

**NOTICE OF APPEAL, ATTACHMENT
(Appellants Save Yountville Hill, Mary Ann Moffitt,
Christian Moueix, and Ren Harris)**

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Appellants' Signatures:

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Christian Moueix Date

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Julia Levitan (on behalf Date
of Save Yountville Hill)

Reasons for Appeal:

I. Introduction

Appellants submit that the Planning Commission committed a prejudicial abuse of discretion in issuing the following approvals for the Yountville Hill Winery project (“Project”): (1) a use permit and exception to the conservation regulations (P13-00279); (2) three variances (P13-00417); and (3) a viewshed application (P13-00416). These approvals are collectively referred to herein as “the Permits.” Appellants further submit that the Planning Commission committed a prejudicial abuse of discretion in adopting the initial study and mitigated negative declaration (“MND”) for the Project.

As detailed below, the principal reasons for this appeal are two-fold. First, the Planning Commission had no power to approve the Permits because the Project is inconsistent with both the letter and the spirit of numerous provisions of the Napa County Code, including, but not limited to, the Winery Definition Ordinance (“WDO”) and the Viewshed Protection Program, and with the Napa County General Plan. Simply put, the size, scope, and scale of the visitor-serving and tourist serving components of this Project are not remotely agricultural in nature, and the Project as proposed and approved does not belong in the Agricultural Preserve.

While the Project applicant claims that these large-scale and commercial visitor-serving uses are merely incidental and accessory to the proposed production facility, the record evidence demonstrates the opposite. The proposed visitor-serving tourist facilities are in fact the primary use of the proposed Project, for which the approximately 2.5 acre- vineyard and winery production facilities are an accessory. The Project’s clearly commercial, visitor-serving uses do not suddenly transform into “agricultural” uses by adding a showcase vineyard and a large production capacity winery that is almost entirely dependent on off-site grapes.

Second, substantial evidence before the Planning Commission shows that the Project could have a number of potentially significant impacts on the environment. Accordingly, and as a matter of law, the Planning Commission violated the California Environmental Quality Act, Pub. Res. Code § 21000 et seq. (“CEQA”), in adopting the MND and approving the Project without first requiring the preparation of an environmental impact report (“EIR”).

II. Background

The Project would be located on a 10.9-acre site on the western face of Yountville Hill, on land designated Agricultural Resource (“AR”) and zoned Agricultural Preserve (“AP”). Yountville Hill is a steeply-sloped, prominent natural feature that dominates the surrounding area. It is visible from, and directly adjacent to, the designated scenic roadway State Route 29. The hill is also visible from numerous

surrounding properties. More than half of the subject property has between 30 and 50 percent slopes.

The visual and financial centerpiece of the Project is the nearly 13,000 square foot proposed “winery administration and visitor center,” which would prominently cantilever out from the top of Yountville Hill. The Project would also construct a new 1,200 square foot “reception building” halfway up the hillside, and would require construction of a lengthy new driveway and large, visibly obtrusive retaining walls. The Project also includes a 35,588 sq. ft cave area, 37 on-site parking spaces, a small on-site vineyard of approximately 2.5 acres, and an anticipated maximum production capacity of 100,000 gallons annually. The applicant estimates that up to 200 acres of vineyards will be needed for full production, which means that approximately 98% of the grapes processed at the winery would be imported for production from elsewhere in Napa County or beyond. The applicant states that the Project intends to attract roughly 55,400 visitors (52,000 for tours and tastings, 3,400 for 56 marketing events) per year.

The Project has been the subject of three public hearings dating back to March 2014. It has engendered considerable controversy not only amongst neighboring property owners and Yountville residents, but also across a broad cross-section of grape growers, vintners, winery owners, and other stakeholders in Napa’s agricultural community. Much of the opposition to the Project has centered on concern that its size, scale, and focus on visitor-serving uses is completely out of sync with the agricultural character of the surrounding area and, indeed, of the County’s Agricultural Preserve as a whole. Overall, the Project is unsuitable for the small, vertical nature of the site.

The Project has also been a focal point for broader concern about the increasing number of tourist-driven uses being proposed in the Agricultural Preserve, as well as recent County approvals of winery production capacity that far outstrips the County’s grape-growing capacity, to the point that there is now almost four times more permitted capacity than necessary to process Napa grapes. Thus, while the applicant has agreed, as it must, to comply with the WDO’s requirement that 75% of all grapes processed on-site must come from Napa, the Project’s new 100,000 gallon annual production capacity is clearly not necessary to ensure the continued agricultural viability of the area. Indeed, given the existing excess capacity, approval of the Project is likely to further undermine agriculture by taking needed Napa grapes away from other existing vintners and forcing them to seek revenue from tourism, rather than winemaking. The Project has also raised concerns about the cumulative impacts of this and other similar proposed wineries on grape sourcing, water supply and water quality, and traffic in the County.

After the close of the final public hearing on the Project on July 2, 2014, two Planning Commissioners indicated they would vote not to approve the Project. Because Commissioner Phillips had previously recused herself at the request of the

applicant's attorney, it appeared that the Project would not be approved. However, following a break the Commission ultimately voted 3-1 to approve the Project.

III. The Project is inconsistent with Napa County Code and the Napa County General Plan and therefore the Planning Commission had no power to approve it.

Under State law and the Napa County Code ("NCC"), neither the Planning Commission nor the Board of Supervisors has the power to approve a use permit or other land use approval that is inconsistent with the County Code or General Plan. *See, e.g., Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997 (2007); *see also* NCC §§ 18.124.070(A) & (D).

