

1 Thomas Zeleny, Bar No. 176280
thomas.zeleny@countyofnapa.org
2 Laura J. Anderson, Bar No. 161372
Laura.Anderson@countyofnapa.org
3 Jason M. Dooley, Bar No. 258570
Jason.Dooley@countyofnapa.org
4 NAPA COUNTY COUNSEL'S OFFICE
1195 Third Street, Room 301
5 Napa, CA 94559-3001
Telephone: 707.253.4521
6 Facsimile: 707.259.8220
Attorneys for Respondents
7 COUNTY OF NAPA and
NAPA COUNTY BOARD OF SUPERVISORS

8
9 Brien F. McMahon, Bar No. 66809
BMcMahon@perkinscoie.com
10 Jacob E. Aronson, Bar No. 313353
JAronson@perkinscoie.com
PERKINS COIE LLP
11 505 Howard Street, Suite 1000
San Francisco, CA 94105-3204
12 Telephone: 415.344.7000
Facsimile: 415.344.7050
13 Attorneys for Real Party in Interest
MOUNTAIN PEAK VINEYARDS, LLC and
14 Alleged Real Party in Interest
HUA YUAN, aka "ERIC" YUAN

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF NAPA

17
18 SODA CANYON GROUP,

19 Petitioner,

20 v.

21 COUNTY OF NAPA;
22 NAPA COUNTY BOARD OF
SUPERVISORS; and
23 DOES 1 through 10, inclusive

24 Respondents

25 MOUNTAIN PEAK VINEYARDS, LLC;
26 ERIC YUAN; HUA YUAN; and
DOES 11 through 20, inclusive,

27 Real Parties in Interest.
28

Case No.: 17CV001063

**BRIEF OF RESPONDENTS AND REAL
PARTIES IN INTEREST IN SUPPORT
OF DECISION ON REMAND TO
UPHOLD THE PROJECT APPROVAL
AND DENY THE APPEALS**

[CEQA Matter]

Date: November 18, 2021

Time: 8:30AM

Dept: 5

Judge: Hon. Cynthia P. Smith

Action filed: September 20, 2017

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1 Respondents County of Napa and the County Board of Supervisors (collectively “County”
2 or “Board”), Real Party in Interest Mountain Peak Vineyards, LLC, and alleged Real Party in
3 Interest Hua “Eric” Yuan (collectively, “Mountain Peak”), submit this joint brief in support of the
4 County’s decision on remand to uphold its prior approval of Mountain Peak’s winery project
5 (“the Project”) and to deny Petitioner Soda Canyon Group’s (“Petitioner”) administrative appeals.

6 INTRODUCTION

7 This matter returns to the Court following the Board’s reconsideration of the Project on
8 remand. The Court had remanded the matter to the Board to consider certain new evidence related
9 to the personal accounts of Soda Canyon Road residents about evacuation efforts during the
10 October 2017 Atlas Peak Fire (collectively “Post-Approval Evidence”) and the impact, if any, of
11 this evidence on the County’s initial health, safety, and welfare determinations in favor of Project
12 approval. After thoroughly and carefully considering the Post-Approval Evidence on remand, the
13 Board upheld its prior determination that the Project will not cause or exacerbate adverse health,
14 safety, and welfare impacts. The Board upheld its approval of the Project and its denial of the
15 Petitioner’s appeals.

16 Substantial evidence supported the Board’s decision to uphold its prior denial of the
17 appeals as to four grounds related to wildfire impacts. County staff reviewed the administrative
18 record and the Post-Approval Evidence and recommended that the new evidence did not change
19 the fact that the Project would not substantially change the conditions of the Soda Canyon area
20 with respect to wildfires. Virtually all County hillside areas—the vast majority of land area
21 countywide—are located in areas designated High or Very High Fire Hazard Severity Zones by
22 the California Department of Forestry and Fire Protection (CalFire) and are subject to rigorous
23 fire safety standards. The Project was designed and conditioned to comply with fire standards for
24 winery developments, including emergency vehicle access and high fire hazard construction.

