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Attorneys for Petitioner

THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

SODA CANYON GROUP,

Petitioner,

vs.

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

Respondents

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

Real Parties in Interest.

Case No.: 17CV001063

NOTICE OF ENTRY OF JUDGMENT

[CEQA Matter]

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 1, 2022 the above court entered a Final
3 Judgment on the merits of the Petition for Writ of Mandate in the above-captioned matter. A
4 true and correct copy of the Judgment as entered is attached hereto as **EXHIBIT A.**

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6 Dated: August 3, 2022 M. R. WOLFE & ASSOCIATES, P.C.

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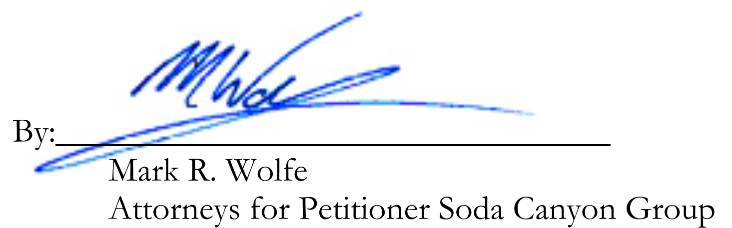

9 By:__________________________________
Mark R. Wolfe
10 Attorneys for Petitioner Soda Canyon Group

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EXHIBIT A

EXHIBIT A

EXHIBIT A

EXHIBIT A

efile rec'd 7/26/22

FILED

2022 AUG -1 AM 9:00

CLERK OF THE NAPA SUPERIOR COURT
BY: ______ DEPUTY

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THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

SODA CANYON GROUP, Petitioner, vs. COUNTY OF NAPA; NAPA COUNTY BOARD OF SUPERVISORS; and DOES 1 through 10, inclusive, Respondents ——— MOUNTAIN PEAK VINEYARDS, LLC; ERIC YUAN; HUA YUAN; and DOES 11 through 20, inclusive, Real Parties in Interest.	Case No.: 17CV001063 ~~[Proposed]~~ CPS **JUDGMENT** [CEQA Matter]

The Petition for Writ of Mandate in this action ("Petition") came before this court for hearing on January 20, 2022. Anthony G. Arger and Mark R. Wolfe appeared as counsel on behalf of Petitioner Soda Canyon Group ("Petitioner"); Jason M. Dooley appeared as counsel on behalf of Respondents County of Napa and Napa County Board of Supervisors ("Respondents"); Brien F. McMahon and Jacob Aronson appeared on behalf of Real Parties in Interest Mountain Peak Vineyards, LLC, et al. ("Real Parties").

Having considered the parties' respective briefs filed in support of and in opposition to the Petition, the evidence presented in the administrative record lodged with the court and subsequently augmented, and oral arguments of the parties' counsel at the hearing, and the court having issued its ORDER GRANTING WRIT OF MANDAMUS on March 21, 2022, a true and correct copy of which is attached as **EXHIBIT A** hereto;

IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Judgment is entered in favor of Petitioner.

2. A Peremptory Writ of Mandate shall issue requiring Respondents to set aside their actions adopting a Negative Declaration under the California Environmental Quality Act and approving Use Permit No. P13-00320-UP and an exception to Napa County's Road and Street Standards for the proposed Mountain Peak Winery Project, and further directing Respondents to prepare an Environmental Impact Report prior to any subsequent consideration or approval of the Project.

3. The Court shall retain jurisdiction over these proceedings in accordance with Public Resources Code Section 21168.9(b) until it has determined that the City has complied with CEQA.

4. Respondents shall file an initial return to the writ of mandate within sixty (60) days from the date the signed writ is served on them, setting forth the actions they have taken to date to comply with the writ.

5. ~~Petitioner is awarded costs of suit in the amount of $~~____________________.

