

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

In the Matter of:

An appeal filed by George and Nancy Montgomery (Appellant) to a 4-1 decision by the Napa County Planning Commission on January 15, 2020, to approve an application submitted by Sherrett Reicher, Alsace Company, LTD (Applicant) for Use Permit No. P16-00428-UP to construct and operate a new 30,000 gallons per year winery known as the Scarlett Winery and to allow: a) construction of a winery building consisting of two detached structures (a two story 4,514 sf hospitality/administration building and a one story 18,022 sf production building) separated between the east outdoor terrace area and a landscaped area; b) construction of a 4,725 sf covered outdoor crush pad - crush will occur inside the winery production building; c) tours and tastings by appointment only with a maximum of 15 visitors per day and a weekly maximum of 80 visitors (Daily tours and tastings may be conducted on the West Terrace Deck); d) a marketing program of two (2) food and wine pairing lunch events per month with a maximum of 10 persons; one (1) wine club release event per year with a maximum of 100 guests; one (1) large event per year with a maximum of 125 guests; and one (1) wine club release event per year for groups of up to 200 guests with up to 10 event staff. Events to be held between 10 a.m. and 6 p.m. or 6 p.m. and 10 p.m. Larger events (100, 125, and 200 guests) to be held on weekends only. Portable toilets to be utilized during any event hosting greater than 75 guests. Shuttle service used for events over 100 guests. No marketing events shall be conducted in the outdoor picnic area and on the West Terrace Deck. Daily tours and tastings by visitors will not occur on days when events are held with more than 100 guests in attendance. Food and Wine Pairings – Food prepared in the commercial kitchen or catered; e) six (6) full-time, two (2) part-time employees and two (2) employees during harvest for vineyard activities only; f) a commercial kitchen for some food preparation and use as a

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caterers' staging area for some of the marketing events; g) on-premises consumption of wines produced on-site may occur solely within the hospitality building designated tasting areas in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5; h) winery hours of operation daily 6 a.m. – 6 p.m. (Non-harvest production hours) and daily visitation hours of operation daily 10 a.m. – 6 p.m.; i) construction of seven (7) visitor and five (5) employee parking spaces both with a handicapped space and one area for a high occupancy vehicle for a total of 13 spaces; j) installation of a wastewater system; k) installation of a regulated transient non-community water system; l) installation of two (2) 20,000-gallon domestic water storage tanks and one (1) 100,000-gallon fire water storage tank; m) installation of an entry gate and winery sign; and n) all project spoils to be disposed of on-site. The project is located on an approximately 47.88 acre site at 1052 Ponti Road, which intersects with Skellenger Lane just west of Silverado Trail, St. Helena, CA; APN: 030-280-010 (the Property). The site is designated as Agricultural Resource (AR) and Agriculture, Watershed and Open Space (AWOS) in the 2008 General Plan and is in the Agricultural Preserve (AP) and Agricultural Watershed (AW) Zoning Districts.

WHEREAS, on November 22, 2016, Sherrett Reicher, Alsace Company, LTD (Applicant) submitted an application to the Planning, Building and Environmental Services (PBES) Department for approval of Use Permit No. P16-00428-UP to construct and operate a new 30,000 gallons per year winery known as the Scarlett Winery (Scarlett, the Winery or the Project) including construction of a winery building consisting of two detached structures, construction of a 4,725 sf covered outdoor crush pad, tours and tastings by appointment only with a maximum of 15 visitors per day and a weekly maximum of 80 visitors, a marketing program and other related improvements; and

WHEREAS, resubmittal applications with additional information about the Winery's operations were received on April 20, 2017 and February 15, 2018. The Winery application was determined to be complete on July 23, 2019; and

WHEREAS, the project is located on an approximately 47.88 acre site at 1052 Ponti Road, which intersects with Skellenger Lane just west of Silverado Trail, St. Helena, CA; APN: 030-280-010 (the Property). The site is designated as Agricultural Resource (AR) and

Agriculture, Watershed and Open Space (AWOS) in the 2008 General Plan and is in the Agricultural Preserve (AP) and Agricultural Watershed (AW) Zoning Districts; and

WHEREAS, on January 13, 2017, a New Project Submittal Courtesy Notice (dated January 12, 2017) was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the general CEQA document notification list. The size of the Project and a description of the marketing events were incorrect, and a corrected version of the courtesy notice dated January 20, 2017 was mailed out on January 23, 2017; and

WHEREAS, after a preliminary review of the Project, the PBES Department determined that the Project might result in a significant environmental effect and therefore required preparation of an Initial Study consistent with the requirements of CEQA to determine if the Project may have a significant effect on the environment; and

WHEREAS, based upon the Initial Study and CEQA review, the PBES Department prepared a Mitigated Negative Declaration (or MND) for the Project. The MND was released for public review on September 11, 2019, for a 30-day public comment period; and

WHEREAS, on September 11, 2019, the Public Notice for the Planning Commission hearing on October 2, 2019 and Notice of Intent to Adopt a Mitigated Negative Declaration were mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet. Notice was also provided to those persons on the general CEQA document notification list. The Notice was published in the Napa Valley Register on September 12, 2019; and

WHEREAS, on October 2, 2019, the Planning Commission held a public hearing regarding the Scarlett Winery. Several letters and emails were received prior to the hearing and comments at the hearing focused on the following issues: 1) access to the Project site via Ponti Road including the adequacy of the right-of-way width, potential harm to existing trees and the feasibility of relocating the winery access to Silverado Trail; 2) potential noise impacts of the winery on surrounding residences; 3) groundwater availability and use, and the adequacy of the Project's Water Availability Analysis (WAA); 4) shuttle service to the winery for marketing events; and 5) general land use concerns regarding proposed visitation, marketing, and production. Given these comments, the Commission opened the hearing, heard the Applicant's presentation, solicited comments from the public and Commissioners, and continued the item to December 4, 2019, so that Staff could address the concerns raised. The Commission also requested that the Applicant and neighbors meet to discuss and address issues before the next meeting; and

WHEREAS, on December 4, 2019, Staff requested additional time to provide written responses on the various issues. The Commission continued the hearing to January 15, 2020; and

WHEREAS, on January 15, 2020, the Planning Commission held a continued public hearing. On January 6, 2020 Staff received correspondence from the law firm of Shute, Mihaly and Weinberger on behalf of George and Nancy Montgomery regarding additional traffic and

road issues. The day before the January 15th hearing, Staff provided to the Planning Commission and posted on the County's project website Staff's supplemental analysis responding to the Montgomery's counsel's correspondence; and

WHEREAS, on January 15, 2020, Staff presented an overview of the issues that had been raised including the following: groundwater availability and the adequacy of the Project's WAA; potential storm water issues; potential noise impacts of the winery on surrounding residences; grape sourcing on-haul and off-haul; Ponti Road and the right-of-way width, safety, and potential harm to existing trees; adequacy of parking for visitation, employees and marketing events and the use of shuttle service; the winery design and potential impact on the surrounding neighborhood; alternative project access from Silverado Trail; and the adequacy of the Traffic Impact Study prepared by Crane Transportation Group (CTG); and

WHEREAS, Public Works Director Steve Lederer also provided the Commission with the history of when the road became part of the County's network, and the feasibility of and issues associated with relocating winery access to Silverado Trail (Certified Planning Commission Hearing Transcript January 15, 2020, pages 40-43:4-6). County Engineering Services Manager Patrick Ryan provided additional testimony to the Commission regarding the adequacy of Ponti Road to serve both the proposed winery operations and maintain safe ingress/egress for the surrounding residential neighborhood and vineyard operations currently utilizing the road (Certified Planning Commission Hearing Transcript January 15, 2020, page 53:4-8); and

