

BEFORE THE BOARD OF SUPERVISORS
OF NAPA COUNTY

In the Matter of:

An appeal filed by Appellant Water Audit California concerning the Napa County Planning Commission's decision on December 18, 2024, to approve Bonny's Vineyard New Winery Use Permit No. P22-00002-UP. The project is located on a 25.54-acre parcel, located at 1555 Skellenger Lane, Napa, CA. (Assessor's Parcel Number 030-200-080)

RESOLUTION NO. 2025-_____

**FINDINGS OF FACT AND
DECISION ON APPEAL**

WHEREAS, on January 7, 2022, Meyer Family Enterprises (Applicant) applied for a Use Permit to establish a new 30,000 gallon per year production winery known as Bonny's Vineyard Winery, consisting of a 10,996 square foot (sf) winery building with a 1,426 sf covered crush pad, a 392 sf uncovered mechanical yard and 1,255 sf of covered loggia (patio space). The winery proposes to have six (6) full time employees, by appointment tours and tastings for a maximum of 45 visitors per day, two (2) large events per year with a maximum of 150 visitors, and nine (9) small events per year with a maximum of 80 visitors (the Project or Winery); and

WHEREAS, the Project is located on a 25.54-acre parcel within the Agricultural Preserve (AP) zoning district and designated as Agricultural Resource (AR) in the General Plan at 1555 Skellenger Lane, Napa (APN 030-200-080); and

WHEREAS, on November 15, 2024, the Public Notice of the Planning Commission hearing and Notice of Intent to adopt a Mitigated Negative Declaration (MND) was mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. 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 California Environmental Quality Act (CEQA) document notification list. The Notice was published in the Napa Valley Register on November 16, 2024; and

WHEREAS, on December 18, 2024, the Planning Commission held a public hearing to consider the Project. After considering the Staff Report, Applicant presentation, and all verbal and written public comment, the Planning Commission voted (3:0 AYES: Brunzell, Dameron and Whitmer; ABSENT: Phillips and Mazotti) to approve the Bonny's Vineyard Winery project; and

WHEREAS, on January 10, 2025, a timely notice of intent to appeal was filed by Appellant Water Audit California (Appellant WAC or WAC) and a timely appeal packet was submitted on January 27, 2025 (the Appeal); and

WHEREAS, in accordance with Napa County Code (NCC) Section 2.88.080 (A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for April 8, 2025, a date at least twenty-five but no more than ninety days from the date of submittal of the Appeal; and

WHEREAS, public notices of the Appeal hearing were mailed, emailed and provided to all parties who received notice of the Planning Commission hearings, all property owners within 1,000 feet of the Property, and published in the newspaper on March 13, 2025; and

WHEREAS, on April 8, 2025, the Board opened the public hearing for the Appeal and continued the matter to May 6, 2025, to accommodate all parties' schedules. No public testimony occurred on April 8, 2025; and

WHEREAS, on May 6, 2025, at a duly noticed continued public hearing on the Appeal, the Board heard and considered the Staff presentation, Appellant WAC's presentation, Applicant's presentation, and all written and verbal testimony and evidence regarding the Appeal. The Board closed the public hearing and adopted a motion of intent to deny the Appeal in its entirety, adopt the MND and Mitigation Monitoring and Reporting Program prepared for the Project, uphold the Planning Commission's decision to approve the Project, and approve the Project subject to revised Conditions of Approval (COA); and

WHEREAS, the Board further directed County Counsel's office to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on June 24, 2025; and

WHEREAS, on June 24, 2025, a proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on June 24, 2025 and interested persons having been given an opportunity to address the Board regarding the proposed resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors finds, determines, concludes and decides as follows:

Section 1. **Recitals.**

The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Conduct of Appeal.

A. NCC Section 2.88.090 (B) provides that if the appeal pertains to a decision for which a record on appeal exists, the board, in hearing the appeal, shall base its consideration of the appeal on the record on appeal and any extrinsic evidence submitted by the parties and allowed by the chair for good cause shown. "Good cause" means that the proposed evidence, in the exercise of reasonable diligence, could not have been produced to, or was improperly withheld or excluded from, the decision maker. Here, a record on appeal of the Planning Commission's decision exists and was provided to the Board.

