George Caloyannidis
2202 Diamond Mountain Road
Calistoga, CA 94515

April 25, 2024

ADDITIONAL COMMENTS

TO: Napa County Planning Commission
RE: VIDA VALIENTE WINERY APPLICATION #P20-00079

As I had pointed out in my COMMENTS dated November 28, 2023, the traffic data of neighboring wineries which is a significant part of the CTG Traffic Report leading to Staff's determination that the winery's TRANSPORTATION and MANDATORY FINDINGS OF SIGNIFICANCE (b) & (c) impacts were less.than.significant, were selectively non-representative and as I argue below, marginally relevant and materially incomplete.

The traffic data for Dacota Shy winery was obtained between January 31 and February 8, 2020, when winery visitor traffic is practically non-existent.
The Wheeler Farms and Mattera wineries data was obtained between October 18 and 31, 2020, only 3-5 weeks following the Glass Fire on September 27, 2020, when all traffic was not only discouraged but largely prohibited in the general Glass Fire area.

FAILURE TO IDENTIFY EXISTING WINERIES ON CRYSTAL SPRINGS ROAD & NORTH FORK

Note that all three above wineries are located on the Silverado Trail, and while they may have some impact on the project, the far more impactful existing wineries on Crystal Springs Road (CSR) and Crystal Springs Road North (CSRN) were absent from all reports as if they did not exist. In fact, the entire CSRN road was erased in the CTG Report Maps as was Rose Lane.

My email exchanges with Mr. Trevor Hawkes, between February 28 and March 5, 2024, show that Staff did not have these wineries' data available or in the file. It is reasonable to assume that the operations of the wineries located on the same substandard roads used by residents, would have a significantly higher impact in case of evacuations during a catastrophic event including their winery production, visitors and events, services, construction etc. and the simultaneous access by large emergency vehicles.

Failure to identify, analyze and consider the operational impacts of these wineries including their already entitled likely.future.uses (if not yet in full operation) as mandated under CEQA, is a material omission in both the CTG Traffic Report and in Staff's less.than significant impact finding.

When.the very.existence.of.these.wineries.was.ignored?their.impacts.were.ignored.as.well¡

Data for the existing wineries were hard to obtain from the Napa Couty website. Nonetheless, we were able to identify Merus and Woodbridge wineries on CSR and Dancing Hares and Reverie II on CSRN. Assuming.they.operate.in.compliance, their combined entitlements appear to amount to 74,000 gallons of wine production (overwhelmingly relying on imported grapes) and approx. 8,639 annual visitors, in addition to the 30,000 gallons and 7,745 visitors at Vida Valiente. These operational entitlements must be updated in the CTG Traffic and Staff Reports so that their impact under the CEQA Mandatory Findings is accurate.

SAFETY CONCERNS DURING CONSTRUCTION

Ms. Oldford testified that impacts during construction were not analyzed because they are temporary. My own cave tailings export analysis on file showed that this operation alone utilizing ten-wheel trucks will last 1 full year and winery construction at best 3 more. The impact of such large vehicle traffic lasting 4 years or longer (see neighboring Chateau Bozwell), has serious safety implications in case of a fire which must be analyzed.

VISITORS AS SITTING DUCKS

Note that large events may be concurrent with those at the other wineries and certainly during Auction Day, with hundreds upon hundreds of visitors on CSR and CSRN transported by limousines and buses, from unidentified public staging areas or driven individually and valet parked off-site at unknown locations.

With limousines and buses and valet vehicles parked off-site, these visitors are sitting ducks with no instantly available evacuation transportation along substandard roads in a high severity fire risk area.

The same considerations apply to the impacts of the agricultural activities of the wineries along CSR and CSRN during harvest which are largely concurrent with those at Vida Valiente and most wineries in the Napa Valley.

VISITORS: HIGH-RISK OCCUPANCY GROUP

Visitors are more vulnerable than residents during a fire. They are unfamiliar with the terrain, are not connected to local emergency notification channels like NIXLE or registered to receive text warnings and updates from local authorities. They are also likely to be inebriated to various degrees.

As fire expert David Rich of Reax Engineering had testified during the Hard Six Cellars appeal:" Winery visitors unfamiliar with Diamond Mountain Road would be considered a high_risk.occupancy.group.going.into.a.high_risk.fire.area¡ Parts of the road are so narrow that two vehicles cannot pass".

UNTRUSTWORTHY GALLON REDUCTION

The applicant has reduced the Vida Valiente's gallon production capacity from 40,000 to 30,000 gallons. This "reduction" lacks historic credibility for three reasons:

1) Since Napa County suspended its auditing program in 2014 resulting in the wine industry violating its honor-based use permit compliance in massive numbers.
2) Since Napa County refrained from imposing any penalties on violations and replaced it with a "voluntary compliance program" which not only legalized said violations but increased the violators' entitlements to even higher levels.
3) This situation, beyond its serious, ramifications (*), renders any compliance with use permit entitlements untrustworthy both.in.that they.will.not.be.complied.with.by. this.applicant.and.due.to.Napa.County's.historic.inability.and.refusal.to.enforce. compliance¡

This renders the applicant's reduction offer meaningless.

BINDING LEGAL PRECEDENT ON EVACUATIONS

Below is part of the Comment submitted by Christine Tittel dated December 5, 2023, (full copy attached for convenience), directing your attention to:

II. CONTROLING LEGAL PRECEDENT GOVERNING NAPA SUPERVISORS
Court Case No CV 421152 People.of.the.State.of.California.v¡.County.of.Lake¡

In summary, (1. Through 4.), the Court found that Lake County failed to properly analyze emergency evacuation routes.

3¡.»Because.the.County's.findings.regarding.community.emergency.evacuation.routes.are. not.supported.by.substantial.evidence• if.a.wildfire.occurs?.the.Project's.(guests).will.need. to.evacuate¡.These.people.will.likely.compete.with.residents.in.the.surrounding.area.for. safe.evacuation.routes¡.The.additional.people.competing.for.the.same.limited.routes.can. cause.congestion.and.delay.in.evacuation?.resulting.in.increased.wildfire.related.deaths¡

This.Is.undoubtedly.a.situation.where.the.Project.by.bringing.a.significant.number.of.people.into.the.area?may.significantly.exacerbate.existing.environmental.hazards?specifically.wildfires.and.their.associated.risks¡.Therefore?this.is.an.issue.that.is.required.to.be.addressed.under.CEQA‹¡

I point out that in the Lake Couty case, the Court's reference to "existing.environmental.hazards" was anticipatory. However, it is historically factual along CSR and CSRN where 6 homes were either burned to the ground or significantly damaged during the Glass Fire..

The Applicant, his experts, the Napa County Fire Marshal and the County Staff Report have ignored the evacuation issue under CEQA. In fact, the very word »evacuation‹ is conspicuously absent in their respective Reports and Conditions of Approval.

The primary duty of this Commission is to safeguard the health and welfare of its citizens.

This Commission may not in.good.conscience.ignore:

1) The Court's unambiguous language regarding safe evacuations in the Lake County case.
2) The fire insurance industries' assessments by its experts, which have led to massive policy cancellations along CSR and CSRN.
3) The State's experts who over many years and public hearings enacted Title 14 State Minimum Fire Safe Regulations which mandate roads of sufficient width to insure safe evacuations.

Nor may this Commission in.good conscience accept the deficient CEQA Cumulative Impact Mandatory Findings by approving this project in this location.

(*) Since Napa County suspended its winery audit program in 2014, dozens of use-permit- violating wineries (perhaps 15% of total wineries) have come forward to take advantage of the County's voluntary compliance program. The sheer size of the known plus.unknown violators has rendered the Napa County winery database an unreliable source on which accurate CEQA assessments can be based.
CEQA Cumulative Impacts Mandatory Findings must consider the impacts of any new project on past?present.and.future.likely.projects. Due to the rampant violations, neither present projects nor future projects, both of which.are.represented.by.the.total.entitled.winery.use.permit.numbers, whether currently in use or not are reliable. This has put in question the very integrity of the Napa County CEQA winery use-permit process.

H - Public Comment Recieved After Previous Public Comment Period E...

2 of 90 75%

From: calti@comcast.net
To: Planning Commission
Cc: Ringel, Matthew
Subject: FW: Vida Valiente Winery Statement of Facts and Controlling Case Law
Date: Tuesday, December 5, 2023 5:44:56 PM
Attachments: Vida Valiente Winery Factual Statement And Controlling Case Law.pdf
SUPPLEMENTAL RULES FOR NAPA COUNTY IMPLEMENTING.pdf
Glass Fire - CAL FIRE.pdf
Ruling and Order on Petitions for Writ of Mandate.pdf

[External Email - Use Caution]

Dear Commissioners,
Attach, please find my comments and related case law which I hope you will find helpful in your review regarding the VIDA VALIENTE Use Permit application.
Thank you,
Chritine Tittel
2202 Diamond Mountain Road
Calistoga, CA 94515

I. STATEMENT OF FACTS:

1. Proposed Vida Valiente Winery ("Vida Valiente Winery") is located at 407 Crystal Springs Road, St. Helena, CA.
   Napa County Assessor's Parcel No. 021-410-013 (16.93 acre) and 021-372-001 (1.15 acre) parcels ("Vida Valiente Winery Site").
   Source: County of Napa, Planning, Building and Environmental Services Department, Initial Study Checklist, Vida Valiente Winery Use Permit P-19-00079 ("Vida Valiente Use Permit Napa County Checklist").

2. The Vida Valiente Winery Site "*was burned in the summer of 2020 by the Glass Fire. The vegetation canopy cover was largely destroyed in the Glass Fire and has not recovered. The Glass Fire destroyed 82 trees that were previously located within the project site. Site improvements are primarily located in areas... destroyed in the 2020 Glass Fire...*"
   Source: Vida Valiente Use Permit Napa County Checklist.

3. The Glass Fire ignited on the "*North Fork Crystal Springs Road & Crystal Springs Road* ("Crystal Springs Road") on *September 27, 2020, burned 67,484 acres, destroying 1,528 structures, damaging 282 structures, and was contained 23 days later on October 20, 2020*" ("Glass Fire").
   Source: CAL FIRE Glass Fire Incident Report.

4. "*The proposed project is located within a high fire hazard severity zone and in the State Responsibility (SRA) district.*"
   Source: Vida Valiente Use Permit Napa County Checklist.

5. "*Crystal Springs Road ranges in width from about 16 to 14 feet north of the Winery, and from about 12 to 18 feet south of the Winery.*"
   Source: Vida Valiente Use Permit Napa County Checklist.

6. Napa County failed to consider impacts on community or area-wide evacuation routes that are severely constrained by the 12 to 8 foot wide Crystal Springs Road that is in violation of CAL FIRE'S and The State of California's wildfire equipment and civilian evacuation during a Wildfire emergency ("CA Wildfire Evacuation Regulations"), intensified by the fact that Crystal Springs Road burned in the Glass Fire.
   Source: Cal. Code Regs. Tit. 14, §1273 *etal.*
   Source: CAL FIRE Glass Fire Incident Report.

7. Napa County also failed to assess impacts on community or area-wide evacuation routes negatively impacted by the proposed Vida Valiente Winery.
   The Vida Valiente Winery will increase traffic on Crystal Springs Road by the extensive daily visitors, weekly visitors, Winery Club Events, and Large Auction Events, exacerbated by the burning of the Vida Valiente Winery Site in the Glass Fire.
   Source: Vida Valiente Use Permit Napa County Checklist.

8. Napa County further failed to evaluate the combined negative impacts on community or area-wide evacuation routes caused by Crystal Springs Road's violation of CA Wildfire Evacuation Regulations significantly worsened by the harmful impacts of increased traffic on Crystal Springs Road caused by Vida Valiente Winery, burned in the Glass Fire.
   Source: Vida Valiente Use Permit Napa County Checklist.

II. CONTROLLING LEGAL PRECEDENT GOVERNING NAPA SUPERVISORS:

1. Controlling case law requires that the California Environmental Quality Act ("CEQA") ...must provide analysis of the wildfire risk and the methodology used to analyze that risk relating to the Vida Valiente Winery.
   "The Project's impacts to community evacuation routes, however, must be analyzed..."
   Source: Ruling and Order on Petitions for Writ of Mandate, *Center for Biological Diversity, and People of the State of California, Ex. Rel, Attorney General Rob Bonta v. County of Lake, Board of /supervisors of the County of Lake*, Case No CV421152.
   Source: Vida Valiente Use Permit Napa County Checklist.

2. *"CEQA does, however require an analysis of a "project's potentially significant exacerbating effects on existing environmental hazards-effects that arise because the project brings 'development and people into the area affected.'"*
   Source: Ruling and Order on Petitions for Writ of Mandate, *Center for Biological Diversity, and People of the State of California, Ex. Rel, Attorney General Rob Bonta v. County of Lake, Board of /supervisors of the County of Lake*, Case No CV421152.

3. *"Because the County's findings regarding community emergency evacuation routes are not supported by substantial evidence...if a wildfire occurs, the Project's [guests] will need to evacuate. These people will likely compete with residents in the surrounding area for safe evacuation routes. The additional people competing for the same limited routes can cause congestion and delay in evacuation, resulting increased wildfire related deaths. This is undoubtedly a situation where the Project, by bringing a significant number of people into the area, may significantly exacerbate existing environmental hazards, specifically wildfires and their associated risks. Therefore, this is an issue that is required to be addressed under CEQA."*
   Source: Ruling and Order on Petitions for Writ of Mandate, *Center for Biological Diversity, and People of the State of California, Ex. Rel, Attorney General Rob Bonta v. County of Lake, Board of /supervisors of the County of Lake*, Case No CV421152.

   "The National Resources Agency amended CEQA Guidelines Appendix G, which is the checklist for agencies considering environmental review under CEQA, to include questions specifically focused on the effects of new projects in creating or exacerbating wildfire risks.'"

Source: Ruling and Order on Petitions for Writ of Mandate, *Center for Biological Diversity, and People of the State of California, Ex. Rel, Attorney General Rob Bonta v. County of Lake, Board of /supervisors of the County of Lake*, Case No CV421152.

Source: Ruling and Order on Petitions for Writ of Mandate, *Center for Biological Diversity, and People of the State of California, Ex. Rel, Attorney General Rob Bonta v. County of Lake, Board of /supervisors of the County of Lake*, Case No CV421152.

4. *"While wildfire risk already exists in such areas, bringing development to those areas makes the risk worse,"*
Source: CEQA Guidelines Appendix G.

COUNTY OF NAPA
PLANNING, BUILDING AND ENVIRONMENTAL SERVICES DEPARTMENT
1195 THIRD STEET SUITE 210
NAPA, CA 94559
(707) 253-4417

From: Bordona, Brian
To: Parker, Michael; Anderson, Laura; Ringel, Matthew
Subject: Fwd: P20-00079-UP
Date: Monday, April 29, 2024 8:16:29 AM

Get Outlook for iOS

From: Jan Zakin <jan@zakinwines.com>
Sent: Friday, April 26, 2024 2:12:56 PM
To: Brunzell, Kara <kara.brunzell@countyofnapa.org>; Dameron, Megan <megan.dameron@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: P20-00079-UP

[External Email - Use Caution]

Vida Valiente Winery Use Permit Application #P20-00079-UP

Dear Ms. Brunzell, Dameron and Mr. Bordona,

I was asked by my neighbors on Crystal Springs Road to retell my experience on the night of the Glass Fire after hearing there were no "evacuation issues" during the Glass Fire.

It was September 27th, 2020 just after 4am. My husband awoke to take a pain pill. He had broken his hip two days before and was in a moderate amount of pain and was walking with a walker. He looked out our bedroom window and saw flames a few hundred yards away. The entire mountian on our property line was in flames. There was no smoke in the house, no alarm went off.

We ran to the car in about 30 seconds. It's 2 miles from our home to the Silverado Trail. The private road is winding and in many places one lane with turn outs. We got to the gate which was the half way point, with no smoke or flames visible since we left our property, and thought we were safe and the fire was behind us.

After we passed the gate we saw spot fires. Each turn we took the flames and pitch black smoke was worse and more terrifying.

When we got to the valley floor, we saw a car engulfed in flames that had crashed into a tree with a big white truck behind it. The cars were blocking our last tenth of a mile to safety. Our neighbors car had hit a tree during a black out smoke shift. His truck was behind her car with the door open, engine running keys in the ignition. They ran.

I ran to the truck and jumped in the drivers seat and didn't know what to do. I realized I did not know how to push a burning car out of the way.

We called for help. The firefighters at Revere 2 heard us. We crawled down then up the 3 foot stream bed, my husband with a broken hip and me in my underwear. The firefighters cut a hole in Revere's fence. I crawled through and then my husband Jon behind me. I called for my dogs but they were gone. The firefighters took us to the safety of an ambulance. We were evaluated, given oxygen but did not require hospitalization.

Animal control found our 8 month old Brittney Spaniel on Silverado Trail 4 house later, completely unscathed. My 11 year old vizsla was found shortly after we were rescued by the fire department but died of her burns later that night.

We are incredibly lucky the firefighters were at Revere and were able to save us. I am opposed to the Vida Valiente Winery Use Permit. Our road does not support such a project in case of an emergency.

Jan Zakin MD
290 N Crystal Springs Road
St Helena, CA 94574
415 793 6354

From: Quackenbush, Alexandria
To: Ringel, Matthew
Cc: Parker, Michael
Subject: Fw: Vida Valiente Winery Use Permit Application #P20-00079-UP
Date: Monday, April 29, 2024 8:26:49 AM
Attachments: Outlook-dgcqfcyl.png

Please see below, more to follow.

Alexandria Quackenbush
Administrative Secretary I
Planning, Building, & Environmental Services
County of Napa | 1195 Third Street, Suite 210 | Napa, CA 94559
alexandria.quackenbush@countyofnapa.org

A Tradition of Stewardship
A Commitment to Service

From: Dameron, Megan <megan.dameron@countyofnapa.org>
Sent: Saturday, April 27, 2024 8:34 PM
To: Quackenbush, Alexandria <Alexandria.Quackenbush@countyofnapa.org>; Ramos, Aime <aime.ramos@countyofnapa.org>
Subject: Fwd: Vida Valiente Winery Use Permit Application #P20-00079-UP

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From: Vivian Robison <vivian.robison@gmail.com>
Sent: Friday, April 26, 2024 1:55 PM
To: Brunzell, Kara <kara.brunzell@countyofnapa.org>; Dameron, Megan <megan.dameron@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: Vida Valiente Winery Use Permit Application #P20-00079-UP

[External Email - Use Caution]

County of Napa:

We wish to make known our adamant opposition to the Vida Valiente Winery development on Crystal Springs Road, Saint Helena per subject use permit application.

We have had our home on Rose Lane since 1980 and can only use Crystal Springs Road for access. CSR is a heavily traveled and very narrow road.

Sent from my iPhone

From: Bordona, Brian
To: Parker, Michael; Anderson, Laura; Ringel, Matthew
Subject: Fwd: Vida Valiente Use Permit #P20-00079-UP Comments
Date: Monday, April 29, 2024 8:10:13 AM
Attachments: VV Opposition Letter-2.pdf

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From: Ehan Kamat <ehankamat@gmail.com>
Sent: Sunday, April 28, 2024 8:14:59 PM
To: Brunzell, Kara <kara.brunzell@countyofnapa.org>; Dameron, Megan <megan.dameron@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: Vida Valiente Use Permit #P20-00079-UP Comments

[External Email - Use Caution]

Mr. Bordona - Copying you as I was told this is protocol, but this is the same letter I sent you a couple days prior.

Commissioners Brunzell and Dameron,
Very nice to e-meet you. My name is Ehan Kamat and I am the owner of #333 Crystal Springs Road. As I am out of town this coming week, I will not be able to attend the May 1st meeting regarding the use permit for Vida Valiente. I thus, would like to ensure that you have my comments regarding this project in advance.

As a community, we greatly appreciate everything you do for Napa County and the effort you have put into fully informing yourselves regarding this matter.

Thank you,
- Ehan

Ehan V. Kamat
Founder and CEO, 321 Innovations
www.solemender.com
ABC's SHARK TANK Season 9
UpStart 100 Top 21 Inventors in the United States
University of California, Berkeley, B.S., B.A.

April 26, 2024

Ehan V. Kamat
333 Crystal Springs Road
Saint Helena, CA, 94574

RE: Comments on Vida Valiente Winery Use Permit
Use Permit #P20-00079

I am expressing my opposition to the Vida Valiente Winery Use Permit. My primary concern is the winery's intentions to hold tastings and several significant marketing events throughout the year.

While I hate to hinder an entrepreneur from building their vision, this proposal needs to account for the future ramifications the winery will have on the residents of Crystal Springs Road.

As currently written, the use permit for Vida Valiente proposes the following:

- Tours and tastings with a maximum of 120 visitors/ week.
- Two (2) wine and food pairings for 24 guests/ month.
- Three (3) wine release events with up to 60 guests/ year.
- Two (2) large wine auction events with up to 125 guests/ year.

The number of guests and size of events proposed do not reflect the "small family winery" Vida Valiente contends to be; instead, it would be a commercial entertainment facility placed in the heart of a rural neighborhood.

This increased traffic and the inevitable introduction of inebriated drivers pose a significant danger to Crystal Springs Road residents.

Crystal Springs Road is a deteriorating, rural, winding, unlit road that requires skill to navigate, particularly in the evening.

Significantly augmenting general traffic along the route and introducing possibly intoxicated drivers unfamiliar with the road poses unnecessary dangers to residents' safety and significantly increases the risk of damage to neighboring properties.

Illustrating this point, on the evening of August 5th, 2023, a driver under the influence, trying to navigate Crystal Springs Road late in the evening struck a PG&E power pole on the corner of #333 and #315 Crystal Springs Rd, causing an outage for the residents of Crystal Springs. This event subsequently led to a fire quickly addressed by CalFire and CHP, who came to attend to the scene. Had this event not been handled so swiftly and professionally or had occurred during a high wind event, it would have endangered the lives of many neighbors and resulted in significant damage to property.

Vida Valiente's proposition of employing shuttle buses in addition to valet parking is a band-aid solution that exclusively addresses the issue of traffic and parking. Given the option, it is naive and dangerous to assume that guests will choose to avoid driving themselves to events.

Deliberately introducing these hazards to the neighborhood would be irresponsible and is contrary to the public health and welfare.

For these reasons, I oppose the Vida Valiente project.

Ehan V. Kamat
333 Crystal Springs Road, Saint Helena CA

From: Bordona, Brian
To: Parker, Michael; Anderson, Laura; Ringel, Matthew
Subject: Fwd: Vida Valiente Winery Use Permit Application #P20-00079-UP
Date: Monday, April 29, 2024 8:09:49 AM

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From: Mike and Elena <mikeandelena105@comcast.net>
Sent: Sunday, April 28, 2024 8:40:10 PM
To: Brunzell, Kara <kara.brunzell@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: Vida Valiente Winery Use Permit Application #P20-00079-UP

[External Email - Use Caution]

Dear Commissioner Brunzell,

I am writing to express my concerns regarding the Vida Valiente winery permit application on Crystal Spring Road. I live on Rose Lane, a residential lane off of Crystal Springs Road.

