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***Via Email***

July 17, 2018

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**Re: Nova Wine Warehouse, Use Permit P16-00456 Mitigated Negative Declaration**

Honorable Members of the Planning Commission:

I am writing on behalf of Laborers International Union of North America, Local 324 and its members living and working in and around Napa County (“LIUNA”) regarding the Mitigated Negative Declaration (“MND”) prepared for the proposed Nova Wine Warehouse, Use Permit P16-00456 (the “Project”). The matter will come before the Napa County Planning Commission on July 18, 2018, and is listed as Agenda Item 7.B.

After reviewing the MND prepared for the Project along with our experts, we believe there is a fair argument that the Project may have significant adverse environmental impacts and that an environmental impact report should therefore be prepared pursuant to the California Environmental Quality Act, Public Resources Code §§ 21000, et seq.

LIUNA submits herewith the expert comments of wildlife ecologist Dr. Shawn Smallwood. Dr. Smallwood’s expert comments and resume are attached hereto as Exhibit A. LIUNA also submits herewith comments on the Project’s air and greenhouse gas emissions from

the environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”). SWAPE’s comments and the resumes of their consultants are attached hereto as Exhibit B. LIUNA also submits comments from expert transportation analyst Daniel Smith, Jr., P.E., a registered civil and traffic engineer. Mr. Smith’s expert comments and resume are attached hereto as Exhibit C.

LIUNA reserves the right to supplement these comments in advance of and during public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997). Thank you for your attention to this matter.

### **PROJECT DESCRIPTION**

The Project proposes to construct a new light industrial building with approximately 400,500 square feet of floor area which includes approximately 391,934 square feet of warehouse space, and 8,566 square feet of office space. MND, p. 1. While no tenant has been identified, the warehouse is intended for wine storage. *Id.* On-site parking will be provided for 241 vehicles, as well as 22 truck/trailer spaces. *Id.* The east elevation of the warehouse will include 34 depressed loading docs, and the west elevation will include 46 depressed loading docks. *Id.* The MND estimates that the Project will employ 20 full-time employees, and 20 part-time employees. *Id.*

The Project site is currently vacant, has been previously graded, and is located within a partially developed industrial/business park. A portion of the northern boundary of the Project site is adjacent to Suscol Creek. The site includes non-native grasses, a smattering of bushes, and a riparian area along Suscol Creek. Two properties totaling 49.8 acres adjoin the west side of the Project site. The northerly property is planted in vines, with the southerly property is undeveloped and wraps around the southern end of the property. *Id.*

### **LEGAL STANDARDS**

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 [“CBE v. SCAQMD”], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109 [“CBE v. CRA”].)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also

functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (Pub. Resources Code, § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927.) In limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs., § 15371 [“CEQA Guidelines”]), only if there is not even a “fair argument” that the project will have a significant environmental effect. (Pub. Resources Code, §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Public Resources Code §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a *reasonable possibility* of a significant effect on the environment. (Pub. Resources Code, §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (CEQA Guidelines, § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors, supra*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies

weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a **preference for resolving doubts in favor of environmental review.**” (*Pocket Protectors*, 124 Cal.App.4th at 928 [emphasis in original].)

As a matter of law, “substantial evidence includes . . . expert opinion.” (Pub. Resources Code, § 21080(e)(1); CEQA Guidelines, § 15064(f)(5).) CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. (CEQA Guidelines § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, 124 Cal.App.4th at 935.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Resources Code, § 21068; see also CEQA Guidelines, § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc.*, 13 Cal.3d at 83.) In *Pocket Protectors*, the court explained how expert opinion is considered. The Court limited agencies and courts to weighing the admissibility of the evidence. (*Pocket Protectors*, 124 Cal.App.4th at 935.) In the context of reviewing a negative declaration, “neither the lead agency nor a court may ‘weigh’ conflicting substantial evidence to determine whether an EIR must be prepared in the first instance.” (*Id.*) Where a disagreement arises regarding the validity of a negative declaration, the courts require an EIR. As the Court explained, “[i]t is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project.” (*Id.*)

CEQA requires that an environmental document include a description of the project's environmental setting or “baseline.” (CEQA Guidelines, § 15063(d)(2).) The CEQA “baseline” is the set of environmental conditions against which to compare a project's anticipated impacts. (*CBE v. SCAQMD*, 48 Cal.4th at 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 [*“Save Our Peninsula”*].)

