entity registered with the California Secretary of State, we understand PLL to be an unincorporated association. Apart from Mr. Murphy, Permittee has no confirmation of PLL's membership or structure. An unincorporated association must have two or more persons to be legally formed under California law. (CA Corporations Code §18035) Not having confirmation of PLL membership beyond Mr. Murphy, PLL and Murphy are referred to interchangeably herein.

[69] Appeal Packet is dated May 31, 2023 and the Appeal Packet Form is stamped received by Napa County on June 1, 2023.

[70] Murphy/PLL Appeal Packet, page 2.

[71] Staff Report to the Planning Commission Attachments N and O.

[72] Transcript page 17, lines 12-24 (Commissioner Dameron specifically referring to a public comment).

[73] Transcript page 18, lines 27-28.

[74] Transcript page 54 lines 25-28 (Commissioner Dameron) and page 55 lines 27-28 (Commissioner Phillips).

[75] Murphy/PLL Appeal Packet, page 2.

[76] See page 1 of the Planning Commission agenda available online here: https://napa.legistar1.com/napa/meetings/2023/5/1519_A_Planning_Commission_23-05-03_Agenda.pdf.

[77] *Ribakoff v. City of Long Beach* (2018) 27 Cal. App. 5th 150.

3. *PBES failed to analyze the Project's potential cumulative traffic impacts.*[78]

This statement is factually incorrect. The project's Traffic Impact Study ("TIS") contains detailed analysis of current and future conditions under a cumulative impact analysis.[79] This analysis included the pending Inn at the Abbey project referenced at length in Mr. Murphy's Appeal Packet.[80] Cumulative traffic impacts also are analyzed in the IS/MND.[81] Therefore, Mr. Murphy's assertion that cumulative traffic impacts were not analyzed is incorrect. Mr. Murphy's further grounds related to traffic are addressed below.

4. *PBES "prejudicially excluded" evidence based on the personal observations of unnamed PLL members and supporters regarding the intersection of Highway 29 and Lodi Lane.*[82]

The premise of this ground of appeal is incorrect. Neither PBES nor the Planning Commission excluded any evidence. Mr. Murphy's comment letter (along with others) was provided to the Planning Commission, and members of the public can and did address the Commission during the hearing. Mr. Murphy has not identified any evidence that was excluded by PBES staff. The statement framing this ground of appeal is factually incorrect. Mr. Murphy's argument and speculation on traffic issues did not sway the Planning Commission, but that is not the same as excluding evidence.

5. *The Planning Commission failed to consider potential impacts between the Vine Trail and trucks leaving Duckhorn.*[83]

The Planning Commission was provided with an analysis of potential impacts associated with the Vine Trail. That the Commission did not discuss this topic in detail during its hearing, does not mean that the subject was not studied. The project TIS and the County's CEQA document discuss the Vine Trail[84] Therefore, the TIS was expressly aware of the Vine Trail when analyzing safety considerations in relation to the project. [85]

6. *The Traffic Impact Study relies on pre-pandemic data from 2019.*[86]

Mr. Murphy cites several sections of the Traffic Guidelines arguing that the TIS itself is too old and that the TIS relied on 2019 data. Mr. Murphy misstates the County's TIS Guidelines, which state "[i]n general, a TIS is valid for two years. After two years, a TIS should be updated unless County staff determine that the existing TIS remains valid."[87] The project's TIS is dated June 10,

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[78] Murphy Appeal Packet page 4,
[79] Traffic Impact Study for the Duckhorn Vineyards Use Permit Modification prepared by W-Trans dated June 10, 2021 ("TIS") pages 13, 19-20. The TIS is designated as Attachment F to the Staff Report to the Planning Commission.
[80] TIS page 16.
[81] IS/MND, pages 27-29, 32.
[82] Murphy/PLL Appeal Packet page 5-6.
[83] Murphy/PLL Appeal Packet page 7.
[84] TIS pages 6, 13-14, 38, and 43; IS/MND, page 28.
[85] TIS pages 6-8.
[86] Murphy/PLL Appeal Packet page 8-9.
[87] Napa County Traffic Impact Study Guidelines 2021, page 3.

2021, which is less than two years from the Planning Commission hearing. Furthermore, County staff did not determine that this TIS should be updated. Therefore, the TIS complies with the requirement stated in the County's guidelines.

Murphy's appeal packet also contains an incorrect statement that the traffic data was gathered two years prior to the submission of the major modification application, which would be 2017. As explained during the Planning Commission hearing, 2019 data was used to reflect pre-pandemic conditions.[88] Napa County Department of Public Works expressly directed the Permittee to use pre-pandemic data.[89] While the guidelines provide that traffic count data should be taken within two years, the guidelines also provide the Public Works Department with discretion to direct the scope of the TIS and to determine whether the TIS remains a valid analysis.[90] Here, Napa County's Traffic Engineer required pre-pandemic traffic volumes be used to evaluate impacts because volumes collected during the height of the pandemic would have been lower. Based on the above, the Planning Commission did not err in relying on the TIS that was prepared with pre-pandemic traffic data as directed by the Department of Public Works.

7. *Duckhorn improvements are too close to residential property.*[91]

The Duckhorn project is in Agricultural Preserve zoning, and no surrounding properties are zoned residential. Uses in the area include vineyards, like Mr. Murphy's vineyard, wineries, the Wine Country Inn, and rural residences. Duckhorn's winery was established approximately 50 years ago.[92] PLL acknowledges that the winery will be more than 500 feet from nearby residences but asserts that the winery access road (which travels over only Duckhorn property) violates a 500 foot setback from an unspecified residence. Napa County Code does not contain a setback between residences and winery driveways.

As stated in Napa County's Right to Farm Ordinance, agriculture (which includes agricultural processing) can be disruptive at times.[93] Here, Duckhorn provided a noise study to analyze the potential impacts on nearby residences, and that noise study concludes that the "project would not result in a substantial temporary increase in noise levels or produce excessive groundborne vibration levels during construction activities."[94] During operations, the noise study concludes the project will result in "no substantial permanent increase in noise levels".[95] The project will not have a noise impact to neighbors, and the Commission's conditions of approval require screening landscaping and limits on outdoor lighting that will limit the project's visual impact on

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[88] Transcript page 25, lines 16-26.
[89] Department of Public Works memorandum from Janice Spuller to PBES staff regarding Traffic Impact Study Scope of Services for P19-00097 dated September 8, 2020.
[90] Napa County Traffic Impact Study Guidelines - January 2021, page 5.
[91] Murphy/PLL Appeal Packet page 12.
[92] Transcript page 35, lines 21-23 (testimony of Alex Ryan).
[93] NCC §2.94.030.
[94] Duckhorn Winery Noise and Vibration Assessment prepared by Illingworth & Rodkin dated October 28, 2022, page 26.
[95] Duckhorn Winery Noise and Vibration Assessment prepared by Illingworth & Rodkin dated October 28, 2022, page 26.

residences.[96] Given the noise study and these protections, the Planning Commission did not err in approving the project.

8. An EIR is required due to "structural traffic safety threats" at the intersections of Silverado Trail and Highway 29.[97]

The "structural traffic safety threats" listed by Mr. Murphy consist of the feared traffic interactions between users of the Vine Trail, winery guests, winery trucks, and other existing users of Lodi Lane. These listed "threats" are not observations of existing difficulties or collisions experienced by Mr. Murphy, but are expressed fears and speculation.[98] The project's TIS provides actual data on number of collisions at all intersections raised by Mr. Murphy.[99] For the five year period prior to the TIS between October 1, 2014 and September 30, 2019, there were zero collisions in the immediate vicinity of the project driveway on Lodi Lane, and collision data at all locations was well under statewide averages except for the intersection of Silverado Trail and Lodi Lane and the road segments approaching that intersection.[100] These collisions were the result of high speeds on Silverado Trail, and the TIS recommends a speed feedback sign to lower speeds on Silverado Trail.[101] That speed feedback sign is required by the Department of Public Works conditions of approval.[102] As a collector road in the County's road system,[103] Lodi Lane serves to "link locally important activity centers and provide a collection system for local roads."[104] By design, Lodi Lane serves more than just the properties abutting it, and this project's improvement will help reduce speeds for existing traffic as well as project traffic. The TIS further analyzed safety in terms of sight lines (found to be adequate for entering and exiting the project site) and truck access (adequate with improvements to the western access). Because Mr. Murphy's generalized speculation regarding traffic impacts does not meet the definition of substantial evidence, CEQA does not require an EIR for the Duckhorn project, and this ground of appeal should be rejected.

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[96] Conditions of Approval 4.16.b., 6.4.d., and 6.6.a. included in Attachment B to the Staff Report to the Planning Commission.

[97] Murphy/PLL Appeal Packet pages 11 and 13.

[98] Fears and speculation or the general comment that "traffic will be worse" do not provide substantial evidence of a potentially significant impact. (14 Cal. Code Reg. §§15064(f)(5), 15384(a)) While CEQA caselaw provides that actual experiences of commenters regarding may support a fair argument of a potentially significant impact, that evidence must be based on experience relating to an impact of the project, not just fears and speculation. (Compare *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322 (city's reliance on threshold of significance without traffic study not appropriate where commenters relayed personal experiences of roadway being used by equestrians and horses killed in accidents) and *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 195 (no fair argument of an impact where neighbors' predictions about project's traffic impacts not supported by specific factual foundation). While PLL's Appeal Packet purports to rely on the "personal experience" of unnamed residents within 1000 feet of the project site, the testimony at the Planning Commission consisted of generalized fears of predicted traffic increases.

[99] TIS, pages 6-8.

[100] TIS, Table 2 on page 7.

[101] TIS, page 8.

[102] Item 7 of DPW's July 22, 2021 memo as updated on April 10, 2023. The requirements of DPW's memo are conditions of approval pursuant to condition 4.18c.

[103] NCC §18.112.070(49).

[104] Napa County General Plan Circulation element adopted February 5, 2019, page 11.

Conclusion

The Planning Commission considered and weighed the issues reflected in the grounds of appeal asserted by Appellants WAC and Appellant John D. Murphy and PLL. In addition to the information presented during the hearing, the record contains extensive information and analysis on Duckhorn's project. None of the purported errors cited in the respective appeal packets demonstrate that the Planning Commission's unanimous approval was incorrect, and neither appellant has provided a fair argument of a potentially significant impact supported by substantial evidence. The Planning Commission was not "asleep at the switch" or dismissive of the appellants' concerns. Neither is the Planning Commission empowered to change County groundwater policy in the context of a single application. Duckhorn's project is the natural 50 year progression of an agricultural processing facility that has been rooted in this part of Napa County for decades. The Commission conducted a thorough review of the project and imposed conditions of approval to protect the environment, neighbors, and our agricultural economy. Duckhorn respectfully requests that the Board reject all grounds of appeal and uphold the Commission's unanimous approval. Thank you for your consideration.

Respectfully,

Rob Anglin

cc: Neha Hoskins
Laura Anderson
Trevor Hawkes
William McKinnon
Amy Minteer

Attachment Q

Correspondence through
August 8, 2024

From: PlanningCommissionClerk
To: Hawkes, Trevor
Subject: FW: Duckhorn winery major modification P19-00097
Date: Wednesday, May 3, 2023 10:56:45 AM

Please see below.

From: Water Audit California <general@waterauditca.org>
Sent: Wednesday, May 3, 2023 10:47 AM
To: PlanningCommissionClerk <planningcommissionclerk@countyofnapa.org>
Subject: Duckhorn winery major modification P19-00097

[External Email - Use Caution]

Dear Planning Commissioners

Water Audit California formally objects to the captioned proposal:

1. Although the applicant asserts that it has done a Tier 3 water availability analysis, it is not part of the public record and therefore unavailable for proper review for potential injury to the proximate water course;

2. Although the application shows that this project will be infilling wetland, there is no record of a Section 404 permit application or waiver by the U.S. Army Corp of Engineers.

These omissions preclude proper and complete review of the project, and therefore it must be rejected or continued to allow for compliance.

Respectfully,

William McKinnon
General Counsel
Water Audit California

WATER AUDIT CALIFORNIA - *A California Public Benefit Corporation*
952 School Street #316, Napa, CA 94559 / phone: (707) 681-5111

From: Nancy Yewell
To: Gallagher, Joelle; Cottrell, Anne; Gregory, Ryan; Pedroza, Alfredo; Ramos, Belia; Bordona, Brian; Hawkes, Trevor
Cc: beberling@napanews.com; diane@dianedillon.net; tfcarl@gmail
Subject: Duckhorn Winery Expansion"s Industrialization of Lodi Lane
Date: Saturday, May 27, 2023 1:39:03 PM

[External Email - Use Caution]

May 27, 2023

Notice to the Napa County Board of Supervisors

Re: The Duckhorn Winery Expansion's Industrialization of Lodi Lane

From: Nancy and Dave Yewell
1119 Ehlers Lane
St. Helena, CA 94574

Lodi Lane is exactly that: a lane, just wide enough for two-way traffic—except for the decades' old bridge over the Napa River on the east side of the lane where a sign on the bridge clearly states it's a one lane bridge.