25 The County Engineering Division found that the Project meets both the fire safety
26 requirements applicable at the time of initial Project approval and currently proposed State Fire
27 Safe development regulations. The County Department of Public Works found that the previous
28 and current capacity and condition of Soda Canyon Road are sufficient to accommodate the

1 Project traffic and provide a safe means of its evacuation in the event of a wildfire. The Fire
2 Marshall, a contracted CalFire fire safety expert, recommended approval of the Project after
3 thorough review of its compliance with all applicable fire safety regulatory requirements for a
4 winery and the Property's substantial areas of reduced fire hazard planted in its vineyard and
5 vineyards in the immediate vicinity.

6 Based on these analyses by subject matter experts within County staff, the Board found
7 that the Post-Approval Evidence did not identify any conditions of the Project, the Property, or
8 Soda Canyon Road that undermine the findings made by the Board in 2017. The Board found no
9 credible evidence that the addition of the Project winery along Soda Canyon Road would
10 significantly increase the risk of fire or significantly hinder rescue efforts.

11 After thoroughly considering the Post-Approval Evidence, the Board determined that the
12 Project meets all regulatory requirements relating to wildfires and will not adversely affect the
13 health, safety, and welfare of the County. But the Board went further to address wildfire safety
14 issues. To substantially reduce the likelihood that winery visitors will be present at the Project
15 location when a wildfire occurs, the Board imposed a new condition prohibiting visitation or
16 marketing events on days on which a Red Flag Warning has been issued by the National Weather
17 Service or Napa County Office of Emergency Services, or when a Public Safety Power Shutoff
18 (PSPS) Warning has been issued by Pacific Gas and Electric (PG&E), when such Warnings are in
19 effect for the Property.

20 The Board properly exercised its discretion to uphold the Project approval and deny each
21 of the grounds of appeal (Numbers 7–10) that implicate health, safety, and welfare issues relating
22 to wildfires. The Petition should be denied on these grounds (and all others previously briefed).

23 STATEMENT OF FACTS AND REMAND HISTORY

24 I. The Initial Approval of the Project.

25 The County Planning Commission initially approved a use permit for the Project on
26 January 4, 2017. (AR 3686–3687.¹) Four members of Petitioner's organization then

27 _____
28 ¹ Citations to AR and SR are to pages in the Administrative Record and Supplemental
Administrative Record, respectively.

1 administratively appealed the Planning Commission’s approval to the Board. (AR 4527–4652.)
2 On August 22, 2017, the Board denied Petitioner’s appeals and approved revised conditions of
3 approval for the Project² to allow: (1) construction of a new 100,000 gallon per year winery
4 including an approximately 33,424 square foot cave, approximately 8,046 square foot tasting and
5 office building, and approximately 6,412 square foot covered outdoor crush pad and work area;
6 (2) demolition of the existing single family residence; (3) installation of 26 parking spaces; (4)
7 construction of two new driveways and private access roads with ingress/egress from Soda
8 Canyon Road; (5) installation of a High Treatment wastewater treatment system and community
9 non-transient potable water supply sourced from on-site private wells including two 100,000
10 gallon water tanks for vineyard irrigation and one 20,000 gallon water tank for domestic supply;
11 (6) disposal of all cave spoils on-site within existing vineyards; (7) 19 full-time employees, four
12 part-time employees and four seasonal harvest employees; (8) tours and tastings by prior
13 appointment only for a maximum of 60 visitors per day and a maximum of 275 visitors per week;
14 (9) a marketing plan including two annual events for up to 75 visitors, and one annual event for
15 up to 125 visitors; and (10) on-premises consumption of wines produced on site in the tasting
16 room and outdoor terrace. The Board also approved an exception to the County Road and Street
17 Standards (RSS) to increase the maximum slope on a portion of the commercial Project access
18 road to the covered crush pad and cave portals from 16% to 19.6%. (AR 3–342.)

19 The Project site is a 41.76-acre parcel located on the northwest side of Soda Canyon Road,
20 approximately 6.1 miles north of its intersection with Silverado Trail, 3265 Soda Canyon Road,
21 Napa, CA, 94558; APN: 032-500-033 (“the Property”). (AR 900; SR 1, 56.) The Property is
22 zoned Agricultural Watershed (AW) and designated Agriculture, Watershed and Open Space
23 (AWOS) under the County's General Plan. (AR 1715; SR 1.)

24
25
26
27 ² The Board adopted Resolutions 2017-130, 2017-131, 2017-132, and 2017-133 containing the
28 Findings of Fact and Conclusions of Law relied upon to deny the four appeals and attaching the
revised Conditions of Approval for the Project Use Permit (No. P13-00320-UP). (AR 3–342; SR
2.)

