

Attachment S

Staff Responses to WAC's
Appeal

GROUNDINGS OF APPEAL:

The following outlines the basis of the appeal as contained in Appellant WAC's Appeal dated June 1, 2023. (See **Attachment B**). For convenience, staff has provided a summary below, but recommends the Board review the entirety of the WAC Appeal for details.

Appeal Ground No. 1: Appellant WAC asserts various deficiencies with Applicant's "New Community and Non-Community Water Systems Technical, Managerial and Financial Capacity Worksheet" (the Worksheet). Specifically, WAC claims: (a) that a water availability analysis must be done for a ten-year period, but the Bartelt Water Availability Analysis dated August 2022 (Bartelt WAA) projected only one year; (b) the Worksheet calls for examination of existing well logs. The Bartelt WAA did not discuss the topic and relied solely on statistical norms; (c) the Worksheet calls for groundwater logs. The Bartelt WAA references such logs, but they are not part of the Application or the public record. According to WAC, Duckhorn claims it has been submitting extraction records to the County, but no records have been provided to WAC; and (d) the Worksheet calls for characterization of the water quality, but the Bartelt WAA says the results were not available for the irrigation wells prior to completion of the WAA and Domestic Well #1 is assumed to comply with Federal, State and local laws governing public water systems.

Staff Response: Appellant WAC appears to disregard information Applicant included in their Worksheet and in the Bartelt WAA. The Worksheet is the second page of a Division of Environmental Health (EH) memorandum which provides information regarding requirements for regulated water system permitting. Staff responds to each assertion as follows:

(a) **Timing.** Contrary to Appellant WAC's claim, the Worksheet does not require that a water availability analysis (WAA) be done for a ten-year period. The Worksheet requires a one-year projection for water demand and an analysis of the water system to meet the projected demand (project expansion and improvements for a ten-year period). Page 3 of Duckhorn's July 2020 Technical, Managerial, and Financial Capacity Worksheet (the Applicant's 2020 Worksheet) addressed projected water demand as follows:

"Based on the proposed wine production, number of employees and staff, and all of the marketing events ... it is estimated that the existing Non-transient Non-community Water System (NTNCWS) will be required to satisfy a demand of 2,736,405± gallons per year of domestic water."

"... The water system service area, water demand, and the number of users are expected to remain constant over the next several years with no future plan for expansion."

(b) **Well logs.** The Bartelt WAA contains well logs (pages 16-22) and page 3 of the Applicant's 2020 Worksheet provided the following examination of well logs;

“... Based on the Well Completion Report, the estimated water yield from the existing groundwater well that meets the annular seal depth is 115 gallons per minute; therefore, the existing PWS should have more than adequate capacity to meet projected domestic water demands for the existing winery located on APN 022-130-010 (SFAP) and the proposed facility on APN 022-100-033 (SFAP).”

(c) Groundwater logs. The Worksheet does not require groundwater logs (see page 2 of the New Community and Non-Community Water Systems Technical, Managerial and Financial Capacity Worksheet Memorandum).

(d) Water Quality. Page 3 & 4 of the Applicant’s July 2020 Worksheet examined water quality:

“Water quality results from the existing groundwater well were analyzed as part of the original permitting process for the existing PWS. Ongoing chemical and bacteriological sampling is performed as part of the PWS permit. Additional water sampling is not required with the proposed modifications to the Use Permit.

Water quality results for the “Domestic Well #1” that provides water to the NTNCWS were not reviewed by Bartelt Engineering because it is assumed the water system complies with all Federal, State, and local laws governing public water systems. Annual Consumer Confidence Reports (CCRs) have been submitted to the State and/or County and can be reviewed by either contacting the California State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW) District Office or the Local Primacy Agency (LPA), which in this case is the Napa County Environmental Health Division Consumer Protection Team.”

The Applicant’s 2020 Worksheet was reviewed by the EH and found to be compliant with Worksheet requirements and EH recommended approval of the project as conditioned.

Appeal Ground No. 2: Although the Bartelt WAA states that the Annual Consumer Confidence Reports have been submitted to the State and/or County, Appellant WAC claims that not once in the last six years has a fully conforming report been filed. According to WAC, in 2017-2019 and 2022 no reports were filed and in 2020 and 2021 reports were filed but not certified.