WHEREAS, the Commission's deliberations primarily focused on potential winery impacts perceived by the neighbors, whether or not the winery's access should be relocated to Silverado Trail, and Applicant-volunteered concessions that included: 1) use of shuttle buses for all marketing events with over 75 guests; 2) removal of on-site wine consumption (picnicking) from the West Terrace Deck; and 3) installation of two turn-out areas on the east side of Ponti Road on the adjacent parcel [APN 030-280-010] owned by Applicant to further enhance the safety of Ponti Road. Ultimately, the Commission revised the conditions of approval to eliminate marketing events from occurring on the West Terrace Deck and within the outdoor picnic area adjacent to the guest parking area (as designated on the Architectural Drawings Sheet UP A-2 dated January 31, 2018). The Commission also restricted use of the West Terrace Deck to daily tours and tastings only and required the Applicant to notify surrounding property owners a minimum of 30 days prior to marketing events of 100 or more guests (COA No. 4.20(c)). The conditions also memorialized two turnout areas proposed by the Applicant on the east side of Ponti Road (COA No. 6.15(c)); and

WHEREAS, on January 15, 2020, after considering all public testimony and all evidence submitted, the Planning Commission closed the public hearing, deliberated, and voted (4:1– AYES: Gallagher, Whitmer, Dameron and Mazotti; NO: Cottrell) to approve Use Permit No. P16-00428-UP; and

WHEREAS, on January 28, 2020, the project approval letter with the final adopted conditions of approval was forwarded to the Applicant and mailed to all the property owners along Ponti Road including the Montgomerys; and

WHEREAS, on January 30, 2021, subsequent to the Commission's decision and within the prescribed period, Appellant George and Nancy Montgomery (Appellant) submitted a timely Notice of Intent to Appeal the Planning Commission's decision to approve the Project and subsequently filed a timely Appeal Packet on February 12, 2020 (collectively the Appeal). The Appeal Packet specified the grounds on which the Appellant's Appeal is based, and are set forth with more particularity therein¹; and

WHEREAS, in accordance with Napa County Code (NCC) Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for May 5, 2020, a date at least 15 but no more than 90 days from the date of submittal of the Appeal; and

WHEREAS, public notices of the appeal hearing were mailed and provided to all parties who received notice of the Planning Commission hearing on January 15, 2020. The notice ran in the newspaper on April 24, 2020. On May 5, 2020, the public hearing was opened and continued to July 14, 2020 to accommodate all parties' schedules; and

WHEREAS, prior to the continued appeal hearing on July 14, 2020, the former Chair issued a Good Cause Determination that found good cause existed for the record to be augmented with the Papadimos Group Report dated February 4, 2020, submitted by Appellant. The Chair also authorized the parties the opportunity to submit additional evidence, legal briefing and analysis on the topic of noise. To give Staff ample time to engage a noise consultant to review the Papadimos Report and to prepare a supplemental noise analysis, on July 14, 2020, the appeal hearing was dropped with the consent of Applicant and Appellant from the Board's calendar to be re-noticed for a future date; and

WHEREAS, in October 2020, Staff engaged noise consultant Illingworth & Rodkin, Inc. to review the noise analysis in the MND prepared for the Planning Commission (the Original MND). As a result of the COVID pandemic and stay at home orders, the consultant was unable to visit the Property for some time and it took longer than usual to receive the supplemental noise analysis. The Noise and Vibration Assessment was completed by Illingworth & Rodkin, Inc. on March 18, 2021 (I&R Noise Assessment). The I&R Noise Assessment relied on site-specific noise measurements taken at the Winery and in the vicinity and reaffirmed and amplified the County's prior conclusions in the Original MND that the Winery would not result in any significant noise impacts; and

WHEREAS, on March 25, 2021, the I&R Noise Assessment was provided to Appellant and Applicant for review. The parties were given an opportunity to submit additional evidence, legal briefing and analysis on the topic of noise; and

WHEREAS, the I&R Noise Assessment results were incorporated into the Revised MND and included in Staff's responses to the grounds raised in the Appeal. Changes made to the

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

Revised MND were identified using strikethrough (indicating deletions) and italicized bold fonts (indicating additions or modified elements or analysis pertinent to this analysis. No new impacts associated with the I&R Noise Assessment were identified. The I&R Noise Assessment merely amplified and clarified the previous determinations in the Original MND that the Winery would not generate significant noise impacts. As of July 1, 2020, lead agencies are required to consider Vehicle Miles Travel (VMT) as part of the CEQA analysis. Staff also updated the Transportation section of the Revised MND to reflect the County's VMT program. Staff updated the Hydrology section also to reflect the recent drought declarations made by the State and County. Since these revisions to the Initial Study clarified and amplified the existing analysis and conclusions and do not result in new or more significant impacts, the Revised MND was not required to be recirculated (CEQA Guidelines Section 15073.5 (c)); and

WHEREAS, the appeal hearing was rescheduled for August 24, 2021, and public notices of the new hearing date were mailed and provided to all parties who received notice of the Planning Commission hearing on January 15, 2020. The notice ran in the newspaper on August 6, 2021; and.

WHEREAS, the public comment period on this appeal will have run for 492 days by the time the hearing was held on August 24, 2021; and.

WHEREAS, on August 24, 2021, at a duly noticed continued public hearing on the Appeal, the Board heard and considered all evidence and testimony regarding the Appeal; the Board closed the public hearing and adopted a motion of intent to: (1) reject each of the grounds of the Appeal and deny the Appeal in its entirety; (2) adopt the Revised MND and Mitigation, Monitoring and Reporting Program for the Project; (3) uphold the Planning Commission's approval of the Project; and (4) approve Use Permit No. P16-00428-UP for the Scarlett Winery subject to Revised Conditions of Approval; and

WHEREAS, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on October 19, 2021; and

WHEREAS, on October 19, 2021, this proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on October 16, 2021, and interested persons having been given an opportunity to address the Board regarding the proposed resolution.

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

Section 1. Recitals.

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

Section 2. Conduct of Appeal.

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

B. To clarify the County's procedural requirements and expectations regarding land use appeals, the Board of Supervisors has an adopted policy that requires that the parties attend a pre-hearing conference with the parties and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists.

C. A pre-hearing conference was initially held on May 5, 2020 with Appellant's counsel, Applicant's representative and counsel, former Chair Dillon and a Deputy County Counsel. Former Chair Dillon issued a Good Cause Determination that found good cause existed for the Planning Commission record to be augmented with a noise report prepared by the Papadimos Group Report (dated February 4, 2020), submitted by Appellant with the Appeal. The Chair also authorized the parties to submit additional evidence, legal briefing and analysis on the topic of noise.

D. On May 13, 2021, current Chair Pedroza held a follow-up pre-hearing conference with the parties and allowed Appellant and Applicant the opportunity to submit supplemental evidence only regarding the topic of noise and/or supplemental information related to Appellant's grounds of appeal not to exceed ten pages including exhibits and attachments.

E. On June 18, 2021, Appellant's counsel submitted two supplemental packets of information. The first packet was 63 pages longer than the ten-page limit imposed by the Chair at the pre-hearing conference (Appellant's Long Submittal). Appellant's counsel's second shorter packet was ten pages (Appellant's Short Submittal). Applicant's counsel submitted six pages of supplemental information.

F. On July 13, 2021, Chair Pedroza issued a Supplemental Good Cause Determination which found that good cause did not exist to augment the Planning Commission record with the new information in Appellant's Long Submittal for the reasons reflected in the Chair's Supplemental Good Cause Determination including but not limited to the submittal exceeded the maximum ten page limit set at the pre-hearing conference and included new evidence beyond the topic of noise. The Chair further found that good cause did not exist for augmentation of the Planning Commission record with a third traffic report from Appellant's counsel (the Griffin Cove dated June 8, 2021) attached to Appellant's Short Submittal. The record already includes two prior traffic reports prepared by Griffin Cove (one dated September 30, 2019 commenting on the Original MND and one dated January 2, 2020 providing further comments to the Planning Commission). The Chair further found that Appellant had ample opportunity to present evidence

and legal arguments on the topic of traffic to the Planning Commission and in Appellant's Appeal Packet. Also, supplemental evidence was limited by the Chair to the topic of noise.

