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August 29, 2016

Gladys I. Coil
Clerk of the Board of Supervisors
Board of Supervisors
County of Napa
1195 3rd Street
Napa, CA 94559

Re: Appeal of Approval of Agricultural Erosion Control Plan No. P11-00205-ECPA and certification of Final Environmental Impact Report under the California Environmental Quality Act for the Walt Ranch Vineyard Conversion Project.

Dear Ms Coil:

This office represents Appellant Living Rivers Council with respect to this appeal of the Napa County Conservation, Development and Planning Department Director's approval of Agricultural Erosion Control Plan No. P11-00205-ECPA and certification of a Final Environmental Impact Report ("EIR") under the California Environmental Quality Act ("CEQA") for the Walt Ranch Vineyard Conversion Project ("Project"). All correspondence or other communications relating to this appeal should be directed to this office.

Per County Code section 2.88.010.B, submitted herewith is a title insurance company report issued no earlier than six months prior to the date of the decision being appealed that certifies, by name, address and assessor's parcel number, the owners of all real property located within one thousand feet of any real property which is the subject of the appeal; mailing labels for all such property owners; and a copy of the assessor's map book pages current as of the date of the decision being appealed that shows all real property which is the subject of the appeal and all properties in the property owners list.

This letter provides the "Reasons for Appeal" information required by paragraphs 4 and 5 of subdivision A of County Code section 2.88.050.

The August 27, 2016 letter from Greg Kamman, attached hereto as Exhibit 1, provides additional support for the grounds for appeal related to impacts from increased runoff and groundwater extraction.

The August 27, 2016 letter from Gretchen E. Padgett-Flohr, attached hereto as Exhibit 2, provides additional support for the grounds for appeal related to impacts on wetlands, amphibians and reptiles.

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The specific factual or legal determinations of the approving authority which are being appealed are:

1. The Director's August 1, 2016, decision approving the Project and its ECPA.
2. The Director's certification of the Final EIR for the Project pursuant to CEQA; and
3. The Director's "CEQA Findings" made pursuant to Public Resources Code section 21081.

The grounds for this appeal are set forth in sections 1, 2, and 3 of my office's November 21, 2014, comment letter on the Draft EIR, including the Exhibits to said letter pertinent to these sections, specifically including the November 20, 2014 letters from Greg Kamman, Pat Higgins, and Gretchen E. Padgett-Flohr, attached as Exhibits 7, 8, and 16, respectively, to said letter.

As specified in my November 21, 2014 letter, these grounds are:

1. The EIR fails as an informational document with respect to increased stream sedimentation in the Napa river drainage and associated impacts on the aquatic ecosystem.
 - a. The EIR Fails as an Informational Document with Respect to Sediment Impacts on Special Status Fish Species Below Milliken Reservoir.
 - b. The EIR Fails as an Informational Document with Respect to Sediment Impacts on Aquatic Ecosystems and Fish above Milliken Reservoir.
2. The EIR fails as an informational document with respect impacts on wetlands, amphibians and reptiles.
 - a. Wetlands.
 - b. California Red-Legged Frog and Foothill Yellow-Legged Frog.
3. The EIR fails as an informational document with respect to impacts on groundwater resources.
 - a. The EIR fails to analyze the Project's use of groundwater in the environmental setting where this use will impact groundwater resources.

The grounds for this appeal are further set forth in my office's November 21, 2014 (Second of Two), comment letter on the Draft EIR, as follows:

4. The EIR Fails as an Informational Document with Respect To Project Impacts on Oak Woodlands.

5. The EIR Fails as an Informational Document with Respect to Cumulative Impacts.
 - a. The EIR fails to disclose relevant information regarding the environmental setting regarding and fails to use the best available information to assess the Project's cumulative impacts on biological resources.
 - b. The EIR's analysis of cumulative impacts fails to disclose all closely related past, present and reasonably foreseeable future projects.

The grounds for this appeal are further set forth in my office's April 4, 2016 comment letter on the Final EIR, including pertinent Exhibits to said letter, specifically including the April 3, 2016 letters from Greg Kamman and Gretchen E. Padgett-Flohr, attached as Exhibits 1 and 2, respectively, to said letter, as follows:

6. The EIR fails to provide 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.)¹
 - 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.

7. 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.

¹References to Exhibits 1 and 2 in sections 6 - 10 of this letter refer to the April 3, 2016 letters from Greg Kamman and Gretchen E. Padgett-Flohr, attached as Exhibits 1 and 2, respectively, to my April 4, 2016 comment letter on the Final EIR.

- 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.
8. 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?”].)
9. The RTC (“RTC”) fails to provide legally adequate responses to comments.
- a. Examples are provided in Exhibits 1 and 2 to my April 4, 2016 comment letter on the Final EIR.
 - 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.

