

**BEFORE THE BOARD OF SUPERVISORS
OF NAPA COUNTY**

In the Matter of:

An Appeal by William Hocker to a decision by the Planning Commission on January 4, 2017 approving the Mountain Peak Winery Use Permit No. P13-00320-UP requesting approval of the following: (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 two 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, four part-time employees and four 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 including two events per year for up to 75 visitors, and one event per year for up to 125 visitors; and (10) on premises consumption of wines produced on site in the tasting room and outdoor terrace. The project also includes a request for 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%. The project is 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.

RESOLUTION NO. 2017-132

**FINDINGS OF FACT AND
DECISION ON APPEAL**

WHEREAS, on September 26, 2013, Steve Rea/Mountain Peak Winery (Applicant) submitted the original application for approval of a Use Permit No. P13-00320-UP, and submitted a revised and downscaled application on March 17, 2016 to allow: 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 two (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 (2) 100,000 gallons water tanks for vineyard irrigation and one (1) 20,000 gallon water tank for domestic supply; 6) disposal of all cave spoils on-site within existing vineyards; 7) 19 full-time employees, four (4) part-time employees and four (4) seasonal harvest employees; 8) wine tours and tastings by prior appointment only for a maximum of 80 visitors per day and a maximum of 320 visitors per week; 9) a marketing plan including three (3) events per month for up to 12 visitors, three (3) events per month for up to 24 visitors, four (4) events per year for up to 75 visitors, and two (2) events per year for up to 125 visitors; and 10) on premises consumption of wines produced on site in the tasting room and outdoor terrace in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5. The Applicant also requested 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 percent to 19.6 percent (the Mountain Peak Winery, Winery or the Project);

WHEREAS, the Project is 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 Property);

WHEREAS, the Property is zoned Agricultural Watershed (AW) and designated Agriculture, Watershed and Open Space (AWOS) under the County's General Plan;

WHEREAS, after a preliminary review of the Project, the Planning, Building and Environmental Services (PBES) Department determined that the Project might result in significant environmental effects and therefore required preparation of an Initial Study consistent with the requirements of the California Environmental Quality Act (CEQA) to determine if the Project may have a significant effect on the environment;

WHEREAS, based upon the Initial Study and CEQA review, the PBES Department determined the Project would not have a significant effect on the environment, and accordingly a Negative Declaration was prepared for the Project. The Negative Declaration was circulated for public review and comment for at least 20 days in accordance with CEQA requirements;

WHEREAS, a duly noticed public hearing on the Project was scheduled for July 20, 2016 before the Napa County Planning Commission (Planning Commission). Because a large amount of written comments with supporting materials was submitted by or on behalf of surrounding property owners on the eve of, and substantial verbal testimony was given at the hearing, the Planning Commission unanimously voted to continue the item to August 17, 2016;

WHEREAS, on August 8, 2016, the Applicant submitted a formal request to continue the August 17, 2016 hearing, and with the concurrence of Applicant and staff, the Planning Commission continued the public hearing to October 19, 2016;

WHEREAS, on October 12, 2016, the Applicant submitted a formal request to continue the October 19, 2016 hearing to November 16, 2016 as a result of the submittal of additional materials, including biological and hydrological reports, from Anthony Arger on behalf of neighbors to the Project. On October 19, 2016, a new hearing date mutually acceptable to the parties involved could not be determined. Commission members were split (2-2) on a new hearing date, and therefore, the Commission voted to continue the item to November 2, 2016 to allow the Commission to determine a new hearing date and directed Staff to pursue alternative hearing dates;

WHEREAS, at the continued public hearing on November 2, 2016, Staff and the parties discussed the new hearing date. At the conclusion of the discussion, the Planning Commission continued the public hearing to January 4, 2017, a date acceptable to all parties;

WHEREAS, at the continued public hearing on January 4, 2017, the Planning Commission read, received, reviewed and considered the Project, the entire administrative record, public comment and all evidence and testimony (both written and oral) submitted at the hearings, including that submitted by Applicant, surrounding property owners and other interested persons;

WHEREAS, following conclusion of the public hearing on January 4, 2017, and in reliance upon the entire record and evidence submitted, the Planning Commission voted 3:1 (Ayes: Scott, Basayne and Gill; Noes: Cottrell) to adopt the Negative Declaration, and approve Use Permit No. P13-00320-UP and the RSS Exception for the Mountain Peak Winery subject to the recommended revised conditions of approval including Applicant's further voluntary downscaling of the Project's marketing plans;

WHEREAS, on January 17, 2017, Appellant William Hocker (Appellant) submitted a timely Notice of Intent to Appeal the Commission's approval and subsequently filed an appeal packet on January 30, 2017 (collectively the Appeal). The Appeal Packet specified the grounds upon which Appellant's Appeal is based, and are set forth with more particularity herein¹;

WHEREAS, timely appeals were also filed by Appellants Cynthia Grupp, Kosta M. Arger, and Glenn Schreuder to the Planning Commission's approval of the Mountain Peak Winery. All four appellants are hereafter referred to collectively as Appellants. Because all four appeals were identical and in order to avoid repetition, the Chair consolidated the four appeals into a single appeal hearing. Appellants and Applicant did not object to the consolidation;

¹ The complete Appeal Packet is on file with the Clerk of the Board of Supervisors.

WHEREAS, in accordance with Napa County Code² Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for April 18, 2017, a date at least 15 but no more than 90 days from the date of submittal of the Appeal;

WHEREAS, on April 18, 2017, at the continued public hearing on the Appeal, the Board opened the public hearing, and with the concurrence of Appellants, Applicant and staff, continued the public hearing on the Appeal to May 23, 2017. No testimony was taken on April 18, 2017;

WHEREAS, Staff prepared an Agenda Report for the Board's continued public hearing (Staff Report) that attached and incorporated various Supporting Documents related to the Appeal (Attachments A-J inclusive, including Staff's detailed responses to each of the grounds of the Appeal³), and set forth Staff's recommendation that that the Board deny the consolidated Appeals in their entirety and uphold the Planning Commission's approval of the Project subject to Updated Conditions of Approval;

WHEREAS, on May 23, 2017, at the duly noticed continued public hearing, due to the absence of Supervisor Dillon, Appellants requested that the Appeal hearing be continued until the entire Board could hear the matter.⁴ Appellants' request for a continuance was denied. Thereafter, the Board held a hearing on Appellant's Appeal, which was consolidated with the appeals of Appellants Cynthia Grupp, Kosta M. Arger, and Glenn Schreuder;

WHEREAS, on May 23, 2017, after considering all evidence presented, including the Staff Report (and the supporting attachments thereto), Appellants' presentation, Applicant's presentation, and public testimony (verbal and written), the Board closed the public hearing and adopted a motion of intent to: (1) reject each of the grounds of the Appeal and deny all four of the 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, and including Applicant's proposed voluntary local grape sourcing condition of approval;

WHEREAS, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision denying each of the four appeals and to present those findings to the Board for consideration at its meeting on August 15, 2017;

WHEREAS, on August 15, 2017, to accommodate the Board's calendar, the Board continued its decision on the resolution containing Findings of Fact and Decision on Appeal to a special meeting of the Board on August 22, 2017;

WHEREAS, on August 22, 2017, a proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

² All further code references are to the Napa County Code unless otherwise specified.

³ Staff's detailed Responses to the Grounds for Appeal is set forth in Attachment A to the Staff Report.

⁴ Supervisor Dillon was attending a hearing in Washington DC and excused from the May 23, 2017 meeting.

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a special meeting of the Board on August 22, 2017, and interested persons having been given an opportunity to address the Board regarding the proposed resolution;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors finds, determines, concludes and decides as follows:

Section 1. Recitals.

The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Conduct of Appeal.

A. Napa County Code Section 2.88.090 (B) provides that if the hearing before the approving authority was recorded electronically or by a certified court reporter then upon request by the appellant or any interested party and upon a showing of good cause, the Board may permit additional evidence to be presented which could have been presented at the time of the decision appealed from was made but was not. Here, the Planning Commission proceedings were recorded electronically and transcripts of the Planning Commission proceedings were provided to the Board.

B. Appellant requested that the Chair find “good cause” to supplement the record with new information and to have the appeal heard de novo (e.g., a fresh hearing). Specifically, as part of Appellant’s Appeal packet, Appellant requested that “good cause” be found to (1) augment the record with a hydrological analysis prepared by Kamman dated January 30, 2017 (Kamman letter) and approximately 290 pages of exhibits; and (2) for a de novo hearing. On March 27, 2017, Appellant submitted another “good cause” request to augment the record with a geotechnical and geological report by KC Engineering, which was not yet prepared but was expected to be available in mid-April. That same day, Applicant’s counsel submitted an opposition to the Appellant’s “good cause” requests.

C. On April 3, 2017, the Chair issued its Determination of Appellants’ Good Cause Request. The Chair found good cause to allow the Kamman letter but not the 290 pages of exhibits referenced therein and attached thereto. The Chair denied the requests for de novo review and the as-yet-unprepared KC Engineering report. Pursuant to County Code Section 2.88.090 (B), the Chair’s decision is final unless one of the parties requests that a majority of the Board overrule the decision. On May 8, 2017, Appellants submitted the KC Engineering Report, which had been denied by the Chair. On May 11, 2017, Appellants informed the County that Appellants intended to request that a majority of the Board overrule the Chair’s prior good cause determinations.

D. On May 23, 2017, at the Appeal hearing, the Board heard and considered Appellants’ request that a majority of the Board overrule the Chair’s prior good cause decision. The Board also heard testimony from Applicant’s counsel opposing Appellants’ request to

overrule the Chair’s decision. After considering the request and opposition, the Board voted and denied Appellant’s request.

Section 3. Findings of Fact and Conclusions of Law on Appeal.

The Board hereby makes the following findings of fact and conclusions of law in regards to each of the grounds for appeal as stated by Appellant in its Appeal⁵:

1. First Ground of Appeal.

Appellant’s Position: Appellant contends that the Planning Commission failed to properly consider the Project’s effect on the health, safety, and welfare impacts of Napa County. County Code Section 18.124.070(C) requires a finding that “[t]he grant of the use permit, as conditioned will not adversely affect the public health, safety or welfare of the county.” The Planning Commission did not analyze the effect of the Project beyond the Project site.

Findings and Decision: The Board finds and determines as follows:

The Planning Commission conducted a thorough evaluation of the Project and its setting near the end of Soda Canyon Road. All potential Project impacts regarding public health, safety and welfare were evaluated, including traffic safety and congestion along Soda Canyon Road, biological and hydrological effects within the Rector Creek drainage basin, groundwater resources, and fire risk/safety. The record reveals that these evaluations went beyond just the Project site.

Appellant provided documentation regarding existing conditions along Soda Canyon Road and within the Rector Creek drainage, but most every ground of the Appeal cites existing or historical conditions as the basis for concluding that this new Winery would cause significant impacts. Appellant has not provided credible evidence or articulated a factual basis as to how that will occur. Public comments that are not based on a specific factual foundation do not constitute substantial evidence.⁶

Visitors to the Mountain Peak Winery would not substantively change the existing situation. Traffic was evaluated by licensed traffic engineer Crane Transportation Group in the traffic study entitled “Traffic Impact Report: Proposed Mountain Peak Winery along Soda Canyon Road in the Napa Valley dated March 16, 2016” (the Crane Traffic Study). The scope of the Crane Traffic Study was approved by County Traffic Engineer Rick Marshall and it evaluated both harvest and summer (non-harvest) traffic periods for Friday a.m. and p.m. peak traffic periods, as well as Saturday afternoon peak traffic conditions. The existing year 2019 (near term future conditions), and year 2030 (cumulative/long term future conditions or “General Plan Buildout”) horizons were evaluated both with and without Project traffic. Operating

⁵ This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the actual Appeal dated January 30, 2017.

⁶ Public Resources Code Section 21082.2(c); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417 (residents' opinions that road widening would prevent continued recreational use and have other impacts was not substantial evidence because there was no specific factual foundation for the claims.)

conditions along Soda Canyon Road from the Project site to and including the intersection of Soda Canyon Road and Silverado Trail were evaluated, and included an analysis for traffic improvements such as left turn lane warrant requirements. Potential Project impacts beyond the Project site were studied and considered.

Because the subject property is a hillside parcel, the equivalent of a Tier 2 “Water Availability Analysis for Mountain Peak Winery dated March 16, 2016” was prepared by Bartelt Engineering (the Bartelt WAA) which evaluated potential groundwater impacts and the potential for Project wells to impact neighboring wells located within 500 feet. It also considered potential impacts to the blue line streams located 510 feet and 530 feet at their closest point, respectively, from the on-site wells.

An evaluation of erosion and stormwater impacts was performed by licensed engineer Bartelt Engineering in the report entitled “Stormwater Control Plan for a Regulated Project, Mountain Peak Vineyards dated March 2016” (the Bartelt Stormwater Plan). Testimony or reports by experts supporting a finding that a project’s impacts will be insignificant constitutes substantial evidence supporting the agency’s conclusions.⁷ The studies and expert testimony all provide substantial evidence that the Planning Commission appropriately and adequately considered the effects of the Project beyond just the Project site.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the First Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

2. Second Ground of Appeal.

Appellant’s Position: Appellant contends that the Planning Commission failed to properly consider the Project’s effect on the health, safety, and welfare of the County in light of evidence from the 1999 determination by the Department of Alcoholic Beverage Control (ABC) regarding the Astrale e Terra winery, located 0.4 miles from the Project site. Appellant alleges that ABC determined that the increased traffic from retail sales and wine tasting would aggravate a traffic problem on a problematic roadway.

Findings and Decision: The Board finds and determines as follows:

The ABC’s determination is not binding on the Planning Commission, nevertheless, the Planning Commission considered this 16 year-old ABC decision on Astrale e Terra Winery in context with all other evidence presented on traffic related to retail sales and wine tasting. There are three other wineries located off of Soda Canyon Road which currently conduct visitation, and which have approval to do so. Both the Caves at Soda Canyon and Relic wineries have opened

⁷ 14 Cal. Code Regs Section 15063(a)(3).

for business with visitors within the last four years without significantly impacting the traffic setting. Antica Winery, next door to Astrale e Terra Winery, has been open since 1987.

Appellant mischaracterizes both the nature of the application and the conclusions of the administrative law judge in the referenced ABC matter. There, the applicants sought a Type 02 winegrower license, which permits the sale of wine and authorizes wine tastings on or off the winegrower's premises. Several neighbors filed protests with ABC to prevent the issuance of the permit. Notably, the applicant, Astrale e Terra winery, testified at the hearing that they did not plan to build a wine tasting room or conduct wine tasting for the public, but rather sought an unconditional license to account for potential future business activities. The administrative law judge did find that the conditions of the roadway were "problematic" and that increased traffic would aggravate the problem, but because the applicant did not seek to have winery visitation, the judge determined that "conditions on the applied-for license could resolve the concern of Protestants while not impeding applicant's primary commercial objectives." ABC did not engage in a rigorous analysis of the traffic conditions, as was done for Mountain Peak Winery, but rather found there was no real contest to the imposition of conditions on the permit. Thus, ABC's findings of dangerous conditions on Soda Canyon Road were not necessary to its determination to apply conditions to the permit.⁸

Unlike the 1999 ABC decision on Astrale e Terra Winery, the Planning Commission's approval of this Project was supported by a project specific traffic study (e.g., the Crane Traffic Study), and reviewed by County Traffic Engineer Marshall. Based on the original, larger project, that had 80 daily visitors, no cap on weekly visitation, 78 annual marketing events and four additional employees, the Crane Traffic Study concluded that Project peak hour traffic during harvest (busiest time) would be five inbound trips and six outbound trips, which equates to roughly one trip every five minutes. That relatively low volume during peak times would not cause a discernible change to the existing Level of Service (LOS) on Soda Canyon Road or at its intersection with Silverado Trail. The reduced Project approved by the Planning Commission eliminated all but three of the marketing events (a reduction of 75 events), and dropped visitation from 80 to 60 visitors on the busiest day (not to exceed 275 weekly), which will result in even less traffic than what was initially evaluated.

The opinions of Appellant's traffic expert were based on the original Project and thus the resulting analysis relied on an erroneous factual foundation and does not rise to the level of substantial evidence.⁹ The Crane Traffic Study along with the opinions of County Traffic Engineer Marshall provides substantial evidence to support the Planning Commission's finding that the Project would not result in significant traffic impacts. See also Findings and Decision to Fortieth Ground of Appeal.

⁸ *In the Matter of the Protests of Fletcher Benton, et al., Against the Issuance of a Winegrower License to Soda Canyon Real Estate Investments, Inc.* File No. 02-344164, Reg. 98045225.

⁹ *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1422 (letter from engineering professor about groundwater and erosion impacts was not substantial evidence because it lacked an adequate foundation of specific information about the project).

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Second Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

3. Third Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of traffic figures presented by opponents to the Project which show an increase of traffic on Soda Canyon Road, as well as a potential increase of 207 percent on Soda Canyon Road and Silverado Trail.

Findings and Decision: The Board finds and determines as follows:

No specific citation or reference source was provided to support Appellant's assertion that cumulative traffic generation on Soda Canyon Road and Silverado Trail would increase by 207 percent. The Planning Commission properly considered the potential for traffic impacts from the Project within the overarching context of forecasted local and regional growth evaluated in the 2008 General Plan and the supporting General Plan Program EIR. These documents found that additional growth in Napa County would result in significant increases in traffic volumes on the overall county road network because of both local and regional growth. The General Plan Program EIR traffic analysis concluded that regional population and job growth would result in significant increases in traffic volumes on the county road network even if all growth in Napa County ceased. In adopting the 2008 General Plan, the Board of Supervisors considered the effects of local and regional growth on the health, safety and welfare of the County, and ultimately determined that additional winery and vineyard development was acceptable within the General Plan's planning period (2008-2030). The scale and scope of this Project falls within the overall level of development contemplated and analyzed within the General Plan.

The Crane Traffic Study which was peer reviewed by the County's Traffic Engineer indicates the Project will add only a maximum of 11 trips during weekday p.m. peak cumulative traffic periods. This volume of new traffic represents a nominal change (much less than one percent) to traffic conditions during the period of time when the County road network experiences its highest volumes and has the least ability to accommodate additional capacity. The daily and annual traffic generation rates put forth by the Appellant, and their traffic engineer (Smith Engineering), do not correlate to the Project's potential to impact roadway capacity and consequently are generally irrelevant. This is because all roads, including roads that experience regular periods of traffic congestion, have lengthy periods within a 24-hour day and also annually when traffic is free flowing or otherwise unconstrained. As a result, daily and/or annual traffic generation has no direct relationship to potential changes to roadway capacity, and those

overall generation rates must be converted to a unit of measure that equates with the road network's periods of highest volumes. Peak hour analysis is the standard practice for evaluating potential traffic impacts.

Based on the Crane Traffic Study the Planning Commission properly found that the Project will not cause levels of service to worsen on Soda Canyon Road or significantly contribute to traffic congestion at the intersection of Soda Canyon Road and Silverado Trail (which is 6.1 miles away but the only public access route to the Project site). Significant growth has been occurring at properties taking access off Soda Canyon Road for decades at a rate essentially no different from what is being experienced in other rural hillside areas throughout Napa County. In fact, many of the properties in the vicinity of the Project were relatively undisturbed in the 1993 aerial photograph, but now contain vineyards and residential estates. See also Findings and Decision to Fortieth Ground of Appeal.

