

## **Attachment F**

Applicant's Supplemental Information

July 31, 2020

Napa County Board of Supervisors  
1195 Third Street, Suite 310  
Napa, California 94559

*Delivery via email to: Diane.Dillon@countyofnapa.org*

RE: Appeals of the Planning Commission approval of the Anthem Winery Project (P14-00320-MOD, P14-000322-ECPA)

Chair Dillon and Supervisors:

As counsel for Julie and Justin Arbuckle, the proprietors of Anthem Winery and Vineyards (“Applicants” or “Anthem”), I submit this letter brief in opposition to the appeal filed by Patricia Damery and to the appeal by Paul Rowe and Jeff Atlas.

### **Introduction**

This project has been in process since October 6, 2014 and involved extensive review by County staff, peer review of the Applicants’ water availability analysis, technical studies rarely required of other projects (e.g. earthquake fault investigations, noise study), and multiple site visits. Planning Commissioners toured the site and met with neighbors concerned about the Anthem project. After reviewing the submitted materials and roughly 8½ hours of publicly noticed hearings, the Planning Commission unanimously (5-0) approved a use permit modification, viewshed permit, erosion control plan, and exception to the Road and Street Standards and certified a mitigation negative declaration for the project. This decision was no “rubber-stamp” approval. Prior to the February 5<sup>th</sup> hearing, the Applicants withdrew a request for any production increase and reconfigured the project to avoid the need of a variance and to address neighbor concerns. Even with these voluntary changes, the Planning Commission significantly cut the visitation requested by Applicants. Rather than approving the approximately 13,000 annual visitors requested by Applicants and analyzed in the supporting CEQA review, the Planning Commission limited visitation to 7,623 visitors per year, which further alleviated neighbor concerns. In light of this significant additional reduction, the spokeswoman for the group of neighbors opposing the project, which included appellants, requested the reopening of public comment to state on the record:

While the total number is still a little high, the fact that they’re willing to give up the large 200, and one of the 100 is really important because that really was danger and noise and everything compounded. And I think bringing in a carload of four people or six

people at a time is more livable and safer, and so, all the way around, I think we're more amenable to that.<sup>1</sup>

Although the reduced visitation is substantially less than the visitation granted to similarly-sized wineries over the past decade<sup>2</sup> and the visitation that Applicants feel they need to support their growing family-owned winery and vineyards in the foreseeable future, Applicants are willing to accept and comply with it.

In making significant cuts to Applicants' proposed visitation, the Planning Commission rightly declined to wade into adjudicating the easements rights of neighbors. Several of the grounds of appeal asserted here improperly ask the Board of Supervisors to determine the easement rights of two neighboring properties. Other grounds of appeal would have the Board believe that the Planning Commission was "asleep at the switch" without proper evidentiary support for its decision. As the voluminous record before the Planning Commission demonstrates, the Planning Commission considered each of the asserted grounds of appeal and made a correct decision supported by the evidence.

### **Standard of Review**

The appeals before the Board are limited to the grounds for appeal described in the appellants' appeal packets, and "[a]ny issue not raised by the appellant in the appeal packet shall be deemed waived."<sup>3</sup>

"In hearing the appeal, the board shall exercise its independent judgment in determining whether the decision appealed was correct."<sup>4</sup>

"[T]he decision of the board on appeal shall be based on a review of the documentary record ...."<sup>5</sup> Pursuant to the Chair's determination dated July 10, 2020, all requests to augment the record or for *de novo* review have been denied.

### **Responses to grounds of appeal asserted by Mr. Rowe and Mr. Atlas**

Appellants Rowe and Atlas appealed the Planning Commission's approval of use permit modification P14-00320 and its associated exception to the County Road and Street Standards and Mitigation Negative Declaration ("MND").<sup>6</sup> Appellants Rowe/Atlas grounds of appeal are addressed below and are numbered as those grounds appear in Appellants' Appeal Packet dated March 4, 2020. Rather than including exhibits of items already in the record, this letter brief cites to those documents.

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<sup>1</sup> Transcript of Planning Commission February 5, 2020 meeting, pages 143, line 28 – 144, line 6 (emphasis added).