A. The Project is inconsistent with the Winery Definition Ordinance.

The WDO contains several statements of legislative intent directly relevant to this appeal. These include a declaration that the ordinance must be interpreted to achieve the goal of protecting agriculture and open space use as the primary land use in the Agricultural Preserve, and to "prohibit" the use of agricultural land for non-agricultural purposes "except to the extent expressly permitted" by the General Plan and County ordinances. *See* WDO, § 6.

Two WDO provisions essential to achieving this goal are its limitations on the scope and maximum square footage of "accessory uses" such as "marketing of wine" and "tours and tastings." Specifically, all such accessory uses, "***in their totality[,] must remain clearly incidental, related and subordinate*** to the primary operation of the winery as a production facility." *See, e.g.,* NCC § 18.08.370; 18.16.030(G)(5); 18.08.020 (emphasis added). ***In addition***, the WDO places an absolute numerical cap of the square footage of structures that may be "used for accessory uses." *See* NCC 18.104.200 ("The maximum square footage of structures used for accessory uses that are related to a winery shall not exceed forty percent of the area of the production facility.").

The Planning Commission's findings approving the Project do not directly address either of these provisions. Nor do they include any specific finding that these provisions have been satisfied. Instead, the findings simply assert, in conclusory fashion, that the Project "complies with the applicable provisions of the Napa County Code." *See* Planning Commission Finding No. 10.

To the extent this statement was intended to include an ***implicit*** finding that the Project's visitor-serving and tourist facilities are, in their totality, "clearly incidental, related and subordinate" to winery production, any such finding is not supported by the record. To the contrary, the record evidence and testimony before the Commission show that the Project's visitor-serving accessory uses—including the nearly 13,000 sq. ft "visitor center" perched atop Yountville Hill, the 1,208 sq. ft "reception building," and

the more than 9,605 sq. ft in additional outdoor terraces—are the primary purpose of the Project. This is further underscored by the up to 55,400 visitors the Project is intended to serve each year, which is more annual visitors than the nearest three wineries combined (Cosentino, Folie a Deux, Ca' Nani).

Likewise, to the extent the Planning Commission's conclusory finding of compliance with the NCC was intended to include an implicit finding that the Project complies with the WDO's 40% square footage limitation on accessory uses, any such finding is not supported by the record. Including the two substantial open air spaces dedicated to accessory uses, the Project includes approximately 22,776 square feet of accessory uses, which is approximately sixty-three (63%) of the 36,436 square feet used for production facilities.¹

Appellants acknowledge that the applicant has claimed that the percentage of square footage used for accessory uses is only 36% of production capacity. However, that calculation excluded two substantial open air components of the Project that will directly serve accessory uses: (1) the 6,569 sq. ft roof-top terrace on the visitor center; and (2) the 3,036 sq. ft. partially enclosed patio immediately below the cantilevered portion of the visitor center. *See* March 19, 2014, Board Agenda Letter at 3-4; Exhibit A hereto (rendering of the visitor center provided by applicant to appellants). Both of these terraces are part of the visitor center building and clearly intended to serve visitors. Accordingly, excluding them from the 40% calculation is inconsistent with NCC section 18.104.200. This exclusion is also inconsistent with the manner in which the Planning Commission calculated accessory use square footage in two recent actions concerning the B Cellars and Titus Vineyards projects. For both projects, the outdoor terraced spaces were counted as part of the percentage of the project used for accessory uses. As a matter of basic fairness, the County should treat the present Project in the same manner.

In short, the Project approved by the Planning Commission is precisely the type of commercial, visitor-serving use that the WDO was intended to prevent. In adopting the WDO in 1990, the Board of Supervisors made an express factual finding that “[t]he interspersing of non-agricultural structures and activities throughout agricultural areas in excess of what already exists will result in significant increase in the problems and costs of maintaining vineyards and discourage continued use of the land for agricultural purposes.” The Board acknowledged this same concern when it amended the WDO just four years ago, finding that the WDO had been successful in achieving its purposes, in part by “limiting commercial uses in agricultural areas by ensuring that

¹ These square footage numbers are taken from pages 3-4 of the March 19, 2014, Board Agenda Letter for the Project. Subsequent modifications to the Project may have slightly changed these numbers, but the overall percentages remain nearly the same.

wineries remain focused on the business of producing wines, and by ensuring that tours and tastings and marketing of wine play an accessory role.”

In addition to violating the letter of the WDO, the Project approved by the Planning Commission contravenes the intent expressed in these findings by elevating nonagricultural uses over agricultural uses. The accessory, tourism-focused uses of the Project are not “clearly incidental, related and subordinate” to the Project’s primary operation as a winery. Rather, these nonagricultural uses are the Project’s core purpose.

B. The Project is inconsistent with the County’s General Plan.

The Planning Commission also adopted a finding that the Project is consistent with the Napa County General Plan. In contrast to its finding regarding the WDO, this finding did identify several specific General Plan provisions, including Agricultural Preservation and Land Use Goals AG/LU-1, AG/LU-3, AG/LU-4, the Agricultural Resources (“AR”) designation on the General Plan’s Land Use Map, and Economic Development Policy E-1. *See* Planning Commission Finding No. 10. The purpose of these goals and policies, and of the AR designation, is to preserve and promote the existing agricultural land uses on agriculturally designated lands and to support the economic viability of agriculture, including the necessary industries that support agriculture.