## ANALYSIS

### **I. An EIR is Required because the Project will have Significant Impacts on Biological Resources.**

#### **A. The MND Fails to Adequately Analyze Impacts to Biological Resources.**

The MND concludes that a number of special-status species will not be impacted by the project, but did not follow any protocols developed to detect those species. Detection surveys are needed to determine potential impacts to biological resources and to inform formulation of appropriate mitigation measures. Smallwood, p. 15. “Detection survey guidelines have been developed by professional biologists for good reasons. Special-status species are often difficult to detect, and negative findings should be based on standards designed to ensure a reasonable likelihood of detection had been implemented.” Smallwood, p. 7. For example, to comply with the California Department of Fish & Wildlife burrowing owl breeding season survey guidelines, at least four surveys are needed, each separated by three weeks, and according to specific schedule attributes. *Id.* at 15.

Despite the importance of species-specific standards and methods, in this instance, “[n]o detection survey protocols were implemented for any special-status species of wildlife that have been reportedly observed all around the project site.” Smallwood, p. 7.

According to the consulting firm Zentner and Zentner that prepared the biological impact assessment, they visited the Project site on four days from later April to early June 2016. They provide no details on the times of day they visited, how long they stayed, and what they did to survey for wildlife. Smallwood, p. 7. As far as what is documents, Zentner and Zentner could have been on the site for 10 minutes per visit. Without this information, and without conducting scientifically appropriate survey detection methods, there is no substantial evidence to support the conclusion that the Project will not have a biological impact.

#### **B. The Project May Have Significant Impacts on Special Status Species, Requiring Preparation of an EIR.**

Dr. Smallwood concludes that the biological analysis conducted as part of the SMND are woefully incomplete and inadequate, and are not based on substantial evidence.

***California red-legged frog.*** The California red-legged frog is a federally threatened species. Smallwood, p. 10. Zentner and Zentner dismissed the likelihood of impacts on the California red-legged frog because the Project site lacks breeding habitat. Dr. Smallwood disagrees with this conclusion. Based on his experience conducting many California red-legged frog surveys, “[t]o successfully breed, California red-legged frogs require more of the environment than just their ‘breeding habitat;’ they also require upland refugia and dispersal

routes.” Smallwood, p. 10. Therefore, Dr. Smallwood concludes that “project impacts to this species are likely.” *Id.*

***Tricolored blackbird.*** This species is listed as threatened under the California Endangered Species Act. Zentner and Zentner dismissed the likelihood of impacts on the tricolored blackbird based on lack of habitat on the Project site. Dr. Smallwood disagrees with this conclusion. Smallwood, p. 10. Dr. Smallwood has “many times observed tricolored blackbirds foraging in tall- and short-stature vegetation both during the breeding and nonbreeding season.”

***Golden eagle.*** Zentner and Zentner dismissed the likelihood of impacts on this species because the site lacks breeding habitat. According to Dr. Smallwood, however, “golden eagles cannot breed successfully without access to foraging habitat within their nesting territories, and for that matter, within their larger home ranges outside the breeding season, because without food folder eagles cannot survive to reproduce to feed their chicks.” *Id.* Accordingly, Dr. Smallwood concludes that the “Project would adversely affect golden eagles.” *Id.*

***Western burrowing owl.*** Zentner and Zentner dismissed the likelihood of impacts on burrowing owls because the habitat is marginal for burrowing owls. Zentner and Zentner did not implement the appropriate CDFW (2012) survey guidelines, and therefore lack the foundation to conclude that the species’ occurrence is unlikely. Smallwood, p. 11.

