

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

2
3 In the Matter of the Appeals)
4 of HIDDEN VALLEY LAKE)
WATERSHED)
5 [Wild Diamond Vineyards Project-)
6 AB 16-04 and 16-08])
7 _____)

FINDINGS OF FACT AND DECISION

8 This proceeding was commenced by virtue of appeals by the Hidden Valley Lake
9 Watershed (the "Appellant") of the Planning Commission decisions to certify an
10 Environmental Impact Report ("EIR") and to adopt the Water Supply Assessment (AB 16-04)
11 and to approve a Major Use Permit and Grading Permit for the Wild Diamond Vineyard
12 Project (the "Applicant") which allow for the development of a winery, a tasting room open
13 to the public, an interpretive center, planting of approximately 80 new acres of vineyards,
14 and to allow up to 35 special events per year with amplified outdoor sound (the "Project").

15 A duly noticed public hearing on the appeal was held before this Board on December
16 6, 2016, at which time evidence, both oral and documentary, was presented. Based upon the
17 evidence and applicable law, we find the following:

- 18 1. That the Lake County Planning Commission held a public hearing to consider the
19 Project EIR and Water Supply Assessment on October 1, 2016. At that hearing, the
20 Planning Commission made a unanimous decision to certify the EIR and adopt the
21 Water Supply Assessment.
- 22 2. That the Lake County Planning Commission held a further public hearing on
23 November 10, 2016 to consider the Project's Major Use Permit, Grading Permit,
24 and Lot Line Adjustment. At that hearing, the Planning Commission unanimously
25 approved the Major Use Permit (UP 16-02), the Grading Permit (GP 16-029), and
26 the Lot Line Adjustment (LLA 16-08).
- 27 3. That the Project is located at 15015, 15087, 15373, 15375, 15591, 15663, and
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1 15807 Spruce Grove Road in Middletown, California. The proposed Project
2 consists of the planting of approximately 80 acres of new vineyards, the construction
3 of a winery with the capacity to produce up to 52,800 cases of wine per year, the
4 construction of a wine-tasting room with a commercial kitchen that would be open
5 to the public, the creation of an interpretative center. These development activities
6 would occur on approximately 90 acres. Additionally, the proposed Project would
7 host a maximum of 35 special events per year. Such events would include wine and
8 wine industry promotions, weddings, charitable events, and other facility rentals.
9 The proposed Project would include the redevelopment of interior roads to
10 accommodate emergency vehicle access, the installation of a new water tank for
11 facility uses, and the development of a new onsite wastewater disposal system.

12 4. That the Board of Supervisors has conducted a de novo hearing in this matter as
13 required by Section 58.34 of the Lake County Zoning Ordinance.

14 5. That the Appellant is the Hidden Valley Lake Watershed which has appealed the
15 Planning Commission's certification of the Project EIR and the approval of the
16 Water Supply Assessment (AB 16-04) and has appealed the Planning Commission's
17 approval of the Major Use Permit (UP 16-02) and Grading Permit (GP 16-029) for
18 the Project (AB 16-08). For purposes of the proceedings before this Board, these
19 appeals were consolidated for hearing which met with no objection from any party.
20 The grounds for the consolidated appeal in summary include:

21 a. The Final Environmental Impact Report ("FEIR") failed to adequately
22 disclose, analyze, and address the environmental impacts of this Project. The
23 FEIR failed to adequately address water quality impacts. The Water Supply
24 Assessment was touted as an additional safeguard regarding water supply,
25 however, County staff noted that the Assessment provides no information as
26 to the proposed pumping rate, during of pumping, the projected extend of the
27 cone of depression, or if the drawdown will have any significant impacts on
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1 nearby springs, water bodies or other water users. This indicates the
2 certification of the FEIR is premature. The EIR should be revised and re-
3 circulated to address its insufficiencies, review alternatives to the Project,
4 and establish the mitigation measures necessary to reduce the environmental
5 impacts.

- 6 b. Approval of a major use permit for this Project cannot be support under
7 subdivision (a) of Article 5 1.4 of the Lake County Zoning Ordinance. This
8 Project will be detrimental to the health, safety, morals, comfort and general
9 welfare of the persons residing in the Hidden Valley Lake Watershed. The
10 hydrology/water qualify conditions are inadequate. The buffer to address
11 pesticide drift is inadequate. Noise disturbance, traffic safety, and the
12 impacts of burning have not been adequately addressed.

