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Staff Responses to Grounds of Appeal

GROUND OF APPEAL:

The following outlines the basis of the appeal as contained in Appellant's Appeal dated September 16, 2024. (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 Notice of Determination (NOD) filed with the [State Clearing House (SCH)] names both the PBES and "Planning Commission" as lead agencies. Appellant asserts that the Planning Commission was without jurisdiction to consider the project, as the Commission may not be the judge to their own matter.

Staff Response:

Napa County is the lead agency for this project. Pursuant to Public Resources Code section 21067, a "lead agency" is defined as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." The lead agency is responsible for filing the necessary environmental documents and fulfilling the obligations under the California Environmental Quality Act (CEQA). Napa County is listed as the lead agency on the State Clearinghouse (SCH) summary, Notice of Determination (NOD), Summary form, and Notice of Completion (NOC). The NOD and additional filings on SCH were submitted by Napa County and include contact information as to who filed the form within the Napa County Planning, Building, and Environmental Services Department (PBES).

Section 2.50.020 of the Napa County Code (N.C.C.) states that within the county (the lead agency), there is a planning commission. The Planning Commission is the decision-making body for the Use Permit applications. Appellant is incorrect in the assertion that the Planning Commission is acting as "judge of their own matter." The Planning Commission is not responsible for filing the necessary documents or carrying out the project. Napa County, as the lead agency, oversees the environmental review process, and the Planning Commission has the authority to make decisions on planning matters related to the project, based on the CEQA documents and recommendations provided. The NOD does not intend to make the Planning Commission the lead agency, rather the Planning Commission is the decision-making body.

Appellant asserts that County (as Lead Agency) did not perform its duties to consult with Responsible and Trustee Agencies. This argument ignores facts because in compliance with its duties, the County diligently consulted with responsible and trustee agencies regarding the proposed project. Pursuant to CEQA guidelines, the County ensured proper notification and involvement of these agencies throughout the environmental review process. The County submitted relevant documents to the SCH for agency review, providing detailed plans and assessments of potential impacts. The County received a comment letter from California Department of Fish and Wildlife (CDFW), a trustee and responsible agency, and incorporated

the requested mitigation measures into the Revised Recommended Conditions of Approval (COA), ensuring that their expertise and concerns were adequately addressed.

Appeal Ground No. 2: Appellant claims the project access embraces for approximately one-half mile a tributary stream to Pickle Creek. Appellant contends that the drawings show a clear infringement to the riparian way and that the relevant segment of the stream was not encompassed in the posted CEQA documents. Further, the application discloses the blocking of a watercourse, and the diversion of a spring, neither of which was disclosed in the CEQA postings. Appellant contends that the application states that PBES and staff will review it for completeness and reasonableness, however there is no staff report.

Staff Response:

The Initial Study/Mitigated Negative Declaration (IS/MND) submitted to the SCH for review identified an unnamed tributary of Pickle Creek that crosses under the existing driveway through culverts at two locations and drains to a detention basin. (Initial Study/Revised Mitigated Negative Declaration & MMRP, p. 2.) The IS/MND included staff's assessment of associated impacts of the proposed project and evaluated Napa County Roads & Street Standards (RSS) Exception and the Conservation Regulation Stream Setback Exception requests within Section IV, Biological Resources. (*Id.* at p. 9.) The Revised COA adopted by the Planning Commission included Mitigation Measures AG-1, BIO-1, BIO-2, BIO-3 as revised, and BIO-4 to address potential impacts to the unnamed tributary of Pickle Creek and reduce the project's impact to less than significant. (Recommended Revised Conditions of Approval and Final Agency Approval Memos, pp. 12-14.)

CDFW, in its role as a trustee and responsible agency, submitted a comment letter concluding their review of submitted project documents. While their letter did not identify new environmental impacts, CDFW requested four additional mitigation measures that amplify the IS/MND and further decrease potential environmental impacts, which were all incorporated in the COA. The County incorporated three mitigation measures that require preconstruction surveys be conducted and shared with CDFW prior to the commencement of construction, to determine whether the applicant needs to apply for a California Endangered Species Act Incidental Take Permit (ITP) and/or a Lake and Streambed Alteration (LSA) Agreement. (Recommended Revised Conditions of Approval and Final Agency Approval Memos, pp. 13-18.) Furthermore, the County incorporated a fourth mitigation measure requiring a thorough assessment for potential impacts to the stream including the placement, construction, and operation of the driveway modifications and tree removal. (*Id.* at p. 16) The recommended revised COA were presented to the Planning Commission prior to final project action. (Planning Commission August 21, 2024, Transcript, p. 8:13-23.)

