

APR 19 2017

Agenda Item # 8A *Robertson, Johnson, Miller & Williamson*

ATTORNEYS AND COUNSELORS AT LAW

G. DAVID ROBERTSON (NV. & CA.)
KIRK C. JOHNSON (NV., AZ. & CO.)
JARRAD C. MILLER (NV. & CA.)
RICHARD D. WILLIAMSON (NV. & CA.)

JONATHAN J. TEW (NV. & IL.)
ANTHONY G. ARGER (NV. & CA.)

BANK OF AMERICA PLAZA
50 W. LIBERTY ST. SUITE 600
RENO, NEVADA 89501
TELEPHONE: (775) 329-5600
FACSIMILE: (775) 348-8300
www.nvlawyers.com

LAS VEGAS OFFICE:
HUGHES CENTER
3753 HOWARD HUGHES PARKWAY
SUITE 200
LAS VEGAS, NEVADA 89169
TELEPHONE: (702) 483-5800

REPLY TO: RENO OFFICE

April 18, 2017

Ms. Emily Hedge, Planner II
Napa County Planning, Building & Environmental Services Dept.
1195 Third Street, Suite 210
Napa, CA 94559
Email: Emily.hedge@countyofnapa.org
Via: Hand Delivery

RECEIVED
APR 18 2017
Napa County Planning, Building
& Environmental Services

***Re: Comments on and Opposition to the Major Modification (P16-00106)
sought by The Caves at Soda Canyon (P05-00391)***

Dear Ms. Hedge,

The law firm of Robertson, Johnson, Miller & Williamson has been retained to represent Messrs. Steven Stull and Sean Hoel (“Opponents”), two adjacent neighbors of The Caves at Soda Canyon (the “Applicant” or the “Project”), who share a driveway entrance with the Applicant and oppose the Use Permit Modification #P16-00106 and Request for an Exception to the Napa County Road and Street Standards (“Major Modification”) for all of the reasons described herein below. Through the Major Modification, the Applicant seeks approval from the County of Napa (“County”) for the following: (1) increase in annual production from 30,000 to 60,000 gallons; (2) construction of an approximately 2,400 square foot (“sf”) cover over an existing outdoor paved area; (3) use of an existing private patio terrace (no construction) for daily tastings, marketing activities, and on-site consumption; (4) removal of an internal cave wall to open access from the illegally drilled fourth portal to the patio terrace; (5) conversion of approximately 400 sf of approved cave area to a kitchen; (6) change the hours of operation for production activities from 8am-6pm to 7am-6pm; (7) on-premises consumption of wine produced on-site and purchased from the winery in the tasting room, on the areas in front of portal 2, the patio terrace, and the two outdoor areas; (8) installation of a wastewater system and discontinue use of hold and haul; and (9) improvements to the existing road.

As will be described in detail below, this Major Modification should be denied on several grounds including, but not limited to, inadequate notice of the Major Modification, the fact that the Project is and has been using a generator for years as its primary power source, resulting in violations of the Napa County Code (“NCC”), the Napa County General Plan (“General Plan”), and other local and state laws such as the California Environmental Quality Act (“CEQA”), and adverse impacts on both the public safety and welfare of the County and the environment.

Letter of Opposition to a Major Modification sought by The Caves at Soda Canyon (#P16-00106)

I. INADEQUATE NOTICE OF HEARING

According to email correspondence from the County, staff provided only “a 10 day notice for the public hearing” on the Major Modification, as opposed to a 20 day notice because “[p]ursuant to CEQA Guidelines Section 15164(c), an addendum is not required to be circulated for public review but can (and in this case) will be attached to the adopted subsequent negative declaration.” (See **Exhibit 1** – *County Emails Re: Napa CEQA Notification*). While Opponents are still researching the validity of the County’s claim that notice was legally adequate under CEQA, the concern stemming from the mere 10 day notification period is that the County is ignoring the considerable history of violations relating to this Project in an apparent attempt to quickly approve it before members of the public have an adequate opportunity to review and comment on this Major Modification.

The County has issued at least three notices of violation to the Applicant, the most egregious of which is the cave portal that “was constructed without required documentation, agency review and permitting by this office.” (See **Exhibit 2** – *Notices of Violation* at February 4, 2009). Almost exactly two years ago, the Applicant sought to do an end-run around County regulations by seeking retroactive approval for the illegal cave portal. As the County is well aware, there was significant public backlash over the portal that prompted the Planning Commission to deny the retroactive approval and order the portal closed for one year. (See April and May 2015 documentation relating to the Applicant’s illegal cave portal). Critically, at least as it pertains to noticing, the supporting documentation to the May 6, 2015 hearing included a document titled “Potential Findings for Denial,” which contains the following paragraph:

[i]n an effort to provide more outreach and transparency, the County recently adopted enhanced public noticing procedures to provide earlier and expanded notice of discretionary projects so that County residents would be more informed of projects in their neighborhoods which could be potentially impactful. The enhanced noticing allows for more public participation, earlier in the process and gives applicants feedback on ways to design their projects so as to be more harmonious with the neighborhood. “After the fact forgiveness” deprives the public and decision-makers of an opportunity to evaluate and shape a project before it is constructed and incentivize others to engage in non-compliance.

(*Supporting Doc. “B” to May 6, 2015 Agenda for the hearing on The Caves at Soda Canyon*).

Now, the Applicant is not only seeking retroactive approval of the illegally drilled cave portal, but is also seeking to *expand uses relating to that portal* to include “[u]se of an existing private patio terrace (no construction) for daily tastings, marketing activities, and on-site consumption,” and “[r]emoval of internal cave wall to open access from the fourth portal to the patio terrace . . .” and ***the County has only provided 10 day notice to members of the public***. This is an about-face from the County’s own policy pertaining to the same Project from just two years ago. While it is unknown why the County has suddenly changed course in its noticing policies, the bottom line is that given the extreme controversy this Project created over the illegal cave portal and the fact that the Applicant now seeks even more uses for the portal than it did two years ago, the County’s 10 day notice was wholly inadequate.

II. THE PROJECT'S GENERATOR VIOLATES LOCAL & STATE LAW

Power to The Caves at Soda Canyon is supplied entirely by an on-site, commercial generator that is located outside of the caves. This power supply was not included with the original permit application, nor any subsequent modifications, and has never been reviewed by the County, resulting in violations of not only the Napa County Code ("NCC"), but also the California Fire Code ("CFC") and CEQA. Accordingly, as a threshold matter, this Major Modification cannot and should not even be considered by the Planning Commission unless and until a full review and proper resolution to the power supply issue occurs, namely that the Applicant be required to install an underground power supply as it originally planned.

Under NCC 15.08.040(A)(2),

no building permit shall be issued unless and until the building official has made all of the following findings in regard to the proposed development The planning division of the department has certified or stated that all applicable requirements of Titles 17 and 18 of this code have been met, including but not limited to compliance with conditions that were required to be met prior to the issuance of a building permit as a result of the approval of a . . . certificate of compliance, use permit, variance, or other entitlement for use relating to the parcel on which the building will be constructed. . . .

(Emphasis added).

Here, the original use permit application as presented to the County proposed a connection to PG&E for power. Specifically, the "Utility Plan" sheet of the application shows that a "Transformer & Electrical Pad" was to be constructed, *see Exhibit 3 – Original Application for Use Permit (P05-0391) and Graphics* at "utility plan", and the June 11, 2014 Notice of Violation orders the Applicant to "**immediately muffle the generator until the PG&E has been installed and in operation on the subject property,**" *Exhibit 2 – Notices of Violation* at June 11, 2014 (emphasis in original), demonstrating that the Project, as originally proposed, was to be run using a stable power source, not a noisy, commercial generator. This means that the County never contemplated or reviewed the Project to conduct all operations using a commercial generator, which presents several legal and compliance issues for both the Applicant and the County.

First, Condition of Approval Number 1 in the September 12, 2006 letter from the County to Mr. Waugh requires that "[a]ll winery operations including but not limited to crush, fermentation, and aging shall be conducted entirely within the cave. The winery *shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submitted materials.*" (**Exhibit 4 – Conditions of Approval for #P05-0391-UP and #P06-01008-UP**) (emphasis added). As of the date of this letter, nearly 11 years after the County issued its original letter approving the Project, and to the best of Opponents' knowledge and understanding, the Project is still running entirely on a commercial generator. This is a clear violation of the very first condition of approval, and thus is also a violation of NCC 15.08.040(A)(2).

Second, Condition of Approval Number 9 requires that “[a]ny outdoor storage of winery related items and mechanical equipment shall be screened from the view of adjacent properties by a visual barrier consisting of fencing or dense landscaping.” As of the date of this letter, the generator, which is a piece of mechanical equipment, has *not* been screened from the view adjacent properties. As is plainly visible in an April 2017 photograph taken from a neighboring, adjacent parcel, the generator and other mechanical equipment is completely exposed and can be seen from an adjacent parcel. (See **Exhibit 5a-c** – *April 2017 Photographs of Project Site and Generators*). This is a violation of the conditions of approval, which the County is obligated to enforce under Policy AG/LU-118 of the General Plan, and thus is also a violation of NCC 15.08.040(A)(2).

Third, Condition of Approval Number 15 requires that “[e]xterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the Code.” (**Exhibit 4**). As of the date of this letter, and despite the notice of violation dated June 11, 2014, *nearly three years ago*, the generator, which the County appears to categorize as “[e]xterior winery equipment” has *not* been enclosed or muffled. (See **Exhibit 2**; **Exhibits 5a-c**). Instead, the generator continues to produce persistently loud noise that can be heard from neighboring parcels at any time the generator is in operation. This is a continuing violation of Chapter 8.16 of the NCC, and thus is also a violation of NCC 15.08.040(A)(2). This persistent, elevated, ambient noise also raises CEQA concerns, as discussed in detail further below.

Fourth, the continuing operation of the generator as the primary power source for the Project is contrary to the General Plan and may not only result in potentially significant impacts on the environment under CEQA, but may also be a violation of the rules set forth by the Bay Area Air Quality Management District (BAAQMD). The very first policy outlined in the Climate Protection and Sustainable Practices for Environmental Health Policies section of the General Plan maintains that the

County shall support efforts to reduce and offset greenhouse gas (GHG) emissions and strive to maintain and enhance the County’s current level of carbon sequestration functions through the following measures . . . b) [p]reserve and enhance the values of Napa County’s plant life as carbon sequestration systems to recycle greenhouse gases. c) [p]erpetuate policies in support of urban-centered growth and agricultural preservation preventing sprawl. d) [p]erpetuate policies in support of alternative modes of transportation . . . e) [c]onsider GHG emissions in the review of discretionary projects. . . .”