***Ferruginous hawk.*** Zentner and Zentner dismissed the likelihood of impacts on this species because breeding habitat does not occur on the project site. According to Dr. Smallwood, “Ferruginous hawks breed far to the north and visits this part of California during the winter. Foraging over winter is just as important to the persistence of this species as is breeding habitat because breeding cannot succeed in the absence of foraging. The project would have adverse consequences for ferruginous hawk by destroying the species’ winter forage.”

***Swainson’s hawk.*** Swainson’s hawk is listed as threated under the California Endangered Species Act. Zentner and Zentner determined that this species is likely to occur onsite. Dr. Smallwood agrees. He saw a family of Swainson’s hawks flying right next to the site when he visited. Smallwood, p. 11. “Based on the determination of presence of this species alone, the preparation of an EIR is warranted. A more thorough analysis of project impacts on Swainson’s hawk is needed, and so is a more detailed mitigation plan.”

***Northern harrier.*** Zentner and Zentner concluded that this species is unlikely to occur onsite because they would have been observed otherwise. Dr. Smallwood rejects this logic. Dr. Smallwood has surveyed for northern harriers over thousands of hours in areas where northern harriers are relatively abundant. Smallwood, p. 11-12. At any given observation station, Dr. Smallwood will detect northern harriers during some surveys and not during others. In addition, “northern harriers become more cryptic during the breeding season, which is when Zentner and Zentner visited the project site.” *Id.* at 12. Dr. Smallwood concludes that northern harriers next in the precise type of environment that is available at the Project site. *Id.*

*Pallid bat.* Zentner and Zentner improperly concluded that bats are unlikely to occur onsite and the habitat to be marginal. According to Dr. Smallwood, however, most species of bats roost in a variety of settings, occupying a variety of roosts in both natural and manmade structures. Smallwood, p. 12.

### **C. The Project will have a Significant Impact on Wildlife Movement and Habitat Fragmentation.**

The MND fails to analyze the Project's impact on wildlife movement. Instead, the MND improperly dismisses the Project's potential to impact wildlife movement by applying a false threshold of significance. Smallwood, p. 12. The MND claims that impacts to wildlife movement result solely from interference with wildlife movement corridors. *Id.* But the CEQA threshold of significance is much broader than this. Under CEQA, a project will have a significant biological impact if it would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites." CEQA Guidelines, App. G. According to Dr. Smallwood:

The primary phrase of the standard goes to wildlife movement regardless of whether the movement is channeled by a corridor. In fact, whereas natural corridors sometimes exist, the corridor concept mostly applies to human landscape engineering to reduce the effects of habitat fragmentation (Smallwood 2015). Wildlife movement in the region is often diffuse rather than channeled (Runge et al. 2014, Taylor et al. 2011) unless anthropogenic changes have forced channeling (Smallwood 2015). Wildlife movement also includes stop-over habitat used by birds and bats (Taylor et al. 2011), staging habitat (Warnock 2010), and crossover habitat used by nonvolant wildlife during dispersal, migration or home range patrol.

Smallwood, pp. 12-13.

Dr. Smallwood also concludes that 150-foot setback from the Creek is insufficient to avoid impacts to wildlife moving across the Project site. "The functionality of Suscol Creek as a movement route would diminish significantly with a warehouse built 150 feet away." Smallwood, p. 13.

Moreover, as Dr. Smallwood points out, the Project site is within one of two remaining patches of open space along an 18-mile stretch of valley bottom from Napa to Vallejo. "Any terrestrial species of wildlife requiring open space for east-west travel will be severely harmed by the loss of this open space." *Id.* An EIR is needed to adequately analyze and mitigate the Project's impacts on habitat fragmentation and wildlife movement.

At a minimum, Dr. Smallwood concludes that substantial compensatory mitigation is needed to mitigate the Project's impacts on wildlife movement.

