

October 11, 2016

John McDowell
Deputy Planning Director
Napa County Planning, Building & Environmental Services Department
1195 Third Street, Suite 210, Napa, California
Fax: (707) 299-1358
Email: John.Mcdowell@countyofnapa.org

Re: Supplemental Comments on & Opposition to the Mountain Peak Winery Use Permit (#P13-00320-UP)

I. INTRODUCTION

On July 19, 2016, I submitted to the County of Napa (hereinafter “County”) a lengthy and highly detailed letter outlining my concerns relating to the proposed Mountain Peak Winery project. (See Anthony G. Arger Opposition Letter re: Mountain Peak Winery Use Permit #P13-00320-UP (hereinafter “Anthony Arger July 19, 2016 Opposition”), currently on file with the County). A hearing on the Mountain Peak project was held on July 20, 2016, after which it was continued until mid-August 2016. The applicant then requested another continuance to October 19, 2016. I write this letter to the County as a supplement to my original letter and respectfully request that the two be reviewed in concert.

The purpose of this supplemental letter is to inform the County of several issues relating to the Mountain Peak project that have come up since, or as a result of the July 20, 2016 Planning Commission hearing. First, the revised visitation numbers submitted by Mountain Peak on the *day of the hearing* are immaterial, misleading, and still far more than should ever be permitted. Second, recent public safety issues are addressed, including reports for Soda Canyon Road from the Napa County Sheriff’s office that were previously unavailable, as well as traffic incidents and fires that have occurred on Soda Canyon Road *since* the July 20, 2016 hearing. Third, pursuant to California law, the County could expose itself to significant liability if it approves the Mountain Peak project. Fourth, Mountain Peak’s claim to be able to annually produce up to 644 tons of grapes “on-site” is impossible. Finally, a caution over the authenticity and motivations behind the LEED Certification program is provided. These topics provide additional support to my position that the Mountain Peak project is out-of-scope for the location in which it is being proposed, and should either be denied outright, or significantly scaled back to match the comparable wineries in the immediate vicinity of the proposed project site.

II. MOUNTAIN PEAK’S REVISED VISITATION FIGURES ARE IMMATERIAL

The original Mountain Peak application requested annual visitation figures for 18,486 individuals. During the July 20, 2016 planning commission hearing, Mountain Peak’s winery consultant, Ms. Donna Oldford stood before the planning commissioners and stated “the applicant wishes to propose a change in the numbers, the visitation, and the marketing numbers. That change basically amounts to about *a 50 percent cut in what was proposed.*” (See **Exhibit 1** – Transcript Excerpt from July 20, 2016 Hearing at p. 43) (emphasis added). In fact, the revised visitation numbers amount to an annual figure of 14,575, a reduction of only 3,911 individuals, which equates to a 21% reduction in visitation, not a “50 percent cut” as boldly misrepresented by Ms. Oldford during the first hearing. (See **Exhibit 2** – Mountain Peak Annual Visitation Figures (Revised)).

Importantly, this reduction in visitation has very little impact on the total number of cars the Mountain Peak project would bring to Soda Canyon Road on annual basis. According to Mountain Peak’s own estimates, the project will generate approximately 47,300 car trips per year on Soda Canyon Road. (See Anthony Arger July 19, 2016 Opposition at p. 3, Exhibit 4). A reduction of 3,911 visitors only reduces the number of car trips by 3,025 trips,¹ meaning that even with the visitation reduction, the **Mountain Peak project will still be generating some 44,275 car trips on Soda Canyon Road on an annual basis.** Thus, Mountain Peak’s small reduction of visitors is completely immaterial when compared to how many car trips the event center will still generate on an annual basis.

As suggested in a letter to the County from Mr. Steve Chilton, which was read before the Commission on July 20, 2016 by his wife Barbara Guggia, Mountain Peak is engaging in an age-old tactic of “asking for the moon,” but in fact knowing all along that it would have to reduce the project’s size in order for it to be anywhere near a level that could obtain County approval. (See **Exhibit 4** - Transcript Excerpt from July 20, 2016 Hearing at p. 155). Aside from being a reprehensible tactic, even a reduction to 14,575 visitors annually is still 14,575 visitors too many

¹According to Mountain Peak’s revised visitation numbers provided to the County, Mountain Peak projects that there will be 2.5 persons per car during the week and 2.8 persons per car on the weekends, which averages to 2.58 persons per car. (See **Exhibit 3** – Compromise visitation figures provided by Steven Rea and Donna Oldford to the County). If Mountain Peak estimates 2.58 persons per car, a reduction of 3,911 visitors equates to a reduction of approximately 1,512 visitor cars on the road, which is a reduction of 3,025 trips annually (because the cars must travel up and down Soda Canyon Road). Thus, even with Mountain Peak’s reduction of 3,911 visitors annually, the trip reduction, according to Mountain Peak’s own figures, is only 3,025 per year.

due to the very remote location of this proposed winery, and the existing precedent set by the immediately comparable wineries.