Similarly, Rule 8-100 of Regulation 9 of the BAAQMD “limits the emissions of nitrogen oxides and carbon monoxide from stationary internal combustion engines with an output rated by the manufacturer at more than 50 brake horsepower.” In the original “Initial Study Checklist” performed by the County on the Project as proposed in 2006, the County addressed “AIR QUALITY,” but *only with regard additional traffic that will be produced by the Major Modification*. (See *Supporting Doc. “F” to April 19, 2017 Agenda for the hearing on The Caves at Soda Canyon, Initial CEQA Checklist* at p. 7). More recently, in supporting document “E” at pp. 3-4 to the April 19, 2017 agenda titled “CEQA Addendum,” the County addresses “Air

Quality” and “Greenhouse Gas Emissions,” but with a similar analysis pertaining only to traffic. There is no mention in either environmental review regarding the fact that this Project is and has been run for years entirely on power supplied by a generator. While it is unclear exactly what type of generator the Project utilizes, the simple fact is that the continuous use and operation of the generator is contrary to the General Plan and may have already resulted in potentially significant impacts on the environment both from an air quality and greenhouse gas emission standpoint. Moreover, because the Major Modification seeks to double the Project’s annual production capacity, it is likely the generator will have to be run for longer periods of time (which is supported by the fact that the Applicant seeks to expand the Project’s hours of operation), and it could well be that the Applicant plans to install a second generator. In either scenario, any violations of the General Plan and/or BAAQMD rules, and the potentially adverse impacts on the environment must be reviewed, and the Major Modification should not even be considered by the Planning Commission until such time that a thorough review of any potentially significant environmental impacts caused by the generator(s) is completed.

Fifth, the Project’s use of a generator as the primary power supply may be in violation of the California Fire Code, which has been adopted by the County. (See NCC 15.32.010). Under section 604.2.16 of the CFC, “[e]mergency and standby power shall be provided in underground buildings. . . .” Moreover, pursuant to NCC 15.08.020,

[n]o certificate of occupancy shall be issued unless and until the building official finds; in regard to the proposed development, that the fire official has certified or stated that the proposed development will meet the requirements of the fire protection district in which the development is located or, if the development is not located in a fire protection district, that the proposed development has met such fire protection requirements as have been adopted by resolution of the board of supervisors.

At this point, it is unclear if the Project has any emergency or standby power. However, given that the Project has yet to connect to PG&E, it is likely that the only power supply for this *underground building project* is the generator, meaning that there is *no* emergency or standby power available in the event of an emergency. Accordingly, the Project may already be in violation of both the CFC and the NCC, and approval of the Major Modification could result in further violations of same. Before the Major Modification is considered by the Planning Commission, a thorough review of any fire safety violations must be completed by the County.

Finally, the use of a generator as the primary power source reveals the absurdity and inherent contradiction of the Applicant seeking a Major Modification in the first place. To the best of Opponents’ knowledge and understanding, the reason that the Applicant installed and has continued to use a generator as the primary power source is because it lacks sufficient funding to pay for the installation of underground power lines. Under Condition of Approval Number 9, “[n]ew utility lines required for this project that are visible from any designated scenic transportation route . . . shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.” (**Exhibit 4 - Conditions of Approval for #P05-0391-UP and #P06-01008-UP**). While Opponents can appreciate the costs associated with installing underground power lines, these costs are no excuse to allow the Project to continue to

operate on a generator. More importantly, the Major Modification belies the Applicant's own bemoaning of the costs associated with installing underground power lines because there is apparently enough funding to move forward with several construction related activities it seeks.

In light of all the apparent violations of the General Plan, the NCC, CEQA, the California Fire Code, and the BAAQMD regulations as a result of a generator being utilized as the primary power source for the Project, the County should deny any further modifications, including the Major Modification, outright until the Applicant installs the underground power lines originally proposed and presented to the County by the Applicant.

III. THE MAJOR MODIFICATION WILL ADVERSELY IMPACT THE PUBLIC SAFETY & WELFARE

Under NCC section 18.124.070(C), the Planning Commission or Board of Supervisors “*shall make*” a written finding that “[t]he grant of the use permit, as conditioned will not adversely affect the public health, safety or welfare of the county.” In the Recommended Findings for the Major Modification, the County indicates that “[t]he grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.” (*Supporting Doc. “A” to April 19, 2017 Agenda for the hearing on The Caves at Soda Canyon, Recommended Findings* at p. 2). However, as proposed, such a finding is nothing more than a blind assertion, without any analysis of the *General Plan*. In fact, this finding places the Project site in a vacuum and completely overlooks the fact that the Project is located approximately 3.5 miles up a steep, dilapidated, and no-outlet mountain road with innumerable *existing dangerous conditions* that, if approved in its current form, *will undoubtedly exacerbate and thus adversely affect the public health, safety and welfare of the County of Napa*, its residents, property owners, and any patrons of the Project.

Specifically, in its incomplete analysis of adverse effects on the public health, safety and welfare, the County stated the following:

Granting the Use Permit modification for the project as proposed and conditioned will not adversely affect the health, safety, or welfare of the County. Various County divisions and departments have reviewed the project and commented *regarding modifications to the existing road and driveway, grading, drainage, the proposed septic system, parking, building permits, and fire protection*. Conditions are recommended which will incorporate these comments into the project to assure the protection of the public health, safety, and welfare.

Id. (emphasis added). As is obvious from a review of the above language, no consideration whatsoever appears to have been given to the health, safety and welfare impacts of this project on the County *anywhere other than on the Project site itself*. In other words, the County's analysis and finding only determines that the Project will not have any adverse health, safety or welfare impacts on or at the Project site.

However, the Project site alone does not constitute the entire “County of Napa,” and cannot be considered in a vacuum. Instead, the adverse health, safety and welfare impacts of this

Project must be viewed from a much wider lens to include, in the very least, other residents and property owners on Soda Canyon Road (or roads accessed by Soda Canyon Road), as well as any and all current and future users and visitors of Soda Canyon Road (or roads accessed by Soda Canyon Road), as all such individuals are within the “County of Napa,” which is required under NCC section 18.124.070(C). As will be described in detail below, Soda Canyon Road, under existing conditions, is incredibly dangerous, and the approval of the Major Modification would exacerbate those conditions, unquestionably resulting in adverse impacts on the health, safety and welfare of the “County of Napa.”

A. Location, Geography, & History of Traffic on Soda Canyon Road

Before delving into the specific reasons how and why the Major Modification will adversely impact the public safety and welfare, it is important to review and understand where the Project is located.

1. Location of Soda Canyon Road

Soda Canyon Road can only be accessed via Silverado Trail, approximately 4 miles north of Trancas Street in Napa, CA, meaning that it is a dead-road with no other outlet in the event of an emergency. Importantly, Soda Canyon Road has numerous branches, splitting off onto several other roads, including Feliz Ranch Road, Loma Vista Drive, Soda Springs Road, Chimney Rock Road, Capps Drive, and Ridge Drive. There are approximately 163 homes, innumerable vineyards, and even a handful of wineries on nearly every branch of this road, all users of which must use the single entrance and exit point at the intersection of Soda Canyon Road and Silverado Trail. Additionally, while the paved portion of Soda Canyon Road dead-ends at the Antica Winery property (3700 Soda Canyon Road), there is a dirt road that begins near the 6.2 mile-mark that goes on for several more miles into the mountains and is where several additional homes and vineyards are located. (See **Exhibit 6a-b – Soda Canyon Road Service Area; Soda Canyon Road Property Locations**). Accordingly, and for purposes of this letter, when a reference is made to “Soda Canyon,” or “Soda Canyon Road,” it implies ALL of the other roads that can only be accessed from Soda Canyon Road.

2. Geography of Soda Canyon Road

At the top of Soda Canyon Road, approximately 1,400 feet above the Napa Valley floor, the Atlas Peak American Viticultural Area (AVA) makes its home in Foss Valley, which is a mountaintop valley where numerous residents and vineyard operations are located. The paved portion of Soda Canyon Road is 6.75 miles long, extremely steep beginning around mile 4.5, serpentine, filled with blind-corners (none of which have any guard rails), is ridden with unfixed pot-holes that get worse with every car and large truck that travels the road, has no bike or jogging lanes, has cracking and crumbling shoulders, and in short, is totally unfit to house an even larger commercial winery than already exists on the Applicant’s property. To get a better visualization of Soda Canyon Road and its dilapidated condition, see **Exhibits 7a-jj, 8a-ff, 9 & 10**, which respectively include photographs of the road heading in both a northeast (up the mountain) and southwest (down the road) direction, as well as a video of traveling northeast (up

the mountain) and a video of vineyard worker traffic.¹

When reviewing these videos, note that they were taken in succession in 2015 and are a good example of an average day driving up (or down) Soda Canyon Road. During the approximately 15 minute trip up the entire 6.75 mile length of the paved portion of the road (the road forks into a dirt road at approximately mile 6.2 – and continues further into the mountains to other vineyards and protestant properties), there are 35 cars present on the road, including a Sheriff who had somebody pulled over on the side of the road. Immediately following the conclusion of the filming of the first video, the second video is filmed at the dirt road near mile 6.2, and captures a very small portion of the daily caravan of vineyard workers leaving Stagecoach Vineyards (located at the very end of the dirt road), in which there was another 14 cars, making for a total of 49 cars that drove down Soda Canyon Road in a roughly 20-minute period. Passing 49 cars in 20 minutes is a very average, perhaps even below average, day for the traffic that frequently overwhelms Soda Canyon property owners and residents.

After reviewing the above photographs and videos, the reader is encouraged to keep in mind that the Caves are located at the approximately 3.5-mile mark, which is beyond the narrow, one-line bridge over which all of the existing winery traffic and future grape transport truck traffic must pass to reach the driveway for the Applicant, after which all traffic must then begin the very steep ascent up the narrow, one-lane driveway to the Project site.

3. History of Traffic & Poor Road Conditions on Soda Canyon Road

Unfortunately for all residents and property owners on Soda Canyon Road, issues with traffic, large equipment ruining the road, reckless driving, and generally bad road conditions have been prevalent and brought to the attention of the County of Napa (hereinafter the “County”) for decades, yet little deference ever seems to be given to the residents and property owners on Soda Canyon Road. In fact, the last time Soda Canyon Road was repaved was in the early 1980s, and, consistently since then, residents have had to repeatedly bring the condition of the road to the attention of the County at every opportunity, especially when new winery projects are proposed. Regrettably, residents and property owners have to re-raise all of the same issues each time a new Board of Supervisors is voted in. Attached as **Exhibits 11 & 12** are letters from residents to the County dating back to the late 1990s and early 2000s that address these traffic issues. In a letter from Mr. Fletcher Benton, who resides at 3398 Soda Canyon Road (which is beyond the Project site), dated December 17, 2002, Mr. Benton, on the subject of the Krupp Winery application on upper Soda Canyon from the 1990s, Mr. Benton states:

[t]he issue now is that same as it was in 1987, traffic and the fact that Soda Canyon Road is a dead end with no way out in case of catastrophe, except back down the hill... There are many elderly residents and families with small children in the area. The maintenance of the Krupp vineyard has already caused congestion during school busing hours because of vineyard workers coming and

¹All video exhibits “attached” to the paper copy of this Opposition are merely placeholders; a flashdrive provided to the County in conjunction with this Opposition contains all of the actual video files. The **Exhibit 9 & 10** videos are also visible on youtube at <https://www.youtube.com/watch?v=FFSN53PZzjE> and <https://www.youtube.com/watch?v=tF2nmaDgR3g>, respectively).

coming.

In short, the traffic issues on Soda Canyon Road are not new, and more importantly, have gotten dramatically worse on Soda Canyon Road since 2002, and certainly since 1987. Documentation in the form of Maps and Charts supporting this fact are further below. The point of including this information is to inform the County that residents and property owners moved to Soda Canyon to get away from traffic congestion, noise, and everything else that a large winery operation brings to the table. Residents and property owners have been down this path before, and Opponents, as property owners on Soda Canyon Road, implore the County to account for that history, not to mention the myriad of headaches this Project has already caused them over the course of several years.

