No. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

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 the Superior Court of the State of California for the County of Napa
Case No. 17CV001063
Hon. Cynthia P. Smith, Judge
(707) 299-1170

PETITION FOR WRIT OF MANDATE, PROHIBITION OR OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

The following entities have (1) an ownership interest of 10 percent or more in the party or parties filing this certificate, 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 California Rules of Court, rule 8.208(e)(2).

Interested Entity or Person	Nature of Interest
Mountain Peak Vineyards, LLC	Real Party in Interest
Hua Yuan aka "Eric" Yuan	Alleged Real Party in Interest; Managing Member of Mountain Peak Vineyards, LLC
County of Napa and Napa County Board of Supervisors	Respondents

DATED: March 28, 2019

PERKINS COIE LLP

By: */s/ Brien F. McMahon*
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ISSUE PRESENTED

Post-approval evidence is not relevant in administrative mandamus proceedings under Code of Civil Procedure Section 1094.5(e) inquiring into the validity of final agency approvals of projects under the California Environmental Quality Act ("CEQA") because the agency is required to make its decision based on the evidence in the record before it and under Public Resources Code Section 21168 judicial review is limited to whether the agency's final approval was supported by substantial evidence in the record at the time of the project hearing. Section 15162(c) of the CEQA Guidelines affirms this fundamental evidentiary limitation by declaring the lead agency's role in project approval is completed when a negative declaration has been approved. New information appearing after a project approval does not require reopening of the agency's final approval, and may be considered only in connection with the *next* discretionary approval for the project, if any. The question presented is whether courts have authority to order an agency to reopen final project approval under CEQA to consider post-approval information of a natural disaster (here the 2017 Atlas Fire), or alternatively, to order such post-approval information to be added to the administrative record for the purpose of determining whether the agency's negative declaration correctly found no significant impacts related to fire issues.

INTRODUCTION

On May 23, 2017, Petitioners County of Napa and Napa County Board of Supervisors (collectively, "County") after considering substantial

evidence presented at a duly noticed public hearing, unanimously adopted a motion of intent to deny neighbor appeals of the Napa County Planning Commission's approval of the application of Mountain Peak Vineyards, LLC (Mountain Peak Vineyards, LLC and alleged owner-real party Hua "Eric" Yuan are referred to collectively as "Mountain Peak") for a 100,000 gallon winery on a 41.76 acre parcel located on Soda Canyon Road, Napa County (the "Project"). On August 22, 2017, the County adopted Resolutions denying the appeals and approved a Negative Declaration and a use permit for the Project. (See Ex. A, Resolution No. 2017-130.) On September 20, 2017, Petitioner Soda Canyon Group filed this action challenging the County's final Project approval. (Ex. B, Verified Petition for Writ of Mandate.) On October 8, 2017, the Atlas Peak Fire occurred in Napa County. One year later, Soda Canyon Group moved the court to augment the administrative record with post-approval fire evidence. (Ex. C, Motion to Augment.)

On February 22, 2019, the Superior Court issued an Order granting Soda Canyon Group's motion to augment the administrative record and stating its intention to remand the Project to the County to reopen and reconsider Project approval in light of post-approval fire evidence and documents.[1] (Ex. D, Superior Court Order.) The Superior Court's ruling

[1] The Superior Court ordered the parties to submit briefing regarding which portions of Soda Canyon Group's submission evidence "a characteristic of the Atlas Fire that is both (a) relevant to Respondent's decision in this matter, and (b) not exhibited by or is materially different from those exhibited by previous fires in the subject area." The parties' concurrent opening briefs are due March 29, 2019; response briefs are due April 19, 2019; a further hearing is set for May 7, 2019.

contravenes the well-established policy of finality of administrative agency decisions, is clearly erroneous under CEQA and the CEQA Guidelines, and is a misapplication of Code of Civil Procedure Section 1094.5(e) that warrants this Court's immediate review and correction.

