

## Attachment B

Bracketed Appeal filed by Appellant Kosta M. Arger

**APPEAL PACKET – ADDITIONAL SHEETS**  
**Appealing Mountain Peak Winery: P13-00320-UP**  
**(Appellants Kosta Arger, Cynthia Grupp, William Hocker, Glenn Schreuder)**

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**Reasons for Appeal:**

**I. INTRODUCTION**

The Planning Commission committed a prejudicial abuse of discretion when it determined Mountain Peak Winery, use permit #P13-00320-UP, (collectively, the “Project”), “will not have a significant effect on the environment,” adopted a Negative Declaration (“ND”), and approved the Project for a: (1) 100,000 gallon per year (gpy) winery, (2) construction of 33,424 square feet (sf) of caves, (3) a marketing program that permits 14,575 annual visitors, and (4) an exception to the Napa County Road and Street Standards (RSS) to increase the maximum slope for a portion of *Recommended Findings*; the commercial and employee access road from 16% to 19.6%.<sup>1</sup> See *Notice of Determination*; *Recommended Conditions of Approval and Final Agency Approval Memos* (“*Conditions of Approval*”).

The principal reasons for this appeal are two-fold. First, the Planning Commission had no power to approve the Project because it is inconsistent with the letter and the spirit of numerous provisions of the Napa County Code, including, but not limited to, the Winery Definition Ordinance (“WDO”), and with the Napa County General Plan (“*General Plan*”), especially in relation to public safety and environmental issues. Second, substantial evidence before the Planning Commission shows that the Project could have a number of potentially significant impacts on the environment including, but not limited to, water supply and quality, biological resources, noise, traffic, cumulative impacts and archaeological resources. Accordingly, and as a matter of law, the Planning Commission violated the California Environmental Quality Act, Pub. Res. Code § 21000 et seq. (“CEQA”), in adopting the ND and approving the Project without first requiring the preparation of an environmental impact report (“EIR”). Accordingly, and in light of

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<sup>1</sup> The Appellants incorporate by reference all the conditions of approval contained in the Project’s use permit.

the substantial evidence produced by opponents of the Project (collectively, “Opponents”), the Board of Supervisors (“BOS”), in exercising its independent judgment in determining whether the Planning Commission’s decision was correct, must reverse the Planning Commission and remand the Project for further proceedings, or, in the alternative, deny the Project outright. Moreover, good cause exists for a *de novo* review and presentation of additional evidence. This evidence could not have been presented at the time of the January 4<sup>th</sup>, 2017 hearing and decision.

## **II. PROJECT BACKGROUND**

The Mountain Peak project is proposed on a 41.76-acre parcel (APN #032-500-033), approximately 6.2 miles up Soda Canyon Road in the Atlas Peak American Viticulture Area (AVA), on land designated Agriculture, Watershed, and Open Space (AWOS) and zoned Agricultural Watershed (AW). The parcel is in a butterfly configuration with roughly half of the parcel on the western side of a community-shared, shoulder-less dirt road, and with the other half on the eastern side of the dirt road. *See County Graphics from January 4, 2017 Hearing.* This site is located in the Rector Creek Watershed, and there is a blue-line stream running along the length of the western portion of the parcel, and a second blue-line stream bisecting the eastern portion of the parcel. Both streams drain into Rector Creek and Rector Canyon, which flows directly into Rector Reservoir.

The Project proposes a 100,000 gpy wine production facility, 33,424 square feet of caves (which would be the twelfth largest of 174 caves ever approved in Napa County), a total of 14,575 visitors per year, two 100,000 water storage tanks, use of ~15,200 gallons of water per day (or approximately 5,548,000 gallons per year), and one 20,000-gallon waste system, all of which would cover 103,016 square feet (sf) upon completion of “Phase II” of the Project. In addition, the operation would have 19 full-time employees, four part-time (but nonetheless year-round) employees, four seasonal employees during harvest, and an unidentified number of vineyard workers, delivery and equipment truck drivers, and other individuals needed to run an event center of this magnitude. According to the Applicant’s own estimates, the project will generate approximately 44,275 additional car trips on Soda Canyon Road per year.

Soda Canyon Road can only be accessed via Silverado Trail. It is a dead-end road with no other outlet in the event of an emergency. 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 eight wineries on this road. All individuals traveling to homes, vineyards, and wineries on Soda Canyon Road 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 runs along the eastern portion of the Project site that goes on for several more miles into the mountains and is where several additional homes and vineyards are located. Accordingly, and for purposes of this Appeal document, all references to “Soda Canyon,” or “Soda Canyon Road,” include *all* of the other roads that can only be accessed from Soda Canyon Road.

The top of Soda Canyon Road (or “upper Soda Canyon”), where the Project is proposed, is also known as Foss Valley and is approximately 1,400 feet above the Napa Valley floor. It is

home to numerous residents, vineyard operations, and three permitted wineries (notably, however, only one of the wineries, Antica, has any visitation; but, despite Antica's roughly 1,200 contiguous acres of land and 450,000 gpy permit, Antica's operation that is 30 times the size of Mountain Peak is only permitted for 5,200 visitors per year, one-third the amount Mountain Peak seeks). The decrepit 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 riddled 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 a commercial winery event center such as the proposed Project.

To put the Project's overall size of 103,016 sf into perspective, the average size of the original big-box Walmart store is 105,000 sf. As for the size of the proposed caves, an average Best Buy store measures approximately 28,000 square feet, meaning that the Project's proposed caves would be approximately 5,000 feet larger than the one of Best Buy's average retail stores. Importantly, as it pertains to environmental concerns relating to the project, excavation of the caves will yield 29,498 cubic yards, or 796,446 cubic feet of spoils. To quantify that figure, if 796,446 cubic feet of spoils were piled onto a football field, including the endzones, the spoils would measure approximately 14 feet high, which is the approximate height of a 1-story house. Even more environmentally disconcerting than these figures is that after all of the cutting, filling, cave excavation, and topsoil removal, the Project will be moving approximately 71,700 cubic yards, or just under 2 million – 1,935,900 – cubic feet of earth and soil around the Project site. If this amount were piled onto a football field, again including the endzones, it would measure approximately 33 feet high, which is the approximate height of a 3-story building, such as the County Administration Building. Critically, the Applicant will keep *all of the cave spoils and mixed brew of top-soil and earth on-site*. After constructing an access road, and other site features, the Applicant plans to dump roughly half of the remaining spoils and loose earth (estimated to be somewhere in the range of 700,000 to 1,000,000 cubic feet) 260 feet from the western blue-line stream, and the other half 100 feet from the eastern blue-line stream. The resultant runoff siltation into the Rector Dam Reservoir, (the drinking water source for the people and visitors of Yountville and the Veterans Home) by this amount of dirt is unavoidable. And the environmental disaster this portends is beyond measure. Yet the Planning Commission thought that this activity would have no "significant impact" on the Rector Watershed or Rector Reservoir.

The Project has been the subject of two public hearings dating back to July 2016. It has provoked considerable controversy not only amongst neighboring property owners and Soda Canyon residents, but also across a broad cross-section of grape growers, vintners, winery owners, and other stakeholders in Napa's agricultural community. Much of the opposition to the Project centers on concerns that its massive size, commercial-production scale, and deliberate focus on marketing and tourism is completely out of line with the remote, rural, and agricultural character of the surrounding area and, indeed, of the County's Agricultural Preserve as a whole. To date, nearly 1,000 concerned Napa County citizens have signed a petition opposing the Project.

The Project is also representative of broader concerns raised in other recent winery projects regarding the increasing number of tourist-driven uses being proposed in the Agricultural Preserve, as well as recent County approvals of winery production capacity that far outstrip the County's grape-growing capacity. There is presently almost four times as much permitted capacity as would



be necessary to process all Napa grapes. Thus, while the Project is mandated to comply with the WDO's requirement that 75% of all grapes processed on-site must come from Napa, the Project's requested 100,000 gpy annual production capacity is clearly not necessary to ensure the continued agricultural viability of the area. Indeed, given the existing excess capacity, approval of the Project is likely to further undermine agriculture by taking needed Napa grapes away from other existing vintners and forcing them to seek revenue from tourism, rather than winemaking. The Project thus presents concerns about the cumulative impacts of this and other similar proposed wineries on grape sourcing, water supply and water quality, greenhouse gases (GHG) by increased traffic and traffic circulation, and broader environmental concerns not only for residents and property owners on Soda Canyon Road, but also for the entire County.

### **III. DISCUSSION – FACTUAL AND LEGAL GROUNDS FOR APPEAL**

#### **A. Standard of Review**

Pursuant to Napa County Code ("NCC") section 2.88.070, "[a]ny appeal of a decision of the approving authority for which a notice of appeal has been filed in the manner required by this chapter shall be heard by the board unless withdrawn pursuant to the Section 2.88.060." Moreover, section 2.88.090 of the NCC requires the BOS to "exercise its independent judgment in determining whether the decision appealed was correct," and "[u]pon a showing of good cause, the chair of the board may authorize a *de novo* review and/or the presentation of additional evidence which could not have been presented at the time of the decision appealed from."

Here, good cause exists for a *de novo* review because, as will be shown below, the Planning Commission virtually ignored all of the substantial evidence presented by Opponents pertaining to the public safety, environmental, and other issues that the Project is likely to create, and in so doing violated numerous provisions of the NCC, the WDO, and the *General Plan* in approving the Project. Moreover, the Applicant presented a final version of its "Hydrology Response" to a rebuttal produced by Opponents to the County on December 30, 2016, a mere four days, including the New Year's holiday, before the January 4, 2017 hearing, giving Opponents no time to produce a response. The Applicant will likely argue that it produced a "draft" version of its Hydrology Response on November 30, 2016, and therefore Opponents had sufficient time to respond. However, Opponents cannot adequately respond to a "draft" version of a report, especially one as important as a hydrology report, for the obvious reason that the "final" version could contain substantially different information to which Opponents would not be able to respond. Additionally, Opponents' hydrology expert, Mr. Greg Kamman had a death in the family in December 2016 and would not have been able to timely respond to the November 30, 2016 "draft" even if it had been final. Thus, good cause exists for a *de novo* review and the presentation of additional evidence which could not have been presented prior to the Planning Commission's decision to approve the Project.