In my July 19, 2016 letter to the County, I explained that there are three comparable wineries projects in the immediate vicinity of the Mountain Peak proposed winery site that serve as precedent as to the appropriate size and scaling of winery project to be located on upper Soda Canyon Road. As detailed in my first letter, the Mountain Peak Winery project would be appropriately scaled to its proposed location and comparable nearby wineries if the range for the three primary components of the winery – that is (1) production capacity, (2) cave size, and (3) the visitation allowance – were as follows: (1) 12,000 to 19,300 gallons; (2) 1,100 to 1,600 square feet of caves; and (3) 160 to 190 visitors per year. (See Anthony Arger July 20 Opposition at pp. 29-32, 34).

I, along with other opponents of the Mountain Peak project, implore the County not to be fooled but what was likely a premeditated reduction in visitation disguised as an attempt by the applicant to make a public showing of its willingness to compromise. In fact, the proffered reduction in visitation is far less than Ms. Oldford's representation of "a 50% cut in what was proposed," and even the revised annual visitation numbers of 14,575 are still tens of thousands too many for the remote location of this vineyard.

Notably, even the limited visitation numbers of 160 to 190 visitors per year suggested above are generous, as the 1999 decision from the Alcoholic Beverage Control regarding the Astrale e Terra winery clearly determined that "[n]o winetasting or tasting by appointment shall be permitted at this location," and "[n]o retail sales of alcoholic beverages to walk-in customers shall be permitted at this location" specifically because of "a traffic problem on a problematic roadway," which has deteriorated dramatically since 1999. (See Anthony Arger July 19, 2016 Opposition at 30-32). Astrale e Terra/Meadowrock winery is only 0.4 miles from the proposed entrance to Mountain Peak Winery and therefore must be used as a comparable winery. Based on the Astrale e Terra decision, which is the most recent precedent for the immediately comparable wineries, Mountain Peak should not be permitted to have any visitation.

Astoundingly, in what appears to be yet another attempt to mislead the County, the Applicant, in its "Project Statement," revised on March 15, 2016, lists only the following as comparable wineries for daily visitation: (1) Chappellet Winery, (2) Ladera Winery, (3) Oakville Grade Winery, (4) Schramsberg Winery, and (5) Somerston Winery. (See Mountain Peak

Project Statement Revised as of March 15, 2016, on file with the County, at p. 14). A simple search on Google Maps shows that Chappellet Winery is approximately 22 miles from Mountain Peak's proposed winery site; Ladera Winery is approximately 28 miles from Mountain Peak's proposed winery site; Oakville Grade Winery is approximately 17 miles from Mountain Peak's proposed winery site; Schramsberg Winery is approximately 28 miles from Mountain Peak's proposed winery site; and Somerston Winery is approximately 27 miles from Mountain Peak's proposed winery site.

It is flatly deceptive that Mountain Peak presents five wineries from completely different areas of Napa to the County as its "Comparative Analysis," yet fails to even mention the Krupp Winery that never received County approval, and neither the Antica nor Astrale e Terra wineries, which have been operating since the late 1980s-early 1990s, and are located within one half mile of the proposed Mountain Peak winery site. The illusive tactic used by Mountain Peak is readily apparent – the applicant selected as comparisons only "100,000-gpy production wineries," of which there are none in the immediate vicinity, so as to try and hide the fact that there is very limited, and no tasting, respectively permitted at the 450,000-gpy annual production Antica and the 20,000-gpy annual production Astale e Terra, the directly comparable wineries within a stone's throw of the proposed site. Clearly, Mountain Peak must have realized that the real "comparable" wineries in the immediate vicinity of its proposed project allow either very limited or zero visitation, and thus did not want to mention that information to the County. Such conduct is unacceptable and sheds even further light on the concerning and questionable behavior engaged in by the applicant, which was explained in my July 19, 2016 letter. (See Anthony Arger July 19, 2016 Opposition at pp. 32-34).

III. RECENT PUBLIC SAFETY ISSUES ON SODA CANYON ROAD

In my July 19, 2016 letter to the County, I addressed the myriad of public safety issues that currently exist on Soda Canyon Road. While I will not recount all of the specific issues covered in that letter here, it is important to update the County on the recently obtained Sheriff's Office records for Soda Canyon Road, as well as on additional traffic and fire incidents that have occurred *since* the July 20, 2016 hearing. Both topics further demonstrate how dangerous this road is, and the adverse impacts the Mountain Peak project and its addition of approximately 44,275 annual car trips will have on those existing conditions.

