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15 THE SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF NAPA

17 SODA CANYON GROUP,

18 Petitioner,

19 vs.

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

23 Respondents

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

27 Real Parties in Interest.
28

Case No.: 17CV001063

**PETITIONER'S REPLY BRIEF IN
SUPPORT OF PETITION FOR WRIT
OF MANDATE**

[CEQA Matter]

Hearing Date: January 11, 2019
Time: 8:30 am
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1 **INTRODUCTION**

2 Faced with the abundance in the record of facts, corroborated expert opinion based on
3 facts, and lay testimony establishing facts, all establishing that the MPV not only may but most
4 certainly will have significant environmental impacts, the County and MPV (Respondents) try in
5 vain to dismiss it all as speculative or unsubstantiated. In doing so, they rely on cases that are
6 either plainly inapt, or that actually affirm that the volume and type of evidence in the record of
7 this case has been deemed substantial evidence satisfying the fair argument standard under
8 CEQA time and again. As this reply will argue, Respondents cannot overcome CEQA’s strong
9 built-in presumption favoring preparation of a full EIR for project such as MPV’s, where the
10 nature and intensity of the new use is unprecedented in Napa County for a location this remote,
11 prone to catastrophic wildfires, and accessible only by one of narrowest, most deteriorated and
12 dangerous roads in the County.

13 Even if there were just one expert opinion in the record, or one set of facts showing the
14 Project might have a single significant impact on one environmental feature, the court would still
15 need to find a CEQA violation and issue a writ of mandate. Yet here we have multiple, mutually
16 corroborating expert opinions, all based on facts and at least one based on personal observations,
17 that impacts on biological resources on or downstream from the site likely will be significant.
18 These are augmented by additional expert opinions based on site-specific facts and information
19 that the Project’s noise and traffic safety impacts will be as well

20 That the County spent nearly four years reviewing the Project is irrelevant. So is the fact
21 that the County reviewed numerous technical reports, conducted lengthy hearings, and adopted
22 findings nominally addressing the environmental concerns. And, ultimately, even the opinions of
23 the County’s and MPV’s consultants are legally irrelevant because under the fair argument
24 standard, no balancing of conflicting expert opinion is permissible, either by the County or by
25 this court. Even if there are any doubts about whether the record contains substantial evidence
26 of even one potentially significant impact (and SCG submits there can be none given the volume
27 of corroborated expert testimony), these doubts must, as a matter of law, be resolved in favor of
28 preparing an EIR.

1 **I. The Fair Argument Standard Distilled**

2 In light of Respondents’ efforts to dismiss SCG’s evidence as speculative or unfounded
3 for purposes of CEQA’s fair argument standard, the following judicially affirmed principles
4 repeating:

5 a. The fair argument standard is a “low threshold” test for requiring the preparation
6 of an EIR. *No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68, 84;

7 b. Whether substantial evidence supports a fair argument is a question of law, not
8 fact. *League for Protection of Oakland’s etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th
9 896, 905. The court therefore is to give no deference to the County’s findings, approval, or its
10 view of the evidence in the record. (*Ibid.*)

11 c. If **any** aspect of the project may result in a significant impact on the environment,
12 an EIR must be prepared, even if the overall effect of the project is benign. Guidelines,
13 §15063(b)(1); *County Sanitation Dist. No. 2 v County of Kern* (2005) 127 Cal.App.4th 1544, 1580.
14 Here there is abundant substantial evidence relating not only to potential biological resources
15 impacts, but to noise and traffic/public safety impacts as well.

16 d. The fair argument standard bars agencies from weighing competing evidence to
17 determine who has a better argument concerning the likelihood or extent of a potential
18 environmental impact. Guidelines, §15064(g). *Rominger v County of Colusa* (2014) 229 Cal.App.4th
19 690, 713; *Architectural Heritage Ass'n v County of Monterey* (2004) 122 Cal.App.4th 1095, 1109. If
20 qualified experts disagree about either the likelihood or magnitude of a project’s impact, the
21 agency must assume that a significant impact may occur and must prepare an EIR. *City of Carmel-*
22 *by-the-Sea v Board of Supervisors* (1986) 183 Cal.App.3d 229, 249. Here, there are qualified experts
23 on both sides that disagree about the Project’s impacts to water, noise, and traffic/public safety.
24 In addition, other qualified experts testified to the significance of impacts to biological resources,
25 and neither the County nor MPV have cited any expert opinion to the contrary. Accordingly, the
26 County must assume that all these impacts will occur and must prepare an EIR.

