

“G”

Applicant Supplemental Information

HolmanTeague

real estate law • land use law • business law • climate change law

January 6, 2025

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

Delivery via email to: Chris.Apallas@countyofnapa.org

RE: Appeals of the Planning Commission approval of the Hillwalker Winery Project (P23-00101-UP)

Chair Cottrell and Supervisors:

As counsel for Kevin Morrison and Hillwalker, LLC (“Permittee” or “Hillwalker”), I submit this letter brief in opposition to the appeal filed by Water Audit California, a California corporation (“WAC”).

Introduction

Hillwalker’s project is extremely small with minimal development. The Planning Commission unanimously approved Hillwalker’s proposed winery with 7,000 gallon production and modest visitation in an existing structure and cave. Other than WAC, no neighbor or interested person opposed this project. In the latest of its serial appeals, WAC makes inaccurate assertions of law and fact that misunderstand Napa County’s permitting process. As the record before the Planning Commission demonstrates, the Planning Commission considered the asserted grounds of appeal, responded to those issues, and made the correct decision supported by the evidence.

Standard of Review

The appeal before the Board is limited to the grounds for appeal described in the appellant’s appeal packet, and “[a]ny issue not raised by the appellant in the appeal packet shall be deemed waived.”¹ “[T]he decision of the board on appeal shall be based on a review of the documentary record”² Because Appellant did not request a *de novo* hearing or to augment the record within the timeframe set by the Chair, the appeal is decided based on the record before the Planning Commission. “In hearing the appeal, the board shall exercise its independent judgment in determining whether the decision appealed was correct.”³

¹ NCC §2.88.050(A)(4).

² NCC §2.88.090(A).

³ NCC §2.88.090(A).

Responses to WAC's grounds of appeal

WAC appealed the Planning Commission's approval of use permit modification P23-00101-UP, use permit exception to the Conservation Regulations P23-00239-UP, and the associated Initial Study/Mitigated Negative Declaration ("IS/MND").⁴ Appellant WAC's enumerated grounds of appeal are addressed below in the order the grounds appear in WAC's Appeal Packet dated September 16, 2024.

1. **"The Notice of Determination (NOD) filed with CEQA names both PBES and Planning Commission as Lead Agencies."**⁵

WAC is trying to make simple things seem complicated. Napa County is the Lead Agency for CEQA purposes. PBES drafted the IS/MND for review by the public and the Planning Commission. As provided in Napa County's adopted CEQA procedures, the Commission's role is to determine whether to adopt the IS/MND.⁶ PBES and the Planning Commission are not separate "Lead Agencies" for CEQA purposes. Instead, Napa County is the Lead Agency, and the Commission adopts the IS/MND. The listing of the Planning Commission on the NOD does not remove the project from the Commission's jurisdiction.

2. **"Errors in the record."**⁷

WAC asserts that the Board should overturn the Planning Commission's approval based on asserted errors in the record. The alleged errors are, at most, a couple of minor typos that were explained during the Commission's hearing. None of these purported errors establish that the Commission's decision was incorrect.

(a) **"Graphics submitted to CEQA do not have necessary dimension or detail."**

Apart from WAC, all commenting parties, including CDFW, found the plans and graphics provided sufficient detail. Applicant notes that WAC's comments to the Planning Commission did not request more detail. Instead, WAC now asserts that a lack of detail is an error. If WAC needed more information, WAC easily could have met with the project planner or appeared at the August 21, 2024 hearing to seek more information. WAC took neither of those actions.

(b) **"Clearinghouse do not include any water availability, do not disclose the diversion of a spring, do not disclose proximity."**

This statement is incorrect. The IS/MND addresses water availability in detail.⁸

⁴ Appeal Packet Form stamped received by Napa County on September 16, 2024.

⁵ WAC Appeal Packet page 5.

⁶ Napa County Local Procedures for Implementing CEQA, §301.

⁷ WAC Appeal Packet page 8.

⁸ IS/MND pages 19-22.

(c) APN Discrepancy

WAC asserts a discrepancy in the public notice and the Clearinghouse summary sheet is grounds to invalidate the Commission's decision. PBES staff addressed this discrepancy during the Planning Commission hearing and explained that these two documents (among all the documents generated for this project) contained a couple of incorrect APNs for the properties through which the winery's access road passes. The IS/MND (i.e. the "CEQA document") given to the Clearinghouse did contain the correct APNs, and all neighboring properties required to be noticed were given notice.⁹ Moreover, all of this was explained at the Planning Commission.

(d) Difference in number of wells listed in IS/MND and WAA

WAC asserts a difference in the number of wells described in the IS/MND and the WAA. First, WAC incorrectly asserts that the WAA lists "only two wells". The WAA states that there are four wells, and the IS/MND states that there are five wells. The Applicant believes that this difference is explained by the fact that the WAA does not classify the spring on the property as a well, and the IS/MND does include the spring in the list of wells. Applicant notes that all wells on the Property are covered by the Planning Commission's conditions of approval.

WAC also asserts that the presence of a spring requires a Tier 2 analysis. This issue was also addressed at the Planning Commission. Napa County's Water Availability Analysis policy document contains a statement that a Tier 2 analysis is required when a project well is within 1,500 feet of a natural spring (noted by WAC in its appeal). However, WAC ignores the portion of the Water Availability Analysis policy document providing that a Tier 2 is not required when water use is reduced. The Staff Report for this project noted that a reduction in groundwater use resulted in no Tier 2 being required.

3. "The Public Trust"¹⁰

WAC's appeal packet contains over 2.5 pages of text on the Public Trust Doctrine, which is listed as an apparent ground of appeal. However, there is no statement as to what WAC feels the Planning Commission did incorrectly, and no statement as to how the Planning Commission's approval violates the Public Trust doctrine. There also is not a statement that Napa County's adopted policy for analyzing Public Trust Doctrine issues is incorrect.

In contrast, the PBES Staff Report to the Planning Commission and the IS/MND apply the Public Trust Doctrine to the project. The project well is more than 1,500 feet from a significant stream, which is the screening criteria for possible public trust impacts.¹¹ Additionally, the project slightly reduces water use over the existing condition. For these reasons, the Staff Report

⁹ Transcript of Planning Commission's August 21, 2024 meeting, page 26.

¹⁰ The Public Trust doctrine does not apply to groundwater itself. "Rather, the public trust doctrine applies if the extraction of groundwater adversely impacts a navigable waterway to which the public trust doctrine does apply." (*Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 865.) The County's obligation is to take the public trust into account and to protect the public trust where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3 419, 446.) Napa County has adopted a Well Permitting Procedure dated January 2024 that takes Public Trust issues into account.

¹¹ Staff Report page 14; IS/MND pages 19-20.

and IS/MND state that the approval complies with the Public Trust Doctrine. WAC has offered nothing to challenge that conclusion. The Planning Commission's decision on the Public Trust Doctrine was correct and consistent with Napa County's adopted Well Permitting Procedures.

Conclusion

In its serial appeals, WAC complains that Napa County's permitting process is somehow flawed. At the same time, WAC's appeal documents are repeatedly and demonstrably incorrect. The Planning Commission weighed all the issues reflected in the grounds of appeal asserted by Appellant WAC. None of the purported errors cited in WAC's appeal packet demonstrate that the Planning Commission's unanimous approval was incorrect. Applicant respectfully requests that the Board reject all grounds of appeal. Thank you for your consideration.

Respectfully,



Rob Anglin

cc: McKayla McMahon
Charlene Gallina
Wendy Atkins
William McKinnon