1 **II. Petitioner’s Petition for Writ of Mandate.**

2 On September 20, 2017, Petitioner filed the Petition in this Court, challenging the Board’s
3 decision on appeal on several grounds, including CEQA and non-CEQA grounds. The non-
4 CEQA grounds included an allegation that the County abused its discretion by finding the Project
5 would not adversely affect the public health, safety, and welfare of County residents. (Petition for
6 Writ of Mandate, ¶¶ 42–45 (Third Claim for Relief).)

7 **III. The 2017 Atlas Fire and Petitioner’s Motion to Augment the Record.**

8 After the Board’s denial of the appeals and the filing of the Petition, on October 8, 2017, a
9 wildfire began on Atlas Peak (the “Atlas Fire”), which spread quickly through the vicinity of the
10 Project and forced the evacuation of hundreds of residents and occupants of properties along the
11 full length of Soda Canyon Road. The Atlas Fire burned approximately 51,625 acres, destroying
12 dozens of commercial and residential buildings in the area. (SR 2.)

13 On October 15, 2018, in connection with its opening merits brief, the Petitioner filed a
14 Motion to Augment the Administrative Record, asking the Court to consider the Post-Approval
15 Evidence, consisting of seven declarations and exhibits prepared after and purportedly relating to
16 the Atlas Fire. The requested Post-Approval Evidence included select photographs, maps,
17 incident reports, and personal accounts from residents and property owners on Soda Canyon
18 Road. The Petitioner requested that the matter be remanded for consideration of this Evidence.
19 (SR 2.) On February 22, 2019, the Court granted in part and denied in part the Petitioner’s Motion
20 to Augment and indicated it would be remanding the matter to the Board for reconsideration in
21 light of the Atlas Fire presented by the Petitioner that the Court characterized as “new evidence of
22 emergent fact for purposes of remand.” (SR 380–390.)

23 **IV. The Remand Order.**

24 On June 17, 2019, after briefing and argument, the Court remanded the matter to the
25 Board for reconsideration in light of those portions of the Post-Approval Evidence that the Court
26 determined met the Court’s standard of “truly new and emergent facts.” (SR 2, 391–396.) The
27 Court identified specific pages, paragraphs, and lines from the Post-Approval Evidence that met
28

1 the Court's standard of evidence and ordered the Petitioner to redact the declarations and exhibits
2 that did not meet that standard. (*Id.*)

3 **V. County Staff's Review of Post-Approval Evidence and Renewed Approval**
4 **Recommendations.**

5 County Staff conducted a thorough review of the Post-Approval Evidence, including
6 analyses by the Engineering Division of the Department of Planning, Building and Environmental
7 Services ("PBES"); the Department of Public Works; and the Fire Marshal's Office. Staff also
8 reviewed the administrative record, the Post-Approval Evidence, all rules and regulations
9 applicable to the Project, and CalFire's pending Fire Safe Regulations. Staff concluded the
10 Project met the minimum standards for safety, including for fire access and egress. Accordingly,
11 Staff recommended the Board affirm its decision to deny the appeals and uphold the Planning
12 Commission's approval of the Project. (SR 2, 56–62.)

13 Staff prepared an Agenda Report for the Board's May 18, 2021, public hearing on remand
14 ("Staff Report") in which it summarized its analysis and recommendations. (SR 56–62, 378–379
15 (corrections).) Staff determined that the Post-Approval Evidence specifically implicated four
16 grounds from the initial appeal. The Staff Report analyzed the Post-Approval Evidence in the
17 context of the entire record, attaching and incorporating the 2017 approved Conditions of
18 Approval and related County departmental memoranda (SR 65–96); Project graphics (SR 97–
19 113); analytical reports from the Engineering Division of PBES, the Department of Public Works,
20 and the Fire Marshal (SR 114–120); the redacted Post-Approval Evidence (SR 121–260); public
21 comments (SR 261–330); Staff and Appellants' PowerPoint presentations (SR 331–377); the
22 Court's order granting in part the Petitioner's Motion to Augment the Administrative Record (SR
23 380–390); and the Court's remand order (SR 391–396).

