

Attachment A

Grounds of Appeal and Staff Responses

**ATTACHMENT A TO AGENDA REPORT
BOARD OF SUPERVISORS MEETING OF MAY 23, 2017
GROUNDS OF APPEAL AND STAFF RESPONSE**

The following outlines the basis of the appeal as contained in Appellant Arger's Appeal dated January 31, 2017. For convenience, staff has bracketed each ground of appeal and provided a summary below, but recommends the Board review the actual Appeals for details. (See Attachment B.)

Summary of Appeal Grounds:

The 42 appeal grounds address the following general points: consistency with the General Plan and Zoning; traffic congestion and hazards; fire and natural hazard safety; size, scope and scale of the proposal; noise generation; potential for cultural resources; protection of biological resources; and hydrology including groundwater use and water quality.

Appeal Ground No. 1: Appellants contend 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.

Staff Response:

Contrary to Appellants' assertions, the Planning Commission conducted a thorough evaluation of the Project and its setting near the end of Soda Canyon Road. As noted in detail in the remainder of this report, 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. These evaluations went beyond just the Project site. While Appellants provided documentation regarding existing conditions along Soda Canyon Road and within the Rector Creek drainage, most every ground of their appeals cites existing or historical conditions as the basis for concluding that this new winery would cause significant impacts. Appellants assert that there are dangerous or otherwise unacceptable existing conditions, and conclude that the Mountain Peak Winery will make those situations worse but have 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.¹

The Planning Commission appropriately found that visitors to the Mountain Peak Winery would not substantively change the existing situation. By way of example, 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

¹ Public Resources Code Section 21082.2(c); *Gentry v. City of Murrieta* (1995) 36 CA4th 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.)

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 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. As such, clearly 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, 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.² The studies and expert testimony referenced herein all provide substantial evidence that the Planning Commission appropriately and adequately considered the effects of the Project beyond just the Project site.

Appeal Ground No. 2: Appellants contend 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. Appellants allege that ABC determined that the increased traffic from retail sales and wine tasting would aggravate a traffic problem on a problematic roadway.

Staff Response:

While 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. In raising this appeal point, Appellants fail to acknowledge three other wineries located off of Soda Canyon Road which currently conduct visitation, and which have ABC approval to do such. In fact, both the Caves at Soda Canyon and Relic wineries have opened 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.

Appellants’ contention that the ABC denied a 1999 application for wine tasting and retail sales on the site of the Astrale e Terra winery, located near the Project site, mischaracterizes both the nature of the application and the conclusions of the administrative law judge in that matter.

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

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, including some of the Appellants in this matter, 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 here, but rather found there was no real contest to the imposition of conditions on the permit. Thus, its findings of dangerous conditions on Soda Canyon Road were not necessary to its determination to apply conditions to the permit.³

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 4 additional employees, the Crane Traffic Study concluded that Project peak hour traffic during harvest (busiest time) would be 5 inbound trips and 6 outbound trips, which equates to roughly one trip every five minutes. That relatively low volume during peak times would not cause a discernable 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, 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. As described in Staff Response to Appeal Ground No. 40, the opinions of Appellants' 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.⁴

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.

Appeal Ground No. 3: Appellants contend 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.

³ *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.

⁴ *Gentry v City of Murrieta* (1995) 36 CA4th 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).

Staff Response:

Appellants have not provided a citation or reference source to their assertion that traffic on Soda Canyon Road and Silverado Trail would increase by 207 percent so Staff is unable to respond regarding the validity or invalidity of this stated alleged increase. However, 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 as a result 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 properly 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. It is within this context that the Planning Commission considered the Project.

More specifically, the Commission considered not only the evidence brought forth by the Appellants, but the Crane Traffic Study prepared by the Applicant's representative and peer reviewed by the County's Traffic Engineer that 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 1 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 Appellants, 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. This is why 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 than 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. The circumstances of regional population and job growth causing increased traffic volumes on Soda Canyon Road and Silverado Trail is not justification that this particular Project be denied. See also Staff Response to Appeal Ground No. 40.

In addition, the Commission heard testimony from 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.⁵ 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. In fact, the 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. Appellants have not demonstrated how adding a new winery along this 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.⁶

Appeal Ground No. 4: Appellants contend 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.

