

ENDORSED

NOV 19 2018

Clerk of the Napa Superior Court
By: K. ROSE
Deputy

1 Jeffrey M. Brax, Bar No. 218601
Jeffrey.Brax@countyofnapa.org
2 Laura J. Anderson, Bar No. 161372
Laura.Anderson@countyofnapa.org
3 Jason M. Dooley, Bar No. 258570
Jason.Dooley@countyofnapa.org
4 OFFICE OF NAPA COUNTY COUNSEL
1195 Third Street, Room 301
5 Napa, CA 94559-3001
Telephone: 707.253.4521
6 Facsimile: 707.259.8220
Attorneys for Respondents
7 COUNTY OF NAPA and
NAPA COUNTY BOARD OF SUPERVISORS

8
9 Brien F. McMahon, Bar No. 66809
BMcMahon@perkinscoie.com
Jacob E. Aronson, Bar No. 313353
10 JAronson@perkinscoie.com
Michelle W. Chan, Bar No. 281587
11 MWChan@perkinscoie.com
PERKINS COIE LLP
12 505 Howard Street, Suite 1000
San Francisco, CA 94105-3204
13 Telephone: 415.344.7000
Facsimile: 415.344.7050
14 Attorneys for Real Party in Interest
MOUNTAIN PEAK VINEYARD, LLC and
15 Alleged Real Party in Interest
HUA YUAN, aka "ERIC" YUAN

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF NAPA

18
19 SODA CANYON GROUP,

20 Petitioner,

21 v.

22 COUNTY OF NAPA;
23 NAPA COUNTY BOARD OF
SUPERVISORS; and
24 DOES 1 through 10, inclusive

25 Respondents

26 MOUNTAIN PEAK VINEYARDS, LLC;
ERIC YUAN; HUA YUAN; and
27 DOES 11 through 20, inclusive,

28 Real Parties in Interest.

Case No.: 17CV001063

**BRIEF OF RESPONDENTS AND REAL
PARTIES IN INTEREST IN
OPPOSITION TO PETITION FOR WRIT
OF MANDATE**

[CEQA Matter]

Date: January 11, 2019

Time: 8:30AM

Dept: I

Action filed: September 20, 2017

1 **TABLE OF CONTENTS**

2 **Page**

3 TABLE OF CONTENTS..... i

4 TABLE OF AUTHORITIES ii

5 INTRODUCTION 1

6 STATEMENT OF FACTS AND PROCEDURAL HISTORY..... 2

7 I. The Project and Project Site..... 2

8 II. Expert Technical Reports Regarding Possible Environmental Impacts 3

9 III. The Initial Study and Negative Declaration..... 4

10 IV. Planning Commission Approval of the Project..... 4

11 V. Appeal to the Board of Supervisors 4

12 VI. Petition for Writ of Mandate..... 5

13 ARGUMENT 5

14 I. The “Fair Argument” Standard 5

15 II. Petitioner Failed to Identify Substantial Evidence that Would Support a

16 Fair Argument of a Significant Environmental Impact 6

17 A. There Is No Substantial Evidence that the Project Will Have

18 Significant Impacts on Water Quality and Biological Resources in

19 Nearby Streams 6

20 B. There Is No Substantial Evidence that the Project Will Have

21 Significant Impacts on Groundwater and Aquatic Habitat in Nearby

22 Ponds and Streams 9

23 C. There Is No Substantial Evidence that the Project Will Have

24 Significant Noise Impacts 11

25 D. There Is No Substantial Evidence that the Project Will Have

26 Significant Impacts on Traffic and Safety 13

27 CONCLUSION..... 17

28

TABLE OF AUTHORITIES

CASES

Ass'n of Irrigated Residents v. Kern Cty. Bd. of Supervisors,
17 Cal. App. 5th 708 (2017)6, 10

Banker's Hill, Hillcrest, Park W. Cmty. Pres. Grp. v. City of San Diego,
139 Cal. App. 4th 249 (2006)16

Clews Land & Livestock, LLC v. City of San Diego,
19 Cal. App. 5th 161 (2017)5, 16

Cmtys. for a Better Env't v. S. Coast Air Quality Mgmt. Dist.,
48 Cal. 4th 310 (2010)6

Jensen v. City of Santa Rosa,
23 Cal. App. 5th 877 (2018)5, 12

Joshua Tree Downtown Bus. All. v. Cty. of San Bernardino,
1 Cal. App. 5th 677 (2016)5, 6

Leonoff v. Monterey Cty. Bd. of Supervisors,
222 Cal. App. 3d 1337 (1990).....5, 7

Lucas Valley Homeowners Ass'n v. Cty. of Marin,
233 Cal. App. 3d 130 (1991).....7

Mejia v. City of Los Angeles,
130 Cal. App. 4th 322 (2005)9

Mission Bay All. v. Office of Cmty. Inv. & Infrastructure,
6 Cal. App. 5th 160 (2016)12

Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.,
57 Cal. 4th 439 (2013)6

Parker Shattuck Neighbors v. Berkeley City Council,
222 Cal. App. 4th 768 (2013)9

Rominger v. Cty. of Colusa,
229 Cal. App. 4th 690 (2014)8

San Francisco Baykeeper, Inc. v. State Lands Comm'n,
242 Cal. App. 4th 202 (2015)12

Stanislaus Audubon Soc'y, Inc. v. Cty. of Stanislaus,
33 Cal. App. 4th 144 (1995)5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATUTES

Pub. Res. Code § 210686

Pub. Res. Code § 21080(e)(1)5

Pub. Res. Code § 21080(e)(2)5

Pub. Res. Code § 21082.2(c)5

REGULATIONS

Cal. Code Regs. tit. 14, §15064(b)6

Cal. Code Regs. tit. 14, § 15064.7(a)12

Cal. Code Regs. tit. 14, § 153826

Cal. Code Regs. tit. 14, § 15384(a)5

Cal. Code Regs. tit. 14, § 15384(b)5

1 Respondents County of Napa and the County Board of Supervisors (collectively
2 “County”), and Real Party in Interest Mountain Peak Winery, LLC, and alleged Real Party in
3 Interest Hua “Eric” Yuan (collectively, “Mountain Peak”), submit this joint Brief in Opposition to
4 Petitioner’s Petition for Writ of Mandate (“Petition”).