Testimony was provided by County Traffic Engineer Marshall that the accident history and safety of Soda Canyon Road is not out of the ordinary for hillside roads in Napa County. Soda Canyon Road is a functional public hillside roadway that supports a variety of existing land uses including residences, vineyards and wineries. County Traffic Engineer Marshall further testified that Soda Canyon Road is not one of the highest priority roads needing attention in terms of collision rates or concentration.¹⁰ Neighbors' photographs of cars in ditches and Sheriff and CalFire incident reports along Soda Canyon Road were not solely the result of intoxicated drivers and cannot be ascribed to people leaving the three existing wineries along Soda Canyon Road. Incident reports revealed 28 incidents of drunk driving in more than three years, compared to 73 calls for animal control, 30 calls for trespassing, 20 for "suspicious situation[s]," and 40 hang up calls during that same time period.

Evidence of existing incidents demonstrates that there are numerous and varied reasons for emergency response and do not demonstrate how adding a new winery along Soda Canyon Road would cause a discernable change from the existing setting. Complaints, fears, and suspicions about a project's potential environmental impact likewise do not constitute substantial evidence.¹¹

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Third Ground of

¹⁰ See Planning Commission Meeting January 4, 2017 Transcript, pgs. 66-71.

¹¹ *Joshua Tree Downtown Bus. Alliance v. County of San Bernardino*, 1 Cal.App.5th at 690; *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 CA3d 130 (expressions of generalized concerns and fears about traffic and parking impacts, and anecdotal statements about parking problems at another facility, are not substantial evidence); *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 CA3d 1337 (opponents' subjective concerns and unsubstantiated opinions about dangerous traffic conditions are not substantial evidence); *Perley v. Board of Supervisors* (1982) 137 CA3d 424 (neighbors' unsubstantiated fears and concerns about project's impacts lacked objective basis for challenge and did not constitute substantial evidence.)

Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

4. Fourth Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of Incident Reports from the Napa County Sheriff's Office demonstrating that there have been 465 calls for service on Soda Canyon Road from January 1, 2014 through September 26, 2016.

Findings and Decision: The Board finds and determines as follows:

The number of calls for service is not unusual given the vast land area involved. These calls for service occurred over a land area that involves several hundred properties along 6.1 miles of public roadway. Land uses range from open land, to vineyards, residences and wineries. The calls for service are not focused on the other existing wineries that share the road but instead are dispersed amongst the various land uses, and are not out of the ordinary from what is experienced in other rural parts of Napa County. The reports suggest that residences not wineries are the biggest generator of service calls. See also Findings and Decision to Third Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fourth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

5. Fifth Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of Incident Reports from the California Highway Patrol (CHP) demonstrating that there have been 53 incidents on Soda Canyon Road or the intersection with Silverado Trail between January 1, 2013 and October 3, 2016.

Findings and Decision: The Board finds and determines as follows:

Assumptions that winery visitors are likely to be under the influence of alcohol while driving, and that the road is difficult to safely traverse for those who are otherwise unfamiliar with it are based on conjecture, fear and speculation and not substantiated facts. The CHP Incident Reports show 65 incidents in a four-year span, including a variety of traffic issues, ranging from collisions to abandoned vehicles, roadside fires, and animals in the roadway.

The Planning Commission properly considered all of the evidence before it, including Appellant's data, the Crane Traffic Study, the Bartelt Engineering road study entitled "Mountain Peak Winery: Soda Canyon Road Study dated March 2016" (the Bartelt Road Study) and testimony from County Traffic Engineer Marshall, all of which demonstrate that incidents on Soda Canyon Road have been the result of wide variety of causes not directly (or indirectly) linked to the existing wineries on Soda Canyon Road. The entire length of Soda Canyon Road from the Project site to the intersection of Silverado Trail was evaluated for traffic congestion in the Crane Traffic Study and for safety in the Bartelt Road Study. The Bartelt Road Study detailed the steepness of the road and tightness of corners, which correlated with testimony from County Traffic Engineer Marshall on the function and adequate level of safety on the road. In addition, County Traffic Engineer Marshall spoke to the County's role in maintaining public roadways.

Substantial evidence was presented by Staff and the Applicant, including evidence prepared by licensed traffic and engineering professionals, which demonstrated that Soda Canyon Road is similar in function and safety to hillside roads throughout Napa County; that it is not dangerous and is capable of supporting the various land uses taking access from it; and that the Project would not substantially change those existing conditions. See also Findings and Decision to Third and Fourth Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fifth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

6. Sixth Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of the 2007-2008 Napa County Grand Jury Final Report on the Napa County Fire Department determining that the Soda Canyon area has the second highest rate of incidents in Napa County, having 594 incidents from 2006 through 2007.

Findings and Decision: The Board finds and determines as follows:

Appellant failed to articulate how implementation of the Mountain Peak Winery would cause existing conditions to change discernably. Review of the incident reports shows a wide range of reasons for Fire Department response often related to health emergencies, vehicle accidents, or wildland fires. Approval of a winery in this location will not substantially adversely change these circumstances. The Project site is developed primarily in vineyards which do not represent a significant fuel source for wildland fire. There are dozens of wineries in similar hillside settings, including three accessed from Soda Canyon Road that produce wine

and conduct visitation without having caused a substantial increased demand for emergency service calls. Fears and speculation that visitors to wineries will drive unsafely and/or impaired, will be irresponsible toward fire safety, and will impede property owners' egress in the event of wildland fire does not rise to the level of substantial evidence. See also Findings and Decision to Seventh through Tenth Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Sixth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

7. Seventh Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of Incident Reports from the California Department of Forestry and Fire Protection (CalFire) demonstrating that there have been 107 incidents between January 2007 and April 2015 on Soda Canyon Road.

Findings and Decision: The Board finds that and determines as follows:

The CalFire Incident Report, which spans approximately 10 years, shows 181 total incidents, ranging from medical responses and residential fires to false alarms and traffic collisions. The Planning Commission duly considered this evidence and appropriately concluded that the construction and operation of a new winery would not substantially change the fire protection or emergency response setting. The Project has been designed and conditioned to comply with fire standards for winery developments, including provisions for emergency vehicle access and high fire hazard construction type. (See Updated Condition of Approval (COA) 4.18(d).) The Project may actually nominally improve fire safety by providing 80,000 gallons of tanked water on-site and available for fire suppression on-site, fire hydrants and an area within the ventilated caves to shelter in place. See also Findings and Decision to Fourth, Fifth, Sixth, Eighth and Ninth Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Seventh Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

8. Eighth Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of maps produced from CalFire data demonstrating that nearly the entire upper portion of Soda Canyon Road, including the Project site, is located in a "Very High Fire Hazard Severity Zone."

Findings and Decision: The Board finds and determines as follows:

Virtually all hillside areas of Napa County, which make up the vast majority of land area countywide, are located in areas designated High or Very High Fire Hazard Severity Zones by CalFire. Throughout Napa County, these fire hazard areas apply to thousands of residences and dozens of wineries. New residences and business are not prohibited in these zones but rather subject to significantly more rigorous fire safety standards, including fire resistive construction standards, mandatory automatic fire sprinklers, dedicated on-site emergency water supplies, and specific fire access road design standards. The Project is designed to meet these standards and has been recommended for approval by the County Fire Marshal, who is a contracted subject matter expert from CalFire. The Project site also contains substantial areas of reduced fire hazard because most of the property is now planted in vineyard, as are several hundred acres in the immediate vicinity. The Project would not represent a significant fire risk due to its setting and fire resistive construction. See also Findings and Decision to Seventh and Ninth Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Eighth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

9. Ninth Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of a "Pre-Attack Fire Plan" designed by CalFire for the Soda Canyon area, which warns of the extreme fire danger and the likelihood that Soda Canyon Road will quickly become congested in the event of a fire.

Findings and Decision: The Board finds and determines as follows:

This Project was thoroughly evaluated by the County Fire Marshal, who is a subject matter expert on wildland fire risk, response and pre-planning. The Project was reviewed for compliance with local and State fire standards and determined by the County Fire Marshal to comply with those standards. The subject property is predominantly planted in vineyards along

with several hundred acres of vineyards on nearby and adjacent properties. Vineyards, although flammable, provide a substantially lower wildland fire risk than the brush and woodland floral communities native to the area. Construction of the Mountain Peak Winery, especially the cave, would provide a safe haven for sheltering in place in the event of wildfire conflagration and evacuation. Appellant Grupp testified that sheltering in place is one of the recommendations included on the “Pre-Attack Fire Plan” in the event of evacuation. The proposed Project would not interfere with planning or response to wildland fire, and the property and proposed winery nominally improve wildland fire response. See also Findings and Decision to Seventh and Eighth Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Ninth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

10. Tenth Ground of Appeal.

Appellant’s Position: Appellant contends that the Planning Commission failed to properly consider the Project’s effect on the health, safety, and welfare of the County in light of testimony from the chief of the Soda Canyon Volunteer Fire Department and a former volunteer of the Department describing the inherent dangers of Soda Canyon Road from a fire safety perspective. They testified that approval of the Project would increase the risk of fire and significantly impact rescue efforts.

Findings and Decision: The Board finds and determines as follows:

The Commission heard and considered testimony from Appellant and neighbors that wildland fires are caused by human activities such as tossed cigarette butts and arson. None of the testimony or incident reports attributed the wildland fires specifically to winery construction, operation or visitors to a winery. No credible evidence was put forward that the addition of another winery along Soda Canyon Road will significantly increase the risk of fire or significantly hinder rescue efforts. Neighbors’ opinion that winery visitors will cause traffic congestion during a fire is not supported by fact. Generalized fears and concerns about a project does not constitute substantial evidence. *Perley v. Board of Supervisors* (1982) 137 CA3d 424. See also Findings and Decision to Third Ground of Appeal.

Soda Canyon Road is a fairly typical hillside public road, and accident history on the road is primarily the result of unsafe driving as opposed to hazardous driving conditions. Traffic volumes on Soda Canyon Road are very low. In the event of a fire that results in mass evacuations from this area, the road has sufficient capacity and roadway width to accommodate all outgoing traffic while allowing incoming fire response units. In addition, most of Foss Valley in the vicinity of the Project site is now planted in vineyard, which significantly reduces the

extent of wildland fire that can occur in the vicinity. During the Atlas Peak Fire in 1981, most of the areas that are now planted in vineyards were undeveloped wildlands, which provided a combustible fuel source. See also Findings and Decision to Seventh, Eighth and Ninth Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Tenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

11. Eleventh Ground of Appeal.

Appellant's Position: Appellant contends that the Planning Commission failed to properly consider the Project's effect on the health, safety, and welfare of the County in light of testimony relating to the naturally and regularly occurring conditions on Soda Canyon Road, including dense fog, flooding, and mudslides, which would be dangerous to potential visitors to the Project. The presence of natural wildlife that inhabit Soda Canyon would be impacted by the Project as would users of Soda Canyon Road, including property owners, walkers, joggers, cyclists, vineyard workers, and the like. The Planning Commission completely ignored these conditions. The additional 44,275 annual car trips on Soda Canyon Road will lead to more accidents, incidents, fire and other public safety issues and expose the County to liability under Government Code Section 835.

Findings and Decision: The Board finds and determines as follows:

The Commission did not ignore the conditions present on Soda Canyon Road. They properly considered the Project's potential to change those existing conditions, and based on the evidence in the record including the opinions of licensed traffic professionals, found the Project would not significantly change traffic volumes or road safety. Appellant's traffic engineer (Smith Engineering) even noted that Soda Canyon Road "carries very light traffic volume." While traffic volumes have increased over the years due to hundreds of acres of new vineyards being planted, more residential estates and several wineries; the road remains at LOS "A" even during p.m. peak periods. The road continues to be rural in character despite changes resulting from increased vehicle and truck traffic. Pedestrians, cyclists and wild animals are a relatively common sight on the road, which indicates that traffic volumes are not at a level to discourage/prevent these activities/occurrences. Adding the Mountain Peak Winery will not significantly change that condition. Peak period winery related traffic results in 11 total trips over the course of the busiest hour (4:30 to 5:30 p.m.) of the busiest day of operation (Friday - harvest). This equates to roughly one trip every five minutes.

The approximately 45,000 annual trips resulting from the Project must be considered within the context of road capacity as it relates to hourly traffic volumes generated by the

Project. Annual vehicle trips are misleading for purposes of understanding actual traffic conditions. By way of example, a typical house generates 10 trips a day, or 3,650 trips a year. With over a 100 residences accessed off Soda Canyon Road this translates into well over 100,000 annual trips, yet the road is free flowing with low traffic volumes. It is undisputed that Soda Canyon Road is deteriorated and in need of improvement, the location of many collisions, and subject to flooding. However, County Traffic Engineer Marshall testified that the road: (1) is not unique in the County maintained road system in that there are many roads which have a similar condition of pavement and infrastructure that need attention; (2) is not one of the highest priority County roads that needs attention in terms of collision rates and collision concentration; and (3) has not had a washout or landslide specifically worse than any other.¹²

Section 835 of the Government Code provides that a public entity may be held liable in certain circumstances for injuries caused by dangerous conditions on public property. However, liability under Section 835 requires a case-by-case analysis of each particular incident and a factual determination of the cause of any particular event. These analyses are not appropriate in the context of consideration of a Use Permit, as any such analysis would require speculation about the cause of future events.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Eleventh Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

12. Twelfth Ground of Appeal.

Appellant's Position: Appellant asserts that the Project violates the intent of the Conservation Regulations, outlined in County Code Section 18.108.010(B)(1) because it does not "[m]inimize cut, fill, earth moving, grading operations and other such man-made effects in the natural terrain" since it allows for the removal of 29,498 cubic yards of loose tunnel spoils to create the 33,424 feet of caves.

Findings and Decision: The Board finds and determines as follows:

The Conservation Regulations do not limit or otherwise restrict the amount of earth movement associated with a project. County Code Section 18.108.010(B), describes the purpose of the Conservation Regulations and provides the basis for the regulatory framework but it does not establish regulatory requirements. County Code Section 18.108.010(B)(1) must be read in context with the other purposes outlined in Section 18.108.010. As with most local regulations, the Conservation Regulations seek to balance competing interests. County Code Section 18.108.010(A) states "...these regulations are intended to ensure the continued long-term viability of county agricultural resources by protecting county lands from excessive soil loss

¹² See Planning Commission Meeting January 4, 2017 Transcript, pgs. 66-71.

which if unprotected could threaten local water quality and quantity and lead ultimately to loss of economic productivity.” This section guides the Planning Commission in balancing the protection of county watersheds against the loss of economic viability.

County Code Section 18.108.010(B) calls out minimizing earth movement “in the natural terrain.” Specific design requirements addressing earth-moving activities are set forth later in Sections 18.108.027, .080, .090, and .100. The Project has been designed in conformance with those design requirements. The design requirements allow earth-moving activities outside of prescribed riparian corridors and steep hillside areas. The Project site contains minimal natural terrain (terrain that contains native plants and landforms), and all earth moving activities will occur outside of those locations. In addition, all earth-moving activities have been designed by a qualified professional engineer, evaluated by qualified professional engineers in the County’s Engineering Division and found to comply with both local and State laws applicable to earth movement, erosion control, and water quality. The Project fully complies with the development standards.

The Project grading plans (Sheet UP4, Bartelt Engineering) indicate that the Project will result in 14,000 cubic yards (or 378,000 cubic feet) of grading for this site work beyond the cave. There is no removal of material from the site. All earthwork will be balanced on-site. These plans also note that cave excavation amounts to 21,070 cubic yards of un-factored material (value reported without shrink/swell/bulking) that results in 29,498 cubic yards of ‘loose’ cave spoils which will be deposited on-site in three dispersal areas. Grading plans show the three dispersal areas and the volume of material to be deposited in each area. Within the 41.76-acre property, a total of 8.9 acres will be disturbed, and virtually all of those 8.9 acres have been previously graded and disturbed for the existing vineyards and residence. Earth disturbance affects less than 25 percent of the subject property and does not impact any remaining natural terrain on-site, and thus is fully consistent with County Code Section 18.108.010(B)(1).

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twelfth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

13. Thirteenth Ground of Appeal.

Appellant’s Position: Appellant contends that the Project violates the intent of the Conservation Regulations, outlined in County Code Section 18.108.010(B)(2) because it does not “[m]inimize soil erosion caused by human modifications to the natural terrain.” The Project will result in the disposal of all cave spoils on-site in locations that are within 260 and 100 feet of two blue line streams that feed directly into Rector Canyon. The cave spoils are likely to runoff into the blue line streams and cause environmental impacts on the watershed.

Findings and Decision: The Board finds and determines as follows:

Bartelt Engineering provided detailed Project specific grading and stormwater pollution prevention plans in the Bartelt Stormwater Plan, which demonstrates how the Project will comply with both local and State water quality pollution prevention requirements. The Bartelt grading plans show the location and full extent of grading activities including its proximity to blue line streams, with the vast majority of grading activity occurring far greater than 260 feet from the streams (actually ranging from as close as 75 feet to greater than 500 feet from streams). The total amount of cave spoils is 29,498 cubic yards (or 798,446 cubic feet). Other site work amounts to 14,000 cubic yards (or 378,000 cubic feet) of earth movement.¹³ These grading plans show both existing and proposed grades, gradient and contours, and indicate that post-construction conditions will direct drainage to on-site retention areas, vegetated swales and other stormwater quality control features designed to minimize sedimentation. These Project plans were evaluated by County Civil Engineers and found to comply with applicable State and local standards. There is no credible evidence or rationale in the record regarding why the erosion control measures would be inadequate.

A mitigated negative declaration [or negative declaration] cannot be attacked successfully, however, on the theory that the conditions will not be enforced; compliance with the conditions will be presumed. When a court reviews a mitigated [or straight] negative declaration, “the focus must be the use as approved, and not the feared or anticipated abuse.”¹⁴ Under this approach, an objective compliance standard, by which development is conditioned on not exceeding specific thresholds of significance, justifies a determination that no significant impacts can occur.¹⁵

The cave spoils will be deposited in three separate areas with the majority of the three sites lying greater than 260 feet from the blue line streams in areas that have been disturbed, are currently planted in vineyard and well outside of mandated creek setbacks. At their closest point, spoils will be deposited 75 feet from one blue line stream, with an existing vineyard road intervening. This road will not be altered as part of the Project. After cave spoils have been deposited and compacted, vines will be replanted, and post-construction vineyard erosion control measures will be implemented, including directing drainage to on-site stormwater retention areas and vegetated swales, applying cover crops, and installing silt traps. These vineyard erosion control measures have been successfully implemented and monitored throughout hillside vineyards in Napa County and effectively limit soil loss. In fact, as mandated by State Law, County stormwater quality control measures have been reviewed and endorsed by the State Regional Water Quality Control Board, with Napa County responsible for implementing National Pollution Discharge Elimination System (NPDES).¹⁶ Conjecture and speculation about

¹³ One cubic yard equals 27 cubic feet: Cubic yards is the standard civil engineering unit of measurement for expressing earth movement quantities, similar to square feet (not square inches) being the architectural unit of measurement for floor area.

¹⁴ *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 CA3d 130, 164.

¹⁵ *Schaeffer Land Trust v. San Jose City Council* (1989) 215 CA3d 612, 625.

¹⁶ The NPDES permit program, created in 1972 by the Clean Water Act (CWA), addresses water pollution by regulating point sources that discharge pollutants to waters of the United States. The permit provides two levels of control: technology-based limits and water quality-based limits. Under the CWA, EPA authorizes the NPDES permit program to state, tribal, and territorial governments, enabling them to perform many of the permitting,

anticipated abuse does not equate to substantial evidence. Appellant failed to articulate how the Project cave spoils would harm the streams and impact the watershed.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

14. Fourteenth Ground of Appeal.

Appellant’s Position: Appellant asserts that the Project violates the intent of the Conservation Regulations, outlined in County Code Section 18.108.010(B)(3) because it does not “[m]aintain and improve, to the extent feasible, existing water quality by regulating the quantity and quality of runoff entering local watercourses.” Depositing cave spoils near blue-line streams is likely to cause erosion and slumping into creeks, which may adversely affect the water quality in Rector Canyon and Rector Reservoir.

