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FILED
9/20/2017 8:26 AM
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11
12 THE SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF NAPA
14

15 SODA CANYON GROUP;

Case No.: 17CV001063

16 Petitioner,

17 vs.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

18 COUNTY OF NAPA; NAPA COUNTY
19 BOARD OF SUPERVISORS; and
20 DOES 1 through 10, inclusive,

[Code Civ. Proc. §1094.5; Pub. Res. Code §§
21168, 21168.5 et seq.; Gov't Code § 65000
et seq.]

21 Respondents

22
23 MOUNTAIN PEAK VINEYARDS, LLC;
24 STEVEN REA; ERIC YUAN; HUA YUAN;
and DOES 11 through 20, inclusive,

25 Real Parties in Interest.
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1 **INTRODUCTION**

2 With this lawsuit, Petitioner SODA CANYON GROUP (“SCG”), an unincorporated
3 association of Napa County residents and property owners, challenges the August 22, 2017 final
4 action by Respondents COUNTY OF NAPA and NAPA COUNTY BOARD OF
5 SUPERVISORS (collectively “County”) approving Use Permit No. P13-00320-UP and a Road
6 and Street Standards exception request for a proposed 100,000 gallon per year winery located at
7 3265 Soda Canyon Road in unincorporated Napa County (“Project”). The Project proponents
8 are Real Parties in Interest MOUNTAIN PEAK VINEYARDS, LLC, STEVEN REA, ERIC
9 YUAN and HUA YUAN (collectively “Mountain Peak”). In approving the Project, the County
10 adopted a Negative Declaration pursuant to the California Environmental Quality Act
11 (“CEQA”), Pub. Resources Code § 21000 *et seq.*, finding that the Project would have no
12 significant environmental impacts.

13 SCG contends the County prejudicially abused its discretion by relying on a Negative
14 Declaration in lieu of preparing a full environmental impact report (“EIR”) for the Project.
15 Under CEQA, if there is substantial evidence in the administrative record before a public agency
16 that a proposed project may have a significant impact on the environment, the agency must
17 prepare an EIR, even if other substantial evidence shows the project will have no such impact. In
18 this case, there is abundant substantial evidence in the record before the County that the Project
19 not only may but will have several significant environmental effects, most notably in the areas of
20 biological resources, surface and groundwater resources, traffic, noise, public safety,
21 archaeological resources, and cumulative impacts. The County therefore had a mandatory duty
22 under CEQA to prepare and circulate an EIR before approving the Project.

23 SCG also contends the County violated applicable provisions of the State Planning and
24 Zoning Law, Gov’t Code § 65000 *et seq.* by approving the Use Permit despite the Project’s
25 numerous inconsistencies with the Napa County General Plan. Finally, SCG contends the
26 County abused its discretion by adopting findings required by the County’s Zoning Code that the
27 Project would not adversely affect the public health, safety, and welfare of County residents,
28 when there is no substantial evidence in the record to support such findings, and in fact there is

1 substantial evidence in the record that the Project would adversely affect the public health, safety,
2 and welfare of County residents.

3 SCG accordingly seeks a peremptory writ of mandate under Code of Civil Procedure
4 section 1094.5, and Public Resources Code section 21168 and/or 21168.5, commanding the
5 County to set aside its adoption of the Negative Declaration and approval of the Project, and to
6 reconsider its actions only after preparing and circulating a draft EIR for public review and
7 comment in accordance with CEQA, and addressing the Project's inconsistencies with the
8 General Plan and County Code. SCG further seeks a stay of the effect of the County's approvals
9 during the pendency of these proceedings. Finally, SCG seeks an award of costs and attorneys
10 fees under Code of Civil Procedure section 1021.5, together with any other relief the Court
11 deems necessary and proper.

12 In support whereof, SCG alleges:

13 **PARTIES**

14 **Soda Canyon Group**

15 1. Petitioner SODA CANYON GROUP is an unincorporated association of citizens,
16 property owners, tax payers and electors residing in unincorporated Napa County. Its
17 organizational purpose includes advocating for just, equitable and responsible land use planning
18 and policy, as well as diligent enforcement of planning and environmental laws in and around the
19 Napa Valley, and particularly in Napa's hillsides and watersheds.

20 2. SCG's members include, but are not limited to, Kosta Arger, Cynthia Grupp,
21 William Hocker, and Glenn Schreuder, all of whom are competent adult residents of the County
22 living near the Project site.

