



WATER AUDIT CALIFORNIA

A PUBLIC BENEFIT CORPORATION

952 SCHOOL STREET #316 NAPA CA 94559

VOICE: (707) 681-5111

EMAIL: GENERAL@WATERAUDITCA.ORG

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To Napa County Planning Commission

Sent via email to: meetingclerk@countyofnapa.org

RE June 18, 2025

7B. WILLIS BLAKEWELL / VINE CLIFF WINERY ALTERATION / USE PERMIT FOR EXCEPTION TO CONSERVATION REGULATIONS NO. P25-00161 AND USE PERMIT MINOR MODIFICATION NO. P24-00191

To whom it may concern:

Water Audit California ("Water Audit") is a public interest corporation with a mission of advocacy for the public trust. The following comments are submitted on its own behalf, and in the public interest.

I. INTRODUCTION

Following careful review of the proposed project, Water Audit has concluded that the project does not meet the criteria for eligibility as Categorical Exempt from the California Environmental Quality Act (CEQA) and will have a significant impact on the environment. Water Audit recommends Option 3 - Deny Proposed Project Disposition.

II. THE STATUS QUO

In response to a 2017 application, the Planning Commission approved Vine Cliff Winery's earlier permit modifications for its marketing, visitation, and employee entitlements. Previous Conditions of Approval (COA) did not require a Public Water System. The earlier approval required a Water System Feasibility Report, but it was not performed.

It appears that the Applicant admits to operating a winery without a Public Water System permit for seven years. Applicant admits that the facility proposes to "operate a Transient Non-Community Public Water System (PWS). (packet page 338.) There is no evidence in the hearing packet of any attempt to consolidate "with another water system." Accordingly, the winery's current operations are presently not in compliance with County and State policy.

III. OBJECTIONS TO PROCESS

Numerous significant elements of the process have not been completed.

1. The Planning Application Form has no date received, staff initials, or permit number assigned. Application Type is marked in the column "Zoning Administrator Winery Minor Modification" (packet page 136.) The "Detailed Project Description Conditions of Application do not include staff "Date Received, Received by, Receipt No., File No., or Application Fees Deposit Amount" (packet page 137.)
2. The ConRegs Checklist has no check-marked items for the topographical map; completed site plan; title or List of All Property Owners within 1000feet, Assessor's pages, check amount determined, Pre-Submittal application review meeting "Date: ____" (packet page 135, 163, 165.)
3. The "Application For Use Permit Exception To Conservation Regulations" omits all areas on the page where staff is required "to be completed by office and Planning Building, and Environmental Service:" Zoning District, No Type of Application, request, Date Submitted, Date Published, Date Completed, staff signature/date received/permit #; Application Fee deposit, Receipt, Received by or Date from PBES (packet page 168.)
4. There is no Notice of Hearing.
5. The Public Water System requires CEQA review.
6. Staff Report and Current Project files are inconsistent.
7. The planning process has failed to ensure the integrity of evidence or witnesses.
8. Geotechnical Report.
9. Cave Setbacks.

10. Soil Evaluation Report.
11. Septic Feasibility Report.
12. Business Activities form.
13. Any provision to deposit cave spoils offsite.
14. The Hourly Fee Agreement omits "PROJECT File" name, "request for" description, and "I am providing \$ ___ as a deposit." No amount is inserted on document.
15. There is no indication that the Public Works Department has reviewed the application. The PBES Engineer is not the Public Works Department or Peer Review. Previous conditions of approval include "jointly implemented by Public Works." This application does not.
16. Public Works (Flood Control & Water Resources) are tasked with Clearing problem areas within the Napa River and its tributaries, managing and monitoring groundwater, overseeing adjudicated watersheds, preparing special studies for flood protection and watershed management. (<https://www.countyofnapa.org/1646/About-Us>), (<https://www.countyofnapa.org/DocumentCenter/View/3244/Public-Works-Department-Organizational-Chart-PDF>), (<https://www.countyofnapa.org/1161/Watershed-Management>)
17. The ConRegs Permit does not include the Notice of Adjoining Neighbor Property (page 176) The Use Permit Application does not include the Adjoining Property Owner List (packet page 135 and 163)
18. The ConRegs Site map is incomplete re access to property, property lines and the distances of all structures to those property lines, roads, streets, driveways, rivers, reservoirs, dams, creeks, streams, paths and the distance from centerline of roads, streets and highways, buildings and/or structures on the property, existing and proposed and the distances between those buildings and/or structures, easements, water wells, fire hydrants, water storage tank(s), LP gas tank(s), septic system(s) and required 100% expansion (reserve) area), stock pile(s) of dirt, soil, rocks and/or earth. (packet page 178)
19. The above requirements are also omitted from the Overall Site Plan (packet page 183.)

