

APALLAS LAW GROUP
YEORYIOS C. APALLAS
LAWYER AND COUNSELLOR AT LAW
4054 SILVERADO TRAIL
NAPA, CALIFORNIA 94558-1119
TELEPHONE: (707) 320-3806
EMAIL: YCA@APALLASLAWGROUP.COM

YEORYIOS C. APALLAS

August 28, 2017

Napa County Board of Supervisors
County Administration Building
1195 Third Street, Suite 310
Napa, California 94559
E-Mail: sarah.minahen@countyofnapa.org

Notice of Intent to File Request for Reconsideration in Mountain Peak Winery Matter P-13-00320-UP.

Dear Members of the Board of Supervisors:

This letter will serve to provide you with notice that all Appellants in the above referenced matter intend to file a request for reconsideration of the Mountain Peak Winery Decision entered in the above referenced matter, pursuant to Napa County Code §2.88.110.

The primary bases for the petition for reconsideration are as follows:

A. The evidence before the Board of Supervisors (BOS) on the appeal did not support the findings of fact in the decision on appeal. The testimony of the experts adduced at the hearing was ignored by the BOS to the detriment of the Appellants.

1. The project's adverse impacts on traffic, about which Smith Engineering & Management provided documentary testimony, was ignored. The project's adverse impacts on Soda Canyon Road from a geotechnical standpoint, about which KC Engineering Company provided documentary testimony, was ignored. The project's adverse impacts on ambient noise levels in the area of the project, about which Wilson Ihrig & Associates provided documentary testimony, was ignored. The project's adverse impacts on water availability and sedimentation of the Rector Creek watershed, about which Greg Kamman, PG, CHG, testified at length, was ignored. The project's degradation of the habitat of many threatened species, about which Dr. Manfree testified at length, was ignored. Thus, the findings are erroneous in that they failed to consider the expert testimony of Smith Engineering & Management, KC Engineering Company, Wilson Ihrig & Associates, Greg Kamman, PG, CHG, and Dr.

Manfree. Expert testimony regarding ground water siltation and runoff into the Rector Creek and ultimately into Rector Dam was ignored to the detriment of the Appellants. Nor were alternatives to the project, as proposed by Appellants and other project opponents, considered by BOS. The BOS turned its collective *back of the hand* on all reasonable and substantial expert and lay testimony. Having ignored this testimony, the BOS could not credibly have considered alternatives to the project. *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal. App. 3d 1167; *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App. 4th, 587, 599. For example, had it not placed a rather heavy thumb on the determination scale, and approached the hearing *de novo*, it well would have taken into consideration what alternatives existed to the project as a whole. Instead, without deliberating on the facts, the BOS turned a deaf ear to the substantial facts that the Appellants put forth in support of their arguments that such alternatives would have minimized adverse impacts on the environment to be caused by the project as currently proposed. An example of this is a smaller project without caves and without Disneyland-like visitations up a dead-end serpentine road—Soda Canyon Road – that is more appropriate for the unquestionably remote and rural location of Foss Valley/Upper Soda Canyon.

2. Additional, material facts and substantial evidence were ignored by the BOS, which, if they were considered on the merits, would have resulted in a different decision and would have compelled the Applicant to prepare and file an Environmental Impact Report in accordance with the provisions of the California Environmental Quality Act (“CEQA”).
 3. Finally, the BOS completely ignored facts that established beyond peradventure that the project violated many of the land use policies of Napa County’s General Plan, and other provisions of local and state laws.
- B. The findings of fact in the decision on appeal do not support the decision of the BOS on the appeal. The BOS, without conducting a rigorous analysis of the evidence produced by the Appellants simply ignored these facts and robotically prepared findings that led to the ineluctable but erroneous decision that a monstrous winery with caves that will produce 71,400 cubic yards, or 1,927,800 cubic feet – enough earth to stack 33 feet high on a football field including the end-zones –would have no impacts on the environmentally fragile project site bounded by Class C, blue-line streams which are tributaries to Rector Creek and ultimately to Rector Dam which serves as the source of drinking water of our veterans and the City of Yountville. Our veterans and the Yountville residents deserve better than that.

- C. Appellants have discovered new evidence material to a decision contrary to the decision of the BOS, which the Appellants could not, with reasonable diligence, have discovered and produced at or prior to the hearing on their appeal.
1. Respondent, Mountain Peak Winery, has recently opened a tasting room in the City of Napa under the brand "Acumen". On information and belief, Acumen is owned and operated by the proprietors of Mountain Peak Vineyards. Had this information been known to Appellants at the time of their presentation, they would have forcefully argued that there exists an alternative to the project's demand that it be provided a tasting room and substantial visitation rights on the most remote reaches of Atlas Peak. The downtown Napa tasting facility could have been considered by the staff in determining whether, and as required by CEQA, an alternative existed to the project which, if implemented, would have reduced or minimized impacts on the environment to be caused by the project as currently permitted.
 2. The recent letter from the law firm of Shute, Mihaly & Weinberger LLP, dated August 11, 2017, which paints a "pattern and practice" on the part of BOS regarding the way the board processes projects and considers project baselines for traffic and other matters in approving said projects is a distortion of the CEQA requirements. Had Appellants been aware of such a calumny on the part of the BOS, they would have been able argue with empirical evidence (cited in the Shute Mihaly Letter) that the approval of the project, on the basis of a negative declaration, was a massive breach of many CEQA requirements and at the very least would have compelled the recidivist BOS to mandate a full EIR, and possibly a total denial of the project.

In addition to the above, and papers to be submitted in support thereof, Appellants will support their Request for Reconsideration by reference to all the papers filed herein on January 30, 2017 and thereafter and all the oral and written testimony that was heretofore submitted on this matter as well as the legal arguments written and orally presented to the Napa County Board of Supervisors and the Napa County Planning Commission.

Sincerely



Yeoryios C. Apallas

Cc: Minh Tran, County Counsel
Anthony Arger, Esq.; Brien McMahon, Esq.