5 INTRODUCTION

6 The project at issue underwent nearly four years of planning and environmental review,
7 analysis of numerous expert technical reports, extensive agency and public comment, and
8 multiple public hearings before the County Planning Commission and Board of Supervisors.
9 After a lengthy and well attended appeal hearing and detailed findings addressing each issue
10 raised by Petitioner, the County adopted a Negative Declaration and approved a use permit for
11 Mountain Peak to construct and operate a winery on Soda Canyon Road, including a wine cave,
12 outdoor crush pad and work area, and tasting and office building, with limited daily visitation by
13 appointment and up to three annual marketing events (the “Project”).

14 The Project will use less water than current vineyard operations on the Project site, will
15 implement stormwater control measures that fully comply with local and state water quality
16 requirements and reduce current erosion risk on the Project site, will operate within County Noise
17 Ordinance standards, and will generate no more than six peak-hour vehicle trips on a road that
18 currently experiences only 109 peak-hour vehicle trips.

19 The County’s role under the California Environmental Quality Act (“CEQA”) was to
20 fairly evaluate the potential environmental impacts of the Project and to carefully consider expert
21 technical reports, testimony of interested persons, and other evidence. The County did precisely
22 that, and acted within its sound discretion in determining the Project will not cause any significant
23 adverse environmental impact. Petitioner has not carried its burden of showing substantial
24 evidence that the Project will have significant adverse environmental impacts. Petitioner relies
25 solely on evidence that lacks a factual foundation, is based on assumption or speculation
26 unsupported by facts, or is irrelevant to the environmental impact inquiry. The Petition should be
27 denied.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. The Project and Project Site.

The Project site is a 41.76-acre parcel located on Soda Canyon Road 6.1 miles north of its intersection with Silverado Trail. AR 900. The Project site currently contains a single-family residence, a farm management office, and 28 acres of vineyards. AR 1715.

On September 26, 2013, Mountain Peak applied to the County for a use permit to construct a new 100,000-gallon-per-year winery. As originally proposed, the Project included a 64,695-square-foot wine cave, a 15,015-square-foot covered outdoor crush pad and work area, and two buildings for tastings and office space. AR 5458. The Project was subsequently revised and downsized multiple times. *See* AR 1715. The final Project is much smaller than was originally proposed: the size of the wine cave was reduced to 33,424 square feet, the size of the covered outdoor crush pad and work area was reduced to 6,412 square feet, and one of the two winery buildings was removed. AR 56. Cave spoils will be deposited within the existing vineyard on the Project site. AR 57. The Project will also involve demolishing the existing single-family residence, installing a wastewater treatment system, installing a community non-transient potable water supply, installing an 80,000-gallon fire suppression cistern, removing 2.96 acres of existing vineyard, and building two new driveways and private access roads. AR 56–57.

As originally proposed, the Project would host tours and tastings for up to 80 visitors per day and 320 visitors per week, three marketing events per month with up to 12 people, three marketing events per month with up to 24 people, four marketing events per year with up to 75 people, and two marketing events per year with up to 125 people. AR 5462. The final approved Project has a substantially downsized marketing program: tours and tastings for up to 60 visitors per day and 275 visitors per week (by appointment only), two marketing events per year with up to 75 people, and one marketing event per year with up to 125 people. AR 58–59. Events must end by 10:00 p.m. (excluding “quiet clean-up”), and no amplified sound or music is allowed. AR 59–60. If an event will exceed the 26 on-site parking spaces, Mountain Peak must prepare an event-specific parking plan (which may include valet service or shuttle service). AR 59.

1 **II. Expert Technical Reports Regarding Possible Environmental Impacts.**

2 During the County’s planning and review process, Mountain Peak submitted expert
3 technical reports addressing every major environmental concern, including water availability,
4 stormwater control, wastewater disposal feasibility, cave feasibility, traffic, and noise.

5 *Water Availability.* Mountain Peak submitted a water availability analysis prepared by
6 Bartelt Engineering, and the results of groundwater pumping tests performed by Richard C. Slade
7 & Associates. AR 369–412, 434–462, 1560–1584. These reports indicated that the Project had
8 adequate groundwater resources, and would use 0.5 acre-feet per year less water than the existing
9 vineyard, by reducing the irrigated vineyard acreage and reusing treated winery process water for
10 vineyard irrigation. AR 1561–1562.

11 *Water Quality.* Bartelt prepared a stormwater control plan that included site-specific
12 stormwater management and erosion control measures to meet applicable County and State water
13 quality requirements. AR 413–433. These measures include compacting and depositing cave
14 spoils on the property away from blue line streams or stream setbacks, directing drainage to on-
15 site retention areas and vegetated swales, and other stormwater control features designed to
16 minimize sedimentation. AR 21, 421–422. The Project plans were evaluated by County civil
17 engineers and found to comply with applicable state and local standards. AR 21.

