

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

In the Matter of:

The Consolidated Appeals of Kosta M. Arger, Cynthia Grupp, William Hocker, and Glenn Schreuder to the decision made by the Napa County Planning Commission on January 4, 2017, to approve the Mountain Peak Winery/Mountain Peak Vineyards, LLC Use Permit No. P13-00320-UP

RESOLUTION NO. 2021 - _____

**FINDINGS OF FACT AND
DECISION ON REMAND**

WHEREAS, on August 22, 2017, this Board of Supervisors denied the above-referenced appeals and approved modified conditions of approval for a Use Permit No. P13-00320-UP to allow: (1) construction of a new 100,000 gallon per year winery including an approximately 33,424 square foot cave, approximately 8,046 square foot tasting and office building, and approximately 6,412 square foot covered outdoor crush pad and work area; (2) demolition of the existing single family residence; (3) installation of 26 parking spaces; (4) construction of two new driveways and private access roads with ingress/egress from Soda Canyon Road; (5) installation of a High Treatment wastewater treatment system and community non-transient potable water supply sourced from on-site private wells including two 100,000 gallon water tanks for vineyard irrigation and one 20,000 gallon water tank for domestic supply; (6) disposal of all cave spoils on-site within existing vineyards; (7) 19 full time employees, four part-time employees and four seasonal harvest employees; (8) tours and tastings by prior appointment only for a maximum of 60 visitors per day and a maximum of 275 visitors per week; (9) a marketing plan including two annual events for up to 75 visitors, and one annual event for up to 125 visitors; and (10) on premises consumption of wines produced on site in the tasting room and outdoor terrace. The Project also includes a request for an exception to the Napa County Road and Street Standards (RSS) to increase the maximum slope on a portion of the commercial access road to the covered crush pad and cave portals from 16% to 19.6% (the Mountain Peak Winery, Winery or the Project);

WHEREAS, the Project is located on a 41.76-acre parcel on the northwest side of Soda Canyon Road, approximately 6.1 miles north of its intersection with Silverado Trail, 3265 Soda Canyon Road, Napa, CA, 94558; APN: 032-500-033 (the Property);

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

WHEREAS, on August 22, 2017, this Board adopted Resolutions 2017-130, 2017-131, 2017-132, and 2017-133 containing the findings of fact and legal conclusions relied upon to deny the four appeals and attaching the revised conditions of approval for the Project;

WHEREAS, on September 20, 2017, a community organization called Soda Canyon Group (“Petitioner”), comprised of members of the public including the appellants, filed a petition for writ of mandate in Napa County Superior Court challenging this Board’s decision on appeal on several grounds, including CEQA and non-CEQA grounds;

WHEREAS, on October 8, 2017, a wildfire began on Atlas Peak (the “Atlas Fire”), spreading quickly through the vicinity of the Project, forcing the evacuation of hundreds of residents and occupants of properties along the full length of Soda Canyon Road. The Atlas Fire burned approximately 51,625 acres, destroying dozens of commercial and residential buildings in the area;

WHEREAS, on October 15, 2018, in connection with its opening brief, the Petitioner filed a Motion to Augment the Administrative Record, asking the superior court to consider seven declarations and exhibits relating to the Atlas Fire. The additional evidence included select photographs, video, maps, incident reports, and personal accounts from residents and property owners on Soda Canyon Road. The Petitioner requested that the matter be remanded to the Board for consideration of this additional evidence;

WHEREAS, on June 17, 2019, after briefing and argument, the court granted the Petitioners motion and remanded the matter back to the Board for reconsideration in light of the evidence of “truly new and emergent facts.” The court identified specific pages, paragraphs, and lines from the declarations that met the court’s standard of evidence and ordered the Petitioner to redact the declarations and exhibits that did not meet that standard;

WHEREAS, Staff conducted a thorough review of the additional evidence, including analysis by the Engineering Division of the Department of Planning, Building and Environmental Services, the Department of Public Works, and the Fire Marshal’s Office. Staff reviewed the administrative record, the additional evidence, and the current rules and regulations applicable to the Project. Staff also considered the pending Fire Safe Regulations from the Board of Forestry. After this review, staff concluded that the Project met the minimum standards for safety, including for fire access and egress. Staff recommended that the Board affirm its decision to deny the appeals and uphold the Planning Commission’s decision to approve the Project;