In rainy years, the river floods its banks and the bridge. A couple of years ago, the flood lasted several days and signs posted on either side of the bridge stated: "Road Closed."

When we drive north on the Silverado Trail through St. Helena, we turn left onto Lodi Lane to reach our home. The Silverado Trail just north and south of Lodi Lane curves around blind corners, so we're always grateful when we're safely on Lodi Lane.

Similarly, the intersection at Lodi Lane and Highway 29 is blind when looking right—north—because of the incline up 29. When traffic is heavy here on 29, and one needs to turn left—south—onto 29, there isn't much time to make that left turn when traffic appears to the north.

For all of the above reasons, Lodi Lane won't comfortably support the heavy truck traffic, nor the increased wine visitor traffic that the Duckhorn Winery expansion requests and the Napa County Planning Commissioners approved. Add the traffic that Jackson Family Inn at the Abbey will cause, the eventual traffic congestion is a series of accidents waiting to happen.

Then there's the quality of the road surface itself: the wear and tear of traffic and the long term, regular maintenance required.

The County Supervisors need to take a longer view of the impact of the increased vehicular traffic –enormous trucks transporting grapes, the expansion of over 100+ daily winetasters in their own cars or in limos, and vans for Duckhorn's proposed events of 400 to 600 attendees.

Lodi Lane, its bridge and its intersections are not built to be industrialized.

We ask that the County Supervisors overrule the approval of this project by the planning commission, and send it back to the applicant with guidance to cut the wine production and the number of visitors by 50%, or even better, cancel the whole project to preserve Lodi Lane.

Nancy & Dave Yewell

From: Bordona, Brian
To: Parker, Michael; Hawkes, Trevor
Subject: FW: Duckhorn Major Modification
Date: Thursday, June 1, 2023 8:20:17 AM

From: kathy korteranch.com <kathy@korteranch.com>
Sent: Wednesday, May 31, 2023 6:08 PM
To: Cottrell, Anne <anne.cottrell@countyofnapa.org>; Gregory, Ryan <Ryan.Gregory@countyofnapa.org>; Pedroza, Alfredo <Alfredo.Pedroza@countyofnapa.org>; Ramos, Belia <Belia.Ramos@countyofnapa.org>; Bordona, Brian <Brian.Bordona@countyofnapa.org>; diane@dianedillon.net
Cc: Gallagher, Joelle <joelle.gallagher@countyofnapa.org>
Subject: Re: Duckhorn Major Modification

[External Email - Use Caution]

May 31, 2023

Notice to the Napa County Board of Supervisors

Re: The Duckhorn Winery Expansion

From: John (Jack) Pagendarm and Kathleen Pagendarm

1105 Ehlers Lane

St. Helena, CA

We are opposed to the Planning Commission's decision to allow Duckhorn's Winery expansion. We believe that the Planning Commissioners accepted out-of-date traffic studies. By doing so, a box checked "not significant" did not meet the standard set by the County of Napa.

We routinely travel on Lodi Lane. It is only wide enough for two cars and has a one lane bridge located over the Napa River. There are two intersections that bring into question **"not significant"** in that decision.

- Traveling north on Silverado Trail to approach Lodi Lane is a blind curve. It requires extreme caution to make that left turn. The opposite is true when turning left from Lodi Lane to Silverado Trail. Our son was rear-ended at this same intersection.
- There is a one-lane bridge that has flooded when rains are heavy. There is an excellent sign installed to warn people not to cross when water is present.

The west end of Lodi also has its challenges when turning left to head south on Highway 29. Presently, Lodi is not a busy thoroughfare, however with the proposed development at Duckhorn, coupled with the Jackson Wine Group building a hotel, needs to be studied. Lodi Lane is not built to handle the increased development presently in the pipeline. The study needs to be current and project the outcome of these developments.

- We believe the structural and traffic limits of Lodi Lane will not be able to handle the traffic demands of the proposed expansion. A single lane bridge, closer to the Estate House, would certainly not handle the traffic created by a 600-person event, nor some of the "smaller" events listed in the declaration.

We ask that the Supervisors overrule the approval of this project and send it back to the applicant. Either downsize the production facility and the number of visitors or reject the project entirely.

Jack & Kathy Pagendarm

From:	PlanningCommissionClerk
To:	ClerkoftheBoard; Hawkes, Trevor; Bordona, Brian
Subject:	FW: Napa County Board Of Supervisors - Notice of Public Hearing
Date:	Monday, October 16, 2023 10:09:51 AM

From: RICHARD W SVENDSEN <rsvendsen@sbcglobal.net>
Sent: Monday, October 16, 2023 9:39 AM
To: PlanningCommissionClerk <planningcommissionclerk@countyofnapa.org>
Subject: Re: Napa County Board Of Supervisors - Notice of Public Hearing

[External Email - Use Caution]

In my humble opinion this expansion of Duckhorn Vineyards is way out of compliance for Lodi Lane

Sent from my iPhone

> On Oct 12, 2023, at 10:39 AM, PlanningCommissionClerk <planningcommissionclerk@countyofnapa.org> wrote:
>
> *Duckhorn Vineyards Winery Use Permit Major Modification – P19-00097*
>
> Planning Commission Clerk
> Planning, Building and Environmental Services
> County of Napa 1195 Third Street, Suite 210 Napa, CA 94559
> planningcommissionclerk@countyofnapa.org (707) 253-4417 AQ
> <image001.jpg>
>
> CONFIDENTIALITY NOTICE: This email message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and/or exempt from disclosure under applicable law. If you are not the intended recipient of the message, please contact the sender immediately and delete this message and any attachments. Thank you.
>
> <Duckhorn Appeal Public Hearing Notice 2.pdf>

From: Morgan, Greg
To: Hawkes, Trevor
Cc: Anderson, Laura
Subject: FW: Duckhorn Winery Expansion
Date: Friday, October 20, 2023 9:05:38 AM

Hi Trevor,

Per your request.

Thank you,

G

From: PublicComment <publiccomment@countyofnapa.org>
Sent: Thursday, October 12, 2023 2:35 PM
To: Alsop, Ryan <ryan.alsop@countyofnapa.org>; Bratton, Sheryl <sheryl.bratton@countyofnapa.org>; Morgan, Greg <Greg.Morgan@countyofnapa.org>; Williams, Anthony <anthony.williams@countyofnapa.org>; Cooper, Paulette <paulette.cooper@countyofnapa.org>; CRAIG, REBECCA (Becky) <Becky.Craig@countyofnapa.org>; Tijero, Jesus <Jesus.Tijero@countyofnapa.org>; Espinosa, Ximena <ximena.espinosa@countyofnapa.org>; Dawson, Holly <holly.dawson@countyofnapa.org>; Doyle-Stevens, Leah <leah.doyle-stevens@countyofnapa.org>; Upton, Janet <janet.upton@countyofnapa.org>; Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: FW: Duckhorn Winery Expansion

This public comment was sent to all Board members.

From: Ramos, Belia <Belia.Ramos@countyofnapa.org>
Sent: Thursday, October 12, 2023 2:32 PM
To: PublicComment <publiccomment@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: FW: Duckhorn Winery Expansion

From: Cindy Worthington <littlecid67@gmail.com>
Sent: Wednesday, October 11, 2023 1:19 PM
To: Gallagher, Joelle <joelle.gallagher@countyofnapa.org>; Ramos, Belia <Belia.Ramos@countyofnapa.org>; Gregory, Ryan <Ryan.Gregory@countyofnapa.org>; Cottrell, Anne <anne.cottrell@countyofnapa.org>; Pedroza, Alfredo <Alfredo.Pedroza@countyofnapa.org>
Subject: Duckhorn Winery Expansion

[External Email - Use Caution]

Good Afternoon Board Members,

I'm writing today in support of the appeal on this winery expansion, with the following reasons:

1. Production Increase. The project requests increasing from 160k gallons a year to 300K. The size of the production facility requested is symptomatic of the ever increasing size of large production wineries. I recall when 100K gallon production wineries were something to cause alarm. This is grown to be a norm now. I think a question needing to be asked is, where are all these grapes being processed coming from? Napa Valley wine must consist of 75% or greater Napa grapes. With the incredible amount of wine production in Napa County, I think we really need to start confirming that the Napa Wineries are actually using 75% Napa County grapes. Who exactly is confirming this is happening? If we are going to continue to drain our aquifers for wine production facilities (which use more water than vineyards) shouldn't we be using Napa grapes? It seems likely from the sheer volume of wine being produced, it is very possible we are producing a lot of non local wine. This urgently needs to become a priority of the county, confirming what grapes are using up our resources for wine production. We should be an agriculture preserve of Napa grapes, not non local grapes.
2. Loss of unreplaceable agricultural land to wine production facilities and related wine estates. This project proposes to removes 3.5 acres of vineyards. If Napa County is truly as Ag Preserve as the citizens have voted it to be, why are we removing the very best valley floor vines for wine production? That seems counterproductive. Yes, the owners could develop new vineyards somewhere in the hills to replace lost vineyards, but they will not be the same quality and we will lose more of our natural landscape and develop more wells to do so. That does not seem to be a good solution either.
3. Additionally, the project calls for an 18K square foot estate residence. This brings up a whole new question, of again, we are more and more removing prime agricultural land for giant estate mega homes (home-tels) for the wineries big rollers to stay in. This has been going on for years with no concerns from the county. The amount of land developed for these estates is enormous, and 18,000 square feet can attest to.

I'm going to suggest a radical thought. What if, we need to start considering if these mega production facilities need to be located into our industrial area in south county? Isn't that what these are becoming? Industrial wine production warehouses? I think it's time to start asking these tough questions and stop kicking that can down the road for the next generation of board members. Every one of these giant mega facilities being approved continues to set precedence for ever increasingly larger ones, with no verification they are even needed to wine from grapes actually grown here.

Thank you for your consideration in this matter

Respectfully,

Cindy Worthington
Napa

Sent from Mail for Windows

RECEIVED
JUN 28 2024
NAPA COUNTY
EXECUTIVE OFFICE

Preserve Lodi Lane

Preserve Lodi Lane or allow it to become an Industrial Parkway?

Send your Email address (jjdm1@icloud) to access objective facts in play, and make up your own mind.

The enclosed visualizations depict how Lodi Lane might look as an Industrial Parkway where pedestrians, runners, cyclists, and your vehicles—who presently share the narrow, rural Up valley road without usable shoulders with a relatively limited number of cars and trucks—will literally have health and safety threatened by traffic generated by a hotel (Inn at the Abbey) on both sides of Lodi Lane at State Route (SR) 29; a proposed 52,000 square foot plus industrial-scale wine factory built on Agricultural Preserve acreage land owned by Duckhorn Portfolio accessed off Lodi Lane and serviced by 53-feet long, 81,000 lbs. loaded, tanker-trucks; and a nearly 60 percent increase in visitations at Duckhorn reaching over 90,000 annually.

These vehicle numbers are increased exponentially by thousands of Lodi Lane Wine Country Inn guest vehicles; the 1000 vehicles a week using Lodi Lane (based on 2017 traffic study by W-Trans); and literally tens of thousands visitors and their vehicles wine tasting at the 20 wineries located within a mile of Lodi Lane. In 2017, traffic consultant W-Trans hired by both the Inn at the Abbey and Duckhorn Portfolio estimated that nearly 5 million vehicles cross the tee-intersection of Lodi Lane and SR 29 annually.

Napa County Planning, Building, and Environmental Services endorsed the W-Trans finding that potential traffic hazards for both the Inn at the Abbey and Duckhorn are "less than significant" and therefore, don't require further study.

You decide.

NOTE: An appeal of the Napa County Planning Commission approval of the Duckhorn Industrial-scale wine factory and a nearly 60 percent increase in visitations is scheduled before the Board of Supervisors on August 20, 2024.

