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Agenda Date: 5/23/2017  
Agenda Placement: 9B  
Set Time: 9:35 AM PUBLIC HEARING  
Estimated Report Time: 5 Hours

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** John McDowell, Principal Planner - 299-1354  
**SUBJECT:** Mountain Peak Winery Appeal Hearing

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### **RECOMMENDATION**

Consideration and possible action regarding the following:

1. An appeal filed by Kosta M. Arger, to a decision made by the Napa County Planning Commission (Planning Commission) on January 4, 2017 to approve the **Mountain Peak Winery/Mountain Peak Vineyards, LLC Use Permit No. P13-00320-UP** (the Mountain Peak Winery or the Project) filed by Steven Rea (the Applicant);
2. An appeal filed by Cynthia Grupp, to a decision made by the Planning Commission on January 4, 2017 to approve the Mountain Peak Winery;
3. An appeal filed by William Hocker, to a decision made by the Planning Commission on January 4, 2017 to approve the Mountain Peak Winery; and
4. An appeal filed by Glenn Schreuder, to a decision made by the Planning Commission on January 4, 2017 to approve the Mountain Peak Winery.

The Mountain Peak Winery allows: (1) Construction of a new 100,000 gallon per year winery including an approximately 33,424 square foot cave, approximately 8,046 square foot tasting and office building, and approximately 6,412 square foot covered outdoor crush pad and work area; (2) demolition of the existing single family residence; (3) installation of 26 parking spaces; (4) construction of 2 new driveways and private access roads with ingress/egress from Soda Canyon Road; (5) installation of a High Treatment wastewater treatment system and community non-transient potable water supply sourced from on-site private wells including two 100,000 gallon water tanks for vineyard irrigation and one 20,000 gallon water tank for domestic supply; (6) disposal of all cave spoils on-site within existing vineyards; (7) 19 full time employees, 4 part-time employees and 4 seasonal harvest employees; (8) tours and tastings by prior appointment only for a maximum of 80 visitors per day and a maximum of 320 visitors per week; (9) a marketing plan including 3 events per month for up to 12 visitors, 3 events per month for up to 24 visitors, 4 events per year for up to 75 visitors, and 2 events per year for up to 125 visitors; and (10) on premises consumption of wines produced on site in the tasting room and outdoor

terrace. The Project also includes a request for an exception to the Napa County Road and Street Standards (RSS) to increase the maximum slope on a portion of the commercial access road to the covered crush pad and cave portals from 16% to 19.6%. The Project is located on a 41.76-acre parcel on the northwest side of Soda Canyon Road, approximately 6.1 miles north of its intersection with Silverado Trail, 3265 Soda Canyon Road, Napa, CA, 94558; APN: 032-500-033.

**ENVIRONMENTAL DETERMINATION:** Consideration and possible adoption of a Negative Declaration. According to the proposed Negative Declaration, the proposed Project would not have any potentially significant environmental impacts. The Project site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

**(CONTINUED FROM APRIL 18, 2017)**

### **EXECUTIVE SUMMARY**

The matter before the Board involves a multi-neighbor generated appeal of the Planning Commission's decision on January 4, 2017, to approve an application submitted by Applicant for construction of a new 100,000 gallon per year winery, driveways and access roads, wastewater treatment system, related infrastructure improvements, and visitation and marketing activities for the Mountain Peak Winery located on the northwest side of Soda Canyon Road, approximately 6.1 miles north of its intersection with Silverado Trail.

Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. To accommodate all parties' schedules, on April 18, 2017 the Chair opened and continued the hearing (with the consent of all parties) to May 23, 2017. No testimony was taken on April 18th.