Judicial review of a public agency's CEQA approval is limited to evidence which was before the agency when it made its decision. Section 1094.5(e)'s narrow exception for consideration of extra-record evidence in an administrative mandamus action has never been applied to admit post-approval "merits" evidence in a CEQA action to contradict the evidence the agency relied on or to take account of new environmental information. This is because such evidence is not relevant under Public Resources Code Section 21168 to consideration of whether the agency's decision was supported by substantial evidence in the record before it. CEQA Guidelines Section 15162(c) expressly provides an agency is *not* required to consider such post-approval information.

The Superior Court erroneously relied upon *Fort Mojave Indian Tribe v. Dept. of Health Services* (1995) 38 Cal.App.4th 1574, as purported authority for reopening of CEQA approvals to consider post-approval Atlas Fire merits evidence under Section 1094.5(e). *Fort Mojave* observed that Section 1094.5(e) has been applied under limited circumstances to allow admission of evidence which came into existence after an adjudicatory agency hearing involving loss of an important right. The court concluded, however, the proffered post-approval CEQA evidence was untimely. (*Id*. at 1595-96.) *Fort Mojave* held, *inter alia*, that under CEQA Guidelines

Section 15162(c), new information appearing after a project approval does not require reopening of that approval but may only be considered in connection with subsequent discretionary approvals, if any. (*Id*. at 1597.)

Thus, there is no basis for concluding that the narrow exception in Section 1094.5(e) for consideration of extra-record evidence applies to post-approval evidence in CEQA cases. Post-approval merits evidence is not relevant to and cannot override CEQA's substantive provisions governing agency fact-finding and judicial review of those determinations under Public Resources Code Section 21168 which is limited to the evidence before the agency at the time of approval. The Superior Court's error would undermine the finality of all land use approvals in CEQA cases and subject such approvals to potentially indeterminate reopening any time a project opponent can point to what it claims is new environmental information. This case therefore involves an issue of significant public interest and statewide importance calling for review by writ and correction of the Superior Court's ruling.

PETITION FOR WRIT OF MANDATE

The County and Mountain Peak (collectively, "Petitioners") allege as follows:

A. The Parties

1. The County Petitioners are respondents in the underlying action, *Soda Canyon Group v. County of Napa and Napa County Board of Supervisors*, Case No. 17CV001603 (Napa County Superior Court). The County is a political subdivision of the State of California.

2. The Mountain Peak Petitioners are real parties in interest (or with respect to Hua "Eric" Yuan, alleged real party in interest) in the underlying action. Mountain Peak is a California Limited Liability Company with a principal place of business in Napa County. Alleged real party in interest Hua "Eric" Yuan is a U.S. resident with a domicile in Marin County.

3. Respondent is the Superior Court of the State of California for the County of Napa ("Superior Court") exercising jurisdiction in this action.

4. Real Party in Interest Soda Canyon Group is the petitioner in the underlying action.

B. Timeliness of Petition

5. The Superior Court filed its written order on February 22, 2019. Petitioners received notice of entry of the order electronically on the same day. Petitioners timely filed this petition fewer than sixty days later.

C. Authenticity of Exhibits

6. All exhibits accompanying this petition are true and correct copies of original documents filed in the Superior Court. The exhibits are incorporated by reference as though fully set forth in this petition. The exhibits are paginated consecutively, and page references in this petition are to the consecutive pagination.

D. The County's Extensive Environmental Review of the Project

7. On September 26, 2013, Mountain Peak applied to the County for a use permit to construct a new 100,000 gallon-per-year winery

located on a 41.76-acre parcel on the northwest side of Soda Canyon Road, approximately 6.1 miles north of its intersection with Silverado Trail, 3265 Soda Canyon Road, Napa, California.

8. The Project underwent nearly four years of planning and environmental review, including numerous technical studies, extensive agency and public comment, and multiple public hearings.

E. The County's Consideration of Substantial Evidence of Fire-Related Issues

9. Among other issues the County considered in its review of the Project, the administrative record is replete with evidence regarding analysis, discussion, and conclusions relating to the history of fire and the risk of future fire in the Project area, including without limitation, Soda Canyon Road. (See Ex. E, Evidence in Administrative Record regarding Fire History and Fire Risk.)