- 13 6. Staff of the Community Development Department presented evidence both
14 documentary and testimonial. Staff submitted a staff report, dated November 18,
15 2016 and Exhibits A through I thereto. Said exhibits included the Appeals AB 16-04
16 and 16-08, Planning Commission staff reports dated October 3, 2016 and October
17 28, 2016, Site Plans, Use Permit Conditions of Approval, Grading Permit
18 Conditions of Approval, the Final Environmental Impact Mitigation and Monitoring
19 Plan, and the Project Description. Testimony included:

- 20 a. Community Development Department Associate Planner Joshua Dorris made a
21 power point presentation and presented the staff report. Mr. Dorris testified that
22 there were two appeals under consideration. Appeal 16-04 related to the
23 certification by the Planning Commision of the Project Environmental Impact
24 Report and adoption of the Water Supply Assessment on October 13, 2016. Appeal
25 16-08 related to the approval of the Major Use Permit and Grading Permit for the
26 Project which had been approved by the Planning Commission on November 10,
27 2016. Mr. Dorris testified that in Appeal 16-04 relating to the EIR and Water
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1 Supply Assessment, the Appellant raised issues of the geology and hydrology
2 impacts, pesticide drift, the 200-foot buffer, and that the EIR should be revised and
3 recirculated. In Appeal 16-08 relating to the Major Use Permit and Grading
4 Permit, Mr. Dorris noted that similar issues were raised: geology and hydrology
5 impacts, pesticide drift, and the contention that the Board should consider the entire
6 record involving this Project. Mr. Dorris noted that the lot line adjustment
7 approved for this Project by the Planning Commission on November 10, 2016 was
8 not the subject of an appeal. Mr. Dorris testified that the Project site is
9 approximately 323 acres. The Project site is zoned Rural Lands which allows
10 vineyards by right and, by major use permit, allows large wineries, tasting rooms,
11 and special events. A grading permit is necessary in to expand an existing vineyard
12 by 80 additional acres.

13 b. Community Development Director Robert Massarelli testified that while
14 comments were received that the study of geology and hydrology impacts was
15 inadequate because a comprehensive survey of current water resources should be
16 done, it is the opinion of staff that the Water Supply Assessment accomplishes that
17 survey. Further, while qualitative groundwater modeling has also been suggested,
18 the County's past practice has been monitoring rather than modeling and
19 groundwater monitoring is a condition of approval of the Project Use Permit. Mr.
20 Massarelli testified that concern had been raised about pesticide drift, but there is no
21 evidence that the state program for managing pesticides is not adequate and a 200-
22 foot buffer will be used which is acceptable to the County Agricultural
23 Commissioner. Concerns as to noise have been addressed by limitations to the
24 number of special events and the hours for those events. Burning impacts have been
25 addressed by a condition of approval of the Use Permit which requires chipping to
26 the extent feasible. As for concerns as to traffic safety, a traffic study was done
27 which shows the project is well within the requirements of the County General Plan.
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1 c. Lake County Agricultural Commissioner Steve Hajik testified that a 200-foot
2 buffer for pesticide application of the type used for this Project is fine.

3 d. Lake County Air Pollution Control Officer Doug Gearhart testified that air
4 pollution as a result of this Project is fairly minimal and within state law standards.

5 7. On behalf of the Appellant, Elizabeth Montgomery submitted detailed written
6 objections to this Project and attachments. Ms. Montgomery testified that the
7 Project EIR violates both the spirit and substance of CEQA and, as more particularly
8 explained in her written comments, this Project should not forward with the current
9 EIR and the current mitigations. Two experts, geologist David Adams and
10 hydrologist Matt Hagemann have opined that the EIR is inadequate to meet CEQA
11 requirements relating to the water supply and quality aspects of the Project. Ms.
12 Montgomery stated that the written opinions of these experts was included with her
13 written comments, but that neither expert was present at these proceedings. Ms.
14 Montgomery testified that Wild Diamond made the decision to locate its vineyard
15 near a densely populated housing development. Ms. Montgomery acknowledged
16 that the Project site is zoned for that use, but the decision to zone the area as it is
17 was made by the County. Ms. Montgomery testified that Project Applicant
18 somehow overrode the Agricultural Commissioner's standard requirements of a 300
19 foot buffer for pesticide application. As for impacts from burning, a condition
20 requiring chipping to the extent feasible was not adequate. Ms. Montgomery
21 testified that the Board should send a message to the people of Lake County that
22 they and the environment they live in matter as much as monied interests and a little
23 tax revenue.

