

Attachment D

Appellants' Requests for Good Cause and
Applicant's Opposition thereto

**APPELLANTS GOOD CAUSE LETTER FOR *DE NOVO* REVIEW &
PRESENTATION OF NEW EVIDENCE**
Appealing Mountain Peak Winery: P13-00320-UP
(Appellants Kosta Arger, Cynthia Grupp, William Hocker, Glenn Schreuder)

March 27, 2017

Napa County Board of Supervisors
Attn: Belia Ramos, Chair
1195 Third Street, Suite 310
Napa, California 94559
Fax: (707) 253-4421
Via Email: belia.ramos@countyofnapa.org

Office of Napa County Counsel
Attn: Laura J. Anderson,
Deputy County Counsel
1195 Third Street, Suite 301
Napa, CA 94559-3035
Via Email: laura.anderson@countyofnapa.org

Dear Ms. Ramos,

Pursuant to Napa County Code (“NCC”) section 2.88.090, “[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.” Appellants Kosta Arger, Cynthia Grupp, William Hocker, and Glenn Schreuder (collectively, “Appellants”) seek such a *de novo* review, as well as the presentation of additional evidence which could not have been presented at the time of the Planning Commission’s decision to grant use permit P13-00320-UP to Mountain Peak Winery following the January 4, 2017 hearing on the project (“Project”) proposed by the Applicant. Specifically, good cause exists for the presentation of two pieces “new” evidence, which include (1) a *Review of Response to Public Comments by Richard C. Slade & Associates LLC in the Mountain Peak Winery matter, use permit #P13-00320-UP*, prepared by Greg Kamman, PG, CHG, and Principal Hydrologist of Kamman Hydrology & Engineering, Inc. (“Kamman Review”), enclosed with this letter, and (2) a report from KC Engineering Co. providing a review of certain geologic and geotechnical areas of Soda Canyon Road (“KC Engineering Report”).

De Novo Review

Good cause exists for a *de novo* review because, as described in Appellants’ appeal, filed on January 30, 2017 (“Appeal”), 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. In order to correct this blatant violation of the rules, a *de novo* review before the Board of Supervisors is necessary, and Appellants hereby respectfully request such a review.

Additional Evidence – Kamman Review

On October 11, 2016, Mr. Kamman, on behalf of Opponents (including Appellants) of the Project produced an initial response to groundwater studies produced by the Applicant's expert, Richard C. Slade & Associates, LLC. On December 30, 2016, the Friday before the New Year's holiday weekend, and a mere four days before the January 4, 2017 hearing on the Project, the Applicant submitted a final version of its "Hydrology Response" to Mr. Kamman's October 11, 2016 response. Given the very late timing of Applicant's December 30, 2016 final response, the most recent Kamman Review, which Appellants now seek to introduce, could not have been produced before the January 4, 2017 hearing.¹

Additionally, Appellants' hydrology expert, Mr. Greg Kamman had a death in the family in December 2016 and would not have been able to timely respond even if a final version of Applicant's Hydrology Response had been produced prior to December 30, 2016. In fact, and as a result of his personal loss, Mr. Kamman was only able to produce a response on January 30, 2017, which Appellants then submitted via email to Ms. Gladys Coil, Clerk of the Board, the very next day, January 31, 2017.

Finally, given the extreme controversy that has arisen between the Applicant and Project Opponents regarding the availability of water, as well as potentially significant adverse environmental impacts under the California Environmental Quality Act ("CEQA") in the form of sedimentation of water flowing off the Project parcel and other water-related issues, the County will be in a better position to analyze any adverse impacts of the Project if the Chair allows this evidence to be presented to the Board of Supervisors.

¹Appellants do acknowledge that the Applicant produced a "draft" version of its Hydrology Response on November 30, 2016. However, Opponents cannot and could not have adequately responded 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.

In light of the above, good cause exists for the Chair to allow the presentation of the January 30, 2017 Kamman Review, which could not have been presented prior to the Planning Commission's decision to approve the Project.