18 *Traffic.* A traffic impact report prepared by Crane Transportation Group evaluated short-
19 term and long-term traffic impacts on Soda Canyon Road and Silverado Trail. AR 467–544. The
20 report found that during the p.m. peak hour (the period of time when the County road network
21 experiences its highest volume and has the least ability to accommodate additional capacity), the
22 Project would generate five inbound and six outbound vehicle trips. AR 536. The traffic impact
23 report, which was peer reviewed by the County’s traffic engineer, concluded that the Project
24 would not significantly impact the level of service on any studied roadways or intersections. AR
25 11, 471.

26 *Noise.* An acoustical analysis prepared by Illingworth & Rodkin evaluated potential noise
27 impacts from various Project features, including truck traffic, visitor traffic, mechanical
28 equipment, production-related noise (crushing and bottling activities), and special events. AR

1 545–563. The analysis concluded that noise levels at nearby residences would not exceed the
2 County’s Noise Ordinance standards and would not amount to a significant noise impact. AR
3 563.

4 **III. The Initial Study and Negative Declaration.**

5 The County prepared an Initial Study that evaluated all possible environmental effects of
6 the Project. AR 343–368. The Initial Study determined that any environmental impacts would be
7 less than significant. *Id.* Accordingly, the County prepared a Negative Declaration. AR 345. The
8 Initial Study and Negative Declaration were circulated for public review and comment for more
9 than 20 days. AR 571.

10 **IV. Planning Commission Approval of the Project.**

11 The County Planning Commission heard testimony on the Project at a public hearing on
12 July 20, 2016, and January 4, 2017. AR 3605–3688, 3719–3911. Following the conclusion of the
13 public hearing, the Planning Commission voted 3-1 to adopt the Negative Declaration and
14 approve the Project use permit. AR 3687.

15 **V. Appeal to the Board of Supervisors.**

16 On January 17, 2017, four individual members of Petitioner’s organization appealed the
17 Planning Commission’s approval to the County Board of Supervisors. AR 11595, 11597, 11599,
18 11601. The Board of Supervisors held a public hearing on the appeals on May 23, 2017. AR
19 3424–3604. Following the hearing, the Board of Supervisors voted 4-0-1¹ to reject the appeals in
20 their entirety, and directed County staff to prepare resolutions containing findings of fact in
21 support of its decision. AR 3600–3603. On August 22, 2017, the Board of Supervisors adopted
22 resolutions containing detailed findings of fact that addressed each of the 42 grounds of appeal.
23 AR 3–342.² The Board of Supervisors also adopted the Negative Declaration for the Project and
24 approved the use permit subject to updated Conditions of Approval. *Id.*

25
26 ¹ Supervisor Diane Dillon was absent due to a prior official commitment in Washington, D.C. AR
3424–3431.

27 ² The Board of Supervisors adopted separate resolutions for each of the four appellants, identical
28 in form and substance except for the identity of the appellant. *Cf.* AR 3–87, AR 88–172, AR 173–
257, AR 258–342.

1 **VI. Petition for Writ of Mandate.**

2 On September 20, 2017, Petitioner filed the Petition in this Court.

3 **ARGUMENT**

4 **I. The “Fair Argument” Standard**

5 Under the fair argument standard, the Negative Declaration may only be set aside if
6 Petitioner identifies substantial evidence in the record that is sufficient to support a fair argument
7 that the Project may have a significant environmental impact. *Leonoff v. Monterey Cty. Bd. of*
8 *Supervisors*, 222 Cal. App. 3d 1337, 1348 (1990). “The petitioner bears the burden of proof to
9 demonstrate by citation to the record the existence of substantial evidence.” *Jensen v. City of*
10 *Santa Rosa*, 23 Cal. App. 5th 877, 886 (2018).

11 “[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or
12 expert opinion supported by fact.” Pub. Res. Code § 21080(e)(1); *see also* Guidelines³ §
13 15384(b). It is “evidence which is of ‘ponderable legal significance . . . reasonable in nature,
14 credible, and of solid value.’” *Stanislaus Audubon Soc’y, Inc. v. Cty. of Stanislaus*, 33 Cal. App.
15 4th 144, 152 (1995) (quoting *Lucas Valley Homeowners Ass’n v. Cty. of Marin*, 233 Cal. App. 3d
16 130, 142 (1991)).

17 Argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or
18 erroneous evidence, or evidence of social or economic impacts that do not physically impact the
19 environment is *not* substantial evidence. Pub. Res. Code §§ 21080(e)(2), 21082.2(c); *see also*
20 Guidelines § 15384(a). “In the absence of a specific factual foundation in the record, dire
21 predictions by nonexperts regarding the consequences of a project do not constitute substantial
22 evidence.” *Clews Land & Livestock, LLC v. City of San Diego*, 19 Cal. App. 5th 161, 195 (2017)
23 (citation omitted). “Complaints, fears, and suspicions about a project’s potential environmental
24 impact likewise do not constitute substantial evidence.” *Joshua Tree Downtown Bus. All. v. Cty.*
25 *of San Bernardino*, 1 Cal. App. 5th 677, 689 (2016) (citation omitted). The lead agency has
26

27 _____
28 ³ The CEQA Guidelines (“Guidelines”) are codified in Title 14, Chapter 3 of the California Code
of Regulations.

1 discretion to discount evidence where there is a legitimate, disputed issue of credibility. *Id.* at
2 684.