F. The County's Approval of the Project

10. On January 4, 2017, following a duly noticed public hearing, the Napa County Planning Commission approved the Project and adopted a Negative Declaration pursuant to CEQA.

11. On January 17, 2017, members of Soda Canyon Group appealed the Project approval to the County Board of Supervisors.

12. On August 22, 2017, after a duly noticed public hearing, the Board of Supervisors issued a Resolution and Findings of Fact by which it denied the appeals, approved the use permit for the Project with updated conditions of approval, and adopted a Negative Declaration for the Project.

(Ex. A, pp. 4-56.)[2]

G. The County's Findings and Conclusions that the Project did not Present Significant Fire-Related Risks

13. Among other Findings and Conclusions, the County found and concluded that substantial evidence supported the County's analysis of fire hazards in the Project area, including: construction and operation of the Project would not substantially change the fire protection or emergency response setting; the Project had been designed and conditioned to meet County fire safety standards; the Project contained substantial areas of reduced fire hazard because most of the Project site was planted in vineyards which do not represent a significant fuel source for wildland fire; the Project would not present a significant fire risk due to its setting and fire restrictive construction and would not interfere with planning or response to wildland fire; and the Project may nominally improve fire safety by providing tanked water on-site and available for fire protection on-site, fire hydrants and an area within the ventilated caves to shelter in place. (Ex. A, pp. 9, 13, 15-19, 45, 52.)

H. Soda Canyon Group's Writ Petition

14. Soda Canyon Group filed a petition for writ of mandate in Napa County Superior Court on September 20, 2017. (Ex. B)

15. The petition for writ of mandate alleged that the County violated CEQA and the California Planning and Zoning Law.

[2] The County Board of Supervisors consolidated the 4 appeals to the Planning Commission's approval of the Project and issued 4 identical Resolutions and Findings of Fact and Decision on Appeal as to each of the appeals.

I. The Post-Approval Atlas Fire

16. On October 8, 2017, the Atlas Fire burned areas of Napa County near the site of the proposed Project.

J. The Motion to Augment the Administrative Record with Post-Approval Atlas Fire Information

17. On October 15, 2018, Soda Canyon Group filed a motion to augment the administrative record with, *inter alia*, 175 pages of post-approval information purportedly related to the Atlas Fire, relying on Cal. Code Civ. Proc. § 1094.5(e). (See Ex. C, pp. 338-513.)

18. The post-approval fire-related information submitted includes: declarations from individuals impacted by the Atlas Fire describing their evacuation; unofficial maps purportedly showing the boundaries of the Atlas Fire; excerpts from the Atlas Damage Inspection Report; a CalFire incident fact sheet regarding the Atlas Fire; news articles regarding the Atlas Fire; photographs and URL links to videos purportedly showing the aftermath of the fire; post-approval electronic communication from a Napa County Board of Supervisor; and electronic messages shared on social networking platforms.

19. The County and Mountain Peak jointly opposed the motion to augment the administrative record.

20. The Superior Court held a hearing on the motion to augment the administrative record on February 1, 2019.

K. The Superior Court's Order that the County Reopen and Reconsider Its Approval in Light of Post-Approval Atlas Fire Evidence

21. In an order filed February 22, 2019, the Superior Court

granted Soda Canyon Group's motion to augment the record with respect to the post-approval Atlas Fire evidence. Although the Court acknowledged the administrative record was replete with evidence regarding the history of fire and the risk of future fire in the Project area (see Ex. E), the order further stated that the Court "will be remanding the case to the Napa County Board of Supervisors for reconsideration."

22. The Superior Court ordered the parties to submit briefs on "the scope of the Atlas Fire Evidence (Exhibit C to Petitioner's Motion to Augment the Administrative Record) that constitutes new evidence of emergent fact for purposes of remand to the Board of Supervisors". The Superior Court ruled that "Proffered Atlas Fire materials meet this requirement where they evidence a characteristic of the Atlas Fire that is both (a) relevant to Respondent's decision in this matter, and (b) not exhibited by or is materially different from those exhibited by previous fires in the subject area."

23. The parties' concurrent opening briefs are due March 29, 2019; response briefs are due April 19, 2019; a further hearing is set for May 7, 2019.