23 3. SCG's members maintain a direct and regular geographic nexus with the County of
24 Napa and the Project vicinity, and will therefore suffer direct harm as a result of any adverse
25 environmental and/or public safety impacts caused by the Project.

26 4. SCG has a clear and present right to, and beneficial interest in, the County's
27 performance of its duties to comply with CEQA, the State Planning and Zoning Law, and its
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1 own Zoning Code. As Napa County citizens and property owners, SCG's members are within
2 the class of persons to whom the County owes such duties.

3 5. By this action, SCG seeks to protect the interests of its members and to enforce a
4 public duty owed to them by the County. Because the claims asserted and the relief sought in this
5 petition are broad-based and of a public as opposed to a purely private or pecuniary nature,
6 direct participation in this litigation by SCG's individual members is not necessary.

7 6. SCG's members individually and/or through counsel testified in opposition to the
8 Project prior to and/or during the public hearings culminating in the County's August 22, 2017
9 approval action, and raised or supported all objections to the Project and alleged grounds for
10 noncompliance with CEQA and the State Planning and Zoning Law presented herein.

11 **County of Napa**

12 7. Respondent COUNTY OF NAPA is a political subdivision of the State of
13 California. It is responsible for regulating and controlling land use in the unincorporated area of
14 its territory, and has a mandatory duty to implement and comply with the provisions of CEQA
15 and the State Planning and Zoning Law in fulfilling this responsibility. At all times relevant
16 herein, the County served as the "lead agency" under CEQA responsible for evaluating the
17 potential environmental impacts of the Project before approving it.

18 **Napa County Board of Supervisors**

19 8. Respondent NAPA COUNTY BOARD OF SUPERVISORS is the duly elected
20 legislative decisionmaking body of the County. As such, it is charged with the ultimate
21 responsibility to implement and comply with the provisions of CEQA and the State Planning and
22 Zoning Law in carrying out the County's land use regulatory authority.

23 **Respondent Does 1 through 10, Inclusive**

24 9. SCG currently does not know the true names and capacities of Respondent DOES
25 1 through 10 inclusive, and therefore names them by such fictitious names. SCG will seek leave
26 from the court to amend this petition to reflect the true names and capacities of DOES 1
27 through 10 inclusive if and when ascertained.

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1 **Mountain Peak Vineyards, LLC**

2 10. SCG is informed and believes that Real Party In Interest MOUNTAIN PEAK
3 VINEYARDS, LLC, is a California limited liability company with a principal place of business in
4 Napa County. SCG is further informed and believes that Mountain Peak Vineyards, LLC, is a
5 sponsor and developer of the Project, and was an applicant for and recipient of the land use
6 entitlements challenged herein.

7 **Steven Rea**

8 11. SCG is informed and believes that Real Party In Interest STEVEN REA is an
9 adult U.S. citizen domiciled in Napa County. SCG is further informed and believes that Steven
10 Rea is a sponsor and developer of the Project, and was an applicant for and recipient of the land
11 use entitlements challenged herein.

12 **Eric Yuan**

13 12. SCG is informed and believes that Real Party In Interest ERIC YUAN is an adult
14 U.S. resident domiciled in Marin or Napa County. SCG is further informed and believes that Eric
15 Yuan is an owner of the property comprising the Project Site, is a sponsor and developer of the
16 Project, and was an applicant for and recipient of the land use entitlements challenged herein.

17 **Hua Yuan**

18 13. SCG is informed and believes that Real Party In Interest HUA YUAN is an adult
19 U.S. resident domiciled in Marin or Napa County. SCG is further informed and believes that Hua
20 Yuan is an owner of the property comprising the Project Site, is a sponsor and developer of the
21 Project, and was an applicant for and recipient of the land use entitlements challenged herein.

22 **Real Party Does 11 through 20, Inclusive**

23 14. SCG currently does not know the true names and capacities of Real Parties In
24 Interest DOES 11 through 20 inclusive, and therefore names them by such fictitious names.
25 SCG will seek leave from the court to amend this petition to reflect the true names and capacities
26 of DOES 11 through 20 inclusive if and when ascertained.

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1 **JURISDICTION & VENUE**

2 15. This action is brought pursuant to Public Resources Code sections 21167, 21168,
3 and 21168.5, and Code of Civil Procedure section 1094.5. Venue is proper Napa County under
4 Code of Civil Procedure section 395.

