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Applicant Response to Public Comments
After April 20, 2016

Cover Memorandum Followed
by
Parts 1-5

MEMORANDUM

DATE: July 22, 2016
TO: Laura Anderson, Napa County Counsel
FROM: Thomas Adams & Jeff Dodd, Dickenson, Peatman & Fogarty
RE: Shute Mihaly April 15 letter on Frog's Leap Project and Revised Initial Study

This memorandum addresses the comments from Shute, Mihaly and Weinberger's ("SMW") April 15, 2016 letter on behalf of Nancy Hammonds and Charlotte Bank regarding the Frog's Leap Use Permit Modification #P14-00054 (the "Project") and the legal sufficiency of the County's Revised Initial Study (the "Revised IS"). As a threshold matter, it is important to note that SMW first submitted a comment letter on the original Initial Study on December 23, 2015 (the "First SMW Letter"; attached as Exhibit "A"), which included comments on traffic, safety, noise, water supply, and consistency with the Winery Definition Ordinance and the County's General Plan. In response to the First SMW Letter, the County revised the Initial Study to provide additional information to address the First SMW Letter and clarify potential ambiguities. The Revised IS included supplementary analysis from the Project's traffic consultant, Omni-Means Engineering Solutions, on traffic and safety issues raised in the First SMW Letter (the "Omni-Means First Response"; attached as Exhibit "B"). In response to the Revised IS, the County received a second comment letter from SMW on April 15, 2016 ("Second SMW Letter"; attached as Exhibit "C") that only raised concerns related to traffic and safety.

Upon review of the Second SMW Letter, it is clear that SMW raises issues that are, in large part, the same issues raised in the First SMW Letter and the same issues already addressed in the Omni-Means First Response. Nevertheless, we are providing the following responses to the Second SMW Letter for the County's review. Please note that these responses incorporate detailed comments from an updated traffic impact analysis from Omni-Means dated July 13, 2016 (the "Updated July 2016 TIA"; attached as Exhibit "D"). The Updated July 2016 TIA provides an updated analysis of the project's effect on traffic as a result of comments raised by County staff in response to the Second SMW Letter concerning level-of-service methodology, cumulative levels-of-service, and updated significance criteria.

The comments in the Second SMW Letter are restated below in bold italics. Each comment is organized by the section headings used in the Second SMW Letter and followed by our response. As detailed below, the Revised IS has not been "substantially revised" pursuant to CEQA Guidelines section 15073.5 and, thus, recirculation is not appropriate.

ANALYSIS OF COMMENTS

- I. ***The Revised IS Analysis of Traffic Safety is inadequate, and there is a fair argument that the project may have significant safety-related impacts.***

The Revised IS fails to consider safety issues associated with intoxicated drivers. (p. 2)

Response: This comment duplicates an earlier comment from the First SMW Letter. As previously stated in the Omni-Means First Response:

“Vehicle sight distance at the proposed project driveway is acceptable looking northeast or southwest on Conn Creek Road. In addition, the project driveway is extremely ‘flared’ at Conn Creek Road (approximately 140 feet of driveway frontage at Conn Creek Road) which allows [for] safer ingress and egress for both vehicular and truck traffic. The evaluation of the County’s left turn lane warrant at the Frog’s Leap Driveway/Conn Creek Road intersection is merely a daily volume satisfaction. Specifically, the warrant is met with the daily trips being generated in/out of the project driveway and the total daily vehicle trips on Conn Creek Road. The warrant is not directly related to the amount of vehicle traffic turning left (inbound) from Conn Creek Road into the project driveway or the amount/type of vehicle accidents that occur on Conn Creek Road. Therefore, the County left turn lane warrant is not required to mitigate any safety issues and the proposed exception also is not mitigation for either traffic impacts or safety concerns but rather simply required to comply with the County requirements. [More importantly, the Project does not trigger Caltran’s left turn lane warrant.]

As noted in the Focused TIA (*Focused Traffic Analysis for the Proposed Frog’s Leap Winery Modifications Project—Located on Conn Creek Road, December 15, 2014 [Revised], Omni-Means*), overall peak period volumes on Conn Creek Road would be considered “light” for this major two-lane arterial street. This is evidenced by calculated operations of LOS A (less than 10 seconds vehicle delay) at the Frog’s Leap Driveway/Conn Creek Road intersection under existing and near-term “with project” conditions.

Lastly, it is understood that the occurrence of DUI vehicular accidents in the Napa Valley is a concern given the nature of winery visitation/tasting. However, from an engineering standpoint there are little if any mitigation-related intersection or roadway improvements that can guard against DUI accidents.” (pp. 6-7.)

