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By Mail and Email to: kelli.cahill@countyofnapa.org

Ms Kelli Cahill, Project Planner
County of Napa
Planning, Building and Environmental Services Department
Engineering and Conservation Division
1195 Third Street, Suite 210
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Re: Initial Study and Proposed Mitigated Negative Declaration for Kongsgaard Wine LLC – Atlas Peak Vineyard Conversion: Agricultural Erosion Control Plan (ECPA) #P14-00069-ECPA

Dear Ms. Cahill:

This office represents Living Rivers Council ("LRC") with respect to the Initial Study and Proposed Mitigated Negative Declaration ("MND") for Kongsgaard Wine LLC – Atlas Peak Vineyard Conversion: Agricultural Erosion Control Plan (ECPA) #P14-00069-ECPA ("Project"). LRC objects to County approval of the Project for the reasons described in this letter and the attached letters from Greg Kamman (Exhibit 6), which is incorporated herein by reference.

I am submitting with this letter, in both hard copy and electronically on CD, a total of twenty-four (24) exhibits cited in this letter or the May 14, 2015, letter from Greg Kamman, which are also identified at the end of this letter.

1. There Is Substantial Evidence Supporting a Fair Argument That the Project Will Have Significant Effects with Respect to Increased Stream Sedimentation in the Napa River Drainage and Associated Impacts on the Aquatic Ecosystem.

Over the last 10 years, environmental organizations[1] in Napa County have repeatedly demonstrated, to Napa County in comments on previous vineyard conversions projects, and in comments to the San Francisco Bay Area Regional Water Quality Control Board on the Napa River Sediment Total Maximum Daily Load (TMDL), that implementing projects in compliance with the Conservation Regulations may cause significant, adverse sediment impacts on the Napa River watershed. The principal mechanism causing this harm is the installation of engineered drainage facilities to reduce surface erosion. These facilities have the unintended consequence of routing rainfall off the site more efficiently, thereby increasing the amount of downstream runoff. The increased runoff, in turn, causes downcutting of the stream beds (also known as channel incision)

[1]The Sierra Club and Earth Defense for the Environment Now ("EDEN").

which both directly moves more sediment downstream, and causes stream banks to collapse and add their sediments to the stream flow as well.

These organizations retained the services of experts in the field, including Dr. Robert Curry,[2] to comment on a number of vineyard conversion projects in the Napa River watershed and the Erosion Control Plans ("ECPs") prepared by vineyard owners pursuant to the Napa County Conservation Regulations. These experts consistently found that the ECPs do not accurately evaluate or adequately mitigate impacts associated with increases in runoff from the changes in land use attendant to vineyard conversions. Again, the problem is that the focus of the ECPs used in the Napa County program is to reduce surface erosion, and the methods used to do so, including cross-slope ditches, drop inlets and underground pipes, concentrate and rout rainfall off of the property as quickly as possible before it can erode the surface. The result is to *increase* the rate of runoff and peak discharge to tributary streams, causing channel incision, which causes destabilization of stream and river banks which then collapse and contribute additional sediment to the streams system. This in turn lowers stream and river beds, separating the channels from their natural flood plain, which has many diverse and well-documented negative impacts on the riparian environment. (Exhibit 4, pp 9-10 [AR 710-711.)

As explained by Dr. Curry in his review of the Conservation Regulations in 2000:

> The approach of the Napa County ordinances is fundamentally incorrect and cannot protect either public health and safety or long-term land productivity. The existing ordinances seem to assume that by attempting to capture sediments from upland vineyard conversion areas, downstream cumulative effects are reduced to insignificance. This is not correct. Increased upland sediment yields, while important, are less hazardous to Napa Valley than are the changes in runoff timing, volumes, and rates. Increased runoff does have cumulative downstream effects through changes in rates of runoff and frequency of runoff events of a given magnitude. These changes are likely to be a significant factor in changing sediment loads in the main Napa River through changes in stability of its side tributaries.

(Exhibit 1, p. 2 [AR 8930].)