WHEREAS, Staff prepared an Agenda Report for the Board’s public hearing on remand (Staff Report) that attached and incorporated various supporting documents related to the Appeal and set forth Staff’s recommendation. The Staff Report included the previously approved Conditions of Approval and Project Graphics, the seven factual declarations submitted by the Petitioners (which were redacted pursuant to the superior court’s order), and reports from the Engineering Division of PBES, the Department of Public Works, and the Fire Marshal. Staff analyzed four findings from the previous denial of the appeal that were implicated by the new evidence and provided the analysis of those findings in the Staff Report;

WHEREAS, on May 18, 2021, the Board held a duly noticed public hearing to reconsider the Project on the limited grounds implicated by the new evidence. The Board considered the Staff Report and the supporting documents, as well as presentations by the Petitioner, Mountain Peak Winery (“Applicant”), and Staff. The Board informed the public that only the evidence described by the court was under review and that further new evidence would not be considered. The public was instructed to limit their comments to the issues raised by the new evidence;

WHEREAS, at the regular meeting on May 18, 2021, after considering all evidence presented, including the Staff Report (and the supporting attachments thereto), the Petitioner’s presentation, Applicant’s presentation, and public testimony (verbal and written), the Board closed the public hearing and adopted a motion of intent to affirm its decision to uphold the Planning Commission’s approval of the Project with one additional Condition of Approval;

WHEREAS, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Remand in support of its proposed decision denying each of the four appeals and to present those findings to the Board for consideration at its meeting on July 13, 2021, along with revised Conditions of Approval reflecting the new condition;

WHEREAS, on July 13, 2021, a proposed resolution containing the Findings of Fact and Decision on Remand was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Remand having been presented to the Board for possible adoption at a regular meeting of the Board on July 13, 2021, and interested persons having been given an opportunity to address the Board regarding the proposed resolution;

NOW, THEREFORE, BE IT RESOLVED by the Napa County Board of Supervisors 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. The original appeals in this matter were conducted in accordance with Chapter 2.88 of the Napa County Code, as described in the Resolutions adopted on August 22, 2017. The public hearing on Remand was limited in scope based on the court’s order to reconsider the decision in light of specific new evidence identified by the court. To the extent possible, the hearing followed the procedures set forth in Chapter 2.88.

B. The parties held a modified prehearing conference to discuss the conduct of the hearing and to establish deadlines for the submittal of presentations, witness lists, and other information needed to ensure the hearing proceeded smoothly. Since the hearing was to consider a specific set of evidence, the parties were not permitted to submit evidence to supplement the record for a good cause determination, nor were the parties permitted to request a de novo hearing on the

Appeals. Following the prehearing conference, the Chair established that the parties would each have 20 minutes to present their arguments.

C. On May 18, 2021, the Board held a hearing in which the parties appeared in person. Members of the public attended both in person and through teleconference via Zoom, in accordance with the procedures established by the County in response to the COVID-19 pandemic.

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 the grounds of appeal relevant to the consideration of the new evidence presented by the Appellants.

7. Seventh Ground of Appeal.

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

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

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

The new evidence does not demonstrate that the Board made an error when it denied the Seventh Ground of Appeal and approved the Project. Two of the declarations, from Linda Savoie and Glenn Schreuder, provide accounts of residents finding shelter from the Atlas Fire in the vineyards of Stagecoach and Antica Wineries, suggesting that the Board was correct when it concluded that the Project would not substantially change the fire protection or emergency response setting. This finding is further supported by the maps contained in Exhibit Five (5) of Anthony Arger's declaration, which clearly show that the extent of fire damage from the 2017 Atlas Fire was significantly reduced around the areas of the Foss and Stagecoach valleys, which are dense with vineyard development. The Project site also contains substantial areas of reduced fire hazard because most of the property is now planted in vineyard.

Two of the declarations provide accounts of the inability of evacuees to utilize Soda Canyon Road during the evacuation of the 2017 Atlas Fire. Cynthia Grupp's declaration provides an account of a downed tree that prevented vehicle travel on Soda Canyon. Once the obstacle was removed, evacuation was able to continue down Soda Canyon Road, and firefighting vehicles

proceed up the road. This obstacle in the roadway happened despite the existence of the Project and the Project contains no features that would exacerbate the potential for more trees to fall and create roadway obstacles.

