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15 THE SUPERIOR COURT OF CALIFORNIA  
16 COUNTY OF NAPA

17 SODA CANYON GROUP,

18 Petitioner,

19 vs.

20 COUNTY OF NAPA; NAPA COUNTY  
21 BOARD OF SUPERVISORS; and  
22 DOES 1 through 10, inclusive,

23 Respondents

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

27 Real Parties in Interest.  
28

Case No.: 17CV001063

**PETITIONER'S OPENING BRIEF IN  
SUPPORT OF PETITION FOR WRIT  
OF MANDATE**

[CEQA Matter]

Hearing Date: January 11, 2019  
Time: 8:30 am  
Dept.: I

Action filed: September 20, 2017

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1 **INTRODUCTION**

2 Soda Canyon Group (“SCG”) is an unincorporated association of residents, vineyard  
3 proprietors, and other business owners living on or near Soda Canyon Road in Napa County.  
4 With this writ of mandate action, SCG challenges Respondent County of Napa (“County”)’s  
5 approval of a use permit for the Mountain Peak Winery project (“Project”), a new 100,000  
6 gallon per year winery and visitor center at an existing vineyard located on Soda Canyon Road,  
7 6.1 miles from its intersection with Silverado Trail, in a steep and remote hillside area. The  
8 Project proponents are Mountain Peak Vineyards, LLC (“MPV”), and owners Eric and Hua  
9 Yuan. The County approved the Project without preparing an environmental impact report  
10 (“EIR”) under the California Environmental Quality Act (“CEQA”), Public Resources Code  
11 section 21000 et seq., relying instead on a simple Negative Declaration that the Project could  
12 not have any significant adverse environmental effects.

13 As this brief will show, the County’s failure to prepare an EIR violated CEQA. That  
14 statute mandates that an EIR be prepared if there is any substantial evidence in the  
15 administrative record that a Project may have one or more significant impacts on the  
16 environment, regardless of whether other evidence might show the Project would have no such  
17 impacts. Here, the record contains abundant substantial evidence that the Project will have  
18 significant adverse impacts on biological resources, groundwater resources, rural community  
19 noise levels, and public safety in the area. Therefore, under CEQA’s low “fair argument”  
20 evidentiary standard, the County was obligated to prepare a full EIR before it could lawfully  
21 approve the Project. SCG therefore asks the court to issue a writ of mandate ordering the  
22 County to rescind its approval of the Project and to reconsider its action only after preparing a  
23 full EIR in compliance with CEQA.

24 **FACTS**

25 **Project Description**

26 The Project involves constructing a new 100,000 gallon per year (gpy) winery, a 33,424  
27 square foot (SF) cave, a 6,412 SF outdoor crush pad, an 8,046 SF office and tasting facility, and  
28 installing 26 new parking spaces with two new driveways providing access from Soda Canyon

1 Road at the existing Mountain Peak Vineyard. Administrative Record (“AR”) 00001, 00311. The  
2 winery would host up to 60 public visitors per day/275 visitors per week for wine tasting and  
3 would in addition host outdoor evening marketing events ending at 10:00 pm for up to 75  
4 people twice per year, and 125 people once per year. AR 00311, 00313. This equates to an  
5 annual figure of 14,575 visitors (AR 01060-61, 01081) -- the largest visitation allowance in the  
6 history of Napa County for a remote winery located on a dead-end road. AR 3452, 3945-3948,  
7 4473-4495, 06864.009. In total, the Project is expected to introduce approximately 45,000  
8 additional vehicle trips per year on Soda Canyon Road (“SCR”). AR 00018, 01060-61.

9 The Project requires the removal of 2.96 acres of existing vines to construct the winery  
10 and caves. AR 00344. It will excavate and transport approximately 1,927,800 cubic feet of earth  
11 and soil around the Project site during construction. AR 03938. If this amount of earth were  
12 piled onto a football field, including the endzones, it would measure approximately 33 feet high.  
13 AR 03938. The new wine cave alone will require the excavation and disposal of 798,446 cubic  
14 feet of soils on the property. AR 00001, 00588-00589. Construction of the new driveways and  
15 parking area likewise will require the excavation and onsite deposition of 378,000 cubic feet of  
16 soils. AR 00588. These soils, or excavation “spoils,” will be deposited onsite, including in an  
17 area approximately 75 feet from one of two “blue-line” streams situated on or adjacent to the  
18 property. AR 00589, 06864.172, 06864.175-06864.178 (aerial photographs and map images  
19 showing cave spoil deposit sites), 06864.180 (topographical map showing Project location in  
20 relation to blue-line streams). A total of 5,900 cubic yards (159,300 cubic feet) of spoils would  
21 be deposited at this location near one of the streams. *See* Engineering Plans, AR 02121. The  
22 Project also includes drilling a new onsite water well next to an existing well, which together will  
23 supply water for the winery, domestic uses, and vineyard irrigation. AR 00380.

## 24 **Project Setting**

25 The Project site is a 41.76-acre parcel on the northwest side of SCR near Atlas Peak in  
26 what is known as Foss Valley. AR 00001, 06864.170, 06864.180, 6864.182 (aerial photographs  
27 and maps of Rector Canyon, Foss Valley and Project site). The site now houses a 28-acre  
28 vineyard, a residence, and vineyard office. AR 00344. The site is in a remote, semi-undeveloped



1 rural area. Surrounding land uses consist mainly of undeveloped hillside areas with vineyards and  
2 rural residences on generally large parcels. AR 00344, 02153-54, 06864.007-06864.008. The  
3 nearest homes are 100 feet and 285 feet from the property. *Id.*

4 SCR is a 6.75 mile-long, dangerous, narrow, two-lane, dead-end road in extremely poor  
5 condition. AR 00019, 06864.038-06864.063 (images of recent accidents on SCR), AR 06864.090-  
6 06864.093 (images of deplorable conditions), 06864.099-06864.115 (images of large trucks  
7 broken down on SCR), 02156-02162, 02178-02179, 02181-02185, 02880, 02928-02997. There  
8 are (or were, before the 2017 Atlas Fire) approximately 163 homes on SCR. AR 02153-2154,  
9 02927. Importantly, SCR provides the only access to the Project site, as well as to all other  
10 residences and properties on SCR or its various offshoots. AR 00475, 02880-02881.  
11 Additionally, while the paved portion of SCR dead-ends at the Antica Winery Property, there is  
12 a dirt road starting at the entrance to the Project that splits from the paved road and continues  
13 for several miles into Foss Valley, where several other homes and vineyards are located. AR  
14 02880, 06864.008, 06864.180. Although there are currently three permitted wineries on SCR,  
15 only one, Antica, hosts public wine tastings. AR 00618. Yet even though Antica is a vastly larger  
16 operation than the Project, with a 450,000 gpy winery on 1,200 acres compared to the Project's  
17 100,000 gpy on 25 acres, the County has limited Antica's visitation to only 5,200 visitors per  
18 year, compared with 14,575 per year for the Project. AR 00618, 01060-61, 01081, 02230, 02909,  
19 03206-03209.