Additional Evidence – KC Engineering Report

Before and during the July 19, 2016 and January 4, 2017 hearings, Project Opponents produced photographic and testimonial evidence demonstrating the current, deteriorating physical condition of Soda Canyon Road. To the best of Appellants' knowledge, the Applicant has not produced any reports that specifically address the physical condition of Soda Canyon Road, meaning that Project Opponents did not have an opportunity to counter any type of expert report on this matter produced by the Applicant. However, at the January 4, 2017 hearing, Commissioners Gill and Basayne requested that Deputy Director of County Engineering, Rick Marshall speak and answer several questions pertaining to both the physical condition of Soda Canyon Road, and the frequency of accidents thereon. During his testimony, Mr. Marshall made several statements that should have caused the Planning Commission to deny, or at least postpone approval of the Project until further investigation regarding the physical condition of the road could be performed. Specifically, Mr. Marshall stated that there "really is no funding to do the kind of improvement that [Soda Canyon] or any other road would need in the foreseeable future." He went on to state that Soda Canyon

"[r]oad is not, in my awareness, as one of the highest priority County roads that needs attention in terms of collision rate and collision concentration . . . but what I can tell is that the collisions that we've had are not concentrated, they're distributed along the length of the road, so there isn't any specific, definite pattern, and that distinguishes it from some other roads where there is clearly a pattern, an individual location that needs some help."

Despite these alarming statements, which clearly indicate that the addition of approximately 45,000 annual vehicle trips on Soda Canyon Road from the Project's winery visitors will exacerbate the poor condition of the road, and increase the number of incidents along the entire length of the road, the Planning Commission approved the Project by a vote a 3-1. As a result of Mr. Marshall's testimony, it has become clear that additional analysis of both the physical condition of the road and the collision rates and concentration thereon is necessary before the Board of Supervisors can render a final decision on the Appeal. Accordingly, KC Engineering, a firm that specializes in geologic and geotechnical review of roadways and other types of

construction projects, has been retained to conduct a geological and geotechnical review of Soda Canyon Road.

Importantly, and as it relates to good cause, the Chair should allow this additional evidence to be presented as soon as it becomes available because Appellants could not have known that Mr. Marshall would make the above statements regarding the condition of the road at the January 4, 2017 hearing, and that the Planning Commission would effectively ignore these concerning statements by approving the Project on that date. As a result, such a report responding to these statements and the decision made immediately thereafter could not have been produced prior to January 4, 2017.

Moreover, given the numerous concerns raised by project Opponents and Appellants alike in terms of the public safety and welfare stemming directly from the configuration and physical condition of Soda Canyon Road, if the Chair allows this evidence to be presented to the Board of Supervisors, the County will be in a better position to make an informed recommendation and ultimate decision on the Project, especially as it relates to the physical condition of Soda Canyon Road and public safety concerns arising therefrom.

Thus, good cause exists for the presentation of a geologic and geotechnical review of Soda Canyon Road by KC Engineering. As soon as the report becomes available, which is expected in mid-late April, Appellants will produce same for review by the Chair and County counsel.

In summary, and in light of the above, good cause exists to (1) grant a *de novo* review of the Appeal, and (2) allow both pieces of additional evidence to be presented to the Board of Supervisors as part of the Appeal. Thank you in advance for your consideration, and please do not hesitate to let me know of any questions or concerns.

Sincerely,



Anthony G. Arger
Attorney for Appellants

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aargerlaw@gmail.com

cc: Brien McMahon, Esq. (*via* email)

January 30, 2017

Attn: Glenn Schreuder
The Soda Canyon Group
c/o 2882 Soda Canyon Road
Napa, CA 94558

Subject: Review of Response to Public Comments by Richard C. Slade & Associates LLC
Mountain Peak Winery: Use Permit #P13-00320
3265 Soda Canyon Road, Napa, CA 94558 (APN: 032-500-033)

Dear Mr. Schreuder:

I have reviewed the response to public comments memorandum on groundwater conditions presented in the Project Initial Study and Negative Declaration (IS/ND) for the Mountain Peak Winery Use Permit, prepared by Richard C. Slade & Associates LLC (RCS) and dated November 30, 2016. All of the RCS responses address comments contained in my review letter on the IS/ND, dated October 11, 2016. In addition to reviewing RCS's response to public comments, I have reviewed the documents listed below to help formulate and further my opinions. Copies or website links of selected documents that you probably have not seen are included with this letter.

