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Via Email david.morrison@countyofnapa.org, charlene.gallina@countyofnapa.org

Napa County Planning Commission
David Morrison, Director of Planning
Charlene Gallina, Supervising Planner
County Administration Building
1195 Third Street, 2nd Floor
Napa, CA 94559

Re: September 5, 2018 Agenda, Item 7B: Aloft Winery, P16-00429-UP

Honorable Commissioners:

On behalf of Protect Napa Watersheds, we submit these comments on the mitigated negative declaration (MND) prepared for the Aloft Winery Project. The Project would permit construction of a 50,000-gallon winery, complete with a 5,562-square foot hospitality building, a 28,107-square foot wine cave, a mechanical building, and an outdoor patio. (MND p. 2.) A commercial kitchen would be included to facilitate “marketing” events with up to 125 attendees, which would likely include weddings and parties. (*Ibid.*) The Project would include 12 parking spaces. (*Ibid.*)

The Project would thus impose a winery and event center reached by narrow, winding roadways in an otherwise quiet neighborhood. Construction would require deforestation of the Project site in excess of the existing variance, the cutting of 47, mature trees that are habitat for the federally-threatened Northern Spotted Owl and the removal of rare, Napa false indigo plants. Operation of the event center would introduce additional vehicular traffic to an area with substandard road widths and blind curves, in proximity to residential uses and several schools. Evening and nighttime events would introduce noise and lighting sources to an otherwise quiet, residential area. Notably, the Project seeks an exception to County driveway width requirements, despite the Project’s location in a High Fire Hazard Severity Zone.

The California Environmental Quality Act (CEQA) serves two basic, interrelated functions: ensuring environmental protection and encouraging governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) In connection with the Project’s review under CEQA, the County has prepared an initial study and mitigated negative declaration. A lead agency prepares an initial study

in order to determine whether an EIR, a negative declaration, or an MND is the appropriate environmental review document. (14 CCR § 15365, herein “CEQA Guidelines”.) The initial study must consider whether any aspect of a project, either individually or cumulatively, may cause a significant adverse impact. (CEQA Guidelines § 15063(b)(1).) The purpose of the initial study is to provide the lead agency with adequate information regarding a project to determine the appropriate environmental review document and “documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment.” (*Ctr. for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal. App. 4th 1156, 1170, citations omitted.) There must be a basis within the record to support the conclusions reached by the initial study. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1201.) “Where an agency. . . fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate.” (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591, 1597, citations omitted.) Failure to adequately analyze all of a project’s potentially significant impacts or provide evidence to support conclusions reached in the initial study is a failure to comply with the law.

When a fair argument exists that a Project will have a significant environmental impact, an environmental impact report (EIR) must be prepared.

With regard to the Aloft Winery Project, the County has failed to prepare a legally adequate initial study, improperly omitting consideration of potentially significant Project impacts and lacking evidentiary support for claims that Project impacts would be insignificant. A fair argument also exists that the Project would have adverse impacts on the environment with regard to biological resources, land use, noise, and traffic. An EIR is required.

1. The Project Would Have Significant Impacts on Biological Resources.

a. Sensitive Animal Species

The Northern Spotted Owl has been documented ¼ mile away from the Project site, which is classified as roosting and foraging habitat. (MND p. 10.) The Northern Spotted Owl is listed as “threatened” on the federal and California Endangered Species lists. Its numbers have dwindled due to habitat loss from deforestation and land conversions and from incursion by barred owls, which are more resilient to habitat changes. (<https://www.fws.gov/oregonfwo/articles.cfm?id=149489595>.) Although past activity on the site has already removed more than the 40 percent of tree canopy permitted by the County, the Project would remove an additional 47 trees that could be used by the Northern Spotted Owl. (MND p. 10.) Despite this, the MND finds the potential adverse impacts to this species to be remedied below a level of significance because MM BIO-2 requires trees to be removed before February 1, 2019. (MND p. 12.)