A. Napa County Sheriff's Office Incidents (September 2014 to July 2016)

Reports from the Napa County Sheriff's office recently obtained by opponents of the Mountain Peak project further confirm the treacherous and incident-prone area in which Mountain Peak seeks to build its winery event center. Attached to this letter is a summary of "Calls for Service" from the Napa County Sheriff's office from January 1, 2014 to September 26, 2016. (See **Exhibit 5a-b** – Napa Sheriff's Department Soda Canyon Calls for Service and Call Code Explanations). **During that period of just two years and nine months, there have been 465 "Calls for Service" on Soda Canyon Road.** This is an average of 14 calls per month and 169 calls per year. A summary of these calls is as follows:

911 Hangup Call (CODE1): 36	Napa County Ordinance Violation (NCO): 1
Abdominal Pain (ABDOM): 3	Neighbor Problem (NPROB): 2
Agency Assist (AA): 3	NSIB Event (NSIB): 2
Alarm (1033): 19	OCR: 1
Animal Control Callout (ASO): 70	Overdose (OVERD): 2
Area Check (ACK): 3	Patrol Check (PCK): 14
Assault (ASSAU): 4	Patrol Info (PATRO): 29
Attempt to Contact (ATC): 2	Ped Check (PEDCK): 3
Barking Dog (1091B): 1	Person Down (PDOWN): 2
Bite Animal Human Insect Reptile (BITE): 1	Petty Theft under \$400 Loss (488): 7
Bleeding Problem (BLEED): 1	Phone Message: 1
Breathing Problem (BREATH): 2	Probation/Parole Search (SEARC): 3
Burglary (459): 4	Prowler (1070): 1
Chest Pain (CHEST): 4	Reckless Driver (RECK): 18
Choking (CHOKER): 1	Security Check (SCK): 1
Citizen Assist (CA): 10	Seizure (SEIZU): 4
Civil Problem (CIVIL): 2	Shots Fired (SHOTS): 3
Coroner Case (1144): 3	Sick Person (SICK): 3
Disturbance of the Peace (415): 12	Stolen Vehicle (10851): 1
Drug Activity (DRUG): 1	Suicide (1056): 1
<u>Drunk Driver (23152): 28</u>	Suspicious Situation (1030): 19
Elder Abuse (EABUS): 2	<u>Traffic Collision (TC): 11</u>
Embezzlement (EMBEZ): 1	<u>Traffic Hazard (1125): 7</u>
Follow Up (FU): 24	<u>Traffic Stop (TS): 13</u>
Found (FOUND): 1	Trauma (TRAUM): 2
Fraud (FRAUD): 4	Trespassing (TRES): 29
Garbage Dump (GDUMP): 2	Unconscious Person (UNCON): 1
Grand Theft over \$400 Loss (487): 3	Vandalism (594): 6
Hazardous Condition (HAZCON): 1	Vehicle Check (VCK): 11
Lost (LOST): 1	Welfare Check (WCK): 4
Mail Tampering/Theft (MAIL): 5	
Medical Needed (MEDIC): 8	
Motorist Assist (MA): 1	Daytime Incidents (7am-6pm): 341

Nighttime Incidents (6pm-6am): 124

As is clear from a review of the Sheriff's records, Soda Canyon Road is not a quiet country road on which there are no accidents or incidents. To the contrary, and as evidenced by the Napa County Sheriff's report in which there have been 465 "Calls for Service" from January 2014 to September 2016, and both the California Highway Patrol ("CHP") and California Department of Forestry and Fire Protection ("CalFire") reports discussed in my July 19, 2016 letter, see Anthony Arger July 19, 2016 Opposition at pp. 6-9, Soda Canyon Road experiences an extremely high number of accidents and incidents annually. Approval of the Mountain Peak project, which will add some 44,275 car trips per year to Soda Canyon Road, will cause these existing large incident and accident figures to increase significantly.

B. Recent Accidents & Incidents on Soda Canyon Road

In the three months since the July 20, 2016 hearing, three of the most dangerous conditions on Soda Canyon Road – fires, traffic accidents, and incidents involving large trucks and buses – have occurred, lending further support to the opponents' position that **Soda Canyon Road is a very dangerous road under existing conditions**, and approving Mountain Peak will only lead to more accidents, more fires, and more threats to the public's safety and welfare.