Staff Response:

Appellants appear to contend that approval of the Mountain Peak Winery will significantly increase the need for law enforcement service calls to the neighborhood, but do not offer any explanation as to how existing calls for service equates to the new winery exacerbating that existing condition.⁷ The number of calls for service is not unusual given the vast land area involved in the citation. 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. Calls for service are not focused on the other existing wineries that share the road. Instead, calls for service are dispersed amongst the various land uses, and they are not out of the ordinary from what is experienced in other rural parts of Napa County. If anything, the Appellants' evidence suggests that residences not wineries are the biggest generator of service calls. See also Staff Response to Appeal Ground No. 3.

⁵ See Planning Commission Meeting January 4, 2017 Transcript, pgs. 66-71.

⁶ *Joshua Tree Downtown Bus. Alliance v. County of San Bernardino*, 1 CA5th 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.)

⁷ Appellants submitted updated information that provided additional incident reports up through March 6, 2017.

Appeal Ground No. 5: Appellants contend 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.

Staff Response:

Appellants again assert that the Mountain Peak Winery should not be approved near their property because it will cause existing conditions to significantly worsen. This appears to be based on Appellants' assumptions that winery visitors are likely to be under the influence of alcohol while driving, and that the road is difficult to safely transverse for those who are otherwise unfamiliar with it. These conclusions are based on conjecture, fear and speculation and not substantiated facts. The CHP Incident Reports provided by Appellants 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 Appellants' 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. The Planning Commission considered all evidence and testimony provided. Substantial evidence was presented by Staff and the Applicant, including evidence prepared by licensed traffic and engineering professionals, demonstrating 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 result in substantial changes to those conditions. See also Staff Response to Appeal Ground Nos. 3 and 4.

Appeal Ground No. 6: Appellants contend 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.

Staff Response:

Appellants fail to articulate how implementation of the Mountain Peak Winery would cause existing conditions to discernably change. Review of the incident reports clearly 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 does 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. Appellants seem to presume 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. Appellants' fear and speculation does not rise to the level of substantial evidence and Appellants have not demonstrated how the Project will cause a discernable adverse change to these existing conditions. See also Staff Response to Appeal Ground Nos. 7 through 10.

Appeal Ground No. 7: Appellants contend 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.

Staff Response:

This ground of appeal is similar to Appeal Ground Nos. 4, 5 and 6 excepting that a different data source of existing/historic conditions is referenced by Appellants. The CalFire Incident Report provided by Appellants, 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 Staff Response to Appeal Ground Nos. 8 and 9.

Appeal Ground No. 8: Appellants contend 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."

Staff Response:

Since the entire upper portion of Soda Canyon Road is in a high fire hazard area, Appellants assert that a winery should not be allowed next to or near their properties. However, the Planning Commission recognized that virtually all hillside areas of Napa County, which makes 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 Staff Response to Appeal Ground Nos. 7 and 9.

Appeal Ground No. 9: Appellants contend 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.

Staff Response:

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 Staff Response to Appeal Ground Nos. 7 and 8.

Appeal Ground No. 10: Appellants contend 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.

Staff Response:

The Commission heard and considered testimony from Appellants and neighbors that wildland fires are caused by human activities such as tossed cigarette butts and arson. Of note, none of the testimony or incident reports attributed the wildland fires specifically to winery construction, operation or visitors to a winery. No credible evidence has been 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. See also Staff Response to Appeal Ground No. 3. Their opinion appears based on an assumption that winery visitors will be unfamiliar with the road and thus represent a driving hazard to both themselves and other drivers. As noted above in Staff Response to Appeal Ground No. 3, generalized fears and concerns about a project does not constitute substantial evidence.

One does not require local knowledge to safely use Soda Canyon Road. It 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 Staff Response to Appeal Grounds Nos. 7, 8 and 9.

Appeal Ground No. 11: Appellants contend 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.

Staff Response:

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. Appellants' testimony is generally contradictory in that the road cannot be both congested and dangerous, and also tranquil enough to commonly attract wild animals, pedestrians and cyclists. Appellants' own traffic engineer (Smith Engineering) even notes 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.

Appellants' claim of 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 hundred 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.⁸

Finally, Section 835 of the Government Code provides that a public entity could be held liable in certain circumstances for injuries caused by dangerous conditions on public property. Appellants contend that approval of the Project opens the County to liability because of the existing dangerous conditions on Soda Canyon Road. 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. Moreover, Appellants' argument goes too far; by claiming that Soda Canyon Road is already a dangerous condition, the approval or denial of the Project would be irrelevant in the consideration of the County's liability for incidents on the road.