Two Trucks with Pedestrians.jpg

Open with

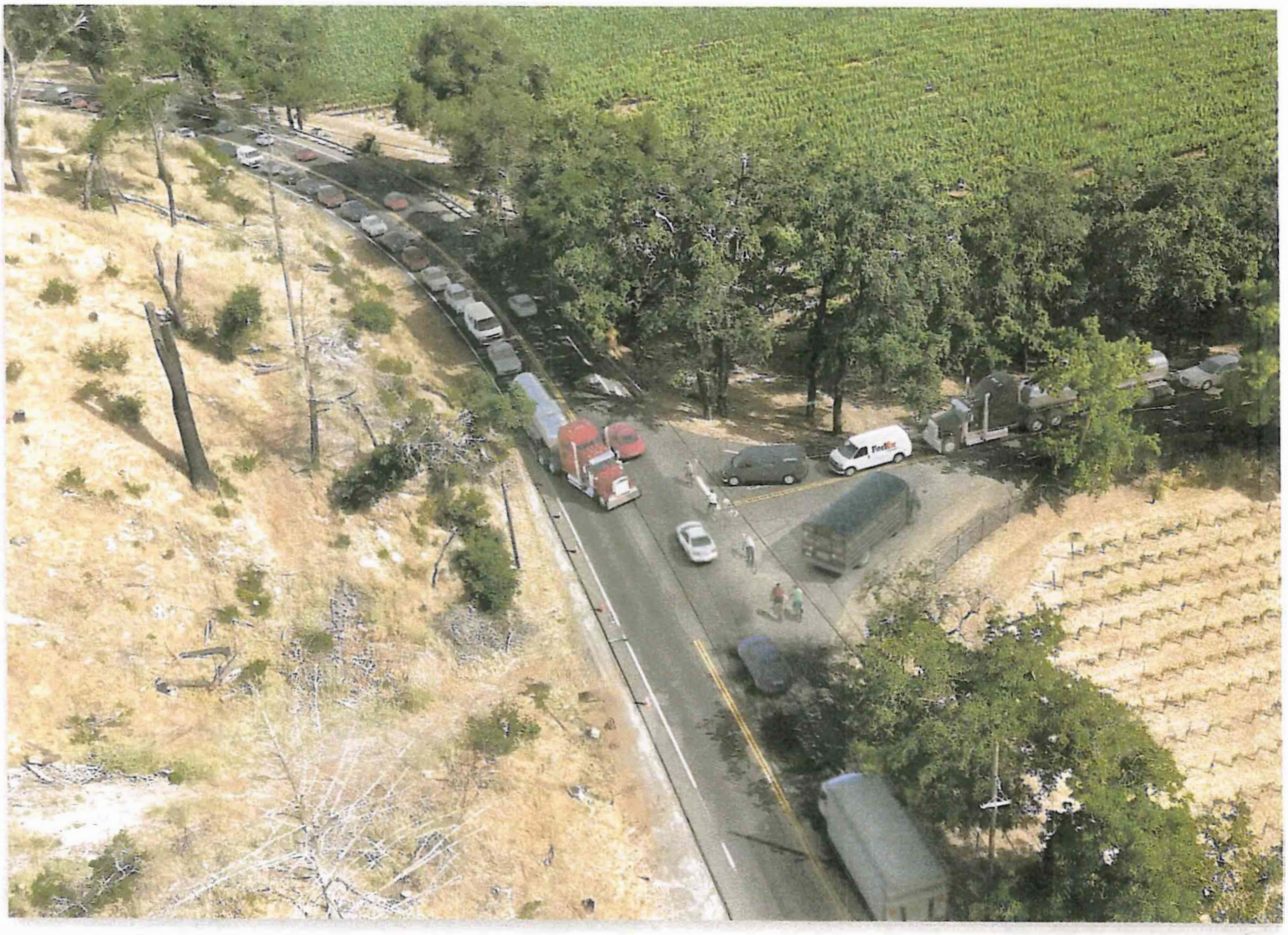
Share

C

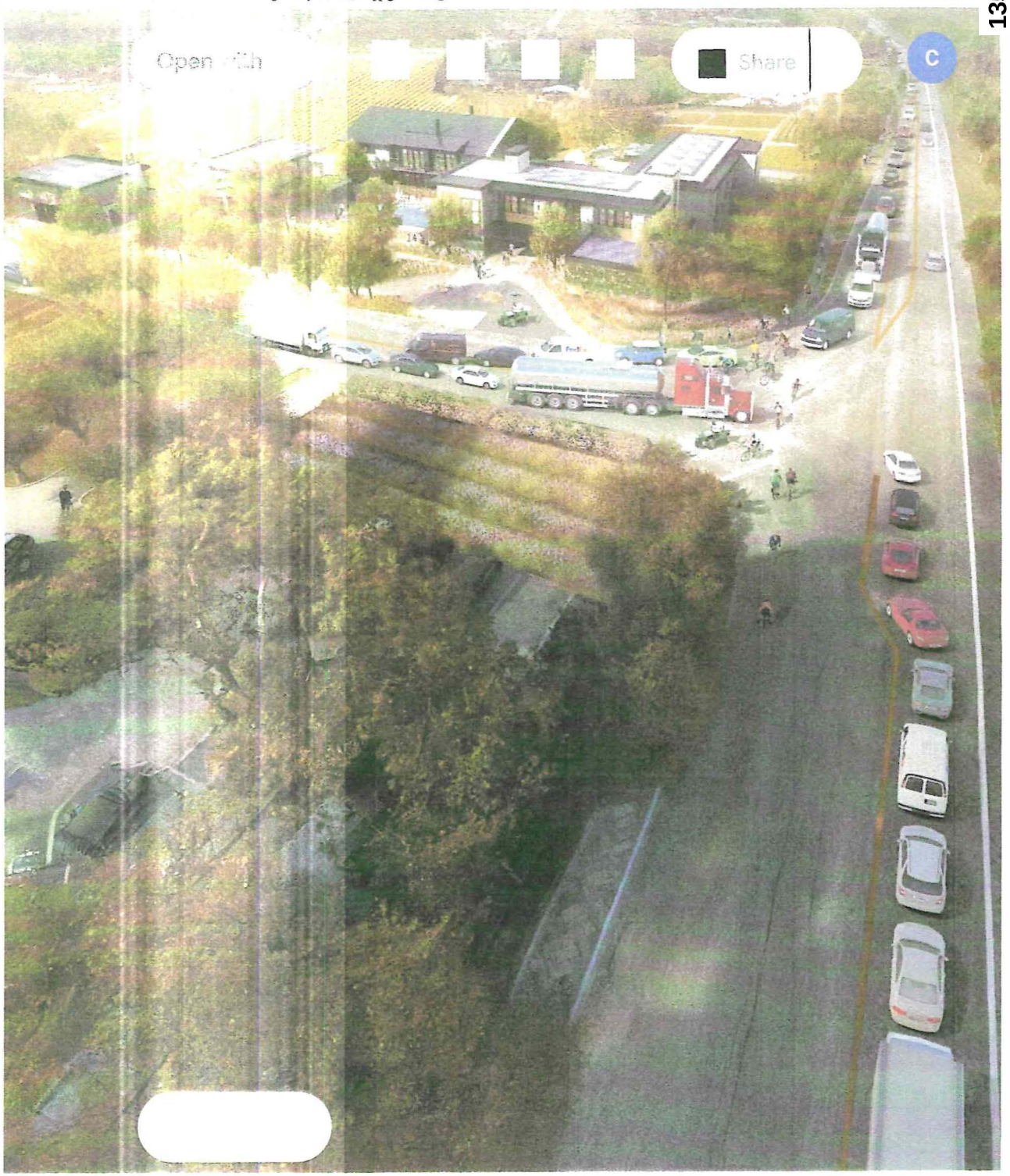
Lodi Lane and Silverado Trail.jpg

Open with

Share



Lodi Lane and Highway 29 final.jpg



Attachment R

Staff Responses to PLL's
Appeal

GROUNDS OF APPEAL:

The following outlines the basis of the appeal as contained in Appellant PLL Appeal dated June 1, 2023. (See **Attachment A**.). For convenience, Staff has provided a summary below, but recommends the Board review the entirety of the PLL Appeal for details.

Appeal Ground No. 1: Appellant PLL asserts various deficiencies in the public process regarding the Project. Specifically, PLL contends that: (a) the Planning Commission failed to consider written and verbal public comments, particularly from citizens living within 1,000 feet of the Project; (b) the hearing was prejudicial because it was scheduled the day following the closure of the 30-day comment period on the MND without ever responding to public comments; (c) the Commission and Staff failed to evidence any awareness of having read or responded to public comment; (d) members of the public were limited to three minutes each during the hearing; and (e) the $1,000 appeal fee and adherence to the complex PBES public participation process intentionally disenfranchises Napa County citizens from the ability to participate substantively in the Planning Commission's decision-making process.

Staff Response (Response from Department of Planning, Building and Environmental Services): Staff disagrees with Appellant PLL's assertions. The public had ample opportunity to review and comment on the Project. The public notice provided exceeded what is required by law. Also, all written comments were provided to and considered by the Planning Commission prior to approving the Project. As to each of Appellant PLL's specific claims, Staff responds as follows:

(a) The Planning Commission failed to consider written and verbal public comments, particularly from citizens living within 1,000 feet of the Project. The Project application was first submitted on March 26, 2019. On April 22, 2019, a New Project Courtesy Notice was distributed to properties within 1,000 feet of the Project and the County's Interested Parties list informing parties of the pending Project.

On April 3, 2023, Notice of the Planning Commission Hearing and Intent to Adopt a MND was published in the Napa Valley Register and mailed to properties within 1,000 feet of the Project, the County's Interested Parties list, individuals who had requested notice (or who had contacted Staff with prior questions related to the Project), the State Clearinghouse and the City of St. Helena. The notice outlined the 30-day public review and comment period required by CEQA that ran from April 3, 2023, through May 2, 2023. The notice directed the public to the location both online and physically where the Project documents could be viewed, and the Project planner for whom to direct written comments and questions.

At the time the Staff Report was released on April 26, 2023, only one (1) public comment had been received and it was included in the agenda packet and a summary of the comment was included in the Discussion section of the Staff Report. (Page 14; Duckhorn Vineyards Winery Use Permit Major Modification Staff Report.) Five (5) additional public comments and one (1) Responsible Agency comment were received after the Staff Report was published and before the

end of the public comment period and distributed to the Commission. Furthermore, at the beginning of the meeting and at the beginning of Staff's presentation of the Project, the Commission was informed that six (6) additional comments had been received. (Planning Commission Meeting of May 3, 2023, Transcript (Transcript) 2:8-11.)

Lastly, prior to the Planning Commission hearing, Staff spent approximately five (5) hours discussing the Project and Staff's evaluation of the Project with interested parties, including Appellant PLL members Nancy Yewell, Dave Yewell, Joann Sculatti and Frank Sculatti. Appellant PLL member John Murphy did not request a meeting with Staff prior to the Planning Commission hearing. Staff's interaction with neighbors consisted of topics such as aesthetics, noise, biological resources, tree removal, stormwater, traffic, flooding, the proposed hospitality operations and the Winery Definition Ordinance (WDO). All parties were encouraged to either submit their comments in writing prior to the meeting or provide verbal comments to the Planning Commission.

(b) The hearing was prejudicial because it was scheduled the day following the closure of the 30-day comment period on the MND without ever responding to the written opinions and concerns of the public. The 30-day public review period required by CEQA for an MND ran from April 3, 2023, through May 2, 2023. By law, the Commission cannot take action to approve a project until the public comment period required by CEQA has closed. As is customary practice for the County, the public hearing on the Duckhorn Project was set for the day after the close of the public comment period. Lead agencies must consider agency and public comments on an MND but are not required to prepare responses to such comments. (14 CCR § 15074 (b).)

(c) The Commission and Staff failed to evidence any awareness of having read or responded to public comment. As noted above, Staff informed the Commission that additional public comment had been received prior to the meeting. Public comment (written and verbal) received concerned traffic, noise, groundwater, air quality, tree removal and the size of the Project. The record reveals that the Commissioners commented and asked questions of Staff and the Duckhorn team regarding traffic, groundwater usage and the WAA, tree removal, lighting, noise, signage, and at least one Commissioner asked Staff to address the concerns posed in the comment letter from the Sculattis. (Transcript 17:12-24.)

(d) Members of the public were unfairly limited to three minutes per speaker. The Planning Commission by-laws limit public comment to three (3) minutes per speaker. A three-minute time limit for public comment is customarily used by public agencies and has been upheld by courts as a valid time limit. (See *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150, 176.) Neighbors have been aware of the Project since April 2019 when the County first sent a Courtesy Notice. The public and Appellant PLL also had ample opportunity to submit written comments in advance of the meeting.

(e) The $1,000 appeal fee and adherence to the complex PBES public participation process intentionally disenfranchises Napa County citizens from the ability to participate substantively in the Planning Commission's decision-making process. Appellant PLL has failed to articulate how, in PLL's view, the public process intentionally disenfranchises County citizens from participating. As noted above, the public notice provided exceeds what is required by State law. The Applicant also advised the Commission that six months prior to the hearing they reached out to neighbors and invited neighbors to visit the Winery and discuss the Project. (Transcript 27:9-18; 29:21-28.)