B. Current Public Safety Precedent on Soda Canyon Road – Astrale e Terra

In 1988, the owners of Meadowrock Winery, (DBA Astrale e Terra, File No. SW-118889-UP; APN: 032-230-027, hereinafter “Astrale e Terra”) proposed a winery that would produce 20,000 gallons of wine per year, have no caves, and be limited to 52 visitors (1 per week). The winery was approved and is still in operation today. However, in 1998-1999, before obtaining the required Type 02 license to operate and sell alcoholic beverages at the winery site from the Department of Alcoholic Beverage Control (hereinafter “ABC”), there was a hotly contested battle between the Astrale e Terra owners and the nearby Soda Canyon neighbors. Even though Astrale e Terra could only host a maximum of 52 visitors per year, neighbors were still concerned of the prospect of this winery operating and having the ability to host wine tastings and conduct retail sales with members of the public. For the record, the Astrale e Terra ABC file number is 02-344164, and the ABC Reg number is 98045225.

As a result, the matter was litigated. After a hearing before an administrative law judge, during which evidence of the dangerous nature of the road was presented via pictorial and testimonial evidence from several neighbors and residents on Soda Canyon Road, the ABC issued a formal order that denied all wine tasting and retail sales on-site. Specifically, the ABC determined in 1999 that:

- (1) the “[e]vidence established that increased traffic on Soda Canyon Road would interfere with the quiet enjoyment of nearby residences.”
- (2) the “[e]vidence established that increased traffic on Soda Canyon Road would aggravate a traffic problem on a problematic roadway which serves Applicant, nearby residents and two other vineyards.”

(See **Exhibit 13** – 1999 *Astrale e Terra Decision & Proposed Order* at p. 6).

Based on these two findings, the reviewing court found that the “issuance of the applied-for license *would be contrary to public welfare or morals.*” (See *Id.*). The court went on to state that because the Applicant’s “primary present purpose in seeking a winegrower license [was] to enable Applicant to sell the wine it has produced and wine which it intends to produce,” the court indicated that the protests would be sustained *if* the Applicant petitioned the Department for a conditional license containing the following conditions:

- (1) “No winetasting or tasting by appointment shall be permitted at this location.”
- (2) “No retail sales of alcoholic beverages to walk-in customers shall be permitted at this location.”

(See *Id.* at pp. 6-7).

The Astrale e Terra winery is located at 3148 Soda Canyon Road and sits on a parcel of roughly 68 acres, at least 20 acres of which are planted and producing grapes that partially, or perhaps entirely, supply the 20,000 gallon permit (contrast this to the Applicant’s location which has *no grapes on site*, requiring all grapes to be trucked in each harvest). The entrance to Astrale e Terra is approximately 6.7 miles up Soda Canyon Road (i.e. past the Applicant’s location). Soda Canyon Road has not been repaved since the 1980s, and, as will be discussed in detail below, road and traffic conditions have gotten significantly worse since 1999, when the ABC determined that (1) “increased traffic on Soda Canyon Road *would interfere with the quiet enjoyment of nearby residences*,” and (2) “increased traffic on Soda Canyon Road *would aggravate a traffic problem on a problematic roadway* which serves Applicant, nearby residents and two other vineyards.”

In short, the legal precedent for the *entirety* of Soda Canyon Road is and has been established for nearly twenty years. Yet, as will be discussed below, the County continues to ignore this precedent and approve projects on Soda Canyon Road that do not have sufficient, and in some cases none, grapevines on-site to supply grapes to satisfy production needs (e.g. The Caves at Soda Canyon, Relic Winery, and Mountain Peak Winery). This increases winery visitor and commercial traffic on this “problematic roadway,” which only serves to worsen existing road conditions and further heighten the risk to the public’s safety and welfare. On this precedent alone, and notwithstanding all of the Applicant’s illegal and otherwise inappropriate conduct over the years, this Major Modification should be denied.

C. Cumulative Traffic Impacts on Soda Canyon Road

The Applicant seeks to double its annual production from 30,000 to 60,000 gallons. This will add a significant amount of commercial traffic on Soda Canyon Road, especially grape transport trucks during harvest because the Project does not have a single grapevine on-site, meaning *all* of the approximately 400 tons it will take satisfy a 60,000 gallon permit will have to be trucked in. (See *CMP Traffic Flow Calculations for the Caves Winery*, attached to *Applicant’s Major Modification Use Permit Application*). Importantly, because of the very steep and narrow configuration of the Applicant’s driveway, it is unlikely that large semi-truck transports can deliver the grapes, thus requiring significantly more deliveries from smaller dump-truck sized transports, and further increasing the amount of commercial traffic on the already dilapidated and deteriorating Soda Canyon Road.² Because of the dead-end nature of Soda Canyon Road, this increase in commercial traffic *cannot* be viewed as a stand-alone project and considered in a vacuum. Instead, it must be viewed with a broad lens that encompasses *all* of the existing and pending winery and vineyard projects on Soda Canyon *and* at the intersection of Silverado Trail, which is currently and will continue to be impacted from several existing and

² In fact, as described in detail further below, semi-trucks have become stuck on *at least* three occasions on the Applicant’s driveway precisely because of how steep it is and sharp the turns are thereon.

proposed winery projects located on either Soda Canyon Road or within the immediate vicinity of the Soda Canyon/Silverado Trail intersection.

Currently, on any given weekday, the morning traffic turning left onto Soda Canyon from Silverado Trail, and the afternoon traffic turning left onto Silverado Trail from Soda Canyon is abysmal. Long queues of resident, vineyard worker, and winery visitor traffic regularly develop, and there have been several fender benders from cars trying to make the left turn. (See **Exhibit 8ff**). If traffic at this intersection continues to increase at its current pace, it is only a matter of time before there is a serious and potentially catastrophic accident there. The addition of even more commercial traffic to this intersection, and to Soda Canyon Road generally, puts the public safety and welfare at even greater risk.

More specifically, there are currently eight County approved and operating wineries on Soda Canyon Road – Antica Napa Valley, Astrale e Terra/Meadowrock Winery, La Vallette Winery, Roy Estate Vineyards, the Caves at Soda Canyon, V-12 Winery, White Rock Vineyards, and Relic Winery. On Silverado Trail, and within approximately one quarter mile of the intersection of Soda Canyon Road and Silverado Trail there are currently two County approved and operating wineries – Reynolds Family Winery and Black Stallion Winery. The combined number of current annual permitted winery visitors for the above listed ten wineries is 42,012. (See **Exhibit 14 – Winery Visitation from Current and Future Wineries on SCR & ST**).

In January 2017, the Planning Commission approved Mountain Peak Winery,³ located approximately 6.2 miles up Soda Canyon Road. If, after the appeals process, the Project moves forward as approved by the Planning Commission, it will be permitted to host 14,575 annual winery visitors. Importantly, it will add approximately 42,000 annual car trips on Soda Canyon Road. (See **Exhibit 15 – Understanding Traffic Trips Generated by Mountain Peak Winery**). In February 2017, the Planning Commission approved the Grassi Family Winery project, located approximately 0.2 miles up Soda Canyon Road. Grassi will add another 3,795 annual winery visitors, and approximately 13,722⁴ trips on Soda Canyon Road. (See **Exhibit 16 Grassi Family Winery Visitation & Traffic Figures**). In addition to these two projects on Soda Canyon Road, there are four projects located within approximately one quarter mile of the Soda Canyon/Silverado Trail intersection that are at various stages of the Planning Department review process, which seek to add another 46,856 winery visitors annually. Combined with the two recently approved projects on Soda Canyon Road, these projects would add another 65,226 winery visitors annually to locations within the immediate vicinity of the Soda Canyon Road/Silverado Trail intersection. If all of these projects are approved, that will result in a **155% increase** in the number of *annual winery visitors* permitted to visit wineries at or near the intersection of Soda Canyon Road and Silverado Trail. (See **Exhibit 14**). Importantly, this 155% increase in winery traffic does ***not*** account for the additional traffic from general winery operations (employees, business operations, etc.) from the proposed winery projects described

³ Several Opponents of the Mountain Peak Project filed an appeal on January 30, 2017, which will be heard by the Board of Supervisors on May 23, 2017.

⁴ The Grassi permit application only indicates “one-way trips,” making it unclear if it accounts for the drive in *and* the drive out. The number of annual “one-way trips” is 6,861. Because it appears that return trip is not accounted for, the number was simply doubled. If that is not how the County calculates trips, and 6,861 represents the trip in *and* out, then 6,861 appears to be an accurate number.

above (e.g. Mountain Peak adding approximately 42,000 annual car trips, and Grassi adding approximately 13,722 car trips on Soda Canyon Road), or even from the Major Modification.

Of further importance with regard to traffic is that between 1999 and 2015, there has been an **88% traffic increase** (48,472 winery visitors and vineyard workers in 1999 to 78,994 in 2015) from winery visitation and vineyard workers solely from Soda Canyon wineries and vineyards at the intersection of Soda Canyon Road and Silverado Trail. (See **Exhibit 17 – Vineyard Worker & Winery Visitor Traffic on Soda Canyon Road & Silverado Trail**). And, if all of the above proposed wineries are approved in their proposed form, the total number of winery visitors and vineyard workers who must utilize the Soda Canyon Road/Silverado Trail intersection to access the respective wineries or vineyards, will increase to 148,678, a **207% increase** in winery visitor and vineyard worker traffic since 1999. The year 1999 is important because that is when the ABC denied all wine tasting and retail sales on-site to Astrale e Terra as a result of evidence establishing “that increased traffic on Soda Canyon Road would **aggravate a traffic problem on a problematic roadway** which serves Applicant, nearby residents and two other vineyards.” (**Exhibit 13** at p. 6) (emphasis added).

As will be described in the next several pages, Soda Canyon Road already suffers from an incredible number of accidents and incidents. In light of the Astrale e Terra precedent, the already 88% increase in winery visitor and vineyard worker traffic since 1999, and the 207% increase in winery visitor and vineyard worker traffic if all of the proposed projects on/near Soda Canyon Road move forward, the Major Modification cannot be approved because it will only make worse the already substantial cumulative traffic impacts on/near Soda Canyon Road, which in turn will adversely impact the public safety and welfare, and potentially the environment.

D. The Napa County Grand Jury, Sheriff’s Department, CHP, CalFire, and Unreported Incidents and Accidents on Soda Canyon Road

1. 2007-2008 Napa County Grand Jury Final Report

The 2007-2008 Napa County Grand Jury Final Report on the Napa County Fire Department (the “07-08 Grand Jury Report) determined that the Soda Canyon area has “the second highest rate of incidents in Napa County,” and concluded that in the two-year period from 2006 to 2007, Soda Canyon Road had 594 incidents (See **Exhibit 18 – 2007-08 Grand Jury Final Report** at pgs. 20, 23). As will be demonstrated further below, traffic conditions and traffic volume have worsened and increased, respectively, each year since that time.

2. Napa County Sheriff’s Calls for Service on Soda Canyon Road

Attached to this letter is a summary of “Calls for Service” from the Napa County Sheriff’s office from January 9, 2014 to March 6, 2017.⁵ (See **Exhibit 19**). Also attached are copies of the actual Napa Sheriff’s reports.⁶ (See **Exhibit 20**). ***During that period of just three***

⁵Anthony Arger, Esq., attorney for Opponents compiled the attached summary reports from the Napa Sheriff’s Department, the California Highway Patrol, and the California Department of Forestry and Fire. Mr. Arger, as an officer of the court, declares under penalty of perjury under the laws of the State of California, that these summaries accurately reflect what is contained in the much longer, more detailed reports from each of the respective agencies.