Appeal Ground No. 12: Appellants assert 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.

Staff Response:

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), cited by Appellants, 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. In fact 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 which if unprotected could threaten local water quality and quantity and lead ultimately

⁸ See Planning Commission Meeting January 4, 2017 Transcript, pgs. 66-71.

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), cited by Appellants, specifically 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.

Appellants incorrectly state that the Project may result in up to 1,000,000 cubic feet of earth removal in addition to the 29,498 cubic yards of caves in order to construct the access driveway, crush pad, parking lot and other surfaces covered by the Project. 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 earth work is 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 indicate 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).

Appeal Ground No. 13: Appellants contend 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.

Staff Response:

The Applicant’s engineer, 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.⁹ 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. Appellants have not provided any credible evidence or rationale as to 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.”¹⁰ 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.¹¹

Appellants erroneously claim that all cave spoils are within 260 feet of blue line streams. As noted above, 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).¹² Again, Appellants’ conjecture and speculation about anticipated abuse does not equate to substantial evidence. Appellants have not articulated how the Project cave spoils would harm the streams and impact the watershed.

Appeal Ground No. 14: Appellants assert 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

⁹ 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.

¹⁰ *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 CA3d 130, 164.

¹¹ *Schaeffer Land Trust v. San Jose City Council* (1989) 215 CA3d 612, 625.

¹² 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, 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.

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.

Staff Response:

Please see Staff Response to Appeal Ground No. 13. Appellants’ contention is unsupported by evidence and is contrary to the Bartelt Stormwater Plan and engineered plans prepared for the Project, which were evaluated by County engineers for compliance with applicable standards. Appellants speculate 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 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.

Appeal Ground No. 15: Appellants claim 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.

Staff Response:

The Planning Commission duly considered testimony and written materials presented by Appellants’ biologist (Amber Manfree) and hydrologist (Greg Kamman). Both the biologist and hydrologist established that nearby blue line streams (part of the Rector Creek watershed) is habitat for special status species as well as high-quality native habitat. 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. Appellants' 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.¹³

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 +/- 3 acre vineyard uses 0.5 AF/year more groundwater than the new winery is 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.¹⁴ See also Staff Response to Appeal Ground No. 31.

Appeal Ground No. 16: Appellants claim 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.

Staff Response:

Contrary to Appellants' assertions, the Project has been designed to minimize impacts on existing natural land forms, 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 land forms 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 2 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

¹³ *Rominger v County of Colusa* (2014) 229 CA4th 690 (expert's opinion that mitigation for odors might be inadequate is too vague to amount to substantial evidence).

¹⁴ *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).

designed to maintain and incorporate all but two existing oak trees and avoid the stream corridors entirely and is consistent with Section 18.108.010(B)(5).

Appeal Ground No. 17: Appellants assert 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.

Staff Response:

Appellants’ assertion that cave spoils will contaminate Rector Reservoir is speculative and not supported by evidence in the record. The Project complies with local and State requirements to protect water courses, including sensitive domestic water supplies. See Staff’s Response to Appeal Ground Nos. 13, 14, and 15.

Appellants raise the possibility of potential liability on the County for costs to replace the filtration system in the Rector Reservoir dam due to damages from sedimentation. While the analysis of the County’s general liability for such an occurrence is complex and speculative outside the context of a concrete injury, 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...” Thus, the County would have to engage in some act outside the approval of a permit that caused damages to the Rector Reservoir dam to be held liable. Appellants make no claim that the County engaged in such actions and even if they did, such a claim cannot form the basis upon which the County denies the Project.

Appeal Ground No. 18: Appellants claim 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.

Staff Response:

The resolution cited by Appellants 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. Instead, 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. Appellants are reading more into the Resolution than exists by suggesting that visitation and wine production levels approved by the Planning Commission are inconsistent with this resolution. Appellants also do not acknowledge that the Planning Commission's final approval was based on a significantly downsized Project that included reduced marketing events from 78 to 3 events, and reduced visitation numbers from 80 maximum daily to 60 maximum daily and 275 maximum weekly.

Appellants acknowledge 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.¹⁵ It is common for the Planning Commission to hear winery use permit requests 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.