<sup>2</sup> Comparison to 30,000-40,000 Gallon Wineries Granted Visitation Since 1/1/09, included in Attachment I to the Planning Commission's February 5, 2020 staff report.

<sup>3</sup> NCC §2.88.050(A)(4).

<sup>4</sup> NCC §2.88.090(A).

<sup>5</sup> NCC §2.88.090(A).

<sup>6</sup> Appeal Packet Form stamped received by Napa County on March 4, 2020.

1. *The County does not have the legal authority to approve the proposed one-way bridge because the bridge lacks turnouts at both ends.*

Counsel for Appellants Rowe/Atlas raised this issue before the Planning Commission. During the February 5, 2020 Planning Commission hearing, Patrick Ryan stated:

That portion of the road can accommodate two-way traffic based on the design by RSA+. So that is a turnout in itself just because it provides two-way traffic, or it accommodates two-way traffic. Just after the bridge, following the bridge, which is, we consider, a single lane. It widens back out to a two-lane road.<sup>7</sup>

This ground of appeal is based on semantics with Appellant Rowe/Atlas arguing the definition of a “turnout” without addressing the purpose of a turnout. A turnout’s purpose is to allow two vehicles to pass each other. With that purpose in mind, the Engineering Division’s interpretation of the Napa County Road and Street Standards (“RSS”) is that the turnout is provided by a road width allowing two-way traffic. Napa County’s interpretation of its regulatory requirements is given deference,<sup>8</sup> and the Planning Commission correctly agreed with the interpretation and analysis of the County’s Engineering Division.

2. *The County may not grant an exception to the turnout requirement for the one-way bridge because the winery never requested one.*

This ground of appeal assumes that the Engineering Division’s application of the RSS is incorrect. For the reasons stated above, the Engineering Division properly applied the RSS to conclude that road segments on either side of the bridge accommodate two-way traffic. Further, Anthem requested an exception for a 14 foot wide bridge with two-way roads on both sides.<sup>9</sup> This design and exception were presented to and approved by the Planning Commission. Paradoxically, counsel for Appellants Rowe/Atlas has stated “[a] one-way bridge requires turnouts at both ends. There is no turnout on one side. Exception.”<sup>10</sup> So, Appellants Rowe/Atlas are arguing simultaneously that Anthem both asked for an exception and did not ask for an exception.

3. *The evidence does not support the Planning Commission finding that the use as a turnout of the upper easement, which is 15 feet wide and located 120 feet from the bridge, will provide the same level of public safety as a bridge with fully compliant turnouts at both ends.*

This ground of appeal misstates the Planning Commission’s findings. None of the findings rely on use of the upper easement. This ground of appeal also assumes that the Engineering Division’s application of the RSS is incorrect. Again, the Engineering Division properly applied the RSS to conclude that road segments on either side of the bridge accommodate two-way traffic, which

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<sup>7</sup> Transcript of Planning Commission February 5, 2020 meeting, page 12 lines 7-15 (emphasis supplied).

<sup>8</sup> *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880; *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807.

<sup>9</sup> RSA+ Road Exception Request at page 4, included as Exhibit B to the Planning Commission’s February 5, 2020 staff report.

<sup>10</sup> Transcript of Planning Commission February 5, 2020 meeting, page 67 lines 7-8.

satisfied the requirement of a turnout at the bridge. Therefore, the evidence in support includes the applicant's design, the Engineering Division's memoranda,<sup>11</sup> and Patrick Ryan's testimony to the Planning Commission on February 5, 2020.<sup>12</sup>

4. *The County may not condition the grant of Road and Street Standard exceptions on a use that violates the scope of the upper and lower easements.*

None of the conditions of approval require Anthem to violate easements over Appellant Rowe's property or any other neighbor's property.