G. On July 30, 2021, Appellant's counsel submitted a 23-page Good Cause letter including exhibits. The letter attempted to augment the record with new evidence, reargued cumulative impacts and asserted that the appeal hearing must be de novo. The County's procedures (NCC Section 2.88.090 (B)) allow oral not written argument in support of a request to overrule the Chair. The Clerk of the Board excluded the Good Cause letter from the materials considered by the Board but retained it as part of the record of the meeting.

H. On August 19, 2021, Appellant's counsel submitted a seven page letter reasserting Appellant's prior positions. At the pre-hearing conference, the Chair set June 18, 2021 as the deadline for submittal of supplemental legal argument by Appellant or Applicant. Appellant's submittal was untimely and per County Code Section 2.88.090 (B)(3), the Clerk of the Board excluded the letter from the materials considered by the Board but has retained it as part of the record of the meeting.

I. Pursuant to NCC Section 2.88.090 (B), the Chair's decision regarding exclusion of Appellant's four submittals referenced above is final unless one of the parties request that a majority of the Board overrule the decision. Appellant requested that a majority of the Board overrule the Chair's prior good cause determination.

J. On August 24, 2021, the Appeal hearing began with the Chair allowing Appellant's counsel the opportunity to convince a majority of the Board to overrule the Chair's prior determinations to exclude the four submittals referenced above. The Board heard and considered Appellant's request but declined to overrule the Chair.

K. As previously noted, Appellant's counsel's four submittals were excluded from the record of proceedings and materials considered by the Board but were retained by the Clerk of the Board as part of the record of the meeting.

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

The Board hereby makes the following findings of fact and conclusions of law in regards to each of the grounds for appeal as stated by Appellant in the Appeal²:

A. First Ground of Appeal.

Appellant's Position: Appellant claims that the sole means of access to the Winery would be from Ponti Road, a 15-foot wide local street, which does not meet the County Road and Street Standards (County RSS). The RSS states: "*All streets and roads, with the exception of agricultural special purpose roads and residential driveways, shall be constructed to provide a minimum of two 10-foot traffic lanes and a minimum of one foot of shoulder on each side of the roadway providing two-way traffic flow.*" Because Ponti Road is neither an agricultural special

² This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the actual Appeal dated February 11, 2020.

purpose road nor a residential driveway, the exceptions stated in the County RSS do not apply. Appellant asserts that the Project would add a sizable volume of traffic to a roadway that fails to meet the County's standards and this constitutes a significant environmental impact.

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

“Section 2. Scope of Standards” of the County RSS clearly states that the County RSS apply to private roads and driveways and to newly constructed public roads. The RSS do not apply to existing public roads such as Ponti Road. If Ponti Road was proposed as a new public road today, it would have to comply with the standards based upon the classification of the road type. Ponti Road is approximately 0.54 miles long and ranges in width between 13.5-17 feet with an average width of approximately 15 feet. The County's authority over the road is from pavement edge to pavement edge. The Planning Commission heard and considered testimony provided by Public Works Director Steve Lederer that Ponti Road was brought into the County Road System around 1939 and that like many other historic roads in the County it does not meet current standards (Certified Planning Commission Hearing Transcript January 15, 2020, pages 40-41:4-11).

The CTG Traffic Study prepared for the Project identified the level of service for Ponti Road as LOS A, the best level of service for a road. According to the County's Winery Traffic Information/Trip Generation Sheet, as revised by County Staff in the Updated Use Permit Application materials, the proposed Project's daily traffic volumes and peak hour trips were calculated to be 38 vehicle trips with 14 trips occurring during the PM peak period on a typical weekday, 36 vehicle trips with 16 trips occurring during the PM peak period on a typical Saturday, and 43 vehicle trips with 18 trips occurring during the PM peak period on a Saturday during crush. Contrary to Appellant's assertion, these low traffic volumes on a road with the lowest level of congestion (LOS A) do not reasonably rise to a significant level.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the First Ground of Appeal and upholds the Planning Commission's approval of the Project.

B. Second Ground of Appeal.

Appellant's Position: Appellant asserts that the Project contemplates almost 170 vehicular trips associated with the largest marketing events, yet the MND failed to evaluate how this increased traffic would affect Ponti Road. The MND asserts that shuttle service will be employed for events that exceed 100 guests, however Appellant contends that there is no assurance that visitors will not try to access the Winery by car, travelling on Ponti Road, realizing there is insufficient parking, and then either attempting to park on Ponti Road or continuing to search for parking. Appellant claims that the MND fails to address the impacts of such a scenario and failed to provide any information about the number of shuttle buses that would be employed or the location of off-site parking.

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

The County is not required to evaluate Appellant's speculative parking scenario. (*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). The County properly evaluated traffic resulting from the Winery including the 167 trips anticipated to be generated by the once a year 200-person marketing event. The large marketing event was conditioned to occur on weekends only (10 a.m. to 6 p.m. or 6 p.m. to 10 p.m.). This conservative number takes into account 10 event staff (20 trips), 200 visitors (143 trips) and two special event trucks (four trips) [Refer to the Use Permit Application Packet - Proposed Project Winery Traffic/Trip Generation Sheet (Revised) – Attachment E of the October 2, 2019 Planning Commission Staff Report]. The Applicant informed the Commission it envisioned using larger shuttle buses for larger events. Because shuttle service is required for all marketing events (COA Nos. 4.3(b), 4.3(c), and 4.3(d)), the estimated 167 trips for the largest event is overestimated and will likely be considerably lower.

The use of shuttles depends on the size and type of the event, as well as where visitors will originate, specific information regarding what shuttle service options (e.g., type and size of vehicle, specific pick-up and drop off locations, etc.) would be used and is not usually known until a winery becomes operational. (Staff Response to Comment Memorandum (Attachment C of the Planning Commission Staff Report of January 15, 2020).) Staff further informed the Planning Commission that wineries typically utilize valet service and park vehicles in production areas of the Winery and/or along existing vineyard rows to accommodate guests and/or catering staff. Project COA No. 4.3 requires the preparation of an event special parking plan which may include, but is not limited to, valet service or off-site parking and shuttle service to the Winery. Scarlett Winery would have just three "large" marketing events per year consisting of one event per year at 100, 125, 200 persons held on weekends only and possibly an Auction Napa Valley Event, if selected. Shuttle services would be required at all marketing events for 100, 125 and 200 guests (COA Nos. 4.3(b), 4.3(c) and 4.3(d)). Smaller marketing events were also permitted to occur with a maximum of 10 guests at two per month any day of the week during the hours of 10 a.m. to 6 p.m. or 6 p.m. to 10 p.m. No shuttle service was required for these events. Furthermore, daily tours and tastings visitors were restricted to not occur when events with more than 100 guests were in attendance.

No parking is permitted or proposed within the County's right-of-way or unpaved portions of Ponti Road. (COA No. 4.12). Project COA No. 4.20(b) requires the submittal of a Traffic Demand Management Plan for review and approval by the Planning Division and the Public Works Department and that Plan will provide more details regarding implementation of the Winery's shuttle program.

For all of these reasons, the Board finds that the Commission reasonably determined that none of the marketing events would adversely impact traffic on Ponti Road and the required shuttle service would alleviate any potential parking issues.

Conclusions:

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

C. Third Ground of Appeal.

Appellant's Position: Appellant contends that the MND failed to analyze the traffic impacts associated with the proposed shuttle system or to evaluate how the width of these shuttle buses would affect operations along Ponti Road. Appellant further claims that the MND fails to identify the location of the off-site parking lot or analyze how roadways and intersections near this parking lot would be affected by the Project's traffic, thus preventing the public from ascertaining whether a shuttle system would address the Project's traffic impacts.