This scope of this project is simply not appropriate for the proposed property. My main concern is safety of the current community on Crystal Springs Road and Rose Lane. Pulling onto Crystal Springs Road from Rose Lane requires care at all times, it is a narrow entrance and exit. We have seen the traffic increase in quantity and speed since Jason Woodbridge's project was approved. Many promises were made when that winery was approved and many broken since approval. All traffic for that project was required to use the north entrance to Crystal Springs Road, that has definitely not been the case. My understanding is the Vida Valiente project has the same north entrance use requirement. How will this requirement be enforced?

They are asking for a permitted weekly visitation of 120, this means 60 extra cars a week on that road, assuming two visitors per car. This doesn't include traffic from employees, vendors delivering supplies such as grapes, barrels, and all that the supplies that are involved with bottling the wine. Crystal Springs Road is a narrow one lane road, not a two-way Silverado Trail or Hwy 29, roads that could handle a project of this scope. The impact of this traffic on quality of human and wildlife should not be discounted.

The more important concern is safety in case of evacuation due to fire. I have lived this first hand as have most of our neighbors during the Glass Fire in 2020. It was daunting navigating out of the area. We were fortunate that the evacuation took place in the early hours of the morning verses during a business day that would have included all the traffic from a proposed winery.

I am sure that the applicants are fine people, but that is not relevant to the application. This use permit application should not be approved for all the concerns, valid and relevant concerns, stated.

Respectfully,

Elena Franceschi
105 Rose Lane

From: gecalo@comcast.net
To: Ringel, Matthew; brian.bardona@countyofnapa.org
Subject: FW: VIDA VALINTE COMMENTS
Date: Sunday, April 28, 2024 1:47:47 PM
Attachments: VIDA VALIENTE - 2nd HEARING COMMENT T.docx
VIDA VALIENTE - LAKE COUNTY CASE.pdf
VIDA VALIENTE - SONOMA ADVOCATES v. COUNTY OF SONOMA.docx

[External Email - Use Caution]

Dear Brian and Mathew,

The recently released ruling on SCV-272539 SONOA COUNTY ADVOCATES V. COUNTY OF SONOMA contains relevant material to the VIDA VALIENTE application.
Specifically, I would like to draw your attention to pages 26 through 33, *Transportation/Traffic* and *Wildfires Impacts* which strongly indicate that the applicant's and Staff's CEQA findings were incomplete.

These are in addition to the LAKE COUNTY case ruling and my own COMMENT both of which I include herewith once again.

Transportation/Traffic (pg. 27-28):

As I had argued, and highlighted by the Court in the SONOMA ruling, Staff's cumulative CEQA finding is incomplete because it failed to consider *reasonably foreseeable probable future projects* (pg.26) and discusses the case of the Hanna Project (pg.28) which the Petitioner argued was not considered as it ought to have done.
The Respondent argued that it did not do so because said project was not "sufficiently developed" which the Court rejected because, though the project may be incomplete, it is listed as a *planned* project. Therefore, a known future one.
What is relevant here, is that the existing four wineries on CSR and CSRN (which were omitted in the applicant's Traffic and Staff's Reports) have been granted a known number of entitlements by Napa County itself, which (whether currently in use or not), *are known and are foreseeable, probable future projects.*
Therefore, the cumulative impacts on the environment *including evacuations* (as mandated in the LAKE ruling) of Vida Valiente must be considered within the framework of the entitlements of the four wineries on CSR and CSRN. This has not been the case.

Wildfire Impacts (pg.28-33):

As previously noted, wildfire impacts were completely ignored by the applicant and the Staff Report.

The Court found the following CEQA Environmental Guidelines Appendix G as "*pertinent*":

"Section XX. WILDFIRE – If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

a. Substantially impair an adopted emergency response plan or emergency evacuation plan?
b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?
c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fir risk or that may result in temporary or ongoing impacts to the environment?"

It must be noted that the Vida Valiente project has is neither an adopted emergency response plan nor an emergency evacuation plan. This is an omission which involves life and death issues and at a very minimum, it is Staff's responsibility to address it.

The Planning Commission, whether it chooses to be bound by the Board of Supervisors Resolution to ignore Title 24 mandates, after reviewing the evidence on record, has the primary responsibility to ensure that this project does not exacerbate negative impacts on the health and welfare of its citizens.

George Caloyannidis

From: gecalo@comcast.net <gecalo@comcast.net>
Sent: Thursday, April 25, 2024 2:25 PM
To: G/ COUNTY Ringel (matthew.ringel@countyofnapa.org) <matthew.ringel@countyofnapa.org>; 'brian.bardona@countyofnapa.org' <brian.bardona@countyofnapa.org>
Subject: VIDA VALINTE COMMENTS

SCV-272539, SONOMA COUNTY ADVOCATES FOR A LIVEABLE ENVIRONMENT (SCALE), ET AL. V. COUNTY OF SONOMA

Petition for Writ of Mandate GRANTED is explained herein.

Facts

Petitioners Sonoma Community Advocates for a Liveable Environment ("SCALE") and Sonoma County Tomorrow ("SCT") challenge Respondent's approval of a specific plan (the "Plan") for the site (the "Site") of the former Sonoma Developmental Center ("SDC") and adoption of an Environmental Impact Report ("EIR") for the Plan. They claim that the approval of Plan and the EIR violates the California Environmental Quality Act ("CEQA").

The Site

The current management, disposition, and development of the Site are governed by Government Code ("Govt. Code") section 14670.10.5, which the California Legislature enacted in 2019. The Site, located at 15000 Arnold Dr., Eldridge, California, consists of a developed campus of about 180 acres (the "Core Campus") with about 755 acres of agriculture, recreation, and natural areas, a total of roughly 1.5 square miles. AR 1; Govt. Code section 14670.10.5. It is located in the Sonoma Valley adjacent to the Sonoma Valley Regional Park and Jack London State Historic Park. AR 1; Govt. Code section 14670.10.5. The SDC was a nationally significant institution providing services to persons with disabilities for about 120 years until its closure in 2018, at which time the remaining residents, who then still numbered "over 400," were relocated to smaller, community-based care facilities. AR 17 (Respondent's April 5, 2019, Summary Report on the Plan); Govt. Code section 14670.10.5. The SDC contains "about 140 buildings within the core campus comprising over 1.3 million square feet of administrative office buildings, congregate care buildings, and private residences built between the 1800s and 1990s." AR 19. At its peak in 1960, according to the Plan, the SDC was home to 3,700 residents. AR 73.

Govt. Code section 14670.10.5(a) sets forth the intentions and policies of the State of California (the "State") with respect to the site. It states, in pertinent part,

The Legislature finds and declares all of the following:

…

(3) In the October 2015 Plan for the Closure of the Sonoma Developmental Center, the State Department of Developmental Services recognized the unique natural and historic resources of the property and acknowledged that it was not the intent of the state to follow the traditional state surplus property process.

…

(6) California is experiencing an acute affordable housing crisis. The cost of land significantly limits the development of affordable housing. It is the intent of the Legislature that priority be given to affordable housing in the disposition of the Sonoma Developmental Center state real property.

(7) The Department of General Services recognizes the exceptional open-space, natural resources, and wildlife habitat characteristics of the Sonoma Developmental Center.

…

(9) It is the intent of the Legislature that the lands outside the core developed campus and its related infrastructure be preserved as public parkland and open space.

The Parties

SCALE is an unincorporated association formed in January 2023 after approval of the Plan with the asserted mission of ensuring that the transformation of the Site will reflect the visions of stakeholders and balance human needs with the Site's environmental values. Its members include individuals and associations local to the Site area who objected to the Plan during the approval process.

SCT, founded in 1977, is a nonprofit organization with the stated intent of supporting economic and environmental sustainability in Sonoma County as a whole.

Respondent County of Sonoma ("Respondent") is both the lead agency and project applicant for the Plan. AR 1-2; Government Code ("Govt. Code") section 14670.10.5. It conducted the Plan review pursuant to CEQA and it approved the Plan and the EIR, including related amendments to its own General Plan (the "General Plan").

Real Party in Interest California Department of General Services ("RPI" or "DGS") is the lead agency currently authorized by the California Legislature to manage the SDC and the Site. AR 6, 11, 18, 522, 523.

Govt. Code section 14670.10.5 (hereinafter, simply "Section 14670.10.5") authorizes RPI to maintain and manage the Site while authorizing Respondent to manage the planning process for its development and conversion to other uses. It authorizes Respondent and RPI to enter into an agreement to implement the land-use planning process and disposition of the Site.

The Plan

Respondent prepared the EIR by agreement with RPI. AR 1, 17-18, 16711; Govt. Code section 14670.10.5. The Draft EIR ("DEIR") for the Plan was circulated for public review and comment in 2019 and 2020 after community meetings and outreach efforts. After the publication of the Final EIR ("FEIR") and Responses to Comments (the "Responses"), the Plan and EIR were presented to the County Landmarks Commission in September 2022 and the Planning Commission September, October, and November 2022. AR 13558-13561, 13684-

14578. The Planning Commission recommended that Respondent's Board of Supervisors certify the EIR and approve the Plan with modifications. AR 12843-12844. The Board of Supervisors approved the revised Plan and certified the EIR at a public hearing in December 2022. AR 1, 14578-14908. It issued the Notice of Determination ("NOD") on December 19, 2022. AR 1.

Respondent certified the EIR and approved the Plan in December 2022. AR 1, 17-18, 16711. It envisions redevelopment of the Site with up to 1,000 units of varied housing types in a mixture of low- and medium-density sites and 410,000 sq ft of non-residential use, including a hotel, along with park space, some land dedicated as a "buffer" zone, and preserved open space. AR 1, 16779.

Respondent determined that the Plan will have a significant environmental impact but nonetheless did not make mitigation measures a condition of the approval. AR 1. Accordingly, it approved the Plan based on a Statement of Overriding Considerations. AR 1.

Overview of The Arguments

Petitioners have filed both an Opening Brief ("Opening") and a Reply Brief ("Reply"). They argue that the Plan lacks sufficient, enforceable mitigation measures and is not "self-mitigating" as Respondent claims; the EIR lacks an adequate project description (the "Description"); the EIR failed to study potentially feasible mitigation measures; the EIR analysis of environmental impacts is defective with respect to wildlife corridors and biology, transportation and traffic, and wildfire impacts; the Responses are deficient; and there is no support for the findings to reject a feasible alternative.

Respondent provides the primary opposition to the petition in its opposition brief ("Respondent Oppo"). It argues that the Plan complies with all requirements to be self-mitigating because it includes standards and policies which avoid or lessen impacts to less than significant; a mitigation monitoring and reporting program ("MMRP") is only required for mitigation measures which avoid or lessen the impacts; an EIR only need discuss mitigation measures if there are significant impacts; the Description is complete and accurate in compliance with CEQA; the EIR explains why there are no feasible mitigation measures; the EIR fully analyzes all potential impacts; and substantial evidence supports the findings on alternatives.

RPI has filed a short opposition brief ("RPI Oppo") stating that it supports Respondent's position. It otherwise focuses on the statute specifically governing the Site, Section 14670.10.5. RPI contends that Section 14670.10.5, specifically in subdivisions (c)(2)-(4) and (e)(2) provides a "foundational blueprint" for the Plan; sets forth "three overarching components" consisting of the legislative findings about the Site and the legislative intent at (a); the land-use goals and priorities at (c)(3)-(4); and the land-use planning and disposition processes at (c)(1)-(2), (d), (e), and (g). It clams that the statute lacks any requirement to preserve the old SDC buildings as historic resources, an intentional decision given that it states that the Legislature intends to conserve the natural resources and the Eldridge Cemetery. It argues that "most" of the buildings are falling into disuse and in a state of disrepair, raising concerns of safety and cost, citing AR 43-44, 2054, 8807, 4874-4875. Preserving these buildings

or converting them to residential or other uses would, it argues, be contrary to the Legislature's express goals and the efforts of Respondent.

Request for Judicial Notice

Petitioners have filed a request for judicial notice. There is no objection or opposition to this request.

Petitioners request judicial notice of Respondent's 6th Public Review Draft Appendices of the Sonoma County Housing Element, presented at the November 30, 2022, meeting of the Sonoma Valley Citizens Advisory Commission, North Sonoma Valley Municipal Advisory Council, and Springs Municipal Advisory Council, and the agenda of the meeting. Petitioners assert that the documents are relevant to knowledge, prior to approval of the Plan, of the pending Hanna Boys Center Mixed-Use Project at 810 W. Agua Caliente Road (the "Hanna Project"). The court may judicially notice these documents, the contents, and the purported legal effect but may not judicially notice the truth of factual assertions made therein. With this limitation, the court grants the request.

The court notes that although, in general, judicial review on a petition for writ of mandate such as this is limited to the administrative record, the request fits into exceptions to that general rule. As explained in *Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, at 1621, relying on *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, "extra-record evidence may be admissible to show 'agency misconduct.'" See also *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 118. The Supreme Court stated in *Western States*, at 576-578, that exceptions include (1) evidence to show that an administrative agency has not considered "all relevant factors" in making its decision; (2) evidence to show the evidence the agency considered did not support its decision; and (3) evidence that could not be produced at the administrative level "in the exercise of reasonable diligence. The court also noted that it is, by contrast, improper to judicially notice evidence which is not in the record *and* which was not before the agency at the time of its decision. *Western States*, 574, fn.4. Moreover, although *Western States* involved traditional mandamus, the basic approach articulated in it applies to administrative mandamus as well. *Cadiz Land Co.*, 120.

In this instance, Petitioners seek judicial notice of information which was before Respondent when it made the decision and specifically it is intended to demonstrate exactly that fact: that although Respondent failed to discuss it in the proceedings on this Plan, this information was before Respondent.

CEQA

An EIR is required for a project which substantial evidence indicates may have a significant effect on the environment. Guidelines for the Implementation of CEQA ("Guidelines"), 14 California Code of Regulations ("CCR") section 15063(b) (hereinafter, the court shall cite to Guidelines simply by stating "Guideline" and the section number); Public Resources Code ("PRC") sections 21100, 21151. EIRs are, in the words of the California

Supreme Court, "the heart of CEQA." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights I*).

"An EIR must identify the 'significant environmental effects' of a proposed project. [Citations.]" *Mira Mar Mobile Community v. City of Oceanside* (2001) 119 Cal.App.4th 477, 492-493.

The ultimate mandate of CEQA is "to provide public agencies and the public in general with detailed information about the effect [of] a proposed project" and to minimize those effects and choose possible alternatives. PRC 21061. The public and public participation hold a "privileged position" in the CEQA process based on fundamental "notions of democratic decision-making." *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936. As stated in *Laurel Heights I, supra,* 47 Cal.3d 376, at 392, "[t]he EIR process protects not only the environment but also informed self-government."

The burden of investigation rests with the government and not the public. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1378-1379. The court in *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, at 1202, finding that a city failed to consider an issue, ruled that the city could not rely on information to make good the gap in its analysis where the record did not show that the information had ever been available to the public. Similarly, as the court explained in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, at 311, an "agency should not be allowed to hide behind its own failure to gather relevant data.... CEQA places the burden of environmental investigation on government rather than the public." See also *Gentry, supra* (quoting *Sundstrom*).

The Standard of Review

PRC section 21168 governs CEQA actions under CCP section 1094.5, challenging administrative decisions, those "made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency." CCP section 1094.5. *Friends of the Old Trees v. Dept. of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1389.

The reviewing court must determine if Respondent abused its discretion by 1) failing to proceed in the manner required by law, or 2) because its decision is not supported by substantial evidence. PRC 21168; *Laurel Heights I, supra* 47 Cal.3d 392, fn.5. These two standards vary greatly and apply to different issues, so "a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

As the court explained in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 at 435:

[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.

(§21168.5.) Judicial review of these two types of error differs significantly: while we determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" [Citation], we accord greater deference to the agency's substantive factual conclusions.

Accordingly, while courts must give deference as to substantive factual decisions, they demand strict compliance with "legislatively mandated CEQA requirements." *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta II*). A Respondent is entitled to no deference where the law has been misapplied, or where the decision was based on "an erroneous legal standard." *East Peninsula Educ. Council, Inc. v. East Peninsula Unif. Sch. Dist.* (1989) 210 Cal.App.3d 155, 165.

The substantial-evidence test does not apply, therefore, to a claim that an EIR failed to include mandatory information or elements. *Vineyard Area Citizens*, 435, citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. Failure to include required information is a failure to proceed in the manner required by law and demands strict scrutiny. *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; *Vineyard Area Citizens*, 435. Courts must determine such a question de novo. *Vineyard Area Citizens*, 435.

The distinction may not always be clear, but as stated in *Barthelemy v. Chino Basin Munic. Water Dist.* (1995) 38 Cal.App.4th 1609, at 1620, a claim that the EIR lacks *sufficient* information regarding an issue should be treated as an argument that the EIR is not supported by substantial evidence. See also *National Parks and Conservation Association v. County of Riverside* (4th Dist.1999) 71 Cal.App.4th 1341, at 1353 (challenges to the scope of the analysis, the methodology for studying an impact, and the reliability of accuracy of the data present factual issues, so such challenges must be rejected if substantial evidence supports the agency's decision as to those matters).

By contrast, other courts, as explained in decisions such as *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, at 1392, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, at 721-722, and *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, at 712, claims involving a complete lack of information may involve a failure to proceed in the manner required by law. The court in *Association of Irritated Residents* rejected the analysis in *Barthelemy* and *National Parks II* that "claims that information has been omitted from an EIR essentially should be treated as inquiries whether there is 'substantial evidence to support [the] decision….'" It reasoned that such an approach "fails to acknowledge the important public informational purpose" of an EIR. As stated in *Kings County Farm Bureau*, "error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.'" In *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, at 101-102, the court again determined that where the petitioner's assertion is that information has been omitted from an EIR, "independent review will apply if the information… is required by CEQA and necessary for an informed discussion. In contrast, if the asserted error concerns the amount or type of information that is not required by CEQA and necessary for an informed discussion, then the substantial evidence standard applies." In *Save Round Valley Alliance v. County of Inyo* (2007)

157 Cal.App.4th 1437, at 1465, the court ruled that where an EIR included "only the barest of facts regarding the BLM parcel, vague and unsupported conclusions about aesthetics, views, and economic objectives, and no independent analysis whatsoever of relevant considerations," the agency "failed to proceed in the manner required by law."

More recently, the Supreme Court addressed this issue in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502. At 516, it determined that even where an EIR addresses an issue, there may be a mixed standard of review, stating that to the extent that the EIR fails to present any *meaningful* information or discussion sufficient to allow one to understand the issues and reasoning, the failure is procedural and subject to independent review. On the other hand, the court added, where the issue is a factual question of whether the evidence supports the conclusion, then the more deferential standard applies. In the court's words,

The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail "to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." [Citations.] The inquiry presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference. [Citations.] Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted.

Real party in interest draws a distinction for standard of review purposes between claims that a required discussion has been omitted altogether and claims that a required discussion is insufficient, with the former subject to de novo review and the latter subject to substantial evidence review. But such a distinction is neither consistent with our precedent [Citation] nor logically defensible. Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.

The court noted that Guideline 15151 expressly states "An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences."

Agency actions are also presumed to comply with applicable law unless the petitioner presents proof to the contrary. Evid. Code section 664; *Foster v. Civil Service Commission of Los Angeles County* (1983) 142 Cal.App.3d 444, 453. The petitioner in a CEQA action thus has the burden of proving that an EIR is insufficient. *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.

Prejudicial Error

Under CEQA, a court may only issue a writ for any abuse of discretion, including making a finding without substantial evidence, if the error was *prejudicial*. PRC section 21005; *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143. When substantial

evidence does not support a decision, but there is no prejudicial abuse of discretion, the court must defer to the agency's substantive conclusions and uphold the determination. *Chaparral Greens, supra; see* PRC 21168, 21168.5, *Laurel Heights I, supra* 47 Cal.3d 392, fn.5.

An "error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.'" *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, at 721-722, quoting *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, at 712.

Standard of Review: Substantial- Evidence Test

As noted above, the substantial-evidence test applies to substantive issues in a decision certifying an EIR and under this standard, the court must uphold the decision if it is supported by substantial evidence in the record as a whole. *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1075; see *River Valley Preservation Project v. Metropolitan Transit Dev.Bd.*(1995) 37 Cal.App.4th 154, 166; see *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703. The "substantial evidence" test requires the court to determine "whether the act or decision is supported by substantial evidence in the light of the whole record." *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143; *River Valley Preservation Project v. Metropolitan Transit Develop. Bd.* (1995) 37 Cal.App.4th 154, 168.

As a fundamental benchmark that generally applies to all issues in CEQA, the court in considering an issue should look to see if "the public could discern... the 'analytic route the... agency traveled from evidence to action.'" See *Al Larson Boat Shop Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 749; see also *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.

Although " 'an EIR need not include all information available on a subject' ... [it must contain] sufficient information and analysis to enable the public to discern the analytical route the agency traveled from evidence to action." *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397 ("*AIR*"); *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (App. 1 Dist. 2013) 216 Cal.App.4th 614, 639-640 (quoting *AIR*).

"CEQA simply requires that the public and public agencies be presented with adequate information to ensure that 'decisions be informed, and therefore balanced.' " *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748.

The court must focus upon the EIR's "sufficiency as an informative document." *Laurel Heights I, supra,* 47 Cal.3d 393. The evidence must be sufficient to allow one to make an intelligent, informed decision, i.e., sufficient to make clear the analytic route of the agency. *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936; *Al Larson Boat Shop Inc. v. Bd. of Harbor Commissioners* (1993) 18

Cal.App.4th 729, 749; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.

When applying the substantial evidence standard, in other words, the court must focus not upon the "correctness" of a report's environmental conclusions, but only upon its "sufficiency as an informative document." *Laurel Heights I, supra,* 393. The court must resolve reasonable doubts in favor of the findings and decision. *Id.* The findings of an administrative agency are presumed to be supported by substantial evidence. *Taylor Bus. Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331.

The Definition of "Substantial Evidence"

Substantial evidence is not simple "uncorroborated opinion or rumor" but "enough relevant information and reasonable inferences" to allow a "fair argument" supporting a conclusion, in light of the whole record before the lead agency. 14 CCR section 15384(a); PRC §21082.2; *City of Pasadena v. State of California* (2nd Dist.1993) 14 Cal.App.4th 810, 821-822. Other decisions define "substantial evidence" as that with "ponderable legal significance," reasonable in nature, credible, and of solid value. *Stanislaus Audubon Society, Inc., v. County of Stanislaus* (1995) 33 Cal.App.4th 144.

Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. PRC §21082.2(c); see also Guidelines 15064(g)(5), 15384. It does not include argument, speculation, unsubstantiated opinion or narrative, clearly incorrect evidence, or social or economic impacts not related to an environmental impact. Guideline 15384.

Program EIRs

The Plan is an overall land-use document governing the subsequent development of the Site via smaller projects consistent with, or "tiered" from, the Plan. The parties do not directly discuss this, and it is not specifically at issue in this litigation, but the court notes that this provides part of the context of the project and the analysis.

The EIR for it is a "program" EIR in accord with Guideline 15168. The language of Guideline 15168 is instructive regarding both the purposes, and policies behind, a program EIR and how it is to be used. It states that a "program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related" in a logical fashion on one of the manners it describes. It further states that a program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

…

(c) Use With Later Activities. Later activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. That later analysis may tier from the program EIR as provided in Section 15152.