5 **FACTUAL BACKGROUND**

6 **Project Description**

7 16. The Project consists of: (a) the construction of a new 100,000 gallon per year
8 winery, including an approximately 33,424 square foot cave, approximately 8,046 square foot
9 tasting and office building, and approximately 6,412 square foot covered outdoor crush pad and
10 work area; (b) demolition of an existing single family residence; (c) installation of 26 parking
11 spaces; (d) construction of 2 new driveways and private access roads with ingress/egress from
12 Soda Canyon Road; (e) installation of a wastewater treatment system and community non-
13 transient potable water supply sourced from on-site private wells including two 100,000 gallon
14 water tanks for vineyard irrigation and one 20,000 gallon water tank for domestic supply; (f)
15 disposal of all cave spoils on-site; (g) employment of 19 full-time employees, 4 part-time
16 employees and 4 seasonal harvest employees; (h) tours and tastings for up to 60 visitors per day
17 and 275 visitors per week; (h) a marketing plan including two events per year for up to 75
18 visitors, and one event per year for up to 125 visitors; and (i) on premises consumption of wines
19 produced on site in the tasting room and outdoor terrace. The Project also includes a request for
20 an exception to the Napa County Road and Street Standards (RSS) to increase the maximum
21 slope on a portion of the commercial access road to the covered crush pad and cave portals from
22 16 percent to 19.6 percent.

23 17. The Project site is located on a remote and rural 41.76-acre parcel on the
24 northwest side of Soda Canyon Road on Atlas Peak, approximately 6.1 miles northeast of
25 Silverado Trail. The parcel is bordered by a blue-line stream immediately to the west, and has a
26 second blue-line stream that bisects the eastern portion of the parcel. Both blue-line streams feed
27 into Rector Canyon and eventually into the Rector Reservoir and Dam. To dig the caves and to
28 make way for other improvements, the Project will remove and redistribute nearly 2,000,000

1 cubic feet of earth, all of which will be redistributed on-site and in close proximity to both blue-
2 line streams.

3 18. The Project's employees, combined with approximately 14,000 annual visitors, and
4 other patrons will generate over 40,000 new vehicle trips per year to Soda Canyon Road, a
5 narrow, two-lane, winding, dead-end road currently in a state of serious disrepair, where
6 hundreds of accidents and other emergency-related incidents have been reported over the past
7 several years by the Napa County Sheriff's Department, the California Highway Patrol, and the
8 California Department of Forestry and Fire.

9 19. All told, the Project is the largest winery Project ever approved in Napa County
10 when considering the remoteness of the location and access constraints of Soda Canyon Road.

11 **Procedural History**

12 20. Mountain Peak submitted its Use Permit application for the approved version of
13 the Project in March, 2016. Thereafter, the County's Planning, Building, and Environmental
14 Services Department prepared, or caused to be prepared an Initial Study of the Project's
15 potentially significant environmental impacts in accordance with CEQA. The Initial Study, which
16 the County released for public review and comment in June, 2016, concluded the Project could
17 not possibly have any significant environmental impacts, that a full EIR was not necessary, and
18 that a Negative Declaration would be appropriate under CEQA.

19 21. Various organizations and individuals, including SCG members, submitted timely
20 written comments on the Initial Study during the public review period. These comments
21 included expert opinion and testimony from qualified technical professionals in the areas of
22 traffic, noise, and biological resources who had independently reviewed the information
23 contained in the Initial Study. All these experts concluded that the Project would have significant
24 environmental impacts, contrary to the Initial Study's conclusion.

25 22. On July 20, 2017, the County's Planning Commission held a public hearing on the
26 Project, which it continued to August 17, 2016 due to the large volume of public opposition and
27 comments presented. The Planning Commission thereafter continued the matter at Mountain
28 Peak's request, and set a final hearing date of January 4, 2017.

1 23. On January 4, 2017, the Planning Commission reconvened the public hearing on
2 the Project. Various individuals and organizations, including SCG and/or its individual members
3 appeared and testified in objection to the Project and submitted additional technical information
4 and expert testimony that the Project would have significant environmental impacts in the areas
5 of noise, traffic, surface water and groundwater hydrology, biological resources. SCG members
6 also submitted evidence addressing the adverse public safety effects of locating a wine tasting and
7 event facility on a dangerous, poorly maintained dead-end road with a long history of traffic
8 accidents and emergency responses.

9 24. After closing the public hearing, a majority of the Planning Commission voted to
10 adopt a Negative Declaration under CEQA and to approve the Project.

11 25. On January 10, 2017, County personnel filed and posted a Notice of
12 Determination in accordance with Public Resources Code section 21152.