While vehicular accidents related to DUI are an important social issue for every community, CEQA was not intended to address social impacts. (Pub. Res. Code § 21080(e)(2); CEQA Guidelines Section 15382 [“evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment’ are beyond the scope of CEQA”].) This is a social issue best addressed by public outreach, education, and established industry standards on responsible tasting and serving practices. Further, there is not substantial evidence that the proposed project will result in an increase in DUI related accidents.

SMW falsely assumes that the data showing that Napa County has exceeded the state average DUI arrest rates in some years is a result of increased visitation to wineries. In fact, surveys of DUI-related accidents show that DUI incidents are not directly related to wineries; in fact the majority of DUIs are not tourists returning from wineries but local residents returning home from bars and friends homes. (See Johnson, *DUI stats show that wine country loves beer*, Napa Valley Register (Jul. 25, 2015); attached as Exhibit “E”.) Napa Police Lt. Debbie Peacock stated the surveys of data on DUIs reflects historic trends in Napa for the past several years, and believes the discrepancy between tourists and locals is tourists take more precautions and have a different mindset about drinking. (*ibid.*)

Frog’s Leap Winery is a responsible social host and their entire tasting room staff have been trained in responsible beverage service rules and are T.I.P.S. Certified (“Training For Intervention Procedures”).

The winery's staff also participates in the Napa Valley Vintners' quarterly workshops that certify local winery staff in responsible beverage service.

SMW claims that driving conditions are already unsafe on Conn Creek Road because of drunk drivers that come from wine tasting and marketing events. The Second SMW Letter states:

In a single January 2016 weekend, two serious drunk driving incidents occurred on the segment of Conn Creek Road between Silverado Trail and Rutherford Road. One incident involved a drunk driver hitting a telephone pole and fence and then crossing over Conn Creek Road and crashing into a vineyard. The other involved a drunk driver veering off the road and crashing into a rock wall on the Caymus property. (Second SMW Letter, p. 2.)

SMW has not provided any specific evidence about these accidents, such as where these intoxicated drivers were served, the intoxicants involved, and the time of day that the accidents took place.¹ These details are significant, because they relate to whether SMW can establish a logical connection to DUI-related traffic accidents and Frog's Leap Winery. Based on review of the facts, traffic reports, and available information related to traffic incidents no traffic safety concerns related to this project have been established. Regardless, SMW comments on a social issue and CEQA was not intended to address social impacts.

The Revised IS does not adequately evaluate safety impacts associated with widening the shoulder of Conn Creek Road rather than installing a left turn lane in front of the Project site. Due to the shoulder widening vehicles will illegally pass on right hand shoulder, which will substantially increase traffic hazards. (p. 3)

Response: Section 17 of the County of Napa Road and Street Standards (the "Road Standards") provides the standard for requiring left turn lanes. In determining whether the County will require a left turn lane for a particular project, the Director of Public Works considers two main issues: daily traffic trips and/or public safety. First, the Director considers the Average Daily Traffic Trips ("ADT") and the projected ADT of the proposed project based on the Left Turn Lane Warrant Graph contained in the Road Standards, which represents the possible conflict between left turn traffic and advancing traffic in the opposite direction. Secondly, the Director of Public Works considers safety issues, such as whether traffic conditions or turning movements pose a considerable threat to public life and safety. In this instance, the requirement for installing a left turn lane was based solely on the ADT; it was not based on public safety. As stated in Omni-Means' First Response and the Revised IS, the Napa County left turn lane warrant is triggered based on daily volume criteria, not safety criteria. It is also important to note that the Project is located on State Highway 128 and is well below the CalTrans guidelines threshold for installing a left turn lane, which unlike the County's ADT threshold, is based on safety criteria. Further,

¹ We have worked with the California Highway Patrol to determine whether there have been any reports of DUI-related automobile accidents on Conn Creek Road since December 2015. CHP Officer Paulson stated that there have been zero traffic accidents (DUI or non-DUI related) on Conn Creek Road as of May 25, 2016. Additionally, the Amended Caymus Winery Traffic Impact Study also provides that from January 1, 2007 to December 31, 2011 there was only one fatality from a traffic collision involving an intoxicated driver. The collision rate was well below the statewide average for rural, flat roads, with two lanes or less and a speed limit at or equal to 55 mph. During that five year period there was a total of five collisions, four of which were single driver collisions late in the evening (i.e. not occurring during tasting room hours). (Caymus Traffic Study attached as Exhibit "F.")

consistent with CalTrans safety focused threshold, the Project was determined not to require a left turn lane based on County safety concerns.

