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Staff Responses to Grounds of Appeal

Bonny's Vineyard Appeal P25-00020-APL
Board of Supervisors Hearing – May 6, 2025

ATTACHMENT B – STAFF RESPONSE TO GROUNDS OF APPEAL:

The following outlines the basis of the appeal as contained in Appellant’s Appeal dated January 27, 2025 (See **Attachment A**). For convenience, staff has provided a summary below, but recommends the Board review the actual Appeal for details.

Appeal Ground No. 1: Appellant Water Audit California (WAC) asserts that the project application misstates its purpose as a Major Modification rather than a new use.

Staff Response:

The Appellant is correct that the Applicant inadvertently checked both the Major Modification Winery Box and the Use Permit Winery Box. However, the application was clearly processed, assessed, as well as publicly noticed and described in the Initial Study/Mitigated Negative Declaration (MND) as a new winery use permit (see **Attachment J** – Planning Commission Public Hearing Notice; **Attachment K** – Planning Commission Staff Report, and **Attachment O** -MND). Furthermore, the Planning Departments Use Permit application is for both new wineries and major modifications, and as such, is labeled as ‘Use Permit/Major Modification Application - Winery Uses’. Given this, the applicant may have thought they were required to select both Use Permit and Major Modification since that is the title for the County’s application form (see **Attachment W** – Use Permit/Major Modification Application Winery Uses).

Appeal Ground No. 2: Appellant claims the application identifies only one well, but the proposed new use requires not less than two sources of water.

Staff Response:

Appellant cites no authority to support its assertion that the winery requires not less than two water sources.

The Water Availability Analysis (WAA) prepared by CMP Civil Engineering & Land Surveying Inc., dated August 8, 2024 (**Attachment Q**) for this project identified three existing wells on the property, but only one well (Well #1) was identified and assessed to serve the proposed new winery’s water use demands. Well #1 is currently used for vineyard irrigation and is proposed to be used for the new winery as well as continuing to irrigate portions of the existing vineyard. The other two onsite wells (Well #2 and Well #3) serve the existing residences and also irrigate some of the existing vineyard and will continue to do so.

The proposed new winery does not require more than one source of water and only Well #1 will serve as the winery well. There may be some confusion on the part of the Appellant since the Project Description (see **Attachment P**) Water Use Summary section notes that emergency fire protection and domestic water will be supplied by three proposed tanks on site, which will serve as emergency fire protection and domestic water for the winery. However, these tanks will all be filled with water from Well #1 – the identified winery well. ‘Domestic’ use in this instance refers

to the winery's employees, daily visitors and attendees – not the residential domestic use which will be served by the other two property wells (Wells #2 and #3). Well #1 will be the winery's water source for its 'domestic', and fire protection water uses. The other two wells (Well #2 and Well #3) will continue to serve the residences and irrigation of vineyards.

In connection with this Appeal, staff discovered, a fourth potential well during a review of the building permit history of the project parcel (this is discussed in further detail in the Staff Response to Appeal Ground No. 3 below). Since this well is not in use, Staff is recommending that the Board adopt a condition of approval to require the destruction of said well, unless it is confirmed as already being destroyed.

Appeal Ground No. 3: Appellant contends that the application refers to four wells on the property but does not include any well drilling information to determine the utility and acceptability of the existing infrastructure. The application and Department of Water Rights database contains no well drilling data for three of the alleged additional wells. Appellant contends that this information is critical to determine the suitability for incorporation into a public water system.

Staff Response:

Staff were unable to find any reference to four wells within the application submittal materials. However, as noted above, staff determined that there does appear to be a potential fourth well on the subject parcel which staff recommends be destroyed.

Contrary to Appellant's assertions, that application and WAA includes well drilling information on the project well as follows:

1. Well #1 (proposed winery well) was approved in 2011 for a well with an 8 inch casing diameter, 15 inch boring diameter, with a 3 inch annual seal with Environmental Well Permit E11-00266 (**Attachment L**).
2. Well #2 (the 2nd residence well) – no well permit history. Non-project well.
3. Well #3 (the primary residences well) – no well permit history. Non-project well.