Appellant argues that the "application states that PBES staff will review it for completeness and reasonableness, however there is no staff report." Staff is unclear what Appellant's actual

argument is regarding there being “no staff report,” however PBES reviewed the application for completeness prior to Commission review and action. The Staff Report presented at the Commission details staff’s review and confirmation of the project during the course of permit processing. (Board Agenda Letter to the Napa County Planning Commission 8/21/2024, pp. 3-4.) Moreover, the report provides a recommendation to the Planning Commission analyzing all components of the project and record, including conclusions of the IS/MND.

Appeal Ground No. 3: Appellant contends that the graphics submitted to [SCH] do not have necessary dimension or detail. Appellant asserts that Graphics “K” does not show distances of driveway length and from stream or cistern, or between extraction water and adjunct wells or watercourses. Lastly, Appellant asserts that the CEQA documents do not disclose two tributaries to Redwood Creek within one thousand feet of the site.

Staff Response:

Contrary to the Appellant’s assertion, the graphics submitted to SCH contain the necessary dimension and detail. The “Graphics” were included as attachment K of the Planning Commission Staff Report and submitted to SCH for responsible and trustee agency review. The graphics include Plans (Sheets UP-4.0, UP-5.0, and UP-6.0) which detail and identify the proposed RSS Exception request and the proposed turnouts affected by the stream setback to address the request for a Conservation Regulation Stream Setback Exception. Furthermore, the location of the project site’s existing wells and the existing spring fed cistern was provided on Sheet UP-1.0. These sheets submitted by Stillwater Civil Design each contain a clear measurement scale allowing the viewer to determine distances from the various features depicted in the plan.

The Biological Assessment dated February 3, 2024, prepared by LSA Associates on behalf of the Applicant, was also submitted to the SCH. The Biological Habitat Assessment included a map of Special-status Reptile and Amphibian Occurrences within two (2) miles of the project site along with all USGS Blueline Streams and the project’s detention basin (Figure 2) as well as the biologist representative photos (Figure 3) and conclusions. (Biological Habitat Assessment, p. 7-8.) Appellant asserts that two tributaries to Redwood Creek were not disclosed, however, staff determined that these two tributaries were not located within 1,500’ buffer of the project boundaries and will not be impacted through the scope of the project.

As proposed, the existing project driveway is shared by three other properties (APNs 034-100-020, 034-100-043, and 034-110-0059; Winery property is APN 034-110-047) and is required to be widened, as presented to the Planning Commission, to meet the County’s RSS requirements. Planning and Engineering Staff conducted a detailed review of the proposed RSS Exception and Stream Setback Exception requests, and recommended approval subject to COA and mitigation measures as revised in response to the CDFW comment letter.

Appeal Ground No. 4: Appellant claims that the document submissions to SCH did not include any analysis regarding water availability, the diversion of the spring, or the proximity.

Staff Response:

As required for all discretionary permits, a Water Availability Analysis (WAA) was prepared and submitted for review by the County. Furthermore, potential impacts to groundwater resources are also evaluated pursuant to the County's Interim Well Standard that were accepted by the Board of Supervisors in 2022 and have been further revised in January 2024.

The final WAA, prepared by Stillwater Civil Design dated February 9, 2024, includes a Tier I calculation for existing and proposed water uses and a groundwater recharge analysis for the project site. (Water Availability Analysis, p. 3.) According to the existing and proposed water use estimates in the Tier I analysis, the applicant has recently implemented irrigation reduction measures such as dry farming techniques, which have reduced estimated groundwater use from approximately 0.5 acre-feet/acre/year to 0.2 acre-feet/acre/year. The winery is estimated to require approximately 0.204 acre-feet/year inclusive of the winery, employees, and visitation and marketing. The combination of the recent reduction in irrigation and the moderate increases in water use to support the proposed winery and the existing residence, result is a net reduction of 1.15 acre-feet/year for a total estimated use of 1.63 acre-feet/year for the property. In terms of estimated water availability for the parcel, the Tier I analysis estimates the annual recharge for the parcel to be 2.23 acre-feet compared to the total proposed use for the parcel at 1.63 acre-feet. Therefore, staff concluded the project would not have an adverse impact on groundwater recharge or lowering of the local groundwater level.

