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Applicant's Supplemental Information

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VIA ELECTRONIC MAIL

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

Applicant's Submission of Additional Information Regarding Appeal

Dear Chair Ramos and Ms. Anderson:

Applicant Mountain Peak Winery ("Applicant") responds to the assertions of Appellants on Appeal. As discussed, the Planning Commission properly found the Project is consistent with the Napa County General Plan and Agricultural Watershed (AW) Zoning District; and complies with the County Winery Definition Ordinance (and interpretive guidance); Zoning Code; Noise Ordinance; Conservation Regulations; and the California Environmental Quality Act (CEQA).

Appellants misinterpret the County's winery development policies, standards and zoning regulations, and conflate existing environmental conditions on or proximate to Soda Canyon Road with the Planning Commission's well-supported findings of no evidence, let alone substantial evidence of any potentially significant *Project-related* environmental effects. Appellants' argumentative and speculative assertions and anecdotal evidence regarding the Project do not support a fair argument for an EIR under CEQA.

I. Introduction--The Project

The Project property consists of 41.76 acres located on the northwest side of Soda Canyon Road, approximately 6.1 miles north of its intersection with Silverado Road, 3265 Soda Canyon Road, Napa, CA, 94558; APN: 032-500-033. The Project Property is zoned AW, and is located within the Rector Reservoir Municipal Watershed Area.

The Project property includes approximately 28 acres of vineyards, a residence, and two agricultural buildings. The surrounding land uses include vineyards, several wineries (including the 450,000 per year production Antica winery), rural residences and grazing lands.

The Project seeks construction of a 100,000 gallon per year winery; 33,424 square foot cave;¹ 8,046 square foot tasting/office building; and 6,412 square foot covered outdoor crush pad and work area. The cave area will include fermentation and barrel aging areas, with 4,484 square feet devoted to tasting/marketing areas, office, restroom, employee break room and wine laboratory. The Project winery will not be visible from Soda Canyon Road.

Approximately 92% of the requested production will be from estate grapes on 112 acres of vineyards owned or controlled by the Applicant on the Project property and nearby, without the necessity of the grapes requiring access onto Soda Canyon Road to arrive at the winery for processing.²

The Project also involves demolition of the existing single family residence; installation of twenty-six (26) parking spaces; construction of two (2) new driveways and private access roads with ingress/egress from Soda Canyon Road; installation of a high treatment wastewater treatment system and community non-transient potable water supply sourced from on-site private wells, with two (2) 100,000 gallon water tanks for vineyard irrigation and one (1) 20,000 gallon water tank for domestic supply.

The Project development area is 26,572 sq. ft. Winery Coverage is 5.3% (maximum 25% permitted). Accessory/Production Ratio is 37.1% (maximum 40% permitted). Approximately 2.96 acres of vineyard will be removed to construct the Project winery.

¹ Cave spoils will be disposed on-site within existing vineyards at locations specified on Project Overall Site Plan, Bartelt Engineering, UP-1, March 2016. The Project will comply with all Napa County Conservation Regulations and is conditioned to ensure full performance under appropriate regulatory supervision. See Section IV C *infra*.

² Project vineyard manager, Garrett Buckland, Premiere Viticulture Services Napa, provided detailed information to the Planning Commission in regard to the 92% production estimate, including current site conditions, wine making methods, grape varieties, soil conditions, and regular vineyard yields of five tons per acre or more.

The Project design incorporates a LEED-Platinum footprint³, and numerous voluntary best management practices to conserve energy and water resources and to reduce its carbon footprint (further detailed in Section IV E (2)(f), Greenhouse Gas Emissions).

The Project will employ nineteen (19) full time employees, four (4) part-time employees and four (4) seasonal harvest employees. The revised Project requests wine tours and tastings by appointment for a maximum of sixty (60) visitors on the busiest day and 275 visitors per week, and includes a marketing plan with only three annual events: two (2) events per year for up to seventy-five (75) visitors, and one (1) event for up to 125 visitors.⁴ On-premises consumption of wines produced on site will occur in the tasting room and outdoor terrace. The Project also requests an exception to Napa County Road and Street Standards (RSS) to increase the maximum slope on a portion of the commercial access road to the covered crush pad and cave portals from 16% to 19.6%.

II. Project Approval

The Project history is detailed in the Staff Report prepared for the continued Planning Commission public hearing. Staff found the Project consistent with the County General Plan; AW Zoning Regulations; Winery Definition Ordinance (WDO); the County Zoning Code; Conservation Regulations; Noise Ordinance; and to have no potentially significant environmental impacts. Staff recommended adoption of a Negative Declaration and approval of a Road and Street Standards Exception.

On January 4, 2017, the Planning Commission, on a 3-1 vote, agreed with Staff's recommendations and approved the Project. On January 30, 2017, Appellants appealed.

III. Standard of Review on Appeal

The Board of Supervisors exercises its independent judgment to determine whether the Planning Commission's decision was correct, based on review of the documentary record, including a transcript of the hearing, and such additional evidence which could not have been presented at the time the decision appealed was made. No other evidence shall be permitted, except upon a showing of good cause. Napa County Code §2.88.090.

³ Only one other winery in Napa County, Teucer Winery, has a LEED-Platinum design.

⁴ The Project originally included a request for a maximum of 320 weekly visitors (maximum 80 per day), and a marketing plan of three (3) events per month for up to twelve (12) visitors, three (3) events per month for up to twenty-four (24) visitors, four (4) events per year for up to seventy-five (75) visitors, and two (2) events per year for up to 125 visitors. The Applicant voluntarily agreed at the initial Public Hearing to reduce Project visitation to 275 maximum weekly (60 maximum daily) visitors; and marketing events from 78 to 3 events annually by elimination of all events for 12 and 24 guests; reduction of 75 guest events from 4 to 2; and reduction of 125 guest events from 2 to 1.