3 Even where there is credible substantial evidence of possible environmental impacts from
4 the Project, Petitioner must also show that the impacts would be significant. A “significant effect
5 on the environment” is “a substantial, or potentially substantial, adverse change in the
6 environment.” Pub. Res. Code § 21068; Guidelines § 15382; *see also* Guidelines § 15064(b)
7 (determination of significance “calls for careful judgment on the part of the public agency
8 involved, based to the extent possible on scientific and factual data”). To determine and quantify
9 a project’s environmental impacts, the lead agency compares existing physical conditions with the
10 physical conditions that are predicted to exist after the Project has been implemented. *Ass’n of*
11 *Irrigated Residents v. Kern Cty. Bd. of Supervisors*, 17 Cal. App. 5th 708, 724–25 (2017).
12 Agencies have significant discretion to determine the appropriate baseline for this comparison.
13 *See Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.*, 57 Cal. 4th 439, 452–53
14 (2013); *Cmtys. for a Better Env’t v. S. Coast Air Quality Mgmt. Dist.*, 48 Cal. 4th 310, 328
15 (2010).

16 **II. Petitioner Failed to Identify Substantial Evidence that Would Support a Fair**
17 **Argument of a Significant Environmental Impact.**

18 **A. There Is No Substantial Evidence that the Project Will Have Significant**
19 **Impacts on Water Quality and Biological Resources in Nearby Streams.**

20 The Project includes features that minimize the risk of grading work or cave spoils
21 affecting water quality in nearby streams. Cave spoils will be deposited in three areas on the
22 property, with most greater than 260 feet from blue line streams. AR 21. Cave spoils will be
23 compacted and vines will be replanted in those areas. *Id.* At their closest point, cave spoils will be
24 deposited 75 feet from one stream, with an existing vineyard road separating the stream from the
25 spoils area. *Id.* No cave spoils will be placed in stream setbacks, and no grading work for the
26 Project will occur in stream setbacks. *Id.* Grading plans for the Project were evaluated by County
27 civil engineers and found to comply with applicable state and local standards. *Id.*

28

1 The Project is required to implement post-construction erosion and sediment control
2 measures to minimize the risk of pollutant and sediment transport to a receiving water body. AR
3 69, 73–76, 81. These measures include directing drainage to on-site retention areas and vegetated
4 swales, applying cover crops, and installing silt traps. AR 21. The County found that these
5 vineyard erosion control measures have been successfully implemented at hillside vineyards
6 throughout the County and are effective at limiting soil loss. *Id.* Bartelt Engineering prepared a
7 stormwater control plan, which documented how the Project would implement erosion control
8 measures and comply with local and state water quality requirements. AR 413–433. In fact,
9 because the Project would implement erosion control measures to satisfy more stringent water
10 quality standards (including ongoing monitoring to ensure that erosion control measures remain
11 in place and function as planned), the County found that that Project would actually *improve*
12 water quality and erosion control as compared to existing conditions. AR 23, 39. Based on these
13 Project design features, Conditions of Approval, and requirements in state and local laws, the
14 County determined that the Project will not cause significant impacts to water quality in nearby
15 streams and, consequently, will not modify habitat or impact sensitive species in nearby streams.
16 AR 350.

17 Petitioner alleges, without any factual basis, that the Project will result in cave spoils
18 entering nearby streams, which would degrade aquatic habitat and impact species in the Rector
19 Creek watershed. Pet'r's Br. at 11–17. On the contrary, as noted, the County studied potential
20 erosion and water quality impacts, and determined that the Project will not result in substantial
21 adverse impacts on water quality or biological resources in nearby streams. AR 349–353, 356–
22 359, 368. There is no credible evidence in the record that the Project's erosion control measures
23 will be inadequate. Petitioner's argument that the County should have prepared a biological
24 assessment thus lacks merit, because there is no fair argument that the Project will cause a
25 significant increase in erosion or sedimentation. *See Lucas Valley Homeowners Ass'n*, 233 Cal.
26 App 3d at 163–64 (where a project cannot conceivably result in an impact, there is no need for
27 further environmental review to study that impact); *Leonoff*, 222 Cal. App. 3d at 1354 (lack of a
28 study is hardly evidence that there will be a significant impact).

1 Evidence cited by Petitioner regarding possible water quality or biological impacts is no
2 more than speculation unsupported by fact:

3 *O’Rear Report.* The report prepared by Teejay O’Rear and four other purported experts
4 (the “O’Rear Report”) documented special status species in the Rector Creek watershed and
5 explained that increased sedimentation could negatively impact those species. AR 1509–1511.
6 But the O’Rear Report did not contain any evidence that the construction or operation of the
7 Project would cause sedimentation to increase. *See* AR 1509–1522.

8 *Manfree Testimony.* Amber Manfree alleged that there is a high risk of sediment entering
9 nearby streams “given the quantity and location of earthmoving activities.” AR 3503. Manfree
10 did not explain or provide a factual basis for her conclusion, nor did she address the adequacy of
11 the Project’s erosion control measures. *See* AR 3498–3505, 3648–3653, 3841–3845. The County
12 acted within its discretion to discount Manfree’s testimony as an assumption unsupported by fact.
13 Specifically, the County found that “proximity to a creek, when the Project is outside of local and
14 State stream setbacks, has little to do with its potential to result in significant erosion. Of far
15 greater importance on preventing erosion into creeks is the proper design and implementation of
16 erosion control measures as part of the project.” AR 22; *see also* AR 3571–3572. Manfree’s
17 further assertion that the creek adjacent to the Project site is “already facing impacts from
18 sediment,” AR 3650, even if true, describes only existing conditions and not impacts from the
19 Project. The Project will be required to comply with the County’s conservation regulations and
20 current state-mandated erosion control measures. AR 69, 73–76, 81. As these requirements are
21 more rigorous than the requirements that were in place when the vineyards were installed, the
22 County properly found they will improve water quality and erosion control compared to existing
23 conditions. AR 22–23.