This conclusion lacks substantial evidence. Although not stated in the MND, it appears the goal of MM BIO-2 is to prevent the disruption of occupied nests by preventing tree removal during nesting season. The mitigation measure does nothing to prevent the loss of needed owl habitat, or injury to owls using trees prior to February 1, 2009. No pre-construction surveys are required. Additionally, MM BIO-2 does not even require that trees be removed before nesting season. Instead, the mitigation measure allows later removal of trees, so long as pre-construction surveys are conducted. (MND p. 12.) This mitigation measure will not adequately protect Northern Spotted Owls, nor is it concrete and enforceable, as required. (Pub. Resources Code § 21081.6(b); *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 445 [“mitigation measures must be feasible and enforceable”].) A fair argument exists that the Project will harm sensitive animal species.

CDFW databases show reports of California Species of Special Concern near the Project site, including Townsend’s big-eared bat, Pallid bat, foothill yellow-legged frog, California red-legged frog, California giant salamander, and the western pond turtle. No surveys were conducted for these species, and conclusions that they would not be impacted by the Project lack substantial evidence.

As species imperiled by human disturbance of roosts, the pallid bat and the Townsend’s big-eared bat could suffer adverse impacts from construction and operation of the Project. The pallid bat is a year-round resident bat, meaning that does not migrate. According to the IUCN, “The pallid bat may be in trouble because it is very sensitive to disturbance. Any disturbance, even hiking, can cause the bat to abandon a roosting area completely.” (IUCN 2016, <http://www.iucnredlist.org/details/1790/0>, herein incorporated by reference.) The IUCN’s recommended conservation actions are to “avoid disturbance.” (*Ibid.*) CDFW concurs, noting that the pallid bat is “[v]ery sensitive to disturbance of roosting sites.” (Life History Account for Pallid Bat, California Department of Fish and Wildlife, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2349>, herein incorporated by reference.) Pallid bats roost at night in the open, near foliage, and will use coast live oak trees for their roosts. The Project will remove seven oak trees. Pallid bats use echolocation for obstacle avoidance and may utilize prey-produced sounds while foraging. (Life History Account for Pallid Bat, California Department of Fish and Wildlife, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2349>, herein incorporated by reference.) Loud noise that displaces echolocation and prey noise, such as that produced by outdoor events with music, would adversely impact foraging success. The pallid bat emerges for the night 30-60 minutes after sunset, with a major activity peak 90-190 minutes after sunset. It would be particularly vulnerable to evening or nighttime events proposed by the Project.

The Townsend’s big-eared bat, a candidate for CESA protection, “shows marked population declines over the past 40 years: a 52% loss in the number of maternity

colonies, a 44% decline in the number of available roosts, a 55% decline in the total number of animals (primarily adult females), and a 32% decrease in the average size of remaining colonies.” (Distribution, Status, and Management of Townsend’s Big-Eared Bat, California Department of Fish and Wildlife, http://dfg.ca.gov/wildlife/nongame/publications/bm_research/docs/96_07.pdf, herein incorporated by reference.) According to a study conducted by CDFW, “the primary cause for the observed declines has been human disturbance of roosting sites.” (*Ibid.*) “Unlike many species which take refuge in crevices, *C. townsendii* only roosts in the open, hanging from walls and ceilings, where it is relatively easily detected and particularly vulnerable to disturbance.” (*Ibid.*) According to the IUCN, “These animals are sensitive to light and movement so if they are disturbed during the day, they awake and their ears begin to move as they try to identify the intruder. If the disturbance occurs for more than a few seconds, the entire group takes flight.” (IUCN 2016, citing Barbour and Davis, 1969, <http://www.iucnredlist.org/details/17598/0>, herein incorporated by reference.) The IUCN concludes, “Minimization of human disturbance is essential for *Corynorhinus townsendii* to remain in existence (Nowak, 1999).” (IUCN 2016, <http://www.iucnredlist.org/details/17598/0>, herein incorporated by reference.) Townsend’s big-eared bats would be similarly disturbed by evening events at the Project winery, and analysis and mitigation is required before the County can support a conclusion that the Project would have no significant impacts on biological resources.

