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Response to Grounds of Appeal

Background on RSS and State Minimum Fire Safe Regulations.

Since the Appeal and public comment on the Project have focused on the County's Road and Street Standards (RSS) and the State Board of Forestry and Fire Protection (BOF) State Minimum Fire Safe Regulations (the Minimum Regulations), the following background is provided.

Since 1991, pursuant to Public Resources Code § 4290, et seq. the BOF has been the state agency charged with establishing minimum wildfire protection standards in conjunction with building, construction, access and development on lands in the State Responsibility Area (SRA). Over the years, the BOF has periodically adopted new regulations.

Most recently in 2018, SB 901 (Dodd), expanded the applicability of the regulations promulgated under Public Resources Code §4290 to land in the Local Responsibility Area (LRA) Very High Fire Hazard Severity Zone (VHFHSZ). It also revised Public Resources Code §4290 to require that the BOF more frequently update regulations relating to fuel breaks and greenbelts near communities, and to preserve undeveloped ridgelines to reduce fire risk and improve fire protection. The regulations set certain minimum standards for structures, subdivisions and developments in the SRA and LRA VHFHSZ and provide for basic emergency access and perimeter wildfire protection, as well as standards for fuel breaks, greenbelts, and measures to protect undeveloped ridgelines.

In accordance with SB 901, between mid-2020 and mid-2022, the BOF circulated draft versions of the revised BOF Minimum Regulations. The early draft versions of the BOF Minimum Regulations included a definition of "access" where none had previously existed at the state level. However, following a year of extensive debate, on May 5, 2022, the BOF changed course and substantially narrowed the scope of the proposed BOF Minimum Regulations and expressly deleted in its entirety their proposed definition of "access."

On August 17, 2022, the BOF adopted the revised 2021 Minimum Regulations and established standards for fuel breaks and greenbelts near communities, and preservation of undeveloped ridgelines, improved clarity regarding the inspection and enforcement agencies, and promoted local jurisdictional compliance with the 2021 BOF Minimum Regulations. All California counties and cities must comply with the new 2021 BOF Minimum Regulations which became effective on April 1, 2023.

On April 8, 2023, the Board of Supervisors adopted Resolution No. 2023-59 amending the RSS to comply with the adopted 2021 BOF Minimum Regulations, relating to Section 2 -Scope of the RSS; Section 4 - Definitions; Section 14 - Street and Road Classifications; and Section 15 - Design Criteria. The changes did not modify Napa County's standard/requirement to widen commercial driveways from the nearest publicly maintained road to building construction that was previously certified by the Board of Forestry in 2016 and 2019. Furthermore, although the BOF no longer certifies local regulations as meeting or exceeding state regulations, the BOF did not take action to decertify, invalidate or otherwise disturb any of the BOF's prior certifications. For these reasons, in staff's opinion, the RSS are consistent with and do not contradict state law.

GROUND OF APPEAL:

The following outlines the basis of the appeal as contained in Applicant/Appellant's Appeal dated May 23, 2024. (See **Attachment A**.) For convenience, staff has provided a summary below, but recommends the Board review the entirety of the Appeal for details.

Appeal Ground No. 1: Applicant/Appellant contends that the Planning Commission decision is contrary to the RSS adopted by the Board because it incorrectly extended "access" to include public roads used by the general public that are maintained by Napa County. The BOF Minimum Regulations do not define "access" but the RSS define "access" as the connection to the nearest public road. The Project is fully compliant with the RSS as adopted by the Board of Supervisors.

Staff Response (Response from Department of Planning, Building, & Environmental Services): The Planning Commission's decision to interpret "access" under the RSS as requiring that the Project improve Crystal Springs Road (a public road) to commercial road standards is inconsistent with the specific language of the RSS that requires minimum design criteria for commercial access (e.g. roadway width) from the public road to the building site and which has been the adopted standard/requirement of the Board for decades.

"Access" is included in Section 4 (Definitions) of the current RSS as "[t]he vehicular route from the nearest publicly maintained Road to Building construction." (See Section 4 of the RSS adopted by Resolution No. 2023-59). The requirement that property owners widen commercial roads "from the nearest publicly maintained road to the improved structure" has been in the RSS in Section 13 (Commercial, Industrial and Non-Residential Roads) since 1999. Staff has provided a summary of the history of Section 13 (Commercial Roads) standards in the RSS from 1999 to 2023 in **Attachment F**. As shown in Attachment F, Section 13 has included variations of the requirement that the "property owner shall provide a minimum ___ foot wide road from the publicly maintained road to the improved structure" for more than 20 years.