As more particularly set forth in the Chair's Determination of Good Cause regarding Appellants' request for a *de novo* review and to augment the record, the Chair has denied Appellants' request for a *de novo* review; partially granted and partially denied Appellants' request to augment the record to include a January 30, 2017 letter from Kamman Hydrology & Engineering, Inc. ("Kamman") (the record will be augmented with the eight page letter, but not the 290 pages of attached exhibits); and denied Appellants' request to allow new information regarding a geotechnical and geologic review of Soda Canyon Road by KC Engineering.

Applicant opposes inclusion of the KC Engineering study for the same reason it opposes the second Kamman letter. Appellants had over six months spanning two public hearings to submit written comments to the Planning Commission. There is no good cause to add the untimely Kamman letter or the KC engineering study to the record.

Nor is there good cause for a *de novo* review. Appellants submitted voluminous written opposition, exhibits, graphical presentations and exhaustive testimony from numerous witnesses for the two lengthy public hearings. The Chair has afforded Appellants two hours due process to present their opposition fully at the Appeal hearing. There is no justification for more.

IV. The Planning Commission Correctly Approved the Project Use Permit Application.

A. The Project is Consistent with the General Plan.

Courts give great deference to an agency's determination concerning consistency with its general plan due to an agency's "unique competence" to interpret its policies and the need for broad discretion to balance and construe those policies in light of the purposes of the General Plan. *Pfeiffer v. City of Sunnyvale City Council*, 200 Cal.App.4th 1552, 1562-63. (2011); *see also Friends of Lagoon Valley v. City of Vacaville*, 154 Cal.App.4th 807, 816 (2007). A project need not be an "exact match" with a General Plan, only compatible with its objectives and policies; consistency findings can be reversed only if based on evidence from which no reasonable person could have reached the same conclusion based on the evidence presented. *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* 102 Cal.App.4th 656,678 (2002). The Planning Commission engaged in precisely this reasoned balancing analysis when it found the Project consistent with the overall goals and objectives of the General Plan.

The General Plan land use designation for the subject parcel is Agriculture, Watershed and Open Space. Agricultural Preservation and Land Use Goal AG/LU-1 guides the County to "preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County." Goal AG/LU-3 states that the County should "support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands." Goal AG/LU-3 and Policy AG/LU-2 recognize wineries as agricultural uses. The Project's wine processing use supports the economic viability of agriculture within the County, consistent with Goal AG/LU-3 and Policy

AG/LU-4. Authorizing a winery at the Project site supports the economic viability of the vineyard use on the property, consistent with Economic Development Goal E-1 and Policy E-1.

The General Plan generally recognizes the “Right to Farm”, specifically referenced in Policy AG/LU-15 and throughout the County Code. “Right to Farm” provisions ensure that agriculture remains the primary land use in Napa County and is not threatened by potentially competing uses or neighbor complaints. The General Plan reinforces the County’s long-standing commitment to agricultural preservation, urban centered growth, and resource conservation.

The Project’s LEED-Platinum design is consistent with Policy CON-65(e) and 67(d), which require consideration of Greenhouse Gas Emissions and promote and encourage “green building” design.

B. The Project Complies with the WDO and the County Zoning Code.

The Planning Commission correctly found that the Project is consistent with the AW Zoning District regulations. Wineries (Napa County Code §18.08.640) and uses in connection with a winery (Napa County Code §18.20.030) are permitted in the AW District subject to an approved use permit. Project site improvements will comply with the development regulations of the AW District, including the minimum road setback for winery buildings and maximum building height (County Code §§18.104.010, 18.104.220 and 18.104.230). The Project complies with the Napa County WDO and all other requirements of the County Zoning Code.

Appellants erroneously assert that WDO Resolution 2010-48 precludes approval of the Project because of its location on Soda Canyon Road. Resolution 2010-48, which provides “interpretive guidance” to the Board in reviewing winery-related sections of the County’s Zoning Ordinance, complements, not supersedes the Zoning Ordinance, and expressly recites that in the event of any conflicts, the Zoning Ordinance prevails. Resolution 2010-48 states only that the Board considers the remoteness of the location and quantity of wine to be produced and endeavors to ensure a direct relationship between access constraints and marketing and visitor programs.

The Planning Commission did that, and found no inconsistency between the Project, the WDO or the interpretive guidance of the Resolution. Several wineries are located on Soda Canyon Road, including the much larger 450,000 gallon production Antica Winery. While other wineries on Soda Canyon Road are smaller and associated visitation is smaller than requested by the Project, the WDO does not prohibit wineries with a production capacity or proposed visitation at this or any other hillside location similar to the Project.

Staff provided an updated Winery Comparison Analysis with data regarding other wineries and locations, and Applicant also presented evidence regarding the appropriateness of the Project scope/scale for its location and size. Staff’s report did not consider the Project size problematic, and in recommending approval, noted the high quality, unique Project LEED design; Applicant’s

efforts to retain the visual character of the site; and opinion that approval would not lead to an increase in requests for similar facilities in similar locations or on Soda Canyon Road.

Recognizing, as did Staff, that neighbor concerns essentially related to “community character”, the Planning Commission acknowledged those concerns but found the Project location and scale appropriate and consistent with General Plan policies, the WDO and the Zoning Code.

C. The Project Complies With The County’s Conservation Regulations.

Appellants assert that Project grading activity and handling of cave spoils has the *potential* to cause damage to the Rector Municipal Watershed and thereby violates the County’s Conservation Regulations because there will be a significant volume of cave spoils⁵, and certain areas will be disposed near a blue line stream. There is no basis for Appellants’ assertion. On the contrary, standard Project conditions of approval and regulatory supervision and performance standards ensure full compliance with the County’s Conservation Regulations.

The County’s Conservation 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.” Napa County Code §18.108.080. Standard Project Conditions of Approval ensure cave spoils will not result in environmental impacts, including all conditions identified in the County’s Engineering Services Division Memorandum dated July 1, 2016.

