

ATTACHMENT A

GROUNDS OF APPEAL AND STAFF RESPONSES

ATTACHMENT A

Raymond Grounds of Appeal and Staff Responses

Beckstoffer Vineyards, Frank Leeds, and Kelleen Sullivan (together Appellants) generally assert that the Planning Commission's approval of the Raymond-Ticen Ranch Winery Use Permit Major Modification No. P15-00307-MOD (the Raymond-Ticen Ranch Winery, the Winery or the Project) violated numerous County policies, ordinances and rules intended to protect agriculture, and public health, safety and welfare and that an Environmental Impact Report (EIR) is required. The following outlines the basis of the Appeal as contained in Appellants' Appeal dated April 11, 2017. (See Attachment A.) For convenience, Staff has provided a summary below, but recommends that the Board review the actual Appeal for details.

Appeal Ground No. 1: Appellants assert that the previously unauthorized improvements violate the Winery Definition Ordinance (WDO) because they transformed the winery into a hospitality facility with no corresponding increase in wine production using Napa grapes. Appellants claim that the WDO's 75 percent Napa grapes rule aims to ensure that any expansion beyond an existing winery development area is accompanied by an increase in use of Napa grapes. Allowing Raymond Winery to increase marketing activities without increasing wine production undermines the purpose of the WDO. According to Appellants, the changes requested by Tom Blackwood (Applicant) would not have been approved if Raymond Vineyards had complied with the law and sought County approval *prior* to expanding.

Staff Response:

There is simply no authority in the Napa County Code (NCC) or General Plan in support of Appellants' position that the Project violates the WDO because the Winery's expansion will not increase the market for Napa grapes and that the purpose of the WDO is undermined by allowing marketing expansion without also increasing wine production. The County has no rules, policies or regulations that *require* an applicant to increase production capacity when making a request to increase hospitality spaces. The 75 percent Napa fruit requirement is triggered when wine is produced "as a result of the expansion". (See NCC 18.104.250 (C)(2).) The Project is not proposing any increase in production as a result of the expanded hospitality areas nor is Applicant required to do so under the WDO.

Appellants opine that the requested use permit modification would not have been approved if it had been pursued proactively in 2009 (when the property changed ownership to the current winery operator) rather than retroactively now. Use permits and modifications thereto require discretion of the decision-making body; and whether any prior membership of the Planning Commission would have made the necessary findings to approve or to deny the request is purely a matter of speculation and irrelevant. However, the proposed modification complies with the provisions of the WDO regardless of whether the application was submitted now or back in 2009.¹ Specifically, the Project:

¹ See February 1, 2017, Planning Commission Staff Report.

(1) Includes an accessory to production ratio that does not exceed 40 percent. Under Raymond Winery's current entitlements, the accessory to production ratio is approximately 17 percent. With the site modifications requested, the accessory to production ratio across both the Ticen Ranch and Raymond sites would be 32 percent and would remain below the 40 percent maximum allowed in NCC Section 18.104.200.

(2) Would result in winery coverage of approximately 12.1 acres across both the Raymond Winery and Ticen Ranch sites, where a maximum of 15 acres of coverage is allowed on the combined 86.2 acres of both sites.

(3) Would comply with all setback requirements. More specifically, on the Raymond Vineyard parcel, winery building setbacks would be 1,400 feet from the centerline of Zinfandel Lane (where 300 or more feet are required under NCC Section 18.104.230); and 1,300 feet from the rear property line, 20 feet from the east side property line, and 85 feet from the west side property line, where 20 or more feet is the required setback from each respective property line (NCC Section 18.104.010). On the Ticen Ranch parcel, the residence proposed to be converted to winery accessory use would have a setback of approximately 375 feet from the centerline of State Route 29, where 300 feet is the minimum setback for existing historic structures as allowed by NCC Section 18.104.235. Other building setbacks on the Ticen Ranch parcel would remain 600 feet from the rear property line, 425 feet from the north side property line, and 375 feet from the south side property line, where 20 or more feet is the required setback from each respective property line.

(4) Would result in the continued operation of a winery on a single parcel with a combined acreage of approximately 86 acres, where the minimum parcel size for a winery established prior to 1991 is one acre per NCC Section 18.104.240(B).

Based on the above analysis of the Project's consistency with the WDO requirements, it is likely, though purely hypothetical, that Staff would have made a recommendation for approval to the Planning Commission had the Project come forward in 2009.

Appeal Ground No. 2: Appellants contend that the proposed outdoor picnic areas and Biodynamic Garden were improperly excluded from the accessory use calculation and that in B Cellars and Titus Vineyards, the Commission included outdoor terraced spaces in the accessory use calculations.

Staff Response:

Regarding the calculation of outdoor accessory areas, since adoption of the WDO, the County's practice has been that outdoor areas used for visitation and/or tasting are not counted in the calculation of accessory use area to wine production space. NCC Section 18.08.020 defines accessory uses as: "Unless provided otherwise in this title, accessory uses may be conducted in the primary structure or in structures other than the primary structure." The section goes on to say: "Structures constituting an accessory use that are related to a winery are further limited to the extent provided by NCC Section 18.104.200." In both cases, accessory uses are only addressed insofar as they are conducted within structures. Outdoor accessory uses are not restricted.

Section 18.104.200 states: “The maximum square footage of structures used for accessory uses that are related to a winery shall not exceed forty percent of the area of the production facility. "Production facility" for the purpose of this section means crushing, fermenting, bottling, bulk and bottle storage, shipping, receiving, laboratory, equipment storage and maintenance facilities, but shall not include wastewater treatment or disposal areas which cannot be used for agricultural purposes.” Although accessory uses are not defined in this section, it is noted that outdoor uses not located within a structure (e.g., wastewater treatment and disposal areas) are not included as part of production facilities for purposes of calculation the ratio. This has been interpreted to also apply to accessory structures not located within a structure.

However, during Planning Commission review of the B Cellars Use Permit on March 6, 2013, and the Titus Vineyard Use Permit and Variance on May 7, 2014, questions were raised as to whether or not outdoor visitation areas should be included in the accessory use calculations. These questions were raised because outdoor visitation areas were denoted on the project plans as accessory use; consequently, both the project application and the Staff Report prepared for the item had included their square footage in the accessory to production ratio calculation (Titus Vineyard was listed at 31 percent and B Cellars was shown at 36.7 percent, both including the outdoor areas). Staff responded that the outdoor areas did not need to be included in the calculation pursuant to the WDO and Staff further noted that with or without this square footage, both of those projects still fell below the 40 percent maximum requirement.

In 2015 and 2016, this very topic was re-evaluated in depth by the Agricultural Preservation Advisory Committee (APAC), and then duly considered by both the Planning Commission and Board of Supervisors. Although the APAC recommended amending the County Code to include outdoor hospitality areas in the production/accessory ratio, the Board confirmed the long-standing County practice of excluding outdoor visitation areas in the accessory to production calculation. Instead, the Board directed staff to include outdoor hospitality areas in the calculation of the production/accessory ratio as a part of the staff report, but for informational purposes only and not to be considered as a part of the decision. The Project complies with the WDO and NCC Section 18.104.200 as proposed and as approved.

All appropriate accessory areas were considered in making the calculation. The accessory to production ratio has been determined to be 32 percent which does not exceed the amount of accessory use space allowed by the NCC. Appellants correctly note that the area of structures housing accessory uses is limited to 40 percent of the areas dedicated to wine production but incorrectly assert that outdoor areas, which by definition are not “structures,” should be considered within the calculation.

Appeal Ground No. 3: Appellants contend that the Project would install a new winery on the Ticen Ranch parcel, which violates that parcel’s zoning. Merging the parcels does not eliminate this conflict because the WDO prohibits multiple wineries on a single parcel. The expansion will change Ticen Ranch from residential to hospitality.

Staff Response:

Raymond Winery is located in the Agricultural Preserve (AP) zoning district. Parcels in the AP zoning district may only host wine tours, tastings, and other marketing activities if these

activities are “accessory” to wine production. (See NCC Section 18.16.030(H).) An accessory use must be clearly incidental, related and subordinate to the primary agricultural use and cannot change the character of that primary use. (See NCC Section 18.08.020.)

Appellants’ assert that a new winery (what they refer to as the “Ticen Winery”) would be constructed on the Ticen Ranch parcel. The assertion is not supported by the record.² The Project would maintain the bulk of the Winery operations including wine production, primary tasting room, barrel storage, crush pad, wastewater ponds, wells, parking and related facilities on the existing Raymond Vineyard and Cellars parcel (Raymond Vineyard parcel). Some limited accessory uses consisting of winery offices, VIP tasting room, a catering kitchen and a demonstration space would occur on what is now the Ticen Ranch parcel. These uses would all be accessory to the Raymond production facility. There are no production facilities such as tanks, barrel or bottle storage, laboratories, shipping/receiving or crush pad areas proposed inside of or adjacent to any building on the Ticen Ranch parcel that would suggest or in any way support Appellants’ unfounded assertion that a separate wine production facility would be built on that property. Appellants have exaggerated the facts in their argument that the accessory uses proposed for the Ticen Ranch parcel equate to a wine production facility; simply calling the accessory uses the “Ticen Winery” does not make it a winery.