The WAA concluded that a Tier II analysis was not required for the project because the project is reducing overall groundwater use. Staff found that a Tier II is not applicable to this project for the following reasons: 1) Napa County's Interim Napa County Well Permit Standards and WAA Requirements - January 2024 (Interim Well Standards) states in Footnote 8 that for existing wells, Tier II analyses are only required for an increase in groundwater use; 2) there are no known off-site springs within 1,500 feet that are being used for domestic or agricultural purposes; and 3) there is no increase in groundwater proposed for this project. To clarify, a Tier II is only required for an increase in groundwater extraction. The proposed project scope is proposing to decrease the project parcel's overall groundwater usage (Water Availability Analysis, pp. 2-4.)

With respect to the consideration of potential impacts to offsite springs and significant streams, the WAA guidelines have established screening criterion whereby a Tier III analysis to consider groundwater and surface water interaction is only required if the groundwater comes from a well within 1,500 feet of a Significant Stream. Here, a Tier III analysis is not applicable because staff determined that the project engineer had demonstrated that the project wells are not within 1,500 feet of a Significant Stream. The Interim Well Standards only require Tier III analysis if existing

wells are *less* than 1,500 feet to a Significant Stream. Given this, the County satisfied its duty to consider impacts to trust resources and no further analysis was required through the submittal of a Tier III.

Further, the WAA was found to be technically adequate by the Engineering Division based on information provided by the applicant, its location, and available geologic and hydrologic information. On June 5, 2024, Engineering issued a memorandum concluding that the WAA was technically adequate as it relates to Napa County's water use criteria, well and spring interference, groundwater/surface water interaction pursuant to Napa County's WAA Guidelines, Governor's Executive Order N-7-22/N-3-23, Napa Valley Subbasin Groundwater Sustainability Plan, and the Public Trust Doctrine. (WAA Technical Adequacy Engineering Services Memorandum, June 5, 2024.)

Appellant references "diversion of a spring." The project does not propose any spring diversion. Appellant's argument is unclear. The spring fed cistern is an existing condition and no modifications are proposed. The onsite spring is not subject to the Tier II analysis because overall groundwater use is being reduced and because the spring is owned by the applicant. Tier II analyses are required to assess impacts to neighboring wells and springs.

Even assuming a spring is located within 1,500 feet of a project well, County's Interim Well Standards (January 2024) expressly exempts existing wells from a Tier II analysis for spring interference when groundwater usage is not increasing. As the IS/MND and Project WAA disclose, groundwater usage is decreasing. Therefore, a spring interference analysis is not required regardless of well proximity.

Regarding proposed improvements adjacent to a detention basin, Planning & Engineering staff found that the proposed road improvements within the stream setback are minimized and limited to approximately 250 feet of road widening from 14 feet to 22 feet, and installation of the proposed six (6) turnouts. Only three (3) of the six (6) proposed turnouts located within the stream setback do not propose to disturb the ground which is closer to the stream. (Supplemental Memorandum to the Planning Commission, August 6, 2024.) The IS/MND addressed this issue under the IV. Biological Resources, XVII Transportation, and XXI Mandatory Findings of Significance sections in the document. The IS/MND concludes that impacts would be less than significant with mitigation incorporation. It should be noted that the CDFW submitted comments on the project's environmental document which included revised and additional mitigation measures for the project. Such changes did not result in a recirculation of the project to the SCH.

Finally, the project's WAA was available for review by trustee agencies. Appellant offers no legal support and cites no authority for any claim that County failed to comply with document submission requirements to the SCH. While it may be Appellant's hope that every piece of the project record, including project WAAs, must be uploaded to the SCH website, that is not what the law requires. The SCH within the Governor's Office of Planning and Research (OPR) is

responsible for managing the State’s environmental review process under CEQA. Appellant misunderstands which documents are required to be submitted to SCH. Only actual CEQA documents such as Notices of Determination, Notice of Preparation, Notice of Exemption, and draft environmental documents are required to be sent. The entire project record does not get uploaded to SCH. That is not the purpose of SCH and their own guidance documents make clear which documents are properly submitted. The County fully complied with its obligations.

Appeal Ground No. 5: Appellant asserts that the Clearinghouse documents submitted by County are inconsistent because of an error with the listed APNs related to property access. Appellant contends the entire project was not submitted for review, and therefore agency review is incomplete.

Staff Response:

Staff disagrees with the assertion that agency review is incomplete. The SCH Summary Form for Electronic Document Submittal lists the correct APNs for the Use Permit, Conservation Regulation Exception request and RSS Exception request. (SCH Summary Form.) The correct APNs, as listed on the SCH Summary Form, are as follows: Project Site APN: 034-110-047 - 1871 Mount Veeder Road, Napa; and Properties adjacent to driveway access: APNs 034-100-020, 034-100-043, and 034-110-059.