L. Basis for Relief

24. The Superior Court was not authorized to augment the administrative record to include, or to require the County to reopen its final Project approval to consider post-approval Atlas Fire evidence.

25. Public Resources Code Section 21168 provides that in any action challenging a CEQA decision "the court shall not exercise its

independent judgement on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record."

26. Under CEQA Guidelines Section 15162 subdivision (c) new environmental information does not require that project approvals be reopened. An agency may only consider such new information when the next discretionary approval for the same project is proposed, if any.

27. The narrow exception in Code of Civil Procedure Section 1094.5(e) for judicial consideration of extra-record evidence is limited to relevant evidence that, in the exercise of reasonable diligence, could not have been produced at the final administrative hearing. Post-approval fire evidence is not relevant to the merits of the Project approval under CEQA because the County was required under CEQA to make its decision based on the evidence in the record before it and judicial review is limited to that body of evidence.

28. The Superior Court exceeded its authority under CEQA by requiring the County to reopen Project approval to consider post-approval information regarding the Atlas Fire.

M. Absence of Other Remedies

29. Petitioners have no other plain, speedy, or adequate remedy at law other than writ relief because direct appeal does not lie from the Superior Court's interlocutory order reopening the Project approval to consider post-approval fire evidence. (See CCP, § 904.1.)

30. Appellate courts have recognized that writ relief is

appropriate in CEQA cases to avoid unnecessary extra delay that would result from having a Project sent back for reconsideration due to an erroneous Superior Court ruling.

N. Prayer for Relief

Petitioners pray that this Court:

1. Issue a peremptory writ of mandate, writ of prohibition, or other appropriate relief in the first instance, directing Respondent Superior Court to vacate its order of February 22, 2019 and prohibiting it from remanding the case to the Napa County Board of Supervisors for reconsideration of post-approval Atlas Fire evidence;

2. In the alternative, issue a peremptory writ of mandate, writ of prohibition, or other appropriate relief, directing Respondent Superior Court to show cause why such a peremptory writ should not issue;

3. Award costs under California Rule of Court 8.493; and

4. Grant such other relief as may be just and proper.

DATED: March 28, 2019

NAPA COUNTY COUNSEL

By: */s/ Jason M. Dooley*
Jason M. Dooley, Bar No. 258570

Attorneys for Petitioners
County of Napa and
Napa County Board of Supervisors

DATED: March 28, 2019

PERKINS COIE LLP

By: */s/ Brien F. McMahon*
Brien F. McMahon, Bar No. 66809

Attorneys for Petitioners
Mountain Peak Vineyards, LLC and
Hua Yuan aka "Eric" Yuan

VERIFICATION

I, Brien F. McMahon, declare as follows:

I am a member of the State Bar of California, a partner at Perkins Coie LLP, and counsel for Real Party in Interest Mountain Peak Vineyards, LLC and alleged Real Party in Interest Hua "Eric" Yuan.

I have read the Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and am familiar with its contents. The facts alleged within the Petition are within my knowledge, except as otherwise attributed, and I know these facts to be true. The allegations are within my personal knowledge and accurately reflect what is alleged or set forth in the records or files of this case, and I certify that they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this verification was executed on March 28, 2019 at San Francisco, California.

/s/ Brien F. McMahon

Brien F. McMahon

MEMORANDUM OF POINTS AND AUTHORITIES

A. Post-Approval Evidence is Not Admissible in CEQA Cases to Reconsider the Merits of the Project Approval

Judicial review of agency approvals in administrative mandamus actions is generally limited to the evidence before the agency when the agency made the challenged decision. (CCP, §§1094.5(b) and (e).) Section 1094.5(e) provides a narrow exception for consideration of "relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing" before the agency.

Section 1094.5(e)'s limited exception for consideration of extra-record evidence does not authorize post-approval evidence relating to the merits in a CEQA case because such evidence is not relevant evidence. A public agency is required to make its decision based on the evidence in the record before it, and under Public Resources Code Section 21168 review is limited to whether the agency's decision was supported by substantial evidence. There is no basis for concluding that Section 1094.5(e) may be applied in a way that would override the substantive provisions of CEQA governing agency fact-finding, agency decision-making, and judicial review of those determinations.