**D. The MND Fails to Analyze the Project's Impacts on Wildlife from Additional Traffic Generated by the Project.**

The MND contains no analysis of the impacts of the Project's added road traffic on special-status species of wildlife, including species such as the California red-legged frog, California tiger salamander, and American badgers. Smallwood, p. 13. Regardless of whether these species live on site, these and other special status species must cross roadways that will experience increased traffic volume as a result of the Project. *Id.*

Vehicle collisions with special-status species is not a minor issue. Dr. Smallwood explains:

Vehicle collisions have accounted for the deaths of many thousands of reptile, amphibian, mammal, bird, and arthropod fauna, and the impacts have often been found to be significant at the population level (Forman et al. 2003). Increased use of existing roads will increase wildlife fatalities (see Figure 7 in Kobylarz 2001). It is possible that project-related traffic impacts will far exceed the impacts of land conversion to commercial use. But not one word of traffic-related impacts appears in the EIR – a gross shortfall of the CEQA review.

Smallwood, p. 13.

An EIR should be prepared to analyze the Project's impacts on biological resources as a result of increased traffic collisions, and compensatory mitigation should be required to reduce this impact.

**E. The MND Fails to Analyze the Project's Impacts from the use of Pest Control Measures.**

The MND does not discuss the potential impact of using pesticides inside and outside of the proposed warehouse. As a wine storage distribution facility, there will likely be steps taken to abate pests. There are many businesses that provide services for controlling stored products pests, perching birds, and rodents and other mammal pests within and around distribution warehouses. Smallwood, p. 14. These businesses advertise exclusion strategies and fumigation for stored products pests, glue boards for rodents, and other measures including anticoagulant poisons and acute toxicants. *Id.* The use of these methods "can harm non-target wildlife through direct exposure and indirect exposure via predation and scavenging." *Id.* "Pest control involving toxicants can result in the spread of toxicants beyond the warehouse." *Id.*

An EIR is needed to analyze the potential impacts of animal damage control associated with the proposed Project. Anticipated animal control strategies at the Project should be detailed, and impacts mitigated.



## **F. The Project will have Cumulative Impacts on Biological Resources.**

Dr. Smallwood concludes that the Project will have a significant cumulative impact on biological resources. Smallwood, p. 15. According to Dr. Smallwood, “[p]roject impacts on any special-status species should, by default, be considered as contributions to cumulative effects. This is so because all special-status species are so listed due to cumulative effects of human activities.” Smallwood, p. 15. In addition, Dr. Smallwood notes that the Project site is within one of two remaining patches of open space along an 18-mile stretch of valley bottom from Napa to Vallejo. When combined with previous and future development, “[a]ny terrestrial species of wildlife requiring open space for east-west travel will be severely harmed by the loss of this open space. Smallwood, p. 13. An EIR is needed to fully analyze and mitigate the Project’s cumulative biological impacts.

## **G. Mitigation Measures BIO-1 and BIO-2 are inadequate.**

The MND proposes preconstruction surveys as mitigation measures for potential impacts on California red-legged frog and breeding birds. But Dr. Smallwood explains that detection surveys should be implemented to inform an EIR, and then mitigation measures proposed based on the results of those surveys. Smallwood, p. 15. Preconstruction surveys for breeding birds are inadequate mitigation. *Id.* “Detection surveys are necessary for informing the public and decision-makers about potential impacts and appropriate mitigation for breeding birds. Appropriate detection surveys, which are available for multiple bird species, should be implemented to inform an EIR.” *Id.*

## **II. The Project Will Have Significant Greenhouse Gas Impacts.**

### **A. The MND Fails to Consider Required Cold Storage for the Warehouse.**

The Project’s air quality and greenhouse gas emissions were estimated assuming the Project’s warehouse land use will be exclusively unrefrigerated warehouse. SWAPE, p. 3. Because the Project is intended as a wine warehouse, climate control and refrigeration will be needed in at least a portion of the warehouse. *Id.* SWAPE explains that refrigerated warehouses release more air pollutants and GHG emissions than unrefrigerated warehouses. *Id.* By not including refrigerated warehouse as a potential land use, the Project’s operational emissions may be grossly underestimated. *Id.* at 4. The air quality analysis must be updated to account for potential cold storage needs at the warehouse.