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

As to the size and use of shuttle buses, the Board incorporates here by reference Findings and Decision as to the Second Ground of Appeal. Any proposed access drive and parking areas must comply with the latest edition of the Napa County Roads and Street Standards (COA No. 6.1(a) – and COA No. 6.1(d)). Such adopted standards are required to ensure adequate widths are maintained for all types of vehicles, their approaches, site distance requirements and turning movements of vehicles. In recommending approval of this winery Project, Engineering Services and the Department of Public Works evaluated the preliminary civil plans submitted for the Project and determined that the proposed connection at Ponti Road would comply with the RSS, which allows a fire apparatus vehicle to make a maneuver from Ponti Road onto the Project site. Since fire apparatus could make the maneuver, it was assumed that any conventional vehicle such as delivery truck, a standard vehicle, and shuttle vehicles typically used in Napa Valley would also be able to make that maneuver.

Conclusions:

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

D. Fourth Ground of Appeal.

Appellant's Position: Appellant asserts that the MND fails to provide an analysis of how the Project's truck traffic would impact Ponti Road. Appellant's traffic analysis (the Griffin Cove Report) states that standard truck widths will consume over half of the available road width

(15 feet) along Ponti Road resulting in truck and shuttle traffic on Ponti Road precluding other vehicles from using the road at the same time.

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

The three “large” marketing events (100, 125 and 200 persons per year) will be scheduled on weekends and daily tours and tastings will be prohibited to occur on those days to further reduce any potential for roadway conflicts.

Ponti Road currently consists of a paved, flat roadway varying in width from 13.5 feet to 17 feet with an average width of approximately 15 feet, as well as a direct line of sight along the entirety of Ponti Road making it adequate for a fire apparatus and other large vehicles to have clear visibility. The County’s standard for a lane width is 8 feet.

While the standard width of a truck could consume over half of the road, the clear visibility, the flat, paved nature of the road, the proposed turnouts and shoulder areas along Ponti Road would provide relief and reduce roadway conflicts. Applicant proposed (and the Project was conditioned to require) installation of two turnouts on the Applicant’s property located adjacent to the Winery property on the east side of Ponti Road (COA 6.15(c)). The shoulders (privately owned) throughout the length of Ponti Road exceed 20 feet and have bays in between the existing trees that can also be utilized by egressing/ingressing vehicles in an emergency and during large truck deliveries and shuttle vehicle arrivals and departures. Any proposed access drive and parking areas are required to comply with the latest edition of the Napa County Roads and Street Standards (COA No. 6.1(a)). These standards ensure adequate widths for any type of vehicles, their approaches, site distance requirements and turning movements of large vehicles including fire apparatus vehicles, delivery trucks and other standard vehicles, as well as, shuttle vehicles utilized in Napa County. The Board Findings and Decision as to the Third Ground of Appeal is incorporated here by reference.

Conclusions:

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

E. Fifth Ground of Appeal.

Appellant’s Position: Appellant asserts the MND erred in that it relied exclusively on a level of service (LOS) methodology to conclude that the Project would not have significant traffic impacts and that an agency may not rely exclusively on such a methodology if other substantial evidence in the record demonstrates that the Project may actually cause significant impacts.

Findings and Decision: The Board finds and determines that:

The selection of a threshold of significance is a policy decision that calls for the agency to exercise judgment based on scientific and other evidence (14 California Code of Regulations (CCR) Section 15064 (b)(1)). An agency's reliance on a reasonable standard for gauging the significance of an impact cannot be challenged on the ground that the impact would be significant under other recognized standards (*Citizens for Responsible Equitable Env't'l Dev. v. City of Chula Vista* (2011) 107 CA4th 327, 335).

Since 2015, the County has relied on a traffic memorandum prepared by traffic engineering firm of Fehr & Peers that interprets the General Plan significance criteria and associated significance thresholds for arterials, signalized intersections, and unsignalized intersections for project conditions and for cumulative conditions. The County has consistently and uniformly applied this methodology on discretionary projects for purposes of evaluating traffic impacts. Upon submittal of Applicant's Use Permit application in 2016, Staff selected the intersections to be evaluated in the Crane Transportation Group traffic study (CTG Traffic Study) based on potential areas of concern. The CTG Traffic Study incorporated the County's 10% or greater significance criteria limit for traffic added by a project on a stop sign-controlled intersection approach, as well as the 1% or greater traffic significance criteria for project traffic being added to arterial roadways.

The CTG Traffic Study found that the Level of Service for Ponti Road for the entire segment and at the intersection of Skellenger Road is LOS A. The CTG Traffic Study was reviewed by the County's Transportation Engineer and deemed acceptable given the assumptions made, methods used in the evaluation, and the conclusions reached. Per the Public Works Memorandum, dated March 14, 2018, Staff confirmed that the CTG Traffic Study adequately demonstrates that the proposed Winery in the proposed location will not result in significant impacts related to transportation as conditioned (COA No. 4.18(d)). See also Findings and Determinations as to the Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Grounds of Appeal incorporated here by reference.

Staff further identified in the Original MND that the transition to VMT was not required of lead agencies until July 1, 2020. However, in anticipation of the transition and per the County's recently adopted Circulation Element, Staff included new policies that reflected this new regulatory framework for transportation impact assessment, along with a draft threshold of significance that is based on reduction of VMT compared to the unmitigated project rather than the regional average VMT (General Plan Policies CIR-7 through CIR-9). In anticipation of implementation of County's VMT program, the Applicant is required to submit a Traffic Demand Management Plan that will identify winery measures to reduce peak-hour vehicle trips and annual reporting requirements upon the County's request (COA No. 4.20(b)).

The methodology relied on in the Original MND and Revised MND is reasonable, appropriate and supported by substantial evidence. Appellant's disagreement with the County's reasonable methodology does not equate to a significant impact.

Conclusions:

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

F. Sixth Ground of Appeal.

Appellant's Position: Appellant asserts that the MND's LOS analysis did not accurately reflect the nature of Ponti Road as a residential street. Appellant claims that calculations that simply show the increase in vehicular delay at nearby intersections fail to reflect the potential effects of the Project on residents' quality of life. Appellant contends that resident perceptions play an important role in this process, and those perceptions are dependent upon many variables, including ambient traffic levels, traffic speed, vehicle mix (such as number of trucks), and the general environment. Appellant's traffic consultant, Griffin Cove, relied on the Traffic Infusion on Residential Environments (TIRE) methodology and concluded the Project's increased traffic will be noticeable to area residents. Appellant contends that this is a significant impact that was unaddressed in the MND.

Findings and Decision: The Board finds and determines that:

Appellant's discontent with the County's reasonable methodology does not mean a significant impact on traffic would occur. While Staff may not have relied on the TIRE methodology, Staff did take into account the resident's quality of life or rural characteristics of the neighborhood. The Original MND acknowledged the neighborhood by describing that the surrounding area consists of existing vineyards and rural residential uses to the north, south, and west. Pina Cellars Winery is located directly across the proposed Project site off Silverado Trail. Out of seven residences, the Original MND identified the closest residence as approximately 560 feet to the north of the proposed Winery building along Ponti Road. The Original MND noted that Ponti Road has no posted speed limit and dead ends at the gated entrance to Beckstoffer Vineyards, which is approximately 0.54 miles from the intersection of Skellenger Lane. The proposed Winery would be located on the east side of Ponti Road and 1,230 feet from the intersection of Skellenger Lane.

In responding to Appellant's appeal, Staff's research revealed that TIRE index methodology is used by some communities for evaluating non-residential activities proposed in residential zones within urban areas. This methodology has never been used when evaluating Napa County projects given that the County is predominantly rural and agricultural uses such as vineyards and wineries are acceptable primary uses within the AP and AW Zoning Districts, in addition to residential uses pursuant to policies set forth in the Napa County General Plan.

As discussed above in Findings and Determination as to the First Ground of Appeal, incorporated here by reference, the CTG Traffic Study found with seasonal adjustments and scheduling of visitation or marketing activities, the proposed Project would result in an increase

of two inbound trips and one outbound trip during Friday PM peak hour (3:45 to 5:15) and one inbound trip and two outbound trips on Saturday PM peak hour (4:30 to 5:30). All two study intersections operate at unacceptable levels of service (LOS E or F) for both the Friday and Saturday PM peak hour under existing conditions, year 2020 conditions, and cumulative conditions (year 2030) both with and without the Project. These small increases in vehicle trips are similar to what would be generated from a single family residence, which is typical of at least 10 trips per day, and are not considered significant. The record reflects the agricultural residences found along Ponti Road and given the low traffic volumes, Project traffic impacts were appropriately found to be less than significant.