#### **B. The Project is Inconsistent with Napa County Code, the Winery Definition Ordinance (and its 2010 Amendment), and the Napa County General Plan**

Pursuant to California state law and the Napa County Code ("NCC"), neither the Planning Commission nor the Board of Supervisors has the power to approve a use permit or other land use

approval that is inconsistent with the County Code or General Plan. *See, e.g., Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997 (2007); *see also* NCC §§ 18.124.070. As will be described below, approval of the Mountain Peak project violates Napa County Code, the WDO, and Napa County's *General Plan*.

### **1. The Grant of a Use Permit to Mountain Peak Winery will Adversely Affect the Public Health, Safety and Welfare of the County and its Communities**

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." While the County did make an initial finding that the grant of the Mountain Peak use permit, "as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa," *see Recommended Findings Planning Commission Hearing – January 4, 2017* ("Jan. 4 Recommended Findings"), 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 6.2 miles up steep, dilapidated, and no-outlet mountain road with numerous 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 and any visitors 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 for the project as proposed and amended by the applicant, and conditioned will not adversely affect the health, safety or welfare of the County. Affected County divisions and departments have reviewed the project and commented regarding the proposed 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.

*See Jan. 4 Recommended Findings* at pg. 3 (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).

Several Opponents of the Mountain Peak project produced an overwhelming amount of evidence through their letters and presentations at both Planning Commission **hearings** on the Project demonstrating that Soda Canyon Road, under **existing conditions**, is incredibly dangerous, and that the approval of the Project as proposed would dramatically exacerbate those conditions, unquestionably resulting in adverse impacts on the health, safety and welfare of the “County of Napa.” For example, Opponent Anthony Arger, in two separate letters, spent several pages outlining the existing public safety issues on Soda Canyon Road as determined by several State and County agencies. *See Anthony G. Arger Opposition Letter re: Mountain Peak Winery (Use Permit #P13-00320-UP) dated July 19, 2016; Anthony G. Arger Supplemental Opposition re: Mountain Peak Winery (Use Permit #P13-00320-UP) (collectively, “Arger Opposition Letters”).* The existing public safety issues were further illuminated by several other Opponents through their letters and hearing testimony. Some of the public safety highlights include:

- (1) A 1999 determination by the Department of Alcoholic Beverage Control (ABC) regarding the Astrale e Terra winery, located 0.4 miles from Mountain Peak’s proposed project site, which denied **all wine tasting and retail sales on-site** because evidence established that “increased traffic on Soda Canyon Road would interfere with the quiet enjoyment of nearby residences,” and “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 1999 Decision In the Matter of the Protest of Fletcher Benton, et al., ABC File no. 02-344164, Reg no. 98045225, attached as an exhibit to the Arger Opposition Letters*);
- (2) Traffic figures presented by Opponents demonstrating that (a) between 1999 and 2015, there has been a **63% increase** in winery and vineyard worker traffic on Soda Canyon Road (e.g. after the ABC determined that Soda Canyon Road is a “problematic roadway” and denied all retail sales and winetasting on the premises), (b) if all proposed wineries on Soda Canyon Road and/or at the intersection of Soda Canyon Road and Silverado Trail are approved as proposed, there will be an **88% increase** in winery and vineyard worker on Soda Canyon Road and the intersection of Silverado Trail **since 2015**; and (c) if all proposed wineries on Soda Canyon Road and/or at the intersection of Soda Canyon Road and Silverado Trail are approved as proposed, there will be a **207% increase** in winery and vineyard worker traffic on Soda Canyon Road and the intersection of Silverado Trail **since 1999** when the ABC denied a permit for all winetasting and retail sales at Astrale e Terra, a winery located 0.4 miles from the Mountain Peak proposed site (*see also July 18, 2016 Mountain Peak Winery Initial Study/Proposed Mitigated by Smith Engineering & Management (hereinafter “Smith Engineering Traffic Peer Review”)*);
- (3) Incident Reports from the Napa County Sheriff’s office for Soda Canyon Road from January 1, 2014 to September 26, 2016 demonstrating that in under three years, there have been **465 calls for service** on Soda Canyon Road, including 28 drunk driver incidents and 62 traffic collisions/incidents;
- (4) Incident Reports from the California Highway Patrol (CHP) for Soda Canyon Road from January 1, 2013 to October 3, 2016 demonstrating that there have been **53**

- incidents** during that time period on Soda Canyon Road and/or at the intersection of Soda Canyon Road and Silverado Trail, including 12 “driving under the influence” (DUI) incidents and 34 traffic collisions/incidents<sup>2</sup>;
- (5) The 2007-2008 Napa County Grand Jury Final Report on the Napa County Fire Department determining 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;
- (6) Incident Reports from the California Department of Forestry and Fire Protection (CalFire) for Soda Canyon Road from January 2007 to April 2015 demonstrating that there have been **107 incidents** during that time period on Soda Canyon Road, including 40 medical checks, 13 residential fires, and 16 wildland fires, among other incidents;
- (7) Maps produced from CalFire data demonstrating that nearly the entire upper portion of Soda Canyon Road, including Mountain Peak’s proposed project site, as well as the residences and properties of numerous neighbors, is located in a “Very High Fire Hazard Severity Zone”;
- (8) A “Pre-Attack Fire Plan” specifically designed by CalFire for the Soda Canyon/Monticello area as a result of the extremely high fire danger that exists in those communities, which includes numerous statements warning of the extreme fire danger on Soda Canyon Road and adverse impacts stemming therefrom, such as the roads on Soda Canyon “will quickly become congested” in the event of a wildfire, and “[f]ire history, fuels, topography and urban-interface issues indicate the potential for a large and damaging fire in the Soda Canyon/Monticello Area”;
- (9) Testimony (written, spoken and supported by photographs) from the Chief of the Soda Canyon Volunteer Fire Department, Doug Christian, and a former volunteer at the Soda Canyon Volunteer Fire Department with extensive training in fire science and wildland fire behavior, Cynthia Grupp, who is also an Appellant, describing the inherent dangers of Soda Canyon Road from a fire safety perspective and that approval of the Mountain Peak project would not only increase the risk of fire, but also significantly impact rescue efforts in the event of a fire due to increased traffic involving winery tourists unfamiliar with the area;
- (10) Testimony (written, spoken and supported by photographs and videos) from numerous Opponents of the naturally and regularly occurring conditions on Soda

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<sup>2</sup>It is important to note that because Soda Canyon Road is a County maintained road, the Sheriff’s office has primary jurisdiction over the road, explaining the significantly larger number of incidents reported by the Sheriff’s office on Soda Canyon Road. However, the CHP has and does patrol Soda Canyon Road as necessary, which is evidenced by the CHP incident reports. The important takeaway is that in approximately three years and nine months, there have been 518 ***reported*** incidents (as outlined by several Opponents, an incredible number of traffic collisions and incidents go ***unreported on Soda Canyon Road***) on Soda Canyon Road and/or at the intersection of Soda Canyon Road and Silverado Trail. ***There can be no question that Soda Canyon Road, under existing conditions, suffers from serious traffic and safety hazards, yet the County, thus far, has completely ignored those dangers.***



Canyon Road, including dense fog, ice, flooding, and mudslides which can and have caused accidents, and which will be particularly dangerous to potential visitors of the project who do not know the road and could injure themselves and others while attempting to drive in these adverse conditions;

- (11) Testimony (written, spoken and supported by photographs and videos) from numerous Opponents regarding natural wildlife that inhabit Soda Canyon, including deer, foxes, mountain lions, turkeys, raccoons, possums, squirrels, and rattlesnakes, and all of which pose an additional safety threat to residents, property owners, and visitors alike;
- (12) Testimony (written, spoken and supported by photographs and videos) from numerous Opponents regarding current and regular users of the road, including property owners, walkers, joggers, cyclists, vineyard workers, and large trucks, all of whom pose additional safety risks to all users of the road;

In addition to the above-described and *existing* health, safety, and welfare issues on Soda Canyon Road, former Supervisor Dodd, Supervisor Dillon, Supervisor Pedroza, Commissioner Scott, and Deputy Director of County Engineering, Rick Marshall, have all plainly acknowledged the abysmal physical condition of Soda Canyon Road in its present state. *See Letter of Opposition (and attachments) from Steven Rivera, Owner of Rivera Vineyards; January 4, 2017 Hearing Comments of Commissioner Scott and Deputy Directory of County Engineering Rick Marshall.* Moreover, at the January 4, 2017 hearing, Mr. Marshall testified that the Soda Canyon “collisions that we’ve had reported to us are not concentrated; they’re distributed along the length of the road,” thus validating Opponents assertions and evidence demonstrating that *traffic and safety issues exist along the entire 6.75 mile length of Soda Canyon Road*. Mr. Marshall further stated that “there really is no funding to do the kind of improvement that [Soda Canyon] or any other similar road would need in the foreseeable future,” verifying that Soda Canyon Road is and will only continue to deteriorate. In short, the County is well aware of the dangerous and dilapidated conditions of Soda Canyon Road, yet has thus far completely ignored those conditions in its review of the Mountain Peak Winery application.