Napa County's appeal fee is set by the Board of Supervisors and is universally applied to all parties who wish to appeal a discretionary decision to the Board.

Appeal Ground No. 2: Appellant PLL asserts approval of the Project will transform Duckhorn from a charming rural winery into an industrial monument for the wine industry and place Lodi Lane residents under siege.

Staff Response (Response from Department of Planning, Building and Environmental Services): Since adoption of the Winery Definition Ordinance (WDO) in 1990, the County has defined wineries as an agricultural land use. Wineries are considered an agricultural land use, and permissible in agricultural areas, because they are a necessary component to facilitating the conversion of grapes (a crop) into wine (an agricultural product). The WDO contains a complex set of strict development constraints to ensure that wine production, from crops grown in Napa County, is the primary land use occurring at a winery (also known as "production"). General Plan Policy AG/LU-1 states that agriculture and related activities are the primary land uses in Napa County. Policy AG/LU-2 defines "agriculture" to include the production of agricultural products "and related marketing, sales and other accessory uses."

The property has 12.90 acres of vineyards in production on the West Property and 3.71 acres on the East Property. At the hearing, Duckhorn representatives informed the Commission that the almost 50-year-old winery has a demonstrated need to expand the facility for operational and efficiency purposes. Duckhorn is currently trucking up to 1,500 tons of fruit to a facility in Hopland for processing into wine. Those grapes come from vineyards in close proximity to the Winery. (Transcript 22:20-28; 23:1-7.) The expansion will allow Duckhorn to maximize operational efficiencies and reduce water use, pollution and truck trips. (Transcript 23:1-7.) While the Project would increase the winery coverage by approximately 187,585 square feet, total winery coverage would be slightly less than 25% of the entire 30.34-acre parcel. The revised project does not increase winery coverage from what was approved at the Planning Commission.

The proposed Project has been reviewed by the Napa County Planning Division, Environmental Health Division, Building Division, Engineering Division, Napa County Fire Marshall and the Public Works Department, who have each found it to be consistent with the applicable Agricultural Preserve (AP) zoning district regulations and, as conditioned, complies with the

WDO including the sizing of accessory structures related to the winery (N.C.C. § 18.104.200), winery development area (N.C.C. § 18.104.210), winery coverage (N.C.C.§ 18.104.220), winery setbacks (N.C.C. § 18.104.230), winery minimum parcel size (N.C.C.§ 18.104.240) and production capacity (N.C.C. § 18.104.250). The definition of "agriculture," includes marketing, sales, and other accessory uses that are related, incidental and subordinate to the main agricultural processing use. (N.C.C. § 18.08.040.)

Appeal Ground No: 3: Appellant PLL contends that the less than significant conclusion about the Inn at the Abbey's impact on traffic means that without being forced to file an appeal public concerns about the colossal Duckhorn expansion were not included in the decision-making process.

Staff Response (Response from Planning, Building and Environmental Services): Staff is unclear which decision-making process Appellant PLL is referencing. To the extent it is in reference to the process related to Duckhorn, the traffic anticipated from the Inn at the Abbey was included in Duckhorn's Traffic Impact Study prepared by W-Trans dated June 10, 2021 (Duckhorn TIS). PLL had ample opportunity to express concerns to Staff and the Planning Commission regarding the Winery. In fact, the record demonstrates that PLL actively participated in the decision-making process. PLL first contacted Staff on April 28, 2023, requesting clarification on the CEQA process, the deadline for written public comments and whether verbal public comments would be accepted at the public hearing. PLL then exchanged several emails and files with Staff on May 1, 2023, requesting a list of the last five years of Use Permit Major Modification hearings and clarification of Duckhorn's wine production entitlement. Ultimately PLL submitted formal public comment on the Project to the Commission on May 2, 2023, which primarily focused on the Project's traffic impacts.

To the extent PLL questions the conclusions of the Inn at the Abbey's Traffic Impact Study, those concerns are premature and beyond the scope of this appeal hearing. The traffic analysis and related potentially significant impacts for the Inn at the Abbey are currently under evaluation under the Draft EIR. The Draft EIR for the Inn at the Abbey has not been circulated for public review and comment yet. There has yet to be formal or final determination of that project's transportation and traffic impacts.

Appeal Ground No. 4: Appellant PLL asserts that the Napa County Traffic Impact Study (TIS) requires traffic studies to be completed within two-years prior to the submission of a Use Permit Major Modification. The Duckhorn and Inn at the Abbey traffic studies violate this TIS requirement.

Staff Response (Response from Department of Public Works): Appellant PLL is incorrect.

The Duckhorn TIS was completed on June 10, 2021, which is within two years of the May 3, 2023, public hearing date for the Project. PLL's Appeal Packet (Page 10) also cites 11 different documents utilized in the Duckhorn TIS that according to PLL are "more than two-year-old

traffic studies", but 10 of the 11 documents are guidelines, manuals or policy documents which are not subject to the two-year limit the Napa County Traffic TIS Guidelines.

PLL also contends that the Inn at the Abbey Traffic Study is more than two years old, but that project is still undergoing environmental review and a public hearing has yet to be scheduled. The Inn at the Abbey's Traffic Impact Study was referenced in the Duckhorn TIS because both studies had similar conclusions about the need for restriping a dedicated westbound right-turn lane at the intersection of SR-29/Lodi Lane as well as northbound and southbound speed feedback signs on Silverado Trail.

Duckhorn's application was submitted to the PBES Department on March 26, 2019. On initial review of the Project, the Department of Public Works (DPW) noted that the Project would need a TIS to be prepared and that a draft scope of work should be forwarded to DPW for approval prior to preparation of the study. Traffic consultant, W-Trans, submitted a Memorandum of Assumptions (MOA) for the Duckhorn TIS to DPW on June 30, 2020.

According to the Center for Disease Control and Prevention's COVID-19 timeline, first reports of the COVID-19 virus occurred on December 12, 2019. The virus was declared a public health emergency by the U.S. government on January 30, 2020, and by March 19, 2020, Governor Newsom issued California's stay-at-home orders for non-essential businesses and encouraged residents to stay home and avoid going out.

Because of the impacts to traffic levels during the pandemic W-Trans proposed to utilize turning movement count data that had been captured in October of 2019. This point for data collection was reviewed by DPW and found to be feasible and a realistic representation of pre-pandemic conditions for modeling turning movements. This earlier data point was applied universally to similar projects preparing Traffic Impact Studies during the pandemic.

As to the TIS for the Inn at the Abbey, Appellant PLL's concerns are premature and beyond the scope of this appeal hearing. PLL will have an opportunity to comment on that TIS when the Draft EIR is released for public review and comment.

Appeal Ground No. 5: Appellant PLL contends that the Duckhorn TIS failed to examine traffic in the context of Inn at the Abbey's traffic, including 53-foot long Duckhorn tanker trucks designated to use the "tee" intersection of Lodi Lane and Highway 29 to access and depart Duckhorn because of the 100-year-old bridge that commonly floods closing Lodi Lane during extended heavy rains.

Staff Response (Response from Department of Public Works): Appellant PLL is mistaken. The Duckhorn TIS examined heavy vehicle trips and use of the bridge during heavy flood conditions.

First, Staff notes that Appellant PLL makes frequent reference to'53-foot-long tanker trucks', which are described as traveling to the property in the hundreds of vehicles and utilizing the

West Property driveway all day and night. The assertion that commercial vehicle activity will take place all day and night is factually incorrect. Duckhorn's existing hours of operation for their production facilities is 6 a.m. to 7 p.m., commercial vehicles are not allowed to access the property outside of this time frame. Further, under Condition of Approval No. 4.2, Duckhorn is required to the extent feasible to schedule deliveries to and from the winery outside of the peak travel window of 4 p.m. to 6 p.m. The only location in the application materials that refer to 53-foot-long trucks relate to modeling truck access at the existing West Property driveway (Duckhorn TIS, page 36.). Modeling requires that the largest potential vehicle that may visit the site be utilized in determining whether the existing driveway is adequate for the proposed use, but it does not mean that all commercial vehicles accessing the property will be 53-foot-long semi-trucks.

Duckhorn is an existing winery operating for almost 50 years. As part of that existing operation, heavy vehicles (trucks hauling grapes or those with five or more axles) currently access the production facility of the winery on the East Property by turning onto Lodi Lane from either of the two study intersections: SR29/Lodi Lane and Silverado Trail/Lodi Lane. As a function of the Duckhorn's TIS capacity analysis the percentage of heavy vehicles at each intersection was calculated based on previous data collected during harvest in September 2017. The data indicates that heavy vehicles represent just two (2) to four (4) percent of all peak hour vehicle trips. (Page 13; Duckhorn TIS.)

According to Napa County's Winery Traffic Information/Trip Generation sheet (County Trip Generation sheet), heavy vehicle traffic due to the expanded operations is not likely to increase substantially; expanding production capacity from 160,000 gallons per year to 300,000 gallons per year increases the expected average daily trips (ADT) of heavy vehicles to the winery by 2.5 ADT, from 2.9 ADT to 5.4 ADT. (Page 182; Duckhorn TIS.)

Contrary to Appellant PLL's assertions, the Duckhorn TIS also assessed sight distances at the Project's driveways. Based on field conditions and the posted speed limit of 40-mph, W-Trans concluded that both the East and West Property driveways have adequate sight distance in both directions. The bridge over the Napa River lies between both these driveways. The collision history for Lodi Lane over the study period is zero.

Neither project driveway is situated such that vehicle traffic would be forced to utilize the Lodi Lane bridge over the Napa River during emergency flood conditions. Vehicular traffic leaving the East Property can turn left towards Silverado Trail and vehicular traffic leaving the West Property can turn right towards SR 29. In both cases vehicles would be able to move away from the river channel.

Appeal Ground No. 6: Appellant PLL asserts that Duckhorn incorporates the Inn at the Abbey traffic studies completed between 2015 and 2019 as part of the rational for finding the Winery's traffic impacts would be "less than significant impact" and excluded it from the Planning Commission's consideration of Duckhorn.

Staff Response (Response from Department of Public Works): Appellant PLL is wrong. The W-Trans TIS prepared for the Duckhorn project was part of the materials provided to the Planning Commission for consideration. The Duckhorn TIS incorporated trips from the Inn at the Abbey proposed project.

The Duckhorn TIS found that the collision rate for the Silverado Trail/Lodi Lane intersection was greater than the statewide average for similar facilities for the period 2014 – 2019. Further analysis found that all three (3) of the collisions documented in this timeframe came from northbound traffic. The Inn at the Abbey TIS documented the same collision pattern, which is noted in the Duckhorn TIS. (Page 7.) The Duckhorn TIS is consistent with the Inn at the Abbey TIS which found that sight distances for stopping given the posted speed limit complied with CalTrans recommendations, but that the sight distances would be inadequate if vehicles were traveling above the posted speed limit. The Inn at the Abbey TIS recommended installation of a speed feedback sign for northbound traffic, and that recommendation is also included in the TIS for Duckhorn (or whichever project is approved first).

The Duckhorn TIS capacity analysis included the average daily trips of the Inn at the Abbey TIS into its analysis of the Near-Term Conditions for the proposed Project. The Inn at the Abbey TIS calculated an average of 645 new trips per day would be generated, including 33 weekday p.m. peak hour trips and 57 trips during the weekend peak hour. Project volumes from this prior analysis were used to evaluate the Near-Term conditions scenario (Existing plus Approved conditions). Under Cumulative Conditions for the stop-controlled approach at SR 29/ Lodi Lane, the Duckhorn project is expected to have an adverse effect during peak hours for Friday and Saturday. The Inn at the Abbey TIS is noted in the Duckhorn TIS as having also identified this impact. Because both projects are recommended to restripe the westbound stop-controlled approach to include a dedicated right-turn lane, the Duckhorn TIS also recommends that these two projects share the restriping improvements. The Duckhorn TIS found that all other intersections and segments would be expected to operate normally, even with the inclusion of the Inn at the Abbey to the Near-Term scenario.

Appeal Ground No. 7: Appellant PLL asserts that there is substantial public evidence to support a fair argument that the Duckhorn project may have significant traffic impacts and an EIR is necessary. Specifically, PLL asserts that Preserve Lodi Lane members and supporters have personally observed and experienced traffic safety hazards that engender accidents and near misses and necessitating the preparation of an EIR.