27 e. Relevant personal observations of area residents on nontechnical subjects can
28 qualify as substantial evidence.” *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903,

1 928. “For example, an adjacent property owner may testify to traffic conditions based upon
2 personal knowledge.” *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985)
3 172 Cal.App.3d 151, 173. Here, the testimony, photographs, statistics from public safety agencies
4 (Napa County Sherriff’s Department, California Highway Patrol (CHP), and the California
5 Department of Forestry and Fire (CalFire), and other relevant information proffered by SCG and
6 others constitutes substantial evidence supporting a fair argument of noise and traffic safety
7 impacts, even without corroborating expert testimony. Still, two experts, Watry and Smith, fully
8 corroborated SCG’s lay testimony with expert opinion based on fact.¹

9 With these principles in mind, SCG addresses the points raised in Respondents’ Opposing
10 Brief (Opp. Br.)

11 **II. The County’s admitted failure to perform a biologic resources assessment negates**
12 **any claim that there is no substantial evidence of impacts to biological resources.**

13 CEQA clearly obligated the County to undertake a baseline assessment of the biological
14 resources that the Project could impact, namely the species and aquatic habitat both within and
15 downstream of the watercourses near to which MPV will deposit thousands of cubic feet of cave
16 spoils. CEQA Guidelines, § 15063(d)(2); *see* § 15025(a) (initial study must include description of a
17 project’s “environmental setting,” which will “normally constitute the baseline physical
18 conditions by which a lead agency determines whether an impact is significant”). The record
19 shows that while this Initial Study did include baseline assessments of traffic, noise, and
20 groundwater, it completely omitted any assessment for biological resources. Called out for this
21 omission, Respondents argue that no such assessment was needed because “there is no fair
22

23 ¹ SCG also presented the with a Geotechnical Road Impact Review & Reconnaissance from KC
24 Engineering Company during the administrative proceedings. AR 03914-03920. This Report concluded
25 that “the addition of heavy truck traffic from the proposed Mountain Peak Winery operations to the
26 roadway would substantially increase hazards due to incompatible uses, and will significantly exacerbate
27 the existing road damage and increase the design Traffic index.” AR 03916. The Report further found
28 that MPV’s own traffic impact report and road study “failed to perform an adequate analysis of current
and future road stability of Soda Canyon Road, and failed to divulge the impacts to the road surface and
subsurface infrastructure,” and recommended additional tests of pavement conditions, drainage, and
potential road subsidence. AR 03916-03917. The County excluded the Report from the record, and it is
now a subject of SCG’s Motion to Augment the Administrative Record.

1 argument that the Project will cause a significant increase in erosion or sedimentation” Opp. at 7.
2 Respondents suggest, wrongly, that the fair argument standard applies to the scope of an initial
3 study, rather than to the determination of whether its outcome dictates preparation of an EIR.
4 Under this view, an agency would need to conduct a separate mini-study to gauge whether
5 substantial evidence shows a resource should be included in the actual initial study. Not only is
6 this absurd, it is belied by the Initial study itself, which discloses the presence of the streams
7 onsite and the fact that cave spoils will be deposited near them. AR 00349-00350.

8 **A. *Mejia v. City of Los Angeles* is on-point and governs.**

9 *Mejia v City of Los Angeles* (2005) 130 Cal.App.4th 322 and other cases SCG has cited are
10 in unison: an agency cannot support a decision to adopt a negative declaration by asserting that
11 the record contains no substantial evidence of a significant adverse environmental impact if the
12 agency itself has failed to include an assessment of that potential impact. *See* Kostka & Zischke,
13 *Practice Under the California Environmental Quality Act* (2nd Ed., 2018 Update), § 6.77; *see also*
14 discussion and case citations in SCG’s Opening Brief at p. 15. Respondents try but fail to
15 distinguish *Mejia*, arguing that there is no evidence that special-status species exist on the project
16 site. That fact, even if true (and how can we know for sure without a biological resources
17 assessment?) is irrelevant given that the impact in question involves the effects of sediments
18 traveling downstream to Rector Creek, where aquatic habitat for special status species
19 indisputably exists. Water flows downstream, after all.