In light of all of the above-outlined existing traffic, abysmal road condition, fire, and safety issues on Soda Canyon Road (and roads accessed by Soda Canyon Road), there can be no question that Mountain Peak’s addition of approximately 44,275 car trips per year on Soda Canyon Road will not only cause further deterioration of the already disastrous physical condition of the road, but will also lead to more accidents, incidents, fires and other public safety issues, especially when the Project seeks to attract 14,575 annual visitors who will be imbibing alcohol and driving on Soda Canyon Road.

In summary, the County has completely failed to consider the health, safety and welfare impacts of the Mountain Peak project on the Soda Canyon community and visitors of Soda Canyon Road, all of whom are clearly within the “County of Napa.” Such a flagrant omission is in direct violation of NCC section 18.124.070(C) and California state law. *See BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1246, 97 Cal. Rptr. 2d 467, 499 (2000) (determining that “[i]n reaching a decision on an application for a CUP it is also appropriate for an agency to consider

traffic, parking, safety, noise and nuisance problems; these clearly represent concerns that are well within the domain of the public interest and public welfare”). Unfortunately, especially for the tax-paying citizens of Napa County, these violations stemming from approval of the Project, could result in direct liability of the County for an injury or death under Government Code section 835. (*See Arger Opposition Letters* for full discussion; *see also Smith Engineering Traffic Peer Review*).

## **2. The Project Violates the County’s Conservation Regulations**

Section 18.108.010 of the Napa County Code maintains that

[t]he purpose and intent of these [conservation] regulations is to protect the public health, safety and community welfare, and to otherwise preserve the natural resources of the county of Napa. Further, these regulations are intended to ensure the continued long-term viability of county agricultural resources by protecting county lands from excessive soil loss which if unprotected could threaten local water quality and quantity and lead ultimately to loss of economic productivity.

*See also General Plan* at CON-10. Section 18.108.010(B) of the Napa County Code goes on to state that the conservation regulations are intended to:

1. Minimize cut, fill, earthmoving, grading operations and other such man-made effects in the natural terrain;
2. Minimize soil erosion caused by human modifications to the natural terrain;
3. Maintain and improve, to the extent feasible, existing water quality by regulating the quantity and quality of runoff entering local watercourses;
4. Preserve riparian areas and other natural habitat by controlling development near streams and rivers;
5. Encourage development which minimizes impacts on existing land forms, avoids steep slopes, and preserves existing vegetation and unique geologic features; and
6. Protect drinking water supply reservoirs in sensitive domestic water supply drainages from sediment, turbidity, and pollution.

During her hearing testimony and letters to the County regarding the Project, Dr. Amber Manfree, who has a PhD in Geography at UC Davis with an emphasis in landscape change, a Masters degree in Geography with an emphasis in plant ecology, and a Bachelor of Arts in Environmental Studies from Sonoma State University, demonstrated that Mountain Peak will violate virtually every single one of the above-described regulations. *See Amber Manfree July 19, 2016 Letter to the County; Amber Manfree October 11, 2016 Supplemental Letter to the County; Amber Manfree January 4, 2017 Speaking Notes; and Amber Manfree July 19, 2016 and January 4, 2017 Testimony* (collectively, “*Dr. Manfree Testimony*”).

First, Mountain Peak proposes to build 33,424 feet of caves, the “(loose) tunnel spoils” for which will amount to 29,498 cubic yards, or 796,446 cubic feet. *See Mountain Peak Vineyards Wine Cave Plan produced by Condor Technologies, Inc.* This massive figure does *not* include what will amount to hundreds of thousands, or perhaps as much as 1,000,000 additional cubic feet of earth that will need to be removed to construct the production access driveway, the crush pad,

parking, and other surface areas to be covered by the project. In short, Mountain Peak is literally proposing to scrape and extensively alter the natural terrain of the project site. Nothing could be farther from NCC 18.108.010(B)(1), which requires the minimization of “cut, fill, earthmoving, grading operations and other such man-made effects in the natural terrain.”

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Second, the Project will dispose of “all cave spoils on-site within existing vineyards.” See *Recommended Conditions of Approval and Final Agency Approval Memos* at pg. 1. The Applicant has designated two sites to dispose of the cave spoils on the property; one on the northwestern portion of the western part of the parcel, and the other on the southwestern portion of the eastern part of the property parcel. See *County Graphics from January 4, 2017 Hearing* at pg. 4. Importantly, these proposed spoil locations are approximately 260 and 100 feet, respectively from separate blue-line streams that feed directly into Rector Canyon. During the various rainstorms in Napa in January 2017, several Opponents have taken and provided photographs to the County of the blue-line streams demonstrating suspended sediment above background levels already present in runoff. If the Project moves forward in its current form and places roughly some 700,000 to 1,000,000 cubic feet of cave spoils and other surface soil over nearly four acres (9.24% of the parcel) near these blue-line streams, it is reasonable to expect that, even with erosion control measures, sediment will be delivered to waterways by normal weathering processes such as wind and precipitation runoff. Material excavated from caves will be unweathered, a condition commonly associated with negative water quality impacts as unweathered material can contain elevated levels of contaminants. Given the magnitude of proposed excavation relative to the size of the site, the proximity of dump sites relative to streams, and the potential for Project cave spoil leachate to contain contaminants, environmental impacts of excavation should be rigorously evaluated. The Project clearly will not “[m]inimize the soil erosion caused by human modifications to the natural terrain,” as is required by NCC 18.108.010(B)(2).

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Third, the Project’s proposal to place approximately 7000,000 to 1,000,000 cubic feet of earth very close to two separate blue-line streams is likely to cause erosion and slumping into the creeks, which in turn may adversely impact the water quality in Rector Canyon and Rector Reservoir, which serves as the water supply for the Yountville Veteran’s Home and the City of Yountville. Approval of this Project will *not* “[m]aintain and improve, to the extent feasible, existing water quality by regulating the quantity and quality of runoff entering local watercourses,” as required by NCC 18.108.010(B)(3).

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Fourth, the Applicant’s proposal to place hundreds of thousands, or perhaps as much as 1,000,000 cubic feet of cave and other earth spoils near two separate blue-line streams may significantly impact delicate Rector Creek habitat, which supports species of special concern as well as desirable native species indicative of high-quality habitat including the yellow-legged frog, California giant salamander, rough-skinned newt, pipevine swallowtail, pacific chorus frog, and rainbow trout, among others. If the sediment mobilized and delivered to creeks adjacent to the Project by January 2017 storms are any indication, sediment loading is possible and likely at the Project site. Approval of the Project is in direct contravention of the County requirements to “[p]reserve riparian areas and other natural habitat by controlling development near streams and rivers.” NCC 18.108.010(B)(4).

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Fifth, approval of the Project will encourage development on existing land forms and steep slopes, as well as promote destruction of existing vegetation and unique geologic features, which is in direct contradiction to NCC 18.108.010(B)(5). Specifically, the Project is going to change the entire surface and configuration of the Property by removing virtually every form of vegetation (including vineyards, mature oak and other native trees, and other plant life) during the construction phase. The Applicant also had to obtain an exception to the Napa County Road and Street Standards (RSS) to “increase the maximum slope for a portion of the commercial employee and business access road to the covered crush pad and cave portals not to exceed 500 ft. in length from 16% to 19.6%.” *See Recommended Conditions of Approval* at pg. 2. Both actions, among others, will directly contradict NCC 18.108.010(B)(5).

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Finally, the Project may endanger “drinking water supply reservoirs in sensitive domestic water supply drainages from sediment, turbidity, and pollution.” NCC 18.108.010(B)(6). As described through Dr. Manfree’s testimony and in a peer review submitted by Greg Kamman, a Certified Hydrologist and specialist in Sedimentology and Hydrogeology, the movement of some 1,000,000 cubic feet of earth to two locations within 300 feet of separate blue-line streams will dramatically increase the possibility for soil erosion into the creeks and sedimentation of Rector Creek. *See Dr. Manfree Testimony; Greg Kamman Peer Review of Initial Study and Negative Declaration Mountain Peak Winery: Use Permit #P13-00320-UP* (hereinafter “*Kamman Hydrology Peer Review*”) at pg. 10. This is further demonstrated by an architectural rendering produced by Opponents during the January 4, 2017 hearing, which shows that the entire project, post-construction, slopes downhill and towards the blue-line streams, and ultimately to Rector Creek and Canyon. Importantly, and as noted above, Rector Creek feeds directly into Rector Canyon and then Rector Reservoir, the last of which is the primary domestic water supply for the Veterans Home and the City of Yountville. Moreover, during the January 4, 2017 hearing, Gary Margadant, a frequent commenter before the Planning Commission, the Board of Supervisors and more recently the California Water Resources Board on hydrological issues, testified that the owners of the Rector Reservoir had to spend *millions of dollars* in the 1990s to replace the filtration systems at the dam as the result of soil erosion occurring upstream, and specifically on upper Soda Canyon. It is Appellants’ belief and understanding that the owners of the Rector Reservoir are facing a similar problem today with regard to sedimentation and other issues as the result of vineyard and other development in Rector Creek Watershed. (*See, Water Audit California v. The California Department of Veterans Affairs, Sacramento Superior Court No. 34-2016-8002487-CU-WM-GDS*). Approval of the Mountain Peak project will exacerbate these issues, in direct contravention of NCC 18.108.010(B)(6), as well as NCC 18.108.027, and possibly Federal water law, all of which could expose the County of Napa to significant liability in the near future if the owners of the Rector Reservoir are again required to replace filtration systems due to damages from sedimentation from upstream vineyard and winery development.

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In short, the County’s approval of the Mountain Peak project is a blatant violation of the County’s conservation regulations.