Furthermore, on two prior occasions (in 2016 and 2019), the BOF reviewed the County's RSS including the County's requirement that commercial roads be improved from **the publicly maintained road to the building site** and in both instances the BOF determined the County's RSS met or exceeded the State's minimum standards. The most recent update to the RSS in 2023 did not alter, add, amend or change how the County evaluates commercial roads or the requirement to meet minimum design criteria from the nearest publicly maintained road but instead simply moved the standard/requirement from Section 13 into Section 4 (Definitions) under "access." Since the County's RSS were certified as meeting or exceeding the BOF Minimum Regulations and because the County's standard and definition of "access" is consistent with the BOF's prior certification, and the BOF specifically removed draft changes to the definition of "access" as part of their updated and adopted 2021 Minimum Regulations in August 2022, in staff's opinion the RSS do not conflict with state law.

Crystal Springs Road is a publicly maintained road. The Vida Valiente Winery project proposes improvements between Crystal Springs Road and the winery site. Public Works staff and the Fire Marshal reviewed the proposed project and found that the proposed access improvements comply with the RSS and are therefore compliant with the 2021 BOF Minimum Regulations.

Appeal Ground No. 2: Applicant/Appellant asserts that the Planning Commission’s decision sets a precedent that private property owners must improve the public road. Applicant/Appellant further asserts that the precedential decision extends beyond this Project and beyond wineries because if upheld by the Board, the decision creates a new definition of “access” and it is unclear where the obligation to improve the public road would end under the Planning Commission’s reasoning; presumably, extending throughout the County’s public road system.

Staff Response (Response from Department of Public Works): The State Fire Regulations apply to lands designated as being in the State Responsibility Area (SRA) and Local Responsibility Area (LRA) Very High Fire Hazard Severity Zone (VHFHSZ) and became effective on April 1, 2023. On February 28, 2023, and then again on April 18, 2023, the Board of Supervisors considered a proposed Resolution and took public comment regarding the 2021 BOF Minimum Regulations. The Board adopted Resolution No. 2023-59 (**Attachment E**) amending various sections of the RSS to be consistent with the 2021 BOF Minimum Regulations. The Board’s action did not amend the County’s historic scope of access. The Resolution ensured that Napa County's scope, applicability and design standards for ingress and egress are equal to or exceed the minimum standards required by the State Fire Regulations (Title 14 California Code of Regulations Section 1270.000, et seq).

Planning Commission’s interpretation of the RSS is inconsistent with the Board’s long standing policy.

Appeal Ground No. 3: Applicant/Appellant contends that imposing the cost of improving the public road disproportionately burdens the Applicant/Appellant and does not fairly allocate responsibility for a road that is shared with neighboring property owners who use Crystal Springs Road to drive to their homes, property owners hauling fruit from vineyards, neighbors walking horses, and travel to and from an approved winery. The Commission placed the entire burden of improving that public road on the Project.

Staff Response (Response from Department of Public Works): Staff concurs with Applicant/Appellant that the cost of significantly improving all of Crystal Springs Road (approximately 1 mile of public road) may not be reasonable or financially feasible for a single applicant, would exceed the burden created by the Project, and unfairly allocates responsibility of a shared road to the Applicant/Appellant.

Most of Crystal Springs Road is 20 feet or more wide, and the elevation change from Silverado Trail to the Project is gradual, less than 50 feet of net change over the approximately one (1) mile distance. For these reasons, Public Works staff and the Fire Marshal previously concluded that Crystal Springs Road from Silverado Trail to the Project entrance is adequate to serve the project, particularly in comparison to projects on other similar roadways that have also been

found to be adequate and approved. Staff notes that many of the public comments at the Planning Commission addressed the south end of Crystal Springs Road, which is much more challenging, but which is not the point of access to the Project.

However, the Board does have options with regards to requesting reasonable and proportionate improvements to public roads. General Plan Circulation Element Policy CIR-40, states (in part): “When a project is proposed in a location such that County roads are needed to access the nearest fully staffed fire station, the County may require the developer to improve the County roads to meet adequate fire protection standards similar to improvements required on the developer’s property.”

While not required by Code, should the Board choose to require public road improvements per General Plan Circulation Element Policy CIR-40, staff recommends that the Board adopt a new Condition of Approval to require the submittal of engineered plans and an encroachment permit for the applicant to perform these improvements.

Example:

“Prior to obtaining final occupancy (or prior to the commencement of the visitation and marketing programs, as referenced in Conditions of Approval 4.1, 4.2, 4.3, and holding temporary events), the applicant shall make improvements to Crystal Springs Road to make the length between Silverado Trail and the project driveway such that the road shall have 22-feet of travel way (Horizontal Clearance), including a twenty (20) foot wide all weather surfaced travel lane with two (2) feet of drivable shoulder. The applicant shall submit engineered plans and obtain an encroachment permit for the associated work with the Department of Public Works.”