Fourteen, mature trees would be removed from the existing vineyard. Given the lower profile of surrounding vegetation, these trees are prime roosting and foraging habitat for raptors. The white-tailed kite is found in the area. The MND contains no mitigation to protect raptors or other birds that may roost or nest in the 47 trees that would be removed. Without requirements for pre-construction surveys and buffers for birds found onsite, the Project would have significant impacts on state fully-protected species and violate the Migratory Bird Treaty Act.

b. Sensitive Plant Species and Oak Woodlands

The Napa false indigo, a CNPS List 1B species, is located on the Project site and would be removed for the Project’s driveway relocation. (MND p. 10.) CNPS List 1B species are eligible for listing under the California Endangered Species Act. The Napa false indigo is endemic, rare throughout its range, and imperiled by habitat loss and road maintenance. (<http://www.rareplants.cnps.org/detail/1812.html>.) The MND finds that impacts to the species would not be significant because the removed individuals would be replaced onsite through MM BIO-1. (MND pp. 10-11.) However, the California Department of Fish and Wildlife (CDFW) recommends against transplanting sensitive species due to the high risk of transplant failure. Instead, CDFW recommends avoiding populations of sensitive species, which the MND fails to consider. If plants must be relocated, a greater ratio than 1:1 is required to ensure no net loss of the species. In fact, the biological report attached to the MND considers an 80 percent retention “successful.”

As relocation often fails, and full 1:1 mitigation is not required, a fair argument exists that the Project would harm rare plant species. An EIR is required.

The Project site contains suitable habitat for other special-status plant species, including the bent-flowered fiddleneck, Clara Hunt's milk-vetch, and the narrow-anthered California brodiaea. Site-specific surveys should have been performed, and mitigation measures should have been incorporated in case these species are encountered. The MND's conclusion that the Project would not have significant impacts on biological resources lacks substantial evidence.

c. Waterways, Las Posadas State Forest, and Cumulative Impacts

The MND fails to disclose the potential impacts of agricultural practices on biological resources, including the impacts of nutrient and sediment runoff into waterways including Conn Creek, which flows into the Napa River. The entire Napa River watershed provides critical habitat to the Central Coast Steelhead and is listed on the federal 303(d) list for sediment impairment. The Central Coast Steelhead is threatened by increased river sediment.

The MND also fails to disclose the potential impacts of winery and event noise and nighttime lighting on sensitive species that inhabit the area and Los Posadas State Forest. Increased night and evening noise levels, such as music that would accompany marketing or special events, could disrupt feeding of sensitive species, such as bats. Nighttime lighting is known to disrupt predator-prey relationships and circadian rhythms of birds and other species. (<https://www.nature.com/articles/d41586-018-00665-7>.) The MND fails altogether to mention the Project's proximity to the Los Posadas State Forest, which provides habitat to Northern Spotted Owls. The MND's conclusions that the Project would not have significant impacts on biological resources lack substantial evidence.

Finally, the MND contains no analysis of the Project's potential cumulative impacts on biological resources, despite admitting that the County is concurrently preparing an EIR for the LeColline, LLC winery. The LeColline Project is deforesting an additional 25 acres of woodland and tree canopy, nearby. (MND p. 2.) CEQA requires an EIR to consider the Project's cumulative impacts on biological resources, especially considering that the Project site already exceeds the 40 percent canopy removal permitted by the County. (MND p. 11.)

2. The Project Would Have Significant Impacts on Land Use.

CEQA requires an EIR to disclose and evaluate a project's consistency with adopted planning documents, including General Plans. Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (CEQA Guidelines §

15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874.) This project's obvious inconsistency with the 2008 General Plan and County Code requirements requires preparation of an EIR. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4.)