- California Department of Water Resources (CDWR), 2013, Rector Reservoir water yield study, Napa County, California. Prepared for: California Department of Veterans Affairs, Veterans Home of California, Yountville, May, 71 p.
- Luhdorff & Scalmanini and MBK Engineers, 2013, Updated hydrogeologic conceptualization and characterization of Conditions. Prepared for: Napa County, January, 181p.
- Kongsgaard Wine, LLC, 2015, Initial Study – Mitigated Negative Declaration, Submitted to: Napa County Planning, Building and Environmental Services, March 11, 376p.
- McKinnon, W., 2016, First amended complaint for declaratory relief; for preliminary and permanent injunctions; petition for writ of mandate; Water Audit California (plaintiff) v. The California Department of Veterans Affairs (defendant), Superior Court of California in and for the County of Sacramento, Case No. 34-2016-8002487-CU-WM-GDS, 91p.
- O'Rear, T., Manfree, A., Gailey, R, Katz, J., and Moyle, P., 2016, Mountain Peak Winery – Use Permit Application. Letter to John McDowell, Napa County Planning Building and Environmental Services Department, October 11, 14p.

- Richard C. Slade & Associates LLC, 2007, Results and Analysis of 48-hour Constant Rate Pumping Test, Irrigation-Supply Well No. 4, Circle S Ranch, Foss Valley, Napa County, CA. Prepared for: Premiere Pacific Vineyards LLC, July.
- Richard C. Slade & Associates LLC, 2014, Second Updated Report on the Results and Analysis of 96-hour Constant Rate Pumping Test, Irrigation-Supply Well No. 3, Walt Ranch, Napa County, CA. Prepared for: Hall Wines LLC, April, 56p.
- Ridge to River Incorporated Environmental Services, 2009, Rector Creek Reservoir watershed sanitary survey 2009 update. Prepared for: Veterans Home of California and Rector Reservoir Surface Water Treatment Facility, California Department of Health Services Drinking Water Division, July 10, 117p.
(http://sodacanyonroad.org/docs/Rector-Creek_Survey_2009.pdf)
- Woolfenden, L.R. and Hevesi, J.A., 2014, Chapter E – Santa Rosa Plain hydrologic model results. In: Simulation of groundwater and surface-water resources of the Santa Rosa Plain watershed, Sonoma County, California, USGS Scientific Investigation Report 2014-5052, Eds. Woolfenden, L.R., and Nishikawa, T., 292 p.
(<https://pubs.usgs.gov/sir/2014/5052/>)

Based on my review of the IS/ND, response to comments, the reports cited above and discussions with adjacent land owners, it is my continued professional opinion that the project has the potential to significantly impact: local groundwater levels and supply; groundwater conditions that sustain a neighboring spring-fed pond; and groundwater-fed spring/seep flows that sustain creek flow and associated aquatic habitat for several sensitive or endangered species within the watershed. Because the IS/ND does not fully or adequately address or mitigate for potential impacts to hydrologic, water quality and biological resources, an EIR should be completed. The rationale for this opinion is based on multiple findings presented below. Like the RCS responses, the section numbers and headings below are consistent with those presented in the RCS response to comments memorandum and my original letter.

1. Inaccurate water demand estimates that underestimated impacts to groundwater

There are two separate issues addressed in the RCS response under this section. I address them chronologically below.

- a) The RCS 2015 Memorandum indicates that past existing pumping volumes from the project site well from January 1 through September 15, 2015 (22.4 acre-feet) significantly exceeded the estimate for annual Project water demands of 14.75 acres-feet per year (AF/yr). RCS's response is that during the 2015 period, water pumped from the vineyard well was used for road work on a portion of Soda Canyon Road not maintained by the County. It is hard to believe that all or even a majority of the excess water (7.65 AF) over the estimated existing conditions annual vineyard demand pumped in 2015 was used for road work. This volume

of water would inundate a one-mile length of 20-foot wide road to a depth of over three feet.

Agreement between measured groundwater withdrawals with the theoretical calculation of existing condition vineyard demands is an important issue as it validates the baseline condition to which project impacts are evaluated against. If the existing baseline condition is not accurate and realistic, how can analyses determine and characterize potential impacts to hydrologic conditions? Even given the response by RCS, the project has not demonstrated that current vineyard groundwater extractions agree with the estimated existing condition (baseline) demands and the impact analysis in the IS/MD should be considered invalidated and incomplete.