B. To clarify the County's procedural requirements and expectations regarding land use appeals, the Board requires the parties attend a mandatory pre-hearing conference with a representative of the County Counsel's office and the Chair of the Board of Supervisors to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists.

C. A pre-hearing conference was held on February 24, 2025, with Appellant, Applicant, Applicant's counsel, the Chair of the Board, and a Deputy County Counsel. Appellant and Applicant agreed to various procedural matters related to the Appeal hearing including, but not limited to, exchanging witness lists, providing 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), time limits for presentations, and page limits for supplemental legal arguments.

D. On March 5, 2025, Appellant WAC submitted a "good cause" request to supplement the record on appeal before the Board with additional graphics derived from County Geographic Information System (GIS) data and other documents relied upon in arriving at the decision being appealed.

E. On March 21, 2025, the Chair denied WAC's request to augment the record with the graphics derived from County GIS Data because WAC failed to identify why, in the exercise of reasonable diligence, the documents could not have been provided to the Planning Commission for consideration because this document was publicly available on the County's Current Project Explorer website. Further, the Chair denied the remainder of the request to augment the record because NCC 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 remaining documents (CEQA Notice of Determination, County's Water Availability Analysis Guidance Document, Napa County's Well Permit Standards and Water Availability Requirements dated January 2024 (2024 Interim Standards), County Memorandum entitled "Application of Public Trust Doctrine to Projects Dependent on Groundwater," and Staff PowerPoint presentation at the Planning Commission hearing) were relied upon (both directly and indirectly) by the Planning Commission in making its decision and therefore, the documents are part of the "record on appeal" as defined by Napa County Code.

F. On March 24, 2025, WAC submitted a request to overturn the Chair's good cause determination. The Chair's decision may be overruled by a majority of the Board upon request

by either an appellant or applicant on the day of the appeal hearing. During the public hearing on May 6, 2025, WAC withdrew the request that the full Board overrule the Chair's good cause determination. Therefore, the Chair's determination stands.

G. Prior to the Appeal hearing, Appellant asserted that the staff report and all attachments that were finalized, released to the parties, and posted on the County's website on April 25, 2025, were "modified" when these same documents were published on May 1, with publication of the May 6, 2025, Board of Supervisors Meeting Agenda. However, as explained by Supervising Planner Dana Morrison at the Appeal hearing, the documents were not changed or altered. The document's properties show the "modification date" as the date and time the document was last downloaded, not that the documents were altered. Thus, the documents released on April 25 and published with the Board Meeting Agenda on May 1, 2025, were the same.

Section 3. Findings of Fact and Conclusions of Law on Appeal.

The Board hereby makes the following findings of fact and conclusions of law in regard to each of the grounds for appeal as stated by Appellant in the Appeal¹:

A. First Ground of Appeal.

Appellant's position: Appellant asserts that the project application misstates its purpose as a Major Modification rather than a new use.

Findings and Decision: The Board finds and determines that the application was processed, assessed, as well as publicly noticed and described in the Initial Study/Mitigated Negative Declaration (MND) as a new winery use permit. The Planning Department's Use Permit application is for both new wineries and major modifications, and as such, is labeled as 'Use Permit/Major Modification Application - Winery Uses.' Given this, the Applicant may have selected both Use Permit and Major Modification accidentally. The Applicant intended for the application to be processed as a new use. Despite any alleged misstatement or incorrect checkmarks on the application, the application was analyzed by staff, the Planning Commission, and the Board of Supervisors as a new winery use permit and described as a new winery use permit in the prepared CEQA documents.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the First Ground of Appeal and upholds the Planning Commission's approval of the Project.

¹ This Resolution summarizes the grounds of appeal. For the complete text of the WAC Appeal, please see the actual Appeal dated January 27, 2025.

B. Second Ground of Appeal.

Appellant's position: Appellant claims the application identifies only one well, but the proposed new use requires not less than two sources of water.

Findings and Decision: The Board finds and determines as follows:

1) The proposed Winery does not require more than one source of water; only Well #1 will serve as the winery well. The Water Availability Analysis (WAA) prepared by CMP Civil Engineering & Land Surveying Inc., dated August 8, 2024, for the Project identified three existing wells on the property, but only one well (Well #1) was identified and assessed to serve the Winery's groundwater use demands. Well #1 is currently used for vineyard irrigation and is proposed to be used for the Winery, as well as, continuing to irrigate portions of the existing vineyard. The other two onsite wells (Well #2 and Well #3) serve the existing residences and also irrigate some of the existing vineyard and will continue to do so.

