

RESOLUTION NO. 2022-_____

**RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, RESCINDING RESOLUTIONS NOS. 2017-130,
2017-131, 2017-132, 2017-133, AND 2021-81, AND SETTING ASIDE AND
REVOKING USE PERMIT NO. P13-00320-UP, THE EXCEPTION TO THE
NAPA COUNTY ROAD AND STREET STANDARDS, AND THE
NEGATIVE DECLARATION FOR THE MOUNTAIN PEAK WINERY
PROJECT**

WHEREAS, on January 4, 2017, the Napa County Planning Commission considered the application of Mountain Peak Vineyards, LLC (“Applicant”) and approved the issuance of Use Permit No. P13-00320-UP and the exception to the Napa County Road and Street Standards, allowing (1) construction of a new 100,000 gallon per year winery including an approximately 33,424 square foot cave, approximately 8,046 square foot tasting and office building, and approximately 6,412 square foot covered outdoor crush pad and work area (2) demolition of the existing single family residence; (3) installation of 26 parking spaces; (4) construction of 2 new driveways and private access roads with ingress/egress from Soda Canyon Road; (5) installation of a High Treatment wastewater treatment system and community non-transient potable water supply sourced from on-site private wells including two 100,000 gallon water tanks for vineyard irrigation and one 20,000 gallon water tank for domestic supply; (6) disposal of all cave spoils on-site within existing vineyards; (7) 19 full time employees, 4 part-time employees and 4 seasonal harvest employees; (8) tours and tastings by prior appointment only for a maximum of 60 visitors per day and a maximum of 275 visitors per week; (9) a marketing plan of 2 annual events for a maximum of 75 visitors and 1 annual event for a maximum of 125 visitors; and (10) on premises consumption of wines produced on site in the tasting room and outdoor terrace, 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, CA, 94558; APN: 032-500-033 (the “Project”). The Project also includes approval of an exception to the Napa County Road and Street Standards (“RSS”) to increase the maximum slope on a portion of the commercial access road to the covered crush pad and cave portals from 16% to 19.6%. In connection with the approval of the Project, the Planning Commission adopted a Negative Declaration finding that the Project would not have a significant impact on the environment; and

WHEREAS, on January 17, 2017, four interested parties, Kosta Arger, Cynthia Grupp, William Hocker, and Glenn Schreuder (“Appellants”), filed appeals of the Planning Commission’s decision to the Board of Supervisors, arguing numerous grounds of appeal based on alleged violations of the Planning and Zoning Code and the California Environmental Quality Act (“CEQA”). The appellants argued, among other things, that the County violated CEQA by not requiring an Environmental Impact Report (“EIR”) based on purported evidence that the Project would have a significant impact on several resource categories, including biological resources. Since the appeals were identical, they were consolidated for consideration by the Board; and

WHEREAS, on May 23, 2017, the Board of Supervisors held a hearing on the consolidated appeals, pursuant to the procedures set forth in Chapter 2.88 of the Napa County Code. After considering all evidence presented, including the staff report and attachments,

Appellants' presentation, Applicant's presentation, and public comment, both written and oral, the Board closed the public hearing and adopted a motion of intent to: (1) reject each of the grounds of the Appeals and deny all four Appeals in their entirety; (2) adopt the Negative Declaration for the Project; (3) uphold the Planning Commission's approval of the Project; and (4) approve the Mountain Peak Winery subject to the Updated Conditions of Approval recommended by staff. The Board further directed County Counsel to prepare resolutions of Findings of Fact and Decision on Appeal to reflect the Board's action; and

WHEREAS, on August 22, 2017, the Board adopted Resolutions Nos. 2017-130, 2017, 131, 2017-132, and 2017-133 reflecting the Findings of Fact and Decision on Appeal denying the four appeals, adopting the Negative Declaration for the Project, and approving the Use Permit No. P13-00320-UP and the RSS Exception subject to updated conditions of approval volunteered by the Applicant at the May 23, 2017, hearing. The Resolutions found, among other things, that there was no substantial evidence that the Project would have a potential adverse effect on the environment; and