⁶The attached copies of the Sheriff’s Reports contain a stamp precluding duplication of the reports. However, Lauran Griffiths, the individual who obtained the reports from the Napa Sheriff’s Department, received authorization to duplicate the reports for submission to the County.

years and two months, there have been 498 "Calls for Service" on Soda Canyon Road. This is an average of 13 calls per month and 157 calls per year, and that is just for the Napa Sheriff's Department. Importantly, the vast majority (366 of 498) took place during the daytime hours, which is precisely when the Applicant seeks to introduce the bulk of its additional traffic to the road, particularly the additional grape transport trucks that will be required to haul the grapes required to satisfy another 30,000 gallons of annual wine production. A summary of these calls for service on Soda Canyon Road is as follows:

Brief Summary of Sheriff Calls for Service on Soda Canyon from Jan. 2014 to Mar. 2017

Total Number of Calls (1/9/14 to 3/6/17): 498	Napa County Ordinance Violation (NCO): 1
911 Hangup Call (CODE11): 40	Neighbor Problem (NPROB): 2
Abdominal Pain (ABDOM): 3	NSIB Event (NSIB): 2
Agency Assist (AA): 3	OCR: 1
Alarm (1033): 22	Overdose (OVERD): 2
Animal Control Callout (ASO): 73	Patrol Check (PCK): 16
Area Check (ACK): 3	Patrol Info (PATROL): 31
Assault (ASSAU): 4	Ped Check (PEDCK): 3
Attempt to Contact (ATC): 3	Person Down (PDOWN): 2
Barking Dog (1091B): 1	Petty Theft under \$400 Loss (488): 7
Bite Animal Human Insect Reptile (BITE): 1	Phone Message: 1
Bleeding Problem (BLEED): 1	Probation/Parole Search (SEARC): 3
Breathing Problem (BREATH): 2	Prowler (1070): 1
Burglary (459): 4	<u>Reckless Driver (RECK): 19</u>
Chest Pain (CHEST): 6	Security Check (SCK): 1
Choking (CHOKER): 1	Seizure (SEIZU): 5
Citizen Assist (CA): 10	Shots Fired (SHOTS): 4
Civil Problem (CIVIL): 2	Sick Person (SICK): 3
Coroner Case (1144): 3	Stolen Vehicle (10851): 1
Disturbance of the Peace (415): 12	Stroke (STROK): 1
Drug Activity (DRUG): 2	Suicide (1056): 1
<u>Drunk Driver (23152): 28</u>	Suspicious Situation (1030): 20
Elder Abuse (EABUS): 2	<u>Traffic Collision (TC): 13</u>
Embezzlement (EMBEZ): 1	<u>Traffic Hazard (1125): 7</u>
Follow Up (FU): 25	<u>Traffic Stop (TS): 13</u>
Found (FOUND): 2	Trauma (TRAUM): 2
Fraud (FRAUD): 4	Trespassing (TRES): 30
Garbage Dump (GDUMP): 2	Unconscious Person (UNCON): 1
Grand Theft over \$400 Loss (487): 3	Vandalism (594): 6
Harassment (HARASS): 1	Vehicle Check (VCK): 11
Hazardous Condition (HAZCON): 2	Welfare Check (WCK): 4
Lost (LOST): 1	
Mail Tampering/Theft (MAIL): 7	Daytime Incidents (6am-6pm): 366
Medical Needed (MEDIC): 8	Nighttime Incidents (6pm-6am): 132
Motorist Assist (MA): 2	

3. California Highway Patrol Reported Incidents on/near Soda Canyon Road

Attached to this letter as **Exhibit 21** is a summary of the California Highway Patrol (“CHP”) Incident Reports from January 21, 2013 to March 22, 2017 on Soda Canyon Road, including at the intersection with Silverado Trail.⁷ Notably, 30 of the 65 incidents reported during the roughly four-year period of reports provided have occurred during the last year (between April 6, 2016 and March 22, 2017). This indicates that the existing, increasing traffic levels on or near Soda Canyon Road have already led to a significant increase in the number of incidents that regularly occur on the road. Furthermore, the vast majority of the incidents (43 of 65) took place during the daytime, precisely when the Applicant seeks to add even more commercial traffic from large grape transport trucks and vendors to the road on an annual basis.

Brief Summary of CHP Incidents on/near Soda Canyon from Jan. 2013 to Mar. 2017

Total Number of Incidents: 65

Number of 2 car collisions: 9

Number of 1 car collisions: 15
(i.e. into tree, ditch, pole, etc.)

Traffic Hazards: 6

Reckless Driving: 7

Animal in Roadway: 1

Driving Under the Influence: 13

2 Car Speed Contest: 1

Fire: 3

Semi-Truck Stalls/Accidents: 2

Abandoned Vehicle: 2

Parking Violation: 1

Shots Fired: 1

Hit & Run: 2

Take a Report: 1

Unidentified: 1

Daytime Incidents (6am-6pm): 43

Nighttime Incidents (6pm-6am): 22

Incident number 140910GG01108 is worthy of special attention because it involved a semi-truck that overturned on the steepest part of Soda Canyon Road and blocked ALL ingress and egress to every property above that point for more than 5 hours, and required two tow trucks to remove it. Had that truck started a wildfire, which can and does happen with regularity in fire prone regions, or had there been an emergency incident above that location, *all* persons above that point would have been trapped. Attached as **Exhibit 22** is a picture of a similar traffic jam caused by large trucks very near to where Incident number 140910GG01108 occurred. The Applicant seeks to add even more large trucks to Soda Canyon Road, which could similarly become trapped, stuck, or overturned, and block all ingress and egress on Soda Canyon Road.

⁷ Because the individual incident reports amount to hundreds of pages, Opponents have not included them with this letter of opposition. However, all are available upon request.

4. CalFire Reported Incidents on Soda Canyon Road

In addition to the significant number of incidents on Soda Canyon Road responded to by the Sheriff's Department and CHP, there is also an substantial number of incidents reported by the California Department of Forestry and Fire Protection ("CalFire") that further reveal that there are serious, existing public safety issues and concerns on Soda Canyon Road. Attached to this letter is a summary of the CalFire incident reports from January 29, 2007 to December 20, 2016.⁸ (See **Exhibit 23**).⁹ Similar to the Sheriff's and CHP reports, the majority (122 of 181) of all the CalFire incidents occurred during the daytime, which again is when the Applicant seeks to introduce the vast majority of additional traffic that will be created by the Major Modification.

Brief Summary of CalFire Incidents on Soda Canyon from Jan. 2007 to Dec. 2016

Total Number of Incident Calls/Responses: 181*

Number of Calls/Incidents for Medical/EMS: 81

Number of Calls/Incidents for Residential Fires: 13

Number of Calls/Incidents for Wildland Fires: 20

Number of Calls/Incidents for Reported Fires/False Alarms/Smoke Checks: 32

Number of Calls/Incidents for Traffic Collisions: 11

Number of Calls/Incidents for Hazmat/Hazardous Condition: 10

Number of Calls/Incidents for PA/Other/No-Description: 15

Daytime Incidents (6am-6pm): 122

Nighttime Incidents (6pm-6am): 59

*Does not include all 2008, 2009, 2010, or 2013 incidents (see footnote above)

While a separate section on fire danger on Soda Canyon Road is further below, it is important to include the CalFire summary report here because CalFire deals not only with fires, but also with medical and other emergency related incidents, of which there are many. Numerous residents and property owners on Soda Canyon are growing older and increasingly require emergency medical assistance, as evidenced in the CalFire summary. Be it a fire truck or ambulance that needs to rush up or down this road, the addition of any number of patrons to the Applicant's Project site will significantly impede, and perhaps prevent altogether, access by emergency services to house fires, wildfires, or elderly persons needing emergency care. As noted above with regard to the semi-truck overturning, if an accident occurs anywhere on the road and blocks the roadway, all individuals above that line are trapped because of one-way in, one-way out design of the road, including any would-be patrons to any winery on the road.

⁸Incident reports provided by CalFire typically run a three-month lag, meaning that while these reports were recently requested, the provided reports only run through December 2016 and do *not* include any incidents from the first three months of 2017, during which there have been several incidents responded to by CalFire. Moreover, CalFire is still in the process of compiling incident reports for Soda Canyon Road from 2008, 2009, 2010, and 2013, as the initial set of reports included only six incidents from 2008, ten incidents from 2009, three incidents from 2010, and three incidents from 2013 (contrast to 62, 58, and 74 incidents in 2014, 2015, and 2016, respectively), and thus it does not appear that CalFire fully responded to the public records act request. Any updated CalFire reports and incidents will be distributed as soon as they become available.

⁹Similar to the CHP individual reports, because the individual incident reports for CalFire amount to hundreds of pages, Opponents have not included them with this letter of opposition. However, all are available upon request.

5. Analysis of Combined Incidents & Accidents on Soda Canyon Road

To provide an even better picture of existing incidents and accidents that occur on Soda Canyon Road, it is instructive to analyze the total number of incidents from each agency over the period of time during which the reports overlap, which is from January 2014 through December 2016. (See Exhibits 19, 22, and 23). Such an analysis is important for the County to consider because it prevents piecemeal analyses and conclusions that could be drawn from only looking at a single agency, for example the CHP, which has a relatively low number of incidents as compared to the Sheriff's Department. A summary of the total number of combined agency incidents from 2014-2016 is as follows:

Combined Agency Incidents January 2014 – December 2016:

Sheriff's Department:

Daytime Incidents (6am-6pm) 2014-2016: 360

Nighttime Incidents (6pm-6am) 2014-2016: 129

Total Sheriff's Department Incidents 2014-2016: 489

California Highway Patrol:

Daytime Incidents (6am-6pm) 2014-2016: 31

Nighttime Incidents (6pm-6am) 2014-2016: 21

Total CHP Incidents 2014-2016: 52

CalFire:

Daytime Incidents (6am-6pm) 2014-2016: 63

Nighttime Incidents (6pm-6am) 2014-2016: 34

Total CalFire Incidents 2014-2016: 97

Grand Total Daytime Incidents 2014-2016 (All Agencies Combined): 454

Grand Total Nighttime Incidents 2014-2016 (All Agencies Combined): 184

Grand Total Incidents 2014-2016 (All Agencies Combined): 638

In summary, a review of the reports from the Napa Sheriff's Department, CHP, and CalFire confirm that Soda Canyon Road is *not* a quiet, uneventful road. In fact, it is quite the contrary. As is evident from above, over the course of just three years, from January 2014 to December 2016, there have been *a total of 638 reported incidents and accidents* on Soda Canyon Road. *That is an average of 213 reported incidents and accidents per year, 18 reported incidents per month, and 4 reported incidents per week* on Soda Canyon Road over the three-year period. Furthermore, the *vast majority of the incidents (454 of 638) took place during the daytime hours*, precisely when the Applicant seeks to add even more annual drivers to the road in the form of grape truck transports, vendors, contractors, and other normal patrons of a large-scale commercial operation such as this one. Yet, the County's recommended findings appear to have given no consideration whatsoever to the increasing number of accidents on Soda Canyon Road, and instead focused solely on the Project site itself, effectively ignoring the public safety and welfare of all users of Soda Canyon Road. Given the Project's location 3.5 miles up the dead-end Soda Canyon Road, it would be a violation of local and State laws regarding the public safety and welfare for the County to consider only the Project site, as opposed to the entire

road, as it relates to the Project's impacts on the public safety and welfare. This Project, particularly considering its remote and rural location, cannot be considered in a vacuum. Soda Canyon Road, under current conditions, is a dangerous road. If the Major Modification is permitted to move forward in its current form, it is likely that the already large number of annual incidents on the road will increase, which is not only a serious threat to the public safety and welfare, but could expose the County to significant liability in the event of any accident resulting in serious injury or loss of life. (See Cal. Gov. Code § 835, which maintains that "a public entity is liable for injury by a dangerous condition of its property" if several conditions are met).