24 Staff concluded that none of the information provided in the Post-Approval Evidence
25 substantially challenged or required modification of the Planning Commission decision on
26 January 4, 2017, which was upheld by the Board on August 22, 2017. (SR 62.) Staff reiterated
27 that the County's Engineering Division, Fire Marshall, and Department of Public Works had all
28 reviewed the Post-Approval Evidence and reviewed the proposed Project in relation to current

1 standards of project approval, and all continued to support the prior Project approvals. (*Id.*) As a
2 result, Staff recommended that the Board affirm its decision and deny the appeals. (*Id.*)

3 **VI. The County Upholds the Project Approval and Denies the Appeals**

4 On May 18, 2021, the Board held a duly noticed public hearing to reconsider the Project
5 on the limited health, safety, and welfare grounds implicated by the Post-Approval Evidence. (SR
6 402–483.) The Board considered the Staff Report and attachments A through T thereto, as well as
7 presentations by Staff, the Petitioner, members of the public, and Mountain Peak. The Board
8 tentatively determined, on a 3-2 vote³, to uphold its approval of the project and to deny the
9 appeals on the basis that the Post-Approval Evidence did not demonstrate that the Project would
10 adversely impact public health, safety, and welfare. (SR 481.) As an integral part of its
11 determination, the Board imposed a new condition of approval that would prohibit project tours
12 and tastings/visitation and marketing events when a “Red Flag Warning”⁴ has been issued by the
13 National Weather Service or the County Office of Emergency Services or when a PSPS warning
14 has been issued by PG&E, when such warnings are in effect for the subject Property of the
15 Project. (SR 480–481.)

16 The Board directed County Counsel to prepare a resolution containing findings of fact and
17 a decision on remand in support of its tentative decision denying each of the four appeals and to
18 present those findings to the Board for consideration at its meeting on July 13, 2021, along with
19 revised conditions of approval reflecting the new condition. (SR 482.)

20 **VII. The County Adopts Resolution 2021-81 and Revised Conditions of Approval.**

21 On July 13, 2021, the Board considered a proposed resolution containing the Findings of
22 Fact and Decision on Remand regarding the four “health, safety, and welfare” grounds of appeal
23 relevant to the consideration of the Post-Approval Evidence. The proposed resolution contained,
24

25 ³ Chair Pedroza and Supervisors Gregory and Wagenknecht voted to affirm the approval of the
26 Project and to deny the appeals. Supervisor Ramos (who had previously voted to approve the
27 Project) and Supervisor Dillon (who did not attend the 2017 Board hearing at which the Project
28 was approved) voted to grant the appeals. (SR 481.)

⁴ Red Flag Warnings are issued for weather events that may result in extreme fire behavior that
will occur within 24 hours, to alert fire departments of the onset, or possible onset, of critical
weather and dry conditions that could lead to rapid or dramatic increases in wildfire activity.

1 among others, “health, safety and welfare” Findings of Fact with respect to each of the four
2 grounds of appeal implicated thereby. (SR 1–9.)

3 The Findings of Fact and Decision on Remand substantially incorporate Staff’s findings
4 and recommendations. They further incorporate the Board’s new Red Flag Warning/PSPS
5 Warning condition. (See COA 4.20(i), SR 30.) As noted, the Board found that this condition will
6 substantially reduce the likelihood that winery visitors will be present at the Project location when
7 a wildfire occurs.⁵ (SR 5–8.)

8 After a brief hearing, during which interested persons were invited to address the Board
9 regarding whether the Findings of Fact accurately reflected the Board’s tentative decision, the
10 Board adopted Resolution 2021-81⁶, which incorporated the Findings establishing that substantial
11 evidence exists in the record to affirm the Board’s denial of the Seventh through Tenth Grounds
12 of Appeal in their entirety and approval of the Project Use Permit and the RSS Exception, subject
13 to the revised Conditions of Approval imposed by the Board. (SR 1–9.)

14 ARGUMENT

15 I. **The Standard of Review: The County’s Health, Safety, and Welfare Findings Must** 16 **Be Upheld if Supported by Substantial Evidence.**

17 Pursuant to Napa County Code §18.124.070(C), before approving a use permit, the
18 County must make written findings that the grant of the use permit, as conditioned, will not
19 adversely affect the public health, safety, or welfare of the County. The County’s Standard of
20 Review for administrative appeals (see Napa County Code §2.88.090) provides that the Board
21 shall exercise its independent judgment, based on substantial evidence on the record on appeal, or
22 such extrinsic evidence as may be allowed pursuant to this section, in determining whether to
23 grant or deny the appeal, or remand the matter, in whole or in part, to the decision maker.