- b) RCS states that only water use for the proposed project is discretionary under County guidelines. They also present a series of calculations that indicate that project will reduce total annual groundwater demand by 0.5 AF. Is this reduction relative to existing conditions or estimated project conditions? If the later, project groundwater demands still exceed existing condition demands. Regardless of County guidelines and what portion of pumping is discretionary or not, if the total groundwater pumping from the vineyard increases over existing conditions, under CEQA, there is the potential for a significant impact to groundwater resources. The IS/ND indicates that total annual groundwater pumping from vineyard wells will increase. If the calculations presented by RCS in their 2016 response are to the contrary, a clear presentation of the predicted total project groundwater demand is warranted. If, as stated, “Total annual groundwater use will decrease”, the proposed project groundwater demand estimates in the IS/ND should be corrected to indicate a value of 14.25 AF/yr (14.5 – 0.5 AF) versus the 16.46 AF/yr value.

2. Well yield test results that don't evaluate potential impacts to groundwater

The higher historic operational pumping rate (100 gpm) of the project well explains the greater drawdown observed during summer operations than during the pumping test when the well was pumped at a rate of 50 gpm. Given the IS/ND only analyzes the impacts of well pumping at a maximum rate of 44.5- to 46.0 gpm, we can assume the wells won't be pumped above those rates in the future as has been the practice in the past. As the existing data indicate, pumping a single well above 46 gpm will increase drawdown and the cone of influence leading to increased potential impacts that have not been analyzed under the IS/ND.

RCS assumes that because surrounding neighbor wells are over 500-feet from the project well, “evaluation of offsite impacts on nearby wells has been presumptively met by the County standards set forth in the 2015 WAA Guidelines.” This assumption is incorrect, as it does not relieve the project from analysis of potential impacts under CEQA. Within the Introduction section of the 2015 WAA is the following statement.

The purpose of this document, the Water Availability Analysis (WAA), is to provide guidance and a procedure to assist county staff, decision makers, applicants, neighbors, and other interested parties to gather the information necessary to adequately answer that question. The WAA is not an ordinance, is not prescriptive, and project specific conditions may require more, less, or different analysis in order to meet the requirements of CEQA.

Table B of the 2016 RCS response memorandum indicates that there will be up to 0.79-foot of groundwater level drawdown at the “Spring-Fed Pond” located 700-feet from the Mountain Peak well. As indicated in my 2016 comment letter, there is a neighbor’s domestic well immediately adjacent to the pond. Will this level of drawdown have an adverse impact on the yield from this well? How was it determined and where in the IS/ND is it discussed that this project influence will not adversely impact this well? Therefore, the analysis of potential impacts to groundwater resources should be considered incomplete, warranting preparation of an EIR.

3. “Misleading statement on historic vineyard impacts to groundwater levels”

I agree with RCS that the available water level data I used to make my interpretation includes similar summer-period measurements, all during drought years. The issue of data not being representative of static conditions does not apply to the most important measurement completed in July 1991 as no pumping occurred prior to installation and measurements from this new well. Based on review of the well pumping test results presented in RCS’s 2015 memorandum, Figure 4 illustrates that the well recovers and stabilizes very quickly to pre-pumping, static levels. Therefore, I continue to contend that the available data indicates a long-term decline in groundwater levels.

RCS states, “A more robust, continuous data set to measure trends in water level data in the Project area does not exist.” This suggests that there isn’t sufficient water level data to evaluate the potential long-term trends of vineyard pumping and aquifer storage. An alternative and standard method to evaluate vineyard pumping on aquifer storage exists and includes development of a long-term water budget to track cumulative annual groundwater recharge. As demonstrated in the USGS study of the Santa Rosa Plain aquifer (Woolfenden and Hevesi, 2014), a single water budget of average annual conditions does not necessarily capture the long term net changes in aquifer storage associated with the varying recharge and withdrawals during wet and dry year cycles, especially when there is significant groundwater pumping in the vicinity. Again, the IS/ND falls short in characterizing existing, baseline conditions from which to evaluate potential project impacts on hydrologic conditions, which should be corrected through completion of suitable analyses. In the absence of an analysis of potential impacts to aquifer storage, the IS/ND should be considered incomplete and an EIR should be prepared.

4. Water Availability Analysis does not comply with current County code

Please see Section 6 of this letter regarding response to the long-term estimate of groundwater recharge.

5. Water Availability Analysis does not evaluate impacts to adjacent spring-fed pond

One purpose of the public review process under CEQA is to identify potential impacts not captured in the preliminary document and address new potential impacts that come to light during the review process. The project proponents now know about the presence of a spring fed pond on the adjacent property. In this circumstance, the pond is not used for domestic or agricultural purposes. However, it does provide beneficial use as wetland habitat and supports both riparian and aquatic vegetation and habitat for associated aquatic and terrestrial wildlife. The owner of this pond, Bill Hocker, promotes these beneficial uses and is concerned about potential adverse impacts to them.