20 According to incident and accident statistics from the Napa County Sheriff's  
21 Department, the California Highway Patrol, and CalFire between January 2014 to December  
22 2016 there were 639 reported incidents and accidents on SCR, equating to 4 accidents per week.  
23 AR 00699, 03929-03933, 02166-02169, 02174-02176; *see* AR 06864.071-06864.082 (photos of  
24 recent incidents and accidents). In 1999, the Department of Alcoholic Beverage Control  
25 ("ABC") denied public wine tasting to a project within one quarter of a mile of the Project  
26 because "[e]vidence established that increased traffic on SCR would aggravate a traffic problem  
27 on a problem roadway that serves Applicant, nearby residents and two other vineyards. AR  
28 3186, 03192, 06864.014. If the Project along with others proposed on the Silverado Trail moves

1 forward, there will be a 207 percent increase in the amount of winery visitor traffic at the  
2 intersection of SCR and Silverado Trail, the only access point to all of Soda Canyon. AR 02150,  
3 02898-02899, 06864.014-06864.022, 03454-03457.

4 The Project area also has a history of major wildfires dating back to the 1800s, with  
5 major fires occurring in 1861, 1913, 1944, 1960, and 1981. AR 03820-03823, 03480-03484. In  
6 October 2017, the Atlas Fire devastated the area, destroying 118 of the 163 residences, and  
7 damaging another 16, for a total of 134 residences, or **82 percent** *See* Declaration of Anthony G.  
8 Arger (“Arger Decl.”) in support of SCG’s Motion to Augment Administrative Record  
9 (“Motion to Augment”) filed concurrently herewith, at ¶ 9 and Exhibit 2. Two people died and  
10 45 others were evacuated from the top of Soda Canyon after being completely trapped by fire.  
11 Declaration of Glenn Schreuder (“Schreuder Decl.”) in support of Motion to Augment, at ¶ 3.

## 12 **Impacted Natural Resources**

13 The Project’s hillside site is within the drainage area of Rector Creek, a perennial  
14 watercourse that flows into Rector Reservoir, which in turn provides drinking water to the  
15 Town of Yountville. AR 00344, 01759. A “blue-line” stream<sup>1</sup> flows along the length of the  
16 western edge of the site, while a second blue-line stream bisects the site’s eastern portion. AR  
17 00009, 00020, 00344; *see* satellite image with map overlay, AR 04200, 06864.162. Aerial  
18 photographs of the site and vicinity show the location of the creeks on the property. AR 01673,  
19 01674, 06864.170-06864.171, 06864.157; *see also* photos of creeks themselves, AR 01677-01678,  
20 06864.181. A spring-fed pond sits approximately 700 feet from the Project’s new groundwater  
21 well. AR 01497-01498. According to expert testimony (discussed further below), the Rector  
22 Creek watershed provides habitat for numerous and diverse plant and animal species (see list,  
23 AR 01514-01516), including two California Species of Special Concern: the foothill yellow-  
24 legged frog, AR 06864.184, and California giant salamander, AR 06864.185. AR 01509. Rector  
25 Creek itself provides pristine stream habitat supporting salmon and steelhead trout species, AR  
26

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27 <sup>1</sup> A “blue-line” stream is a watercourse appearing as a broken or solid blue line (or a purple line) on  
28 a USGS topographic map.

1 01510, 06864.186, and accordingly has been designated as critical habitat for steelhead. AR  
2 00659. Photos illustrating the quality of Rector Creek’s habitat values appear in the record at AR  
3 01518 and AR 06864.187-06864.192.

4 **Procedural History**

5 MPV applied to the County for a use permit in 2014. In accordance with CEQA, the  
6 County prepared an environmental Initial Study which it circulated for public review and  
7 comment in June 2016. AR 00343-00563.<sup>2</sup> Based on the Initial Study’s overall conclusion that  
8 the Project could not and would not have any significant adverse environmental impacts, the  
9 County proposed to adopt a negative declaration for the Project. AR 00345. Several individuals,  
10 including SCG members and other opponents of the Project (collectively, “SCG Members”),  
11 submitted timely written comments on the proposed negative declaration.<sup>3</sup> AR 02064-02113.

12 Planning Commission Hearings

13 On July 20, 2016, the County’s Planning Commission held a public hearing on the  
14 Project and negative declaration. AR 01713. SCG Members appeared and testified in opposition  
15 to the Project at the hearing. AR 03719 *ff*(transcript). Before the hearing, SCG submitted  
16 written expert testimony that the Project would in fact have significant adverse impacts on  
17 roadway safety (AR 02759-02767, letter from Smith Engineering) as well as noise impacts (AR  
18 02768-02773, letter from Wilson Ihrig, acoustical consultants). During the hearing, SCG offered  
19 a slide presentation summarizing the expert evidence showing the Project would in fact cause  
20 these significant impacts. AR 02146-02235. Based on this evidence, SCG urged the County to  
21 prepare a full EIR before approving the Project.

22 After hearing public testimony, the Planning Commission at MPV’s request continued  
23

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24 <sup>2</sup> CEQA requires public agencies to prepare an “initial study” to determine whether a proposed  
25 project may have a significant environmental impact. If the initial study finds a significant impact, the  
26 agency must prepare an EIR. If the study finds no significant impact, the agency may approve the project  
based on a “negative declaration.” Pub. Resources Code § 21080; *see* further discussion below.

27 <sup>3</sup> Several SCG Members have strong, longstanding ties to the wine industry, including vineyard  
28 owners, former winery employees and owners, as well as businessowners dependent on the wine  
industry. AR 02879; 03510; 03532-03534; 14209; 14254-14255; 14227-14230; 14448.

1 the hearing first to August 17, 2016, then continued two more times until January 4, 2017. AR  
2 01712, 01704, 01701. Before the January 4 hearing, SCG submitted additional written expert  
3 testimony from Greg Kamman that the Project would have significant adverse impacts on  
4 groundwater hydrology. AR 01493-01502. SCG also submitted expert opinion from a  
5 consortium of biological resource scientists who had reviewed the Project application materials  
6 and Initial Study and concluded that the Project would adversely impact special status species,  
7 further underscoring the need for an EIR. AR 01509-01522. MPV submitted additional  
8 information from its own hydrologists purporting to rebut SCG's submittals. AR 01560-01584.

9 At the January 4 hearing, SCG and other members of the public presented further  
10 evidence and testimony establishing the likelihood of significant impacts on biological resources  
11 including special status species, groundwater supply, noise, and roadway safety. AR 03618-03664  
12 (transcript). A petition opposing the Project signed by over 900 people, including 54 percent of  
13 all residences along SCR, was also submitted. AR 00996-01057; *see* summary, AR 01652-01654.  
14 After closing the public hearing, a majority of the Planning Commission voted to adopt the  
15 negative declaration and approve the Project. AR 03687.

#### 16 Board of Supervisors Appeal Hearing

17 Four members of SCG timely appealed the Planning Commission's action to the Board  
18 of Supervisors in accordance with the appeal provisions of the County Code. AR 04527-04622.  
19 In accordance with the County Code's appeal provisions, the SCG appellants submitted a  
20 request to the Board Chair to admit new information into the record and to conduct a "de  
21 novo" hearing, based on a showing of "good cause." AR 00574. The new information was a  
22 letter from hydrologist Greg Kamman that attached various technical studies as exhibits (AR  
23 00649-00661), and a geotechnical report addressing roadway safety issues on SCR prepared by  
24 the KC Engineering civil engineering firm ("KC Engineering Report") (AR 03914-03920). The  
25 Board Chair admitted the Kamman letter, though not its attached exhibits, but declined to admit  
26 the KC Engineering Report, and denied the request for a de novo hearing. AR 00667-00668.  
27 SCG appellants requested the full Board of Supervisors to overrule the Board Chair's denials

28

1 pursuant to the County Code’s appeal provisions, but a majority of the Board declined to do so.  
2 AR 03443 (transcript).