Staff Response (Response from Department of Public Works): Appellant PLL asserts various traffic condition and hazard scenarios are present with the SR 29/Lodi Lane intersection (pages 6-7 of PLL's Appeal packet). These scenarios include and are addressed by Staff as follows:

- Topography and vehicle speeds on SR 29 at the Lodi Lane intersection present dangerous conditions for vehicles looking to enter either of the southbound or northbound lanes from Lodi Lane.

- Vehicles occupying the left- and right-hand turn lanes for the westbound Lodi Lane intersection will obstruct each driver's sightlines of SR 29 traffic.
- Vehicle queues will form on westbound Lodi Lane. This may block a future driveway for the Inn at the Abbey project.
- Vehicle queueing and sightlines of SR 29 will be further impacted by the addition of heavy vehicles occupying the left- and right-hand turn lanes for the westbound Lodi Lane intersection.

Topography and turn lanes

Although Appellant PLL asserts that unsafe conditions exist at the SR 29/Lodi Lane intersection, the collision history data does not support PLL's assertion. The Statewide Integrated Traffic Records System indicates that between October 1, 2014, through September 30, 2019, the intersection at SR 29/Lodi Lane was below the statewide average for collisions of similar facilities. Similarly, the segments of SR 29 both north and south of Lodi Lane had a collision history below the statewide average for similar facilities. Although the Silverado Trail/Lodi Lane intersection and segments of Silverado Trail north and south of Lodi Lane showed a collision rate above the statewide average for similar facilities, W-Trans recommended physical improvements (north- and south-bound speed feedback signs on Silverado Trail) to reduce the common cause of collisions within these facilities. (Pages 6-8; Duckhorn TIS.)

Queuing and sightlines of SR 29

PLL also asserts increased queueing will occur as a result of the Winery expansion. While approval of the operational modifications to Duckhorn would result in increases in delay (Level of Service or LOS) for the study intersections and segments, the Duckhorn TIS found that the increases in delay for the most part meets acceptable standards of the Napa County General Plan related to LOS under all traffic scenarios. The only exception is the westbound approach at the SR 29/Lodi Lane intersection under Cumulative Conditions. To offset the Project's effect, W-Trans recommended restriping a separate dedicated right-turn lane. Modeling indicates that this improvement would allow for stop-controlled delays to be reduced to less than the delays without the Project. (Page 28; Duckhorn TIS.) This recommendation was included as a Condition of Approval by DPW.

Appeal Ground No. 8: Appellant PLL asserts that the construction of the Vine Trail extension on Highway 29 from St. Helena to Calistoga primarily for bicyclists must be considered since the Vine Trail will contiguously occupy the space both north and south property line of the proposed Inn at the Abbey on Highway 29 crossing Lodi Lane. When the Vine Trail is operative, drivers using Lodi Lane to turn either north or south on Highway 29 will physically impede the passage of Vine Trail bicyclists and pedestrians - along with Inn at the Abbey visitors and employees, attempting to use the crosswalk. Pedestrians and bicyclists will be forced to stop or dangerously

negotiate passage in front of vehicles nosed into the northbound traffic lane, or even more threatening, between queued vehicles.

Staff Response (Response from Department of Public Works: The environmental and safety impacts of the Napa Valley Vine Trail: St. Helena to Calistoga Section were considered by the Napa Valley Transportation Authority Board of Directors on August 19, 2020, who approved the Project and adopted a Mitigated Negative Declaration. The Vine Trail alignment immediately concerning the Duckhorn project is described in the Initial Study as "crossing York Lane and continuing along private property frontage to Lodi Lane, the Vine Trail then would cross Lodi Lane, into Caltrans' Right-of-Way and continue north to parallel Freemark Abbey Winery. A portion of this segment would be on SR 29 shoulder…" (Page 10; Napa Valley Vine Trail: St. Helena to Calistoga Section; Initial Study/Mitigated Negative Declaration.)

In general, the Napa Valley Vine Trail: St. Helena to Calistoga Section will improve transportation safety along SR 29. The Vine Trail will not introduce new uses to SR 29, pedestrians and bicyclist currently utilize the shoulder of this roadway for travel. Safety improvements and signage would be installed at crossings to conform to applicable local, Caltrans, and California Manual on Uniform Traffic Control Devices standards. (Page 7; Napa Valley Vine Trail: St. Helena to Calistoga Section; Initial Study/Mitigated Negative Declaration.)

Appeal Ground No. 9: Appellant PLL asserts that when combined with the traffic expected from Inn at the Abbey, the Duckhorn project would add an estimated 44,000 passenger vehicles and hundreds of 53-foot-long tanker trucks to the Inn at the Abbey traffic load at Lodi Lane and Highway 29. PLL contends that despite a massive increase in traffic load, no present-day traffic study was required by PBES for either the Inn at the Abbey or Duckhorn. Appellant PLL further asserts that PBES chose not to assess the cumulative impacts of traffic load, safety, and hazards arising from the Inn at the Abbey and Duckhorn projects.

Staff Response (Response from Department of Public Works): Appellant PLL is wrong. Staff Responses 3, 5 and 6 are incorporated here by reference.

The Duckhorn TIS was reviewed by County's traffic engineers in DPW and appropriately and adequately analyzed traffic load, safety and hazards and complied with the established protocols of the 2021 Napa County Traffic Impact Study Guidelines.

Appeal Ground No. 10: Appellant PLL asserts that the County's reliance on mostly four-to-five-year-old traffic safety hazard analysis materially failed to analyze present-day traffic health and safety issues at either the project level or cumulatively in light of the Permit Major Modifications at virtually every winery in proximity to Lodi Lane at the tee-intersections at Highway 29 and Silverado. The following wineries within one-half mile of Duckhorn have been granted use permit major modifications within the last five years: Ballentine, Ravena, Grace Family, Brasswood, Titus, Trinchero, Ehlers, Charles Krug and Faust Haus and the resulting

increased visitors, employees and vehicle trips were apparently excluded from the Inn at the Abbey and Duckhorn traffic analysis because impacts were found to be less than significant.

Staff Response (Response from Department of Public Works): As outlined in Staff's response to Appeal Ground No. 6 (incorporated here by reference), the DPW approved the use of traffic count data from prior to the COVID-19 pandemic to better reflect the pre-pandemic environment.

The alleged traffic impacts from the wineries listed by PLL are not as alarming or significant as PLL's contends. Out of the nine (9) wineries mentioned by PLL six (6) have not received approval from the County for major modifications to their Use Permits within the last five (5) years.

Grace Family Winery's Very Minor Modification to their Use Permit (P16-00183-VMM), was approved on September 14, 2016, and permitted only physical improvements to the winery. Trinchero's Very Minor Modification (P11-00066-VMM) to their Use Permit, was approved on March 22, 2011, and permitted only physical improvements to the winery. Faust Haus received approval for a Winery Administrative Permit (P18-00012-ADM) on August 29, 2018, which permitted only physical improvements to the winery. Charles Krug Winery resides within the municipal boundaries of the City of St. Helena and is thus subject to the City's permit modification procedures and regulations. According to City Planning Staff, the last modification, which included increased operational entitlements at Charles Krug Winery, was approved on July 15, 2008.

Revana Winery received approval for a Minor Modification to their Use Permit (P20-00225-MM) on August 31, 2021, to increase in annual wine production from 15,000 to 30,000 gallons. According to the County Trip Generation sheet, increasing production from 15,000 gallons to 30,000 gallons resulted in an increase of 0.2 heavy truck ADT. Titus Vineyard Winery received approval for a Major Modification to its Use Permit on August 16, 2017. Their operational modifications would have been in effect during the data collection for the Duckhorn TIS, and thus would be considered part of the existing conditions. The other three wineries (Ballentine, Ehlers & Brasswood) received Major Modifications to their Use Permits in the last five years, including various increases in production, visitation, employment, etc. Because of the location of their driveways, these increases in operations would be expected to primarily impact SR 29 and not the roadway segments of Lodi Lane and Silverado Trail.

Napa County's Traffic Impact Study Guidelines (2021) allow forecast modeling to be used for traffic volume and vehicle miles of travel (VMT). The guidelines provide criteria for appropriate forecasting. For large projects that have the potential to affect regional travel patterns, County Guidelines identify the Napa-Solano Travel Demand Model as an appropriate modeling tool. The Duckhorn TIS utilized the Napa Solano Travel Demand Model for projecting future volumes for horizon year 2040.

As described under Staff Response to Appeal Ground No. 9, modeling cumulative conditions found that both study intersections are expected to continue operating at the same service levels as

without the Project. Silverado Trail/Lodi Lane would continue to operate acceptably. SR 29/Lodi Lane which would already be operating unacceptably under cumulative conditions without the Project, would continue to do so with addition of the Project. W-Trans recommended measures to improve operational conditions under the cumulative scenario, and those measures were incorporated in the Project's Conditions of Approval by the DPW.

Appeal Ground No. 11: PLL asserts a number of structural hazards in regard to transportation facilities at the Project's study roadway segments and intersections. These hazards include the topography, turn lanes, queuing and sightline issues raised in Appeal Ground No. 7, as well as hazards related to users of the Vine Trail, movement of employees, patrons, and service vehicles to the proposed Inn at the Abbey project, and public transit stops.

Staff Response (Response from Department of Public Works): Appellant PLL asserts twelve structural safety hazards. Staff responds as follows:

1. Appellant PLL alleges that existing SR 29 travel lanes constitute a structural hazard. Please see Staff Response to Appeal Ground No. 7 incorporated here by reference.
2. SR 29 is a State highway and CalTrans determines what traffic control devices are warranted for their various roadway segments. The Project's Notice of Intent was sent to CalTran offices and they did not submit any comments about concerns with the Project's impacts to SR 29.
3. Appellant PLL appears to be alleging that the various travel mode mix along the study segments of SR 29 and the study intersection of SR 29 & Lodi Lane constitute a structural hazard. Duckhorn does not introduce any new uses to SR 29 or the SR 29/Lodi Lane intersection. Private and commercial vehicles currently travel along SR 29 and turn onto Lodi Lane to access the Duckhorn property and other properties. Bicyclists presently utilize the contiguous bicycle paths adjacent to the vehicle travel lanes and public transit buses utilize public transit stops. See also Staff Response to Appeal Grounds No. 7 & 8 incorporated here by reference.
4. Appellant PLL alleges that the existing single lane for Lodi Lane for right- and left-hand turn obstructs driver sight lines. As conditioned, Duckhorn will be required to provide a dedicated striped right turn lane at this intersection, which will cut down on delays caused by the increase in traffic from the Project.
5. This alleged structural traffic hazard deals with Appellant PLL's perception of access issues with the Inn at the Abbey project, which is not the subject of this appeal.
6. See response to alleged structural hazard #4 & #2 above.
7. Staff is confused that Appellant PLL is alleging that vehicles will be required to stop and wait for passing Vine Trail bicyclists and pedestrians at the SR 29/Lodi Lane intersection, and this would be considered a structural hazard. As explained in Staff's Response to Appeal Ground No. 8, the construction of the Vine Trail will include various safety improvements and signage. Bicyclists and pedestrians currently travel along this right-of-way and completion of the Vine Trail will improve safety along this corridor.
8. Appellant PLL alleges that an existing public transit stop when occupied by a bus will cause structural hazards with drivers, bicyclists, pedestrians and vehicles traveling north on SR 29. The bus stop currently exists and buses, such as the UpValley Connector,

currently utilize this stop. This segment of SR 29 has a collision history below the statewide average for similar facilities.

9. See response to alleged structural hazard #2 above.
10. This alleged structural hazard deals with Appellant PLL's perception of potential pedestrian & business operational movement for the Inn at the Abbey project, which is not the subject of this appeal.
11. This alleged structural hazard deals with Appellant PLL's perception of business operations and their movement for the Inn at the Abbey project, which is not the subject of this appeal.
12. This alleged structural hazard deals with Appellant PLL's perception of project access issues with the Inn at the Abbey Project, which is not the subject of this appeal.

Appeal Ground No. 12: Appellant PLL contends that the production site fails to include a proposed 1,000 foot-long, 20-foot-wide paved road necessary to allow 53-foot long Duckhorn tanker trucks to enter and exit the production facility that is located only 200 feet from a residence on Lodi Lane.

Staff Response (Response from Department of Planning, Building and Environmental Services): Appellant PLL is mistaken. The Project includes a driveway that fully complies with the County's Road and Street Standards and includes upgrading the existing driveway to a minimum 20-foot paved width.

The expansion of the existing driveway is included in the Project description. (Page 2, Section 9, Duckhorn Vineyards Winery Initial Study/Mitigated Negative Declaration.) The widening and improvement of the West Property driveway to the required driveway standards is described in multiple environmental sections of the MND.