20 Regardless, *Mejia* remains on point and dispositive. There, the court found substantial
21 evidence that a residential development would impact biological resources based only on
22 personal observations from project opponents because the agency had failed to conduct a
23 current biological assessment on its own. *Id.* at 339. The court explained;

24 The administrative record ordinarily is very limited when there is only an initial study and
25 no EIR. Project opponents who challenge a negative declaration often have no expert
26 studies to rely on. Recognizing this, courts have held that the absence of expert studies is
27 not an obstacle because personal observations concerning nontechnical matters may
28 constitute substantial evidence under CEQA. [Citations.] This is particularly true where an
expert assessment corroborates to some extent the personal observations, as here. *Ibid*
(emphasis added).

1 As in *Mejia*, the record here includes corroborated expert opinion of several scientists,
2 supplemented by personal observations from one the experts herself, Amber Manfree, that the
3 Rector Creek drainage into which the Project site's two blue-line streams flow, *see* AR
4 06864.171, 06864.180 (aerial photo and map showing Project location in relation to two blue-
5 line streams), contains habitat for special status species. *See* AR 01509-01522; 03650-03651;
6 03493-03495; 06864.153-06864.167 (Kamman testimony regarding erosion/sedimentation and
7 slides); 03498-03503, 03649-03651, 03675-03676, 06864.168-06864.204 (Manfree Testimony
8 regarding erosion/sedimentations events and adverse impacts on special status species
9 downstream and slides). and discussion in Opening Br. at pp. 6, 11-13.

10 **B. Respondents' characterization of expert biologist and hydrologist testimony**
11 **as speculative is belied by the facts in the record and hinges on irrelevant**
12 **opinion from their own experts.**

13 Respondents claim that SCG “alleges, without any factual basis, that the Project will result
14 in cave spoils entering nearby streams, which would degrade aquatic habitat and impact species in
15 the Rector Creek watershed.” Opp. Br. at 7 (emphasis added). This statement is not only
16 incorrect, it is legally irrelevant, since under the fair argument standard SCG need not cite
17 evidence showing the Project will result in cave spoils entering streams and degrading habitat,
18 only that this might occur – again, a very low evidentiary threshold meant to ensure that any
19 doubts are resolved in favor of more, not less, environmental protection. If the record contains
20 facts and/or expert opinion based on fact that cave spoils might enter these streams, then an
21 EIR is required. Here, the AR is replete with expert testimony that cave spoils may in fact enter
22 either of the two blue-line streams and adversely impact habitat in Rector Creek immediately
23 downstream.

24 Respondents argue that Amber Manfree, PhD, “did not explain or provide a factual basis
25 for her conclusion, nor did she address the adequacy of the Project's erosion control measures.”
26 Opp. at 8. To the contrary, Manfree stated emphatically, both in writing and during public
27 hearings, corroborating the testimony of Greg Kamman (AR 01502) and other resource scientists
28 (AR 01511), that the placement of excavated cave spoils on a land surface creates a high potential

1 for erosion during heavy rain events, and that runoff will necessarily transport soils into the
2 streams draining the site. AR 03649-03650. Dr. Manfree further testified that she had personally
3 visited the stream adjacent to the Project site on January 4, 2017 and observed that it was running
4 “red with sediment” and was “full of dirt,” which was “not common.” AR 03650. Notably, and
5 as admitted by the County and MPV, the cave spoils will be deposited in close proximity to both
6 of the blue-line streams. *See* AR 06864.172 (aerial photo depicting approximate location of cave
7 spoil deposition sites). Dr. Manfree’s observations of the sediment in the blue-line stream
8 running through the Project parcel are memorialized through photos and videos of the blue-line
9 stream taken on January 3 and January 4, 2017. AR 06864.196-06864.199. She also affirmed that
10 there are in fact species of special concern dependent on habitat in Rector Creek and its
11 watershed that would be adversely impacted by the transport of cave spoils entering the streams
12 on the Project site. AR 03651, 06864.177-06864.192 (Manfree testimony and slides containing
13 photographs of said species that she personally photographed in Rector Creek). She also
14 explained how, given the steepness of the slopes in this area of Rector Canyon and the resulting
15 rapidity of flows during rain events, the sediment load from the Project will inevitably reach
16 Rector Reservoir, potentially impacting Yountville’s drinking water supply. *Id.*² Thus, not only
17 does her testimony qualify as expert opinion supported by fact and hence substantial evidence
18 under CEQA, it is also substantial evidence based on “relevant personal observations.” *See Pocket*
19 *Protectors, supra*, 124 Cal.App.4th at 928.