1. July 26, 2016 Fire on Soda Canyon Road

On July 26, 2016 a fire broke out on Soda Canyon Road just past the one lane bridge at approximately the 3.2-mile mark. (See **Exhibit 6a-g** – Photos of July 26, 2016 Fire; **Exhibit 7** – Napa Valley Register Article re: July 26, 2016 Fire). Fortunately, CalFire was immediately alerted, responded quickly, and extinguished the fire without any significant human or property damage. As described in detail in my July 19, 2016 letter, the majority of Soda Canyon Road is located in a "Very High Fire Hazard Severity Zone." (See Anthony Arger July 19, 2016, 2016 Opposition at p. 10, Exhibit 22). Due to the geography of the canyon and very dry surrounding brush, the July 26, 2016 fire could have easily spread into a major wildfire if any number of conditions, not the least of which is the wind, had been even slightly different.

Disturbingly, conversations between Soda Canyon residents and CalFire firefighters on scene that day revealed that the suspected cause was a discarded cigarette butt from a careless driver who most likely was *not* a Soda Canyon resident or property owner. The Mountain Peak project is seeking to add 14,575 unfamiliar wine-tasting tourists to Soda Canyon Road on an annual basis. Many, if not all of these wine-imbibing tourists will almost certainly *not* be aware

that they are driving through a “Very High Fire Hazard Severity Zone.” Any single one of these proposed winery tourists could be the next visitor to our community who carelessly discards a cigarette butt out the window of their car and causes a major wildfire, resulting in catastrophic amounts of damage to both people and property.

2. August 13, 2016 Traffic Collision on Soda Canyon Road

Early in the morning of August 13, 2016, a car was driving down Soda Canyon Road, and, almost directly across from the Soda Canyon Road Volunteer Fire Station, at the 4.1-mile mark of the road, struck a deer. The car swerved off the side of the road, plunged down 8-10 feet into Soda Creek and slammed into a tree. (See **Exhibit 8a-h** – Aftermath Photos of the August 13, 2016 Accident; See also **Exhibit 5** – Sheriff’s Report 8/13/16 incident). Although the deer was killed and the car severely damaged, the vehicle occupants fortunately did not sustain any major injuries.

As indicated in my July 19, 2016 letter, deer sightings are incredibly common on Soda Canyon Road, so common in fact that I consider it to be rare *not* to see one or several deer when I drive on the road. (See Anthony Arger July 19, 2016, 2016 Opposition at 13-14). The August 32, 2016 incident is just one of many accidents over the years involving wildlife on this road. While deer and other wildlife are more active at night, they are still regularly seen and involved in accidents during the daytime. (See **Exhibit 9** – October 8, 2016 Video of Deer on Soda Canyon Road, video file provided to County, also available at <https://youtu.be/OW9gAfyZJsw>). Accordingly, even though Mountain Peak has agreed to remove most of its nighttime marketing events, the risk of accidents involving vehicles and deer (or other wildlife) is still very high given that the project will add some 44,275 annual trips on the road.

3. September 24, 2016 Bus Breakdown on Soda Canyon Road

On September 24, 2016, a Saturday, three to four buses from California Wine Tours were seen traveling on Soda Canyon Road. It is still unclear whether the buses were heading to a private home, vineyard, or a winery. Regardless of the circumstance, one of the buses broke down on Soda Canyon Road just before mile marker 5.00, which is at one of the steepest and most dangerous sections on the road because there are no guardrails to protect cars and trucks from toppling over the cliff and into the canyon in the event of an accident. (See **Exhibit 10a-f**). According to a conversation between a Soda Canyon resident and the bus driver, the driver indicated that the 6.7-liter diesel engine “blew up.” The breakdown occurred around 4:30pm. Passengers in the bus were stranded and standing in the middle of the road until another bus came

and picked them up. It then took approximately another four hours for a large tow truck to come and remove the bus from blocking the road. Because of the steep and narrow configuration of Soda Canyon Road, the tow truck had to haul the bus further up the road to the dirt portion of Soda Canyon Road to turn around, which is at the approximately 6.2-mile mark and directly in front of the proposed Mountain Peak Winery site. As is clear from the picture of the tow truck with the bus, it was dark by the time the bus was removed from Soda Canyon Road. (See **Exhibit 10f**).