6. Examples Recent Traffic Collisions on Soda Canyon Road

To further illuminate the public safety issues that currently exist on Soda Canyon Road, it is instructive to review a few recent incidents and accidents that have occurred on the road.

a. February 18, 2016 Traffic Collision on Soda Canyon Road

On February 18, 2016, a single car carrying three people struck a tree on Soda Canyon Road near the intersection with Loma Vista Drive (approximately the 2.1 mile mark on Soda Canyon Road). (See **Exhibit 24** – *Napa Valley Register, Car hits tree, sending on to hospital*; **Exhibit 19** – *Sheriff's Summary Report*). One of the passengers was transported to Queen of Valley Medical Center. The accident occurred around 11am on what appears from the pictures to be a clear, sunny day. This is important because it demonstrates that accidents can and do occur on Soda Canyon Road during normal business hours when the Applicant seeks to add even more commercial traffic to the road, and even when the road is dry and there is no fog.

b. August 13, 2016 Traffic Collision on Soda Canyon Road

Early in the morning of August 13, 2016, a car was driving down Soda Canyon Road, and, almost directly across from the Soda Canyon Road Volunteer Fire Station, at the 4.1-mile mark of the road, struck a deer. The car swerved off the side of the road, plunged down 8-10 feet into Soda Creek and slammed into a tree. (See **Exhibit 25a-h** – *Aftermath Photos of the August 13, 2016 Accident*; See also **Exhibit 19** – *Sheriff's Summary Report*). Although the deer was killed and the car severely damaged, the vehicle occupants did not sustain any major injuries.

As described in more detail below, deer sightings are incredibly common on Soda Canyon Road, so common in fact that many residents consider it to be rare *not* to see one or several deer when driving on the road. The August 13, 2016 incident is just one of many accidents over the years involving wildlife on this road. While deer and other wildlife are more active at night, they are still regularly seen and involved in accidents during the daytime. (See **Exhibit 26** – *October 8, 2016 Video of Deer on Soda Canyon Road*).¹⁰ Accordingly, while the Applicant's normal operations take place mostly during the daytime (excluding the winter months), expanding the hours of operation and adding more commercial traffic to the road increases the risk of accidents involving vehicles and deer (or other wildlife).

¹⁰The **Exhibit 26** video is also available on youtube at <https://youtu.be/OW9gAfyZJsw>.

c. November 4, 2016 Traffic Collision on Soda Canyon Road

Attached as **Exhibit 27** are photographs from the aftermath of another accident on Soda Canyon Road that occurred on November 4, 2016 near the two-mile mark, which is below the Project site. It appears that the Napa Sheriff's Department responded to this accident. (See **Exhibits 19 – Sheriff's Summary Report**).

d. January 26, 2017 Traffic Collision on Soda Canyon Road

On January 26, 2017, there was yet another accident on Soda Canyon Road, which involved a single car just past the 2.25 mile mark on the road. Attached as **Exhibit 28** are photographs of the accident. (See also **Exhibit 19 – Sheriff's Summary Report**). In addition to providing further proof of how often incidents and accidents already occur on Soda Canyon Road, the position of the car off the roadway demonstrates how much speed cars and trucks alike carry on the road, and how dangerous that speed can be, even without unfamiliar tourists consuming alcohol at the very end of the road, due to the serpentine configuration of the road.

7. Un-Reported Accidents on Soda Canyon Road

The Sheriff, CHP and CalFire summaries, even with their substantial numbers, are still only a snapshot of the types of accidents that regularly occur on Soda Canyon because so many accidents go *un-reported*. For example, in June 2015 an abandoned car was found crashed and hanging over the creek on the gravel portion of Soda Canyon Road near mile 6.2. (See **Exhibit 29a-b**). As is plainly visible from the pictures, the car crashed on the dirt road portion of Soda Canyon heading either to or from the direction of Stagecoach Vineyards, and the driver (and any occupants) simply abandoned the car. It cannot be stressed to the County enough *how often this exact same scenario plays out on Soda Canyon Road*. Every year, numerous (probably somewhere in the range 10-15) cars are found crashed on the road and simply abandoned, creating obvious hazards for property owners and all other users of the road. And, in addition to the cars that are abandoned, there are other instances where cars crash, the occupants do *not* abandon the car, but the only responder is a tow truck (e.g. the incident goes unreported because no state or county agencies are contacted). For example, in September 2015, a Honda Accord was heading down Soda Canyon Road, had just completed coming off the steepest part of the road, lost control of the vehicle, went off the road, and crashed into a resident's front yard (2441 Soda Canyon Road), narrowly missing a propane tank. (See **Exhibit 30a-i**). As is evident from the pictures, and confirmed by eyewitnesses, there was no response by the Sheriff's Department, the CHP, CalFire, or any other agency. This was just another typical accident that occurs on Soda Canyon road. Further evidence of car accidents, demonstrated by skid marks and downed signs, that occur regularly on Soda Canyon Road are seen in additional pictures attached to this letter. (See **Exhibit 31a-d**).

8. Evidence of Alcohol Consumption on SCR – Discarded Beer Bottles

Attached are several photos taken by a Soda Canyon resident depicting discarded beer bottles regularly found along the road. (See **Exhibit 32a-e**). An elderly resident of the road, until very recently, used to walk the road nearly every morning, would find these beer bottles, and then place them on top of the mile markers. While it is unknown who discarded these

bottles (although it can probably be surmised from the brand of beer bottles displayed), it is obvious that alcohol consumption currently occurs on Soda Canyon Road.

In sum, as is plainly apparent from the above descriptions, Soda Canyon Road, under current conditions, experiences high numbers of accidents and incidents on annual basis. *The fact that none of this information is mentioned anywhere in the Applicant's traffic report, or the County's documents, is extremely troubling because it wholly ignores the public safety of all property owners, residents, and current users of the road.* Now, add even more large trucks and other commercial traffic on an annual basis to this mix, and the results could be disastrous.

E. Naturally Occurring Conditions on Soda Canyon Road Fire, Fog, Floods, Wildlife, Dark

Aside from the significant dangers posed by current drivers and users of Soda Canyon Road, there are several naturally occurring conditions on the road which warrant attention, including fires fog, flooding, wildlife and the pitch dark of Soda Canyon Road at night.

1. Fires on Soda Canyon Road

The ever-present danger of wildland and residential fires on Soda Canyon Road cannot be overstated. Soda Canyon is a boxed-canyon, which is especially dangerous because winds funnel through canyons and cause what may be an initially small fire to spread rapidly, particularly in the uphill direction. To get a better idea of the fire danger that exists on Soda Canyon Road, please review **Exhibits 33 & 34**, which respectively show the "Fire Hazard Severity Zones" across Napa and the specific "Fire Hazard Severity Zone" for all properties located on Soda Canyon Road. As is readily apparent from a review of **Exhibit 34**, the majority of Soda Canyon Road, and almost the entire upper portion of Soda Canyon is located in a "Very High Fire Hazard Severity Zone."

As indicated in the CalFire summary, between 2007 and 2016, there were 13 residential fires and 20 wildland fires on Soda Canyon Road. By way of specific example (although not counted in the CalFire figures above), there was a fire in May 2003 near the 2400 block of Soda Canyon Road, close to the residence of Mr. and Mrs. David Hallett. The fire was later determined to have been caused by a discarded cigarette butt from a careless vehicle occupant. The Halletts took several photographs of this fire, as demonstrated in **Exhibit 35a-e**, and it is plainly visible how the fire began on the roadway and quickly spread uphill.

In 2005, there was another fire near the 2400 block of Soda Canyon Road, which again threatened homes and quickly spread uphill. This fire was caused by oil dripping onto the exhaust pipe of a car and sparking a fire in the dry brush alongside of the road nearly at the entrance to the Hallett residence. (See **Exhibit 36a-e – Photos of August 2005 Fire**).

In 2011, there was another wildfire near the 2400 block of Soda Canyon Road, which threatened homes, quickly spread uphill and trapped all residents living above the 2300 block of Soda Canyon, including the Halletts, in their homes. (See **Exhibit 37a-c – CalFire Incident Report and Newspaper Articles**). There were additional wildfires in 2012 and 2013 that either trapped residents or prevented them from accessing their homes. (See **Exhibits 38a-c, 39a-b, &**

40a-c – *CalFire Incident Reports and Newspaper Articles for 2012 and 2013 fires, respectively*).

As recently as July 26, 2016, a fire broke out on Soda Canyon Road just past the one lane bridge at approximately the 3.2-mile mark. (See **Exhibit 41a-g** – *Photos of July 26, 2016 Fire*; **Exhibit 42** – *Napa Valley Register Article re: July 26, 2016 Fire*). Fortunately, CalFire was immediately alerted, responded quickly, and extinguished the fire without any significant human or property damage. Due to the geography of the canyon and very dry surrounding brush, the July 26, 2016 fire could have easily spread into a major wildfire if any number of conditions, not the least of which is the wind, had been even slightly different.

While the ignition source was ultimately undetermined because of the lack of evidence discovered at the scene, “Arson” and “Vehicles” were included as a possible fire cause class. The CalFire investigator included “Arson” because of a possible hot start with a lighter, and “Vehicle” because there were vehicles, specifically including “construction vehicles,” using the roadways that could have started the fire by any number of means including a driver or passenger flicking a cigarette butt out the window, dragging a chain, etc. (See **Exhibit 23** – *CalFire Summary Report*). Conversations between Soda Canyon residents and CalFire firefighters on scene that day suggested that the suspected cause was a discarded cigarette butt from a careless driver who most likely was *not* a Soda Canyon resident or property owner. The Applicant seeks to add hundreds of additional vehicle trips to Soda Canyon Road on an annual basis. Many, if not all of these vehicle drivers will almost certainly *not* be aware that they are driving into a “Very High Fire Hazard Severity Zone.” Any of these proposed patrons could be the next visitor to the Soda Canyon community who carelessly discards a cigarette butt out the window of their car and causes a major wildfire, resulting in catastrophic damage to both people and property.

In short, there have been numerous wildfires on Soda Canyon Road in the very recent past that posed serious threats to public safety and will do so again, especially because there is only a single exit in the event of such an emergency. Many residents of Soda Canyon, like Mr. Rick Thornberry, are aware of the fire risks and have specifically designed their homes to be “fire resistant.” (See **Exhibit 43** – *Newspaper Article on Rick Thornberry*). However, even a “fire resistant” home will not stop a devastating firestorm, such as the devastating Atlas Peak Fire that ravaged the entire community in 1981.