Conclusions:

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

G. Seventh Ground of Appeal.

Appellant's Position: Appellant claims that Ponti Road is too narrow to support evacuating vehicles (including shuttle buses) and emergency response vehicles and is a dead-end roadway that is the sole access for seven residences. Given that Ponti Road is of substandard width, the MND should have analyzed whether it could safely accommodate traffic during an emergency, such as during a fire.

Findings and Decision: The Board finds and determines that:

Ponti Road and emergency access/egress was evaluated by the Napa County Fire Department. Although Ponti Road is narrow, it is a flat road, with clear line of sight for the entire approximately 0.54 mile length with 20' (privately owned) shoulders that can accommodate traffic during an emergency. The Project was routed to the Napa County Fire Department, the subject matter experts on life safety and fire issues, for review prior to Planning Commission consideration of the Project. The Fire Department's review included conducting a site visit on January 14, 2020. The Napa County Fire Department determined that because it is a flat paved road, with an average 15' width, as well as direct line of sight along the entirety of Ponti Road, it is adequate for Fire Department vehicles. The road also has privately owned shoulders throughout in excess of 20', which can be utilized by egressing vehicles in an emergency.

To further enhance the safety of Ponti Road, Applicant offered to construct two turn-out areas on the east side of Ponti Road, coinciding with adjacent property owned by Applicant. These turnouts would be hard-pack earth with gravel, subject to County Fire requirements for turnouts. Applicant's offer was accepted by the Commission and reflected in COA No. 6.15(c). Given the short segment of the road and the excellent sight distance in either direction, the Applicant's Engineer also opined that these two turnouts should provide more than adequate area

for large vehicles to pass on the paved road. County's Engineering Manager Ryan informed the Commission that the Applicant would work with the Napa County Fire Marshal's Office and the Engineering Division in the placement and siting of these turnouts for the most appropriate uses. (Certified Planning Commission Hearing Transcript January 15, 2020, page 53: 4-8).

The Winery's weekday visitation at 15 per day equates to approximately 12 daily trips on weekdays (at 2.6 visitors per vehicle times two one way trips) and 11 daily trips on weekend days (at 2.8 per vehicle times two one way trips on the weekend), which is comparable to a single-family residence that generates 10 trips per day. In addition, the largest of the three marketing events (200 guests) equates to approximately 143 trips at 2.8 visitors per vehicle times two one-way trips (which will be significantly reduced with the required shuttle service). There is no substantial evidence in the record that these low levels of marketing and visitation to the Winery would obstruct fire equipment and evacuation access during emergencies.

See also Findings and Determinations to the First, Second, Third, Fourth and Fifth Grounds of Appeal incorporated here by reference.

Conclusions:

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

H. Eighth Ground of Appeal.

Appellant's Position: Appellant asserts that although the County indicates that parking would not be allowed on Ponti Road, it fails to provide any indication as to how this alleged prohibition would be enforced.

Findings and Decision: The Board finds and determines that:

Parking enforcement is achieved through the Napa County Sheriff's Department as complaints are called in and/or through officers driving by and seeing parking violations firsthand.

To protect agricultural lands for agricultural use, the County balances parking in a manner that will meet a project's anticipated demand but avoid creating excess parking (See Section XVII (f) of the Revised MND). Based upon the Winery's proposed business plan, visitation and employment levels, 13 on-site parking spaces would be provided. Parking for the larger marketing events will be off-site with shuttle service to the Winery. No parking is permitted or proposed within the right-of-way of Ponti Road.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion. Therefore, the Board denies the Eighth Ground of Appeal and upholds the Planning Commission's approval of the Project.

I. Ninth Ground of Appeal.

Appellant's Position: Appellant asserts that the County failed to address traffic impacts on Skellenger Lane. A Commissioner requested an assessment of Skellenger Lane noting that the roadway serves as a short-cut between Silverado Trail and Highway 29 via Conn Creek Road. There is no stop sign for traffic on Skellenger at the intersection of Ponti Road. Because of high speeds (55 mph plus) on Skellenger Lane, combined with its lack of shoulders or turn lane, Appellant contends that turning in and out of Ponti Road is extraordinarily dangerous. Appellant claims that Commissioner Cottrell's requested analysis was not conducted.

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

Commissioner Cottrell's questions were addressed by CTG in its memorandum dated January 9, 2020. CTG's Mark Crane, PE confirmed that traffic distribution for the Project was based upon current traffic levels such that the vast majority of peak traffic hours on Friday and Saturday afternoon would be expected to turn right from Skellenger Lane and go southbound on Silverado Trail. Crane further stated that it was not realistic for exiting Project traffic to turn left onto Silverado Trail. Therefore, no stop sign was warranted at Skellenger Lane and Ponti Road nor would a left turn lane be warranted at the intersection of Silverado Trail. Staff concurred with CTG's analysis that no improvements were required, since the intersection of Skellenger Lane and Ponti Road did not exceed established traffic thresholds.

Conclusions:

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

J. Tenth Ground of Appeal.

Appellant's Position: Appellant asserts moving Winery access to Silverado Trail would avoid impacts to both Skellenger Lane and Ponti Road, a substantial benefit that was not analyzed by the County.

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

The record indicates that the Commission thoroughly and thoughtfully considered the feasibility of relocating the Winery's access to Silverado Trail. The Planning Commission record includes a letter from Applicant's engineer, Bartelt Engineering, dated November 20, 2019, documenting the reasons that relocating the proposed Winery access from Ponti Road to Silverado Trail is not feasible (the Bartelt Engineering Letter) and testimony from Public Works Director Lederer regarding County General Plan policies discouraging new driveways on major arterials like Silverado Trail.

According to the Bartelt Engineering Letter, relocation of the access driveway to a point along Silverado Trail would necessitate installation of a left turn lane on Silverado Trail and widening of Silverado Trail to accommodate the left turn lane. The Applicant's infeasibility analysis also identifies steep slopes, limited right-of-way availability, removal of mature Eucalyptus trees, the relocation of one joint utility pole and one guy pole, the extension and/or relocation of two 36-inch storm drain culverts flowing under Silverado Trail, the construction of roadway embankments ranging from 4 feet to 8 feet in height, relocation of approximately 700 lineal feet of overhead electrical and telephone lines, construction of a 600± lineal foot driveway from Silverado Trail to the relocated winery due to the setback requirements from Silverado Trail, and the removal of approximately three (3) acres of existing vineyard in support of infeasibility. Applicant informed the Commission that this alternative would require completely redesigning the Winery, drafting new technical reports, and filing a new application, all of which would be of considerable expense.

Relocating a proposed winery or access road is generally required only if necessary to avoid potentially significant environmental impacts or to achieve compliance with County regulations such as setbacks, slopes and viewshed or General Plan policies. Here, the proposed winery's access off Ponti Road has been designed in a manner that complies with County regulations and also avoids potential environmental impacts.

Staff also advised the Commission that both Caltrans and Napa County Public Works Department prefer to limit driveway connections along high speed high volume roadways, such as Silverado Trail or State Route 29, where there is an alternative access route to a property. The fewer driveway connections, the fewer potential locations for vehicle conflicts or disruptions to traffic flow. Public Works Director Lederer also opined that it would be preferable to direct all Scarlett Winery turn movements to/from Silverado Trail at the existing Skellenger Lane intersection. Public Works Director Lederer further informed the Commission that there are two General Plan Circulation Element policies that discourage the addition of new driveways on Silverado Trail and other major arterials in order to maintain a good flow of traffic on these roadways indicating that as more connections are introduced, the more impacted it may get. The Circulation Element policies are as follows: Policy CIR-1 and Policy CIR-40, formerly identified as Policy CIR-11 and CIR-15 under the 2008 Circulation Element, which is reflective of the Board of Supervisors' policy (Certified Planning Commission Hearing Transcript January 15, 2020, page 41:12-28).