5. *The Planning Commission's failure to evaluate the existing Redwood Road entrance, which is already permitted for a 30,000-gallon winery, was inappropriate and undermines the finding that Road and Street Standard exceptions are necessary due to a physical or legal constraints on the winery's property.*

This ground of appeal misstates the facts. The feasibility of improved access to the winery from Redwood Road was discussed extensively at the Planning Commission hearings on October 3, 2018 and February 5, 2020.<sup>13</sup> The Engineering Division's memorandum dated January 21, 2020 described that the Redwood Road access as within a 9.8 foot wide foot easement and in steep terrain.<sup>14</sup> County staff did not "evaluate" Redwood Road access through review of detailed engineering plans, but that does not mean such access was not considered by the Planning Commission. The neighbors through whose lands the easement passes refuse any expansion of the limited easement and oppose improvement of the Redwood Road access based on landslides in the area.<sup>15</sup> Several speakers addressed the impossibility of improving the Redwood Road access to meet RSS. Dotia Scriven, a neighbor at 3440 Redwood Road, spoke in opposition to improving winery access onto Redwood Road and made clear that she would not grant easement area for a wider road.<sup>16</sup>

6. *Approval of the winery's request for an unprecedented number of Road and Street Standard exceptions unnecessarily compromises public safety and sets undesirable precedent for years to come.*

Appellants Rowe/Atlas concern regarding precedent is unfounded because the RSS expressly allows exceptions "on a case-by-case basis."<sup>17</sup> Here, County engineering staff and two consecutive Napa County Fire Marshals recommended approval of the requested RSS exceptions based on

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<sup>11</sup> Engineering Division memorandum dated January 21, 2020 and included as Attachment G to the Planning Commission's February 5, 2020 staff report; Road Exception Evaluation dated June 14, 2018 and attached to the Approval Letter dated February 20, 2020.

<sup>12</sup> Transcript of Planning Commission February 5, 2020 meeting, page 12 lines 7-15.

<sup>13</sup> Transcript of Planning Commission October 3, 2018 page 10 lines 12-19, page 59, lines 1-15; Transcript of Planning Commission February 5, 2020 meeting page 10 lines 1-15, page 17 lines 18-28, page 83 lines 4-9

<sup>14</sup> See page 3 of the Engineering Division's January 21, 2020 memorandum which is Attachment G to the Planning Commission's February 5, 2020 staff report.

<sup>15</sup> Letter from Janet Sullenger to Donald Barrella dated February 4, 2020 and included in Attachment N to the Planning Commission's staff report dated February 5, 2020; Dotia Scriven Public Comment, Transcript of Planning Commission February 5, 2020 meeting, page 78, lines 6-26 (emphasis added).

<sup>16</sup> Transcript of Planning Commission February 5, 2020 meeting, page 77 line 22 through page 78 line 26.

<sup>17</sup> Napa County Road and Street Standards adopted September 26, 2017, page 3.

their shared conclusion that the proposed access road provided the same overall practical effect. These recommendations were the result of four years of collaboration with Cal Fire and County engineering staff. In fact, two Fire Marshalls and engineering staff walked the driveway several times to ensure compliance with the same overall practical effect standard, and life and safety considerations.<sup>18</sup> After hearing lengthy evidence and testimony on this subject, the Planning Commission approved the RSS exception with significant reductions in the proposed visitation. Rather than compromising safety, there is substantial evidence in the record that the proposed road improves safety by creating a wider access road for emergency vehicles, more defensible space and an access link between Redwood Road and Dry Creek Road.<sup>19</sup> While this application was being processed, Redwood Road was closed multiple times due to downed power lines, fires, and landslides.<sup>20</sup>

7. *The facts do not support the finding that the road as approved provides the same level of safety as would a road that is in full compliance with the Road and Street Standards.*

A RSS exception is “an alternate method by which adherence to these [RSS] may be achieved”.<sup>21</sup> The required finding for approval of a RSS exception is that the “same overall practical effect” as the RSS.<sup>22</sup> The factual record provides ample support for the Planning Commission’s conclusion that the proposed road provides the same overall practical effect as compliance with the full standard. That record includes Anthem’s exception request, multiple site visits with the County Engineering Division and Fire Department, Engineering Division memoranda dated June 14, 2018 and January 21, 2020, RSA+’s Driveway Plans, and Patrick Ryan’s testimony on October 3, 2018 and February 5, 2020.