The Conditions of Approval require, without limitation, that on site excavation, fill, general grading, and conveyance be constructed, reviewed and approved by the Planning Building and Environmental Services Department prior to the commencement of onsite land preparation or construction; grading and proposed soil stockpile areas conform to the current Napa Stormwater Quality Ordinance; appropriate erosion and sediment control measures be implemented to minimize the risk to pollutant and sediment transport to a receiving water body; stockpiles be located a minimum of 100 feet away from concentrated flows of stormwater, drainage courses, and inlets; earth disturbing activities include measures to prevent erosion, sediment, and waste materials from leaving the site and entering waterways both during and after construction; disturbed soils be stabilized; all construction and post-construction storm water pollution prevention protocols be followed; and Best Management Practices (BMPs) be implemented.

In short, the design and location of the cave spoils and graded material fill areas will adhere to the County’s Conservation Regulations, California Building Code (CBC), Road and Street Standards, and California Department of Fish & Wildlife, California Regional Water Quality Control Board (BAAQMD) requirements and the Project geotechnical engineer’s

⁵ Appellants create a misleading impression of cave spoils volumes by referring to cubic feet, when industry standard measurements are in cubic yards (conversion factor of 1:27).

recommendations. The construction of the fill areas will observe industry construction BMPs, and fully comply with the CBC, the Napa County Stormwater Quality Ordinance, BAAQMD Basic Construction BMPs, and will be monitored by the Napa County Engineering Services Division, the Project Geotechnical Engineer and the Civil Engineer. A Grading Permit from the Napa County Engineering Services Division and coverage under the State of California's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities will be obtained for all grading activities associated with the Project prior to any ground disturbing activities.

D. The Project Will Not Adversely Affect the Public Health, Safety or Welfare of the County of Napa.

The Project findings specify that 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. The recommended Conditions of Approval incorporate these comments into the Project to assure the protection of the public health, safety, and welfare. Appellants' repeated claim that Soda Canyon Road is not safe due to traffic and fire hazard issues, and that allowing the Project will adversely impact public safety is contrary to the evidence. As discussed in Section E below, traffic data and observations on roadway functionality indicate Soda Canyon Road is not a health and safety hazard to current users. With respect to fire concerns, vineyard land surrounding the Project site provides a natural fire break, and the Project extensive cave complex represents a potential safe haven in the event fire traps area residents from escape routes. As further discussed in Section IV E below, there is no evidence that the Project would exacerbate the existing conditions in any manner to endanger public health, safety or welfare, or that is environmentally significant.

E. The Planning Commission Correctly Adopted a Negative Declaration for the Project.

Appellants recite a litany of environmental ills they claim will occur if the Project is approved. Most, if not all of Appellants' complaints relate to concerns regarding "community character" and existing conditions that the Project will not impact or exacerbate in any significant environmental manner. Staff and the Planning Commission appropriately distinguished these non-CEQA review considerations and focused on the appropriate scope of CEQA review--does *the Project* have the potential to significantly impact the environment. The Planning Commission correctly concluded it does not; its adoption of a Negative Declaration was proper.

1. The Fair Argument Standard Requires Substantial Evidence That The Project Has The Potential To Cause A Significant Environmental Impact.

CEQA does not require analysis of social impacts or "community character" of a project that does not result in significant physical effects on the environment. *See Preserve Poway v. City of Poway*, 245 Cal. App. 4th 560 (2016) (psychological and social impact of replacement of horse

facility with homes, i.e., community character concerns, not a significant environmental effect under CEQA); *Eureka Citizens for Responsible Government v. City of Eureka*, 147 Cal. App. 4th 357 (2007) (safety of playground that did not contribute to secondary physical effects not a proper consideration under CEQA); *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, 102 Cal.App.4th 656 (2002) (parking shortfalls in San Francisco relative to demand not significant environmental impacts); *Baird v. Cnty. of Contra Costa*, 32 Cal. App. 4th 1464, 1469 n. 2 (1995) (neighbors' claim of crime problems from construction of young male residential treatment facility not subject to CEQA).

Nor does CEQA require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents. CEQA mandates only an analysis of how a project might exacerbate existing environmental hazards. *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 (2015)

Thus, under the "fair argument standard", the Negative Declaration may only be set aside under CEQA if there is (1) *substantial* evidence (2) sufficient to support a *fair* argument (3) that the Project may have a *significant* effect on the environment based on the public agency's applicable thresholds of significance. *Rominger v. Cnty. of Colusa*, 229 Cal. App. 4th 690, 713 (2014); *Citizens for Responsible Dev. v. City of W. Hollywood*, 39 Cal. App. 4th 490, 498–99 (1995).

CEQA defines "substantial evidence" as "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Cal. Pub. Res. Code (hereinafter "PRC") § 21080(e)(1); *see also* Guidelines § 15384(b). What is *not* substantial evidence is argument, speculation, unsubstantiated opinion, or narrative, clearly inaccurate or erroneous evidence, or evidence of social or economic impacts that do not physically impact the environment. PRC §§ 21080(e)(2), § 21082.2(c); *see also* Guidelines § 15384(a)⁶.

Comments by members of the public not based on an adequate factual foundation do not constitute substantial evidence. PRC § 21082.2(c); *Newberry Springs Water Ass'n v. Cnty. of San Bernardino*, 150 Cal. App. 3d 740, 749 (1984). Nor do generalized concerns, fears, and suspicions about a project's potential environmental impact constitute substantial evidence. *See Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.*, 215 Cal. App. 4th 1013, 1042 (2013) (general objection to noise in neighborhood not substantial evidence); *Porterville Citizens for Responsible Hillside Dev. v. City of Porterville*, 157 Cal. App. 4th 885, 905 (2007) (general objections to project density and quality not substantial evidence); *Bowman v. City of Berkeley*, 122 Cal. App. 4th 572, 592 (2004) (generalized objections regarding aesthetic merit of building in urban area not substantial evidence); *Lucas Valley Homeowners*

⁶ CEQA Guidelines are found at 14 Cal. Code Regs. §§ 15000 *et seq.* ("Guidelines").