24 *Kamman Testimony.* Hydrologist Greg Kamman testified that the County should have
25 performed additional studies to calculate runoff and soil loss, and to test whether erosion control
26 measures would be adequate. AR 3495. Kamman’s bald assertion is not evidence, let alone
27 substantial evidence, of a Project-related impact. *See Rominger v. Cty. of Colusa*, 229 Cal. App.
28 4th 690, 723 (2014) (expert’s opinion that mitigation might be inadequate is too vague to amount

1 to substantial evidence); *Parker Shattuck Neighbors v. Berkeley City Council*, 222 Cal. App. 4th
2 768, 786 (2013) (expert suggestion to investigate further is not evidence, much less substantial
3 evidence, of an adverse impact). Indeed, Kamman contradicted his unsupported allegation that
4 erosion control measures might be inadequate: He stated that potential erosion and water quality
5 impacts are “routinely mitigated through erosion control plans and/or preparation and filing of the
6 required Stormwater Pollution Prevention Plan with the State Regional Water Quality Control
7 Board.” AR 1502. This is precisely what the Project’s final Conditions of Approval require. AR
8 69, 73–76, 81.

9 *Mejia v. City of Los Angeles*, 130 Cal. App. 4th 322 (2005), which Petitioner contends is
10 “on all fours” with the instant case, Pet’r’s Br. at 15, is factually distinct and does not support
11 Petitioner’s argument. In *Mejia*, a developer proposed to build a single-family residential
12 subdivision on 17 acres that were predominately undeveloped and on which special status species
13 had been documented. *Id.* at 327. The court in *Mejia* determined that there was a fair argument
14 that constructing 28 houses on the largely undeveloped project site would have a significant effect
15 on existing special status species whose habitat would be destroyed. *Id.* at 340. Unlike in *Mejia*,
16 special status species are not on the Project site, and the Project will not destroy habitat used by
17 special status species. Moreover, the Project site has already been developed in vineyard; the
18 Project will not remove any potential habitat for special status species. The O’Rear Report
19 documented special status species near the Project site in the Rector Creek watershed, but
20 Petitioner has not put forth substantial evidence that any runoff from the Project will cause
21 significant adverse impacts to water quality, aquatic habitat, and special status species in the
22 Rector Creek watershed.

23 **B. There Is No Substantial Evidence that the Project Will Have Significant**
24 **Impacts on Groundwater and Aquatic Habitat in Nearby Ponds and Streams.**

25 Bartelt Engineering and Richard C. Slade & Associates performed detailed calculations of
26 current and projected water use based on County standards. AR 369–412, 434–462, 1560–1584.
27 As detailed below, their analyses demonstrated that the Project will use 0.5 acre-feet less water
28 annually than current vineyard operations on the property. *Id.* Because the Project will use less

1 water annually than existing vineyard operations, it will not have any adverse impact on
2 groundwater supply, nor can it adversely impact water levels in nearby ponds and streams. AR
3 356–359.

4 Current water use on the property is 20.79 acre-feet per year: 20.12 acre-feet per year to
5 irrigate 28 acres of vineyards and 0.67 acre-feet per year to serve the existing single-family
6 residence. AR 371. The Project will make the following changes to current water use conditions
7 on the Project site: (1) remove 2.96 acres of vineyards, which currently require 2.1 acre-feet per
8 year; (2) remove the single-family residence, which uses 0.67 acre-feet per year; (3) add a winery,
9 which will use 3.44 acre-feet per year for processing, marketing events, and landscape irrigation;
10 (4) install a wastewater treatment system, which will allow the reuse of 1.84 acre-feet per year of
11 winery process wastewater for vineyard irrigation; and (5) reduce seasonal irrigation on the
12 remaining 25 acres of vineyards from 129 gallons to 104 gallons per vine. AR 1561–1562.
13 Conditions of Approval limit winery water use to 3.44 acre-feet per year and require ongoing
14 monthly monitoring and annual reporting to the County to ensure this limit is not exceeded. AR
15 62–63. The Project’s 3.96 acre-feet per year reduction in irrigation demand from current
16 conditions (from removal of 2.96 acres of existing vineyards that currently require 2.1 acre-feet
17 per year of irrigation and reuse of 1.84 acre-feet per year of winery process wastewater) more
18 than offsets the 3.44 acre-feet per year winery water use. AR 1561–1562. Thus, the Project will
19 result in a net *decrease* in water demand of 0.5 acre-feet per year from existing conditions. *Id.*⁴

20 Petitioner’s arguments fail to recognize that the Project’s impacts must be evaluated by
21 comparing the post-Project net water consumption to existing baseline conditions. *See Ass’n of*
22 *Irrigated Residents*, 17 Cal. App. 5th at 724 (to determine if impacts are significant, existing
23 conditions must be compared to predicted conditions after the project has been implemented).
24 Kamman’s speculative assertions regarding existing groundwater use, groundwater recharge
25 rates, and potential impacts of groundwater pumping on nearby streams and a spring-fed pond

26 _____
27 ⁴ Because the reduction in seasonal vineyard irrigation demand from 129 gallons to 104 gallons
28 per vine was not a required feature of the Project, the County treated this aspect of the Project as
an existing condition outside the scope of its environmental review. AR 358. Thus, the actual net
decrease in water demand will likely be even more than 0.5 acre-feet per year. *Id.*

1 thus are irrelevant and do not amount to a fair argument of significant adverse Project impacts on
2 groundwater availability, because the Project will use less groundwater than current vineyard
3 operations (which will continue to exist with or without the Project). As the County found, any
4 dispute regarding groundwater recharge rates “is academic and irrelevant. Regardless of whether
5 Kamman’s or Slade’s projections on basin-wide groundwater recharge are correct, there is no
6 evidence in the record to contradict the conclusion that the Project reduces the demand on
7 groundwater over existing conditions.” AR 41.