Staff Response: Appellant is wrong.

Duckhorn’s water system is required to submit a Consumer Confidence Report and certification form to the County Division of EH each year. The report and certification form for the years 2017 through 2021 have been submitted to the County and copies are available in County EH records. The deadline to complete and distribute to consumers the 2022 report was July 1, 2023. The deadline to submit to the Local Primacy Agency (i.e., the County) for certification that the 2022 report was completed and provided to consumers was October 1, 2023. Both of these dates were after Duckhorn’s public hearing date on May 3, 2023, and likely had not been completed yet.

Prior to the hearing EH was contacted by Planning Staff. Duckhorn has submitted both their 2022 and 2023 Annual Consumer Confidence Reports.

Appeal Ground No. 3: Appellant WAC asserts that the Worksheet requires planning staff “to evaluate the feasibility of consolidation with other existing systems” however the Bartelt WAA does not address the topic. According to the Bartelt WAA, Duckhorn is not located in the vicinity of the City of St. Helena’s municipal water system and therefore it is infeasible to consolidate with any existing water systems at this time. Appellant WAC claims that the recently approved Inn at the Abbey use permit application is located at the other end of Lodi Lane and has a connection to City of St. Helena water, and it was an abuse of discretion not to discuss this alternative.

Staff Response: WAC is mistaken. The feasibility of consolidation with other existing systems was considered. The Applicant’s July 2020 Worksheet evaluated the feasibility of consolidation with other existing systems as follows

“The closest large-scale municipal water system is operated by the City of Saint Helena. This municipal water system is not located within the vicinity of the proposed water system for this project. It is infeasible to consolidate with any existing water systems at this time. If municipal water service becomes available in the future, it is anticipated that the onsite well will continue to be utilized for wine production and any municipal water service would be utilized for domestic purposes. There is no anticipated consolidation with other (existing) water systems near the site.” (See page 4.)

Because the Duckhorn parcels exist outside of the municipal boundaries and the Sphere of Influence (SOI) of the City of St. Helena, connection to the City’s municipal water system could only be obtained through an outside service agreement approved by the Local Area Formation Commission of Napa County (LAFCO). Formal request for the outside service agreement would need to originate from the City and LAFCO could only approve a request if it was to mitigate an existing or impending threat to public health or safety or if LAFCO determines through a municipal service review that there is a service need or deficiency and that the extension would not be growth inducing.

The proposed Inn at the Abbey project has not been approved and is undergoing environmental review. The Inn proposes to rely on an existing Water Agreement with the City of St. Helena to provide water service to the Property (Freemark Abbey and the parcels of proposed project Inn at the Abbey) for all of the uses thereon since at least the 1930’s and possibly before.

Appeal Ground No. 4: Appellant WAC asserts that Applicant stated that a Tier 1, Tier 2 and a Tier 3 analysis was performed and provided to the County in support of the Use Permit Modification application and that the Tier 2 or Tier 3 analyzed the anticipated groundwater usage and potential effects on adjacent wells and the Napa River. Appellant WAC requested these records via a Public Records Act request but was informed by the County that analysis was not a

part of the record that was considered by the Commission on May 3, 2023, nor is it available as a public record. Therefore, according to Appellant WAC claims the Commission erred when it approved the Application as it relied on statements, presented as facts, when evidence supporting those statements is not a part of the record.

Staff Response: Although County staff concluded that the Duckhorn project's reduction in water use did not necessitate the Tier 2 and 3 analysis due to the Project's anticipated reduction in groundwater use, the Tier 2 and 3 was referenced and cited in the Tier 1 analysis submitted to the Planning Commission. Staff and Applicant's planning consultant George Monteverdi also repeatedly referenced the Tier 2 and 3 analysis and its resulting findings at the Planning Commission hearing. Applicant's planning consultant Monteverdi testified that;

"... because Duckhorn is a good neighbor, ..., we have neighbors who have wells and is our well going to affect their well. Well, that's what a Tier 2 analysis is. Does this--will this well have any effect on neighboring wells, the answer was no. Tier 3 analysis included, does this well have connectivity with Napa River underflow. Again, the analysis went through. It's pulling from an aquifer that's hundreds of feet below the river. This is not water that's being pulled out from the bottom of the Napa River. So this is all, again, evidence showing that the groundwater usage is not going to change or actually be less and have no impact outside of the property (Planning Commission Meeting of May 3, 2023, Transcript (Transcript) 28:10-21.) The Tier 3 was completed and demonstrated no connectivity between the Napa River and any well on the site, and there are conditions of approval required that Duckhorn monitor and report groundwater uses at their wells." (Transcript, 50:17-20.)

