

## Attachment E

Determination of Good Cause Decision  
issued by the Chair



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## **DETERMINATION OF GOOD CAUSE REQUEST TO AUGMENT THE DOCUMENTARY RECORD AND REQUEST FOR DE NOVO REVIEW REGARDING THE MOUNTAIN PEAK APPEAL HEARING**

April 3, 2017

TO: Anthony Arger, Esq. on behalf of Appellants  
Brien McMahon, Esq. on behalf of Applicant

FROM: Chair Ramos

RE: Mountain Peak Appeal Hearing – Good Cause Determination

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As the Chair of the Board of Supervisors, I have received and reviewed Appellants' January 30, 2017 and March 27, 2017 requests to augment the record and request for the appeal hearing to be held on a *de novo* basis and Applicant's March 27, 2017 opposition to such requests. My decision on the requests is as follows:

### **1) Appellants' Request for De Novo Review.**

**Nature of the Request** – Appellants request a *de novo* review of the appeal, pursuant to Napa County Code (NCC) Section 2.88.090(A). Appellants claim that good cause exists for a *de novo* review by the Board because the Planning Commission "virtually ignored" all of the substantial evidence presented by opponents, allegedly pertaining to public safety, and environmental issues the project is likely to create in violation of numerous provisions of the Napa County Code, the Winery Definition Ordinance, and the General Plan. Appellants assert that a *de novo* review is necessary to correct the alleged blatant violation of the rules. (Appeal Packages, p. 4.)

**Decision and Rationale** – Denied. Pursuant to NCC 2.88.090(A), "the decision of the board on appeal shall be based on a review of the documentary record..., and such additional evidence as may be presented which could not have been presented at the time the decision appealed was made." Appellants' claim of good cause for *de novo* review is based on conclusions related to the specific grounds of appeal. Appellants have presented no evidence or justification that a good cause basis exists for such a *de novo* review. There were more than four hearings between July 2016 and January 2017 before the Planning Commission. Each of the hearings was recorded electronically or by a certified court report, proper notice was given and Appellants had ample opportunity to comment on the project and submit relevant evidence. Appellants' counsel testified and submitted evidence and voluminous



materials at the hearings. In addition, given the long contentious nature of the project, it is important that the Board have the benefit of the record below and the testimony that was considered by the Commission along with the Commission's deliberations. As such, the appeal will be based on the documentary record plus the additional evidence identified in Section 2 below that has been granted based on a showing of good cause to augment the record.

**2) Appellants' Request to Augment the Record with the Kamman Letter.**

**Nature of the Request** – Appellants' request that the record be augmented to allow new information regarding hydrology, in the form of a letter from Greg Kamman, Principal Hydrologist for Kamman Hydrology & Engineering, Inc., dated January 30, 2017 (the "Kamman Letter") and approximately 290 pages of attachments and website references. Appellants claim the Kamman Letter could not have been produced before the January 4, 2017 Planning Commission hearing because it addressed written rebuttal from Applicant's hydrologist Richard Slade & Associates dated December 30, 2016, which was released a mere four days before the January 4, 2017 hearing. The Appellants' hydrology expert was not available during the month of December, when a "draft" version of the rebuttal report was available, and could not comment on the "draft." (Appeal Packages, p. 4.)

**Decision and Rationale** – Partially Granted and Partially Denied. While four days elapsed after the December 30, 2016 Slade rebuttal report was made available, it is impractical to expect that a meaningful response to the rebuttal report could be produced within that time, especially with the New Years' Day holiday in the middle. There was not a reasonable amount of time to study and prepare a response to the Kamman Letter for consideration by the Planning Commission. Also, Kamman had a death in the family in December 2016 and was unavailable to respond to the Slade rebuttal report until January 30, 2017. As such good cause exists to augment the record with the 8-page Kamman Letter. However, neither Appellants nor Kamman have identified the relevance or provided an analytical route from which it can be ascertained how the 290 pages of exhibits referenced on pages 1-2 of the Kamman Letter are relevant to the specific Mt Peak project other than simply noting that they are materials that Kamman reviewed. Appellants have also failed to identify any reason why the exhibits, which were created anywhere from 2007 to 2016, could not have been presented to the Planning Commission prior to January 4, 2017. Good cause does not exist to augment the record with the 290 pages of exhibits referred to and attached to the Kamman Letter.

**3) Appellants' Request to Augment the Record with the KC Engineering Report.**

**Nature of the Request** – Appellants request that the record be augmented to allow new information regarding a geotechnical and geologic review of Soda Canyon Road. The report will be prepared by KC Engineering and should be available in mid-late April. Appellants assert that the report is needed in terms of public safety and welfare because of the configuration and physical conditions of Soda Canyon Road.

**Decision and Rationale** – Denied. Safety issues related to Soda Canyon Road were extensively discussed and raised by Appellants at the hearings and considered by the Planning Commission. Appellants have failed to articulate why the KC Engineering report could not have been prepared during the approximately 16 month period that the project was pending before the Commission. The physical condition of the road has not changed and traffic safety was thoroughly vetted at the Commission.