### **3. The Project is Inconsistent with the Winery Definition Ordinance**

The WDO contains several statements of legislative intent directly relevant to this appeal. These include a declaration that the ordinance must be interpreted to achieve the goal of protecting

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agriculture and open space use as the primary land use in the Agricultural Preserve, and to “prohibit” the use of agricultural land for nonagricultural purposes “except to the extent expressly permitted” by the General Plan and County ordinances. *See* WDO, § 6. Under NCC section 18.20.010,

The AW district classification is intended to be applied in those areas of the county where the predominant use is agriculturally oriented, where watershed areas, reservoirs and floodplain tributaries are located, where development would adversely impact on all such uses, and where the protection of agriculture, watersheds and floodplain tributaries from fire, pollution and erosion is essential to the general health, safety and welfare.

The Mountain Peak project is zoned AW and, contrary to the recommended findings of the County that the “project is consistent with the AW . . . zoning district regulations,” *see Recommended Finding* nos. 10 and 13, the Project violates the spirit and intent of NCC section 18.20.010. As described above, the development of this Project is likely to adversely impact agriculture through water depletion and other means, and especially the Rector Creek watershed through fire, pollution, and erosion that is essential to the general health, safety and welfare of Napa County’s public.

The WDO and the 2010 WDO Amendment further seek to ensure the protection of not only agriculture, but also the public’s safety and welfare by placing limitations on the size and scope of both production facilities and marketing programs. Of critical importance to the Mountain Peak project is Napa County Resolution No. 2010-48 to the 2010 WDO (Interpretive Resolution to Ordinance No. 1340), Exhibit A, Section III, which is titled “The Appropriate Intensity of Marketing Programs” (jointly referred to as the “2010 WDO”) and maintains that

To ensure that the intensity of winery activities is appropriately scaled, the County considers ***the remoteness of the location and the amount of wine to be produced at a facility*** when reviewing use permit proposals, ***and endeavors to ensure a direct relationship between access constraints and on-site marketing and visitation programs.*** (Emphasis added.)

Opponents of the Mountain Peak project have provided the County with overwhelming evidence that the proposed Project site, which is 6.2 miles up a dead-end road on the upper reaches of Atlas Peak, is not only as remote and rural a location that could be imagined within Napa County, but also suffers from severe and potentially life-threatening access constraints. In combination, these indisputable facts mandate that the County significantly reduce both the amount of wine to be produced at the facility *and* the on-site marketing and visitation program to a size that is appropriate for the remote location.

To date, the County has made two dramatic errors in its analysis of ensuring that the Project is appropriately scaled to the remote and rural location in which it is being proposed. First, the comparative analysis employed by both the County and the Applicant ignore the realities and long-standing precedent of existing hillside winery size both on Soda Canyon Road and throughout

Napa. Second, the Applicant's proposed production figures are wholly inaccurate and do not support the Applicant's claim that it will be able to produce "92% of the grapes" on-site.

First, as explained in great detail in *Arger Opposition Letters*, and further expanded upon by Appellant Glenn Schreuder during the January 4, 2017 hearing, the wineries used by both the Applicant and the County for their respective comparative analyses must be heavily discounted or discarded altogether because *none* of the "hillside winery comparables" are located on dead-end, County-maintained roads like Soda Canyon Road. A more appropriate comparative analysis would include the wineries located on Atlas Peak Road, which is also a dead-end, County-maintained road. As demonstrated during the January 4, 2017 hearing, there are five wineries on Atlas Peak Road – William Hill Winery, Vin Roc Winery, Ripe Peak Winery, Alta Vineyard Cellar, and Kongsgaard Winery. With the exception of William Hill Winery, which is not only located near the very bottom of Atlas Peak Road, but has also been in existence since 1987 (e.g. pre-WDO), all of the wineries on Atlas Peak Road have extremely limited production and visitation figures, especially the farther up the road the wineries are located.

An even more appropriate comparative analysis that was not conducted by either the Applicant or the County is to consider the size and scope of the *existing wineries on Soda Canyon Road*, and especially on upper Soda Canyon Road. There are currently eight County permitted wineries on Soda Canyon Road, which are outlined in the table below:

Winery Name	Production	Visitation	Distance from Silverado Trail	Pre-WDO?
Roy Estate	12,000 gpy	2,710	0.9 miles	No (2002)
White Rock	20,000 gpy	520	1.7 miles	Yes (1987)
V-12 Winery	22,500 gpy	2,172	3.3 miles	No (2009)
Caves at SCR	30,000 gpy	4,960	4.2 miles	No (2006)
Relic Wine Cellars	20,000 gpy	4,458	4.3 miles	No (2010)
La Vallette Winery	20,000 gpy	0	5.4 miles	Yes (1988)
Astrale e Terra	20,000 gpy	0	6.5 miles	Yes (1988)
Antica Napa Valley	450,000 gpy	5,200	6.6 miles	Yes (1987)

With the exception of Antica Napa Valley, which owns approximately 1,200 acres of contiguous land at the very end of Soda Canyon Road and therefore can only be compared in terms of its parcel size to production and visitation ratios, all of the wineries on Soda Canyon Road have production levels of between 12,000 and 30,000 gallons. This includes Astrale e Terra (dba Meadowrock), which is 0.4 miles from the Mountain Peak site, sits on 68 acres (e.g. larger than Mountain Peak's ~40 acre parcel), but has a permit to produce only 20,000 gallons per year and has *zero visitation* based on the 1999 decision reached by the Department of Alcoholic Beverage Control that denied *all wine tasting and retail sales on-site* because evidence established that "increased traffic on Soda Canyon Road would interfere with the quiet enjoyment of nearby residences," and "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 *1999 Decision In the Matter of the Protest of Fletcher Benton, et al.*, ABC File no. 02-344164, Reg no. 98045225, attached as an exhibit to the *Arger Opposition Letters*. A simple review of the above chart demonstrates that the Mountain Peak project, as proposed, is far larger in size and

scope than seven of the eight existing wineries on Soda Canyon Road. Importantly, when Mountain Peak is compared and scaled to the two wineries – Antica and Astrale e Terra – *which are within one half mile of the proposed project site*, it would be appropriately sized if it was permitted to have between 12,000 and 19,300 gpy annual production, between 1,100 and 1,600 square feet of caves, and 0 visitors (based on the 1999 Astrale e Terra precedent). (*See Arger Opposition Letters* for more detailed discussions on immediately comparable wineries).

When considering the size and scope of both the production and marketing programs of the wineries on Soda Canyon Road and Atlas Peak Road, the obvious commonality between them is that they are appropriately scaled based on either or both their parcel size and their location on dead-end roads. Given that Mountain Peak is being proposed on the dead-end Soda Canyon Road, the same standards and considerations *must be applied to Mountain Peak*.

In further consideration of the appropriate amount of wine to be produced at the remote Mountain Peak location, and despite the Applicant's unsubstantiated assertions to the contrary, 92% of the grapes cannot be grown and harvested "on-site." (For full discussion on the subject, *see Arger Opposition Letters*). The crux of the Applicant's argument is that 1) it owns and leases additional vineyards on upper Soda Canyon Road, which it is in turn counting towards its total production figures, and 2) the combined vineyards will produce 5 tons to the acre. However, as explained in excruciating detail by Opponents of the project, including several owners of vineyards on upper Soda Canyon Road, Mountain Peak's projections of producing 5 tons to the acre on Atlas Peak is virtually impossible based on some 40 years of combined growing experience in that region (several vineyard owners provided evidence that the average annual yield on Atlas Peak is between 2 and 3 tons per acre). Even more importantly, Opponents point out that a 100,000 gpy permit runs with the land, and, based on the extremely remote location of the Project, it is inappropriate for the Applicant and County to count grapes from non-contiguously owned or leased vineyards (because they can be sold, or have their contracts cancelled, respectively, at any time) in the production totals due to the severe access constraints to the location, as it will further endanger the public health, safety and welfare of the County of Napa and its residents and visitors.

More specifically, and as discussed above, NCC section 18.124.070(C) requires the County to find that "[t]he grant of the use permit, as conditioned will not adversely affect the public health, safety or welfare of the county." As it relates specifically to Project size and the non-contiguous vineyards relied upon to reach that size, the larger the Project's permitted production and marketing, the larger the chances are that the public health, safety and welfare will be endangered as result of more car, truck, and other operations traffic on Soda Canyon Road.

The Applicant makes the argument that a larger production capacity will actually decrease the truck traffic on the road because grapes will only have to be transported from the vineyards to the Project. However, the gaping hole in this argument is that 1) the Project is going to increase the amount of traffic on the road by approximately 44,275 car trips per year, and 2) the trucks that transport the grapes from the vineyards to the Project site will *still have to travel up Soda Canyon Road to reach the vineyards*.<sup>3</sup> Critically, in the event of a) the Project owner selling the non-contiguous vineyard parcel, b) the lease for the Acora Vineyard being cancelled, c) the inability of

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<sup>3</sup>This type of vehicular activity will certainly have a consequential impact of some sort on greenhouse gasses and certainly a CEQA EIR should have been prepared. (*See, discussion, infra, at p.27-29*)



the Applicant to secure the requisite ~700 tons of grapes to satisfy the 100,000 gpy permit from vineyards on Soda Canyon, or d) any combination thereof, the owner (or future owner) of the 100,000 gpy permit at the remote Project location will be forced to *truck in* hundreds of tons of grapes up the already dangerous, dilapidated, and dead-end road. This in turn, will further exacerbate the existing traffic and public safety issues on the dead-end road, which will violate the public health, safety and welfare provisions of the *General Plan*, the WDO and Napa County Code.