24 “Substantial evidence,” as defined in the County Appeals Ordinance, means such facts: 1. That a

25 _____
26 ⁵ As this Condition of Approval further provides, if visitation or a marketing event is occurring at
27 the time a Red Flag Warning or PSPS Warning is issued and takes effect, the visitation or
28 marketing event shall be terminated and all attendees and non-essential personnel shall be
expeditiously directed off the property. (SR 30.)

⁶ Supervisors Gregory, Wagenknecht and Pedroza voted to adopt Resolution 2021-81. Supervisor
Dillon voted no. Supervisor Ramos was absent. (SR 9.)

1 reasonable mind would accept as adequate to support a conclusion, even if other conclusions
2 might also be reached; and 2. That is reasonable in nature, credible, and of solid value. (Napa
3 County Code §2.88.010(L).)

4 The County’s review process comports with the standard of review set forth in Code of
5 Civil Procedure section 1094.5 and interpretive case law. The court reviews the County’s decision
6 for prejudicial abuse of discretion. (Code Civ. Proc., § 1094.5, subd. (b).) “Abuse of discretion is
7 established if the [County] has not proceeded in the manner required by law, the order or decision
8 is not supported by the findings, or the findings are not supported by . . . substantial evidence in
9 light of the whole record.” (Code Civ. Proc., § 1094.5, subds. (b), (c).) “Substantial evidence is
10 relevant evidence that a reasonable mind might accept as adequate to support a conclusion.”
11 (*Martis Camp Community Ass’n v. County of Placer* (2020) 53 Cal.App.5th 569, 595.)

12 The substantial evidence standard is deferential towards the agency’s decision. “[I]t is
13 presumed that the [County] regularly performed its official duty” and “that the findings and
14 actions of the [County] were supported by substantial evidence.” (*Desmond v. County of Contra*
15 *Costa* (1993) 21 Cal.App.4th 330, 335.) The Court does “not reweigh the evidence; [it] indulge[s]
16 all presumptions and resolve[s] all conflicts in favor of the [County’s] decision. . . . When more
17 than one inference can be reasonably deduced from the facts, [the Court] cannot substitute its own
18 deductions for that of the [County].” (*Poncio v. Dept. of Resources Recycling & Recovery* (2019)
19 34 Cal.App.5th 663, 669.) “Because the [County] has technical expertise to aid it in arriving at its
20 decision, [the Court] should not interfere with the discretionary judgments made by the
21 [County].” (*Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 326–27.) The Court “may
22 reverse [the County’s] decision only if, based on the evidence before it, a reasonable person could
23 not have reached the conclusion reached by it.” (*Kirkorowicz v. Cal. Coastal Comm’n* (2000) 83
24 Cal.App.4th 980, 986.) “The burden is on the petitioner to show there is no substantial evidence
25 whatsoever to support the findings of the [County].” (*Saad v. City of Berkeley* (1994) 24
26 Cal.App.4th 1206, 1212; *Desmond v. County of Contra Costa, supra*, 21 Cal.App.4th at p. 336.)

1 The County's Findings and determination on remand to uphold the Project approval and
2 deny the appeals on the four health, safety, and welfare grounds implicated by the Post-Approval
3 Evidence fully met the substantial evidence standard of review and should be upheld.

4 **II. The Board Properly Affirmed on Substantial Evidence its Denial of the Appeals and**
5 **Approval of the Project.**

6 **A. Substantial Evidence Presented at the 2017 Appeal Hearing Support the**
7 **Board's Health, Safety, and Welfare Findings.**

8 At the 2017 appeal hearing that resulted in the Board's original approval of the Project,
9 substantial evidence was presented that the Project will not have an adverse impact on public
10 health, safety, and welfare. After reviewing the Petitioner's statistics of emergency incidents
11 along Soda Canyon Road, the Board determined there are various reasons for emergency
12 response (the majority of which are from residences, not wineries). (AR 12–13.) The Board
13 further determined that the addition of a new winery to the approximately 250 properties and
14 existing land uses accessed off Soda Canyon Road will not result in a discernible increase in the
15 degradation of pavement caused by vehicle use. (AR 32.) Further, the County Traffic Engineer
16 testified that Soda Canyon Road is not unique in terms of its pavement condition, many County-
17 maintained roads are in similar condition, the accident history and safety of Soda Canyon Road is
18 not out of the ordinary for hillside roads in the County, and Soda Canyon Road is not one of the
19 County's highest priority roads in terms of collisions. (AR 3670–3675.)