20 Respondents likewise fault testimony from hydrology expert Greg Kamman, calling his
21 assertions “speculative” and “irrelevant . . . to a fair argument of significant adverse Project
22 impacts on groundwater availability.” Opp. Br. at 11. Respondents fail to recognize that
23 Kamman’s testimony primarily corroborated Dr. Manfree’s testimony concerning sediment
24

25 ² Dr. Manfree’s observations and testimony are further corroborated by the Rector Reservoir
26 Water Yield Study (“Rector Water Yield Study”), AR 10834-10914, and the Rector Creek Reservoir
27 Watershed Sanitary Survey 2009 Update (“Rector Sanitary Survey”), AR11007-11123, both of which were
28 attached to Greg Kamman’s January 2017 letter, but were erroneously excluded from the administrative
record. *See* SCG’s Reply Brief in support of its Motion to Augment the Record, at pp. 6-7 explaining
relevance of documents and how they specifically address sedimentation and pollution issues in Rector
Creek from upstream activities, such as those proposed by the Project).

1 runoff into Rector Creek watershed, affirming that merely stating the Project will comply with
2 generic erosion control requirements is not a substitute for actual analysis of those potential
3 impacts, and that in any event the record showed the Project did not comply with the County’s
4 conservation regulations due in part to inadequate design of the stormwater detention basins
5 onsite. AR 03495-03496; *see* Opening Br. at 14, 16. Moreover, Mr. Kamman did not merely
6 provide testimony; he personally visited the Project site, climbed down into Rector Canyon, and
7 observed and photographed the wetted channels from the blue-line streams that transport
8 sediment flows directly into Rector Creek. *See* AR 03492-03495, 06864.157-06864.164 (Kamman
9 testimony and slides).

10 **C. Respondents’ cases are distinguishable.**

11 Respondents also cite *Rominger v. County of Colusa* (2014) 229 Cal.App.3d 690, 723 to argue
12 that Kamman’s testimony on the sedimentation issue was too vague to amount to substantial
13 evidence. But *Rominger* involved a purported expert’s opinion, offered with no sites-specific
14 analysis, that “some land uses produce odors,” and that “air pollutant emissions control
15 technologies may not mitigate odor impacts.” *Id.* at 723. Finding this opinion did not rise to the
16 level of substantial evidence under CEQA, the court explained: “[t]he consultant does not
17 identify what types of odors cannot be adequately mitigated with emissions control technology,
18 nor does the consultant explain what land uses—other than ‘some land uses ... associated with
19 agricultural production—might occur in the Adams subdivision that could produce such odors.”
20 *Ibid.* Here, by contrast, Mr. Kamman based his opinion on a review of the Project’s stormwater
21 basin planning documents, the topography of the site based on his personal site visit, and the
22 Count’s generic erosion control measures. AR 03495-03496; 06864.157-06864.164.³

23 With regard to Kamman’s testimony addressing groundwater pumping and aquifer
24 recharge rates, Respondents try to obscure Kamman’s main point. Kamman showed, with facts,
25 that because MPV has conducted its vineyard well pumping test only during the wet season, the
26

27 ³ It is odd that Respondents cite *Rominger*, since the court ultimately ordered the agency to prepare
28 a full EIR after finding substantial evidence of potentially significant traffic impacts. The substantial
evidence in question was expert opinion from none other than Daniel Smith, SCG’s consultant here. *Id.*
at 718-719. Mr. Smith’s credibility should therefore not be an issue here.

1 results substantially understated actual pumping rates necessary to irrigate the vineyard year-
2 round. Kamman also showed how MPV had substantially overstated natural recharge rates in the
3 aquifer, strongly suggesting that the Project’s groundwater demand will exceed the replenishment
4 potential. AR 01499-01500. Without accurate quantitative measures of both MPV’s actual
5 groundwater use and the aquifer’s recharge rate, there can be no meaningful environmental
6 baseline against which to gauge whether the Project will have significant impacts – not just on
7 groundwater supply, but also on nearby wells and hydrologically connected streams. This is true
8 regardless of whether the Project uses more or less groundwater than the vineyard does currently.