~~2.~~ 5. The court retains jurisdiction over Petitioner's claim for reasonable attorneys' fees under Code of Civil Procedure section 1021.5. Pursuant to Rule of 3.1702 of the California Rules

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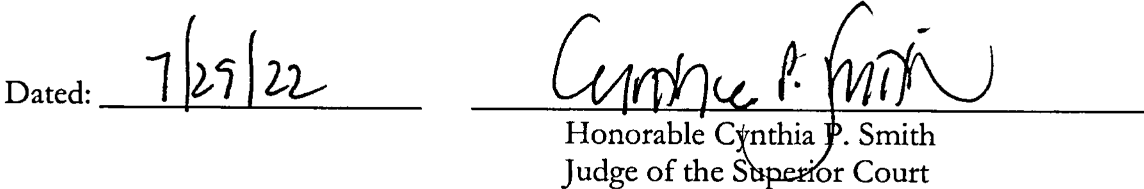
of Court, Petitioner shall notice any motion for attorneys' fees 60 days from the date of mailing of the notice of entry of judgment.



Dated: 7/29/22

Honorable Cynthia P. Smith
Judge of the Superior Court

Approved as to form:

Dated: 07/26/2022

/s/ Laura J. Anderson

Laura J. Anderson
Attorney for Respondents

Dated: 07/26/2022

Brien F. McMahon
Attorney for Real Parties

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EXHIBIT A

EXHIBIT A

EXHIBIT A

EXHIBIT A

FILED

MAR 21 2022

Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF NAPA

SODA CANYON GROUP, Petitioner, vs. COUNTY OF NAPA, et al., Respondents.	Case No.: 17CV001063 ORDER GRANTING WRIT OF MANDAMUS Hearing Date: January 20, 2022, Department A.

This matter came on for hearing on January 20, 2022.

Soda Canyon Group (Petitioner or SCG) petitions the Court for a writ of mandate, based on alleged violations of the California Environmental Quality Act (CEQA), directing respondent County of Napa (County) to set aside its actions adopting a Negative Declaration and approving use permit No. P13-00320-UP (Use Permit) and exception to the County's Road and Street Standards for a winery project proposed by real parties in interest Mountain Peak Vineyards, LLC, Steven Rea, Eric Yuan, and Hua Yuan (collectively Real Parties), and located at 3265 Soda Canyon Road in unincorporated Napa County (Project).[1] Upon review of the moving and opposition papers and the argument of the parties at the hearing, the Court agrees with Petitioner that substantial evidence in the administrative record supports a fair argument that the Project may have a significant effect on the environment and that as a result the County is required to prepare an Environmental Impact Report (EIR).

[1] Because Respondents and Real Parties collectively filed a single opposition brief, the Court refers to them collectively as Opponents.

A. LEGAL BACKGROUND

"'With certain limited exceptions, a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.' [Citations.] ''Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment.' [Citations.]' (Citation.)" (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 (*Pocket Protectors*).) Put another way, "[a] public agency should not file a negative declaration for a project if it can be fairly argued that the project might have a significant environmental impact." (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1348 (*Loenoff*).) "Where the agency has filed a negative declaration while granting a use permit, the concern of judicial review, by both trial and appellate courts, is whether there is substantial evidence in the record supporting a fair argument of significant environmental impact. If such evidence is found, it cannot be overcome by substantial evidence to the contrary." (*Ibid.*) "In the CEQA context, substantial evidence is 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence.' (. . . § 15384, subd. (a).)" (*Scaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 621, fn. 6.) Similarly, "'[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.' (Guidelines, § 15384.)" (*Pocket Protectors, supra*, at 927-28.) "Since CEQA's concern is about the likely future impact of a yet undeveloped project, the evidence will obviously consist of predictions with varying degrees of plausibility." (*Loenoff, supra*, at 1348.)

The fair argument standard has been called a "low threshold test" for the requirement of an agency to prepare an EIR. (See *Pocket Protector, supra*, 124 Cal.App.4th at 928.) "It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the

lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." (*Ibid.*)

"In examining the record for such substantial evidence, the courts recognize the public agency's responsibility for creating an adequate record. Deficiencies in the record due to the public agency's lack of investigation 'may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.' (Citation.) However, it remains the [Petitioner's] burden to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact." (*Loenoff, supra*, 222 Cal.App.3d at 1348-49.)

"Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument. [Citations.] So may expert opinion if supported by facts, even if not based on specific observations as to the site under review. [Citations.] Where such expert opinions clash, an EIR should be done. [Citation.]" (*Pocket Protector, supra*, 124 Cal.App.4th at 928.)

With this background in mind, the Court turns to Petitioner's CEQA claims.

B. SUBSTANTIAL EVIDENCE EXISTS IN THE ADMINISTRATIVE RECORD TO SUPPORT A FAIR ARGUMENT THAT THE PROJECT MAY HAVE A SIGNIFICANT ADVERSE IMPACT ON SURFACE WATER AND BIOLOGICAL RESOURCES

Petitioner argues that substantial evidence exists to support a fair argument that the Project will have a significant impact on water quality, aquatic habitat, and species in the on-site streams and nearby Rector Creek. The Court agrees. The Court finds that the evidence found at AR 1502, 1508-22, 3498-3505, 3648-52, 6864.170-6864.172, 6584.177 and 6864.196-6864.201 is substantial evidence sufficient to support a fair argument that the Project might have a substantial adverse impact on surface water quality, and on the health of several species, including at least one species designated as endangered, and their habitat in on-site streams and nearby Rector Creek. (See 14 C.C.R. § 670.5, subd. (a)(3)(D)-(F).)

Specifically, there is evidence in the Administrative Record that:

1. Rector Creek and its surrounds are habitat to a number of biological species, at least one of which is designated as endangered. (See AR1508-1522.);

2. As part of the Project, cave spoils – materials excavated in creating caves – will be deposited in the vicinity of the blue line stream that crosses the property as well as a blue line stream that borders the property. (See AR 3498-3505, 6864.170-6864.172, 6864.177.);
3. During periods of rain, surface runoff from the Property introduces sediment into the blueline stream crossing the Property and from there into waterways downstream including Rector Creek. (See AR 417, 1502, 3648-3652, 6864.196-6864.201); and
4. Sediment entering the streams is a pollutant and endangers the breeding habitats of the species populating Rector Creek and its surrounds, interfering with the species reproduction. (See AR 3501-3505, 6864.196-6864.201.)

Based on the foregoing, the Court finds that substantial evidence in the Administrative Record supports a fair argument that the Project "may have a significant effect on the environment." (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 927.) "A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that...[t]he project has the potential to substantially degrade the quality of the environment...[or]...reduce the habitat of a fish or wildlife species...[or]...substantially reduce the number or restrict the range of an endangered, rare or threatened species." (14 C.C.R. § 15065, subd. (a)(1).) This conclusion is bolstered by the authority providing that the Court's de novo review should be undertaken with a preference for resolving doubts in favor of environmental review. (See *Pocket Protector*, *supra*, 124 Cal.App.4th at 928.) "In the CEQA context, substantial evidence is 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record." (*Scaeffer Land Trust v. San Jose City* Council, *supra*, 215 Cal.App.3d 612, 621, fn. 6.)

Petitioner further presents substantial evidence questioning methodologies used by the County in collecting the data used to support the Initial Study's analysis of surface water, and sediment runoff into downstream watersheds. (See, *e.g.*, AR 1491-1502, 3490-3496.) Petitioner

also asserts that the County "failed to assess the biological resources potentially impacted by the Project and/or analyze the Project's effects on them." (Opening Brief at 15:2-4.) "While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

In response to the foregoing, Opponents appear to concede that no assessment of the biological resources was undertaken. Opponents argue that this is not fatal to their position because Petitioner's assertion that "the Project will result in cave spoils entering nearby streams" are "without any factual basis." (*Id.* at 7:17-19.)

First, there need not be evidence that spoils *will* enter nearby streams. Opponents may be correct that there is no factual basis for an assertion that the Project will (with certainty) result in cave spoils entering nearby streams. However, "[a] public agency should not file a negative declaration for a project if it can be fairly argued that the project *might* have a significant environmental impact." (*Leonoff, supra,* 222 Cal.App.3d at 1348. Emphasis added.) And a *potentially* substantial adverse change in the environment constitutes a "[s]ignificant effect on the environment" for purposes of this analysis. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 927.) Moreover, "[s]ince CEQA's concern is about the likely future impact of a yet undeveloped project, the evidence will obviously consist of predictions with varying degrees of plausibility." (*Loenoff, supra*, at 1348.)

