

Hello all,

It was great to see so many of you at yesterday's Case Management Conference on Walt Ranch in the Napa Superior Court before Judge Warriner, a visiting Judge from Placer County. As many of you know, as a part of yesterday's hearing, the Court provided an opportunity for oral arguments on the (3) pending Petitions for Writ of Mandate.

Last Friday [2/9/18], the Court issued a Tentative Decision denying all (3) petitions which was a great disappointment to the Petitioners, but not entirely unexpected.

At yesterday's hearing, Tom Lippe, attorney for Living Rivers Council presented his oral arguments on various issues ranging from challenging the adequacy of the ECP Plan (engineered drainage facilities) and the County's calculations of storm water run off, to challenging the County's failure to include pertinent Memorandums concerning HSG soil typing in the EIR which are relevant to soil typing at the project site. Following project approval, the County attempted to support their conclusions which has allowed the project to elevate certain D class soils to C class which controls where vineyard blocks may be planted and the storm water run off calculations necessary to establish "no net increase" from this project's approval. Finally, LRC addressed classification of Milliken Creek as ephemeral (and thus not hydraulically connected to groundwater in the project area) as well as the more intricate nuances of protection of special species habitat which may be impacted by both sedimentation (from storm water runoff) and the standards applied by the County which LRC says fails to address pesticide drift from the project.

Rachel Mansfield Howlett, on behalf of Circle Oaks, spoke about the concerns that the EIR did not adequately address the significant impacts of the project on the community's water supply and unlawfully deferred determination of actual groundwater impacts to Circle Oaks, to the Ground Water Mitigation Plan which fails to include performance standards (such as "trigger points" and the further requirement of proof that Walt is the cause of the loss of water production, before any mitigation will occur.) In addition, she argued that the potential for damage to the roads and infrastructure as a result of allowing the project to use roads within Circle Oaks subject to an arbitrary vehicular weight limitation (64,000 lbs.) as well as banning construction equipment (on Table 3.5) from accessing the project via Circle Oaks Drive. She further challenged the project's unlawful deferral of studies of the actual conditions of these structures (which

the EIR admits no knowledge) to a vague post-project mitigation that ends when vineyard construction is completed, but does not continue during project operations. Further, that the mitigations contained within (MM 4-7.4) does not reduce the projects impacts to less than significant; especially where the EIR did not consider alternative access as a method by which impacts could have been entirely avoided. She was unable to complete her oral arguments, as the Court unexpectedly ended the hearing at noon and requested all Counsel to return and resume oral arguments on March 1.

Both attorneys were critical of the choice of law in determining the standard of review which was heavily relied upon by the Judge in his Tentative Decision. The Court, relying heavily upon older case law cited within the County's Opposition Briefs [e.g. Laurel Heights (1988)], in support of many of his findings in the Tentative Decision, rather than two recent California Supreme Court cases [Banning Ranch (2017), Vineyard Area Citizens (2007)] which are more availing to the Petitioner's points of view as expressed in the briefs. The legal arguments within the Writs of Mandate are subject to different standards of review which are both complicated and contested in this case. Simply stated, the standards of review generally fall into these categories: (1) abuse of discretion (of the decisions made by the BOS in the appeal process which maintained the project's approval which are in violation of CEQA law) and/or (2) De Novo review (of the decisions made by either the Director when the project was approved or by the BOS for approval the project ), and/or (3) substantial evidence (e.g. "battle of the experts", where the tie will always go to the County as long as substantial evidence exists to support the decisions made concerning the project.)

At the March 1 hearing, Circle Oaks will complete its oral arguments, rebuttal and surrebuttal arguments as to Circle Oaks' presentation which will conclude before the Center for BioDiversity and Sierra Club's counsel (Aruna Prabhala) will present their oral arguments.

There was a great turn out at the court hearing with a packed courtroom of concerned Valley residents who continue to support efforts to resist approval of the Walt Ranch project.

Attached is a copy of today's Napa Valley Register article in the event that any of you do not receive the local paper. I am also attaching an excerpted copy of the Tentative Decision.

Sue Wagner