In fact, there is such a severe fire risk on Soda Canyon that CalFire created a “Pre-Attack Fire Plan” specifically designed for the Soda Canyon and Monticello area. (See **Exhibit 44** – *Soda Canyon/Monticello Pre-Attack Fire Plan*¹¹). The Pre-Attack Fire Plan discusses the history of large fires that have occurred every 30-40 years on Soda Canyon Road, the reasons why Soda Canyon Road is so prone to fires, and several instructions on what to do not if, but when, the next big fire comes. Below are several quotes taken directly from the Pre-Attack Fire Plan, which specifically address the incredible and legitimate dangers that residents and all users of Soda Canyon Road face with regard to wildfires:

“There are a wide range of fuels in the Soda Canyon/Monticello Area. Fuels range from grass/oak woodland to 15-50 year old chaparral with some stands of decadent brush over 50 years old. Due to fire suppression and lack of aggressive wildland

¹¹ An electronic version of the Pre-Attack Fire Plan has been included on the flashdrive submitted herewith.

fuels management, both the vertical arrangement and horizontal continuity of fuels will promote rapid fire growth. These same conditions will also hinder conventional fire suppression tactics”

“The Soda Canyon/Monticello Area consists of numerous structures ranging from small to very large wineries, caves, and trailers. Most have outbuildings that may contain hazardous materials such as fuel, ammunition, pesticides, insecticides, herbicides, fertilizers and controlled substances”

“Elevations within the Soda Canyon/Monticello Area range between 0 and 80% slope. . . Vineyards and other manmade features provide a network of barriers that will need to be connected to create an effective fireline. The two wide canyons provide the opportunity for wind to be funneled, even under local wind conditions.”

“The early designation and use of incident facilities such as Staging Areas and early evacuation is critical due to the poor road network servicing area. **The roads will quickly become congested if an effective traffic control plan is not established by cooperating law enforcement agencies and public works departments.**”

“An adequate facility to support an incident does not exist within the Soda Canyon/Monticello Area.”

“If evacuation is necessary, it needs to be **ORDERED EARLY**... Residents should be discouraged from using their normal travel patterns if that takes them closer to the incident. If the incident or associated emergency responder equipment compromises the travel routes, then **sheltering in place or use of vineyards may be the best option.**”

“Depending on the location of the fire, the primary evacuation routes are the main paved roads of Soda Canyon Rd.”

“Most bridges have not been engineered, tested or rated for fire engines. Inspect every bridge before crossing!”

“There are no water distribution systems in the Soda Canyon/Monticello Area...Residences use wells with on-site water storage.”

“The most significant fire in the Soda Canyon/Monticello Area was the 1981 Atlas Peak fire[, which] burned approximately 23,000 acres over two days in late June. Several other fires have occurred in recent years including the October 2006 Atlas Fire and July 2007 Peak Fire. Both of these fires burned around numerous structures and required a significant commitment of resources.”

“Fire history, fuels, topography and urban-interface issues indicate the potential for a large and damaging fire in the Soda Canyon/Monticello Area.”

The implications of this Pre-Attack Fire Plan are terrifying. The prospect of trying to escape under existing traffic conditions is frightening enough. The issuance of a Major Modification to allow for even more traffic on Soda Canyon Road will only make worse an already dangerous situation. Again, there is only 1 way out. Traffic will become congested, if not outright blocked as the result of an accident caused by a panicking truck or car driver, meaning that residents, property owners, and even visitors will have to take refuge in their homes or nearby vineyards and hope for the best. One can safely assume that most individuals would prefer being able to escape, which will be made significantly more difficult if unfamiliar patrons of the Project are clogging the only exit. And, not only will these visitors be endangered, but they could also cause the fire, as was seen with the cigarette butt fire of 2003, the July 2016 fire, and even the July 2015 Wragg Fire just over the hill from Atlas Peak, which was caused by the overheating engine of a car that pulled over on the side of the road in the dry brush near Lake Berryessa. (See **Exhibit 45a-b** – *CalFire Incident Report & NVR Articles on Wragg Fire*).

The prospect of fire on Soda Canyon is an extremely serious issue that cannot be overstated, and it begs two questions: (1) why was this Project ever approved in the first place, and (2) how can the County possibly be recommending approval for a “Major Modification” and encouraging even more traffic to frequent an area with such a high risk of wildfire? The simple answers are that such a Project should never have been approved in the first place, and any Major Modification thereto cannot now be approved.

2. Downed Trees Blocking All Traffic on Soda Canyon Road

Among the many hazards that exist on Soda Canyon Road are falling branches and entire trees. A review of the CHP and CalFire reports for Soda Canyon reveals that since January 2014, there have been *at least* 10 incidents (including the March 27 incident) involving downed branches and trees.¹² (See **Exhibits 19, 21, and 23**). And, just during this past fall and winter (October 2016 to March 2017), there have been four separate incidents involving downed trees blocking the entire roadway, the most recent of which occurred on March 27, 2017. (See **Exhibit 19**). Attached as **Exhibit 46a-e** are photos of the March 27 incident, which depict a tree blocking the entirety of Soda Canyon Road around the 2.6-mile mark (which is before the Applicant’s Project site at approximately mile 3.5). According to individuals at the scene, and supported by photos showing the numerous stopped cars, the road was completely blocked for approximately an hour and a half while crews worked with chainsaws to cut and remove the large oak tree. Fortunately, nobody was injured, but this incident demonstrates how quickly and easily the dead-end road can and *does* become completely blocked for hours at a time. Had there been a medical emergency and/or a wildfire, rescue crews would not have been able to reach any victims; all residents and visitors of Soda Canyon above the 2.6-mile mark, which includes the Applicant’s site, were trapped and would have been forced to “shelter in place” in the event of another devastating wildfire.

Moreover, the downed tree on March 27, 2017 knocked out both phone and power lines that affected numerous properties on Soda Canyon Road. In fact, several homes on Soda

¹²The Sheriff’s reports do not provide enough specificity to determine whether incidents, such as “Hazard,” involve downed trees, and not all of the CHP or CalFire reports provide the amount of detail to determine exactly how many incidents involving downed trees have occurred over the years. Accordingly, it is likely that more than 10 downed tree incidents have occurred since January 2014, and many more in the years prior.

Canyon Road were without power and a landline telephone connection for several days. Importantly, because there is *no cell service on nearly the entirety of Soda Canyon Road*, many home and property owners, and any visitors to the area do not have the ability to call for help in the event of an emergency. Combine this fact with the past many instances in which the road has become blocked for hours at a time (fallen trees, car and large truck accidents, fires, etc., *see Exhibits 19, 21, and 23*), and it is a recipe for disaster, especially when the Applicant seeks to introduce even more vehicles and unfamiliar patrons to the road on an annual basis.

3. Fog & Ice on Soda Canyon Road

Due to the unique composition of Soda Canyon – it is a canyon, with very steep hillsides – the road experiences dense fog on a regular basis. On numerous occasions, residents have experienced fog on the road so dense – both during the day and at night – that the only way they can proceed forward in their vehicles is to open the driver door and follow the yellow line in the middle of the road. Importantly, these incidents can and do occur during the middle of the day. Attached hereto as **Exhibits 7n-q and 8h-q** are photographs taken around 12pm on May 16, 2016 showing how dense the fog becomes on Soda Canyon Road. In addition to the fog, during the winter, it can and does snow at the higher elevations on Soda Canyon Road, including near the Project site, causing icy conditions on the road and steep driveways, posing further driving dangers to all users of the road.

4. Flooding & Mudslides on Soda Canyon Road

In addition to the foggy conditions that regularly impact Soda Canyon Road, rainy conditions can and have quickly caused flooding and mudslides. Soda Creek begins near the top of the steep hill and follows the road for the majority of the way down. Because of how steep Soda Canyon is, even a small rainstorm can lead to flooding of Soda Creek very quickly, which at many points along the road, has and will cause flooding. Particularly vulnerable parts of the road are (1) the hairpin turn at mile 3.95 and (2) the lower portion of the road near the 1.10-mile mark, which are just past, and below, respectively, of the Project site. And, with rainstorms and flooding comes mudslides, of which there have also been many, some of which have closed the road for several days at a time. A few pictures of such incidents on Soda Canyon Road are attached to this letter. (See **Exhibit 47a-e** – Photos of Flooding & Mudslides). Also attached are videos showing flooding on lower Soda Canyon Road on December 15, 2016 and January 8, 2017. (See **Exhibits 48a-c**; and **49**, respectively).¹³

These are not the type of conditions that unfamiliar patrons of the Project should be encouraged to drive in, especially if it puts the safety of residents and property owners at even greater risk.

5. Wildlife and Nighttime Conditions on Soda Canyon Road

Finally, there is an array of wildlife that inhabits Soda Canyon and which is seen near or crossing the road with regular frequency, including deer, foxes, mountain lions, turkeys,

¹³ The **Exhibit 48c** and **49** videos are also available on youtube at <https://youtu.be/OEL4VMOVuOU> and <https://www.youtube.com/watch?v=FzpaOmKdHNI&feature=youtu.be>, respectively).

raccoons, possums, squirrels, rattlesnakes, and even bears. The most prevalently seen and dangerous of these animals, at least to drivers and other vehicle occupants, are deer. Whether hitting, or swerving to avoid hitting a deer, substantial damage can be caused to the animal, the vehicle, and the vehicle's occupants. Importantly, aside from one street where Loma Vista Drive branches off from Soda Canyon Road, there is not a single street light on Soda Canyon Road, meaning that it is incredibly dark at night. The Applicant is currently allowed to operate until 6pm, which during the winter months is after dark. Now, the Applicant not only seeks to double its production capacity, but also expand its hours of operation, adding even more vehicles to Soda Canyon Road at night when the wildlife typically becomes more active. This is a mistake, and could quickly result in even more accidents and incidents on this already dangerous road.

F. Current Users of Soda Canyon Road – Property Owners, Walkers, Joggers, Cyclists, Vineyard Workers, & Large Trucks

When reviewing the Major Modification proposal, it is also important to keep in mind the current types of users of Soda Canyon Road. Those users include Residents, Walkers/Joggers, Cyclists, employees of existing vineyard and winery operations, vineyard workers, & large trucks that travel the road on a daily basis.

1. Property Owners, Walkers, & Joggers on Soda Canyon Road

There are 163 residences on Soda Canyon Road. Many of those individuals have lived on the road for decades, some going back to the 1940s and 1950s, such as the Schreuder and Manfree families. They have all witnessed the drastic changes on the road since that time, specifically with regards to dramatic increases in traffic on the road. With so many residents and property owners on the road who live there full-time and/or spend significant portions of their time at their properties, it is hoped that the County remembers that these individuals, these residents, and these long-time property owners have spent significant portions of their lives and financial resources building their homes and lives on this road and in this community; their input and opinions should not and cannot be so quickly dismissed by the County. Many of the residents, particularly at the bottom of Soda Canyon Road, are often seen walking and/or jogging along Soda Canyon Road, and the addition of any more cars and/or trucks on this road increases their risk of getting injured at the hands of a reckless and/or drunk driver.

2. Bicyclists on Soda Canyon Road

In addition to the walkers and joggers who regularly use Soda Canyon Road, it is a road utilized weekly (and almost daily during the warmer months) by bicyclists. Because of the very steep climb offered by the road, it has become a draw for many cyclist enthusiasts looking for a challenge. In fact, there are several resources (online and print) that tout this road as a cycling destination. (See **Exhibit 50a-b – Articles Re: Cycling on SCR**). Attached as **Exhibit 51a-b** are photographs of two cyclists climbing the steepest part of Soda Canyon Road near mile 4.6 in July 2016, which, of course, is past the entrance to the Applicant's winery. Importantly, because there are no bicycle lanes on the road, virtually every time a driver passes a cyclist, that driver, unless he or she moves into the other lane of traffic, is in violation of California Vehicle Code section 21760 – the “Three Foot for Safety Act.” The major issue for cyclists, drivers, and for the County, becomes when two cars (or trucks) are approaching from opposite directions on one

of the many blind curves and overtake a cyclist (or two) simultaneously and there is nowhere to turn. Approving this Major Modification and adding even more commercial vehicle traffic to Soda Canyon Road further increases the likelihood of such an incident occurring.