As noted above, the Court finds substantial evidence in the record sufficient to support a fair argument that the Project *might* have a *potentially* substantial adverse impact on surface water, and several species, including at least one species designated as endangered, and their habitat in on-site streams and nearby Rector Creek. In light of the preference for environmental review, this finding is sufficient to require Respondent to prepare an EIR prior to approving the Project. (See *Pocket Protectors*, 124 Cal.App.4th at 927.)

Opponents cite to areas in the record that they contend show that the "Project includes features that minimize the risk of grading work or cave spoils affecting water quality in nearby

streams." (Opposition Brief at 6:20-21; see also *id.* at 9:25-11:15.) Opponents argue that the County "studied potential erosion and water quality impacts, and determined that the Project will not result in substantial adverse impacts on water quality or biological resources in nearby streams." (Opposition at 7:19-21.)

At hearing, Real Parties argued that the Project was evaluated with regard to state, local, and regional pollution and storm water control regulations, and was designed to "minimize impacts relating to those matters." Real Parties further argued at hearing that the Project incorporates many design features designed to minimize those impacts. Real Parties cited to a study by Bartelt Engineering at AR 349-350, and a letter from Respondent's engineering division at AR 72-76.

First, the presence of evidence that the project will have no significant effect is of no moment. "Where the agency has filed a negative declaration while granting a use permit, the concern of judicial review, by both trial and appellate courts, is whether there is substantial evidence in the record supporting a fair argument of significant environmental impact. If such evidence is found, it cannot be overcome by substantial evidence to the contrary." (*Leonoff, supra*, 222 Cal.App.3d at 1348.) "Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68)." (14 C.C.R. § 15064, subd. (f)(1).)

Second, none of the materials cited support Opponents' assertions that they analyzed the Project's potential to contribute to erosion and/or studied the potential for surface water pollution from the Project to impact biological resources downstream. Opponents rely heavily on the Stormwater Control Plan prepared by Bartelt Engineering in support of the County's decision to deny the 13th, 14th and 15th Grounds for Appeal brought by Petitioner (Stormwater Control Plan). (See, *e.g.*, Opposition at 7:1-16; see also AR 20-22, 413-433.) Opponents argue that the County studied potential erosion and water quality impacts and determined that the Project will not result in substantial adverse impacts on water quality or biological resources in nearby streams. (See Opposition at 7:6-16; see also AR 349-353, 356-359, 368, 413-433.) However, a

careful review reveals that the Stormwater Control Plan does not specifically evaluate potential erosion, does not evaluate the impact erosion might have on water quality (and does not evaluate the potential impact that erosion and degraded water quality may have on species living in the Rector Creek Watershed. (See AR 413-433.) Moreover, the Stormwater Control Plan acknowledges that "[w]hen the capacity of the detention basin is exceeded during a greater than 10-year storm 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." (See AR 417.)

Next, the Letter from Respondent's Engineering Division contains no Project-specific reference or language suggesting that its authors prepared the letter in response to the specific Project. (See AR 72-76.) Similarly, it contains no reference to any Project-related study and no suggestion that any was undertaken or relied upon in generating the letter. Rather, the letter appears to simply recite the relevant portions of County Code and related regulations that would appear to apply to any such project. (See AR 72-76.) A finding that compliance with local codes and ordinances is all that is required to support a Negative Declaration, and therefore avoid preparation of an EIR, would undermine the very heart of CEQA. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123. ["[w]e have repeatedly recognized that the EIR is the 'heart of CEQA'"].)

Opponents question the validity of the evidence cited by Petitioner. Opponents argue that the Teejay O'Rear report "did not contain any evidence that the construction or operation at the Project would cause sedimentation to increase." (Opposition at 8:3-7.) Expert opinion, however, "may qualify as substantial evidence for a fair argument... if supported by facts, even if not based on specific observations as to the site under review." (*Pocket Protector*, *supra*, 124 Cal.App.4th at 928.) The Court finds that the Teejay O'Rear report explicitly references the factual basis for the opinions set forth therein. (See AR 1509-1511.)