### **PROCEDURAL REQUIREMENT**

1. Chair introduces item. If requested, Appellants or Applicant provided opportunity to be heard on Chair's prior "good cause" determinations. If no request is made by Appellants or Applicant, Chair invites Staff report presentation. (\*Note: Appellants have requested to be heard on the Chair's prior determination.)
2. Chair opens the public hearing and invites testimony from Appellants and their witnesses as previously disclosed on their witness list and in the order noted on the witness list attached as Attachment C.
3. Chair invites any other interested members of the public to testify regarding the appeals.
4. Upon hearing all testimony from interested members of the public, Chair invites the Applicant and their witnesses as previously disclosed on their witness list attached as Attachment C to testify.
5. Chair then invites Appellants to have final rebuttal.
6. Chair closes the public hearing and invites disclosures from Board members.
7. A motion of intent is made and seconded to deny, uphold, and/or remand each of the four appeals. \*Note: Because of the multiple appeals, Staff requests that the Board act on each of the appeals separately and the Chair call for a vote on each of the motions, as follows:
  - a) Appellant Kosta M. Arger's appeal;
  - b) Appellant Cynthia Grupp's appeal;
  - c) Appellant William Hocker's appeal; and
  - d) Appellant Glenn Schreuder's appeal.
8. Chair refers the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Because of the number of the appeals and the number of grounds raised in the appeals, good cause exists for County Counsel's office to have ninety days to prepare the Resolution of Findings and Decision on Appeal. Consequently, Staff recommends that the Board direct County Counsel's office to

return to the Board on August 15th at 9:30 am with the proposed Resolution for the Board's consideration and adoption.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

Consideration and possible adoption of a Negative Declaration. According to the proposed Negative Declaration, the proposed Project would not have any potentially significant environmental impacts. The Project site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

### **BACKGROUND AND DISCUSSION**

All documents associated with the Mountain Peak Winery including, but not limited to, the application materials, Negative Declaration, Planning Commission Staff reports, comments and correspondence, transcripts of the Planning Commission meetings, the four appeals and the supplemental materials submitted by Appellants and Applicant can be accessed at: <http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294985975> .

This matter involves an appeal of the Planning Commission's approval for the construction of a new 100,000 gallon per year winery, related infrastructure improvements including an approximately 33,000 square foot cave, and a visitation and marketing program proposed to be located near the end of Soda Canyon Road. The Project generated controversy primarily because of its location. Typically, wineries with larger production and visitation are located closer to major through roads, and wineries located on hillside parcels similar to the Mountain Peak Winery site tend to be smaller. However, there is no prohibition on larger wineries in more remote areas and the Planning Commission carefully evaluates each proposal on a case-by-case basis to determine whether a particular winery's scope and scale is appropriate for its location.

There are five other existing wineries (White Rock, Caves at Soda Canyon, Relic, Antica and Astrale e Terra Winery) and three approved but not yet built wineries (Grassi, Roy and V12) located along Soda Canyon Road. For comparison and context, the other wineries have permitted production levels between 5,000 and 60,000 gallons annually, with the exception of Antica at 450,000 gallons. Mountain Peak's production of 100,000 gallons would be at the higher end for facilities along Soda Canyon Road. Similarly, the other wineries have annual permitted tasting room visitation levels between 0 and 7,280. The Applicant's proposal of 14,300 tasting room visitors per year would be more than double any existing winery along Soda Canyon Road.

### **Code Compliance:**

During the course of processing this application, two code compliance cases were investigated. The first case involved wine tastings being conducted within the existing vineyard office on north side of the property. It was determined that the prior property owner had been conducting tasting in the office for a number of years without complaint, and was using the building as a staging area for tours and tastings for another property further up the canyon. The current property owner was responsive to the County's notice of violation and the unauthorized tastings activities were immediately discontinued.

In mid-2016, a neighbor complained that the current property owner conducted a tasting at the existing residence. Staff contacted the property owner shortly after the complaint was received, and the property owner asserted that the persons visiting the property were friends and that no commercial wine tasting occurred. The complaining party stated that they had talked with the visitors who indicated that they were visiting for commercial purposes. The property owner made a claim of trespass against the complaining neighbor, which was documented with the Sheriff's office. There have been no further incidents reported to the County, and given the conflicting reports and no indications of further alleged violations, Staff has closed the case.

**Public Process:**

The Mountain Peak Winery use permit application was originally submitted on September 26, 2013. (Note that this occurred prior to the current County practice of providing early public notice to nearby property owners and other interested parties.) Resubmittal applications were provided on the following dates: November 21, 2013; May 27, 2014; July 9, 2014; November 25, 2014; April 14, 2015; and March 21, 2016. The application was determined to be complete on April 15, 2016.

In the summer of 2013, prior to submittal of the original project, the Applicant held an outreach meeting with neighbors. Several follow-up meetings between neighbors and the Applicant occurred in March, April and May of 2014. Over the course of the next two years there was some additional interaction between neighbors and the Applicant, but agreement on project design could not be reached. Staff began interacting with neighbors in early 2014.

