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April 4, 2016

Brian Bordona, Supervising Planner
Napa County Planning, Building, & Environmental Services Department
1195 Third Street, 2nd Floor
Napa, CA 94559

Re: Walt Ranch Erosion Control Plan Application No. P11-00205-ECPA and Final Environmental Impact Report

Dear Mr. Bordona:

This office represents Living Rivers Council ("LRC") with respect to the Walt Ranch Erosion Control Plan Application No. P11-00205-ECPA. LRC objects to County approval of the Project for the reasons described in this letter and my previous letters.

Attached hereto and incorporated herein by reference are a number of Exhibits listed at the end of this letter. Two are most noteworthy. Exhibit 1 is a letter dated April 3, 2016, from hydrologist Greg Kamman. Exhibit 2 is a letter dated April 3, 2016, from biologist Gretchen Padgett-Flohr. These two letters should be considered independent comments on the Final EIR, whether their specific points are mentioned in this letter or not.

Preliminarily, I note the unusual time line for the preparation of and comment periods for the Project's Environmental Impact Report ("EIR"). The Notice of Preparation issued in November of 2012; the Draft EIR issued about 20 months later on July 11, 2014; the comment period on the Draft EIR ended 4 months later on November 21, 2014; then the Final EIR issued about 15 months later on March 1, 2016, with a 1 month period for comment. In sum, since issuance of the NOP, the County spent 35 months preparing the EIR, while the public had only 5 months to review and comment on it, only 1 of which was after the Final EIR issued. Therefore, LRC requests an extension of the time to comment on the Final EIR for another 30 days.

The Final EIR for this Project does not comply with CEQA's information disclosure requirements and the Response to Comments ("RTC") fails to provide legally adequate responses to comments in a number of important respects.

1. The EIR fails to provided an adequate description of the environmental setting. Examples include the following.

- a. The EIR mischaracterizes the rate of groundwater recharge on the Project site. (Ex 1, pp. 2-7.)
- b. The EIR mischaracterizes the hydraulic connection between groundwater to be pumped for the Project and groundwater in the Milliken Sarco Tulocay ("MST")

Groundwater Deficient Area. (Ex 1, pp. 7-11.)

c. The EIR mischaracterizes the direction of groundwater flow between the Project site and the MST Groundwater Deficient Area. (Ex 1, pp. 7-11.)

d. The EIR fails to include reliable surveys to determine the presence, absence, and location of threatened and sensitive wildlife species and their habitat, including California Red-Legged Frog (“CRLF”), Foothill Yellow Legged Frog (“FYLF”), and Western Pond Turtle (“WPT”) (Ex 2, pp. 18-29.) The 2007 and 2008 surveys expired before the NOP issued for this EIR (See Ex 2, p. 20; Ex 14, p. 2), and the RTC admits the 2012 surveys were not to “protocol.” The 2012 surveys are also now expired due the passage of time.

e. The EIR fails to conduct reliable surveys to determine the presence, absence, and location of bats, especially the Townsend’s Big-eared Bat, as bat biologist Joe Szewczak commented. The RTC responds to protocol-level surveys will be done post-approval, but pre-construction. Post approval is too late to describe the environmental setting. The purposes of the EIR is to conduct the impact analysis in public. That cannot be done without sufficient information on what resources are present and at risk from Project activities. For bats, the EIR unlawfully defers describing the environmental setting, the impact analysis, and the development of mitigation measures until after Project approval.

2. The EIR fails to assess the significance of impacts of all aspects of the Project description by ignoring specific mechanisms of impacts raised in comments on the Draft EIR. Examples include the following.

a. The EIR fails to analyze the significance of pumping more groundwater than is recharged on-site on local groundwater supplies. (Ex 1, pp. 2-3.)

b. The EIR fails to analyze the significance of increased channel erosion and sediment production caused by increases in peak runoff caused by installing engineered drainage structures. (Ex 1, pp. 11-13.)

c. The EIR fails to analyze the significance of herbicide/pesticide drift on threatened and sensitive wildlife species and their habitat, including CRLF, FYLF, and WPT. (Ex 2, pp. 11-14, 31-32.) The SEIR relies on “compliance with all USEPA, CDPR, and Napa County regulations” governing the use of herbicides/pesticides to reduce impacts to less-than-significant. This is improper under CEQA.¹

¹*Ebbetts Pass Forest Watch v. California Department of Forestry & Fire Protection* (2008) 43 Cal4th 936, 957 (error to conclude that compliance with pesticide restrictions precludes significant impact); *Endangered Habitats League v County of Orange* (2005) 131 Cal.App.4th 777, 793 [“The use of an erroneous legal standard [for the threshold of significance in an EIR] is a failure to proceed in the manner required by law that requires reversal”]; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 [“in preparing the EIR, ... the fact that a particular environmental effect meets a

3. The EIR unlawfully defers the development of mitigation measures until after Project approval. Examples include the following.

a. The EIR asserts that the Project's Integrated Pest Management Strategy will reduce potentially significant impacts on CRLF, FYLF, and WPT. (See Ex 2, p. 11 ["IPM is a strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties; strategies do not physically filter anything....the DEIR failed to itemize the types of IPM that would be used; the combinations are endless and specific to the target species being controlled. If not listed, how can they be evaluated?"].)

4. The RTC ("RTC") fails to provide legally adequate responses to comments.

a. Examples are provided in Exhibits 1 and 2.

b. With respect to Oak Woodlands, the Draft EIR found impacts to be less-than-significant based on small reductions in the areas to be cleared. My November 21, 2014, (Second of Two) comment letter criticized this rationale. Rather than try to justify this flawed rationale, the Final EIR changes the rationale for the less-than-significant finding to referencing the acres of oak woodlands to be permanently preserved. This response is inadequate for two reasons.

