

Case No. A156816

---

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
Division 3**

---

COUNTY OF NAPA and NAPA COUNTY BOARD OF SUPERVISORS,  
*Respondents/Petitioners,*

MOUNTAIN PEAK VINEYARDS, LLC and HUA “ERIC” YUAN,  
*Real Parties in Interest/Petitioners,*

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY  
OF NAPA,  
*Respondent,*

SODA CANYON GROUP,  
*Petitioner/ Real Party in Interest*

---

From an Order of the Superior Court of California  
County of Napa  
Case No. 17CV001063, Hon. Cynthia P. Smith, (707) 299-1170

---

**PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF  
MANDATE, PROHIBITION, ETC.**

---

MARK R. WOLFE (SBN 176753)\*  
M. R. WOLFE & ASSOCIATES, P.C.  
555 Sutter Street, Suite 405  
San Francisco, CA 94102  
Tel: (415) 369-9400  
mrw@mrwolfeassociates.com

ANTHONY G. ARGER (SBN 304483)  
ROBERTSON, JOHNSON, MILLER &  
WILLIAMSON  
50 West Liberty Street, Suite 600  
Reno, NV 89501  
Tel: (775) 329-5600  
anthony@nvlawyers.com

*Attorneys for Petitioner/ Real Party In Interest* SODA CANYON GROUP

Document received by the CA 1st District Court of Appeal.

<b>COURT OF APPEAL</b>		<b>FIRST APPELLATE DISTRICT, DIVISION THREE</b>	COURT OF APPEAL CASE NUMBER: A156816
ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: Mark R. Wolfe FIRM NAME: M. R. WOLFE & ASSOCIATES, P.C. STREET ADDRESS: 555 Sutter Street, Ste 405 CITY: San Francisco TELEPHONE NO.: 415-369-9400 E-MAIL ADDRESS: mrw@mrwolfeassociates.com ATTORNEY FOR (name): Real Party/Petitioner SODA CANYON GROUP		STATE BAR NUMBER: 176753  STATE: CA ZIP CODE: 94102 FAX NO.: 415-369-9405	SUPERIOR COURT CASE NUMBER: 17CV001063
APPELLANT/ COUNTY OF NAPA, et a. PETITIONER: RESPONDENT/ SUPERIOR COURT; SODA CANYON GROUP REAL PARTY IN INTEREST:			
<b>CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</b>			
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE			
<b>Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.</b>			

1. This form is being submitted on behalf of the following party (name ): SODA CANYON GROUP
2. a.  There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b.  Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	-------------------------------

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 5, 2019

Mark R. Wolfe  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF APPELLANT OR ATTORNEY)

**PETITIONER/REAL PARTY IN INTEREST SODA CANYON GROUP'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE, PROHIBITION, ETC.**

Pursuant to California Rules of Court Rule 8.487(a), Real Party In Interest and Petitioner Soda Canyon Group (SCG) submits its preliminary opposition to the County of Napa and Napa County Board of Supervisors (County)'s and Mountain Peak Vineyards, LLC, et al. (Mountain Peak)'s (collectively "Petitioners"), Petition for Writ of Mandate, Prohibition or Other Appropriate Relief (Petition), filed March 28, 2019.

**Additional facts**

During the administrative proceedings before the County Board of Supervisors on the Mountain Peak Winery (Project) application, several individuals and organizations testified that the Project's remote location in a dry, wooded, fire-prone hillside area, accessible only via Soda Canyon Road, a narrow, winding, highly deteriorated dead-end thoroughfare with a long history of traffic accidents, would make evacuating the area extremely difficult in the event of a fire, thus creating an undue fire safety risk. The Board of Supervisors dismissed these concerns and approved the Project. In its August 2017 final resolution of approval, the Board adopted the following factual finding:

**In the event of a fire that results in mass evacuations from this area, [Soda Canyon Road] has sufficient capacity and roadway**

**width to accommodate all outgoing traffic while allowing incoming fire response units.**

*See* Exhibits to Petition (“Exhibits”), Vol 1, p. 0018-0019.