Ass'n v. Cnty. of Marin., 233 Cal. App. 3d 130, 162–63 (1991) (generalized concerns, fears and anecdotal statements about traffic and parking impacts not substantial evidence).

Even where evidence of environmental impacts has been shown, it must also be shown the impacts are *environmentally significant*. A “significant effect on the environment” is “a substantial, or potentially substantial, adverse change in the environment.” PRC § 21068; Guidelines § 15382. Agencies evaluate potential adverse environmental change by developing standards of significance. *Rominger*, 229 Cal. App. 4th 690, 716 (2014). CEQA grants lead agencies discretion to develop their own thresholds of significance. Guidelines § 15064(b) (determination of significance threshold “calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data”).

Thus, Appellants must identify substantial evidence supporting a fair argument of a significant impact that exceeds the threshold(s) of significance. *Rominger*, 229 Cal. App. 4th at 716–18 (no fair argument that conversion of farmland to nonagricultural use might constitute a significant effect on the environment in light of county’s determination that the conversion was less than significant); *see also Citizens for Responsible Equitable Env’t Dev.*, 197 Cal. App. 4th 327, 336–37 (no fair argument of significant air quality impacts; although the evidence showed the project would emit air pollutants, petitioners failed to identify any evidence to contradict the air quality assessment’s determination that increases were below its threshold of significance).

2. Appellants Failed to Identify Substantial Evidence To Support A Fair Argument of Any Significant Project-Related Environmental Impact.

(a) Traffic Safety. Appellants presented concerns and presented anecdotal evidence regarding existing conditions on Soda Canyon Road relating to traffic safety. Appellants mischaracterize the County’s position and the evidence regarding Soda Canyon Road relative to both the existing conditions and the Project. There is no evidence Soda Canyon Road is unsafe, and accident statistics, objectively considered, belie Appellants’ contentions to the contrary. But however the existing conditions on Soda Canyon Road are viewed, there is no evidence the Project will result in any significant impact on traffic safety to worsen those conditions.

In its report for and testimony at the initial public hearing, Staff noted that traffic data and Staff’s field observations on the functionality of Soda Canyon Road indicate that it is not a health and safety hazard to current users. Having considered detailed analysis of vehicle trips, including trucks, prepared by Applicant’s traffic engineer and peer reviewed by the County Traffic Engineer, Staff noted that Soda Canyon Road is well below operational capacity during peak hours and carries very few cars outside of peak times. For the continued public hearing, Staff further reported on the detailed review by County Road Commissioner Rick Marshall and Applicant’s traffic consultant, Mark Crane, of all evidence submitted, as well as all accident location data and details along Soda Canyon Road between Silverado Trail and the Project site

from 2011-2015 that indicated only 13 total accidents along Soda Canyon Road, with no two accidents along Soda Canyon Road occurring at the same location other than at Silverado Trail.⁷

Mr. Marshall also testified regarding the existing accident data for Soda Canyon Road. Mr. Marshall, whose responsibility includes tracking collision reports throughout Napa County and looks for patterns to insure the health and safety of the public, concluded that the conditions of Soda Canyon Road are not unique; many other mountain roads in the County have similar conditions; and Soda County does not stand out in its rate of accidents.⁸ Also according to Mr. Marshall, Soda Canyon Road has an even distribution of accidents, and no concentration of accidents at any site or the Project location. Mr. Marshall said nothing to indicate any peculiar issue to distinguish Soda Canyon Road as presenting a particular safety concern, nor expressed any opinion that the Project would worsen existing conditions.⁹

Appellants' presentation of "incident" statistics on Soda Canyon Road for several years prior to consideration of the Project application are misleading and in no way suggest the Project would be a significant contributor to traffic safety risks. Many of these reported incidents have nothing to do with traffic issues, and those relatively few that do provide no evidence that the Project will significantly worsen existing conditions. Appellants' speculation regarding the potential safety impacts of traffic associated with the Project on Soda Canyon Road does not constitute evidence that Project visitors will contribute to purported existing safety issues in any significant way.¹⁰

The Planning Commission engaged in a thorough discussion regarding Appellants' road safety concerns. Commissioner Basayne observed that although the Project location was not "ideal" for public access, it was similar to other County roads (some with worse conditions) and found the Project location suitable for the proposed use. He also noted Applicant's voluntary steps to ameliorate traffic by reducing significantly its marketing program. He concluded the Project would not cause any change in traffic level of service and would not worsen existing conditions. Commissioner Scott acknowledged neighbors' concerns regarding Soda Canyon Road, but

⁷ In regard to the safety of the Silverado Trail/Soda Canyon Road intersection, Applicant's planning consultant, Donna Oldford, further advises a continuous left-turn lane extending south from the Soda Canyon Road intersection will be required as conditions of approval for two other wineries located to the south of the intersection, the existing Reynolds Family Winery and the newly proposed Ellman Family Winery. The new median refuge area will be a great benefit to existing as well as Project traffic assisting left-turn movements from Soda Canyon Road to southbound Silverado Trail. The Reynolds approval hearing is scheduled for June, 2017, and processing of Ellman is anticipated to be complete within a year. Both applicants have expressed the desire to work cooperatively to construct the left-turn lane. Crane Transportation Group is involved with both of these traffic studies.

⁸ They identified six accidents where speed signing may have been helpful to reduce vehicle speeds. Five out of six listed unsafe speed as the cause of the accident and five of the six were in the downhill direction.

⁹ Mr. Marshall acknowledged that Soda Canyon Road, like many County roads, lacks optimal pavement conditions and current funding did not allow for improvements, but did not associate these conditions with traffic safety issues.