20 The Board found that the Project was designed to meet, and would comply with,
21 applicable fire codes and project-specific fire safety Conditions of Approval. (AR 85–87.) Since
22 the Project site is in a Very High Fire Hazard Severity Zone, Project construction must comply
23 with more rigorous fire safety standards. (AR 16.) The Board found important the thorough
24 review and approval recommendation of the County Fire Marshal, a contracted subject matter
25 expert from CalFire. (*Id.*) The Board determined that the Project will not change the fire
26 protection setting and will nominally improve fire safety by adding an 80,000-gallon fire
27 suppression cistern and adding fire hydrants. (AR 15.) The Board further found that the Property
28 and several hundred acres in the immediate vicinity are planted in vineyards, which the Board

1 determined provide a substantially lower wildland fire risk than the native area brush and
2 woodland floral communities. (AR 16–17.) The Board also reviewed the traffic impact report,
3 which indicated that Soda Canyon Road traffic volumes are very low (averaging fewer than two
4 vehicles per minute during the peak period), and determined that in the event of a fire, the road
5 has sufficient capacity and roadway width to accommodate mass evacuations while allowing
6 incoming fire response units. (AR 17, 522.)

7 There was substantial evidence on the administrative record to support the Board’s
8 decision in 2017 and, based on the standard of review discussed above, the Court must defer to
9 the County’s decision to approve the Project, even if another conclusion could be reached. The
10 Post-Approval Evidence does not change this conclusion.

11 **B. Substantial Evidence Supports The Board’s Decision, on Remand, to Affirm**
12 **its Denial of the Appeals in their Entirety and its Approval of the Project.**

13 After thoroughly considering the Post-Approval Evidence, the Board properly determined
14 that substantial evidence in the record supported its prior determination that the Project will not
15 adversely impact the health, safety, or welfare of County residents in the event of a wildfire and
16 its decision to affirm the denial of the appeals in their entirety and to approve the Project use
17 permit subject to the revised Conditions of Approval. The Board affirmed that each ground of
18 appeal relating to wildfire impacts was supported by substantial evidence and found that the Post-
19 Approval Evidence did not undermine those findings.

20 ***Appeal Ground No. 7***

21 The Board affirmed that the Planning Commission had duly considered Soda Canyon
22 Road CalFire Incident Reports⁷, and had appropriately concluded that the construction and
23 operation of the Project winery would not substantially change the fire protection or emergency
24 response setting. (SR 4.) The Board found that the Project has been designed and conditioned to
25 comply with rigorous fire standards for winery developments, including provisions for emergency
26

27 _____
28 ⁷ The Incident reports spanned approximately 10 years, and 181 total incidents, ranging from
medical responses and residential fires to false alarms and traffic collisions. (SR 4.)

1 vehicle access and high fire hazard construction (see COA 4.18(d)) and may nominally improve
2 fire safety by providing tanked water on-site. (SR 4.)

3 The Board considered the declarations of Linda Savoie and Glenn Schreuder that
4 recounted finding shelter from the Atlas Fire in nearby vineyards (see SR 248–250, 253–254) and
5 found that these declarations supported the Board’s conclusion that the Project would not
6 substantially change the fire protection or emergency response setting. (SR 4.) The Board found
7 further support from the maps contained in Anthony Arger’s declaration (see SR 145–154), which
8 clearly show that the extent of fire damage from the 2017 Atlas Fire was significantly reduced
9 around the areas of the Foss and Stagecoach valleys, which are dense with vineyard development.
10 (SR 4.) The Project site contains substantial areas of reduced fire hazard because it is mostly
11 planted in vineyard. (*Id.*) The Board also considered declarant Cynthia Grupp’s accounts of the
12 temporary inability of evacuees to utilize Soda Canyon during the Atlas Fire evacuation due to a
13 downed tree obstacle (see SR 207–208) and declarant Linda Savoie’s account of vehicle
14 congestion on Soda Canyon Road adjacent to the planned Project access driveway location (SR
15 246–247). The Board found that the roadway obstacle happened despite the nonexistence of the
16 Project; the Project contains no features that would exacerbate the potential for roadway
17 obstacles; the congestion did not appear to be a result of the lack of road capacity; and the Project,
18 with its minimal visitation, would not have substantially impacted the evacuation. (SR 4–5.)