Findings and Decision: The Board finds and determines as follows:

The Bartelt Stormwater Plan and engineered plans prepared for the Project were evaluated by County engineers and found compliant with applicable standards. Appellant speculates that placement of cave spoils on-site would result in erosion and slumping of materials into waterways but offer no explanation why this would occur other than assuming it will result because grading will occur in proximity to creeks. However, proximity to a creek, when the Project is outside of local and State stream setbacks, has little to do with its potential to result in significant erosion. Of far greater importance on preventing erosion into creeks is the proper design and implementation of erosion control measures as part of the project. Here, the Project will be implemented in conformance with all applicable State and local erosion control requirements and includes features such as on-site stormwater retention basins, vegetated swales, drainage grade breaks, silt traps, and cover crops that work in concert to slow stormwater runoff and thus reduce the volume of sediment load.

The record contains substantial evidence that the Project complies with County Code Section 18.108.010(B)(3) and will result in improved water quality control over existing conditions. In 2004, NPDES standards were substantially upgraded, resulting in a paradigm shift in both construction and post-construction stormwater control practices. All projects built after 2004 are subject to these far more rigorous requirements. The existing vineyards where cave spoils will be located were installed at some point prior to 1993 on the western side of the

administrative, and enforcement aspects of the NPDES program. In states authorized to implement CWA programs, EPA retains oversight responsibilities. California is one of 46 states and one territory currently authorized to implement the NPDES program, which is administered within California by those local agencies whose local codes and programs have been endorsed by the State, which is the case for Napa County.

property and prior to 2002 on the eastern side (based on aerial photography), and consequently do not comply with current NPDES program requirements. In those areas where cave spoils will be deposited and replanted in vineyards, the resulting improvements will be compliant with the current State-mandated erosion control measures and thus improve water quality and erosion control measures over existing conditions. See also Findings and Decision to Thirteenth Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fourteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

15. Fifteenth Ground of Appeal.

Appellant’s Position: Appellant claims that the Project violates the intent of the Conservation Regulations, outlined in County Code Section 18.108.010(B)(4) because it does not “[p]reserve riparian areas and other natural habitat by controlling development near streams and rivers.” Depositing cave spoils near blue line streams may impact delicate Rector Creek habitat, which supports species of special concern as well as desirable native species indicative of high-quality habitat including the yellow-legged frog, California giant salamander, rough-skinned newt, pipevine swallowtail, pacific chorus frog, and rainbow trout, among others.

Findings and Decision: The Board finds and determines as follows:

The Planning Commission duly considered testimony and written materials presented by Appellant’s biologist (Amber Manfree) and hydrologist (Greg Kamman). Both the biologist and hydrologist established that nearby blue line streams (part of the Rector Creek watershed) contain high-quality native habitat, and habitat for special status species. However, neither the biologist (Manfree) nor hydrologist (Kamman) explained how the construction and operation of this new Winery could potentially impact those nearby sensitive features. Instead, both the biologist and hydrologist focused on the existing vineyard conditions as the source of the alleged dewatering of the creek. Appellant’s experts fail to acknowledge that if the existing vineyards are a source of reduced water for the creeks then any impact the vineyards have caused to the streams occurred both prior to submittal of this use permit application, and most certainly prior to their evaluations of sensitive habitat. An agency need not accept expert opinion that lacks specificity or fails to adequately explain why the project might cause a significant impact.¹⁷

Both the biologist and hydrologist also fail to recognize that the Project, as approved, will reduce groundwater reliance because 2.96 acres of existing vineyard would be removed. The existing +/- three-acre vineyard uses .5 AF/year more groundwater than the new Winery is

¹⁷ *Rominger v County of Colusa* (2014) 229 Cal.App.4th 690 (expert’s opinion that mitigation for odors might be inadequate is too vague to amount to substantial evidence).

projected to use. Since the Project will result in a reduction in groundwater use, it cannot logically have an adverse change in the environment and cannot result in a significant effect on sensitive species.¹⁸ See also Findings and Decision to Thirty-First Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fifteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

16. Sixteenth Ground of Appeal.

Appellant's Position: Appellant claims that the Project violates the intent of the Conservation Regulations, outlined in County Code Section 18.108.010(B)(5) because it does not "[e]ncourage development which minimizes impacts on existing land forms, avoids steep slopes, and preserves existing vegetation and unique geological features." The Project would do exactly the opposite. It is going to change the entire surface and configuration of the Property by removing virtually every form of vegetation during the construction phase.

Findings and Decision: The Board finds and determines as follows:

The Project has been designed to minimize impacts on existing natural landforms, avoid steep slopes, and preserve existing vegetation. There are no unique geologic features on the property, and the sensitive creek corridor located on the subject property will not be altered as part of the Project. The majority of the Project will be located in a cave and constructed in previously disturbed areas. The winery development coverage amounts to just 5.3 percent of the entire 41.76 acre site.

Some existing vineyards, the residence and residential access driveway will be removed and re-contoured to accept cave spoils and provide mounding to reduce neighbor views into the Mountain Peak Winery site. This type of grading is common on winery projects throughout Napa County and would not substantially alter the overall existing land forms, especially since the landforms involved were all previously modified under the original development scheme. There are no steep slopes on the Project site (30 percent or greater pursuant to County Code Section 18.108.060). Slopes average between two and 15 percent on the site. Existing native vegetation on-site consists of the stream corridor northeast of the Project and several mature oak trees within the Project site adjacent to the existing residence that will be the location of the future tasting room. The Project has been designed to maintain and incorporate all but two

¹⁸ *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 CA3d 1337, 1358 (impacts of project not cumulatively considerable when no substantial evidence that any incremental impacts of project are potentially significant); *Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150 CA3d 740, 750 (county need not consider cumulative effects of other dairies when it determined that dairy in question would have no significant effect).

existing oak trees and avoid the stream corridors entirely and is consistent with Section 18.108.010(B)(5).

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Sixteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

17. Seventeenth Ground of Appeal.

Appellant’s Position: Appellant asserts that the Project violates the intent of the Conservation Regulations, outlined in County Code Section 18.108.010(B)(6) because it does not “[p]rotect drinking water supply reservoirs in sensitive domestic water supply drainages from sediment, turbidity, and pollution.” It increases the likelihood that movement of 1,000,000 cubic feet to within 300 feet of the blue line stream will contaminate the Rector Reservoir, which is the primary domestic water supply for the Veterans Home and the City of Yountville. The Project might expose the County to liability for costs to replace the filtration system in the Rector Reservoir dam due to damages from sedimentation.

Findings and Decision: The Board finds and determines as follows:

The Project complies with local and State requirements to protect water courses, including sensitive domestic water supplies. Speculation that cave spoils will contaminate Rector Reservoir is not supported by evidence in the record. See also Findings and Decision to Thirteenth, Fourteenth and Fifteenth Grounds of Appeal.

An analysis of the County’s general liability is complex and speculative outside the context of a concrete injury, and the County is expressly immune from liability for injuries caused by the approval of the Project. Section 818.4 of the Government Code states that “a public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of...any permit, license, certificate, approval, order, or similar authorization...”

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Seventeenth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

18. Eighteenth Ground of Appeal.

Appellant's Position: Appellant claims that the Project violates the spirit and intent of the Winery Definition Ordinance (WDO), as expressed in Napa County Resolution No. 2010-48, Exhibit A, Section III, which is entitled "The Appropriate Intensity of Marketing Programs." The WDO and zoning regulations require the County to consider the remoteness of the location and the amount of wine to be produced at a facility when reviewing use permit proposals containing marketing and visitation components. The County's comparative analysis does not properly consider the fact that Soda Canyon Road is a dead-end, County-maintained road. An appropriate comparative analysis would limit the comparable wineries to those on Atlas Peak Road or on Soda Canyon Road. Appropriate production levels for the Mountain Peak Winery should be between 12,000 and 30,000 gallons and visitation should be substantially limited.

Findings and Decision: The Board finds and determines as follows:

Resolution No. 2010-48 provides guidance on the appropriate intensity of marketing programs associated with wineries in agriculturally zoned areas. It does not address wine production or visitation levels. It describes examples of acceptable and unacceptable forms of marketing events, and states that operational and location factors should be considered when setting marketing limits. The Planning Commission's final approval was based on a significantly downsized Project that included reduced marketing events from 78 to three events, and reduced visitation numbers from 80 daily to 60 maximum daily and 275 maximum weekly.

Appellant acknowledges Atlas Peak Road as a road similar in character to Soda Canyon Road and suggest that wine production levels should be limited to 12,000 to 30,000 gallons of annual production with substantially reduced visitation based on wineries of that size located off of those roads. The Planning Commission considered these same points during the hearings. The Commission also considered testimony from the Applicant regarding larger wineries in similar settings, including the Antica Winery at 450,000 gallons of annual production which is located on Soda Canyon Road beyond the subject Project site. Soda Canyon Road is not an atypical hillside roadway. There are 12 similar dead-end public roads with winery, residential and vineyard uses (Partrick Road, Redwood Road, Lokoya Road, Atlas Peak, Diamond Mountain Road, Lovall Valley, Langtry Road, Summit Lake Drive, Conn Valley Road, Greenfield Road, Wild Horse Valley Road, Green Valley Road.) In addition, there are numerous private hillside roads (Auberge Road, Hennessey Ridge Road, Pritchard Hill Road, upper Whitehall Lane, Long Ranch Road, etc.) that serve wineries, vineyards and residences, and which generally have narrower road widths (14 feet to 20 feet) and maximum grades up to 20 percent.¹⁹ It is not uncommon for the Planning Commission to hear winery use permits accessed from dead-end hillside roads, and such wineries approved by the Planning Commission over the last three decades have functioned without significant impact or hazard to the properties that share access along those roadways.

¹⁹ The County Road and Street Standards changed in 2016 reducing maximum grade from 20 percent to 16 percent.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Eighteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

19. Nineteenth Ground of Appeal.

Appellant's Position: Appellant claims that despite Applicant's assertions to the contrary, 92 percent of the grapes used for its 100,000 gallon production level cannot be grown and harvested on-site. Since the use permit runs with the land, Applicant's reliance on other, off-site non-contiguous parcels under Applicant's ownership is inappropriate because of the severe access constraints.

Findings and Decision: The Board finds and determines as follows:

The WDO does not require wineries to source grapes from on-site. There is no requirement that vineyards must actually be located on the subject property that is seeking a winery use permit. Most properties with wineries do not contain sufficient vineyard acreage to fully support the extent of wine production, and it is common for the Planning Commission to see proposals similar to Mountain Peak Winery where fruit is sourced from other Napa County properties. The WDO simply requires that 75 percent of the grapes used to make the wine produced at the winery be sourced from vineyards located within Napa County.

During the Commission hearings, Appellant questioned Applicant's ability to produce five tons per acre on-site and from its nearby vineyards on upper Soda Canyon Road and Applicant's representation that the on-site and nearby vineyards would account for 92 percent of the Winery's production. Appellant Arger testified that they are lucky to get three tons per acre from their vineyard properties on Soda Canyon Road. The Applicant and the vineyard manager for Mountain Peak, Garrett Buckland, of Premier Viticultural Services, testified that the Project site and nearby property controlled by the Applicant would produce up to 92 percent of the grapes required to make the requested 100,000 gallons of annual wine production. Planning staff noted in the Staff Report from July 20, 2016 that the 112 planted acres on these parcels would produce approximately 71,680 gallons assuming vineyards yielded four tons of grapes per planted acre, which is roughly proportional to meeting the 75 percent rule assuming the winery reaches 100,000 gallons of annual production. Vineyard manager Buckland, who has been managing the property since 2012, testified that because of the higher yielding white grape varieties planted on-site, the soil conditions that in some cases mimic what would be found on the Valley Floor instead of a hillside parcel, and their wine making production methods, on average they get five tons per acre and sometimes even more depending on the varietal. Vineyard manager Buckland further testified that this tonnage is consistent with what the prior property owner was obtaining and is consistent with historical records.²⁰

²⁰ See Planning Commission Meeting July 20, 2016 Transcript pgs. 170- 174.

Planning Commissioners considered all testimony on wine production levels and ultimately supported the level proposed by Applicant. As is typical of virtually all winery use permit approvals, the Project is not required to source fruit from these vineyards but to simply comply with the 75 percent rule. (See Updated COA No. 4.6.) While Appellant claimed that sourcing fruit from other off-site locations is inappropriate due to severe access constraints, the Planning Commission disagreed. Presently, large trucks routinely access dozens of vineyard properties on Soda Canyon Road in the vicinity of the Project site and beyond. There is a 450,000 gallon per year winery (Antica Winery) located .5 miles beyond the Project near the end of Soda Canyon Road that has used large trucks since 1987.

At the Appeal hearing, Applicant voluntarily offered a condition of approval on the Project that would require at least 75% of the grapes used to make the Winery's wine, would be sourced from grapes grown on the Property and/or the separate non-contiguous parcels owned by the Applicant. The Board accepted Applicant's commitment in concept and directed Staff to draft a new condition of approval reflective of the Board's intent. Updated COA No. 4.20 (h) reflects the Applicant's commitment to source at least 75% of the grapes from parcels in the vicinity of Mountain Peak Winery. Like all other use permit conditions of approval, once adopted the conditions run with the land and are binding on all subsequent owners of the Winery.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Nineteenth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

20. Twentieth Ground of Appeal.

Appellant's Position: Appellant claims that the Project is inconsistent with the WDO and specifically County Code Section 18.104.200 which limits the maximum square footage of accessory use structures to 40 percent. Here the 36.1 percent accessory to production ratio is likely inaccurate because the accessory uses currently proposed could far exceed 40 percent. Appellant notes that just 1,500 square feet of additional accessory use would put the Project over the threshold and there are additional outdoor tasting areas that may not be properly considered in the ratio, which may put the Project over the 40 percent threshold.

Findings and Decision: The Board finds and determines as follows:

Since adoption of the WDO, the County's practice has been that outdoor areas used for visitation and/or tasting are not counted in the calculation of accessory use area to wine production space. In 2015 and 2016 this very topic was re-evaluated in depth by the Agricultural Preservation Advisory Committee, and then duly considered by both the Planning Commission

and Board resulting in the Board of Supervisors confirming the long-standing County practice of excluding outdoor visitation areas in the accessory to production calculation.

The Project complies with the WDO and County Code Section 18.104.200 as proposed and as approved. All appropriate accessory areas were considered in making the calculation. The accessory to production ratio has been determined to be 36.1 percent which does not exceed the amount of accessory use space allowed by code. Outdoor areas, which by definition are not “structures,” are not considered within the accessory to production calculation.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twentieth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

21. Twenty-First Ground of Appeal.

Appellant’s Position: Appellant asserts that the Project is inconsistent with the General Plan specifically, Policies AG/LU-13 and AG/LU-2 because the primary objective of the Project is not to support agriculture. The primary objective of the Project is to support a large scale, direct-to-consumer marketing program. The Project is entirely reliant on tourism and without the marketing and visitation component, the Project would not be sustainable.

Findings and Decision: The Board finds and determines as follows:

The Mountain Peak Winery will provide a production facility where approximately 112 acres of vineyard owned or controlled by Applicant can be crushed which clearly supports agriculture. The Planning Commission considered the scale and scope of the visitation and marketing plan, which has only three marketing events and a maximum of 60 visitors on the busiest day and a cap of 275 per week. The Applicant provided substantial background into their wine making objectives as well as need for a visitation and marketing program to support those wine making activities. The visitation and marketing program is clearly ancillary and subordinate to the approved maximum 100,000 gallons of annual wine production, as required by the WDO.

In addition, comparing wine production to visitation levels puts the ancillary nature of the visitation program into even better context. One hundred thousand gallons of annual wine production equates to 42,735 cases or 512,820 bottles of wine. Maximum hospitality levels of 275 visitors per week and three marketing events equates to an absolute maximum of 14,575 total visitors annually (assuming visitation remains at maximum levels throughout the entire year, rain or shine). This would equate to 35 bottles of wine for each visitor to the Mountain Peak Winery assuming maximum production and maximum visitation occurs. Clearly, this

winery will need to sell its product beyond those who come to the winery and it is not entirely reliant on tourism to be viable.

The Planning Commission gave thoughtful consideration to the Applicant's Project objectives and rationale supporting those objectives. The Applicant wishes to produce wine primarily from the on-site and nearby contracted vineyards, with a combined total of 112 planted acres. The Applicant requested by-prior-appointment visitation and a marketing program to showcase the wines made at the facility. These activities are clearly allowable under the long-established WDO and consistent with dozens of other new winery applications the County has approved and that have proven sustainable in the market. The Project is quite similar, in terms of wine sales objectives, to most other new winery projects the Commission has heard over the last several years, featuring a direct-to-consumer element and focusing on high-end wine production. Appellant's claim that the winery is not sustainable in the market is unsubstantiated.

Further, at the May 17, 2017 Board of Supervisors hearing, Applicant voluntarily proposed that Project include a condition of approval requiring at least 75% of the winery's fruit to be sourced from grapes on Soda Canyon Road in the vicinity of the subject property, and is reflected in Updated COA 4.20 (h).

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-First Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

22. Twenty-Second Ground of Appeal.

Appellant's Position: Appellant asserts that the Project is inconsistent with the General Plan specifically, Policy AG/LU-20, which requires that the AWOS designation preserve land for agriculturally oriented uses, not urban uses. The Project is an urban development in the remote and rural reaches of Atlas Peak.

Findings and Decision: The Board finds and determines as follows:

Since adoption of the WDO in 1990, the County has defined wineries as an agricultural land use, and although wineries may be allowed in urban areas, they are expressly not an urban use. Wineries are considered an agricultural land use, and permissible in agricultural areas, because they are a necessary component to facilitating the conversion of grapes (a crop) into wine (an agricultural product). The WDO contains a complex set of strict development constraints to ensure that wine production from crops grown in Napa County is the primary land use occurring at a winery (also known as "production"). Visitation and marketing activities are limited and highly regulated (especially in comparison to other businesses) to ensure that these activities remain clearly subordinate and ancillary to the production of wine. These activities are

scrutinized by the Commission on a case-by-case basis to ensure that they remain secondary to the primary use of producing wine. In addition, only the wines made at the facility can be sold from the facility, and marketing activities must contain a component featuring the wines made at the facility. Winery use permits, such as Mountain Peak Winery, have strict limitations placed on the number of visitors and marketing events, and the amount of winery development area dedicated to accessory (non-production) space. See also Findings and Decision to Nineteenth, Twentieth and Twenty-First Grounds of Appeal and Updated COA Nos. 4.1 through 4.3.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Second Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

23. Twenty-Third Ground of Appeal.

Appellant's Position: Appellant claims that the Project is inconsistent with the General Plan specifically, Goal CIR-2, which requires the provision of safe and efficient movement on well-maintained roads. With its 44,275 annual car trips, the Project will not provide for safe and efficient movement on well-maintained roads, but will exacerbate existing dangerous conditions.

Findings and Decision: The Board finds and determines as follows:

Appellant overstates the number of annual vehicle trips associated with the Project by basing the purported annual volume off of the original Project description with 78 marketing events and 80 maximum visitors daily. The approved Project reduced visitation by at least 25 percent which would have a corresponding reduction in vehicle trips. Even assuming arguendo that Appellant's total is correct, 44,275 annual trips equates to roughly 121 daily trips or about 11 trips per hour over a 12 hour day. This volume of trips would not be an impediment to the safe and efficient movement of vehicles on Soda Canyon Road, which functions at a high level of service due to very low traffic volumes.