9 Respondents defend the County’s failure to conduct any biological resources assessment
10 by citing two nearly thirty-year-old cases, *Lucas Valley Homeowners Association v. Cty of Marin* (1991)
11 233 Cal.App.3d 130 and *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337.
12 Neither case avails them. True, *Lucas Valley Homeowners* did hold that “where a project cannot
13 conceivably result in an impact, there is no need for further environmental review.” Opp. Br. at
14 p. 7. However, the project at issue in that case was the conversion of a single-family home into a
15 synagogue, with opponents raising concerns mainly about parking and related congestion that the
16 court held amounted only to “generalized concerns and fears about traffic and parking impacts,
17 or related anecdotes of parking problems[.]” *Id.* at 163. SCG submits that it is at the very least
18 “conceivable” that MPV’s Project might impact aquatic habitat and species if cave spoils enter
19 the streams onsite during a heavy rain event. Regardless, the fact-based opinions of several
20 credentialed experts hardly amounts to “generalized concerns and fears” as Respondents argue.

21 In *Leonoff*, the project opponents criticized the lack of a site-specific study of air quality,
22 odor, and noise impacts from a proposed contractor service center, while offering only vague
23 and speculative lay concerns about these issues. As the court observed, these statements included
24 such generalized assertions as: “[a] concentration of large vehicles in this area-most of them
25 diesels-will create an air pollution problem which at the present time does not exist The noise
26 factor created by diesel motors is another item which deserves serious study” *Id.* at 1354.
27 Here, by stark contrast, SCG did not simply criticize the lack of a biological resources and then
28 raise generalized fears and concerns. To the contrary, SCG presented substantial, mutually

1 corroborated expert testimony, all based on facts, personal observations, and/or public agency
2 information addressing special-status species and habitat that the Project will impact. *See*
3 Opening Br. discussion at pp. 13-14 (sedimentation), 17-18 (groundwater pumping). The facts in
4 *Leonoff* are therefore distinguishable (and in any event, *Leonoff* still found that “[d]eficiencies in the
5 record due to the public agency’s lack of investigation ‘may actually enlarge the scope of fair
6 argument by lending a logical plausibility to a wider range of inferences.’” *Id.* at 1348.

7 **IV. Cases directly on point affirm that the expert and lay testimony addressing noise**
8 **concerns constitute substantial evidence supporting a fair argument that the**
9 **Project will significantly impact the noise environment in this remote, rural area.**

10 As with *Mejia* on the issue of biological resources, *Keep our Mountains Quiet v. County of Santa*
11 *Clara* (“*KOMQ*”) (2015) 236 Cal.App.4th 714 is four-square with respect to both noise and traffic
12 impacts. We address each of these topics in turn.

13 **A. *Keep Our Mountains Quiet* is directly on point with respect to noise issues,**
14 **and governs.**

15 In *KOMQ*, the County of Santa Clara adopted a mitigated negative declaration and
16 granted a use permit allowing a property owner “to host a limited number of weddings and other
17 events” on property housing vineyards for a winery, llama grazing, and a residence. *Id.* at 719.
18 The owner sought approval to host 28 special events per year for 100 guests, lasting from 2 pm
19 to 10 pm. *Id.* at 720. The County’s planning commission approved the mitigated negative
20 declaration and approved the Project, requiring as a condition of approval that the property
21 owner retain a qualified noise consultant to conduct noise readings at future events to determine
22 whether event noise exceeds the County noise ordinance or general plan threshold. *Id.* at 721.⁴
23 The property owner in *KOMQ* submitted a noise consultant’s report that concluded the events
24 would not exceed applicable noise standards, and that noise impacts would be less than

25 _____
26 ⁴ Note this is virtually identical to the condition imposed on the MPV permit at issue here, which
27 allows events until 10 pm, with a mitigation condition requiring future noise studies to determine
28 compliance with the County noise ordinance. AR 00362. *See* Opening Br. at p. 22. Respondents
acknowledge this: “To ensure that actual operations do not exceed noise levels, a Condition of Approval
requires Mountain Peak to submit an acoustical report to the County noise officer after it commences
operations AR 62.” Opp. Br. at 13.