Staff concurs with Appellants that the establishment of a stand-alone tasting room or winery offices on a parcel in the AP zoning district is prohibited *unless* those uses are accessory to a wine production facility, farm management, or other land use that is otherwise allowed by the parcel’s zoning. (See NCC Sections 18.16.020 and 18.16.030.) The Project includes merger of the Ticen Ranch and Raymond Vineyard parcels into a single parcel. Thus the exclusively accessory uses proposed on the Ticen Ranch portion of the 86.2-acre merged parcel would be subordinate and ancillary to the Winery currently operating on the Raymond Vineyard parcel.

While it is true that the predominant use of the Ticen Ranch house would change from residential to winery hospitality use, that change of use does not equate to construction of a new winery. With merger of the parcels, the Ticen Ranch house would become accessory space/use to the Raymond Winery. There is no standard in the WDO or the NCC specifying a maximum allowed distance between wine production and winery accessory spaces. The only requirement is that there can only be one winery (and by implication its concomitant accessory uses) per parcel. (NCC Section 18.108.240.)

Per the Conditions of Approval (COA) imposed on the Project by the Planning Commission, the Applicant will be required to undertake “voluntary merger” of the parcels before receiving a grading permit or establishing any accessory use on the Ticen Ranch parcel, whichever occurs first. (See COA No. 2.13.)³ That process is governed by NCC Chapter 17.51 and among other things, requires that the involved parcels are contiguous and held in common ownership⁴ and that

² It has been the understanding of Staff through written correspondence with Applicant’s representative Donna Oldford that the intent of the winery operators is to change the facility name to “Raymond-Ticen Ranch Winery” upon approval of the use permit modification. This further supports the position that the property will be comprised of a single winery with multiple supporting accessory uses.

³ As discussed below, Staff is recommending a change to this condition regarding the timing of merger.

⁴ See Government Code section 66499.20.3

upon merger, no conforming structures will become non-conforming. Because the future merged parcel is zoned AP, requiring a 40-acre minimum parcel size, it is possible (though purely speculative) that at some point in the future two 40-acre parcels could be created. However any such subdivision would be reviewed and approved by the County only if *all* requirements were met and no non-conforming uses/structures were created as a result of subdividing.

Assuming *arguendo* that, in the future, an application were submitted to subdivide the merged 86.2-acre parcel back to its previous configuration, the existence of a winery tasting room and winery offices would be non-conforming with the AP zoning district. This nonconformity would preclude approval of the subdivision because the hospitality and office spaces in the Ticen Ranch buildings would essentially become accessory uses to nothing and not supportive of a primary use. The accessory tasting room, offices and agricultural experience building would either have to be removed, expanded to include on-site production facilities pursuant to an approved Use Permit, or converted to a use allowed pursuant to the AP zoning district.

Appeal Ground No. 4: Appellants claim that the Project undermines agriculture because it intensifies commercial and tourist-serving uses while dramatically reducing the area devoted to wine production by 50 percent, from the existing 243,900 square feet of production facilities to only 121,133 square feet.

Staff Response:

Appellants have greatly exaggerated the reduction in wine production space that would occur. The Project would reduce the area devoted to wine production by approximately three percent not 50 percent as asserted by Appellants. The building plans show that the Raymond Winery currently has approximately 118,000 square feet of space dedicated to wine production uses which will be reduced to approximately 116,000 square feet. This nominal reduction of approximately 2,000 square feet equates to approximately two percent, is well below 50 percent and cannot reasonably be considered a “dramatic reduction” as asserted by Appellants.

The area dedicated to accessory uses (hospitality and administrative space) would increase under the approved Project from approximately 20,500 square feet to over 36,500 square feet. (See February 1, 2017, Planning Commission Agenda Report, page 5.) NCC Section 18.104.200 states that the square footage for structures used for accessory uses related to a winery shall not exceed 40 percent of the area of the production facility. “Production areas” are defined as the crushing, fermenting, bottling, bulk and bottle storage, shipping, receiving, laboratory, equipment storage and maintenance facilities. The intent of Section 18.104.200, is to ensure that a winery’s accessory uses remain subordinate (e.g., secondary) to agriculture and agricultural processing activities by limiting the area the accessory uses may occupy to less than half of that area used for wine production. As described above, after conversion of the existing production area to accessory uses, the Project would result in an accessory to production ratio of 32 percent which is below the maximum 40 percent ratio established by the NCC.

The Raymond Winery is currently entitled to produce 750,000 gallons of wine per year⁵. In reviewing the Applicant's request, the Planning Commission also reviewed comparative data of six other wineries: William Hill Winery, Reata Winery, Laird Family Estates (post-WDO); and Conn Creek Winery, Mumm Napa Valley, Artesa Winery (pre-WDO) with similar annual wine production allowances (700,000 to 900,000 gallons) as the Raymond Winery. Data included areas of buildings associated with each winery, all of which offered tours and tastings to the public or by appointment. While the data was not so detailed as to differentiate production versus accessory uses, wineries in this production range have permitted cave and/or building sizes that range from 30,000 to 150,000 square feet. The production area associated with the Raymond Winery is 116,000 square feet, and the total building area associated with the Project (approximately 151,000 square feet) was not drastically out of the range of wineries with comparable production entitlements. Two of the wineries (Conn Creek Winery and Reata/Kirkland Ranch Winery) conduct tours and tastings and produce wine with building areas of fewer than 60,000 square feet, so that a definitive conclusion cannot be drawn that approving a reduced production area would have the effect of impairing the quantity of wine that the Winery could produce under the Project.

Appeal Ground No. 5: Appellants assert that the Project is inconsistent with the General Plan and specifically, Agricultural Preservation and Land Use (AG/LU) Goal AG/LU-1, which requires the County to preserve existing agricultural land uses and plan for agriculture; Policy AG/LU-4, which requires the County to reserve agricultural lands for agricultural use; and Policy AG/LU-9, which requires the County to evaluate projects for their potential impacts on farmlands and avoid conversion where feasible. The new access road would result in the loss of 2.2 acres of prime agricultural land and would only serve hospitality purposes; not agriculture. The Planning Commission abused its discretion in finding the Project consistent with NCC and the General Plan because a feasible alternative to the new driveway exists which would not convert farmland.

Staff Response:

The Board of Supervisors is the local government body charged by law with interpreting the County's land use policies and rendering the final determination on a project's consistency or lack thereof with those land use policies.⁶ Further, the Board has significant discretion in interpreting the County's land use policies. The courts' review of a county's interpretation of its general plan policies is highly deferential because "policies in a general plan reflect a range of competing interests" which the agency's decision-making body "must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purpose."⁷

⁵ Averaged over any consecutive three-year period, with production in any year not to exceed 900,000 gallons of wine.

⁶ *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 668.

⁷ *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, 816.

The rule of general plan consistency is that the project must at least be *compatible with* the objectives and policies of the general plan.⁸ “[S]tate law does not require precise conformity of a proposed project with the land use designation for a site, or an exact match between the project and the applicable general plan. [Citations.] Instead, a finding of consistency requires only that the proposed project be ‘*compatible with* the objectives, policies, general land uses, and programs specified in’ the applicable plan. [Citation.] The courts have interpreted this provision as requiring that a project be “‘in agreement or harmony with the terms of the applicable plan, not in rigid conformity with every detail thereof.’”⁹ To reiterate, the essential question is “whether the project is compatible with, and does not frustrate, the general plan’s goals and policies.”¹⁰

Judicial review of consistency findings is highly deferential to the local agency.¹¹ “[C]ourts accord great deference to a local governmental agency’s determination of consistency with its own general plan, recognizing that ‘the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. [Citations.] A reviewing court’s role “is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.” [Citation.]”¹²

Since adoption of the WDO in 1990, the County has defined wineries as an agricultural land use. Wineries are considered an agricultural land use, and permissible in agricultural areas, because they are a necessary component to facilitating the conversion of grapes (a crop) into wine (an agricultural product). The WDO contains a complex set of strict development constraints to ensure that wine production, from crops grown in Napa County, is the primary land use occurring at a winery (also known as “production”). General Plan Policy AG/LU-1 states that agriculture and related activities are the primary land uses in Napa County. Policy AG/LU-2 defines “agriculture” to include the production of agricultural products “and related marketing, sales and *other accessory uses* (emphasis added).” In support of these policies, NCC Section 18.08.040(H) defines “agriculture” as including the following, but only upon grant of a use permit pursuant to Section 18.124.010, or unless previously issued a small winery certificate of exemption pursuant to subsection (H) of Section 18.16.020 and subsection (I) of Section 18.20.020, or legal existence as a winery prior to July 31, 1974 as provided in subsection (G) of Section 18.16.020 and subsection (H) of Section 18.20.020:

1. Production and processing of agricultural products, including agricultural processing facilities; and

⁸ *Sequoiah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717–718 (*Sequoiah Hills*); *Friends of Lagoon Valley, supra*, 154 Cal.App.4th at p. 817.

⁹ *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678 (*San Franciscans*).

¹⁰ *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 378.

¹¹ *Friends of Lagoon Valley, supra*, 154 Cal.App.4th at p. 816.

¹² *San Franciscans, supra*, 102 Cal.App.4th at pp. 677–678, quoting *Save Our Peninsula, supra*, 87 Cal.App.4th at p. 142; *Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto*, 1 Cal. App. 5th 9, 17-19.