The Planning Commission relied on these statements from Staff and the Applicant's consultant, and the WAA report which was referenced and cited in the Tier 1 analysis and prepared by a licensed engineer as the evidentiary basis for its decision. The Tier 2 and 3 analysis was relied upon (both directly and indirectly) by the Planning Commission in making its decision.

Subsequent to the Planning Commission hearing the Tier 2 & 3 Supplemental WAA has been provided by the applicant to the appellants. The supplemental demonstrates that the project would not impact neighboring wells (Tier 2 – Well and Spring Interference Evaluation Criteria) beyond acceptable standards and would not impact surface waters (Tier 3 – Groundwater/Surface Water Interaction Criteria). Staff has revised the project's CEQA Mitigated Negative Declaration (MND) to include this analysis.

The project applicant has also proposed revisions to their project based on neighbor comments. Part of the revised project includes capping and reducing the existing project well by 10% of the current groundwater extraction amounts and developing a new project well that would be able to meet Tier 3 screening requirements for project wells.

Appeal Ground No. 5: Appellant WAC contends that in rejecting the need for a Tier 2 and Tier 3 analysis, Planning Staff opined that it was not necessary under the WAA 2015 Guidelines as

there was no evidence of existing environmental injury yet neither the application nor the County discussed any of the extensive study data that shows injury to the public trust that has been assembled over nearly thirty years.

Staff Response:

The public trust doctrine dates back to ancient Roman and English common law and has been part of California law since the State's admission to the Union in 1850.¹ The public trust doctrine is borne out of the concept "that the public rights of commerce, navigation, fishery and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society."² The doctrine is an affirmation of state power to use public property for public purposes, and the state's duty to protect the people's common heritage of streams, lakes, marshlands and tidelands.³ "Under the public trust doctrine, the state has title as trustee to all tidelands and navigable lakes and streams and is charged with preserving these waterways for navigation, commerce, and fishing, as well as for scientific study, recreation, and as open space and habitat for birds and marine life."⁴

The public trust doctrine is only implicated by groundwater use if the groundwater in question is hydrologically interconnected to a navigable waterway that is subject to the doctrine. [public trust "analysis begins and ends with whether the challenged activity allegedly harms a navigable waterway"]. In such a circumstance, the public trust doctrine applies only "to the extent that such extraction of groundwater affects public trust resources and uses" in a navigable waterway; that is, only if the "issuance of well permits will result in extraction of groundwater adversely affecting the public's right to use [a navigable waterway] for trust purposes, [then] the County must take the public trust into consideration and protect public trust uses when feasible."⁵ There is not clear guidance from the courts on what it means to protect public trust uses when feasible. While the court held that the "state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible, it did not go on to define what is meant by "feasible". However, the court recognized that there would be times when the state may have to approve water appropriations despite foreseeable harm to trust uses, but that the state must "preserve, so far as consistent with the public interest, the uses protected by the trust."

Crucially, County's duty is "not to regulate but to consider," give "due regard," and "take the public trust into account." The duty to consider does not require any particular outcome. When an action may adversely impact a public trust resource; to the contrary, such actions and activities may be authorized "despite foreseeable harm to public trust uses."⁶

County's WAA guidance document adopted by the Board of Supervisors on May 12, 2015, contains three levels or "tiers" of groundwater review for project relying on groundwater. Tier 1 contains guidance for groundwater volume and recharge analysis, Tier 2 consists of an analysis

¹ (ELF, 26 Cal.App.5th at 856; World Business Academy v. California State Lands Commission (2018) 24 Cal.App.5th 476, 508.)