RCS claims I did not follow standard methods for determining groundwater flow direction as I did not use water level data from three wells. As noted by RCS, there isn't a sufficient number of wells available for flow direction determination. Therefore, I used the data that was available, including the vineyard well, the spring fed pond and the spring/seep location and elevation in the tributary channel to Rector Creek identified during my field visit. I felt justified in using these features as springs and seeps represent a location where the groundwater table and aquifer intersect the ground surface.

It is surprising to me that the IS/ND does not include such basic hydrologic information as groundwater flow direction and gradient in the project vicinity, especially with wells located in-between two tributary channels to Rector Creek. Such information is necessary in order to evaluate existing and potential future impacts on surrounding hydrologic and biological resources. For example, does well pumping and drawdown alter the groundwater flow direction and gradient to reduce, reverse or eliminate groundwater flow towards bordering creeks, as well as recently revealed spring fed pond?

RCS states that is a "speculative assertion" that the declining water level in the pond may be tied to groundwater pumping. Their own study (2016 memorandum) indicates that pumping at 46-gpm will lower the groundwater table that feeds the pond's spring by 0.79-feet. Given the vineyard has been pumping the well at 100-gpm in the past, it is likely the drawdown and influence/impact on the pond has been even greater. The presence of the spring fed pond is relatively new information as well as RCS's determination that the groundwater table and spring feeding the pond is under the influence of existing and future vineyard pumping. This information came to light under the CEQA process. However, a full analysis on the potential impacts on pond/wetland habitat and aesthetics that have not been addressed in the IS/ND, even after being discovered during CEQA review. Therefore, because there are potential significant impacts on the spring fed pond, that may need mitigation, requires preparation of an EIR that addresses these issues.

6. Water Availability Analysis does not evaluate project impacts to groundwater/surface water interaction that sustain adjacent creek flow

The IS/ND does not address biological resources in depth. I assume this is because there is the belief that there are no sensitive species or wetland/riparian vegetation and habitats within the influence of the project. My field observations indicate the presence of a groundwater fed reach of creek, tributary to Rector Creek, within 900 feet of the vineyard project well. This channel remains wetted and flowing during late summer of a multi-year drought. Table B in RCS's 2016 response to comments memorandum indicates that the drawdown effects of proposed project pumping will reach this same location, resulting in 0.71 feet of water table drawdown.

With regard to the WAA Tier 3 analysis criteria for interaction with an adjacent creek, the tributary and surface in question is located within the criteria's zone of influence (1500 feet) and also is part of the Rector Creek drainage, which is host to several special status species, including: California Species of Special Concern (SSC) foothill yellow-legged frog (*Rana boylei*); SSC California giant salamander (*Dicamptodon ensatus*) (O'Rear et al., 2016); and Central California Coast Steelhead, a federally threatened species under the Endangered Species Act (McKinnon, 2016; O'Rear et al., 2016). Rector Creek is specifically designated critical habitat for steelhead (ibid).

In order to address RCS's concern over the presence and nature of the wetted channel, I will provide further description of observations and added interpretation on seasonal changes to flow in the tributary. My reconnaissance of the tributary channel started well downstream of the upper terminal end of wetted channel. The trail down to the channel intersects the channel several hundred feet downstream of the spring/seep location. At this location, the channel consisted of repeated intervals of rock cascades and intervening pools. Water was flowing at the rate of several gallons per minute over the rock cascades separating pools. I climbed up the channel from this point with flow rates gradually receding towards the upstream end of the wetted channel. At the terminus of the wetted channel was a shallow pool confined in the deepest point in the channel bed. This is where the channel first intersects the groundwater table. Upstream of this point, the channel was dry, but there was evidence of recent standing water in pools by the evaporate rings and staining on bedrock and boulders that contained the pools.