8. *Approval of the road width exceptions is improperly conditioned on evidence, which is not in the record, that the proposed turnouts will accommodate the passage of fire apparatus and the winery’s largest vehicles.*

There is significant evidence in the record that the road as proposed provides the same overall practical effect. In addition to the driveway plans, RSS exception request, and Fire Engine and Truck Passing Exhibit submitted by the qualified engineers retained by Applicants, the record contains the safety analysis of the County’s Engineering Division and Cal Fire. Statements in the conditions of approval that the proposed turnouts will accommodate passage of fire apparatus and winery vehicles are conclusions, not conditions subject to future evidence. In fact, after years of evaluating Applicants’ driveway plans and Appellants’ objections, the Engineering Division’s January 21, 2020 memorandum expressly concluded that:

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<sup>18</sup> See RSA+ January 11, 2019 Letter to Don Barrella, included in Attachment I to the Planning Commission’s February 5, 2020 staff report.

<sup>19</sup> *Id.*; Engineering Division January 21, 2020 memorandum which is Attachment G to the Planning Commission’s February 5, 2020 staff report; and RSA+ Driveway Plans, included in Attachment G to Planning Commission’s October 3, 2018 staff report.

<sup>20</sup> See, e.g. Napa Register Story Julie Arbuckle emailed to Don Barrella on March 15, 2019 and included in Attachment J to the Planning Commission’s February 5, 2020 staff report.

<sup>21</sup> Napa County Road and Street Standards adopted September 26, 2017, page 3.

<sup>22</sup> Napa County Road and Street Standards adopted September 26, 2017, page 3.

Line of sight is maintained for ingressing and egressing vehicles through the flagpole section of the roadway as illustrated in the RSA+ driveway plan and profile (June 5, 2018, Anthem Winery Driveway ... Plans). Typical driveway section A (Type A of the civil driveway plans provides approximately eighteen (18) feet of travel way to accommodate the passage of two large vehicles including a Type 1 Engine and delivery truck as illustrated by RSA+'s exhibit – Passing of Type A Driveway, dated January 12, 2018. The applicant proposes the Type A driveway over one-quarter of the approximate 1,700 feet of the constrained flagpole access. Static traffic signs are proposed at various locations along the flagpole access to avoid delays and conflicts . . . .

Appellants Rowe/Atlas may disagree with these conclusions and those of the Planning Commission, but there is substantial evidence in the record upon which the Planning Commission relied.<sup>23</sup>

9. *Granting an exception to the required entry gate width is improper because it depends on the use of an easement which no longer exists.*

The exception to the gate width requirement is based on a gate placed on the “existing AC pavement”.<sup>24</sup> Counsel for Appellants Rowe/Atlas has stated that the easement width is limited to the existing pavement.<sup>25</sup> Similar to Appellant Damery’s arguments regarding the tree easement, Appellants Rowe/Atlas improperly seek an adjudication of easement rights. Appellant Rowe has written that the Planning Commission should accept his view of the relative easement rights between the parties “[r]ather than setting up litigation against the applicants”.<sup>26</sup> To avoid any future civil dispute with Appellant Rowe, Applicants have proposed a gate option that assumes no amendment to existing easement rights. This option includes a 17 foot wide gate with vehicles being able to use the existing driveway.<sup>27</sup> Even if Appellant Rowe were to eventually obtain a civil adjudication that the gate as designed would violate the easement, then Napa County would not issue a building permit for the gate as explained in Engineering Division’s memorandum dated January 21, 2020.<sup>28</sup>

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<sup>23</sup> RSA+ Driveway Plans, Fire Engine and Truck Passing Exhibit, and Exception Request, Attachment G to the Planning Commission’s October 3, 2018 staff report; RSA+ January 11, 2019 Letter to Don Barrella, included in Attachment I to the Planning Commission’s February 5, 2020 staff report; Engineering Division January 21, 2020 memorandum which is Attachment G to the Planning Commission’s February 5, 2020 staff report.

<sup>24</sup> Page 2 of the Road Exception Evaluation dated June 14, 2018 and attached to the Approval Letter dated February 20, 2020.

<sup>25</sup> Page 2 of letter from Kevin Block to the Planning Commission dated February 4, 2020 and included in Attachment N of the Planning Commission’s February 5, 2020 staff report.

<sup>26</sup> Letter from Paul Rowe to the Planning Commission dated February 4, 2020 and included in Attachment M to the Planning Commission’s February 5, 2020 staff report.

