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September 20, 2017

**Via Email and U.S. Mail**

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**Via Email Only**

Stephanie Stowers, [sstowers@sjgov.org](mailto:sstowers@sjgov.org)

**Re: Comments on the Revised Initial Study/ Negative Declaration for  
the Proposed Delicato Vineyards Project: Use Permit # PA-  
1700032, SCH # 2017032056**

Dear Ms. Sullivan, Ms. Duzenski, and Ms. Stowers:

We are writing on behalf of **San Joaquin County Residents for Responsible Development** ("San Joaquin Residents") to provide comments on the revised Initial Study/Negative Declaration ("IS/ND") for the Delicato Vineyards Project, Use Permit #PA-1700032 (UP), ("Project"). The IS/ND was prepared by San Joaquin

County (the "County") pursuant to the California Environmental Quality Act ("CEQA")<sup>1</sup> and was released on August 21, 2017.

The Project seeks a Use Permit to expand an existing winery in three phases over fifteen years. Phase 1 includes construction of about 801,305 square feet of buildings, including administration, bottling, warehouse, lab, and maintenance. Phase 2, to be completed in ten years, includes the conversion of the existing 47,675 square foot bottling, warehouse, and office building into storage and the existing 108,874 square foot warehouse to barrel storage; the construction parking area car ports totaling 54,000 square feet with roof mounted solar, 4 refrigeration units with canopies totaling 8,568 square feet, a 25,000 square foot warehouse building, and a 6,000 square foot bottling cellar; and the installation of tanks, fermenters, and other ancillary equipment. Phase 3, to be completed within 15 years, includes the construction of a new tank farm with 80 additional wine storage tanks. The Project site is located on the west side of South State Route 99 West Frontage Road, 378 feet south of East French Camp Road, north of Manteca.

As explained more fully below, the revised IS/ND prepared for the Project does not comply with CEQA requirements. The County may not approve Use Permit #PA-1700032 (UP) until the County prepares an Environmental Impact Report ("EIR") that adequately analyzes the Project's potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to minimize these impacts.

## **I. INTEREST OF SAN JOAQUIN RESIDENTS**

San Joaquin Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. San Joaquin Residents includes Raul Hernandez, Jason Miranda, Steve Stevenson, and Matt Richard, Plumbers & Pipefitters Local 442, International Brotherhood of Electrical Workers Local 595, and Sheet Metal Workers Local 104, and their members and their families who live and/or work in San Joaquin County.

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<sup>1</sup> Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs., §§ 15000 et seq. ("CEQA Guidelines").



The individual members of San Joaquin Residents live, work, and raise their families in San Joaquin County. They would be directly affected by the Project's impacts. Individual members may also work on the Project itself. They will therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

The organizational members of San Joaquin Residents also have an interest in enforcing the County's planning and zoning laws and the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, San Joaquin Residents' members are concerned about projects that present environmental and land use impacts without providing countervailing economic and community benefits.

## **II. THE COUNTY HAS FAILED TO COMPLY WITH CEQA'S PROCEDURAL REQUIREMENTS.**

The Planning Commission may not adopt the Negative Declaration and approve Use Permit-1700032 on September 21, 2017 because the County has failed to comply with CEQA's procedural requirements.

### **A. The County failed to provide adequate public notice.**

CEQA requires that the lead agency provide notice of its public comment opportunities to the public and those interested organizations and individuals who have requested such notice in writing.<sup>2</sup> On April 27, 2017, San Joaquin Residents requested mailed notice of the availability of any environmental review document, prepared pursuant to CEQA, related to the Delicato Vineyards Project, PA-1700032 UP, as well as a copy of the environmental review document when it is made available for public review.<sup>3</sup> Despite this request, San Joaquin Residents did not

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<sup>2</sup> CEQA Guidelines, § 15072.

<sup>3</sup> Attachment A, Request for Mailed Notice of CEQA Actions and Hearings – Delicato Vineyards Project (PA-1700032 (UP)).

receive notice that the IS/ND was available until August 28, 2017 – seven days after the public comment period commenced.

Under CEQA, the public review period shall not be less than 30 days when a proposed negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies (as was the case here).<sup>4</sup> The County violated this requirement by not providing San Joaquin Residents timely notice of the public comment period. Because notice was not provided until August 28, 2017, the public comment period is required to run until at least September 27, 2017 (30 days after receipt of the notice) to submit comments. Accordingly, the Planning Commission may not approve the Negative Declaration at its September 21, 2017 meeting since it would violate the statutorily required public review.