IV. WATER AVAILABILITY ANALYSIS

Water Audit disagrees with Finding #14:

“14. The proposed Use Permit would not require a new water system or improvements causing significant adverse effects, either individually or cumulatively, on an affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Section 13.15.070 or 13.15.080 of the County Code.”

Previous Conditions of Approval P17-00129-MOD Conditions of Approval Environmental Health Services Memorandum required an annual permit to operate a water system (packet page 113/14). No permit is in the hearing packet or appears to be on the County record.

The Water System Feasibility claims a 4-hour pumping test is sufficient (packet page 338.) That duration is not consistent with the County 2005 revised 2018 Memorandum Re: Use Permits and Regulated Water System.
([https://www.countyofnapa.org/DocumentCenter/View/10959/Water-System-Information-for-Use-Permits-2025?bidId=.](https://www.countyofnapa.org/DocumentCenter/View/10959/Water-System-Information-for-Use-Permits-2025?bidId=))

The Water System Feasibility Report (appended to the attachment representing to be the Wastewater Feasibility Report) has not performed a 24-hour pumping test. It appears Vine Cliff has been operating a transient non-community public water supply system without following the California Water Act and related laws. There appears to be no County "annual permit to operate a water system." Thus, the current operations appear to be a health and safety Code Compliance Violation.

COA 1.0 Project Scope has insufficient discussion of the required installation of a Transient Non-Community Public Water System and omits volume and water quality discussion of the water supply from groundwater well. The WAA memorandum argues water usage for the new kitchen was accounted for in present operations, but there is no evidence to support the statement. "Second, the 2017 WAA implicitly assumed that the visitor events were catered on-site, consequently the new kitchen used for events catered on-site was already accounted for with respect to water use." (Packet page 360.)

"Finally, the 2017 WAA was developed to permit increases in visitor and employee use at Vine Cliff Winery; the updated 2024 WAA includes the same visitor and employee uses that were incorporated in the 2017 WAA. We utilized standard use duties for guests and visitors as set forth in the Napa County WAA Guidelines (2015)" (Packet page 361.)

However, assumptions are not data.

The current WAA memorandum asserts its calculations follow County 2015 WAA Guidance Document. However that statement does not include accounting for the marketing events that were not calculated in conformity with the Guidance Document.

There is no GW Memorandum, no Acre Feet cap, no Groundwater Management Demand Program.

There is no Public Works/Peer Review for the Water Availability Analysis. The Water Availability Analysis (WAA) prepared by O'Connor Environmental, Inc., dated September 18, 2024, has not been reviewed to determine no negative impact to groundwater resources and interconnected surface waters. Absent peer-review, it is uncertain if calculations and conclusions are accurate.

COA section 4.9 omits language that proposed conditions will be "jointly implemented by Public Works." Note that the Previous Conditions DO INCLUDE "jointly implemented by Public Works" (packet page 101.) Public Works review is essential to avoid inadvertent injury to the public trust. In short, the COA have degraded.

Further, the Applicant has failed to provide sufficient information on the groundwater for proposed wells (depth of water table, etc.). Yield must be determined using the methods described in the Waterworks Standards. Evidencing the inadequacy of the Application, the scope of the Condition of Approval ("COA") omits installation of a PWS, and groundwater well use. COA 4.9 omits language "jointly implemented by Public Works", and there is no Groundwater Memorandum.

The proper protocols are published on the County website, Public Water Systems link out Permit Instructions (PDF) at <https://www.countyofnapa.org/DocumentCenter/View/3813/Permit-Instructions-PDF?bidId=>.pdf.

The Applicant has failed to assess the suitability of the proposed source and the appropriateness of any planned treatment; it is essential that the quality of the source water be determined. Samples of the raw source water must be taken and analyzed by a State certified laboratory. All sources must be sampled and analyzed for organic and inorganic chemicals as well as radioactivity compounds, all listed in the drinking water regulations. Specifically, this project does not report a 24-hour pumping test to determine the well can serve as the PWS water supply.

If the source will be a well that has not yet been constructed, the District Office or LPA may require a test well or may impose a permit condition that requires the constructed well to be sampled and analyzed before the well can be placed into service. If an existing well will be used, you will need to submit a copy of the well driller's report. (Page 8/9)

The Application has not dealt with several factors required to determine the source adequacy:

Groundwater: The Application does not establish that all wells have a 50-foot seal with a 3-inch annular space. Well logs are reported as not available.

