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County of Napa Board of Supervisors
1195 3rd Street Napa, CA 94559
Clerk of the Board of Supervisors
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Via Electronic Delivery

Re: Walt Ranch Vineyard Conversion Project
Appeal of the August 1, 2016, Planning Director's certification of the EIR
and approval of the Agricultural Erosion Control Plan No. P11-00205-
ECPA proposed by the Walt-Brambletree Corporation

Dear Chair Pedroza and Members of the Board of Supervisors,

The following testimony is offered in rebuttal to the evidence presented on
11/22/16.

As an initial matter, Appellants believe that the Applicant's 11/22/16 Walt Powerpoint presentation (identified as #879488, containing 83 slides) included several slides that were not part of the Powerpoint document provided on the County's website for the 11/18/16 hearing (identified on 11/18/16 as #879252, containing 52 slides). There is also an updated Powerpoint presentation (identified as #879253, containing 52 slides) that also contains information not included in the 11/18 Agenda's Meeting Supporting Documents submittal. All Powerpoint presentations were required to be submitted to the County by 11/15/16. The County did not put Appellants on notice that new Powerpoint presentations had been submitted and the Applicant failed to abide by the terms set out by the County for the timely submission of Powerpoint presentations. The new Powerpoints contain new information and assertions.

Circle Oaks' Roads

The Applicant stated during their presentation on 11/22 that they would agree to limit Walt Ranch traffic to less than 64,000 lbs. during construction, which they say directly correlates to the weight of fully laden garbage trucks that service Circle

Oaks. They further argued that the current damage to Circle Oaks Drive could be attributable to the garbage trucks. Rather than seek accurate information for their argument from Berryessa Garbage Service, they conducted an internet research. Tom Gomez, of Berryessa Garbage confirms that their garbage trucks weigh 32,000 lbs. empty and cannot exceed 54,000 lbs., fully laden. Isn't it reasonable to conclude that trucks weighing 10,000 lbs. greater than the limitation set for garbage trucks will exacerbate road conditions to a greater degree than has been assessed? And as Appellants have consistently argued, the proposed mitigation relates only to the construction phase, not the ongoing operational phase of the Project. The new limitation does not cure this defect.

As documented in Appellants' letters and the expert testimony by KC Engineering Co., David Heitzman, and as numerous others testified, the Circle Oaks' roads are in a state of deterioration and potentially significant collapse with the *current* unrestricted traffic load, therefore, adding additional traffic (especially heavy vehicles) will accelerate road failure and exacerbate road conditions and the EIR failed to adequately analyze this or propose adequate mitigation.

KC Engineering provided substantial evidence that roads are failing in two specific areas within the Project's impact area on Circle Oaks Drive and that pavement damage and road subsidence will continue to worsen in both of these areas during the operation of the Project. This information has not been rebutted. Furthermore, the report finds that the addition of heavy truck traffic from the proposed Walt Ranch Vineyard operations to the roadway will significantly exacerbate the damage and increase the design Traffic Index; due to the poor condition of the roadway, rainfall and runoff could lead to embankment and road failure; and the EIR's proposed mitigation failed to provide for ongoing operational road impacts. KC Engineering further stated that, "It is assumed that all development traffic would be on Circle Oaks Drive, however, any alternative route should be evaluated for stability considering the historical instability of the roads in Circle Oaks Community." (Appellants' 9/1/16 letter, Exhibit 62, pg. 3.)

The EIR, therefore, failed to adequately analyze and provide mitigation for impacts to roads, including road failure, due to the Walt Ranch operations. (Appellants' 9/1/16 letter, Exhibit 1 at pgs. 26-27; Exhibit 24 at pgs. 808-810, 813, Rachel Mansfield-Howlett comment letters; Exhibit 11 at pgs. 618-619 and Exhibit 30 at pg. 1269, April 3 and 4, 2016, Mark Billings letters; Exhibit 12a at pgs. 620-623 and Exhibit 31a at pgs. 1,269-1,270, November 21, 2014 and April 3, 2016, David Heitzman letters; Exhibit 14a at pg. 734 and Exhibit 14b at pg. 735, November 21, 2014, Stephen Gort, General Manager, Circle Oaks Homes Association Draft EIR comment letter; Exhibits 19a at pgs. 747-749 and Exhibit 19d at pg. 776, November 21, 2015, Sue Wagner Draft EIR comment letter;

Exhibit 36 at pgs. 1,431-1,436, April 4, 2016, Sue Wagner comment letter; Exhibit 22 at pgs. 787-789, Bob McLeish Draft EIR comment letter; Exhibit 33 at pg. 1,413, July 22, 2014 Jack MacDonald, Circle Oaks County Water District Draft EIR comment letter; Exhibit 38 at pg. 1,455, March 23, 2016, Kathleen Maxim, Circle Oaks Homes Association, letter; Exhibit 39 at pgs. 1,458-1,461, April 4, 2016, Ron Tamarisk letter.)