(2) If the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR….

…

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into later activities in the program.

…

(5) A program EIR will be most helpful in dealing with later activities if it provides a description of planned activities that would implement the program and deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed project description and analysis of the program, many later activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

…

Guidelines 15152 and 15385 describe "tiering" projects and environmental review from broader plans and program EIRs. Guideline 15385 states, '"Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared.' It states that tiering is appropriate when the sequence of EIRs involves, among others, a progression from a general or site plan to a site-specific EIR.

Guideline 15152 mirrors and expands on this language. Among other things, it states, at subdivision (b) and with emphasis added, "Tiering *does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects* of the project and *does not justify deferring such analysis* to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan,

policy, or ordinance being analyzed." Subdivision (c) adds, however, that some site-specific detail may not be feasible to address in the plan EIR and may be deferred.

A plan with a program EIR therefore provides an overall framework for subsequent development consistent with the requirements and measures incorporated into the plan and the program EIR, partly to streamline later development but also to provide both a broader environmental review and policy development in the plan and its program EIR, as well as more specific analysis for the individual projects tiering from it. The Supreme Court explained in *In re Bay Delta* (2008) 43 Cal.4th 1143, at 1169-1170,

An advantage of using a program EIR is that it can "[a]llow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." [Citation.] Accordingly, a program EIR is distinct from a project EIR, which is prepared for a specific project and must examine in detail site-specific considerations. [Citation.]

Program EIR's are commonly used in conjunction with the process of tiering. [Citation.]

…

This court has explained that "[t]iering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases." [Citation.]

Approving a Project Pursuant to a Statement of Overriding Considerations

As noted, Respondent approved this Plan and its EIR with a statement of overriding considerations. Again, Petitioners do not challenge this statement in this action, so it is not itself at issue, but the authority is relevant for the context of this analysis.

When a lead agency approves a project which will produce unavoidable significant impacts, the agency must produce a statement of overriding considerations that must state the specific reasons supporting its action based on the EIR and other information in the record. PRC 21081; Guidelines 15091, 15093(b). The statement must be supported by substantial evidence. Guideline 15093(b). This is to reflect the "ultimate balancing of competing objectives." Guideline 15021(d).

Pursuant to PRC 21081, an agency may approve a project identified as having one or more significant impacts if it satisfies two requirements. Subdivision (a) sets forth the first requirement, which is that either (1) mitigation measures which reduce the impacts to less than significant have been required or are incorporated in the project, or (2) another agency with authority to impose mitigation measures has done so or can and should do so, or (3) the agency has found that mitigation measures are infeasible and the significant impacts unavoidable. The second requirement, in subdivision (b), is that where the agency has found unavoidable significant impacts and no feasible mitigation measures pursuant to (a)(3), the agency must adopt a statement of overriding considerations. On the requirement of the statement of overriding

considerations, 21081(b) states that the agency may approve a project identified as having unavoidable significant impacts as long as the "agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects…."

Guideline 15091, also governing approval of a project where the agency has identified one or more significant environmental impacts, reiterates this. It mirrors the language of PRC 21081 with some additional explanation and detail, adding that making a statement of overriding considerations pursuant to Guideline 15093 "does not substitute for the findings required by this section."

The finding of overriding considerations focuses on broader reasons for approving the project, such as jobs, housing, or revenue. See *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222-1224. The court in *City of Poway v. City of San Diego* (1984) 155 Cal.App.3d 1037 upheld a statement of overriding considerations, for example, that justified approval based on the finding that the project would satisfy housing and employment needs and be consistent with the area's growth-management policies.

Project Description

Petitioners contend that there is no clear and stable project description. They note that it is inconsistent or vague as to the number of housing units which may be allowed but studies a specific number as the maximum without evidence to show that this is in fact the ultimate amount of housing to be built. They also claim that the description is unclear to its phasing. Respondent opposes this argument.

An EIR must contain an accurate and consistent project description. Guideline 15124. As stated in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, at 193, "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." The clear and logical reason is that a clear, consistent description "is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143 (discussing a notice of exemption). Only this way can those involved, particularly outsiders, assess the impacts, benefits, mitigation, and alternatives. *County of Inyo, supra*, 192-193.

On the other hand, the CEQA process should normally lead to changes in the project to reduce environmental impacts and the like. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737; *County of Inyo, supra*. After all, the "CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge... evoking revision of the original proposal." *Kings County Farm Bureau*, 736-737 (quoting *County of Inyo, supra)*.

Petitioners argue that the Plan description is unclear and inconsistent because it fails to clarify or fully analyze the number of housing units and lacks clarity regarding the phasing.

With regard to housing buildout, Petitioners point out that the Plan provides a range of housing units within each district, up to a total of 1,000 housing units "anticipated," but also states that is "is not anticipated" each district would be built to the maximum range allowed, citing AR 4845-4846. They contend that there is no basis in the record for assuming that maximum buildout would not occur, leaving a gap in the information and an underestimation of the impacts. Thus, they assert, the EIR needed to analyze either a maximum buildout number which exceeds 1,000, or include a housing cap.

Petitioners are persuasive on this point. They are correct that the EIR must analyze the impacts of the full possible buildout allowed under the Plan and cannot limit analysis to a lesser development on the unsupported assumption that full development will not occur. Although Petitioners' own citations to the record are not complete, they cite to AR 4845-4846, a brief discussion in the FEIR of Table 4-2 of the Plan and the units of housing. The cited section notes the additions to the table, stating that it provides a range of housing for each district, allowing for "flexibility" and stating that it "is not anticipated that development would be built to the maximum" for each district and that the total number of housing units is "anticipated" to be 1,000. However, Table 4-2 of the plan, in setting forth the minimum and maximum allowed units, gives maximums for each district which actually total 1,210 units, in increase of more than 20% over the "anticipated" total. AR 133.

On its face, this lacks a set project description. The Plan and the EIR consistently state that the analysis is based on the stated limit of 1,000 units, the number consistently set forth as the total number of housing units. See, e.g., AR 1 (the NOD, stating that the "Plan proposes redevelopment of up to 1,000 units of various housing types"), 1161 (statement in the EIR, regarding impacts, that the Plan "would result in the development of 1,000 residential units"), 1168 (the same), 1221 (EIR table on alternatives, listing the Plan's housing buildout as 1,000 for comparison against alternatives), 4889 and 4929 (comments discussing 1,000 housing units), 16787 (Plan Table 4-3 showing "projected" buildout of 1,000 housing units). Thus, it is clear that the analysis of impacts is based on the assumption that the Plan would result in up to 1,000 housing units. However, in reality, the Plan, as demonstrated at Table 4-2, essentially states that the housing total is flexible and not set, and at the very least may result in up to 1,210 units, based on the numbers in the table. The Project thus fails to contain a clear and established description with respect to the number of housing units allowed. This results in an analysis of impacts based on an assumed buildout which is on the face of the record significantly less than the potential allowed buildout. Nor is the difference small, the total number allowed evidently being more than 20%, or 1/5, greater than the number assumed for the analysis. There is no basis for the assumption of 1,000 units, while on the face of the record, basing the analysis of the Plan on the unsupported lower number demonstrates that the analysis must lack substantial evidence.

Respondent counters that buildout projections were based on assumptions about "what might be feasible based on a number of factors," and that "it is difficult to project the exact amount and location of future development that may result," so the "buildout projection… is not intended as a development prediction or cap that would restrict development in any of the five subareas. Rather, the Proposed Plan allows for flexibility in the quantity and profile of future development within and between subareas, as long as it conforms to the policies and standards,

including permitted densities and FARs [floor area ratios], in the Specific Plan." AR 597; Respondent Oppo 18-19.

Table 4-2 and its explanation illustrate the lack of a set project description. Respondent essentially makes Petitioners' point for them. They expressly cite to portions of the EIR stating, and directly claim, that the Plan and EIR impose no specific cap on housing units, include only a range of possible buildout numbers, and have no cap or limit. This makes it even more clear that there is no clear and set project description. Further, the analysis of the Plan is based on an unsupported assumption about what "may" occur, even though what actually could occur under the Plan may be far greater of a housing number which is not disclosed anywhere in the record.

As for the issue of phasing, Petitioners assert that the Plan and EIR fail to describe the duration of work, demolition, or construction, all relevant to air quality, transportation, greenhouse gas emissions ("GHGs"), noise, and utilities. They note that the Plan identifies five-year construction phases but that these lack quantitative information to allow meaningful analysis. However, Petitioners cite to nothing in the record regarding this issue and provide no further analysis or discussion. Respondent asserts that this information is improper and beyond the confines of the Plan and would require speculation. Respondent has a valid point, but whether it is correct or not, ultimately Petitioners have provided nothing to support this brief, unexplained, and unsupported contention.

Conclusion: Project Description

The court GRANTS the petition as to the lack of a clear and established project description regarding the number of housing units. The court DENIES the petition on issue of a lack of a proper description as to phasing.

Mitigation Measures

Petitioners challenge the analysis of mitigation measures on several points. They claim that the Plan is not "self-mitigating" as Respondent claims, it lacks clear performance standards for its purported mitigation measures, it lacks a mitigation monitoring and reporting program ("MMRP"), and there is no support for the findings that mitigation measures are infeasible for two areas of admitted significant impacts.

As stated above, a lead agency may approve a project with a statement of overriding considerations even if it finds that the project will result in significant environmental impacts if it finds those impacts to be unavoidable and mitigation measures to be infeasible.

PRC section 21002 states that "it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects...." Agencies must therefore adopt feasible mitigation measures, or environmentally superior alternatives, to substantially lessen or avoid otherwise significant effects. PRC sections 21002, 21081(a), 21081.6; Guidelines 15002(a)(3), 15021(a)(2), 15091(a)(1). The EIR therefore must set forth

mitigations measures that can be adopted. PRC section 21100(b)(3); Guideline 15126(e), 15126.4.

The Supreme Court has made clear that considering mitigation measures and alternatives is one of the most important functions of an EIR. *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197. In fact, "[t]he core of the EIR is the mitigation and alternatives sections." *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*). CEQA is thus recognized as not merely a "procedural" statute but one that contains a "substantive mandate" that agencies not approve projects if feasible alternatives or mitigation measures can substantially reduce those impacts. *Mountain Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th 105, 134.

The court in *Citizens for Ceres v. Sup.Ct*. (2013) 217 Cal.App.4th 889, at 898, stated, that when approving a project based on a statement of overriding considerations despite significant impacts, "[a]n agency must require feasible mitigation measures for all significant impacts and consider seriously and without bias whether the project should be rejected if mitigation is infeasible or approved in light of overriding considerations."

As noted above, PRC section 21081 and Guideline 15091 set forth the requirements where an agency has determined that a project may have one or more significant impacts, and this includes requiring or incorporating feasible mitigation measures. In other words, as set forth in PRC section 21081(a)(1), "[c]hanges or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment…."

Where mitigation measures are either imposed or incorporated in the project pursuant to PRC section 21081(a)(1), and Guideline 15091(a)(1), PRC section 21081.6 and Guideline 15091 mandate that the mitigations be enforceable and implemented, imposing certain requirements to ensure that they are in fact enforced and implemented. In such circumstances, section 21081.6(a)(1) requires the agency to "adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation." This provision sets forth the requirement for a mitigation monitoring and reporting program ("MMRP") to help effect mitigation measures. The mitigation measures may be set forth in the EIR or other environmental documents, or, in the case of an agency adopting a plan or other public project, they may be incorporated directly into the plan or project. PRC section 21081.6(b). PRC section 21081.6(b) states, in full and with emphasis added,

A public agency shall provide that measures to mitigate or avoid significant effects on the environment *are fully enforceable* through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

Guideline 15091 likewise mandates that the agency "adopt a program for reporting on or monitoring" the mitigations and that they be "fully enforceable," These mitigation measures must be capable of avoiding the effects altogether by avoiding all or part of an action, limiting the effects by limiting the degree or magnitude of the action, "rectifying" the effect "by repairing, rehabilitating, or restoring the impacted environment," or reducing or eliminating the effect over time by preservation and maintenance operations. Guideline 15370.

Guideline 15097 sets forth standards for mitigation monitoring or reporting which, it states, apply when an agency has approved a project pursuant to Guideline 15091(a)(1), i.e., when an agency has approved a project subject to mitigation measures which have been imposed on, or incorporated in, the project. It reiterates that the agency "shall" adopt an MMRP. Subdivision (b) clarifies that, "Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan-level document (zoning, ordinance, regulation, policy), *the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative*. The monitoring plan may consist of policies included in plan-level documents." Subdivision (c) discusses "reporting" and "monitoring," stating,

The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both.

The EIR itself requires no mitigation measures for any of the potential impacts. See, e.g., AR 535-559, 771, 773, 774, 777. The EIR's Table ES-2, "Summary of Impacts" at AR 535-559, lists each impact with its corresponding mitigation measures, significance before mitigation, and significant after mitigation. For almost all impact categories, it states, for mitigations, "None required," because there are ostensibly no impacts or the impacts are less than significant, so the significance after mitigation is "Not applicable." However, for impacts 3.5-2 regarding historic resources (AR 541), and 3.14-2 regarding conflict with CEQA as to Vehicle Miles Traveled ("VMT") on the issue of transportation, as well as resulting cumulative impacts on transportation (AR 555-556), the EIR states that these effects are "significant and unavoidable" while the transportation cumulative impacts are "cumulatively considerable." Nonetheless, for mitigation measures as to these impacts, it still states, "None required," and for significance after mitigation, "Not applicable." Regarding historic resources, it claims that no mitigation is required because, with emphasis added,

The Proposed Plan includes policies and actions that *encourage* the preservation of *much* of the historic character of the SDC campus. This includes retention, rehabilitation, and adaptive reuse of buildings, structures, and landscape features in the Core Campus area that contribute to the SSHHD, as well as the retention of contributing resources that are located in the hog and poultry area east of the Core Campus and the SDC water and sewage system to the west and north. New construction still has the potential to *disconnect the remaining contributing resources* in the Core Campus from those in Community Separator and Regional Parks lands to the east and west,

consequently disrupting the feeling and character within the historic district. While proposed policies would help reduce these impacts to the maximum extent practicable, there are no mitigation measures available to avoid impacts to the historic district entirely.

With respect to transportation and VMT, it claims,

Policies in the Proposed Plan are designed to reduce VMT in the Planning Area through required TDM reductions, establishment of a TMA to oversee VMT reduction strategies and programs, multi-modal transportation improvements, and parking-related demand management strategies. While these VMT reduction measures can be expected to reduce VMT, their effectiveness cannot be guaranteed, and they may be insufficient to reduce residential VMT per capita in the Planning Area below the applicable significance threshold or fully offset the effects of induced VMT. There are no other feasible mitigation measures available.

Although the EIR includes no mitigation measures, as Respondent argues, the Plan itself does contain some mitigation measures in the form of goals, policies, and conditions of approval for implementing projects, regarding factors such as biological resources and wildlife corridors intended to mitigate development impacts. Respondent cites to AR 228-247, 271-333, and 347-362. AR 228-247 are conditions of approval. The other pages are in the Plan's discussions of the various issues and impacts, where the Plan sets forth its goals and policies. Some are specific and concrete such as 2-7, prohibiting lights in wildlife corridors (AR 275), 3-7, requiring two new intersections on Arnold Drive and 3-9, imposing a 25-mph speed limit (both at AR 285). Most are vague and open-ended, such as 3-22 (AR 286); many of the parking policies at AR 287-288; many of goals and policies for land use at 296-297, such as all three goals, and policies 4-3, 4-4, 4-5; the goals and policies for historic resources at 299-301. In general, the vast majority of these goals and policies are vague, open-ended, and devoid of any clear mandatory requirements or performance standards, as CEQA requires for mitigation measures. Guideline 15126.4 (discussing the requirement of concrete performance standards for mitigation). They set forth hopeful intentions and vague statements that the goal of the Plan is to "promote" or "encourage" the stated measures or methods, and that items "should" be considered or studied, implemented if vaguely "feasible," and the like with no performance standards or clear criteria. Respondent's citations do not demonstrate that the Plan as a whole incorporates clear, mandatory mitigations measures with clear performance standards. There are some instances of clear measures with evident performance standards, as noted, but nothing more.

The first Master Response ("MR") at MR1, on the adequacy of the Plan as self-mitigating, states that it "aims to be self-mitigating" by including "policies and programs… as part of the project designed to avoid or mitigate… impacts," citing PRC 21081.6(b) and Guideline 15097(b). AR 4854. It claims that policies in the Plan were "designed to avoid or mitigate … impacts that would otherwise occur" and that the policies are "fully enforceable" and require "[c]ompliance with established regulatory requirements and standards…." Ibid. MR3, addressing the level of detail necessary for a program EIR, admits that program EIRs must "shall incorporate feasible mitigation measures and alternatives."

Preliminarily, Petitioners argue that Respondent violated CEQA because it failed to analyze the Plan's potentially significant impacts before considering mitigations or

alternatives. Opening 15; Reply 10; AR 4854. Apparently, this is based on the fact that the only mitigation measures are those imposed in the Plan while the EIR, where the real environmental review occurred, includes none and relies solely on the Plan's own measures. This argument, as Respondent contends, is unpersuasive and inconsistent with the law. Nothing indicates that environmental review must take place before considering or developing mitigation measures. In fact, as noted above, the authority expressly states that mitigation measures may be incorporated directly into the plan rather than being imposed in the EIR. Moreover, the environmental analysis of impacts may take into account the measures imposed in a plan. As long as the review is complete and takes into account the full effects of a project, it does not matter if the mitigation measures were developed before or after environmental review.

Petitioners more persuasively claim that the discussion of mitigations is defective because it is not self-mitigating and fails to include any MMRP to help enforce the mitigations in compliance with Guideline 15097(c)(3); the Plan policies are not effective as mitigation measures because they lack clear, performance-based mitigations sufficient to avoid or lessen impacts; and the EIR acknowledges that the Plan will have some significant impacts yet fails to consider potentially feasible mitigation measures. Opening 15-16.

As noted above, the purported mitigation measures in the Plan, its goals and policies, are on the whole facially toothless, vague, and limited to hopeful intentions. The sheer number makes it impossible to list them all, but as explained above, most do nothing more than set forth hopeful intentions and vague statements that the goal of the Plan is to "promote" or "encourage" the stated measures or methods, and that items "should" be considered or studied, implemented if vaguely "feasible," and the like, with no definition of what any of this means, no performance standards, and no clear criteria. Respondent's citations to what it claims are sufficient mitigation policies or measures do not demonstrate that the Plan as a whole incorporates clear, mandatory mitigations measures with clear performance standards.

Similarly, Petitioners point out that there is no evidence of any MMRP in the Plan or the EIR.

Respondent counters, in a somewhat unclear and seemingly contradictory statement, that it need not include an MMRP because an MMRP is only required for mitigation measures and that it need not adopt mitigations because they are only required where a project may have a significant impact. To quote Respondent, it asserts, with original emphasis, that Petitioners' claims that

…a specific plan only can be self-mitigating if it incorporates mitigation measures and has an MMRP, is not supported by law. (POB 15-16.) The regulation that SCALE cites only discusses when a program includes both a monitoring element **and** a reporting element, as opposed to just a monitoring **or** just a reporting program. (14 CCR § 15097(c)(3).) The law is clear: mitigation measures only need to be discussed for impacts that will have a significant effect, and an MMRP is required only when an agency finds that the significant effects will be mitigated by specific measures. (PRC §§ 21100, 21081.6(a); 14 CCR § 15126.4(a)(1).) Here, two impacts were determined to be significant and unavoidable, but the County found that there is no feasible mitigation or alternative that would reduce or eliminate these impacts. (AR 45-49, 815-816,

1132- 1136, 11469, 12396.) SCALE does not and cannot point to anything in the record suggesting that feasible mitigation exists, yet SCALE still demands that an MMRP is required.

Respondent's argument is confusing. Respondent Oppo 12-17. It claims that the Plan is "self-mitigating," by which it means that instead of imposing additional mitigations in the EIR, the Plan itself incorporated the noted mitigations and policies sufficient to mitigate impacts to less than significant, and it cites to statements in the Plain claiming that it is a "model" of ecological and "sustainable development" or the like. See, AR 76-80. It contends that Petitioners' argument that the EIR fails to include mitigation measures "falls flat" because such a discussion "is required only for significant environmental effects." Respondent Oppo 11:6-7. At the same time, it admits that the EIR expressly finds that some environmental impacts *are* still significant and are not mitigated to less than significant, even though no measures were adopted to lessen or avoid those impacts. It makes conflicting arguments. It asserts that the Plan itself contains mitigation measures which reduce impacts on most issues to less than significant, but it claims that no MMRP is required because an MMRP is only required for mitigation measures which reduce or avoid significant impacts. It admits the Plan does not mitigate all significant impacts and that the EIR includes no additional mitigation, yet argues that the EIR need not include such a discussion because an EIR only need discuss and include mitigation measures if impacts are significant.

Although Respondent's arguments are somewhat murky, it appears to claim that no MMRP is necessary because the measures which will avoid or reduce environmental impacts are already included in the Plan and not being imposed as mitigations in the EIR. This argument is unpersuasive.

As noted above, the EIR, and Respondent in its opposition brief here, expressly rely on the provision in PRC section 21081.6(b) allowing an agency to include in a plan "conditions of approval… which address mitigation measures," instead of imposing them in the EIR. This does not mean that they are therefore not "mitigation measures" subject to the requirement of an MMRP.

In addition to lacking any authority in support, Respondent's argument on this point simply makes no sense. The above provision on which it relies is subdivision (b) of PRC section 21081.6 which, at subdivision (a), sets forth the requirement for an MMRP, while Guideline 15097 has substantially the same language. They allow a plan such as this to incorporate mitigations without the need to impose those in the EIR, but they indicate that an MMRP plan is still required. Guideline 15097(b), in fact, makes this clear, stating, with emphasis added, "Where the project at issue is the adoption of a general plan, *specific plan*, community plan or other plan-level document (zoning, ordinance, regulation, policy), *the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative*. The monitoring plan may consist of policies included in plan-level documents." Moreover, logically, an MMRP is just as necessary for implementing measures designed to prevent or lessen impacts set forth in the plan itself, as it is for measures set forth in an EIR.

Respondent also makes the brief statement that Petitioner "SCALE, in citing to Guideline 15097(c)(3), only discusses when a program includes **both** a monitoring element and a reporting element, as opposed to just a monitoring **or** just a reporting program. (14 CCR § 15097(c)(3)." Respondent Oppo 14:19-21, Emphasis original. It stresses the emphasized words but provides no further discussion or explanation as to the import. Its apparent analysis, to whatever unexplained purpose it intends, is, in any case, incorrect. Guideline 15097(c)(3) simply discusses when reporting and monitoring are appropriate, stating, "Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements." The rest of the Guideline indicates that MMRP may include either monitoring or reporting, or both, depending on what is required and the needs of the circumstances, as well as the application and analysis. There is no indication in the authority that Petitioners somehow are improperly relying on something which only applies when an MMRP includes both, as opposed to one or the other. It is even less clear how such a distinction might have any bearing here. The point Petitioners make is that there is no MMRP and one is required.