As explained by Dr. Curry in his comments on the Napa River Sediment TMDL, erosion control measures approved by the County and implemented in compliance with its Conservation Regulations have not been able to reduce surface erosion without simultaneously causing peak flow increases that lead to sedimentation caused by channel incision:

> [M]y prior extensive reports and analyses of specific conversion projects in Napa County have all demonstrated that you cannot simultaneously reduce sediment yield

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[2]Dr. Curry's credentials are set forth in Exhibit 3.

> with engineering structures and flow routing while maintaining or reducing peak flow runoff. [...] In my opinion, it may be possible to implement the TMDL and meet its goals with local control, but that has not been demonstrated to date and the bulk of the evidence suggests that in the specific case of Napa County, there is an entire land-use engineering industry that has not been able to deal with impacts of peak flow increases associated with land conversions.
> The source-area erosion control technology promoted by the consultant community in Napa County is good and seems to be improving through time. But the engineering solutions for headwater source-area sediment yield reduction and/or local capture of sediments almost invariably result in greater off-site, downstream, concentration of runoff that then leads to bank and streambed erosion to balance sediment load with the increased stream power. It seems that recommendations for more and larger-capacity on-site runoff detention are largely ignored in favor of reduced sediment concentration in that runoff.

(Exhibit 2, p. 1.)

As explained by Dr. Curry, the contribution of increased runoff from installation of engineered drainage facilities designed to bring new vineyards into compliance with the Napa County Conservation Regulations is cumulatively significant:

> The recommended structural drainage facilities such as culverts, lined ditches, and drainage facilities such as culverts, lined ditches, and drainage channels as applied over large areas of Napa Valley will reduce sediment input from uplands but will exacerbate off-site channel and stream-bed erosion through increased yield of runoff. The public and the fish in the Napa River are directly impacted by the cumulative downstream impacts of increased frequency and duration of flood flows in the main river and its primary tributaries.

(Exhibit 2, p. 3 [AR 9565].)

The Regional Board concurred with Dr. Curry that increased runoff from vineyard development is causing significant increases in sediment supply to the Napa River, stating:

> We concur that increased runoff from vineyard development is causing significant increases in sediment supply to the mainstem Napa River through enlargement of headwater channels, gully formation, and associated shallow landslides.

(Exhibit 5, p. 55-56 [AR 515-516].)

Indeed, a Regional Water Board staff memorandum acknowledges that erosion control measures on hillslope vineyards cause stream channel erosion:

> Where engineered drainage systems are used on hillslope sites to capture sheetflow and discharge it through subsurface drainage pipes, and where these same vineyards are developed on soft sedimentary bedrock and/or were forested prior to development, we often found that storm runoff from vineyards was concentrated in time and/or space, appearing to contribute to active bed and bank erosion in headwaters channels at or near the point(s) of discharge from the vineyard.

(Exhibit 6 [emphasis added].)

The Regional Water Board final Staff Report for the TMDL also discusses channel incision, stating:

> We hypothesize that the current episode of channel down-cutting (channel incision) is in response to the following disturbances including: a) a suite of direct alterations to the river channel and/or its floodplain (e.g., levee building, channel straightening, filling of side channels, removal of debris jams, historical gravel mining, and dredging); b) construction of four large tributary dams between 1939 and 1959 that capture runoff and coarse sediment delivered from approximately 20 percent of the land area in the watershed; and c) land-cover changes that have increased peak flows in the river (e.g., vineyards, rural residences, commercial buildings, and roads). Each of the above actions may contribute to down-cutting either through increasing the capacity of the river to transport sediment or by decreasing its supply of coarse sediment (e.g., tributary dam construction).

(Exhibit 4, p. 39 [AR 740].)