2. Marketing, sales, and other accessory uses that are related, incidental and subordinate to the main agricultural processing use.

The definition of “agriculture” contained in the County’s General Plan and zoning regulations belies Appellants’ argument that Raymond Winery’s accessory offices, tasting room, catering kitchen and related uses are not accessory to agriculture. The Planning Commission found the Project consistent with the County’s General Plan overall and, in particular, 13 specific goals and policies including those that promote agriculture, use of renewable energy sources and preservation of historic structures.¹³

Staff concurs with Appellants that General Plan Policy AG/LU-9 discourages the County from converting farmland to non-agricultural uses, where feasible, and if infeasible, preservation of one acre of farmland for each acre that is converted to non-agricultural use is required. However, contrary to Appellants’ assertions, Policy AG/LU-9 is *not* applicable to this Project because winery offices, tasting rooms, and infrastructure improvements such as access roads and wastewater disposal areas that serve a winery are considered accessory or supporting agricultural uses under the County’s General Plan and zoning regulations. This interpretation was expressly articulated by the Board of Supervisors as part of the 2008 General Plan Update and the General Plan Update Draft Environmental Impact Report, which adopted the farmland conversion mitigation measure that established Policy AG/LU-9. The General Plan Update Draft EIR states that the:

“[c]ontinued expansion of agricultural operations could involve the use of farmland by supporting uses and facilities (e.g., winery sites may consist of up to 15 acres of impervious surfaces under NCC Section 18.104.220). However, these potential uses of farmland are not considered significant since *these supporting uses are locally considered “agriculture”* and are intensively regulated (in terms of size, intensity, etc.)” (Emphasis added.) (See General Plan Update DEIR, pg. 4.1-23.)

In Napa County the removal of vineyard to accommodate a new access driveway is not a conversion of farmland to a non-agricultural use, and therefore, Policy AG/LU-9 is not triggered. It is merely replacing one form of agriculture (vineyard) with another form of agriculture (accessory infrastructure supporting the winery). Wineries and uses accessory thereto are conditionally permitted uses that are consistent with the agricultural land use designation of the property. (General Plan Policies AG/LU-2 and AG/LU-21). The new access road is subordinate to and would serve the Winery which is and would remain the primary permitted use of the merged property.

As further discussed above in Staff Response to Appeal Ground Nos. 1-4, the Project is also consistent with provisions of the WDO that are intended to preserve agricultural lands by allowing tasting rooms and paved roads in conjunction with wineries; provided, that all elements of the winery (excluding farm management uses) do cover not more than 25 percent of the parcel area or 15 acres, whichever is less. (See NCC Section 18.104.220.) This limitation ensures that crop production or the raising of livestock remains the predominant use of the parcel. The Raymond –Ticen Ranch Winery, including the new access road, would have a winery coverage

¹³ See Planning Commission February 1, 2017 Staff Report, Attachment “A” – Recommended Findings.

area of just over 12 acres or approximately 14 percent on the approximately 86-acre merged parcels and thus would be compliant with the County's maximum coverage requirement.

Appeal Ground No. 6: Appellants contend that the Project is inconsistent with General Plan noise policies and specifically Community Character (CC) Policy CC-38 which provides exterior noise level standards for maximum noise levels that are not to be exceeded more than 30 minutes in each hour. Noise measurements taken by Appellants' noise consultant, The Papadimos Group, at the Napa Gras Event held by the Raymond Winery on February 24, 2017, demonstrate that noise levels from vehicular traffic and music exceeded County standards (Appellants' Noise Report). The Project includes similar outdoor events as well as expanded marketing facilities and amenities that will increase the potential for such events. These documented noise violations constitute substantial evidence of the Project's likely noise impacts, and therefore, the Planning Commission abused its discretion in finding the Project will not adversely affect public health, safety, and welfare.

Staff Response:

Since 1991, the Raymond Winery has been entitled to host daily events for up to 10 people, twice-weekly events for 10 to 30 people, and twice-monthly events for 30 to 100 people. The Project would not change the number of events, their frequency or the number of attendees. It would simply allow up to half of these marketing events (or approximately 246 events annually) to occur outdoors in the following three areas: (1) the existing lawn and pool areas near the existing residence on the Raymond Vineyard parcel; (2) the existing biodynamic garden area on the Raymond Vineyard parcel; and (3) the landscaped picnic area on the east side of the residential building on the Ticen Ranch parcel. The nearest off-site residence to the Raymond Winery is located approximately 500 feet northeast from the lawn and pool area, the closest of the three outdoor venues. The events would span three to four hour increments, with no event beginning before 10:00 a.m. or ending later than 10:00 p.m. The use of amplified music is prohibited.

The Revised Mitigated Negative Declaration, dated March 7, 2017 (Revised MND), determination that noise from the outdoor events would be less than significant was supported by a recent acoustical study prepared by a licensed acoustical engineer for the Bell Winery use permit modification, which involved factually similar circumstances as the Raymond Winery. The Bell Winery noise study was relied upon because: (1) it utilized actual (not predicted) noise measurements taken during a marketing event that occurred at the Bell Winery; (2) the size of the monitored event, which was attended by 85 people, was comparable to the size of Raymond Winery's largest marketing event of 100 people; and (3) the setting of the Bell Winery, and most particularly its distance to residences and its distance from State Route 29, a "line" source of noise, is similar to that of the Raymond Winery (1,900 feet from State Route 29 for Bell Winery and 1,750 feet from State Route 29 for Raymond Winery).

With respect to outdoor noise sources, in the case of the Bell Winery project, the nearest residence is approximately 200 feet east of the winery's outdoor crush pad. In the Raymond Winery project, the nearest residence is approximately 500 feet northeast of the location of the outdoor marketing activities proposed to occur near the pool on the Raymond parcel. According

to the Revised MND, it is anticipated that exterior noise at the nearest off-site residence on Wheeler Lane would be 44 decibels for half of the event with an average of 48 decibels which is between two and six decibels below the County's noise standards of 50 decibels during 50 percent of daytime hours. The closest residence to the outdoor events proposed on the Ticen Ranch parcel is approximately 700 feet to the west on the opposite side of State Route 29 and therefore, would not be subject to exceedances of the County noise standards from Winery marketing events. (See Revised MND, pgs. 28-30.)

During the final public hearing before the Planning Commission, Appellants' Noise Report was submitted regarding noise impacts resulting from a temporary event (Napa Gras) that had occurred at the Raymond Winery on February 24, 2017. It should be noted that temporary events are separately permitted, with specific regulatory requirements, and are not covered under the existing Use Permit. Appellants' Noise Report asserted that the Napa Gras event had caused exceedances of the County's noise ordinance, particularly after 10:00 p.m. when the acceptable noise threshold drops to 45 decibels (measured for at least 30 minutes in any hour). The noise exceedances were attributed to vehicular traffic into and out of the Raymond Winery and music from the event. Appellants' Noise Study did not address any of the marketing activities approved under the Use Permit for the Winery, just this single temporary event held at the Winery.

While Appellants' Noise Report alleges exceedances of the noise ordinance with respect to a particular event, it lacks relevance for purposes of concluding that significantly smaller events authorized as part of Raymond Winery's marketing plan will exceed permitted noise levels. Appellants' Noise Report did not identify the number of persons in attendance at the event, but according to the Napa Gras temporary event permit, the maximum allowed attendance was 600 people. That is six times the number of people that would be permitted to attend the largest of Raymond Winery's permitted marketing events. Thus while Appellants' Noise Report may be of anecdotal interest, the evidence of noise exceedances would only be relevant to future temporary or marketing event applications with attendance of similar magnitude. The reported noise violations from a single temporary event with approximately 600 people in attendance does not adequately demonstrate that all or even some of the outdoor marketing activities at Raymond Winery would result in a potential noise impact. It is also noted that no outdoor amplified music is allowed with the marketing activities.

Argument, speculation, inaccurate information, unsubstantiated opinion, or social or economic impacts unrelated to physical changes to the environment do not constitute substantial evidence. (Public Resources Code Section 21080(e), 21082.2(c).) An argument that a project may have a significant environmental effect must be based on relevant evidence sufficient to support that conclusion. An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts.¹⁴ Because Appellants' Noise Report evaluated noise impacts associated with a significantly larger event than what is proposed by the Project, the study lacks an adequate factual foundation and does not rise to the level of substantial evidence demonstrating that approximately 246 marketing events per year with up to 100

¹⁴ *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785.

persons maximum may result in noise impacts. A lead agency need not accept expert testimony that lacks an adequate factual foundation.¹⁵

The Revised MND's finding that the Project would not result in potentially significant noise impacts is supported by substantial and relevant evidence. Furthermore, the issuance of a temporary event permit is an administrative action of the Zoning Administrator and falls outside the scope of the requested use permit modification upon which the Planning Commission was tasked to take action. See also Staff Response to Appeal Ground No. 7.

Appeal Ground No. 7: Appellants contend that Raymond Winery's temporary events violate the WDO because temporary events conducted at Raymond are a foreseeable, ongoing component of Raymond Winery's marketing plan, which cause the marketing activities to cross the line from being incidental and subordinate to becoming the primary use. The temporary events generate significant traffic and noise and shift the primary focus of the facility from winemaking (an accessory use to agriculture) to hospitality (an accessory use to winemaking).