Similarly, Opponents assert that Amber Manfree "did not explain or provide a factual basis for her conclusion...." (Opposition at 8:8-10.) The Court disagrees. The record contains both Ms. Manfree's explanation and citation to the factual basis supporting her conclusions. (See, *e.g.*, AR 3499-3504.) Opponents then contend that "the County acted within its discretion to discount Manfree's testimony as an assumption unsupported by fact." (Opposition at 8:11-13.)

Opponents cite to no portion of the record supporting their contention that the County discounted Manfree's testimony. The citation provided supports only the inference that the County drew a different conclusion than did Ms. Manfree. (See *id.* at 8:13-16.)

Opponents next address the testimony of Greg Kamman. (Opposition at 8:24, *et seq.*) Opponents contend that Mr. Kamman's testimony is not evidence of a Project-related impact. Even assuming, *arguendo*, that this is so, the Court finds Mr. Kamman's testimony to be evidence that the County may have failed to conduct an adequate Initial Study to support the Negative Declaration. As noted above, "[w]hile a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data." (*Sundstrom v. County of Mendocino, supra*,202 Cal.App.3d at 311.) Moreover, "deficiencies in the record due to the public agency's lack of investigation 'may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.'" (*Loenoff, supra*, 222 Cal.App.3d at 1348-49.)

"[I]f the trial court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed 'in a manner required by law.' (Pub. Resources Code, § 21168.5.)" (*Brentwood Association for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504.)

The foregoing is sufficient to support Petitioner's prayer for a writ of mandate. (See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580 ["fair argument test...requires the preparation of an EIR where 'there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial' [Citation]"].)

In the interest of providing a complete record, the Court will briefly address Petitioner's other CEQA-related claims.

C. THERE IS NO SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT A FAIR ARGUMENT THAT GROUNDWATER EXTRACTION FROM THE PROJECT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT

Petitioner fail to direct the Court to evidence in the Administrative Record that supports a fair argument that the Project may have a significant adverse impact on groundwater levels and/or aquifer supply. Petitioner cite to the evidence found at AR 1493-1502, 1509, 1512-13, and 3490-96.

Instead, the evidence before the Court demonstrates that the Project will use 0.5 acre-feet less water each year than the current vineyard operations on the property. (See AR 369-412, 434-462, 1560-1584.) Petitioner's arguments fail to recognize that the Project's impacts must be evaluated by comparing the post-Project water use with the existing water use. (See *Assn' of Irritated Residents v. Kern Cty. Bd. of Supervisors* (2017) 17 Cal. App. 5th 708, 724.) To the extent Petitioner's experts predict that nearby streams and ponds are drying up due to the current groundwater pumping on the property – this describes an existing condition and not one caused by the Project.

D. THERE IS NO SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT A FAIR ARGUMENT THAT AMBIENT NOISE IMPACTS FROM THE PROJECT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT

Petitioner next contends that "the Project will generate additional noise in this very quiet, remote, rural area primarily from the evening marketing events." (Opening Brief at 21:24-25.) Excessive noise may constitute an adverse environmental impact under CEQA. (See *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1379-80 ["through CEQA, the public has a statutorily protected interest in quieter noise environments"]; see also 14 C.C.R. § 15360 [defining "environment" as "physical conditions which exist within the area which will be affected by a proposed project including…ambient noise…"].)

The most compelling evidence presented by Petitioner on the issue of noise is the contention of Petitioner's noise expert Derek Watry that Opponents' noise assessment analysis (conducted by Illingworth & Rodkin, Inc.) relied on an inapplicable standard under Napa County Noise Ordinance. (See AR 2769; see also AR 545-563.) Mr. Watry concludes that, when the appropriate standard is applied, the data presented in Opponents' analysis reveals that noise

levels caused by the Project would "exceed a local standard" and thereby constitute a significant impact. (See *id.*)

Opponents do not dispute Mr. Watry's contention that the alternative noise standard was used by Illingworth & Rodkin, Inc. Rather, they argue that the County had discretion to use the base noise standard threshold it did under the holding in *Mission Bay Alliance v. Office of Community Investments & Infrastructure* (2016) 6 Cal.App.5th 160; *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 885; *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 716, overruled on other grounds in *Union of Medical Marijuana Patients, Inc. v City of San Diego* (2019) 7 Cal.5th 1171, 1194.) Further, Opponents argue that Mr. Watry's contention that the noise levels would "exceed a local standard," was based on the estimate, in Opponents' study, of the noise that would be generated from a hypothetical special event attended by 200 people. (See AR 562-563.) However, the approved Project limits attendance at events to a maximum of 125 people. (See AR 58-59.)