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.

The grounds for this appeal also include the following.

10. **Inadequate Assessment and Mitigation of Groundwater Drawdown Impacts.** The EIR finds that the project will cause a significant groundwater drawdown impacts unless mitigation is adopted. (FEIR, 4.6-51: "After mitigation, impacts as a result of groundwater drawdown are less than significant.") But the EIR defers analysis of the degree of this significant groundwater drawdown impact and defers the development of specific measures to reduce such impacts until after project approval. (FEIR, 4.6-51-52; GMMP, FEIR, Appendix R, 13-14; August 1, 2016, Updated MMRP, p. 49.) Deferring the impact analysis is not allowed under CEQA. Deferring the development of mitigation measures is not allowed under CEQA unless it is impracticable to develop mitigation measures during the CEQA process, there is evidence that future mitigation is feasible, and the project is required to meet specific performance standards. (*CBE v. Richmond* (2010) 184 Cal.App.4th 70, 92-96.)

Mitigation measure 4.6-4 provides for well monitoring but does not specify what specific measures will be implemented to reduce identified impacts. Nor does it specify performance standards the project is required to meet. With respect to standards, MM 4.6-4 provides:

"the Director of Environmental Management shall be authorized to require additional reasonable conditions on the Applicant, or revocation of this permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety and welfare." (FEIR, 4.6-51-52.)

The FEIR fails, however, to explain whether the Napa County Groundwater Ordinance even applies to this project, given the exemption for agriculture at County Code § 13.15.040. Even if the Groundwater Ordinance applies, it does not provide a performance standard; it merely echoes CEQA's "significant effect" standard (see County Code § 13.15.070.C ["based on substantial evidence in the record, that the new water system, improvement or addition would not significantly affect the impacted groundwater basin in Napa County"].) MM 4.6-4's reference to protecting "public health, safety and welfare" is even vaguer.

The Groundwater Monitoring and Management Plan provides a standard for impacts on

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neighboring property owners' wells, i.e., "would drop to a level which would not support existing land uses or planned uses for which permits have been granted." (GMMP, FEIR, Appendix R, 13.) But this standard is not incorporated into the Updated Mitigation Monitoring and Reporting Plan, which in the column for "Performance Criteria" merely refers to "County standards." (August 1, 2016, Updated MMRP, p. 49.) Further, this GMMP standard only measures impacts on neighboring land uses, not on the groundwater resource as a whole.

Finally, as noted above, the Updated Mitigation Monitoring and Reporting Plan, in the column for "Performance Criteria" merely refers to "County standards." What these putative County standards might be is unknown.

11. **New Information Regarding Increased Runoff.** With respect to LRC's ground for appeal related to increases in precipitation runoff, the EIR's estimates of project-caused runoff increases are based on two informational deficiencies: its failure to include the project's many engineered drainage facilities in its estimate of project induced increases in runoff, and its assumption that deep ripping the soil causes a permanent increase in soil moisture permeability.

In his comments letters, Mr. Kamman repeatedly asked for the EIR's runoff analysis to include the project's many engineered drainage facilities in its estimate of project induced increases in runoff. But the County refused to include these components of the project in the EIR's impact analysis. As a result, Mr. Kamman estimating project-caused increases in runoff for one vineyard block, using the same parameters and assumptions used in the EIR's analysis, except Mr. Kamman included the runoff increase and concentration effects of the project's proposed drainage facilities in the analysis. The results show substantial increases in runoff as compared to the EIR's estimate. (See Exhibit 1.)

As explained by Mr. Kamman in Exhibit 1, the EIR's assertion that deep ripping the soil causes a permanent increase in soil moisture permeability, and therefore will reduce surface runoff as compared to pre-project conditions, is based on a 2014 letter from Dave Oster of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS). (FEIR, 4.6-7.) This letter was not included in the EIR. What it actually says is that any change in permeability may be temporary. (Exhibit 1, Attachment A.)

More importantly, Mr. Oster sent a new letter to the County, dated June 2, 2016 (i.e., well after the Director's April 4, 2016 hearing) to clarify that to conclude that ripping would increase soil permeability, a site-specific investigation of the kind described the NRCS' Soil Survey Manual is necessary. (Exhibit 1, Attachment A.) Here, no such investigations have been conducted.

As a result of the informational deficiencies, the EIR's assessment of the significance of project-caused increases in runoff, and of the many adverse environmental impacts associated with increased runoff, including stream sedimentation, degraded fish habitat, flooding, and landsliding does not comply with CEQA. (See *CBE v. City of Richmond* (2010) 184 Cal.App.4th 70, 82 ["the existence of substantial evidence supporting the agency's ultimate decision ... is not relevant when

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one is assessing a violation of [CEQA's] information disclosure provisions"]; accord, *Joy Road Area Forest and Watershed Ass'n v. California Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 684.)