Thankfully, it does not appear that anyone was injured as a result of this bus breaking down. However, somebody easily could have been injured in any number of different ways. For example, the bus driver and passengers who were standing in the road while waiting for another bus and/or tow truck could have easily been injured if a speeding car coming down the hill did not see them. Additionally, any drivers in a car coming up or down Soda Canyon Road could have easily run into the bus, injuring themselves. Finally, this engine “blow up” could have easily started a brush fire and caused inestimable damage and potential loss of life. As explained in my July 19, 2016 letter, cars have previously started brush fires on Soda Canyon Road, as well as on other roads in neighboring counties. (See Anthony Arger July 19, 2016, 2016 Opposition at p. 10, Exhibit 24a-e; p. 12, Exhibit 31a-b).

The implications of this incident are clear: Mountain Peak has presented to neighbors and the County that it will attempt to reduce the impact of its 14,575 annual visitors on Soda Canyon Road by hiring buses just like the one that broke down on September 24, 2016.² This will lead to other engine “blow ups” that may not end so pleasantly, and in fact could end quite disastrously for Soda Canyon residents, visitors, and even the County in the event of a lawsuit.

IV. APPROVAL OF MOUNTAIN PEAK WILL EXPOSE THE COUNTY TO LIABILITY FOR INJURY

In California, state law imposes liability upon public entities for dangerous conditions of public property. As will be described in detail below, if the County of Napa approves the Mountain Peak Winery project in its current form, or even in a moderately reduced form, it could be subjecting itself to multi-million dollar lawsuits in the event of any serious accidents on Soda Canyon Road that stem from this poorly located and massively out-of-scope commercial winery

²To further demonstrate the frequency with which accidents and incidents occur on Soda Canyon Road, attached as **Exhibit 11a-d** are several photos showing another truck break down around the 4.3-mile mark of Soda Canyon Road in May 2016. This is the location of one of the sharpest and most blind turns on all of Soda Canyon Road. Again, it does not appear that anyone was injured in that accident, but somebody easily could have been, especially if there are some 44,275 car trips added by the Mountain Peak Winery project.

venture. This, in turn, would then adversely impact the tax-paying citizens of Napa County, as they would ultimately foot the bill in one form or another for mistakes made by the County. As public servants, it is the duty of the County of Napa, and especially its Planning Commissioners and Supervisors, to render decisions that are in the best interests of the citizens of Napa, particularly when it comes to public safety.³ Approval of the Mountain Peak Winery, its 14,575 annual visitors and approximately 44,275 annual vehicle trips in the form of both passenger vehicles and still more large equipment and trucks on an already dangerous road, would be contrary to the public welfare, morals, and best interests of not only Soda Canyon residents and property owners, but also citizens throughout Napa County.

Under California Government Code, section 835,

a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either: (a) [a] negligent or wrongful act or omission of an employee of the public entity within the scope his employment created the dangerous condition; or (b) [t]he public entity had actual or constructive notice of the dangerous condition under [s]ection 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

As described in detail in my July 19, 2016 letter, this supplemental letter, and confirmed by numerous other residents and property owners on Soda Canyon Road, the current physical condition of the road is abysmal, which is a function of both the natural geography and steepness of the canyon, as well as the very poor design, engineering, construction, and maintenance of the road. (See also Anthony Arger July 19, 2016 Opposition at pp. 3-5). There are no guardrails or protection on any of the many blind turns, nor on any portion of the steepest section of the road, which drops off nearly straight down into the canyon for an approximate one mile stretch beginning around the 4.5 mile mark. Importantly, for years now, residents and property owners on Soda Canyon have been notifying the County of the dangerous road conditions, numerous traffic accidents, and extreme wildfire danger, yet the County has dismissed all citizen concerns and taken no action other than putting up a few “No Parking” signs and fixing an occasional pothole. In fact, email correspondence dating back several years between various Soda Canyon property

³See *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1246, 97 Cal. Rptr. 2d 467, 499 (2000) (determining that “[i]n reaching a decision on an application for a CUP it is also appropriate for an agency to consider traffic, parking, safety, noise and nuisance problems; these clearly represent concerns that are well within the domain of the public interest and public welfare.”)

owners and several County officials, including Alfredo Pedroza, Diane Dillon, Rick Marshall, and Bill Dodd, demonstrates their knowledge that Soda Canyon Road is and has been for years in a “deplorable condition” that is “well below” the required Pavement Condition Index (PCI) standard of 70. (See **Exhibit 12a-d** at Nov. 4, 2015 email from Supervisor Pedroza, Nov. 4, 2015 email from Supervisor Dillon, Nov. 21, 2013 email from then Deputy Director of Public Works Rick Marshall, and Nov. 18, 2013 email from then Supervisor Dodd). It is truly baffling how the Mountain Peak project has initially been recommended for approval when it is obvious that the County is aware of how “deplorable” the road is and how much worse it will become if the 100,000 gallon, 14,575 annual visitation tourist event center is approved.⁴