3. Vineyard Workers on Soda Canyon Road

In contrast to the residents, joggers, walkers, and cyclists, a group of users who pose severe safety risks to the users of Soda Canyon Road are the vineyard workers. As will be described in detail below, there has been significant vineyard expansion over recent years, and with that expansion, more vineyard workers are required to tend to those vineyards. And because of the hilly and rocky nature of Atlas Peak, very little can be done by machine, meaning that vineyard workers are and will continue to be the primary means to farm these vineyards. Unfortunately, the vineyard workers are among the most reckless drivers on the road. Ask any resident or property owner and they will have at least one or two stories of being honked at, yelled at, and/or nearly driven off the road by one or a group of these drivers. Part of the problem is that many of them typically get off work at the same time and leave in caravans of cars that can be as many as 100 or more at a time, especially during the harvest season. And, the problem with these worker caravans is that their timing is not always predictable, especially during harvest, because grapes are often picked through the night and/or early into the morning. This means that the time the caravan is heading up and down the hill changes on a regular basis, depending on the season (and thus cannot be avoided by simply changing the opening or closing time for a tasting room). The drivers maintain speeds far in excess of the posted 25 mph near the top of the road, and the 45 mph at the bottom of the road, and there have been countless times when residents and property owners have come around a hairpin turn, or over the one-lane bridge at mile 3.15, and had to slam on their brakes because a parade of vineyard workers is driving too fast around the corner, drift into the opposite lane, and do not stop for oncoming traffic.

In addition to their generally reckless driving as increasing numbers of workers are required to farm the vineyards, there is a growing daily traffic backup at the intersection of Soda Canyon Road and Silverado Trail. Because there is no traffic signal at the intersection, and the traffic on Silverado Trail travels at speeds of 55 mph +, making a left turn onto Silverado Trail from Soda Canyon Road is not only hair-raising, but has also been the site for several accidents (*see Exhibit 21 – CHP Summary Report*) and innumerable near misses. Due to this difficult left turn, traffic regularly backs up a half-mile or more onto Soda Canyon Road from the intersection. These are serious and growing problems on the road that are worse every year, and introducing even more commercial traffic onto the road is simply irresponsible.

4. Commercial & Large Truck Traffic

One of the most negatively impactful groups of users of Soda Canyon Road is the large trucks which are increasingly larger in both size and prevalence on the road. Much of the truck traffic is due to the existing winery and vineyard operations at the end of Soda Canyon Road (i.e. past the Project site), as well as the rock quarry at Stagecoach Vineyards, which has been steadily increasing the number of large loads carried off-site. At this point, sightings of multiple large trucks has unfortunately become a daily occurrence on Soda Canyon Road. Not only is the road deteriorating into an even more dilapidated condition because of these large trucks, but they

also pose *serious safety risks to all users of the road*.¹⁴ The road is so narrow that the trucks can literally not stay in their own lane, and very often take over both lanes because the loads are so large. Yet, the Major Modification seeks to add even more large trucks to the road both during construction and long after, when numerous large trucks will be needed to transport loads of grapes, bottles, capsules, equipment, food and other items for catering events, and many other types of loads that will be required to run this commercial winery operation.

Attached are several pictures of trucks on Soda Canyon Road taken during the last couple of years, which demonstrate a sampling of the type and size of trucks that are frequently seen going up and down this already dilapidated road. (See **Exhibit 52a-1** – Large Trucks on Soda Canyon Road). In addition, **Exhibits 53, 54, and 55** depict videos of large trucks on Soda Canyon Road, the first two of which were filmed in June of 2015, and the last in July 2016.¹⁵ These videos provide a clear demonstration as the serious safety risks posed all users of the road, especially residents and property owner, by the ever-increasing number of large trucks on Soda Canyon. The trucks cannot physically stay in their lane, despite what is assumed to be their best efforts to do so. As described in the CHP report section above, these oversized trucks can and have overturned on Soda Canyon Road, blocking all traffic for hours at a time. Additionally, many of these trucks can and do stall on the steepest parts of Soda Canyon Road, which presents safety risks because there is no shoulder on which to pull over, and could also lead to wildfires from overheating engines.¹⁶

In fact, on at least three separate occasions, large trucks have gotten stuck on the Applicant's driveway at the same sharp left-hand turn, blocking all ingress/egress to the Project, and even affecting traffic on Soda Canyon Road. Specifically, in or around 2014, a large tractor-trailer with a 40-48 foot trailer was attempting to make a delivery at the Caves, but could not make the left hand turn. According to eyewitnesses, the truck had to back all the way down the steep driveway with assistance from employees from the Caves at Soda Canyon. Once the truck reached Soda Canyon Road in a reverse position, employees from the Caves then stood in the

¹⁴ Opponents additionally note that Mr. Stull owns two separate parcels of property over which the Applicant has easements *for residential use* to access its parcel, *nor for commercial purposes*. Commercial traffic from the winery has and continues to deteriorate portions of the shared driveway and road owned by Mr. Stull. However, to date, the Applicant has not made any concerted effort to remediate said deterioration. Instead, Messrs. Stull and Hoel have had to bear the majority of costs associated with repairing the shared portions of the driveway and road. Accordingly, when considering this Major Modification, Opponents are opposed to increased commercial use and request that the County take into consideration the fact Opponents have and continue to suffer direct harm as a result of the Project. If the Major Modification is approved without specific remediation efforts addressing this issue, both the Applicant and the County may be exposing themselves to additional liability as a direct result of the harm to Mr. Stull's separate property over which the Applicant has easements *for residential use* because the Project will introduce even more commercial traffic to shared portions of the driveway and road, resulting in further deterioration of same.

¹⁵ The **Exhibit 53, 54, and 55** videos are also available on youtube at <https://www.youtube.com/watch?v=HQe5MuIrYI0>, <https://www.youtube.com/watch?v=ZY2cQVdI9cw>, and <https://youtu.be/Fj6gC8jO64U>.

¹⁶ Attached as **Exhibit 56a-d** are several photos showing another truck break down around the 4.3-mile mark of Soda Canyon Road in May 2016. This is the location of one of the sharpest and most blind turns on all of Soda Canyon Road. Again, it does not appear that anyone was injured in that accident, but somebody easily could have been, especially if the Applicant is allowed to introduce even more commercial traffic to the roadway.

roadway to block all traffic for several minutes while the truck gingerly turned around and went back down Soda Canyon Road with the load still on board. Nearly identical incidents occurred again on April 14, 2015 and March 16, 2016, photos of which are attached. (See **Exhibit 57a-e**). Approval of the Major Modification will further increase the risks to the public safety and welfare because more large trucks posing all of the same problems as described above will be necessary to provide the Applicant not only with another ~200 tons of grapes during harvest, but also the additional supplies (bottles, corks, barrels, equipment, etc.) necessary to produce another 30,000 gallons of wine annually.

5. Tour Bus Breakdowns on Soda Canyon Road

As the County continues to approve more winery projects on Soda Canyon Road (the Planning Commission approved both Mountain Peak Winery and Grassi Family Winery, both located on Soda Canyon Road, in early 2017), the number of commercial tour buses that frequent the road continues to increase. While the County seems to applaud wineries for encouraging tour buses because it theoretically decreases the number of vehicles on the roadways,¹⁷ these types of buses present serious safety threats on roads like Soda Canyon that are narrow, serpentine, and very steep in places because the buses not only crowd the road and create safety risks for oncoming traffic, but also overheat, stall, and breakdown on the steepest parts, which in turn can block traffic and creates serious fire danger during the summer months when there is dry vegetation along the road.

In fact, over the years, innumerable trucks and buses have stalled, overheated, and otherwise been unable to make it up the steep grade on Soda Canyon Road, which begins around the 4.1-mile mark. For example, on September 24, 2016, a Saturday, three to four buses from California Wine Tours were seen traveling on Soda Canyon Road. It is still unclear whether the buses were heading to a private home, vineyard, or a winery. Regardless of the circumstance, one of the buses broke down on Soda Canyon Road just before mile marker 5.00, which is at one of the steepest and most dangerous sections on the road because there are no guardrails to protect cars and trucks from toppling over the cliff and into the canyon in the event of an accident. (See **Exhibit 60a-f**). According to a conversation between a Soda Canyon resident and the bus driver, the driver indicated that the 6.7-liter diesel engine “blew up.” The breakdown occurred around 4:30pm. Passengers in the bus were stranded and standing in the middle of the road until another bus came and picked them up. It then took approximately another four hours for a large tow truck to come and remove the bus from blocking the road. Because of the steep and narrow configuration of Soda Canyon Road, the tow truck had to haul the bus further up the road to the dirt portion of Soda Canyon Road to turn around, which is at the approximately 6.2-mile mark and directly in front of the proposed Mountain Peak Winery site. As is clear from the picture of the tow truck with the bus, it was dark by the time the bus was removed from Soda Canyon Road. (See **Exhibit 60f**).

¹⁷ Opponents note that Platypus Wine Tours hired Commissioner Michael Basayne in the summer of 2016 to serve as a director, focusing on strategic planning and project management. (See **Exhibit 58 – Napa Valley Register, Basayne Joins Platypus Wine Tours**). On the Platypus Wine Tours website, The Caves at Soda Canyon is listed as one of the “Top Napa Valley Wineries,” indicating that Platypus Wine Tours has a business relationship with the Applicant. (See **Exhibit 59 – Platypus Wine Tours webpage**). As such, Opponents respectfully request that Commissioner Basayne recuse himself from any project review/hearing involving the Applicant, as there is an inherent conflict of interest.

Thankfully, it does not appear that anyone was injured as a result of this bus breaking down. However, somebody easily could have been injured in any number of different ways. For example, the bus driver and passengers who were standing in the road while waiting for another bus and/or tow truck could have easily been injured if a speeding car coming down the hill did not see them. Additionally, any drivers in a car coming up or down Soda Canyon Road could have run into the bus, injuring themselves. Finally, this engine “blow up” could have started a brush fire and caused inestimable damage and potential loss of life. As explained in the fire section above, cars have previously started brush fires on Soda Canyon Road, as well as on other roads in neighboring counties.

On March 25, 2017, yet another bus carrying tourists stalled around the 4.3 mile mark on Soda Canyon Road and pulled into the *exact same driveway* as the broken down truck did mentioned in footnote 16. (See **Exhibit 61a**). As can be clearly seen from the photo of the March 25, 2017 incident, as well as the previously provided photos of the September 24, 2016 bus incident, there is no shoulder onto which these stalled vehicles can pull over and stop. The vehicles literally end up in the middle of the roadway, posing a safety risk to any and all other drivers on the road due to the many blind corners on Soda Canyon Road. In fact, where the stalled bus pulled over on March 25, 2017 is one of the worst possible places it could have happened because that driveway, which services 2431, 2435, and 2439 Soda Canyon Road, is on a downhill slope just past a completely blind corner on the right hand side of the road following the steepest part of Soda Canyon Road, meaning that cars and trucks coming around that corner carry significant rates of speed and could have easily plowed into the back of the bus, which is hanging well out into the road, injuring numerous members of the public. (See **Exhibit 61b-c**).