The Planning Commission’s finding that the Project is consistent with the General Plan is predicated on its determination that the Project’s accessory uses comply with the WDO and “support the economic viability of agriculture” within the County. *See id.* As demonstrated above, however, the Project’s visitor-serving uses do not comply with the WDO and do not qualify as permissible accessory uses. These uses are not necessary to support the economic vitality of agriculture and will, if anything, undermine the continued economic vitality of agriculture by allowing and encouraging excessive reliance on tourism.

Perhaps even more importantly, these uses are clearly inconsistent with the intent of the General Plan’s Agricultural Resources designation. As County voters reaffirmed in approving Measure P in 2008, “agriculture is and should continue to be *the predominant land use*, where uses incompatible with agriculture *should be precluded*. . .”. In short, the visitor center, reception building, and related tourism-serving components of the Project are commercial uses, not agricultural ones. Accordingly, they are inconsistent with the General Plan and may not lawfully be approved.

C. The Project violates the County’s Viewshed Protection Program.

To approve the Project the Planning Commission was also required to find that the applicant’s proposal was consistent with the County’s Viewshed Protection Program and complied with NCC section 18.106.050. Although the Planning

Commission purported to make such findings, those findings are not supported by substantial evidence in the record. To the contrary, the record demonstrates that the Project directly violates the Viewshed Protection Program and cannot be approved as proposed.

The overarching purpose of the Viewshed Protection Program is to preserve the scenic quality of Napa County by ensuring that “the existing landscape fabric of the county’s hillside areas are protected and preserved.” NCC § 18.060.010. But instead of preserving Yountville Hill’s natural landscape, the Project will fundamentally transform it. To accommodate two new visitor-serving buildings, a new driveway, necessary retaining walls, and other infrastructure, the applicant will cut nearly 15,000 cubic yards of earth from the hillside. The magnitude of this earthwork means that the Project will cut down nearly one-third of the site’s existing trees. In short, as one of the drafters of the Viewshed Protection Program noted, the Project’s overall design and approach epitomizes the type of hillside development that the ordinance precludes and was designed to prevent. Exhibit B at 1.

In addition to this overall inconsistency, the record demonstrates that the proposed Project would violate several specific requirements of NCC § 18.106.050(B), as follows:

1. The project as designed or modified is consistent with Chapter 18.108 of the code;

The Project as proposed directly violates NCC Chapter 18.108 (Conservation Regulations). *See Part III.D, infra.*

2. If the highest point of the proposed project is located more than twenty-five vertical feet below a major or minor ridgeline, that measures have been included in the project to reduce its visual impact on the major or minor ridgeline through use of existing natural vegetation, landscaping, topographical siting, architectural design, and colortone; or if the highest point of the proposed structure is within twenty-five vertical feet of a major or minor ridgeline, that the existing vegetation, proposed landscaping, topographical siting, architectural design, and colortone screen the predominant portion of the proposed structure;

The Planning Commission’s findings incorrectly state that the top of Yountville Hill is not a major or minor ridgeline. Yountville Hill is, at the very least, a “minor ridgeline” within the meaning of the County Code. *See* NCC § 18.106.020. And significantly, the top of the proposed visitor center is within 25 feet of the top of Yountville Hill and must be screened under the Viewshed Protection Program.

The record indicates that the most prominent portion of the visitor center will cantilever from the top of Yountville Hill. Instead of screening the structure, this design further exposes it to public views of Yountville Hill. The Project’s very purpose

is to provide prominent views of the valley from the visitor center. These views would be impossible if the structure were properly screened. Similarly, evidence in the record demonstrates that the site's slopes of rocky, shallow soil cannot support the new plantings that are intended to hide the Project's large buildings and retaining walls. The western-facing slopes of the property bake in the summer sun, suggesting that the proposed planted retaining walls will not survive and that new trees will grow very slowly, if at all. Consequently, a predominant portion of the Project will remain unscreened.

3. The proposed structure, access roads and other site improvements are sited and designed to minimize adverse effects on views from designated public roads;

The Planning Commission erred in finding that the Project met this standard. The record shows that the heavy grading, large retaining walls, and large footprint of the Project buildings will be very visible from Route 29, and are neither sited nor designed to minimize adverse effects on views.

4. The proposed structure, access road and other site improvements, including earthmoving or grading, and benches or shelves minimize the removal of vegetation;

The Planning Commission also erred in finding that the Project would minimize vegetation removal. Because of the large footprint of the proposed buildings and the very steep slopes in the middle of the property, the Project requires substantial grading. This earthwork will require significant destruction of vegetation on the site, including nearly one-third of the property's trees. A project of this design cannot minimize removal of vegetation as the Viewshed Protection Program requires.

5. The siting and design of site improvements and access roads minimize grading and alteration of natural landforms and topography;

The evidence before the Planning Commission showed that the Project is oversized for the steep hillside property where it is proposed. Rather than minimizing impacts, the Project's large scale grading and massive retaining walls will significantly alter the natural landform and topography of Yountville Hill.

6. A landscape and/or vegetation retention plan in conformance with the Design Manual has been submitted and approved for the site that would provide maximum screening from designated public roads through preservation of existing vegetation and the planting of new vegetation and provide for defensible space in conformance with state law;

Despite the Planning Commission's contrary findings, multiple aspects of the Project do not conform to the County's Design Manual. For instance, the Design Manual states that "Proposed structures shall not be sited atop peaks nor silhouetted against the sky when viewed from any designated public road." County of Napa,

Viewshed Protection Program Application Packet at 21. But the Project's large new visitor center cantilevers off of the top of Yountville Hill, guaranteeing that the visitor center will be silhouetted against the sky when viewed from Route 29.