### **B. The MND’s Daily Operational Vehicle Trip Estimates is Incorrect.**

According to the MND’s Trip Generation Study, the Project will only generate 202 daily vehicle trips during operation. Trip Generation Study, p. 2. Rather than rely on the ITE *Trip Generation Manual* to determine expected daily trips based on the floor area of the Project, the Study based its estimate on the number of employees the warehouse will generate. SWAPE, p. 5. The Study’s assertion that “the use of rates based on total floor area appears to be unreasonable” is not supported by any evidence.

### **C. An Updated Analysis Demonstrates that the Project Will Have a Significant Greenhouse Gas Impact.**

SWAPE prepared an updated GHG analysis including more site specific information and updated parameters. SWAPE, p. 6. Since the exact amount of cold storage is unknown, SWAPE conservatively estimated 15% of the warehouse would be refrigerated. *Id.* In addition, SWAPE relied on default values to estimate daily vehicle trips, as is industry standard. *Id.*

When the corrected input parameters are used, SWAPE found that the Project will emit 2,687 MT CO<sub>2</sub>E per year, which is more than twice the 1,100 MT CO<sub>2</sub>E CEQA threshold of significance established by the Bay Area Air Quality Management District (“BAAQMD”). *Id.* As a result, the Project will have a significant GHG impact, which must be analyzed and mitigated in an EIR.

### **D. The MND Fails to Demonstrate Consistency with Long-Term Statewide Greenhouse Gas Reduction Goals.**

The Project’s GHG Technical Memo only accounts for the reductions in GHG emissions required to meet the 2020 emission reduction targets set forth in AB 32. In doing so, the MND fails to demonstrate consistency with the more stringent 2030 reduction targets set forth in Executive Order B-30-15 and Senate Bill 32. SWAPE, p. 7. These require California to achieve a new, more aggressive statewide emissions reductions target of 40% below 1990 levels by 2030. *Id.* This new GHG reduction goal is widely acknowledged as a necessary interim target to ensure that California meets its long-range goals of reducing GHG emissions by 80% below 1990 levels by 2050. *Id.* Without any evidence showing that the Project would comply with these more stringent goals, the Project may have a potentially significant impact that has not been analyzed and mitigated.

## **III. The MND Underestimates the Project’s Traffic Impact.**

The MND’s analysis of the Project’s traffic generation relies on assumptions that are inconsistent with the proposed Project. Smith, p. 1. Traffic engineer Dan Smith explains in his comments that the MND estimates trip generation using ITE *Trip Generation, 9th Edition* rates for warehouse use on a per-employee basis. *Id.* The MND assumes that the Project will employ 20 full-time and 20-part time employees, according to the Project applicant. *Id.* However, the Project description and the physical site plan disclose that there will be 80 loading docks, 22 trailer parking spaces, and 241 passenger vehicle parking spaces. *Id.* at 1-2; MND at 1. Accordingly, the Project provides passenger parking spaces for six times as many vehicles as would be needed for the 40 employees if they were all on site at the same time, and all drove alone to and from work. Smith, p. 2. It appears that the employee count may be an initial workforce, with additional employees coming on board at a later time. According to Mr. Smith, the MND underestimates the Project’s trip generation by six times. *Id.* This discrepancy must be corrected.

#### **IV. The MND's Cumulative Impact Analysis Violates CEQA.**

For each environmental impact, the MND concludes that the Project would not result in cumulatively significant impacts. MND, p. 24. This conclusion is based on improper reasoning, and an analysis that is not in compliance with CEQA.

An initial study and MND must discuss a Project's significant cumulative impacts. 14 CCR § 15130(a). This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

"Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." 14 CCR § 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." *Id.* "The 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." *Comm. for a Better Env't v. Cal. Resources Agency* ("CBE v. CRA") (2002) 103 Cal.App.4th 98, 117; 14 CCR § 15355(b). A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

The CEQA Guidelines allow two methods for satisfying the cumulative impacts analysis requirement: the list-of-projects approach, and the summary-of-projects approach. Under either method, the MND must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of the cumulative impacts, and examine reasonable mitigation options. 14 CCR § 15130(b). The MND's cumulative impacts analysis does not comply with either of these requirements.