¹⁰ As discussed in Section IV E (2)(b), Level of Service on Soda Canyon Road is A, the highest level of service, and the addition of Project traffic would not change this operation.

considered it inappropriate for the Planning Commission to hold the Project hostage to pre-existing conditions, and found no evidence to assume that the Project would exacerbate existing conditions, and like Commissioner Basayne, noted Applicant's reasonable efforts to mitigate those concerns by reducing the number of marketing events. Noting the state of current road conditions, Commissioner Cottrell expressed appreciation for Applicant's environmentally-focused design and its efforts to scale down the Project, but could not support the visitation level sought due to its location. Chair Gill echoed the comments of fellow commissioners regarding neighbors' thoughtful concerns, but noting Applicant's attempts to scale the Project in a manner that still suited its needs, also found the Project appropriate.

(b) Traffic Volume. Appellants erroneously seek to equate raw Project vehicle trip numbers with impact significance under CEQA. Quite the contrary, the Initial Study noted that Soda Canyon Road functions at a high level of service (LOS A) even during peak periods. In its initial report, Staff concluded "it is clear...that the project would not result in a significant traffic impact", i.e., Soda Canyon Road is well below operational capacity during peak hours and carries very few cars outside of peak times; truck traffic will increase, but well within the capacity of the road, and the types and frequency of truck trips will not be out of character with truck trips that already occur routinely in the area. Staff recommended approval after detailed analysis of vehicle trips prepared by Crane Transportation Group for Applicant and peer reviewed by the County Traffic Engineer.¹¹

In sum, the County and Crane analyzed the proposed additional traffic to the roadway resulting from the Project and concluded that increases would not change the high level of service on Soda Canyon Road (LOS A) or result in any off-site level of service or signal warrant impacts to Silverado Trail, Soda Canyon Road or the Silverado/Soda Canyon Road intersection; would not degrade operation from acceptable to non-acceptable at any analyzed location; and peak traffic volumes at the intersection of Soda Canyon Road and Silverado Trail (which already experiences unacceptable "without Project" operation) would be less than 1% of the current volume of the intersection and thus not a substantial change to the function of that intersection. Thus, they found the Project traffic would not result in a cumulatively considerable contribution to a traffic impact pursuant to the County's 1% significance criteria.

Notably, the Crane traffic volume analysis was conducted prior to Applicant's voluntary proposal to reduce daily visitation maximums from 80 to 60, weekly maximums from 320 to 275, and marketing events from 78 to 3. Thus, as revised, the Project would generate significantly less

¹¹ See Crane Transportation Group Traffic Impact Report dated March 16, 2015 ("Crane Report"). As further noted in the Crane Report, estate grapes grown on 112 acres of vineyards owned or controlled by the Applicant are currently offhauled to processing facilities in Napa in 84 trucks. The Crane Report concluded that there will be a reduction of about 88 existing round-trip truck trips from Soda Canyon Road each harvest due to grapes from the Project property and nearby vineyards supplying 92% of the Project's grape production, and the elimination of outhaul truck trips from these vineyards on Soda Canyon Road and Silverado Trail.

traffic volumes than originally analyzed, where no significant traffic impacts were determined. The Planning Commission correctly found Project-related traffic would result in no significant environmental impacts.

Appellants' personal opinions and concerns regarding existing traffic conditions on Soda Canyon Road do not constitute substantial evidence of a significant adverse traffic impact *from the Project*. *Leonoff v. Monterey Cnty. Bd. of Supervisors*, 222 Cal. App. 3d 1337, 1352 (1990) (citizen comments, including testimony from self-proclaimed expert, consisting of "unsubstantiated conclusions about traffic being dangerous near the project site" without stated "factual bas[e]s . . . do not rise to the level of substantial evidence supporting a fair argument of significant environmental effect"); *Citizen Action to Serve All Students v. Thornley*, 222 Cal. App. 3d 748, 756 (1990) (speculation and generalizations about traffic, parking not substantial evidence of project-related impact).¹²

(c) Fire Safety. The Planning Commission acknowledged neighbors' concerns that Soda Canyon is a high fire hazard area prone to wildfire, and that intensifying land use with the Project would somehow impact fire safety. However, the evidence presented supports that the Project will improve fire safety, not worsen it. As Staff reported, the County Fire Marshal reviewed the Project and found that it complies with design standards and will be built with fire safe materials. Staff further observed (and Commissioner Basayne agreed) that the vineyard land surrounding the Project site provides a natural fire break. Staff further noted two evacuation routes from upper Soda Canyon--Soda Canyon Road itself, and a less direct route through the Circle S Ranch property to Atlas Peak Road. Applicant also offered its water storage resources for CDF use, in the event of wildfire.

The Fire Marshal and the County Roads Commissioner both concluded that additional traffic to Soda Canyon Road would not substantially increase the risk of fire from motor vehicles. Staff further observed that a large proportion of the rural roads in Napa County are in hillside settings with high fire hazard, and many of these roads carry much larger volumes of daily traffic, including visitor traffic, without the vehicles causing significant threat of wild land fire. The Planning Commission thus found no Project-related significant fire safety impact.

(d) Hydrology. Appellants' consultant Kamman incorrectly claims¹³ that the Project would deplete groundwater supplies and asserts that the Bartelt Water Availability Analysis (WAA) and

¹² The Smith Engineering "peer review" traffic analysis to which Appellants refer speculates (and well outside Smith's claimed expertise) additional truck trips because Applicant will not meet its 92% production estimates from estate grapes on-site or from nearby vineyards under its control, and analyzed existing traffic conditions on Soda Canyon Road, not whether the Project would have a significant impact on the existing conditions. As Crane demonstrated and the County traffic engineer concurred, the Project will not have any such impact.