Respondent also argues that no mitigation measures are needed when a project will comply with applicable regulatory standards, relying on *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, at 916, 930-934. It claims that the EIR at 605-1209 identified the laws and regulations which apply to the Plan's goals or conditions or other elements. Respondent's reliance on *Tracy First* is misplaced. In *Tracy First*, the project at issue, construction of a grocery store, complied with specific, controlling state building standards. The court ruled that no mitigation was required to address the possible impacts of the issues to which those standards applied because the standards were already enacted to provide specific performance criteria for such issues with the purpose that any project complying with them need not do further review on those issues. Here, by contrast, neither the Plan nor the EIR appears to contain such specific compliance with regulatory standards, except for some few instances. The Plan is a complex governing land-use plan setting forth broad goals and policies with general, vague, and broad references to local and state laws and regulations. It is very different from the development of a specific grocery store or other building, and the policies and goals it sets forth are fundamentally different from simply requiring construction to comply with specific state building standards.

The portion of the EIR to which Respondent cites, AR 605-1209, is the entire environmental analysis of impacts. It includes some references here and there to some legislation and other regulations which apply to the issues or policies in the Plan. Some standards appear to be concrete, controlling standards such provisions of the Fish and Game Code prohibiting the destruction of bird nests (AR 726) and portions of the Sonoma County Code ("SCC") regarding riparian setbacks, removal of landmark trees, (AR 729-30). However, these are limited instances. Otherwise, the cited provisions merely provide the overall framework or basic goals, and Respondent cites to nothing showing any analysis or adoption of specific standards similar to that in *Tracy First*. In fact, Respondent just cites to the entire 600-plus page section on environmental analysis without citing to any specific examples which may support or explain what it means. There is nothing indicating that the entire Plan, or even more than a small portion of it, is subject to such controlling, established standards, statutes, and regulations as addressed in *Tracy First*.

Regarding the two impacts found to be significant, Petitioners are persuasive that absolutely nothing supports the findings that there are no feasible mitigation measures. The record appears to contain only unsupported, conclusory statements that there are no feasible mitigation measures, nothing more.

Respondent tries to counter this by citing to AR 45-49, 815-816, 1132-1136, 11469, and 12396 as supporting the infeasibility findings and explaining why there are no feasible mitigations to avoid or lessen these impacts. See Respondent Oppo 13. AR 45-49 are the CEQA findings of fact on significant impacts. Regarding historic resources, the findings admit that the Plan will cause a "substantial adverse change to the significance of a historic district as defined as physical demolition, destruction, relocation, or alteration of the historic district or its immediate surroundings such that the significance of the historic district would be materially impaired pursuant to § 15064.5." The findings then conclude with the general statement that "Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible any mitigation measures or project alternatives." The supporting explanation consists solely of the statement,

The Proposed Plan includes policies and actions that encourage the preservation of the historic character of the Core Campus. This includes retention, rehabilitation, and adaptive reuse of buildings, structures, and landscape features in the Core Campus area that contribute to the SSHHD (policies 4-20 through 4-31), as well as considering the preservation of contributing resources that are located in the hog and poultry area east of the Core Campus and the SDC water and sewage system to the west and north (Goals 2-I and 2-J and policy 4-32). The proposed policies and Standard Conditions of Approval (LU-1, LU-2, LU-3, LU-4, LU-5, and LU-6) would help reduce these impacts to the maximum extent practicable, therefore, there are no mitigation measures available to avoid impacts entirely or further reduce the level of impact.

Furthermore, as discussed in Chapter 4 of the EIR and above in the alternatives section, the Historic Preservation Project Alternative is not feasible. It would be less superior in some environmental features…. Additionally, the Historic Preservation Project Alternative would not support key project objectives related to increased housing supply, varied housing opportunities, community vibrancy, and long-term fiscal stability to the same degree as the Proposed Plan.

Respondent cites to AR 815-816 is to the portion of the EIR discussing impacts to cultural and historic resources. This section repeats the statement that the Plan will cause a significant impact as to the historic district and the explanation found at AR 45-46 above. It adds detail about the number of contributing resources which "are planned to remain," height limits on new buildings in area with historic resources anticipated to remain, but otherwise just refers to the same Standard Conditions of Approval noted above and their effect with the same basic language. It again concludes, that, nonetheless, "there are no mitigation measures available to avoid impacts entirely. As such, this impact would remain significant and unavoidable." Despite this, the section starts by stating that no mitigation is required. Respondent's last cite for historic resources, AR 12396, is part of a staff report. It repeats some of the above language and adds nothing more.

With respect to transportation and VMT, these findings state that the Plan will violate CEQA Guideline 15064.3(b) as to VMT and that the "effectiveness" of the Plan's strategies to address VMT "cannot be accurately estimated since performance would vary according to the specific attributes of individual development projects and the synergies existing among them, which will evolve over time," and that the Plan's requirements "cannot be guaranteed, and will need to be monitored over time, with ongoing adjustments…." It concludes with the same finding as for historic resources that the cited factors make mitigations or alternatives infeasible. The explanation refers back to the Plan's policies intended to reduce VMT, the ones which it just said cannot be guaranteed and which will require monitoring, and then describes these. It states that their effectiveness cannot be guaranteed, then simply adds that all alternatives would result in significant impacts regarding VMT and that therefore there are no other feasible mitigation measures. AR 1132-1136 is part of the same section as AR 815-816, but for transportation and VMT. This section again states that no mitigation is required but that the Plan will violate CEQA Guideline 15064.3(b) as to VMT. It provides traffic assessment information and data, and notes that the performance metrics of the Plan might reduce VMTs but efficacy is uncertain. It provides no discussion of possible mitigation measures and does not explain why any are infeasible. The last citation, AR 11469, is part of a staff report discussing alternatives and gives some data on the Plan's VMT, which it repeats part of the statement that the Plan will violate CEQA Guideline 15064.3(b) as to VMT and states that it will still exceed the threshold of significance. It adds nothing more on this issue.

The above discussion and citations, including specifically Respondent's own cited portions of the record, make it clear that there is no evidence or analysis supporting the findings that there are no feasible mitigation measures. They consist solely of repeated conclusory statements that there are no feasible measures without providing even a suggestion of evidence or attempt to provide any analysis.

Respondent argues that no member of the public suggested any mitigations for the remaining significant impacts, but this argument is unpersuasive. As noted above, CEQA places the burden of investigation on the agency, and the agency must provide substantial evidence and the "analytical route the agency traveled from evidence to action." *North Coast Rivers, supra*, 216 Cal.App.4th 639-640 (quoting *AIR, supra*). The record simply shows that Respondent concluded that there are no feasible alternatives. Nothing shows that it even bothered to consider or investigate any indeed neither the Plan nor the EIR, at any page to which Respondent cites, provides any such discussion, evidence, possible mitigations, or evidence. Under such circumstances, the public need not provide possible mitigations for the agency to consider in order to raise this issue or for the court to find a violation of CEQA. Respondent's utter lack of discussion violates CEQA. Nothing demonstrates that it made any effort whatsoever to identify, much less consider, some possible mitigations while there is neither evidence nor analysis explaining how it came to the conclusion that there are no feasible mitigation measures.

Moreover, as with Respondent's arguments on this issue in this litigation, the EIR is, on its face, muddled about these points. It claims that the Plan creates unavoidable significant impacts on these two issues, yet then explains that no mitigations are necessary because the Plan inherently involved standards and policies which will avoid such impacts. This is a contradiction.

Respondent also contends that although no MMRP is needed, Plan Policy 4-13 at AR 297 requires staff to

review all development to ensure consistency with the Specific Plan and all of the policies, conditions, and other requirements in the Specific Plan. To assist in this effort, the County shall prepare a checklist to be used for all proposed projects at the SDC site to ensure consistency with Plan policies and Supplemental Standard Conditions of Approval, as detailed in Appendix A. Require all development at SDC to comply with additional standard conditions of project approval, as detailed in Appendix A. These conditions should be updated by County staff over time to reflect changing conditions, new information, and compliance with changing local and State laws and guidelines.

The section on implementation and financing, at 7.2, AR 334-335, reiterates this policy with some additional language giving examples of where consistency checks might be employed, but largely repeats the basic statements of the prior section.

Nothing in the pages which Respondent cites indicates that this is a meaningful or enforceable MMRP or method of ensuring compliance with the policies of the Plan. It is vague as to any standards or details, how or when any review of proposed development will occur, what the checklist will involve or how it will be implemented, or the like. It mandates that review take place and that it involve a checklist, but contains absolutely no detail or concrete information about this review or the checklist. This itself is effectively meaningless and is facially insufficient to comply with CEQA mandates, which requires mitigations measures to have concrete, enforceable performance standards. See, e.g., Guideline 15126.4 (discussing the requirement of concrete performance standards for mitigation). Finally, as discussed above, the majority of the policies or mitigations which it would address are themselves vague and lack any performance standards.

For its part, RPI argues that Section 14670.10.5 lacks any requirement to preserve the old SDC buildings as historic resources, an intentional decision given that it states that the Legislature intends to conserve the natural resources and the Eldridge Cemetery. It also contends that “most” of the buildings are falling into disuse and in a state of disrepair, raising concerns of safety and cost, citing AR 43-44, 2054, 8807, 4874-4875. Preserving these buildings or converting them to residential or other uses would, it argues without any citations to the record or supporting evidence, be contrary to the Legislature’s express goals and the efforts of Respondent

to “reduce uncertainty, increase land values, expedite marketing, and maximize interested third-party potential purchasers” (§ 14670.10.5, subd. (c)(2)) for future development that must include critically needed affordable housing (id. at subd. (c)(4)). It would also conflict with the statute’s twin land use goals of housing and open space conservation if future development were constrained by the footprint and layout of the old SDC buildings. The buildings are specially clustered and designed for their prior SDC uses. Due to these constraints, a requirement to preserve them would significantly reduce the number of housing units and project feasibility — or, more likely, expand the development footprint into the open space acreage otherwise being conserved.

RPI cites to nothing supporting the conclusions as to mitigations. AR 43-44 is the section on CEQA findings of fact regarding alternatives. It dismisses a reduced project alternative on the ground that it will be "less economically viable" and thus fail to meet the objective of long-term fiscal sustainability due to reduced development. It contains no other explanation, facts, or analysis. It dismisses the historic preservation alternative on the ground that "complete preservation and restoration of all existing buildings is not financially feasible. AR 2054 is simply a summary of regulated, or harmful, materials in the listed buildings on the Site. AR 8807 is more meaningful, setting forth the approach to analysis of alternatives and feasibility challenges, with some explanation as to the actual costs of rehabilitating existing buildings. AR 4874-4875 set forth the Master Response 8 ("MR8") to the historic preservation alternative, explaining the "very large feasibility gap (about $140 million), claims that this renders the alternative's "viability questionable, cites a few examples of costs and problems with the Main Building, and claims that Section 14670.10.5 gives no priority to preservation while the Plan as adopted promotes the goals of that statute and Respondent.

None of this information, while part of what could be a sufficient explanation supporting the rejection of the preservation alternative, supports the conclusion that there is no viable mitigation which may address the admittedly significant impacts of the Plan as to historic resources.

Conclusion: Mitigation Measures

The court GRANTS the petition as to mitigation measures on the following grounds: the purported mitigation measures in the Plan are, as whole, ineffective, vague, and devoid of any semblance of performance standards in violation of CEQA; there is no sufficient MMRP to implement such mitigation measures as are presented, in violation of CEQA; and there is no substantial evidence or analysis whatsoever which could support the findings that there are no feasible mitigation measures for the two areas of identified unavoidable significant impacts, again in violation of CEQA.

Analysis of Environmental Impacts

Petitioners also argue that the discussion of environmental impacts is deficient in four areas, wildlife corridors/biology, transportation/traffic, wildfire impacts, as well as in the responses to comments.

Wildlife Corridors/Biology

Petitioners contend that the EIR does not sufficiently assess the impacts on biological resources and wildlife corridors and instead relies on vague and deferred mitigation measures to support its conclusion that there will be no such significant impacts. Petitioners cite to the numerous statements in the Plan and EIR acknowledging the Site's importance for open space, biological resources, and wildlife corridors, with a wildlife corridor running along the Site's northern edge, while forests, grasslands, and wetlands make up the Site and are "connected to a larger matrix of natural habitats." AR 525, 528, 575-577. They also cite the statements in the Plan and EIR regarding the goals and policies of the Plan to promote open space that "maintains

and enhances the… Wildlife Corridor for safe wildlife movement throughout the site" (AR 525), the "opportunity" of "reestablishing riparian corridors" (AR 577), and the like. The Plan includes various policies addressing the wildlife corridor, including preserving open space, prohibiting lights in the corridors, orienting building away from the corridors, and using thickly planted vegetation as a buffer. AR 614, 621. The conclusion in the EIR is that the Plan "would not interfere substantially with … established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites" and that the Plan's impact is "Less Than Significant w/o Mitigation. No Mitigation." AR 539.

At the same time, the Department of Fish and Wildlife ("DFW") and others advised Respondent to evaluate these issues, explaining with detail the importance of the wildlife corridors and the possible impacts of the Plan. AR 1330, 19032-19042. Petitioners list numerous other examples in the Opening Brief at 21.

The EIR's primary discussion of the effects on biological resources is at AR 723-778. This section describes the regulatory setting with applicable laws and regulations. AR 723-731. It then describes in detail the environmental setting, including the habitat types, forest types, woodland types, grassland, shrubland, riparian forests, wetlands and vernal pools, existing buildings, streams and water, existing special-status species with a detailed catalogue, sensitive habitats, and wildlife corridors. AR 731-755. Following this, it presents the impacts analysis, first setting forth the impact criteria according to which the Plan would have a significant impact, as well as the methodology and assumptions. AR 755-757. It describes the policies and implementing actions. AR 757-760. It then has a section on the specific potential impacts during construction and during operation, setting forth the conditions of approval for specific implementing projects and applicable Plan policies. AR 760-778.

Petitioners are persuasive on this issue. The EIR does, as Respondent asserts, include what appears to be a meaningful, the detailed description of the environmental setting, species, and corridors, with detailed information. It also sets forth the applicable policies or efforts to mitigate impacts. However, the section is ultimately deficient. As discussed in the section on mitigation measures above, the Plan relies primarily on its own policies as mitigation measures to avoid significant impacts, yet most of these, as already discussed, are toothless, vague, and lacking in performance standards or an MMRP to ensure implementation. Some of these measures do appear adequately enforceable if a plan were in force to ensure enforcement, but the analysis rests on them as a whole and as a whole they are deficient. As a result, there is no basis to rely on them for the conclusion that they mitigate potential significant impacts. Moreover, the EIR expressly notes that construction activities or development may occur in ways contrary to the intended goals, resulting in significant impacts. See, e.g., AR 761, 775. This appears to reflect the vague, wishful, and open-ended nature of many of the policies as mitigation measures, as discussed above. The EIR does not, however, address these potential problems or give any indication that there is any method for preventing them. Finally, despite the detailed description of the environmental setting and biological resources, as well as the listing of policies or conditions, there is no actual analysis or explanation which links this information to the conclusions. The EIR simply sets forth the information and, despite the unclear and vague nature of many of the policies and the acknowledged possibility that development may in fact deviate from the intentions and cause significant impacts, simply concludes that there will be no

significant impacts and that further mitigation is not required. In short, there is no required "analytical route the agency traveled from evidence to action." *AIR, supra,* 107 Cal.App.4th 1397. The fact that, on the face of the information presented, there is no clear support for the conclusion underscores this failing.

The court GRANTS the petition on this point.

Transportation/Traffic

Petitioners note, as already mentioned, that the EIR admits that the strategies or policies for addressing traffic, specifically VMT, are of unknown efficacy, with the result that the Plan will result in significant, unavoidable impacts with respect to traffic and transportation. AR 555-556, 662. Petitioners also argue that the analysis is further deficient because it fails to take into account the cumulative traffic impacts in light of the "Hanna Project," a proposal to develop 600 homes and 10,000 square feet of commercial space on the site of the former Hanna Boys Center (the "Hanna Center"), nearby. As noted, the EIR already considered the cumulative impacts of the Project to be considerable, but this discussion was limited to the effects of the Plan alone on VMT.

CEQA requires consideration of a project's cumulative impacts. PRC section 21083(b)(2); Guideline 15130; *Whitman v. Bd of Supervisors* (1979) 88 Cal.App.3d 397, 408. This is because the "full environmental impact… cannot be gauged in a vacuum." *Whitman, supra.*

Guideline 15355 defines "cumulative impact" as "two or more individual effects which, when considered together, are considerable or which compound or increase other...impacts." Subdivision (b) adds that "[t]he cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, *and reasonably foreseeable probable future projects*. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." Emphasis added.

According to Guideline 15130, an EIR must consider a project's cumulative impacts "when the project's incremental effect is cumulatively considerable, as defined in section 15065(a)(3)." One way to satisfy this is to provide a list of past, present, and future projects that contribute to the problem. Guideline 15130(b)(1)(A).

Guideline 15065(a) states that "an agency *shall* find that a project may have a significant impact where its possible environmental effects "are individually limited but cumulatively considerable." Emphasis added. Guideline 15064(h)(1) adds that " '[c]umulatively considerable' means that 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*." See *EPIC v. Johnson* (1985) 170 Cal.App.3d 604, 625. Emphasis added.

Guideline 15130(b) sets forth the "elements… necessary" to discussing cumulative impacts. Subdivision (b)(1) states that an EIR must use one of two methods for identifying other projects and their impacts. It must include *either*

(A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or

(B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency.

Subdivision (b)(2) states that when an EIR uses a list under (b)(1), "factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type." According to (b)(3), lead agencies "should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." Subdivision (b)(4) and (5) state that the EIR should also include a "summary of the expected environmental effects" of the other projects specifically referring to "where that information is available," and a "reasonable analysis of the cumulative impacts" of the relevant projects and reasonable, feasible mitigation options.

Again, just as discussed above with respect to growth-inducing impacts, analysis of cumulative impacts need not and should not involve speculation. See *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859*;* Guideline 15130 (EIRs must consider "past, present, and probable future projects" or a summary of projections and analysis of cumulative impacts in another document that discussed the project area).

Thus, the key is whether the potential future projects are reasonably foreseeable at the time the EIR is prepared. *City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1337. The "primary consideration" under this standard 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, citing *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, at 74-77.

Petitioners note that the Hanna Project was brought to the attention of Respondent's staff but it is not discussed in the EIR. Petitioners cite to evidence in the record indicating that Respondent was aware of the Hanna Project. At the February 2022 Scoping meeting for the Plan with Respondent's staff, members of the public mentioned the Hanna Project and complained that Respondent was looking at each project on its own without looking at them in the context of other projects, which is exactly the issue which CEQA's requirements for cumulative impacts are

intended to address. AR 13365, AR 13377. A member of the Plan Advisory Team ("PAT") for this Plan, Nick Dalton, was a member of the Hanna Center. AR 17433, 17437, 17439, 17444, 17466, 18388. At another meeting, others again mentioned the Hanna Project and the potential impacts regarding traffic of the two combined. AR 13539, 13544-13545. The Hanna Project is also mentioned in other portions of the record, and again this includes statements regarding the need to consider cumulative impacts on traffic specifically. See, e.g., AR 5525, 5990, 13365, 13377-78, 22620, 24809, 24820, 258809, 24845.

Respondent acknowledges the need to consider cumulative impacts and also admits that the EIR for the Plan does not discuss the Hanna Project but contends that it did not need to do so. Respondent Oppo 25-26. It argues that the Hanna Project was not "sufficiently developed" so that including it would involve sheer speculation.

Petitioners respond that the Hanna Project was sufficiently concrete and known, with Respondent's own Housing Element of November 2022, prior to the approval of this Plan and certification of the EIR. Respondent's Housing Element not only lists it as a planned project but gives the specific address, the anticipated date of completion in 2028, and the number of housing units, specifying that it is expected to include 150 low-income units and 508 above moderate income units. See RJN.

The court finds that the EIR should have considered the cumulative impacts related to the Hanna Project and accordingly GRANTS the petition on this basis.

Petitioners also make an argument regarding GHGs and electric vehicles. This argument is exceedingly brief, added at the end of the discussion on traffic regarding the cumulative impacts of the Hanna Project, and lacks clear explanation, evidence from the record, or analysis. Petitioners' brief discussion of this issue is unclear and fails to meet their burden of showing a potential violation of CEQA on this point. The court DENIES the petition as to the GHG issue.

Wildfire Impacts

Petitioners contend that the discussion is deficient regarding wildfire-related impacts because the conclusion that there will be no significant impacts in this regard is based on defective proposed policies which are not enforceable, it lacks a sufficient description of the baseline, the EIR relies at AR 1193 on an evacuation analysis prepared by Kittelson & Associates ("Kittelson"), not included in the EIR or Appendices or ever made available on the Plan website, there is no discussion of the impacts regarding a fire spreading from the west, and it fails to consider cumulative impacts with the Hanna Project.

As Petitioners point out, the EIR specifically sets forth three wildfire criteria from the CEQA Guidelines and dismisses them with the conclusion that the Plan will not cause the identified problems. The CEQA Guidelines, at Appendix G, include an Environmental Checklist Form which sets forth various issues to address. This includes a section on whether the project will exacerbate wildfire risks and listing specific issues, among them the ones which the EIR notes at AR 558-559. The Guideline Appendix G states, in pertinent part,

Section XX. WILDFIRE -- If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:

a) Substantially impair an adopted emergency response plan or emergency evacuation plan?

b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

An agency must prepare, cause to be prepared, or certify completion of, an EIR when for a project which "may have a significant effect on the environment." See, e.g., PRC sections PRC section 2106821100(a), 21151(a); Guideline 15382. As a result, CEQA requires review of a project's impacts on the environment. In other words, CEQA is generally not concerned with impacts on the project. *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, at 386 (*CBAI*). This standard does not appear to be in dispute, but the court notes it as providing the framework for analyzing the study of wildfire impacts.

Preliminarily, after pointing out that the EIR notes the three Guideline criteria regarding wildfires, Petitioners ultimately discuss only the effects of the Plan on evacuation in the event of wildfire. To some extent, that could implicate all three of the criteria, but it is the one specific issue which Petitioners do discuss, and they provide no argument or evidence as to whether the Plan will otherwise exacerbate wildfire threats due to the conditions cited above, or require infrastructure which may exacerbate such risks.

Petitioners claim that the Kittelson report, providing the evacuation analysis on which the EIR is based, is missing from the record, despite requests made by the Sonoma Land Trust and others. See AR 49230, 47959, 48273, 48275,48292, 48432-48437, 54092. Respondent claims that the Kittelson report's analysis is present in the EIR, citing to AR 1199-1205. At 1193 and 1199-1200, the EIR describes the methodology and assumptions for addressing wildfire impacts, explaining that the evacuation analysis was taken from the report by Kittelson. The EIR specifically discusses evacuation, the section based on the Kittelson report, at 1199-1205. This section describes in detail the analysis, its methodology, its estimates, the scenarios which it considered, the assumptions in the analysis, the calculations, and the conclusions. The FEIR at AR 4859 states that the analysis and estimates used for the evacuation scenario are at Impact 3.16-1, starting at page 512 of the EIR, or AR 1198.