Two months later, the Atlas Fire occurred. It was one of the worst fires in the Napa County history. It completely destroyed 118 of the 163 homes on Soda Canyon Road, and substantially damaged 16 others. *See* Exhibits. Vol. 1, p. 0110. The fire also killed two people who lived in one of the homes before they could evacuate. *Id.* As the fire spread, Soda Canyon Road soon became blocked by burning trees and debris, rendering it completely impassable by automobile. *Id.* Approximately 20 people were trapped in their cars behind a downed, burning tree as the fire closed in around them. *Id.* As a result, they and others totaling 45 individuals living towards to the end of the dead-end road – including the area immediately adjacent to the Mountain Peak project site – were forced to evacuate by helicopter. *See* Exhibits, Vol. 1, p. 0111.

In the interim, SCG filed its petition for writ of administrative mandate under C.C.P. § 1094.5 challenging the County’s approval. The petition included claims under the California Environmental Quality Act (CEQA) that the County had unlawfully failed to prepare and environmental impact report before approving Mountain Peak’s project. However, the petition also included entirely separate claims that the project was inconsistent with the County’s General Plan, and that the County’s findings of fact in approving the

project – which include the fire safety finding quoted above – were not supported by substantial evidence. *See* Exhibits, Vol.1, p. 0097-0099.

SCG later filed a Motion to Augment the Administrative Record with, among other things, evidence of the Atlas Fire, the resulting impassibility of Soda Canyon Road, and the subsequent need to evacuate the Project area by helicopter. The trial court granted the motion in part, and ordered the matter remanded to the County to consider “new evidence of emergent facts” relating to the fire, relying on C.C.P. § 1094.5(e), *Ft. Mojave Indian Tribe v. Dept. of Health Svs.* (1995) 38 Cal.App.4th 1574, 1593-1595, and *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 596-597 (“[w]hen the Legislature granted the superior court the discretion to receive ‘relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the administrative hearing, it reasonably may be inferred that it meant to authorize the receipt of evidence of events which took place after the administrative hearing’”). *See* Order, Exhibits, Vol. 3, pp. 0521, 0524.

The trial court noted, however, that not all the evidence in SCG’s motion would necessarily constitute “new evidence of emergent facts.” It therefore ordered the parties to submit briefs addressing the proper scope of the evidence the County must consider on remand, and set a hearing for May 7, 2019. *See* Petition, p. 2, fn.1. On March 29, one day after filing the present

Petition, the County and Mountain Peak filed a joint brief in the trial court raising many if not all of the same arguments presented here to this Court. A file-stamped copy of Petitioners' trial court brief is filed concurrently herewith as **Exhibit A.** *Compare* arguments in the current Petition at pp. 14-18 to those in Petitioners' trial court brief, **Exh. A**, pp. 005-006, and fn. 4.

### **Extraordinary Writ Relief is Not Warranted**

The Court of Appeal should summarily deny the Petition for four principal reasons.

**First**, as noted, the Petitioners are already seeking virtually identical relief before the trial court which, if granted, would obviate the need for any extraordinary relief from this Court. In light of the pending similar proceeding before the trial court, and the possibility that the trial court could grant the remedy Petitioners seek here wholly or in part, for the Court even to consider issuing an extraordinary writ would be a waste of judicial resources.

**Second**, the Petition is premised entirely on a mischaracterization of SCG's lawsuit as involving CEQA claims exclusively. Petitioners frame their "Issue Presented" as whether C.C.P. section 1094.5(e) allows for the admission of post-approval new evidence in CEQA cases brought under Public Resources Code section 21168 (Petition, p. 1). All their supporting arguments relate to the

CEQA statute, the CEQA Guidelines, and selected CEQA cases. As noted, SCG does claim the County violated CEQA in approving the Project; however, it separately and additionally claims that the County’s findings – including its finding that Soda Canyon road has sufficient capacity and roadway width to accommodate all outgoing traffic while allowing incoming fire response units during a mass-evacuation event – are not supported by substantial evidence. *See* Verified Petition for Writ of Mandate, Third Cause of Action, Exhibits Vol. 1, p. 98-99.<sup>1</sup> Petitioners ignore the fact that SCG’s petition for writ of mandate includes these separate, non-CEQA claims. Thus, the question whether or not C.C.P. section 1094.5(e) authorizes remand to an agency to consider new, post-approval evidence in CEQA cases (it does), is not dispositive here, since the new evidence in question relates directly to SCG’s non-CEQA challenges to the County’s fire-safety finding. *See Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.App.5th 883, 893 (C.C.P. § 1094.5 mandate procedures provided