Similar to arguments made in an above section of this Appeal, this project cannot be considered in a vacuum. Instead, as is required by the 2010 WDO, the remote location must be taken into account. Thus, when the severe access constraints (e.g. one way in, one way out) and existing public safety concerns on Soda Canyon Road (e.g. traffic, fire, flooding and the ability of residents and visitors to escape in the event of a disaster, and rescue crews to access the disaster) are considered together with the dangerous realities of permitting the Project for 100,000 gpy in production and 14,575 annual tourists, it is clear that approval of the Mountain Peak project in its current form is a clear violation of the WDO and the 2010 WDO Amendment.

A second, and similarly relevant limitation of the WDO relates to the maximum square footage of “accessory uses” such as “marketing of wine” and “tours and tastings.” Specifically, all such accessory uses, “*in their totality [,] must remain clearly incidental, related and subordinate* to the primary operation of the winery as a production facility.” *See, e.g.*, NCC § 18.08.370; 18.16.030(G)(5); 18.08.020 (emphasis added). Additionally, the WDO places an absolute numerical cap of the square footage of structures that may be “used for accessory uses.” *See* NCC 18.104.200 (“The maximum square footage of structures used for accessory uses that are related to a winery shall not exceed forty percent (40%) of the area of the production facility”).

In the case of Mountain Peak, the current Accessory-to-Production ratio will be 36.1% by Phase Two of the project. *See March 15, 2016 Project Statement* at pg. 2. However, in light of the above analysis of how inappropriate the scale and scope of this winery is for the remote and rural location in which it is being proposed, there can be little question that the Project must be drastically reduced in both size and scope from both a production and marketing standpoint. As a result, it is very likely that following an appropriate reduction in size and scope, the current Accessory-to-Production ratio of 36.1% will be inaccurate, and the accessory uses currently proposed could far exceed the 40% permitted under NCC 18.104.200. Moreover, even in its current state, the Project’s figures should be very carefully reviewed, as it appears that a matter of only some 1,500 square feet of additional accessory use would put it over the 40% threshold, and it is Appellants’ understanding that there are additional outdoor tasting areas being proposed that may put the project over the 40% accessory use allotment.

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#### **4. The Project is Inconsistent with the Napa County General Plan**

The Planning Commission adopted the recommended finding that the Project is consistent with the Napa County *General Plan*. *See Recommended Findings* at pg. 3, finding number 13. However, while this finding identifies several specific General Plan provisions, there is almost zero analysis of how those provisions apply to the Project. Instead, there is only a general and conclusory assertion that “the requested Use Permit is consistent with the overall goals and objectives of the General Plan (2008),” and a finding that “the requested Use Permit supports the



economic viability of both the vineyard use on the property, consistent with Economic Development Goal E-1 and Policy E-1.” Such conclusory statements are far from providing any support to the notion that the Project complies with the General Plan. To the contrary, the Project is wholly inconsistent with the *General Plan* and the finding is simply unsupported by the evidence adduced at the Planning Commission hearings. *See, Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 510 & fn. 1 [113 Cal.Rptr.3d 836, 522 P.2d 12].

To begin, the purpose of these goals and policies, and of the Agriculture, Watershed, and Open Space (AWOS) designation, is to preserve and promote the existing agricultural land uses on agriculturally designated lands and to support the economic viability of agriculture, including the necessary industries that support agriculture. Importantly, Action Item AG/LU-2.1 maintains that “marketing activities and other accessory uses remain incidental and subordinate to the main use.” Similarly, Policy AG/LU-13 requires that “[a]ll tours and tastings, retail sales, marketing activities, and non-commercial food service must be accessory to the principal use of the facility as an agricultural processing facility. Nothing in this policy shall alter the definition of agriculture set forth in Policy AG/LU-2.” Policy E-1 further provides that the “County’s economic development will focus on ensuring the continued viability of agriculture in Napa County.”

The primary objective of the Project is not to support agriculture, but instead to support a large scale, direct-to-consumer marketing program. From the very first meetings between several neighbors and the project’s developer, Steven Rea, and winery consultant Donna Oldford, Mr. Rea and Ms. Oldford made it very clear that this Project would not exist and would not be sustainable without the marketing and visitation component. This objective is supported by the Applicant’s request for 14,575 annual winery visitors, as well as the expansive winery accessory structure to accommodate wine tasting rooms, winery administrative offices, and a commercial kitchen. Importantly, the Project will be *reducing* the number of plantable vineyard acres on-site to accommodate for its vast on-site marketing program. None of this marketing is accessory to agriculture, but in fact makes it very clear that agriculture is an accessory to the Project’s far-reaching marketing objective. Such uses are not necessary to support the economic vitality of agriculture and will, if anything, undermine the continued economic vitality of agriculture by allowing and encouraging excessive reliance on tourism. Moreover, recent County approvals of wineries have caused the amount of winery production capacity to outstrip the County’s grape-growing capacity by almost four times than is necessary to process Napa grapes. Thus, the Project’s request for a 100,000 gpy winery permit is not necessary to ensure the continued agricultural viability of the area, and in fact, as a result of the existing excess capacity, approval of the Project is likely to further undermine agriculture by taking needed Napa grapes away from other existing vintners and forcing them to seek revenue from tourism, rather than winemaking. This shortfall will also force wineries, possibly including the Project, to violate the 75% requirement by having to truck in non-Napa grapes to meet their large production needs.

Furthermore, these uses are clearly inconsistent with the intent of the General Plan’s AWOS designation. As described in Policy AG/LU-20, the intent of the AWOS designation is to

provide areas where the predominant use is agriculturally oriented; where watershed are protected and enhanced; where reservoirs, floodplain tributaries, geologic hazards, soil conditions, and other constraints make the land relatively

unsuitable for urban development; where urban development would adversely impact all such uses; and where the protection of agriculture, watershed, and floodplain tributaries from fire, pollution, and erosion is essential to the general health, safety, and welfare.

As described in detail above, this Project, its 14,575 visitors, 103,016 square feet of winery coverage, and especially the approximately 2,000,000 cubic feet of earth and cave spoils to be produced in excavation of the 33,424 square feet of caves and other clearing projects to take place on the Project site, the remainder of which will be placed nearly on top of two separate blue-line streams, is diametrically opposed to the intent of the AWOS designation. This Project is an urban development in the remote and rural reaches of Atlas Peak, which may adversely impact Rector Creek and Canyon, its tributaries, the Rector Reservoir, and all of Foss Valley (Upper Soda Canyon) as a result of fires, pollution, and erosion.

Pursuant to Goal CIR-2, the “County’s transportation system shall provide for safe and efficient movement on well-maintained roads throughout the County, meeting the needs of Napa County residents, businesses, employees, visitors, special needs populations, and the elderly.” As described in detail above, Soda Canyon Road (and roads accessed by Soda Canyon Road) are in abysmal physical condition, and there are numerous *existing traffic, fire, and safety issues* on Soda Canyon Road. Approval of the Mountain Peak project and its approximately 44,275 annual car trips will *not* provide “for safe and efficient movement on well-maintained roads.” Instead, the Project will exacerbate existing dangerous conditions on a poorly-maintained road, especially with the addition of 14,575 alcohol imbibing tourists on an annual basis.

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Under Policy CIR-5, “roadways outside the urbanized areas of the County shall reflect the rural character of the county.” Adding approximately 44,275 annual commercial car trips to an already run-down rural road completely contradicts Policy CIR-5, as it will effectively urbanize a rural community.

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Under Policy CIR-16, the “County shall seek to maintain an arterial Level of Service D or better on all county roadways . . . .” *See General Plan* at CIR-15. Level of Service D is defined as the “level where traffic nears an unstable flow. Intersection still function, but short queues develop and cars may have to wait through one cycle during short peaks.” *Id.* Level of Service E is defined as “[t]raffic characterized by slow movement and frequent (although momentary) stoppages. At peak traffic hours, traffic frequently stops, there are long-standing queues, and intersections may be blocked by cars attempting to cross.” *Id.* Level of Service F is “marked by ‘stop and go’ traffic and stoppages of long duration. Vehicles at signalized intersections usually have to wait through one or more signal changes, and intersections may be blocked by the long queues.” *Id.*

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As demonstrated by several Soda Canyon residents and property owners, as well as in the *Smith Engineering Traffic Peer Review* produced by Project Opponents, the intersection of Soda Canyon Road and Silverado Trail falls somewhere between a Level of Service E and F. This Project proposes to introduce an additional ~44,275 cars to the intersection of Soda Canyon Road and Silverado Trail on an annual basis, which will undoubtedly cause an already horrendous traffic situation during peak hours to become even worse.

Incredibly, Opponents' are informed and believe that the County has not abided by Policy CIR-19, which mandates that

[a]pplicants proposing new discretionary development projects with the potential to significantly affect traffic operations shall be required to prepare a traffic analysis prior to consideration of their project by the County and *shall be required to mitigate project impacts and to pay their fair share of countywide cumulative traffic improvements* based on their contribution to the need for these improvements.

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While the Applicant did provide a traffic analysis, Opponents produced a peer review to that analysis, along with additional testimony and evidence that the project would have adverse impacts on Soda Canyon Road, a road maintained by the County, yet the County does not appear to have placed any conditions that the Applicant "pay their fair share of countywide cumulative traffic improvements."<sup>4</sup> This is not only against the *General Plan*, but is simply incredible in light of the fact that County Commissioners, Supervisors, and even the Deputy Director of Public Works, Rick Marshall, have acknowledged the "deplorable" condition of the road *before* this Project is put in place. Approval of this Project clearly contradicts Policy CIR-16.