The Director of Public Works may grant an exception to the Road Standard's left turn lane requirement. In granting such an exception for this project, the Director considered the following evidence:

- The project driveway intersection at Conn Creek would continue to function at LOS B or better under existing, existing + project and under the cumulative 2030 scenario.
- The maximum delay for northbound traffic tuning into the Winery driveway, without a left turn lane was in the order of 8 seconds.
- Vehicle queuing analysis conducted for this intersection indicates the northbound left turn movements from Conn Creek Road into the Winery driveway would require approximately one vehicle length (95% queue at 30 feet) during normal weekday PM peak hour or Saturday mid-day peak hour conditions.
- Based on CalTrans design standards and "critical" vehicle speed, there is a sight distance limitation associated with widening Conn Creek Road to the west.
- Shoulder widening would provide a safety area where northbound traffic on Conn Creek Road could carefully bypass a waiting left-turning vehicle, if necessary.

Despite there being no evidence of a safety issue based on either existing conditions or with the Project, safety is still considered by the County in granting an exception. The Director considers whether the exception, as conditioned, provides the same overall practical effects as the County's Road Standards . . . towards life, safety and public welfare." (Road Standards, p. 7.) Based on the Omni-Means traffic studies and the applicant's agreement to widen the existing east shoulder (opposite the project driveway entrance) to provide additional room for the safety of northbound traffic (including pedestrians and bicyclists), the Director granted an exception to the left turn lane requirements.

Site specific analysis shows that there is no safety issue. Notably, both the vehicle speed survey conducted by Omni-Means for the project area and existing sight distances meet Caltrans' design standards for both posted speed limit and measured vehicle speeds. Thus, neither the Road Standards left turn lane requirement nor the exception to the County left turn lane warrant are intended to mitigate traffic or safety concerns, since none exist, but rather a technical requirement for compliance with the Road Standards based only on ADT generation. (See Exhibit "B"; Omni-Means First Response, pp. 6-7.) If a safety issue did exist, the Public Works Director could not tentatively approve the exception.

The characterization of the shoulder widening as a significant traffic hazard does not have evidentiary support. The pavement widening is not an effort to allow motorists to pass stopped vehicles on Conn Creek Road at the Project driveway, nor is it reasonable to assume that motorists will violate the law. Rather, the road widening will provide an area where northbound traffic on Conn Creek Road could carefully bypass a waiting left-turning vehicle, "if necessary"—that is, **only in times of emergency**. In doing so, drivers can safely avoid a potential safety threat by using the additional paved surface area to maneuver their vehicle (See Deputy Director Rick Marshall, letter to Frog's Leap Winery, June 22, 2016; attached as Exhibit "G"). Additionally, the Revised IS finds that the exception to the Road Standards improves safety by avoiding a line of sight issue that would exist if the County required a left turn lane (please note this issue would only arise upon construction of a left turn lane; it is not an existing condition or a condition that would exist under an exception to the Road Standards (Revised IS, p. 30.)

Further, there will be little reason for northbound drivers to use the shoulder to pass vehicles making a left turn even if they were inclined to do so. As calculated in the traffic analysis for the proposed project, vehicle delays for northbound motorists wishing to turn left into the Conn Creek Driveway range from 0.2-1.2 seconds under all “with project” scenarios. With these infrequent and minimal delays, drivers will only need to use the shoulder area in emergency situations as noted above.

See also responses below.

The proposed shoulder widening creates new, unsafe conditions for cyclist (as well as any agricultural workers / equipment operating on the side of the road).

Response: This comment is counterintuitive to well-established Federal transportation planning principles as shoulder widening significantly improves conditions for cyclists and pedestrians. The U.S. Department of Transportation recognizes that wider paved shoulders have the following benefits:

- Provides a stable surface off roadway for pedestrians to use when sidewalks cannot be provided
- Reduces numerous crash types including the following:
 - Head on crashes (15%–75% reported reduction)
 - Sideswipe crashes (15%–41%)
 - Fixed object crashes (29%–49%)
 - Pedestrian (walking along roadway) crashes (71%)
- Improves roadway drainage
- Increases effective turning radii at intersections
- Reduces shoulder maintenance requirements
- Provides emergency stopping space for broken-down vehicles
- Provides space for maintenance operations
- Provides space for variable message signs
- Provides an increased level of comfort for bicyclists

(Federal Highway Administration, *Safety Benefits of Walkways, Sidewalks, and Paved Shoulders*, (Jan. 12, 2012), p. 2; attached as Exhibit “H”) CalTrans planning policies come to the same conclusions for rural areas. (Cal. Dept. of Transportation, *Improving Access and Safety for Pedestrians & Bicyclists on State Highways* (Dec. 30, 2015), p. 10; attached as Exhibit “I”.) Accordingly, there is no substantial evidence to support this assertion that shoulder widening creates a safety issue; in fact, the evidence supports the opposite conclusion.