3 The Board heard the appeals on May 23, 2017. SCG Members again testified in  
4 opposition to the Project, with expert witnesses Greg Kamman, hydrologist, and Amber  
5 Manfree, PhD, biologist, summarizing their earlier written testimony that the Project would  
6 indeed have significant environmental effects and that an EIR was required. AR 03450 *ff*  
7 (transcript). SCG Members and other members of the public testified at length regarding the  
8 roadway safety and fire hazard issues implicated by the Project, presenting photographs and  
9 additional data and information concerning traffic accidents and fire hazards on SCR. AR  
10 06864.011-06864.139. After hearing testimony from MPV and its own consultants, the Board  
11 voted to deny the appeals and approve the Project based on the negative declaration, adopting  
12 formal findings of fact to that effect on August 22, 2017. AR 0003-00342.

13 SCG timely filed its petition for writ of mandate on September 20, 2017.

## 14 ARGUMENT

### 15 **I. Guiding CEQA Principles.**

16 Passed in 1970, CEQA is a “comprehensive scheme” to provide long-term protection to  
17 the environment. Pub. Resources Code, § 21001; *Mountain Lion Foundation v Fish & Game Com.*  
18 (1997) 16 Cal.4th 105, 112. The Legislature has elevated environmental protection to the highest  
19 priority, declaring that it “shall be the guiding criterion in public decisions[.]” Pub. Resources  
20 Code § 21001(d), (g); *Friends of Westwood, Inc. v City of Los Angeles* (1987) 191 Cal.App.3d 259, 265.  
21 “In enacting CEQA, the Legislature declared its intention that all public agencies responsible for  
22 regulating activities affecting the environment give prime consideration to preventing  
23 environmental damage when carrying out their duties. [Citations.] CEQA is to be interpreted ‘to  
24 afford the fullest possible protection to the environment within the reasonable scope of the  
25 statutory language.’ [Citation.]” *Mountain Lion Foundation, supra*, at 112.

26 Under CEQA, a full EIR is required for any project that a public agency proposes to  
27 approve that may have a significant effect on the environment. Pub. Resources Code, §§  
28 21100(a), 21151(a); CEQA Guidelines (“Guidelines”), 14 Cal.Code.Reg. § 15064(a)(1). An EIR

1 must describe the proposed project and its environmental setting, identify and analyze the  
2 significant effects on the environment, state how those impacts can be mitigated or avoided, and  
3 identify alternatives to the project, among other requirements. Pub. Resources Code, §§  
4 21100(b), 21151; Guidelines, §§ 15124, 15125. “The purpose of an environmental impact report  
5 is to provide public agencies and the public in general with detailed information about the effect  
6 which a proposed project is likely to have on the environment; to list ways in which the  
7 significant effects of such a project can be minimized; and to indicate alternatives to such a  
8 project.” Pub. Resources Code, § 21061. Courts have “repeatedly recognized that the EIR is the  
9 ‘heart of CEQA.’ [Citations.] ‘Its purpose is to inform the public and its responsible officials of  
10 the environmental consequences of their decisions *before* they are made. Thus, the EIR “protects  
11 not only the environment but also informed self-government.” *Laurel Heights Improvement Assn. v*  
12 *Regents of University of California* (1993) 6 Cal.4th 1112, 1123. By contrast, a “negative declaration”  
13 is a statement that briefly explains why a project will have no significant environmental impact  
14 and therefore will not require an EIR. Pub. Resources Code, § 21064. A negative declaration is  
15 proper only if the agency determines based on an initial study that there is no substantial  
16 evidence whatsoever that the project may have a significant effect on the environment. Pub.  
17 Resources Code, § 21080(c)(1), (d); Guidelines, §§ 15063(b)(2), 15070(a).

## 18 **II. The “fair argument” evidentiary standard for requiring an EIR.**

19 Based on the above Legislatively-declared principals, a strong presumption in favor of  
20 requiring preparation of an EIR rather than relying on a negative declaration is built into CEQA.  
21 This presumption is reflected in what is known as the “fair argument” standard, under which an  
22 agency **must** prepare an EIR whenever substantial evidence in the record supports a fair  
23 argument that a project **may** have a significant effect on the environment. *Quail Botanical Gardens*  
24 *Found., Inc. v City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of “B” St. v City of Hayward*  
25 (1980) 106 Cal.App.3d 988, 1002. “Substantial evidence” under CEQA includes “facts,  
26 reasonable assumptions predicated upon facts, and expert opinion supported by facts.”  
27 Guidelines, § 15384(b). “Significant effect upon the environment” is defined as “a substantial or  
28 potentially substantial adverse change in the environment.” Public Resources Code § 21068;

1 Guidelines, § 15382. A project “may” have a significant effect on the environment if there is a  
2 “reasonable probability” that it will result in a significant impact. *No Oil, Inc. v City of Los Angeles*  
3 (1974) 13 Cal.3d 68, 83 n16; *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 309. If  
4 any aspect of the project may result in a significant impact on the environment, an EIR must be  
5 prepared even if the overall effect of the project is beneficial. Guidelines, §15063(b)(1). *See*  
6 *County Sanitation Dist. No. 2 v County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

7 In effect, the fair argument standard precludes agencies, as well as courts, from weighing  
8 conflicting evidence. If substantial evidence supports a fair argument that a project may have a  
9 significant environmental effect, the lead agency must prepare an EIR even if other substantial  
10 evidence before it indicates the project will have no significant effect. *See Brentwood Ass’n for No*  
11 *Drilling, Inc. v City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St, supra*, 106  
12 Cal.App.3d 988; Guidelines, §15064(f)(1). Thus, the fair argument standard essentially bars  
13 agencies from weighing competing evidence to determine who has a better argument concerning  
14 the likelihood or extent of a potential environmental impact. *Rominger v County of Colusa* (2014)  
15 229 Cal.App.4th 690, 713; *Friends of "B" St., supra*; *Architectural Heritage Ass'n v County of Monterey*  
16 (2004) 122 Cal.App.4th 1095, 1109.

17 Even in marginal cases where it is unclear whether substantial evidence exists that a  
18 project may have a significant effect on the environment, and/or when experts disagree over the  
19 significance of an impact, the lead agency must still treat the effect as significant and prepare an  
20 EIR. Guidelines, §15064(g). Thus, if qualified experts disagree about either the likelihood or  
21 magnitude of a project’s environmental impact, the agency must assume that a significant impact  
22 may occur and must prepare an EIR. *City of Carmel-by-the-Sea v Board of Supervisors* (1986) 183  
23 Cal.App.3d 229, 249. Stated otherwise if qualified experts present an agency with conflicting  
24 evidence on the nature or extent of a project’s impacts, the agency **must** accept the evidence  
25 tending to show that the impact might occur. Evidence to the contrary, even when presented by  
26 qualified experts or the agency’s own staff, is irrelevant since the agency may not weigh  
27 competing evidence. *See Rominger v County of Colusa* (2014) 229 Cal.App.4th 690; *City of Carmel-by-*  
28 *the-Sea, supra*, at p. 249 (conflicting opinions by multiple experts on definition and extent of

1 wetlands); *Brentwood Ass'n for No Drilling, supra*, 134 Cal.App.3d at p. 504 (conflicting expert  
2 testimony about impacts of exploratory oil well project).