Due to past approvals, the Project site retains only 45 percent of its tree canopy, instead of the 60 percent retention required by Napa County Zoning Code Section 18.108.27(B). (MND p. 11.) The Project would cut an additional 47 trees and leave only 40 trees, thereby exacerbating the existing inconsistency with County regulations. Even so, the MND claims that significant impacts would not occur, and an additional exception to the Conservation Regulations is not required, because the prior approvals underestimated the remaining tree cover. (*Ibid.*) This conclusion defies reason and lacks substantial evidence. An EIR is required to analyze the impact of removing over half of the remaining trees on an already-deforested parcel.

The removal of seven Black Oak and Live Oak trees also conflicts with General Plan Policy CON-24, which seeks to preserve the County's disappearing oak woodlands. The MND claims that impacts would be mitigated because the Project's proposed landscape plans would provide for 22 Blue Oak trees. (MND p. 11.) However, CDFW has cautioned that several species of oak are failing to regenerate in Napa County. Additionally, the proposed trees are of a different species than the lost trees. The MND contains no information about the size or age of the Black and Live Oak trees slated for removal, so it is unknown if the replacement trees would provide the same habitat, shade, or greenhouse gas uptake value as the lost trees. Finally, the MND contains no actual mitigation to require replacement of lost trees. MM BIO-3 merely provides for preparation of a "final tree removal plan." It contains no requirement for replacement of oak trees, or their species or sizes. Thus, mitigation of this impact is speculative, and the MND's claims that the Project would not have significant impacts due on land use and biological resources due to tree removal lack substantial evidence.

3. Greenhouse Gas Impacts Are Not Disclosed or Analyzed.

Global temperatures are rising at unprecedented rates, which is expected to increase the frequency of heat waves, droughts, and devastating wildfires in the state. California has enacted legislation and executive orders requiring greenhouse gas reductions to 80 percent below 1990 levels by 2050 to avert the worst impacts of climate change. However, these state targets will be missed unless existing emissions are drastically reduced and future developments are emission-free.

CEQA requires agencies to "make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate, or estimate the amount of greenhouse

gas emissions resulting from a project.” (Guidelines § 15064.4(a).) The California Supreme Court recently ordered agencies to “ensure that CEQA analysis stays in step with evolving scientific knowledge and state regulatory schemes.” (*Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 519.)

The MND fails to disclose the Project’s impacts on greenhouse gases. Greenhouse gases would be emitted through construction, agricultural processes, wine fermentation, electricity use, construction, and winery and visitor vehicles, among others. Despite this, the MND claims that analysis is not required because the Project is consistent with the 2008 General Plan. (MND pp. 14-16.) While new wineries such as the Project may have been anticipated by the General Plan, the EIR prepared for that General Plan predates the 2010 CEQA Guidelines Update that required greenhouse gas analysis. Accordingly, that EIR contains limited analysis of the greenhouse gas impacts from new development and no quantification of likely emissions. More importantly, the EIR required the County to prepare a Climate Action Plan to provide mitigation for the impacts of expected growth. The County has not yet adopted a Climate Action Plan. Thus, the MND is incorrect that its alleged consistency with the 2008 General Plan prevents significant impacts due to greenhouse gas emissions.

Although the MND claims that the Project falls below Bay Area Air Quality Management District (BAAQMD) thresholds of significance for greenhouse gas emissions, it cherry-picks its thresholds to avoid being found significant. (MND p. 8 [alternating between general industrial, light industrial, and high quality restaurant].) The MND fails to provide any data, projections, or quantification of the Project’s likely greenhouse gas impacts. CEQA requires an environmental document to “find out and disclose all it reasonably can.” (CEQA Guidelines § 15144.) The MND fails to do this, stating only that the Project’s emissions would be “relatively modest” and would not exceed the 1,100 metric tons carbon dioxide equivalent threshold of the BAAQMD. (MND pp. 15-16.) The public need not rely on the Applicant’s unsupported assertions. An EIR is required that discloses the Project’s greenhouse gas emission calculations.