8 Kamman’s unsupported assertion that existing groundwater pumping on the Project site is
9 causing nearby streams and a spring-fed pond to dry up, even if true, is not a fair argument that
10 the Project would have significant adverse impacts on biological resources, because this describes
11 an existing condition; moreover, the Project would reduce groundwater pumping and would not
12 exacerbate any current drawdown impacts on nearby streams and ponds. Finally, Kamman
13 provided no factual foundation to explain how seasonal variations in the Project’s groundwater
14 pumping will be any different from seasonal variations in baseline conditions, and how any
15 potentially resulting adverse impacts would be significant.⁵

16 **C. There Is No Substantial Evidence that the Project Will Have Significant Noise**
17 **Impacts.**

18 The County determined that the Project, as designed and conditioned, would not result in
19 significant noise impacts. AR 361–362. Illingworth & Rodkin prepared a report that evaluated
20 potential Project noise impacts and determined that the Project as originally proposed (with 78
21 special marketing events per year) would not cause noise levels to exceed any noise thresholds in
22 the County Noise Ordinance. AR 563. As summarized in Table 9 of the Illingworth & Rodkin
23 report, noise levels for special events with up to 200 people would not exceed any noise
24 thresholds at nearby residences, even assuming the worst-case scenario of both raised
25 conversation and non-amplified music. AR 562. The Project as approved is authorized to host
26 only three marketing events per year, each with less than the studied maximum attendance (two

27 _____
28 ⁵ Richard C. Slade & Associates explained in detail why Kamman’s various water use assertions
were speculative and without factual support. *See* AR 1560–1584.

1 with up to 75 people and one with up to 125 people). AR 58–59. To ensure that actual operations
2 do not exceed noise levels, a Condition of Approval requires Mountain Peak to submit an
3 acoustical report to the County noise officer after it commences operations. AR 62.

4 Petitioner cites a letter from Derek Watry, an acoustical consultant, as purportedly
5 supporting its assertion of a fair argument of significant Project noise impacts because, according
6 to Watry, (1) the Illingworth & Rodkin report used incorrect noise thresholds of significance
7 based on the County Noise Ordinance, and (2) the Project would substantially change the
8 character of the neighborhood near the Project. *See* AR 2768–2773. Petitioner is wrong on both
9 counts.

10 The County was not obligated to apply the section of the County Noise Ordinance that
11 Watry referenced as providing for noise thresholds to be reduced by 5 dBA (but not lower than 45
12 dBA) for noise containing music or speech. AR 2769. The County had discretion to use the Noise
13 Ordinance’s base noise thresholds (without a 5 dBA reduction) as thresholds of significance for
14 its CEQA analysis of the Project. *See Mission Bay All. v. Office of Cmty. Inv. & Infrastructure*, 6
15 Cal. App. 5th 160, 192 (2016) (lead agency has substantial discretion in determining the
16 appropriate threshold of significance to evaluate the severity of a particular impact). A threshold
17 of significance does not automatically indicate whether an effect will be significant; rather, it is
18 indicative only that an effect that crosses the threshold will normally be significant. *Jensen*, 23
19 Cal. App. 5th at 885; *see also San Francisco Baykeeper, Inc. v. State Lands Comm’n*, 242 Cal.
20 App. 4th 202, 227 (2015) (Appendix G of the CEQA Guidelines contains suggested thresholds,
21 not mandatory thresholds); Guidelines § 15064.7(a).

22 The Illingworth & Rodkin report’s “worst-case scenario” estimate for special events
23 indicated that noise levels at three nearby residences would be 45 dBA, 47 dBA, and 48 dBA for
24 up to 30 cumulative minutes every hour—at or slightly over Watry’s asserted 45 dBA threshold.
25 AR 562. The County was justified in concluding that actual Project noise would not reach these
26 slightly elevated estimated noise levels and that they did not constitute substantial evidence of
27 significant noise impacts, because the estimated noise levels were based on an event with 200
28 people, 60 percent more people than the 125 maximum guests allowed at the largest allowed

1 Project annual event. AR 562. In addition, the Illingworth & Rodkin report explained that
2 although the estimate combined levels for conversation and music on an (energy) average basis
3 for the sake of estimating a worst-case scenario, this approach is “somewhat problematic” and
4 “not appropriate” because people converse less when music is played. *Id.* Project Conditions of
5 Approval require Mountain Peak to prepare an acoustical report that will recommend attenuation
6 measures, and Mountain Peak must implement those measures if actual Project noise levels are
7 found to exceed noise levels allowed by the County Noise Ordinance. AR 62.