<sup>27</sup> RSA+ Driveway Plans and Exception Request, Attachment G to the Planning Commission’s October 3, 2018 staff report.

<sup>28</sup> Page 4-5 of Engineering Division memorandum dated January 21, 2020 and included as Attachment G to the Planning Commission’s February 5, 2020 staff report.

10. *The water course to be spanned by the proposed bridge constitutes a “stream” as defined by the Conservation Regulations, which prohibit construction of the bridge within the stream setback.*

Napa County’s Director of Engineering, Patrick Ryan, and the project planner, Don Barrella, both physically inspected the drainage that is spanned by the proposed bridge.<sup>29</sup> Both County staff concluded that the drainage does not meet the criteria as a “stream.” The basis for this conclusion is documented further in the project’s CEQA document and the staff report to the Planning Commission.<sup>30</sup>

11. *The County may not grant a use permit exception to the Conservation Regulations because the winery did not request one and because the required findings were not made.*

This ground of appeal is based on a false premise. No one has asserted that the Planning Commission approved a use permit exception to the Conservation Regulations. As explained above in relation to the prior ground of appeal, no use permit exception is required. For that reason, Anthem did not apply for a use permit exception to the Conservation Regulations.

12. *The Initial Study and Mitigated Negative Declaration do not comply with CEQA because they (1) fail to identify a conflict with County policies protecting trees, streams and other biological resources a potentially significant impact, (2) fail to identify the watercourse to be spanned by the bridge as a riparian area, (3) erroneously conclude that the project will not physically alter any watercourses or drainages and (4) fail to analyze potential environmental impacts from the bridge construction or identify measures to mitigate them.*

There are four CEQA arguments lumped into this ground of appeal. Each of the four arguments misstates facts in the record and legal requirements applicable to the Initial Study and Mitigated Negative Declaration (“MND”).

The MND did not “fail to identify a conflict with County policies protecting trees, streams and other biological resources a potentially significant impact”: The MND does identify County policies protecting trees and finds the impacts to oak woodlands and other individual trees to be less than significant with required mitigation.<sup>31</sup> This conclusion is based in part on an extensive Biological Resources Survey that recites relevant State and local regulations and Napa County General Plan policies.<sup>32</sup>

The MND did not “fail to identify the watercourse to be spanned by the bridge as a riparian area”: The MND does identify the drainage over which a clear span bridge is proposed at pages 2, 3, 14, and 38. The Staff Report to the Planning Commission recognizes that the water course is subject

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<sup>29</sup> Transcript of Planning Commission February 5, 2020 meeting, page 4 lines 5-10.

<sup>30</sup> MND pages 14 and 38; Staff Report to the Planning Commission February 2020 page

<sup>31</sup> MND page 14.

<sup>32</sup> Biological Reconnaissance Survey prepared by Kjeldsen Biological Consulting dated September 2012; Biological Resources Reconnaissance Survey prepared by MUSCI dated August 31, 2014; Biological Resources Assessment prepared by First Carbon Solutions dated October 13, 2017.

to the jurisdiction of the California Department of Fish and Wildlife (“CADFW”) pursuant to Fish and Game Code §1600 *et seq.* As noted in the CADFW comment letter dated October 3, 2018, construction of the bridge will require issuance of a Lake and Streambed Alteration Agreement with CADFW.

The MND did not “*erroneously conclude that the project will not physically alter any watercourses or drainages*”: The proposed bridge construction involves a clear span bridge that will not place structures within the bed, bank or channel of the drainage.<sup>33</sup> No grading or earthmoving within the drainage is proposed or required for the bridge’s placement. There is no evidence in the record before the Planning Commission that physical alterations to the drainage will occur. To the contrary, the report prepared by a professional biologist concludes that the bridge’s construction will not impact the bed or bank of the ephemeral drainage and that no potentially significant impacts will result from the bridge’s placement.<sup>34</sup> This ground misstates the conclusion of the MND. The MND relies on this substantial evidence to conclude that no significant impacts will result from the placement of the clear span bridge over the drainage.<sup>35</sup>