Staff Response:

See Staff Response to Appeal Ground No. 6 above. The issuance of a temporary event permit¹⁶ is an administrative action of the Zoning Administrator governed by NCC Chapter 5.36 and falls outside the scope of the use permit modification that was before the Planning Commission. Appellants appear to contend that temporary events and marketing activities are synonymous and lump them together and refer to them collectively as marketing events.

Contrary to Appellants' assertions, there are important and legally significant differences between temporary events and marketing events. These activities are governed by different standards, held for different purposes, subject to different permitting processes and have different decision-makers. Temporary events are expressive activities within the ambit of the First Amendment of the United States Constitution and Sections 2, 3 and 4 of Article 1 of the California Constitution. Temporary Event Permits are administrative (ministerial) permits that are issued by the Planning, Building and Environmental Services Director upon compliance with the criteria applicable to a particular type of event. Unlike temporary events, winery marketing events are defined as activities for the education and development of customers and potential

¹⁵ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1422 (letter from engineering professor about groundwater and erosion impacts was not substantial evidence because it lacked an adequate foundation of specific information about the project).

¹⁶ "Temporary event" or "event" means any festival, fair, show, showcase, house or garden design tour, concert, dance, rally, parade, demonstration or competition of creative athletic form, or any other gathering or assemblage of individuals for the purpose of observing or engaging in expressive activities within the ambit of the First Amendment of the United States Constitution and Sections 2, 3 and 4 of Article 1 of the California Constitution, including, but not limited to, music, dance, theater, speech, athletics, or any other visual, audio, or tactile arts or combination thereof, including incidental retail sales of the products of such activities, as long as such sales are not advertised off-site; which is held at any place other than a highway as defined in Section 10.24.010 of this code, a permanent building or installation constructed and primarily used for the purpose of conducting such activity or one similar thereto, property owned or leased by the state of California, or property owned or leased by a public school district for use as a public school site, and to which the public is invited or admitted with or without the payment of an admission charge. (See NCC 5.36.010.)

customers at wineries.¹⁷ Marketing activities are components of a winery’s discretionary use permit and are carefully evaluated by the Planning Commission to ensure that they are related to the education and development of winery customers.

Related activities that are similar in nature and that serve the same purpose are separate projects (as opposed to a single project) if they are independently considered for approval and one activity is not a foreseeable consequence of the other.¹⁸ The California Supreme Court has ruled that a lead agency must analyze possible future expansion or other action related to a project that is “a reasonably foreseeable consequence” of the project and the future action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. “Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.”¹⁹

The exception to this rule is for activities that are determined to be speculative or uncertain. This is the case with the activities undertaken through temporary event permits. These temporary events are not “linked” to the underlying project in that the Raymond Winery may hold such events regardless of whether the Project is approved.²⁰ Further, temporary events which may occur in the future would require “prophecy” on the part of the County in order to assess potential impacts in the Project CEQA document. This kind of oracular ability was expressly rejected by the *Laurel Heights* court. In *Berkeley Keep Jets Over the Bay Com.*, the court held that projects identified in an airport’s long-range plan did not have to be included in the EIR because they were not being proposed for approval, they were not necessary elements of the projects proposed for approval, and they were not shown to be foreseeable consequences of that development. This rationale applies to the temporary events at the Raymond Winery. They are not proposed, are not necessary elements of, or “linked” to, the Project, and have not been shown to be foreseeable consequences of the Project.

The evidence of “reasonable foreseeability” of the temporary events offered by Appellants is simply the word “annual” noted next to the events described in two license applications made by Applicant. The Applicant may apply for myriad temporary events, as few as 60 days before the occurrence of the event. Despite the potential for doing so, the Applicant has only obtained nine temporary events since 2012. This equates to an average of 1.5 temporary permits per year, on average. Consequently, this would clearly require a sizeable dose of speculation by the County to assess the number of events for which the Applicant may apply for in the future, in addition to their size, scope, timing, etc. The temporary events are simply not a consequence of the proposed Project and thus were not required to be evaluated in the Project’s Revised MND.

Appeal Ground No. 8: Appellants claim that the County used an incorrect baseline which inflates existing conditions and underestimates Project-related impacts. The Revised MND

¹⁷ See Board of Supervisors Resolution No. 2010-48, Establishing Interpretive Guidance on Marketing Activities.

¹⁸ *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690 (city’s agreements with two water districts for assignments of rights to Central Valley Project water were separate projects because the assignments were independent of each other and were approved by separate irrigations districts).

¹⁹ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.

²⁰ *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1362. “The record reveals that the various runway projects are not similarly “linked” to the ADP either functionally or as part of the Port’s concrete planning objectives for the airport.”

erroneously relied on the maximum levels of production and visitation permitted under the existing use permit, rather than the actual existing levels of production and visitation which Appellant asserts appear to be significantly lower than permitted levels. The permitted winery production levels and permitted visitor levels were used as baseline conditions without providing any verifiable information on the current, actual level of production and number of visitors.

Staff Response:

The determination whether a project may have a significant effect on the environment requires that the lead agency determine whether it might result in “a substantial, or potentially substantial, adverse change in the environment.” (Public Resources Code Section 21068.) In environmental analyses, comparison of the proposed project against a baseline condition highlights the potential environmental impacts resulting from the proposed project. In the case of Applicant’s use permit modification, the Revised MND properly relied on the “permitted” wine production levels and number of visitors as baseline conditions because changes to production and visitation were *not* part of the Project scope. The maximum entitled activity was provided for the background discussion purposes of Raymond Winery’s existing operations and entitlements; not for the purpose of conducting a CEQA impact analysis.

The above facts are distinguishable from cases cited by Appellants which prohibit the use of hypothetical allowable development authorized under existing permits as the baseline. In the *Communities for a Better Environment*²¹ case, Conoco sought to produce ultralow sulfur diesel fuel at their refinery which would require substantially increasing operation of the refinery’s existing cogeneration plant and four boilers. The Air Quality District determined the increased use would result in increased NOx emissions; however the District did not consider these increases to be part of the diesel project because they did not exceed the maximum rate of heat production allowed under existing permits. Here, the Winery’s project is not proposing any increased use of winemaking equipment or increased production and similarly not requesting an increase in permitted visitation. While the Conoco diesel project specifically required an increased use of refinery equipment which apparently would result in increased emissions, the Winery’s project simply does not include a production or visitation increase component and therefore application of the baseline rule articulated in *Communities for a Better Environment* is incongruous.

The Winery’s allowed visitation and wine production were previously analyzed in the initial study and mitigated negative declaration that accompanied the use permit modification approved by the Planning Commission in 1991. (See Use Permit No. U-89-46). The current use permit modification would not change those entitled numbers in any way. Thus, there is no increment, either upward or downward, in visitation or production levels that needed to be analyzed as part of the Project. If an EIR or negative declaration was completed for an existing permit, plan or use, any change to the project is proposed, any further CEQA review is limited to the incremental impacts of the proposed changes.²² The proposed changes to the Raymond Winery primarily relate to operational changes and legitimatization of unpermitted employees and structures. They are unrelated to visitation or production levels.

²¹ *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, (2010) 48 Cal.4th 310.

²² See CEQA Guidelines Section 15162; *Abatti v. Imperial Irrig. Dist.* (2012) 205 Cal.App.4th 650, 676.

Staff notes that Appellants are asserting that two different baselines should have been used. Appellants advocate that the current existing levels should have been used as the baseline for annual production and visitation but not in other areas of the analysis. For traffic, noise and water use, Appellants assert that the permitted or entitled level should have been used as the baseline. The existing conditions referenced in the Revised MND are representative of the Winery's typical operations (recognizing its daily, seasonal and annual variations dependent on weather) within the parameters of its approved entitlements. Under its current entitlements, Raymond Winery is allowed to produce 750,000 gallons of wine per year (averaged over three years) and to host up to 400 visitors per day.²³ Information provided by the Applicant indicated that Raymond Winery's wine production and visitation numbers are within and in some instances up to the maximum permitted levels allowed by the Winery's approved use permit.²⁴

Appeal Ground No. 9: Appellants contend that the Revised MND improperly included existing, unlawful conditions in the baseline for certain activities when it was required to use legally permitted existing conditions as the baseline as opposed to unlawful existing conditions. Use of unlawful existing conditions creates an incentive for wineries to expand without permits and seek the County's blessing after the fact.

Staff Response:

Courts have consistently stated that CEQA is not a code enforcement mechanism and that the proper baseline, even if as a direct result of illegal activity, is the existing conditions of the site. "Environmental impacts should be examined in light of the environment as it exists when a project is approved, and any illegal activities affecting the baseline environmental condition are best addressed by enforcement agencies."²⁵ While Appellants' point about incentivizing bad behavior is well taken, were the County to use a hypothetical "pre-violation" baseline, it would itself violate the clear, almost black-letter line of cases which prohibit making such a comparison. "In the absence of more detailed guidance either from the Legislature or the Resources Secretary, we believe a more prudent method of dealing with alleged prior illegality is to rely in the first instance on direct enforcement by the agencies charged with the responsibility of doing so..."²⁶

The County is committed to its code enforcement program and it is through this process that violations such as the ones at issue here may be remedied. The County has a long-standing policy and practice of working to gain voluntary compliance from residents and landowners. Violations that may threaten public health or safety or that may cause significant environmental damage are given the highest priority. However, each case is unique, and the methods for achieving compliance are varied. The Planning Commission's decision to approve the Project

²³ Because Raymond Winery is pre-WDO winery, 200 of the visitors may be "drop in" without an appointment and 200 of the visitors are by appointment only.