24 8. The Applicant presented evidence, both documentary and testimonial:

25 a. Tina Wallace, legal counsel for the Applicant, testified that the Project Applicant
26 is bound by the Project description and the County can legally enforce that. CEQA
27 only allows mitigation measures for Project impacts that are determined to be
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1 significant impacts. However, where the public had still had concerns, those
2 concerns were addressed by conditions of approval of the Major Use Permit. The
3 groundwater availability study that was done for the EIR found groundwater
4 availability to be adequate. The County, through a third-party, conducted a peer
5 review of that study and agreed. Further, while there was no requirement for a
6 Water Supply Assessment, that assessment was done and determined there was
7 ample groundwater. Drainage areas, wetlands, and spring areas were mapped and the
8 Project was pulled back by modifying the setbacks in excess of the County General
9 Plan requirements. In regard to wildlife corridors, there is perimeter fencing
10 already on the property. This Project makes no changes and adds no new fencing.
11 Ms. Wallace testified that the rigorous and thorough studies which have been done
12 in regard to this Project indicate the respect the Applicant has for the community.

13 b. Mark Chaney, SHN geologist and the Project development lead, presented a
14 power point and testified that the Project is a complete, single project with six
15 elements: 80 acres of new vineyards, a winery with a production capacity of 52,800
16 cases of wine, a 14,300 square foot tasting room, non-special event tours, a
17 maximum of 35 special events per year, and an interpretative center. Studies
18 completed for the Project show that there is enough groundwater, not only for the
19 Project, but for adjacent uses for the next 20 years. In regard to the Appeal relating
20 to the EIR and the Water Supply Assessment, the Mr. Chaney testified that the EIR
21 did review and respond to substantive comments on the draft and final EIR from the
22 public, County staff, and the Planning Commission. Mr. Chaney noted that when the
23 Project application was submitted to the County, the County determined to process
24 the Project with a mitigated negative declaration. To address any concerns of the
25 public, the Applicant wanted to proceed with an EIR. Mr. Chaney testified that the
26 EIR does disclose environmental impacts and makes a determination as to
27 significant impacts and provides mitigation measures to reduce the impacts to a less
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1 than significant level. The analysis of groundwater and potential project impacts
2 were evaluated by a licensed professional who found the impacts to be less than
3 significant. The Water Supply Assessment was prepared and provided in the FEIR in
4 addition to the groundwater supply assessment in the DEIR. Impacts from the
5 Project were determined to be less than significant so no mitigation measures were
6 required. Feasible alternatives were developed in consultation with the Applicant
7 and the County and are documented in the FEIR. The County can only modify or
8 develop mitigation measures to reduce significant impacts from the project. In
9 regard to the Appeal relating to the Major Use Permit and the Grading Permit, Mr.
10 Chaney testified that conditions of approval are the appropriate mechanism for
11 evaluating future conditions. The conditions of approval are the appropriate means to
12 add permit conditions that provide additional control by the County over projects.
13 County has great latitude over use permit and grading permit conditions. Runoff of
14 chemicals and sediment is controlled by application timing, vineyard design, cover
15 crops, and adjacent vegetation buffers. Air quality impacts for burning were found
16 to be less than significant and require County burning permits. Applicant has agreed
17 to chip to the maximum extent feasible to reduce vegetation burning.

18 c. Mike Delmanowski, a hydro-geologist, testified that two studies were done for
19 this Project relating to groundwater availability. The first study focused on water
20 supply and the potential impacts associated with that. As part of that study, he
21 looked at what development is currently in the project area and what future
22 development there could be. Mr. Delmanowski testified that he performed a
23 detailed assessment of the aquifer geometry in the Project area. Once the size of
24 the aquifer was established, a water budget analysis was performed. The difference
25 between the water inflow and the water outflow and spring activity is the water
26 available for groundwater recharge. Mr. Delmanowski testified that there was a
27 positive water balance for the average year and for a 10- year average. A positive
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1 water balance indicates the project is appropriate from a water balance perspective.
2 There are five wells on the Project site and with the exception of one of them, the
3 wells produce well. The water supply is sufficient to supply the project. The Water
4 Supply Assessment is a bit more specific type of study in that you are trying to
5 define an area where there may be potential impacts and constrain that area to be as
6 small as possible. That assessment considered three scenarios: Normal water year,
7 single dry water year, and multiple dry water years. They found a positive water
8 balance for the normal year and multiple dry years scenarios. Mr. Delmanowski
9 noted that there was a negative water balance for the single dry year, however, when
10 that is considered in the context of the storage capacity of the aquifer, it is a very
11 small percentage of the total. The Water Supply Assessment indicates sufficient
12 groundwater for the area.