Revised IS fails to consider how shoulder widening would impact the Valley Oak Tree, a significant biological resource, as roots would have to be paved over. (p. 3, fn. 1)

Response: The purpose of applicant seeking the exception to the left turn lane requirement (and the Department of Public Works reason for granting such an exception) was to save multiple trees, including oaks that exist in the public right of way that would otherwise need to be removed. While the health of one of these trees may potentially be at risk if certain precautions are not taken, the Project can preserve this 52” oak tree, in addition to the other trees by following the recommendations noted in the Britton Report (attached as Exhibit “J”). As a result, the Project will preserve all potentially impacted trees and improve vehicle and bicycle safety conditions.

The Revised IS contains misleading discussion of safety impacts regarding the left turn lane standards as the Revised IS states (consistent with the traffic consultant) that the warrant for a left turn lane is not based on safety issue whereas the Revised IS provides otherwise later in the document. (p. 3)

Response: This is not intended to be misleading because (as described above) there is no safety issue related to traffic turning left into the winery. The statement is intended to convey that the Project as proposed, including the exception to the left turn lane will maintain the same level of safety as would exist if a left turn lane was installed. The Revised IS does not state that safety has been identified as a significant impact that requires mitigation, nor does it state that the project will increase hazards due to a design feature. As cited in the Revised IS's checklist traffic impacts and traffic hazards are "Less Than Significant"; it is not "Less Than Significant With Mitigation Incorporated." (Revised IS, p. 26.)

II. *The Revised IS's Transportation Analysis Is Inadequate, and There Is a Fair Argument that the Project May Have Significant Transportation Impacts.*

A. *The Traffic Impact Calculations Upon Which the Revised IS Relies Contain Numerous Flaws.*

The Omni-Means study does not use County-approved trip-generation factors to determine how many cars that the new winery visitors will add to the road system. Using the County's factors show that the Project will create over 150 percent more weekday peak traffic and almost 70 percent more Saturday peak traffic than the Initial Study states. (p. 5)

Response: This comment duplicates an earlier comment from the First SMW Letter. As noted in the Revised IS, and clarified in the Updated July 2016 TIA, the "baseline for [the project] is the existing winery operations as described above not those activities approved under use permit #P10-00157-MOD." (Revised IS, p. 2.) Since Frog's Leap is already generating peak hour traffic volumes consistent with "proposed" winery related uses, Omni used actual driveway count data collected during the weekday peak period and weekend mid-day peak period to generate proposed project traffic, instead of using the Napa County trip ratios for winery uses and visitors, because it is more accurate.

Based on ultimate employee and visitor/guest data with the APC building in use, the Project would generate (gross) 202 weekday daily trips with 30 PM peak hour trips (6 in, 24 out). During a typical weekend (Saturday), the Project would generate (gross) 255 daily trips with 86 mid-day (afternoon) peak hour trips (40 in, 46 out). Allowing for the existing CEQA baseline of existing trips on the roadway network, the net increase in peak hour Project trips during the weekday period would total 5 PM peak hour trips (30 [project gross trips] – 25 [baseline trips]) or 1 trip in and 4 trips out (a 20% increase). During the weekend (Saturday) period, the project's net increase in mid-day peak hour trips would total 37 trips (86 [project gross trips] – 49 [baseline trips]) or 17 trips in and 20 trips out (a 75% increase).

Even using its understated traffic generation numbers, the Omni-Means study fails to "assign" all of the new traffic to the roadways around Frog's Leap to determine which roads are impacted. That is, in calculating the traffic impacts, the study fails to count the majority of peak hour traffic that it estimates the project will generate. (p. 5)

Response: SMW does not interpret the Project's traffic study correctly. As noted above, the "existing" traffic conditions represent the CEQA baseline and include the production, proposed employees, most

of the visitation, and some marketing activities. These existing conditions are therefore, included as part of the CEQA baseline (basis) from which Project impacts would be measured. Existing weekday PM peak hour and weekend mid-day peak hour intersection volumes have been shown in Figure 2 of the Updated July 2016 TIA. Figure 4 of the Updated July 2016 TIA shows the net increase in Project trips and clearly indicates “Net New Project Trips Based on Existing Site Generation.” Figure 5 on “Existing plus Project Weekday PM and Weekend Peak Hour Volumes” shows the total project trips coming to/from the winery for a weekday and a weekend day (Saturday).