² (Zack's Inc. v. City of Sausalito (2008) 165 Cal.App.4th 1163, 1175.)

³ (National Audubon 33 Cal.3d at 441.)

⁴ (Santa Teresa Citizen Action Group v. City of San Jose (2003) 114 Cal.App.4th 689, 709 [citing National Audubon].)

⁵ (Id. at 85 1, 853-54 [italics added].)

⁶ (National Audubon, 33 Cal.3d at 446.)

of neighboring well and spring interference if proximity triggers are met, and Tier 3 considers groundwater and surface water interaction if the groundwater comes from a well within 1,500 feet of a “Significant Stream” which County has determined has a high probability of being hydrologically connected to the Napa River, a “navigable water” for public trust purposes.

Tier 3 review is the County’s intended method for complying with its duties under the public trust. For the Duckhorn project, engineering firm Wagner & Bonsignore (W&B) prepared a Tier 3 analysis (**See Current Project Explorer Folder**) and assessed the potential pumping effects from Domestic Well#1 and potential effects on the Napa River (a navigable water for public trust purposes). After evaluating pumping rates, the well log, well depth, the well seal, the soils and the geology, W&A opined that groundwater from Domestic Well #1 appears to be derived entirely from Sonoma Volcanics and is not in the same aquifer as the Napa River and there is no direct connection. The Tier 3 reached this conclusion based on an expected 1.85 acre-feet per year increase in groundwater demand; however, the approved Duckhorn project actually reduced groundwater use over existing conditions by .04 acre-feet per year and included COA No. 6.15.a.5 limiting groundwater use to 14.00 acre-feet per year. This reduction in groundwater use over existing conditions not only benefits the aquifer, but also Groundwater Dependent Ecosystems and interconnected surface flows.

As summarized in Staff Response to Appeal Ground No. 4, the conclusions of the Tier 3 that there is no hydrological connection and therefore no resulting harm to public trust resources was discussed at the Planning Commission hearing. The results of the Tier 3 satisfies the County’s duty to consider and give due regard to whether groundwater extraction for the Duckhorn project affects public trust resources and uses. Despite the County’s satisfaction of its duty under the public trust doctrine WAC provides several pages of summaries and citations to reports that WAC believes provides substantial evidence of existing environmental injury, as well as a historical summary of the development of the County’s groundwater regulatory apparatus with particular focus on WAC’s perception of the inadequacy of the county’s review of surface water interaction.

Most of the evidence provided by WAC is not project or site specific to Duckhorn. WAC does tie their evidence to Duckhorn at three different points in this appeal ground and Staff responds as follows;

- On page 11 of the Appeal WAC cites to a statement in the Napa County Groundwater Sustainability Report – Water Year 2022 (LSCE 2023), that “Notable declines in saturated thickness (five to seven feet) occurred in some areas north of St. Helena”. WAC then adds “i.e. in the area of the Duckhorn Project”. This is incorrect. A closer inspection of Figure 6-21 from LSCE 2023, which provides a map of the change in saturated thickness from Spring 2021 to Spring 2022 reveals that the Duckhorn parcels are clearly not within the boundaries of the area designated with this notable decline in saturated thickness.
- On page 12 of the Appeal WAC alleges that DWR has reported depletions of interconnected surface water also have significant and unreasonable adverse impacts. LSCE 2023 reported an undesirable result when the representative monitoring site in the

proximity of the Duckhorn project fell below the minimum threshold. Notably WAC provides no page reference in LSCE 2023 for this assertion. The only undesirable results in LSCE 2023 are for a reduction in groundwater storage and depletion of interconnected surface waters. It appears that WAC is referencing the undesirable result of depletion of surface water. However, the only representative monitoring sites which exceeded minimum thresholds for surface water depletion in LSCE 2023 are located in the vicinity of Oak Knoll and Silverado Trail and the Yountville Cross Road Ecological Reserve. WAC may be referencing monitoring sites which exceeded minimum thresholds for groundwater levels, but all the monitoring sites which exceeded this minimum threshold for Water Year 2022 are south of the City of St. Helena. It is unclear which monitoring well WAC is referencing.