The County's Design Manual also requires avoiding both large retaining walls with "tall flat surfaces that restrict views and slopes steeper than 1:3." *Id.* at 18. Although the Project proposes stepped retaining walls in some locations, other retaining walls are tall flat structures that reach up to 28 feet high. As previously stated, the proposed screening vegetation is not viable on Yountville Hill's western-facing slope, and consequently cannot adequately screen the Project's retaining walls and other structures. Here again, the Project violates the Design Manual and the requirements of the Viewshed Protection Program.

D. The Project violates the County's Mandatory Conservation Regulations.

County staff and the applicant have acknowledged that the Project does not comply with multiple requirements in the County's Conservation Regulations (NCC Chapter 18.108). As a result, the applicant was forced to request an "exception" to these regulations pursuant to NCC section 18.108.040(A). A project cannot qualify for this exception, however, unless the Planning Commission validly finds that the project satisfies seven express requirements. *See id.* The record reveals that the Commission could not make several of these required findings.

For instance, the Planning Commission was required to find that an "erosion control plan, or equivalent NPDES stormwater management plan *has been . . . approved* by the director or designee." *Id.* § 18.108.040(A)(7) (emphasis added). But the Commission's findings indicate the required plan has *not* been approved, but instead has improperly been deferred until the building permit stage. *See* Planning Commission Finding No. 6 ("A Stormwater Pollution Prevention Plan (SWPP) must be submitted for the review and approval of the Engineering Services Division *prior to the issuance of a building, grading, or any other development permit.*") (emphasis added). Because County staff have not yet approved the necessary plan, the Commission could not have validly found that the Project complied with NCC section 18.108.040(A)(7).

Similarly, the Commission had to find that the Project's structures "complement the natural landform" and contain "[m]ultiple floor levels which follow existing, natural slopes." NCC § 18.108.040(A)(1), (2)(a). But, as discussed elsewhere, the Project is significantly oversized for the property and consequently interrupts the site's natural landforms with excessive grading and large retaining walls. *See* Parts II & III.C; *see also* Exhibit C at 3-8. Nor does the Project's most prominent feature, the winery administration and visitor center, "follow existing, natural slopes." Instead, it cantilevers from the top of Yountville Hill, purposely diverging from the hill's existing

contours. Because the Project cannot meet the necessary criteria for an exception to the Conservation Regulations, the Planning Commission should not have approved it.

Moreover, it appears that the Project as proposed may not even be eligible for an exception at all. Pursuant to NCC section 18.108.060(B), the Conservation Regulations prohibit any “improvement, grading, earthmoving activity, vegetation removal or development” on slopes greater than 50%. Topographic maps in the record indicate that portions of the property may exceed 50% slopes. *See* Exhibit D. The Project applicant, however, has submitted different information that the Project site contains slopes of up to exactly 50%, but no more. *See* July 2, 2014, Board Agenda Letter, at 8. Because of this discrepancy, Appellants request that the County independently confirm whether portions of the site in fact include slopes exceeding 50%. To the extent that the property does contain slopes exceeding 50%, the County may not grant an exception that would allow grading, earthmoving activity, vegetation removal or development on that portion of the property.

E. The Planning Commission’s variance findings are not supported by substantial evidence.

The applicant requested three variances as part of its Project to encroach on the otherwise-mandatory: (1) 600-foot setback from Route 29; (2) 300-foot setback from the shared driveway, and (3) 20-foot rear yard setback. In order to validly grant these variances, the Planning Commission was required to make several findings, based on substantial evidence, that justified the Project’s departure from County Code requirements applicable to all similarly situated properties. While the Planning Commission did adopt such findings, these findings are not supported by substantial evidence.

First, there is no substantial evidence to support the Planning Commission’s finding that “strict application of the zoning district regulations” would deprive the property “of privileges enjoyed by other property in the vicinity and under identical zoning classifications.” Planning Commission Finding No. 20; *see* NCC § 18.128.060(A)(2). There is absolutely no evidence in the record suggesting other properties in the vicinity of Project have placed large-scale visitor and tourism facilities on prominent hillsides like the Project proposes to do. To the contrary, all of the record evidence shows just the opposite—that the Project would be precedent-setting in its scale, design, and intended purposes, and would grant the property owner special privileges beyond those enjoyed by other property in the vicinity.

Second, there is no substantial evidence to support the Planning Commission’s finding that granting the requested “variance[s] is necessary for the preservation and enjoyment of substantial property rights.” Planning Commission Finding No. 21; *see* NCC § 18.128.060(A)(3). In fact, as County staff explained, other permissible economic uses of the property are available to the applicant, including

residential use, that would not require such variances. July 2, 2014, Board Agenda Letter at 10.

Third, there is no substantial evidence to support the Planning Commission's finding that the Project would not adversely affect the public health, safety, and welfare. Planning Commission Finding No. 22; *see* NCC § 18.128.060(A)(4). This finding is predicated on the Planning Commission's determination that the Project complies with all applicable County Codes. In reality, as demonstrated above, the Project is inconsistent with numerous provisions of the County Code and with the County General Plan. Accordingly, this finding, too, cannot validly be made.

Moreover, the Planning Commission's findings and supporting analysis wrongly focus on the assertion that some variances would likely be required for any wine production facilities on the subject property. Even assuming that were true, the requested variances are also essential to the applicant's proposal to build the visitor-serving, and asserted "accessory" uses, proposed in conjunction with the winery. Accordingly, these accessory uses must be considered in evaluating whether the Commission's findings are proper.