2) Well #1 will also fill three proposed tanks on site, which will serve as emergency fire protection and domestic water for the winery. 'Domestic' use in this instance refers to the Winery's employees, daily visitors and attendees – not the residential domestic use which will be served by Wells #2 and #3.

Conclusion

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the Second Ground of Appeal and upholds the Planning Commission's approval of the Project.

C. Third Ground of Appeal.

Appellant's position: Appellant contends that the application refers to four wells on the property but does not include any well drilling information to determine the utility and acceptability of the existing infrastructure. The application and Department of Water Rights database contains no well drilling data for three of the alleged additional wells. Appellant contends that this information is critical to determine the suitability for incorporation into a public water system.

Findings and Decision: The Board finds and determines as follows:

1) The application and WAA identify three existing wells and includes well drilling information on the Project well as follows:

- Well #1 (Winery well) was approved in 2011 for a well with an 8-inch casing diameter, 15-inch boring diameter, with a 3-inch annual seal with Environmental Well Permit E11-00266.

- Well #2 (the secondary residences' well) – no well permit history. Non-project well.
- Well #3 (the primary residences' well) – no well permit history. Non-project well.

2) There is no well permit history for Well #2 and Well #3 in the Napa County records. This parcel went through a Lot Line Adjustment in 2011. Prior to 2011, there were two separate parcels, each with an existing primary residence and associated well. Well #2 served the residence located at 1555 Skellenger Lane and Well #3 served the residence at 794 Oakville Cross Road. Well # 2 and Well #3 are located immediately adjacent to the existing primary and secondary residences. Both residences were constructed prior to 1955, before the County required building permits and well permits.

3) There is building permit history in the County's records which supports the existence of the three wells noted in the application submittal materials for the Bonny's Vineyard New Winery Use Permit, but said permit history also appears to indicate that, at least in 2016, there were four wells on the property. Building Permit B11-01347, a permit for a 10,500 gallon water tank, noted the existence of Well #2 (secondary residences' well) and Well #1 (the proposed winery project well which was a new replacement well approved under E11-00266). Building Permit B16-01016, a permit for updates to an existing barn near the primary residence (the residence accessed off of Oakville Cross Road) calls out two wells near the residence. First, a "well for house" located immediately adjacent to the pool and which was not noted in the Bonny's Vineyard Plan Set. Second, a "well and pump house for the pool" located immediately adjacent to the solar barn and noted as Well # 3 in the WAA and Plan Set. According to the Applicant, the "well for house" is no longer in use and was not observed during their reconnaissance work of the site. Currently both the main residence and pool water uses are served by existing Well #3.

4) At the Appeal hearing, Supervising Planner Dana Morrison, testified that in connection with the appeal, a fourth potential well, "Well for House," was discovered during review of the building permit history. A site visit to the property revealed that the potential well is covered by an above ground deck and existing patio furniture. Because the potential well is covered, this well was not observed during the reconnaissance work for the site. The potential well is not in use and covered by an above ground deck, since at least 2005 based on review of historical aerials.

5) The Board of Supervisors added a new condition of approval requiring destruction of the fourth well on the Property, identified as "(E) Well for House" on the approved Plan Set for B16-1016, unless already destroyed. The two residential wells (Wells #2 and 3), and unused Well #4 are not proposed for use as part of the new winery, however, to feasibly mitigate any alleged harm to public trust resources the Planning Commission adopted COA Nos. 4.9 and 4.20 to require that the parcel's overall groundwater use be limited to 10.16 acre feet per year (af/yr), that the Project well (Well#1) and parcel wells (Wells #2 and #3) be

equipped with flow regulation devices limiting the pumping capacity to less than or equal to existing operations, preparation of a Ground Water Management Plan, and inclusion of the Project in the County's well monitoring program and that the pumping rate, pumping duration, and extraction volumes remain unchanged and/or are reduced from existing conditions. To ensure accurate measurements of existing well operations, immediately upon approval, the Applicant shall monitor Well #2 and Well #3 to establish a baseline pumping operation.