**B. The County failed to indicate the starting and ending dates for the review period.**

The public comment period requirements were also violated because the County failed to provide the public the starting and ending dates for the review period. CEQA requires that the agency provide the starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration.<sup>5</sup> When a proposed negative declaration has been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.<sup>6</sup> The public review period and the state agency review period may, but are not required to, begin and end at the same time.<sup>7</sup>

The notice that we received did not indicate the start and end date of public review.<sup>8</sup> Rather, we received an email on Monday, August 28th indicating that “[a]dditionally, an updated Initial Study and Negative Declaration were posted this week. I have attached a copy for your information. Any reports cited within the initial study can be found by contacting the San Joaquin County Community

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<sup>4</sup> CEQA Guidelines, § 15073(a).

<sup>5</sup> CEQA Guidelines, § 15073.

<sup>6</sup> CEQA Guidelines, § 15073.

<sup>7</sup> CEQA Guidelines, § 15073.

<sup>8</sup> Attachment B, Email from Stephanie Stowers to Janet Laurain (Aug. 28, 2017)



Development Department.”<sup>9</sup> The copy of the IS/ND simply stated the date the document was posted (August 21, 2017).<sup>10</sup> We were not informed until September 14, 2017 that the County was using the comment period posted on the State Clearinghouse (which itself is inadequate because it only 29 days long (August 21, 2017 to September 19, 2017)).<sup>11</sup>

The County informed us that it would accept comments until the date of the Planning Commission hearing on September 21, 2017.<sup>12</sup> As discussed above, this new date still fails to comply with the public comment period notice and duration requirements.

Due to the errors in noticing the public comment period, a new public comment period that complies with CEQA must be held prior to project approval.

**C. The County failed to provide all documents referenced and relied upon.**

CEQA requires that the notice address where copies of the negative declaration and where all documents referenced in the negative declaration are available for review.<sup>13</sup> All documents referenced or relied upon in the ND must be made available to the public for the *entire* public comment period, as required by the California Environmental Quality Act (“CEQA”).<sup>14</sup> The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process.<sup>15</sup> As noted by leading CEQA commentators:

[CEQA] appears to compel agencies to make available for public review all documents on which agency staff or consultants expressly rely in preparing a negative declaration. In light of case law emphasizing the importance of ensuring that the public can obtain and review

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<sup>9</sup> Attachment B, *supra*.

<sup>10</sup> Attachment B, *supra*.

<sup>11</sup> Attachment B, *supra*.

<sup>12</sup> Attachment C, Email from Stephanie Stowers to Janet Laurain (Sept. 14, 2017).

<sup>13</sup> Pub. Resources Code, § 21092(b)(1); CEQA Guidelines, 15072(g)(4).

<sup>14</sup> See Pub. Resources Code, § 21092, subd. (b)(1); CEQA Guidelines, § 15072, subd. (g)(4).

<sup>15</sup> *Ultramar v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689.

documents on which agencies rely for the environmental conclusions (see, e.g., *Emmington v. Solano County Redevelopment Agency* (1st Dist. 1987) 195 Cal.App.3d 491, 502-503), agencies, to be prudent, should ensure that they comply literally with this requirement.<sup>16</sup>

San Joaquin Residents asked for documents referenced and relied upon in the IS/ND. In particular, San Joaquin Residents requested documents related to CalEEMod output files and the prioritization screening files to determine whether a Health Risk Assessment is required. Both of these files are referenced on page 8 of the IS/ND. The County did not have these files, contrary to its statement, above, “[a]ny reports cited within the initial study can be found by contacting the San Joaquin County Community Development Department.”<sup>17</sup>

In its Staff Report for the September 21, 2017 Hearing, the County indicates that “the Community Development Department has received five (5) public records requests from Adams Broadwell Joseph & Cardozo regarding the project. Each of these requests was fulfilled.”<sup>18</sup> But also,

“An email was received from Sheila Sannadan of Adams Broadwell Joseph & Cardozo on August 30, 2017 that requested documents cited within the Initial Study and Negative Declaration. On September 5, 2017, Mo Hatef, Senior Planner, replied via email to Ms. Sannadan and asked what documents were requested for review, and state that the Community Development Department would either provide the documents to Ms. Sannadan or make them available for viewing at the Community Development Department office. No response was received to this email.”<sup>19</sup>

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<sup>16</sup> Remy, Thomas, Moose and Manley, *Guide to the California Environmental Quality Act*, p. 300 (Solano Press, 2007).

<sup>17</sup> Attachment C, *supra*; Attachment D, Email from Stephanie Stowers to Janet Laurain (re: CalEEMod) (Sept. 12, 2017); Attachment E, Email from Stephanie Stowers to Janet Laurain (re: Prioritization screening) (Sept. 14, 2017).

<sup>18</sup> Staff Report, p. 2.

<sup>19</sup> Staff Report, p. 2 (San Joaquin Residents disputes this characterization because San Joaquin Residents provided a formal letter requesting specific documents after Ms. Hatef's email).