---

<sup>1</sup> SCG’s Third Cause of Action does not implicate CEQA at all. It states: “Under Section 18.124.070 of the Napa County Code, the County may grant a Use Permit for a project if and only if it makes a finding, based on substantial evidence in the record before it, that the permitted project, as conditioned, will not adversely affect the public health, safety or welfare of the county. [¶] Here, there is substantial evidence in the record that the operation of the Project, including, but not limited to, its on-site wine tasting activities and larger scale marketing events, will adversely affect the public health, safety and welfare of County residents, including SCG members. There is no substantial evidence in the record that the Project will not have these adverse effects. [¶] The County therefore prejudicially abused its discretion by approving a Use Permit for the Project based on findings of fact that are not supported by substantial evidence.”

for CEQA violations per Pub. Resources Code § 21168.9 do not apply to challenges to project approvals on non-CEQA grounds).

**Third**, the trial court’s order does not impermissibly “reopen” the entire approval proceeding, or otherwise undermine principles of “finality.” The order constitutes a plainly authorized interlocutory remand to the County for the limited purpose of considering new, emergent facts about the Atlas Fire that directly contradict the County’s unsupported findings regarding fire-safety. The County’s approvals are by no means “final” in any legally operative sense, as they have been timely challenged as unlawful in litigation that is actively pending. The trial court’s order is analogous to the interlocutory remand order upheld by the Supreme Court in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499 (“when a court has properly remanded for agency reconsideration on grounds that all, or part, of the original administrative decision has insufficient support in the record developed before the agency, [section 1094.5(e)] does not preclude the agency from accepting and considering additional evidence to fill the gap the court has identified”); *see also Ft. Mojave Indian Tribe v. Dept. of Health Svcs.*, *supra*, 38 Cal.App.4th at pp. 1593-1595 (rule against admitting newly produced, extra-record evidence in traditional mandamus cases challenging quasi-legislative agency actions does not apply per se to administrative mandamus cases). Indeed, while the court in *Ft. Mojave* cautioned that there exists only “a narrow, discretionary

window for additional evidence, newly discovered after the hearing,” *id.* at 1595, it nevertheless held that section 1094.5(e) affords trial courts with discretion to admit as new evidence only “truly new evidence of emergent facts.” *Ibid.* Here, the trial court’s remand order is plainly circumscribed by this limitation. *See* Order, Exhs. Vol. 3, p. 0523.

**Finally**, it is possible that the Board of Supervisors’ final decision after considering the new evidence on remand will favor Mountain Peak. The Board may re-approve the project unchanged despite the new evidence; re-approve the project after adding new conditions or mitigation measures to address fire safety; or deny it. The record of the Board’s future action will necessarily return to the trial court for briefing and argument, and any decision by the trial court may then be properly brought before the Court of Appeal. It is therefore premature and wholly unnecessary for the Court of Appeal to intervene in the matter now, given the incompleteness of the record and the uncertainty of the final outcomes at both the administrative and trial court levels.

### CONCLUSION

For the foregoing reasons, SCG respectfully request the Court of Appeal to SUMMARILY DENY the Petition.

Dated: April 5, 2019

Respectfully submitted,

M. R. WOLFE & ASSOCIATES, P.C.

  
\_\_\_\_\_  
Mark R. Wolfe  
Attorney for Petitioner/Real Party In  
Interest SODA CANYON GROUP

**CERTIFICATION OF WORD COUNT**

I, Mark R. Wolfe, declare:

In accordance with Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that the length of this brief, excluding tables, as calculated by the word processing software with which it was produced, is **1,652** words.

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

Dated: April 5, 2019

By:   
\_\_\_\_\_  
Mark R. Wolfe

Document received by the CA 1st District Court of Appeal.