13 9. Testimony was received from several members of the public, including but not
14 limited to, Diana Merrill, Julie Kreis, and Tom Nichols who opposed approval of
15 the Project and supported the recommendations for further hydrology studies.

16 10. That the staff of the Community Development Department recommended that this
17 Board deny these appeals and uphold the Planning Commission's decisions to
18 certify the Project EIR and approve the Water Assessment Study as well as to
19 approve the Major Use Permit and Grading Permit.

20 11. That this Board finds, based on substantial evidence in the record of these
21 proceedings as to this project:

22 a. That as to the Appellant's challenge to the certification of the EIR and the
23 approval of the Water Assessment Study(AB 16-04), the Appellant has failed
24 to offer sufficient evidence to support this appeal. As described
25 hereinbelow, substantial evidence supports the certification of the EIR and
26 approval of the Water Assessment Study.

27 b. That as to the Appellant's challenge to the approval of the Major Use Permit
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1 and Grading Permit for the Project (AB 16-08) , the Appellant has failed to
2 offer sufficient evidence to support this appeal. As described hereinbelow,
3 substantial evidence supports the ability of this Board to make the findings
4 necessary to approve this Major Use Permit and the Grading Permit.

5 12. That this Board has considered and incorporates by reference the Community
6 Development staff memoranda and exhibits thereto submitted to this Board for the
7 hearings on this matter as well as the written submissions by the Appellant, the
8 Project Applicant, and members of the public for the public hearing of this matter.

9 13. That for purposes of these proceedings, the DEIR, the FEIR and all technical reports
10 and studies made available for public review may be referred to as the “EIR”.

11 14. That the EIR was prepared, published, circulated, reviewed, and completed in
12 accordance with the requirements of CEQA, the CEQA Guidelines, and the Lake
13 County Zoning Ordinance and constitutes an adequate, accurate, objective, and
14 complete Final EIR in accordance with the requirements of CEQA, CEQA
15 Guidelines, and the Lake County Zoning Ordinance.

16 15. That all individuals, groups, and agencies desiring to comment were given adequate
17 opportunity to submit oral and written comments on the Draft EIR, Final EIR, and to
18 submit written comments on the adequacy of the Final EIR for certification as
19 described in the staff report to the Planning Commission dated October 3, 2016.
20 These opportunities for comment meet or exceed the requirements of CEQA.

21 16. That all comments raised during the public review and comment period on the Draft
22 EIR and Final EIR, the public hearing on the adequacy of the Draft EIR conducted by
23 the Planning Commission were responded to adequately.

24 17. That the Final EIR consists of public comments and responses to public comments,
25 including minor modifications to DEIR and makes only minor and insignificant
26 technical changes, clarifications or additions to the EIR, and therefore do not
27 constitute “significant new information” within the meaning of Public Resources
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1 Code Section 21092.1 and the modifications and/or information added to the EIR
2 have not deprived the public of a meaningful opportunity to comment upon a
3 substantial adverse environmental effect of the project or a feasible way to mitigate
4 or avoid such an effect that the project's proponents have declined to implement.
5 Substantial evidence exists in the EIR and administrative record to support a
6 decision not to recirculate the EIR.

7 18. That the Board of Supervisors was presented with all of the information in the
8 administrative record, testimony, and EIR documents for the EIR, and the Board has
9 reviewed and considered this information and the EIR prior to taking action on the
10 proposed Project and finds the EIR reflects the independent judgment and analysis
11 of the Board of Supervisors.

12 19. That the EIR has been completed in compliance with the intent and requirements of
13 CEQA and the State CEQA Guidelines, and the County EIR process, and represents
14 the best efforts of Lake County to undertake all reasonably feasible and prudent
15 actions to discover, analyze, disclose, and mitigate all potentially significant
16 environmental impacts of the proposed Project.