Similarly, the Regional Board Staff Report identifies historical factors; "watershed development" in general, and direct channel alterations as the causes of channel incision, stating:

> As the watershed was developed, upslope disturbances of vegetation and soil likely increased runoff rates and sediment input to channels. These historical and recent impacts, in combination with direct alterations of channels and adjacent flood basins, have destabilized channels where they traverse alluvial fan and valley deposits. This has led to active and rapid channel down-cutting and accompanying bank erosion that is widespread along Napa River and lower reaches of many of its tributaries today.

(Exhibit 4, p. 17 [AR 1718]

The Regional Board Environmental Document for the Napa River Sediment TMDL further states:

> "[a] suite of management actions have likely caused or contributed to channel incision, including (but not necessarily limited to): levee building, large tributary

> dams, straightening of some mainstem channel reaches, filling of side channels, historical gravel mining, dredging to reduce flood risk, and intensive removal of large woody debris."[3]

(Exhibit 4, p. 91 [AR 792].)

The MND recognizes that anadromous salmonid species listed as threatened or endangered are found in Milliken Creek and the Napa River below Milliken Reservoir stating:

> the project site is located within the sub-watershed of the Milliken Reservoir and Capell Creek – Upper Reach Drainages, which have not been designated as critical habitat for steelhead due in part to the presence of barriers to upstream migration by anadromous fish; however, Milliken Reservoir which drains into the Napa River, which has been designated as critical habitat for steelhead and is located within the Napa River watershed. According to the Regional Water Quality Control Board, San Francisco Bay Region's Napa River Sediment total maximum daily load (TMDL) and Habitat Enhancement Plan Staff Report dated September 2009, the watershed stewardship, along with several others have developed management plans and/or have implemented, or are planning, large-scale projects to enhance water quality and stream-riparian habitat with this sub-watershed. The Napa River is currently listed as an impaired body of water for nutrients, pathogens, and sediment under Section 303 9(d) of the Clean Water Act (CWA). Historically, the construction of large dams and other impoundment structures between 1924 and 1959 on major tributaries in the eastern Napa River watershed and northern headwater areas of the Napa River has affected sediment transport processes into the mainstem of the Napa River by reducing the delivery of the coarse load sediments to the river (Stillwater Science and W. Dietrich, 2002). However, the finer sediments that are not trapped by dams, are negatively affecting salmonid habitat by reducing gravel permeability potentially affecting special status fish species (Stillwater Science and W. Dietrich, 2002). In response, the Regional Water Quality Control Board, San Francisco Bay District has released a technical report that proposes a TMDL for the Napa River, which calls for reductions in the amount of fine sediment deposits into the watershed to improve water quality and maintain beneficial uses of the river, including spawning and rearing habitat for salmonid species.

(MND, p. 24.)

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[3] See also Exhibit 4, p 51 [AR 752] ("Almost all incision is found to be anthropogenic based on the very high estimated rate [of incision], and initiation during historical period, which is coincident with a period of intensive levee building and dam construction, filling of flood basins adjacent to channels, navigational dredging, intensive removal of debris jams, and historical gravel mining and channel straightening.").

Remarkably, however, the MND does not assess impacts on anadromous fish at all. Perhaps this omission is based on its statement that "No special status animal species were observed on the project site during any of the surveys conducted by Kjeldsen Biological Consulting." (MND, p. 11.)

The MND's basis for concluding the project will not have significant impacts on Chinook salmon and steelhead is flawed. As discussed above, the Project will cause increased sediment loading of the stream system in the Milliken Creek watershed and from there to Milliken Reservoir as a result of concentrating and discharging increased runoff to upland stream channels. The MND recognizes that Milliken Reservoir traps coarse sediments, but that fine sediments pass through. MND, p. 24.)

The recently issued Draft EIR for the nearby Walt Ranch Vineyard Project elaborates on this point, stating:

> Dams that trap coarse sediment in the area have not significantly reduced the degree to which finer sediments are being delivered to the mainstem Napa River and its tributaries. As a result of this fine sedimentation, habitats for steelhead, Chinook salmon, and California freshwater shrimp, which rely on more gravel substrate in the river, have been negatively affected from reduced gravel permeability. (Stillwater Sciences and W. Dietrich, 2002). The San Francisco Bay Regional Water Quality Control Board (RWQCB) has released a technical report that proposes a total maximum daily load (TMDL) for the Napa River that calls for substantial reductions in the amount of fine sediment deposits into the watershed to improve water quality and maintain beneficial uses of the river, including spawning and rearing habitat for salmonid species.