3 Notably, evidence of a significant impact need not come from an expert to constitute  
4 substantial evidence under CEQA. “Relevant personal observations of area residents on  
5 nontechnical subjects may qualify as substantial evidence” supporting a fair argument that an  
6 EIR should be prepared. *Pocket Protectors v City of Sacramento* (2004) 124 Cal.App.4th 903, 928.  
7 “For example, an adjacent property owner may testify to traffic conditions based upon personal  
8 knowledge.” *Keep Our Mountains Quiet v County of Santa Clara* (2015) 236 Cal.App.4th 714, 730.  
9 Needless to say, this standard sets a very “low threshold” for preparation of an EIR. *Consolidated*  
10 *Irrig. Dist. v City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v County of Kern* (2010) 190  
11 Cal.App.4th 252; *Pocket Protectors, supra*, 124 Cal.App.4th at p. 928.<sup>4</sup>

12 The fair argument standard applies both to agency decisions and to judicial review of  
13 those decisions. Where agencies apply the fair argument standard as a substantive standard in  
14 deciding whether an EIR is required, courts apply the standard as a standard of judicial review  
15 for agency decisions to adopt a negative declaration. *See, e.g., Parker Shattuck Neighbors v Berkeley*  
16 *City Council* (2013) 222 Cal.App.4th 768, 777; *Gentry v City of Murrieta* (1995) 36 Cal.App.4th  
17 1359, 1399. Thus, application of the fair argument test is a question of law for the court’s  
18 independent review. *San Joaquin Raptor/Wildlife Rescue Center v County of Stanislaus* (1996) 42  
19 Cal.App.4th 608; *Quail Botanical Gardens Foundation, supra*, 29 Cal.App.4th at p. 1602.

20 To summarize: under the fair argument standard, if this court finds any substantial  
21 evidence in the record in the form of facts, reasonable assumptions predicated on facts, expert  
22 opinion supported by facts, or lay testimony based on personal observations that the MPV  
23 Project may have a significant impact on the environment, it must set aside the County’s action  
24 even if there is other substantial evidence in the record – from MPV’s consultants or the  
25 County’s own staff - showing the Project would not have a significant impact. As documented

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26  
27 <sup>4</sup> By contrast, once an agency prepares an EIR, any findings or conclusions about the project’s  
28 environmental impacts contained in the document will be upheld if supported by any substantial  
evidence, notwithstanding conflicting evidence presented by project opponents. *See Vineyard Area Citizens*  
*for Responsible Growth, Inc. v City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.



1 below, the administrative record here is replete with facts and expert opinion supported by facts  
2 that the Project not only may but will have significant impacts on biological resources,  
3 hydrology, roadway safety, and noise.

4 **III. Substantial evidence supports a fair argument that the Project will**  
5 **significantly impact biological resources including special status species.**

6 **A. The Initial Study omits a biological resources assessment.**

7 The Project involves the disposal of nearly 160,000 cubic feet of cave spoils on land  
8 surfaces within just 75 feet of a blue-line stream (AR 00589, 02121, 06864.177) that is tributary  
9 to Rector Creek, which in turn drains to Rector Reservoir, the Town of Yountville's drinking  
10 water supply. AR 03500, 07757-07763, 06864.180, 08429. The Initial Study appended a  
11 Stormwater Control Plan (AR 00413-00433) and Wastewater Disposal Feasibility Study (AR  
12 00434-00462) that claimed to evaluate potential erosion impacts from the Project. These studies  
13 found no significant impacts on the blue-line streams or connected watercourses from siltation  
14 or sedimentation resulting from alterations of the site's existing drainage patterns from cave  
15 spoil deposition and other grading activities. AR 00356. The Initial Study accordingly concluded  
16 that the Project "will not conflict with any local or regional plans, policies, or regulations  
17 protecting riparian habitat and other sensitive natural communities directly as a result of the  
18 degree of existing vineyard and residential development on site." (AR 00350, emphasis added),  
19 while elsewhere concluding that "[t]he project would not ... cause a significant increase in  
20 erosion or siltation on or off the cultivated agricultural vineyard site." AR 00359.

21 The Initial Study did not, however, include an assessment of biological resources  
22 potentially affected by the Project, nor any discussion or actual analysis of potential impacts to  
23 water quality and aquatic habitat from cave spoil sediments entering the blue-line streams or  
24 Rector Creek during heavy rain events. As discussed later below, this omission vitiates any  
25 finding that the Project could not adversely impact such resources.

26 **B. Expert opinion based on fact shows the Project may significantly impact**  
27 **aquatic habitat and species in the on-site streams and Rector Creek.**

28 Alarmed by this omission, SCG consulted with a group of five biologists and resource

1 scientists during the Initial Study’s public review period. These scientists included a  
2 distinguished professor of biology at U.C. Davis, three scientists with Master’s and/or Doctoral  
3 degrees in ecology, geography, and a certified professional hydrologist. AR 01522. In a letter  
4 provided to the Planning Commission before its first hearing on the Project, these scientists  
5 criticized the Initial Study’s wholesale failure to disclose or consider potential sedimentation  
6 impacts to aquatic habitat from cave spoils migrating into the creek. AR 01509-01522. They  
7 provided a list of plant and animal species with documented presence in and adjacent to Rector  
8 Creek upstream of the Reservoir (AR 01514-01517), together with photographs showing the  
9 high habitat values and physical presence of fish and amphibian species in these areas. AR  
10 01518-01521. They explained that at least two California Species of Special Concern,” the  
11 foothill yellow-legged frog and California Giant Salamanders, are “present and abundant” in the  
12 area. AR 01509. They explained further that these species require cool, flowing water in  
13 streambeds covered with rocks and gravel in order to survive and reproduce. AR 01509-01510.  
14 They cautioned that increased in-stream sedimentation from runoff of loose soils such as  
15 deposited cave spoils would impede streamflows, elevate temperatures, and degrade gravelly  
16 habitat that species require. *Id.* The scientists concluded with their joint expert opinion that:

17 “The character and value of habitat adjacent to and downstream of the proposed  
18 Mountain Peak project, the presence of Species of Special Concern, and the likelihood of  
19 adverse impacts resulting from this project due to inadequate environmental assessment  
20 and planning by the applicant compel a full Environmental Impact Report.” AR 01511.

21 One of the scientists, Amber Manfree, PhD,<sup>5</sup> later testified in person before the Planning  
22 Commission at its January 4, 2017 hearing. AR 03648 *ff.* She elaborated on the scientists’  
23 concern that the placement of excavated cave spoils on a land surface creates a high potential  
24 for erosion during heavy rain events, and that runoff will necessarily transport soils into the  
25 streams draining the site. AR 03649-03650. She testified that she had personally visited the  
26 stream adjacent to the Project site and observed that it was running “red with sediment” and  
27 was “full of dirt,” which was “not common.” AR 03650. She affirmed that there indeed are

28 \_\_\_\_\_  
<sup>5</sup> Dr. Manfree’s family owns property on SCR near the Project.

1 species of special concern, as well as trout, in the creek that would be adversely impacted by the  
2 transport of cave spoils into the creek. AR 03651. She also explained how, given the steepness  
3 of the slopes in this area of Rector Canyon and the resulting rapidity of flows during rain events,  
4 the sediment load from the Project will inevitably reach Rector Reservoir, potentially impacting  
5 Yountville’s drinking water supply. AR 03650-03651.