The MND's conclusory cumulative impact analysis is devoid of substantial evidence and errs as a matter of law and commonsense. Lacking any substantial evidence, the MND fails to provide sufficient information for the public to evaluate cumulative impacts that may result from approval of the Project.

Indeed, the MND does not mention a single past, present, or future project that it evaluated cumulatively with the instant Project. Without any information on what – if any – cumulative projects were considered, and what environmental impacts those cumulative projects have, the public and decision makers lack any information on which to assess the validity of the cumulative impacts conclusions under CEQA.

The entire cumulative impact analysis for the Project consists of nothing more than the following paragraph:

The project does not have impacts that are individually limited but cumulatively considerable. ....The project does not propose new development that would have a significant impact on the environment or substantially change the existing conditions. With the imposition of standard and project specific conditions of approval, the project does not have impacts that are individually limited but cumulatively considerable.

MND, p. 24.

This bare conclusion does not constitute an analysis. Without even the most basic information about any of the cumulative projects or their environmental impacts, the MND's general cumulative impact conclusion is not supported by substantial evidence.

In addition to being conclusory, the cumulative "analysis" is also based on flawed logic. The conclusion that the Project will have no cumulative impact because each individual impact has been reduced to a less-than-significant level relies on the exact argument CEQA's cumulative impact analysis is meant to protect against. The entire purpose of the cumulative impact analysis is to prevent the situation where mitigation occurs to address project-specific impacts, without looking at the bigger picture. This argument, applied over and over again, has resulted in major environmental damage, and is a major reason why CEQA was enacted. As the court stated in *CBE v. CRA*, 103 Cal. App. 4th at 114:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

(citations omitted).

A new cumulative impacts analysis is needed for the Project that complies with CEQA's requirement to look at the Project's environmental impact, combined with the impacts of other past, current, and probable future projects. An EIR must be prepared to fully analyze the Project's cumulative impacts.

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**CONCLUSION**

For the foregoing reasons, an EIR is required to analyze and mitigate the Project's potentially significant environmental impacts. The MND is wholly inadequate. Thank you for your attention to these comments.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a long horizontal stroke.

Rebecca L. Davis  
Lozeau | Drury LLP

**From:** [Trippi, Sean](#)  
**To:** [Fuller, Lashun](#); [Thepkaisone, Cesselea](#)  
**Cc:** [Smith, Vincent \(PBES\)](#); [Gallina, Charlene](#); [Anderson, Laura](#); [Apallas, Chris](#)  
**Subject:** FW: Updated Comments - Nova Wine Warehouse MND  
**Date:** Tuesday, July 17, 2018 3:35:17 PM  
**Attachments:** [2018.07.17 LIUNA PC Comments Nova Warehouse.pdf](#)

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Please forward to the Planning Commission.

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**From:** Rebecca Davis <[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)>  
**Sent:** Tuesday, July 17, 2018 3:24 PM  
**To:** [joellegPC@gmail.com](mailto:joellegPC@gmail.com); Whitmer, David <[Dave.Whitmer@countyofnapa.org](mailto:Dave.Whitmer@countyofnapa.org)>;  
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**Subject:** Updated Comments - Nova Wine Warehouse MND

Please find the attached updated comments by Laborer International Union of North America, Local 324 regarding the Nova Wine Warehouse Mitigated Negative Declaration, which is listed as item 7.B on tomorrow's Planning Commission agenda.

Sincerely,

Rebecca Davis

Rebecca L. Davis  
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On Mon, Jul 16, 2018 at 2:21 PM, Rebecca Davis <[rebecca@lozeaudrury.com](mailto:rebecca@lozeaudrury.com)> wrote:

| Please find the attached comments by Laborer International Union of North America, Local

324 regarding the Nova Wine Warehouse Mitigated Negative Declaration, which is listed as item 7.B on the July 19, 2018 Planning Commission agenda.

Sincerely,

Rebecca Davis

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