²⁴ As noted in the application materials, production in recent years was as little as 450,000 gallons of wine in 2016 but was at the maximum level in 2010 at 750,000 gallons. The application materials also note daily variations in visitation between 200 and 400 visitors per day. (See Use Permit Application, pages 9 and 15, attached to February 1, 2017, Planning Commission Staff Report.)

²⁵ *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1233.

²⁶ *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453.

was in no small part based on the County's desire for the Applicant to achieve compliance with the County's zoning regulations and prior use permit conditions. As is common for code compliance cases, the conditions of approval adopted by the Planning Commission incorporate strict timelines for correction of outstanding violations, such as the construction of the unbuilt left-turn lane on Zinfandel Lane and submittal of building permit applications for structures and interior occupancy changes built without benefit of County permits. (See COA Nos. 2.6 and 2.11). The conditions of approval also prohibit expansion of the Winery's accessory operations until the Applicant has corrected the outstanding violations. (See COA No. 2.12).

Appeal Ground No. 10: Appellants claim that the Revised MND improperly includes existing, unlawful conditions in the baseline for certain activities. These unlawful expansions have resulted in impacts to the Project site and adjacent areas that were never evaluated under CEQA. The Planning Commission erred in relying on unpermitted uses as the baseline for evaluating impacts.

Staff Response:

Please see Staff Response to Appeal Ground Nos. 8-9, above. Appellants inconsistently assert that using the "existing" condition as the baseline is appropriate for wine production and visitation levels, but that the "permitted" condition should be used as the baseline in other instances, such as in the analysis of traffic impacts from employees. As explained below, various elements of the requested use permit modification were compared against the "permitted" condition because that comparison generally provided a more conservative analysis of the Project's impacts.

The traffic section of the Revised MND used the "permitted" number of employees (26) rather than the "existing" condition (90) as the baseline measurement. This comparison better represents the potential impacts of the additional winery employees that the Applicant requested to be recognized under the use permit modification application. If the existing condition of 90 employees had been used, there would have been no change and a finding of no impact of the Project. Instead, the Crane Traffic Study disclosed the potential traffic impacts resulting from the increased employees as if the Applicant had pursued the modification *before* increasing employment. (See Crane Traffic Study, page 1.) This approach made clear the potential minimal impact resulting from the past violation.

The analyses of air quality and greenhouse gas emissions are similarly conservative, discussing the potential impacts of the Project compared to the "permitted" condition (i.e., removing the unpermitted accessory use areas from the baseline). This approach was used to inform decision-makers about the potential impacts of the Project by accounting for proposed, unbuilt additions, as well as, those elements of the Winery's expansion that occurred without permits. A comparison of the Project solely against existing conditions would have resulted in a determination of "no impact" with respect to the built but unpermitted winery accessory spaces, and would have significantly underestimated the full impact of the proposal. This would have misled the public and would have resulted in the Commission basing its decision on inaccurate and incomplete analysis.

The groundwater use, vehicle trip emissions, and wastewater treatment emissions generated by the unpermitted employees was also calculated using the “permitted” baseline (maximum of 26 employees), again, because this approach represents the more conservative analysis of the potential impacts resulting from the requested use permit modification and the increase in employees.

The analysis of potential noise impacts also uses the “permitted” allowances as the baseline, as this baseline also represents the existing condition with respect to marketing events conducted under the approved use permit occurring indoors. Also see Staff Response to Appeal Ground Nos. 8-9, above.

Appeal Ground No. 11: Appellants assert that County’s traffic analysis is unfounded because it relies on an incorrect baseline using activities associated with unpermitted marketing facilities. Applicant’s “no new visitors” premise is inconsistent with the record because the Project includes significant additions to the operation’s visitor-serving facilities and marketing plan.

Staff Response:

See Staff Response to Appeal Ground Nos. 8-10. The “permitted” condition is used as the baseline with respect to the Revised MND’s discussions of visitation and marketing event attendance because there are no changes proposed or requested to those elements of the Winery’s operation. Thus they are not within the scope of the Project. It would be inappropriate and speculative to presume that the Applicant would exceed the Winery’s permitted visitation levels just because the guest parking and hospitality facilities have been expanded. Per the conditions of approval, Raymond Winery is limited to 200 public visitors per day (1,400 maximum per week) and 200 by-appointment visitors per day (1,400 maximum per week). (See COA No. 4.1.) Raymond Winery is also authorized to hold marketing events daily for up to 10 people; two times per week for up to 30 people; and two times per month for up to 100 people. (See COA No. 4.2.) Applicant did not request nor did the Planning Commission’s approval of the Project authorize an increase or change to the visitation or marketing levels.

The Planning Commission heard and considered testimony from Applicant’s team that these expanded visitor-serving facilities are intended to be part of Raymond Winery’s existing hospitality operations and not for purposes of increasing permitted visitation levels. Applicant’s Director of Retail Operations Tom Blackwood testified that the additional tasting room was driven by Raymond Winery’s focus on guest experience and the desire to provide visitors with a sit-down, guided, tasting experience and that the tasting room on the Ticen Ranch parcel would be by-appointment for VIP and trade visitors. Mr. Blackwood further testified that the Ticen Ranch tasting room would just be another location for dispersing current or planned visitation. Applicant’s planning consultant and representative, Donna Oldford, explained that the expanded parking is needed because private by-appointment tours have changed since Raymond Winery’s inception and are now longer, more personal and overlap with the parking required for larger marketing events.²⁷

²⁷ See Planning Commission Meeting March 15, 2017 Transcript, pg. 24:12-27; pg. 19:4-11.

Staff initially did not support the request for 50 additional parking stalls on the Raymond Vineyard parcel because of concerns that it was inconsistent with General Plan Circulation Element Policy CIR-23, which discourages unnecessary or excessive parking. Staff questioned the need for the additional parking because there was no corresponding increase in visitation or marketing activities; tasting room visitors would be split between the tasting rooms on the Raymond Vineyard parcel and on the Ticen Ranch parcel thus reducing the parking demand on the Raymond Vineyard parcel; and by expanding visitation two and half hours per day, daily visitors would have a larger span of time to visit the Winery.

Prior to the March 15, 2017 Planning Commission hearing the Applicant's representative submitted additional justification for the increase in guest parking. Applicant's representative explained that the Winery's visitor experience differs from those of the past, and that the typical tasting is two to three times longer than when the Winery's hospitality facilities were approved more than two decades ago in the 1990s. With the longer duration in tours and tastings, visitors remain on the property for longer periods of time, and there is more overlap between groups of guests, which increases the competition for limited parking. Applicant's representative further testified before the Planning Commission that private tours (e.g., by appointment) are longer and more-in depth. The Applicant is not trying to find a way to fit more people in but rather to solve an existing parking problem.²⁸

Appellants contend that the indirect consequence of approving increased winery hospitality space is an increase in visitation above the limits in the approved use permit. However, there is no evidence in the record to support this unfounded assertion. The change in visitor experience as explained by Applicant's representative provides a logical and less nefarious explanation for the requested changes to visitor facilities and hours. In other words, keeping the number of daily visitors constant but extending the duration of their stay on-site, adding hospitality space, and expanding guest parking facilities and visitation hours are all reasonable and logical justifications to support the requested modification to the approved use permit. Furthermore, COA No. 4.0 requires the Applicant to maintain a log book of all visitors to the Raymond Winery and to provide this record of visitors to the County upon request. Therefore, the County can monitor visitation levels to ensure Raymond Winery is not exceeding the levels authorized by its use permit.

Appeal Ground No. 12: Appellants claim that baseline defects permeate the Revised MND and render inadequate its analysis of a host of impacts including traffic, air quality, greenhouse gas (GHG) emissions, water supply and wastewater, and noise. Therefore the Commission abused its discretion in approving the document.

Staff Response:

Appellants have baldly asserted that the Revised MND is inadequate in traffic, air quality, GHG emissions, water supply and wastewater yet failed to articulate or explain the basis for these assertions. Please see Staff Responses to Appeal Ground Nos. 10, 12, and 16 (traffic), Nos. 10 and 12 (air quality), Nos. 10 and 12 (GHG emissions), Nos. 10 and 12 (water supply) and Nos.

²⁸ See Planning Commission Meeting February 1, 2017, Transcript, pg. 23:21-28.

10 and 12 (wastewater) and Nos. 6 and 10 (noise). Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence.²⁹

Appeal Ground No. 13: Appellants contend that the County must prepare an EIR because there is a fair argument that the Project will cause numerous significant impacts, including noise, land use, traffic, hydrology and water quality, and wildlife impacts. The Commission's failure to require an EIR was an abuse of discretion.