19 ***Appeal Ground No. 8***

20 The Board reviewed the Project’s “Very High Hazard Severity Zone” location and noted
21 that virtually all hillside areas, and the vast majority of land of the County, are located in areas
22 designated High or Very High Fire Hazard Severity Zones by CalFire and the designation applies
23 to thousands of residences and dozens of wineries. (SR 5.) The Board further found significant
24 that the Project is designed to meet the very rigorous fire safety standards applicable to such
25 locations and had been recommended for approval by the County Fire Marshal, a contracted
26 subject matter expert from CalFire. (SR 5–6.) The Post-Approval Evidence did not change the
27 Fire Marshal’s recommendation, and the Board found no error in the Fire Marshal’s analysis of
28 the Project. (*Id.*) The Project property also contains substantial areas of reduced fire hazard

1 because most of the Property is now planted in vineyard, as are several hundred acres in the
2 immediate vicinity. (*Id.*) The Board found that the Project would not significantly increase fire
3 risk and meets the regulatory requirements for a winery in the County. (*Id.*)

4 ***Appeal Ground No. 9***

5 The Board rejected Appellants' contention that the Planning Commission failed to
6 properly consider the Project's purported effect on a "Pre-Attack Fire Plan" designed by CalFire
7 for the Soda Canyon area. (SR 6–7.) The Board found that the Project was thoroughly evaluated
8 by the County Fire Marshal—an expert on wildland fire risk, response, and pre-planning—for
9 compliance with local and State fire standards and was determined to comply with those
10 standards. (SR 6.) The Board further found that the Property is predominantly planted in
11 vineyards along with several hundred acres of nearby vineyards and concluded the Project would
12 provide a safe haven for sheltering in place in the event of a wildfire. (*Id.*) For those reasons, the
13 Board concluded that the Project would not interfere with planning or wildfire response and
14 would nominally improve wildfire response. (*Id.*)

15 The Board found that the Post-Approval Evidence did not change this conclusion. (SR 6–
16 7.) As noted in the Board's Findings on the Seventh and Eighth Grounds of Appeal, two of the
17 Post-Approval declarations provide accounts of evacuees utilizing nearby vineyards to shelter in
18 place and await rescue from CalFire or the California Highway Patrol and demonstrate that when
19 evacuation down Soda Canyon Road was not an option, wineries and associated vineyards
20 provided a safer location than areas of native vegetation and that the Project winery would
21 provide a safe haven for sheltering in place during a wildfire. (*Id.*) More importantly, the Board
22 determined that the Post-Approval Evidence does not provide substantial evidence that the
23 Project is unsafe or fails to comply with County health, safety, and welfare regulations. (SR 7.)

24 The Board also reviewed the Engineering Division's conclusion that the Project meets
25 requirements applicable at the time of Project approval and proposed Fire Safe Regulations for
26 development in the State Responsibility Area; the Department of Public Works' conclusion that
27 the capacity and condition of Soda Canyon Road are sufficient to accommodate the Project traffic
28 and provide a safe means of evacuation in the event of a wildfire; and the Fire Marshall's

1 recommended approval of the Project based on its compliance with applicable regulations. (SR
2 7.) The Board determined that the Post-Approval Evidence did not identify any conditions of the
3 Project, the Property, or Soda Canyon Road that undermine those conclusions. (*Id.*) Instead, the
4 declarants' harrowing personal experiences with a wildfire event occurred regardless of the
5 absence or presence of the Project, e.g., a downed tree that contributed to congestion. (*Id.*) The
6 Board determined that Soda Canyon Road has sufficient capacity for additional traffic and the
7 addition of cars connected to the Project will only have a minimal effect on road capacity. (*Id.*) In
8 sum, the Board found that the Project meets all regulatory requirements relating to wildfires. (*Id.*)

9 ***Appeal Ground No. 10***

10 Appellants contended that the Planning Commission failed to properly consider testimony
11 from the chief of the Soda Canyon Volunteer Fire Department and a former volunteer of the
12 Department describing the alleged inherent fire safety dangers of Soda Canyon Road and
13 purported Project-related increased risk of fire and significant impact on rescue efforts. (SR 7.)
14 The Board referred to its prior finding (see AR 17) that the Planning Commission had considered
15 testimony from Appellants and other neighbors that wildland fires are caused by human activities
16 such as tossed cigarette butts and arson. (SR 7–8.) However, none of the testimony or incident
17 reports attributed wildfires specifically to winery construction, operation, or visitation. (*Id.*) As
18 the Board concluded, generalized fears and concerns about a project do not constitute substantial
19 evidence. (See *Perley v. Bd. of Supervisors of Calaveras County* (1982) 137 Cal.App.3d 424,
20 436.)