The MND did not “*fail to analyze potential environmental impacts from the bridge construction or identify measures to mitigate them.*” As a preliminary matter, this ground of appeal is incomplete. Appellants Rowe/Atlas have not stated a potentially significant impact that the Planning Commission did not analyze through the MND. Instead, this ground appeal asserts there is some unspecified impact that was not analyzed and that the unnamed impact required mitigation. The record does contain a memorandum from Mike Podlech asserting that the drainage is a County definitional “stream” and subject to the jurisdiction of DWF.<sup>36</sup> As explained above, County Engineering and Conservation Division staff came to a different conclusion regarding the County’s definition, and no one has contested that a Lake and Streambed Alteration Agreement is required per the DFW comment letter for the Anthem project. More importantly, Mr. Podlech’s memorandum does not describe a single potentially significant impact that would occur from the bridge’s placement. Therefore, Mr. Podlech’s memorandum does not provide any evidence of a potentially significant impact.

### **Responses to grounds of appeal asserted by Ms. Damery**

The Appeal Packet submitted by Appellant Damery challenges the Planning Commission’s approval of a use permit modification (P14-00320-MOD) and erosion control plan (P14-000322-ECPA). The Appeal Packet purports to appeal the approval of a variance (P14-000321-VAR), but the Commission did not approve any variance. Anthem revised its project to remove the need for a variance, and none of Appellant Damery’s grounds for appeal address a variance. Appellant Damery’s grounds of appeal are addressed below and are numbered as those grounds appear in Ms. Damery’s Appeal Packet dated March 5, 2020.

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<sup>33</sup> Transcript of Planning Commission February 5, 2020 meeting, page 4 lines 5-10.

<sup>34</sup> Biological Resources Assessment prepared by First Carbon Solutions dated October 13, 2017, page 20.

<sup>35</sup> MND page 14.

<sup>36</sup> Memorandum from Mike Podlech to Kevin Block dated January 31, 2020 and included in Attachment M to the Planning Commission’s February 5, 2020 staff report.

1. *Derogation of tree easement.*

Appellant Damery has repeatedly and incorrectly asserted that the vineyard approved under P14-00322-ECPA violates a reciprocal tree easement recorded against the Anthem property and Ms. Damery's property. As stated clearly in the tree easement "[n]one of the existing mature oak trees located within the Tree Easement Area shall be removed or excessively cut or pruned unless any such tree becomes incurably diseased or dying." The Planning Commission's staff report confirms "no trees are proposed to be removed as part of vineyard development associated with this project."<sup>37</sup> The extent of the tree easement area and the fact that existing trees are to be preserved is clearly depicted on Anthem's erosion control plan.<sup>38</sup>

The tree easement does not prohibit other use of the easement area, including vineyard. It is well settled in California law that property owners with negative easements, like the tree easement here, have "dominion and control over the servient tenement and possesses all rights and privileges in the property except those which has passed to the owner of the easement."<sup>39</sup> The only right passed over to Ms. Damery is that none of the existing mature oak trees would be removed. Appellant Damery attempts to convert the prohibition on removing existing oak trees into a prohibition on all uses within the easement area. Inconsistent with her argument, however, Appellant Damery herself maintains a lavender field and a fenced vegetable garden within the tree easement.<sup>40</sup>

Further, accepting Appellant Damery's interpretation of the tree easement would constitute a taking of Anthem's property in that the tree easement's restriction would be greatly expanded beyond the express language of the easement. Lastly, the adjudication of easement rights is a civil matter for California courts, not the Planning Commission or Board of Supervisors.<sup>41</sup> Applicants' erosion control plan has been in the permitting process for six years, and Appellant Damery submitted correspondence on this issue dating back to December of 2014.<sup>42</sup> Appellant Damery has had years in which to seek judicial review of her interpretation of the tree easement.

3. *Road and Street Standards Exceptions.*<sup>43</sup>

Appellant Damery argues that Charlene Gallina crafted a mitigation measure following the close of Planning Commission's public hearing and that Ms. Gallina is not qualified to recommend a mitigation measure. This argument is factually incorrect on three points. First, no additional mitigation measure was crafted during the hearing. The mitigation measures are as stated in the project revision statement executed by Julie Arbuckle. Instead, Ms. Gallina discussed with the Planning Commission a revision to a condition of approval requiring a Traffic Demand Management Plan ("TDM").<sup>44</sup> Second, Ms. Gallina does not craft or draft the TDM, a registered

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<sup>37</sup> Planning Commission Staff Report dated February 5, 2020 page 9.