As it pertains to Government Code section 835, the entirety of Soda Canyon Road represents a “dangerous condition” of property maintained by the County. Approval of Mountain Peak, or any other event center and tourist-based project seeking approval on Soda Canyon Road, will only exacerbate the dangerous condition because traffic, including the number of inebriated drivers, will unquestionably increase. This creates a foreseeable risk of injury to members of the public. In addition, this letter, along with my July 19, 2016 letter, and all other letters either or both opposing the project and notifying the Count of the dangerous conditions of the road, is more than adequate to satisfy both actual and constructive notice of the dangerous condition as required by Government Code section 835.2. In combination, it is entirely foreseeable that if the County approves the Mountain Peak Winery project, and an accident, fire, or other incident resulting in serious bodily injury or death occurs on Soda Canyon Road as the result of a visitor, employee, vineyard worker, or truck driver going to or from Mountain Peak Winery, the County could be held liable for millions of dollars in damages for such injury or death.

Unfortunately, in the event of such a tragic event it is the very same citizens and taxpayers who are advocating against this project and the unbridled winery and event center expansion across the Napa Valley who would ultimately have to bear the cost of defending such a lawsuit precisely because the County is funded by taxpayer dollars. This scenario is maddeningly unjust, and I implore the County to consider these potentially devastating consequences while reviewing

⁴I take this opportunity to inform the County that opponents of the project have for several weeks now been trying to obtain the traffic records for Soda Canyon Road maintained in the ordinary course of business by the Napa Department of Public Works, but as of the date of this letter, have not yet been provided with all of the records by the Department of Public Works. Accordingly, I, along with other opponents of the Mountain Peak project, respectfully request that the County permit the record to be supplemented at such time that the traffic records for Soda Canyon Road are provided by the Department of Public Works.

any winery application, and especially that of Mountain Peak, as this project is so blatantly out-of-scope for the remote and rural location in which it is located. To ignore these considerations would be contrary not only to California statutory authority and supporting caselaw, but also the very function of the County as a public office to protect the safety and welfare of its citizens.

V. “ON-SITE” GRAPE PRODUCTION OF 450-500 TONS, LET ALONE 644 TONS, IS IMPOSSIBLE

At the July 20, 2016 hearing Mr. Garrett Buckland, Mountain Peak’s viticulturalist, stood before the Planning Commission and stated that at the Mountain Peak “project site, we routinely can get yields – again, its’ variety dependent – that average *five tons an acre or more* in some cases.” (See **Exhibit 13** - Transcript Excerpt from July 20, 2016 Hearing at p. 171). He then mentioned some “model” he based his figures on, and stated that “[i]f you look back at the historical records for all these properties, we are currently doing *somewhere between 450 and 500 tons without a problem.*” (See *Id.* at p. 173). Importantly, when asked by Commissioner Basayne what the total acreage Mountain Peak is “relying upon in creating the production levels,” Mr. Buckland stated that “*these numbers were derived from 112 total acres that’s currently on site that’s using the Acora Vineyard as well.*”⁵ (See *Id.* at p. 172).

As described in my July 19, 2016 letter and as presented at the July 20, 2016 hearing, the most my family has ever harvested from our vineyard is 2.7 tons to the acre. Our property is directly across the dirt road from the Mountain Peak project site, and has a very similar slope, vine configuration, and soils. Accordingly, it is disingenuous for Mountain Peak to claim that it is or will produce 5 tons to the acre.

However, even if for a moment it is assumed that Mountain Peak *could* produce 5 tons to the acre, which I again maintain that it cannot in that location, **the most Mountain Peak could possibly produce “on-site” is 125 tons of grapes, 325 to 375 tons LESS than the projections given by Mr. Buckland.** As explained in detail in my July 19, 2016 letter, the actual Mountain Peak project site has a maximum plantable area of 25 acres after construction. (See Anthony Arger July 19 Opposition at pp. 18-19, Exhibit 39). Mr. Buckland is relying on grape production from (1) another parcel supposedly owned by the applicant several miles past the project site, and (2) leased property from Acora Vineyard to arrive his figure of “112 total acres that’s currently on site...” (See **Exhibit 13** - Transcript Excerpt from July 20, 2016 Hearing at p. 172.). Those

⁵It is noteworthy that Mr. Buckland did **not** specify whether the 112 acres were actually planted in vines.