The Omni Means study uniformly assumes that trucks only occupy 2 percent of the traffic in the study area, despite the fact that marketing events and harvest/crush activities require a substantial number of trucks. A recent Caltrans report states that the trucks comprise over 28 percent of the vehicles on this section of SR-128. This high truck volume likely further exacerbates intersection delays. (p. 5)

Response: The Omni-Means traffic studies analyzed proposed project impacts for normal day-to-day winery activities and documents peak hour and daily trip generation associated with marketing events and harvest/crush activities. As stated in Omni-Means First Response:

[The] existing traffic volumes collected as part of the analysis were increased by 9% to account for the ‘peak month’ of traffic flow along Conn Creek Road. This was based on the most recent Caltrans volume data available at the time the Notice of Preparation was published and represents the highest month of traffic volumes recorded on Conn Creek Road during the year, period. Caltrans does not identify the month (only the volume). However, whether traffic volume is recorded during the harvest/crush season or not, it represents the absolute highest volumes on Conn Creek Road and Rutherford Road. In addition, volume increases on SR-29 are comparatively less (based on Caltrans data) and no recent counts are available for Silverado Trail. Therefore, a very conservative increase of 9% is acceptable for project study roadways.

The County does not typically require traffic analysis of proposed project impacts during the crush/harvest season (established at six weeks over an August, September, or October period dependent on weather and harvest conditions). However, as stated above the traffic analysis used the highest volume representations in the Project study area as established by Caltrans. In addition, the Focused TIA provided Project crush/harvest information related to production, employment, visitation, and trucks along with resulting daily and peak period trip generation.

SM&W has not provided any facts or expert opinion that peak traffic volumes increase during harvest due to ‘the change in traffic character during harvest, when [according to the First SMW Letter] an increased number of large agricultural equipment and trucks hauling grapes are on the roadways.’ It is our understanding that a majority of winery trucks hauling grapes, including those from Frog’s Leap Winery, complete their hauls before sunrise to limit sun exposure and protect grape quality and therefore, do have any significant impact on peak hour trips. Regardless, even if such information had been provided the traffic analysis used the highest available traffic volume data and the proposed project’s harvest traffic data. (Exhibit “B”, pp. 1-2.)

With regard to truck traffic, the Second SMW Letter improperly assumes that marketing events require a substantial amount of trucks. While truck traffic may increase during the harvest/crush period, the

majority of these trucks are travelling during off-peak hours. In discussions with local vintners, the majority of trucks operate during early morning hours to maintain sugar levels during picking and avoid sun exposure in order to preserve the freshness of the winegrapes when hauling fruit. Relative to truck percentages on SR-128, the most recent CalTrans volume book indicates truck percentages ranging from 2-5% on Conn Creek Road. This would not change the conclusions related to proposed project impacts.

Additionally, Omni-Means Updated July 2016 TIA included a supplementary analysis dated July 13, 2016 to respond to the Second SMW Letter regarding truck counts. Specifically, Omni-Means updated the intersection levels-of-service based on the on the most recent Highway Capacity Manual (*HCM 2010*) operations methodology for unsignalized intersections. In addition, peak hour factors (PHF's) and truck traffic on Conn Creek Road has been incorporated into the LOS calculations using the most recent Caltrans data for SR-128. Some minor LOS changes and delays resulted from new inputs but overall conclusions remain unchanged from Omni-Means' previous traffic analyses.

The study fails to adequately analyze the traffic impacts of 500-person marketing events, which will generate traffic volumes that substantially exceed the peak hour volumes considered in the Omni-Means analysis. The applicant's traffic consultant claims that traffic from these events would not occur during peak traffic periods, but the proposed conditions of approval would allow these events (and resulting traffic) to occur anytime between 11:00 am and 10:00 pm. (p. 5)

Response: This comment duplicates an earlier comment from the First SMW Letter. Please see response above. In addition, the traffic studies from Omni-Means, clearly address the applicant's 500-person marketing events:

The winery proposes to host the following marketing large events: four annual events with 500 guests (each). Based on standard auto occupancy rates, these annual 500-person events would be expected to generate approximately 403 trips (202 in, 201 out) including visitors and staff. These events are typically of sufficient duration in length that the inbound and outbound trips occur in separate hours, thus the number of trips on the street network at one time are half of the total volume. These events are usually held outside of typical peak traffic periods (during the middle of the day or later than 6:00 p.m.) and therefore generally do not impact peak hour operations and no other visitation or events would occur during the annual events. (See Omni-Mean TIAs from Dec. 15, 2014 at p. 21 and May 8, 2014 at p. 17; see also Updated July 2016 TIA at p. 21.)

Since these events only occur four times per year, they were not analyzed for roadway and intersection impacts as they do not represent day-to-day (normal) activities at the winery. Additionally, the Revised IS provides in the Project Description that Frog's Leap would close the winery to visitation when it holds a 500-person event, which offsets any increase in traffic. (Revised IS, p. 2.)