6 **C. MPV and the County fail to address biologists’ concerns or explain the**  
7 **failure to include a biological resources assessment.**

8 Responding to the group of scientists and Dr. Manfree, MPV’s consultant told the  
9 Planning Commission that the Project would comply with the County’s best management  
10 practices for erosion control, including construction of a stormwater detention basin onsite,  
11 suggesting that this would avoid any possibility of cave spoils entering the nearby stream. AR  
12 03668-03669. MPV’s consultants did not address the specific testimony offered by the scientists.  
13 Instead, they claimed that because the Project would be pumping less groundwater on an annual  
14 basis than the current vineyard, due to the removal of 2.96 acres of irrigated vines, there could  
15 not possibly be any significant impact on groundwater or biological resources. When asked by a  
16 Planning Commissioner to respond specifically to Dr. Manfree’s testimony regarding potential  
17 sedimentation impacts from cave spoils (transcript, AR 03675-03676), County staff again simply  
18 referred to a stormwater treatment plan that is “requisite of every application that’s filed with  
19 the County” (AR 03676), noting that that plan would implement all best management practices  
20 required by the California Regional Water Quality Control Board. AR 03677. County staff, like  
21 MPV, simply did not directly address the consortium’s testimony that the placement of cave  
22 soils close to a blue-line stream would result in sediment flows into that stream and thence to  
23 Rector Creek and Rector Reservoir during rain events.

24 **D. Additional expert opinion corroborates and affirms the Project may have**  
25 **significant impacts on stream habitat.**

26 Dr. Manfree presented additional testimony to the Board of Supervisors during its May  
27 23, 2017 appeal hearing. AR 03498 *ff*. She repeated and affirmed her earlier testimony,  
28 explaining that in addition to the blue-line creeks running through and immediately adjacent to

1 the Project site, there are several perennial and seasonal wetlands located nearby, downslope of  
2 the site, which could likewise be impacted by earthmoving activities and the pumping of  
3 groundwater. AR 03499. She further testified that the quantity of excavated soils that the Project  
4 would deposit onsite was “volumetrically equivalent . . . to a football field piled 33 feet high with  
5 dirt,” with cave spoil deposition locations “adjacent to wetland and riparian features.” *Id.*; *see also*  
6 AR 06864.168-06864.204 (slides accompanying testimony). She concluded by stating:

7 “Mountain Peak project sediment will wash into the creek in storm events, negatively  
8 impacting species that require pristine waters and degrading high quality habitat  
9 throughout the canyon. The risk is high, especially given the quantity and location of  
10 earthmoving activities, and this risk has not been adequately assessed in the existing  
11 materials provided by the applicant.” AR 03503.

12 Another technical expert that SCG consulted, hydrologist Greg Kamman, PC, CHG, a certified  
13 hydrologist and registered professional geologist with over twenty-seven years of technical and  
14 consulting experience in hydrology (AR 01493), corroborated Dr. Manfree’s concern in his own  
15 testimony to the Board of Supervisors, stating:

16 “[t]he initial study/neg. dec. contains no documentation that the project won’t increase  
17 sediment delivery. There hasn’t been soil loss calculations done, they haven’t quantified  
18 what’s the pre- and post-runoff volume. How do they know that their BMPs are feasible  
19 if they haven’t done the numbers to design and test these BMPs?” AR 03495; *see also*  
20 Presentation slides, AR 06864.153-0684.167.

21 Responding to Dr. Manfree and Kamman, MPV’s consultants claimed the Project would  
22 be required to comply with the County’s best management practices for erosion control. AR  
23 03668-03669. This explanation fails to address the specific testimony offered by these experts.  
24 Even if these practices reduce sediment transport by some unquantified degree, absent an actual  
25 analysis of potential impacts on species and aquatic habitat, there is simply no evidentiary  
26 support for the County’s conclusion that the Project would not and could not possibly have a  
27 significant impact on these biological resources. As explained, the Initial Study includes no  
28 assessment of potentially affected biological resources at all, or any analysis or quantification of  
the potential for sediments to mobilize and flow into the stream channel during rain events.



1           **F.     MPV and County Staff testimony, even if comprising substantial evidence,**  
2           **is irrelevant under the fair argument standard.**

3           In written responses to SCG’s appeal to the Board of Supervisors, County staff  
4 addressed the concerns over sedimentation as follows:

5           “An evaluation of erosion and stormwater impacts was performed by licensed engineer  
6 Bartelt Engineering. . . .Testimony or reports by experts supporting a finding that a  
7 project’s impacts will be insignificant constitutes substantial evidence supporting the  
8 agency’s conclusions. The studies and expert testimony referenced herein all provide  
9 substantial evidence that the Planning Commission appropriately and adequately  
10 considered the effects of the Project beyond just the Project site.” AR 00009, 00579.

11          Additional expert testimony from hydrologist Kamman belies the County’s claim that the  
12 Project would comply with erosion control requirements and that this would necessarily avoid  
13 all potential impacts to species. Kamman explained to the Board how the Project did not  
14 comply with the County’s conservation regulations (Ch. 18.108 of the County Code). Noting  
15 that the regulations expressly require drainage facility outfalls to be protected against erosion in  
16 a 100-year storm event, Kamman observed that the Project’s proposed stormwater detention  
17 basins were designed for a 10-year storm, and the drainage plan was diverting more flows  
18 toward the basin area than is naturally occurring. AR 03495. As a result, Kamman explained, the  
19 risk of overflow and resulting transport of sediment downhill to the blue-line creek remains  
20 substantial.<sup>6</sup> AR 03495-03496.

21          MPV’s consultants and County staff dismissed Kamman’s additional testimony, but under  
22 the fair argument standard this is of course immaterial. If qualified experts present an agency  
23 with conflicting evidence on the nature or extent of a project’s impacts, the agency **must** accept  
24 the evidence tending to show that the impact might occur. Evidence to the contrary, even when  
25 presented by qualified experts or the agency’s own staff, is irrelevant since the agency may not  
26 weigh competing evidence. The question is not whether substantial evidence supports the  
27 agency’s conclusions. The question is whether there is substantial evidence anywhere in the

28          <sup>6</sup>       Even MPV’s own consultant, Bartelt, has acknowledged that: “[w]hen the capacity of the  
detention basin is exceeded during a greater than 10-year event, the water will overflow the detention  
basin and sheet flow through natural terrain before entering an existing blue line stream on the  
neighboring parcel.” AR 00417.

1 record supporting a fair argument that the Project *may* have a significant impact. The County was  
2 barred from engaging in any balancing of the evidence. *See Rominger v County of Colusa, supra*, 229  
3 Cal.App.4th 690; *City of Carmel-by-the-Sea, supra*, 183 Cal.App.3d at p. 249 (agency **must** accept the  
4 evidence tending to show that the impact might occur; evidence to the contrary is irrelevant,  
5 since the agency may not weigh competing evidence). Regardless, the fact that the Project will  
6 implement generally applicable erosion control measures as a condition of approval is also  
7 irrelevant. Mere compliance with a regulatory standard does not “foreclose the consideration of  
8 substantial evidence showing there might be a significant environmental effect from a project.”  
9 *Communities for a Better Environment v California Resources Agency* (2002) 103 Cal.App.4th 98, 114;  
10 *Protect the Historic Amador Waterways v Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108.