Appeal Ground No. 6: Appellant WAC asserts that the MND fails to consider substantial evidence of existing environmental injury. WAC claims that the “Napa County Groundwater Sustainability Annual Report – Water Year 2022 (“LSCE 2023 Report”) reported an undesirable result when the representative monitoring site in proximity of the Duckhorn project fell below the minimum threshold. This withholding of evidence precludes the ability to challenge conclusions allegedly found on this data. For example, the assertion "No direct connection to the overlying alluvium is indicated in the well log" appears to be in direct contradiction to the conclusion in the Slade report that production wells screened and/or gravel packed in the alluvium can nevertheless draw directly from the alluvium that is in direct contact with the Napa River. This conflicting professional opinion can be resolved by qualified expert review of Tier 2 and Tier 3 analyses.

Staff Response: Staff incorporates Staff Response to Appeal Ground No. 5 here by reference. Much of the purported substantial evidence cited by WAC is not site or project specific to the Duckhorn project. The record includes a site-specific Tier 3 WAA analysis by Wagner & Bonsignore which opined that there is no direct connection to the overlying alluvium.

Appeal Ground No. 7: Appellant asserts that the proposed water demand exceeds groundwater recharge. Appellant specifically asserts the 14.0 acre-feet proposed water demand by Duckhorn is in excess of current limits. The current water use criteria for a parcel located within the "Napa Valley Floor" area is 0.3 acre-feet per acre per year, or 9.7± acre-feet per year for the project.

Staff Response: Duckhorn submitted their request for a Use Permit Major Modification on March 26, 2019. On June 7, 2022, in response to Governor Newsom’s Executive Order N-7-22, the Napa County Board of Supervisors provided direction regarding interim procedures for the issuance of new, altered or replacement well permits and discretionary projects that would increase groundwater use during the declared drought emergency limiting water use criteria for the Napa Valley Floor to 0.3 af/acre/yr or not net increase if that threshold is already exceeded.

As part of their application Duckhorn Vineyards Winery submitted a Tier 1 WAA that estimates the existing and proposed water demand for groundwater uses on the properties including a winery with production and hospitality facilities and entitlements, vineyards and a single-family residence (planned for demolition). Existing groundwater use for the project was estimated to be 14.04 af/yr. The Project proposes to construct both process and sanitary wastewater recycling systems for vineyard irrigation which would replace some of the groundwater demand. Based on their calculations, the proposed project, with implementation of the proposed operational modifications and recycled wastewater systems, would decrease annual groundwater use by 0.04 af/yr.

Because the project's estimated proposed groundwater demand is so close to their estimated existing groundwater demand the Planning Commission adopted Conditions of Approval (COA) No. 4.20b and 6.15a which require the applicant to implement a Groundwater Demand Management Program including monthly reporting of well meters, inclusion of the project's wells in the Napa County Groundwater Monitoring program, and potential for corrective actions if the water usage from the project's wells is on track to exceed 14.0 af/yr. and a capped groundwater use at 14.0 af/yr.

Appeal Ground No. 8: Appellant WAC asserts that although the winery has operated since 1976, no tangible evidence is disclosed in the Application of actual historical or present water use; the Application relies exclusively on statistical norms and specifically that "[t]he groundwater demand generated ... is estimated to remain the same. The total estimated water usage for the existing and proposed uses for the project is calculated based on the Guidelines for Estimating Residential and Non-residential Water Use."

Staff Response: Duckhorn has relied on reasonable estimates of its groundwater use. It is not uncommon for older wells and wineries in Napa County to not have meters or actual data.

Since 2015, the County's WAA has required discretionary projects that utilize groundwater or increase the intensity of groundwater use to provide a water availability analysis. In the absence of actual metered data, the County's WAA Guidelines (Appendix B Guidelines for Estimating Non-Residential Water Usage) provides reasonable guidance for estimating groundwater use associated with various winery related activities. The guidelines were developed by the County's consulting hydrogeologist and based on technical literature of water use estimates from land uses and industry standards. Because each project has its own unique characteristics, applicants provide the most appropriate data to estimate water use for their specific project. That data is typically provided by a licensed engineer familiar with the applicant's operations. Contrary to WAC's assertion, Duckhorn's previous permit modification (P05-00199-MOD) included a WAA. Water use coefficients in this WAA match coefficients used in the current Tier 1 WAA.