PLL erroneously contends that the Project's Notice of Intent (NOI) claimed the production facility was within 500 feet of the nearest residence and that Staff claimed this distance satisfied Napa County winery set-back policy. To clarify, the Duckhorn NOI never mentions setbacks. Winery setbacks are regulated by Napa County Code § 18.104.230. The winery setback for Silverado Trail is 600 feet and 300 feet for Lodi Lane. Winery setbacks apply only to buildings of the winery facility. Driveways are exempt from setbacks and yard requirements. (N.C.C. § 18.104.280.B.)

The Duckhorn application was reviewed by the Napa County Planning Division, Engineering Division, Public Works Department, and CalFire. Except for the left turn lane warrant for the East Property driveway the proposed Project has been found to be fully compliant with applicable codes and regulations. The Duckhorn Vineyards Winery TIS included a simulation of truck turning movements into and out of the West Property driveway, found that the existing driveway would not be adequate for the largest potential commercial vehicle type, and recommended upgrading the driveway to current Napa County Road and Street Standards.

Appeal Ground No. 13: Appellant PLL asserts that the MND failed to assess the impacts of constructing a new wine production facility together with a new entrance and exit road physically required to reach the facility that is 200 feet from an occupied residence. According to

PLL, the MND noise analysis fails to address either the noise from the production facility, or the noise of 53-foot-long tankers and delivery trucks that are likely to utilize the new road night and day. Since the new road is only 200 feet from an occupied residence, PLL claims that an EIR is required.

Staff Response (Response from Department of Planning, Building and Environmental Services): Page 25 of the Duckhorn MND identifies the distance between the proposed production facility and the closest sensitive receptor (residence) is approximately 580 feet to the east. During the public hearing the Applicant discussed that the building had been designed specifically to address operational noise, with a central pull through for vehicles so that idling noise is contained within the building. (Transcript 23:16-28.) Based on this distance and Staff's experience with prior noise studies for winery operations and residences at similar distances, noise impacts from this stationary location would not be expected to exceed County noise standards.

The application proposes to build a new winery facility on the West Property. Development of the facility would require improvement and expansion of an existing driveway on the West Property. Subsequent to the development of the new facility, Duckhorn would begin improvements and expansion of their existing estate house on the East Property. During this time hospitality operations currently conducted on the East Property would temporarily take place within and around the new winery facility on the West Property. These hospitality operations on the West Property would be temporary and would return to the East Property at the completion of the Estate House expansion. At the conclusion of the Estate House expansion, the West Property would return to a production only winery facility.

Vehicle traffic on the improved West Property driveway would likely increase due to the development of the new winery facility, but the increase in vehicle traffic is not expected to cause noise impacts to neighboring sensitive receptors because "traffic noise is not highly sensitive to changes in traffic volume." (Page 23, Noise Resources - Napa County Baseline Data Report, 2005.) Vehicle traffic from hospitality operations on the West Property would be temporary. After that, vehicle traffic on this driveway would primarily be production Staff, agricultural and commercial vehicles. This vehicular activity would not take place during all hours of the day and night; Duckhorn is conditioned to only operate during the hours of 6:00 a.m. – 7:00 p.m., except during crush. (Page 25 Duckhorn MND; Page 39 Duckhorn Conditions of Approval and Final Agency Memos.) Truck traffic would not be expected to be a sizable portion of vehicular traffic on the West Property driveway. Napa County's application for Winery Use Permit Major Modifications includes a Trip Generation sheet that is used by the Department of Public Works to determine if a more detailed Traffic Impact Study is needed for a proposed project. Duckhorn's Trip Generation sheet is contained on page 182 of Duckhorn's TIS. According to the Trip Generation sheet estimated truck traffic for a 160,000 gallon per year winery is 2.9 average daily trips (ADT). Truck traffic for a 300,000 gallon per year winery is

expected to be 5.4 ADT, an increase in 2.5 ADT. Trip count data from the Project's TIS found heavy vehicles to make up two (2) to four (4) percent of vehicles using the study intersections.

The applicant submitted a Noise and Vibration Assessment after the release of the Notice of Intent. Although it was not relied upon by Staff in the MND noise analysis, Assessment further supports the conclusion that noise impacts would be less than significant.

Appeal Ground No. 14: Appellant PLL asserts that based on the lengthy personal experience of Lodi Lane residents and people living within 1000 feet of the Duckhorn property with structural traffic safety threats at the tee-intersections of Highway 29 and Silverado Trail, establishes a fair argument that the Planning Commission approval Duckhorn MND must be the subject of an EIR.

Staff Response (Response from Department of Public Works):

The Duckhorn TIS addresses the following traffic and safety elements;

- A description of study roadways and bicycle, pedestrian and transit facilities. Any planned County or Caltrans improvements within the Project vicinity.
- Traffic controls, turning movement counts, average daily traffic figures by scenarios.
- Trip Generation for existing and proposed annual and daily trips, showing the net added trips.
- Trip Generation for existing and proposed peak hour trips, showing the net added trips.
- Project scenarios Level of Service (LOS), and net change with plus Project scenarios.
- Collision analysis table.
- Traffic volume figures for all Project scenarios.
- Vehicle Miles Traveled (VMT) Analysis.
- A Transportation Demand Management (TDM) Plan.
- Parking Analysis.
- Site Access and On-site Circulation.
- Sight Distance Analysis.
- Collision Analysis.
- Left Turn Lane Warrant at proposed Project Driveway.
- Mitigations/Recommendations.

Based on the DPW conditions on the Project, the depth of analysis in the Duckhorn TIS, and the MND, there are no impacts from the Project that would exceed identified and established thresholds of significance and that those impacts would be significant and unavoidable, necessitating the need to prepare an EIR.

Attachment S

Staff Responses to WAC's
Appeal

GROUNDS OF APPEAL:

The following outlines the basis of the appeal as contained in Appellant WAC's Appeal dated June 1, 2023. (See **Attachment B**). For convenience, staff has provided a summary below, but recommends the Board review the entirety of the WAC Appeal for details.

Appeal Ground No. 1: Appellant WAC asserts various deficiencies with Applicant's "New Community and Non-Community Water Systems Technical, Managerial and Financial Capacity Worksheet" (the Worksheet). Specifically, WAC claims: (a) that a water availability analysis must be done for a ten-year period, but the Bartelt Water Availability Analysis dated August 2022 (Bartelt WAA) projected only one year; (b) the Worksheet calls for examination of existing well logs. The Bartelt WAA did not discuss the topic and relied solely on statistical norms; (c) the Worksheet calls for groundwater logs. The Bartelt WAA references such logs, but they are not part of the Application or the public record. According to WAC, Duckhorn claims it has been submitting extraction records to the County, but no records have been provided to WAC; and (d) the Worksheet calls for characterization of the water quality, but the Bartelt WAA says the results were not available for the irrigation wells prior to completion of the WAA and Domestic Well #1 is assumed to comply with Federal, State and local laws governing public water systems.

Staff Response: Appellant WAC appears to disregard information Applicant included in their Worksheet and in the Bartelt WAA. The Worksheet is the second page of a Division of Environmental Health (EH) memorandum which provides information regarding requirements for regulated water system permitting. Staff responds to each assertion as follows:

(a)**Timing.** Contrary to Appellant WAC's claim, the Worksheet does not require that a water availability analysis (WAA) be done for a ten-year period. The Worksheet requires a one-year projection for water demand and an analysis of the water system to meet the projected demand (project expansion and improvements for a ten-year period). Page 3 of Duckhorn's July 2020 Technical, Managerial, and Financial Capacity Worksheet (the Applicant's 2020 Worksheet) addressed projected water demand as follows:

"Based on the proposed wine production, number of employees and staff, and all of the marketing events … it is estimated that the existing Non-transient Non-community Water System (NTNCWS) will be required to satisfy a demand of 2,736,405± gallons per year of domestic water."

"… The water system service area, water demand, and the number of users are expected to remain constant over the next several years with no future plan for expansion."

(b) **Well logs.** The Bartelt WAA contains well logs (pages 16-22) and page 3 of the Applicant's 2020 Worksheet provided the following examination of well logs;

"… Based on the Well Completion Report, the estimated water yield from the existing groundwater well that meets the annular seal depth is 115 gallons per minute; therefore, the existing PWS should have more than adequate capacity to meet projected domestic water demands for the existing winery located on APN 022-130-010 (SFAP) and the proposed facility on APN 022-100-033 (SFAP)."

(c) Groundwater logs. The Worksheet does not require groundwater logs (see page 2 of the New Community and Non-Community Water Systems Technical, Managerial and Financial Capacity Worksheet Memorandum).

(d) Water Quality. Page 3 & 4 of the Applicant's July 2020 Worksheet examined water quality:

"Water quality results from the existing groundwater well were analyzed as part of the original permitting process for the existing PWS. Ongoing chemical and bacteriological sampling is performed as part of the PWS permit. Additional water sampling is not required with the proposed modifications to the Use Permit.

Water quality results for the "Domestic Well #1" that provides water to the NTNCWS were not reviewed by Bartelt Engineering because it is assumed the water system complies with all Federal, State, and local laws governing public water systems. Annual Consumer Confidence Reports (CCRs) have been submitted to the State and/or County and can be reviewed by either contacting the California State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW) District Office or the Local Primacy Agency (LPA), which in this case is the Napa County Environmental Health Division Consumer Protection Team."

The Applicant's 2020 Worksheet was reviewed by the EH and found to be compliant with Worksheet requirements and EH recommended approval of the project as conditioned.

Appeal Ground No. 2: Although the Bartelt WAA states that the Annual Consumer Confidence Reports have been submitted to the State and/or County, Appellant WAC claims that not once in the last six years has a fully conforming report been filed. According to WAC, in 2017-2019 and 2022 no reports were filed and in 2020 and 2021 reports were filed but not certified.

Staff Response: Appellant is wrong.

Duckhorn's water system is required to submit a Consumer Confidence Report and certification form to the County Division of EH each year. The report and certification form for the years 2017 through 2021 have been submitted to the County and copies are available in County EH records. The deadline to complete and distribute to consumers the 2022 report was July 1, 2023. The deadline to submit to the Local Primacy Agency (i.e., the County) for certification that the 2022 report was completed and provided to consumers was October 1, 2023. Both of these dates were after Duckhorn's public hearing date on May 3, 2023, and likely had not been completed yet.

Prior to the hearing EH was contacted by Planning Staff. Duckhorn has submitted both their 2022 and 2023 Annual Consumer Confidence Reports.

Appeal Ground No. 3: Appellant WAC asserts that the Worksheet requires planning staff "to evaluate the feasibility of consolidation with other existing systems" however the Bartelt WAA does not address the topic. According to the Bartelt WAA, Duckhorn is not located in the vicinity of the City of St. Helena's municipal water system and therefore it is infeasible to consolidate with any existing water systems at this time. Appellant WAC claims that the recently approved Inn at the Abbey use permit application is located at the other end of Lodi Lane and has a connection to City of St. Helena water, and it was an abuse of discretion not to discuss this alternative.

Staff Response: WAC is mistaken. The feasibility of consolidation with other existing systems was considered. The Applicant's July 2020 Worksheet evaluated the feasibility of consolidation with other existing systems as follows

"The closest large-scale municipal water system is operated by the City of Saint Helena. This municipal water system is not located within the vicinity of the proposed water system for this project. It is infeasible to consolidate with any existing water systems at this time. If municipal water service becomes available in the future, it is anticipated that the onsite well will continue to be utilized for wine production and any municipal water service would be utilized for domestic purposes. There is no anticipated consolidation with other (existing) water systems near the site." (See page 4.)

Because the Duckhorn parcels exist outside of the municipal boundaries and the Sphere of Influence (SOI) of the City of St. Helena, connection to the City's municipal water system could only be obtained through an outside service agreement approved by the Local Area Formation Commission of Napa County (LAFCO). Formal request for the outside service agreement would need to originate from the City and LAFCO could only approve a request if it was to mitigate an existing or impending threat to public health or safety or if LAFCO determines through a municipal service review that there is a service need or deficiency and that the extension would not be growth inducing.

The proposed Inn at the Abbey project has not been approved and is undergoing environmental review. The Inn proposes to rely on an existing Water Agreement with the City of St. Helena to provide water service to the Property (Freemark Abbey and the parcels of proposed project Inn at the Abbey) for all of the uses thereon since at least the 1930's and possibly before.

Appeal Ground No. 4: Appellant WAC asserts that Applicant stated that a Tier 1, Tier 2 and a Tier 3 analysis was performed and provided to the County in support of the Use Permit Modification application and that the Tier 2 or Tier 3 analyzed the anticipated groundwater usage and potential effects on adjacent wells and the Napa River. Appellant WAC requested these records via a Public Records Act request but was informed by the County that analysis was not a

part of the record that was considered by the Commission on May 3, 2023, nor is it available as a public record. Therefore, according to Appellant WAC claims the Commission erred when it approved the Application as it relied on statements, presented as facts, when evidence supporting those statements is not a part of the record.