21 The Board found no credible evidence that the addition of the Project winery would
22 significantly increase the risk of fire or significantly hinder rescue efforts. (SR 7–8.) As noted
23 previously, the Board characterized Soda Canyon Road as a fairly typical hillside public road,
24 with very low traffic volumes, and whose accident history is primarily the result of unsafe
25 driving, not hazardous driving conditions. (SR 8.) In the event of a fire that results in mass
26 evacuations, the Board concluded the road has sufficient capacity and roadway width to
27 accommodate all outgoing traffic while allowing incoming fire response units. (*Id.*)

28

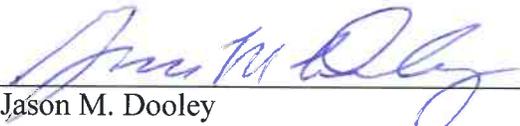
1 In sum, the Board reviewed the Post-Approval Evidence regarding declarants' personal
2 experiences during the 2017 Atlas Fire and concluded that these accounts did not present
3 substantial evidence that the addition of the Project would significantly increase fire risk or hinder
4 rescue efforts. (SR 8.) The Board found that the declarations do not suggest that congestion was
5 due to Soda Canyon Road lacking capacity, but rather to a roadway obstacle that temporarily
6 impeded evacuation. (*Id.*) The declarants' accounts of evacuees finding shelter in vineyards and
7 the maps provided by declarant Anthony Arger further supported the Board's findings and
8 conclusion that vineyard-dense areas could reduce the extent of damage from wildfire. (*Id.*)

9 **CONCLUSION**

10 After thoroughly considering the Post-Approval Evidence, the County properly decided,
11 based on substantial evidence, to uphold its approval of the Project and denial of the Appeals on
12 the four health, safety, and welfare grounds presented (Appeal Grounds Nos. 7-10). The Petition
13 should be denied as to each of these grounds.

14
15 DATED: October 22, 2021

NAPA COUNTY COUNSEL'S OFFICE

16
17 By: 
Jason M. Dooley

18 Attorneys for Respondents
19 COUNTY OF NAPA and
20 NAPA COUNTY BOARD OF
SUPERVISORS

21 **PERKINS COIE LLP**

22
23 By: 
Brien F. McMahon

24 Attorneys for Real Parties in Interest
25 MOUNTAIN PEAK VINEYARD, LLC and
26 HUA YUAN aka "ERIC" YUAN
27
28

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and employed in Napa County, California. I am over
3 the age of eighteen years and not a party to the within-entitled action. My business address is
4 1195 Third St., Napa, CA I am readily familiar with this firm’s practice for collection and
5 processing of correspondence for mailing with the United States Postal Service. On October 22,
6 2021, I placed with this firm at the above address for deposit with the United States Postal
7 Service a true and correct copy of the within document(s):

8 **BRIEF OF RESPONDENTS AND REAL PARTIES IN INTEREST IN OPPOSITION TO**
9 **PETITION FOR WRIT OF MANDATE**

10 in a sealed envelope, postage fully paid, addressed as follows:

11 **Attorneys for Petitioner Soda Canyon Group**

12 Mark. R. Wolfe
13 John H. Farrow
14 M.R. Wolfe & Associates
15 A Professional Corporation
16 555 Sutter Street, Suite 405
17 San Francisco, CA 94102

18 Anthony G. Arger
19 Robertson Johnson Miller & Williamson
20 50 West Liberty Street, Suite 600
21 Reno, NV 89501

22 Following ordinary business practices, the envelope was sealed and placed for collection
23 and mailing on this date, and would, in the ordinary course of business, be deposited with the
24 United States Postal Service on this date.

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

27 Executed on October 22, 2021, at Napa, California.

28 
Meredith Trueblood