Pavement quality on Soda Canyon Road is degraded in some areas but not dysfunctional. County Road Engineer Marshall testified that Soda Canyon Road is not unique in terms of the condition of its pavement and that there are many County-maintained roads in similar condition.²¹ The Applicant is not responsible for maintaining County roads, and the existence of degraded pavement quality on portions of a public road is not sufficient justification to deny approval of a new winery.

Road maintenance, including resurfacing, is prioritized by the Department of Public Works under the general direction of the Board of Supervisors. The majority of funds available for resurfacing are focused on those roads with the highest traffic volumes. Since Soda Canyon

²¹ See Planning Commission Meeting January 4, 2017, Transcript 66:21-28.

Road carries a very low volume of traffic compared to roads such as Silverado Trail or Tubbs Lane, the County has given Soda Canyon Road a lower priority for resurfacing. The County however continues to maintain the roadway surface in a functioning state, including repair of storm damage and patching pavement failures and continues to seek funds such as Measure T to make road repairs. The addition of a new winery to the approximately 250 properties and existing land uses accessed off of Soda Canyon Road will not result in a discernible increase in the degradation of pavement caused by vehicle and truck use. See also Findings and Decision to the Third and Fifth Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Third Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

24. Twenty-Fourth Ground of Appeal.

Appellant's Position: Appellant contends that the Project is inconsistent with the General Plan specifically, Policy CIR-5, which requires the preservation of the rural character of county roads. The Project's additional 44,275 car trips will effectively urbanize a rural community.

Findings and Decision: The Board finds and determines as follows:

Circulation Element Policy CIR-5 reads in full as follows: "Roadways outside of urbanized areas of the county shall reflect the rural character of the county." The Project does not conflict with this policy. Soda Canyon Road is a rural road and the rural character of that road will not be altered as a result of the Project. No changes to the road are proposed except where the Project driveways are located. No road widening or left turn construction is warranted. The road presently functions in a free flowing state with low traffic volumes at LOS A. New vehicle trips on the roadway resulting from the Project would not change the LOS for the roadway segment or at the intersection of Soda Canyon Road and Silverado Trail. See also Findings and Decision to the Second, Fifth and Twenty-Fifth Grounds of Appeal.

Policy CIR-5 applies to all roadways outside of urbanized areas, including Silverado Trail, Petrified Forest Road, Monticello Road, etc. These arterial roads, which are also rural roads, carry tens of thousands of vehicles daily and provide access to numerous wineries, vineyards, residences and other land uses including to the cities of Napa County. Adding a winery with visitation near the end of Soda Canyon Road will not urbanize the road. Wineries have been implemented off of Soda Canyon Road and virtually all other rural hillside public roadways within Napa County without changing the rural character of the roadways. See also Findings and Decision to the Third, Twenty-Third and Twenty-Fifth Grounds of Appeal

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Fourth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

25. Twenty-Fifth Ground of Appeal.

Appellant's Position: Appellant asserts that the Project is inconsistent with the General Plan specifically, Policy CIR-16, which requires the County to "seek to maintain an arterial Level of Service of D or better on all county roadways." Appellant submitted a traffic peer review entitled "Smith Engineering Peer Review dated July 18, 2016" (the Smith Peer Review) that concludes the Level of Service rating for Soda Canyon Road at Silverado Trail is "somewhere between Level of Service E and F" without the additional 44,275 annual car trips resulting from the Project.

Findings and Decision: The Board finds and determines as follows:

Presently, in pre-project conditions, portions of the intersection of Soda Canyon Road and Silverado Trail operates during the weekday p.m. peak hour at the threshold between LOS E and F, and segments of Silverado Trail (one of two major arterial north/south arterial roads) operates at LOS E and F in the p.m. peak hour. With the addition of Project generated traffic, this intersection and Silverado Trail will continue to operate at the same levels of service. Contrary to Appellant's assertion, the Crane Traffic Study did evaluate the level of service both with and without the Project. (See Crane Traffic Study, pgs. 11-21.)

Policy CIR-16 directs that LOS D or better shall be maintained, "...except where maintaining this desired level of service would require the installation of more travel lanes...", and seeks to maintain LOS D at intersections "...except where levels of service already exceed this standard...and where increased intersection capacity is not feasible without substantial additional right-of-way." When considering the policy in its entirety, it can be seen with certainty that the Project does not conflict with the policy. The policy directs that LOS D be maintained, except when traffic volumes already exceed LOS D, then LOS E and F are acceptable if major widening would be necessary to improve levels of service. When the County adopted the 2008 General Plan Update, a conscious decision was made not to widen most roads in Napa County largely in response to regional traffic growth and in order to maintain the rural character of the County. As such, in reviewing new projects, the policy directs that LOS D or better should be maintained, but it does not mandate disapproval of a project where LOS D is already exceeded, as in this Project. See also Findings and Decision to the Third, Fifth and Twenty-Sixth Grounds of Appeal

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Fifth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

26. Twenty-Sixth Ground of Appeal.

Appellant's Position: Appellant claims that the Project is inconsistent with the General Plan specifically, Policy CIR-19, which requires the County to ensure that new discretionary projects mitigate project impacts on traffic and pay their fair share of countywide cumulative traffic improvements. The County did not require any condition that the Applicant pay their fair share of countywide cumulative traffic improvements.

Findings and Decision: The Board finds and determines as follows:

Circulation Element Policy CIR-19 reads in full as follows: "Applicants proposing new discretionary development projects with the potential to significantly affect traffic operations shall be required to prepare a traffic analysis prior to consideration of their project by the County and shall be required to mitigate project impacts and to pay their fair share of countywide cumulative traffic improvements based on their contribution to the need for these improvements."

Per the policy, applicants are only required to mitigate project impacts and pay their fair share if their project generates a significant impact. Per the Crane Traffic Study (which was peer reviewed by County Traffic Engineer Marshall), this Project was not found to have the potential to significantly affect traffic operations. Traffic from the Project would not cause the level of service to change at any of the affected roadways in the vicinity, including at Silverado Trail, 6.1 miles from the Project site. Also, the Project was found to have a less-than-significant contribution toward cumulative traffic impacts, contributing less than one percent to the volume of the intersection of Silverado Trail and Soda Canyon Road during p.m. peak hour conditions. The Project therefore resulted in no significant traffic impact, and thus there are no Project impacts or fair share contributions "to mitigate" as mandated by the policy.

CEQA confers no independent grant of authority to impose mitigation measures on a project. When imposing measures to mitigate a project's significant environmental effects, a public agency may exercise only powers provided by legal authority independent of CEQA.²² Such limitations include constitutional limitations applicable to any exaction or condition of approval.²³ A public agency must show that a "reasonable relationship" or "nexus" exists between the project's impacts and an exaction, fee, or condition imposed by the agency as

²² Public Resources Code Section 21004.

²³ 14 Cal Code Regs Sections 15041(a), 15126.4(a)(4).

mitigation.²⁴ Thus, any condition or mitigation measure requires a determination that the project will have a substantial impact and that the mitigation measure is reasonably related to that impact. Since there was no substantial evidence identifying a significant traffic impact, the County lacks a legal basis upon which to impose traffic mitigation on the Project.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Sixth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

27. Twenty-Seventh Ground of Appeal.

Appellant's Position: Appellant asserts that Project is inconsistent with the General Plan specifically, Goal CC-4, which requires the preservation of "Napa County's irreplaceable cultural and historic resources for present and future generations to appreciate and enjoy." The Project site is located on or near areas of Foss Valley that served as summer grounds for the Wappo Indians and the Project's excavation plans could uncover archaeological remains or potentially destroy historic resources.

Findings and Decision: The Board finds and determines as follows:

The Project site was evaluated for its potential to impact cultural and historical resources in the IS/ND. The County's GIS contains detailed mapping of known cultural resource sites based on data from Sonoma State's Northwest Information Center (NWIC), which maintains a database of all known cultural resource sites in the region. State law mandates that these sites be kept confidential and to protect the sites, their locations can only be described in general terms relative to the subject Project. There are several cultural resource sites in Foss Valley. However, these sites are located on lightly sloping terrain generally in close proximity to creeks, as is typical for many village/camping spots, which is inconsistent with the terrain where this winery Project will be constructed. The nearest mapped site is approximately 0.5 miles from the subject Project and located along a creek.

The Mountain Peak Winery will be located on sloped terrain that has been highly modified in recent years by the installation of vineyards and construction of the existing single family home. There are no rock outcroppings or other significant land features where the winery will be constructed. The Project site is not in an area that typically would be a location for cultural resources, which was confirmed by the tribal representative for the Yocha Dehe Nation.

²⁴ *Nollan v. California Coastal Comm'n* (1987) 483 US 825, 107 S Ct 3141; *See also, Rohn v. City of Visalia* (1989) 214 CA3d 1463 (condition of site plan approval and building permit requiring that portion of property be dedicated to city for street widening project was invalid under substantial relationship test because project would not increase traffic).

In compliance with State Law,²⁵ the County conducted tribal consultation with the three Native American Tribes traditionally and culturally affiliated with Napa County including Yocha Dehe, Mishewal Wappo, and Middletown Rancheria. Two of the tribes declined to comment, and consultation only occurred with Yocha Dehe Tribe.

Furthermore, the Project has been conditioned to cease construction activities and to conduct an archaeological investigation in the unlikely event archaeological resources are encountered. This is a standard condition of approval applied to all projects located outside of culturally significant areas. (See Updated COA No. 7.2.) See also Findings and Decision to Forty-Second Ground of Appeal

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Seventh Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

28. Twenty-Eighth Ground of Appeal.

Appellant's Position: Appellant claims that the Project is inconsistent with the General Plan specifically, Policy CC-31, which requires the County to consider the integral part that nighttime darkness plays in the County's rural areas. The Project will cause substantial light to emanate from the outdoor crush pad and the nighttime events lasting until 10 p.m. that are planned to occur on the site.

Findings and Decision: The Board finds and determines as follows:

The Commission properly found that the Project would not result in any significant effects on nighttime darkness in the region. The Planning Commission imposed a condition of approval requiring that Project lighting be shielded, directed downward and the minimum necessary for security and operations. Lighting must include timers, motion detectors and be placed in a manner so as not to cause light spillage or glare onto adjoining properties. Flood lighting and high pressure sodium lighting is prohibited, and would be inconsistent with the Applicant's green building objectives. (See Updated COA No. 6.3.)

Within these parameters, during harvest (generally a six week period of time annually) the covered (and enclosed on three sides) outdoor crush pad will likely be used during night time hours. Light emanating from these activities will not cause light and glare spillage onto adjoining properties. Residences on neighboring properties are located more than 500 feet from the above-ground winery improvements. The combination of distance, topography and vegetation will substantially reduce visibility of the above-ground winery features from neighboring residences. The partially enclosed outdoor work area and crush pad are located on

²⁵ Public Resources Code Section 21080.3.1.

the southern portion of the property and face west such that it will not be in direct line-of-sight to any residences which are located north, east and southeast of the subject property.

Furthermore, the Project approved by the Planning Commission, allows only three events a year, which may occur at night or during the day. Commissioners expressed some concern about the potential number of nighttime events originally proposed (78), and the Applicant reduced those events to be responsive to neighbors' concerns. For all these reasons, the Commission appropriately found the Project consistent with Community Character Policy CC-31.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Eighth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

29. Twenty-Ninth Ground of Appeal.

Appellant's Position: Appellant claims that the Project is inconsistent with the General Plan specifically, Goals CC-7 and CC-8, as well as Policies CC-35 through CC-50, which set forth noise standards in the designated area of the Project. Appellant identifies the outdoor production facilities, nighttime marketing events, and regular tours and tastings as sources of substantial noise. Appellant claims these noise impacts violate the noise standards set forth in the General Plan and County Code Chapter 8.16, et seq.

Findings and Decision: The Board finds and determines as follows:

The Planning Commission found that the Project as designed and conditioned is consistent with both General Plan and County Code noise standards. All aspects of noise generation from the Project were evaluated by Illingworth and Rodkin, a qualified acoustical engineering firm. The noise study entitled "Mountain Peak Winery, Environmental Noise Assessment, Illingworth & Rodkin, Inc. dated September 23, 2015" (the I&R Noise Study) showed that the Project will comply with County noise standards. According to the I&R Noise Study, the Project, as originally proposed, was close to (but did not exceed) noise thresholds for evening outdoor events and truck noise related to wine production. Evening outdoor noise concerns were virtually eliminated as a result of the Project being downsized by the Applicant from 78 events to just 3. Truck noise, which was one dB below noise thresholds (Appellant's noise expert concurred that it was below the threshold) and appropriately found to be a less-than-significant impact, is subject to a Project specific condition requiring re-evaluation of truck noise after the Project has been implemented to ensure that noise levels remain below the standard. (See Updated COA Nos. 4.20 (a) and 6.6.)

Appellant's noise expert's (Wilson Ihrig) opinion was based on the originally proposed Project which had 78 marketing events that would primarily occur in the evening up to as late as 10 p.m. Based on that number of events, Appellant's noise expert opined that "...special event noise will cause substantial periodic increases in noise levels above the ambient noise levels..." and concludes that this change results in a significant noise impact. This opinion is not disputed by Staff. Seventy-eight evening events annually, or roughly six per month, may have the potential to change the character of the neighborhood due the frequency of occurrences. However, the Planning Commission approved only three annual events not 78. The three events, two at 75 visitors and one at 150 visitors, would occur infrequently and not result in periodic increases in ambient noise levels, especially considering the events, if outside, are projected by both Appellant's and Applicant's noise experts not to exceed the 50 dB noise level standard. The Project would not exceed the County's noise thresholds and has been conditioned to ensure that noise levels remain below the threshold once the Project has been implemented. See also Findings and Decision to the Thirty-Ninth Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twenty-Ninth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

30. Thirtieth Ground of Appeal.

Appellant's Position: Appellant asserts that the Project is inconsistent with the General Plan specifically, Goals CON-1, CON-2, CON-3, and CON-4, and Policies CON-10, CON-16, CON-19, and CON-22. These conservation goals and policies require the County to preserve natural habitats for biological resources. The Project violates the goals and policies by threatening two blue-line streams that feed Rector Creek and Rector Canyon, home to an incredibly diverse habitat containing special status species. Appellant claims the record does not contain any evidence that an analysis of the impacts of the Project on biological resources was performed. Appellant points to Applicant's Stormwater Control Plan, which Appellant asserts admits that erosion into at least one of the blue-line streams will occur during large storm events.

Findings and Decision: The Board finds and determines as follows:

The Project's potential to impact biological resources was evaluated in the IS/ND and it was determined that the Project, as designed and conditioned would not result in a significant impact to special status species. Potential impacts to biological resources are evaluated on pages 2 (Setting), 7-9 (Biological Resources), 14-17 (Hydrology and Water Quality), and 26 (Mandatory Findings of Significance) of the IS/ND. Project conditions of approval related to the environment are Updated COA Nos. 4.18 (a), 4.20 (b)-(g), 6.1 (a), 6.2 (a), 6.4, 6.10, 7.1(a) - (d), 9.4, 9.6, 9.7, and most notably the July 1, 2016 Engineering Services Memo addressing grading and erosion control. Conclusions in the IS/ND were supported by the Napa County GIS which

contains detailed information on the location of special status species habitat and sensitive biotic communities, including baseline data used to prepare the Napa County General Plan EIR, past project specific special status species studies in the vicinity, and contains State and Federal special status species data including the California Natural Diversity Database. The Project site is already developed with a vineyard and residence, and is located outside of mapped areas of known sensitive biotic communities. Although there is a stream running through the subject property, no Project improvements will occur within that stream corridor or the County mandated stream setbacks. Project activities will occur at least 75 feet from the stream corridor in accordance with County setback requirements. Additionally, the Project has been designed to retain the majority of the on-site vegetation including oak woodlands.

Appellant's biological analysis demonstrates the nearest sensitive habitat is located outside of the Project boundaries within Rector Creek down to Rector Reservoir approximately ranging from 500 feet to two miles from the Project site. (See Amber Manfree, PH.D. et al, presentation and October 11, 2016 letter.)²⁶ Appellant's assertion that the Project will cause significant impacts to this off-site habitat is based on an unsupported assumption that Project grading and Project water use will significantly impact the off-site sensitive habitat. This assumption fails to acknowledge that: (1) the Project is designed to comply with local and State erosion control standards; and (2) groundwater use will in fact be reduced over existing conditions due to the Project's removal of vineyards which is a higher water user than the resultant winery Project. Since groundwater is being reduced over existing conditions there can be no resulting adverse impact. See also Findings and Decision to the Fifteenth Ground of Appeal.

County General Plan Policy CON-48 requires that projects implement project specific sediment and erosion control measures and/or stormwater pollution prevention plans that maintain pre-development sediment erosion conditions. Here, the Project will actually improve (rather than simply maintain) on-site erosion control measures over existing conditions. Although the existing vineyards contain erosion controlling design features, the future winery site and replanted vineyards (over cave spoils) will feature erosion control measures meeting current, more stringent Regional Water Quality Control Board (RWQCB) water quality standards. During construction, the Project will be subjected to mandatory periodic inspections, and water quality sampling is mandatory during any storm event. These inspections and sampling do not occur in the current setting.

In post-construction conditions, the Project will continue to be monitored as a "regulated project site" under the RWQCB program administered by the County's Conservation and Engineering Division. This program ensures that post-construction erosion control measures remain in place and function as planned. This is also an improvement over the existing non-regulated conditions. The permittee is obligated to comply with RWQCB standards, and by complying with the standards, the Project would not to have a potentially significant increase in erosion. Stormwater control regulations do not prevent all erosion. Erosion is a process that occurs naturally within the environment. The purpose behind the NPDES program, as

²⁶ Presentation on Rector Creek and Reservoir made by Amber Manfree, PH.D and 17 page biological assessment authored by Teejay O'Rear, M.S., Amber Manfree, PH.D., Rob Gailey, P.G., C.H.D., Robert Katy, PH.D., and Peter Moyle.

administered by RWQCB and the County, is to attenuate stormwater runoff to ensure that development does not cause changes in hydrology and water quality that result in habitat modification and loss, increased flooding, decreased aquatic biological diversity, and increased sedimentation and erosion. (See also Updated COA No. 7.1 (a)-(d).)

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirtieth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

31. Thirty-First Ground of Appeal.

Appellant's Position: Appellant asserts that the Project is inconsistent with the General Plan specifically, Policy CON-41, which requires the County to protect Napa County's watersheds and public and private water reservoirs to ensure clean drinking water, support ecosystems, and preserve agricultural water supply. The Project is likely to violate this policy due to the likely effect on the quality of two blue-line streams that feed into Rector Creek and Rector Canyon due to the location of the nearly one million cubic feet of cave spoils. The Project will likely have a significant effect on the water supply for surrounding vineyards and agriculture based on the production allowance of 100,000 gallons of wine.

Findings and Decision: The Board finds and determines as follows:

The Project has been designed to comply with Conservation Policy CON-41 and the associated implementing regulations of the County Code. General Plan Policy CON-41 and County Code Section 18.108.027 requires the protection of sensitive domestic water reservoirs/supplies. Notable requirements are the preservation of 60 percent of the tree canopy and understory, and 40 percent of the shrub and brush communities within municipal drainage basins, and a shortened summer construction period to ensure construction is not occurring during the rainy season. No natural vegetation/terrain within the basin will be lost as a result of the Project, because all earth moving activities will occur in areas where the natural vegetation was previously removed. As a result, the Project is compliant with General Plan Policy CON-41 and County Code Section 18.108.027 resulting in no change in the natural terrain preservation requirements from what presently exists.