<sup>38</sup> Sheet C3.0 of the erosion control plan depicts this information and included in Attachment I of the Planning Commission's February 5, 2020 staff report.

<sup>39</sup> Miller & Starr, 6 Cal. Real Est. (4th ed.) §15:64 Servient tenement owners.

<sup>40</sup> Transcript of Planning Commission October 3, 2018 page 79, lines 13-26.

<sup>41</sup> Planning Commission Staff Report dated February 5, 2020 page 9.

<sup>42</sup> Letter from the Arbuckles to Ms. Damery dated December 12, 2014 that Ms. Damery emailed to Don Barrella on January 8, 2015 and included in Attachment V to the Planning Commission's October 3, 2018 staff report.

<sup>43</sup> Appellant Damery's Appeal Packet dated March 5, 2020 did not contain a ground of appeal numbered as "2."

<sup>44</sup> Transcript of Planning Commission February 5, 2020 meeting, page 104 line 21.

professional traffic engineer prepares the TDM as required in condition of approval 4.20(b) contained in the Planning Commission approval letter dated February 20, 2020. After submittal of the TDM to Napa County, the TDM is reviewed by Napa County's registered professional traffic engineer. Lastly, the requirement for a TDM was contained in the recommend conditions of approval in Attachment B to the Planning Commission's February 5, 2020 staff report. Therefore, the TDM was not sprung on the public after public comment closed.

Appellant Damery makes several arguments regarding road safety. Applicants incorporate by reference the above responses to Appellant Rowe/Atlas grounds of appeal numbers 1-3 and 6-8.

Appellant Damery adds an argument that workers staffing events are not reflected in the record and thus not studied in the project's MND. This is mischaracterization. The project's traffic study does not include trip generation for events consistent with the Napa County Public Works Traffic Impact Study Policies (updated March 25, 2016), but the study certainly analyzes the potential for traffic impacts resulting from events,<sup>45</sup> and this report was reviewed by the Napa County's traffic engineer.<sup>46</sup> Even considering the 200 and 300 person events the Applicants initially requested, the MND concludes that traffic impacts will be less than significant.<sup>47</sup> No contrary expert evidence regarding traffic impacts was submitted to the Planning Commission.

4. *Water availability and erosion control plan.*

In this ground of appeal, Appellant Damery makes incorrect and unsupported factual arguments and appears to object to method of creation of the Napa County Groundwater Sustainability Agency (GSA). Regarding the GSA, the creation of that agency is not within the Planning Commission's purview and has no bearing on whether the Planning Commission correctly decided the permit application before it.

Appellant Damery incorrectly states that wells in the project vicinity are "highly interdependent wells."<sup>48</sup> Studies submitted by the Applicants and consistently peer reviewed by Ludorff Scalmanini Consulting Engineers discuss the segmented nature of the different aquifers in the area, and the lack of interdependence, which was conveyed to the Planning Commission through the testimony of Anthony Hicke.<sup>49</sup> Also, there are no wells within 500 feet of a project well,<sup>50</sup> which is the County's adopted threshold for further study of potential well interference.<sup>51</sup> The

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<sup>45</sup> See page 6 of the Amended Final Traffic Analysis prepared by W-Trans dated March 7, 2018 and included in Attachment L to the Planning Commission's October 3, 2018 staff report.

<sup>46</sup> Memorandum from Janice Spuller to PBES Staff dated August 9, 2018 and attached to the Approval Letter dated February 20, 2020.

<sup>47</sup> Memorandum from Janice Spuller to PBES Staff dated August 9, 2018 and attached to the Approval Letter dated February 20, 2020.

<sup>48</sup> See page 4 of Appellant Damery's Appeal Packet dated March 5, 2020.

<sup>49</sup> Transcript of Planning Commission February 5, 2020 meeting, page 40 lines 8-11.

<sup>50</sup> MND page 25-26.