The failure to include the Kittelson report itself in the record does not necessarily violate CEQA. If the EIR, or other documents in the record, include a sufficiently detailed description of the information and analysis from that report, the failure to include the report is immaterial. Petitioners cite to no authority that a report itself must be included in the record as long as the necessary information from that report is in the record. CEQA mandates that the record contain substantial evidence and the analytic route which the agency took from evidence

to findings, and including the information from a report in an EIR may satisfy that standard even if the report itself is not provided.

That said, absent the report itself, if there may be a violation of CEQA where agency's conclusions are based on the report's analysis and the information and analysis from that report are not adequately provided elsewhere in the record. Apparently recognizing that the Kittelson report does not itself need to be in the record as long as the record includes the relevant information and analysis form that report, Petitioners also raise this very point. They contend that "The EIR fails to provide *or adequately summarize* the evacuation analysis prepared by Kittelson & Associates. (AR 49230-31.)" Opening Brief 30:3-4; emphasis added.

Respondent correctly points out that information from the Kittelson report is set forth in the EIR, including a description of the methodology and assumptions on which its analysis was based. Petitioners themselves essentially admit that when they attack the validity of the Kittelson modelling. Opening 29:1-25. Nonetheless, they contend the assumptions for the evacuation model were not sufficiently disclosed, and, despite the detailed information provided, Petitioners appear to be correct.

The court notes that the EIR does clearly include much information from, and detail about, the analysis from the Kittelson report. It describes the bases and assumptions of the evacuation analysis, i.e., the Kittelson report, at 1199, stating, in pertinent part,

The analysis used the… regional travel model maintained by the Sonoma County Transportation Authority. The travel model includes tabulations of housing and employment in each part of Sonoma County…. The travel model estimates traffic generated by land uses and tracks traffic volumes relative to road capacities to calculate the associated levels of congestion and congested speeds. The travel model represents a typical weekday peak hour, so additional assumptions were used to override the typical weekday traffic in the Planning Area and add the potential evacuation traffic.

It then explains that two fire scenarios were considered and sets them forth in detail, explains that, and why, they were selected as most likely, and it details the assumptions about when residents would leave and the number leaving at each stage. It sets forth assumptions about a fire occurring at night, stating,

If a fire occurs during the night, most residents would be home, but most employees would not be at their workplace. If a fire occurs during the workday, most employees would be at their workplace, but many residents would not be at their homes. The evacuation analysis conservatively assumes that 75 percent of residents and 75 percent of employees would need to evacuate during a fire event. Each household is assumed to use two vehicles and each employee is assumed to use one vehicle.

It lists the four portions of the planning area used for the study, explains why the study used them, identifies the assumed destinations for those fleeing, adds further details about assumptions for traffic volumes, details the measured travel times under the scenarios, and the conclusion about the Plan's impacts on travel times. Aside from a little additional information

on methodology provided at a hearing on August 24, 2022 (AR 13501-13503), more discussion of the methodology and the analysis was set forth in the Responses to Comments in the FEIR at AR 4859-4863. The EIR explains that "the analysis used estimates of traffic generated by land uses and tracks traffic volumes relative to road capacities to calculate the associated levels of congestion and congested speeds. The analysis also includes tabulations of housing and employment in each part of Sonoma County, compiled by transportation analysis zones (TAZs)." AR 4859. The EIR explains, at AR 1202-1203,

Evacuation traffic without the Proposed Plan would increase travel times to most destinations, particularly towards the City of Napa. Evacuation traffic added by the Proposed Plan would increase travel times to areas beyond the evacuation areas by up to 1.2 minutes and by up to five percent, although the average increase will be 0.2 minutes (less than 15 seconds) and one percent. The Proposed Plan would reduce some travel times from the Madrone/Proposed Plan area due to the planned additional connection to SR 12. The estimated changes in travel times caused by the Proposed Plan would not require changes in current evacuation routes or plans.

The FEIR response to comments adds, at 4861,

The Draft EIR evacuation analysis is adequate; it incorporates evacuation patterns from recent wildfires through coordination with local officials as well as the most recent CAL FIRE Fire Hazard Severity Zone maps. Evacuation traffic with the Proposed Plan would increase travel times to most destinations, particularly towards the City of Napa. Evacuation traffic added by the Proposed Plan would increase travel times to areas beyond the evacuation areas by up to 1.2 minutes and by up to five percent, although the average increase will be 0.2 minutes (less than 15 seconds) and one percent. The Proposed Plan would reduce some travel times from the Madrone/Proposed Plan area due to the planned additional connection to SR 12. The proposed project multimodal connection to SR 12 would provide an additional route for project traffic to evacuate the project site. This would reduce potential project traffic impacts on Arnold Drive which is generally a lower capacity road than State Highway 12 due to local driveway access. The two access routes would provide options and flexibility in evacuation routing in the event that one of the roads is blocked due to fire or traffic incidents. The estimated changes in travel times caused by the Proposed Plan would not require changes in current evacuation routes or plans. Thus, implementation of the Proposed Plan would not impair an emergency response or emergency evacuation plan and impacts would be less than significant.

However, the information on the methodology is not complete and is lacking in at least one obvious, fundamental component: the specific methodology and information used to reach the actual numbers for the travel-time results. There is no information or explanation as to the basis for the travel times provided, or how the analysis calculated the travel times for evacuation scenarios. As noted above, the EIR provides much detail on the assumptions about how many people would flee at given times, on the volume of traffic, and the like, but there is absolutely no explanation for how the analysis reaches the numbers. Absent this, there is no analytical route, or even complete evidence. From the cited portions of the record, it is not possible for the court, the public, or, most importantly, Respondent's own decisionmakers to understand how the travel-time numbers were in fact reached. The EIR therefore fails as an informative document. The court GRANTS the petition on this point.

Petitioners then argue that the analysis is deficient because, again, the evacuation analysis is based on policies as mitigation measures which lack performance standards or any MMRP to ensure such compliance as is possible. The specific goals and policies of the Plan regarding wildfires are set forth in the wildfire section at 1194-1197. This is unpersuasive. First, the analysis regarding evacuation is based on few, if any, of the goals and policies set forth, which largely involve protecting the development under the Plan, i.e., the effects of the environment on the project. Most of these do not go to issues of evacuation, which Petitioners discuss. Petitioners also make no argument or showing as to the other wildfire criteria identified above. Accordingly, the analysis regarding evacuations, the one wildfire criterion which Petitioners discuss, is not based on defective mitigations or policies. It is instead based on the evacuation analyses.

Petitioners take issue with the results of the analyses as to the increased evacuation time, arguing that it "defies logic that evacuation of more than 2,000 cars (and potentially 3,000 or more depending on the number of Plan housing units and jobs) during a wildfire would increase travel time during an evacuation by fewer than 15 seconds, as the EIR represents. (AR 1203.)" Opening Brief 29:28-30:3.

Petitioners again have a valid point that nothing demonstrates how the travel-time numbers were reached, as discussed above. The court first notes that Petitioners do not, in the courts view, explain their argument here very clearly, and they muddle the analysis by attacking the possible correctness of the figures, stating that it "defies logic" that the additional cars would only increase evacuation travel time by up to 15 seconds. The court reiterates, as stated above, that when applying the substantial evidence standard, the court must focus not upon the "correctness" of a report's environmental conclusions, but only upon its "sufficiency as an informative document."). *Laurel Heights I, supra,* 47 Cal.3d 393. The court must resolve reasonable doubts in favor of the findings and decision. *Id.* The findings of an administrative agency are presumed to be supported by substantial evidence. *Taylor Bus. Service, supra.* The court is therefore not second-guessing the travel-time results, as Petitioners apparently are doing, but it does find, as Petitioners also claim, that there is no explanation for the final methodology by which the analysis actually reached the travel-time results. The court GRANTS the petition on this point.

Petitioners also argue that the EIR fails to describe the baseline conditions as to evacuation, but they provide no discussion or analysis; they do not explain how it fails to do so or cite to any portion of the record which they contend shows this. Opening Brief 29:26-28. They refer to past experiences and cite accounts in the record from prior fires at Opening Brief 29:27-28, 30:5-8. However, they fail to explain how or why the baseline description is inadequate, in with regard to what aspect of the baseline. The EIR also clearly describes baseline conditions regarding evacuation travel time, expressly giving this information at AR 1204-1205 in the chart of travel times for the area with and without evacuation and for evacuation with and without the Plan. By definition, this sets forth the baseline travel conditions by which the Plan's impacts on evacuation must be judged. The EIR also presents baseline information on evacuation in the assumptions used for the modelling, stating that the modelling is based on the behavior and evacuation conditions in recent prior fires. AR 1202. Moreover, an examination of the rest of the EIR reveals that the EIR describes the environmental setting, conditions, roads,

and traffic in other sections. All of this information, although set forth in different sections of the Plan and EIR, necessarily form part of the baseline conditions in which this issue is studied, and Petitioners make no effort to explain how that information is lacking.

Finally, Petitioners contend that the analysis failed to study a scenario involving a fire approaching the area from the west. Respondent admits that there is no such analysis but counters that there is no requirement that it consider all possible fire scenarios and that this was not considered because it was felt to be unlikely. See AR 1199.

The EIR states, as Respondent notes, that it considered only two scenarios, fire from the northeast and southeast, because they were considered "as representative of the most likely potential fires to impact Sonoma Valley given the valley's previous fire history and considering such variables including but not limited to wind speeds, direction, humidity, topography, and rate of advancement." AR 4859-4860. It claims that they were identified in collaboration with the Sonoma Valley Fire District and other officials, and that they represent a worst-case scenario. AR 4860. It dismisses the need to analyze a fire from the west with the statement, "Historically, a fire approaching from the west may be less likely, and therefore did not warrant further specific analysis." AR 1202.

Respondent has valid points, but ultimately the analysis in the EIR is not sufficient. Respondent is correct that there is no requirement to analyze all possible scenarios, or any given number of scenarios. It could be potentially correct that there may be no need to consider a fire from the west if indeed it is sufficiently unlikely or a lesser concern than the scenarios studied so that including it would add nothing meaningful. The problem for Respondent is that there is absolutely no evidence or analysis in the cited portions of the record supporting its position, or the EIR's refusal to consider a fire from the west. There is absolutely no evidence or discussion of any sort which could support the conclusion that it is unlikely or not as bad a scenario as the two studied, or any other explanation for not considering it. In fact, the EIR simply dismisses studying such a scenario solely because it "*may* be *less* likely." AR 1202, emphasis added. It not only provides no evidence or analysis which could possibly support such a conclusion, but it dismisses it with an expressly vague and noncommittal statement that it only "may" be "less" likely than the others. It does not even make the claim that it "is" less likely, or that it is in fact "unlikely," only the undefined term "less" likely. Nothing indicates that it could possibly be valid to avoid analyzing a scenario solely because it might not be as likely as the ones considered, especially when there is no evidence to support that contention, or to demonstrate any other reason why it should be ignored. Once again, the EIR fails as an informative document in this regard.

The court GRANTS the petition with respect to the specific issues in the analysis of wildfire impacts noted above, but otherwise DENIES the petition on the other points.

Responses to Comments

Petitioners next argue that the responses to comments in the FEIR are defective. Respondent counters that the EIR provides a sufficient response to all comments, the

level of detail required may simply correspond to the level of detail in the comment, and Petitioners have "cherry-picked" a few to support their argument.

CEQA requires Respondent to respond to public comments which had been received during the public-comment period. PRC 21080.5; 21091(d)(2)(A); Guideline 15088; see *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722, 732. PRC 21091(d)(2)(A) states, "With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B)." Similarly, Guideline 15088(a) states, "The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments raising significant environmental issues received during the noticed comment period and any extensions and may respond to late comments." Guideline 15088(c) provides more specification of what responses must contain, stating, with emphasis added,

The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. *There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice*. The level of detail contained in the response, however, *may correspond to the level of detail provided in the comment* (i.e., responses to general comments may be general). A general response may be appropriate when a comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment.

The court in *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, at 1124 (*Laurel Heights II*) reiterated that

In the course of preparing a final EIR, the lead agency must evaluate and respond to comments relating to significant environmental issues. [Citations.] In particular, the lead agency must explain in detail its reasons for rejecting suggestions and proceeding with the project despite its environmental effects. [Citation.] There must be good faith, reasoned analysis in response [to the comments received]. Conclusory statements unsupported by factual information will not suffice." [Citation.] Thus, it is plain that the final EIR will almost always contain information not included in the draft EIR.

See also, *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, at 615 (quoting and relying on *Laurel Heights II*). In *The Flanders Foundation*, the court found a violation of CEQA where the FEIR included no response to a comment that mitigation possibilities were not sufficiently analyzed because the EIR failed to consider reducing the size of the parcel at issue or adding a conservation easement.

Petitioners claim that numerous comments "received non-existent or inadequate responses" and they cite a "small representative sample" on the basis that there are too many to address. Opening Brief 31. They cite the responses to several comments in Comment Letter B11 from the Sonoma Land Trust ("SLT"), B11-26, B11-29, B11-30, B11-35, and B11-39 at AR 5029-5040 and Comment Letter C191 at AR 6194-6211 from one Vicki Hill. See Opening Brief 31-32.

In the comments at issue from letter B11, the SLT asserted hat the EIR lacked baseline information on specific points; failed to analyze or mitigate for noise impacts regarding wildlife and again provided detailed, specific points with explanations and citations to the EIR; missing information on stream impacts and bridge maintenance, again with specific points and citations; and argues that certain mitigation measures were improperly deferred, again giving detailed explanations. The responses to these comments are at AR 6497-6518.

The comments from Hill which Petitioners address are more numerous. They raised issues regarding lack of evidence regarding the project's scale and its apparent conflict with goals, phasing mitigation, lack of mandatory measures in the proposed policies and inability to ensure compliance, and other similar issues, all with specific points. The responses to these are at AR 7256-7292.

As Petitioners argue, these responses are inadequate. They contain boilerplate stock responses consisting of unsupported conclusions. The responses to B11 add no information and brush off the comments with basic conclusions and statements that the issues were properly analyzed, with no explanation, or with an explanation that does not actually answer the issue raised. Some of the responses do not even respond to points raised in the comments at all, or simply by referring to a master response which does not address the comment, such as C191-7, C191-8, and C191-26 (AR 7256-7257, 7269). The response to C191-48 simply says that the comment, addressing the adequacy of a specific policy in the Plan, is on the plan and not on the EIR, so does not even bother answering it.

Respondent argues that the master responses solve any deficiencies in the individual responses, but nothing supports this. As noted above, some individual responses cite to the master responses which purportedly address the specific comment, but for the ones which Petitioners raise above, the cited master responses do not actually address the issues. For others, the individual responses give no indication that a master response applies at all, so the record indicates that none do apply to those responses. Even if they did, nothing explains which ones apply or why and Respondent provides no explanation or indicate which master responses might respond to the comments at issue. It simply says that the master responses cover the issues raised in comments with no further explanation or citation to the record to support a finding that any master responses resolve the defects as to these comments.

Perhaps, as Respondent argues, other responses are sufficient, and Petitioners do not in fact challenge other specific ones, but that does not change the fact that the FEIR is defective as to those comments which Petitioners do raise. Absent any other demonstration as to other comments, the court cannot find that all of the responses are defective, but it can find that the cited responses above are defective, and this violates CEQA.

The court GRANTS the petition on this point, as limited above.

Alternatives

Finally, Petitioners claim that the EIR is defective because it rejected the Historic Preservation Alternative (the "Preservation Alternative") based on findings which lack support. They do not challenge the range of alternatives considered, but only the sufficiency of the analysis finding the Preservation Alternative infeasible.

In contrast with other issues, both Respondent and RPI address this issue. In fact, this appears to be the focus of RPI's entire, if short, brief, as noted above. The court discussed RPI's argument above regarding mitigation measures because the analysis could arguably apply there and because RPI does not make it exactly clear what issues it may be addressing. That said, RPI's argument appears to be particularly directed to the issue of the alternatives analysis.

As noted above, the agency may not approve a project that will result in significant impacts *unless it first finds that mitigation measures or alternatives are infeasible*. PRC section 21081; Guidelines 15091, 15093. The EIR must discuss both mitigation measures and alternatives and it is well-established that an agency may not avoid a discussion of alternatives on the basis that mitigation measures reduce any impacts to less than significant. See *Laurel Heights I, supra,* 400. When the agency determines that alternatives are infeasible, it "shall describe the specific reasons for rejecting identified ... project alternatives." Guideline 15091(a), (c). Again, "[t]he core of the EIR is the mitigation and alternatives sections." *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*).

An EIR must describe a range of reasonable alternatives to the proposed project or its location that would feasibly achieve most of the project's objectives, while reducing or avoiding any of its significant effects. Guideline 15126.6(a), (d). The discussion must evaluate the relative merits of each alternative. Guideline 15126.6(a). At the same time, one need not analyze or adopt alternatives that are not feasible. Guideline 15126.6(c), (f); *Goleta II, supra,* 52 Cal.3d 564, 566. "Feasible" means able to be "accomplished in a successful manner within a reasonable period... taking into account economic, environmental, social, and technological factors." PRC section 21061.1. Guideline 15091(a)(3) adds that the agency must consider "specific" economic, legal, social, technological, employment, and other considerations.

If the agency considers an alternative to be infeasible, the analysis "must explain in meaningful detail the reasons and facts supporting that conclusion." *Marin Municipal Water Dist. v. KG Land Corp. California* (1st Dist.1991) 235 Cal.App.3d 1652, 1664. On the other hand, as usual, the requirement is one of reasonableness and a "crystal ball" inquiry is not necessary. *Residents Ad Hoc Stadium Committee v. Bd. of Trustees* (3d Dist.1979) 89 Cal.App.3d 272, 286. The key, as with most aspects of an EIR, is that the agency must provide enough information about the analytical path that they took to allow the court to "intelligently examine the validity of the administrative action." *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 513-514, 522.

Thus, no "ironclad rule" other than the "rule of reason" governs the decision. Guideline 15126.6(a). This requires the EIR to set forth the alternatives necessary to permit a reasoned choice and in a manner that will allow "meaningful evaluation." Guideline 15126.6(a), (d), (f); *Goleta II;* see also *Laurel Heights I, supra*; see also *San Bernardino Valley Audubon Soc., Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751 (the detail must allow a reasonable choice "so far as environmental aspects are concerned."). Alternatives that would eliminate or reduce significant environmental impacts *must* be considered even if they would cost more or "to some degree" impede attainment of the project's objectives. Guideline 15126.6(b).

Finally, the alternatives must be discussed in the EIR itself, provided for public review, and subject to analysis. See *Friends of the Old Trees, supra*, 52 Cal.App.4th at 1403-1405. The court in *Friends of the Old Trees* stated that the agency could not cure defects by providing analysis in its official response, since the alternatives must be adequately addressed in the EIR itself and subject to public comment. *Id.*, 1404, fn.11. See also *Citizens to Preserve the Ojai, supra,* 176 Cal.App.3d at 430 (information in response cannot cure EIR deficiencies).

Ultimately, determining if alternatives are suitable involves a three-part test governed by the "rule of reason" as set forth in Guideline 15126.6. See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564, 566 (*Goleta II*); *Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission* (1992) 10 Cal.App.4th 908, 919. The analysis must consider alternatives that 1) may "attain most of the basic objectives of the project," 2) reduce or avoid the project's impacts, and 3) are "potentially feasible." Guideline 15126.6(a), (f).

"Thus, for example, a lead agency may reject an alternative as infeasible because it cannot meet project objectives, as long as the finding is supported by substantial evidence in the record." *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 949.

However, evidence simply showing increased costs is not sufficient to support a finding that the alternative is not feasible; the evidence must be sufficient to show that the additional cost actually makes it impractical. *Citizens of Goleta Valley v. Board of Supervisors (Goleta I),* (1988) 197 Cal.App.3d 1167, 11780-1181, 1189. In *Goleta I*, the EIR considered a smaller hotel to be an economically infeasible alternative to the proposed hotel at issue. Because the EIR lacked *evidence* that the smaller hotel was economically infeasible, the court considered it an error to deny the writ of mandate. The court found that although the EIR contained estimated figures of costs, the record did not reveal any *evidence* or analysis of the alternative in terms of comparative costs, comparative profits or losses, or comparative economic benefit to the project proponent, residents, or the community at large. *Id.*, 1180. Thus, no *meaningful* conclusions regarding the feasibility could have been reached. *Id*. The court concluded that the fact that an alternative may be simply less profitable or more expensive *is not sufficient* to show that the alternative is financially infeasible; the record requires evidence that the additional costs or lost profitability are severe enough to render the project impractical. *Id*., 1181. The court also held that it was unreasonable, and error, for the EIR not to consider another location for the hotel, in spite of the fact that the project proponent did not own any other locations. *Id*, 1189.

Preliminarily, the EIR notes that the Site is in the designated Sonoma State Home Historic District ("SSHHD"), eligible for inclusion in the National Register of Historic Places ("NRHP") and the California Register of Historic Resources ("CRHR") and as a designated California Landmark. AR 781, 799, 1082. It includes two individual resources listed on the National Register of Historic Places, the Main Building and Sonoma House. AR 781, 799, 1082. It contains 75 identified contributing historic resources. AR 799-800.

The impact analysis on historic and cultural resources is found in the EIR at AR 802-820. As noted above, the EIR concludes that the Plan will result in unavoidable, significant impacts regarding historic resources through the destruction of historic buildings and other features, and construction, all fundamentally destroying the cohesiveness of the historic site and elements which remain, thereby threatening its status as an historic district. AR 541, 815.

Respondent in its brief sites to its own findings on alternatives at AR 43-44. This shows that it rejected the Preservation Alternative based on a finding that it was not financially feasible. AR 43-44. The finding states, in full,

As described in Chapter 4 of the Draft EIR, because complete preservation and restoration of all existing buildings in the Planning Area is not financially feasible this alternative will be less economically viable and would therefore not meet project objectives such as the objective to "Ensure Long-Term Fiscal Sustainability." This alternative would not support key project objectives related to increased housing supply and varied housing opportunities (e.g., "Support Housing Development and Provide a Variety of Housing Types"), community vibrancy (e.g., "Promote a Vibrant, Mixed-Use Community"), and long term fiscal stability to the same degree as the Proposed Plan (e.g., "Ensure Long-Term Fiscal Sustainability"). Thus, this alternative would not meet sufficient project objectives and would not achieve the underlying project purpose. The Board of Supervisors therefore rejects the Historic Preservation Alternative as undesirable and infeasible and declines to adopt this alternative pursuant to the standards in CEQA and the CEQA Guidelines.

The finding thus refers solely to the analysis in the alternatives section of the EIR. It provides no other analysis itself and refers to no other information or discussion regarding this alternative.

The EIR's alternatives analysis is at Chapter 4, AR 1211, et seq., and summarized in ES.3 at AR 530-534. The summary of the Preservation Alternative is at AR 532, the full description is at 1219-1220, and the impacts analysis is at 1248-1257. There is a brief summary of it in the alternatives summary at Table 4.1-1 on AR 1221 and a summary of its impacts in Table 4.5-1, setting forth the summary of impacts of alternatives, at AR 1259-1264.