Appeal Ground No. 19: Appellants claim that despite Applicant's assertions to the contrary, 92 percent of the grapes used for its 100,000 gallon production level cannot be would 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.

Staff Response:

The WDO does not require wineries to source grapes from on-site. In fact, 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.

¹⁵ The County Road and Street Standards changed in 2016 reducing maximum grade from 20 percent to 16 percent.

During the Commission hearings, Appellants 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. Appellants 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 4 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.¹⁶

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 Appellants 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 0.5 miles beyond the Project near the end Soda Canyon Road that has used large trucks since 1987.

Appeal Ground No. 20: Appellants claim 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. Appellants note 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.

Staff Response:

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

¹⁶ See Planning Commission Meeting July 20, 2016 Transcript pgs. 170- 174.

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. Appellants correctly note that accessory use structures are limited to 40 percent, but incorrectly assert that outdoor areas, which by definition are not “structures,” be considered within the calculation.

Appeal Ground No. 21: Appellants assert 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.

Staff Response:

Appellants’ claim that the Project does not support agriculture is unfounded. 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. Furthermore, the Planning Commission thoughtfully 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. Simply because Appellants believe that the visitation program is too large does not mean that the Project is inconsistent with Agriculture and Land Use Policies AG/LU-13 and AG/LU-2.

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 3 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.

Appellants also claim that even without visitation and marketing, the Mountain Peak Winery is not sustainable. 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. Appellants' claim that the winery is not sustainable in the market is unsubstantiated and frankly not a supportable rationale for denying the Project.

Appeal Ground No. 22: Appellants assert 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.

Staff Response:

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 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. Please also see Staff Response to Appeal Ground Nos. 19, 20, and 21, and Updated COA Nos. 4.1 through 4.3.

Appeal Ground No. 23: Appellants claim 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.

Staff Response:

Appellants overstate the number of annual vehicle trips associated with the Project apparently 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 arguing that Appellants' 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.¹⁷ 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 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 Staff Response to Appeal Ground Nos. 3 and 5.

Appeal Ground No. 24: Appellants contend 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.

Staff Response:

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 as further explained in Staff Response to Appeal Ground Nos. 2, 5, and 25.

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 as contended by the Appellants. 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. Please also see Staff Response to Appeal Grounds No. 3, 23, and 25.

¹⁷ See Planning Commission Meeting January 4, 2017, Transcript 66:21-28.

Appeal Ground No. 25: Appellants assert 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.” Appellants 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.

Staff Response:

Presently, in pre-project conditions, 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 the Appellants’ assertion, the Crane Traffic Study did evaluate the level of service both with and without the Project. (See Crane Traffic Study, pgs. 11-21.)

Appellants misrepresent Policy CIR-16 by omitting other critical text within the policy. The policy 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 the level of service already exceeds 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 conscientious 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 Staff Response to Appeal Ground Nos. 3, 5, and 26.

Appeal Ground No. 26: Appellants claim 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.

Staff Response:

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 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 LOS 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 1 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.¹⁸ Such limitations include constitutional limitations applicable to any exaction or condition of approval.¹⁹ 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 mitigation.²⁰ 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.

Appeal Ground No. 27: Appellants assert 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.

Staff Response:

Cultural and archaeological resources have been adequately addressed and considered. During preparation of the initial study/negative declaration (Negative Declaration), the Project site was evaluated for its potential to impact cultural and historical resources. 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

¹⁸ Public Resources Code Section 21004.

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

²⁰ *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).

locations can only be described in general terms relative to the subject Project. Staff concurs with Appellants that 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. In compliance with State Law²¹, 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 Staff Response to Appeal Ground No. 42.

Appeal Ground No. 28: Appellants claim 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.

Staff Response:

The Commission determined 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 6 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 the southern portion of the

²¹ Public Resources Code Section 21080.3.1.

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.

Appeal Ground No. 29: Appellants claim 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. Appellants identify the outdoor production facilities, nighttime marketing events, and regular tours and tastings as sources of substantial noise. Appellants claim these noise impacts violate the noise standards set forth in the General Plan and County Code Chapter 8.16, *et seq.*

Staff Response:

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 1 dB below noise thresholds (Appellants' 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. 4.16 and 6.6.)

Furthermore, as described in Staff Response to Appeal Ground No. 39, Appellants' 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, Appellants' 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 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 Appellants' 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.