11 **IV. Substantial evidence supports a fair argument that pumping of groundwater may**  
12 **cause significant impacts on the aquifer and on aquatic habitat in nearby streams.**

13 The Project would add a new groundwater well to one already present at the site, using  
14 both to supply water for irrigation, winery processes, and domestic use. In its discussion of  
15 potential impacts on groundwater resources from well pumping, the Initial Study cited and  
16 appended a Water Availability Analysis prepared by Bartelt Engineering (“Bartelt”) (AR 00369-  
17 00378), and the results of a 24-hour constant rate pumping test<sup>7</sup> performed in April, 2014 for  
18 the existing well by Richard Slade & Associates (“Slade”) (AR 00379-00412). These studies  
19 purported to evaluate potential impacts to groundwater generally, to various neighboring wells  
20 within 500 feet, and to the blue-line streams located 510 and 530 feet from the on-site wells. AR  
21 00579. Together, the studies concluded that the Project could not possibly have any significant  
22 adverse impact on groundwater resources or nearby wells or streams. AR 00356.

23 **A. Expert opinion shows the Initial Study substantially understated existing**  
24 **groundwater use by the vineyard and substantially overstated recharge**  
25 **rates in the aquifer.**

26 SCG consulted with Greg Kamman, PC, CHG, on the groundwater issues as well. In a  
27 letter submitted to the Planning Commission, Kamman pointed out a substantial discrepancy in

28 <sup>7</sup> A constant rate pumping test measures changes in a well’s water levels after pumping at a set rate  
for a set period of time.

1 the Initial Study's estimates of existing groundwater use at the site, and the groundwater  
2 extraction that was actually measured in the constant rate pumping test. Specifically, Bartelt and  
3 Slade estimated current water usage by the existing vineyard and residence to be 14.75 acre-feet  
4 per year (AF/yr). However, actual measured groundwater extraction rates reported by Slade  
5 from the pumping test showed that just in the nine-month period between January 1 and  
6 September 15 of 2015 was significantly higher, at 22.4 AF, which would be even greater for the  
7 full calendar year. Thus, actual pumping data showed that the existing vineyard was using 34  
8 percent more water than disclosed in the Initial Study.<sup>8</sup>

9 The Initial Study estimated future project water demand at 16.46 AF/yr. Kamman  
10 testified that increasing this estimate by 34 percent, similar to the measured disparity between  
11 estimated and measured existing conditions and demands, results in an estimated project water  
12 demand of 25.00 AF/yr – a quantity far higher than the estimated average annual groundwater  
13 recharge. Kamman went on to explain that sustained groundwater withdrawals that exceed  
14 annual recharge will lead to groundwater overdraft and falling groundwater levels and aquifer  
15 supply, a clear adverse impact under CEQA. Kamman also explained that even though the  
16 pumping test conducted in April 2014 revealed a water level draw-down of 3.3 feet while  
17 pumping the existing well at a rate of 50 gallons per minute (gpm), no monitoring of draw-down  
18 or reduced water levels in any off-site wells, ponds, or springs occurred. AR 01495. Kamman  
19 observed that continuous water level monitoring data as reported by Slade for the existing well  
20 during the summer and fall of 2014 and 2015, and the winter of 2014/2015, showed a 6 to 7-  
21 foot draw-down during the summer/fall -- more than twice the level reported during the 50  
22 gpm pumping test, showing that MPV was pumping far more water during these dry periods  
23 than reported. *Id.*

24 According to Kamman, the well yield test completed in April 2014:

25 \_\_\_\_\_  
26 <sup>8</sup> This conclusion was not just Kamman's alone. A second credentialed hydrologist, Robert Gailey,  
27 P.G., C.HG (who had not seen Kamman's testimony), testified to the Planning Commission that: "Other  
28 information presented in the [Bartelt] report appears to indicate that the 14.86 af/yr value is low. The  
report states that current water use for 28 acres of vineyards is 14.75 af/yr; however, 14 months of  
monitoring shows 32.2 af/yr of water use. These data indicate that annual water use is roughly double  
what is stated." AR 01512.



1 “fails to look for or evaluate potential project impacts on groundwater levels and seasonal  
2 storage surrounding the site. Completing the well pump test during the wet season  
3 precludes the analysis and evaluation of greater drawdown that is more pronounced  
4 during the dry season. The lack of monitoring the effects of project pumping on off-site  
5 wells, springs and seeps precludes the ability to evaluate potential significant impacts on  
6 groundwater resources.” AR 01496.

7 Kamman also observed that there is an existing off-site spring-fed pond located 700-feet north  
8 of the existing vineyard well, and 800-feet northwest of the proposed new well onsite. *See* aerial  
9 view, AR 01498. According to the owner of the property where the pond is situated, the annual  
10 late summer (September) water level in the pond has been getting lower and lower over the past  
11 decade, and in July of 2016, the pond had dried up completely for the first time in at least 22  
12 years. AR 01497-01499.<sup>9</sup> Kamman noted that according to the County’s own Guidance for  
13 conducting Water Availability Analyses, “projects located in the vicinity of springs, where  
14 potential impacts of pumping are possible but unknown, may require monitoring and further  
15 analysis.” AR 01497. Yet the Initial Study failed to include any monitoring or actual analysis,  
16 despite the project wells’ proximity to this pond. Kamman further noted that the Initial Study  
17 had failed to evaluate the groundwater/surface water interaction that sustains the blue-line  
18 streams or to assess the potential for groundwater pumping from the existing and new Project  
19 wells to reduce water levels in these streams. He pointed out that the County’s own Guidelines  
20 for conducting water availability analyses expressly calls for such analysis. AR 01499-01500.

21 Kamman testified further that MPV’s water availability analysis had substantially  
22 overstated the annual recharge rate of the aquifer, claiming it to be 14 percent of annual rainfall  
23 totals, while noting that the Slade study itself had acknowledged that rates closer to 9 or 10  
24 percent were assigned to the aquifers in this area. AR 01500. If a 10 percent recharge rate is  
25 assumed, Kamman showed, the Project’s groundwater demand exceeds the replenishment  
26 potential of the aquifer, resulting in a significant impact. *Id.* Finally, Kamman corroborated the  
27 consortium of scientist’s opinions that the Project would have significant impacts resulting from

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28 <sup>9</sup> The property owner’s statements constitute substantial evidence. “For example, an adjacent  
property owner may testify to traffic conditions based upon personal knowledge.” *Keep Our Mountains  
Quiet, supra*, 236 Cal.App.4th at p. 730

1 erosion/sedimentation from the transport of cave spoils during rain events. AR 01502. He  
2 concluded that “the project has the potential to significantly impact: local groundwater levels  
3 and supply; groundwater conditions that sustain a neighboring spring-fed pond; spring/seep  
4 flows that sustain creek flow and pool habitat in an adjacent channel; water quality; and  
5 biological resources (vegetation and wildlife) in the Rector Creek watershed.” AR 01494.

6 **B. MPV’s and County staff’s responses to Kamman are incorrect and off-**  
7 **point, and remain irrelevant under the fair argument standard.**

8 MPV’s consultant, Slade, responded to Kamman’s review in a letter dated November 30,  
9 2016. AR 01560-01584. Slade disputed Kamman’s conclusions generally, and with respect to the  
10 question whether the current vineyard was pumping more groundwater than claimed, argued  
11 that the vineyard had been pumping water for use in road maintenance. AR 01561. Kamman in  
12 turn replied to Slade (AR00654-00661)<sup>10</sup> explaining that the amount of water MPV claims it was  
13 using for road work, 7.65 AF, was unfounded; indeed, it would inundate a one-mile long, 20-  
14 foot wide stretch of road to a depth of over 3 feet! AR 00655-00656. Kamman then proceeded  
15 to address and rebut each and every effort by Slade to justify the Initial Study’s failure to  
16 consider potential impacts on nearby wells, ponds, and streams. AR 00657-00661.