Staff from PBES and PW walked Crystal Springs Rd. from the project driveway to Silverado Trail several times. The road meets the width stated above in most locations, with the exception of approximately 75 yards south of the driveway to 296 Crystal Spring Rd., where the paved width varies between 17’ and 19’, and for the 85 yard section north of that same driveway (i.e. to the intersection of Crystal Springs Rd. and North Fork Crystal springs Rd.) where it necks down to 15 ft. Given that the section south of the driveway is wider, and has good sightlines, staff would recommend the greatest value, and that most proportional to the proposed project, could be obtained by widening the road north of the driveway. This widening could all be done within the existing 40’ right of way (ROW) with only minor disturbance of the existing shoulders. This would result in a Condition of Approval such as:

“Prior to obtaining final occupancy (or prior to the commencement of the visitation and marketing programs, as referenced in Conditions of Approval 4.1, 4.2, and 4.3), the applicant shall make improvements to Crystal Springs Road from its intersection with North Fork Crystal Springs Rd. to the driveway at 296 Crystal Springs Rd. to ensure this section of road contains 22-feet of travel way (Horizontal Clearance), including a twenty (20) foot wide all weather surfaced travel lane with two (2) feet of drivable shoulder. The applicant shall submit engineered plans and obtain an encroachment permit for the associated work with the Department of Public Works.”

Appeal Ground No. 4: Applicant/Appellant asserts that improvement of the existing public road is not a cost that any property owner could reasonably expect to be imposed.

Applicant/Appellant asserts that applicants have expectations based on laws, regulations, or other written policies and can expect requirements to improve private roads, but Appellant could not have anticipated that the Commission would impose a requirement to improve a public road.

Applicant/Appellant alleges that the Commission's decision is directly contrary to the RSS, which effectively re-writes the rules during the hearing on the Project.

Staff Response (Response from Department of Public Works): Staff agrees that the financial burden of solely requiring Applicant/Appellant to improve Crystal Springs Road is not reasonably related to the Project's impacts. (Staff incorporates Response to Appeal Ground No, 3 here.) Staff further agrees that the adopted RSS do not require public roads to be improved to commercial road standards however the Board does have discretion to require some reasonable and proportionate improvements to Crystal Springs Road as set forth in Staff Response to Appeal Ground No. 3 above.

Appeal Ground No. 5: Applicant/Appellant contends that the Planning Commission's decision is not based on substantial evidence because the denial relied on neighbor fear and speculation. Further, the conflicting testimony at the Planning Commission does not support a finding that the Project poses a safety threat. Applicant/Appellant contends that the opposing testimony ignored safety measures, including added conditions of approval which would prohibit any visitation on red flag days or during a PG&E Public Safety Power Shut Off (PSPS), requiring all large events utilize shuttles, and a significant amount of fire protection water and a truck turnaround staging area for fire crew to aid evacuation that would be made available by the Project.

Staff Response (Response from Department of Planning, Building, & Environmental Services): Applicant/Appellant is incorrect. The Commission's decision relied on substantial evidence and the record reflects that the Commission considered and weighed verbal and written testimony regarding safety issues. Furthermore, contrary to Applicant/Appellant's assertions, the proposed safety measures were presented by staff to the Commission both in writing and verbally; they were not ignored.

The two Commissioners who opposed the Project articulated such factors as the location of the Project in a very high risk fire zone, their belief of the substandard condition of Crystal Springs Road, the increased risk of wildfires, and General Plan policies as the basis for denial. The Commissioners relied on relevant factual information in the record and personal observations which extended beyond neighbor fear and speculation.

Commissioner Dameron identified several factors, including the intensity of the proposal, and the Project's location within a "high risk fire zone coupled with a substandard road"(Planning Commission May 1, 2024, Transcript, 70:19.) Commissioner Dameron's decision included her personal observations of having walked and driven Crystal Springs Road and experience of the inability of two cars to pass on some portion of the road, blind spots, and damaged portions of said road. (Planning Commission May 1, 2024, Transcript, 70:28; 71:1-6.)

