

Attachment P

Applicant's Supplemental Argument

September 26, 2023

Napa County Board of Supervisors
1195 Third Street, Suite 310
Napa, California 94559

Delivery via email to: Belia.Ramos@countyofnapa.org

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 Phillips³ 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

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

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+VI NEYARDS&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

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.

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.

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.

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

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 plan⁵¹ 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.

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:

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 Code § 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

...

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

...

The applicant/permittee shall install a dedicated right-turn lane at the westbound approach at SR 29/Lodi Lane.⁶⁶

...

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.

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/PLL⁶⁸

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.

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 Trail⁸⁴ 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,

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

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.

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 Minter