The Negative Declaration was released for review on June 29, 2016, for a 20-day public comment period ending on July 19, 2016. In addition, on June 29, 2016 the formal 20-day County notice of public hearing and notice of intent to adopt a negative declaration was posted for the July 20, 2016 hearing, and was sent to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. (It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet.) Notice was also provided to those persons on the general CEQA document notification list.

Topics considered by the Planning Commission during the public hearing on July 20, 2016, included: traffic volume, visitation and marketing, noise, water availability, setbacks, road and street standards exception, greenhouse gas emissions, and grape sourcing. Due to the large volume of materials received prior to and during the hearing, the item was continued. The public comment period was not closed by the Planning Commission Chair until January 4, 2017, immediately prior to final deliberations and Planning Commission action. The public comment period was open for a total of 190 days.

Ninety-six documents from 66 interested parties (other than the Applicant and their representatives) were submitted to the administrative record over the course of application processing, and ranged from letters and emails to power point presentations, petitions, and analysis from subject matter experts. Several of the letters included a large number of attachments or exhibits, resulting in an overall total of 1,353 pages of documents from interested parties. Some pieces of correspondence were submitted more than once, or as attachments to other correspondence, and therefore appear more than once in the administrative record. Attachment T of the Planning Commission's January 4, 2017 Staff Report contains a list of all comments received up to that hearing and includes the party, form and general content of the submission, based in order of when the comment and/or materials were received. Petition signature pages were received on July 19, 2016 (35 pages), July 20, 2016 (41 pages), October 11, 2016 (60 pages), and with the Dorothy Leighton correspondence received May 11, 2017.

**Planning Commission Action:**

On July 20, 2016, the Planning Commission conducted the initial public hearing on the Project. Based on the extensive public comments and documents received on the eve of the hearing, the matter was continued to August 17, 2017 to provide Staff and the Applicant opportunity to review and respond to materials and comments received. At the hearing, as part of its presentation, the Applicant modified the proposed Project as follows: maximum daily visitation was reduced from 80 to 60 persons and the weekly maximum visitation from 320 to 275 (a reduction from 16,640 tasting room visitors to 14,300 annually); and the number of marketing events was reduced from 78 annually to 3 annually. No changes were proposed to the 100,000 annual production, number of employees, or site and building improvements.

On August 17, 2016, at the Applicant's request the Commission continued the hearing to October 16, 2016.

On October 16, 2016, prior to the hearing, additional materials, including a biological analysis and hydrological analysis, were submitted by attorney Anthony Arger on behalf of several neighbors. The Applicant requested a continuance to November 16, 2016 to allow sufficient time for Staff and the Applicant to review and respond to the materials. Due to Mr. Arger's unavailability on November 16th, the Commission continued the item to November 2nd to determine the new hearing date and to allow the parties and Staff time to see if a mutually agreeable date for the continuance could be determined.

On November 2, 2016, the scope of the Commission's discussion of the item was limited to determining the new hearing date. After considering input from the neighbors, the Applicant and Staff, the Commission continued the matter to January 4, 2017.

On January 4, 2017, the Commission considered a number of topics related to the proposal, including traffic safety, traffic volume, fire safety, water availability, biological resources, and noise. After considering the Staff report, Applicant's presentation, and all public comment, the Commission voted (3:1 – AYES: Basayne, Gill, Scott; NOES: Cottrell) to approve the Mountain Peak Winery.

### **Findings:**

When reviewing the proposed Project, the Planning Commission based its decision on a series of Findings, as required under both County Code and State law. The Board of Supervisors must also consider all of the same Findings in reaching their decision. In order to uphold one or more grounds of the Appeals, the Board must determine that the Project is not consistent with at least one (or more) of the Findings. To approve the Project and deny the Appeals, the Board must determine that the Project is consistent with each of the following Findings:

### **CEQA:**

1. The Board of Supervisors has read and considered the Negative Declaration prior to taking action on said Negative Declaration and the proposed project.
2. The Negative Declaration is based on independent judgment exercised by the Board of Supervisors.
3. The Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).
4. There is no substantial evidence in the record as a whole, that the project will have a significant effect on the environment.
5. There is no evidence, in considering the record as a whole that the proposed project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

**Exception to Road and Street Standards:**

1. The exception will preserve unique features of the natural environment which includes, but is not limited to, steep slopes, heritage oak trees, or other trees of at least 6" dbh and found by the decision-maker to be of significant importance, but does not include man made environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like.
2. Grant of the exception will provide the same overall practical effect as the Standards do in providing defensible space, and does not adversely affect the life, safety, and welfare of the public or persons coming to the property.