8 Watry’s further assertion that the Project would substantially change the neighborhood
9 character was based on the original Project proposal for 78 evening events per year, not the
10 Project as approved, which was allowed only a maximum of three evening events per year. *See*
11 AR 2768–2770. The County acted within its discretion to determine that Watry’s opinion was not
12 credible because it was unsupported by an accurate factual foundation, given the vast difference
13 between the potential neighborhood-changing impacts of 78 events per year and the approved
14 three events per year. AR 48–49. There is no evidence in the record, let alone substantial
15 evidence, to contradict the County’s finding that three Noise Ordinance-compliant events per year
16 would not cause a substantial change to the character of the neighborhood.

17 **D. There Is No Substantial Evidence that the Project Will Have Significant**
18 **Impacts on Traffic and Safety.**

19 Crane Transportation Group prepared a detailed traffic impact report that evaluated near-
20 term (2019) and long-term (2030) traffic conditions on Soda Canyon Road and Silverado Trail.
21 AR 467–544. This report was peer reviewed by the County traffic engineer. AR 11. The report
22 found that during the p.m. peak hour (the period of time when the County road network
23 experiences its highest volume and has the least ability to accommodate additional capacity), the
24 Project would add only five eastbound vehicle trips and six westbound vehicle trips to Soda
25 Canyon Road. AR 522. For comparison, existing p.m. peak hour traffic on Soda Canyon Road
26 before the Project is 57 eastbound trips and 109 westbound trips (slightly less than one eastbound
27 and two westbound trips per minute). *Id.* The Project would increase p.m. peak hour trips on
28 Silverado Trail by less than 1 percent. *Id.* The traffic impact report concluded that new traffic

1 from the Project—up to six peak-hour trips—will be a nominal increase and will not substantially
2 change existing traffic conditions on Soda Canyon Road or Silverado Trail, or at the intersection
3 of those two roads. AR 470. Because the traffic impact report studied the initially proposed
4 Project before it was substantially downsized, actual peak-hour trip generation will be less than
5 six vehicle trips. *See* AR 10.

6 Petitioner relies on a peer review of the traffic impact report by Daniel Smith, who
7 asserted that the traffic impact report did not accurately reflect existing conditions on Soda
8 Canyon Road, did not properly evaluate intersection congestion, and underestimated Project trip
9 generation. AR 2759–2767. The County acted within its discretion in determining that Smith’s
10 letter was not credible evidence because it relied on erroneous factual foundations and contained
11 several inconsistencies. *See* AR 11–12, 16–17, 49–50. Contrary to Smith’s assertion, the traffic
12 impact report did address the existing condition of Soda Canyon Road. *See* AR 475 (describing
13 Soda Canyon Road’s narrow lanes, minimal shoulder areas, and frequent horizontal curves); AR
14 476 (noting that the traffic analysis considered available collision histories); AR 477 (explaining
15 that the traffic analysis reduced normal two-lane collector roadway capacities by 50 percent to
16 reflect the character of Soda Canyon Road near the Project site).

17 Smith also inaccurately calculated trip generation for the Project based on a worksheet
18 page from the County’s standard use permit application. *See* AR 49–50. As the County explained,
19 this worksheet “is used as a starting point for Planning Division Staff to determine if a formal
20 traffic study prepared by a licensed traffic engineer is required. . . . [I]t provides a conservative
21 approach for determining if a project warrants further study, as was the case with this Project.”
22 AR 49. Further, the information that Smith used to fill in the worksheet did not reflect actual
23 Project characteristics. AR 49–50. Smith filled out the worksheet based on an average of 80
24 weekday visitors (as was originally proposed for the Project), but the Project as downsized and
25 approved will have an average of 40 weekday visitors. *Id.* Smith also erroneously assumed that 38
26 percent of daily employee and visitor vehicles would be on the road between 4:30 and 5:30 p.m.
27 on weekdays, when actual visitation would be spread over the entire day, employees will
28 typically not leave until 5:30 or 6:00 p.m., and a Condition of Approval requires recurring trips to

1 occur outside of p.m. peak hour periods (4:30 to 5:30 p.m. on weekdays and 4:00 to 5:00 p.m. on
2 weekends). *Id.* Even the inflated trip generation rates calculated by Smith’s worksheet do not
3 exceed County thresholds of significance. AR 49–50, 2763.

4 Petitioner also vaguely asserts that the Project will adversely affect public health, safety,
5 or welfare, citing evidence of existing roadway conditions, historical emergency response
6 statistics on Soda Canyon Road, and neighbors’ testimony about safety hazards. Pet’r’s Br. at 23–
7 25. These claims amount to generalized fears, speculation, and assumption unsupported by a
8 factual foundation, not substantial evidence of a significant adverse environmental impact.

9 Petitioner’s testimony and photographs regarding the condition of Soda Canyon Road is
10 not substantial evidence that the Project will have a significant adverse impact. The County traffic
11 engineer testified that Soda Canyon Road is not unique in terms of its pavement condition or its
12 accident history, and that there are many County-maintained roads in similar condition. AR
13 3670–3675. The County determined that the addition of a new winery to the approximately 250
14 properties and existing land uses accessed off Soda Canyon Road will not result in a discernible
15 increase in the degradation of pavement caused by vehicle use. AR 32. Testimony and
16 photographs regarding the pavement, shoulders, and other roadway features describes the existing
17 baseline conditions and does not demonstrate that the Project will cause significant changes to
18 those conditions.