The Commission's deliberations reflect that the Commission thoughtfully considered and analyzed the feasibility of relocating the Winery's access. (Certified Planning Commission Hearing Transcript January 15, 2020, pages 40:9-28; 41-51:1-5). During deliberations Commissioner Hansen commented, "I am not inclined to compel an applicant to completely change an entire project ... especially when there are suitable alternatives, and the County and Caltrans both have said that they want to limit driveway connections along high volume roadways like Silverado Trail" (Certified Planning Commission Hearing Transcript January 15, 2020, page 46:24-28). Similar comments were expressed by Commissioners Mazotti, Gallagher and Chair Whitmer.

For these reasons, a majority of the Commission and a majority of the Board were unable to find any justification (technical, regulatory or environmental) to warrant redesign of the Project to relocate the proposed winery access from Ponti Road to Silverado Trail.

Conclusions:

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

K. Eleventh Ground of Appeal.

Appellant's Position: Appellant contends that 13 parking spaces, five of which would be used for employee parking, is significantly less than would be needed during large events. Appellant further asserts although the Project calls for the use of shuttle service for the Project's large events (100-200 people), there is no assurance that visitors will not try to access the Winery by car resulting in excessive congestion on Ponti Road. Appellant contends that the MND failed to evaluate these impacts.

Findings and Decision: The Board finds and determines that:

Appellant's speculation regarding the Applicant's future compliance is unfounded and is not required to be analyzed in the MND. (See *Joshua Tree Downtown Bus. Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677 at 690; *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)).

The Applicant represented to the Commission that shuttle service would be used for all "large" events and the Project has been conditioned accordingly (COA Nos. 4.3(b), (c) and (d)).

The 13 parking spaces (five for use by employees and eight for use by daily visitors) is commensurate with the proposed number of employees and visitation. Daily winery hours of

operation are 6 am to 6 pm and visitation hours are 10 am to 6 pm. During regular visitation hours, not all 15 daily visitors would be arriving at the same time. Visitation programs are generally staggered based upon the desired wine experience envisioned in the winery business plan. The proposed parking will meet the anticipated parking demand, prevent excess unused parking and will not result in excessive congestion on Ponti Road. Furthermore, the Applicant is required to submit a Traffic Demand Management Plan for review and approval by the Planning Division and the Public Works Department, which includes but is not limited to the following measures that will reduce peak-hour vehicle trips such as encouraging guests to carpool or use a shuttle or van measures, promoting employee carpooling, implementing Guaranteed Ride Home (GHR) program, and providing lunch on-site. Such plan would be implemented upon County issuance of a Final Certificate of Occupancy for the Winery, and will be subject to submittal of annual reporting requirements at the County's request in response (COA No. 4.20 (b)).

Conclusions:

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

L. Twelfth Ground of Appeal.

Appellant's Position: Appellant asserts that the County did not establish proper thresholds of significance for determining whether noise from the Project would be significant. The County relied on a noise standard of 50 decibels and did not acknowledge that the County Code allows the noise limits to be reduced by 5 dB for noise characterized as "offensive," so long as the resulting noise limit is not below 45 dBA (NCC Section 8.16.070.B). On that basis, Appellant contends the relevant limit becomes 45 dBA. The Code identifies offensive noise as that which contains a steady, audible tone such as a whine, screech or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech. NCC Section 8.16.070. Noise from the Project's construction, production, and marketing events clearly has the potential to exceed 45 dBA.

Findings and Decision: The Board finds and determines that:

Appellant is incorrect. The County relied on appropriate noise thresholds, appropriately evaluated noise from both project construction and operations, and correctly found that noise from winery operations and production would not exceed even the 45 dBA suggested by Appellant.

A) Background

Because of the small marketing and visitation program and closest residence located approximately 560 feet from the Winery from the north, Staff reasonably extrapolated the Bell Winery noise assessment calculations prepared by RGD Acoustics and dated November 16, 2015 to assess potential noise impacts for the Scarlett Winery. Use of the Bell Winery calculations was

appropriate for this Project given similar characteristics of the Scarlett Winery to the Bell Winery (e.g., winery size, outdoor visitation and marketing events, hours of operation, location on the valley floor, and proximity to nearby residences).

For the Bell Winery, a noise meter measurement device was placed 123 feet from the sound source (a marketing event). Given that the largest marketing event proposed at the Scarlett Winery was larger, the noise level measured at the Bell Winery was adjusted upward. Furthermore, since the nearest residence from Scarlett Winery is 560 feet to the southwest of the winery patio, noise measurement levels were also adjusted accordingly. Thus, using the Bell Winery study as a model, and applying a six-decibel reduction per doubling of distance from the noise source, for Scarlett Winery, it was anticipated that exterior noise experienced at the nearest residence 560 feet to the southwest of the winery patio (estimated 49 decibels for half of the event duration) would not exceed the County Code standard of 50 decibels during 50 percent of daytime hours. With regards to noise associated with the production building (predominately-bottling activities), the proposed orientation and layout of this building would muffle noise and direct any noise toward Silverado Trail and not to the northwest.

To further address any perceived potential noise impacts by the neighbors, the Applicant removed its prior request for on-site wine consumption activities from the West Terrace, which is the closest visitor-serving area of the Project to Ponti Road (300 feet away per the WDO setback), the closest residence (R1, Green) at 600 feet, and the Montgomery (R5) residential access on Ponti Road. The Planning Commission further restricted use of the West Terrace to only daily visitation when it approved the Project.

Prior to the appeal hearing, the former Chair found good cause existed to allow Appellant to augment the record with the Papadimos Report and to allow the parties to submit additional evidence regarding potential noise impacts. Staff retained noise consultant Illingworth & Rodkin to review the conclusions in the Original MND and to provide site-specific noise calculations.

Illingworth & Rodkin measured long-term noise along the north boundary of the project site, where the winery and hospitality/administration buildings are proposed, and measured short-term noise in the vicinity of the residential properties south of the project site and on Skellenger Lane south of Ponti Road. Illingworth & Rodkin then calculated noise levels from project activities at six residential sites located on Ponti Road. The Appellant's residence was measured to be 900 feet away from the Winery (R-5).

The results of the site-specific I&R Noise Assessment amplified and reaffirmed the conclusions of the Original MND that noise impacts would be less than significant.

B) The County relied on appropriate noise thresholds.

Both the Napa County General Plan and the County's Noise Ordinance were used to identify appropriate noise thresholds for the Project. The noise levels are conservative given the rural setting, consistent with thresholds used by many other communities and appropriate for the impact of the proposed Winery.

Appellant unreasonably suggests that any detectable increase in noise levels above the quietest ambient conditions would represent a significant increase in noise. Contrary to the assertions in the Papadimos Peer Review, the County Jail Project EIR relied on the quantitative noise limits in the County General Plan and County's Noise Ordinance (Chapter 8.16) as did Scarlett Winery's assessment.

C) The County appropriately found noise from Project construction would not exceed 75 dBA.

Noise from construction activity in all cases were predicted assuming unshielded conditions and propagated to the nearest receptors using a standard rate of attenuation with the distance from the noise source.

The Original MND acknowledges that the Project would result in a temporary increase in noise levels during construction of the winery and its infrastructure. Construction activities would be limited to daylight hours using properly muffled vehicles. Staff further identified that the nearest residence to the winery development area is approximately 560 feet to the northwest of the proposed winery structures and that there is a low potential for impacts related to construction noise to result in a significant impact on the residence. As conditioned (COA No. 7.3), construction activities would be limited to 7a.m.-7p.m. on weekdays, during normal hours of human activity, vehicles would be muffled, and backup alarms adjusted to the lowest allowable levels. All construction activities would be required to comply with the Napa County Noise Ordinance (Napa County Code Chapter 8.16). The Original MND appropriately concluded that temporary construction noise generated would not be significant.