Appeal Ground No. 30: Appellants assert 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. Appellants claim the record does not contain any evidence that an analysis of the impacts of the Project on biological resources was performed. Appellants point to Applicant's Stormwater Control Plan, which admits that erosion into at least one of the blue-line streams will occur during large storm events.

Staff Response:

Appellants incorrectly allege that there is no evidence that the Project's impacts to biological resources were analyzed. On the contrary, the Project's potential to impact biological resources was evaluated in the Negative Declaration 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 Negative Declaration. Project conditions of approval related to the environment are Updated COA Nos. 4.9, 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 Negative Declaration 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.

Appellants provided a biological analysis but it 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 2 miles from the Project site. (See Amber Manfree, PH.D. et al, presentation and October 11, 2016 letter.)²² Appellants' 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

²² Presentation on Rector Creek and Reservoir made by Amber Manfree, PH.D. and 17 page biological assessment authored by Teejay O'Reer, M.S., Amber Manfree, PH.D., Rob Gailey, P.G., C.H.D., Robert Katy, PH.D., and Peter Moyle.

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. As noted above in Staff Response to Appeal Ground No. 15 since groundwater is being reduced over existing conditions there can be no resulting adverse impact.

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 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 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.)

Appeal Ground No. 31: Appellants assert 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.

Staff Response:

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 0.5 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.²³ 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 Nos. 4.9 and 4.20(b).)

Appeal Ground No. 32: Appellants claim 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. Appellants 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.”

Staff Response:

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 0.5 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 Staff Response to Appeal Ground No. 31. As a result, 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.

²³ See “Response to Public Comments Proposed Mountain Peak Winery (Application #P13-00320)” Richard C. Slade & Associates, LLC, November 30, 2016.

Appeal Ground No. 33: Appellants allege 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.

Staff Response:

Appellants' 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.²⁴ 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.²⁵ 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 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. Please also see Staff Response to Appeal Ground No. 41.

Appeal Ground No. 34: Appellants assert 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

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

²⁵ *Sierra Club v West Side Irrig. Dist.* (2005) 128 CA4th 690.

viability and sustainability of the incredibly diverse habitats in the Rector Canyon area through adverse impacts of soil erosion and sedimentation.

Staff Response:

As noted in the Staff Response to Appeal Ground Nos. 13 through 15, 17, 30 and 31, Appellants have not substantiated how the Project will purportedly result in substantial soil erosion and sedimentation. Appellants appear to simply assume that grading and deposition of cave spoils on-site will result in more erosion potential than current conditions. Appellants appear to disregard that 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.²⁶ 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 Winery which has been designed to maintain most of the native vegetation including oak trees and avoid the riparian corridor.

Appeal Ground No. 35: Appellants claim 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. Appellants point out that it is a dead-end road with access constraints that will impact rescue and evacuation efforts.

Staff Response:

Because of existing flooding, accident data, emergency calls for service, and fire history in Soda Canyon, Appellants assert that the Project will cause their neighborhood to become unsafe. However substantial evidence in the record supports the Planning Commission's finding that the Project would not cause these existing conditions to change substantially.

²⁶ General Plan Recreation and Open Space Element, pgs. ROS-1 through ROS-3.

More specifically, 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. As noted in Staff Response to Appeal Ground Nos. 6 through 10, exposure to fire dangers for Project occupants and surrounding neighbors would not increase as a result of the Project, and may even nominally improve. Appellants' claims 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. Appellants have 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 LOS along Soda Canyon Road would remain at "A." See also Staff Response to Appeal Ground Nos. 11 and 23.

Appeal Ground No. 36: Appellants contend 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.

Staff Response:

Appellants 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. Appellants claim 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 0.75 miles outside of the drainage basin that the Appellants' 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 Staff Response to Appeal Ground No. 35.

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 Staff Response to Appeal Ground No. 3.

Appeal Ground No. 37: Appellants assert 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.

Staff Response:

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.²⁷ 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.²⁸ However, argument, speculation, inaccurate information, unsubstantiated opinion, or social or economic impacts unrelated to physical changes to the environment do not constitute substantial evidence.²⁹ 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.³⁰

Appellants have not made a “fair argument” that the construction and operation of a new winery may have significant environmental effects. The vast majority of materials submitted by the Appellants, 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.³¹

Appellants dispute 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 Appellants’ 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 Appellants), then removal of the vineyards would result in greater water reduction than projected by Slade. Similarly, Appellants accurately describe 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 grading and cave spoil deposition. Again the Appellants’ contention is conclusory and not supported by the administrative record. See Staff Response to Appeal Ground No. 31.