In addition, the Project will not have a significant effect on the water supply of surrounding vineyards and agriculture. Even at 100,000 gallons of annual production, the Project will utilize less water than the existing vines that must be removed to make way for the Project. Presently, those vines have an annual water demand of 2.1 AF/year. The Mountain Peak Winery, inclusive of wine production, visitation and marketing (including domestic water use for employees) will have an annual net water demand of 1.6 AF/year, which is a .5 AF/year reduction. The Project features a recycled water system for winery process waste to be recycled

for subsequent vineyard irrigation. As a result, virtually all groundwater extracted for the wine making process is treated and stored for later vineyard irrigation use. Domestic water use for visitors and employees is not recycled but in theory also returns to the ground in a traditional septic system. The recycled water system reuses 1.84 AF/year of the 3.44 AF/year of the total winery water use, thus resulting in a net annual groundwater extraction rate of 1.6 AF/year.²⁷ Further, the Applicant is obligated to monitor the amount of groundwater used at the winery so as not to exceed 3.44 AF/year. (See Updated COA No. 4.20(b)-(g).)

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-First Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

32. Thirty-Second Ground of Appeal.

Appellant's Position: Appellant claims that the Project is inconsistent with the General Plan specifically, Policy CON-55, which requires the County to consider the effects on existing water uses of any new water uses associated with discretionary projects. Appellant provided a peer review report entitled "Review of Initial Study and Negative Declaration Mountain Peak Winery: Use Permit #P13-00320-UP Kamman Hydrology & Engineering, Inc., dated October 11, 2016" (the Kamman Peer Review) which concluded that the Project "has potential to significantly impact: local groundwater levels and supply; groundwater conditions that sustain a neighboring spring-fed pond; spring/seep flows that sustain creek flow and pool habitat in an adjacent channel; water quality; and biological resources."

Findings and Decision: The Board finds and determines as follows:

The Kamman Peer Review fails to draw a distinction between existing conditions and proposed conditions. Specifically, it fails to account for the reduced groundwater demand resulting from the removal of approximately three acres of vineyards in order to accommodate the Winery. The new Winery uses .5 AF/year less water than what the existing vines (that will be removed) use. Therefore, the Project will use less not more groundwater than what currently exists and would not result in an adverse effect. See also Findings and Decision to Thirty-First Ground of Appeal. Any dispute between the Applicant's hydrologist (Slade) and Kamman on groundwater recharge rates is academic and irrelevant. Regardless of whether Kamman's or Slade's projections on basin-wide groundwater recharge are correct, there is no evidence in the record to contradict the conclusion that the Project reduces the demand on groundwater over existing conditions.²⁸

²⁷ See "Response to Public Comments Proposed Mountain Peak Winery (Application #P13-00320)" Richard C. Slade & Associates, LLC, November 30, 2016.

²⁸ *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266-67.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Second Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

33. Thirty-Third Ground of Appeal.

Appellant's Position: Appellant alleges that the Project is inconsistent with the General Plan specifically, Policy CON-65, which requires the County to support efforts to reduce and offset greenhouse gas (GHG) emissions and to consider GHG emissions in its review of discretionary projects. The introduction of 44,275 new car trips on Soda Canyon Road, as well as additional large trucks, will significantly increase GHGs emissions.

Findings and Decision: The Board finds and determines as follows:

Appellant's assertion of 44,725 new vehicle trips annually must be considered in context. First, this figure appears to be derived from the maximum daily traffic generation from the originally proposed Project multiplied by 365 days (in a year). This assumption is flawed because the approved Project was substantially smaller in terms of its visitation and marketing program. It is also unrealistic to assume that a winery would operate at maximum daily visitation and marketing every single day of the year. Still, even if the Project generated approximately 45,000 vehicles annually (which Staff disputes), it would still be well below the threshold screening criteria put forth by the Bay Area Air Quality Management District (BAAQMD) for significant contributions to GHGs. The production facilities are 33,424 square feet compared to the BAAQMD's GHG screening criteria of 121,000 square feet for general industrial, and 8,046 square feet of tasting and office building compared to the BAAQMD's screening criterion of 9,000 square feet for high quality restaurant. As such, the Project was determined not to exceed the 1,100 MT of CO₂e/yr GHG threshold of significance. Put another way, 45,000 annual vehicles trips is the equivalent trip generation of 12 single family homes based on an assignment of 10 trips daily per home (Institute of Transportation Engineers Standard Generation Rate) multiplied by 365 days. Traffic from the equivalent of 12 homes would not constitute a cumulatively considerable contribution to global warming.

The existence of significant cumulative impacts caused by other projects is not, standing alone, evidence that the project's impact is cumulatively considerable.²⁹ It must be shown that the project will contribute to an environmental impact for the impact to be characterized as a project-related cumulative impact.³⁰ The Planning Commission properly found that the Project does not make a considerable contribution to cumulative GHG emissions. The Project is well below the screening threshold, and is subject to California Green Building Code standards that further addresses GHG emissions. Besides the Project falling well below the GHG significance

²⁹ 14 Cal Code Regs Section 15064(h)(4).

³⁰ *Sierra Club v West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690.

criteria, the Project is also required to comply with California Green Building Standards such as Title 24 compliance requirements which mandate energy efficient building design such as window glazing, building insulation, cool roof technology, etc. that further reduce GHG emissions. The Applicant is committed to building and operating the facility in a manner that will achieve LEED Platinum green development certification. See also Findings and Decision to Forty-First Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Third Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

34. Thirty-Fourth Ground of Appeal.

Appellant's Position: Appellant asserts that the Project is inconsistent with the General Plan specifically, Goal ROS-1, which requires the County to ensure an extensive landscape of open spaces for recreation and protection of natural, cultural, and archaeological resources, requiring a balance with private property rights and agricultural production. The Project will jeopardize the viability and sustainability of the incredibly diverse habitats in the Rector Canyon area through adverse impacts of soil erosion and sedimentation.

Findings and Decision: The Board finds and determines as follows:

The Project has been designed to comply with a myriad of local and State requirements. These requirements mandate that certain levels of water quality, erosion and pollution prevention be achieved including but not limited to retention of stormwater on-site, controlling gradient and concentration of stormwater runoff paths, and installation of siltation basin and vegetated swale to reduce stormwater sediment load. These requirements exceed the level of erosion control measures currently in place on the property. By complying with those standards, the Project site will improve erosion control measures over existing conditions, and not result in a potentially significant impact on the sustainability of diverse habitats.

Likewise, the Project is also consistent with General Plan Goal ROS-1, which sets forth the County's intention to ensure open space lands throughout the County for recreation and the protection of natural, cultural, and archaeological resources and agricultural production, and private property are mutually supportive and complementary. The term "open space" as used in Napa County does not denote a single land use, nor is it a designation for empty, unused, or not-yet-developed places. It is best understood as lands that support an array of activities and benefits including the preservation of natural resources and the managed production of agricultural lands.³¹ This Project is located on private property that is already developed with a residence and producing vineyards. The on-site grapes will be processed at the Mountain Peak

³¹ General Plan Recreation and Open Space Element, pgs. ROS-1 through ROS-3.

Winery which has been designed to maintain most of the native vegetation including oak trees and avoid the riparian corridor. See also Findings and Decision to Thirteenth, Fourteenth, Fifteenth, Seventeenth, Thirtieth and Thirty-First Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Fourth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

35. Thirty-Fifth Ground of Appeal.

Appellant's Position: Appellant claims that the Project is inconsistent with the General Plan specifically, Goals SAF-1, SAF-3, SAF-16, SAF-20, and SAF-38, all of which relate to protecting County residents from fire, flood, geologic, and other hazards. There is substantial evidence that the Project would have a significant negative impact on the potential for fire dangers on Soda Canyon Road. Appellant points out that it is a dead-end road with access constraints that will impact rescue and evacuation efforts.

Findings and Decision: The Board finds and determines as follows:

Substantial evidence in the record supports the Planning Commission's finding that the Project would not cause existing conditions to change substantially. Construction of the Project will not pose a flooding hazard to visitors and employees of the Project or any neighbors in the vicinity. Videos of flooding in Soda Canyon Creek while of concern, does not mean that this Project would make that condition worse, primarily because the Project is not in the Soda Canyon Creek drainage basin. All water draining off of the Project site drains into the Rector Creek drainage and has no potential to change flooding conditions in Soda Canyon Creek Basin. Furthermore, as demonstrated by the Bartelt Stormwater Plan and confirmed by County engineers, the Project has been designed to channel runoff into retention basins and contain stormwater on-site such that there is no increase in runoff or impact on flooding.

The Project also must comply with the Uniform Building Code which requires structures to meet certain seismic and geologic safety requirements. Exposure to fire dangers for Project occupants and surrounding neighbors would not increase as a result of the Project, and may even nominally improve. Appellant's claim that fire rescue/response efforts will be impeded along Soda Canyon Road if the Project is constructed are unfounded and not supported by factual evidence. Appellant has an inaccurate understanding of the scale of traffic generated by the Project, as demonstrated by their reoccurring erroneous claim of 45,000 new annual vehicle trips causing traffic congestion. The volume of traffic from the Project of approximately 11 trips per hour would not constrain rescue or evacuation efforts or otherwise impede emergency response. The traffic volumes along Soda Canyon Road would remain at LOS A. See also Findings and Decision to Sixth through Eleventh and Twenty-Third Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Fifth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

36. Thirty-Sixth Ground of Appeal.

Appellant’s Position: Appellant contends that the Project is inconsistent with the General Plan specifically, Goal SAF-4, which requires the County to “protect residents and businesses from hazards caused by flooding.” The Project will exacerbate the existing condition of the Soda Canyon Road area, which is already prone to flooding and mudslides.

Findings and Decision: The Board finds and determines as follows:

Appellant and opponents of the Project provided videos, photographs and testimony regarding flooding and storm damage occurring along Soda Canyon Creek in the vicinity of Soda Canyon Road which must be traversed to access the Project site. Appellant claims that the Project will exacerbate this existing condition but do not provide a rational explanation of how the Project will do so. The Project site is actually located in the upper portion of the Rector Reservoir drainage basin which is a different drainage basin from Soda Canyon Creek. The Project is about .75 miles outside of the drainage basin that the Appellant’s claim will be exacerbated by the Project. The Project simply has no potential at all to change existing drainage characteristics within the Soda Canyon Creek Basin. See also Findings and Decision to Thirty-Fifth Ground of Appeal.

Winery visitation is lightest during winter months, and virtually non-existent during stormy conditions. Wine production peaks in the fall and is typically light during wet winter months. Winery related-vehicles may be on the road during the rare occurrences of flood-level storm events, but there is effectively no likelihood that winery-related vehicles could exacerbate hazards when flooding is actually occurring. See also Findings and Decision to Third Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Sixth Ground of Appeal and upholds the Planning Commission’s adoption of the Negative Declaration and approval of the Project.

37. **Thirty-Seventh Ground of Appeal.**

Appellant's Position: Appellant asserts that an Environmental Impact Report (EIR) is required because they have made a “fair argument” and provided substantial evidence demonstrating that the Project may substantially degrade water quality, contaminate a public water supply, degrade or deplete groundwater resources, interfere with groundwater recharge, and cause substantial flooding, erosion, and siltation.

Findings and Decision: The Board finds and determines as follows:

CEQA case law requires a public agency to prepare an EIR if it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.³² Substantial evidence means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even if other conclusions may be reached.³³ However, argument, speculation, inaccurate information, unsubstantiated opinion, or social or economic impacts unrelated to physical changes to the environment do not constitute substantial evidence.³⁴ The existence of public controversy over the environmental effects of a project does not, in and of itself, require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.³⁵

A “fair argument” has not been made that the construction and operation of the new Winery may have significant environmental effects. The vast majority of materials submitted by the Appellant, both during the Planning Commission hearings and now on appeal, pertain to existing conditions without a direct or indirect link of how the Project influences or exacerbates those existing conditions. An argument that a project may have a significant environmental effect must be based on relevant evidence sufficient to support that conclusion. An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts.³⁶

Appellant disputes the opinion and evidence put forth by the Applicant's hydrologist (Slade) and civil engineer (Bartelt) regarding existing groundwater use from the vineyard, claiming that vineyard water use is greater than projected. This is the basis of Appellant's claim that groundwater and surface water supplies will be impacted. However, the vineyards are an existing condition, and the Project results in approximately three acres of those vineyards being removed and replaced with winery uses that have a lower water generation rate. Therefore, even if the vineyards use more water (as asserted by the Appellant), then removal of the vineyards would result in greater water reduction than projected by Slade. Similarly, Appellant accurately describes the existing water basin setting that drains to a public water supply, but reach a conclusory determination that Project will negatively impact water quality simply as a result of

³² *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74-75.

³³ CEQA Guidelines Section 15384(a).

³⁴ Public Resources Code Section 21080(e), 21082.2(c).

³⁵ Public Resources Code Section 21082.2(b); CEQA Guidelines Section 15064(f)(4).

³⁶ *Parker Shattuck Neighbors v Berkeley City Council* (2013) 222 Cal.App.4th 768, 785.

grading and cave spoil deposition but this contention is conclusory and not supported by the administrative record. See also Findings and Decision to Thirty-First Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Seventh Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

38. Thirty-Eighth Ground of Appeal.

Appellant's Position: Appellant asserts that an EIR is required because they have made a "fair argument" and provided substantial evidence demonstrating that the Project may substantially effect species of special concern and their habitat. The Project may impact the Rector Creek watershed, which is the habitat for several species of special concern, including, but not limited to, the foothill yellow-legged frog and California giant salamander.

Findings and Decision: The Board finds and determines as follows:

CEQA defines a "significant effect on the environment" as a substantial, or potentially substantial, adverse change in the environment.³⁷ The CEQA Guidelines refine the definition, limiting CEQA's application to substantial and adverse changes in any of the physical conditions with the area affected by the project.³⁸ Thus, in determining whether there are significant environmental impacts, the lead agency must determine if an impact is both substantial and adverse.³⁹ Where substantial evidence supports a finding that the project's impacts are not adverse, the lead agency is justified in finding that no significant impact will result.⁴⁰

Appellant has not demonstrated that the Project has the potential to significantly and adversely impact Rector Creek watershed. Appellant asserts that the Project, which consists of construction and operation of a winery, will dewater Rector Creek and result in unmitigated sedimentation into the creek. However, this assertion is factually unsupported. Applicant demonstrated that the Project will actually result in less groundwater use than current uses. Since the winery will use less water than the vines that must be removed in order to construct the Project, the Project itself would not result in additional groundwater being extracted. Therefore, any impact on groundwater by the Project would be beneficial and not adverse, thus not amounting to a significant adverse effect on the environment. See also Findings and Decision to Thirty-First Ground of Appeal.

³⁷ Public Resources Code Section 21068.

³⁸ 14 Cal Code Regs Section 15382.

³⁹ *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.

⁴⁰ *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1267.

Appellant makes an unsupported assumption that grading, by its very nature, will result in significant sedimentation of the creek and thus impact endangered species downstream. However, the Applicant demonstrated that the Project, inclusive of all associated grading, is designed to comply with local and regional standards for sediment control both during construction and post-construction. As a result, the stormwater retention facilities will actually be upgraded over their existing conditions. Again Appellant does not differentiate between the existing setting and the Project. For example, Appellant's biologist (Manfree) opines that the Rector Creek downstream of the Project site is habitat for both common and special status species, but offers no tangible evidence how the Project would dewater the creek or increase sedimentation beyond the levels occurring today. Instead, the only evidence offered on how the Project would impact sensitive habitat is the claim that the Winery and vineyards combined are the cause, but the Winery would use less groundwater than the existing vineyards therefore the Winery cannot result in dewatering of the creek.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Eighth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

39. Thirty-Ninth Ground of Appeal.

Appellant's Position: Appellant asserts that an EIR is required because they have made a "fair argument" and provided substantial evidence demonstrating that the Project may have significant environmental effects relating to noise impacts. Appellant claims their noise expert (Wilson Ihrig) produced substantial evidence that the Project would result in significant noise impacts.

Findings and Decision: The Board finds and determines as follows:

Appellant's noise expert (Wilson Ihrig) opined that speech and music from outdoor events would be 11-13 dB higher than ambient noise levels at the residence nearest to the Project which is approximately 500 feet away. Although this higher volume would still be below the 50 dB threshold prescribed in County Code (Table 8.16.070 Exterior Noise Limits), Appellant's noise expert claims that this increase would "...fundamentally change the character of the neighborhood..." However this opinion was based on the originally proposed Project which had 78 marketing events that would primarily occur in the evening up to as late as 10 p.m. Based on that number of events, the noise expert opined that "...special event noise will cause substantial periodic increases in noise levels above the ambient noise levels..." and concludes that this change results in a significant noise impact. This opinion is not disputed by Staff. Seventy-eight evening events annually, or roughly six per month, may have the potential to change the character of the neighborhood due the frequency of occurrences.

However, the Planning Commission approved a substantially smaller marketing plan of only three events, not 78. The three events, two at 75 visitors and one at 150 visitors, would occur infrequently and not result in periodic increases in ambient noise levels, especially considering the events, if outside, are projected by both Appellant's and Applicant's noise experts not to exceed the 50 dB noise level standard. Fifty decibels is a low level of noise equated with a quiet suburb, conversation at home, or a large electric transformer at 100 feet (source: IAC Acoustics "Comparative Examples of Noise Levels," 2017). Events occurring no greater than three times a year at that sound level would not substantially increase ambient noise levels in the adjoining neighborhood.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirty-Ninth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

40. Fortieth Ground of Appeal.

Appellant's Position: Appellant asserts that an EIR is required because they have made a "fair argument" and provided substantial evidence relating to adverse traffic impacts. The Project will add approximately 45,000 annual car trips to Soda Canyon Road, which Appellant's expert (Smith Engineering) opined would have a significant adverse traffic impact.

Findings and Decision: The Board finds and determines as follows:

There are several inconsistencies in the Smith Peer Review that result in an inaccurate and erroneous representation of the traffic impacts resulting from the Project. First, Smith derives p.m. peak hour trip generation from the Winery Traffic Information/Trip Generation worksheet page from the County's standard use permit application. The information on this sheet was filled out by Smith (as opposed to the Applicant), and incorrectly reflects average weekday visitation at 80 visitors, which was the originally proposed maximum weekend daily visitation. Applicant instead proposed an average of 40 weekday visitors. As a result, the worksheet effectively doubles the number of daily weekday visitors causing an overstatement of total daily trip generation.

Second, this worksheet (from the standard use permit application) is used as a starting point for Planning Division Staff to determine if a formal traffic study prepared by a licensed traffic engineer is required. The worksheet applies an assumption that a project will result in 38 percent total daily traffic occurring in the p.m. peak hour, which generally overstates p.m. peak traffic generation for most projects. The reason for this overestimation is that it provides a conservative approach for determining if a project warrants further study, as was the case with this Project. County Staff required preparation of a Project specific traffic study and the trip generation worksheet was superseded. A more refined and more accurate evaluation was

prepared by Crane Transportation Group, and peer reviewed by the County Traffic Engineer Marshall. The Crane Traffic Study concluded that the Project (as originally proposed) generated six outbound and five inbound trips (11 trips total) during the weekday p.m. peak hour as opposed to the 49 trips assumed by Smith. This generation rate is also consistent with by-prior-appointment visitation wineries that stagger visitation over the course of the business day. The Smith Peer Review's p.m. peak traffic generation incorrectly assumes that 38 percent of the daily employee and visitor vehicles would be on the road between 4:30 and 5:30 p.m. on weekdays. This projection is inconsistent with the Project description, where the Applicant has stated that visitation will be spread over the entire day and wine production and hospitality employees will typically not leave the premises until 5:30 p.m. to 6 p.m. Updated COA No. 4.11 requires reoccurring trips to occur outside of p.m. peak hour periods which is 4:30 to 5:30 p.m. weekdays and 4:00 p.m. to 5:00 p.m. weekends. The Project application states that winery hours of operation (outside of harvest) conclude at 6 p.m., and thus employees will depart the site after the close of business. A lead agency need not accept expert testimony that lacks an adequate factual foundation.⁴¹ Here, the Smith Peer Review was based on overstatements of traffic estimates for the original Project and not the reduced version. As such, it lacks an adequate foundation.