There is no well permit history for Well #2 and Well #3 in the Napa County records. As noted in the Planning Commission Staff Report and MND, this parcel went through a Lot Line Adjustment in 2011. Prior to 2011 there were two separate parcels, each with an existing primary residence and associated well; Well #2 served the residence located at 1555 Skellenger Lane and Well #3 served the residence at 794 Oakville Cross Road. Well # 2 and Well #3 are located immediately adjacent to the existing primary and secondary residences [see Plan Set and Exterior Colors - **Attachment S**]. Both residences were constructed prior to 1955, before the County required building permits and well permits (see **Attachment N** for historic aerials). However, there is building permit history in the record which supports the existence of the three wells noted in the application submittal materials for the Bonny's Vineyard New Winery Use Permit,

but said permit history also appears to indicate that, at least in 2016, there were four wells on the property.

Building Permit B11-01347 (see **Attachment U**), a permit for a 10,500 gallon water tank, noted the existence of Well #2 (2nd residence well) and Well #1 (the proposed winery project well which was a new replacement well approved under E11-00266). Building Permit B16-01016 (see **Attachment V**), a permit for updates to an existing barn near the primary residence (the residence accessed off of Oakville Cross Road) calls out two wells near the residence. First, a “well for house” located immediately adjacent to the pool and which was not noted in the Bonny’s Vineyard Plan Set. Second, a “well and pump house for the pool” located immediately adjacent to the solar barn and which was noted as Well # 3 in the WAA and Plan Set (**Attachments Q** and **S**, respectively). According to the Applicant, the “well for house” is no longer in use and was not observed during their reconnaissance work of the site. Currently both the main residence and pool water uses are served by existing Well #3. However, staff recommends the Board of Supervisors adopt a new condition of approval to require the deconstruction of the fourth unused well – identified as “(E) Well for House” on the approved Plan Set for B16-1016, unless already destroyed. The two residential wells (Wells #2 and 3), and unused Well #4 are not proposed for use as part of the new winery, however, to feasibly mitigate any alleged harm to public trust resources the Planning Commission adopted conditions of approval requiring that the parcel’s overall groundwater use be limited to 10.16 acre feet per year (af/yr), that the project well (Well#1) and parcel wells (Wells #2 and #3) be equipped with flow regulation devices limiting the pumping capacity to less than or equal to existing operations, preparation of a Ground Water Management Plan, and inclusion of the project in the County’s well monitoring program and that the pumping rate, pumping duration, and extraction volumes remain unchanged and/or are reduced from existing conditions. To ensure accurate measurements of existing well operations, immediately upon approval the applicant shall monitor Well #2 and Well #3 to establish a baseline pumping operation. (See **Attachment E** – COA Nos, 4.9.A, 4.9.B, 4.9.C, 4.9.D, 4.20.A, 4.20.B, 4.20.C, and 6.15.A).

A Preliminary Water System Technical Report was prepared by CMP Civil Engineering & Land Surveying Inc. and submitted with the application (**Attachment M**). This report concluded that there are no public water systems within three (3) miles of the proposed project, that the water supply to the proposed system is more than enough for the proposed use, and that the only viable option for the proposed winery is to develop its own transient non-community water system. The proposed water system will supply potable water solely from Well #1 and the water storage facilities (that will also be filled utilizing water pumped from Well #1).

Appeal Ground No. 4: Appellant claims that the approval of the application makes tangential reference to the need for an additional water supply, but the approval is not conditioned on compliance.