The MND’s conclusion that the Project’s greenhouse gas emissions would not be significant also appears to rely on voluntary greenhouse gas-reduction methods including rooftop solar panels, green roofs, water efficient fixtures, low impact development, composting, and other measures. (MND p. 15.) While these measures are to be applauded, they are not actually incorporated into the Project as mitigation measures and do not appear to be specific or enforceable. Moreover, the MND contains no detail about the measures or about their likely efficacy, especially given that some of the measures may conflict. The MND does not explain how rooftop solar panels and green/cool roofs will be accommodated simultaneously. Environmental document must evaluate the efficacy of mitigation measures. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645.) Without this evaluation, any reliance on these measures to mitigate the Project’s greenhouse gas emissions lacks substantial evidence.

Carbon that is removed from the atmosphere through photosynthesis is stored in plant roots, leaves, and branches until a plant dies or is removed. The MND further fails to account for ongoing carbon sequestration that will be lost when the 47 mature trees are removed. These losses are substantial and must be quantified and mitigated. Additional greenhouse gas emissions will occur after the trees are felled and either decompose or are burned. Vegetation that is burned will emit carbon dioxide, methane, nitrous oxide, and black carbon, which are far more potent than carbon dioxide. According to the California Air Resources Board, methane has 25 times more climate impact than carbon dioxide, nitrous oxide has 298 times more climate impact than carbon dioxide, and black carbon has 900 times more climate impact than carbon dioxide.

(<https://www.arb.ca.gov/cc/inventory/background/ghg.htm>; <http://news.mit.edu/2017/explained-greenhouse-gases-0130>.) These pollutants account for 30 to 40 percent of climate change. These lost sequestration and biogenic emissions must be disclosed and mitigated in an EIR.

4. The Project Will Have Significant Noise Impacts.

The nearest Project neighbor is only 218 feet from the driveway. Although the MND acknowledges that the Project's purpose is to hold monthly marketing and other events, it claims, without analysis, that these events will have no negative impacts on neighboring residents or biological resources. The MND conclusions appear to rely, in part, on a closing time of 10 pm for all events. However, the MND itself is inconsistent about whether clean-up of events is required to be completed before 10 pm. (MND p. 23.) The MND also relies on a prohibition on amplified music to claim that significant noise impacts would occur, but it is not clear that this prohibition would extend to "temporary" events that would occur. (*Ibid.*) The Project contains no prohibition on non-amplified music. A wedding or party band could easily produce noise levels loud enough to affect nearby residents. The MND's conclusion lacks substantial evidence, especially if an increase in the size or frequency of events is permitted in the future, which is likely.

The MND also fails to analyze the likely significant cumulative noise impacts of the Project, despite the MND's admission that construction or operation of the Project may overlap with the construction of the LeColline project. Tree removal and construction are inherently noisy activities, and enforceable mitigation is required if impacts will occur. A fair argument exists that the Project would have significant noise impacts. An EIR is required.

5. The Project Will Create Unsafe Traffic Conditions.

The MND admits the Project may cause significant impacts with regard to traffic congestion, traffic hazards, and reduced emergency access, but fails to adequately

mitigate these impacts. The MND's conclusions that the impacts would not be significant lack substantial evidence, and an EIR is required.

The Project is located amongst the uncontrolled intersection of Cold Springs Road and Deer Park Road, roadways without sidewalks or shoulders, limited sight lines, and narrow roadways (MND p. 25.) Cold Springs Road is only 14 feet wide in places, meaning that two-way traffic requires one vehicle to pull over in a driveway. (MND p. 26.) Several schools, including PUC Elementary School and Discoveryland Preschool and Childcare Center, are located nearby. (MND p. 26.) There are no sidewalks to protect students walking to school. (*Ibid.*) The Project would introduce wine tasting to these already-dangerous roads, and increase congestion whenever events, weddings, and parties are held. As the site would produce only 24 percent of the grapes needed for winemaking, 76 percent of winemaking grapes would be trucked in to the site during the months of September and October, further exacerbating these traffic impacts.