(Exhibit 23 [DEIR 4.6-8 [pdf 341]].)

The Regional Water Board's final Staff Report for the TMDL describes the impacts of fine sediment loading, stating:

> The limiting factors study documented two adverse impacts of sediment pollution on steelhead and salmon habitat. The first impact is due to a high concentration of fine sediment deposited in the streambed, which adversely affects spawning and rearing habitat for both species. The second impact is due to channel incision, which occurs primarily in the mainstem and lower tributaries and affects Chinook salmon to a much greater extent (because most steelhead spawn further upstream in the tributaries). These sediment-related impacts are discussed below:
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> • Documentation of low permeability values at potential spawning sites for salmon indicates a high concentration of fine sediment in the streambed. Successful salmon and steelhead reproduction depends on adequate water flow through gravel in order for eggs to hatch and larvae to grow. If fine sediment clogs the gravels, flow is very

> slow, egg mortality can be very high, and few young fish (fry) may emerge from the streambed. Low gravel permeability is predicted to cause high rates of mortality between spawning and emergence at potential spawning sites in Napa River and its tributaries.
>
> • High concentration of fine sediment in the streambed also can cause significant decreases in growth and survival of juvenile salmonids during freshwater rearing by reducing availability of vulnerable prey species and increasing activity level, aggressive behavior, and attacks between juvenile salmonids (Suttle et al., 2004).
>
> • Juvenile steelhead use open spaces between clusters of large cobbles and/or boulders as winter refuges from predators and high flows (Hartman, 1965; Chapman and Bjorn, 1969; and Meyer and Griffith, 1997). As the concentration of fine sediment in streambed increases, quality of winter rearing habitat is significantly diminished with consequent adverse impacts to survival.
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> • Scour of spawning gravel during commonly occurring peak flows (e.g., bankfull) can be a significant source of mortality to incubating eggs and larvae of salmon and trout species (McNeil, 1966; Montgomery et al., 1996). Human actions that increase the rate of sediment supply, and/or cause it to become finer, will cause the streambed to become finer, facilitating an increase in mean depth and/or spatial extent of scour (Carling, 1987).
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> • Active and rapid channel incision in mainstem Napa River and lower reaches of its major tributaries has greatly reduced quantity of gravel bars, riffles, side channels, and sloughs, and has greatly decreased frequency of inundation of adjacent flood plains. These features and processes provide essential spawning and juvenile rearing habitat for Chinook salmon, which reside primarily in the mainstem Napa River. Therefore, channel incision appears to be a key factor limiting Chinook salmon run size. Channel incision, and associated bank erosion in areas underlain by thick alluvial deposits, also appears to be a significant source of sediment delivery to Napa River. Shallow groundwater stored in the valley floor adjacent to incised channel reaches is more rapidly depleted during the spring and summer, causing spring and summer baseflow persistence to be reduced, and the quantity and quality of cold pools (e.g., those fed by groundwater inputs) to be diminished.

(Exhibit 4, pp. 8-9.)

In his analysis of sedimentation impacts of this Project, Mr. Kamman identifies two critical analytic errors. First, the MND's purported negative value for estimated increases in net surface erosion simply masks the fact the Project will have positive net increases in sediment discharge from surface erosion in the Milliken Creek watershed. Second, the MND fails to assess the sedimentation effects caused by increases in peak flows attributable to the entire project, specifically the engineered

drainage facilities that reduce the "time of concentration" of runoff and thereby concentrate channel destabilizing flows in channels below the Project. (See Exhibit 7, pp. 7-8.)