Staff Response:

Staff is unclear how the conditions tangentially reference the need for an additional water supply. The specific conditions require monitoring and installation of flow regulation devices on all the parcel's wells. This is not in reference to the need for additional water sources, but rather a limitation on the pumping capacity of the other existing wells on site to ensure the noted overall water demand of 10.16 af/yr is not exceeded thereby ensuring that the project is truly resulting in a reduction in overall groundwater demand. Because the Applicant is reducing groundwater use, the *Interim Napa County Well Permit Standards and WAA Requirements - January 2024* (see **Attachment R**) do not require a Tier II interference and Tier III interaction analysis. If only Well #1 is monitored, the pumping could potentially be increased on the other two wells resulting in increased groundwater use. The COAs will require the demolition of the potential well and monitoring of all three of the parcel's remaining wells (Well #1, Well #2 and Well #3) to ensure overall water use is reduce from 10.18 af/yr to 10.16 af/yr.

Appeal Ground No. 5: Appellant asserts that although this project has been in development since 2018, and although it acknowledges the need for well monitoring, there is no well monitoring or consumption data.

Staff Response:

The WAA data provided by the Applicant was reviewed by County staff and complies with the requirements set forth in the WAA Guidance Document. As noted above the winery will utilize the Well #1 to serve the winery use. The project has been designed to offset the increase in water use through the removal of 0.63 acres of existing vineyard (resulting in that much less vineyard requiring water 0.63 acres *0.3 acre-feet per acre per year [af/ac/yr] = 0.189 af/yr), the watering of portions of the existing vineyard with process wastewater from the winery, reducing the annual pumping time for the parcel and limited the pumping rate for the project well (Well #1) to 160 gallons per minute (see **Attachment E** – COAs Nos. 4.9.A, 4.9.B, 4.9.C, 4.9.D, 4.20.A, 4.20.B, 4.20.C, and 6.15.A). These COAs require that the parcel's overall groundwater use be limited to 10.16 af/yr, that the project and all parcel wells be equipped with flow regulation devices limiting the pumping capacity to less than or equal to existing operations, preparation of a Ground Water Management Plan, and inclusion of the project in the County's well monitoring program. The property owner will be required to satisfy all inspection and reporting requirements prior to final building permit approval and continue to monitor the wells in perpetuity as conditioned.

As noted in Staff Response to Appeal Ground No. 3 a potential fourth, unused well, was discovered and. Staff recommends a condition of approval to require its demolition if not already destroyed.

Appeal Ground No. 6: Appellant contends that the application is based on assertions rather than empirical data, claiming that the Applicant's compliance with current groundwater extraction limitations is not supported by evidence. The Appellant contends that the Applicant's calculations of future consumption are also baseless and were adjusted only after staff pointed out that future consumption exceeded current extractions. Moreover, the Appellant asserts that the Applicant's representations are inconsistent, with different input values appearing in various parts of the application.

Staff Response:

Appellant has not identified the inconsistencies, and staff is unclear specifically where the different input values appear in various parts of the application.

The Project Description (see **Attachment P**), the WAA (see **Attachment Q**) and Wastewater Feasibility Report (see **Attachment T**) are all consistent in their representation of water uses for existing and proposed conditions. Other project studies and reports submitted by the Applicant such as Biological Study, Final Transportation Impact Study, Noise Study, and Stormwater Control Report do not speak to or concern water use and no inconsistencies were found by staff.

The Applicant's WAA was reviewed by County staff and complies with the standards set forth in the WAA Guidance Document, which allows applicants to provide reasonable estimates of existing extraction volumes based on land use when actual monitoring or well pumping data has not been collected and provided by the applicant. The Planning Commission adopted conditions of approval, as noted above, to ensure water use does not exceed 10.16 af/yr, which results in a reduction of overall groundwater use compared to existing water use. The property owner is required to actively monitor all of the property wells, prepare a Ground Water Management Plan, and include the project in the County's well monitoring program which will ensure the property does not exceed these limits. If the parcel is ever found to exceed these limits there are measures that can be utilized to further reduce water use and ensure the project maintains the conditioned 10.16 af/yr water use limit for the entire parcel.