17 20. That where the EIR identifies certain environmental impacts as having no impact or
18 are less than significant and do not require mitigation, as identified in the staff
19 report to the Planning Commission dated October 3, 2016, this Board concurs and
20 finds that said identified environmental impacts of the proposed Project would have
21 no significant impact on the environment.

22 21. That where the EIR discloses that the proposed Project may pose certain significant
23 adverse impacts, changes have been required and/or incorporated into the proposed
24 Project that will mitigate these impacts to the less than significant levels set forth in
25 the EIR and as identified in the staff report to the Planning Commission dated
26 October 3, 2016, and this Board therefore finds that any said significant adverse
27 environmental impacts of the proposed Project have been eliminated or reduced to
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- 1 the point where they would have no significant effect on the environment.
- 2 22. That the EIR considered a reasonable range of project alternatives, including a “no
3 project” alternative. An alternative that does not meet basic project objectives is not
4 required by CEQA.
- 5 23. That the EIR makes a good faith effort to respond to comments and describes the
6 approach used by the consultant to categorize those responses as process
7 comments, opinion, and questions regarding the adequacy of the EIR and that all
8 comments relating to the adequacy of the EIR, the text changes, and revisions to
9 mitigation measures have been incorporated into the Final EIR.
- 10 24. That the Water Assessment Study for the proposed Project is adequate and complete
11 and hereby adopted by this Board.
- 12 25. That the Lake County Board of Supervisors certifies that the EIR for the proposed
13 Project is adequate and complete in compliance with CEQA, and the State CEQA
14 Guidelines, and is adequate and complete for consideration in making a decision on
15 the merits of the project.
- 16 26. That the Mitigation Monitoring and Reporting Program is hereby adopted.
- 17 27. That Major Use Permit conforms to the plans, policies, requirements and standards
18 of the Lake County General Plan, the Lower Lake Area Plan, and the Lake County
19 Zoning Ordinance.
- 20 28. That the County has a Right to Farm Ordinance which declares that it is the policy of
21 Lake County to preserve, protect and encourage the development and improvement
22 of its agricultural land.
- 23 29. That the Lake County Planning Commission determined that the proposed Major
24 Use Permit (UP 16-02) met the findings required for approval delineated in Section
25 51.4 of the Lake County Zoning Ordinance and this Board expressly reaffirms those
26 findings based upon the record of these proceedings, which includes but is not
27 limited to the analysis provided in the staff report to the Planning Commission dated
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October 28, 2016, as follows:

- a. The establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County;
- b. The site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed;
- c. The streets, highways, and pedestrian facilities are reasonably adequate to safely accommodate the specified proposed use;
- d. There are adequate public or private services, including but not limited to, fire protection, water supply, sewage disposal, and police protection to serve the project;
- e. The Project is compatible with surrounding land uses and is in conformance with the applicable provisions and policies of the Lake County Code, the General Plan, the Lower Lake Area Plan, and the Lake County Zoning Ordinance;
- f. That no violation of Chapters 5, 17, 21, 23, or 25 of the Lake County Code currently exists on the property.

- 30. As to the Major Use Permit (UP 16-02), this Board finds that the mitigation measures recommended in the EIR have been implemented through the Use Permit conditions and the Mitigation Monitoring and Reporting Program prepared for the EIR. Additionally, some of the proposed Project's mitigations are contained in the Project description and the Board may reasonably presume that said mitigations will be implemented.
- 31. That as to the Grading Permit (GP16-029), Chapter 30 of the Lake County Code, the Grading Ordinance, authorizes the approval of a grading permit when the Community Development Department has determined that the nature and extent of the proposed grading will be in accordance with those required findings set forth in section 27.2

1 of Chapter 30. This Board hereby concurs with and adopts those findings set forth
2 on pages 20 to 22 of the staff report to the Planning Commission dated October 28,
3 2016, for the reasons therein stated.

4 32. Based upon the foregoing and for the reasons set forth hereinabove, this Board
5 denies the Appeal AB 16-04 and Appeal AB 16-08.

6 **NOTICE TO APPELLANT:** You are hereby given notice that the time within which
7 any judicial review of the decision herein may be sought is governed by the provisions of
8 the Code of Civil Procedure Section 1094.5.

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10 Dated: _____

CHAIR, Board of Supervisors

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14 ATTEST: CAROL J. HUCHINGSON
15 Clerk to the Board
16 of Supervisors

APPROVED AS TO FORM:

17 By: _____
18 Deputy

ANITA L. GRANT
County Counsel