**Use Permit:**

1. The Board of Supervisors has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.
2. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the County Code (zoning regulations) have been met.
3. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.
4. The proposed use complies with applicable provisions of the County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.
5. That the proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of the County Code.

Please see Attachment A of the Planning Commission's January 4, 2017 Staff Report for the Findings adopted by the Commission.

**Appeal:**

On January 30, 2017, timely appeal packets were filed by Appellant Kosta M. Arger, Appellant Cynthia Grupp, Appellant William Hocker, and Appellant Glenn Schreuder (hereafter all four appellants are referred to as Appellants) to the Planning Commission's decision to approve the Project. With the exception of the names of the Appellants, all four appeals are identical so Staff has only attached and responded to the appeal packet filed by Appellant Kosta M. Arger. (Please see Attachment B.) The other three appeals can be reviewed online at: <http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294985975>. Pursuant to the County's appeals ordinance (Napa County Code Chapter 2.88) a public hearing on the appeal must be scheduled not less than fifteen days nor more than ninety calendar days from submittal of an appeal. To accommodate all parties' schedules, on April 18, 2017 the Chair opened and continued the hearing (with the consent of all parties) to May 23, 2017. No testimony was taken on April 18th.

**Pre-Hearing Conference:**

In an effort to clarify the County's procedural requirements and expectations regarding land use appeals, the County Counsel's office has initiated a voluntary program whereby a pre-hearing conference is held with the parties (applicants and appellants) and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists. Any witness not appearing on a witness list at the pre-hearing conference will be treated as an ordinary member of the public and be allotted the

usual three minutes of speaking time.

A pre-hearing conference was held on March 6, 2017, with Appellant Schreuder and Appellants' counsels, the Applicant and its counsel, Chair Ramos and members of the County Counsel's office. At that time, Appellants and Applicant agreed to provide a list of their respective witnesses along with the subject matter of testimony and time estimates. The Chair informed the parties that each Appellant is allocated a maximum of 30 minutes for their presentation including rebuttal or 2 hours total to be allocated at Appellants' discretion; and that the Applicant has a maximum of 45 minutes for its presentation. A summary of the witness information by name, subject matter of testimony and time estimates that was provided by Appellants and the Applicant is attached as Attachment C.

Appellants and Applicant also agreed to provide the Chair with any requests for "good cause" to either supplement the record with new information and/or to have the appeal heard de novo (e.g., a fresh hearing). As part of Appellants' appeal packet, they requested that "good cause" be found to (1) augment the record with a hydrological analysis prepared by Kamman dated January 30, 2017 and approximately 290 pages of exhibits; and (2) for a de novo hearing. On March 27, 2017, Appellants submitted an additional "good cause" request to augment the record with a geotechnical and geological report to be prepared by KC Engineering and which was expected to be available in mid-April. That same day, Applicant's counsel submitted an opposition to the Appellants' requests. A copy of each of Appellants' requests and Applicant's opposition is attached as Attachment D. Because of the number of exhibits attached to Appellants' "good cause" request, they can be viewed online at: <http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294985975>.

The Chair found good cause to allow the Kamman analysis but not the 290 pages of exhibits referenced therein. The Chair denied the requests for de novo review and the as-yet-unprepared KC Engineering report. A copy of the Determination of Good Cause decision issued by the Chair is attached as Attachment E. Pursuant to County Code Section 2.88.090 (B), the Chair's decision is final unless one of the parties requests that a majority of the Board overrule the decision. On May 8, 2017, Appellants submitted the KC Engineering Report which had previously been denied by the Chair. On May 11, 2017, Appellants requested that a majority of the Board overrule the Chair's prior good cause determinations. A copy of Appellants' request is attached as Attachment F. The 290 pages of exhibits and the KC Engineering Report submitted by Appellants denied by the Chair can be viewed online at: <http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294985975>. Those documents are not part of the administrative record on appeal unless the Chair's decision is overruled.

At the pre-hearing conference, all parties further agreed to provide any supplemental information not to exceed 10 pages per Appellant that the parties wished to have considered by the Board by April 3rd. Included as Attachment G is the supplemental information that was provided by the Applicant and Attachment H is the letter from Appellants. The 500 plus pages of exhibits attached to Appellants' letter is available for review online at: <http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294985975>. Public correspondence received after the Planning Commission's decision and as of May 12, 2017 is attached as Attachment I.