In the County's email, it responded that it did not have the CalEEMod and prioritization screening files to determine whether a Health Risk Assessment. Thus, the County did not respond to our public records requests because it did not have the documents it claimed would be available for viewing at the Community Development Department office.

The County's failure to provide access to all documents referenced or relied upon in the ND was prejudicial since it allowed insufficient time for a meaningful assessment of the Project and its potential impacts. For example, the Air District provided San Joaquin Residents with prioritization screening files for a boiler on September 18, 2017. The Site Plan states this boiler already exists and is permitted. However, because we did not receive this document until this week our air quality experts could not independently evaluate the boiler's impacts on air quality. The failure of the County to provide complete and timely information in response to our requests especially compromised the public review process in this case given the enigmatic Project description in the materials that were released.

Consequently, the Planning Commission may not adopt the Negative Declaration on September 21, 2017 and must provide at least 20 days from the day that San Joaquin Residents received all documents referenced or relied upon from a different agency. Therefore, San Joaquin Residents reserves the right to provide supplemental comments after the September 21, 2017 hearing.<sup>20</sup>

### **III. THE NEGATIVE DECLARATION FAILS TO COMPLY WITH CEQA**

#### **A. Summary of Comments**

In addition to its procedural flaws, the revised IS/ND for Use Permit #PA-1700032 (UP) does not comply with CEQA's substantive requirements. The IS/ND fails to adequately describe the Project, lacks substantial evidence supporting the County's finding of no significant adverse impact on the environment, fails to disclose significant impacts, and improperly includes mitigation measures in the Project design.

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<sup>20</sup> San Joaquin reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); Pub. Resources Code, § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Furthermore, the reliance on a negative declaration violates CEQA because substantial evidence exists to support a fair argument that the project may result in significant impacts related to air quality, greenhouse gas emissions, Valley Fever, and on-site hazards and hazardous materials. Because there is substantial evidence supporting a fair argument that the Project may have one or more significant effects on the environment, the County cannot approve an IS/ND for the Project and must instead prepare an EIR.

We reviewed the IS/ND for the Project with the help of independent environmental consultants Phyllis Fox<sup>21</sup>, and Matt Hagemann and Hadley Nolan.<sup>22</sup> Their attached technical comments are submitted in addition to the comments in this letter. Accordingly, they must be addressed and responded to separately. The curricula vitae of these experts are also attached as exhibits to this letter.

As discussed below, the County's decision to prepare a Negative Declaration for this Project violates CEQA for the two reasons: (1) the County failed to comply with the informational requirements of a Negative Declaration and (2) substantial evidence exists supporting a fair argument that the Project may have a significant effect on the environment, requiring the preparing on an EIR.<sup>23</sup>

**B. The County failed to comply with the informational requirements of an Initial Study rendering the Negative Declaration invalid.**

With respect to a Negative Declaration, a properly prepared Initial Study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment.<sup>24</sup> Thus, it

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<sup>21</sup> Attachment F, Letter from Phyllis Fox, to Linda Sobczynski, re: Comments on Initial Study/Negative Declaration for the Delicato Vineyards Expansion Project, September 20, 2017 (hereinafter, "Fox Comments").

<sup>22</sup> Attachment G, Letter from Matt Hagemann and Hadley Nolan, to Linda Sobczynski, re: Comments on Initial Study/Negative Declaration for the Delicato Vineyards Expansion Project, September 20, 2017 (hereinafter, "SWAPE Comments").

<sup>23</sup> CEQA Guidelines, § 15064(f)(1) & (3); *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591, 1597 [20 Cal.Rptr.3d 224, 227], as modified (Oct. 14, 2004).

<sup>24</sup> CEQA Guidelines, § 15070.



documents the reasons to support the Negative Declaration's proposed finding that the project will not have a significant effect on the environment.<sup>25</sup> The Initial Study must also identify the environmental setting.<sup>26</sup> Establishing the environmental setting is necessary to determine the environmental baseline against which the project's changes to the environment are measured.<sup>27</sup>

"Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate."<sup>28</sup> "Once the informational requirements of a complete initial study have been met, the [agency] may again determine whether a negative declaration, a mitigated negative declaration, or an EIR is appropriate."<sup>29</sup>

The County's decision to prepare a Negative Declaration is based on a deficient Initial Study. The Initial Study for this Project lacks an accurate project description and setting, fails to provide evidentiary support and undertake an adequate environmental analysis.<sup>30</sup> This Project may not be approved until the informational requirements of a complete initial study are met.

1. Informational Requirements: The Initial Study failed to provide an adequate description of the Project, and its setting.

The substantial deficiencies in the Initial Study's description of the Project and the environmental setting discussed below preclude a meaningful assessment of impacts and violate CEQA.