The EIR identifies the Preservation Alternative as the environmentally superior alternative. AR 534, 1257-1264. It will have similar impacts to the reduced- or no-project alternatives but will avoid the significant impacts on historic resources. AR 534, 1257-1264. This alternative would still include housing and commercial development but would involve simply a reduction in the development while preserving more of the existing buildings and overall cohesion. It would allow a reduced housing and commercial development with

supposedly about 450 housing units to the Plan's supposedly envisioned total of 1,000, about 1,080 residents to the Plan's vision of 2,400, and about 600 jobs to the Plan's anticipated 940. AR 1219-1221. As explained at AR 1219-1220, it would

focus on adaptively reusing existing buildings to the maximum extent and limiting development to within the current built footprint of the SDC facility (Core Campus) as with the other alternatives while incorporating existing sustainable features of the Proposed Plan (e.g., microgrid). Further, because the historic character of the existing buildings within the Sonoma State Home Historic District would be retained as much as possible, intensity and density of future development would be more constrained than with the Proposed Plan.

The reduced construction would also generate reduced construction-related impacts such as pollution and noise. AR 1220. It would result in a roughly similar mix of land uses, but with lower density. Ibid. The description claims that the need to generate housing units in light of the expense of adapting some of the existing historic buildings to housing would most likely result in some new housing construction, which would "prioritize market rate housing units over affordable housing units in order to generate adequate financial returns, undermining the State mandate and project objectives to promote affordable housing." AR 1220.

The analysis states that this alternative would result in fewer housing units and jobs and "previous analysis has demonstrated that because existing buildings were not designed for residential uses, construction related to adapting these buildings to the desired uses will still be needed. Furthermore, complete preservation and restoration of all existing buildings in the Planning Area is not financially feasible, and thereby contrary to the economic objectives codified in State law (Government Code Section 14670.10.5)" AR 1220. At footnote 141, it cites a report indicating that rehabilitation and adaptive reuse of buildings is "generally more expensive than new construction." AR 1220.

There is no data, analysis, fiscal comparisons, or other data, in either the finding on the Preservation Alternative or the alternatives section which is sufficient to show that it is infeasible, and the discussion includes assumptions or assertions which on their face appear arbitrary, groundless, and even in conflict with the evidence in the record. These discussions fail to show even the amount of increased cost, much less anything drawing an actual comparison between the alternative and the Plan. They contain unsupported assumptions about what only *may* be and even these are vague.

The EIR dismisses this alternative as failing to support the goal of providing affordable housing by stating that new construction would *most likely* focus on market-rate housing, but evidence does not support this conclusion. First, it provides no evidence or analysis supporting the assumption that new construction would focus on market-rate housing, and it fails to take into account that, even if this were true, some of the existing buildings may potentially be converted to affordable housing. It *claims* that this is more expensive, or some buildings may not be well suited to housing uses, but it provides no evidence or analysis to support this claim. It *claims* that "existing buildings were not designed for residential uses," but provides no evidence to support even this assumption, while the information in the record is clearly to the contrary. Respondent's own Plan and its April 5, 2019, Summary Report on the Plan (the "April

2019 Summary") contradict this contention on their face. As noted, Respondent's April 2019 Summary states that when the SDC closed in 2018, it still had "over 400 residents." AR 17; see also Govt. Code section 14670.10.5 (stating that residents were relocated upon closure). The April 2019 Summary also states that the Site contains "about 140 buildings within the core campus comprising over 1.3 million square feet of administrative office buildings, *congregate care buildings, and private residences* built between the 1800s and 1990s." AR 19, emphasis added. The Plan itself states that the SDC "served an estimated 3,700 *residents* at its peak… in 1960." AR 73, emphasis added. The record is thus clear that Respondent's claim that existing buildings are not suited to residential purposes is at best not entirely correct and utterly inaccurate. There is *no* evidence in any portion of the record to which a party has cited which indicates how many private residences or other buildings used for residential purposes survive, how practicable it is to adapt them to new residential purposes, or the like. The court further notes that this means that the existing buildings were thus evidently sufficient to house 3,700 people, more than thrice the number which the EIR claims the Preservation Alternative could accommodate with new housing construction. Obviously, it is possible, perhaps likely, that some number of these existing buildings could not be converted actually or feasibly into proper residential uses now, or that they could not themselves house the number which they used to house when functioning as the SDC. That possibility, however, is immaterial given the lack of analysis or evidence supporting any such finding. The point is that the record, even Respondent's own Plan, EIR, and other documents, indicates on its face an obvious potential for the Preservation Alternative to house far more people, and at less cost or construction, than the EIR's analysis assumes, and there is no evidence or analysis which addresses this issue. Accordingly, not only does the record as cited contain no evidence to support the infeasibility finding, but what evidence it does contain *actually contradicts* the statements in the infeasibility finding.

The analysis of the alternative also claims that "complete preservation and restoration of all existing buildings" is not feasible, but this statement also has no support. There is simply no evidence or explanation. Moreover, there is no explanation as to why "complete" preservation of "all" buildings, even if infeasible, is necessary to achieve the Preservation Alternative's fundamental points and avoid a significant impact on historic resources. Therefore, finding the alternative to be infeasible is based not only on unsupported conclusions about infeasibility, but on an unsupported conclusion about what is even needed for the alternative or what the alternative would actually entail.

The discussion in the EIR, and Respondent's findings, on the alternatives are accordingly bereft of substantial evidence or an analytic route to support the findings of infeasibility.

Respondent and RPI in their opposition papers cite to some additional portions of the record. These are outside the alternatives discussions in the EIR or Respondent's findings, and they are portions of the record which the actual analysis and findings on alternatives do not mention.

Respondent and RPI both cite to Master Response 8 ("MR8"), a response to comments on the Preservation Alternative, at AR 4874. This states,

The Historic Preservation Alternative has a very large financial feasibility gap (about $140 million)—more than $400,000 per market rate housing unit (more than four times that of the Project)—that renders its viability questionable. Many existing buildings are deteriorating (for example, the iconic Main Building is no longer structurally safe to enter because of extensive water damage), and delays in implementation could result in loss of resources and additional restoration costs. The State and Sonoma County entered an agreement in 2019 where the State of California allocated $40 million for three years of maintenance of the shuttered campus. The State has not allocated any additional funds for the maintenance.

Aside from noting that historic "preservation per se is not a priority objective established by" Section 14670.10.5, it otherwise provides only general observations or conclusions such as the statement that the Preservation Alternative provides less than half of the overall units, and less affordable housing, than the Plan. AR 4875. This statement is no different from the unsupported conclusion in the alternatives analysis and it also lacks any evidence or explanation supporting it. Otherwise, it is devoid of any other information or analysis on feasibility.

The court notes that MR8 does cite only *one, and only one*, specific example of the costs for a building which needs significant rehabilitation, the Main Building. It briefly presents this as its sole example demonstrating the supposed infeasibility of preserving the Site's buildings. Ironically, however, this is one of the existing buildings *which is to be kept and rehabilitated* under all scenarios, including the Plan itself as adopted and other options discussed more below. See AR 373, 525-526, 584-586, 591, 8791. The Plan and EIR repeatedly and expressly state that the Plan *will preserve and reuse both the Main Building and the Sonoma House complex*. AR 525-526, 584-586, 591. Preserving and rehabilitating these is, in fact, expressly identified as both one of the Plan's specific "Objectives" and one of the Plan's "Guiding Principles." AR 525-526, 585-586. The EIR states that the Main Building is also itself a National Historic Landmark. AR 572. The EIR explains that the Main Building and Sonoma House will be "repurposed for contemporary uses." AR 584. The resolution by which Respondent approved the Plan also states that these buildings will be preserved. AR 373. An analysis of different development options, discussed more below, also expressly proposes preserving and reusing the Main building under all the options discussed. AR 8791, 15933-16066. Accordingly, the *only* example of the alleged infeasibility of preservation and rehabilitation is of one of the few buildings which will be kept, and which Respondent thus found is feasible to keep and preserve. Given that this building will be rehabilitated, and that Respondent found it feasible to do so, evidence of its expense cannot be substantial evidence, or even evidence, of the infeasibility of the Preservation Alternative.

Otherwise, MR8 thus states, again without evidence, that many existing buildings are deteriorating. This is an unsupported conclusion with no evidence or explanation, it is highly generalized and vaguely descriptive, and it just repeats the same assertions as discussed above.

The only statement of any specific import in MR8, therefore, is the statement that the Preservation Alternative has a "feasibility gap" of about $140 million and therefore "more than $400,000 per market rate housing unit (more than four times that of the Project)—that renders its viability questionable. This statement is again devoid of evidence or analysis, apparently an

assumption with no basis. Moreover, there is no explanation for what this statement actually means or how it makes the alternative infeasible.

Respondent and RPI also argue that Section 14670.10.5 lacks any requirement to preserve the old SDC buildings as historic resources, an intentional decision, RPI asserts, given that it states that the Legislature intends to conserve the natural resources and the Eldridge Cemetery. This may be true, but, although a factor for Respondent to consider, it does not explain how or why the Preservation Alternative is not feasible.

AR 2054, which RPI cites, is part of the EIR Appendix G on Soil Analysis. As noted in the mitigations section above, this is simply a summary of regulated, or harmful, materials in the listed buildings on the Site. It simply states what such materials are present, without giving any information on costs or how this affects the feasibility of the Preservation Alternative. This evidently is because this section is simply limited to soil analysis and provides no apparent discussion on preservation or rehabilitation of buildings, or the like, much less any information on the Preservation Alternative. The court further notes that the discussion in this section is limited to soil contamination. On the face of the record, amelioration of any soil contamination would evidently be required for the Plan as well as for the Preservation Alternative, since this is a problem with the Site as a whole, and not the buildings to be preserved. Nothing indicates the contrary.

Respondent and RPI also cite to the Financial Feasibility Analysis (the "FFA") in a November 2021 Alternatives Report. Respondent cites the copy at AR 15933-16066, and specifically to 16013, while RPI cites the copy at AR 8807, which is the same as AR 16013. This report contains a little information which is somewhat more meaningful, setting forth the approach to analysis of the alternatives which are discussed in that report, with general feasibility challenges and at least some explanation as to the actual costs of rehabilitating existing buildings.

Prepared by a consulting firm of planners, it discusses three alternatives. Preliminarily, it is important to note that *these* alternatives, A, B, and C, do not correspond specifically to the Plan or any of the "alternatives" discussed in the EIR; they are evidently different proposals which the consultants prepared for the Plan and not for the EIR analysis. AR 8727-8854. Alternative A seems most closely to resemble the Preservation Alternative since it is described as including the most rehabilitation and preservation of existing buildings and other elements. AR 8756-8766, 8791. The key information here, on which RPI apparently relies, is the statement that rehabilitating the Main Building "is estimated to range from $17 million to $32 million." The only other figures given on this page are the statements that under Alternatives A and B, the "residual value to purchase the property" would be about $2 million to $2.3 million while under C it would be about $24 million," apparently an estimate of the cost warranted to purchase the property as it is. No party actually cites this statement, and it does not appear to apply to this analysis. Otherwise, 8807 contains a general discussion of costs and challenges associated with development.

Although no party cites it, the court notes that the following page, at AR 8808, sets forth some additional information regarding the A, B, and C alternatives. Again, the information

indicates that these do not truly, but only vaguely, correspond to the Preservation Alternative and the Plan as approved, so this information is not truly on point with the issue at hand. The import of this information again is also not clearly applicable here, but the court finds it appropriate to note it, nonetheless. Amongst other numbers, this shows the most preservation-focused option, A, has a "net residential value" of $84,123,000, while the least preservation oriented, C, has a value of $105,827,000. Again, nothing indicates that these figures are meaningful to this analysis, but, if they are, nothing in the record even here explains how the Preservation Alternative is not financially feasible, while these figures appear to indicate a potential feasibility.

It is significant that the discussion in the FFA on which Respondent and RPI rely simply repeats a variation of the key fact in MR8 at 4874-4875: both focus on the costs of rehabilitating the historic Main Building as the only specific examples of costs. However, not only is this the sole specific example, but, as already discussed above, it is one of the existing buildings *which would be kept and rehabilitated* under *all* scenarios, including all alternatives in the FFA and the Plan itself as adopted. See AR 373, 525-526, 584-586, 591, 8791.

As for the entirety of RPI's arguments specifically, RPI contends that "most" of the buildings are falling into disuse and in a state of disrepair, raising concerns of safety and cost, citing AR 43-44, 2054, 8807, 4874-4875, all discussed above. Preserving these buildings or converting them to residential or other uses would, it argues without any citations to the record or supporting evidence, be contrary to the Legislature's express goals and the efforts of Respondent

to "reduce uncertainty, increase land values, expedite marketing, and maximize interested third-party potential purchasers" (§ 14670.10.5, subd. (c)(2)) for future development that must include critically needed affordable housing (id. at subd. (c)(4)). It would also conflict with the statute's twin land use goals of housing and open space conservation if future development were constrained by the footprint and layout of the old SDC buildings. The buildings are specially clustered and designed for their prior SDC uses. Due to these constraints, a requirement to preserve them would significantly reduce the number of housing units and project feasibility — or, more likely, expand the development footprint into the open space acreage otherwise being conserved.

RPI cites to no substantial evidence actually supporting the conclusions. The citations to the record which it presents are all discussed above.

Conclusion: Alternatives

The EIR and the entirety of the cited portions of the record are wholly devoid of anything resembling either substantial evidence or the analytical route which could support the finding that the Preservation Alternative is infeasible.

The court GRANTS the petition on this issue of alternatives analysis.

Conclusion

The court GRANTS the petition as detailed above. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

Sent: Monday, April 22, 2024 7:01:44 PM
To: Megan Dameron <megan8052415@gmail.com>
Subject: Fwd: CSR MEETING

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From: gecalo@comcast.net <gecalo@comcast.net>
Sent: Thursday, April 4, 2024 10:54:15 AM
To: Dameron, Megan <megan.dameron@countyofnapa.org>
Subject: CSR MEETING

[External Email - Use Caution]

Dear Megan,

Thank you for coming out yesterday and walking Crystal Springs Road from one end to the other.

As promised, I attach letters by Edith Hannigan, BOF Land Use Planning Manager dated April 7, 2020, to Sonoma County and subsequent detailed October 23, 2020, detailed clarification by Jeff Slaton, BOF Senior Board Counsel, both addressing that Sonoma County's public roads must meet the State's Fire Safe Regulations. These requirements apply throughout the State, not just to Sonoma County.

Napa County Road Standards Resolution 2023-59 argues that because the BOF certified the 2019 County's Road Standards on July 2019 and because BOF did not rescind its 2019 certification, such certification still applies, and as a result, Napa Couty is immune to the State's subsequent BOF requirements. How absurd this argument is, is further evidenced by the fact that all post 2019 Napa County Road Standards revisions were made without BOF certifications (BOF stopped its certifications program in 2020). Taking the argument to its logical conclusion, would mean that Napa County is free to ignore BOF new laws until its 2019 certification is rescinded by it.

It is as absurd an argument as requiring the Unified Building Code to rescind its prior edition before it is legally entitled to enforce any subsequent additional requirements. For example, requiring smoke detectors!

George

BOARD OF FORESTRY AND FIRE PROTECTION **KEITH GILLESS, CHAIR**
THE NATURAL RESOURCES AGENCY Wade Crowfoot, *Secretary*
STATE OF CALIFORNIA Gavin Newsom, *Governor*

P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 653-8007
(916) 653-0989 FAX
BOF Website (www.bof.fire.ca.gov)

April 7, 2020

To: Board Members

From: Edith Hannigan, Land Use Planning Policy Manager

Re: Sonoma County Request for Local Ordinance Certification pursuant to 14 CCR § 1270.04

Background

Under Public Resource Code Section 4290, the Board of Forestry & Fire Protection is required to "adopt regulations implementing minimum fire safety standards related to defensible space that are applicable to state responsibility area (SRA) lands under the authority of the department, and to lands classified and designated as very high fire hazard severity zones (VHFHSZ), as defined in subdivision (i) of Section 51177 of the Government Code.* These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction…approved after January 1, 1991..."

These regulations, known as the SRA Fire Safe Regulations, are in Title 14 of the California Code of Regulations, §§ 1270.00 *et seq*. These regulations have set a minimum standard, or "floor," for the perimeters and access to development in the SRA since 1991 and for VHFHSZs beginning in July 2021. They were last updated by the Board in 2019, with an effective date of January 1, 2020.

While the SRA Fire Safe Regulations apply generally to construction approved after January 1, 1991, certain exemptions are provided. Roads that are "used solely for agricultural, mining, or the management and harvesting of wood products" are exempted under § 1270.02(c)(4). Additionally, the SRA Fire Safe Regulations do not apply to building permits or parcel or tentative maps approved prior to 1991, if the applicable permit or map imposes perimeter and access requirements for the buildings, as specified in § 1270.02(b). This latter exemption resulted from a 1993 Attorney General Opinion interpreting PRC § 4290 and the Board's then-existing regulations. Subsequently, the Board amended its regulations in accordance with that opinion. The Board also eliminated the provision that stated that its regulations "do not apply to existing structures, roads, streets, and private lanes or facilities." Thus, the only current exemptions from the SRA Fire Safe Regulations are set forth in Sections 1270.02(b) and 1270.02(c)(4).

Section 1270.04 provides that the Board may certify local ordinances relating to those standards adopted by the Board for perimeter and access. This certification confirms that the local ordinance meets or exceeds the minimum standards the Board adopted in the

SRA Fire Safe Regulations when the local ordinance has the "same practical effect." Counties may wish to take advantage of this certification process by submitting their ordinance to the Board so that one set of local development laws apply in the entire unincorporated county area, rather than one set of standards for the SRA and another for unincorporated LRA. Without certification by the Board, the SRA Fire Safe Regulations apply in the SRA and the local ordinance applies in the unincorporated LRA.

The term "same practical effect" is defined in § 1271.00 and means "an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety," including access for fire equipment and safe civilian evacuation. The regulations provide further clarification regarding access for fire equipment and civilian evacuation in Sections 1273.00 *et seq*., requiring roads and driveways to provide for "safe access for emergency wildfire equipment and civilian evacuation concurrently" and to meet minimum road widths (§ 1273.01(a)).

Sonoma County

In 2019, the Sonoma County Board of Supervisors approved changes to their local fire safety standards to align their local code with the updates to the SRA Fire Safe Regulations. Sonoma County officials submitted those revised local standards to the Board via email on November 20, 2019, under the process described above and in 14 CCR § 1270.04. Since that date, the Board has also received multiple written letters from the public regarding Sonoma County's local standards. Those comments have been forwarded to Board members for review.

Sonoma County last submitted its ordinance for certification after the Board revised its regulations in 2016, and the Board certified that ordinance in early 2017.

The certification of Sonoma County's revised local ordinance as "meeting or exceeding" the SRA Fire Safe Regulations is set for discussion at the Board's Joint Committee Workshop on April 7, and if forwarded out of committee, may be a possible action at the Full Board Meeting on April 8.

Staff Review

Board staff reviewed Sonoma County's submitted ordinance, taking into consideration the written public comments received and consultation with Sonoma County officials. Staff identified the following areas where the local ordinance does not appear to strictly meet or exceed the SRA Fire Safe Regulations. A full analysis of the local ordinance (known informally as "the matrix") follows this memo.

1. Sec 13-25 Exemptions, page 49, specifically 13-25(f) on page 50
    a. Sec 13-25(f) allows "any existing road that provides year-round, unobstructed access to conventional drive vehicles, including sedans and fire engines, which was constructed and serving a legal parcel prior to January 1, 1991…" to be exempt from the standards in the SRA Fire Safe Regulations. Sec 13-25(f) does require defensible space around existing roads, and requires that if an existing road is extended, reconstructed, or improved, that part of the road that is extended, reconstructed, or improved must meet the SRA Fire Safe Regulations.

b. Staff analysis:
    i. The SRA Fire Safe Regulations are applicable to the perimeters and access of all construction in the SRA with minimal exceptions. An explicit road exemption exists in 14 CCR § 1270.02(d) for roads which are used exclusively for agricultural, mining, or timber harvesting. And, in accordance with the 1993 Attorney General Opinion, the SRA Fire Safe Regulations do not apply in connection with a building permit or parcel map approved prior to January 1, 1991, as specified in 14 CCR § 1270.02(b).
c. Board Determination
    i. The Board may determine that the Sonoma County exemption falls within the scope of the exemptions set forth in the SRA Fire Safe Regulations, in which case the Sonoma County provision would be exempt from application of the SRA Fire Safe Regulations.
    ii. Sonoma County Sec 13-25(f) appears to exceed the scope of the exemptions provided for in the SRA Fire Safe Regulations. Sec 13-25(f) is not limited solely to roads described in 14 CCR § 1270.02(d) (*i.e.*, solely for agriculture, mining or timber use), nor is it associated with a building permit or parcel map approved prior to January 1, 1991, in which the approved document provides for the conditions relating to the perimeters and access to the buildings. While an existing road in connection with construction satisfying the conditions of 14 CCR § 1270.02(d) might also satisfy the conditions of 13-25(f), the opposite cannot be said. A road meeting the requirements in 13-25(f) may not necessarily meet the requirements of 14 CCR §§ 1270.02(b) or (d).
    iii. Alternatively, the Board may determine that the Sonoma County requirements for existing roads in Sec 13.25(f) provides for the same practical effect of the Board's road standards.
        1. The Board's road standards are in 14 CCR §§ 1273.00 through 1273.09. Specifically, 14 CCR § 1273.00 states: *Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.*
        2. The sections following 14 CCR § 1273.00 lay out the minimum construction requirements for different components of the road network (roads, driveway, gates, etc) that the Board has determined best meet the intent of 14 CCR § 1273.00. These minimum construction standards are phrased as mandatory as opposed to optional requirements, as they uniformly state that the particular standard "shall" apply.
d. Sec 13-25(f) does not appear to satisfy the minimum requirements set forth in 14 CCR §§ 1273.00, *et seq*. For example, Sec 13.25(f) does not require concurrent access for fire equipment and civilian evacuation, nor does it address the minimum road widths prescribed in 14 CCR § 1273.01(a).

e. It should be noted that when the Board certified Sonoma's ordinance in 2017, the ordinance contained this exemption. However, this previous action does not preclude the Board from considering new information regarding this exemption in 2020.

2. Sec 13-25 Exemptions (g) and (h), page 50
   a. Sec 13-25(g) and (h) address roads and driveways.
   b. Staff analysis:
      i. Sec 13-25(g) and (h) appear to suffer from flaws similar to those in 13-25(f). These exemptions appear to exceed the scope of the specific exemptions in 14 CCR § 1270.02, and do not appear to satisfy the minimum requirements set forth in 14 CCR §§ 1273.00, *et seq*.

3. Sec 13-34 Two-way Roads, page 56, specifically 13-34(a)-(d)
   a. Sec 13-34(a) allows an exception to the road standards described in Sec 13-34 whereby a subdivision, when permitted and approved by the appropriate county departments, may have a two-way road that is narrower than the stated requirement in Sec 13-34. The width requirement in Sec 13-34 matches the width requirement for two-way roads in the SRA Fire Safe Regulations.
   b. Staff Analysis:
      i. 14 CCR § 1273.01(a) do not allow two-way roads to be less than two, ten-foot wide traffic lanes, excluding shoulders and striping. However, that section continues on to state: *These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements.*
   c. Board Determination
      i. The Board may determine that the requirements in Sec 13-34(a), for two-way roads that are approved to have only one lane, constitute "additional requirements" and with these additional requirements Sec 13-34(a) meets or exceeds as providing the same practical under the SRA Fife Safe Regulations. These include approval by relevant county departments for the exception as well as additional turnouts and turnarounds.
   d. Sec 13-34(a)-(d) does not appear to satisfy the minimum requirements set forth in 14 CCR §§ 1273.01. The Board regulations do not specifically allow the use of turnouts or turnarounds to compensate for having fewer than two traffic lanes.
   e. It should be noted that when the Board certified Sonoma's ordinance in 2017, the ordinance contained this exception. However, this previous decision does not preclude the Board from considering new information regarding this exemption in 2020.