These measures were discussed at the December 18, 2024, Planning Commission hearing and include the following: installing a cover on the pool, replacing existing landscaping with low water use plantings, installing water saving fixtures and features in the residences, and even removal of existing vineyard to reduce the overall water demand of the site to ensure it does not exceed 10.16 af/yr. See Staff Response to Appeal Ground No. 7 (below) incorporated here by reference for information regarding empirical data.

Appeal Ground No. 7: Appellant asserts that although all extraction projections are represented to be based on County standards, non-conforming numbers have been utilized to support the proposition of “no change”.

Staff Response:

Appellant has not identified what non-conforming numbers have been utilized.

It is not uncommon for older wells 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 the Appellant’s assertions, the Applicant’s groundwater estimates are reasonable and consistent with the estimates provided in the County’s WAA Guidance Document. The existing water use for the site is estimated to be 10.18 acre-feet per year with 0.8 acre-feet attributable to residential use - the County’s WAA Guidance Document estimates typical water use associated residential water use to be 0.50-0.75 af/yr, with 0.20 -0.50 af/yr for a second residence, and 0.10 af/yr for an uncovered pool. The Applicant’s WAA calculated water use demand is consistent with the County’s WAA Guidance Document adopted by the Board of Supervisors as the house plus pool was calculated to account for 0.60 af/yr (main house and uncovered pool) and the second residence as 0.20 af/yr.

The remaining water use is accounted for with existing vineyard irrigation and heat protection. The County WAA Guidance Document estimates vineyard irrigation water use at 0.20-0.50 af/yr (project assumes 0.30 af/yr which is within the standard) and 0.25 af/yr for heat protection (project assumes 0.25 af/yr which is consistent with the standard). This calculates the existing vineyard water demand as 9.383 af/yr, which is the irrigation water use (17.06 acres x 0.3 af/ac/yr = 5.12 af/yr) plus the heat protection water use (17.06 acres x 0.25 af/ac/yr = 4.27 af/yr). There are no proposed changes to the residential use, leaving this number at 0.8 af- unchanged. Approximately 0.63 net acres of existing vineyard will be removed to allow for the construction of the new winery, reducing vineyard irrigation usage to 9.0365 af/yr (16.43 af/yr x 0.3 af/ac/yr = 4.929 af/ac/yr) plus heat protection water use (16.43 x 0.25 af/ac/yr = 4.1075 af/ac/yr). This results in vineyard irrigation being reduced by 0.3465 af/yr (9.838 af/yr – 9.0365 af/yr).

The estimates and methodology used in reaching these calculations are reasonable and consistent with the County’s WAA Guidance Document.

Appeal Ground No. 8: Appellant contends that the claim that 45 daily visitors and events hosting up to 800 people will use no more water than the previously existing grape vines is because the constraints of the Water Availability Analysis (WAA) do not apply if the Applicant can show no net increase in water extraction. Appellant contends that the Applicant claims to be exempt from Tier reviews because the change of use does not change water consumption. Appellant further contends that it is directed solely at the WAA, not to the County's ongoing duty to determine potential injury to the public trust.

Staff Response:

The proposed water use calculations prepared by CMP Engineering & Land Surveying Inc., dated August 8, 2024 (see **Attachment Q**) already accounted for the 45 daily visitors and both medium and large events hosting up to 800 people (see page 13 for Proposed Use Calculations and page 17 for Waste Water Calculations). The WAA demonstrated that overall water use on the subject parcel will decrease by 0.02 af/yr, as a result of the removal of 0.63 acres of vines (see calculation in Staff Response to Appeal Ground No. 7) and the utilization of recycled process water would reduce the parcel's overall water use total by an additional 0.46 af/yr (see page 13 of **Attachment Q**).