Under community character Goal CC-4, the General Plan requires the identification and preservation of "Napa County's irreplaceable cultural and historic resources for present and future generations to appreciate and enjoy." Opponents of the Project have provided evidence to the County that Foss Valley (Upper Soda Canyon Road) served as summer grounds for the Wappo Indians. Mountain Peak's excavation of nearly 800,000 cubic feet of earth to build its 33,424 square feet of caves could uncover archaeological remains and/or potentially destroy such valuable historic resources in the process thereof.

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Pursuant to Policy CC-31, the "County considers nighttime darkness to be an integral part of the character of the County's rural areas." As presented by numerous Opponents of the Project, Soda Canyon, and particularly upper Soda Canyon where the Project will be located enjoys some of the darkest and most enjoyable nights imaginable. The Project will not only have a crush pad and production facility that is partially outside, but will host nighttime events, including marketing events lasting until 10pm and regular tours and tastings lasting until 6pm. There will undoubtedly be substantial light emanating from the Project during these various times of activity, which will significantly impact the nighttime darkness and rural character of upper Soda Canyon.

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The goals and policies for noise outlined in the *General Plan* set forth various standards for acceptable levels of noise in designated area. *See Goal CC-7, 8; Policy CC-35-50.* As described by several Opponents of the Mountain Peak project, one of the most attractive features of upper Soda Canyon Road is that, aside from occasional animal noises, the area is truly silent at

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<sup>4</sup>For example, Soda Canyon Road property owner, Project Opponent and Nobel Laureate Daniel McFadden stated in his letter of opposition to the County that "the possible increase in income from direct sales originating in an on-site visitor program at MPV will be far below the cost of upgrading Soda Canyon Road to provide safe access. This visitor proposal makes economic sense for MPV only if the taxpayers of Napa County subsidize them by assuming the enormous cost of upgrading the road, or the liability of approving this facility with unsafe access."



night. Similar to the above, the Project will have a partially outdoor production facility, marketing events lasting until 10pm, and regular tours and tastings lasting until 6pm, which is nighttime during the winter months. These activities will adversely impact the serenity of upper Soda Canyon and violate the noise standards set forth in the *General Plan* and in section 8.16 *et seq.* of the Napa County Code. This is supported by a peer review produced by Opponents of the Project, which concludes that the Project will result in a “significant noise impact.” See *July 18, 2016 Mountain Peak Winery (Use Permit #P13-00320-UP Review of Noise Analysis by Wilson Ihrig & Associates* (hereinafter “*Wilson Ihrig Noise Peer Review*”).

The very first goal stated in the conservation section of the *General Plan* provides that the “County of Napa will conserve resources by determining the most appropriate use of land, matching land uses and activities to the land’s natural suitability, and *minimizing conflicts with the natural environment and the agriculture it supports.*” Goal CON-1 (emphasis added). The very first policy in the conservation section of the *General Plan* requires that the “County will preserve land for greenbelts, forest, recreation, flood control, adequate water supply, air quality improvement, *habitat for fish, wildlife and wildlife movement, native vegetation, and natural beauty.* The County will *encourage management of these areas in ways that promote wildlife habitat renewal, diversification, and protection.*” Policy CON-1 (emphasis added). Policy CON-6 requires that the “County shall impose conditions on discretionary projects which limit development in *environmentally sensitive areas such as those adjacent to rivers or streamside areas* and physically hazardous areas such as floodplains, steep slopes, *high fire risk areas* and geologically hazardous areas.” (Emphasis added). Goal CON-2 seeks to “[m]aintain and enhance the existing level of biodiversity.” Goal CON-3 is to “[p]rotect the continued presence of special-status species, including special-status plants, special-status wildlife, and their habitats, and comply with all applicable state, federal, or local laws or regulations.” Goal CON-4 seeks to “[c]onserve, protect, and improve plant, wildlife, and fishery habitats for all native species in Napa County.” Policy CON-10 provides that the “County *shall* conserve and improve fisheries and wildlife habitat in cooperation with governmental agencies, private associations and individuals in Napa County.” (Emphasis added). Policy CON-16 maintains that the “County *shall require* a biological resources evaluation for discretionary projects in areas identified to contain or potentially contain special-status species based upon data provided in the Baseline Data Report (BDR), California Natural Diversity Database (CNDDDB), or other technical materials.” (Emphasis added). Policy CON-19 mandates that the “County *shall* encourage the preservation of critical habitat areas and habitat connectivity. . . .” (Emphasis added). Policy CON-22 provides that the “County *shall* encourage the protection and enhancement of natural habitats which provide ecological and other scientific purposes.” (Emphasis added).

Simply put, approval of the Mountain Peak project violates the vast majority of the goals and policies outlined in the conservation section of the *General Plan*. Approval of the Project further violates sections 16.28 *et seq.* and 18.108 *et seq.* of the Napa County Code, as described above. The nearly 1,000,000 cubic feet of earth and cave spoils are going to be placed within 300 feet of two separate blue-line streams that feed Rector Creek and Canyon, home to an incredibly diverse habitat containing special-status species, including the yellow-legged frog and California giant salamander and potentially genetically valuable rainbow trout.<sup>5</sup> Opponents of the project

<sup>5</sup>According to the California Department of Fish and Wildlife, “[t]he 433-acre Rector Reservoir Wildlife Area of oak woodland and mixed chaparral vegetation is owned by the Department of Veterans Affairs, and managed by



have produced expert reports explaining that erosion is very likely, which will in turn have potentially devastating impacts on the biologically diverse habitats in Rector Canyon. In contrast, the Applicant has not produced, and the County has not required the Applicant to produce any evaluation of biological resources.

Critically, during the January 4, 2017 hearing, in response to a question from Commissioner Cottrell regarding the adverse impacts of the cave spoils and storm water, Deputy Planning Director McDowell stated that “erosion control [is] certainly not an area of my expertise for responding” and deferred to the county’s engineers, who in turn blindly relied on the Storm Water Control Plan submitted by the Applicant. A review of the July 1, 2016 memorandum titled “Permit No. P13-00320 Mountain Peak Winery Conditions of Approval” referenced in the Project’s Recommended Conditions of Approval reveals that while there are prerequisites to “prevent erosion, sediment and waste materials,” there is no specific discussion of the two blue line streams within 300 feet of the some 700,000 to 1,000,000 cubic feet of cave spoils that will be placed and the potential for adverse impacts on the Rector Creek watershed and ultimately the Rector Reservoir. *See July 1, 2016 Memo from the County’s Engineering Department.* Similarly, and perhaps even more damaging, a review of the Storm Water Control Plan created by Bartelt Engineering reveals that there is *zero* discussion of the Rector Creek Watershed habitat, including the various special-status species, or the adverse effects of erosion into the watershed and eventually the Rector Reservoir. However, what the Storm Water Control Plan does state is that when “a greater than 10-year storm event” does occur, the “stormwater runoff from the developed area to a detention basin near the western property line . . . will overflow the detention basin and sheet flow through natural terrain before entering an existing blue line stream on the neighboring parcel.” *See Bartelt Storm Water Control Plan* at pg. 2 (emphasis added). In other words, the Applicant’s own study *admits that erosion into at least one of the blue-line streams that feeds the Rector Creek Watershed will occur* during large storm events, such as those that occurred in January 2017.<sup>6</sup>

The very first water resource policy maintains that the “County will work to protect Napa County’s watersheds and public and private water reservoirs to provide for the following purposes: a) [c]lean drinking water for public health and safety; b) [m]unicipal uses, including commercial, industrial and domestic uses; c) [s]upport of the eco-systems; d) [a]gricultural water supply. . . .”

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the California Department of Fish and Wildlife. The plant communities at Rector Reservoir support approximately 27 species of mammals, 40 species of birds, and 14 species of reptiles and amphibians. Among these are both prairie and peregrine falcon, Cooper’s and sharpshinned hawks, red-legged frogs, and northwestern pond turtles. The watershed area immediately surrounding the reservoir, is also owned by the Department of Veterans Affairs and is not open to the Public.” *See, California Department of Fish and Wildlife, Rector Reservoir Wildlife Area, [www.wildlife.ca.gov/Lands/Places-to-visit/Rector-Reservoir-WA](http://www.wildlife.ca.gov/Lands/Places-to-visit/Rector-Reservoir-WA).*

<sup>6</sup>The Storm Water Control Plan also acknowledges the existence of the two blue-line streams into which cave spoil erosion may flow; one on the western edge of the Project site, and one that “bisects the eastern portion of the parcel.” *See Storm Water Control Plan* at 3. Such overflow, which will carry mud, and other debris into the Reservoir will have significant environmental impacts on steelhead trout, freshwater shrimp, California red-legged frog and foothill yellow-legged frog. The status of the red-legged frog is “threatened” and the yellow-legged frog is “of concern” according to the California Department of Fish and Wildlife (previously, the Department of Fish and Game). Also, the steelhead trout is identified as a threatened species by both state and federal authorities.

Policy CON-41. Approval of the Mountain Peak project is likely to violate this policy. As described by Opponents of the Project and their experts, soil erosion from the nearly 1,000,000 cubic feet of cave spoils next to two blue-line streams may cause sedimentation and damage to the Rector Reservoir, which is a “major surface water basin[ ] in Napa County,” and serves the City of Yountville, the State of California Veterans Home, the Department of Fish and Game, and the Napa State Hospital). *See General Plan* at CON-7. The Project may also adversely impact the Rector Creek and Canyon eco-system, and may ultimately impact the water supply for surrounding vineyards and agriculture, as it takes a *significant amount of water* to produce 100,000 gallons of wine on an annual basis.

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Policy CON-55 provides that the

County shall consider existing water uses during the review of new water uses associated with discretionary projects, and where hydrogeologic studies have shown that the new water uses will cause significant adverse well interference or substantial reductions in groundwater discharge to surface waters that would alter critical flows to sustain riparian habitat and fisheries or exacerbate conditions of overdraft, the County shall curtail those new or expanded water uses.