The I&R Noise Assessment amplified the prior conclusions in the Original MND and reaffirmed that the Project would not result in a substantial temporary increase in noise levels during construction of the Winery and its infrastructure. In addition, the Project would not generate excessive ground borne vibration because "Construction would occur more than 500 feet from the nearest residences and pile driving is not proposed as a method of construction. At a distance of 500 feet, ground borne vibration from construction is anticipated to generate [less than significant vibration levels]" and "such low levels of vibration would not be perceptible by persons at rest..."

D) The County appropriately found noise from winery operations and production would not exceed 45 dBA for daytime and 50 dBA for nighttime would result in less than significant impacts.

Noise from winery operations is generally limited and intermittent, meaning the sound level can vary during the day and over the course of the year, depending on the activities at the winery. The primary noise-generating activities are equipment associated with wineries including refrigeration equipment, bottling equipment, barrel washing, de-stemmers and press activities occurring during the harvest crush season, delivery trucks, and other vehicles. The Napa County General Plan EIR indicates the average, or equivalent, sound level (Leq) for winery activities is 51dBA in the morning and 41dBA in the afternoon. Audibility of a new noise source and/or increase in noise levels within recognized acceptable limits are not usually considered to

be significant noise impacts, but the General Plan notes that these concerns should be addressed and considered in the planning and environmental review processes. Winery operations would occur between 6:00 a.m. and 6:00 p.m. (excluding harvest). Staff determined that the proposed orientation and layout of this production building, as well as project landscaping, would muffle winery operational noise and direct such noise out toward Silverado Trail and not to the north.

Again, the I&R Noise Assessment reaffirmed the conclusions in the Original MND and found operational features of the proposed Winery would not generate significant noise impacts as follows:

- Mechanical Equipment: Because the mechanical equipment would be located a minimum of 560 feet from the nearest residential outdoor use areas, the sound pressure level resulting from full-load operation is calculated to be 39 dBA L50 or less, which would not exceed the 50 dBA L50 daytime noise limit or 45 dBA L50 nighttime noise limit established by Napa County.
 - Maintenance and Forklift Operations: Since maintenance and forklift operations would be located a minimum of 560 feet from the nearest residential outdoor use areas (R1), the sound pressure level resulting from these activities is calculated to be 46 dBA L25 or less, which would not exceed the 55 dBA L25 daytime noise limit. Other receptors (R2-R6) would be located further away and therefore, exposed to lower levels of noise. The Appellant's residence (R-5) is located 900 feet from the Winery.
 - Seasonal Crush Activities: Crush activities typically occur for a period of about six to eight weeks per year; however, such activities would not occur on a daily basis during this timeframe and are expected to primarily occur within the winery building and at the covered outdoor work area. Such activities would occur approximately 650 feet from the closest portion of the residential outdoor use area of R1, and other receptors in the project vicinity (R2-R6) would be further from the bottling truck and partially or fully shielded by the intervening winery building. At the closest residential outdoor use area, crush noise levels are calculated to be 42 dBA L50 or less, and would not exceed the 50 dBA L50 daytime noise limit or 45 dBA L50 nighttime noise limit.
 - Bottling Activities: Bottling would occur over a period of a few weeks per year during the daytime. The analysis conservatively assumes that bottling will be done with a mobile bottling truck at the covered outdoor work area approximately 650 feet from the closest portion of the residential outdoor use area of R1. At the closest residential outdoor use area, bottling noise levels are calculated to be 45 dBA L50 or less, and would not exceed the 50 dBA L50 noise limit. Other receptors in the project vicinity (R2-R6) would be further from the bottling truck and partially or fully shielded by the intervening winery building.
- E) The County appropriately found noise from marketing and visitation would result in less than significant impacts.

The Original MND concluded that because marketing events would be held inside the hospitality building with some use on the West Terrace Deck, surrounding residences would not be significantly impacted. The Planning Commission restricted the larger proposed marketing events to weekends only and prohibited use of the West Terrace Deck and outdoor picnic area for marketing events. Daily tours and tastings are limited to the tasting areas inside the hospitality building, the East Outdoor Terrace area and on the West Terrace Deck.

The I&R Noise Assessment concluded that the acoustic center of the noise produced by marketing events in the picnic area would be approximately 600 feet from the residential area of R1, 680 feet from the residential area of R6, and 800 feet from the residential area of Appellant's residence, R5. The predicted noise level from marketing events would be 45 dBA L50 at the residential area of R1, 43 dBA L50 at the residential area of R6, and 44 dBA L50 at the residential area of R5. Noise levels would be less if the events were held at the west terrace, east terrace, or indoors. The predicted noise levels at R1, R5, and R6 would not exceed the daytime noise level threshold of 45 dBA L50 (corrected for the character of sound). Other receptors in the project vicinity (R2, R3, and R4) would be further from the event noise source and subsequently exposed to lower levels of noise.

The I&R Noise Assessment also evaluated potential impacts associated with traffic and parking generated by the Winery and visitation/marketing events at nearby receptors and concluded that noise levels would be less than significant.

Traffic noise levels occurring during the PM peak period on a Saturday during crush or during a marketing event would fall within the low end of the range of existing ambient noise levels in the area, which typically ranged from 37 to 52 dBA Leq (as measured at LT-1), and from 42 to 43 dBA Leq (as measured at ST-1 and ST-2).

Regarding parking lot noise, the I&R Noise Assessment found "Parking lot noise levels would be produced by vehicle circulation, engine starts, and door slams, which typically produce noise levels that range from 53 dBA to 63 dBA Lmax at 50 feet. Such noise levels would be about 20 dBA less at a distance of 500 feet, which represents the minimum separation distance from the small parking to the nearest residential property to the north. Maximum instantaneous noise levels due to on-site parking activities would range from 33 to 50 dBA Lmax at the nearest residence north of the parking lot and would be well below the daytime maximum instantaneous noise limit of 70 dBA Lmax and typical ambient maximum instantaneous noise levels in the area. Parking lot noise levels would be less at other receptors in the project vicinity due to increased distance from the noise source."

After reviewing I&R's Noise Assessment, Appellant submitted a peer review report prepared by Papadimos Group dated June 8, 2021 (Papadimos Peer Review). The Papadimos Peer Review asserts that the I&R Noise Assessment fell short of accurately measuring ambient conditions or quantifying how various activities associated with the proposed Project would affect existing ambient conditions for nearby residential uses. The Papadimos Report also asserts that the I&R Noise Assessment failed to identify thresholds of significance in consideration of existing ambient conditions, and therefore, recommended that the County use a 3dB increase as its criterion of significance and that the noise assessment be revised and recirculated.

On July 1, 2021, Illingworth & Rodkin, Inc. responded to the deficiencies asserted by the Papadimos Peer Review, confirmed the County's noise standards were appropriately used to establish the thresholds of significance for the Project and explained that the Papadimos Peer Review's suggested threshold (limiting noise increases to above existing ambient noise levels at nearby residences of at most a 3dB increase) was meritless and unfounded as it was arbitrarily selected in order to present arguments that significant noise impacts could occur.

Conclusions:

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

M. Thirteenth Ground of Appeal.

Appellant's Position: Appellant asserts that the County's reliance on a prior noise analysis for another winery (e.g., the Bell Winery) as a "model" for the Project's noise impacts, in lieu of actually analyzing how noise from the Project would impact nearby neighbors violates CEQA.

Findings and Decision: The Board finds and determines that the I&R Noise Assessment amplified the conclusions of the Original MND and reaffirmed the County's prior assessment based on the Bell Winery model that production and hospitality activities would not result in significant noise impacts. See also Findings and Determination as to the Twelfth Ground of Appeal incorporated here by reference.

Conclusions:

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

N. Fourteenth Ground of Appeal.

Appellant's Position: Appellant asserts that the County failed to provide any factual documentation to support its assertion that impacts would be less than significant and simply asserted that the orientation and layout of the production building would muffle noise directing any noise out toward Silverado Trail. Appellant further asserts that crush activities, deliveries, and bottling activities would take place within the production building and the closest residence, just 560 feet to the north of this building, and that that noise from production activities, which

would occur as early as 6:00 a.m. across the street from a residence would result in a significant noise impact.