1 significant. *Id.* at 722-723. The petitioners submitted contrary noise studies together with
2 individual comments reflecting personal observations, all concluding the project might exceed
3 noise standards. *Id.* at 723-725.

4 The court ultimately found that “substantial evidence in the record supports a fair
5 argument that [p]roject-related crowd noise may have significant noise impacts on surrounding
6 residents.” *Id.* at 734. Notably, the court held that evidence of compliance with the County’s
7 noise standards was not relevant, stating:

8 Accordingly, an EIR is required if substantial evidence supports a fair argument that the
9 Project may have significant unmitigated noise impacts, even if other evidence shows the
10 Project will not generate noise in excess of the County’s noise ordinance and general plan.
11 *Id.* at 732 (emphasis added).

12 Again, the court reached this conclusion despite a mitigation condition requiring the property
13 owner to retain a noise consultant to monitor future compliance with noise standards.

14 In the current case, there is substantial evidence in the form of the expert opinion of
15 noise consultant Derek Watry showing not only that large special events will actually exceed the
16 County’s noise standard, but that the Project will also “fundamentally change the character of the
17 neighborhood near the proposed operation.” AR 02769. Under *KOMQ*, therefore, this court
18 should find ample substantial evidence supporting a fair argument that the Project may have
19 significant impacts on the noise environment in this remote, rural area.

20 **B. *Keep Our Mountains Quiet* is also dispositive on traffic safety issues.**

21 On the issues of traffic safety impacts, *KOMQ* is again directly on point. In that case, the
22 project opponents engaged a traffic expert who opined, much as SCG’s consultant Daniel Smith
23 did here, that the road where the project was located: “is narrow (specifically, it lacks centerline
24 striping in the vicinity of the Project, meaning the road is less than the standard 24 feet wide) and
25 curvy and that the Property’s driveway is not perpendicular to the road.” *KOMQ* at 726. The
26 petitioner’s traffic expert in *KOMQ* further opined that the projected increase in traffic associated
27 with the project “would likely compound the traffic safety issues posed by the narrow, curvy road
28 and skewed driveway,” and that given the usually low traffic volume on Summit Road, “any
projected traffic increase would likely have an impact.” *Id.* at 726.

1 In response, the property owner’s traffic consultant argued “there were ‘no significant
2 accident issues’ on the stretch of Summit Road where no centerline is present, and opined that
3 the Project would not add sufficient traffic to change the character of the roadway.” *Id.* If this
4 exchange seems familiar, it is because it tracks that between SCG, its consultant Daniel Smith,
5 and MPV’s consultant. *See* Opening Br., pp. 24-25.

6 The court in *KOMQ* found the opponents’ consultant’s testimony amounted to substantial
7 evidence notwithstanding contrary conclusions from the property owner’s consultant:

8 Based on our review of the record, we conclude there is substantial evidence to support a
9 fair argument that the Project may have a significant impact on traffic and thus the
10 environment. As described below, such an argument finds support in evidence the Project
11 will—at times—double traffic volume on a narrow, windy, substandard road with a
12 history of accidents. *Id.* at 735.

12 The court explained:

13 Neighbors and the Association’s expert provided factual information indicating the design
14 feature-related hazards exist on Summit Road in the vicinity of the Property, including
15 stretches of road that are narrower than the standard 24 feet wide (and absence of
16 centerline striping in those stretches), a lack of graded or paved shoulders, and more than
17 30 blind curves. At one location, Summit Road is only nine feet six inches wide. *Id.* at 735.