B. *The Revised IS Fails to Study the Full Area of the Project's Traffic Impacts.*

The Revised IS and Traffic Study fail to consider the Project's impacts on the SR 29/Rutherford Road (SR 128) intersection even though the majority of the Project's traffic travels to and from the direction of that intersection. (p. 6)

Response: This comment duplicates an earlier comment from the First SMW Letter. As stated in Omni-Means First Response:

The Focused TIA was reviewed extensively by County Planning and Transportation for scope, content, and methodology during the draft application process. Specifically, after reviewing the traffic analysis on March 31, 2014, the County requested to expand the scope of the analysis to include all key intersections located east and west of the project site including Conn Creek Road/Rutherford Road and Conn Creek Road/Silverado Trail. After re-submitting a draft report that included these additional intersections and analyses, the County then requested further cumulative analysis on two projects that the County had not approved to date: the Caymus Vineyards project to the southwest and proposed Frank Family Vineyards project to the northeast (both located on Conn Creek Road). In addition, the intersection of Rutherford Road/SR-29 is located over 1.8 miles from the Frog's Leap Winery project driveway and County staff did not expand the scope to include this intersection deeming its location (appropriately) outside of the study area. The Focused TIA's study area is consistent with County practice and professional standards for evaluating traffic impacts. (p. 3 [emphasis included].)

In addition, there were other factors involved in this decision. First, the Napa County General Plan EIR addressed the impacts on key county road segments of growth scenarios proposed in the 2008 general plan update. As even referenced by the commenter in the Second SMW Letter, Tables 4.4-3 in the General Plan EIR indicated that the SR 29/Rutherford Cross Road to Oakville Grade segment of S.R. 29 was already operating over LOS E and F under existing conditions, which would be the same for 2030 conditions. In light of these conclusions and other traffic impacts analyzed in the General Plan EIR, the Board of Supervisors adopted findings of overriding consideration in adopting the General plan update in 2008. Second, the traffic studies typically only extend to those intersections within one mile from the project driveway. The S.R. 29/Rutherford Cross Road intersection lies outside the approved study area. The rationale behind excluding S.R. 29/Rutherford Cross Road intersection from the analysis is because out of the 3 new peak hour trips that would turn south from the winery driveway during the weekday PM peak hour, only 2 would of those trips turn would right on Rutherford Cross Road. Inasmuch as there are several wineries (Honig, Round Pond, Elizabeth Spencer) and one restaurant (Rutherford Grill) between the intersection of Conn Creek and Rutherford Road, the impact of Project traffic on S.R. 29/Rutherford Cross Road intersection during the weekday PM peak period is highly speculative.

The Revised IS and Traffic Study neglect evidence (from CalTrans and Institute of Transportation) that the SR 29/Rutherford Road (SR 128) intersection is too far away to consider in its study. (p. 6)

Response: This comment duplicates an earlier comment from the First SMW Letter. See response above.

C. *Revised IS's Threshold for Considering Project's Cumulative Traffic Impacts Is Invalid.*

The Revised IS and Traffic Study improperly employ an arbitrary 1% cumulative impact threshold to determine cumulative impacts and the County has not offered any evidentiary basis to justify using the threshold. The County cannot rely on a single quantitative method to justify a no-significance finding. (p. 7)

Response: This comment duplicates an earlier comment from the First SMW Letter. The General Plan EIR analyzed cumulative traffic impacts related to all development within the County, including winery development. (See Napa County General Plan DEIR (Feb. 2007), p. 4.4-31.) Not only did the DEIR to the General Plan study cumulative impacts related to traffic, the Board of Supervisors made a specific

finding that, even with the implementation of feasible mitigation measures, there would be a significant cumulative impact on traffic that was and unavoidable. The Board found “that specific economic, legal, social, technological, and other benefits of the proposed 2008 General Plan Update outweigh[ed] this significant impact” and approved a Statement of Overriding Considerations. (Napa County Board of Supervisors Resolution 08-86 (Jun. 3, 2008) (hereinafter, “Napa County Resolution 08-86”), § 8, C).

While CEQA Guidelines Section 15183(c) does not require more analysis other than project-specific impacts, the Revised IS and Omni’s traffic studies analyzed both project specific and cumulative traffic impacts—concluding that the impacts are less than significant based on existing county thresholds of significance for both project and cumulative impacts.

At the request of Planning Staff, Omni-Means provided supplementary analysis on July 13, 2016 that compared the Project against recent significance criteria developed for the County by Fehr and Peers. Please refer to pages 11, 18, and 24 of the Updated July 2016 TIA for a discussion of updated County significance criteria. The Updated July 2016 TIA concluded that there was no significant impact at the Silverado Trail/Conn Creek Road intersection (currently operating at LOS F under existing conditions).

Pursuant to the CEQA Guidelines, **the lead agency did not need to perform this additional analysis of cumulative traffic impacts because the Revised IS assesses a project that is consistent with General Plan development projections** for which an EIR was prepared and that concluded that the impact was significant and unavoidable. Not only is it appropriate for the lead agency to do so, but CEQA mandates it. However, to be conservative, the traffic studies did analyze both direct and cumulative traffic impacts to provide the Planning Commission with information to evaluate the Project. Further, Omni-Means provided supplementary analysis in its Updated July 2016 TIA. To the extent that site specific or “peculiar” impacts are not covered by CEQA Guidelines section 15183(a), the traffic studies have adequately addressed those impacts. (See Exhibit “B”; Omni-Means First Response, pp. 2-3.)