The Court agrees with Opponents that the County had discretion to use the alternative base noise standard. Under that standard, there is no evidence in the record that noise from special events would exceed the base threshold. This is particularly true given, as noted above, that the noise assessment analysis estimated noise levels based on an event with 200 guests – not the 125 maximum guests now allowed at the permitted Project.

As to substantially changing the character of the neighborhood, at oral argument, Opponents agreed that 78 food and wine tastings and six large events would have substantially changed the character of the neighborhood. However, as approved, Mountain Peak may hold only three events per year – a dramatic reduction from the number events studied by Illingworth & Rodkin, Inc. and relied on by Mr. Watry. The Court agrees with Opponents that Mr. Watry's opinion was not credible because it was not supported by a factual foundation that accurately reflects the approved Project. Hence there is no evidence in the record to contradict the County's finding that the three permitted evening events would not substantially change the character of the neighborhood.

E. THERE IS NO SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT A FAIR ARGUMENT THAT TRAFFIC AND SAFETY IMPACTS FROM THE PROJECT MAY HAVE A SIGNIFICANT IMPACT ON THE ENVIRONMENT

Finally, Petitioner argues that substantial evidence exists to support a fair argument that the Project will have adverse impacts on traffic and human safety, constituting an adverse environmental impact. (See Opening Brief at 23:24-25:18; see also Petitioner's Supplemental Brief After Remand.) The Court disagrees as to both traffic and safety issues.

Petitioner directs the Court to significant evidence in the Administrative Record regarding the present condition and capacity for regular and emergency traffic on Soda Canyon Road, the only public road servicing the Property. In particular, Petitioner cites lay and expert testimony regarding the poor "deteriorated condition of [Soda Canyon Road], the numerous emergency response calls generated by homes, businesses and travelers, the numerous collisions and drunk-driving incidents, and the susceptibility of the areas to file." (See Opening Brief at 24:11-28.) To be sure, the record is replete with reports, statistics, photographs and the testimony of local residents regarding the poor condition of Soda Canyon road, the accidents on the road and the devastating impact of the Atlas Peak Fire in 2017. All of this evidence relates to the current condition of Soda Canyon Road. Testimony of local residents on their concerns regarding the impact visitors, employees and suppliers to Mountain Peak winery will have on traffic and community safety amounts to generalized fears and concerns. Such testimony does not, therefore, constitute substantial evidence of a significant impact on the environment. (See *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal. App. 5th 161, 195.)

Petitioner also relies on the report of traffic engineer Daniel Smith, of Smith Engineering and Management, to corroborate the testimony of local residents. Mr. Smith did not perform his own traffic safety report but instead reviewed the 2015 report prepared by Opponents' Traffic Engineer Crane Transportation Group. (See AR 467-544; 2759-2767.) Mr. Smith supports his conclusion that a full Environmental Impact Report should be prepared based on his assumption that there would be 80 visitors to the winery each day (See AR 2764), not the 40 daily visitors ultimately approved. (See AR 49-50.) As a result of this faulty assumption, along with other concerns it had with Mr. Smith's peer review, the County found that Mr. Smith's opinion lacked factual foundation and therefore did not constitute substantial evidence that the projected

increase in traffic levels resulting from the Project would create a potentially "significant" environmental impact.

The Court agrees with the Opponents.

F. ARGUMENTS RAISED BY OPPONENTS THROUGH THEIR SUPPLEMENTAL BRIEF

Through their Supplemental Brief, Opponents appear to argue that the issue before the Court is simply whether the County's adoption of Resolution 2021-81, which affirmed the County's prior decision to issue the subject use permit and approve the project based on the EIR, is supported by substantial evidence. (See Brief on Remand.) If Petitioner sought a writ overturning only that decision, then the Court would be inclined to agree with Opponents' analysis.