In light of these accessory uses, a variance is especially inappropriate here given the magnitude of the Project's encroachments on the highway and driveway setbacks. This is not the case where a winery without tourism facilities would have a miniscule encroachment on applicable setbacks. To the contrary, the Project would encroach by approximately 50 percent on the Route 29 setback and by approximately 25 percent on the neighboring driveway setback. These significant encroachments further demonstrate how the Project is out of step with the proposed site and should not have been approved.

IV. The MND violates CEQA, and the Project's potentially significant impacts prohibit the County from approving the Project without first preparing an EIR.

It is well settled that CEQA establishes a "low threshold" for initial preparation of an environmental impact report ("EIR"), especially in the face of conflicting assertions concerning the possible effects of a proposed project. *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 928 (2005). CEQA provides that a lead agency may issue a negative declaration and avoid preparing an EIR only if "[t]here is *no* substantial evidence, in light of the whole record before the lead agency, that the Project may have a significant effect on the environment." Pub. Res. Code § 21080(c)(1) (emphasis added). A lead agency may adopt a mitigated negative declaration only when all potentially significant impacts of a project will be avoided or

reduced to insignificance. Pub. Res. Code § 21080(c)(2); Guidelines § 15070(b).² A mitigated negative declaration will also be set aside if its conclusions are not based on substantial evidence in the record. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 311 (1988).

An initial study must provide the factual basis, with analysis included, for making the determination that no significant impact will result from the project. Guidelines § 15063(d)(3). An agency must prepare an EIR whenever it is presented with a “fair argument” that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75 (1974); *Friends of B St. v. City of Hayward*, 106 Cal.App.3d 988, 1002 (1980); Guidelines § 15064(f)(1). Where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. *Stanislaus Audubon Soc’y v. County of Stanislaus*, 33 Cal.App.4th 144, 150-51 (1995).

A. The MND’s aesthetic impact analysis is inadequate, and there is a fair argument that the Project may have significant aesthetic impacts.

The proposed Project site is located on the western slope of Yountville Hill. This hill is a steeply-sloped, prominent natural feature directly adjacent to the designated scenic roadway State Route 29 and is also visible from numerous surrounding areas. Currently, the site contains a bed and breakfast on top of the hill, which is largely shielded from view by existing vegetation including mature trees. More than half of the property has between 30 and 50 percent slopes.

The proposed Project would bulldoze the existing bed and breakfast and destroy 116 live trees on the site. It would also rework the natural contours of the hillside, cutting over 13,000 cubic yards of earth in the process. In place of the bed and breakfast, the Project will erect a nearly 13,000 square foot visitor center that will prominently cantilever out from the top of Yountville Hill. The Project would also erect a new 1,200 square foot “reception building” halfway up the hillside, and would require construction of a new driveway and large retaining walls. This work will entirely transform the natural character of Yountville Hill and will have a dramatic impact on views from surrounding areas.

Unfortunately, neither the initial study nor the MND contain any visual renderings that accurately portray this impact. However, the testimony presented to the Planning Commission on July 2, 2014 included drawings of the proposed Project that an expert in geospatial mapping and a trained architect prepared based on plans for the

² The CEQA Guidelines, 14 Cal. Code Regs. § 15000 *et seq.*, are referred to as “Guidelines.”

Project. *See* Exhibit C. These drawings show the Project’s visitor and reception buildings, as well as the large retaining walls that will be necessary to support the proposed driveway and loading facilities that are largely omitted from images prepared by the applicant. These expert drawings alone constitute substantial evidence that the Project’s aesthetic impacts will be significant. *Pocket Protectors*, 124 Cal.App.4th at 936-39.

The record also establishes that there are no remotely comparably-sized structures on any of the hillsides in the vicinity. As a result, the Project will dramatically alter the visual character of the area. Nevertheless, instead of grappling with the readily-apparent aesthetic impacts from this large scale Project, the MND largely dismisses them. For instance, CEQA requires an environmental document to evaluate whether a project would “[s]ubstantially damage scenic resources, including . . . trees . . . within a state scenic highway.” Guidelines, Appendix G, I(b). Here, the Project will destroy nearly 120 trees directly within the viewshed of Route 29, but the MND never considers whether this tree removal alone would be a potentially significant impact. *See* Initial Study Checklist (attached as Exhibit D, “Mitigated Negative Declaration & MMRP,” to the March 19, 2014 Board Agenda Letter) at 4. (This document is hereinafter cited as “MND at __”.)

Indeed, because of the property’s prominent location, the large concrete buildings and retaining walls that would replace the trees and natural hillside would be visible from both Route 29 and the surrounding properties. The applicant has proposed to shield these massive new structures by planting 185 new trees, and has created hypothetical images of the site to suggest that the entire site would be covered with vegetation. *See* Exhibit E at 2. But the record does not contain any information indicating that more or larger trees could actually survive on the Project site’s steep, rocky hillside than exist today. To the contrary, none of the western-facing hillsides surrounding the Project site currently support the density of trees that the applicant’s images suggest would grow on Yountville Hill. And, as a licensed landscape architect and property owners in the area have pointed out, the intense summer heat makes it difficult if not impossible to maintain such vegetation on western-facing slopes. Accordingly, there is substantial evidence that the proposed vegetation is inadequate mitigation to render the Project’s aesthetic impacts less than significant.

