

Attachment N

PLL's Supplemental Argument



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Via Email: clerkoftheboard@countyofnapa.org

Napa County Board of Supervisors
1195 Third Street, Room 310
Napa, CA 94559

Re: Appeal of Planning Commission Approval of Duckhorn Vineyards Winery Use Permit Major Modification P19-00097; Additional Written Information

Honorable Supervisors:

On behalf of Preserve Lodi Lane and John Murphy (Appellants), we provide the following additional information in support of the appeal of the Planning Commission approval of the Duckhorn Vineyards Winery Use Permit Major Modification (P19-00097).

1. The Fair Argument Applies in Determining Whether an EIR is Required.

With limited exceptions, CEQA requires preparation of an EIR whenever there is substantial evidence supporting a fair argument that a proposed project *may* have a significant effect on the environment. (Pub. Resources Code §21080, subd. (c)(1), (c)(2), (d); 14 Cal. Code Regs. (“Guidelines”) §15070(a), (b)(2); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 926-29.) The fair argument standard to require an EIR is a “low threshold” test, as resolution of doubts should be resolved in favor of environmental review. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83-84.) Whether a fair argument exists is a question of law, not fact, precluding deference to a lead agency's determination. (*Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1331 (*Grand Terrace*)). If any substantial evidence in the record supports a fair argument the project may have a significant effect on the environment, the lead agency shall prepare an EIR, despite other evidence that the project will not have a significant effect. (Pub. Resources Code §21151(a); Guidelines §15064(f)(1)-(2); *No Oil, supra*, 13 Cal.3d 68, 75.)

Additionally, an agency's lack of investigation “may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) “Where an agency. . . fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate.” (*El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591, 1597, citations omitted.) Failure to adequately analyze all of a project's potentially significant impacts or provide evidence to support conclusions reached in the initial

study is a failure to comply with the law.

2. Traffic Hazard Must be Considered

Under CEQA, the County was required to assess whether the Project may have traffic hazard impacts. (CEQA Guidelines, App. G, section XVII(c).) The traffic impact report relied solely upon collision reports to claim there is no significant traffic hazard impact. This is inadequate for several reasons.

First, as detailed in Appellants' Appeal Packet, area residents have provided personal observations of existing traffic hazards along Lodi Lane and its tee-intersections with Hwy 29 and Silverado Trail. These personal observations provide substantial evidence to support a fair argument that the Project may have significant traffic hazard impacts necessitating preparation of an EIR. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735 [residents' testimony on local traffic hazards is substantial evidence]; *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1151.) Appellants have identified hazards caused by blind curves north and south of Lodi Lane along Hwy 29, adding to the existing traffic safety impacts.

Additionally, the County was required to analyze any existing environmental impacts that the Project might exacerbate. (Guidelines § 15126.2(a); see also *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 388; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.) Residents have identified hazardous existing conditions and collision reports show higher than average collision rates at the intersection of Lodi Lane and Silverado Trail. The Project would add numerous trips along Lodi Lane heading toward both the Silverado Trail and Hwy 29 intersections, exacerbating the existing hazards and increasing the potential for additional collisions.

In addition to passenger vehicle trips, the Project would also increase the number of tanker truck trips along Lodi Lane. The lengthier time these vehicles take for turns would further exacerbate existing traffic hazards at the Lodi Lane intersections. These tanker truck trips, along with the increase passenger vehicle trips, could also increase hazards on the narrow section of Lodi Lane with a one-lane bridge.

Moreover, the Project driveway meets the County warrants for installing a left-turn lane. The Project applicant obtained an exemption from this requirement to limit tree removal, but this does not eliminate the need to address this lack of warranted turn lane when addressing traffic safety impacts.

Further, the Circulation Element of the County's General Plan includes Policy CIR-38, which is intended in part to "promote safe access for all users." This policy requires mitigation for a project's vehicular trips when a level of service (LOS) D is not maintained on roadway intersections. The intersection of Lodi Lane and Hwy 29 operates an unacceptable LOS F and would be made worse by the Project; thus, mitigation is required.

The Traffic Impact Study included recommendations to 1) install a speed feedback sign on Silverado Trail; and 2) restripe the westbound approach at Hwy 29/Lodi Lane to include a

dedicated right turn lane. However, neither of these recommendations to address traffic safety and congestion impacts were included as mitigation measures and are thus improperly unenforceable. (CEQA Guidelines, §15126.4, subd. (a)(2).)

3. The MND Fails to Adequately Address Cumulative Impacts.

Appellants' Appeal Packet identifies the need to adequately address the cumulative traffic and traffic safety impacts in the MND. Of particular concern is the cumulative impacts with the nearby Inn at the Abbey proposed project. The Appeal Packet identifies additional cumulative projects and Appellants' Supplemental Evidence Request identified several more recent cumulative projects that must be considered. The MND was required to assess whether "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines § 15064, subd. (h)(1).) "The primary determination is whether it was reasonable and practical to include the projects and whether, without their inclusion, the severity and significance of the cumulative impacts were reflected adequately." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723.) Preparation of an EIR is mandatory when there are cumulatively considerable significant impacts. (CEQA Guidelines, §15065, subd. (a)(3).)

Here, it was clearly reasonable and practical to include the Inn at the Abbey project in the traffic and traffic safety analysis. As identified in the Appeal Packet, these include cumulative traffic safety impacts for cyclists utilizing the Vine Trail and guests at the Inn at the Abbey that will need to cross Lodi Lane as pedestrians at or near the Hwy 29 intersection. The failure to do so, particularly with regard to traffic hazards caused by even more vehicles at the above-identified intersections, "enlarge[s] the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

4. The Traffic Analysis is Outdated.

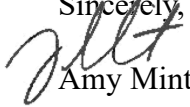
As identified in Appellants' Appeal Packet, the Traffic Impact Study prepared for this study is not only inadequate because it fails to include an assessment of traffic hazards, but it is also significantly outdated. The County has established traffic impact study guidelines, but has failed to require compliance with them for this Project or the cumulatively considerable Inn at the Abbey project. These guidelines require a traffic impact study to be less than two years old so that the analysis is not based on stale data. Here, the Traffic Impact Study is four to five years old. The outdated report does not provide the necessary evidentiary support to claim this Project would have less than significant traffic and traffic safety impacts at either a project or cumulative level.

Conclusion

For all of the reasons set forth herein and those set forth in the Appeal Packet, we urge the Board to grant this appeal with the attached evidence and the evidence set forth above.

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Thank you for your time and consideration in this matter.

Sincerely,

Amy Minter