While CEQA Guidelines Section 15183(c) provides that the lead agency make a finding that the “feasible mitigation measures will be undertaken,” cumulative traffic impacts were determined to be significant and unavoidable. (Napa County Resolution 08-86, § 8, C [“Even with the implementation of mitigation measures . . . this impact would remain significant, and there are no other feasible mitigation measure or alternatives that would reduce this impact to a less than significant level”].) Consequently, this finding requirement is not applicable since there is no feasible mitigation to reduce the impact to less than significant and the County adopted a Statement of Overriding Considerations.

Lead agencies may not apply thresholds of significance in a manner that forecloses consideration of other evidence—such as those cumulative impact thresholds that CalTrans has adopted for state roadways like SR 128—tending to show that a project's environmental effect may be significant. (p. 7)

Response: See response above. Additionally it should be noted that the Focused TIA analysis is consistent with County practice and professional standards for evaluating traffic impacts. Further, Omni-Means provided supplementary analysis in its Updated July 2016 TIA, which accounted for more conservative significance criteria thresholds.

D. *The Revised IS Fails to Account for Impacts Associated with Later Tasting Hours.*

The Revised IS fails to consider how extending visitation hours to 6pm, instead of 4:30pm, will place more drivers on the roadways during peak weekday rush hour periods and impact traffic delays and safety around Frog's Leap. (p. 8)

Response: The Revised IS used current winery operations as the baseline, not those activities approved under use permit #P10-00157-MOD. While the old use permit states the hours of operation for visitation is from 8:00am to 4:30pm, the winery currently hosts visitation through 6:00pm (please note that the last available time a visitor can make an appointment for a tasting is 4:00pm). Accordingly, there will be no increase in drivers on the roadway during peak weekday rush hour period because there will be no changes to Frog's Leap visitation operations.

Further, as noted above, Omni-Means conducted existing peak period traffic counts—at the Frog's Leap Winery driveway and outlying intersections north and south of the driveway—in order to identify existing peak hour operating conditions. The resultant "peak hour" traffic flow on Conn Creek Road occurs during 4:00-5:00 pm (Wednesday) and 1:15-2:15 pm (Saturday).

III. *The Streamlining Provision in CEQA Guidelines Section 15183 Does Not Apply to the Project*

The Revised IS improperly relies on Section 15183, which applies only to projects that are consistent with development densities established in planning documents (such as General Plans). The lead agency must conduct further review of impacts that are peculiar to project, including widening the road which would not happen outside of the project. (p. 8)

Response: CEQA Guidelines Section 15183(c) states that projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified, do not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project. (See Pub. Resources Code § 21083.3.) This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies. In this instance, the Project is consistent with the General Plan because the actual amount of winery and other development within the County is either at or below the General Plan growth projections. (Planning Director Morrison acknowledged that the growth of wineries is consistent with General Plan predictions at the December 8, 2015 Board of Supervisor's meeting. See General Plan FEIR (Dec. 2007), p. 2.0-9 [projecting winery development through the year 2030].)

While Section 15183(c) requires analysis on project-specific impacts, the Revised IS and Omni's traffic studies analyzed both project specific and cumulative traffic impacts—concluding that the impacts are less than significant based on existing and new county thresholds of significance for both project and cumulative impacts. The Revised IS and Omni's traffic studies also reviewed impacts related to widening the road. (See Revised IS, pp. 4, 14, 29.)

In addition, Omni-Means conducted new field reviews with new traffic count data, and provided new overall analyses of the project's effect on traffic based on comments received from County staff pertaining to level-of-service methodology, cumulative levels-of-service, and updated significance criteria. Accordingly the applicant submitted the Updated July 2016 TIA. Consistent with the Revised IS, the existing conditions in that updated traffic study include the production, proposed employees, most of the

visitation, and some marketing activities. Accordingly, the applicant has analyzed all impacts peculiar to the Project, including the road widening.