However, the Petitioner here seeks a writ of mandate directing the County to set aside its actions "adopting a Negative Declaration and approving Use Permit No. P13-00329-UP and exception to the County's Road and Street Standards for the Project." (See Petition at and 11:14-17; see also *id.* at 1:2-7, 13-22, 8:6-9:7.) As discussed in significant detail herein above, the appropriate standard of review is the fair argument standard.

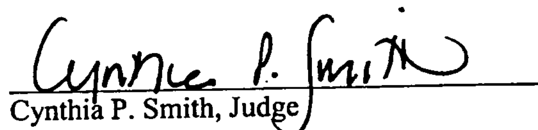
G. REMAINING CAUSES OF ACTION

In light of the Court's conclusion that Petitioner is entitled to writ relief pursuant to its first cause of action for violation of CEQA, the Court finds that Petitioner's remaining causes of action – which seek identical relief on alternative legal theories – are MOOT.

H. CONCLUSION

Based on the foregoing, the Petition is GRANTED. Let a peremptory writ of mandate issue directing the Respondent to set aside its actions adopting a Negative Declaration and approving Use Permit No. P13-00320-UP and exception to the County's Road and Street Standards for the Project and further directing Respondent to prepare an Environmental Impact Report for the Project prior to any subsequent approval.

March 21, 2022



Cynthia P. Smith, Judge

Superior Court of California

County of Napa
825 Brown Street
Napa. CA 94559

Case #: 17CV001063 **Soda Canyon Group vs County of Napa et al**

Mark Raymond Wolfe
MR WOLFE & ASSOCIATES, PC
580 California Street, Suite 1200
San Francisco, CA 94104

Jeffrey Michael Brax
1195 Third ST STE 301
Napa, CA 94559

Brien Francis McMahon
505 Howard ST STE 1000
San Francisco, CA 94105

Certificate of Mailing/Service

I hereby certify that I am not a party to this cause and that a copy of the Order Granting Writ Of Mandamus was:

- ☒ **mailed** (first class postage pre-paid) in a sealed envelope
- ☐ **certified copy faxed** to Napa Sheriff's Department at (707) 253-4193
- ☐ **personal service** – personally delivered to the party listed above
- ☐ **placed in attorney/agency folders** in the ☐ Criminal Courthouse ☐ Historic Courthouse

at Napa, California on this date and that this certificate is executed at Napa, California this Date. I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing within the United States Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 3/21/2022

Robert E Fleshman, Court Executive Officer

Isabel Rodriguez, Deputy Court Executive Officer

PROOF OF SERVICE

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

I hereby declare that I am employed in the City San Francisco, County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 580 California Street, Suite 1200, San Francisco, CA 94104. I am familiar with this firm's practice for the collection and processing of mail sent via U.S. Mail, which provides that mail be deposited with the U.S. Postal Service on the same day in the ordinary court of business.

On August 3, 2022 I served the attached **PETITIONER'S SUPPLEMENTAL BRIEF AFTER REMAND TO CONSIDER ATLAS FIRE EVIDENCE** in this action:

[ ] **BY FIRST CLASS MAIL**: I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On 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.

[x] **BY ELECTRONIC MAIL:** On the date written above, I caused a copy of the attached document(s) to be transmitted via electronic mail to the electronic mail address maintained by the person on whom it is 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.

Laura Anderson, Deputy County Counsel
Jason M. Dooley, Deputy County Counsel
Napa County Office of County Counsel
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Napa, CA 94559
Laura.Anderson@countyofnapa.org
Jason.Dooley@countyofnapa.org

Brien McMahon
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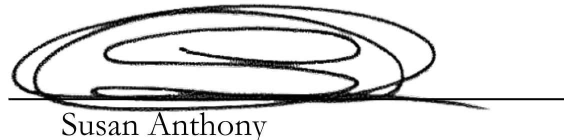
BMcMahon@perkinscoie.com

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Francisco, California on August 3, 2022.



Susan Anthony