First, a fundamental change in rationale of this nature reveals the Draft EIR was "so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130.) Therefore, the Draft EIR must be revised and recirculated for the full 445 days comment period with this new rationale available for public comment.

particular threshold cannot be used as an automatic determinant that the effect is or is not significant"]; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 ["A threshold of significance is not conclusive"]; *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16 (lead agencies must review the site-specific impacts of pesticide applications under their jurisdiction because "DPR's [Department of Pesticide Regulation] registration does not and cannot account for specific uses of pesticides"); *Citizens for Non-Toxic Pest Control v. Department of Food & Agriculture* (1986) 187 Cal.App.3d 1575, 1587-1588 (state agency applying pesticides cannot rely on pesticide registration status to avoid further environmental review under CEQA); *Oro Fino Gold Mining Corporation v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881-882 (rejects contention that project noise level would be insignificant simply by being consistent with general plan standards for the zone in question). See also *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1331-1332 (EIR required for construction of road and sewer lines even though these were shown on city general plan); *Kings County Farm Bureau v. City of Hanford, supra*, 221 Cal.App.3d at pp. 712-718 (agency erred by "wrongly assum[ing] that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality".)

Second, the Draft EIR correctly recognized that the permanent loss of oak woodlands from the Project site is a significant impact absent mitigation to reduce the impact to less-than-significant. But the notion that preserving areas not slated for destruction, even in perpetuity, could reduce the impact to less-than-significant is illogical. The EIR's finding that the unmitigated impact is significant is based on the loss of oak woodlands in the areas to be converted to vineyard; it is not based on the possibility that oak woodlands not slated for destruction might be destroyed in the future. Therefore, preventing their destruction in the future does not reduce the significant impact identified in the EIR.

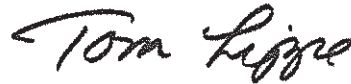
5. The Mitigation Monitoring and Reporting Program ("MMRP") is incomplete. Examples include the following.

a. Permanent preservation by deed restriction/conservation easement is omitted from Mitigation Measures 4.2-2, 4.2-4, 4.2-5, and 4.2-10.

Finally, Mr Kamman references the Draft EIR recently prepared for the Circle S Ranch Vineyard Conversion project in his discussion of this Project's cumulative impacts on groundwater and peak flow generated sedimentation. I request that the County include the Circle S Ranch Draft EIR in the record for this Project

Thank you for your attention to this.

Very Truly Yours,



Thomas N. Lippe

List of Exhibits

1. Letter from Greg Kamman to Tom Lippe re Walt Ranch Vineyard EIR, April 3, 2016. [**Hard copy and on CD**]
2. Letter from Gretchen E. Padgett-Flohr, Ph.D to Tom Lippe re Walt Ranch Vineyard EIR, November 20, 2014. [**Hard copy and on CD**]
3. Letter from Greg Kamman to Tom Lippe re Kongsgaard Wine LLC – Atlas Peak Vineyard Conversion; May 14, 2015. [**On CD only**]
4. Letter from Greg Kamman to Tom Lippe re Kongsgaard Wine LLC – Atlas Peak Vineyard Conversion; March 14, 2016. [**On CD only**]
5. Brownstein, Hyatt, Faber, Shrek (BHFS), 2011, Water supply assessment for the Napa Pipe Project, Napa California. Revised August 25, 2011, 200p, cited by Mr. Kamman in Exhibit 1. [**On**

CD only]

6. City of Napa, 2011, Urban Water Management Plan 2010 update. Public Works Division, adopted June 21, 2011, 259p, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
7. Faye, R.E., 1973, Ground-Water Hydrology of Northern Napa Valley. U.S. Geological Survey Water-Resources Investigations 13-73, prepared in cooperation with the Napa County Flood Control and Water Conservation District, 72p, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
8. Heath, R.C., 1987, Basic ground-water hydrology. U.S. Geological Survey Water Supply Paper 2220, 84p, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
9. Luhdorff & Scamanini Consulting Engineers and MBK Engineers (LSCE & MBK), 2013, Updated hydrogeological conceptualization and characterization of conditions. Prepared for: Napa County, January, 181p, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
10. Luhdorff & Scamanini Consulting Engineers, 2009, Technical memorandum: SB610 water supply assessment and supporting documents, summary of peer review process. Prepared for: Napa County, October 16, 2009, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
11. Singhal, B.B.S, 1997, Hydrogeological characteristics of Deccan trap formation of India. Hard Rock Hydrosystems (Proceedings of Rabat Symposium S2, May), IAHS Publication No. 241, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
12. Stetson Engineering, 2009, Draft groundwater report, former Napa Pipe Corporation. Prepared for: Napa Redevelopment Partners, LLC, August 31, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
13. West Yost & Associates, 2005, 2050 Napa Valley water resources study. Prepared for: Napa County Flood Control & Water Conservation District, City of Napa, City of American Canyon, Town of Yountville, City of St. Helena, and City of Calistoga, October, cited by Mr. Kamman in Exhibit 1. **[On CD only]**
14. U.S. Fish and Wildlife Service, Revised Guidance on Site Assessments and Field Surveys for the California Red-legged Frog August 2005, cited by Dr. Padgett-Flohr in Exhibit 2. **[On CD only]**
15. Mitigated Negative Declaration for the Kongsgaard Vineyard Conversion project, cited by Mr. Kamman in Exhibit 1. **[On CD only]**