The Public Trust Doctrine requires the County to consider and give due regard to public trust resources when analyzing impacts that may impact a navigable waterway, or a non-navigable course (in this instance Conn Creek) which connects to a navigable waterway (Napa River). Contrary to the Appellant's assertion, a Tier III equivalent analysis was prepared by Cameron Pridmore (Registered Professional Engineer No. 76691) of CMP Engineering & Land Surveying. This equivalent analysis demonstrates that the project will feasibly reduce any alleged harm to public trust resources by reducing the overall water use for the parcel by 0.02 af/yr. This will be accomplished through the removal of 0.63 acres of existing vineyard (resulting in that much less vineyard requiring water), the watering of portions of the existing vineyard with process wastewater from the winery, reducing the annual pumping time for the parcel and limiting the pumping rate for all three parcel wells (Wells #1, # 2 and #3) to their existing operational capacity. Through these actions, the County has satisfied its duty to consider and feasibly reduced any alleged harm to public trust resources and no further analysis is required.

Furthermore, from a historic perspective, groundwater has been reduced through the reduction of water use when the 2011 Lot Line Adjustment was processed, and the now combined parcels went from two primary residences to one primary residence with one accessory dwelling. Additionally, the parcel was historically planted with orchard (~8.5 acres), with the orchard converted to vineyard sometime between 1982 and 1993. Historically the water use for the site would have included two primary residences (1.2 af/yr – with a primary residence having an estimated water demand of 0.60 af/ac/yr), plus a water demand for ~8.5 acres of orchard (8.5 acres x 4.0 af/ac/yr = 34 af/yr) for a total demand of 35.2 af/yr. The current parcel water demand (10.18 af/yr) and proposed water demand (10.16 af/yr) post project approval is over three times less than the historic water demands of the parcel.

Appeal Ground No. 9: Appellant contends that this project requires a Tier III analysis to determine whether current or proposed operations cause injury to proximate Conn Creek, which is part of the waters of the United States. Appellant claims that even if the Board finds that the project is exempt from Tier review, Appellant argues that this factor does not fulfill the independent duty to ensure no harm occurs to the public trust. Appellant asserts there is no data in the application that shows any public trust review has ever been conducted and if, hypothetically, a public trust review reveals injury from current operations, whether or not the proposed operations may cause injury, the County is not authorized to permit the injury. Further, Appellant contends that injuries to the public trust are incapable of vesting into a right.

Staff Response:

The County does not dispute that under the Public Trust doctrine, it has an affirmative duty to take the Public Trust into account in the planning and allocation of trust resources, and to protect Public Trust uses when feasible. The Doctrine is implicated if the groundwater in question is hydraulically interconnected to the Napa River and applies only if the project approval “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.” (*Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 853-54.)

To comply with longstanding California Supreme Court and Court of Appeal holdings, Napa County has determined that projects extracting water from wells within 1,500 feet of defined “Significant Streams” must submit a Tier III or equivalent analysis for the County to discharge its legal duties under Public Trust doctrine, whether the proposed project is proposing to extract more or less groundwater or remain at status quo (e.g., no net increase). A Public Trust analysis begins and ends with whether the project allegedly harms a navigable waterway (Id. at p. 859.). The County’s obligation is to consider and give due regard, but not necessarily to prohibit uses or to fully mitigate impacts as required by CEQA.

While a Tier III review is the County’s adopted method for complying with its duties under the Public Trust Doctrine, as discussed herein, the project will comply with the WAA Guidance document because the project proposes to modify the site’s groundwater pumping operational characteristics which will reduce existing groundwater extraction from the project well which offers the greatest leverage in reducing stream flow depletion and any alleged harm to public trust resources. As noted in the WAA, the proposed project well (Well #1) is located 181 feet from a County identified significant stream (Conn Creek). Public Trust Doctrine requires the County to consider and give due regard to public trust when analyzing impacts that may impact a navigable waterway, or a non-navigable course (in this instance Conn Creek) which connects to a navigable waterway (Napa River).

A Tier III equivalent analysis was prepared by CMP Engineering & Land Surveying which demonstrates that the project will reduce alleged harm to public trust resources by reducing the

overall water use for the parcel by 0.02 af/yr (see also Staff Responses to Appeal Ground Nos. 7 and 8 incorporated here by reference).