parcels are both completely separate from the proposed project site and **cannot be considered as part of Mountain Peak’s “on-site production” in association with the sought after 100,000-gallon permit application for APN: 032-500-033 because they are entirely separate parcels of land**. A separate parcel can be sold at any point in time, especially if it is not contiguous with the winery site, and a lease can be terminated at will. This is critical for the Mountain Peak proposal because if the permit for 100,000 gallons is approved, and in 5, 10, 15, or even 20 years, the Mountain Peak owners terminate the lease, sell the separate parcel, and/or sell the winery, the residents and property owners of Soda Canyon Road will be stuck with even more large trucks transporting grapes up and down the road because there will be a winery with a 100,000 gallon permit, which amounts to 700 tons of grapes, (See Anthony Arger July 19, 2016 Opposition at pp. 18-19, Exhibits 40 & 41a-b), that can only grow an absolute maximum of 125 tons of grapes on-site. This (overstated) figure is still far less than the approximately 644 tons Mountain Peak claims it can produce “on-site.” (See Applicant Document – Crane Traffic Report at pp. 4, 5, 31 where Mountain Peak claims that “92 percent of the grapes will be grown on site,” which would amount to approximately 644 tons of the 700 tons of grapes needed to fulfill a 100,000 gallon permit).

In short, the permit sought by Mountain Peak runs with the land, and any claimed on-site production must be limited to the parcel on which the winery is located. By Mountain Peak’s logic of including its separate and *non*-contiguous parcel, as well as a *leased* vineyard, in its grape production numbers, the County might similarly be expected by the applicant to approve a 500,000 or even a 1,000,000-gallon-per-year winery permit that is on a 10-acre parcel in Napa that has perhaps only 2 acres of producing vines on-site, but whose proprietor owns some 100 acres in Sonoma, and leases another 900 acres Calistoga, Paso Robles and/or even the Willamette Valley. Such arguments defy any sense of logic or common sense, the purpose and intent of the Agricultural Preserve, and accordingly must be summarily dismissed by the County.

VI. BE WARY OF MOUNTAIN PEAK’S LEED CERTIFICATION

Throughout its application process, and especially at the July 20, 2016 hearing, Mountain Peak Winery has gone out of its way to emphasize its plans to make the facility the first LEED Platinum winery in the Napa Valley. While I can and do appreciate the applicant’s apparent intent to make its winery more environmentally friendly, I do caution the County not to place too much emphasis on this certification, and not to lose sight of the fact that this project, no matter how

many certifications it has, is still a large scale commercial winery project that will adversely impact the environment.

Since the July 20, 2016, I have conducted some research on the LEED certification program and found that in fact it is effectively a “pay to play” scheme that can cost applicants anywhere from \$20,000 to \$60,000 depending on the size of the project. (See **Exhibit 14** – LEED Certification Fees; **Exhibit 15** – Understanding the Cost of LEED Certification). Importantly, there are critics of the program, including world-renowned architect Frank Gehry, who have called the certification system “bogus stuff.” (See Exhibit 16 – Architect Frank Gehry talks LEED). In one article criticizing the LEED certification system, the author explained that LEED has become so popular because “*it lets politicians cloak themselves in the garb of environmental activism without upsetting real-estate interests.*” (See **Exhibit 17** – Fake Green Labels). In the same article, the author sites to a study that suggests that buildings certified by the U.S. Green Building Council’s (USGBC) LEED green-rating system “often use *more energy*,” not less, than traditional buildings. (See *Id.*). The article concludes by stating that “[a]s long as the builders, the designers, the engineers and the tenants have a stronger incentive *to appear* green than to actually achieve energy efficiency, phony systems such as LEED will dominate.” (See *Id.*).

The Mountain Peak permit application is for a 100,000-gallon production capacity, 33,424 square feet of caves (which would be the twelfth largest in all of Napa – See Anthony Arger July 19, 2016 Opposition, Exhibit 2 – Napa County Wine Caves), a total of 14,575 visitors per year, two (2), 100,000 water storage tanks, use of ~15,200 gallons of water per day, and one (1), 20,000 gallon waste system, all of which is to cover 103,016 square feet by “Phase II” of the project according to the Applicant’s revised application, submitted in March 2016. This project will also have 19 full-time employees, 4 part-time (but nonetheless year-round) employees, 4 seasonal employees during harvest, an unidentified number of vineyard workers, delivery and equipment truck drivers, and other individuals needed to run a commercial operation of this magnitude, who, in combination with the 14,575 annual visitors, and according to the applicant’s own traffic figures, will generate approximately 44,275 vehicle trips annually on Soda Canyon Road. In light of these *facts*, which Mr. Rea and the applicant’s other representatives conveniently and deliberately chose *not* to discuss at the July 20, 2016 hearing, (See **Exhibit 18** - Transcript Excerpt from July 20, 2016 Hearing at p. 49 where Mr. Rea stated he was “not going to go into too many

facts” about the project), no matter how many “points”⁶ Mountain Peak scores on its path to LEED certification stardom, the project will have serious adverse environmental impacts on the entire Soda Canyon community and beyond. Accordingly, I respectfully request that the County keep the facts close at hand, and not be distracted by Mountain Peak’s relentless focus on its LEED certification, especially when a simple Google search reveals that the certification scheme may not be all that its advocates purport it to be.