6) A Preliminary Water System Technical Report was prepared by CMP Civil Engineering & Land Surveying Inc. and concluded that there are no public water systems within three (3) miles of the proposed Project, that the water supply to the proposed system is more than enough for the proposed use, and that the only viable option for the proposed Winery is to develop its own transient non-community water system. The proposed water system will supply potable water solely from Well #1 and the water storage facilities (that will also be filled utilizing water pumped from Well #1).

7) The Wastewater System Feasibility Report and the Preliminary Water System Technical Report are two different reports, both of which were provided and available to the public. The Preliminary Water System Report is analyzed by the State of California and is included on the Application Checklist for submittal. The Wastewater System Feasibility Report was analyzed by staff and included as part of the agenda packet for consideration by both the Planning Commission and Board of Supervisors.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the Third Ground of Appeal and upholds the Planning Commission's approval of the Project.

D. Fourth Ground of Appeal.

Appellant's position: Appellant claims that the approval of the application makes tangential reference to the need for an additional water supply, but the approval is not conditioned on compliance.

Findings and Decision: The Board finds and determines that the Project COAs require monitoring and installation of flow regulation devices on all of the parcel's wells not because there is a need for additional water sources, but rather as a limitation on the pumping capacity of the other existing wells on site to ensure overall water demand of 10.16 af/yr is not exceeded and that the Project reduces its existing overall groundwater demand. (COA 4.9) If only Well #1 is monitored, the pumping could potentially be increased on the other two wells resulting in increased groundwater use.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the Fourth Ground of Appeal and upholds the Planning Commission's approval of the Project.

E. Fifth Ground of Appeal.

Appellant's position: Appellant asserts that although this project has been in development since 2018, and although it acknowledges the need for well monitoring, there is no well monitoring or consumption data.

Findings and Decision: The Board finds and determines as follows:

1) It not uncommon for older wells in Napa County to not have meters or actual data. The Board further finds that the WAA data provided by the Applicant was reviewed by County staff and comply with the requirements set forth in the WAA Guidance Document. The WAA Guidance Document allows applicants to provide water use analyses based on standard criteria and water use set forth in the document. The Project well (Well #1) currently serves the existing vineyard irrigation and is proposed to serve the winery. The Project is proposing a reduction in overall groundwater use through the removal of 0.63 acres of existing vineyard (resulting in that much less vineyard requiring water 0.63 acres (*0.3 acre-feet per acre per year [af/ac/yr] = 0.189 af/yr)) and the recycling of winery process wastewater for supplemental vineyard irrigation. Through these changes in operation, the Project will reduce the annual pumping time for the parcel and limited the pumping rate for the Project well (Well #1) to 160 gallons per minute.

2) The revised COAs require that the parcel's overall groundwater use be limited to 10.16 af/yr, that the Project and all parcel wells be equipped with flow regulation devices limiting the pumping capacity to less than or equal to existing operations, preparation of a Ground Water Management Plan, and inclusion of the Project in the County's well monitoring program. The property owner will be required to satisfy all inspection and reporting requirements prior to final building permit approval and continue to monitor the wells in perpetuity as conditioned. The COAs require well monitoring data be made available to the Director of Planning, Building, and Environmental Services in order to comply with Groundwater Monitoring Program. (COA 4.9.)

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the Fifth Ground of Appeal and upholds the Planning Commission's approval of the Project.

G. Sixth Ground of Appeal.

Appellant's position: Appellant contends that the application is based on assertions rather than empirical data, claiming that the Applicant's compliance with current groundwater extraction limitations is not supported by evidence. The Appellant contends that the Applicant's calculations of future consumption are also baseless and were adjusted only after staff pointed out that future consumption exceeded current extractions. Moreover, the Appellant asserts that the Applicant's representations are inconsistent, with different input values appearing in various parts of the application.

Findings and Decision: The Board finds and determines as follows:

1) The Project Description, the WAA, and the Wastewater System Feasibility Report are all consistent in their representation of water uses for existing and proposed conditions. Other Project studies such as the Biological Report and Traffic Study do not speak to or concern water use.

2) The Applicant's WAA was reviewed by County staff and determined to comply with the standards set forth in the WAA Guidance Document. The WAA Guidance Document allows applicants to provide reasonable estimates of existing extraction volumes based on land use when actual monitoring or well pumping data has not been collected and provided by an applicant. The Project is conditioned to ensure water use does not exceed 10.16 af/yr, which results in a reduction of overall groundwater use compared to existing water use. The permittee is required to actively monitor all of the property wells, prepare a Ground Water Management Plan, and include the Project in the County's well monitoring program which will ensure the property does not exceed these limits.