18 Note this is almost exactly the same as the situation Daniel Smith described in his
19 un rebutted testimony here that “Soda Canyon Road’s lane widths, which vary between 9 and 11
20 feet, are below the 10-foot minimum standard of the State’s Manual on Uniform Traffic Control
21 Devices, and that at many locations the effective pavement width is rendered substandard by
22 badly deteriorated pavement conditions.” AR 02760. Smith explained that the situation was made
23 worse by “open roadside drainages and ditches unprotected by guardrail or a safely traversable
24 shoulder,” *i.e.* a lack of graded or paved shoulders. AR 02760. According to Smith, these safety
25 problems are exacerbated by SCR’s sinuous horizontal and vertical alignment that, combined
26 with effects of roadside vegetation and terrain, “limits sight distance and causes opposed drivers
27 operating near the center of the road to be unable to see each other soon enough to avoid
28 hazardous conflict,” *i.e.* blind curves. *Id.* Smith concluded that the Project could “significantly

1 increase the crash incidence along Soda Canyon Road” (AR 02760) which, like the road at issue
2 in *KOMQ*, is “a narrow, windy, substandard road with a history of accidents.” *KOMQ* at 735.⁵

3 **IV. There is substantial evidence of significant traffic safety impacts even without the**
4 **expert opinion of Daniel Smith.**

5 Respondents claim that SCG only “vaguely asserts” that the Project could significantly
6 affect public safety on SCR. Opp. Br. at 15. Actually, SCG has asserted this forcefully and
7 unequivocally, submitting Sheriff, CHP, and CalFire incident reports, photographs, videos, and
8 abundant personal testimony in support.⁶ Under *KOMQ, supra*, this is precisely the kind of
9 testimony the court found to comprise substantial evidence supporting a fair argument that a
10 project that would hold public events at an existing vineyard located on an overly narrow, windy,
11 poorly maintained road might have significant public safety impacts. *KOMQ* at p. 726.

12 *KOMQ* is not alone on this point. In *Taxpayers for Accountable School Bond Spending v. San*
13 *Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1054, the court held that resident
14 testimony regarding traffic congestion and accidents associated with events at a school stadium
15 constituted substantial evidence supporting a fair argument that a plan to allow night games (that
16 would draw larger crowds) may have significant traffic impacts. The testimony constituted
17 substantial evidence because “any traffic problems experienced in the past logically will only be
18

19 ⁵ Respondents argue Smith’s trip generation calculations as inaccurate because they were based on
20 an earlier version of the Project. This is irrelevant, as SCG has not argued that the Project’s trip
21 generation will cause significant traffic delays or similar impacts to levels of service. *See* Opening Br. at p.
22 25. On the contrary, both SCG (through lay observation, Sherriff’s, CHP, and CalFire incident reports)
23 and Smith (through expert opinion) have presented substantial evidence that based on the current
24 configuration and deteriorated state of SCR, and the winery visitor traffic volumes as reported in the
25 IS/ND the Project may significantly impact public safety.

26 ⁶ Note Respondents fail to address any of the evidence documenting the literally hundreds of
27 accidents and incidents that have (and continue) to occur on Soda Canyon Road, as reported by the
28 Sheriff, CHP, and CalFire. Respondents also overlook the detailed analysis of these statistics showing a
38% increase in the number of accidents/incidents on Soda Canyon Road between 2014-2016, and the
fact that 74 percent of the accidents during the 2014-2016 timeframe occurred between March and
October, precisely when most winery tourists visit Napa Valley, and when the bulk of the annual vehicle
trips to the Project will occur. *See* AR 03458-03461; 06864.031-06864.034. There can be no question that
these detailed statistics from local public safety agencies amount to substantial evidence on the topic of
traffic/public safety.

1 exacerbated if the Project is completed and evening football games are held.” *Id.* at p. 1055. In
2 other words, the court held, “one reasonably can infer a project will have a significant impact on
3 traffic from factual testimony regarding past traffic congestion caused by similar projects.” *Id.* at
4 730-731.

5 Respondents cite *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal. App. 5th
6 161, 195, and *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*
7 (2006) 139 Cal.App.4th 249, 274, to dismiss all of SCG’s evidence of traffic safety impacts as
8 mere “complaints, fears, and suspicions” that otherwise “lack factual foundation.” Opp. Br. at
9 pp. 5, 16. Both cases are distinguishable. In *Clews*, the court held that a fire expert’s testimony
10 that “consist[ed] largely of general observations regarding fire hazards not tied to the project,
11 questions about the project, and topics allegedly unaddressed or inadequately addressed in the
12 MND and project materials” did not constitute substantial evidence under CEQA. *Id.* at 194.
13 That patently is not the case here, where all of the expert and lay testimony, all the public agency
14 statistics, and all the photographic and video evidence is “tied” to Soda Canyon Road itself. And
15 in *Banker’s Hill*, the court simply affirmed that while lay testimony of personal observations can
16 constitute substantial evidence, lay opinion about impact significance by itself is not substantial
17 evidence. The court explained that: “in the absence of specific factual foundation in the record,
18 dire predictions by nonexperts regarding the consequences of a project do not constitute
19 substantial evidence.” *Id.* at 274, underline added. Here again, by contrast, the observations of
20 SCG members are supported not only by specific factual foundation in the record in the form of
21 Sheriff, CHP, and CalFire incident reports, statistics, and photographs, but also by the opinion of
22 a professional traffic engineer with decades of experience as well, all based on undisputed facts
23 concerning the substandard design and deteriorated condition of Soda Canyon Road.