Milliken Creek below Milliken Reservoir provides important habitat for Chinook salmon and steelhead (see Exhibits 8 and 11) that will be degraded by increased fine sediment generated by the Project (see Exhibit 8 [Higgins].) A 2003 report found high densities of steelhead in lower Milliken Creek below the dam. (See Exhibits 8, 19, 20.)

With respect to impacts on fish and the aquatic ecosystems above Milliken dam, Milliken Creek above the dam supports a resident population of steelhead (i.e., rainbow) trout (see Exhibits 8, 20). This is important because:

> Today, many San Francisco Bay tributaries have very limited habitat and salmon and steelhead populations (Leidy et al. 2003). Therefore, there is no source of colonists to re-start the Napa River steelhead population in the event that the local population is lost, which makes protection of Milliken Creek's lower and upper watershed steelhead populations even more important. Conversely, genes from native Napa River steelhead could be used to restore other SF Bay tributaries if they recover in the future.

(Exhibit 8, p. 15.) The Initial Study/MND's assumption these impacts are less than significant is unsupported for the reasons discussed by Patrick Higgins (Exhibit 8).

Also, the cumulative sedimentation impacts of this Project with the Walt Ranch Project may be significant, considering that both Projects will increase fine sediment discharge to Milliken Creek and the Napa River. (See Exhibit 24 [Letter from Greg Kamman to Tom Lippe re Walt Ranch Vineyard EIR, November 20, 2014].)

In sum, the Initial Study and MND fails to conduct an adequate investigation of the extent to which the Project may have significant sediment related effects on special status fish species both below and above Milliken Reservoir. "CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

2. The Project May Have a Significant Effect on Groundwater Resources; Therefore, a Negative Declaration Is Insufficient and Preparation and Certification of an Environmental Impact Report Is Required.

The County has a Groundwater Ordinance which requires this Project applicant to obtain the County's approval of a groundwater permit for this Project. While the DEIR notes the existence of this ordinance, it does not disclose the fact that the Project will require a groundwater permit.

The Groundwater Ordinance requires that the application:

> In the form of a Water Availability Analysis-Phase I, as outlined in the Department of Public Works Water Availability Policy Report, as it may be amended from time to time, provide sufficient information and supporting documentation to enable the director of public works to determine whether it is likely the new water system, improvement or addition might significantly affect the impacted groundwater basin within Napa County, whether or not the proposed improvement or new system may be reasonably expected to adversely affect reasonable and beneficial uses of groundwater, interfere with surface water flows, or cause other adverse changes to the physical environment adversely affecting the impacted groundwater basin.

(County Code § 13.15.060.D.)

The Ordinance also provides:

> The director of public works shall submit its comments in the form of a written appraisal of the application to the director. That appraisal shall assess the potential for significant negative impacts on the affected groundwater table, and assess potential adverse effects on reasonable and beneficial uses of groundwater, interference with surface water flows, or other adverse changes to the physical environment.
>
> The director shall only approve a groundwater permit after making any necessary environmental determination and concluding, 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. In making this determination, the director shall consider, but is not limited to, the following factors: impact on the affected groundwater table; adverse effects on the reasonable and beneficial uses of groundwater; implementation of Best Management Practices; or other adverse changes to the physical environment.

(County Code § 13.15.070.B, C.).

To implement this ordinance, on May 12, 2015, the County adopted an updated "Water Availability Analysis (WAA) - Guidance Document" ("Updated WAA Guidance"). (See Exhibit 16.) The Updated WAA Guidance establishes thresholds of significance, called "Water Use Criteria," for judging whether new water uses subject to CEQA may have significant effects. For the Milliken Sarco Tulocay ("MST') aquifer, the Updated WAA Guidance establishes "Water Use Criteria" of "0.3 acre-feet per acre per year or no net increase, whichever is less." If a new water use is below this criterion, the County assumes the use will not have a significant adverse effect on the aquifer.

The "0.3 acre-feet per acre per year" is the County's longstanding "fair use" threshold that

this writer has criticized in connection with many previous projects. The "no net increase, whichever is less" standard is new.