The NOC & Environmental Document Transmittal Form only identified the subject property but also noted the Longitude and Latitude, degrees, minutes and seconds for State Agencies to locate the proposed project. (Notice of Completion & Environmental Document Transmittal Form, p. 1). This information was also posted on the County’s website in response to the posting of the IS/MND prior to the Planning Commission hearing.

Staff recognizes that there were typographical errors within the IS/MND submitted on July 5, 2024, regarding APNs. In the event reviewing agencies have difficulty in locating a project or property, their staff are able to contact County staff to request clarification before commencing review of such documents. No such action occurred.

The item was scheduled for the August 7, 2024, Planning Commission Meeting. However, due to receipt of public comments received by the Appellant, and errors found by staff prior to the meeting, the item was continued to August 21, 2024. Given this continuance, staff updated the Staff Report and the IS/MND, as well as, addressed comments received and incorporated the requested mitigation measures from CDFW for the project. Staff explained the discrepancy to the Commission in staff’s presentation and clarified the APNs related to the property access. (Planning Commission August 21, 2024, Transcript, p. 3:5-14; 26:5-14.) Finally, the NOD submitted to SCH identified the project’s APN and the APNs related to property access.

Appeal Ground No. 6: Appellant claims that the “CEQA Hillwalker Vineyards IS-MND and MMRP_OCR names five (5) wells”, and states, "Tier II and III Analysis are not required for the project," however, the Water Availability [Analysis] acknowledges only two wells, and does not address the diversion of a spring. Appellant contends a Lake and Stream Alteration Agreement is required from CDFW for “impairment of the riparian way.”

Staff Response:

Appellant is mistaken. The WAA states that there are four existing wells to be used to supply water for the proposed winery and that no new wells are proposed for the project. (Water Availability Analysis, p. 1.) The WAA states that the proposed water use for the project is 1.63 acre-feet per year which is less than the estimated groundwater recharge rate of 2.23 acre-feet per year. This project uses dry farming techniques and estimates to use less water than was previously used to irrigate the onsite vineyards. (Water Availability Analysis, pp. 4-5.)

The IS/MND mistakenly stated that there are five wells. Staff believes that the difference in the number of wells referred to in the IS/MND and the WAA is explained by the fact that the preparers of the WAA properly did not count the spring fed cistern on the property as a well whereas staff did. The spring fed cistern is an existing condition, not being used for the project, and not subject to a Tier II analysis as discussed in Appeal Ground No. 4. In preparing its responses, staff found that in 2006 the prior owner of the property obtained a well destruction permit (E06-01125) from County for a different well not part of the project. Although Environmental Health Division records do not indicate whether this well was decommissioned, Applicant confirmed it was not and is agreeable to a COA requiring its destruction.

As explained in staff's response to Appeal Ground No. 4, a Tier II analysis for spring interference is not required and no spring diversion is proposed as part of this project. Finally, Appellant contends a Lake and Stream Alteration Agreement is required from CDFW. This issue was addressed with the assessment of the RSS Exception and Conservation Regulation Exception requests to ensure any environmental impacts would be avoided. As noted in Appeal Ground No. 4 above, the proposed usage of groundwater demand is decreasing and does not have an impact on groundwater or biological resources in the vicinity. All wells on the Property are bound by the Planning Commission's COA and additional mitigation measures required by CDFW to determine if LSA Agreement is required or not.

Appeal Ground No. 7: Appellant asserts that there are adjacent wells and blue water streams within 1,500 feet that require Tier II and Tier III analyses. Appellant asserts there are no geological studies, well completion reports, or well pump test data.

Staff Response:

This project is reducing groundwater use and County Interim Well Standards, as discussed above, do not require applicants complete a Tier II or Tier III analysis. See staff responses to Appeal Ground Nos. 4 and 6, above. No geological studies, completion reports, or well pump test data are required for completing a Tier I analysis. Additionally, project wells are more than 1,500 feet from designated significant streams Redwood and Pickle Creeks and a Tier III is not required based on distances. The tributaries to Pickle and Redwood Creeks are not classified as significant streams and a Tier III is not applicable to those water courses.

Appeal Ground No. 8: Appellant claims that the Water Availability Analysis and Water Use Estimate calculations for various water-using activities are not in conformity with County's WAA Guidance Document 2015, nor with current Water Availability Analyses. Appellant

contends that there are omissions and inaccurate calculations and that “the cumulative aversely differences impact the water neutrality determination.”