Impacts to Circle Oaks' Wells

On 11/22/16, the Applicant repeated their assertion that if COCWD wells decline, there are a "menu of options" in the GWMMP to maintain adequacy of wells, without a determination of fault.

Appellants' letters and direct testimony at the 11/18/16 hearing reiterated the facts in evidence that thoroughly rebutted these assertions.

During a telephone conversation with the Applicants, the County, COCWD, and myself on April 28, 2016, I discussed the 'determination of fault' issue with the parties and requested that the Applicants/County remove the determination provision but the parties declined to do so. As explained, premising the implementation of "potential mitigation" measures on a finding of fault makes the mitigation vague and unenforceable; moreover, while the fault or cause is being determined, the community of Circle Oaks could already be experiencing shortfall. The EIR failed to analyze the impacts to Circle Oaks wells and the proposed mitigation is inadequate, incomplete, unenforceable, and unlawfully defers analysis and mitigation to a future time.

The proposed EIR mitigation fails to set performance standards for impacts to Circle Oaks wells and defers analysis to a future time and "potential mitigation" measures laid out in the GWMMP are premised on a later determination that impacts to groundwater resources are due to the operation of Walt Ranch and also lack identifiable performance standards. (Draft EIR 2-41; GWMMP, Appendix R, pgs. 13-14; 8/1/16, Updated GWMMP, pg. 49.)

As Appellants assert and the Applicant admits, trigger points should be established to determine when COCWD wells will be impacted and enforceable mitigation proposed, *before project approval, not afterwards*, but none have been established. Appellants have also stated that COCWD and its hydrologist should be consulted when trigger points are being established, but the current GWMMP does not provide any ability for COCWD to participate in establishing appropriate trigger points. Furthermore, the EIR must analyze the efficacy of this mitigation and has not.

The Applicant claims that they shouldn't be required to guarantee water for COCWD wells but Appellants do not ask this – instead Appellants assert the impacts of

the Walt operation on Circle Oaks' wells must be mitigated by the Applicant, not Circle Oaks' Residents, or their Water District.

The Applicant's presentation stated that well monitoring and pump testing were undertaken in 2009 to determine if there was any impact on neighboring wells, however, an out of date pumping test is not relevant to today's conditions, given the prolonged (5) year drought which occurred after the pumping test was completed. The pumping test did not monitor COCWD wells, therefore its validity as to impact, if any, regarding the Circle Oaks wells remains at issue. Accordingly, no evidence exists as to what adverse consequences may occur from drawn down for an extensive period of time, let alone the (96) hours that the test was conducted. Furthermore, evidence submitted by Greg Kamman found that the aquifer is more compartmentalized than previously anticipated, therefore the size of the aquifer in both volume and acreage is significantly less, resulting in a smaller re-charge zone than has been previously assessed. The significance of this point is that the smaller re-charge zone will place the aquifer in an unsustainable deficit once Walt commences pumping at the permitted rate of up to 144.5 acre-ft. per year.

Appendix Q of the EIR shows that the District has provided data to the County and has attempted to cooperate by providing records and data, when available, yet the Applicant claims without support that representatives tried to contact Circle Oaks County Water District Management over 30 times to discuss the District's well logs without success. As noted in testimony by the District on 11/18/16, the District management underwent a complete turnover during the period between 2008-2009, the time period the Applicant references. The District also underwent a change in management from an in house general manager to Phillips & Assoc., and then recently, in 2014, back to in-house management. During the process, data was lost and the current management found that past records had not been well maintained. Despite these difficulties, the current Board has tried to retrieve the lost data and organize their systems as quickly as possible. The District learned in recent months that Circle Oaks Well #1 had a data recorder, which enabled them to retrieve, review, and share well data from 2010 to the present. The District has provided this data and provided provisional well water trigger point levels, which still require further review by the District's geo-hydrologist to confirm that the suggested trigger points are appropriate.

The Applicant has not submitted well logs for Walt Ranch

Chair Pedroza claimed that this issue was not raised by Appellants but the following shows that the issue was raised and this objection along with the following rebuttal is properly before the Board.

Since September 2014, Appellant, Living Rivers Council requested the Applicant

to produce Walt Ranch's Well Driller Logs but they refused to provide them. (Appellants' 9/1/16 letter, Exhibits 51-52.) This request was renewed in November, 2014. (*Id.*, Exhibit 53.) The importance of the need to review the Walt Ranch Well Driller Logs was explained in the November 20, 2014, report by Greg Kamman, attached as, Exhibit 7, at page 10 and referenced in Appellants' September, 1, 2016, letter.