Water supply capacity. There is no evidence that the water system can provide an all-season supply of a minimum of three gallons per minute for at least 24 hours for each service connection served. (Source: 2018 Memorandum page 2)

The Water System Feasibility omits details for Well #2 "There are two existing wells in operating at the site (Table 1), one of which is proposed to be used for the PWS" (packet page 338.) The "Table 1. Summary of existing well information" omits Well #2 and thereby conceals its annular seal depth. According to the WAA Well #2 WCR, the sanitary seal is only 20 feet from surface and cannot qualify as a backup well to the proposed Well # 1 groundwater supply for the PWS (packet page 274.)

The existing water system serves 50 people a day. For the winery to modify/expand its entitlements to remedy its noncompliant public water system, the County Code Compliance Program requires review significant pre-existing violations. (see Resolution No. 2018-164 - County Code Compliance Program, dated December 4, 2018:

The "minor upgrades" to the applicant's "existing water system" evidence that the winery has been operating without a Public Water System permit:
"The Facility is proposing to operate a Transient Non-Community Public Water System (PWS) due to the proposed changes. The Facility will need to make minor improvements to the existing water system in order to operate as a public PWS. Consolidation with another water system is not feasible as **this existing water system** will only require minor upgrades to become a PWS." (packet page 338.)

V. TRAFFIC

Water Audit disagrees with Finding #12:

“The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.”

The Trip Generation Worksheet is inadequately prepared. For example, there is no winery name; date prepared; cumulative impact report; Caltrans notice or review; surrounding communities notice. (packet page 153/4)

Wholly unconsidered in the Application is the cumulative impact of other projects recently approved that also impact traffic on Silverado Trail. These include the Duckhorn, Meadowood, Vida Valiente, Rutherford, Knollwood, Bonny's, and Parable projects. There is no Caltrans review or cumulative impact analysis.

Evidence external to the Application and not in agenda packet, but found in County files, reveals that this is not merely a theoretical concern. Electronic Document Retrieval, P17-00129 COA, Memorandum traffic impact report states:

“Peak Hour Volumes did not include Peak hour intersection turning movement counts in the Appendix and did not include a summary of PMS data "used to calculate seasonal adjustment to peak hour volumes." That Memo continued to condition the approval to restrict the Marketing Events hours at peak traffic activity during 3:00-6:00.

COA conditions do not include the conditions contained in the previously approved P17-00129 COA restricting marketing events hours to mitigate impact on neighboring properties, scheduling operation so that reoccurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times. (See packet page 33, 102)

VI. WASTEWATER

Water Audit disagrees with Finding #5:

“Disturbance to streams and watercourses shall be minimized, and the encroachment if any, is the minimum necessary to implement the project.”

The Wastewater Feasibility Study is not included in the agenda packet. The attachment cover sheet is followed by the Water System Feasibility Study.

The only reference in the agenda packet regarding soils analysis is found in the Biological Report FIGURE 3 SOILS MAP. The Biological Survey Study Area does not report the soil survey of the septic components. (Packet page 220/21)

There is no designated area for the septic components for the residence and winery. The Overall Site Plan G0.03 omits topographic contour elevation levels and omits the septic and reserve areas that are within a stream setback (packet page 183.)

Site Plan UP2 misrepresents the stream setback requirement by altogether erasing the setback delineation that appears at the disturbed areas around the winery building and disappears at the location where the "(E) SEPTIC DISPOSAL FIELD FOR MAIN RESIDENCE AND WINERY" and "(E) SEPTIC RESERVE AREA FOR MAIN RESIDENCE AND WINERY" are sited. (packet page 207) (Exhibit 3)

Environmental Health Services has approved a septic field located inside the stream setback. Septic system components are omitted from the Overall Site Plan, and stream setbacks are erased from plans.

VII. PUBLIC TRUST

There is no CDFW LSAA permit date or number for the alteration of the ephemeral watercourse, culverts and closed conduits.

A Tier 2 Analysis was not performed, and consultant did not state the presence, or no presence, of springs. The Graphics include site plans not in conformity with site plan requirements, omitting labeling distance between watercourses, wells, septic components, and cave. There is no significant stream map.

The WAA contains no language affirming the absence of springs on the project parcel or the surrounding parcels for the Tier 2 Analysis.

There is no GW Memorandum, no Acre Feet cap, no Groundwater Management Demand Program.

COA 6.15 omits Responsible Agency CDFW, Method of Monitoring, and Responsible Party.