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In his peer review of the Mountain Peak hydrology studies, Opponents’ expert Greg Kamman concludes in his original hydrology response that the Project “has the potential to significantly impact: local groundwater levels and supply<sup>7</sup>; groundwater conditions that sustain a neighboring spring-fed pond; spring/seep flows that sustain creek flow and pool habitat in an adjacent channel; water quality; and biological resources (vegetation and wildlife in the Rector Creek watershed.” In light of this peer review, the County’s approval of the Project violates Policy CON-55, as well as NCC section 18.124.070(E-G).

The very first policy outlined in the Climate Protection and Sustainable Practices for Environmental Health Policies 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. . . .”

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<sup>7</sup>It is worth noting that recent California authority indicates that water agencies that fail to affirmatively plan for, secure, and distribute water for present and anticipated future needs may expose themselves to liability for inverse condemnation if the agency’s inaction denies a property owner economically viable use of its land. *See Lockary v. Kayfetz* (9th Cir. 1990) 917 F.2d 11150, 1155-1157. Such litigation against the County could result if the Project is approved and nearby neighbors and vineyard owners are deprived of economically viable uses of their land.

The Mountain Peak project will introduce some 44,275 *new* car trips on Soda Canyon Road, as well as large trucks emitting significant amounts of greenhouse gases. The addition of tens of thousands of vehicles to a largely pristine remote and rural area is the antithesis of the *General Plan's* mandate that the County seek to reduce greenhouse gases. This is especially true when taken in the context that if Mountain Peak is approved in its final form, it will set a dangerous precedent for innumerable other winery applications in the remote and rural areas of Napa to follow. Does the County really consider a massive increase in traffic and degradation of natural and bio-diverse habitats to be a method of conservation?

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In the Recreation and Open Space Goals, Policies, Objectives, and Actions, the first goal is to “ensure an extensive landscape of open spaces in which recreation, the protection of natural, cultural, and archaeological resources, agricultural production, and private property are mutually supportive and complementary.” Goal ROS-1. There are a series of trails to access Rector Canyon and the incredibly diverse habitats it is home to. In direct contradiction of the above-described goal, The Mountain Peak project could jeopardize the viability and sustainability of this incredible natural resource through adverse impacts of soil erosion, sedimentation and other means, which could in turn damage and/or devastate plant and animal species alike.

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The first goal of the Safety section of the *General Plan* provides that “[s]afety considerations will be part of the County’s education, outreach, planning, and operations in order to reduce loss of life, injuries, damage to property, and economic and social dislocation resulting from fire, flood, geologic, and other hazards.” Goal SAF-1. Goal SAF-3 outlines that it is the “goal of Napa County to effectively manage forests and watersheds, and to protect homes and businesses from fire and wildfire and minimize potential losses of life and property.” Policy SAF-16 requires that “development in high wildland fire hazard areas shall be designed to minimize hazards to life and property.” Policy SAF-20 mandates that “[a]ll new development *shall* comply with established fire safety standards” and consider the “[a]bility for a safe and efficient fire department response...[t]raffic flow and ingress/egress for residents and emergency vehicles... [and] [p]otential impacts to emergency services and fire department response.” . Policy SAF-38 requires the “County to achieve the goals, objective, and actions of the [Napa Operational Area Hazard Mitigation Plan (NOAHMP)], including... [p]romoting a fire safer community... [and] [m]inimizing the risk of wildfire at the urban interface.”

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Opponents of the Project have provided an overwhelming amount of evidence outlining the existing fire danger on Soda Canyon Road, especially because it is a dead-end road, which will impact rescue and escape efforts. The Mountain Peak project is located approximately 6.2 miles up the dead-end road and is located in a “Very High Fire Hazard Severity Zone,” the highest zone as rated by CalFire. The Project will introduce some 44,275 annual car trips, which not only increases the chances of individuals unfamiliar with the area starting a fire (Opponents have documented several examples of fires started by tossed cigarette butts and car or truck engines *on Soda Canyon Road*), but will also seriously impede escape and rescue efforts of all users of the road, and particularly the residents. Approval of this Project is a flagrant violation of the *General Plan's* fire safety provisions put in place to protect property owners and tourists alike, as the Project dramatically *increases* the risk of injury and loss of life.



Goal SAF-4 is to “protect residents and businesses from hazards caused by flooding.” Opponents of the Mountain Peak project have provided the County with substantial evidence of flooding and mudslides that occur regularly on Soda Canyon Road. Policy SAF-38 requires the “County to achieve the goals, objective, and actions of the NOAHMP, including . . . [p]romoting a flood safer community . . . [and] [r]educing impacts from flooding.” By approving this Project and encouraging some 44,275 car trips, including 14,575 wine imbibing tourists, to drive the length of the road, potentially during a significant storm event or shortly thereafter, the County is creating the likelihood for hazards in the form of auto-accidents and collisions during and after flooding events. This is completely contrary to the safety goals of the *General Plan*.

The *General Plan* begins with a statement that the “Zoning Code, individual project proposals, and other related plans and ordinances must be consistent with the goals and policies in th[e] General Plan,” *General Plan* at I-2, and concludes by mandating that “individual decisions will be scrutinized for their potential impacts and their consistency with this Plan.” *General Plan* at IP-10. As outlined above, approval of the Mountain Peak project violates innumerable specific goals and policies of the *General Plan* and could not be more *inconsistent* with the Plan and therefore contrary to its objective.

For all of the reasons stated above, the Planning Commission violated several provisions of the Napa County Code, the WDO (and the 2010 Amendment), and the *General Plan* when it approved the Project.

### C. Approval of the Project without First Preparing an EIR Violates CEQA

It is well settled that CEQA establishes a “low threshold” for initial preparation of an environmental impact report (“EIR”), especially in the face of conflicting assertions concerning the possible effects of a proposed project. *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 928 (2005). CEQA provides that a lead agency may issue a negative declaration and avoid preparing an EIR only when “[t]here is *no* substantial evidence, in light of the whole record before the lead agency, that the Project may have a significant effect on the environment,” or when all potentially significant impacts of a project will be avoided or reduced to insignificance. Pub. Res. Code § 21080(c); *see also* CEQA Guidelines 15070(b).<sup>8</sup> The CEQA Guidelines provide that substantial evidence “include[s] facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” CEQA Guidelines § 15384(b). A mitigated negative declaration will be set aside if its conclusions are not based on substantial evidence in the record. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 311 (1988). In addition, “[w]hen assessing whether an EIR is required . . . , the local agency is required to compare the newly authorized land use with the actually existing conditions; comparison of potential impacts . . . with potential impacts under the existing general plan is insufficient.” *Christward Ministry v. Superior Court*, 184 Cal. App. 3d 180, 190, 228 Cal. Rptr. 868, 872 (1986); accord, *City of Antioch v. City Council* (1986) 187 Cal. App. 3d 1325, 1332 [232 Cal.Rptr. 507] (determining that “conformity with the general plan for the area . . . does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects”).

<sup>8</sup> The CEQA Guidelines, 14 Cal. Code Regs. § 15000 *et seq.*, are referred to as “CEQA Guidelines.”



An initial study must provide the factual basis, with analysis included, for making the determination that no significant impact will result from the project. CEQA Guidelines § 15063(d)(3). An agency must prepare an EIR whenever it is presented with a “fair argument” that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75 (1974); *Friends of B St. v. City of Hayward*, 106 Cal.App.3d 988, 1002 (1980); Guidelines § 15064(f)(1); *see also* Pub. Res. Code § 21151. Critically, where there are conflicting opinions regarding the significance of an impact, California courts reflect “a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.” *Stanislaus Audubon Soc’y v. County of Stanislaus*, 33 Cal.App.4th 144, 150-51 (1995). “For purposes of CEQA, “substantial evidence” is defined as including: “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” 14 Cal.Code.Reg. § 15064(f) (5). Thus, under the CEQA statute and regulations, if there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the lead agency “shall treat the effect as significant and shall prepare an EIR.” *Id.* at subd. 15064(g)

With regard to the Mountain Peak project, Opponents produced substantial evidence demonstrating that there is a “fair argument” that the Project may have significant environmental effects on: (1) groundwater resources, availability and water quality, and sedimentation of the Rector Creek Watershed and the Rector Reservoir, (2) Species of Special Concern and their habitat, (3) noise, (4) traffic, (5) cumulative impacts from existing and proposed wineries, and (6) archaeological remains.

### **1. Project Opponents Produced Substantial Evidence of Adverse Impacts on Groundwater Resources, Demonstrating the Project May Have Significant Effects on the Environment**

In California, a “project will normally have a significant effect on the environment if it will substantially degrade water quality; contaminate a public water supply; substantially degrade or deplete ground water resources; interfere substantially with groundwater recharge; or cause substantial flooding, erosion, or siltation.” *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1420, (1995) (quoting CEQA Guidelines, Appen. G, subds. (f), (g), (h), (i), (q)) (internal quotations and alterations omitted).