The County's fair use thresholds are described in the County Planning Department's *Water Availability Analysis: Policy Report* dated August 2007 (Exhibit 10) and in the current "Groundwater Permit Application" available on the County's web site (Exhibit 13). As noted, the "fair use" threshold for the "Groundwater Deficient Area" in the MST region is 0.3 acre feet per acre per year. (Exhibit 10, pp. 3, 8; Exhibit 13, pp. 4, 6; Exhibit 16, p. 7.) This threshold "was determined using data from the 1977 USGS report on the Hydrology of the Milliken Sarco Tulocay region. The value is calculated by dividing the "safe annual yield" (as determined by the USGS study of 1977) by the total acreage of the affected area (10,000 acres)." (Exhibit 10, p. 8, Exhibit 16, p. 20.) According to the County "It is assumed that if all consumers within the MST basin were to limit their consumption to 0.3 acre-feet per acre per year there will be sufficient groundwater for all properties within that area." (Exhibit 10, p. 3.)

The Planning Department's August 2007 *Water Availability Analysis: Policy Report* explains that:

> The threshold for the Valley Floor Area was determined in 1991 in the form of a Staff Report to the Board of Supervisors. The value of 1.0 AF/A/Year was established as the expected demand an average vineyard would have. It was noted that the Valley Floor threshold would have relatively little effect on neighboring wells.
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> The threshold for the Mountain Area [i.e., Hillsides] was established due to the uncertainty of the geology, and the increasingly fractured aquifer in the mountainous and non Napa Valley areas.

(Exhibit 10, p. 8) In other words, the threshold for the Hillsides area is not based on substantial evidence.[4]

Also, the County's "fair use" thresholds, including the MST threshold, are not valid because they do not take into account the fact that many previous owners may be using more than their threshold amount. Thus, the County's assumption that "all consumers within the MST basin [are]

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[4]It is also worth noting that the threshold for the Valley Floor Area (i.e., 1 acre-foot per acre per year) is not based on the reliable, available supply of groundwater, it is based on the expected demand an average vineyard would have. The 1991 staff report to the Board of Supervisors notes that no "extensive groundwater studies" have been conducted in many areas of the County. (Exhibit 11, p. 2.) The 1991 staff report summarizes the findings in the January 1991 Water Resources Study for the Napa County Region (Napa County Flood Control and Water Conservation District) (Exhibit 12).

to limit their consumption to 0.3 acre-feet per acre per year" (Exhibit 10, p. 3) is unsupported. As a result, later owners may not be able to use their "threshold" amount, or any amount of groundwater, without causing or exacerbating existing significant effects. In other words, if the purported "safe yield" of the MST aquifer is used up by allocating the entire purported "safe yield" to every acre in the MST at the rate of 0.3 acre feet year, the County's application of this allocation only to new uses of groundwater in the area cannot ensure that groundwater use does not exceed the purported "safe yield."

Further, the MST groundwater supply is in overdraft. The 2003 USGS analysis concludes:

> Long-term hydrographs for wells in the study area indicate that the greatest rate of decline occurred after the early 1970s and coincides with an increase in the number of wells drilled in the study area. Declining ground-water levels evident over a large part of the Milliken, Sarco, and Tulocay Creeks area is an indication that current (2000–2002) ground-water use exceeds average ground-water replenishment.

(Exhibit 15, p. 60.) Therefore, the idea that there is, or could be, a "safe yield" from this groundwater source that can safely supply future groundwater uses is untenable.

In sum, the fair use "thresholds" are not based on any empirical analysis of actual groundwater supply and demand, and cannot be substituted for the reasoned, fact-based analysis required by CEQA.

The IS/MND's discussion of the Project's incremental impacts on groundwater resources (at pp. 23-25) does not discuss the Project's compliance with either the traditional fair use thresholds used by the County or the new "no net increase, whichever is less" standard. Instead, the MND's threshold of significance for impacts on the MST aquifer is whether the project will use more groundwater than the amount of MST aquifer recharge which the property provides. This is the wrong threshold. The correct threshold is whether the additional loss of recharge to be caused by the project is "cumulatively considerable" considering the existing severe impact on the MST (i.e., it is in overdraft, or in the words of the MND, shows "increasing depths to groundwater" (MND p. 24)).