1. Under CEQA Guidelines Section 15162(c) New Environmental Information Does Not Require that Project Approvals be Reopened.

Post-approval information is irrelevant to and cannot provide a basis for challenging an EIR or a negative declaration adopted for a project once the project has been approved. An agency may only consider such new

information when the next discretionary approval for the same project is proposed, if any. CEQA Guidelines Section 15162(c) sets forth CEQA's standards regarding the finality of agency decisions and its limitations on agency consideration of post-approval information. Once an EIR or negative declaration has been adopted and resulted in a project approval, the agency is not required to reopen its approval to consider new, post-approval environmental information. Further CEQA review can be required only if a *subsequent* discretionary approval is required, and then only if the agency determines one of the triggering events in Section 15162 occurs (change in project, change in circumstances, or new information) and a further CEQA document is warranted.

Section 15162(c) provides:

> "Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any."

El Morro Community Ass'n v Department of Parks & Recreation (2004) 122 CA4th 1341, 1359-1360 followed Section 15162(c) in finding a project's post-approval deletion of a signalized pedestrian traffic crossing irrelevant since the court's review was limited to the CEQA determination for the challenged project approval. While *El Morro* observed Section 15162 may require further CEQA review for post-decision project changes requiring a later discretionary approval, it held that "information arising

after an approval does not require reopening of that approval." (See also *Fort Mojave* at 1597 [information appearing and submitted after project approval is untimely and under Section 15162(c) does not require reopening of that approval].)

Thus, the Superior Court here had no jurisdiction to reopen the approval at issue in this case and require that the County consider the Atlas Fire evidence.

2. CEQA Review Is Limited to the Record before the Agency at the Time of Project Approval.

Nor did the Superior Court have authority to order that such post-approval fire evidence be added to the administrative record for the purpose of determining whether the County incorrectly found no significant Project impacts related to fire issues. The question for the County was whether there was substantial evidence in light of the whole record before it that the Project may have a significant effect on the environment. (Pub. Res. Code, §21082.2 (b), (d).) Judicial review of its resolution to that question is likewise limited to the record before the County at the time of Project approval. The court must decide whether the County's determination is valid "in light of the whole record before the lead agency," not whether it is the right decision in the reviewing court's opinion, especially in light of other evidence that was not in the record. (Pub. Res. Code, § 21168; *Architectural Heritage Ass'n v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1110 (the agency must make its determination based solely on the record before it at the time it makes its decision which precludes admission of post-decision evidence).)

Western States Petroleum Assn. v. Superior Court (1995) 9 Cal. 4th 559, is instructive in why post-approval extra-record evidence is not admissible here. *Western States* held evidence outside the record of the agency's proceedings generally may not be admitted in a CEQA case reviewed in traditional mandamus. (See CCP §1085; Pub. Res. Code, § 21168.5.) In its analysis under the doctrine of traditional mandamus, though, the court examined the exceptions set forth in Code of Civil Procedure Section 1094.5(e), applicable to administrative mandamus actions. It held that any such exception must be narrowly tailored to avoid seriously undermining the finality of agency decisions and repeated cycles of litigation brought by dissatisfied opponents based on new information. The court accordingly limited its exception for extra-record evidence to those rare instances in which (1) the evidence in question existed before the agency made its decision, and (2) it was not possible in the exercise of reasonable diligence to present it to the agency before the decision was made so that it could be considered and included in the administrative record. (*Id*. at 578.) The same limitations should apply here, and for the same reasons. Admission of post-approval evidence relating to the merits based on Section 1094.5(e) has been allowed in cases involving the denial, suspension, or termination of a license, permit, or other entitlement, resulting in loss of an important right subject to independent judgment review. (*See Elizabeth D. v. Zoli*n (1993) 21 Cal.App.4th 347 [post-hearing evidence regarding petitioner's medical condition was relevant to continued suspension of petitioner's driver's license]; *Curtis v Board* of Retirement

(1986) 177 Cal.App.4th 293 [post-hearing medical reports were relevant to question whether petitioner was permanently disabled]; *Toyota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal.App.3d 872) [evidence concerning an individual's postconviction restitution to defrauded customers was relevant on the issue of mitigation of his penalty].