13 26. On January 15, 2017, four members of SCG filed Notices of Intent to Appeal the
14 Planning Commission's action to the Board of Supervisors in accordance with the use permit
15 appeal provisions of the County Zoning Code.

16 27. Between January 31 and February 1, 2017, Respondents and Real Parties entered
17 into written agreements with these four members of SCG tolling the 30-day statute of limitations
18 for challenging the County's actions under CEQA until 30 days following the Board of
19 Supervisors' final action on the appeals.

20 28. The four appeals were later consolidated into a single appeal hearing, which the
21 Board of Supervisors held on May 23, 2017. Prior to the hearing, the Board considered various
22 requests from the four appellants to submit additional technical information into the
23 administrative record showing the Project would have significant environmental impacts relating
24 to surface and groundwater resources, and wetlands, as well as geotechnical impacts that would
25 aggravate the already serious public safety concerns associated with Soda Canyon Road. The
26 Board granted some of the requests but denied others, over the appellants' objections.

27 29. After closing the public hearing, a majority of the Board of Supervisors voted to
28 deny the four appeals and to adopt the Negative Declaration and approve the Project, directing

1 County staff to return at a later date with findings of fact to support its decision.

2 30. On August 22, 2017, the Board of Supervisors adopted resolutions containing its
3 findings of fact and decision on the appeals.

4 **FIRST CLAIM FOR RELIEF**

5 **(Violation of CEQA – Failure to Prepare Environmental Impact Report)**

6 31. SCG here incorporates by reference all preceding paragraphs in their entirety.

7 32. At all times relevant to this action the County was the “lead agency” responsible
8 for the review and approval of the Project under Public Resources Code section 21067.

9 33. Under Public Resources Code section 21080(d), if there is substantial evidence in
10 light of the whole record before a lead agency that a discretionary project it intends to carry out
11 may have a significant effect on the environment, the lead agency must prepare an EIR.

12 34. Under Public Resources Code section 21080(c)(1), a lead agency may adopt a
13 negative declaration for a project, only if an initial study shows there is no substantial evidence in
14 light of the whole record before the agency that the project may have a significant effect on the
15 environment. In other words, if a lead agency is presented with a “fair argument” that a project
16 may have a significant effect on the environment, the lead agency shall prepare an EIR, even
17 though it may also be presented with other substantial evidence that the project will not have a
18 significant effect. *No Oil, Inc. v. County of Los Angeles* (1974) 13 Cal. 3d 68; 14 Cal.Code.Reg. §
19 15064(f)(1).

20 35. For purposes of CEQA, “substantial evidence” is defined as including: “facts,
21 reasonable assumptions predicated upon facts, and expert opinion supported by facts.” 14
22 Cal.Code.Reg. § 15064(f) (5). Thus, if there is disagreement among expert opinion supported by
23 facts over the significance of an effect on the environment, the lead agency “shall treat the effect
24 as significant and shall prepare an EIR.” *Id.* at subd. 15064(g).

25 36. Here, there is substantial evidence in light of the whole record before the County
26 that the Project not only may but will have significant direct, indirect, and cumulative effects on
27 the environment, in areas including but not limited to traffic and circulation, noise, archaeological
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1 resources, biological resources, surface waters, and groundwater resources. There is substantial
2 evidence in the form of facts, reasonable assumptions predicated upon facts, and expert opinion
3 supported by facts that the Project will have these and other significant adverse direct, indirect,
4 and cumulative environmental effects. The County therefore had a mandatory duty under CEQA
5 to prepare and circulate a full EIR for the Project before taking any action to approve it.

6 37. The County therefore prejudicially abused its discretion by approving the Project
7 based only on a Negative Declaration.

8 **SECOND CLAIM FOR RELIEF**

9 **(Violation of State Planning & Zoning Law – Project Inconsistent With General Plan)**

10 38. SCG here incorporates by reference all preceding paragraphs in their entirety.

11 39. Under the State Planning and Zoning law, Government Code §§ 65000 *et seq.*, a
12 local public agency may entitle a proposed land use only if the land use is consistent with the
13 goals, policies, and objectives contained in a valid, current, internally consistent General Plan,
14 including any applicable subsidiary plans and zoning ordinances.

15 40. Substantial evidence in the record shows that the Project is inconsistent and
16 incompatible with numerous governing goals, policies, programs and regulations contained in the
17 County General Plan and Zoning Code.

18 41. The County therefore prejudicially abused its discretion by approving the Project
19 notwithstanding these General Plan inconsistencies and incompatibilities, and by adopting
20 findings of General Plan and Zoning Code consistency that are not supported by substantial
21 evidence.