¹³ As noted in Section III, Kamman submitted one letter before Project approval, and a second letter after the Appeal. The Chair determined good cause exists to augment the record with the 8-page second Kamman letter. We respond herein to both Kamman letters.

initial Slade hydrogeological analysis¹⁴ improperly evaluate water demand and groundwater availability. The water demands for the Property with the Project are 0.5 AF/YR less than the Property's current non-discretionary water demand; there is no Project-related water impact.¹⁵

Staff's updated report incorporated a detailed accounting of current vineyard irrigation demand, and calculation of future demand from information Slade and Bartelt provided. Groundwater extraction totals recorded by Applicant since August 2014 were also provided, are updated herein¹⁶, and reflect a significant decrease in groundwater extraction since December 2015.

Slade's water demand calculations used 129 gallons per vine (the existing use presented by Bartelt) to determine the reduction of total annual groundwater demand for the Property as a result of removing 2.96 acres of vines.¹⁷ Hence, the Project-related reduction of 0.5 AF is calculated relative to existing conditions, not estimated future conditions.¹⁸

The Project positive water use "delta" includes reuse of winery process water that will offset 1.84 AF/YR of water use that would have otherwise been used for vineyard irrigation (an existing "of right" water use that will continue if the Project were not approved)--a water-neutral situation. Analysis of potential water loss in the recycled water system was also evaluated. Bartelt's experience and available data regarding pre-treatment systems indicates at most a 3-5% water reuse reduction factor for "sludge removal", with additional sludge de-watering presses available, if needed, to bring reuse closer to 100%.¹⁹

Since the Project would use less groundwater than under existing conditions, Kamman's various technical assertions regarding Slade's water analysis are irrelevant. However, Kamman both mischaracterizes the Slade Response and his speculative assertions lack factual support.

- Kamman insinuates that Slade incorrectly "assumed" the Project had "presumptively met" Napa County Water Availability Analysis ("WAA") Guidelines. Slade's Response cited to the Guidelines which provides that *"the Tier 2 well interference criterion is presumptively met if*

¹⁴ Richard C. Slade & Associates, LLC Updated Summary of April 2014 Constant Rate Pumping Test Existing Onsite Water Well (October 31, 2015); Bartelt Engineering Water Availability Analysis for the Mountain Peak Winery (March 2016) (attached to Staff Report for July 20, 2016 hearing).

¹⁵ See Slade Response at pages 2-3.

¹⁶ Updated Table 1 to Slade's 2015 report with current groundwater extraction data is attached as Exhibit 1 hereto.

¹⁷ While not required to reduce the current "of right" use, the Project vineyard manager projects a lower future water demand of 104 gallons per vine due to several factors, including, a change in winemaking goals; later spring rains (more normal season) when compared to previous "drought" years; vine maturity; and active attempts to reduce water usage in the vineyard (including disking every other row in parts of the vineyard to reestablish permanent cover crop), growing less canopy, hedging earlier, picking earlier, and training vines to use less water.

¹⁸ Even if 104 gallons/vine were used in lieu of 129 gallons/vine in reduction calculations, there would still be a 1.7 AF/YR vineyard water use reduction, or 0.1 AF/YR less water use than under existing conditions.

¹⁹ A 3-5% reduction of process water reuse is only 0.05-0.09 AF/YR (against a positive Project delta of 0.5 AF/YR).

there are no non-project wells located within 500 feet of the existing or proposed project well(s)." As the neighboring well Kamman references is further than 500 feet from the Project Well, drawdown analyses therefore have been presumptively met per the WAA Guidelines.

- Kamman misrepresents as fact the Slade Response *theoretical* calculation of a 0.79 ft. of water level drawdown at the "spring-fed pond" during pumping events at the Project property, using standard hydrogeologic methods (i.e., the Theis equation). These small theoretical values calculated for the purported spring sites assume an idealized, homogeneous, isotropic aquifer, not the fractured, highly variable volcanic rock aquifer system that underlies the Project site. The Slade Response further states "*that theoretically-calculated [drawdown] values are virtually always greater than the actual field-monitored values*". Thus, Slade concluded actual Project drawdown, if any, would be less than the theoretical values and essentially immeasurable and difficult to attribute to the Project well (due to the effects of well pumping and onsite septic discharge at properties closer to the purported sensitive receptors). Simply put, pumping at the onsite Project well would not have a water level interference effect at the locations of the purported springs (i.e., the spring-fed pond and the wetted channel), particularly considering that future pumping rates are proposed to be lower with the Project than the existing pumping rates.²⁰
- Assuming, as Kamman claims, the neighbor's well is "immediately adjacent to" the spring fed pond, a distance of 700 feet from the Project Well, the Slade Response demonstrates that the theoretical 0.79 foot drawdown calculated for that distance is much less than the "Default Well Interference Criteria" shown on Table F-1 of the May 12, 2015 Napa County WAA Guidelines. Therefore, there is no significant Project water level drawdown effect per the County's standards of significance.
- Water level data collected through March 2017 show that the current static water level in the Project Well is near its historic high of 15 feet per the driller's log.²¹ No long-term, progressive decline in water levels is apparent in Project water level data record, despite historic pumping that exceeds the projected future groundwater use and the recent 5-year drought period. In addition, the Project will use less water in the future than it does under existing conditions. If the Project is not developed, groundwater extraction at the property will continue at current levels with no groundwater level monitoring absent standard condition of approval in winery use permits. Hence, the Project does not increase use of groundwater beyond the existing condition.
- The Project will not impact the existing "wetted channel" because the Project will not use more water in the future than is currently used under existing conditions; in fact, less water will

²⁰ Notably, Kamman did not opine that 0.79 ft. of theoretical drawdown "will have an adverse impact" on the neighbor well; he only poses the question. Per Slade, 0.79 ft. of induced drawdown is negligible in a typical well used for domestic supply purposes in Napa County.