In contrast, *Western States* explained that it would never be proper in CEQA cases to look to evidence that was not before the agency at the time it made its decision because the only evidence that is relevant to the question of whether there was substantial evidence to support an agency's decision under CEQA is that which was before the agency at the time it made its decision. (*Id*, at 573, fn.4.) The court also made clear that "extra-record evidence can never be admitted merely to contradict the evidence the administrative agency relied on in making a quasi- legislative decision or to raise a question regarding the wisdom of that decision." (*Id*. at 579.)

While *Western States* involved review under Public Resources Code Section 21168.5 rather than Section 21168, application of the substantial evidence standard of review under the two statutes is the same. (*Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova* (2007) 40 C4th 412, 426 & n4.) The principles the court articulated in determining whether extra-record evidence is admissible are also essentially the same. (*Cadiz Land Co., Inv. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 120.) Admission of evidence to attack the agency's decision on the merits which post-dates that decision the court is reviewing would only invite second guessing of agency decisions and "pose a threat of repeated rounds of

litigation, and uncertain, attenuated finality." (*Id.*)

The Superior Court's ruling granting Soda Canyon Group's motion to augment and remanding the matter back to the County Board of Supervisors to rehear the earlier Project approval would lead to uncertainty in the finality of Project actions and directly conflict with fundamentals of the CEQA process: that once a project has been approved, new environmental information that later surfaces does not reopen the approval or trigger further CEQA review for that approval. A subsequent EIR or negative declaration may be prepared if a further discretionary approval is proposed and the conditions in Section 15162 that trigger the need for further CEQA review are met. (CEQA Guidelines, § 15162(a), (c).)

The County performed extensive and comprehensive environmental analysis for the Project and considered significant public input and evidence over a nearly four-year period prior to the Project approval. The Superior Court's standard of review of the County's approval of the Project is limited to "determin[ing] whether the act or decision is supported by substantial evidence in light of the whole record." (Pub. Res. Code § 21168.) Requiring consideration of post-approval Atlas Fire evidence and reopening (and thereby questioning the correctness of) the County's approval of the Project would undermine the interests of finality in agency decisions, and directly contravene the proscription on admissibility of post-approval evidence under CEQA Guidelines Section 15162(c), the standards of review under Public Resources Code Section 21168, and improperly expand the narrow exception for "relevant evidence" under Code of Civil

Procedure Section 1094.5(e).

3. The Superior Court's Standard for Admission of "New and Emergent Facts" Related to the Atlas Fire Exceeded its Authority Under Both CEQA and the Narrow "Relevant Evidence" Exception Under Section 1094.5(e)

The Superior Court devised the following standard for determining whether post-approval Atlas Fire information constitutes new relevant evidence within the meaning of Section 1094.5(e): "Proffered Atlas Fire materials meet this requirement where they evidence a characteristic of the Atlas Fire that is both (a) relevant to Respondent's decision in this matter, and (b) not exhibited by or is materially different from those exhibited by previous fires in the subject area." (Ex. D, p. 524.)

While the "evidence" proffered by Soda Canyon Group would not be relevant to the Project's approval even under the Superior Court's standard[3], the Superior Court exceeded its authority to require Petitioners to parse this post-approval information because CEQA Guidelines Section 15162(c) does not require the County to reopen Project approval to consider it. Characteristics of the Atlas Fire are irrelevant to the County's approval under Public Resources Code Section 21168 because that section

[3] Soda Canyon Group's motion to augment the record included, e.g., without limitation, declarations from individuals impacted by the Atlas Fire describing their evacuation; unofficial maps purportedly showing the boundaries of the Atlas Fire; excerpts from the Atlas Damage Inspection Report; CalFire incident fact sheet regarding the Atlas Fire; news articles regarding the Atlas Fire; photographs and URL links to videos purportedly showing the aftermath of the fire; post-approval electronic communication from a Napa County Board of Supervisor; and electronic messages shared on social networking platforms. None of this information is relevant to any purported risks of the *Project* in relation to fire protection or fire safety.

limits judicial review to evidence before the County at the time of approval. Post-approval merits information regarding the Atlas Fire accordingly is not "relevant evidence" regarding the County's decision under the narrow exception under Section 1094.5(e).