<sup>51</sup> Water Availability Analysis Guidance Document adopted by the Napa County Board of Supervisors May 12, 2015.

unsupported statements in Appellant Damery's Appeal Packet or other unsupported statements in the record do not constitute substantial evidence of an impact.<sup>52</sup>

Lastly, it is important to note that through rainwater harvesting, reuse of winery process water, and other water saving measures, this project proposes a significant overall decrease in Applicants' approved groundwater usage, and strict groundwater monitoring.<sup>53</sup> Similarly, the proposed vineyard has been designed so that post project stormwater is not increased from pre project conditions per County Code. Not only did the California Department of Fish and Wildlife review Applicants' erosion control plan,<sup>54</sup> but County staff and qualified consultants both extensively reviewed and scrutinized it, which review included walking the proposed vineyard in the vicinity of Appellant Damery's property line.

5. *Earthquake fault line.*

Appellant Damery states that there was insufficient information before the Planning Commission regarding the safety of the proposed cave expansion in relation to a fault on the Anthem property. The Planning Commission record contains two extensive reports that go well beyond what the County typically requires: Fault Investigation and Report prepared by Ryan Geological Consulting and dated February 7, 2015 and a Supplemental Fault Investigation and Report prepared by Ryan Geological Consulting and dated June 30, 2018. Both reports were researched and prepared after the August 2014 earthquake out of an abundance of caution on the part of Applicants, and both involved extensive trenching by a registered professional geologist to investigate the potential for faults in the vicinity of the project. Appellant Damery's Appeal Packet states that a fault line "runs through the cave" but this is an incorrect statement. After digging and studying several large trenches to determine if there had been an active fault in the past 10,000 years, the Ryan Geological Consulting report found "we did not encounter evidence for an active fault crossing through the planned winery improvements."<sup>55</sup> The MND did analyze the potential for impacts from earthquakes and provided mitigation recommended by a professional registered geologist to reduce those impacts to less than significant levels.<sup>56</sup> Here, the Planning Commission correctly relied on the evidence supplied by experts, and there is no credible contrary evidence in the record.

6. *Vineyard pesticide, herbicide and rodenticide drift.*

Appellant Damery makes several unsupported arguments that pesticide drift will drift over 100 feet to Appellant Damery's home. This issue was not raised during the Planning Commission hearings on October 3, 2018 and February 5, 2020, and there is no evidence supporting the assertion that the approved vineyard will result in unidentified pesticides drifting 100 feet or more.

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<sup>52</sup> *Joshua Tree Downton Business Alliance v. County of San Bernardino* (2016) 1 Cal.App5th 677, 691 (opinion of resident lawyer/business owner did not constitute substantial evidence because the commenter was not qualified to opine on whether the project would cause urban decay).

<sup>53</sup> See Tier 1 Water Calculations in Attachment E of the Planning Commission's February 5, 2020 staff report and Revised Conditions of Approval contained in the Approval Letter dated February 20, 2020.

<sup>54</sup> See Department of Fish and Wildlife October 2, 2018 Letter, included in Attachment X to the Planning Commission's October 3, 2018 staff report

<sup>55</sup> Supplemental Fault Investigation and Report prepared by Ryan Geological Consulting and dated June 30, 2018, page 11

<sup>56</sup> MND page 17-20.

In Napa County, there are no setbacks for vineyard or other agriculture. When it occurs, pesticide overspray is the jurisdiction of the California Department of Pesticide Regulation (“DPR”), which enforces State law prohibitions against inappropriate pesticide use including overdrift.<sup>57</sup> Therefore, Appellant Damery’s argument is pure speculation that even though Applicants’ vineyards are certified Napa Green, they will somehow misuse unidentified pesticides in violation of State law, and that such violation will not be enforced against Applicants by DPR or the Napa County Agricultural Commissioner. There is no evidence in the record to support such a position.

### Conclusion

The Planning Commission weighed all of the issues reflected in the grounds of appeal asserted by Appellants Rowe/Atlas and Appellant Damery. None of the errors cited in the respective appeal packets demonstrate that the Planning Commission’s unanimous approval was incorrect. Applicants respectfully request that the Board reject all grounds of appeal. Thank you for your consideration.

Respectfully,



Rob Anglin

cc: Chris Apallas  
Don Barrella  
Kathy Felch  
Kevin Block  
Julie Arbuckle

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<sup>57</sup> California Food and Agriculture Code §12972.