The MND finds the Project's potential impacts on congestion and schoolchildren safety insignificant, based on limits to winery visitors and events, scheduling of winery deliveries outside school transitions, the addition of stop signs, and the use of shuttles for 125-person winery events held between 3:00 and 5:30 pm. These conclusions are unsupported by substantial evidence. While "winery-related" activity would not occur during school drop-off and pick-ups, MM TRANS-1 does not contain restrictions on wine tasting reservations during those hours. The mitigation also fails to address diesel truck trips related to construction or excavation of the wine cave, which will be numerous. MM TRANS-2 requires shuttles only for event held during 3:00-5:30 pm (although wording of hours inconsistent in MND). It does nothing to address 125 potentially-intoxicated attendees leaving evening events.

The Project would also have insufficient parking. Twelve spaces may be sufficient for a maximum of 20 visitors per day, but it will not suffice for events holding 40, 75, or 125 people, plus staff. MM TRANS-2 must be revised to require the use of shuttles for all events where parking needs will exceed 12 spaces.

Moreover, all of the MND's conclusions are based on the Project's events center holding a limited number of events and on capacity limitations of 125 attendees. Yet the County has shown a willingness to increase the permitted size and frequency of events and has often failed to enforce size and frequency limitations on existing facilities. It is unlikely a commercial kitchen would be economical for the few events disclosed in the MND. Thus, it is likely that the Project will ultimately hold more and larger events, with greater impacts on traffic than disclosed in the MND. These undisclosed impacts are not mitigated by the MND, and an EIR is required.

Finally, the MND acknowledges that the Project's construction or operation could coincide with timber harvesting at the LeColline project. Timber harvesting, grape

transport, wine tasting, and event traffic would have significant, cumulative impacts on traffic congestion and safety on these hazardous roads. The MND's deferral of analysis to the draft EIR for that project violates CEQA.

6. The Project's Narrow Driveway Will Inhibit Emergency Access.

The Project seeks an exception to County requirements for driveway width. (MND p. 24.) County standards for driveway widths exist to ensure the safety of Napa County's residents and visitors and to ensure sufficient access for emergency vehicles. The MND acknowledges that the exception is required by topography, but fails to disclose the potential dangers the driveway exception will pose to employees and visitors to the Project if emergency vehicles and fire trucks cannot easily access the Project. An EIR is required to analyze significant safety impacts on human beings. (CEQA Guidelines § 15065(a)(4).)


7. The MND Fails to Disclose the Impacts of Cave Excavation.

The Project includes the construction of a 28,107 square foot wine cave, but the MND contains no analysis of the grading or earthmoving that will be required to construct the cave or other buildings on the existing, hilly terrain. The excavation and movement of large amounts of earth requires heavy, polluting, diesel equipment, and transport of thousands of truckloads of dirt offsite. Earth movement generates dust and particulate matter, a known problem in the County with adverse health effects on humans, sensitive species, and agriculture. The Project's cave construction would likely result in significant air quality impacts due to fugitive dust and diesel equipment use, as well as the dust and diesel emissions of truckloads of dirt that would be exported from the site, and the traffic and safety impacts of large, diesel trucks on the area's narrow roads. An EIR is needed to analyze these undisclosed impacts.

Conclusion

Thank you for considering our comments. We look forward to the County's preparation of an EIR for this Project that carefully considers the direct and cumulative environmental impacts of the Project and that contains a thorough analysis of alternatives and mitigation measures designed to reduce and avoid these adverse impacts on Napa County.

Sincerely,



Michelle N. Black