3) If the parcel is ever found to exceed these limits, there are measure that can be utilized to further reduce water use and ensure the Project maintains the conditioned 10.16 af/yr water use limit for the entire parcel. These measures were discussed by Supervising Planner Dana Morrison at the Planning Commission hearing and Board of Supervisors hearing, and include the following: installing a cover on the pool, replacing existing landscaping with low water use plantings, installing water saving fixtures and features in the residences, and even removal of existing vineyard to reduce the overall water demand of the site to ensure it does not exceed the cap of 10.16 af/yr. See Findings and Decision for Appeal Ground No. 7 (below) incorporated here by reference for information regarding empirical data.

Conclusion: For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the Sixth Ground of Appeal and upholds the Planning Commission's approval of the Project.

H. Seventh Ground of Appeal.

Appellant's position: Appellant asserts that although all extraction projections are represented to be based on County standards, non-conforming numbers have been utilized to support the proposition of “no change”.

Findings and Decision: The Board finds and determines as follows:

1) The Applicant's groundwater estimates are reasonable and consistent with the estimates provided in the County's WAA Guidance Document. The Project contains residences built prior to 1955 and the parcel has been actively managed as agricultural land since prior to 1940. It is not uncommon for older wells like the Applicant's to not have meters or actual data.

2) 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.

3) The Applicant's groundwater estimates, provided by a licensed engineer, are reasonable and consistent with the estimates provided in the County's WAA Guidance Document. The existing water use for the Property is estimated to be 10.18 acre-feet per year with 0.8 acre-feet attributable to residential use - the County's WAA Guidance Document estimates typical water use associated residential water use to be 0.50-0.75 af/yr, with 0.20-0.50 af/yr for a second residence, and 0.10 af/yr for an uncovered pool. The Applicant's WAA estimated water use demand is consistent with the County's WAA Guidance Document adopted by the Board of Supervisors because the house plus pool was calculated to account for 0.60 af/yr (main house and uncovered pool) and the second residence as 0.20 af/yr.

4) The remaining water use is accounted for by existing vineyard irrigation and heat protection. The County WAA Guidance Document estimates vineyard irrigation water use at 0.20-0.50 af/yr (Project assumes 0.30 af/yr which is within the standard) and 0.25 af/yr for heat protection (Project assumes 0.25 af/yr which is consistent with the standard). This estimates the existing vineyard water demand as 9.383 af/yr, which is the irrigation water use (17.06 acres x 0.3 af/ac/yr = 5.12 af/yr) plus the heat protection water use (17.06 acres x 0.25 af/ac/yr = 4.27 af/yr). There are no proposed changes to the residential use, leaving this number at 0.8 af/yr-unchanged. Approximately 0.63 net acres of existing vineyard will be removed to allow for the construction of the new winery, reducing vineyard irrigation usage to 9.0365 af/yr (16.43 af/yr x 0.3 af/ac/yr = 4.929 af/ac/yr) plus heat protection water use (16.43 x 0.25 af/ac/yr = 4.1075 af/ac/yr). This results in overall vineyard irrigation being reduced by 0.3465 af/yr (9.838 af/yr – 9.0365 af/yr).

5) For these reasons, the Board finds that the estimates, rationale, and methodology used in reaching the Applicant's calculations are reasonable and consistent with the County's WAA Guidance Document.

Conclusion

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the Seventh Ground of Appeal and upholds the Planning Commission's approval of the Project.

I. Eighth Ground of Appeal.

Appellant's position: Appellant contends that the claim that 45 daily visitors and events hosting up to 800 people will use no more water than the previously existing grape vines is because the constraints of the Water Availability Analysis (WAA) do not apply if the Applicant can show no net increase in water extraction. Appellant contends that the Applicant claims to be exempt from Tier reviews because the change of use does not change water consumption. Appellant further contends that it is directed solely at the WAA, not to the County's ongoing duty to determine potential injury to the public trust.