24 **V. Conclusion**

25 This Project would introduce a new winery and visitors center in a remote, sparsely
26 populated, fire-prone location over six miles up Silverado Trail along one of the narrowest, most
27 winding, most deteriorated roadways in the County. It would excavate hundreds of thousands of
28 cubic yards of soils in order to construct its caves and access driveways, depositing all of it on

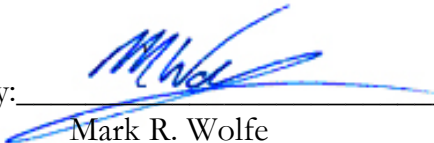
1 land surfaces very close to two watercourses draining eventually into Rector Creek, which
2 provides rich habitat for aquatic species including special-status species, while continuing to
3 pump groundwater in the face of an information vacuum with respect to pumping levels and
4 replenishment rates. Against this backdrop, the Respondents claim it is “inconceivable” that the
5 Project could possibly have even a single significant environmental impact, and that all the
6 testimony from multiple experts and members of the public, supported by data and statistics
7 from CHP and CalFire amounts to nothing more than speculation, generalized fears, and
8 ungrounded concerns.

9 As explained, CEQA’s fair argument standard is designed to ensure that any all doubts
10 about whether a project may have significant impacts, even modest ones, are to resolve in favor
11 of more environmental review, not less. The court should apply the fair argument standard to
12 the record of this case in the same manners as the courts in *Mejia*, *KOMQ*, *Taxpayers*, and the
13 other cases SCG has cited, and find that the County should have prepared a full EIR for the
14 Project rather than relying on a simple negative declaration.

15 SCG therefore respectfully requests this Court to issue a peremptory writ of mandate
16 commanding the County to set aside its approval of the Project and to reconsider its action only
17 after preparing an EIR in accordance with CEQA.

18 Dated: December 14, 2018

Respectfully submitted,
M. R. WOLFE AND ASSOCIATES, P.C.

21
22 By: 
Mark R. Wolfe
Attorneys for Petitioner

1 **PROOF OF SERVICE**

2 *Soda Canyon Group v County of Napa, et al.*
3 Napa County No. 17CV001063

4 I hereby declare that I am employed in the City San Francisco, County of San Francisco,
5 California. I am over the age of eighteen years and not a party to this action. My business address
6 is 555 Sutter Street, Suite 405, San Francisco, CA 94102. I am familiar with this firm’s practice
7 for the collection and processing of mail sent via U.S. Mail, which provides that mail be
8 deposited with the U.S. Postal Service on the same day in the ordinary court of business.

9 On December 14, 2018 I served the attached **PETITIONER’S REPLY BRIEF IN**
10 **SUPPORT OF PETITION FOR WRIT OF MANDATE** in this action :

11 **BY FIRST CLASS MAIL:** I am familiar with my employer’s practice for the collection and processing of
12 correspondence for mailing with the U.S. Postal Service. In the ordinary course of business,
13 correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On
14 the date written above, following ordinary business practices, I placed for collection and mailing at my
place of employment a copy of the attached document(s) in a sealed envelope, with postage fully prepaid,
addressed as shown.

15 **BY ELECTRONIC MAIL:** On the date written above, I caused a copy of the attached document(s) to
16 be transmitted via electronic mail to the electronic mail address maintained by the person on whom it is
17 served at the electronic mail address shown, before 5:00 p.m. That transmission was reported as complete
without error by my electronic mail software. The parties served have agreed to accept service
electronically.

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23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed at San Francisco, California on December 14, 2018.

25 

26 _____
27 Susan Anthony
28