VII. CONCLUSION

As a result of all the adverse environmental impacts and serious threats to the safety and welfare of all members of the public who reside, own property on, or visit Soda Canyon Road, I strongly urge the County to deny Mountain Peak’s use permit application. During the July 20, 2016 hearing, numerous opponents of the project explained how dangerous the road is under existing conditions. Three of the primary dangerous conditions discussed at the hearing were fires, traffic accidents, and large trucks regularly traveling on and blocking the road. In the less than three months since the first Mountain Peak hearing, there has been a fire, a serious traffic accident, and a tour bus blocking the roadway. Residents and property owners are not making these dangerous conditions up. These very recent examples, along with the 465 “Calls for Service” from the Napa County Sheriff’s Department and other reports from both the CHP⁷ and CalFire, verify this fact. Incredibly, the County seems to be keenly aware of these dangerous conditions, and has been for years, yet is still recommending approval of this project. Such cavalier approval could result in direct liability of the County for an injury or death under Government Code section 835. This is not a situation the County should be placing itself in, especially when it is the same

⁶During the July 20, 2016 hearing, Mr. Earl Wilson, a principal with BAR Architects in San Francisco, whom the applicant asked to present at the hearing, spent several minutes explaining how LEED projects must obtain “points” to achieve the various levels of LEED certification (Gold, Silver, Platinum, etc.). (See **Exhibit 19** – Transcript Excerpt from July 20, 2016 Hearing at pp. 73-74).

⁷Attached to this supplemental letter as **Exhibit 20a-c** is (1) an updated summary of the detailed “Incident Reports” as provided by the CHP from January 21, 2013 to October 3, 2016, (2) a certification letter from the CHP, and (3) a sample “Incident Report” from August 3, 2016. Because each individual report is several pages long, I compiled the summary, which is an accurate reflection of each incident as described in the “Incident Reports.” As an officer of the court, I declare under penalty of perjury under the laws of the State of California, that this summary accurately reflects what is contained in the much longer, more detailed CHP “Incident Reports.” And in fact, an earlier version of this report (the same report, but simply containing records from January 2013 to April 2015) was already accepted into a legal court proceeding as an evidence exhibit in a separate matter. That being said, I am more than happy to provide ALL of the CHP records used to compile the attached summary to the County in electronic format for review and confirmation upon request.

taxpayers across Napa who are advocating against winery event center projects like Mountain Peak that will ultimately be stuck with the legal bill.

Additionally, Mountain Peak's permit request for 100,000 gallons is based on severely flawed math in terms of its annual grape production capabilities, and the project developers must not be allowed to mislead the County, not to mention the residents and property owners of Soda Canyon Road, with a claim that "92% of the grapes will be grown on site," which equates to some 644 tons of the approximately 700 tons of grapes that would fulfill a 100,000-gallon permit. Such a claim is truly impossible based on the fact that Mountain Peak will only be able to plant approximately 25 acres of vineyards on the project site post-construction. Lastly, while I do applaud Mountain Peak for its apparent effort to make a "low-impact" winery, I am very weary of the LEED Certification program in light of the fact that Mountain Peak appears to have to pay large sums of money to achieve certification, and because critics have specifically highlighted that LEED Certification is used by developers and politicians alike to give the appearance of being environmentally friendly, when in fact they are not. As clearly demonstrated by Ms. Amber Manfree, PhD, both in her letters to the County and during the July 20, 2016 hearing, this project will have serious environmental impacts on the local environment no matter how many "points" it proclaims to have scored with the LEED Certification system.

For all of these reasons, and many others discussed by other opponents of the project, I respectfully request that this project be denied in its current form, and only be considered for approval if and when it is appropriately scaled to the location and immediately comparable wineries, which would equate to a production capacity of 12,000 to 19,300 gallons, 1,100 to 1,600 square feet of caves, and 160 to 190 visitors per year, if any.

Thank you for taking the time to read my supplemental comments and opposition to the Mountain Peak use permit, and please do not hesitate to let me know of any questions or concerns regarding any of the topics I have covered.

Sincerely,

Anthony G. Arger, Esq.
Odyssey Vineyards
3030 Soda Canyon Road, Napa, CA 94558