BOARD OF FORESTRY AND FIRE PROTECTION
THE NATURAL RESOURCES AGENCY
STATE OF CALIFORNIA

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October 23, 2020

Linda Schiltgen
Deputy County Counsel
County of Sonoma
Linda.Schiltgen@sonoma-county.org

Re: BOF Certification Questions: Sonoma County Responses

Dear Ms. Schiltgen:

The Board is in receipt of your letter dated October 18, 2020, and addressed to Board of Forestry and Fire Protection (Board) Chair Keith Gilless and Vice Chair Darcy Wheeles. It has been distributed to the Board members for consideration. Because your letter provides responses to questions posed by Board staff, please accept this response by Board staff on their behalf.

Background

A brief summary is appropriate for context. For several months, the Board, its staff, and representatives from the County of Sonoma (Sonoma County) have been engaged in discussions relative to the potential certification of Sonoma County's local fire safe ordinance as equaling or exceeding the Board's Fire Safe Regulations (14 CCR § 1270 et seq.). Board members and staff have expressed concerns about portions of Sonoma County's ordinance that either omit standards included in the Fire Safe Regulations or set standards that, on their face, appear to be less stringent than the Fire Safe Standards. At the September 22, 2020, Joint Committee Meeting of the Board, Board staff were directed to provide Sonoma County with a list of specific questions posed by both Board members and staff, that, if answered, would allow Board staff to properly evaluate the local ordinance and enable staff to make a recommendation to the Board in favor of certification. By letter dated October 12, 2020, Board staff issued those questions to Sonoma County. By your letter dated October 18, 2020, Sonoma County provided its responses for Board staff consideration.

When being presented with the myriad of issues related to certification, it is important not to lose sight of the fundamental task before the Board. The Board is reviewing the Sonoma County ordinance pursuant to 14 CCR § 1270.04 to decide whether to exercise its discretion "to certify [the ordinance] as equaling or exceeding [the Board's regulations] when they provide

the same practical effect."[1] While it is generally not difficult to determine whether a particular provision of an ordinance equals or exceeds a corresponding provision in the Board's regulations, the same cannot be said for determining whether a local ordinance that fails to equal or exceed the Board's regulation nonetheless provides the *same practical effect*. To aid in this determination, the Board's regulations provide a detailed definition of the term *same practical effect*. With these tools, the Board must evaluate each provision of a local ordinance and compare it to the corresponding provision in the Board's regulations to determine whether the local ordinance provision equals or exceeds the Board's regulation or provides the same practical effect. Still, the task before the Board is challenging and requires careful and deliberate consideration, especially when applying the complex definition of *same practical effect*.

Summary of Staff Findings

At its core, the Board's task is fundamentally a very narrow inquiry: *For each substantive requirement in the Fire Safe Regulations, does the local ordinance have a provision that equals or exceeds or has the same practical effect as that Fire Safe Regulation standard?*

Board staff have completed their review of Sonoma County's responses and continue to have significant concerns that the ordinance does not satisfy the Board's standards for certification. Sonoma County's responses pertaining to standards for existing roads and for ingress/egress that allows concurrent civilian evacuation are of particular concern. Accordingly, Board staff lack an evidentiary basis to support a recommendation for certification. Board staff have enclosed an updated matrix, dated to reflect the upcoming November 3, 2020, Joint Committee Meeting of the Board, that provides more specific observations and staff recommendations.[2]

This is an appropriate point to address Sonoma County's position that if the Board does not certify its ordinance, then Sonoma County is prevented from enjoying the benefits of the portions of its ordinance that it believes clearly equal or exceed the Fire Safe Regulations. The Board would like to reiterate to Sonoma County that certification of its ordinance by the Board is not required for Sonoma County to apply its own standards that go above and beyond the state minimum standards. Board certification is a creature of regulation, the benefit of which is to publicly document a mutual understanding of the Board and the local jurisdiction that a local ordinance equals or exceeds the Fire Safe Regulations. Under Public Resources Code § 4290, subdivision (c), the Board's minimum standards do not supersede any Sonoma County

[1] References in this letter to the "equal or exceed" standard includes this "same practical effect" standard.

[2] The attached November 3, 2020, matrix represents Board staff's current evaluation and recommendations to the Board, and supersedes any prior matrix, whether final or draft, including the deliberative draft September 4th matrix, which apparently Sonoma County misunderstood to be something more than merely an informal tool to facilitate productive discussion in advance of the September Board meeting.

ordinance that equals or exceeds the minimum state standards.[3] Thus, if Sonoma County has stricter, greater, or enhanced requirements in its ordinance, the lack of certification by the Board does not preclude Sonoma County from deciding to apply these stricter requirements.

Turning now to Sonoma County's responses, it is worth mentioning that it is unnecessary for Board staff to address each individual response. The purpose of the exercise is to provide Board staff sufficient information so that it may complete its evaluation of Sonoma County's ordinance and issue a recommendation for the Board's consideration. As noted above, the certification determination is made in light of the language of the local ordinance and any documents incorporated by reference. Supplemental information, such as Sonoma County's responses, merely illuminates the local jurisdiction's interpretation of its ordinance and how it equals or exceeds the Fire Safe Regulations.

In any event, Sonoma County's responses reflect a number of recurring issues of concern to Board staff that can be summarized generally without focusing on the content of specific responses or specific sections of the ordinance. Board staff have consistently expressed concerns that the Sonoma County ordinance and Administrative Policy do not articulate specific minimum standards for each type of road referenced in the ordinance and Administrative Policy[4] nor does it articulate what standards govern the fire official's assessment that a road provides concurrent civilian evacuation. Board staff's questions were particularized and specific attempts to identify those standards so that Board staff could evaluate where they equal or exceed the Fire Safe Regulations.

Detailed Discussion

Board staff acknowledge that some of Sonoma County's responses on certain other issues resolved Board concerns or provided additional clarity. This letter focuses on major issues that preclude the Board staff from issuing a recommendation in favor of certification. Board staff refer interested parties to the staff-prepared final matrix for the November 3, 2020, Board meeting for a more comprehensive discussion of portions of the ordinance that equal or exceed the Fire Safe Regulations.

Sonoma County's ordinance and responses to staff questions on the following topics are inadequate. Sonoma County's responses do not provide the requested citations nor identify the specific standards that Sonoma County contends apply. Instead, the responses reiterate

[3] It is necessary to acknowledge that the statute does not include a "same practical effect" standard. A local ordinance applied pursuant to Public Resources Code § 4290(c), without obtaining Board certification, must "equal" or "exceed" the Fire Safe Regulations in the ordinarily understood sense of those words. Thus, a non-certified local ordinance applied by a local jurisdiction is potentially subject to a stricter legal standard than is required for certification under 14 CCR § 1270.04.

[4] The ordinance and Administrative Policy contemplate new roads, existing roads, existing public roads, existing private roads, and existing roads approved on a discretionary basis and a ministerial basis. Sonoma County is entitled to have as many subcategories as it chooses, but each must have an established standard that equals or exceeds the Fire Safe Regulations.

positions that, while not unimportant, are nonetheless irrelevant to the narrow certification inquiry before the Board.

We will first address the various arguments that are not relevant to and therefore do not inform staff's analysis.

Sonoma County Argument 1: Some portions of the ordinance equal or exceed the Fire Safe Regulations

Sonoma County's introductory paragraph includes a chart outlining several provisions showing how its ordinance equals or exceeds the Fire Safe Regulations. This general claim is reiterated in response to several questions.

The Board acknowledges that many elements of Sonoma County's standards clearly equal and exceed the minimum standards of the Fire Safe Regulations. This has been well established in documents provided for Board consideration, as well as testimony at several Board and Joint Committee Meetings this year. However, exceeding the Fire Safe Regulations in certain aspects does not excuse an ordinance's failure to equal or exceed other standards imposed by the Fire Safe Regulations.

Thus, the Board's determination that one provision of a local ordinance equals or exceeds the Fire Safe Regulations has no bearing on the Board's consideration of other unrelated provisions of the local ordinance. This argument is an unnecessary distraction and does not inform whether all provisions satisfy the certification standard. As such, the Board does not focus on these statements when applying the certification standard.

Sonoma County Argument 2: Takings / Inability to secure easements for expanding roads

Another argument advanced in Sonoma County's preliminary comments asserts that the Fire Safe Regulations effect an unconstitutional "taking" of private property for public use because they make a landowner individually responsible for upgrading existing roads that serve other parcels. Other variations of this argument suggest that the Fire Safe Regulations encourage Not-In-My-Backyard (NIMBY) opposition to prevent development or allow a landowner to extort a neighbor by refusing to sell an easement to facilitate road widening to comply with state standards. These arguments are also reiterated in response to several questions seeking clarity about Sonoma County's standards and how they equal or exceed the Fire Safe Regulation.

The Fire Safe Regulations have not been legally challenged, let alone invalidated, as being unconstitutional in any sense. They are binding as minimum standards on Sonoma County, notwithstanding speculative practical inconveniences at the local level. It is Sonoma County's prerogative to impose those burdens on individual landowners instead of exercising other options at its disposal, such as eminent domain. In any event, the issue of who bears financial responsibility for upgrading existing roads that serve as access to new building construction has no bearing on whether road standards in Sonoma County's ordinance – such as minimum road

widths – equal or exceed the corresponding standard in the Fire Safe Regulations. As such, the Board does not focus on this argument when evaluating the ordinance for compliance with its certification standard.

Sonoma County Argument 3: Fire Safe Regulation Exception Process

Another argument advanced in Sonoma County's preliminary comments asserts inadequacies in the Fire Safe Regulations' "exception process" (14 CCR § 1270.06), including a loophole authorizing local jurisdictions to waive any requirement in the Fire Safe Regulations. This argument is reiterated in response to several questions.

While the Board appreciates Sonoma County's comments and will certainly takes these into account to consider whether regulatory changes are warranted to address this point, Sonoma County's concerns regarding 14 CCR § 1270.06 do not have bearing on the present issues related to certification of Sonoma County's ordinance, for multiple reasons. First, Sonoma County adopted its own "exceptions to standards" provision, § 13-23, in its ordinance. Notwithstanding certain staff comments in the matrix, the Board may determine that these provisions equal or exceed the minimum standards in § 1270.06. Second, assuming for the sake of argument that 14 CCR § 1270.06 allows for "behind closed doors" determinations, or fails to provide a thorough open and public process, this is irrelevant as to whether *other* sections of Sonoma County's ordinance equal or exceed the Board's minimum standards. Finally, to the extent Sonoma County finds the minimum standards in 14 CCR § 1270.06 unsatisfactory, the regulation expressly states that local jurisdictions "may establish additional procedures or requirements for exception requests." Thus, to the extent Sonoma County believes that the Board's exception standards in § 1270.06 are deficient, Sonoma County may remedy these by imposing additional requirements. Consequently, the Board does not focus on this argument when evaluating the ordinance for compliance with its certification standard.

Sonoma Ordinance Issue 1: Existing Road Standards

We now turn to Sonoma County's discussion of the specific standards and citations in response to the Board staff's questions relating to existing road standards and the concurrent evacuation requirement. Sonoma County's responses continue to make conclusory statements about the quality of its ordinance and Administrative Policy. Board staff are repeatedly told that these documents have "clear standards" and a "strict set of requirements," but do not reference actual standards or citations. Board staff needs this information to properly evaluate the ordinance for certification. Without it, Board staff are compelled to conclude that no such standards exist and recommend to the Board that Sonoma County's ordinance does not satisfy the certification standard for existing roads.

Throughout the certification process, Sonoma County has repeatedly maintained that Public Resources Code section 4290 and the Fire Safe Regulations do not apply to existing roads. Sonoma County's position is incompatible with the plain language of PRC § 4290,[5] the Fire Safe Regulations,[6] and opinions and letters issued by the Attorney General of California.[7] More importantly, the Fire Safe Regulations themselves – which constitute the basis for the certification determination – clearly provide no exemption for existing roads, and it is these regulations that the Sonoma County ordinance must equal or exceed. This represents a fundamental and intractable disagreement between the Board and Sonoma County. Sonoma County's position on existing roads, standing alone, is a legitimate basis for determining that the ordinance does not equal or exceed the Fire Safe Regulations.

Moreover, Sonoma County's position has a discernible impact on it characterizes its ordinance, and the amount of effort necessary for Board staff to parse its assertions for accuracy and compliance with the certification standard. Specifically, any assertion Sonoma County makes about "roads" requires the Board to evaluate whether Sonoma County intends to apply that standard to existing roads.

Setting aside this fundamental disagreement as to the applicability of the Fire Safe Regulations, Sonoma County has argued that, in the alternative, even though it believes existing roads are exempt, Sonoma County's Administrative policy nonetheless applies to existing roads and equals or exceeds the Fire Safe Regulations.

Board staff have reviewed the ordinance and Administrative Policy in great detail. The only specific standard identified in the Administrative Policy is a 12-foot width requirement for existing private roads. On its face, this falls short of the minimum road standard in 14 CCR § 1273.01. That is a significant obstacle to Board certification. More concerning, however, is that the policy provides no standards for other types of existing roads. As noted before, the Administrative Policy contemplates a public/private distinction, as well as a discretionary/ministerial distinction. No standards for these types of existing roads exist in the ordinance or Administrative Policy. Until these deficiencies are remedied to the Board's satisfaction, Sonoma County's ordinance and Administrative Policy is conclusively ineligible for certification. As Sonoma County's responses fail to provide the requested information with sufficient detail, Board staff can only conclude that no such standards exist and recommend to the Board that the ordinance does not meet the certification standard.

Additionally, Sonoma County's reliance on the Administrative Policy as setting the exclusive standard for existing roads raises concerns beyond the road width issues. The Fire Safe

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[5] "These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction within state responsibility areas… ." (Emphasis added.)

[6] See 14 CCR § 1270.02 which includes the same language in fn5 and includes an exemption for roads that is limited to agricultural, mining, and timber-related operations.

[7] See, e.g., AG Opinion No. 92-807 (1993); AG letter to Monterey County Planning Commission (Oct. 25, 2019).

Regulations set other standards for roads, such as grade, surface requirements, radius, turnouts, turnarounds, and dead end roads. However, the Administrative Policy is silent on those issues, and Sonoma County's responses do not identify what standard, if any, apply for those existing road requirements, and where they can be located in the ordinance or Administrative Policy.

In this respect, Sonoma County's response to Question 1.1.3.3 is emblematic. The Board staff posed a direct request seeking specific information: "For convenience and reference, please complete the following table by filling in the specific ordinance section or Administrative Policy section that addresses the specified SRA Fire Safe Regulation." One axis of the referenced table identified (with citations) all of the above-referenced road requirements in the Fire Safe Regulations that Sonoma County's ordinance must equal or exceed. Along the other axis, the table identified all of the categories of existing roads referenced in the Administrative Policy. Sonoma County's task was to provide an ordinance or Administrative Policy citation in each box.

Board staff believed the table provided the best and simplest opportunity for Sonoma County to provide the information necessary to support certification with respect to requirements for existing roads. Sonoma County's response does not provide any relevant or informative citations. For two columns, Sonoma County cross-referenced six of its other responses to unrelated questions. The County responses did not comply with the call of the question to provide a citation, nor could any relevant citations or standards be discerned from the referenced answers. In fact, some of the cited responses made no mention of the relevant terms. With respect to the remaining categories of existing road standards (public/private and ministerial/discretionary), Sonoma County referenced provisions of its ordinance that apply to *new* roads.[8] These citations are also unresponsive to the call of the question because §13-25(f) of the ordinance clearly states that existing road standards are governed by the Administrative Policy.

In the last couple of weeks, Sonoma County has advanced a new argument indicating that its adoption of an optional appendix from the California Fire Code satisfies the requirement for establishing road requirement standards that satisfy the Fire Safe Regulations. As Board staff made clear in a prefacing comment to Question 2.2 and subsequent follow up questions, compliance with the California Fire Code does not ensure compliance with the Fire Safe Regulations. Those standards are relevant only to the extent that they equal or exceed the Fire Safe Regulations. The Board staff's follow up questions on this point quoted a number of the appendix standards which Sonoma County revised so that the standard may also be satisfied by compliance "with the Sonoma County Fire Safe Standards or as approved by the fire code official." The reference to the Sonoma County standard is a circular reference to the very

[8] If Sonoma County intends the particular referenced ordinance provisions to apply both to new roads and existing roads, the ordinance and Administrative Policy will require substantial revision.

standard that Sonoma County has been unable to identify to Board staff. Additionally, it appears that the fire code official has unfettered discretion to impose any standard – including a lesser standard or no standard at all. Sonoma County's responses do not contradict this reasoning or clarify the requirements. Board staff stand by the position that Sonoma County's adoption of the California Fire Code Appendix is meaningless in connection with establishing that the Sonoma County ordinance and Administrative Policy provide minimum standards that equal or exceed the Fire Safe Regulations' road requirement standards.

Again, Sonoma County has had repeated opportunities to identify and provide citations for these standards. Sonoma County repeatedly declines to do so. Until Sonoma County can provide direct and adequate responses to the Board's important questions, the Board has no evidentiary basis to support a decision to certify the Sonoma County ordinance.

Sonoma County Ordinance Issue 2: Concurrent civilian evacuation

A distinct component of the Fire Safe Regulations that is somewhat related to the road conditions issue is that emergency access requirements must accommodate ingress and egress for emergency vehicles *and concurrent civilian evacuation*. Board members and staff have asked Sonoma County on prior occasions to clarify how Sonoma County's ordinance and Administrative Policy satisfy this requirement.

The Administrative Policy states, in an introductory paragraph, that a Fire Inspector will perform an evaluation to "confirm that the proposed development equals or exceeds the below requirements, and the proposed development shall be safely accessed and served in the case of a wildfire, with adequate ingress, egress and the capacity for concurrent evacuation and emergency response."

We acknowledge and appreciate that Sonoma County confirms in its responses that the concurrent evacuation standard is an additional standard to equaling or exceeding "the below requirements." However, Sonoma County does not articulate what standards guide the Fire Official in making that determination.

The first requirement following that statement in the Administrative Policy highlights the importance of that query. The requirement sets a road width standard for existing private roads at 12-ft plus 1-foot of vegetation clearance on both sides. This leads Board staff to question how a 12-foot road, which falls short of the Fire Safe Regulation road width requirement, could be certified as ensuring concurrent civilian evacuation during a wildfire. Nor does this section of the Administrative Policy provide guidance as to what standards guide the Fire Official in making a subjective determination. Absent clarification – which did not occur in response to the Board staff's questions – the Board is appropriately reluctant in determining that the ordinance and Administrative Policy equal or exceed the Fire Safe Regulations.

In addition, Sonoma County routinely refers Board staff to §§ 13-62 and 13-63, in response to Board staff's concerns about the lack of specific articulable standards in the ordinance and Administrative Policy. Sonoma County's reliance is misplaced, however, as those sections merely confer discretionary authority to require compliance with additional fire safety measures. Critically, permissive authority provides no assurances to the Board that additional requirements will be imposed at the level contemplated by the Fire Safe Regulations.

Conclusion

In conclusion, Sonoma County's responses to questions issued by Board staff fail to resolve a number of significant concerns expressed by Board members and staff over the preceding months. The question before the Board at the November 3, 2020, Board meeting is whether the Sonoma County ordinance equals or exceeds the substantive requirements in the Fire Safe Regulations. At this time, the Sonoma County ordinance and Administrative Policy include requirements that fall short of the Fire Safe Regulations and omit standards that are required as a counterpart to other provisions of the Fire Safe Regulations. Until Sonoma County addresses these infirmities, Board staff lack a basis to recommend, and the Board lacks a legal basis to certify, the ordinance as equaling or exceeding the Fire Safe Regulations.

Consistent with our prior communications and correspondence, this letter reflects only the position of Board staff. We wish to be transparent with Sonoma County regarding our ongoing concerns and how we intend to advise the Board in advance of the November Board meeting. Ultimately, the Board will be responsible for making its own assessment on the question of whether the Sonoma County ordinance should be certified as equaling or exceeding the Fire Safe Regulations. Similarly, we respect the right of Sonoma County to disagree with Board staff positions expressed in this letter or the enclosed matrix when the matter is considered by the Board's Joint Committee on November 3, 2020.

Respectfully,

Jeff Slaton
Senior Board Counsel
Board of Forestry and Fire Protection
Jeffrey.Slaton@bof.ca.gov

On Apr 3, 2024, at 3:55 PM, <gecalo@comcast.net> <gecalo@comcast.net> wrote:

Dear Deborah,
We met on site with Megan Dameron Planning Commissioner who voted against the project) today who is eve more firmly on our camp.
Do you have Edith Hannigan's memo referred to below or, even better a more recent one? Megan would love to have it.
George

From: gecalo@comcast.net <gecalo@comcast.net>
Sent: Monday, March 25, 2024 3:22 PM
To: 'Deborah Eppstein' <deppstein@gmail.com>
Cc: G/ *VV Larry Vermeulen (vermeulenlw@gmail.com) <vermeulenlw@gmail.com>; G/ *VV Joe Criscione (joe.criscione9@outlook.com) <joe.criscione9@outlook.com>
Subject: RE: more on Title 14 regs and invalidity of prior certifications

Thank you Deborah,
Anne was still under the impression that the County has a leeway, in "interpreting" some of the Title 14 provisions. We gave her all your material you forwarded to us. I believe she understood that their revised Street Standards have a problem and I think she will pursue the issue further.
She suggested to have a meeting with their Fire Marshall and the administrator. Hopefully, they will agree to meet.
Will keep you posted.
George

From: Deborah Eppstein <deppstein@gmail.com>
Sent: Monday, March 25, 2024 10:21 AM
To: George Caloyanniidis <gecalo@comcast.net>
Cc: Larry Vermeulen <vermeulenlw@gmail.com>; G/ *VV Joe Criscione <joe.criscione9@outlook.com>
Subject: more on Title 14 regs and invalidity of prior certifications

Dear George,

This April 7, 2020 memo from Edith Hannigan at BOF is very relevant for your meeting with Ann Cottrell today, concerning that Napa County's prior certification is no longer relevant. This memo was in response to SoCo's (repeated) certification request for its 2020 ordinance, which initially exempted pre-1991 roads (and then modified to exempting all existing roads)

Point 1 is directly relevant to the prior 2019 certification for Napa County local regulations: **A prior certification by BOF does not carry forward.** (The Sonoma County ordinance exempted pre-1991 roads.)