12. **New Information Regarding Landslide Risk.** The eruption of landsliding under Highway 121 about two miles south and east of the project site on March 13, 2016, caused LRC to expand Mr. Kamman scope of work to include the project's effects on landslide risk. (See Exhibit 3.) The results of Mr. Kamman's analysis are presented in Exhibit 1 to this letter. Mr. Kamman found that runoff in quantities that the EIR has never either calculated or reliably estimated (for the reasons discussed in section 12 above) will be captured in berms and detentions basins that the project proposes to construct on top of active landslides areas. (See Exhibit 1; Updated MMRP, 48, MM 4.6-1.)

The EIR makes no attempt to design these structures to ensure they have adequate design capacity. Instead this work is deferred until after project approval. This violates CEQA because there is no showing that it is impracticable to design these structures during the CEQA process and the project is not required to meet specific performance standards. (*CBE v. Richmond* (2010) 184 Cal.App.4th 70, 92-96.) Indeed, the Updated MMRP merely refers vaguely to "County standards" without specifying what those standards are.

Moreover, the EIR cannot design these structures yet, until it remedies the deficiencies in its assessment of the amount of runoff increases the project will cause, therefore, it is unknown—and unanalyzed in the EIR—whether using these structures as mitigation for increases in runoff is feasible or effective. (See *CBE v. Richmond* (2010) 184 Cal.App.4th 70, 92-96.)

Finally, the EIR utterly fails to assess the potentially significant landsliding impacts these structures could cause by allowing runoff to escape through overtopping or infiltration through the soil. This violates CEQA. (Guidelines, §15126.4(a)(1)(D).)

13. **New Information and De Novo Review.** The Board of Supervisors should consider the information contained in the attached letters from Greg Kamman and Gretchen E. Padgett-Flohr, attached hereto as Exhibits 1 and 2, respectively, and conduct de novo review of this appeal.

The Board must consider this new information and conduct de novo review of this appeal because notice of the April 4, 2016 Director's hearing was not "given in the manner set forth in Section 18.136.040" as provided in County Code section 2.88.090.A. Section 18.136.040 provides the "manner of notice" solely for matters decided by the Planning Commission, and the Planning Commission did not hold a hearing on or approve this ECP. Second, subdivision A of section 18.136.040 provides that the notice must include "the fact that the hearing will be held before the planning commission." The notice provided for the April 4, 2016 hearing held by the director did not include this information, nor could it.

Further, even if the April 4, 2016 Director's hearing "was recorded electronically or by a

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certified court reporter and notice of that hearing had been given in the manner set forth in Section 18.136.040” as provided in County Code section 2.88.090.A, there is good cause for the Board to consider this new information and conduct de novo review of this appeal as provided in County Code section 2.88.090.B.

The new information based on Mr Oster’s June 2, 2016 letter regarding ripping and soil permeability could not have been produced before April 4, 2016.

The new information regarding Mr. Kamman modeling of runoff increases with drainage facilities included is a direct result of and response to the Director’s Responses to Comments on the FEIR, issued on August 1, 2016, which again refused to include such an analysis in the EIR. Indeed, members of the public should not have to retain a hydrologist to conduct analyses that the lead agency should include in an EIR to begin with.

The new information regarding landslide risk is the direct result of the urgency given to this issue by the landsliding under Highway 121 about two miles south and east of the project site on March 13, 2016. There was not sufficient time for LRC to expand Mr. Kamman’s scope of work and get his analysis done before the April 4, 2016 Director’s hearing.

The new information from Mr. Kamman in Exhibit 1 regarding streamflow monitoring is the direct result of and response to new information regarding the July 2016 and proposed August 2016 Walt Ranch Water Quality Monitoring Program referenced in Exhibit 4 attached hereto.

The new information from Mr. Kamman in Exhibit 1 regarding groundwater recharge is the direct result of and response to new information regarding this topic included in the Director’s August 1, 2016, decision, in particular Attachment C, Groundwater Memorandum.

The new information from Ms Padgett-Flohr in Exhibit 2 regarding impacts on biological resources is the direct result of and response to new information regarding this topic included in the Director’s August 1, 2016 decision.

Thank you for your attention to this matter.

Very Truly Yours,



Thomas N. Lippe

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List of Exhibits

1. August 26, 2016, letter from hydrologist Greg Kamman.
2. August 25, 2016, letter from biologist Gretchen Padgett-Flohr.
3. Caltrans Advisory Re closure of Highway 121 due to landsliding.
4. August 15, 2016 Memorandum from the City of Napa, enclosing August 2016 Walt Ranch Water Quality Monitoring Program.

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