Lastly, despite the over inflated trip generation, Smith Peer Review notes that Project trip generation still remains one trip below the one percent threshold for significantly impacting the intersection of Soda Canyon Road and Silverado Trail. As a result, Smith's opinion of a significant traffic impact is based on the Project being close to the threshold as opposed to actually exceeding the threshold. The Smith Peer Review does not support the occurrence of an impact and the opinion lacks an adequate factual foundation, especially when the overstatement of trip generation is factored out of the equation and in light of the reduced visitation levels.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fortieth Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

41. Forty-First Ground of Appeal.

Appellant's Position: Appellant asserts that an EIR is required because they have made a "fair argument" and provided substantial evidence demonstrating that the Project may have significant cumulative environmental impacts. The County must analyze the cumulative impacts of this Project in relation to several projects that are closely related and reasonably foreseeable. Appellant claims they have submitted substantial evidence demonstrating that several existing, current, and future projects in the vicinity of the Project will collectively and adversely impact

⁴¹ *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359, 1422 (letter from engineering professor about groundwater and erosion impacts was not substantial evidence because it lacked an adequate foundation of specific information about the project).

the environment through elevated sediment loads in the Rector Creek and Rector Reservoir, increased GHG emissions, and adverse traffic impacts.

Findings and Decision: The Board finds and determines as follows:

A lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project's potential environmental impacts, although individually limited, are cumulatively considerable.⁴² "Cumulatively considerable" means that the incremental effects of a project are significant when viewed in connection with the effect of past projects, other current projects, and probable future projects.⁴³ To assess whether a cumulative effect triggers the need for an EIR, the lead agency must answer two questions: whether the cumulative impact itself may be significant and whether the project's incremental contribution to that effect would be "cumulatively considerable."⁴⁴ A project's impacts must be found cumulatively considerable if its incremental effects are significant when viewed within the context of the effects of past, current, and probable future projects.⁴⁵ The existence of significant cumulative impacts caused by other projects is not, standing alone, evidence that the project's impact is cumulatively considerable.⁴⁶ It must be shown that the project will contribute to an environmental impact for the impact to be characterized as a project-related cumulative impact.⁴⁷

The Planning Commission properly and thoroughly evaluated the Project's incremental contribution to traffic, GHG, fire hazards, groundwater and sediment loads and determined that its contribution would not be cumulatively considerable. Appellant offered no credible evidence that the Project would contribute to presumed/purported elevated sediment loads in Rector Creek and Rector Reservoir. Appellant simply concludes that Project grading results in significant erosion. This conclusion ignores the substantial amount of erosion control and water quality engineering that has been incorporated into the Project design. Appellant's basis that the Project will cause erosion impacts is simply that grading will occur where they believe it is too close to existing creeks. Unsupported conclusions do not rise to the level of substantial evidence and do not support the unsubstantiated conclusion that a cumulative impact may occur.

Likewise, although the Project is far below the screening thresholds for significant contributions to global greenhouse gas emissions, Appellant contends that this Project contributes significantly to purported significant GHG impacts caused by other winery projects along Soda Canyon Road and on Silverado Trail (over 6.1 miles from the Project site). The Planning Commission properly found that the Project would not result in a cumulatively considerable contribution to significant GHG emissions. The Project is approximately 80,000 square feet below the screening threshold, and is subject to California Green Building Code

⁴² Public Resources Code Section 21083(b); 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3).

⁴³ Public Resources Code Section 21083(b)(2); 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3); *San Bernardino Valley Audubon Soc'y v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 398 (EIR required for habitat conservation plan in part because initial study did not adequately explain why cumulative adverse effects to endangered species would not occur).

⁴⁴ 14 Cal Code Regs Section 15064(h)(1).

⁴⁵ 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3). *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 622 (citing this text).

⁴⁶ 14 Cal Code Regs Section 15064(h)(4).

⁴⁷ *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690 (citing this text).

standards that further addresses GHG emissions. In addition, the Applicant is striving to develop the Project to achieve LEED Platinum certification which would further reduce the Project's contribution to GHG emissions. LEED Platinum status can only be awarded after the Project has been constructed.

Soda Canyon Road functions with a high level of service and low traffic volumes. Traffic congestion along Silverado Trail results in delays for turning movements from Soda Canyon Road, but the Crane Traffic Study found that Project generated traffic will only add six outbound trips during peak hours (turning movements from Silverado Trail onto Soda Canyon Road are free flowing for the five inbound trips in the p.m. peak hour). Six trips in the peak hour is not a cumulatively considerable contribution to cumulative traffic impacts, and is below the County's one percent cumulative threshold of significance. An agency has discretion to find a project's incremental effect less than significant when its contribution to a cumulative impact is insubstantial.⁴⁸ Here, the evidence supports the Commission's finding that the Project would not result in any cumulative impacts. See also Findings and Decision to Twenty-Third through Twenty-Fifth Grounds of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Forty-First Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

42. Forty-Second Ground of Appeal.

Appellant's Position: Appellant claims that the County violated CEQA by approving the Project without preparing an EIR because substantial evidence demonstrates a "fair argument" that the Project may have significant environmental effects on archaeological and historic resources. The Project site may contain archaeological and/or historical resources relating to the Wappo Indian Tribe. Appellant asserts that neither the County nor the Applicant produced any evidence to the contrary.

Findings and Decision: The Board finds and determines as follows:

Testimony was provided by neighbors that Native American artifacts had purportedly been found on adjoining properties, and that it was well known that Foss Valley (as a general area) was used by Native Americans. Appellant assumes that since artifacts were purportedly

⁴⁸ *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 C4th 1 55 (recognizing potential for widespread enactment of laws banning plastic bags but finding cumulative effects of adopting plastic bag ban in small city negligible). See also *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 CA3d 1337, 1358 (impacts of project not cumulatively considerable when no substantial evidence that any incremental impacts of project are potentially significant); *Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150 CA3d 740, 750 (county need not consider cumulative effects of other dairies when it determined that dairy in question would have no significant effect).

found nearby and since the general area is known to have been used by Native Americans, then the Project site must be sensitive. However, these anecdotal and unsubstantiated opinions do not rise to the level of substantial evidence, which is defined by case law as evidence that is of ponderable legal significance, reasonable in nature, credible, and of solid value.⁴⁹

Substantial evidence in the record supports the Commission's finding that the Project would not adversely affect cultural resources. The Project's potential to impact cultural resources was evaluated in the IS/ND prepared for the Project. (See IS/ND pg. 9.) Napa County's GIS contains detailed maps of the location of known archaeological sites, which is sourced from the NWIC which maintains a comprehensive database of known cultural resources. Those maps identify several Native American village sites in Foss Valley as noted by Appellant, but the nearest mapped site is .5 miles from the Project. The Project site has been highly altered and disturbed over the years with development of vineyards and a residence, and as a result it is unlikely that any significant cultural resources exist at the Project site, even if the site had contained resources in the past. In addition, the Project site's terrain is sloped and located away from creeks, which is not typical of where cultural resources are encountered.

The County complied with Public Resources Code Section 21080.3.1 which requires consultation with Native American tribes when preparing environmental documents. This Project was referred to the three Native American Tribes (Yocha Dehe, Mishewal Wappo, and Middletown Rancheria) that are culturally and historically affiliated with Napa County, and formal consultation occurred with the single tribe (Yocha Dehe) that responded to the referral. County Staff and the Applicant's representative met with a tribal representative to inspect the Project site and the general vicinity. The tribal representative concluded that there was no need for an archaeologist to conduct further investigation.

Lastly, as a standard condition of approval, the Project has been conditioned to halt construction and bring an archaeologist onto the site to evaluate the resource encountered in the unlikely event archaeological resources are encountered. (See Updated COA No. 7.2.) This is a standard protocol for construction sites used throughout California. The Planning Commission appropriately evaluated the Project's potential impacts on cultural resources. A fair argument has not been made that an EIR is required. See also Findings and Decision to Twenty-Seventh Ground of Appeal.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Forty-Second Ground of Appeal and upholds the Planning Commission's adoption of the Negative Declaration and approval of the Project.

⁴⁹ *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144.

Section 4. CEQA Determination.

A. The Board has received and reviewed the proposed Negative Declaration pursuant to the provisions of CEQA and of Napa County’s Local Procedures for Implementing CEQA, and finds that:

1. Prior to taking action on the Negative Declaration and the Project, the Board read and considered said Negative Declaration.
2. The Negative Declaration is based on independent judgment exercised by the Board.
3. The Negative Declaration was prepared and considered in accordance with the requirements of CEQA.
4. Considering the record as whole, there is no substantial evidence that the Project as mitigated will have a significant effect on the environment.
5. There is no evidence, in considering the record as a whole that the proposed Project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.
6. The site of this proposed project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.
7. The Clerk of the Board of Supervisors is the custodian of the records of the proceedings on which this decision is based. Records are located at the Napa County Planning, Building, and Environmental Services Department, 1195 Third Street, Second Floor, Napa, CA.

B. The Board adopts the Negative Declaration prepared for the Project and finds that according to the Negative Declaration the proposed Project would not have potentially significant effects on the environment.

Section 5. Summary of Decision.

Based on the foregoing facts, findings, and determinations, the Board of Supervisors hereby:

- A. Denies the Appeal in its entirety;
- B. Adopts the Negative Declaration prepared for the Project; and
- C. Approves Use Permit No. P13-00320-UP and the RSS Exception for the Mountain Peak Winery subject to the Updated Conditions of Approval recommended by Staff and the Condition volunteered by the Applicant attached as Exhibit “A”.

Section 6. Effective Date.

This resolution shall take effect in accordance with the provisions of Napa County Code Section 2.88.090.

Section 7. Judicial Challenge.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Board of Supervisors of Napa County, State of California, at a special meeting of said Board held on the 22nd day of August, 2017, by the following vote:

AYES: SUPERVISORS WAGENKNECHT, PEDROZA, GREGORY and RAMOS

NOES: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE

ABSTAIN: SUPERVISORS DILLON

NAPA COUNTY, a political subdivision of the State of California

By: _____
 BELIA RAMOS, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Laura J. Anderson</u> Deputy County Counsel Date: <u>August 22, 2017</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: August 22, 2017 Processed By: _____ Deputy Clerk of the Board	ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors By: _____
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Attachments:

- Exhibit “A” – Updated Conditions of Approval

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EXHIBIT "A"

**BOARD OF SUPERVISORS ADOPTED – AUGUST 22, 2017
CONDITIONS OF APPROVAL**

***Mountain Peak Winery
Use Permit P13-00320-UP and Road and Street Standards Exception Request
3265 Soda Canyon Road, Napa, CA 94574
APN 032-500-033***

This permit encompasses and shall be limited to the project commonly known as **Mountain Peak Winery**, located at **3265 Soda Canyon Road**. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for issuance of a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as "Reserved" and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1 Approval of an Exception to the Napa County Road and Street Standards (RSS) to increase the maximum slope for a portion of the of the commercial employee and business access road to the covered crush pad and cave portals not to exceed 500 feet in length from 16 percent to 19.6 percent.
- 1.2 Approval of a Use Permit for a 100,000 gallon per year winery to allow the following:
 - a. Construction of an approximately 33,424 square foot cave, approximately 8,046 square foot tasting room and office building, and approximately 6,412 square foot covered outdoor crush pad and work area;
 - b. Demolition of an existing single family residence;
 - c. Visitation, tours and tasting, and a marketing plan as set forth in Conditions of Approval (COAs) Nos. 4.1 through 4.3 below;
 - d. On-premises consumption of wine as set forth in COA No. 4.4 below;
 - e. Hours of operation: 6:00 a.m. to 6:00 p.m. Daily (production hours), and Visitation: 10:00 a.m. to 6:00 p.m. (visitation) Monday through Sunday;

- f. Maximum number of employees: nineteen (19) full time employees, four (4) part-time employees and four (4) seasonal harvest employees;
- g. Number of parking spaces: twenty-six (26) parking spaces including two (2) Americans with Disabilities (ADA) spaces;
- h. Installation of a LYVE (or equivalent brand) wastewater treatment system;
- i. Installation of a community non-transient potable water supply sourced from on-site private wells including two (2) 100,000 gallons water tanks for vineyard irrigation and one (1) 20,000 gallon water tank for domestic supply to be located on the western portion of the site as indicated on the civil engineering drawings submitted with the application;
- j. Temporary and final disposal of all cave spoils on-site within existing vineyards;
- k. Construction of two new driveways and private access roads with ingress/egress from Soda Canyon Road; and
- l. Installation of an approximately 80,000 gallon fire suppression cistern located above the winery cave.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or change in winery use or alternative locations for fire suppression or other types of water tanks shall be in accordance with the County Code and may be subject to the permit modification process.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The

Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS

Consistent with the County Code, tours and tastings and marketing may occur at a winery only where such activities are accessory and “clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.”

Tours and tastings (defined below) may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant.

Retail sales of wine shall be permitted as set forth in the County Code.

4.2 TOURS AND TASTINGS/VISITATION

Tours and tastings shall be by appointment only and shall be limited to the following:

- a. Frequency: Seven days per week, Monday through Sunday
- b. Maximum number of persons per day: 60
- c. Maximum number of persons per week: 275
- d. Hours of visitation: 10:00 a.m. to 6:00 p.m.

“Tours and tastings” means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings. To the maximum extent feasible, scheduling of visitors shall not occur during peak travel times between 4:30 and 5:30 p.m. weekdays and 4:00 and 5:00 p.m. weekends.

A log book (or similar record) shall be maintained to document the number of visitors to the winery (for either tours and tastings or marketing events), and the dates of the visits. This record of visitors shall be made available to the Planning, Building and Environmental Services (PBES) Department upon request.

4.3 MARKETING

Marketing events shall be limited to the following:

- a. Release/Seasonal Events
 1. Frequency: 2 times per year
 2. Maximum number of persons: 75
 3. Time of Day: 10:00 a.m. to 10:00 p.m.
- b. Large Event
 1. Frequency: 1 time per year

2. Maximum number of persons: 125
3. Time of Day: 10:00 a.m. to 10:00 p.m.

“Marketing of wine” means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to the County Code. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as “marketing of wine” if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery’s Use Permit. To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of cost recovery, and any business content unrelated to wine must be limited.

Careful consideration shall be given to the intent of the event, the proportion of the business event’s non-wine-related content, and the intensity of the overall marketing plan.

All marketing event activity, excluding quiet clean-up, shall cease by 10:00 p.m. If any event is held which will exceed the available on-site parking, the permittee shall prepare an event-specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

Auction Napa Valley (ANV) events need not be included in a participating winery’s marketing plan because they are covered by ANV’s Category 5 Temporary Permit. The winery may utilize any ANV event authorized in this permit for another charitable event of similar size.

4.4 ON-PREMISES CONSUMPTION

In accordance with State law and the PBES Director’s July 17, 2008 memo, “Assembly Bill 2004 (Evans) and the Sale of Wine for Consumption On-Premises,” on-premises consumption of wine produced on-site and purchased from the winery may occur solely in the tasting room building, adjoining covered patio, adjacent outdoor visitation landscape features, and within the tasting-room designated areas of the cave as specified in the application. Any and all visitation associated with on-premises consumption shall be subject to the maximum per person weekday and weekend daily tours and tastings visitation limitation and/or applicable limitations of permittee’s marketing plan set forth in COA Nos. 4.2 and 4.3 above.

4.5 RESIDENCE OR NON-WINERY STRUCTURES

Unless specifically authorized by this permit or a previously approved permit, the existing vineyard management office located on the northern portion of the subject property shall not be used for commercial purposes or in conjunction with the operation and/or visitation/marketing program for the winery. If the residence is rented, it shall only be rented for periods of 30 days or more, pursuant to the County Code.

4.6 GRAPE SOURCE

At least 75 percent of the grapes used to make the winery's still wine or the still wine used by the winery to make sparkling wine shall be grown within Napa County.

4.7 COMPLIANCE REVIEW

Permittee shall obtain and maintain all permits (use permits and modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) Grape Crush Inquiry data, all of which are required to produce and sell wine. In the event the required ABC and/or TTB permits and/or licenses are suspended or revoked, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are reinstated.

Visitation log books, visitor reports, custom crush client records, and any additional documentation determined by Staff to be necessary to evaluate compliance may be requested by the County for any code compliance. The permittee (and their successors) shall be required to participate fully in the winery code compliance review process.

4.8 RENTAL/LEASING

No winery facilities, or portions thereof, including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons producing and/or storing wine at the winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this permit or pursuant to the Temporary Events Ordinance (County Code Chapter 5.36).

4.9 GROUND WATER MANAGEMENT - WELLS [RESERVED.]

4.10 AMPLIFIED MUSIC

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

4.11 TRAFFIC

To the maximum extent feasible, scheduling of reoccurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times (4:30 to 5:30 p.m. weekdays; 4:00 to 5:00 p.m. Saturdays; and 4:00 to 5:00 p.m. Sundays). All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

4.12 PARKING

The location of visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and approved marketing events. In no case shall parking impede emergency vehicle access or public roads.

4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES

Please contact the Building Division with any questions regarding the following:

In accordance with the California Building Code (CBC), no change shall be made in the use of occupancy of an existing building unless the building is made to comply with the requirements of the current CBC for a new building.

4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES

Please contact the Fire Department with any questions regarding the following:

The permittee and/or designee shall obtain a tent permit from the Fire Department for any temporary structures utilized for authorized marketing events allowed per COA No. 4.3 above.

4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM [RESERVED.]

4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS

- a. All lighting shall be permanently maintained in accordance with the lighting and building plans approved by the County. Lighting utilized during harvest activities is exempt from this requirement.
- b. All landscaping and outdoor screening, storage, and utility structures shall be permanently maintained in accordance with the landscaping and building plans approved by the County. No stored items shall exceed the height of the screening. Exterior winery equipment shall be maintained so as to not create a noise disturbance or exceed noise thresholds in the County Code.
- c. The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.
- d. Designated trash enclosure areas shall be made available and properly maintained for intended use.

4.17 NO TEMPORARY SIGNS

Temporary off-site signage, such as “A-Frame” signs, is prohibited.

4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies’ requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Engineering Services Division operational conditions as stated in their Memorandums dated July 1, 2016.
- b. Environmental Health Division operational conditions as stated in their Memorandum dated May 26, 2015.
- c. Building Division operational conditions as stated in their Memorandum dated March 31, 2016.
- d. Fire Department operational conditions as stated in their Inter-Office Memo dated October 22, 2013.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES [RESERVED.]