I hypothesize that the location of the terminal end of wetted channel migrates downstream seasonally, as the groundwater table drops in response summer and fall dry-down. This seasonal fall in water table elevation is illustrated in the groundwater level hydrograph during the summer of 2015 in Figure 7 to RCS's 2015 memorandum (also attached to my October 2016 letter). I also hypothesize that just as the wetted channel migrates downstream during summer-fall, it moves upstream, closer to the project site and vineyard wells during the onset of winter rains. During this time, flow in the creek is sustained by both surface runoff and groundwater inflow. It is also a period of rainfall infiltration and rising groundwater table. The seasonal upstream migration of the wetted channel is important because the amount of groundwater table drawdown due to pumping becomes greater with closer proximity to the wells. Thus, influence of the wells on tributary flows (i.e., magnitude of water table drawdown) is greater, especially during transitional periods when high winter surface runoff ceases and late winter-spring

baseflow may be predominantly fed by groundwater inflow. In turn, habitat conditions for sensitive and other aquatic species comes under greater influence to changing water levels during the transition from spring to summer as vineyard well pumps are cycled on and off (see again the rapid drop and recover in well drawdown in Figure 4 of RCS's 2015 memorandum). If daily fluctuations in water table levels due to well pumping and drawdown are expressed in creek water supply, they may adversely impact the breeding of adult aquatic species as well as pool rearing habitat of aquatic juveniles. The IS/ND does not address or propose mitigation for this potential impact to hydrologic and biologic resources.

RCS speculates that wastewater discharges from residences near the wetted channel may be contributing to subsurface discharge feeding the channel. I did not smell or see evidence of nutrient-rich water (e.g., algae and aquatic vegetation blooms) that would support this assumption. However, I agree that it should be investigated and evaluated as part of the project's CEQA analysis. They also suggest that groundwater pumping from wells at the residences could have an influence on creek flows. However, this would only act to further dewater the channel and force the terminus of wetted channel downstream. Regardless, their analysis indicates influence on the water table intersecting the channel, which may have an adverse direct effect on habitat hosting sensitive species present in the watershed or indirect effect by reducing water supply to sensitive species habitats, including downstream of Rector Reservoir. These impacts may be exacerbated by pumping from other vicinity wells. Therefore, the project should be required to complete an EIR to address and propose mitigations for these potential impacts. In addition, the EIR should include a cumulative impact assessment to evaluate the effect of pumping on creek and downstream hydrologic and biologic resources from all vicinity wells in addition to the project vineyard wells.

7. Groundwater study overestimates groundwater recharge

RCS and I have been debating the groundwater recharge rate in Sonoma volcanics for a number of years on a variety of vineyard projects in Napa County. The recharge rate is typically back-calculated out of a water budget where the parameters of rainfall, runoff and evapotranspiration are measured or computed by standard methods. Recharge is typically determined as being what is left over when you subtract the outputs runoff and evapotranspiration from total rainfall. In utilizing a water budget to calculate recharge, my approach is to try and hone in on smaller watershed areas that are predominantly underlain by volcanics to reduce the influence of other lithologies like alluvium, which have significantly higher infiltration rates than most volcanics. RCS tends to go the opposite direction and complete water budgets on large, regional watershed areas underlain with a high percentage of alluvium. For example, the use of the BCM data on the Rector Creek sub-watershed to Napa River in their 2016 response to comments memorandum was done explicitly knowing that analyzing such a small study area, "is not intended and could yield misleading results." Regardless, calculating groundwater recharge is a difficult and elusive endeavor.

RCS contends that the estimate I offer in my 2016 comment letter is erroneous, oversimplified and fails to follow standard methods that they reportedly use. On the contrary, the estimate I proposed comes directly unchanged from the same LSCE&MBK (2013) report that they base their analysis. The LSCE&MBK report provides the best and most in-depth approach and analysis to calculating groundwater recharge rates in Napa County. The 8% of mean annual precipitation (MAP) infiltration rate I propose comes directly and unchanged from this study. My logic is that the watershed for which this rate was derived is smaller in size, has more similar geology by area and less influence from alluvial infiltration. It is also consistent with previous recharge rates used by RCS on other vineyard hydrology studies for projects occupying Sonoma volcanics. For example, they use a 7% of MAP Sonoma volcanic recharge rate on the Walt Ranch and Circle S Winery projects and 8% MAP for the Kongsgaard-Atlas Peak Vineyard Conversion, all projects in reasonably close proximity to the Mountain Peak Vineyard. It is interesting to note that a recharge rate of 7-8% MAP would yield a total annual recharge volume well below estimated project groundwater demands, while the 14% MAP provides an annual recharge volume essentially equal to estimated pumping demands.