Appeal Ground No. 9: Appellant WAC asserts that the proposed project will consume more water than the existing facility. Specifically, Appellant asserts that the estimated total water demand of 14.00 acre-feet, with tasting room visitation at 0.74 acre-feet per year, and events and

marketing at 0.42 acre-feet per year, for a combined total of 1.16 acre-feet per year, does not include water used by the kitchen for the tens of thousands of meals anticipated to be served annually.

Staff Response: Appellant is incorrect. Water use associated with food service including preparation and clean-up is baked into the County's WAA estimates.

Duckhorn Vineyards Winery submitted a Tier 1 WAA for the proposed project that estimated existing (baseline) and proposed water demand for uses utilizing the project wells including water associated with Events and Marketing and food service.

The WAA provides the following reasonable estimates for wineries (Page 15 of the WAA):

- Process Water - 2.15 acre-feet per 100,000 gal. of wine
- Domestic and Landscaping - 0.50 acre-feet per 100,000 gal. of wine
- Employees - 15 gallons per shift
- Tasting Room Visitation - 3 gallons per visitor
- Events and Marketing, with on-site catering - 15 gallons per visitor

The different coefficients between tasting room visitation and Events and Marketing, with onsite catering is indicative of the potential food service preparation and clean up associated with catered Marketing Events. Per the County's Winery Definition Ordinance, "Marketing of wine" may include food service, including food and wine pairings, where such food service is provided without charge except to the extent of cost recovery. (See also COA No. 4.3.) Duckhorn is not allowed to operate as a restaurant but has been authorized to host Marketing Events with food service since 2005 (Use Permit Modification #P05-00199).

Appeal Ground No. 10: Appellant asserts that the failure to provide notice to the Department of Drinking Water (DOW) and the City of St. Helena has prevented full and complete review of the project as required by the CEQA. State Clearing House records (SCH No. 2023030759) indicate that notice was not given to two relevant state agencies: DOW and the City.

Staff Response: Staff is unaware of any legal authority nor has Appellant provided any authority that requires notice to specific divisions of state or responsible agencies. The DOW is a division within the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCB). The CEQA Notice of Intent was sent to SWRCB and RWQCB in their capacity as responsible agencies to protect surface, ground, and coastal waters throughout the state and to issue permits which govern and restrict the amount of pollutants that can be discharged into the ground or a water body.

Napa County EH has delegated authority as the local primacy agency through a delegation agreement per California Health & Safety Code § 116330. Per the agreement, plans for changes to public water systems are submitted directly to Napa County EH for review and approval.

The City of St. Helena is not a state agency and CEQA Notices of Intent are not distributed to the city through the State Clearinghouse. Contrary to WAC's assertion, the City of St. Helena was notified by staff. The City of St. Helena did not respond.

Appeal Ground No. 11: Appellant asserts that although in narrative the Applicant avows that there are no changes anticipated in the potable water system, a more detailed review reveals that the DOW should have had the opportunity to review the Application. Duckhorn has a non-transient community water system, a classification that is based upon Duckhorn's representation that it employs less than 25 people however the application represents 56 employees and in a 2017 Napa County survey of employers, Duckhorn reported 228 people.

Staff Response: As to the DOW notification, Staff incorporates Staff Response to Appeal Ground No. 10 here by reference.

Regarding Duckhorn's classification as a non-transient community water system, Appellant has misconstrued the classification. The non-community classification applies if the public water system does not serve 25 or more yearlong residents (not employees) with less than 15 service connections." (WAA, pg. 4). The non-transient classification applies if the water system serves 25 or more of the same people at least six months of the year. EH reviewed the application and confirmed that Duckhorn has the correct permits for a non-transient, non-community water system with 25 or more employees. Lastly, Staff has not seen and is not familiar with the survey referenced by Appellant WAC, the purpose, or content of such survey. Duckhorn has been approved for 56 employees since 2005 and Duckhorn has not requested any change to the approved number of employees.