WHEREAS, on September 20, 2017, Soda Canyon Group, a community organization comprised of members including the four Appellants, filed a Petition for Writ of Mandate with the Napa County Superior Court entitled *Soda Canyon Group v. County of Napa and Napa County Board of Supervisors (Mountain Peak Vineyards, LLC; Eric Yuan; Hua Yuan)*, Case No. 17CV001063, challenging the Board's adoption of the Resolutions denying the appeals and approving the Project. The petition alleged that the Board abused its discretion in approving the Project by not requiring the preparation of an EIR; and

WHEREAS, on October 8, 2017, the Atlas Peak Fire ignited in the eastern mountains of Napa County, burning thousands of acres in the vicinity of the proposed Project; and

WHEREAS, in connection with the briefing to support the petition, the Petitioner requested the inclusion of post-decision evidence relating to the Atlas Peak Fire as part of the record. The Petitioner submitted declarations containing additional evidence, including testimony describing individuals' experiences during the evacuations from Soda Canyon Road during the Atlas Peak Fire. The County and the Real Parties in Interest objected to the inclusion of the evidence as it was not before the Board when the decision was made and, therefore, could not form the basis for abuse of discretion by the Board; and

WHEREAS, on June 17, 2019, after supplemental briefing and multiple hearings, the Court ordered that the matter be remanded to the Board of Supervisors to reconsider the Project in light of the post-decision Atlas Peak Fire evidence, specifying the evidence to be considered on remand; and

WHEREAS, on May 18, 2021, at a duly noticed public hearing, the Board considered the additional evidence on remand as directed by the Court. After considering the specific evidence identified by the Court, as well as presentations from the Petitioner and the Applicant and public comment (both oral and written), the Board closed the public hearing and adopted the motion of intent to affirm its decision to uphold the Planning Commission's approval of the Project with one additional condition of approval. The Board further directed County Counsel to prepare a resolution of Findings of Fact and Decision on Remand to reflect the Board's action; and

WHEREAS, on July 13, 2021, the Board adopted Resolution No. 2021-81, reflecting the Findings of Fact and Decision on Remand to affirm the prior decision denying the four appeals and approving the Use Permit No. P13-00320-UP and the Exception to the Napa County Road and Streets Standards, subject to updated conditions of approval; and

WHEREAS, after taking the action on remand, the County filed a return describing the action that the Board took to comply with the order of the Court and requesting a status conference to determine the process and timing of the remaining issues before the Court; and

WHEREAS, the matter came before the Court for a hearing on the merits of the Petition on January 20, 2022, after supplemental briefing to address the issues remanded to the County. The Court heard argument from both parties and took the matter under submission; and

WHEREAS, on March 21, 2022, the Court issued its decision, granting the writ of mandamus based on the Court's conclusion that substantial evidence exists on the administrative record to support a fair argument that the Project may have a significant adverse impact on surface water and biological resources. The Court found that the remainder of the Petitioner's arguments were not supported by substantial evidence. The Court concluded that an EIR was required to address the potential significant impact to surface water and biological resources and ordered the County to set aside the approval of the Project and adoption of the Negative Declaration; and

WHEREAS, a judgment was entered, and a peremptory writ of mandate issued, in furtherance of the Court's order on August 2, 2022, with notice of entry of the judgment served on August 3, 2022. The writ required the County to file a return to the writ no later than sixty days from the date the writ was served on all parties, setting forth the action the County has taken to comply with the writ; and

WHEREAS, on October 3, 2022, the County filed a First Return on the Writ, informing the court that no action had yet been taken, but that the matter was to be considered at a scheduled meeting of the Board of Supervisors on October 25, 2022. The matter was rescheduled to be considered at the regular meeting of the Board of Supervisors on November 8, 2022.

NOW, THEREFORE, BE IT RESOLVED by the Napa County Board of Supervisors as follows:

1. Resolutions Nos. 2017-130, 2017-131, 2017-132, 2017-133, and 2021-81 are hereby rescinded and are null and void.

2. Use Permit No. P13-00320-UP, the Exception to the Napa County Road and Street Standards, and the Negative Declaration are hereby declared invalid, revoked and null and void.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED
 by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board
 held on the 8th day of November, 2022, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSENT: SUPERVISORS _____

 RYAN GREGORY, Chair of the Board of
 Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Jason M. Dooley</u> Deputy County Counsel</p> <p>Date: <u>October 6, 2022</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <hr/> <p>Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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