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT

- a. Within six months of grant of a Certificate of Final Occupancy, the permittee shall provide an acoustical report prepared by a qualified acoustic professional evaluating actual noise levels resulting from wine production vehicles entering and exiting the site. The noise evaluation shall be conducted during the harvest period when activity and noise levels will be at its highest. The study shall be submitted for review and approval by the Director of PBES (County Noise Officer). Should noise levels prescribed in Napa County Code Chapter 8.16 be exceeded, the study shall provide recommended changes in operational characteristics and/or project design to attenuate noise to levels to County standards subject to review and approval of the Director of PBES.
- b. The permittee shall (at the permittee’s expense) maintain data regarding monthly well monitoring and the total annual groundwater pumped. Such data shall include water extraction volumes and static well levels of the well. All monitoring shall commence within six months of the issuance of this permit, upon commencement of the winery use authorized by this permit, whichever occurs first, and shall be submitted not later than

January 31st every calendar year thereafter and available upon the County's request at any other time.

Water usage shall be minimized by use of best available control technology and best water management conservation practices.

- c. No new on-site or off-site water sources (other than those evaluated as part of this permit) proposed to be used for the winery, including but not limited to wells, imported water, new or existing ponds/reservoir(s) or other surface water impoundments, to serve the winery, shall be allowed without additional environmental review, if necessary, and may be subject to a modification to this permit. A new Water Availability Analysis shall be required prior to approval of any new water source(s) on the property.
- d. Permittee shall limit groundwater use for the winery to 3.44 acre-ft. per year. Any exceedance of this amount in a calendar year is a material breach of this permit.
- e. If water use for the winery from the well exceeds 3.44 acre-ft. per year in a calendar year by 10 percent or more (a significant exceedance), the permittee shall both immediately notify the County and cease any activity causing the exceedance, shall begin daily well monitoring, and shall promptly prepare a report to be submitted to the PBES Director regarding the reasons for the significant exceedance and the measures immediately taken and to be taken to bring the significant exceedance into compliance with this condition.

The PBES Director may set this permit for a revocation or modification hearing before the Commission within 60 calendar days of discovery of the significant exceedance for possible modification, revocation, or suspension.

- f. If the water use for the winery from the well exceeds 3.44 acre-ft. in a calendar year by less than 10 percent, the permittee shall notify the County, and promptly provide a report of the following:
 - 1. water volume used;
 - 2. the reason for exceedance;
 - 3. the plan the winery has for reducing water use so as not to exceed the allocation the following year; and
 - 4. other information that may be affecting water use.

If after two calendar years of reporting the monitoring shows that the annual water allocation identified above continues to be exceeded by less than 10 percent, the PBES Director shall schedule the permit for review by the Planning Commission and possible modification, revocation or suspension.

- g. The permittee shall be required to include the well in the County's Groundwater Monitoring program upon the County's request.

- h. At least 75 percent of the grapes used to make the Winery's wine, averaged over any three consecutive year reference period ("Three Year Grape Source Average"), shall be grown at vineyard parcels located at or north of the 6.0 post mile highway location marker on Soda Canyon Road (collectively "Upper Soda Canyon Grapes"). "Three Year Grape Source Average" shall be the percentage of Upper Soda Canyon Grapes used for the winery's then-current production year and the two years immediately preceding such year, divided by three (3). The permittee shall keep records documenting the annual source of grapes and annual winery production to verify that the Three Year Grape Source Average from Upper Soda Canyon Grapes is at least 75 percent of winery production. The records shall be provided to the PBES Department by March 31st of each calendar year, but shall be considered proprietary information and not available to the public. Information that is not proprietary shall be made available to the public as allowed by law.

4.21 PREVIOUS CONDITIONS [RESERVED.]

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies at the time of submittal and may be subject to change. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Engineering Services Division plan review/construction/ preoccupancy conditions as stated in their Memorandums dated July 1, 2016.

- b. Environmental Health Division plan review/construction/ preoccupancy conditions as stated in their Memorandum dated January 15, 2014, revised May 26, 2015.
- c. Building Division plan review/construction/ preoccupancy conditions as stated in their Memorandum dated March 31, 2016.
- d. Fire Department plan review/construction/ preoccupancy conditions as stated in their Inter-Office Memo dated October 22, 2013.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the permit.

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a “J” number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.
- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL

- a. Two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the CBC.
- b. All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations; on timers; and shall incorporate the use of motion detection sensors to the greatest extent practical. All lighting shall be shielded or placed such that it does not shine directly on adjacent properties or impact vehicles on adjacent streets. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-

intensity light standards. Lighting utilized during harvest activities is exempt from this requirement.

6.4 LANDSCAPING – PLAN SUBMITTAL

- a. Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the building permit application package for the Planning Division’s review and approval prior to the issuance of any building permit associated with this Use Permit. The plan shall be prepared pursuant to the County’s Water Efficient Landscape Ordinance (Chapter 18.118 of the County Code) requirements in effect at the time of building permit application submittal, as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.
- b. Plant materials shall be purchased locally when practical, and to the greatest extent possible, the plant materials shall be the same native plants found in Napa County. The Agricultural Commissioner’s office shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.
- c. No trees greater than 6” diameter at breast height shall be removed, except for those identified on the submitted site plan. Any Oak trees removed as a result of the project shall be replaced at a 2:1 ratio and shown on the landscaping plans for the Planning Division’s review and approval. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.
- d. Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and any off-site residence from which these areas can be viewed.

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.

- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.
- c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING

All project site addresses shall be determined by the PBES Director, and be reviewed and approved by the United States Post Office. The PBES Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

6.9 HISTORIC RESOURCES [RESERVED.]

6.10 DEMOLITION ACTIVITIES

- a. Final demolition plans of the existing single family residence shall be submitted for building permit issuance. A site plan prepared by a qualified professional shall denote streams, stream setbacks, existing and proposed improvements and slopes. No new construction or earthmoving activities are allowed within established stream setbacks unless specifically approved as part of this permit in COA No. 1.0 (Scope) above. As determined by the PBES Director or designee, temporary construction fencing shall be placed at the stream setback line to prevent unauthorized encroachments.
- b. A landscape plan or restoration plan for the demolition area (existing residential and accessory structures) shall be submitted showing how the area will be restored to its natural vegetation state to the extent feasible. The landscape plan shall be approved by the PBES Director or designee prior to installation.

6.11 VIEWSHED – EXECUTION OF USE RESTRICTION [RESERVED.]

6.12 PERMIT PREREQUISITE MITIGATION MEASURES [RESERVED.]

- 6.13 PARCEL CHANGE REQUIREMENTS [RESERVED.]
- 6.14 FINAL MAPS [RESERVED.]
- 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS [RESERVED.]

7.0 PROJECT CONSTRUCTION

Permittee shall comply with the following during project construction:

7.1 SITE IMPROVEMENTS

Please contact Engineering Services with any questions regarding the following.

- a. GRADING AND SPOILS
All grading and spoils generated by construction of the project facilities shall be managed per Engineering Services direction. Alternative locations for spoils are permitted, subject to review and approval by the PBES Director, when such alternative locations do not change the overall concept, and do not conflict with any environmental mitigation measures or conditions of approval.
- b. DUST CONTROL
Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.
- c. AIR QUALITY
During all construction activities the permittee shall comply with the most current version of BAAQMD Basic Construction Best Management Practices including but not limited to the following, as applicable:
 - 1. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The BAAQMD's phone number shall also be visible.
 - 2. Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) two times per day.
 - 3. Cover all haul trucks transporting soil, sand, or other loose material off-site.
 - 4. Remove all visible mud or dirt traced onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - 5. All vehicle speeds on unpaved roads shall be limited to 15 mph.

6. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
7. Idling times shall be minimized either by shutting off equipment when not in use or reducing the maximum idling time to five (5) minutes (as required by State Regulations). Clear signage shall be provided for construction workers at all access points.
8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. Any portable engines greater than 50 horsepower or associated equipment operated within the BAAQMD's jurisdiction shall have either a California Air Resources Board (ARB) registration Portable Equipment Registration Program (PERP) or a BAAQMD permit. For general information regarding the certified visible emissions evaluator or the registration program, visit the ARB FAQ http://www.arb.ca.gov/portable/perp/perpfact_04-16-15.pdf or the PERP website <http://www.arb.ca.gov/portable/portable.htm>.

d. **STORM WATER CONTROL**

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the California Regional Water Quality Control Board.

7.2 **ARCHEOLOGICAL FINDING**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during project development, all work in the vicinity must be halted, and the Napa County Coroner informed, so that the Coroner can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the permittee shall comply with the requirements of Public Resources Code Section 5097.98.

7.3 **CONSTRUCTION NOISE**

Construction noise shall be minimized to the greatest extent practical and feasible under State and local safety laws, consistent with construction noise levels permitted by the General Plan Community Character Element and the County Noise Ordinance. Construction equipment muffling and hours of operation shall be in compliance with the County Code. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded,

and unloaded on the project site, if at all practicable. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur daily between the hours of 8:00 a.m. to 5:00 p.m.

7.4 CONSTRUCTION MITIGATION MEASURES [RESERVED.]

7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL [RESERVED.]

8.0 TEMPORARY CERTIFICATE OF OCCUPANCY - PREREQUISITES

A Temporary Certificate of Occupancy (TCO) may be granted pursuant to the County Code to allow the commencement of production activities prior to completion of all project improvements. Permittee shall comply with the following before a TCO is granted:

8.1 TEMPORARY OCCUPANCY

All life and safety conditions shall be addressed prior to issuance of a TCO by the County Building Official. TCOs shall not be used for the occupancy of hospitality buildings and shall not exceed the maximum time allowed by the County Code which is 180 days. Departments and/or agencies with jurisdiction over the project are authorized as part of the TCO process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES

Permittee shall comply with the following before a Final Certificate of Occupancy is granted by the County Building Official, which upon granting, authorizes all use permit activities to commence.

9.1 FINAL OCCUPANCY

All project improvements, including compliance with applicable codes, conditions, and requirements of all Departments and Agencies with jurisdiction over the project, shall be completed.

9.2 SIGNS

Detailed plans, including elevations, materials, color, and lighting for any winery identification or directional signs shall be submitted to the Department for administrative review and approval prior to installation. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this permit approval. All signs shall meet the design standards as set forth in the County Code. At least one legible sign shall be placed at the property entrance with the words “Tours and Tasting by Prior Appointment Only” to inform the public of same. Any off-site signs allowed shall be in conformance with the County Code.

9.3 GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Fire Department to assure that the design allows large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at

all times. If the gate is part of an entry structure an additional permit shall be required pursuant to the County Code and in accordance with the Napa County Roads and Street Standards. A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed, and approved as part of this permit approval.

9.4 LANDSCAPING

Landscaping shall be installed in accordance with the approved landscaping plan.

9.5 ROAD OR TRAFFIC IMPROVEMENT [RESERVED.]

9.6 DEMOLITION ACTIVITIES

All demolition activities associated with the existing single family residence shall be completed, landscaping installed, and debris cleared from the subject parcel.

9.7 GRADING SPOILS

All spoils shall be removed in accordance with the approved grading permit and/or building permit.

9.8 MITIGATION MEASURES APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY [RESERVED.]

9.9 OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY [RESERVED.]

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David Morrison
Director

MEMORANDUM

To: John McDowell Planning Division	From: Patrick C. Ryan Engineering Service
Date: July 1, 2016	Re: Permit No. P13-00320 Mountain Peak Winery Conditions of Approval APN: 032-500-033

The County of Napa Planning, Building, and Environmental Services Department (PBES), Engineering Division has received a referral for comments on a Use Permit application, generally requesting the following:

New 100,000 gallon per year production winery with covered outdoor production area, wine caves, tasting room and marketing plan. In addition, to the proposed winery production, tasting and marketing plan the applicant request a road exception to the 2016 Road and Street Standards for roadway grades and length of vertical curve.

After careful review of the Mountain Peak Winery Use Permit application the Engineering Division has determined that sufficient information has been provided to complete an evaluation of the project. Providing no changes are made to the proposed project or Federal, State or Local codes and regulations this Divisions supports this proposed development with the following required conditions listed herein.

EXISTING CONDITIONS:

1. The County of Napa parcel 032-500-033 is located at 3265 Soda Canyon Road, Napa County, CA.
2. The existing parcel is approximately 41.76 acres.
3. The existing parcel is currently zoned AW, Agricultural Watershed District.
4. The existing parcel is located within Cal Fire's State Responsibility Area (SRA).
5. The existing property is currently developed with a single family residence, wine grape vineyards, agricultural barn and associated infrastructure.
6. The existing parcel is part of the Napa River Watershed, Rector Reservoir tributary.
7. The existing parcel is located within a domestic water supply drainage area, Rector Reservoir.
8. An unnamed Blueline stream is located approximately 250-feet west of the existing dwelling.

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REQUIRED CONDITIONS:

ROAD & STREET STANDARDS:

1. All Roadways construction associated with this application shall conform to the Road Exception Evaluation composed by this Division, dated July 1, 2016, (enclosed) and per the accepted construction and inspection practices defined in Federal, State and Local codes.
2. Any roadway, proposed new or reconstructed, not included in the above mentioned Road Exception Evaluation shall meet the requirements for a Road, Streets, or Private Lane. Provide a minimum of two ten (10) foot traffic lanes, not including shoulder and striping from the publicly maintained road to the improved structures. The grades for all roads, streets, private lanes and driveways shall not exceed 16-percent. Pavement structural sections shall be determined by the designed Traffic Index. The minimum structural section shall be homogeneous and consist of 2-inches of hot mix asphalt (HMA) over 5-inches of Class II Aggregate Base (AB) or an engineered equivalent section in accordance with Section 27 of the 2016 Napa County Road and Street Standards (RSS).
3. Any proposed or required new/reconstructed parking shall meet the requirements outlined in the current Napa County RSS, Section 9 and/or Detail D-8, page 82.
4. Stop-bar lines shall be installed at all new or reconstructed egress locations in accordance with standard engineering practices.
5. The developer shall obtain an encroachment permit prior to any work performed within the Napa County right-of-way.

SITE IMPROVEMENTS:

6. All on site civil improvements proposed including but not limited to the excavation, fill, general grading, drainage, surface drainage, storm drainage, and process wastewater conveyance shall be constructed according to plans prepared by a registered civil engineer, which will be reviewed and approved by the Napa County PBES Department Engineering Division prior to the commencement of any on site land preparation or construction. Plans shall be wet signed and submitted with the building and/or grading permit documents at the time of permit application. A plan check fee will apply.
7. Proposed drainage for the development shall be shown on the improvement plans and shall be accomplished to avoid the diversion or concentration of storm water runoff onto adjacent properties. Plan shall also indicate the path and changes in runoff.
8. Grading and drainage improvements shall be constructed according to the current Napa County RSS, Napa County Stormwater Quality Ordinance 1400, and the California Building Codes (CBC).
9. Proposed soil stockpile areas shall conform to Napa County's stormwater quality ordinance and appropriate erosion and sediment control measures implemented to minimize the risk to pollutant and sediment transport to a receiving water body. If soil is deposited within a vineyard block(s) approved by Napa County through the Agricultural Erosion Control Plan process the subject block(s) shall meet those requirements, recommendations, and/or mitigation required by such an approval.

10. If excess material is generated that cannot be used onsite, the Owner shall furnish to the Napa County PBES Department Engineering Division evidence that the Owner has entered into agreements with the property owners of the site involved and has obtained the permits, licenses and clearances prior to commencing any off-hauling operations.
11. All development within a Sensitive Domestic Water Supply Drainage shall be design to conform to Napa County Code Section 18.108.027 for vegetation clearing, winter shut-down, drainage facilities, noticing, and geotechnical report requirements.

CONSTRUCTION SITE RUNOFF CONTROL REQUIREMENTS:

12. All earth disturbing activities shall include measures to prevent erosion, sediment, and waste materials from leaving the site and entering waterways both during and after construction in conformance with Napa County Stormwater Ordinance 1400 and the latest adopted state regulations. Best Management Practices (BMPs) shall also be implemented to minimize dust at all times.
 - a. Minimize Disturbed Areas: Only clear land which will be actively under construction in the near term (i.e. within the next 6-12 weeks), minimize new land disturbance during the rainy season, and avoid clearing and disturbing sensitive areas (e.g. steep slopes and natural water courses) and other areas where site improvements will be constructed.
 - b. Stabilize Disturbed Areas: Provide temporary stabilization of disturbed soils whenever active construction is not occurring on a portion of the site. Provide permanent stabilization during finish grade and landscape the site.
 - c. Stockpile Management: Locate stockpiles a minimum of 100 feet away from concentrated flows of stormwater, drainage courses, and inlets. Protect all stockpiles from stormwater run on using temporary perimeter sediment barriers.
 - d. Protect Slopes and Channels: Safely convey runoff from the top of the slope and stabilize disturbed slopes as quickly as possible. Avoid disturbing natural channels. Stabilize temporary and permanent channel crossings as quickly as possible and ensure that increases in runoff velocity caused by the project do not erode the channel.
 - e. Control Site Perimeter: Delineate site perimeter to prevent disturbing areas outside the project limits. Divert upstream run-on safely around or through the construction project. Runoff from the project site should be free of excessive sediment and other constituents. Control tracking at points of ingress to and egress from the project site.
 - f. Retain Sediment: Retain sediment-laden waters from disturbed, active areas within the site.
 - g. Practice Good Housekeeping: Perform activities in a manner to keep potential pollutants from coming into contact with stormwater or being transported off-site to eliminate or avoid exposure.
 - h. Contain Materials and Wastes: Store construction, building, and waste materials in designated areas, protected from rainfall and contact with stormwater runoff. Dispose of all construction waste in designated areas, and keep stormwater from flowing onto or off of these areas. Prevent spills and cleanup spilled materials.

13. Any construction activity that equals or exceeds one acre of total disturbed area shall prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the regulations of California Regional Water Quality Control Board (CRWQB) and shall file a Notice of Intent (NOI) prior to commencement of any construction activity. The completed SWPPP shall be submitted to the Napa County PBES Department Engineering Division for review.
14. All hazardous materials stored and used on-site during construction that could cause water pollution (e.g. motor oil, cleaning chemicals, paints, concrete, etc.) shall be stored and used in a manner that will not cause pollution, with secondary containment provided. Such storage areas shall be regularly cleaned to remove litter and debris. Any spills shall be promptly cleaned up and appropriate authorities notified.
15. All trash enclosures must be covered and protected from rain, roof, and surface drainage.
16. The property owner shall inform all individuals, who will take part in the construction process, of these requirements.

POST-CONSTRUCTION RUNOFF MANAGEMENT REQUIREMENTS:

17. The proposed development is categorized as a Regulated Development Project under Napa County's BASMAA Post-Construction Manual and is required to meet the design criteria of the current Post-Construction Runoff Management / Low-Impact Development Requirements. A revised Stormwater Control Plan for Regulated Projects shall be submitted prior to any permit approval and shall comply with the site design measures, stormwater treatment and hydromodification, source control measures, and on-going maintenance and operation of these facilities.
18. All stormwater runoff from the proposed development area shall be conveyed via sheet flow or concentrated flow to appropriate treatment facilities prior to being properly discharged. The diversion and concentration of stormwater runoff to adjacent properties is prohibited.
19. On-site storm drain inlets shall be marked with the words "No Dumping! Flows to River" or similar.
20. Parking lots and other impervious areas shall be designed to drain through grassy swales, buffer strips, sand filters or other sediment control methods which shall be approved by this Department. If any discharge of concentrated surface waters is proposed into any "Waters of the State," the permittee shall consult with and secure any necessary permits from the State Regional Water Quality Control Board prior to the issuance of applicable construction permits.
21. Install energy dissipaters, such as riprap, at the outlets of new storm drains, culverts, conduits, or channels that enter unlined channels in accordance with applicable specifications to minimize erosion. Energy dissipaters shall be installed in such a way as to minimize impacts to receiving waters.
22. Ditches and other open conveyance systems shall be lined with vegetation, rock or other material to minimize erosion of the bed and bank. In order to reduce channel velocities and provide some treatment of stormwater runoff. Vegetation shall be the preferred lining provided the critical velocity/shear stress does not exceed the permissible velocity/shear stress of vegetation.