²⁷ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74-75.

²⁸ CEQA Guidelines Section 15384(a).

²⁹ Public Resources Code Section 21080(e), 21082.2(c).

³⁰ Public Resources Code Section 21082.2(b); CEQA Guidelines Section 15064(f)(4).

³¹ *Parker Shattuck Neighbors v Berkeley City Council* (2013) 222 CA4th 768, 785.

Appeal Ground No. 38: Appellants assert 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.

Staff Response:

CEQA defines a “significant effect on the environment” as a substantial, or potentially substantial, adverse change in the environment.³² 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.³³ Thus, in determining whether there are significant environmental impacts, the lead agency must determine if an impact is both substantial and adverse. 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.³⁴

Appellants have not demonstrated that the Project has a potential to significantly *and adversely* impact Rector Creek watershed. Appellants continue to assert 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 Staff Response to Appeal Ground No. 31.

Likewise, Appellants make 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 Appellants do not differentiate between the existing setting and impacts resulting from the Project. For example, Appellants’ biologist (Manfree) opines that the Rector Creek downstream of the Project site is habitat for both common and special status species however, the biologist 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.

³² Public Resources Code Section 21068.

³³ 14 Cal Code Regs Section 15382.

³⁴ *Defend the Bay v. City of Irvine* (2004) 119 CA4th 1261, 1267.

Appeal Ground No. 39: Appellants assert 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. Appellants claim their noise expert (Wilson Ihrig) produced substantial evidence that the Project would result in significant noise impacts.

Staff Response:

Appellants’ 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), Appellants’ 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 6 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 Appellants’ 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.

Appeal Ground No. 40: Appellants assert 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 Appellants’ expert (Smith Engineering) opined would have a significant adverse traffic impact.

Staff Response:

Appellants’ rely on the Smith Peer Review as substantial evidence that the Project may have a significant traffic impact. However, 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 based off of 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 Engineering (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 indicates double 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 6 outbound and 5 inbound trips (11 trips total) during the weekday p.m. peak hour as opposed to the 49 trips assumed by Smith Engineering. 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.³⁵ 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 Engineering'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.

Appeal Ground No. 41: Appellants assert 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. Appellants claim they have submitted substantial evidence demonstrating that several existing, current, and future projects in the vicinity of the Project will collectively and adversely impact

³⁵ *Gentry v City of Murrieta* (1995) 36 CA4th 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.

Staff Response:

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.³⁶ "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.³⁷ 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."³⁸ 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.³⁹ The existence of significant cumulative impacts caused by other projects is not, standing alone, evidence that the project's impact is cumulatively considerable.⁴⁰ 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.⁴¹

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. Appellants' offered no credible evidence that the Project would contribute to presumed/purported elevated sediment loads in Rector Creek and Rector Reservoir. Appellants simply conclude 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. Appellants' 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, Appellants contend 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

³⁶ Public Resources Code Section 21083(b); 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3).

³⁷ 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 CA4th 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).

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

³⁹ 14 Cal Code Regs Sections 15064(h)(1), 15065(a)(3). *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 CA4th 608, 622 (citing this text).

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

⁴¹ *Sierra Club v. West Side Irrig. Dist.* (2005) 128 CA4th 690 (citing this text).

threshold, and is subject to California Green Building Code 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 6 outbound trips during peak hours (turning movements from Silverado Trail onto Soda Canyon Road are free flowing for the 5 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 1 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.⁴² Here, the evidence supports the Commission's finding that the Project would not result in any cumulative impacts. See also Staff Response to Appeal Ground Nos. 23, 24, and 25.

Appeal Ground No. 42: Appellants claim 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. Appellants point out that neither the County nor the Applicant produced any evidence to the contrary.

Staff Response:

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. Appellants assume that since artifacts were purportedly 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.⁴³

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 Negative Declaration prepared for the Project. (See Negative Declaration 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

⁴² *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).

⁴³ *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 CA4th 144.

resources. Those maps identify several Native American village sites in Foss Valley as noted by Appellants, but the nearest mapped site is 0.5 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 Staff Response to Appeal Ground No. 27.

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