The Project's traffic impacts and related cumulative impacts also do not qualify for streamlined environmental review under Section 15183. The General Plan EIR did consider planning-related traffic impacts on certain segments of County roads, but it did not evaluate impacts to the section of Conn Creek Road (SR 128) in front of Frog's Leap. [Citations Omitted.] The General Plan EIR's evaluation of impacts to road segments is not comparable to determining traffic impacts at road intersections near the project site. (p. 9)

Response: As clearly provided in Exhibit E to the Second SMW Letter (a General Plan excerpt), the General Plan EIR's traffic "analysis focused on road segments, rather than intersections, due to the nature of the project (i.e. a county-wide general plan rather than a site-specific development)." (General Plan DEIR (Dec. 2007), p. 4.4-6 [determining existing roadway capacity and level of service methodology].) Accordingly, the Project's traffic impacts and related cumulative impacts do qualify for streamlined environmental review under Section 15183. In the alternative, the Revised IS and Omni's traffic studies analyzed both project specific and cumulative traffic impacts—concluding that the impacts are less than significant based on existing County thresholds of significance for both project and cumulative impacts.

See also comments above regarding additional traffic analysis in the Updated July 2016 TIA.

IV. *There Is No Justification For Revised IS's Choice of Baseline Visitation Conditions.*

The Revised IS fails to consider impacts associated with many of these visitors, because it uses purportedly existing, unpermitted levels of winery operations as its baseline. (p. 9)

Response: CEQA allows a lead agency to use the existing environmental conditions as the baseline, even where existing conditions include unapproved or permitted development or activities. (See CEQA Guidelines § 15125(a); see also *Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 559 ["[h]ow present conditions come to exist . . . is irrelevant to CEQA baseline determinations—even if it means preexisting development did not receive environmental review under CEQA."].) This approach is not only consistent with CEQA but also the existing statements made in the Revised IS, and the technical reports referenced in the Revised IS.

A. *Revised IS Lacks Support For Establishing Baseline Based Upon Illegal Levels Of Use. (p. 10)*

There is no evidence in the record showing the current visitation and marketing levels at Frog's will persist (even if they are accurate). Thus, the Revised IS is inadequate until it can provide actual evidence about existing use levels at the Project site. (p. 10)

Response: Upon submission of the application for the use permit substantiating existing levels of visitation and marketing activities, the applicant signed a certification that the information was accurate. (See Exhibit "K".) If the applicant wanted to be disingenuous about whether it was in compliance with its use permit terms, the applicant would have done so to avoid an enforcement action or civil penalties. In order to bring the winery's activities into compliance, Frog's Leap submitted its Project application over three years ago. The applicant's visitation and marketing levels have been consistent since beginning the

application process. In addition, Frog's Leap's online appointment system for visitation is consistently sold out with many visitors requesting to be put on a waiting list if other visitors cancel.

An agency may not incorporate historical levels of use into the baseline if the effect is to "grandfather" an unauthorized level of use. An agency may not incorporate unpermitted levels of use into the baseline when the effect is to exempt or grandfather an unanalyzed level of use from CEQA review. (pp. 10-11)

Response: CEQA allows a lead agency to use the existing environmental conditions as the baseline, even where existing conditions include unapproved or permitted development or activities. (See CEQA Guidelines § 15125(a); see also *Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 559 ["[h]ow present conditions come to exist . . . is irrelevant to CEQA baseline determinations—even if it means preexisting development did not receive environmental review under CEQA."]) This approach is not only consistent with CEQA but also the existing statements made in the Revised IS, and the technical reports referenced therein.

B. *The County Must Exercise Its Discretion to Measure the Baseline in a Manner that Achieves the Fundamental Purposes of CEQA.*

The Revised IS's choice of baseline does not inform the public of the full scope of the Project's impacts nor does it consider and mitigate those impacts; instead, the Revised IS improperly includes nearly two-thirds of the Project's proposed future weekly visitation levels in the baseline, creating an illusory analysis and no mitigation of the actual impacts of the Project. (p. 11)

Response: See response above. The Revised IS informs the public of the full scope of the Project's impact and mitigates those impacts, when appropriate.

CONCLUSION ON RECIRCULATION

The comments and issues raised in the SMW Second Letter and the subsequent analysis done by the applicant and lead agency pertaining to traffic and safety do not require recirculation under CEQA. A Negative Declaration (and supporting Initial Study) must be recirculated when it has been "substantially revised" after initial public review. (CEQA Guidelines section 15073.5.) Under CEQA Guidelines section 15073.5(b), "substantial revision" means either that:

- (1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added to render the impact less than significant; or
- (2) The proposed mitigation measures or project revisions will not reduce significant impacts to less than significant levels, so that the new mitigation measures are needed.

SMW has not raised comments demonstrating that the Project will have a significant impact. Further, the Updated July 2016 TIA and Revised IS confirm that the Project will result in no significant impacts.

CEQA Guidelines section 15073.5 goes on to specify that recirculation is not required when "[n]ew information added . . . merely clarifies, amplifies, or makes insignificant modifications" to the CEQA document. Here, the Updated July 2016 TIA has done just that—it has clarified and amplified the Revised IS by strengthening and confirming prior conclusions on traffic and safety. As a result, recirculation is not appropriate or warranted under CEQA.