Staff Response:

A lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable.³⁰ "Cumulatively considerable" means that the incremental effects of a project are significant when viewed in connection with the effect of past projects, other current projects, and probable future projects.³¹ To assess whether a cumulative effect triggers the need for an EIR, the lead agency must answer two questions: whether the cumulative impact itself may be significant and whether the project's incremental contribution to that effect would be "cumulatively considerable."³² A project's impacts must be found cumulatively considerable if its incremental effects are significant when viewed within the context of the effects of past, current, and probable future projects.³³ The existence of significant cumulative impacts caused by other projects is not, standing alone, evidence that the project's impact is cumulatively considerable.³⁴ It must be shown that the project will directly contribute in a significant way to an environmental impact for the impact to be characterized as a project-related cumulative impact.³⁵

The Planning Commission properly and thoroughly evaluated the Project's incremental contribution to traffic, noise, land use, traffic, hydrology, and water quality, and wildlife impacts and determined that its contribution would not be cumulatively considerable. Appellants offered no credible evidence that the Project would have a cumulatively considerable contribution to noise, land use, traffic, hydrology and water quality, and wildlife impacts.

²⁹ *Joshua Tree Downtown Bus. Alliance v. County of San Bernardino*, 1 Cal.App.5th 677, 690; *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal.App.3d 130 (expressions of generalized concerns and fears about traffic and parking impacts, and anecdotal statements about parking problems at another facility, are not substantial evidence); *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337 (opponents' subjective concerns and unsubstantiated opinions about dangerous traffic conditions are not substantial evidence); *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424 (neighbors' unsubstantiated fears and concerns about project's impacts lacked objective basis for challenge and did not constitute substantial evidence.)

³⁰ Public Resources Code Section 21083(b); 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3).

³¹ Public Resources Code Section 21083(b)(2); 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3); *San Bernardino Valley Audubon Soc'y v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 398 (EIR required for habitat conservation plan in part because initial study did not adequately explain why cumulative adverse effects to endangered species would not occur).

³² 14 Cal Code Regs Section 15064(h)(1).

³³ 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3). *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 622 (citing this text).

³⁴ 14 Cal Code Regs Section 15064(h)(4).

³⁵ *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690 (citing this text).

Regarding noise impacts, Appellants have provided no explanation as to how allowing half of Raymond Winery's existing marketing events to occur outdoors may incrementally increase in noise levels and result in a cumulative noise impact. Please see Staff Response to Appeal Ground Nos. 6 and 10, above.

Regarding land use, Appellants have failed to articulate how the Project may incrementally affect land use and result in a cumulatively considerable land use impact. Removal of vineyards for construction of a private roadway across the merged parcels was not determined to be a significant land use inconsistency. Please also see Staff Response to Appeal Ground No. 5, above.

Regarding traffic, Appellants have offered no evidence as to how the additional 64 employees create a cumulatively considerable contribution to a cumulative traffic impact. The Crane Traffic Study submitted with the Project application includes a brief discussion of cumulative traffic impacts in its analysis of the Project in the long-term (year 2030) horizon. (See Crane Traffic Study, pages 23-25.) Appellants claim that the cumulative traffic impact analysis should have included a list of projects in the vicinity of the proposed Raymond-Ticen Ranch Winery. The cumulative traffic analysis in the Crane Traffic Study utilized General Plan projections in lieu of a list of specific projects in the vicinity of the Raymond and Ticen Ranch parcels; and this is an acceptable approach under CEQA Guidelines Section 15130.

The Planning Commission properly considered the potential for traffic impacts from the Project within the overarching context of forecasted local and regional growth evaluated in the 2008 General Plan and the supporting General Plan Program EIR. These documents found that: (a) additional growth in Napa County would result in significant increases in traffic volumes on the overall county road network; and (b) regional population and job growth would result in significant increases in traffic volumes on the county road network, even if all growth in Napa County ceased. In adopting the 2008 General Plan, the Board of Supervisors properly considered the effects of local and regional growth on the health, safety and welfare of the County, and ultimately determined that additional winery and vineyard development was acceptable within the General Plan's planning period (2008-2030). The scale and scope of this Project falls within the overall level of development contemplated and analyzed within the General Plan, and it is within this context that the Planning Commission considered the Project. Please also see Staff Response to Appeal Ground Nos. 10 and 16.

Regarding hydrology, Applicant's engineer prepared a groundwater analysis consistent with the County's Water Availability Analysis Guidelines (the County's WAA Guidelines). The County's WAA Guidelines were developed by licensed hydrogeologists in conjunction with the Groundwater Resources Advisory Committee and adopted by the County after an extensive multi-year study and analysis of groundwater resources conducted throughout Napa County. Because the subject property is located on the Valley Floor, pursuant to the County's WAA, a Tier 1 "*Water Availability Analysis for Raymond Vineyards dated September 15, 2015 (Revised January 26, 2016)*" was prepared by Summit Engineering (the Summit WAA) which evaluated potential groundwater impacts and estimated groundwater use associated with the Project. In an effort to provide full disclosure of groundwater impacts and usage, the Revised MND and Summit WAA evaluated groundwater use under three scenarios: the use permit entitlement with

26 employees (89.9 acre-feet per year (af/yr)); the existing use which included the unpermitted additional 64 employees (90.7 af/yr); and the proposed Project, which included legitimization of the 64 unpermitted employees for a total of 90 employees (90.8 af/yr).

Both the Revised MND and Summit WAA noted that no increase in visitation or production was proposed from the existing 400 visitor maximum per day and 750,000 gallons of wine. The Summit WAA concluded that the additional 64 unpermitted employees would increase the Winery's annual water use by 0.90 af/yr over the existing entitlement for a total usage of 90.8 af/yr of groundwater which is below the County's WAA Guidelines for Valley Floor Parcels of one-acre foot per year per acre of property. The Winery has a fair share allocation of 113.4 acre feet per year of groundwater based on the combined acreage of the Winery's three parcels, and thus, no impacts would occur. Appellants have offered no evidence that contradicts the Summit WAA, which contains a site-specific and Project specific analysis of groundwater usage and impacts. Appellants' reliance on Winery Grand Jury Reports which discusses in general the County's need for groundwater monitoring on a County-wide basis is unrelated to the Project and does not articulate how the Raymond –Ticen Ranch Winery would create an impact on groundwater resources.

The Revised MND references reports on Napa County's recent efforts to characterize and monitor groundwater levels in the County and notes that "[m]ost wells elsewhere within the Napa Valley Floor with a sufficient record indicate that groundwater levels are more affected by climatic conditions, are within historical levels, and seem to recover from dry periods during subsequent wet or normal periods." (See Revised MND pages 23-24.) This characterization of groundwater levels in most of the Napa Valley Floor, including the north/St. Helena area where the Project is located, is further supported in the "Comprehensive Groundwater Monitoring Program: 2016 Annual Report and CASGEM Update" (2016 Annual Report), presented to the Board of Supervisors on April 18, 2017. The 2016 Annual Report, describing the same well referenced in the Appellants' comments, notes that groundwater measured at the well has "remained relatively stable although somewhat susceptible to dry years." (See 2016 Annual Report, page 34.) Referencing a very dry year in 1977, the 2016 Annual Report notes that spring season groundwater levels were measured at over 26 feet below ground surface (bgs) but also notes that groundwater levels in more recent years were 18.1 feet bgs and 12.7 feet bgs (in 2014 and 2015, respectively, and both dry years) and was most recently as high as 7.2 feet bgs in January 2017 (with above average precipitation). Thus, with an increase of less than one acre-foot of water per year associated with the employment increase of the Project, the conclusions of the Revised MND remain valid, and groundwater would not be significantly impacted by the Project.

Regarding water quality, an evaluation of erosion and stormwater impacts was performed by licensed engineer Summit Engineering in the report entitled "*Wastewater Feasibility Study for Raymond Vineyards dated September 1, 2015 and Revised January 15, 2016*" (the Summit Wastewater Study). This in turn was reviewed by County engineering staff and was found to meet County and State standards. Testimony or reports by experts supporting a finding that a project's impacts will be insignificant constitutes substantial evidence supporting the agency's conclusions.³⁶ The studies and expert testimony referenced herein all provide substantial

³⁶ 14 Cal. Code Regs Section 15063(a)(3).

evidence that the Planning Commission appropriately and adequately considered the effects of the Project.

As to wildlife impacts, the Revised MND identified potential impacts to bat species and recommended mitigation measures that establish minimum performance and reporting criteria based on conservatively assuming the presence of two California bat species of concern. Appellants have not articulated how or why the mitigation is improper, inadequate or would otherwise result in adverse impacts to bat or other biological species. A mitigated negative declaration cannot be attacked successfully on the theory that the conditions will not be enforced; compliance with the conditions will be presumed. When a court reviews a mitigated negative declaration, “the focus must be the use as approved, and not the feared or anticipated abuse.”³⁷

Unsupported conclusions do not rise to the level of substantial evidence and do not support the unsubstantiated conclusion that a cumulative impact may occur. Appellants have not made a “fair argument” that the operational changes proposed at the Raymond Winery may have significant environmental effects. The vast majority of materials submitted by the Appellants, both during the Planning Commission hearings and now on appeal, pertain to existing conditions without a direct or indirect link of how the Project influences or exacerbates those existing conditions. An argument that a project may have a significant environmental effect must be based on relevant evidence sufficient to support that conclusion. An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts.³⁸

Appeal Ground No. 14: Appellants assert that the Revised MND failed to adequately analyze the Project’s significant water quality impacts and specifically the larger problem of runoff from upstream of the access drive, which will be captured in a swale and concentrated into culverts which could erode a channel downstream from the road.