> *" It should be noted that when the Board certified Sonoma's ordinance in 2017, the ordinance contained this exemption. However, this previous action does not preclude the Board from considering new information regarding this exemption in 2020."*

The BOF memo also summarizes the rules on certification in the 2020 Title 14 regulations (although note that the section on certification has been removed

from the 2023 Title 14 regulations, and instead very explicit language has been added on requirements for local ordinance to meet or exceed the state regulations)). The 2020 Title 14 regulations also state that whenever a regulation is revised, the prior certification is no longer valid.

The following summarizes the allowed exemptions (roads used solely or mining, agriculture, ro harvesting fo timber) and certification requirements:
"While the SRA Fire Safe Regulations apply generally to construction approved after January 1, 1991, certain exemptions are provided. Roads that are "used solely for agricultural, mining, or the management and harvesting of wood products" are exempted under § 1270.02(c)(4). Additionally, the SRA Fire Safe Regulations do not apply to building permits or parcel or tentative maps approved prior to 1991, if the applicable permit or map imposes perimeter and access requirements for the buildings, as specified in § 1270.02(b). This latter exemption resulted from a 1993 Attorney General Opinion interpreting PRC § 4290 and the Board's then-existing regulations. Subsequently, the Board amended its regulations in accordance with that opinion.
Section 1270.04 provides that the Board may certify local ordinances relating to those standards adopted by the Board for perimeter and access. This certification confirms that the local ordinance meets or exceeds the minimum standards the Board adopted in the SRA Fire Safe Regulations when the local ordinance has the "same practical effect." Counties may wish to take advantage of this certification process by submitting their ordinance to the Board so that one set of local development laws apply in the entire unincorporated county area, rather than one set of standards for the SRA and another for unincorporated LRA. Without certification by the Board, the SRA Fire Safe Regulations apply in the SRA and the local ordinance applies in the unincorporated LRA.
The term "same practical effect" is defined in § 1271.00 and means "an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety," including access for fire equipment and safe civilian evacuation. The regulations provide further clarification regarding access for fire equipment and civilian evacuation in Sections 1273.00 et seq., requiring roads and driveways to provide for "safe access for emergency wildfire equipment and civilian evacuation concurrently" and to meet minimum road widths (§ 1273.01(a))."
Point 2. Concerning application of Same Practical Effect and requirement for 20 ft wide roads, as per the BOF memo, the regulations state that requirement for two 10-ft wide traffic lanes is mandatory.

Page 3 3 (iii)
"1. The Board's road standards are in 14 CCR §§ 1273.00 through 1273.09. Specifically, 14 CCR § 1273.00 states: Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.

*2. The sections following 14 CCR § 1273.00 lay out the minimum construction requirements for different components of the road network (roads, driveway, gates, etc) that the Board has determined best meet the intent of 14 CCR § 1273.00. These minimum construction standards are phrased as **mandatory** as opposed to optional requirements, as they uniformly state that **the particular standard "shall" apply. "***

and the April 7 BOF letter goes on to say (page 4, #3d)

> "The Board regulations do not specifically allow the use of turnouts or turnarounds to compensate for having fewer than two traffic lanes. "

Deborah Eppstein
deppstein@gmail.com

From:	Bordona, Brian
To:	Parker, Michael; Anderson, Laura; Ringel, Matthew
Subject:	Fwd: Vida Valiente Winery Use Permit Application #P20-00079-UP
Date:	Monday, April 29, 2024 8:13:30 AM
Attachments:	Final Draft Water Issue 4-24-24.docx

Get Outlook for iOS

From: Joe Criscione <joe.criscione9@outlook.com>
Sent: Sunday, April 28, 2024 1:27:14 PM
To: Brunzell, Kara <kara.brunzell@countyofnapa.org>; Dameron, Megan <megan.dameron@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: Vida Valiente Winery Use Permit Application #P20-00079-UP

[External Email - Use Caution]

Please note that I plan to testify at the May 1 hearing of the Planning Commission to discuss the subject of the attached document.
Thank you,
Joe Criscione

Sent from Mail for Windows

April 24, 2024

To Napa County Planning Commission

Re: Vida Valiente Winery Use Permit Application #P20-00079-UP

My name is Joe Criscione and I live with my wife at 315 Crystal Springs Road. Prior to our move to our current residence, we lived at a home we built at 391 Crystal Springs Road, and we drilled a well there.

When the cave at 424 CSR (now Merus Winery) was built, dynamite blasting was used. During that blasting and for several months thereafter our well water became quite warm.

Given the immediate proximity of the Merus cave and the proposed Vida Valiente cave, there is reason to believe that the geologic composition of both caves is similar. In addition, the Vida Valiente cave of approximately 13,500 sq. ft. is twice as large as the Merus cave of approximately 7,000 sq. ft. The applicant has been silent regarding the construction process of the Vida Valiente cave. But clearly there is ample evidence to believe that dynamite blasting will be used for the construction of its cave.

Obviously, there are serious factors beyond my expertise here – perhaps thermal veins below the surface which affect the water quality including the creeping of Boron and the sheer volume of the Vida Valiente well and other nearby existing wells which require scientific analysis and guarantees before the use of dynamite blasting is permitted.

We therefore request that such analysis is performed prior to the issuance of a use permit and NOT AS A CONDITION THEREOF, because if the use of dynamite blasting is the only way the Vida Valiente cave may be constructed, the entire project will have to be redesigned.

From: Bordona, Brian
To: Parker, Michael; Anderson, Laura; Ringel, Matthew
Subject: Fwd: Resident's Perspective re Vida Valiente Winery Permit Use Permit Application #P20-00079-UP
Date: Monday, April 29, 2024 8:12:38 AM

Get Outlook for iOS

From: Valerie Jespersen-Wheat <vjespwheat@aol.com>
Sent: Sunday, April 28, 2024 6:56:41 PM
To: Dameron, Megan <megan.dameron@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: Resident's Perspective re Vida Valiente Winery Permit Use Permit Application #P20-00079-UP

[External Email - Use Caution]

Dear Ms. Dameron,

My husband and I were awakened at 4 am on September 27, 2020, by the high/low siren and flashing lights of a passing police car. Despite being foggy with sleep, we immediately initiated the process of evacuating: locking doors, grabbing our packed bags and loading our cat into his carrier. As we reached our front door, the power went out.

Outside, as we loaded our car, we saw the glow of the fire and the smell of smoke coming from the north. We were stunned and frightened, but moved as fast as we could. We later learned the fire started about 2 1/2 miles away, on the north end of Crystal Springs Rd. We live at the south end of Crystal Springs Rd., just off Sanitarium. We were extremely fortunate that we were able to head down Deer Park Rd. to safety.

We returned after a 2 1/2 week evacuation to a largely unscathed home. Our emotional status, however, was impacted greatly—it was a terrifying experience, with repercussions that continue still, almost 4 years later.

I'm writing to plead with you to carefully and thoughtfully consider

the potential threat to human life if you approve the petition for Vida Valiente winery. You have seen how narrow and twisty Crystal Springs Road is, and no doubt can imagine the nightmare that would occur if a fire broke out on a day when the winery was open and busy, with many cars traveling on our road. Could the fire trucks get past all the cars trying to get out? It seems nearly impossible. Remember the Paradise fire? The town of Lahaina fire on Maui? *Residents died trying to escape the fire. They had no way to get out.*

I implore you to listen to your conscience and vote no to the Vida Valiente application. It's not a vote against the wine industry or the aspirations of the Vida Valiente developers. They simply need to consider another location for their project, one that does not pose such a huge threat to human life.

Instead, your vote against the proposal is a choice to prioritize the safety and well-being of residents over a commercial project. If you do not, and there is another catastrophic fire in which lives are lost, it's something you would have on your conscience always.

I feel confident you will do the right thing.

Kind regards,

Valerie Jespersen-Wheat
788 Crystal Springs Road
St. Helena, CA 94574

Sent from my iPad

From: Bordona, Brian
To: Parker, Michael; Anderson, Laura; Ringel, Matthew
Subject: Fwd: Resident Perspective re Vida Valiente Winery Use Permit Application #P20-00079-UP
Date: Monday, April 29, 2024 8:13:01 AM

Get Outlook for iOS

From: Valerie Jespersen-Wheat <vjespwheat@aol.com>
Sent: Sunday, April 28, 2024 6:49:21 PM
To: Brunzell, Kara <kara.brunzell@countyofnapa.org>
Cc: Bordona, Brian <Brian.Bordona@countyofnapa.org>
Subject: Resident Perspective re Vida Valiente Winery Use Permit Application #P20-00079-UP

[External Email - Use Caution]

Dear Ms. Brunzell,

My husband and I were awakened at 4 am on September 27, 2020, by the high/low siren and flashing lights of a passing police car. Despite being foggy with sleep, we immediately initiated the process of evacuating: locking doors, grabbing our packed bags and loading our cat into his carrier. As we reached our front door, the power went out.

Outside, as we loaded our car, we saw the glow of the fire and the smell of smoke coming from the north. We were stunned and frightened, but moved as fast as we could. We later learned the fire started about 2 1/2 miles away, on the north end of Crystal Springs Rd. We live at the south end of Crystal Springs Rd., just off Sanitarium. We were extremely fortunate that we were able to head down Deer Park Rd. to safety.

We returned after a 2 1/2 week evacuation to a largely unscathed home. Our emotional status, however, was impacted greatly—it was a terrifying experience, with repercussions that continue still, almost 4 years later.

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I implore you to listen to your conscience and vote no to the Vida Valiente application. It's not a vote against the wine industry or the aspirations of the Vida Valiente developers. They simply need to consider another location for their project, one that does not pose such a huge threat to human life.

Instead, your vote against the proposal is a choice to prioritize the safety and well-being of residents over a commercial project. If you do not, and there is another catastrophic fire in which lives are lost, it's something you would have on your conscience always.

I feel confident you will do the right thing.

Kind regards,

Valerie Jespersen-Wheat
788 Crystal Springs Road
St. Helena, CA 94574

Sent from my iPad

Vida Valiente Winery Use Permit Application #P20-00079-UP

Proposed Project Does Not Meet the Requirements of various Napa County Policies

Planning Commission Hearing – May 1, 2023, Recommended Findings enumerates the following required findings. Staff concludes that the Project meets these requirements. I contend that it does not.

Applicable Napa County General Plan goals and policies:

Policy SAF-20: All new development shall comply with established fire safety standards. Design plans shall be referred to the appropriate fire agency for comment as to:

1) Adequacy of water supply.
2) Site design for fire department access in and around structures.
3) Ability for a safe and efficient fire department response.
4) Traffic flow and ingress/egress for residents and emergency vehicles.
5) Site-specific built-in fire protection
6) Potential impacts to emergency services and fire department response

Specifically, Items 3, 4, and 6 cannot be met, given the substandard nature of Crystal Springs Road.

The Final Traffic Impact Report, Vida Valiente Winery states, “Crystal Springs Road ranges in width from about 16 to 24 feet north of the Winery, and from about 12 to 18 feet south of the Winery.”

It also states, “The road has no centerline and intermittent gravel, or dirt shoulder areas.” What is lacking from this brief description is that the road also has no side striping, no pavement reflectors, very limited roadside reflectors, no bike lanes, no guardrails, and no nighttime illumination except at its intersection with Silverado Trail and Sanitarium Road.” In other words, it is a typical substandard rural country road.

Per the Final Traffic Impact Report, Figure 7, and numerous written descriptions, Crystal Springs Road north of the proposed project does not have 20 feet of traffic lanes and has little-to-no shoulder. Averaging the 500’ interval measurements taken for Figure 7 yields only 17.4 feet in width.

Per Napa County Roads & Street Standards (2023), Crystal Springs Road would properly be classified as a “General Minor” road. As such, the width standard is, “a minimum of two ten (10) foot traffic lanes of homogenous surface, and a minimum of one (1) foot of shoulder on each side of the roadway…” Crystal Springs Road does not meet this standard.

Furthermore, the County of Napa Pavement Management Program PCI Map Book, Map 54, shows Crystal Springs Road as “Poor” (equivalent to a grade of “D”).

At the December 6, 2023, hearing, Fire Marshal Jason Downs said, “…we know, and it’s been clearly identified that that road does not meet that 20-foot standard. That’s a fact.”

Due to the substandard nature of Crystal Springs Road, Item 3) Ability for a safe and efficient response, Item 4) Traffic flow ingress/egress for residents and emergency vehicles, and Item 6) Potential impacts for emergency services and fire departments response, cannot be met and the project should be denied.

Policy CON-77: All new discretionary projects shall be evaluated to determine potential significant project-specific air quality impacts and shall be required to incorporate appropriate design, construction, and operational features to reduce emissions of criteria pollutants regulated by the state and federal governments below the applicable significance standard(s) or implement alternate and equally effective mitigation strategies consistent with BAAQMD's air quality improvement programs to reduce emissions. In addition to these policies, the County's land use policies discourage scattered development which contributes to continued dependence on the private automobile as the only means of convenient transportation. The County's land use policies also contribute to efforts to reduce air pollution.

The Vida Valiente proposal includes the following language regarding the Transportation Demand Management Program. While these efforts are laudable, they obviously do little to offset the 14,650 estimated new vehicle trips per year, plus the uncounted service personnel trips, refuse disposal trips, and the entirety of the construction phase, that the applicants insist need not be addressed at all.

Transportation Demand Management (TDM) Program

9. The project applicant/permittee shall implement the measures in the Transportation Demand Management (TDM) plan in order to meet the County's greenhouse gases emission reduction goals by 15 percent.

10. The project applicant/permittee shall appoint a staff person appointed as Transportation Demand Management (TDM) coordinator to facilitate employees reducing solo-vehicle commuting and report to County staff on January 15th of each year (annual basis) on the status on the strategies implemented.

11. The project applicant/permittee shall implement the following TDM measures:

    a. Financial incentives will be provided for employees to participate in carpools and vanpools.
    b. Electric car charging station will be provided to serve employees and Winery guests.
    c. Bicycle racks and storage areas will be provided for Winery employees and guests.
    d. High occupancy vehicles (HOV), which include vans and shuttle buses, will be encouraged for larger marketing events.
    e. Employee work hours will be staggered to the extent possible in order to avoid congestion during the peak traffic hours on Silverado Trail.
    f. Remote location and work-at-home opportunities will be offered to the extent possible.
    g. Winery visitor appointments will be scheduled, to the extent possible, during times that avoid peak hour traffic on Silverado Trail.

h. The Winery will enroll in "Napa Valley Forward," a program aimed at reducing traffic along major roads in the Napa Valley. This will be accomplished by the promotion of carpooling, vanpooling, bicycle commuting and the use of public transit systems as available.
i. The Winery will enroll in the "Bay Area Commuter Benefits Program," where employees report their carpooling activities and receive company-paid subsidies.
j. The Winery will prepare an Annual Performance Review and provide to Napa County.
k. Bicycle parking spaces will be provided as per the Napa County Municipal Code 18.110.040.

Napa County's Policy CON-77 clearly states that "the County's land use policies discourage scattered development which contributes to continued dependence on the private automobile as the only means of convenient transportation." That is exactly what this project is, and as such, does not meet the requirements of this Policy, and thus, should be denied.

Respectfully submitted,

Larry Vermeulen

670 Crystal Springs Road

April 29, 2024

Vida Valiente Winery Use Permit Application #P20-00079-UP

There Are Still Inconsistencies in the Permit Documents

At the December 6, 2023, Vida Valiente User Permit hearing, public comment was given regarding inconsistencies in the Application, Staff Report, and various supporting documents.

Applicant's consultant, Donna Oldford, stated during the hearing that there were "no inconsistencies."

It is worth noting that the Draft Tentative Staff Report for the May 1st hearing contains the following statements:

> Recommended Condition of Approval 1.1.i. has been updated to match the marketing event time range of 11:00 A.M to 10:00 P.M., as correctly referenced within Condition of Approval 4.3.

> Recommended Conditions of Approval 1.1.j. through l. have been updated to reference Condition of Approval 4.1 through 4.4. This reduces potential inconsistencies by only defining visitation and marketing program counts in one location.

> The Department of Public Works has updated their department memo to reflect the accurate number of proposed marketing events, as correctly referenced within Condition of Approval 4.3.

One would have to conclude that there WERE inconsistencies in the documents presented by Staff and Applicants to the Planning Commission at the December 6th hearing. Furthermore, the Permit documents continue to contain inconsistencies that make it impossible for the Planning Commission to know what it is they're actually voting on.

The Planning Commission Hearing – May 1, 2023, Recommended Findings, contains the following clauses. These are either unclear, unnecessary, or in conflict with stipulations found elsewhere in the submitted documents.

Auction Napa Valley's Category 5 Temporary Permit

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

The Applicant's original (presumably as it is unsigned and undated, except for a date stamp of 2/19 at the bottom of some of the pages) states the following regarding large events:

Larger Auction-Related Events:
One (1) per year with a maximum of 125 persons.
Portable restroom facilities will be used for these events.

The Vida Valiente Winery Use Permit Application, Project Statement – Revised November 12, 2022, states the following regarding large events:

Larger Auction-related Events: Two events per year with up to 125 persons attending.

The applicant's consultant testified during the December 6, 2023, hearing that the number of Large Marketing Events had been increased to 2 because Auction Napa Valley was no longer hosting them.

This raises two questions.

1. Why are these still being referred to as "Auction-Related Events"? In the Public Works Conditions of Approval, they are simply called "marketing events."
2. And more importantly, why is this clause regarding the ANV's Temporary Category Five Permit still included? The number of Large Events has already been adjusted upward to reflect the fact that ANV is no longer sponsoring them. To include this clause and then have ANV return to sponsoring these large events would result in double-dipping and a Large Event count of three.

It is worth noting that the Final Traffic Impact Report based its findings on a Large Event count of one. When the Applicants changed that to 2, the authors of the Traffic Impact Report somehow concluded that doubling the number of Large Events had no impact on their findings. To allow another Large Event under the ANV permit would render the Traffic Study completely irrelevant.

The clause regarding ANV's Temporary Permit should be removed.

Event parking on Crystal Springs Road

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

This exception for "approved marketing events" is in conflict with the express prohibition of same in the Conditions of Approval noted below.

The Department of Publics Work Memorandum of the Conditions of Approval, Updated February 29, 2024, prohibits On Street Parking in two locations:

On Street Parking

7. Parking within the public right-of-way is prohibited during visitation, large marketing and/or temporary events

Transportation Demand Management (TDM) Program

11. The project applicant/permittee shall implement the following TDM measures:

I. There will be no parking within the public right-of-way that is associated with any of the Winery hospitality events, including larger marketing events. All parking will be accommodated on-site, or shuttles will be provided from off-site legal parking areas.

Furthermore, the Vida Valiente Winery Use Permit Application, Project Statement – Revised November 12, 2022, contains the following two clauses pertaining to event parking:

> A total of ten (10) parking spaces are proposed for the winery, including nine (9) standard spaces and one (1) ADA space suitable for unloading a van. For larger of the events, vineyard rows can accommodate a number of valet-parked cars. Small shuttle buses may be made available for some of the larger (60 persons and larger) marketing events. The shuttle buses will operate from an off-site legal parking lot or operate from hotels where guests may be staying. There will be no off-site parking along Crystal Springs Road.
>
> Larger Auction-related Events: Two events per year with up to 125 persons attending. Portable restroom facilities will be brought on-site for this larger event. Shuttle bus service or vans may be made available for some of the attendees at larger events. Shuttle service will be staged from an off-site area offering legal parking or from hotels and other guest accommodations where invited guests may be staying. On-site valet parking will also be provided, with valets parking guests' cars along vineyard rows on the property.

The Final Traffic Impact Study, September 7, 2021, states:

> "When large marketing events are held excess parking will be accommodated along the Winery access road and along vineyard roads."

Finally, at the December 6, 2023, hearing, the Applicant's consultant said:

> "On the parking for larger events, we're proposing to use shuttle service for the larger events."
>
> "But certainly, for the larger events, there'll be shuttle service and they would shuttle people from already-approved parking areas, whether it's a hotel or another parking area."
>
> "There will be no parking along Crystal Springs Road. That's not allowed. It's not going to happen."

Thus, there is no need for an exception to allow event parking on the public road and it should be removed from the Use Permit.

It is worth noting that while the use of shuttle service for larger events has been touted as a means to reduce traffic and the Applicant's consultant mentioned ONLY shuttle service for larger events, the clause "valet parking" remains in the permit. Thus, no real limitation is placed upon the number of guests that will simply drive to the event rather than take a shuttle.

Traffic Mitigation Measure

MM TRANS-1: All promotional information and driving directions provided to guests will only show the Crystal Springs Road connections to Silverado Trail north of the site as the project access route. Also, a sign with the Winery's name will be provided on Silverado Trail at the Crystal Springs Road intersection. Finally, signs will be provided along both Winery Driveways for outbound drivers with an arrow pointing north and a message indicating to make a left turn to access Silverado Trail. Sign size and location are subject to NCC Section 18.116.055 and 18.116.060. A directional sign shall not be constructed, or promotional material distributed, that guides individuals to enter the winery from Deer Park Road or Sanitarium Road.

The Traffic Mitigation Measure, as written, applies only to guests and is purely voluntary. It is unenforceable and there is no reporting mechanism. The onus is placed upon the neighbors to police the Project's traffic.

All parties agree that the southern end of Crystal Springs Road is inadequate to handle the project-generated traffic. The Traffic Mitigation Measure is the Applicants' attempt to resolve this issue by directing guests to use the northern end of Crystal Springs Road for ingress/egress via the Silverado Trail. Unfortunately, this measure is voluntary and applies only to guest traffic, not service personnel, consultants, trash collection, etc. More importantly, the Applicants' consultant stated that construction traffic was considered temporary in nature so the Traffic Mitigation Measure would not apply to it at all.

The Applicant stated publicly at the last hearing that construction traffic would be routed to the north, but again, the document you are being asked to approve only applies to guest traffic.

It is worth noting that a similar condition was applied to the Woodbridge Winery Use Permit of 2005 (#P04-0551-UP) and that condition has been largely ignored.

Unless the Traffic Mitigation Measure applies to ALL winery-related traffic, including construction traffic, AND has a reporting and enforcement mechanism, including penalties for failure to comply, it is essentially meaningless.

The Use Permit is a legally binding agreement between the Applicant and The County of Napa, and by extension, the citizens of Napa County. The Planning Commission is acting as the Agent for the

citizens. It derives its power from, and is responsible to, those citizens. As such, to approve an agreement that clearly has inconsistencies would be a failure by the Commission to adequately represent the best interests of the County and its citizens.

You wouldn't sign a will containing conflicting statements. You wouldn't sign a home purchase agreement that said in one place that the home had 3 bedrooms, but somewhere else said 4 bedrooms. You wouldn't sign a mortgage that said 4% interest on one page and 8% on another.

And yet, that is what you're being asked to do today. Sign off on a document that contains inconsistencies and ambiguities. It is an irresponsible request. And frankly, Staff and Applicants should have done better, especially considering that the inconsistencies were pointed out to them last December.

If you are inclined to deny this project, the inconsistencies don't really matter. But if you vote to approve this project, with these inconsistencies unresolved, you are doing a disservice to the citizens you have sworn to represent.

To do so invites conflict in the future and puts an undue burden on the neighbors to have to police the project. The County has demonstrated the inability to adequately enforce the conditions of Use Permits under the best of circumstances, let alone when the Permit Documents are unclear or in conflict with one another.

Respectfully submitted,

Larry Vermeulen

670 Crystal Springs Road

April 29, 2024