WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

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May 15, 2024

County of Napa
Planning Commission

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RE: Hearing – May 15, 2024
County of Napa Planning Commission Meeting May 15, 2024
7B. GIL AND CATHY PRIDMORE AND KELLY PRIDMORE / PRIDMORE PROPERTY GENERAL PLAN MAP AMENDMENT P17-00135, REZONE P20-00223, AND USE PERMIT P20-00222

Water Audit California ("Water Audit") is an advocate for the public trust.

Through Government Code § 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, while providing that the county's may exercise the maximum degree of control over zoning matters. Government Code § 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. Its five members are each appointed by the supervisor representing one of the counties' five districts for a term that expires one month after the appointing supervisor is no longer in office.

The County remains subordinate to the control and direction of the senior levels of government. Napa Ordinances Title 16 and Title 18 were required to conform the County to state law. The state endows the highest priority on fish and wildlife protection and conservation. "The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of the state are of utmost public interest.

Fish and wildlife are the property of the people, and provide a major contribution to the property of the state …" (Fish and Game Code § 1600) This statement is one of the foundations of Water Audit's mission, both generally and herein. By simply stating that no impacts exist, Applicant has arbitrarily and wholly failed to discuss the substantial potential off-site impacts of the project.

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.) 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, precluding the state from

alienating those resources into private ownership and requiring 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.)

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 County's decisions and actions. (*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 the State (i.e. 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 therefore means that no water rights in California are truly "vested" in the traditional sense of property rights.

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 right to water 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.)

Water Audit California objects to the following:

(1) Documents provided for public review are inconsistent. The Agenda Hearing Packet has 18 documents. CEQA has 9 documents. Current Projects has 23 files.

(2) On April 29, 2024, Director Brian Bordona wrote a memorandum removing this project from state CEQA review. His opinion is not consistent with CEQA parameters. (See California Code of Regulations (CCR) Section 15205 - Review by State Agencies.) CEQA review is required.

(3) The Tier 3 Analysis was not based on an adequate pumping test to support the Public Water Supply System.

(4) This site is not on the State Drinking Water list of approved Public Water System entities.

(5) The agenda package indicates no notice to neighbors and no title report of adjacent properties.

(6) Indicated development along the riparian corridor had not been reviewed by CDFW

Respectfully,

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