Staff Response: Although County staff concluded that the Duckhorn project's reduction in water use did not necessitate the Tier 2 and 3 analysis due to the Project's anticipated reduction in groundwater use, the Tier 2 and 3 was referenced and cited in the Tier 1 analysis submitted to the Planning Commission. Staff and Applicant's planning consultant George Monteverdi also repeatedly referenced the Tier 2 and 3 analysis and its resulting findings at the Planning Commission hearing. Applicant's planning consultant Monteverdi testified that;

"*… because Duckhorn is a good neighbor, …, we have neighbors who have wells and is our well going to affect their well. Well, that's what a Tier 2 analysis is. Does this--will this well have any effect on neighboring wells, the answer was no. Tier 3 analysis included, does this well have connectivity with Napa River underflow. Again, the analysis went through. It's pulling from an aquifer that's hundreds of feet below the river. This is not water that's being pulled out from the bottom of the Napa River. So this is all, again, evidence showing that the groundwater usage is not going to change or actually be less and have no impact outside of the property* (Planning Commission Meeting of May 3, 2023, Transcript (Transcript) 28:10-21.) *The Tier 3 was completed and demonstrated no connectivity between the Napa River and any well on the site, and there are conditions of approval required that Duckhorn monitor and report groundwater uses at their wells."* (Transcript, 50:17-20.)

The Planning Commission relied on these statements from Staff and the Applicant's consultant, and the WAA report which was referenced and cited in the Tier 1 analysis and prepared by a licensed engineer as the evidentiary basis for its decision. The Tier 2 and 3 analysis was relied upon (both directly and indirectly) by the Planning Commission in making its decision.

Subsequent to the Planning Commission hearing the Tier 2 & 3 Supplemental WAA has been provided by the applicant to the appellants. The supplemental demonstrates that the project would not impact neighboring wells (Tier 2 – Well and Spring Interference Evaluation Criteria) beyond acceptable standards and would not impact surface waters (Tier 3 – Groundwater/Surface Water Interaction Criteria). Staff has revised the project's CEQA Mitigated Negative Declaration (MND) to include this analysis.

The project applicant has also proposed revisions to their project based on neighbor comments. Part of the revised project includes caping and reducing the existing project well by 10% of the current groundwater extraction amounts and developing a new project well that would be able to meet Tier 3 screening requirements for project wells.

Appeal Ground No. 5: Appellant WAC contends that in rejecting the need for a Tier 2 and Tier 3 analysis, Planning Staff opined that it was not necessary under the WAA 2015 Guidelines as

there was no evidence of existing environmental injury yet neither the application nor the County discussed any of the extensive study data that shows injury to the public trust that has been assembled over nearly thirty years.

Staff Response:

The public trust doctrine dates back to ancient Roman and English common law and has been part of California law since the State's admission to the Union in 1850.[1] The public trust doctrine is borne out of the concept "that the public rights of commerce, navigation, fishery and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society."[2] The doctrine is an affirmation of state power to use public property for public purposes, and the state's duty to protect the people's common heritage of streams, lakes, marshlands and tidelands.[3] "Under the public trust doctrine, the state has title as trustee to all tidelands and navigable lakes and streams and is charged with preserving these waterways for navigation, commerce, and fishing, as well as for scientific study, recreation, and as open space and habitat for birds and marine life."[4]

The public trust doctrine is only implicated by groundwater use if the groundwater in question is hydrologically interconnected to a navigable waterway that is subject to the doctrine. [public trust "analysis begins and ends with whether the challenged activity allegedly harms a navigable waterway"]. In such a circumstance, the public trust doctrine applies only "to the extent that such extraction of groundwater affects public trust resources and uses" in a navigable waterway; that is, only if the "issuance of well permits will result in extraction of groundwater adversely affecting the public's right to use [a navigable waterway] for trust purposes, [then] the County must take the public trust into consideration and protect public trust uses when feasible." [5] There is not clear guidance from the courts on what it means to protect public trust uses when feasible. While the court held that the "state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible, it did not go on to define what is meant by "feasible". However, the court recognized that there would be times when the state may have to approve water appropriations despite foreseeable harm to trust uses, but that the state must "preserve, so far as consistent with the public interest, the uses protected by the trust."

Crucially, County's duty is "not to regulate but to consider," give "due regard," and "take the public trust into account." The duty to consider does not require any particular outcome. When an action may adversely impact a public trust resource; to the contrary, such actions and activities may be authorized "despite foreseeable harm to public trust uses." [6]

County's WAA guidance document adopted by the Board of Supervisors on May 12, 2015, contains three levels or "tiers" of groundwater review for project relying on groundwater. Tier 1 contains guidance for groundwater volume and recharge analysis, Tier 2 consists of an analysis

[1] (ELF, 26 Cal.App.5th at 856; World Business Academy v. California State Lands Commission (2018) 24 Cal.App.5th 476, 508.)
[2] (Zack's Inc. v. City of Sausalito (2008) 165 Cal.App.4th 1163, 1175.)
[3] (National Audubon 33 Cal.3d at 441.)
[4] (Santa Teresa Citizen Action Group v. City of San Jose (2003) 114 Cal.App.4th 689, 709 [citing National Audubon].)
[5] (Id. at 85 1, 853-54 [italics added].)
[6] (National Audubon,33 Cal.3d at 446.)

of neighboring well and spring interference if proximity triggers are met, and Tier 3 considers groundwater and surface water interaction if the groundwater comes from a well within 1,500 feet of a "Significant Stream" which County has determined has a high probability of being hydrologically connected to the Napa River, a "navigable water" for public trust purposes.

Tier 3 review is the County's intended method for complying with its duties under the public trust. For the Duckhorn project, engineering firm Wagner & Bonsignore (W&B) prepared a Tier 3 analysis (**See Current Project Explorer Folder)** and assessed the potential pumping effects from Domestic Well#1 and potential effects on the Napa River (a navigable water for public trust purposes). After evaluating pumping rates, the well log, well depth, the well seal, the soils and the geology, W&A opined that groundwater from Domestic Well #1 appears to be derived entirely from Sonoma Volcanics and is not in the same aquifer as the Napa River and there is no direct connection. The Tier 3 reached this conclusion based on an expected 1.85 acre-feet per year increase in groundwater demand; however, the approved Duckhorn project actually reduced groundwater use over existing conditions by .04 acre-feet per year and included COA No. 6.15.a.5 limiting groundwater use to 14.00 acre-feet per year. This reduction in groundwater use over existing conditions not only benefits the aquifer, but also Groundwater Dependent Ecosystems and interconnected surface flows.

As summarized in Staff Response to Appeal Ground No. 4, the conclusions of the Tier 3 that there is no hydrological connection and therefore no resulting harm to public trust resources was discussed at the Planning Commission hearing. The results of the Tier 3 satisfies the County's duty to consider and give due regard to whether groundwater extraction for the Duckhorn project affects public trust resources and uses. Despite the County's satisfaction of its duty under the public trust doctrine WAC provides several pages of summaries and citations to reports that WAC believes provides substantial evidence of existing environmental injury, as well as a historical summary of the development of the County's groundwater regulatory apparatus with particular focus on WAC's perception of the inadequacy of the county's review of surface water interaction.

Most of the evidence provided by WAC is not project or site specific to Duckhorn. WAC does tie their evidence to Duckhorn at three different points in this appeal ground and Staff responds as follows;

- On page 11 of the Appeal WAC cites to a statement in the Napa County Groundwater Sustainability Report – Water Year 2022 (LSCE 2023), that "Notable declines in saturated thickness (five to seven feet) occurred in some areas north of St. Helena". WAC then adds "i.e. in the area of the Duckhorn Project". This is incorrect. A closer inspection of Figure 6-21 from LSCE 2023, which provides a map of the change in saturated thickness from Spring 2021 to Spring 2022 reveals that the Duckhorn parcels are clearly not within the boundaries of the area designated with this notable decline in saturated thickness.
- On page 12 of the Appeal WAC alleges that DWR has reported depletions of interconnected surface water also have significant and unreasonable adverse impacts. LSCE 2023 reported an undesirable result when the representative monitoring site in the

proximity of the Duckhorn project fell below the minimum threshold. Notably WAC provides no page reference in LSCE 2023 for this assertion. The only undesirable results in LSCE 2023 are for a reduction in groundwater storage and depletion of interconnected surface waters. It appears that WAC is referencing the undesirable result of depletion of surface water. However, the only representative monitoring sites which exceeded minimum thresholds for surface water depletion in LSCE 2023 are located in the vicinity of Oak Knoll and Silverado Trail and the Yountville Cross Road Ecological Reserve. WAC may be referencing monitoring sites which exceeded minimum thresholds for groundwater levels, but all the monitoring sites which exceeded this minimum threshold for Water Year 2022 are south of the City of St. Helena. It is unclear which monitoring well WAC is referencing.

Appeal Ground No. 6: Appellant WAC asserts that the MND fails to consider substantial evidence of existing environmental injury. WAC claims that the "Napa County Groundwater Sustainability Annual Report – Water Year 2022 ("LSCE 2023 Report") reported an undesirable result when the representative monitoring site in proximity of the Duckhorn project fell below the minimum threshold. This withholding of evidence precludes the ability to challenge conclusions allegedly found on this data. For example, the assertion "No direct connection to the overlying alluvium is indicated in the well log" appears to be in direct contradiction to the conclusion in the Slade report that production wells screened and/or gravel packed in the alluvium can nevertheless draw directly from the alluvium that is in direct contact with the Napa River. This conflicting professional opinion can be resolved by qualified expert review of Tier 2 and Tier 3 analyses.

Staff Response: Staff incorporates Staff Response to Appeal Ground No. 5 here by reference. Much of the purported substantial evidence cited by WAC is not site or project specific to the Duckhorn project. The record includes a site-specific Tier 3 WAA analysis by Wagner & Bonsignore which opined that there is no direct connection to the overlying alluvium.

Appeal Ground No. 7: Appellant asserts that the proposed water demand exceeds groundwater recharge. Appellant specifically asserts the 14.0 acre-feet proposed water demand by Duckhorn is in excess of current limits. The current water use criteria for a parcel located within the "Napa Valley Floor" area is 0.3 acre-feet per acre per year, or 9.7± acre-feet per year for the project.

Staff Response: Duckhorn submitted their request for a Use Permit Major Modification on March 26, 2019. On June 7, 2022, in response to Governor Newsom's Executive Order N-7-22, the Napa County Board of Supervisors provided direction regarding interim procedures for the issuance of new, altered or replacement well permits and discretionary projects that would increase groundwater use during the declared drought emergency limiting water use criteria for the Napa Valley Floor to 0.3 af/acre/yr or not net increase if that threshold is already exceeded.

As part of their application Duckhorn Vineyards Winery submitted a Tier 1WAA that estimates the existing and proposed water demand for groundwater uses on the properties including a winery with production and hospitality facilities and entitlements, vineyards and a single-family residence (planned for demolition). Existing groundwater use for the project was estimated to be 14.04 af/yr. The Project proposes to construct both process and sanitary wastewater recycling systems for vineyard irrigation which would replace some of the groundwater demand. Based on their calculations, the proposed project, with implementation of the proposed operational modifications and recycled wastewater systems, would decrease annual groundwater use by 0.04 af/yr.

Because the project's estimated proposed groundwater demand is so close to their estimated existing groundwater demand the Planning Commission adopted Conditions of Approval (COA) No. 4.20b and 6.15a which require the applicant to implement a Groundwater Demand Management Program including monthly reporting of well meters, inclusion of the project's wells in the Napa County Groundwater Monitoring program, and potential for corrective actions if the water usage from the project's wells is on track to exceed 14.0 af/yr. and a capped groundwater use at 14.0 af/yr.

Appeal Ground No. 8: Appellant WAC asserts that although the winery has operated since 1976, no tangible evidence is disclosed in the Application of actual historical or present water use; the Application relies exclusively on statistical norms and specifically that "[t]he groundwater demand generated ... is estimated to remain the same. The total estimated water usage for the existing and proposed uses for the project is calculated based on the Guidelines for Estimating Residential and Non-residential Water Use."

Staff Response: Duckhorn has relied on reasonable estimates of its groundwater use. It is not uncommon for older wells and wineries in Napa County to not have meters or actual data.