Commissioner Dameron further referred to policies in the County General Plan which acknowledge that fire events are expected to become more frequent in the future and specifically referenced Safety Element policies:

- SAF-5 regarding Emergency Preparedness and Evacuation Planning – Wildfire section (Page SAF-20) stating: “Most past wildfire events in Napa County occurred during the summer months (typically June through August). Fire risk will continue to grow if more development is permitted in WUI areas, which increases fuel loads and the risk of human-caused fires.
- Policy SAF-2.16: “Limit development to protect life and property from dam failure and wildfires. Review all new development proposals relative to dam failure inundation maps and areas subject to wildfire to recommend denial of or limits on development if necessary to protect life and property.”
- Policy SAF-10.6: “Meet or exceed fire safety standards for Napa County buildings and roads. The County should set a good example and meet or exceed fire safety standards and defensible space requirements for all Napa County buildings and roads”. (Planning Commission May 1, 2024, Transcript, 71:19-23; 72:24-28; 73:1-4.)

Commissioner Dameron stated that she would support a winery at this location “that does not include visitation or marketing events” but at the intensity proposed found that it is not appropriate for this location. (Planning Commission May 1, 2024, Transcript, 70:21-22.) Due to public safety concerns, Commissioner Dameron stated that “often the bar is set to just meet the minimum standards and sometimes meeting those minimum standards is simply not enough. Exceeding those standards to ensure public safety is a necessity in this instance. In order to approve this application, Crystal Springs Road should first meet the Title 14 State Minimum Fire Safe Regulations. Specifically with the Crystal Springs Road having the lack of 20 feet of road width with a minimum of two 10-foot-wide traffic lanes, lack of safe and concurrent emergency wildfire equipment access and civilian education, lack of compliance with other road standards listed in Article 2, such as grade and curve radius. Even if there wasn’t a requirement to meet those standards, because of the high fire zone and the substandard road, this is absolutely an area where those standards should be met.” (Planning Commission May 1, 2024, Transcript, 73: 5-19.)

Commissioner Brunzell’s concerns included “congestion and safety” (Planning Commission December 6, 2023, Transcript; 61:3-4) and “the Fire Marshal saying the road is too narrow, but they don’t want to put too much of an economic onus” that “leaves me with safety concerns” (Planning Commission December 6, 2023, Transcript, Page 73:24-26; 73:27). Commissioner Brunzell agreed with Dameron’s concerns and also stated that based on her interpretation of the Fire safe standards, Crystal Springs Road should be 22ft wide. Commissioner Brunzell further requested that “...the supervisors to clarify the policy again, until that, I can’t support this.” (Planning Commission May 1, 2024, Transcript, 74:10-11.)

The Commission considered the written and verbal testimony of residents along Crystal Springs Road describing the narrowness of portions of the road, areas where the road is one-lane, blind turns, evacuation concerns in the event of a fire, and accounts of residents fleeing during the 2020 Glass Fire. The Commission also considered the testimony of Napa County Fire Marshal

Jason Downs who served as a fire captain on the third engine during the Glass Fire. Fire Marshal Downs testified that “fire engine access was not an issue. Evacuations were done and conducted safely, and that area was obviously heavily overgrown, and the fire did some serious damage and there were some significant losses. However, no life loss occurred. So, with that, when we’re evaluating the--if we were to look at the public road, because Title 14 gives us that authority, we look at can we get safe ingress and safe egress. And based on my personal experience and others that I’ve worked with, that was achieved in 2020 during the Glass Fire.” (Planning Commission December 6, 2023, Transcript, 18:7-15.)

Fire Marshal Downs further informed the Commission overall danger is determined by other conditions besides road width: “The other concern that I’d like to sort of bring about is just talking about overall danger. And there are several roads that could be considered dangerous. But we need to look at other measures beyond just widening roads. Widening roads is not going to stop a fire. As we know, ember-cast, wind-driven fires would easily jump whether it’s 14 feet or 20 feet. What we really need to look at is what were the conditions. And Matt’s pictures, I think, really showed that the story there is what the pre-fire conditions were, and what the post-fire conditions were. What have we learned from 2020 and to now. What actions have been taken to reduce the risk and create more resilient communities.” (Planning Commission December 6, 2023, Transcript, 18:16-27).

Contrary to Applicant/Appellant’s assertion, the reveals that at the May 1, 2024, Commission meeting both the staff presentation and staff report discussed the updated project scope, including the winery’s proposed closure during Public Safety Power Shut Offs (PSPS) and the required creation of an Emergency Evacuation Plan (Planning Commission May 1, 2024, Transcript, 6:6-28; 7:1-6 and Planning Commission May 1, 2024, Staff Report, 5-6.) Additionally, Planning staff detailed how the proposal included an underground water storage and a truck turnaround staging area (Planning Commission December 6, 2024, Transcript, 4:5-6; 4:18-19; 4:22-24; Planning Commission May 1, 2024, Transcript, 4:5-6; 4:27-28.) These factors highlight that these project features were discussed and; therefore, not ignored.