17 County staff responded to Kamman mainly by claiming that the Project would “reduce  
18 groundwater reliance because 2.96 acres of existing vineyard would be removed,” and that the  
19 Project therefore “cannot logically have an adverse change in the environment and cannot result  
20 in a significant effect on sensitive species.” AR 00591. This a gross oversimplification, if not an  
21 outright diversion, given: (a) the Initial Study reports fail to account for seasonal variations in  
22 pumping rates and corresponding effects on ponds and streams, (b) the fact that existing  
23 pumping levels, which are substantially underreported, appear to be already drying up the nearby  
24 spring-fed pond, and (c) the patent falsehood of the Initial Study’s estimates of current water use  
25 call all of the study’s conclusions into question. Indeed, in later oral testimony to the Board, (AR  
26 03490 *ff*), Kamman summarized his previous expert opinions, forcefully standing by them

27 \_\_\_\_\_  
28 <sup>10</sup> This is the letter the Board Chair found good cause to add to the record, though without the  
exhibits it cited and attached.

1 despite Slade’s and County staff’s disagreements with them. Kamman admonished that if the  
2 Initial Study reports in fact substantially understate the amount of water the vineyard is  
3 extracting, it calls into question all of the conclusions, including the statements that the Project  
4 will actually be using less water (which, again, is based only on annual usages rates, and does not  
5 consider seasonal variations in pumping levels and draw-down impacts in the nearby ponds and  
6 streams, which themselves are wetted seasonally). AR 03491-03493. Kamman also  
7 independently verified that Rector Creek watershed “hosts a number of special-status species,  
8 the yellow-legged frog, the [California Tiger] salamander, and steelhead trout.” AR 03493.  
9 Kamman also re-explained how the Project’s proposed stormwater detention basin is armored  
10 only for a 10-year rain event and not the 100-year event required by the County Code, and that  
11 this may result in overflow and transport of sediments into the nearby streams, to the detriment  
12 of aquatic habitat and water quality in Rector Creek and Reservoir. AR 03495-03496.

13       Ultimately this expert disagreement is immaterial. Under the fair argument standard,  
14 whether Bartelt, Slade, or County staff’s opinions constitute substantial evidence of no adverse  
15 impacts to groundwater or biological resources is non-dispositive, since any expert disagreement  
16 over either the existence of magnitude of significant must be resolved in favor of requiring an  
17 EIR. *Brentwood Ass'n for No Drilling, supra*, 134 Cal.App.3d 491; *Friends of “B” St., supra*, 106  
18 Cal.App.3d 988. *See also* Guidelines, §15064(f)(1). Moreover, as with the County’s failure to  
19 conduct a biological resources assessment, its failure to measure or evaluate water levels in the  
20 nearby wells, ponds, and streams during the constant rate pumping tests is a material  
21 informational deficiency that vitiates any finding that the Project could not have a significant  
22 impact on these resources. *Mejia v City of Los Angeles, supra*, 130 Cal.App.4th at 339-340.

23 **V. Substantial evidence supports a fair argument that the Project will have**  
24 **significant noise impacts.**

25       The Project will generate additional noise in this very quiet, remote, rural area primarily  
26 from the evening marketing events. AR 00361. The Initial Study cited and appended a noise  
27 study by consultants Illingworth & Rodkin (AR 00545-00563) disclosing that noise from  
28 outdoor events could be as high as 60 dBA for periods of less than one minute during a single

1 hour at the closest receiving residence. AR 00362. This level is at the County’s noise ordinance  
2 threshold the noise events lasting cumulatively more than 1 minute during the same hour. *Id.*  
3 The noise study also disclosed that larger events for 75 persons are projected to reach 61 dBA at  
4 one residence, and 60 dBA at another residence for the 1-minute threshold period, exceeding  
5 the County standard by 2 dBA for the residence. *Id.* Likewise, the County noise thresholds are  
6 lowered by 5 dBA at 10 p.m. Since marketing events would occur in the evening until  
7 10, with clean up until 11, there is potential for noise levels to exceed standards well after 10 pm.  
8 Noise levels of 60 dBA after 10 pm would thus exceed noise limits by 5 dBA if cumulatively  
9 lasting longer than 1 minute over the course of an hour. *Id.* The Initial Study, rather than  
10 acknowledging this, instead found no significant impact because MPV would be required at  
11 some point to obtain a study measuring actual noise levels during outdoor marketing events, and  
12 providing for attenuation if measured levels exceed the applicable thresholds. *Id.*

13 **A. Expert opinion based on fact establishes that outdoor evening events with**  
14 **music will violate applicable County noise standards.**

15 SCG consulted with another noise expert, Derek Watry, M.S., of the acoustical  
16 consulting firm Wilson Ihrig & Associates, who submitted a peer review of the Initial Study and  
17 Illingworth & Rodkin study. AR 02768-02773. Watry is a principal in the firm and has over 26  
18 years of experience in noise impact assessment in the CEQA context. AR 02772.

19 In a letter to the Planning Commission on July 18, 2016, Watry observed, first, that the  
20 Initial Study’s noise report had failed to disclose that the County’s noise ordinance provides that  
21 for noise events that include “music or speech,” the standard thresholds are reduced 5 dBA. AR  
22 02769 (citing County Code, sec. 8.16.070(B). The Initial Study acknowledges that noise from  
23 marketing events will indeed include music and speech. AR 00562 (Table 9). Thus, the  
24 applicable noise standards are actually 5 dBA less than those reported in the Initial Study,  
25 specifically 45 dBA. Since the Initial Study’s noise report itself states that expected noise levels  
26 from special events at the two nearest residences will be over this threshold at 48 and 47 dBA,  
27 respectively, there is by definition a significant noise impact. *See* AR 02769.

1           Watry also explained how, in addition to exceeding the local standard, noise from large  
2 special events will “fundamentally change the character of the neighborhood near the proposed  
3 operation.” AR 02769. Regardless of whether a given noise event exceeds a numeric noise  
4 standard, if the event substantially elevates noise levels above ambient conditions for substantial  
5 periods of time, the impact is significant. AR 00361 (a “substantial temporary . . . increase in  
6 ambient noise levels in the project vicinity above levels existing without the project” is a  
7 significant impact under CEQA”). Watry also explained that noise levels lasting over 30 minutes  
8 per hour are substantially higher than existing noise levels at the three nearest residences, and  
9 that this too is a significant Project impact. AR 02769-02771.