I have recently obtained several documents presenting or summarizing local hydrology studies of the Rector Reservoir watershed completed by the California Department of Water Resources (CDWR, 2013) and others (Ridge to River Inc., 2009; McKinnon, 2016). Copies of these reports are attached to this letter. These reports contain multi-year precipitation, runoff and lake evaporation data - water budget variables that could be used to calculate a watershed-specific estimate of groundwater recharge. The only water budget variable missing from these reports is evapotranspiration data, which could be calculated using standard methods. This newly acquired data provides the opportunity to complete a watershed specific calculation of deep groundwater recharge that better reflects site conditions and should be considered when completing further hydrologic assessment of potential impacts to environmental resources.

If you have any questions, please don't hesitate to contact me.

Sincerely,



Greg Kamman, PG, CHG
Principal Hydrologist



March 27, 2017

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VIA ELECTRONIC MAIL

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Re: Mountain Peak Winery—Appeal of January 4, 2017 Decision of Sonoma County Planning Commission to approve application for Use Permit P13-0020

Applicant's Opposition to Appellants' Request to Augment Record with Kamman Hydrology & Engineering, Inc. Letter dated January 30, 2017 entitled "Review of Response to Public Comments by Richard Slade & Associates, LLC"

Dear Chair Ramos and Ms. Anderson:

Applicant Mountain Peak Winery objects to Appellants' request to augment the record on appeal to include a second letter from Kamman Hydrology & Engineering, Inc., dated January 30, 2017 (including 290 pages of attachments and website references) ("Kamman Post-Appeal Letter"). The Kamman Post-Appeal Letter purports to review comments dated November 30, 2016 from Applicant's hydrology consultant Richard C. Slade and Associates LLC ("Slade"), and re-argues comments Kamman made to the Planning Commission in an earlier letter dated October 11, 2016 ("Kamman Pre-Appeal Letter"), submitted almost three months before the Planning Commission's January 4, 2017 approval of the Mountain Peak application.

March 27, 2017

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Mr. Kamman did not attend either Planning Commission hearing on the Project. Appellants had over six months to submit written comments from Kamman to the Planning Commission. Applicant submits there is no good cause to add the Kamman Post-Appeal Letter to the record, and that Applicant would be prejudiced by having the Board consider untimely submission.

A. HEARING BACKGROUND

On June 27, 2016 Staff prepared an Initial Study for the Project. On July 20, 2016 the Planning Commission held a public hearing on the Project application.

The night before the hearing, Appellants' attorney Anthony Arger submitted a 35 page opposition letter with hundreds of pages of exhibits. Notably, no written comments were provided from Kamman, who did not attend. The hearing was continued to October 19, 2016.

On October 11, 2016, Mr. Arger submitted a 15 page further opposition letter with over hundred more pages of exhibits. Included in this submission was the Kamman Pre-Appeal Letter (discussed below). The hearing was further continued to January 4, 2017.

On November 30, 2016, Slade responded to the Kamman Pre-Appeal Letter. Although marked "DRAFT" for administrative purposes, the Slade response was identical to the letter that the Planning Commission reviewed and that was available for public comment on January 4, 2017.

On December 19, 2016, Mr. Arger sent further emails, with CHP and Calfire incident reports.

Staff prepared a further report to the Planning Commission for the January 4, 2017 hearing that specifically discussed the Kamman Pre-Appeal Letter and the Slade response.

On January 4, 2017, the Planning Commission approved the Mountain Peak Winery use permit application. Appellants did not submit any response to Slade, and Mr. Kamman did not attend.

On January 30, 2017, Appellants filed this appeal. On January 31, 2017 Mr. Arger presented the Kamman Post-Appeal Letter, requesting it be added to the administrative record.

B. KAMMAN PRE-APPEAL LETTER AND SLADE RESPONSE

1. Kamman Pre-Appeal Letter

The Kamman Pre-Appeal Letter set forth Kamman's review of the Initial Study and Negative Declaration. Kamman also reviewed in detail prior submissions of the applicant's consultants, including Bartelt Engineering (On-site Wastewater Disposal Feasibility Study and Water Availability Analysis, Stormwater Control Plan); Condor Earth Technologies (Wine Cave Data and Feasibility Report); and Slade (2015 Updated Memorandum summary of April 2014 constant rate pumping test for existing onsite water well).

Kamman opined that the project had the potential to impact groundwater levels and conditions; a neighboring spring-fed pond; creek flow and pool habitat; water quality; and biological resources.