²¹ Figure 7 from the Slade October 31, 2015 analysis has been updated with current water level data to illustrate the change in water levels over time in the existing Project property Well. See Exhibit 2 attached.

be used.²² There is no basis under CEQA for Kamman's suggestion that the Project should consider possible effects of identified offsite area groundwater wells and residences presumed to have onsite waste disposal systems that are closer to the "wetted channel" than the Project well. The Project is not responsible for assessing possible effects on the "wetted channel" caused by residential wastewater systems or groundwater wells for offsite properties. Nor is the Project required to provide mitigation measures for uses not attributable to the Project.

- The Project will have no potential future impacts on "surrounding hydrologic and biological resources" because the Project will use less groundwater under existing conditions. If the Project is not developed, groundwater extraction will continue at current levels. Kamman concedes drawdown impacts (if any exist) on the spring-fed pond would likely have been greater under the existing condition. Therefore, the Project, which will reduce the groundwater demand, will reduce any theoretically assumed impact on the spring-fed pond compared to current impacts, if any impacts exist.

- The Slade Response demonstrated that Kamman does not use the proper methodology and is improperly interpreting relevant recharge data. Kamman's recharge rate assertions are also beside the point. Water levels from the time the onsite well was constructed in 1991 until the well pumping test in 2014-2015 are nearly the same; thus, the water levels in the well are considered to be stable over time. Further, as noted above, data collected through March 2017 show that the water level in the well is near its historic high. No long-term, progressive decline in water levels has been observed, despite past pumping that exceeds the projected future groundwater use for the Project.

Even with an assumed difference in recharge rates, the Project has no impact because future total groundwater demand is less than the total groundwater use without the Project, and the existing vested use will continue with or without the project. To the extent any purported recharge deficiency is claimed to already exist, it will not be made worse by the Project.

(e) Biological Resources. Appellants assert the Project would impact biological resources based upon Amber Manfree, PhD's claimed identification of special status species within Rector Creek and riparian areas up stream of Rector Reservoir, and Kamman's purported location of the wetted channel approximately 900 ft. from the Project Well. Manfree asserts that even a small draw down of the wetted channel could negatively impact species; Kamman, that groundwater pumping has the potential to impact the wetted channel.

Even if Appellants' assertions regarding sensitive species and the location of the Rector Creek wetted channel were accurate, the Project has no impact on these existing conditions. The Project will *decrease* total water use. Accordingly, there is no increased draw down potential.

²² The Project will recycle and re-use process wastewater for vineyard irrigation.

In addition, Slade's calculations show only a small *theoretical* water level draw down during pumping events at the Project property; assume an idealized aquifer that does not exist; confirm actual draw down, if any, would be immeasurable and difficult to attribute to pumping at the Project Well; and rule out water level interference at the spring fed pond, particularly considering the fact that future pumping rates are proposed to be lower than existing rates.

Appellants' further assertion that "climate change" might result in less ground water recharge than has been evaluated is entirely speculative and is not supported with any factual foundation. Slade is prepared to state to the Board that not all climate change prediction models include "less rain, and more intense events". Some models predict an *increase* in rain in the North Bay area.²³

(f) Noise. Appellants' claims regarding potential Project noise are without merit. Applicant commissioned an Environmental Noise Assessment by Illingworth & Rodkin, Inc. for the Project that concluded the Project will meet County noise standards. The Project noise consultant further concluded noise generation from Project mechanical equipment would be below County Noise Ordinance thresholds. Calculated Project noise levels related to marketing also will be greatly reduced since Project daily visitation has been reduced to 60 visitors on the busiest day and Project marketing events have been reduced from 78 to only three annual marketing events. Staff agreed, and recommended only (and the Conditions of Approval provide for) additional noise evaluation concerning truck movements at the service driveway prior to final occupancy.

(g) Greenhouse Gas Emissions. Appellants assert without foundation that Project greenhouse gas emissions would constitute significant impacts either on an individual or cumulative basis. Appellants are wrong on both counts. Because the Project was found consistent

²³ In response to a similar comment by the Napa Sierra Club on the Walt Ranch project, Slade responded (equally applicable here):

"The [Sierra Club] letter states that: 'Estimation of sustainable rates of groundwater withdrawal cannot rely on past averages. While general effects of climate change, such as warmer weather, more intense storms and sea level rise, are widely agreed upon, the effects on microclimates are less certain. I am including a scientific paper which attempts to model the bay area climate over the next several decades'. The letter included a referenced journal article titled 'Downscaling Future Climate Projections to the Watershed Scale: a North San Francisco Bay Estuary Case Study' by Elisabeth Micheli, Lorraine Flint, Alan Flint, Stuart Weiss, and Morgan Kennedy, published in San Francisco Estuary and Watershed Science, Dec, 2012 (Micheli 2012). Slade understands that there are concerns regarding climate change, with respect to estimates of future precipitation. While climate models are in general agreement that average temperatures are increasing over time, estimates of future precipitation are less reliable. As stated in the conclusions of the document referenced by the Napa Sierra Club letter, 'There is more uncertainty in projected precipitation trends than in projected temperature trends.' (Micheli 2012). Further, that reference also stated: 'While general circulation models converge on consistent temperature projections for the region given a range of emissions scenarios, they do not provide consistent projections about future precipitation.' Recharge volume analyses presented by RCS include and reference multiple rainfall datasets, and rely on conservative assumptions.

with the County General Plan for which an EIR was prepared, the Initial Study properly focused on potential impacts peculiar to the Project. The Initial Study evaluated the Project emissions against the BAAQMD CEQA Screening Criteria and Significance Thresholds (Table 3-1, Operational GHG Screening Level Sizes). The Initial Study found: (1) the Project was within the BAAQMD threshold of significance for GHG emissions; and (2) further recognized the Applicant's commitment to a LEED Platinum performance standard and incorporation of BMPs including energy conserving lighting, water efficient fixtures and landscaping, planting of shade trees, living roof, minimizing tree removal and grading, local food production, sustainable practices, maximum utilization of cover crop, and retaining biomass by chipping and reusing material rather than burning it.