Appeal Ground No. 12: Appellant contends that Duckhorn is one of only three sites in Napa Valley reporting arsenic exceedances (LCSE 2023 Report, ES-9). WAC contends that contrary to Applicant's representations that there are no reportable quantities of hazardous wastes on the Property, Duckhorn filed substantial disclosures in 2012, and offers no explanation why similar quantities of similar hazardous wastes are not present now.

Staff Response: Appellant appears to be confused with the facts in the report they have cited. First the arsenic mentioned in the Napa County Groundwater Sustainability Annual Report (water year 2022) is a naturally occurring chemical in groundwater. This does not qualify as a hazardous waste. Second the claim that Duckhorn is "one of only three sites in Napa Valley reporting arsenic exceedances" is factually wrong. None of the three monitoring well sites reporting arsenic exceedances in the LCSE report are Duckhorn's wells. The closest monitoring well (Well ID 2801070-002) reporting an exceedance, which is in proximity to Beringer Vineyards, is approximately 1.5 miles from the Duckhorn project. Figure 6-30 of the report demonstrates that there is a monitoring well significantly closer to the Duckhorn project than the well in question (Well ID 383148122292901) which is reporting arsenic levels at normal levels. According to EH, County records do not indicate arsenic levels in the drinking water above the

Maximum Contaminant Level (MCL). The source is tested for arsenic every three years and Duckhorn Vineyards Water System is in compliance.

Appeal Ground No. 13: Appellant WAC contends that there is no record of approval of the current well for potable use. Specifically, WAC asserts that there is no indication that DOW has been notified that the project's entire potable water supply will be provided by one well or that the well is potentially drawing from the Napa River aquitard WAC claims that community water systems using only groundwater shall have a minimum of two approved sources before being granted an initial permit.

Staff Response: Staff incorporates Staff Response to Appeal Ground No. 11 here by reference.

The current well was submitted and approved as a source in the initial water supply permit application back in 1999. The approved well is sampled quarterly and there are no indications that the well is under the influence of surface water. The requirement for two sources does not apply to Duckhorn Vineyards Water System as they are not classified as a community water system, they are classified as a non-transient, non-community water system.

Appeal Ground No. 14: Appellant asserts that the City of St. Helena has not reviewed or commented on the project as occurred with the 1976 Use Permit. The Duckhorn project is within the vicinity of several recently approved projects that potentially impact a public trust interest. Appellant contends that any increase in the project's water consumption may have an adverse impact on the City's efforts to mitigate injuries to the public trust.

Staff Response: The City of St. Helena was provided the Notice of Intent via direct mail at the same time that direct mailings were also sent to properties within 1000 feet of the project. The City of St. Helena also receives notice of County discretionary projects via the County's 'Interested Parties' email list. No response or comment letter has been received from the City of St. Helena regarding this project. The City's duty and efforts to mitigate injuries to the public trust is outside of the County's purview and obligation.

Appeal Ground No. 15: Appellant WAC asserts that the MND does not include a necessary term of mitigation requested by CDFW for a "frac-out plan." According to WAC, the Applicant contends that the horizontal bore hole originates and terminates outside the boundaries of the Napa River and therefore a Fish and Game Code, section 1602 permit is not required and that absent an express requirement in the MND, it is possible that the frac material will enter the river and environmental injury will certainly occur.

Staff Response: Appellant appears to be confused. The Applicant is committed to obtaining the section 1602 permit from the California Department of Fish and Wildlife (CDFW) if one is in fact required.

Duckhorn proposes to expand their existing winery facility to APN 022-130-010 (the West Property). Water and wastewater facilities on the east and west properties will be connected

underneath the Napa River, which bisects the two properties, by the extension of utilities through Horizontal Directional Drilling (HDD). The Applicant's HDD exhibit of their application packet (Attachment K to the May 3, 2023, Planning Commission Meeting Agenda), included communications between the applicant and CDFW, Army Corp of Engineers and the RWQCB requesting direction regarding what, if any, permits would be required by these agencies prior to the drilling. Correspondence from these agencies was included in the HDD exhibit. The Army Corp of Engineers and RWQCB informed the applicant that no permits would be required from those agencies for the action. CDFW requested that the applicant submit a Notification of Lake or Streambed Alteration for a Standard Agreement to their online permitting system which would alert the agency and allow them at that time to determine if a Streambed Alteration Agreement would be necessary.