Findings and Decision: The Board finds and determines as follows:

1) The proposed water use calculations prepared by CMP Engineering & Land Surveying Inc., dated August 8, 2024 account for the 45 daily visitors and both medium and large events hosting up to 800 people. (Water Availability Analysis Report for the proposed winery named Bonny's Vineyard ("Project WAA"), pp. 13-17; Wastewater Calculations, p. 17.) The WAA demonstrated that overall water use on the subject parcel will decrease by 0.02 af/yr (or 0.02%), as a result of the removal of 0.63 acres of vines and the utilization of recycled process water would reduce the parcel's overall water use total by an additional 0.46 af/yr.

2) From a historic perspective, a 2011 Lot Line Adjustment resulted in the reduction of water use as the now combined parcels went from two primary residences to one primary residence with one accessory dwelling. Additionally, the parcel was historically planted with orchard (~8.5 acres) and converted to vineyard prior to 1993. Thus, historical water use for the site would have been 35.2 af/yr due to two primary residences (1.2 af/yr – estimated water demand of 0.60 af/ac/yr per residence), plus a water demand of 34 af/ac/yr for ~8.5 acres of orchard (8.5 acres x 4.0 af/ac/yr). The post Project water demand of 10.16 af/yr is over three times less than historic water demands of the parcel.

3) The Public Trust Doctrine requires the County to consider and give due regard to public trust resources when analyzing impacts that may impact a navigable waterway, or a non-navigable course (in this instance Conn Creek) which connects to a navigable waterway (Napa River). The Interim Napa County Well Permit Standards and WAA Guidance Document require an analysis of potential groundwater to surface water interaction for new, altered, or increased groundwater use occurring from Project wells within 1,500 feet of any County-identified

Significant Stream inside the Napa River Watershed. The nearest Significant Stream to the Project well is Conn Creek, which is approximately 181 feet from the well. However, a stream interference analysis is not required if modifications to the location, construction, or operation of the Project well are made to reduce any assumed harm relative to current conditions based on the conclusions by a qualified professional. (See WAA Interim Standards, fn. 6.) In the case of this Project, there are no proposed modifications to the location, construction or pumping rate of the existing Project well. (Project WAA, p. 5.)

4) A Tier 3 equivalent analysis was prepared by Cameron Pridmore (Registered Professional Engineer No. 76691) of CMP Engineering & Land Surveying. This equivalent analysis demonstrates that the Project will feasibly reduce any alleged harm to public trust resources by reducing the overall water use for the parcel by 0.02 af/yr. This will be accomplished through the removal of 0.63 acres of existing vineyard (resulting in less vineyard requiring water), the watering of portions of the existing vineyard with process wastewater from the winery, reducing the annual pumping time for the parcel, and limiting the pumping rate for all three parcel wells (Wells #1, # 2 and #3) to their existing operational capacity. (Project WAA, p. 5.) CMP Engineering & Land Surveying opined that these changes in operation will reduce any assumed harm relative to current conditions. Through these actions, the County has satisfied its duty to consider and feasibly reduced any alleged harm to public trust resources and no further analysis is required.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission's decision. Therefore, the Board denies the Eighth Ground of Appeal and upholds the Planning Commission's approval of the Project.

J. Ninth Ground of Appeal.

Appellant's position: Appellant contends that this project requires a Tier III analysis to determine whether current or proposed operations cause injury to proximate Conn Creek, which is part of the waters of the United States. Appellant claims that even if the Board finds that the project is exempt from Tier review, Appellant argues that this factor does not fulfill the independent duty to ensure no harm occurs to the public trust. Appellant asserts there is no data in the application that shows any public trust review has ever been conducted and if, hypothetically, a public trust review reveals injury from current operations, whether or not the proposed operations may cause injury, the County is not authorized to permit the injury. Further, Appellant contends that injuries to the public trust are incapable of vesting into a right.

Findings and Decision: The Board finds and determines as follows:

1) The Board acknowledges, under the Public Trust doctrine, that the County has an affirmative duty to take the Public Trust into account in the planning and allocation of trust resources, and to protect Public Trust uses when feasible. The Doctrine is implicated if the

groundwater in question is hydraulically interconnected to the Napa River and applies only if the project approval “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.” (*Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 853-54.)