The IS/MND's discussion of the Project's potential cumulative impacts on groundwater resources are improperly based in large measure on the County's fair use thresholds. (MND, p. 38.) As noted above, these fair use thresholds are improper under CEQA.

The County's fair use thresholds and the MND's threshold of significance for impacts on the MST (i.e., whether the project will use more groundwater than the amount of MST aquifer recharge which the property provides) both conflate the issue of "environmental impact" with the issue of an overlying landowners' right to extract underlying groundwater. These issues are distinct. The fact a landowner may have a right to pump a certain amount of groundwater does not mean that pumping does not have a significant environmental impact that must be disclosed under CEQA.

Indeed, the letter report from geologist Greg Kamman (attached as Exhibit 7) demonstrates the Project may have a significant effect on MST groundwater resources because it will draw water that would otherwise recharge the MST aquifer. Thus, there is substantial evidence supporting a fair argument of significant effects, and therefore, under CEQA, a Negative Declaration is insufficient and preparation and certification of an Environmental Impact Report for this project is required before it can be approved.[5]

Applying the County's new "Water Use Criteria" of "0.3 acre-feet per acre per year or no net increase, whichever is less" leads to the same conclusion. By depriving the MST aquifer of recharge that it would otherwise receive, the Project's use of groundwater violates the "no net increase" standard. Therefore, again, an EIR is required.

Also, the cumulative impacts of this Project on the MST aquifer with the Walt Ranch Project may be significant, considering that both Projects will reduce recharge flows to the MST. (See Exhibit 24 [Letter from Greg Kamman to Tom Lippe re Walt Ranch Vineyard EIR, November 20, 2014].)

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[5] See Exhibit 17, p. 30 ["To the east of the MST Subarea a series of tuff exposures occur along Milliken, Sarco, Hagan, and Tulucay Creeks (Figure 2.10). Milliken, Sarco and Hagan Creeks flow into the MST Subarea where each crosses a large body of Sonoma Volcanics sedimentary deposits. Farrar and Metzger (2003) measured the greatest stream losses (16.5 acre-feet per day, (afd)) along Milliken Creek where alluvial fan and Sonoma Volcanics sedimentary deposits overlie a thick tuff deposit (Figure 2.8, A-A')"]; p. 33 ["Outside of the Napa Valley Floor, percolation of surface water appears to be the primary source of recharge. The rate of recharge within the MST has been shown to be significantly higher where streams and tributaries cross highly permeable outcrops, like the tuffaceous member of the Sonoma Volcanics, or shallow alluvium overlying highly permeable aquifer units. Direct infiltration of precipitation is a major component of recharge in the main Napa Valley. Recharge throughout much of the county is generally limited by underlying shallow bedrock of low permeability. An additional component of groundwater recharge, which has not been accounted for in previous studies, is deep percolation through joints, fractures, and faults. This type of recharge can be very difficult to quantify due to the highly variable size and distribution of faults, fractures, and joints in a given area"]; Exhibit 18, p. 29 ["The groundwater conservation ordinance makes a distinction with respect to permitting requirements within groundwater deficient basins of which one is currently recognized: the Milliken-Sarco-Tulucay area, or MST. Because the MST basin is considered a groundwater deficient area, additional regulations and review requirements under the CEQA have required application of "no net increase" and "fair share" principles in groundwater use associated with discretionary actions requiring county approval. The "no net increase" in groundwater use is required because there is no surplus water to support new projects without adverse environmental impacts. The County has also recently established a water conservation program in the MST to disseminate information relevant to the unique needs of this deficient area"].)