Staff Response:

The WAA - Guidance Document, dated May 12, 2015 - Appendix B: Estimated Water Use for Specified Land Use, provides guidance to WAA preparers as follows:

“Each project applicant is responsible for determining estimated water usage for their proposed project. While some guidelines are provided below, other industry standards exist, PBES may be able to provide data based on previous applications, and each project has its own unique characteristics. The most appropriate data should be used by the applicant to estimate water use for their specific project.”

(Water Availability Analysis (WAA) – Guidance Document, Napa County, Adopted May 12, 2015, Appendix B, p. 18)

The WAA Guidance Document provides recommendations for calculating estimated water use for preparers. Appellant contends that the WAA and Water Use Estimate Calculations do not conform, however, the project WAA is sufficient in estimating the water use for the residence, using the most appropriate data. The WAA prepared by Stillwater Civil Design, a professional civil engineering firm registered and licensed through the State of California, adequately estimates water use. The preparers do not need to adhere strictly to the guidance document. As stated in the WAA, the County’s guidance document is designed:

“to provide guidance and a procedure to assist county staff, decision makers, applicants, neighbors, and other interested parties to gather the information necessary to adequately answer that question. The WAA is not an ordinance, is not prescriptive, and project specific conditions may require more, less, or different analysis in order to meet the requirements of CEQA. However, the WAA is used procedurally as the baseline to commence analysis of any given discretionary project.” (WAA Guidance Document, p.3.)

From the project WAA, Planning Staff was able to ascertain the ground water usage for the project site as discussed in the IS/MND and staff report. The estimated water use for the existing onsite residence is 0.5 acre-feet per year (af/yr). This estimate includes the additional usage for a pool with a pool cover. The WAA pulls out and estimates the landscaping separately, at 0.025 af/yr. Utilizing the water estimates recorded, the total for the residence, covered pool, and landscaping is 0.525 af/yr. Regarding wine production, the usage of 3-gallons of water per gallon of wine produced is less than the 6-7 gallons typically utilized, however, the applicant states water conscientious wine making techniques will be utilized. Under the Appendix B Guidelines, the WAA guidance document states that each project applicant is responsible for determining estimate water usage and upholding other industry standards. These water use estimates were added and rounded up to provide a conservative, proposed total usage on the project parcel of 1.63 af/yr.

This resulted in the proposed project to conclude as follows: Existing Usage – 2.78 ac-ft per year and Proposed Usage at 1.63 ac-ft per year which represents a decrease of approximately 1.15 ac-ft per year. The recharged analysis was identified as 2.23 ac-ft per year. Such information was incorporated into the IS/MND, analyzed by staff and interested parties, and considered by the Planning Commission.

Furthermore, the WAA was deemed technically adequate by the Engineering Division based on information provided by the applicant, its location, and available geologic and hydrologic information. On June 5, 2024, Engineering issued a memorandum concluding that the WAA was technically adequate as it relates to Napa County’s water use criteria, well and spring interference, groundwater/surface water interaction pursuant to Napa County’s WAA Guidelines, Governor’s Executive Order N-7-22/N-3-23, Napa Valley Subbasin Groundwater Sustainability Plan, and the Public Trust Doctrine. (WAA Technical Adequacy Engineering Services Memorandum, June 5, 2024.)

Appeal Ground No. 9: Appellant asserts that the project watercourses are supportive of federal and state designated special status species that constitute the *res* (i.e. the assets) of the public trust. Napa County has an affirmative duty to administer the natural resources held by public trust solely in the interest of the people of California.

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.

A Tier III review is the County’s adopted method for complying with its duties under the Doctrine. As discussed in the Staff Responses to Appeal Grounds Nos. 4 and No. 6 above, the Water Availability Analysis concluded that a Tier II & Tier III analysis was not required for the project. The entire project parcel is located outside the 1,500’ buffer from a Significant Stream. The project will not extract water from wells within 1,500 feet of defined Significant Streams.

During review, Staff considered impacts to public trust resources in the event the project wells may be connected to a navigable waterway. Staff determined that because the project engineer had demonstrated that the project well is not within 1,500 feet of a significant stream and that there was not a hydraulic connection to a navigable waterway, that there was no impact to public trust resources. Ground water/surface water criteria are presumptively met if the distance standards and well construction assumptions are met per Tables 3, 4, and 5 of the County's WAA Guidance document when a well is within 1,500 feet of a significant stream. (WAA Guidance Document, p. 12-13.) Given this, the County had satisfied its duty to consider impacts to trust resources and no further analysis was required.

Furthermore, the Planning Commission adopted COA include measures that feasibly mitigate any alleged harm. The COA incorporate the mitigation measures submitted by CDFW, including required preconstruction surveys and compliance with state permitting requirements.