2. Slade Response.

Slade prepared a detailed response dated November 30, 2016 (including detailed references, rainfall recharge and water level drawdown calculations, drawings, location map, well test analysis and watershed boundaries) to each of the assertions in the Kamman Pre-Appeal Letter.

C. APPELLANTS FAILED TO RAISE ANY ISSUES REGARDING THE ADEQUACY OF THE KAMMAN PRE-APPEAL LETTER TO THE PLANNING COMMISSION

Staff recommended approval of the Project, and rejected the Kamman Pre-Appeal Letter assertions that the Project would deplete groundwater supplies or biological resources. Among other findings, Staff noted the stable water levels over time on the Project property, reduction in Project water use through reuse of process water and 2.96 acres of vineyard removal, and a project net water use “delta” (existing conditions without the Project versus existing conditions plus Project conditions) of 0.5 AF/YR less water than under existing conditions.

Appellants’ attorney, Mr. Arger (and attorney Yeoryios Apallas), appellants and others spoke at the hearing. Appellants did not present any further information from Kamman at the Planning Commission hearing. As noted, Mr. Kamman did not attend the continued hearing. Appellants did not object or otherwise assert that they and/or Mr. Kamman had not had an adequate opportunity to present information on hydrology or biological issues, review the Slade Response, or request to submit additional material from Mr. Kamman beyond the Kamman Pre-Appeal Letter. Nor did Appellants inform the Planning Commission about any recent death in Mr. Kamman’s family that purportedly prevented preparation of a further response by Mr. Kamman.

After concluding the Public Hearing, the Planning Commission approved the Project.

D. THERE IS NO GOOD CAUSE TO ADD THE KAMMAN POST-APPEAL LETTER TO THE ADMINISTRATIVE RECORD

Appellants submitted the Kamman Post-Appeal Letter on January 31, 2017--eight pages of comments; 290 pages of attachments (71 page 2013 Rector Watershed Reservoir Study; unsigned copy of 91 page lawsuit by Water Audit California against California Department of Veterans Affairs relating to water diversions from Rector Dam; and a 117 page 2009 study relating to Rector Creek Watershed); and references to a 2013 Luhdorff & Scalmanini and MBK Engineers hydrogeologic report; a 292 page 2014 USGS Santa Rosa Plain groundwater and

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surface water simulation, 2015 mitigated negative declaration from the Kongsgaard Wine, LLC, 2015 project; and 2007 and 2014 Slade reports on other Napa County projects.

Appellants fail to provide any explanation, let alone good cause why the information contained in this untimely submission contains any new evidence or material that could not have been presented to the Planning Commission long before the January 4, 2017 hearing.

Appellants' assertion that they could not have considered the Slade response because the "final version" of the Slade response to the Kamman Pre-Appeal Letter was not "available" until December 30, 2016 is without merit. The Slade response was identical to the final version except for the word "Draft" and Staff clarified the same at the Public Hearing. Appellants did not claim at the Planning Commission hearing any confusion or inadequate review time.

Appellants and Mr. Kamman had ample time to present a full explanation of their opposition to the Project on hydrology-related issues. The Kamman Post-Appeal Letter attachments and references were available to Appellants and Kamman before the January 4, 2017 continued hearing. The Project water analyses prepared by Bartelt Engineering and Slade were also fully available to Kamman and indeed were specifically referenced in the Kamman Pre-Appeal letter. Kamman reasonably could have anticipated that Slade (whom Mr. Kamman says he has "debated for years") would respond to the Kamman Pre-Appeal Letter, and he could have included any additional purportedly supporting materials in the Kamman Pre-Appeal Letter. Appellants provide no explanation as to why Mr. Kamman did not or could not have done so. Any death in Mr. Kamman's family in December 2016 does not excuse Appellants from having failed to present the information earlier. Indeed, Appellants did not even mention at the hearing Mr. Kamman's personal circumstances as a basis for a request for any post-appeal submissions.

The Kamman Post-Appeal Letter is no more than an untimely reassertion of the unsupported, speculative contentions in the Kamman Pre-Appeal Letter which Slade fully answered, Staff reviewed, and the Planning Commission decided in favor of the Applicant. By choosing to wait to present this material after the filing of the Appeal, Appellants deprived Staff, the Applicant and the Planning Commission from any reasonable opportunity to respond.

Appellants' request to augment the administrative record should be denied.

Very truly yours,



Brien F. McMahon

cc: Anthony Arger, Esq. (via e-mail)