22 **THIRD CLAIM FOR RELIEF**

23 **(Violation of State Planning & Zoning Law – Use Permit Findings Not Supported by
24 Substantial Evidence)**

25 42. SCG here incorporates by reference all preceding paragraphs in their entirety.

26 43. Under Section 18.124.070 of the Napa County Code, the County may grant a Use
27 Permit for a project if and only if it makes a finding, based on substantial evidence in the record
28

1 before it, that the permitted project, as conditioned, will not adversely affect the public health,
2 safety or welfare of the county.

3 44. Here, there is substantial evidence in the record that the operation of the Project,
4 including, but not limited to, its on-site wine tasting activities and larger scale marketing events,
5 will adversely affect the public health, safety and welfare of County residents, including SCG
6 members. There is no substantial evidence in the record that the Project will not have these
7 adverse effects.

8 45. The County therefore prejudicially abused its discretion by approving a Use Permit
9 for the Project based on findings of fact that are not supported by substantial evidence.

10 **STATUTE OF LIMITATIONS**

11 46. This action is timely brought notwithstanding Public Resources Code section
12 21167(b), pursuant to the tolling agreement entered into by SCG members, Respondents, and
13 Real Parties described in Paragraph 27 above.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 47. This action is brought consistent with the requirements of Public Resources Code
16 section 21177 and Code of Civil Procedure section 1094.5. SCG and/or its individual members
17 objected to the County's approvals of the Project orally or in writing prior to the close of the
18 final public hearing on the Project. SCG and/or other agencies, organizations and individuals
19 raised or affirmed each of the legal deficiencies asserted in this petition orally or in writing during
20 the public comment provided by CEQA, or prior to the close of the public hearing on the
21 Project.

22 48. SCG has performed all conditions precedent to filing this action by complying
23 with the requirements of Public Resources Code section 21167.5 in serving notice of the
24 commencement of this action on September 19, 2017.

25 **INADEQUATE REMEDY AT LAW**

26 49. SCG declares that it has no plain, speedy, and adequate remedy in the ordinary
27 course of law for the improper action of the County.

28

1 **NEWLY PRODUCED EVIDENCE**

2 50. In accordance with Code of Civil Procedure section 1094.5(e), SCG may, prior to
3 or during the hearing on this petition, offer additional relevant evidence that could not in the
4 exercise of reasonable diligence have been produced prior to or during the administrative hearing
5 on the Project, or that was improperly or unlawfully excluded from the record of the
6 administrative hearing.

7 **ATTORNEYS FEES**

8 51. SCG is entitled to recover attorneys' fees as provided under Code of Civil
9 Procedure section 1021.5 if it prevails in this action and the Court finds that a significant benefit
10 has been conferred on the general public or a large class of persons, and that the necessity and
11 burden of private enforcement is such as to make an award of fees appropriate.

12 **PRAYER**

13 WHEREFORE, SCG prays for entry of judgment as follows:

- 14 1. For a peremptory writ of mandate directing the County:
- 15 (a) to set aside its actions taken on or about August 22, 2017 adopting a Negative
16 Declaration and approving Use Permit No. P13-00320-UP and exception to the County's Road
17 and Street Standards for the Project; and
- 18 (b) to comply fully with CEQA, the State Planning and Zoning Law, and the Napa
19 County Code before taking any subsequent action or actions taken to approve the Project.
- 20 2. For an order staying the effect of the County's actions pending the outcome of this
21 proceeding.
- 22 3. For a preliminary and permanent injunction directing the County and/or any Real
23 Party In Interest to cease and refrain from engaging in any activities in reliance upon the
24 approvals challenged herein until the County takes any necessary action to bring its actions into
25 compliance with CEQA.
- 26 4. For costs of suit.
- 27 5. For an award of attorneys' fees under Code of Civil Procedure section 1021.5 and
28 other applicable law.


1 6. For other legal or equitable relief that the court deems just and proper.

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3 Dated: September 20, 2017.

Respectfully submitted,

4 M. R. WOLFE AND ASSOCIATES, P.C.

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7 By: _____


Mark R. Wolfe
John H. Farrow
Attorneys for Petitioner
SODA CANYON GROUP

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VERIFICATION

I, Glenn Schreuder, declare and affirm:

I am a principal member of SODA CANYON GROUP, the Petitioner in the above-captioned action.

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and know its contents. The statements made therein are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters I believe them to be true.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: September 19th, 2017

By: 
Glenn Schreuder