23. Where practicable, ditches, and other open conveyance systems shall discharge to a vegetated buffer to protect exposed soils and to filter stormwater runoff before entering the conveyance system.
24. Interior floor drains shall be plumbed to sanitary sewer or approved closed loop system (e.g. processed waste system).
25. Refuse Areas shall be covered, graded, and paved to prevent run-on and runoff. And drains within a refuse area shall be connected to a grease removal device before discharge to a sanitary sewer or approved closed loop system (e.g. processed waste system).
26. Processing areas, including but not limited to wine grape crushing/pressing, juice fermentation, blending and fining, filtration and bottling, shall be paved and performed indoors.
27. Loading Docks shall be covered and/or graded to minimize run-on to and runoff from the loading area. Roof downspouts shall be positioned to direct stormwater away from the loading area.
28. Pervious Pavements and other pervious systems shall be designed to meet the minimum design criteria of Napa County's BASMAA Post-Construction Manual.
29. Provide for ongoing Operation and Maintenance Plan including executing a Stormwater Management Facilities Agreement, which runs with the land and provides for periodic inspections and reporting at the facilities owner's expense.

ANY CHANGES IN USE OR DESIGN MAY NECESSITATE ADDITIONAL REVIEW AND CONDITIONS FOR APPROVAL.

If you have any questions regarding the above items please contact Patrick Ryan from Napa County PBES Department Engineering Division at (707) 253.4892 or via e-mail at Patrick.Ryan@countyofnapa.org.



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David Morrison
Director

MEMORANDUM

To: John McDowell Planning Division	From: Patrick C. Ryan Engineering Services
Date: July 1, 2016	Re: Permit No. P13-00320 Mountain Peak Winery Road Exception Evaluation APN: 032-500-033

ROAD EXCEPTION REQUEST:

The Engineering Services Division received a request (Request), by Bartelt Engineering, for exception to the Napa County Road and Street Standards (RSS) for the Mountain Peak Winery commercial access road. The applicant has requested exception to the current Road and Street Standards to allow roadway grades in excess of 16% and a reduced vertical curve of 80 feet to serve the proposed winery and cave.

The project proposes to construct a new 600± foot long commercial drive from Soda Canyon road to the proposed winery and cave. The proposed site design places the winery work area and cave portals finish grade elevation at approximately 60± feet below Soda Canyon Road. The grades for the proposed commercial access increases from 3 percent, at approximately 75± feet from the property line, to 19.4 percent for 400± feet before leveling off and continuing at a grade of 1 for the remainder of the access drive. Site distance along the entire length of commercial drive will be achieved and roadway widths will provide two 10 foot paved travel lanes with 2 feet of additional aggregate shoulder to provide for two-way traffic flow to support emergency vehicles and civilian egress.

An exception is being sought from the current 2016 Napa County Road and Street Standards (RSS) for access within the State Responsibility Area (SRA) to allow an increased roadway grades of 19.4 percent and a reduced vertical curve length of 80 feet in order to preserve unique features of the natural environment and to accommodate physical site limitations such a grade differentials. The Request states that by maintaining the existing location of the proposed caves and winery provides an opportunity to preserve the natural landscape because it focuses the proposed improvements to an area on the parcel already impacted by Soda Canyon Road. Relocating the proposed winery and cave would require an above ground building that may impact the natural beauty of the area. In addition, implementation of roadway grades less than the current design of 19.4 percent would increase the length and the amount of earthwork and fill required to construct the driveway. The request for a reduced vertical curve length of 80 feet allows for an increase roadway length at 3 percent at the connection with Soda Canyon Road allowing truck traffic, including fire apparatus, to stop on a flat slope prior to entering Soda Canyon Road.

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ENGINEERING DIVISION EVALUATION AND RECOMMENDATION:

Engineering Division staff has reviewed the Request noted above with the applicant's agents, design professionals and the Fire Marshal's office, including two site visits to evaluate the proposed road alignment in April 2014. With respect to Section (3) of the RSS as adopted by Resolution No. 2016-06 by the Board of Supervisors on January 26, 2016, this division has determined the following:

The request for an exception to allow roadway grades to 19.4 percent for 400± feet and reduce a vertical curve length to 80 feet to preserve natural features of the environment and to accommodate physical site limitation such as grade differential is consistent with the goals and objectives on the RSS as described in Section 3(D)(1) & (2). By increasing roadway length to flatten roadway grades would require a significant amount of grading on slopes ranging from approximately 10 percent to 25 percent which is within close proximity to a define blue-line stream. Reducing the amount of earthwork within this area reduces the risk of slope failure and threat to water quality to the adjacent tributary. Maintaining the proposed elevations of the winery and cave portals preserves the visual esthetic of the natural environment to the north and constructing an above ground winery in this area may obstruct those views. Due to constraint identified above the applicants design professional, Bartelt Engineering, has design a reduced vertical curve length at connection of Soda Canyon Road to allow for a safe and flat area for egressing traffic to stop before entering Soda Canyon Road.

The Request has provided the necessary documentation and assurances as required by RSS Section 3(A) and SRA Fire Safe Regulations towards providing defensible space for the Engineering Division to support the request for exception to the 2016 Road and Street Standards. A paved asphalt surface at the proposed roadway grades meets or exceeds the traction and road surface stability as a 16% grade gravel drive as implied in the State of California Fire Safe Regulations. A flat and extended stopping area before egressing onto Soda Canyon Road provides a safer staging area to observe oncoming traffic and provides better line of site of both the egressing vehicle and oncoming traffic.

The applicant shall implement the following conditions that are in addition to any and all conditions previously placed on the project:

1. The roadway shall be constructed and maintained to the approved condition prior to commercial occupancy and throughout the life of the approved Winery use or until such time the County deems that future road design changes are necessary based on development, changes in use of the property served by the access drive.
2. The roadway surface shall be periodic maintained by the property owner to assure sufficient structural section for loading conditions equivalent to the imposed loads of fire apparatus weighing at least 75,000 pounds and the design Traffic Index.
3. The property owner will implement a horizontal and vertical vegetation management plan consistent with California Department of Forestry and Fire Protection requirements along the entire length of the driveway to provide defensive space and improve sight distance. The vegetation management plan shall be reviewed and approved by the Napa County Fire Marshall.



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David Morrison
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MEMORANDUM

To: John McDowell, Project Planner	From: Kim Withrow, Environmental Health Supervisor
Date: January 15, 2014 Revised – May 26, 2015	Re: Mountain Peak Winery, 3265 Soda Canyon Road APN 032-500-033 Project #P13-00320

The application requesting approval to construct a new 100,000 gallon per year winery, caves and associated improvements as detailed in application materials has been reviewed. Revised application materials dated March 17, 2016 have been reviewed and conditions of approval updated accordingly. This Division has no objection to approval of this application with the following conditions of approval:

Prior to building permit issuance:

1. Complete plans and specifications for the food preparation, service area(s), storage area(s) and the employee restrooms must be submitted for review and approval by this Division prior to issuance of any building permits for said areas. An annual food permit will be required.
2. The water supply and related components must comply with the California Safe Drinking Water Act and Related Laws. This will require plan review and approval prior to approval of building permits. Prior to occupancy, the owner must apply for and obtain an annual operating permit for the water system from this Division. The technical report must be completed by a licensed engineer with experience in designing water systems. The applicant must comply with all required monitoring and reporting.
3. The applicant shall secure a discharge requirement or waiver of same, from the Regional Water Quality Control Board for the proposed surface drip waste water system option presented in the septic feasibility report.
4. Plans for the proposed sanitary and process wastewater alternative sewage treatment systems shall be designed by a licensed Civil Engineer or Registered Environmental Health Specialist and be accompanied by complete design criteria based upon local conditions. No building

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clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system will be approved until such plans are approved by this Division.

Requirements for process wastewater treatment systems in Napa County are being reviewed and may be modified to comply with Regional Water Quality Control Board (RWQCB) minimum standards. The owner will have to comply with process wastewater system requirements in place at the time the application for a building permit is filed and the sewage installation permit is secured.

5. A permit to construct proposed sanitary wastewater subsurface system must be secured from this Division prior to approval of a building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system.
6. A permit to construct proposed process wastewater treatment system must be secured from this Division prior to approval of a building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system.
7. Adequate area must be provided for collection of recyclables. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the access needed for the collection site. The garbage and recycling enclosure must meet the enclosure requirements provided during use permit process and be included on the building permit submittal.

During construction and/or prior to final occupancy being granted:

8. An annual alternative sewage treatment system monitoring permit must be obtained for the sanitary wastewater treatment system /private sewage disposal system prior to issuance of a final on the project. The septic system monitoring, as required by this permit, must be fully complied with.
9. An annual operating permit for the food facility and water system must be obtained prior to issuance of a final on the project.
10. An annual operating permit must be obtained for the process wastewater reuse system if applicable.
11. During the construction, demolition, or renovation period of the project the applicant must use the franchised garbage hauler for the service area in which they are located for all wastes generated during project development, unless applicant transports their own waste. If the applicant transports their own waste, they must use the appropriate landfill or solid waste transfer station for the service area in which the project is located.

Upon final occupancy and thereafter:

12. Pursuant to Chapter 6.95 of the California Health and Safety Code, businesses that store hazardous materials above threshold planning quantities (55 gallons liquid, 200 cubic feet compressed gas, or 500 pounds of solids) shall obtain a permit and file an approved

Hazardous Materials Business Plan with this Division within 30 days of said activities. If the business does not store hazardous materials above threshold planning quantities, the applicant shall submit the Business Activities Page indicating such.

13. The applicant shall file a Notice of Intent (NOI) and complete a Storm Water Pollution Prevention Plan with the State of California Water Resources Control Board's (SWRCB) Industrial Permitting program, if applicable, within 30 days of receiving a temporary or final certificate of occupancy. Additional information, including a list of regulated SIC codes, may be found at:

http://www.swrcb.ca.gov/water_issues/programs/stormwater/industrial.shtml

Additionally, the applicant shall file for a storm water permit from this Division, if applicable, within 30 days of receiving a temporary or final certificate of occupancy. Certain facilities may be exempt from storm water permitting. A verification inspection will be conducted to determine if exemption applies.

14. The use of the absorption field/drain field area shall be restricted to activities which will not contribute to compaction of the soil with consequent reduction in soil aeration. Activities which must be avoided in the area of the septic system include equipment storage, traffic, parking, pavement, livestock, etc.
15. All solid waste shall be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors and odors.
16. All diatomaceous earth/bentonite must be disposed of in an approved manner. If the proposed septic system is an alternative sewage treatment system the plan submitted for review and approval must address bentonite disposal.



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David Morrison
Director

MEMORANDUM

To: John McDowell	From: Gary J. West, Chief Building Official
Date: March 31, 2016	Re: Mountain Peak Vineyards P13-00320

Building Inspection Division Planning Use Permit Review Comments

Address: 3265 Soda Canyon Rd., Napa CA 94558

APN: 032-500-033-000

Project: Mountain Peak Vineyards P13-00320

Owner: Mountain Peak Vineyards LLC

Contact: Steven Rea

Description: Resubmittal-Revised proposal for new 100,000 gallon per year winery at 3265 Soda Canyon Road, with 33,424 sq. ft. of caves, and 8,046 sq. ft. winery structure; 80 visitors per day maximum; marketing 3 events per month for 12 patrons, 3 per month for 24, 4 per year for 75, and 2 per year for 125; commercial kitchen; Lyve sewage treatment system.

Comments: The Building Division is not reviewing this project for compliance with the California Building Standards Codes at this time; the Building Division is reviewing the proposed Planning entitlements only. The Building Division has no issues or concerns with the approval of the Use Permit P13-00320; it is a Planning entitlement and does not in itself authorize any construction activities. Separate building permits shall be required.

The plans provided for Use Permit application P13-00320 do not provide enough information in sufficient detail to determine all code requirements. A complete and thorough plan review will be performed at the time an application is made for the required building, plumbing, mechanical, and electrical and any other construction permits required by other Napa County Agencies. The following comments are provided to make the applicant aware of what codes the applicant will be required to comply with, as well as issues that may need to be addressed prior/during the building permit application and review process.

Planning Division (707) 253-4417	Building Division (707) 253-4417	Engineering & Conservation (707) 253-4417	Environmental Health (707) 253-4471	Parks & Open Space (707) 259-5933
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1. In accordance with the California Building Code, Chapter 1, Division 1, Section 1.1.9, which states, “only those standards approved by the California Building Standards Commission that are effective at the time of application for a building permit is submitted shall apply to the plans and specifications for, and to the construction under that permit”. The codes adopted at this time are 2013 California Building Standards Codes, Title 24, part 2, Building volumes 1 & 2, part 3 Electrical, part 4 Mechanical, part 5 Plumbing, part 6 Energy, part 9 Fire, and Part 11 Green Buildings. All buildings or areas of building must comply with the code requirements for that occupancy classification and/or use.
2. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities a separate demolition permit will be required from the Napa County Building Division prior to the removal. Please note the applicant will be required to provide a “J” number from the Bay Area Quality Management District at the time the applicant applies for a demolition permit if applicable.
3. The site and associated buildings are required to be accessible to persons with disabilities. This includes, but not limited to, a van accessible parking stall, accessible path of travel from the parking stall to all buildings and areas on the site that are available to employees and the public.
4. All cooking equipment in occupancies other than residential shall be commercial grade. Commercial kitchens are required to comply with the California Mechanical Code. Cooking equipment used in processes producing steam, smoke or grease-laden vapors shall be equipped with an exhaust system that complies with all the equipment and performance requirements of the Mechanical Code, and all such equipment and performance shall be maintained per the Mechanical Code during all periods of operation of the cooking equipment. Specifically, the following equipment shall be kept in good working condition: A. Cooking Equipment. B. Hoods. C. Ducts. D Fans. E. Fire suppression systems. F. Special effluent or energy control equipment. All airflows shall be maintained. Maintenance and repairs shall be performed on all components at intervals necessary to maintain working conditions. If there is not a kitchen proposed for this winery disregard this comment.
5. In accordance with the California Building Code no change shall be made in the use or occupancy of an existing building unless the building is made to comply with the requirements of the California Building Code as for a new building.

Issues of compliance with the California Building Code, Title 24, will be addressed during the building permit application, review and approval process. If the applicant has any questions please have the applicant give me a call at (707)259-8230.

All plans and documents for commercial projects are required by California Law to be prepared and coordinated under the direction of a California Licensed Design Professional, such as an Architect and/or Engineer in accordance with California Business and Professions Code Chapter 3, and the California Building Code, Chapter 1.

A handwritten signature in black ink, appearing to read "Gary West", with a long horizontal flourish extending to the right.

GARY J. WEST
CHIEF BUILDING OFFICIAL
NAPA COUNTY BUILDING DIVISION
1195 THIRD STREET
NAPA CA 94559
(707)259-8230
gary.west@countyofnapa.org



A Tradition of Stewardship
A Commitment to Service

Napa County Fire Department
Fire Marshal's Office
Hall of Justice, 2nd Floor
Office: (707) 299-1461
Fax: (707) 253-4411

Pete Muñoa
Fire Marshal

INTER-OFFICE MEMORANDUM

TO: Shaveta Sharma
Planning, Building and Environmental Services

FROM: Pete Muñoa
Fire Department

DATE: October 22, 2013

Subject: P13-00320 APN# 032-500-033

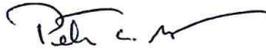
**SITE ADDRESS: 3265 Soda Canyon Road, Napa CA 94558
Mountain Peak Winery (New Winery)**

The Napa County Fire Marshal's Office has reviewed the Use Permit & Variance application for the project listed above. I am requesting that the comments below be incorporated into the project conditions should the Planning Commission approve this project.

- 1. All construction and use of the facility shall comply with all applicable standards, codes, regulations, and standards at the time of building permit issuance.**
2. All fire department access roads shall comply with Napa County Public Works Road and Street Standards.
3. The numerical address of the facility shall be posted on the street side of the buildings visible from both directions and shall be a minimum of 4-inches in height on a contrasting background. Numbers shall be reflective and/or illuminated.
4. All buildings over 3,600 square feet shall be equipped with an automatic fire sprinkler system conforming to NFPA 13 2010 edition with water flow monitoring to a Central Receiving Station.
5. The required fire flow for this project is 300 GPM for a 60 minute duration at 20 psi residual pressure. A UL listed fire pump conforming to NFPA 20, 2010 edition may be required to meet or exceed the required fire flow for the project.
- 6. Provide 9,000 gallons of water dedicated for fire protection. Water storage for fire sprinkler systems shall be in addition to the water storage requirement for your fire flows and domestic use.**

7. All caves shall be classified as to Type I, II, or III. All construction shall comply with CBC Section 436 and applicable sections of Chapter 15.12 of the Napa County Building Code.
8. Provide fire department access roads to within 150 feet of any exterior portion of the buildings and cave portals. Fire department access roads shall be a minimum of 20 feet in width with a 15 foot clear vertical clearance.
9. Blue dot reflectors shall be installed 12-inches off centerline in front of all fire hydrants.
10. All fire hydrants shall be painted chrome/safety yellow.
11. Approved steamer fire hydrants shall be installed within 250 feet of any exterior portion of the building as measured along approved vehicular access roads. Private fire service mains shall be installed, tested and maintained per NFPA 24 2010 edition.
12. Currently serviced and tagged 2A 10BC fire extinguishers shall be mounted 3.5 to 5 feet from the top of all extinguishers to the finished floor and be reachable within 75 feet of travel distance from any portion of every building.
13. All exit doors shall open without the use of a key or any special knowledge or effort.
14. Install illuminated exit signs throughout the buildings per the California Building Code 2010 edition.
15. Install emergency back-up lighting throughout the buildings per the California Building Code 2010 edition.
16. Install laminated 11" x 17" site plans and building drawings in NCFD specified KNOX CABINET. Two Master keys to all exterior doors shall be provided in the KNOX CABINET. A PDF file shall be sent to the Napa County fire Marshal's Office.
17. Beneficial occupancy will not be granted until all fire department issues have been, tested and finalized.
18. Provide 100 feet of defensible space around all structures.
19. Provide 10 feet of defensible space fire hazard reduction on both sides of all roadways of the facility.
20. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus in all weather conditions.
21. Fire lanes shall be painted red with white 4 inch high white letters to read "NO PARKING FIRE LANE-CVC22500.1" stenciled on the tops of the curbs every 30 feet.
22. Barricades shall be provided to protect any natural gas meter, fire hydrants, or other fire department control devices, which may be subject to vehicular damage.

23. Technical assistance in the form of a Fire Protection Engineer or Consultant acceptable, and reporting directly to the Napa County Fire Marshal's Office. The Fire protection Engineer or Consultant shall be provided by the applicant at no charge to the County for the following circumstances:
 - a. Independent peer review of alternate methods proposals.
24. Plans detailing compliance with the fire and life safety conditions of approval shall be submitted to the Napa County Fire Marshal's Office for review and approval prior to building permit issuance and/or as described above.
25. All post indicator valves and any other control valve for fire suppression systems shall be monitored off site by a Central Station or Remote receiving Station in accordance with NFPA 72 2010 edition.
26. A complete set of building drawings and civil drawings shall be submitted to the Napa County Fire Marshal's Office for plan review and approval prior to building permit issuance.



Pete Muñoa
Fire Marshal