#### **Appeal Hearing Public Comments:**

Public notice of this appeal hearing was posted and mailed on April 8, 2017, and provided to all parties who received notice of the Planning Commission hearings. On April 18, 2017 the Board opened the public hearing and continued the item to May 23, 2017 without taking testimony. As of May 12, 2017, seven comments have been received on the appeal from parties other than the Appellants, Applicant and their respective representatives, as follows:

- ) Michael and Marieann Perri, supporting the Project;
- ) Steve Chilton, supporting the Appeal;
- ) Doreen Leighton, supporting the Appeal;

- ) Stephen Donoviel, supporting the Appeal;
- ) Barbara Guggia, supporting the Appeal;
- ) Diane Shepp, supporting the Appeal; and
- ) Daniel McFadden, supporting the Appeal.

The public comment period on this appeal will have run for 66 days by the hearing on May 23, 2017.

**Stated Basis for Appeal:**

Attachment A outlines the basis of the appeal as contained in Appellant Arger's Appeal dated January 31, 2017 and Staff's response to the grounds of appeal.

For convenience, Staff has bracketed and numbered each issue within Appellant Arger's appeal, and provided a general summary of the ground of appeal followed by Staff's response. However, Staff recommends that the Board review the actual appeals. All four appeals are identical so Staff has only summarized and responded once.

**Updated Conditions of Approval:**

Subsequent to the Planning Commission's approval of the Project and while this appeal was pending, the Board adopted Updated Conditions of Approval (the Updated COA). Staff has incorporated the prior conditions of approval adopted by the Planning Commission into the new updated format and recommends that the Board adopt the Updated COA attached as Attachment J. The Updated COA do not substantively change those adopted by the Commission except the groundwater condition. Because the prior version of the groundwater condition was referenced in the Negative Declaration and because groundwater is one of the subjects raised in the appeals, Staff has carried that prior version of the condition forward into the Updated COA rather than applying the new groundwater condition. (See Updated COA No. 4.20 (b)). However the groundwater condition was not identified as a specific mitigation measure and the Project is expected to use less groundwater than existing conditions. Therefore, the Board may wish to direct Staff to use the newer version of the groundwater condition which does not have a cap on the amount of groundwater the Project may use and does not declare exceedance of that cap as a material breach of the use permit. The two versions of the groundwater condition are shown in Attachment K. Because the conditions were reformatted, the Updated COA were provided to Applicant in advance of the appeal hearing. The conditions approved by the Planning Commission are attached as Attachment L for informational purposes only.

**Board Considerations and Staff Recommendation:**

The following options are provided for the Board's consideration regarding possible action on the appeals:

- | Deny the appeals in their entirety and uphold the Planning Commission's approval of the Mountain Peak Winery;
- | Uphold one or more grounds of the appeals and modify the scope of the Project and/or the recommended Conditions of Approval;
- | Uphold one or more grounds of the appeals and reverse the Planning Commission's decision, thereby denying the Use Permit and related actions; or
- | Remand the matter to the Planning Commission with direction.

In Staff's opinion, none of the information provided in the appeals and/or other public comments received to date substantively challenges or requires modification of the decision reached by the Planning Commission regarding

this matter. As a result, Staff recommends that the Board deny the appeals in their entirety and uphold the Planning Commission's approval of the Project subject to the Updated COA.

**SUPPORTING DOCUMENTS**

- A . Attachment A: Grounds of Appeal and Staff Responses.
- B . Attachment B: Bracketed Appeal filed by Appellant Kosta M. Arger.
- C . Attachment C: Witness Lists.
- D . Attachment D: Appellants' Requests for Good Cause-Applicant's Opposition thereto
- E . Attachment E: Determination of Good Cause Decision issued by the Chair.
- F . Attachment F: Appellants' Request to Overrule Chair's Good Cause Determination.
- G . Attachment G: Applicant's Supplemental Information.
- H . Attachment H: Appellants' Supplemental Information
- I . Attachment I: Add'l Public Corresp Rec After PC Decision & as of 5-12-17.
- J . Attachment J: Updated Conditions of Approval.
- K . Attachment K: Groundwater Condition of Approval Comparison.
- L . Attachment L: Conditions of Approval approved by PC (informational).

CEO Recommendation: Approve

Reviewed By: Helene Franchi