Because it was unknown at the time of preparation of the CEQA Initial Study whether the agreement with CDFW would be necessary, to ensure that there is no potentially significant impact to hydrology and water quality, staff included Mitigation Measure BIO-3 which required the applicant to provide to the County the Streambed Alteration Agreement (or other notification from CDFW determining the permit is unnecessary for this project) prior to permit issuance for the utility line extension under the Napa River.

After the Planning Commission's approval of the Project, staff has learned that the Applicant's team has already submitted the Notification of Streambed Alteration to CDFW. The Applicant's submittal included the Frac-Out plan and therefore Mitigation Measure BIO-3 has been complied with as intended.

Appeal Ground No. 16: Appellant WAC asserts that the project does not comply with the terms of the Agricultural Land Preserve because it proposes to import grapes from another county to make up to 25% of its production. WAC specifically asserts that the project is not an ancillary to Napa agriculture, and in fact diminishes the amount of farmed land in the County. Appellant further asserts that no discussion was had regarding the anticipated fuel consumed by trucking into Napa grapes from outside the County. WAC claims that winery capacity that is surplus to local needs is of no use to Napa County agricultural interests and is therefore inconsistent with the Williamson Act.

Staff Response: On January 23, 1990, the WDO was approved by the Napa County Board of Supervisors. Among other things the ordinance established requirements on the percentage of local county grapes used to produce a winery's still wine. Wineries first established subsequent to January 23, 1990, were required to utilize 75% of their total grapes from within Napa County. All existing wineries which expanded beyond their development area were required to comply with the 75% rule for the portion of that expansion.

Duckhorn is a pre-WDO winery and 50,000 gallons of their existing production capacity is a pre-WDO entitlement, the remaining existing 110,000 gallons (250,000 approved by the Commission), is subject to Napa County's 75% local grape rule. Adopted COA No. 4.6 of the

County's standard conditions set limits on the amount of in-county and out-of-county grapes that can be utilized in a wineries production capacity. A winery may use up to 25% of out-of-county grapes, to meet their production capacity. There is nothing in the application indicating that Duckhorn is proposing to use exactly 25% of its production capacity from grapes outside the county. In fact, Commissioner Philips publicly stated that the applicant had expressed to her during her site visit the winery's desire to utilize 100% fruit from within Napa County at this facility.

The applicant proposes to expand an existing winery that has in operation for almost 50 years. The property has been under a Williamson Act contract since December 20, 2017. The terms of that Contract restrict Duckhorn's use of the property to specific activities such as agriculture and agricultural processing facilities such as wineries. Duckhorn's use of the property and the proposed expansion are consistent with and permissible under the terms of the Contract.

The applicant included mention in their project description that the project is likely to reduce truck trips because of the amount of grapes which are hauled off-site to a processing facility in Hopland. This was also mentioned in the Traffic Impact Study project description. While it stands to reason that truck trips will be reduced as a result of the winery's expansion, these reduced trips were not utilized in the project's vehicle miles traveled (VMT) analysis. Although truck average daily traffic (ADT) is included in the County's Trip Generation Worksheet for wineries, the California Office of Planning and Research specifically recommends against including truck trips in VMT analysis.

Appeal Ground No. 17: Appellant WAC asserts that prior Use Permit agreements have obliged Duckhorn to provide a left-hand turn lane on Silverado Trail.

Staff Response: Use Permit Modification #U-28081 was approved by the Planning Commission on November 19, 1980. Mitigation Measure #2 required "Installation prior to opening of this winery for tours or tastings of a north-bound left turn lane on Silverado Trail at the subject winery's entrance whose design is acceptable to the Napa County Public Works Department" (Page 37, Duckhorn Vineyards Winery Conditions of Approval and Final Agency Approval Memos).

On May 7, 1997, the Planning Commission approved Use Permit Modification #96346-MOD. This modification included relocation of the winery entrance from Silverado Trail to Lodi Lane. Relocating the winery entrance to Lodi Lane effectively abandoned the need to require Mitigation Measure #2 from Use Permit Modification #U-28081. No left-hand turn lane was required for the new winery entrance.