Even if the Project site could support the proposed new plantings in the long run, the trees could take up to ten years or longer before they are sufficiently mature to screen the Project. Contrary to CEQA’s requirements, the MND fails to even consider the Project’s aesthetic impacts in the decade between when the site is built and when the new trees will assertedly reach maturity. Thus, even assuming that the proposed trees ultimately survive and grow large enough to screen the Project’s buildings, retaining walls, and driveways, these buildings and structures would be visible from the scenic Route 29 and surrounding properties during the ten-plus year period that it will take for the trees to grow. Given the size and scope of the Project—and its clear incongruity with

the largely undeveloped surrounding hillsides—this visual impact would be manifestly significant.

The MND also wholly fails to address the visual impacts from the potential “overflow” parking that will be situated on the driveway immediately adjacent to, and clearly visible from, scenic State Route 29. Given the inadequate on-site parking for the Project, there is a potential that winery visitors will routinely be required to park along in this overflow area with the resultant potentially significant visual impacts.

In addition, the Project’s construction itself would have significant aesthetic impacts. Project-related construction activities will involve extensive cutting and filling of steeply sloped areas, hollowing-out the hillside for expansive new wine caves, constructing two new exterior buildings and three parking lots, and relocating and expanding the existing driveway. Nevertheless, the MND does not even acknowledge, as it must, that the Project’s construction phase has the potential to cause significant impacts to visual resources in the area.

Instead of fully evaluating the Project’s aesthetic impacts, the MND effectively assumes that no such impacts are possible because the applicant is required to comply with the County’s Viewshed Protection Program. But CEQA directly forbids an assumption, without underlying analysis, that simply complying with a regulatory standard is adequate to mitigate a potentially significant impact. Under well-established case law, compliance with existing policies and regulations does not excuse the agency from describing project activities or from analyzing resulting impacts. *See Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal.App 4th 1099, 1108-09 (2004) (environmental effect may be significant despite compliance with such requirements). Moreover, as detailed above, the Project does not comply with the Viewshed Protection Program, so this program cannot be used to ignore the Project’s apparent aesthetic impacts. Thus, the Planning Commission violated CEQA in approving the Project without first requiring an EIR.

B. The MND fails to adequately disclose and analyze potential impacts from light pollution, and there is a fair argument that these impacts may be significant.

Because the Project is located near the crest of the prominent Yountville Hill and requires the destruction of existing screening vegetation, nighttime lighting of the site will likely cause significant impacts from light pollution

Even though many members of the public have raised this issue with the County, the MND’s discussion of such impacts is confined to two short paragraphs, which do not come close to adequately analyzing this issue. First, the MND fails to establish a proper baseline for lighting impacts. Instead, it vaguely asserts that “the project is in an area that has a certain amount of existing nighttime lighting,” never

identifying the magnitude of existing lighting, where it is located, and how it compares to lighting from the Project. MND at 5.

The failure to establish a nighttime light baseline is fatal to any purported analysis of light pollution impacts. “Without a determination and description of the existing physical conditions on the property at the start of the environmental review process, [an environmental document] cannot provide a meaningful assessment of the environmental impacts of the proposed project.” *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal.App.4th 99, 119 (2001).

Even if it had established a proper baseline, the MND effectively concedes that light pollution from the Project could create significant impacts: “the installation of new sources of nighttime lights may affect nighttime views.” MND at 5. The MND assumes that certain design features for outside lighting could reduce the significance of such impacts, but offers no analysis of how much these measures will reduce lights on the Project site. In fact, the MND cannot offer this analysis because the applicant has not even disclosed which types of outdoor lighting it will use or where it will be placed. *See* Revised Condition of Approvals at 11 (requiring a “lighting plan showing the location and specifications for all lighting fixtures to be installed on the property” be submitted in the future, “[p]rior to issuance of any building permit pursuant to this approval”). This approach directly violates CEQA. An agency is required to fully evaluate potentially significant environmental impacts *before* it approves a project. *See Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123.

Similarly, the MND entirely neglects to analyze nighttime light emanating from within the new winery buildings. For instance, the top floor of the new visitor center will have glass walls so that light will shine out from the building during evening events. These events are expected to last until at least 10 pm in the evening. The applicant has proposed to install louvers and shades to reduce the amount of light escaping the buildings at night. But the record contains no evidence that these measures will be adequate to reduce the site’s light pollution to less-than-significant levels. Indeed, the MND does not even adopt a threshold of significance for making this determination, much less account for how much light pollution the building will generate with or without louvers and window shades. Moreover, since the new visitor center has been proposed for the top of Yountville Hill precisely to afford visitors views of the surrounding area, the proposed louvers clearly will not block these views, just as they will not block nighttime lighting from escaping the building. Until the County undertakes the missing analysis, it is impossible to determine whether light from the visitor center will generate significant light pollution even if the applicant installs the proposed mitigation measures.

C. The MND fails to fully analyze the Project's traffic impacts, and there is a fair argument that the Project will have significant traffic impacts.

Route 29 narrows from four to two lanes south of the Project site and currently experiences very heavy traffic. As the MND acknowledges, the highway is currently operating at Level of Service F—the worst traffic rating—where “[l]ong queues can form behind . . . bottleneck points with queued traffic traveling in a stop-and-go fashion.” MND at 21. Regular operations of the Yountville Hill Winery will add hundreds of daily trips to Route 29, averaging at least 250 daily trips during crush season. But inexplicably, the MND determines that the Project will have less than significant traffic impacts on the surrounding highway and intersections even though these facilities are already significantly impacted by traffic.