2) To comply with longstanding California Supreme Court and Court of Appeal holdings, Napa County has determined that projects extracting water from wells within 1,500 feet of defined “Significant Streams,” in this case Conn Creek, must submit a Tier 3 or equivalent analysis for the County to discharge its legal duties under Public Trust doctrine, whether the proposed project is proposing to extract more or less groundwater or remain at status quo (e.g., no net increase). Equivalent analysis assumes hydraulic connectivity and proposes modifications to the project well(s) to reduce impacts. A Public Trust analysis begins and ends with whether the project allegedly harms a navigable waterway. (*Id.* at p. 859.) The County’s obligation is to consider and give due regard, but not necessarily to prohibit uses or to fully mitigate impacts as required by CEQA.

3) The Project will comply with the WAA Guidance document because the Project proposes to modify the site’s groundwater pumping operational characteristics, which will reduce existing groundwater extraction from the Project well which offers the greatest leverage in reducing stream flow depletion and any alleged harm to public trust resources. As noted in the WAA and discussed in the Findings and Decision for Appeal Ground No. 8, the proposed Project well (Well #1) is located 181 feet from a County identified significant stream (Conn Creek). Public Trust Doctrine requires the County to consider and give due regard to public trust when analyzing impacts that may impact a navigable waterway, or a non-navigable course (in this instance Conn Creek) which connects to a navigable waterway (Napa River).

4) The Board finds that a Tier 3 equivalent analysis was prepared by CMP Engineering & Land Surveying which demonstrates that the Project will reduce alleged harm to public trust resources by reducing the overall water use for the parcel by 0.02 af/yr and by complying with the approved COAs, including the addition of the Board’s condition requiring the destruction of potential well #4 and modifications to COA 4.20.b to limit the pumping time in addition to the flow regulation devices to limit pumping rate to less than or equal to existing operations for all parcel wells. The engineer opined that the Project would reduce overall well pumping time and reduce any assumed harm relative to current conditions.

Conclusion:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to uphold the Planning Commission’s decision. Therefore, the Board denies the Ninth Ground of Appeal and upholds the Planning Commission’s approval of the Project.

Section 4. Revised Conditions of Approval.

The Board revised the Conditions of Approval (COA) to include (1) destruction of a fourth well on the property, unless it is confirmed to be already destroyed; (2) require winery access to occur from Skellenger Lane and prohibit use of the private road south to Oakville Cross Road, the secondary access easement; and (3) require a flow regulation device for all three wells to limit pumping time and pumping capacity to existing uses. The revised COAs are attached as Exhibit "A."

Section 5. CEQA Determination.

A. The Board has received and reviewed the Mitigated Negative Declaration pursuant to the provisions of CEQA and of Napa County's Local Procedures for Implementing CEQA, and finds that:

1. The Mitigated Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
2. The Mitigated Negative Declaration was prepared and considered in accordance with the requirements of CEQA.
3. There is no substantial evidence in the record as a whole that the Project will have a significant effect on the environment after implementation of mitigation measures. Mitigation measures are proposed for the following areas: Biological Resources.
4. 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 after implementation of mitigation measures.
5. 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.
6. The Clerk of the Board is the custodian of the records of the proceedings on which this decision is based. The records are located at the Napa County Planning, Building, & Environmental Services Department, 1195 Third Street, Second Floor, Napa, California.

B. The Board adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the Project and finds that the proposed Project would not have any potentially significant effects.

Section 6. Substantial Evidence.

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

Section 7. **Summary of Decision.**

Based on the foregoing facts, findings, rationales, determinations and conclusions, the Board of Supervisors hereby:

- A. Denies the Appeal in its entirety;
- B. Adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the Project;
- C. Upholds the Planning Commission's approval of Use Permit No. P22-00002-UP for the Bonny's Vineyard Winery; and
- D. Approves the Project subject to the revised Conditions of Approval attached as Exhibit "A."

Section 8. **Effective Date.**

This resolution shall take effect in accordance with the provisions of Napa County Code Section 2.88.090.

Section 9. **Judicial Challenge.**

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

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THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED
 by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of
 said Board held on the 24th day of June 2025, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSENT: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

NAPA COUNTY, a political subdivision of
 the State of California

 ANNE COTTRELL, Chair of the
 Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>McKayla McMahon</u> Deputy County Counsel Date: <u>June 17, 2025</u>	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 Date: _____ By: _____
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Attachment:

- Exhibit “A” – Revised Conditions of Approval and Final Agency Approval Memos