Since 2015, the County's WAA has required discretionary projects that utilize groundwater or increase the intensity of groundwater use to provide a water availability analysis. In the absence of actual metered data, the County's WAA Guidelines (Appendix B Guidelines for Estimating Non-Residential Water Usage) provides reasonable guidance for estimating groundwater use associated with various winery related activities. The guidelines were developed by the County's consulting hydrogeologist and based on technical literature of water use estimates from land uses and industry standards. Because each project has its own unique characteristics, applicants provide the most appropriate data to estimate water use for their specific project. That data is typically provided by a licensed engineer familiar with the applicant's operations. Contrary to WAC's assertion, Duckhorn's previous permit modification (P05-00199-MOD) included a WAA. Water use coefficients in this WAA match coefficients used in the current Tier 1 WAA.

Appeal Ground No. 9: Appellant WAC asserts that the proposed project will consume more water than the existing facility. Specifically, Appellant asserts that the estimated total water demand of 14.00 acre-feet, with tasting room visitation at 0.74 acre-feet per year, and events and

marketing at 0.42 acre-feet per year, for a combined total of 1.16 acre-feet per year, does not include water used by the kitchen for the tens of thousands of meals anticipated to be served annually.

Staff Response: Appellant is incorrect. Water use associated with food service including preparation and clean-up is baked into the County's WAA estimates.

Duckhorn Vineyards Winery submitted a Tier 1 WAA for the proposed project that estimated existing (baseline) and proposed water demand for uses utilizing the project wells including water associated with Events and Marketing and food service.

The WAA provides the following reasonable estimates for wineries (Page 15 of the WAA):

- Process Water - 2.15 acre-feet per 100,000 gal. of wine
- Domestic and Landscaping - 0.50 acre-feet per 100,000 gal. of wine
- Employees - 15 gallons per shift
- Tasting Room Visitation - 3 gallons per visitor
- Events and Marketing, with on-site catering - 15 gallons per visitor

The different coefficients between tasting room visitation and Events and Marketing, with onsite catering is indicative of the potential food service preparation and clean up associated with catered Marketing Events. Per the County's Winery Definition Ordinance, "Marketing of wine" may include food service, including food and wine pairings, where such food service is provided without charge except to the extent of cost recovery. (See also COA No. 4.3.) Duckhorn is not allowed to operate as a restaurant but has been authorized to host Marketing Events with food service since 2005 (Use Permit Modification #P05-00199).

Appeal Ground No. 10: Appellant asserts that the failure to provide notice to the Department of Drinking Water (DOW) and the City of St. Helena has prevented full and complete review of the project as required by the CEQA. State Clearing House records (SCH No. 2023030759) indicate that notice was not given to two relevant state agencies: DOW and the City.

Staff Response: Staff is unaware of any legal authority nor has Appellant provided any authority that requires notice to specific divisions of state or responsible agencies. The DOW is a division within the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCB). The CEQA Notice of Intent was sent to SWRCB and RWQCB in their capacity as responsible agencies to protect surface, ground, and coastal waters throughout the state and to issue permits which govern and restrict the amount of pollutants that can be discharged into the ground or a water body.

Napa County EH has delegated authority as the local primacy agency through a delegation agreement per California Health & Safety Code § 116330. Per the agreement, plans for changes to public water systems are submitted directly to Napa County EH for review and approval.

The City of St. Helena is not a state agency and CEQA Notices of Intent are not distributed to the city through the State Clearinghouse. Contrary to WAC's assertion, the City of St. Helena was notified by staff. The City of St. Helena did not respond.

Appeal Ground No. 11: Appellant asserts that although in narrative the Applicant avows that there are no changes anticipated in the potable water system, a more detailed review reveals that the DOW should have had the opportunity to review the Application. Duckhorn has a non-transient community water system, a classification that is based upon Duckhorn's representation that it employs less than 25 people however the application represents 56 employees and in a 2017 Napa County survey of employers, Duckhorn reported 228 people.

Staff Response: As to the DOW notification, Staff incorporates Staff Response to Appeal Ground No. 10 here by reference.

Regarding Duckhorn's classification as a non-transient community water system, Appellant has misconstrued the classification. The non-community classification applies if the public water system does not serve 25 or more yearlong residents (not employees) with less than 15 service connections." (WAA, pg. 4). The non-transient classification applies if the water system serves 25 or more of the same people at least six months of the year. EH reviewed the application and confirmed that Duckhorn has the correct permits for a non-transient, non-community water system with 25 or more employees. Lastly, Staff has not seen and is not familiar with the survey referenced by Appellant WAC, the purpose, or content of such survey. Duckhorn has been approved for 56 employees since 2005 and Duckhorn has not requested any change to the approved number of employees.

Appeal Ground No. 12: Appellant contends that Duckhorn is one of only three sites in Napa Valley reporting arsenic exceedances (LCSE 2023 Report, ES-9). WAC contends that contrary to Applicant's representations that there are no reportable quantities of hazardous wastes on the Property, Duckhorn filed substantial disclosures in 2012, and offers no explanation why similar quantities of similar hazardous wastes are not present now.

Staff Response: Appellant appears to be confused with the facts in the report they have cited. First the arsenic mentioned in the Napa County Groundwater Sustainability Annual Report (water year 2022) is a naturally occurring chemical in groundwater. This does not qualify as a hazardous waste. Second the claim that Duckhorn is "one of only three sites in Napa Valley reporting arsenic exceedances" is factually wrong. None of the three monitoring well sites reporting arsenic exceedances in the LCSE report are Duckhorn's wells. The closest monitoring well (Well ID 2801070-002) reporting an exceedance, which is in proximity to Beringer Vineyards, is approximately 1.5 miles from the Duckhorn project. Figure 6-30 of the report demonstrates that there is a monitoring well significantly closer to the Duckhorn project than the well in question (Well ID 383148122292901) which is reporting arsenic levels at normal levels. According to EH, County records do not indicate arsenic levels in the drinking water above the

Maximum Contaminant Level (MCL). The source is tested for arsenic every three years and Duckhorn Vineyards Water System is in compliance.

Appeal Ground No. 13: Appellant WAC contends that there is no record of approval of the current well for potable use. Specifically, WAC asserts that there is no indication that DOW has been notified that the project's entire potable water supply will be provided by one well or that the well is potentially drawing from the Napa River aquitard WAC claims that community water systems using only groundwater shall have a minimum of two approved sources before being granted an initial permit.

Staff Response: Staff incorporates Staff Response to Appeal Ground No. 11 here by reference.

The current well was submitted and approved as a source in the initial water supply permit application back in 1999. The approved well is sampled quarterly and there are no indications that the well is under the influence of surface water. The requirement for two sources does not apply to Duckhorn Vineyards Water System as they are not classified as a community water system, they are classified as a non-transient, non-community water system.

Appeal Ground No. 14: Appellant asserts that the City of St. Helena has not reviewed or commented on the project as occurred with the 1976 Use Permit. The Duckhorn project is within the vicinity of several recently approved projects that potentially impact a public trust interest. Appellant contends that any increase in the project's water consumption may have an adverse impact on the City's efforts to mitigate injuries to the public trust.

Staff Response: The City of St. Helena was provided the Notice of Intent via direct mail at the same time that direct mailings were also sent to properties within 1000 feet of the project. The City of St. Helena also receives notice of County discretionary projects via the County's 'Interested Parties' email list. No response or comment letter has been received from the City of St. Helena regarding this project. The City's duty and efforts to mitigate injuries to the public trust is outside of the County's purview and obligation.

Appeal Ground No. 15: Appellant WAC asserts that the MND does not include a necessary term of mitigation requested by CDFW for a "frac-out plan." According to WAC, the Applicant contends that the horizontal bore hole originates and terminates outside the boundaries of the Napa River and therefore a Fish and Game Code, section 1602 permit is not required and that absent an express requirement in the MND, it is possible that the frac material will enter the river and environmental injury will certainly occur.

Staff Response: Appellant appears to be confused. The Applicant is committed to obtaining the section 1602 permit from the California Department of Fish and Wildlife (CDFW) if one is in fact required.

Duckhorn proposes to expand their existing winery facility to APN 022-130-010 (the West Property). Water and wastewater facilities on the east and west properties will be connected

underneath the Napa River, which bisects the two properties, by the extension of utilities through Horizontal Directional Drilling (HDD). The Applicant's HDD exhibit of their application packet (Attachment K to the May 3, 2023, Planning Commission Meeting Agenda), included communications between the applicant and CDFW, Army Corp of Engineers and the RWQCB requesting direction regarding what, if any, permits would be required by these agencies prior to the drilling. Correspondence from these agencies was included in the HDD exhibit. The Army Corp of Engineers and RWQCB informed the applicant that no permits would be required from those agencies for the action. CDFW requested that the applicant submit a Notification of Lake or Streambed Alteration for a Standard Agreement to their online permitting system which would alert the agency and allow them at that time to determine if a Streambed Alteration Agreement would be necessary.

Because it was unknown at the time of preparation of the CEQA Initial Study whether the agreement with CDFW would be necessary, to ensure that there is no potentially significant impact to hydrology and water quality, staff included Mitigation Measure BIO-3 which required the applicant to provide to the County the Streambed Alteration Agreement (or other notification from CDFW determining the permit is unnecessary for this project) prior to permit issuance for the utility line extension under the Napa River.

After the Planning Commission's approval of the Project, staff has learned that the Applicant's team has already submitted the Notification of Streambed Alteration to CDFW. The Applicant's submittal included the Frac-Out plan and therefore Mitigation Measure BIO-3 has been complied with as intended.

Appeal Ground No. 16: Appellant WAC asserts that the project does not comply with the terms of the Agricultural Land Preserve because it proposes to import grapes from another county to make up to 25% of its production. WAC specifically asserts that the project is not an ancillary to Napa agriculture, and in fact diminishes the amount of farmed land in the County. Appellant further asserts that no discussion was had regarding the anticipated fuel consumed by trucking into Napa grapes from outside the County. WAC claims that winery capacity that is surplus to local needs is of no use to Napa County agricultural interests and is therefore inconsistent with the Williamson Act.

Staff Response: On January 23, 1990, the WDO was approved by the Napa County Board of Supervisors. Among other things the ordinance established requirements on the percentage of local county grapes used to produce a winery's still wine. Wineries first established subsequent to January 23, 1990, were required to utilize 75% of their total grapes from within Napa County. All existing wineries which expanded beyond their development area were required to comply with the 75% rule for the portion of that expansion.

Duckhorn is a pre-WDO winery and 50,000 gallons of their existing production capacity is a pre-WDO entitlement, the remaining existing 110,000 gallons (250,000 approved by the Commission), is subject to Napa County's 75% local grape rule. Adopted COA No. 4.6 of the

County's standard conditions set limits on the amount of in-county and out-of-county grapes that can be utilized in a wineries production capacity. A winery may use up to 25% of out-of-county grapes, to meet their production capacity. There is nothing in the application indicating that Duckhorn is proposing to use exactly 25% of its production capacity from grapes outside the county. In fact, Commissioner Philips publicly stated that the applicant had expressed to her during her site visit the winery's desire to utilize 100% fruit from within Napa County at this facility.

The applicant proposes to expand an existing winery that has in operation for almost 50 years. The property has been under a Williamson Act contract since December 20, 2017. The terms of that Contract restrict Duckhorn's use of the property to specific activities such as agriculture and agricultural processing facilities such as wineries. Duckhorn's use of the property and the proposed expansion are consistent with and permissible under the terms of the Contract.

The applicant included mention in their project description that the project is likely to reduce truck trips because of the amount of grapes which are hauled off-site to a processing facility in Hopland. This was also mentioned in the Traffic Impact Study project description. While it stands to reason that truck trips will be reduced as a result of the winery's expansion, these reduced trips were not utilized in the project's vehicle miles traveled (VMT) analysis. Although truck average daily traffic (ADT) is included in the County's Trip Generation Worksheet for wineries, the California Office of Planning and Research specifically recommends against including truck trips in VMT analysis.

Appeal Ground No. 17: Appellant WAC asserts that prior Use Permit agreements have obliged Duckhorn to provide a left-hand turn lane on Silverado Trail.

Staff Response: Use Permit Modification #U-28081 was approved by the Planning Commission on November 19, 1980. Mitigation Measure #2 required "Installation prior to opening of this winery for tours or tastings of a north-bound left turn lane on Silverado Trail at the subject winery's entrance whose design is acceptable to the Napa County Public Works Department" (Page 37, Duckhorn Vineyards Winery Conditions of Approval and Final Agency Approval Memos).

On May 7, 1997, the Planning Commission approved Use Permit Modification #96346-MOD. This modification included relocation of the winery entrance from Silverado Trail to Lodi Lane. Relocating the winery entrance to Lodi Lane effectively abandoned the need to require Mitigation Measure #2 from Use Permit Modification #U-28081. No left-hand turn lane was required for the new winery entrance.