One declaration, from Linda Savoie, provides an account of vehicle congestion on Soda Canyon Road adjacent to the planned location of the access driveway for the Project. Based upon the information provided in the declaration, it is suggested that the congestion was due to two parties of vehicles (vehicles with evacuees heading south towards lower Soda Canyon Road and vehicles with evacuees heading north from lower Soda Canyon) converging at the same location and stopping to discuss the best course of evacuation for both groups. The addition of the Project, with its minimal number of visitors, would not have substantially impacted the evacuation, as the congestion at that location did not appear to be a result of the lack of capacity of the road.

Further, the Board imposed a new condition requiring that no visitation or marketing may occur on days in which a Red Flag Warning has been issued by the National Weather Service or Napa County Office of Emergency Services, or when a Public Safety Power Shutoff (PSPS) Warning has been issued by Pacific Gas and Electric (PG&E), when such Warnings are in effect for the Property. (See Condition of Approval (COA) 4.20(i).) This condition will substantially reduce the likelihood that Winery visitors will be present at the Project location when a wildfire occurs.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to affirm its denial of Appellant's Seventh Ground of Appeal. Therefore, the Board denies the Seventh Ground of Appeal and affirms its denial of the appeals and approval of the Project.

8. Eighth Ground of Appeal.

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

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

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

vicinity. The Project would not significantly increase fire risk and meets the regulatory requirements for a winery in the County.

The Board finds that there is nothing in the newly introduced evidence to suggest that the Fire Marshal made an error in approving the Project as conditioned, which included a number of fire safety standards. Exhibit Five (5) of Anthony G. Arger's declaration and the personal accounts contained in Glenn Schreuder's and Linda Savoie's declarations suggest that the vineyards can act as a fire hazard reduction during a wildfire.

Further, as discussed in relation to the Seventh Ground of Appeal, the new Condition of Approval prohibiting visitation and marketing during a Red Flag Warning or a PSPS Warning will substantially reduce the number of people at the Project site in the event of a wildfire. (See Condition of Approval (COA) 4.20(i).)

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to affirm its denial of Appellant's Eighth Ground of Appeal. Therefore, the Board denies the Eighth Ground of Appeal and affirms its denial of the appeals and approval of the Project.

9. Ninth Ground of Appeal.

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

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

This Project was thoroughly evaluated by the County Fire Marshal, who is a subject matter expert on wildland fire risk, response and pre-planning. The Project was reviewed for compliance with local and State fire standards and determined by the County Fire Marshal to comply with those standards. The Property is predominantly planted in vineyards along with several hundred acres of vineyards on nearby and adjacent properties. Vineyards, although flammable, provide a substantially lower wildland fire risk than the brush and woodland floral communities native to the area. Construction of the Mountain Peak Winery would provide a safe haven for sheltering in place in the event of wildfire conflagration and evacuation. Appellant Grupp testified that sheltering in place is one of the recommendations included on the "Pre-Attack Fire Plan" in the event of evacuation. The Project would not interfere with planning or response to wildland fire, and the Property and proposed winery nominally improve wildland fire response. See also Findings and Decision to Seventh and Eighth Grounds of Appeal.

The new evidence does not change this conclusion. Two of the declarations provide accounts of evacuees utilizing the neighboring vineyards of Stagecoach and Antica in order to shelter in place and await rescue from CalFire or CHP. Both accounts demonstrate that when

evacuation down Soda Canyon Road was not an option, wineries and associated vineyards provided a safer location rather than areas of native vegetation.