Typically, I rely on driller's boring logs and cross-sectional profiles of geologic conditions to better understand the subsurface hydrogeology of a site. This information is lacking in the RCS hydrogeology report and DEIR. Thus, in order to gain a more complete understanding of the underlying geology/hydrogeology conditions at the site and fully review/evaluate RCS's hydrogeology study, it's necessary for me to obtain and review the drillers boring logs for the wells reference above. (Excerpt from Greg Kamman Report, dated November 20, 2014, Exhibit 7 to Appellants' 9/1/16 letter, pg. 10.)

Furthermore, as set forth in Thomas Lippe's written comments which were submitted at the time of the hearing on the Final EIR, the process described in Mitigation Measure 4.6-4 and Appendix R were not public and "deferring that process to post-approval, the public is deprived of its ability to participate in the analysis of ground water availability and the causes of shortages and the appropriate county response." (Appellants' 9/1/16 letter, Exhibit 27, pg. 835.)

Finally, the Applicant complains about data not being submitted for Circle Oaks' wells and complains when the Water District then submits the data, but to date, the Applicant has yet to provide their data. This is information that the County and Appellants' experts need and it has not been provided, despite numerous requests.

Noise and Acoustics/Blasting and Vibration

The Applicant's claim that Napa's right to farm provision provides a blanket approval for all of Walt's operations – regardless of the Project's environmental impacts – is unavailing. Clearly, the right to farm provision is limited by the mandates of CEQA that require discretionary projects be subjected to environmental review to consider their potentially significant impacts and impose feasible mitigation measures that reduce impacts prior to their adoption.

Substantial evidence of the Project's noise impacts and the EIR's failure to analyze and mitigate this impact was submitted by Eric Yee, Circle Oaks' residents, and others. Representatives from the community of Circle Oaks met with each member of the Board of Supervisors as well as conducting on site tours of the community just prior to the 11/18 hearing on this matter. During these meetings, a list of possible mitigations were provided and discussed as being appropriate to include as conditions of approval.

Standard of Review and Case Law

In laying out the substantial evidence standard of review applicable to the determination of the sufficiency of the agency's *conclusions*, the Applicant does not fully explain the second prong in determining abuse of discretion, whether the agency failed to operate in the manner required by law within statutory and regulatory requirements regarding the *content* of the EIR, decided *de novo* by a reviewing court. (CCP § 1094.5; Pub. Res. Code § 21168; *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427, 435; *Association of Irrigated Residents v. County of Madera* (2004) 107 Cal.App.4th 1383, 1391; *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215.) *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, 76-77, explains that abuse of discretion is found if an EIR did not contain information required by law and that the omission precluded informed decisionmaking by the agency or informed participation by the public.

Appellants highlight just a few of the CEQA rules governing the adequacy of the EIR and the many cases that overturned an agency's decision due to inadequately described or analyzed mitigation measures.

An EIR must propose mitigation measures to minimize significant environmental effects. (Pub. Res. Code §§ 21002.1(a), 21100(b)(3); Guideline § 15126.4(a)(1.) "Mitigation" as defined in Guidelines § 15370 does *not* include "study": but encompasses avoidance of impacts by "not taking a certain action;" minimizing impacts by reducing the degree or magnitude of the action; rectifying the impact by "repairing, rehabilitating, or restoring the impacted environment;" reducing or eliminating the impact over time by preservation and maintenance operations; and compensating for the impact by replacing or providing substituted resources. (Guideline § 15370.)

An EIR is required to identify and examine "the full range of feasible mitigation measures." (*League for Protection v. City of Oakland* (1997) 52 Cal.App.4th 896, 909.) Where several measures are available, the basis for selecting a particular measure should be identified. (Guideline §15126.4.) Any significant effects of the mitigation measures themselves should be analyzed in the EIR. (*Ibid.*)

The definition of mitigation does not include studying or monitoring an impact or preparing plans to reduce adverse effects; studies must occur within the EIR and cannot be deferred. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 [mitigation conditions requiring future management plans for listed wildlife species improperly deferred environmental review and rendered EIR inadequate.].) Mitigation measures should be specifically described in the EIR and not

left for future formulation. (Guidelines § 15126.4(a)(1)(B).)

Agencies should not use mitigation measures as a device to avoid disclosing project impacts. (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195-196 [EIR was inadequate because it did not evaluate impacts of supplying water to large new development project and instead included a mitigation measure stating that the project would not proceed at any point that adequate water was not available.].) Similarly, “Cursorily described” mitigation measures are disallowed. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.) *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260 held an EIR inadequate for deferring mitigation.

Due to the critical resources at stake, Appellants urge the Board to reject the EIR, require it to be revised and re-circulated consistent with the objections lodged, and to consider definite, reasonable, and enforceable mitigation consistent with the requirements of CEQA.

Sincerely,



Rachel Mansfield-Howlett
Attorney for Appellants, COHA and COCWD

cc: Laura Anderson, Napa Deputy County Counsel