The MND's traffic analysis fails from its inception because it does not establish proper thresholds of significance for determining whether traffic from the Project will significantly impact Route 29 and nearby intersections. The MND merely recites the Appendix G checklist, which, among other things, requires the County to determine whether added traffic is “substantial in relation to the existing traffic load or capacity of the street system.” MND at 20. But the MND never offers a specific numerical threshold to determine whether the new traffic from the site will be “substantial.” CEQA recognizes that “the significance of an activity may vary with the setting.” Guidelines § 15064(b). And the County's General Plan also requires impacts at unsignalized intersections (like those surrounding the Project site) to be evaluated on a case-by-case basis. General Plan at CIR-16. Without establishing how many new daily trips would constitute a significant impact to Route 29 and the surrounding intersections, it is impossible for the public and County decision makers to evaluate the Project's traffic impact.

Instead of offering specific significance thresholds, the MND appears to suggest that the traffic impact is insignificant because conditions on Route 29 are already poor and traffic from the Project “would represent a less than 1% (0.006) increase to daily volumes [on] the highway.” But CEQA does not allow this approach. An environmental analysis cannot brush aside new potentially significant impacts simply because some environmental impacts already exist. *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025-27. Instead, it must consider whether impacts from the Project will worsen already-subpar environmental conditions.

The MND is further deficient because it concentrates on only two intersections along Route 29 (intersections at the Project driveway and the driveway for Mustard's Grill), while ignoring potential impacts to other nearby intersections. For instance, three other driveways (including the 210-seat and approximately 30 daily staff Brix restaurant) feed onto the highway near the Project site, and three nearby roads also

intersect with Route 29: the Yount Mill Road intersection is 500 yards to the north of the Project site, the Washington Street intersection is roughly 1,100 yards to the south, and Dwyer Road is approximately 700 yards to the northwest. The MND never mentions these additional intersections nor does it evaluate how traffic from the Project could negatively affect them. At the very least, the MND needs to consider if Project-generated vehicle trips would further worsen traffic at these intersections.

The MND also improperly relies on the applicant's September 2013 traffic study, which contains inaccurate traffic assumptions and erroneous calculations. For instance, although the traffic study assumes that the winery will only receive two truck deliveries per day, a month long survey of a comparable 100,000 gallon winery (that does not offer public visitation, retail sales, or large private events) revealed an average of eight daily truck visits. The MND also neglects to fully account for impacts from weekday truck visits during crush season, when multiple long, slow-moving trucks will need to access Route 29 from the Project site.

Furthermore, a traffic expert at Smith Engineering conducted an independent evaluation of the Project's potential traffic impacts, and these findings were presented to the Planning Commission. This evaluation determined that the Project's traffic study contains inaccuracies including underestimating the volume and impact of truck traffic during crush season. Smith Engineering also found that the Project's proposed driveway is located too close to the driveway for Mustard's Grill, leaving inadequate room for drivers attempting to turn left to access the restaurant or the Project site to safely decelerate and enter the left-hand turn lane. As Smith Engineering found, this "situation creates significantly increased risk of a serious high-speed differential overtaking collision." The MND does not adequately consider this concern.

Likewise, the MND and related traffic analyses fail to adequately account for cumulative traffic impacts from the Project and planned or recently approved projects in the County. Notably, the applicant's September 2013 traffic analysis lists only 12 planned or approved new wineries or winery expansions that could have cumulatively significant traffic impacts. But the study overlooks the new Ca'Nani Winery that will be built directly adjacent to the Project site as well as traffic from the planned LMR Rutherford Estate Winery. In fact, the County has approved at least 19 new wineries or significant modifications to existing permits since the applicant released its traffic study last September.³ More fundamentally, the study focuses only on planned or approved wineries, ignoring other new projects that will also increase traffic surrounding the Project site. Because the Project's environmental documents do not account for traffic from the bulk of these new projects, the MND fails to adequately analyze the cumulative

³ While several of these projects are not directly on Route 29, the County still needs to analyze whether they would contribute to cumulative traffic impacts.

traffic impacts from the Project and other new projects in the area. The MND must consider the cumulative traffic impacts of these new projects along with the proposed Project.

Instead of offering a proper analysis of the Project's traffic impacts, the MND describes how Route 29 is projected to experience a two-fold increase in traffic volumes by 2030. The implication behind this information is that Project-generated traffic will be insignificant when compared to long-term traffic growth. But lead agencies must evaluate environmental impacts against *existing* conditions, not just projected future conditions. *See Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

D. The MND fails to adequately consider parking-related impacts from the Project, and there is a fair argument that these impacts will also be significant.

The MND also ignores aspects of the Project that could worsen parking in the area. For instance, the proposed winery will only contain 37 marked spaces for onsite parking, 19 of which would be used by staff onsite. The remaining 18 spaces, along with ill-defined "unmarked parallel space on the shoulders alongside the lower portion of the driveway (before crossing the drainage channel)," would need to accommodate up to 285 visitors per day, along with trucks delivering grapes, bottling trucks, and marketing events of up to 200 people. The MND never considers whether parking is adequate to accommodate the maximum number of daily visitors, staff, and trucks serving the winery. Instead, it focuses solely on marketing events and sidesteps the obvious parking inadequacy by simply asserting that "[a]dditional parking *may* be required" for larger events, and that the "applicant has sufficient space to accommodate additional parking." MND at 21-22 (emphasis added).