Here, Opponents of the Mountain Peak project have produced substantial evidence demonstrating that it may significantly impact the environment with regard to degrading water quality, contaminating a public water supply,<sup>9</sup> substantially degrading or depleting groundwater

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<sup>9</sup>In a July 10, 2009 study performed by the Ridge to River Incorporated Environmental Services for the Veterans Home of California, the authors state at page 65, the following: “Napa County has required an Environmental Impact Report for vineyard development and expansion in the last five years because of the Agricultural Watershed zoning in Rector Creek Watershed, the Yountville municipal and domestic water supply of Rector Reservoir, and the accelerated rate of vineyard expansion. . . . An analysis of erosion, sedimentation, and hydrology is a required component in CEQA and EIR processes. *See, Rector Creek Reservoir Watershed Sanitary Survey 2009 Update, page 65.* The inescapable conclusion reached by this study is that contaminant sources of Rector Reservoir which have a moderate potential impact on water quality come from AW zoned agricultural development from: (a) growth and expansion of land uses in the watershed; (b) land-sliding; and (c) incoming raw water quality. In turn, the incoming water quality flowing into Rector Reservoir are adversely

resources, substantially interfering with groundwater recharge, and causing substantial flooding, erosion, and siltation.<sup>10</sup> *See Dr. Manfree Testimony; see also Kamman Hydrology Peer Review.* Thus, because a fair argument has been presented by Opponents of the Project regarding various hydrology issues relating to the Project, and there are conflicting opinions as whether the project will have a significant impact on the environment, the County should follow California authority and require the preparation of an EIR.

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## **2. Project Opponents Produced Substantial Evidence of Adverse Impacts on Species of Special Concern and their Habitat, Demonstrating the Project May Have a Significant Effect on the Environment**

Pursuant to CEQA Guidelines section 15065, subdivision (a)(1) requires a mandatory finding of significance where a “project has the potential to . . . substantially reduce the number or restrict the range of an endangered, rare, or threatened species.” Importantly, the California Supreme Court has equated the word “range” to include “habitat restriction.” *See Mountain Lion Foundation v. Fish & Game Commission* (1997) 16. Cal. 4<sup>th</sup> 105, 124 (indicating that the threshold found in section 15065, subdivision (a), applied whenever a project created the “potential for population reduction or habitat restriction”).

Here, as described in the first portion of the Appeal, Dr. Manfree provided substantial evidence that the Mountain Peak project may impact the Rector Creek watershed habitat, including several species of special concern including, but not limited to, the foothill yellow-legged frog and California giant salamander. *See Dr. Manfree Testimony; See also, Kamman Hydrology Peer Review* (discussing the likelihood for increased erosion potential and potentially adverse impacts on the Rector Creek watershed). Importantly, neither the County nor the Applicant has produced *any evidence* to the contrary. Thus, substantial evidence exists demonstrating that an initial preparation of an EIR is necessary.

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## **3. Project Opponents Produced Substantial Evidence of Adverse Noise Impacts, Demonstrating the Project May Have a Significant Effect on the Environment**

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).

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affected by (a) fire, (b) erosion and de-sedimentation, (c) nutrient applications to agricultural lands and (d) pesticide/herbicide/fungicide/insecticide applications to agricultural lands, *Rector Creek Reservoir, etc. p. 107.* Finally, the Study, in its conclusion, reports a discussion that the authors held with the Veterans Home officials in which the officials’ greatest concerns for protecting water resources from outside sources was the rapid expansion of vineyard development in the watershed shed area surrounding the Rector Reservoir. *Study, p. 107, Interview with Mr. Pat Gilleran.*

<sup>10</sup>The Project Statement from Applicant submitted to the county planning department unabashedly admits that local drainage is into the Rector Reservoir. This is significant in light of the discussion that is contained in footnote 9, above, regarding sedimentation deposits and siltation due to expansion of vineyard development in the Rector Watershed.

Here, Project Opponents produced substantial evidence in the form of a peer review of the Applicant's noise assessment that concluded the Project would result in a "significant noise impact." See *Wilson Ihrig Peer Review*. Thus, because a fair argument has been presented by Opponents of the Project regarding noise, and there are conflicting opinions as to whether the project will have a significant impact on the environment, the County should follow California authority and require the preparation of an EIR.

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#### **4. Project Opponents Produced Substantial Evidence of Adverse Traffic Impacts, Demonstrating the Project May Have a Significant Effect on the Environment**

California courts have required the preparation of an EIR when a proposed project will adversely impact traffic. *Rominger v. Cty. of Colusa*, 229 Cal. App. 4th 690, 695-96, (2014) (concluding that the preparation of an EIR was necessary solely because of a "significant unmitigated impact on traffic at a particular intersection adjacent to the project"); See also *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1415, 43 Cal. Rptr. 2d 170, 209 (1995) (determining that a "[p]roject's effects on traffic could be 'significant' even though they were consistent with the Community Plan").

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Here, Project Opponents have produced substantial evidence demonstrating that the approximately 45,000 additional annual car trips to be added to Soda Canyon Road by the Project will have an adverse impact on the environment. See *Arger Opposition Letters*; *Smith Engineering Traffic Peer Review*. In sum, because a fair argument has been presented by Opponents of the Project during their discussion of traffic and its impacts on the environment, and because there are conflicting opinions as to whether the project will have a significant impact on the environment, the County should follow California authority and require the preparation of an EIR.

#### **5. Project Opponents Produced Substantial Evidence of Cumulative Impacts from Several Projects, Demonstrating the Project May Have a Significant Effect on the Environment**

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

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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).

Here, Project Opponents have produced 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. Rector Creek and Rector Reservoir are already bearing elevated sediment loads due to extensive wildland to vineyard conversion over the past 25 years, and earth moving activities proposed by the Project will likely exacerbate these conditions. There is also concern over greenhouse gas (GHG) emissions from existing projects and to be caused by the Project. 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 “[l]ead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO<sub>2</sub> 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]. 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).

Project Opponents have produced substantial evidence demonstrating that the construction activity, ongoing winery operations, and approximately 45,000 additional annual car trips to be added to Soda Canyon Road by the Project will have an adverse impact on the environment. *See*



*Arger Opposition Letters; Smith Engineering Traffic Peer Review; Dr. Manfree Testimony.* Specifically, the additional 44,275 car trips per year, the innumerable trips for construction workers and material transport to the remote site, and the removal and relocation of nearly 2,000,000 cubic feet of top soil and cave tailings nearly on top of two blue-line streams, will have substantial and consequential production of GHGs through CO2 emissions. Although, “[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 Guideline, §15130, subd. (f)). 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.

The convenient conclusion by the Planning Commission that the singular and cumulative traffic impacts, including the consumption of thousands of gallons of gasoline and diesel in digging the Best Buy store-sized caves and building a Walmart store-sized winery and tasting rooms will not significantly affect the environment defies all logic and common sense. Clearly, such a massive undertaking in a remote area reachable only by a serpentine, 6.75-mile degraded road will not only have important significance meriting the preparation of an EIR, but will also have inalterable changes in the quality of life and air quality for neighbors of the Project and other citizens of Napa County.

Thus, because Opponents of the Project have presented substantial evidence regarding the cumulative impact of several wineries being proposed on or near Soda Canyon Road during their discussions of traffic, water, and habitat impacts, which, collectively, could adversely impact the environment, the preparation of an EIR is necessary.

#### **6. Project Opponents Produced Substantial Evidence of Archaeological or Historical Resources, Demonstrating the Project May Have a Significant Effect on the Environment**

In California, a project has a significant impact on the environment if it will “disturb archaeological resources . . . [or] affect historical resources.” *San Bernardino Valley Audubon*

*Soc'y v. Metro. Water Dist.*, 71 Cal. App. 4th 382, 392, 83 Cal. Rptr. 2d 836, 842 (1999); *see also* CEQA Guidelines § 15064.5 (outlining the steps an agency must take to determine the significance of impacts to archaeological and historical resources).

Here, Opponents of the Project have provided substantial evidence that the Project site may contain archaeological and/or historical resources relating to the Wappo Indian Tribe, which spent its summers in Foss Valley, and whose tribe members left behind significant numbers of artifacts very near to the Project site. *See Arger Opposition Letters*. Importantly, neither the County nor the Applicant has produced *any evidence* to the contrary. Thus, substantial evidence exists demonstrating that an initial preparation of an environmental impact report is necessary.

#### IV. CONCLUSION

A proposed winery with caves the size of a Best Buy store, an overall size of a Walmart store, and annual visitation of nearly 15,000 wine-imbibing tourists has no place in the remote mountain reaches of Atlas Peak, especially when the only access is via a 6.75-mile long, deteriorating road with a variety of dangers to humble even the most experienced race car driver. The 2010 WDO Amendment counsels that careful analysis be conducted in situations where a winery project is to be located in a remote area with access constraints. This Project is the archetype for that contemplated by the 2010 WDO Amendment, and for this reason alone, the Project should have been rejected in its current form from the very beginning.

However, there are ample other reasons why the Project should be rejected upon appeal and *de novo* review by the Board of Supervisors in its quasi-judicial role.. At the very least, the Board of Supervisors should remand the matter back to the Planning Commission for further consideration in light of the violations of the Napa County Code, the *General Plan*, and CEQA. to The Planning Commission, or remand, should thoroughly review the record, conduct hearing anew and redress the County's numerous violations of the Napa County Code and the *General Plan*. Opponents produced substantial evidence of adverse environmental impacts the Project will create including: (1) groundwater impacts in the vicinity of the project and downstream pollution of the Rector Reservoir; (2) species of special concern at or around the Project site and their habitat in the Rector Creek Watershed; (3) significant noise impacts by the event center activities proposed at the Project site; (4) adverse traffic impacts; (5) cumulative impacts on the area from several other pending projects and the Project itself; and (6) significant impacts on known archeological or historical resources within a mile or so of the Project. Under the fair argument standard, each of those alone, and certainly in combination, require the preparation of an EIR and the County should order such, upon remand to the Planning Commission

In conclusion, the Planning Commission's adoption of the ND for the Project should be overturned. The Board of Supervisors should grant a *de novo* review of the Project, and either deny the Project outright, or remand the Project to the Planning Commission with direction to staff to retain the appropriate qualified experts to conduct an impartial EIR consistent with CEQA requirements, and further require the Project to comply with the Napa County Code, the WDO, and the *General Plan* as fully outlined above.