

Attachment I

WAC's response to revised
MND



WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

952 SCHOOL STREET #316 NAPA CA 94559

VOICE: (707) 681-5111

EMAIL: LEGAL@WATERAUDITCA.ORG

June 28, 2024

Napa County Board of Supervisors
1195 Third Street, Ste. 310
Napa, CA 94559

Submitted via email to:

Laura.Anderson@countyofnapa.org
Clerkoftheboard@countyofnapa.org
acm@cbcearthlaw.com
Chris.Apallas@countyofnapa.org
jdmilesm@comcast.net
jjdm1@icloud.com
anglin@htralaw.com
trevor.hawkes@countyofnapa.org

Re: Water Audit California Review of the Revised MND

On behalf of Water Audit California (“Water Audit”), I provide comments on the Revised Mitigated Negative Declaration (“MND”) for the Revised Duckhorn Vineyards Winery Use Permit Major Modification #P19-00097-MOD (“Revised Duckhorn Project”).

A primary basis for Water Audit’s June 1, 2023 appeal was the reliance of the project on a water supply from a well located immediately adjacent to the Napa River. It was argued by Water Audit that the well required a Tier 3 watercourse interference survey pursuant to Napa County’s water availability protocol, and that the absence of the study required rejection of the mitigated negative declaration. Water Audit introduced evidence that the study was required, and that there was evidence of potential interference. Further, it was argued that groundwater extraction was impermissibly close to a wastewater field, and that the water system did not comply with transient drinking water system standards.

The applicant has subsequently produced a Tier 3 study, proposed to relocate the well and introduce new operating protocols, and to comply with the requirements of a public water system. Of necessity, that will in turn require new approvals by agencies of the state, and compliance with contemporary standards of location, construction and operation. Arguably the study, proposed new well and recertification could remedy the issue of water supply, but this appeal proceeding is not the appropriate venue for such reconsideration.

As set forth in the concurrently filed comments of co-appellant Preserve Lodi Lane, which are hereby incorporated in full as if set forth in full at this location, the Board of Supervisors (BoS) is sitting as an appellate panel. As such, its review is limited to the record put before the Planning Commission (Commission). (see Napa County Code Chapter 2.88, specifically 2.88.010(K); 2.88.090(A) and (B).) Napa Ordinance 2.68.060 provides that the Commission is to be the “decision-making” body for actions such as in consideration here.

Pursuant to the law and established protocols, the BoS may reject the appeals, sustain one or more appeal and remand the matter for Commission reconsideration of the MND, or grant the appeals and advise the applicant of the need to prepare a full Environmental Impact Report (EIR). Respectfully, it is not within the BoS’s appellate jurisdiction to make findings contrary to the Commission on evidence that was not originally before the Commission unless the evidence was reasonably unavailable at the original hearing and leave is granted for late submission. (see Napa County Code 2.88.090(B).) To state the obvious, if appellants are precluded from introduction of crucial and determinative new evidence, so too should be applicants.

There is no evidence that the Tier 3 study could not have been available at the Commission hearing. In fact, the County was in possession of the information in advance of the hearing, and according to the applicant, unilaterally chose to withhold the information from public view. Pursuant to the Chair’s deadline of August 18, 2023 deadline, the applicant did not timely seek and the Chair of the BoS did not grant leave to introduce evidence of the changes in water supply, and therefore such evidence is

not properly part of the appellate package. So too the alleged evidence of the proposed use of recycled water to bring the project within the limits of water use for the project.

Simply put, even if, *arguendo*, the new evidence is supportive of an affirmative MND decision, that decision must be made by the Commission in the first instance. By attempting to circumvent the usual and required procedure, the public generally and Water Audit particularly are being deprived of their right to comment. This truncated procedure does not substitute for the public's unconstrained right to comment orally and in writing to the Commission on matters of both law and evidence. (see The Brown Act, Government Code, section 54950 et seq.)

Further, a MND cannot be granted when there is evidence of potential environmental injury. In the presence of such evidence the project advocate shall be required to prepare an EIR. The recent changes in the application are a *prima facie* admission by the applicant of risks sought to be alleviated by CEQA that require an EIR.

For the foregoing reasons Water Audit respectfully prays that this matter be returned to the Commission for either reconsideration of the MND, or alternatively and preferably, for the preparation of a full EIR.

Respectfully submitted,



William McKinnon
General Counsel
Water Audit California
Direct: 530.575-5335