19 There is no credible evidence that the Project will have significant adverse impacts on fire
20 safety. The Project was designed to meet, and will comply with, applicable fire codes and project-
21 specific fire safety Conditions of Approval. AR 85–87. The County fire marshal, who is a
22 contracted subject matter expert from the California Department of Forestry and Fire Protection
23 (CalFire), recommended the Project for approval. AR 16. Although the Project site is located in a
24 Very High Fire Hazard Severity Zone, the property and several hundred acres in the immediate
25 vicinity are planted in vineyards, which provide a substantially lower wildland fire risk than the
26 brush and woodland floral communities native to the area. AR 16–17. In addition, new
27 construction in a Very High Fire Hazard Severity Zone (including the Project) must comply with
28 more rigorous fire safety standards. AR 16. The traffic impact report indicated that traffic

1 volumes on Soda Canyon Road are very low (averaging fewer than two vehicles per minute
2 during the peak period), and the County determined that in the event of a fire, the road has
3 sufficient capacity and roadway width to accommodate mass evacuations while allowing
4 incoming fire response units. AR 17, 522. The County determined that the Project will not change
5 the fire protection setting and will nominally improve fire safety by adding an 80,000-gallon fire
6 suppression cistern, adding fire hydrants, and providing an area within the ventilated wine caves
7 to shelter in place. AR 15. *Cf. Clews Land & Livestock*, 19 Cal. App. 5th at 193–194 (general
8 observations regarding fire hazards in a Very High Fire Hazard Severity Zone were not
9 substantial evidence of a significant increase in fire hazard risk resulting from a project that
10 would comply with applicable fire codes and incorporate measures to increase fire safety in the
11 area).

12 There is also no credible evidence that the Project will have a significant impact on public
13 safety. The County traffic engineer testified that the accident history and safety of Soda Canyon
14 Road is not out of the ordinary for hillside roads in the County, and that Soda Canyon Road is not
15 one of the County’s highest priority roads in terms of collisions. AR 3670–3675. The County
16 determined that Petitioner’s statistics of emergency incidents along Soda Canyon Road
17 demonstrates that there are various reasons for emergency response (the majority of which are
18 from residences, not wineries). AR 12–13. Petitioner does not explain how these statistics
19 demonstrate that the Project would cause a discernible change from existing conditions.

20 Neighbors’ fears and speculation that visitors to Mountain Peak will negligently start wildfires or
21 will drive unsafely or impaired do not amount to substantial evidence of a significant
22 environmental impact. *Clews Land & Livestock*, 19 Cal. App. 5th at 195 (nonexpert’s dire
23 prediction about traffic and roadway hazards, unsupported by a factual foundation in the record,
24 is not substantial evidence); *Banker’s Hill, Hillcrest, Park W. Cmty. Pres. Grp. v. City of San*
25 *Diego*, 139 Cal. App. 4th 249, 274 (2006) (local resident’s lay testimony about accident history at
26 a dangerous intersection lacked factual foundation that the project would exacerbate the existing
27 dangerous condition for pedestrians and drivers). Petitioner did not, and cannot, explain how
28

1 these generalized fears and concerns amount to substantial evidence of a Project-generated
2 significant impact.

3 **CONCLUSION**


4 Petitioner has not shown substantial evidence sufficient to support a fair argument that the
5 Project will cause significant adverse environmental impacts. The Petition should be denied.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: November 19, 2018

OFFICE OF NAPA COUNTY COUNSEL

By: 

Laura J. Anderson

Attorneys for Respondents
COUNTY OF NAPA and
NAPA COUNTY BOARD OF
SUPERVISORS

PERKINS COIE LLP

By: _____
Brien F. McMahon

Attorneys for Real Parties in Interest
MOUNTAIN PEAK VINEYARD, LLC and
HUA YUAN aka "ERIC" YUAN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: November 19, 2018

OFFICE OF NAPA COUNTY COUNSEL

By: _____
Laura J. Anderson

Attorneys for Respondents
COUNTY OF NAPA and
NAPA COUNTY BOARD OF
SUPERVISORS

PERKINS COIE LLP

By: *Brien F. McMahon*
Brien F. McMahon

Attorneys for Real Parties in Interest
MOUNTAIN PEAK VINEYARD, LLC and
HUA YUAN aka "ERIC" YUAN

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and employed in Napa County, California. I am over
3 the age of eighteen years and not a party to the within-entitled action. My business address is
4 1195 Third Street, Suite 301, Napa, California 94559. On November 19, 2018, I served the within
5 document:

6 **BRIEF OF RESPONDENTS AND REAL PARTIES IN INTEREST IN OPPOSITION TO**
7 **PETITION FOR WRIT OF MANDATE**

- 8 by placing, or causing to be placed, the document(s) listed above in a sealed envelope with
9 postage thereon fully prepaid, in the United States mail at Napa County, California,
addressed as set forth below.
- 10 by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope, by
11 **registered or certified mail, return receipt requested**, with postage thereon fully prepaid,
in the United States mail at Napa County, California, addressed as set forth below.
- 12 by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and
13 at the address(es) set forth below.
- 14 by transmitting via e-mail or electronic transmission to the person(s) at the e-mail
15 address(es) set forth below on this date before 5:00 p.m.

16 Mark R. Wolfe
17 John H. Farrow
18 M. R. WOLFE & ASSOCIATES, P.C.
19 555 Sutter Street, Suite 405
San Francisco, CA 94102
mrw@mrwolfeassociates.com

Anthony G. Arger
ROBERTSON, JOHNSON, MILLER &
WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
anthony@nvlawyers.com
aargerlaw@gmail.com

20 Brien F. McMahon
21 PERKINS COIE LLP
22 505 Howard Street
San Francisco, CA 94105
BMcMahon@perkinscoie.com

23
24 I declare under penalty of perjury that the foregoing is true and correct, and that this
25 declaration was executed on November 19, 2018, at Napa, California.

26
27 
28 _____
Connie Denning