Findings and Decision: The Board finds and determines that the record contains ample evidence supporting the County's determination that noise impacts would not be significant. The Winery has been designed in a scale and scope that is consistent with other wineries in the Valley that blend in with its surroundings. The Winery is made up of two buildings with the hospitality building set back 300 feet from Ponti Road and 123 feet from the northwest property line. The production building is set back 70 feet from the northwest property line and approximately 560 feet from the nearest residence (R-1 – Green residence) separated by a 20-24' wide driveway access, a landscaped area and a proposed two Bioretention Detention Basins. As designed, the hospitality building will be set further away and placed in front of the production building. The residence would also face the north side of the proposed production building where employee parking would occur behind this building and crush activities, deliveries, and bottling activities would take place within the enclosed 3,445 sf crush area/covered work area and a smaller covered outdoor work area approximately 1,280 sf in size near the center of the building directly across from the employee parking area all facing out toward Silverado Trail. As with other winery projects, a site-specific noise assessment is usually only required if a winery is proposed within 300 feet of an off-site residence. Given the building's design and distance from the closest residence, the Original MND appropriately found noise impacts would be less than significant. The I&R Noise Assessment and response to the Papadimos Group comment letter amplified the Revised MND's prior conclusions.

Conclusions:

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

O. Fifteenth Ground of Appeal.

Appellant's Position: Appellant asserts that the County should have conducted a groundwater recharge analysis to identify and evaluate the Project's potential to impact groundwater resources. Appellant asserts that the fact that groundwater levels may have recovered over the last few years does not erase the fact that the area has historically been in a long-term state of decline. In the absence of an actual groundwater recharge analysis, Appellant asserts that the County lacks the evidentiary support that the Project would not adversely impact groundwater recharge and storage.

Findings and Decision: The Board finds and determines that contrary to the Appellant's assertion, a full and thorough assessment of groundwater issues was performed by Applicant's engineer Bartelt Engineering and then peer reviewed by the County's groundwater consultant Luhdorff & Scalmanini Consulting Engineers (LSCE). LSCE's peer review confirmed that based on the most current available information in the vicinity of the proposed Scarlett Winery,

including data not cited by commenters nor Appellant's expert Kamman, the data reflects long-term stable groundwater levels in a well (Napa County-132) located in the Project vicinity and that has been monitored by the County for over five decades. Therefore, additional analysis was not warranted. To ensure the Project remained compliant with the proposed groundwater usage estimates identified in the Water Availability Analysis prepared for the Project, a project specific condition of approval restricts all water consuming activities to 29.40 AF/YR and requires the submittal of groundwater monitoring reports on a regular basis. (COA Nos. 4.20(a), 6.15(b) and 9.9(a)).

Conclusions:

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

P. Sixteenth Ground of Appeal.

Appellant's Position: Appellant claims that the County must require an EIR to analyze the extent and severity of the Project's significant environmental impacts and to consider feasible alternatives to avoid or minimize these impacts. Appellant contends that alternatives exist-both to the location of the Winery on the Project site and access to the Winery that would ensure that existing residents are not subjected to increased traffic and noise impacts. According to Appellant, two civil engineers unequivocally determined that access from Silverado Trail is feasible. It is clear that the only reason the Applicant is refusing to provide access from Silverado Trail is to avoid an increase in cost.

Findings and Decision: The Board finds and determines that:

The County has appropriately and adequately analyzed the potential environmental effects resulting from this small 30,000 gallons per year winery with a maximum of 15 visitors per day and a modest marketing program, proposed on a 47.88 acre-site with 38-acres of existing vineyard and determined no potentially significant environmental impacts would result from the Project. There is nothing about the Winery or its operations that reasonably triggers the need for an EIR to evaluate the "extent and severity" of the impacts or the need to analyze project alternatives.

CEQA requires that when a project would result in significant environmental impacts, project alternatives that will reduce or avoid potentially significant environmental impacts must be considered and evaluated in the environmental impact report (EIR) prepared for the project (CEQA Guidelines Section 15126.6). Outside of an EIR, project alternatives are not required to

be considered in Negative or Mitigated Negative Declarations (CEQA Guidelines Section 15063 (d)).

As Staff explained to the Commission, relocating a proposed winery or access roads is generally required only if necessary to avoid potentially significant environmental impacts or to achieve compliance with County regulations such as setbacks, slopes and viewshed. Here, the Winery and its access has been designed in a manner that complies with County requirements and avoids potential environmental impacts. Applicant's engineer also documented the reasons that relocating the proposed Winery access from Ponti Road to Silverado Trail is not feasible. See also Findings and Determinations as to the Tenth Ground of Appeal incorporated here by reference.

Neither a majority of the Planning Commission nor a majority of the Board of Supervisors could find any reasonable justification (technical, regulatory or environmental) to require redesign of the Project to relocate access from Ponti Road to Silverado Trail.

Conclusions:

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

Other Grounds Raised by Appellant:

Appellant's Appeal also incorporates by reference the various inadequacies and CEQA violations that were raised before the Planning Commission in Appellant's letters dated October 1, 2019 (Refer to Attachment O of the Planning Commission Staff Report of October 2, 2019) and January 6, 2020 (Refer to Attachment G of Planning Commission Staff Report of January 6, 2020). Staff prepared detailed responses to Appellant's concerns in the Staff Reports provided to and considered by the Commission and the Board hereby incorporates them by reference. (Refer to Attachments C, D, E, & L of Planning Commission Staff Report of January 6, 2020)

Section 4. CEQA Determinations.

A. Recirculation of Revised MND is not Required. The Original MND was revised to incorporate the I&R Noise Assessment results and to further support the County's conclusion that noise impacts resulting from the Winery would be less than significant. No new impacts associated with the I&R Noise Assessment have been identified. The I&R Noise Assessment merely amplifies and clarifies the previous determinations in the Original MND that the Winery would not generate significant noise impacts. As of July 1, 2020, lead agencies are required to consider Vehicle Miles Travel (VMT) as part of the CEQA analysis. The Transportation Section of the Revised MND reflects the County's VMT program. The Hydrology section of the Revised MND reflects the recent drought declarations made by the State and County. Since these revisions to the Initial Study clarify and amplify the existing analysis and conclusions and do not

result in new or more significant impacts, the Revised MND is not required to be recirculated (CEQA Guidelines Section 15073.5 (c)); and

B. Adoption of Revised MND. The Board makes the following findings with respect to the Revised MND:

1) The Board of Supervisors has read and considered the Revised Mitigated Negative Declaration prior to taking action on said Revised Mitigated Negative Declaration and the proposed Project.

2) The Revised Mitigated Negative Declaration is based on independent judgment exercised by the Board of Supervisors.

3) The Revised Mitigated Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).

4) There is no substantial evidence in the record as a whole that the Project as mitigated will have a significant effect on the environment.

5) There is no evidence in the record as a whole that the proposed Project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.

6) The site of this proposed Project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

Section 5. Substantial Evidence.

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

Section 6. Summary of Decision.

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

- A. Denies the Appeal in its entirety;
- B. Adopts the Revised MND and Mitigation Monitoring and Reporting Program prepared for the Project;
- C. Upholds the Planning Commission's findings regarding Use Permit No. P16-00428-UP; and
- D. Approves Use Permit No. P16-00428-UP subject to the Revised Conditions of Approval attached as Exhibit "A."

Section 7. Effective Date.

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

Section 8. Judicial Challenge.

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of said Board held on the 19th day of October, 2021, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSENT: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

NAPA COUNTY, a political subdivision of
the State of California

ALFREDO PEDROZA, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Laura J. Anderson (e-sign)</u> Deputy County Counsel Date: <u>October 5, 2021</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____ _____
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Attachment:

- Exhibit "A" – Revised COA