10 **B.     The fact that MPV will host fewer evening events than first proposed is irrelevant**  
11 **to the issue of whether individual events will exceed noise standards.**

12           In response to Watry, MPV and the County cited the fact that the Initial Study’s noise  
13 report, and hence Watry’s critique of it, assumed the Project would host 78 events annually,  
14 including four events per year for 75 visitors and two for 125 visitors. Because MPV later agreed  
15 to limit these to just 3 events for 75 visitors, they argue, Watry’s testimony was no longer  
16 accurate or relevant. AR 00601-00602. What MPV and the County fail to acknowledge is that  
17 the County’s noise thresholds apply to single noise events, not some annualized average. If the  
18 Project’s three events exceed the applicable noise standards, the impact is significant. Guidelines,  
19 § 15382 (substantial adverse change in ambient noise is “significant effect on the environment”);  
20 Guidelines, Appx. G, sec. XII(a) (exposure to persons to noise levels in excess of local standards  
21 is significant impact under CEQA; *id.*, sec. XII(d) (substantial temporary increase in ambient  
22 noise in project vicinity above levels existing without the project is significant impact).<sup>11</sup>

23 **VI.    Substantial evidence supports a fair argument that the Project will have**  
24 **significant impacts on traffic and roadway safety.**

25           Based on the Initial Study and the traffic report it cited and appended (AR00467-00544),  
26 the Count found that the Project would not substantially increase roadway hazards, or otherwise

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27 <sup>11</sup>       Note courts have found significant noise impacts triggering the need for an EIR, even where  
28 noise levels are nominally consistent with an agency’s adopted noise thresholds. *Keep our Mountains Quiet*,  
*supra*, 236 Cal.App.4<sup>th</sup> at p. 732-733 (addressing evening outdoor events).

1 adversely affect the public health, safety or welfare, despite introducing a new commercial land  
2 use, open to the public, onto the remote upper reaches of SCR. *See* AR 00366 (Initial Study),  
3 00912 (Planning Commission findings), 00581-00582 (Bd. of Supervisors affirmation). In its  
4 findings, the Board of Supervisors expressly acknowledged that SCR “is deteriorated and in  
5 need of improvement, the location of many collisions, and subject to flooding.” AR 00019. The  
6 Board acknowledged that the Project would introduce nearly 45,000 new vehicle trips per year  
7 onto this deteriorated, dangerous roadway. AR 00018. The Board reasoned, however, that  
8 according to the County Traffic Engineer that SCR is “not unique” and that many County roads  
9 are in poor condition with high collision rates, and that its incidence of flooding and landslides  
10 is no worse than other roads. AR 00019.

11 SCG submitted lay and expert testimony to the Planning Commission documenting the  
12 deteriorated condition of SCR, the numerous emergency response calls generated by homes,  
13 businesses, and travelers, the numerous collisions and drunk-driving incidents, and the  
14 susceptibility of the area to fire. *See* AR 02151 (CHP accident reports), 02156-02186 (photos of  
15 deteriorated roadway conditions), 02187-02193 (CalFire statistics). SCG later supplemented this  
16 information before the Board. AR 00695-00697 (updated CHP reports), 00697-00698 (updated  
17 CalFire reports), 00699 (flooding), 06864.011-06864.139 (recent traffic, fire and safety  
18 information), 03453-03484 (testimony of residents addressing traffic, safety, and fire hazards).  
19 This evidence showed that just between January 2014 to December 2016, there were 639  
20 reported incidents and accidents on SCR. AR 00699, 06864.031. This averages four reported  
21 accidents per week, the clear majority of which (454 of 639) occurring during daytime hours  
22 when the Project would attract most of its 45,000 annual vehicle trips. *Id.* The evidence also  
23 shows there has been a 38 percent increase in accidents from 2014 to 2016, and that 74 percent  
24 of those occurred between March and October, i.e., when most winery tourists visit Napa  
25 Valley, and when the bulk of the annual vehicle trips to the Project will occur. AR 06864.031-  
26 06864.034, 03458-03461. Furthermore, substantial evidence of existing traffic and fire safety  
27 issues on SCR is corroborated by the New Evidence of the devastation from the historic 2017  
28 Atlas Fire. *See* Motion to Augment and supporting Declarations.

1 Lay testimony by private citizens based on personal observations about traffic conditions  
2 constitutes substantial evidence supporting a fair argument under CEQA. *Keep Our Mountains*  
3 *Quiet, supra*, 236 Cal.App.4th at p. 730. Regardless, SCG’s testimony was corroborated by a  
4 professional traffic engineer, Daniel Smith, P.E. In a July 18, 2016 letter submitted to the  
5 Planning Commission (AR 02759-02767), Smith, who has 48 years of experience in traffic and  
6 transportation engineering (AR 02759), explained that the County’s traffic report failed to  
7 reasonably reflect safety conditions. Smith found that SCR’s lane widths, which vary between 9  
8 and 11 feet, are below the 10-foot minimum standard of the State’s *Manual on Uniform Traffic*  
9 *Control Devices*, and that at many locations the effective pavement width is rendered substandard  
10 by badly deteriorated pavement conditions. Smith explained that the situation was made worse  
11 by open roadside drainages and ditches unprotected by guardrail or a safely traversable shoulder.  
12 AR 02760. According to Smith, these safety problems are compounded by SCR’s sinuous  
13 horizontal and vertical alignment that, combined with effects of roadside vegetation and terrain,  
14 limits sight distance and causes opposed drivers operating near the center of the road to be  
15 unable to see each other soon enough to avoid hazardous conflict. *Id.* Smith concluded that the  
16 Project could “significantly increase the crash incidence along Soda Canyon Road.” AR 02760.<sup>12</sup>

17 The County therefore abused its discretion in finding the Project would not adversely  
18 affect the public health, safety, and welfare of. County residents.

19 **VII. Conclusion**

20 For the above reasons, Petitioner requests the court to GRANT its Petition.

21 Dated: October 15, 2018

Respectfully submitted,

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

23 By:   
24 \_\_\_\_\_

Mark R. Wolfe  
Attorneys for Petitioner

25  
26  
27 <sup>12</sup> Smith’s testimony was based on the Initial Study’s visitor counts, which included 78 annual  
28 marketing events AR 02760. Although MPV later reduced these to three, the Project would still attract  
275 visitors per week, or 14,575 annually – a 64 percent increase over current levels. Smith’s opinion on  
safety issues thus still constitutes substantial evidence under CEQA.

1 **PROOF OF SERVICE**

2 *Soda Canyon Group v County of Napa, et al.*  
3 Napa County No. 17CV001063

4 I hereby declare that I am employed in the City San Francisco, County of San Francisco,  
5 California. I am over the age of eighteen years and not a party to this action. My business  
6 address is 555 Sutter Street, Suite 405, San Francisco, CA 94102. I am familiar with this firm's  
7 practice for the collection and processing of mail sent via U.S. Mail, which provides that mail be  
8 deposited with the U.S. Postal Service on the same day in the ordinary court of business.

9 On October 15, 2018 I served the attached **PETITIONER'S OPENING BRIEF IN**  
10 **SUPPORT OF PETITION FOR WRIT OF MANDATE** in this action :

11  **BY FIRST CLASS MAIL:** I am familiar with my employer's practice for the collection and processing of  
12 correspondence for mailing with the U.S. Postal Service. In the ordinary course of business,  
13 correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On  
14 the date written above, following ordinary business practices, I placed for collection and mailing at my  
place of employment a copy of the attached document(s) in a sealed envelope, with postage fully prepaid,  
addressed as shown.

15  **BY ELECTRONIC MAIL:** On the date written above, I caused a copy of the attached document(s) to  
16 be transmitted via electronic mail to the electronic mail address maintained by the person on whom it is  
17 served at the electronic mail address shown, before 5:00 p.m. That transmission was reported as complete  
without error by my electronic mail software. The parties served have agreed to accept service  
electronically.

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23 I declare under penalty of perjury that the foregoing is true and correct and that this  
24 declaration was executed at San Francisco, California on October 15, 2018.

25   
26 \_\_\_\_\_  
27 Susan Anthony  
28