Staff Response:

Water quality and drainage impacts were thoroughly reviewed and analyzed in the Revised MND and Summit Stormwater Report. The proposed storm drain system incorporates long overland flows across gently sloping areas on-site, landscaped bioretention facilities to capture, treat and hydromodify runoff from structures, and roadside swales to control and convey excess runoff from vineyard areas. Each of these areas is depicted on the Project plans, sheets UP6 and UP7, which were available online on the County Planning, Building and Environmental Services Department Project website before, during and since the public review period on the Revised MND.

The stormwater improvements were designed and prepared by a licensed engineer in accordance with applicable State and County standards, including the Phase II MS4 Municipal General Permit adopted by the County (NCC Chapter 16.28). Under these standards, any runoff from new or reconstructed impervious areas (such as roadways) must be treated and managed prior to

³⁷ *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal.App.3d 130, 164.

³⁸ *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785.

discharge off-site, in order to ensure reduction in pollutants and a “no net increase” in the quantity of runoff leaving the site.

As designed, the proposed storm drainage improvements would maintain the historic drainage pattern of the site, which includes discharge of excess runoff from the vineyards into an existing culvert near the southern property line of the Raymond Vineyards parcel. Runoff from the proposed new access road would sheet flow off of the road surface into the vineyards to the east and south of the roadway alignment. Excess discharge from the vineyards north and west of the access road would be conveyed via a roadside swale to a proposed point of discharge near the southern corner of the Raymond Vineyard parcel. In accordance with the Bay Area Stormwater Management Agencies Post-Construction Manual, incorporated by reference into the County’s Stormwater Quality Ordinance (NCC Chapter 16.28), the point of discharge into the culvert along the Raymond Vineyard parcel’s southern property line would include a velocity dissipation device to decrease the intensity of peak flows at the point of discharge and reduce the potential for erosion in the culvert.

The Summit Wastewater Study and grading and drainage plans were reviewed by Staff of the County’s Engineering Division to confirm compliance with the State and County standards referenced above. Engineering Division Staff recommended approval of the Project, subject to conditions, which were imposed by the Planning Commission. (See COA No. 3.3.) A report submitted by the Appellants’ hydrologic consultant, Tom Meyers, asserted that the Project would have significant water quality impacts but did not assert that the drainage improvements would not meet standards of design adopted by the County to protect public welfare and ensure minimal environmental effects. Nor have Appellants provided any credible evidence or rationale as to why the erosion design measures would be inadequate.

A condition requiring compliance with another agency’s environmental regulations or standards is a reasonable mitigation measure when the lead agency has “meaningful information” that would reasonably justify “an expectation of compliance” and when compliance would avoid significant impacts.³⁹ Mitigation measures, such as requiring engineering department approval of drainage facilities or flood control and water district approval of grading plans, are appropriate when these approvals or plans are subject to performance standards such as those typically found in applicable ordinances, rules, and standards.⁴⁰ As described above, the drainage facilities were designed in accordance with State and County standards, which standards have been adopted to ensure protection of public health, safety and welfare.

Appeal Ground No. 15: Appellants assert that the Revised MND failed to adequately analyze the Project’s significant hydrology impacts and specifically failed to address Appellants’ concern about the low infiltration rate of soils on-site and that the expanded leach line may cause significant seepage of wastewater to downstream locations. The Revised MND fails to include any information on existing wells or analyze the impacts from the expanded leach fields.

³⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308.

⁴⁰ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1395.

Staff Response:

Appellants are incorrect. While the Revised MND acknowledges that there are limitations in use of septic systems in the on-site soils, it also notes that such limitations can be overcome with certain design elements of the system, such as expansion of the leachfield or inclusion of pre-treatment of effluent prior to discharge to the septic system dispersal field.

The Summit Wastewater Study (incorporated by reference in the Revised MND) provides a detailed description of the proposed wastewater treatment system, which consists of three main components: (1) settling tanks with effluent filter; (2) a pre-treatment system with flow meters; and (3) a subsurface drip field system with drip tubing for disposal of flows in the vineyard area south of the winery building. The settling tanks would provide initial treatment of wastewater discharged to the system, primarily removing solids from the effluent. The Orenco pre-treatment system specified in the Summit Wastewater Study would provide additional treatment of the wastewater, to a secondary level, before discharging the high quality effluent to the leachfield where additional treatment would occur in the soil. (For reference, wastewater treated to a tertiary level is considered acceptable for discharge to surface water systems such as wetlands.)

County regulations require a minimum of three feet of vertical clearance between leachlines and the limiting layer (such as heavy clay, rock or groundwater) in a septic system. This distance has been determined to be the minimum necessary to treat water that has received only primary treatment in a septic tank. However, lesser vertical clearance of two feet is permitted when the wastewater is pre-treated prior to discharge to the leachfield, as is proposed with the Project. Appellants' comments neglect to acknowledge the supplemental pre-treatment that is proposed by the Applicant, instead implying that wastewater discharged from the Winery would be of a much lower quality than what is proposed to occur.

In addition to neglecting to acknowledge pre-treatment features incorporated into the system design, Appellants' comments also ignore that the character of the soil extends to the depth of the test pits done during the site evaluation (and possibly deeper). The Summit Wastewater Study conservatively identified a limiting depth of 36 inches below ground surface (bgs), the point at which mottling (evidence of water, potentially groundwater or surface water absorbed into the soil) was first observed (See Summit Wastewater Study, page 5). However, the site evaluation report included in the Summit Wastewater Study also identified consistent soil composition to depths of 41 to 54 inches, indicating potential for vertical movement of secondarily treated effluent beyond 36 inches bgs. Combined with the approximate seven-foot depth to groundwater, and with the closest well located over 600 feet away from the proposed leachfield, the design of the proposed wastewater system meets County standards and does not have the effect of contaminating groundwater. As an additional precaution for septic systems with pre-treatment facilities, the County requires: (a) the permittee or the permittee's contractor to install monitoring wells within a 25-foot perimeter around the leachfield (substantially within the property boundaries and over 500 feet from the nearest well); and (b) the permittee's certified service provider to monitor, maintain/clean, repair and submit twice a year to the County a report on the system's performance. County staff also accompanies the service provider on the system inspection at least once every two years. These monitoring and reporting requirements are

intended to detect issues of effluent quality in the soil, effect repair of potential system problems, and prevent contamination of groundwater. (See also Staff Response to Appeal Ground No. 12.)

The wastewater treatment system improvements were designed in accordance with applicable State and County standards and were reviewed by Staff of the County's Environmental Health Division to confirm compliance. Environmental Health Division Staff recommended approval of the Project, subject to conditions which were imposed by the Planning Commission. (See COA No. 3.1.) Reports submitted by the Appellants' hydrologic consultant, Tom Meyers, asserted that the Project would have significant environmental impacts but did not suggest that the wastewater improvements would not meet standards of design adopted by the County to protect public welfare and ensure minimal environmental effects. Likewise, Appellants' hydrologic consultant did not assert that impacts would result even if the system is designed to County standards nor did he assert that the wastewater design is inadequate. A mitigated negative declaration cannot be attacked successfully on the theory that the conditions will not be enforced; compliance with the conditions will be presumed. When a court reviews a mitigated negative declaration, "the focus must be the use as approved, and not the feared or anticipated abuse."⁴¹ See also Staff Response to Appeal Ground Nos. 13 and 14.

Appeal Ground No. 16: Appellants contend that the Revised MND failed to adequately analyze the Project's significant traffic impacts and ignored the daily increase in winery visitors. The Raymond Winery Use Permit Application states the number of visitors on an average day will double from 200 to 400. The trip generation used in the traffic analysis understates both Project-related peak hour traffic and impacts to the area roadways.

Staff Response:

Please see Staff Response to Appeal Ground Nos. 8-10, above. Contrary to Appellants' assertions, the Project does *not* propose or authorize an increase in winery visitation. The Appellant's assertion is based on the possibility that a violation may occur in the future should the expanded facilities be used to accommodate an increased number of visitors. This assertion is speculative and is outside the scope of CEQA analysis. Since 1991, the Raymond Winery has been authorized to have a maximum of 400 visitors per day. The Revised MND specifically acknowledged that "the overall number of visitor trips would not change with the requested modification, as the Project proponent requests no change to the winery's permitted number of daily and marketing event visitors; however, the number of visitors traveling on Zinfandel Lane would decrease as visitors to the winery would have the ability and be encouraged to use State Route 29 to access both the Ticen Ranch and Raymond [Vineyards] properties." (See Revised MND, pg. 32.)

Under their existing use permit, Raymond Winery may host up to 400 visitors per day. Information provided to the County from the Applicant indicated that Raymond Winery's visitation numbers are within this maximum permitted allowance. As noted in the Project application materials and in testimony from Applicant's team, visitation varies between 200 and

⁴¹ *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal.App.3d 130, 164.