While the turnoff to the Applicant’s property is before the steepest part of Soda Canyon Road, the Applicant’s driveway is comparably steep, meaning that bus stalls occur can (and may have already) on the Applicant’s property, presenting all of the same public safety risks, especially because buses must travel the ~3.5 miles on Soda Canyon Road to reach the Applicant’s location. This could lead to other engine “blow ups” that may not end so pleasantly, and in fact could end quite disastrously for Soda Canyon residents, property owners, visitors, and even the County in the event of a lawsuit.

G. Summary of Adverse Impacts of the Project on the Public Safety & Welfare

As described above and supported by the several attached exhibits, the existing conditions of Soda Canyon Road – both man-made and naturally occurring – are cause for alarm with regard to public safety. Nearly twenty years ago, the ABC determined that Soda Canyon Road is a “problematic roadway” and denied all tours and public winetasting to Astrale e Terra, a winery located at the end of Soda Canyon Road. Since then, the road has become substantially worse, especially after the wet 2017 winter. (See **Exhibit 62a-t**). Incredibly, this is not news to the County. In fact, email correspondence dating back several years between various Soda Canyon property owners and several County officials, including Alfredo Pedroza, Diane Dillon, Rick Marshall, and Bill Dodd, demonstrates their knowledge that Soda Canyon Road is and has been for years in a “deplorable condition” that is “well below” the required Pavement Condition Index (PCI) standard of 70. (See **Exhibit 63a-d** at Nov. 4, 2015 email from Supervisor Pedroza, Nov. 4, 2015 email from Supervisor Dillon, Nov. 21, 2013 email from then Deputy Director of Public Works Rick Marshall, and Nov. 18, 2013 email from then Supervisor Dodd). It is truly

baffling how the Major Modification has initially been recommended for approval when it is obvious that the County is aware of how “deplorable” the road is and how much worse it will become if the Major Modification is approved. The Applicant’s Major Modification seeks to impose even more commercial traffic to the already dangerous mixture of a battered road that has innumerable blind turns, is steep, often foggy, and rampant with wildlife, bicyclists, walkers, joggers, reckless vineyard worker drivers, and oversized trucks that literally cannot stay in their own lane. Approval of the Major Modification will exacerbate those conditions, resulting in adverse impacts on the health, safety and welfare of the “County of Napa” under NCC 18.124.070(C). In light of this reality, the County must deny the Major Modification.

IV. THE MAJOR MODIFICATION PRESENTS POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

In the CEQA Addendum to the Major Modification, the County concludes that “the project will not result in new impacts beyond those analyzed in the Napa Custom Crush/Waugh Winery Subsequent Mitigated Negative Declaration adopted in 2006.” *Supporting Doc. “E” to April 19, 2017 Agenda for the hearing on The Caves at Soda Canyon, CEQA Addendum* at 5. However, such a finding is inapposite with CEQA, as there are potentially significant impacts on the environment relating to (1) noise created by the Project’s generator(s), (2) cumulative impacts relating to traffic and greenhouse gas emissions from the Project’s generator(s), and (3) the piecemeal modification and construction of the Project over the course of nearly 11 years since the original approval.

A. Potentially Significant and Adverse Noise Impacts

Pursuant to the CEQA guidelines, a “project will normally have a significant effect on the environment if it will: . . . (p) increase substantially the ambient noise levels for adjoining areas.” *Lewis v. Seventeenth Dist. Agric. Ass’n*, 165 Cal. App. 3d 823, 829 n.7, (1985) (quoting CEQA Guidelines, Appen. G, subd. p).

As discussed above, the County cited the Applicant in June 2014 for a noise disturbance as a result of failing to enclose or muffle the generator that it is using as its primary power source. (See **Exhibit 2 – Notice of Violations**). Importantly, because the Applicant indicated in its original permit application that power would be supplied from PG&E, and not from a generator, no environmental noise assessment has ever been performed on the part of the Applicant or the County. As there are clearly adverse noise impacts from the generator, as evidenced by the June 2014 Notice of Violation, further review and analysis is necessary to determine whether the noise impacts may be potentially significant under CEQA.

B. Potentially Significant and Adverse Cumulative Traffic and Greenhouse Gas Emission Impacts

Under the CEQA Guidelines,

[t]he cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.

Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

CEQA Guidelines § 15355 (b); *see also* CEQA Guidelines § 15065(3) (requiring a mandatory finding of significance if the “project has possible environmental effects that are individually limited but cumulatively considerable”). In California, “[t]he significance of a comprehensive cumulative impacts evaluation is stressed in CEQA.” *EPIC v. Johnson* (1985) 170 Cal.App.3d 604, 625; such incremental effects must be analyzed whether they fall on-site or off-site (*see, e.g., Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1396; *Schoen v. Department of Forestry & Fire Prevention* (1997) 58 Cal.App.4th 556. Analyses that properly assess cumulative impacts are vital

because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal. App. 4th 1184, 1214-15, 227 (2004) (internal citations omitted).

Additionally, it is now well settled that greenhouse gas (GHG) emissions must be considered and studied under CEQA. Commenting on the consideration of GHG emissions under CEQA, the California Attorney General’s Office (CAG), in March 2009 stated “[I]ead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO2 and other GHG emissions from a project, *including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.*” *See California Attorney General’s Office: Climate Change, the California Environmental Quality Act, and General Plan Updates: Straightforward Answers to Some Frequently Asked Questions*, p. 2 [Rev. 3/06/09] (emphasis added). As articulated by the California Attorney General’s office, “[t]he question, for the lead agency is whether the GHG emissions from the project. . . are considerable when viewed in connection with the GHG emissions from past projects, other current projects, and probable future projects.” (*Id.* at p. 4). Moreover,

[u]nlike more localized, ambient air pollutants which dissipate or break down over a relatively short period of time (hours, days or weeks), GHG accumulate in the atmosphere, persisting for decades and in some cases millennia. The overwhelming scientific consensus is that in order to avoid disruptive and potentially catastrophic climate change, then it’s not enough simply to stabilize our annual GHG emissions. The science tells us that we must immediately and substantially reduce these emissions.

The decisions that we make today do matter. Putting off the problem will only increase the costs of any solution. Moreover, delay may put a solution out of reach at any price. The experts tell us that the later we put off taking real action to reduce our GHG emissions, the less likely we will be able to stabilize

atmospheric concentrations at a level that will avoid dangerous climate change.

(*Id.* at p. 3).

Moreover, while “[d]irect impacts from GHG emissions from one project, even a very large project, are miniscule in comparison to worldwide or even statewide GHG emissions . . . the emissions from each project constitute an incremental contribution to the buildup of GHGs in the atmosphere and may have a significant environmental impact when analyzed on a cumulative basis. Cumulative impacts are those resulting from the incremental impact of the project when added to other past, present, and reasonably foreseeable probable future projects.” (CEQA Guidelines, §15355, subd. (b)). Therefore, the CEQA Guidelines state that analysis of the significance of GHG emissions should typically be done as a cumulative impacts analysis. (CEQA Guidelines, §15130, subd. (f)).

Finally, determining whether the GHG emissions from a project contribute to a significant cumulative impact is complex and evolving. However, a determination of “less than significant” for cumulative impacts based on a finding that a project’s contribution to the cumulative impact of GHG concentrations in the atmosphere is *de minimis* has not withstood legal challenge. Miniscule incremental impacts cannot be ignored as *de minimis* (see *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117) nor can the incremental contribution to an environmental impact of a project be trivialized because of the extent to which previous projects have impacted the environment. See *Kings County Farm Bureau v. City of Hanford* 221 Cal.App.3d 692, 719 (1990); see also *GHG Assessment for CEQA Purposes: Informal Guidance for Water Related Issues*, California Department of Water Resources, CEQA Climate Change Committee, p. 4.

Here, there is substantial evidence demonstrating that several existing (i.e., “past”) current and future projects, both on Soda Canyon Road (and the roads accessed via Soda Canyon), and at or very near the intersection of Silverado Trail and Soda Canyon Road will collectively and adversely impact the environment, especially as a result of the substantial and consequential production of GHGs through CO₂ emissions from the tens of thousands of additional vehicles that now travel up and down Soda Canyon Road on an annual basis. (See section III.C. above). Moreover, the Project has been operating a generator as its primary source of power for several years to date. While it is unknown exactly what type of generator is located on the Project site, if the significant noise is any indication, it appears to have an internal combustion engine using diesel gasoline, which emits GHGs. In combination, these cumulative emissions from both the traffic and the GHGs may have a potentially significant impact on the environment. Importantly, because the County has not performed any type cumulative impact analysis relating to these GHGs, and the Project will likely cause more GHGs to be emitted as a result of longer operations and the doubling of annual production, the Major Modification cannot and should be reviewed by the Planning Commission until such thorough analysis is completed.

C. Potentially Significant and Adverse Impacts as a Result of “Piecemealing”

The CEQA Guidelines define “project” to mean “the whole of an action” that may result in either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, §15378, subd. (a); see also *McQueen v. Board of Directors of the Mid-peninsula*

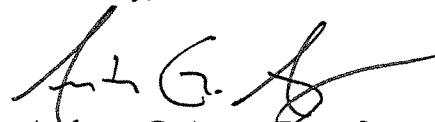
Regional Open Space District (1988) 202 Cal. App. 3d 1136, 1143 (explaining that “[p]roject’ is given a broad interpretation in order to maximize protection of the environment”). Generally, the lead agency, in this case the County, must analyze each “project” in a single environmental review document and not “piecemeal” or “segment” a project into several parts, as “CEQA mandates that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” *Burbank-Glendale-Pasadena Airport Auth. v. Hensler* (1991), 233 Cal. App. 3d 577, 591.

Here, the Applicant has already filed *at least* three different applications relating to its use permit in 2006, a minor modification in 2010, and an exception to the Napa County Road and Street Standards in 2013. Now, in 2017, the Applicant seeks the Major Modification to add several more, substantial components to the Project. Importantly, as was presented to the County in April and May 2015, the Applicant appears to have planned all along to construct the fourth cave portal, which it eventually did illegally and without a permit. As demonstrated above, the Applicant led the County to believe that there would be a consistent, stable power source from PG&E installed, yet a generator has and appears to be the Applicant’s plan for a long-term power supply. Taking this information together, along with the new components sought in the Major Modification, it appears that this Project has in fact been “piecemealed” in order to avoid a more stringent environmental review. As a result, this may serve as further grounds that the Major Modification has potentially significant impacts on the environment.

V. CONCLUSION

In summary, the County failed to provide adequate notice to nearby residents and property owners, despite the County’s own policy stemming from this very same Project two years ago when the County explained that it wants to “provide more outreach and transparency.” The Project has and continues to operate a generator as the primary power source for operations, which is contrary to the Applicant’s presentation to the County of the power supply for the Project, and violates numerous local and state laws. The Major Modification, which seeks to increase commercial traffic on Soda Canyon Road, poses a threat to the public safety and welfare of the County as a result of numerous, existing safety conditions that exist on Soda Canyon Road. Finally, the Major Modification poses potentially significant environmental impacts pertaining to noise, cumulative traffic and GHGs, and the nature in which the Project appears to be have been “piecemealed” over the last 11 years since it was approved. For all of these reasons, and those described herein, the Major Modification must be denied.

Sincerely,



Anthony G. Arger, Esq. of
ROBERTSON, JOHNSON,
MILLER & WILLIAMSON
Attorneys for Opponents