More importantly, the new evidence does not provide substantial evidence that the Project itself is unsafe or fails to comply with the regulations designed to protect the health, safety, and general welfare of the County. The Engineering Division concluded that the Project not only meets the requirements applicable at the time of Project approval, but also meets the proposed Fire Safe Regulations for development in the State Responsibility Area. Public Works again concluded that the capacity and condition of Soda Canyon Road are sufficient to accommodate the Project traffic and provide a safe means of evacuation in the event of a wildfire. The Fire Marshal recommended approval of the Project based on its compliance with applicable regulations. The new evidence did not identify any conditions of the Project, the Project Site, or Soda Canyon Road that undermine those conclusions. Instead, the declarations described harrowing personal experiences with a wildfire event that occurred regardless of the absence or presence of the Project. The declarations identified a tree that blocked the road, contributing to congestion until a pickup-truck driver and fire engine crew were able to break off enough branches to enable vehicles to pass. However, despite the possibility of such accidents, Soda Canyon Road has sufficient capacity for additional traffic and the addition of cars connected to the Project will only have a minimal effect on the capacity. The County cannot plan for every possible eventuality, but should rely on the regulations designed to ensure that projects are safe under most circumstances. Here, the Project meets all of the regulatory requirements relating to wildfires.

In addition, as discussed above, the new Condition of Approval prohibiting visitation and marketing during a Red Flag Warning or a PSPS Warning will substantially reduce the number of people at the Project site in the event of a wildfire. (See Condition of Approval (COA) 4.20(i).)

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to affirm its denial of Appellant's Ninth Ground of Appeal. Therefore, the Board denies the Ninth Ground of Appeal and affirms its denial of the appeals and approval of the Project.

10. Tenth Ground of Appeal.

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

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

The Commission heard and considered testimony from Appellant and neighbors that wildland fires are caused by human activities such as tossed cigarette butts and arson. None of the testimony or incident reports attributed the wildland fires specifically to winery construction, operation or visitors to a winery. No credible evidence was put forward that the addition of another

winery along Soda Canyon Road will significantly increase the risk of fire or significantly hinder rescue efforts. Neighbors' opinion that winery visitors will cause traffic congestion during a fire is not supported by fact. Generalized fears and concerns about a project does not constitute substantial evidence. (*Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 436.)

Soda Canyon Road is a fairly typical hillside public road, and accident history on the road is primarily the result of unsafe driving as opposed to hazardous driving conditions. Traffic volumes on Soda Canyon Road are very low. In the event of a fire that results in mass evacuations from this area, the road has sufficient capacity and roadway width to accommodate all outgoing traffic while allowing incoming fire response units. In addition, most of Foss Valley in the vicinity of the Project site is now planted in vineyard, which significantly reduces the extent of wildland fire that can occur in the vicinity. During the Atlas Peak Fire in 1981, most of the areas that are now planted in vineyards were undeveloped wildlands, which provided a combustible fuel source. See also Findings and Decision to Seventh, Eighth and Ninth Grounds of Appeal.

Five of the seven declarations provide personal accounts of residents' experience during evacuation of the Soda Canyon area during the 2017 Atlas Fire. The Board reviewed this evidence and, as previously noted, does not find that the addition of the Winery would significantly increase the fire risk or hinder fire rescue efforts. Two of the declarations provide accounts of vehicle congestion during the evacuation, but the accounts do not suggest that the congestion was due to Soda Canyon Road lacking capacity, but rather to an obstacle in the roadway that forced evacuees to pause in the roadway until the obstacle was cleared. Two of the declarations provide accounts of evacuees finding shelter in vineyards, suggesting the Board was correct when it found that vineyard-dense areas could reduce the extent of damage from wildfire. Maps contained in Exhibit 5 of Anthony Arger's declaration support this conclusion as well.

The new Condition of Approval imposed by the Board will also ensure that the Project will not increase the risk of wildfire or hinder rescue efforts. The Winery will be required to cancel any marketing events or tours and tastings on days that have a particularly high risk for wildfires, thus substantially reducing the number of people at the Project site in the event of a wildfire. (See Condition of Approval (COA) 4.20(i).)

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to affirm its denial of the Tenth Ground of Appeal. Therefore, the Board denies the Tenth Ground of Appeal and affirms its denial of the appeals and approval of the Project.

Section 4. Summary of Decision.

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

- A. Affirms its decision to deny the Appeals in their entirety; and
- B. Approves Use Permit No. P13-00320-UP and the RSS Exception for the Mountain Peak Winery subject to the Updated Conditions of Approval imposed by the Board of Supervisors, attached as Exhibit "A".

Section 5. Effective Date.

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

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 13th day of July, 2021, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: ALFREDO PEDROZA, Chair of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Jason M. Dooley</u> Deputy County Counsel</p> <p>Date: <u>June 24, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <hr/> <p>Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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