The MND fails as an informational document because it does not identify *how many* extra vehicles the Project site could hold, or whether emergency vehicles will have adequate access with vehicles parked throughout the property. In fact, visual simulations submitted by the applicant show that planted trees and grape vines will occupy almost all of the site's flat areas that are not already slated for parking. *See* Exhibit E at 1. Even if the applicant did have extra space, the Planning Commission failed to adopt either a condition of approval or a mitigation measure requiring the applicant to use such space for overflow parking. *See* Guidelines § 15126.4(a) ("Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments"). The MND must fully analyze the parking issue to adequately inform the public about this potential environmental impact. *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1052-54.

In the alternative, the MND asserts that the applicant “will provide a shuttle service from nearby legally established parking areas.” MND at 22. Again, the MND provides no information about the location or capacity of these areas, preventing the public from ascertaining whether these hypothetical parking areas would be sufficient to handle overflow parking. Rather than addressing this deficiency, the Planning Commission improperly deferred development of mitigation measures to address the parking problem. The Commission’s conditions of approval state that if an event will exceed “available on-site parking,” the applicant will develop a “parking plan,” which can include shuttle or valet service, apparently hoping that this ill-defined process will somehow ensure that potential impacts will be fully mitigated. Revised Conditions of Approval at 10. This approach does not satisfy CEQA’s requirements. *Communities for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 (“‘Formulation of mitigation measures should not be deferred until some future time.’ (Guidelines, § 15126.4(a)(1)(b).) [It] is inadequate if ‘[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review.’”) (citation omitted).

Moreover, the applicant’s inadequate parking proposal threatens to worsen traffic conditions by adding traffic to Route 29. Neither the Project’s traffic studies nor the MND contain any information about how extra additional shuttle or valet traffic will impact parking and traffic in the areas surrounding the Project. By contrast, numerous members of the public sent letters to County staff describing poor traffic and safety conditions near the Project site, and stating that the Project’s inadequately designed parking facilities would exacerbate these traffic problems. These observations constitute substantial evidence of a potentially significant traffic impact from the Project’s parking impacts. *See Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 339.

E. The MND’s hydrological impact analysis is flawed because it fails to consider all of the proposed uses of the Project.

As part of the Project, the applicant proposes to construct a new 705 foot well, with a capacity of roughly 20 gallons per minute, to provide water for the winery and visitor center. The County’s environmental documents rely on the applicant’s representation that it will only need 4.87 acre-feet of water per year, with a maximum pump rate of 12.1 gallons per minute from the new well, to accommodate these activities.

But the application materials estimate this water usage based on anticipated winery, landscaping, and vineyard water needs alone. They neglect to disclose how much water will be needed to host hundreds of daily visitors, in addition to nearly 60 marketing events each year. Nearby winery experts estimate that a project of this scale would require a pumping capacity of at least 250 gallons per minute to accommodate all of the Project’s proposed uses. This is more than 20 times the pumping capacity of the property’s proposed wells. The MND fails as an informational document because it does not explain how the Project will obtain water for visitors and marketing events, or

consider whether increased pumping on the site could negatively impact the area's water supply, especially in light of the County's worsening drought conditions.

F. The MND contains a deficient analysis of the Project's potential water quality impacts.

The Project site's steep slopes render it potentially vulnerable to erosion. Increased sediment discharges from runoff on the site could yield negative water quality impacts to the creek that runs along the base of the property and ultimately feeds into the Napa River.

Construction of the Project will dramatically alter the existing stormwater and groundwater flows on the site. The Project requires large hillside cuts for the proposed driveways and winery buildings. All told, impervious surfaces on the site will increase by nearly 50,000 square feet. Additionally, large excavations into the hillside will replace natural earth with two impervious concrete wine caves totaling over 35,000 square feet.

But the MND fails to consider whether the substantial alterations to Yountville Hill will increase stormwater flows and erosion, or if increased erosion will discharge greater sediment into the Napa River tributary running through the Project site. Until it performs this analysis, the MND cannot aid informed public decision making about potential water quality impacts from the Project.

G. There is a fair argument that the Project's noise impacts require preparation of an EIR.

To support its Project, the applicant commissioned noise studies in an attempt to show that Project would not have significant noise impacts on the surrounding rural community. Even though these studies contained inaccuracies and failed to consider key aspects of the Project, the MND relied on the studies and ignored other evidence that the Project's noise impacts would be significant.

For instance, the noise studies used an estimated baseline of ambient noises to evaluate impacts from the Project's marketing events, instead of measuring actual ambient noise levels in the area. But residents living near the Project site can hear cows on Yountville Hill above the ambient noise levels as well as noise from the Mondavi Winery, which is much farther away than the Project. Indeed, the noise study only fully evaluated the impact of marketing event noise on a single residential property, which was nearly 2,000 feet from the noise simulation site. It erroneously overlooked noise impacts on other properties that are much closer to the site.

Furthermore, neither the MND nor the applicant's noise studies make any attempt to address noise impacts from construction of the Project, which is estimated to

last up to two years. Evidence in the record demonstrates that this construction work—which includes demolition, mass excavation, and over 5,500 truck trips—could generate noise levels between 97 and 112 decibels, far in excess of the County’s noise standards.

Because there is a fair argument, based on substantial evidence in the record, that the Project’s construction and operation could have significant noise impacts, the Planning Commission erred in approving the Project without an EIR.

H. Conclusion

The Planning Commission’s adoption of the MND should be overturned. Prior to considering whether to approve any reduced or modified version of the Project that complies with the County Code and General Plan, the Board of Supervisors should require that an EIR be prepared that properly analyzes and discloses all of the Project’s potentially significant impacts, including the cumulative impacts of this and other similar projects on traffic, water resources, and the growing gap between production capacity and grape sourcing in the County.