The public trust is evergreen; every new day of injury or violation creates a new cause of action. "Public rights cannot be lost nor the public trust as to their administration and exercise be destroyed either by adverse possession or by laches or other negligence on

the part of the agents of the state or municipality who may from time to time be invested with the duty of their protection and administration.” (*San Diego v. Cuyamaca Water Co.* (1930) 209 Cal. 105, 109.) Public agencies have a ministerial duty to consider the public trust interest, and mitigate harm when feasible, when making its daily decisions to divert water, by the operations and/or permitting of well extractions that impact the Napa River. (See *Envtl. Law Found. v. State Water Res. Control Bd.* (“*Envtl. Law Found.*”) (2018) 26 Cal.App.5th 844, 852.)

Once an appropriation is approved, “the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water.” (*Nat’l Audubon Soc’y v. Superior Court* (“*Audubon*”) (1983) 33 Cal.3d 419, 424.) A public agency is “not confined by past allocation decisions that may be incorrect in light of current knowledge or inconsistent with current needs [and] accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust.” (*Audubon*, supra, 33 Cal.3d 419, 424; see also *Cal. Trout v. State Water Res. Control Bd.* (1989) 207 Cal.App.3d 585, 629, stating that “the rule in section 5946 pertains to a public trust interest no private right in derogation of that rule can be founded upon the running of a statute of limitations, for the same reasons that one may not acquire an interest in public lands by means of adverse possession.”.)

[T]he determinative fact is the impact of the activity on the public trust resource. If the public trust doctrine applies to constrain fills which destroy navigation and other public trust uses in navigable waters, it should equally apply to constrain the extraction of water that destroys navigation and other public interests. Both actions result in the same damage to the public trust. The distinction between diversion and extraction is, therefore, irrelevant. The analysis begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust.

(*Envtl. Law Found.*, supra, 26 Cal.App.5th 844.)

Tributaries to navigable waterways are also subject to the public trust doctrine. For example, see Fish and Game Code section 711.7. (a) which states in part “The fish and wildlife resources are held in trust for the people of the state ...”

The public trust doctrine imposes independent and unavoidable obligations on trustee agencies overseeing groundwater extraction. California precedent makes clear that

subdivisions of the state¹ have “a duty to consider the public trust interest² when making decisions impacting water that is imbued with the public trust,”³ and merely complying with CEQA does not discharge that duty.⁴

The public trust requires reconsideration of past or ongoing water use decisions where those decisions were made “without any consideration of the impact upon the public trust.”⁵ Thus, compliance with public trust duties is not discretionary, it is obligatory.

As Napa County is a legal subdivision of the state, it must deal with the trust property for the beneficiary’s⁶ benefit. No trustee can properly act for only some of the beneficiaries – for example the trustee must represent them all, taking into account any differing interests of the beneficiaries, or the trustee cannot properly represent any of them. (*Bowles v. Superior Court* (1955) 44 C2d 574.) This principle is in accord with the equal protection provisions of the Fourteenth Amendment to the US Constitution.

Furthermore, there can be no vested rights in water use that harm the public trust. Regardless of the nature of the water right in question, no water user in the State “owns” any water. Instead, a water right grants the holder thereof only the right to use water, a “usufructuary right”. The owner of “legal title” to all water is the State in its capacity as a trustee for the benefit of the public. Both riparian and appropriative rights are usufructuary only and confer no right of private ownership in the watercourse, which belongs to the State. (*People v. Shirokow* (1980) 26 Cal.3d 301 at 307.)

If at any time the trustee determines that a use of water other than the then current use would better serve the public trust, the State has the power and the obligation to reallocate that water in accordance with the public's interest. Even if the water at issue has been put to beneficial use (and relied upon) for decades, it can be taken from one user in favor of another need or use. The public trust doctrine therefore means that no water rights in California are “vested” in the traditional sense of property rights.

¹ *Env't L. Found. (ELF) v. State Water Res. Control Bd.* (SWRCB) (2018), 26 Cal. App. 5th 844, 868 (“Although the state as sovereign is primarily responsible for administration of the trust, the county, as a subdivision of the state, shares responsibility for administering the public trust and may not approve of destructive activities without giving due regard to the preservation of those resources.”) (internal quotation marks omitted).

² The Napa River and its tributaries, and the fish within those water ways, are protected public trust resources.

³ *Id.* at 863.

⁴ *Id.* at 868.

⁵ *Nat'l Audubon Soc'y v. Superior Ct.* (1983) 33 Cal. 3d 419, 426.

⁶ i.e. people of California

Fish & Game Code, section 1600 provides:

The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state.

The California Department of Fish & Wildlife (CDFW):

... is California's Trustee Agency for the State's fish, wildlife, and plant resources. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitats necessary for biologically sustainable populations of those species. For the purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

(<https://wildlife.ca.gov/Conservation/Environmental-Review/CEQA>.)

Respectfully,



William McKinnon
General Counsel
Water Audit California