Planning Commissioners acknowledged and applauded Applicant's environmental design focus, which Chair Gill viewed as a statement of intent to operate at a high performance level. There is no basis in the record to conclude the Project does not meet GHG significance thresholds.

(h) Archeological or Historical Resources. Appellants assert without foundation the presence of significant archeological/historical resources related to the Wappo tribe that the Planning Commission failed to consider. Not so. The Initial Study concluded that the Project is not known to be located in an area that is archeologically sensitive, but recognized the presence of known archeological sites approximately one-half mile from the Project property. Standard conditions of approval provide that Project construction shall cease if resources are found during earth-disturbing activities, and a qualified archeologist will investigate the site and analyze any artifacts encountered to determine if additional measures are required.²⁴

For the foregoing reasons, the Appeal should be denied.

Very truly yours,



Brien F. McMahon

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

²⁴ The majority of the Project site has been actively farmed for many years, which lessens the chances of there being cultural resources on-site.

EXHIBIT 1

**Updated Table 1
Groundwater Extraction Totals
Mountain Peak Property**

1-Year Period (from start of monitoring)

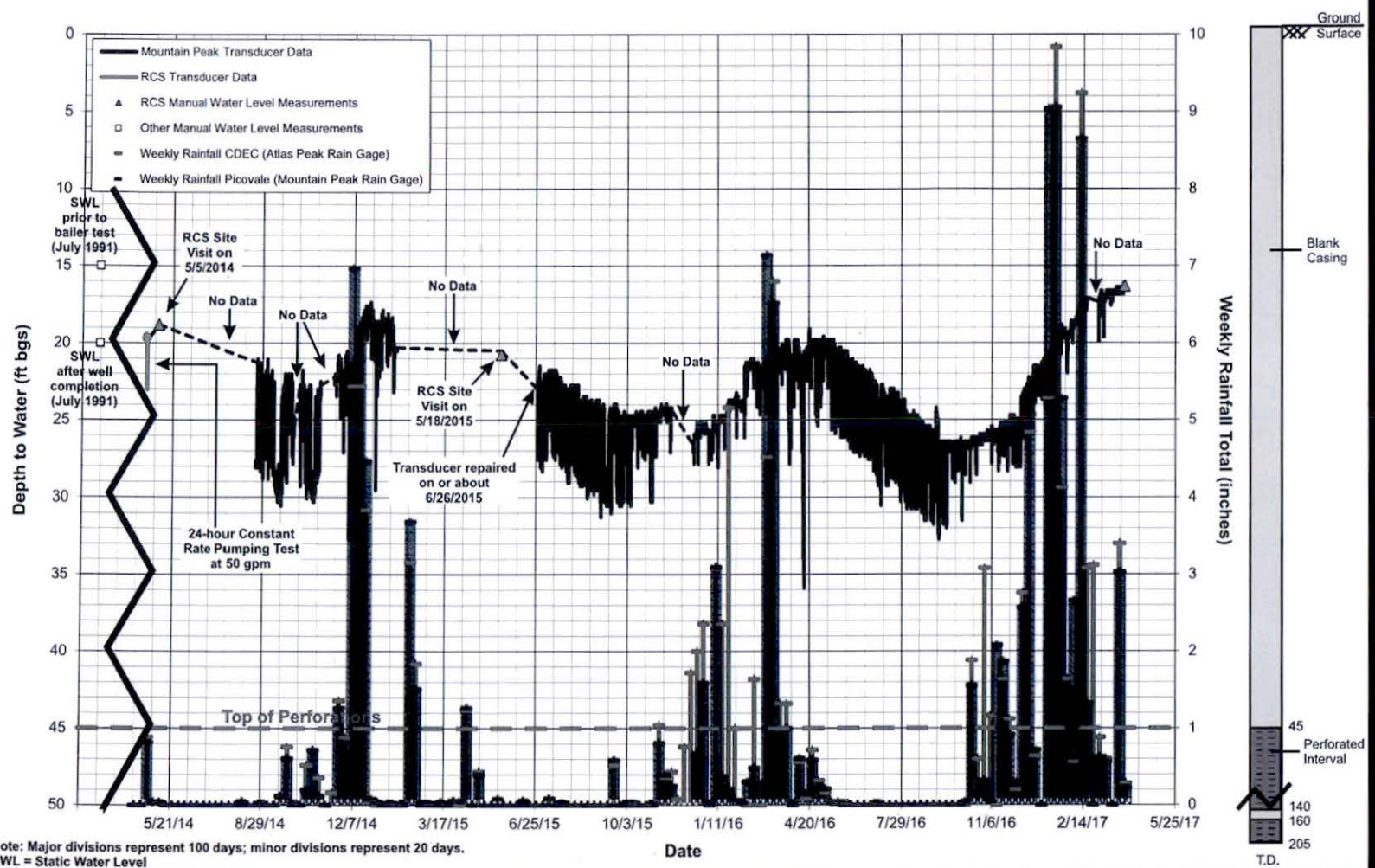
Time Period	Groundwater Extraction Totals	
	Gallons	Acre-Feet
8/24/14 - 8/31/15	9,246,220	28.38
9/1/15 - 8/31/16	6,286,320	19.29
9/1/16 - 3/30/17 (partial year)	720,860	2.21

By Calendar Year (January through December)

Time Period	Groundwater Extraction Totals	
	Gallons	Acre-Feet
8/24/14 - 12/31/14 (partial year)	3,134,190	9.62
1/1/15 - 12/31/15	7,902,540	24.25
1/1/16 - 12/31/16	5,163,410	15.85
1/1/17 - 3/30/17 (partial year)	53,260	0.16

Updated Groundwater Extraction Totals
Mountain Peak Property
RCS Job No. 537-NPA01
March 2017

EXHIBIT 2



RCS
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UPDATED FIGURE 7
MOUNTAIN PEAK WELL NO. 1
WATER LEVEL DATA

Job No. 537-NPA01

March 2017