Evaluation of specific characteristics of the Atlas Fire or purported differences between the Atlas Fire and other fires in the subject area also is irrelevant because extra-record evidence can never be admitted merely to contradict the evidence the County relied upon or to question the County's analysis regarding predictive effects of a potential future fire. (*Western States*,9 Cal. 4th. at 579.) Information regarding potential fire scenarios also is not evidence that "could not have been produced in the exercise of reasonable diligence" at the Project hearing. Petitioners did not meet their burden to show that the evidence they offer adds anything to the voluminous information about the effects of wildfires available when the County held its hearing. For example, CalFire publishes massive historical statewide wildfire activity statistics (Redbooks) with detailed information from 1943-2016, regarding number of fires by cause, size, time of day and month (by unit and county); number of acres burned, and structures destroyed (by unit, county and vegetation type). (*See* www.fire.ca.gov. (Historical Wildfire Activity Statistics (Redbooks).) This detailed publicly available information encompassing all potential fire scenarios *could have been produced* at the Project hearing, in addition to the substantial evidence the Superior Court recognized existed in the record to support the County's

Findings that the Project did not present significant fire-related risks.[4]

CONCLUSION

The Petition for a writ of mandate, prohibition or other appropriate relief should be granted.

[4] The County found and concluded that substantial evidence supported the County's analysis of fire hazards in the Project area, including that construction and operation of the Project would not substantially change the fire protection or emergency response setting; the Project had been designed and conditioned to meet County fire safety standards; the Project contained substantial areas of reduced fire hazard because most of the Project site was planted in vineyards which do not represent a significant fuel source for wildland fire; the Project would not present a significant fire risk due to its setting and fire restrictive construction and would not interfere with planning or response to wildland fire; and the Project may nominally improve fire safety by providing tanked water on-site and available for fire protection on-site, fire hydrants and an area within the ventilated caves to shelter in place. (See Ex. A, pp. 15-19, Findings and Decision to Sixth through Tenth Grounds of Appeal.) The Superior Court acknowledged in its Order that "the administrative record is replete with evidence regarding analysis, discussion, and conclusions relating to the history of fire and the risk of future fire in the Project area". (Ex. D, p. 523; see also Ex. E for evidence regarding the history of fire, and future fire risk that the Court found was "replete" in the Administrative Record.)

DATED: March 28, 2019

NAPA COUNTY COUNSEL

By: */s/ Jason M. Dooley*
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Attorneys for Petitioners
County of Napa and
Napa County Board of Supervisors

DATED: March 28, 2019

PERKINS COIE LLP

By: */s/ Brien F. McMahon*
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Attorneys for Petitioners
Mountain Peak Vineyards, LLC and
Hua Yuan aka "Eric" Yuan

CERTIFICATE OF WORD COUNT

The text of this brief consists of 5087 words according to the word count feature of the computer program used to prepare this brief.

Dated: March 28, 2019

By: */s/ Brien F. McMahon*
Brien F. McMahon

Attorneys for Petitioners
Mountain Peak Vineyards, LLC and
Hua Yuan aka "Eric" Yuan

PROOF OF SERVICE

I, Shari L. Harewood, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 505 Howard Street, Suite 1000, San Francisco, California 94105-3204.

On March 28, 2019, I electronically filed via my electronic service address (SHarewood@perkinscoie.com) the attached document:

PETITION FOR WRIT OF MANDATE PROHIBITION OR OTHER APPROPRIATE RELIEF

with the Clerk of the court using the CM/ECF system which will then send a notification of such filing to the following:

Mark R. Wolfe
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And I hereby do certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

Clerk of the Superior Court
County of Napa
825 Brown Street
NAPA, CA 94559

Office of the Attorney General
1300 I Street
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 28, 2019, at San Francisco, California.

/s/ Shari L. Harewood
Shari L. Harewood