400 visitors per day, with higher numbers attributed to the typical weekend day.⁴² The visitation levels were previously analyzed in the Revised MND that accompanied the use permit modification approved by the Planning Commission in 1991 (Use Permit U-89-46) which approved up to 400 visitors per day. The Project does not propose any change to the entitled visitation numbers, and thus, there is no increment in visitation, either upward or downward, that needed to be analyzed in the Revised MND for the Project.

As there is no request to change visitation or production numbers, the increased vehicle trips associated with the Project are attributed to the requested recognition of the 64-employee increase. As noted in the Staff Response to Appeal Ground No. 10, above, the traffic impact analysis of the Project (including the Crane Traffic Study, see page 1) used the “permitted” number of employees (26) rather than the “existing” condition (90) as the baseline measurement. This comparison better represents the potential impacts of the additional, unpermitted winery employees that the Applicant requested to be recognized under the use permit modification application. Thus, the trip generation numbers used in the environmental analysis are reflective of the requests encompassed within the Project.

Appeal Ground No. 17: Appellants claim that the Revised MND failed to adequately analyze the safety effects of trucks on State Route 29 and the potential safety issues of auto-truck conflicts and mixing automobile traffic (including wine-tasting tourists) with heavy-vehicle traffic.

Staff Response:

There is no known safety issue caused by the combination of trucks and passenger cars on the same road facility. All vehicular facilities on the property and connecting to State Route 29 have been designed in compliance with the Napa County Road and Street Standards and thus, are capable of accommodating both passenger and heavy truck traffic.

The Crane Traffic Study and follow up memorandum evaluated sight line adequacy at both the existing driveway at Zinfandel Lane, as well as, the proposed new driveway at State Route 29 on the Ticen Ranch parcel. (See Crane Traffic Study, page 25.) The Crane Traffic Study states that drivers making turns from State Route 29 would have sight distances of 700 to 800 feet and concludes that these existing sight distances are adequate to accommodate safe turn movements of vehicles from the roadways, without regard to vehicle type (passenger vehicle or truck). (See Crane “Traffic Impact Report dated August 26, 2016” page 25; and February 28, 2017, memorandum from Mark Crane, pg. 3.) The traffic analyses were reviewed by County Public Works Staff and were found to be acceptable.⁴³

Based on existing vehicle speeds of 40 to 60 miles per hour on State Route 29, drivers making the turning movement would be able to see an approaching vehicle for eight to 12 seconds. The two-way left-turn lane recently built by Caltrans on State Route 29, as well as, the exclusive left-

⁴² See Use Permit Application, pages 9 and 15, attached to the February 1, 2017, Planning Commission Staff Report; Planning Commission Meeting February 1, 2017, Transcript pages 30-33.

⁴³ See November 2, 2016, and March 8, 2017, memoranda included with Attachment B to March 15, 2017, Planning Commission Staff Report.

turn pocket that the Applicant was conditioned to construct on Zinfandel Lane would provide sheltered areas for left-turning vehicles to wait safely outside of the way of through-traffic on each respective road.

The Crane Traffic Study also evaluated the Project's existing connection to the public road network via the proposed connection at the improved driveway between Ticen Ranch and State Route 29. At maximum observed speeds of 60 miles per hour, a vehicle would need at least 580 feet of stopping distance to avoid a collision with a vehicle exiting the proposed private driveway. Existing sight distances of 700 to 800 feet, as referenced above, would provide adequate stopping distance in accordance with Caltrans' Highway Design Manual. The shift of the Ticen Ranch driveway southward, as proposed by the Applicant in response to concerns raised by the Leeds, would offset the turning movements of winery visitor vehicles from the turning movements of vineyard maintenance vehicles that use the private road currently located opposite the existing Ticen Ranch driveway.

The Crane Traffic Study along with the peer review by County Traffic Engineer Marshall provides substantial evidence to support the Planning Commission's finding that the Project would not result in significant traffic impacts.

Appeal Ground No. 18: Appellants contend that the Revised MND failed to adequately analyze the Project's contribution to cumulative impacts.

Staff Response:

A lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable.⁴⁴ "Cumulatively considerable" means that the incremental effects of a project are significant when viewed in connection with the effect of past projects, other current projects, and probable future projects.⁴⁵ To assess whether a cumulative effect triggers the need for an EIR, the lead agency must answer two questions: whether the cumulative impact itself may be significant and whether the project's incremental contribution to that effect would be "cumulatively considerable."⁴⁶ A project's impacts must be found cumulatively considerable if its incremental effects are significant when viewed within the context of the effects of past, current, and probable future projects.⁴⁷ The existence of significant cumulative impacts caused by other projects is not, standing alone, evidence that the project's impact is cumulatively considerable.⁴⁸ It must be shown that the project will contribute to an environmental impact for the impact to be characterized as a project-related cumulative

⁴⁴ Public Resources Code Section 21083(b); 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3).

⁴⁵ Public Resources Code Section 21083(b)(2); 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3); *San Bernardino Valley Audubon Soc'y v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 398 (EIR required for habitat conservation plan in part because initial study did not adequately explain why cumulative adverse effects to endangered species would not occur).

⁴⁶ 14 Cal Code Regs Section 15064(h)(1).

⁴⁷ 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3). *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 622 (citing this text).

⁴⁸ 14 Cal Code Regs Section 15064(h)(4).

impact.⁴⁹ As further explained in Staff Response to Appeal Ground No. 12, above the Revised MND properly and adequately evaluated the Project's cumulative impacts.

Appeal Ground No. 19: Appellants claim that Applicant failed to comply with and implement a traffic mitigation measure from the Raymond Winery's 1991 Use Permit which required installation of a westbound left-turn lane when traffic on Zinfandel Lane exceeds 2,000 trips per day (ADT). Applicant's own traffic report⁵⁰ shows in 2013 ADT at 3,512 per day, yet the improvements were never installed.

Staff Response:

Staff concurs with Appellants that the Winery operators failed to comply with the previously-adopted mitigation measure requiring a left-turn lane on Zinfandel Lane.

The traffic study submitted by the Applicant identified the left-turn lane as a component of the Project improvements. (See Crane Traffic Study, page 26). The Planning Commission imposed a specific condition of approval that requires the Applicant (permittee) to install the turn lane in a timely manner, as follows: (1) the permittee shall submit to the County Public Works Department an application for encroachment permit and a design plan for the left-turn lane, within 90 days of the date of the decision on the use permit modification request; (2) the permittee shall commence construction of the roadway improvement within 30 days of receiving the encroachment permit from Public Works; and (3) the Chief Building Official shall withhold any Final Certificate of Occupancy for any structure on the Raymond Vineyard and Cellars parcel, until completion of the left-turn lane on Zinfandel Lane. (See COA No. 2.6.)

Appeal Ground No. 20: Appellants assert that the Revised MND erroneously states that the Project would result in less than a half an acre of vineyard whereas the Staff Report discloses that the revised access driveway will actually require removal of more than two acres of vineyard. This additional loss of agricultural land constitutes a substantial revision of the Revised MND triggering recirculation of the document.

Staff Response:

Staff agrees that the amount of vineyard that was initially disclosed to be removed was revised upward. However, the slight increase is not substantial and does not trigger recirculation. The Revised MND states that there is an estimated half-acre of vineyard removal necessary for construction of the parking lot and viewing platform on the Raymond Vineyard parcel. (See Revised MND, page 19.) The Planning Commission March 15, 2017 Staff Report indicates a higher number, closer to two acres, of vineyard area would be removed on *both* parcels, for the parking lot, viewing platform and access road.⁵¹

The increase in vineyard removal resulted from additional vines that would be removed due to realignment of the access road on the Ticen Ranch parcel to accommodate the neighbors'

⁴⁹ *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690 (citing this text).

⁵⁰ See Omni Means Report prepared for the Raymond Winery (2014).

⁵¹ See Planning Commission Meeting, March 15, 2017 Staff Report, page 7.

(Leeds) concerns. During a recent vineyard replant on the Ticen Ranch parcel, the Applicant maintained an unplanted area in their desired alignment of the proposed access road. In response to concerns raised by the Leeds, the Applicant presented an alternative alignment that shifted the driveway at State Route 29 further to the south and the overall alignment of the road further to the north, thus necessitating removal of vineyards on the Ticen Ranch parcel that were not anticipated during the initial analysis of the Project.

The increase in vineyard removal from the revised road alignment would consequently result in corresponding reductions in air quality and greenhouse gas emissions from vineyard maintenance activities and demands for groundwater extraction for irrigation, thus reducing the potential environmental impacts of the Project, if the unplanted area of the original alignment remains unplanted. If replanting of the original alignment occurs, the total vineyard reduction would be roughly equal to the half an acre that was identified in the Revised MND. Once a negative declaration has been circulated, it need not be recirculated for another round of review and comment unless it is “substantially revised” after the public notice of the first circulation period has been given.⁵² The addition of new information that clarifies, amplifies, or makes insignificant modifications to a negative declaration does not require recirculation.⁵³ Here, the slight increase in vineyard removal was not a new significant effect nor did it require a new mitigation measure and therefore the Revised MND was not required to be recirculated.

H:\ccoun\DOCS\BOS\Appeals-PC\Raymond\Final Appeal Responses 8.15.17.docx

⁵² See 14 Cal Code Regs Section 15073.5(a).

⁵³ See 14 Cal Code Regs Section 15073.5(c)(4).