Finally, as noted above, the County's "fair use" thresholds (e.g., 0.3 acre-feet per acre per year or 0.5 acre-feet per acre per year) are directed to the allocation of competing overlying property rights to groundwater, not to assessing or disclosing environmental impacts under CEQA. The "fairness" of these thresholds supposedly arises from the fact the allocations are based on acreage owned in the watershed above the groundwater basin from which the groundwater will be pumped. Here, however, the project applicant will use groundwater derived from precipitation in the Milliken Creek/Nara River watershed that would otherwise recharge the MST aquifer to irrigate vineyard blocks located in the Capell Creek/Putah Creek/Sacramento River watershed, which is an entirely different river drainage. Using MST water out-of-basin is neither "fair" to other landowners in the basin nor environmentally insignificant.

Thank you for your attention to this.

Very Truly Yours,

Tom Lippe

Thomas N. Lippe

List of Exhibits

1. Napa Valley Hillside Vineyards: Cumulative Effects of Conversion of Upland Woodlands and Chaparral to Vineyards; Robert Curry Ph.D.; December 24, 2000. [AR 8829-8940; pdf 8946-8957.]

2. Letter dated May 7, 2008, from Dr. Robert Curry Ph.D. to Thomas Lippe re Napa River Watershed Sediment TMDL and Habitat Enhancement Plan. [AR 9563-9565; pdf 9580-9582.]

3. Dr. Robert Curry, Curriculum Vitae. [AR 8871-8874; pdf 8888-8891.]

4. Napa River Sediment TMDL and Habitat Enhancement Plan, Final Staff Report, San Francisco Bay Area Regional Water Quality Control Board; September 16, 2009. [AR 1577-1737; pdf 1594-1754.]

5. Excerpts from Responses to Comments on Napa River Sediment TMDL and Habitat Enhancement Plan, San Francisco Bay Area Regional Water Quality Control Board; January 16, 2007. [AR 458, 515-516; pdf 476-533.]

6. Memo to File From Mike Napolitano, San Francisco Bay Water Quality Control Board Re Napa River Sediment TMDL; November 24, 2008.

7. Letter from Greg Kamman to Tom Lippe re Kongsgaard Wine LLC – Atlas Peak Vineyard Conversion; May 14, 2015.

8. Letter and Report from Pat Higgins to Tom Lippe re Walt Ranch Vineyard EIR; November 20, 2014.

9. Milliken Creek Steelhead Habitat Modeling and Instream Flow Study, Napa County Resource Conservation District; December 2010.

10. *Water Availability Analysis: Policy Report*, County Planning Department; August 2007.

11. Memorandum to Planning Commission from Jeffrey Redding, Planning Director, re Public Works Department Report on Water Availability Analysis; February 27, 1991.

12. Water Resources Study for the Napa County Region, Napa County Flood Control and Water Conservation District; January 1991.

13. Groundwater Permit Application, Napa County; 2014.

14. Groundwater Hydrology of the Lower Milliken–Sarco–Tulucay Creeks Area, Napa County, California, USGS; 1977.

15. Groundwater Resources in the Lower Milliken–Sarco–Tulucay Creeks Area, Southeastern Napa County, California, 2000–2002, USGS; 2003.

16. Napa County, Water Availability Analysis (WAA) - Guidance Document, April 23, 2015.

17. Luhdorff & Scalamini, Technical Memorandum (TM 4), Napa County Groundwater Conditions and Groundwater Monitoring Recommendations; 2011.

18. Luhdorff & Scalamini, Technical Memorandum (TM 5), Groundwater Planning Considerations and Review of Napa County Groundwater Ordinance and Permit Process; 2011.

19. Dewberry, C. 2003. Development and Application of Anchor Habitat Approaches to Salmon Conservation: A synthesis of data and observations from the Napa watershed, California. Performed under contract to Ecotrust and the Friends of Napa River by Dr. Charles Dewberry, Florence, OR. 10 p.

20. Friends of Napa River. 2003. Map of reaches of high juvenile steelhead production in the Napa River. Prepared by Friends of Napa River in support of study by Dr. Charles Dewberry. Napa, CA 1 p.

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