The Staff Report recommends that the Planning Commission (1) approve the Negative Declaration; and (2) approve Use Permit application No. PA-1700032 with

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<sup>25</sup> CEQA Guidelines, § 15071.

<sup>26</sup> CEQA Guidelines, § 15063(d)(2).

<sup>27</sup> CEQA Guidelines, § 15125; *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322 ("Like an EIR, 'an initial study or negative declaration 'must focus on impacts to the existing environment, not hypothetical situations.'")

<sup>28</sup> *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1202.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

the attached revised Conditions of Approval contained in the Staff Report.<sup>31</sup> The Project's Use Permit Application describes the proposed Project as follows:

Refer to Exhibit "1" and Use Permit Site Plan for detailed project description[.] Marketing events are not proposed with this application.<sup>32</sup>

Exhibit "1" is one of four exhibits. Exhibit "1" is titled "Project Description." Exhibit "2" is titled "Employee Census." Exhibit "3" is titled "Truck Census." Exhibit "4" is titled "2017/2011 Use Permit Traffic Comparison."

Exhibit "1" outlines in greater specificity the three phases of the proposed Project. The Initial Study does not provide specifications or an adequate description of the Project components listed in Exhibit "1". This deprives the public of understanding the true scope of the Project.

Exhibit "2" is an employee census chart. The chart purports to show a "new total" of 391 staff. In contradictory fashion, however, the Initial Study indicates that there will be no increase in employees.<sup>33</sup> If the "new" number of staff is greater than the existing number of employees, that is a critical fact in the Project description and is relevant to establishing the environmental setting. The number of employees that would result from the proposed Project as compared to existing employees must be clarified, disclosed and the related environmental impacts assessed in accordance with CEQA.

Exhibit "3" provides two charts indicating current truck trips per day and future truck trips per day. Exhibit "3" states that truck trips will increase after completion of Phase 3. The Exhibit indicates that the increase in truck trips is due to an increase in winery production from 15 million (140,000 Tons) to 20 million (200,000 Tons) noted in the Exhibit. An increase in production at the facility is not identified or discussed anywhere else in the Project description or Project documents. The Initial Study includes no information or evaluation of

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<sup>31</sup> Staff Report for Sept. 21, 2017 Hearing, p. 3.

<sup>32</sup> PRA Response from Stephanie Stowers to Janet Laurain (Apr. 4, 2017), pdf. pp. 52-62 ("Application Use Permit PA-1700032", p. 1.) The County provided a *revised* Site Plan for the Use Permit PA-1700032.

<sup>33</sup> Initial Study, p. 11.



environmental impacts associated with increases in truck trips or facility production.

Moreover, the description of the projected increase in wine production is inaccurate. Recent articles indicate that production at the winery is actually only 7.2 million cases per year.<sup>34</sup> The failure to accurately disclose the baseline wine production violates CEQA.

Exhibit "4" provides a traffic comparison between 2011 and 2017. The Exhibit provides data suggesting that the proposed Project will reduce traffic intensity. However, the Initial Study must still evaluate and analyze this information. This data is also inconsistent with other information indicating that the Project will increase employees, truck trips and production levels.

The Project's Use Permit *revised* Site Plan also reflects the uncertain scope of this Project. Some components are noted on the Site Plan, but are not listed in Exhibit "1". Conversely there are some components listed in Exhibit "1", but that are not included in the Site Plan. It is unclear, and unexplained, whether Exhibit "1" or the Use Permit Site Plan for PA-1700032 governs. The Initial Study must disclose what components this Project will consist of, and evaluate and analyze those components' impacts.

We also note that some of the components in Phase 2 are annotated with either one or two asterisks. These asterisks indicate that those items were previously approved in 2011 Phase 2 on Application PA-1100224 (one asterisk), or in 2011 Phase 3 on Application PA-1100224 (two asterisks).<sup>35</sup> Yet recent correspondence with the County indicates that PA-1100224 expired on July 29, 2017. CEQA requires review of the whole of a project.<sup>36</sup> We assume from the Initial Study's project description that the negative declaration is reviewing the impacts for all three phases and all listed components of the project. If that is incorrect, then the IS/ND has violated CEQA by improperly piecemealing environmental review.

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<sup>34</sup> Attachment H, Holland, J., *Manteca's Delicato Tops State Wineries Again* (Mar. 7, 2015) ModBee, <http://www.modbee.com/news/local/article12976229.html>

<sup>35</sup> Use Permit Application No. PA-1700032 at Exhibit "1".

<sup>36</sup> CEQA Guidelines, § 15378.

A public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. CEQA prohibits such a “piecemeal” approach even where one of the phases has already undergone environmental review.<sup>37</sup> It was precisely such piecemealing that was rejected by the Second District in the *Natural Resources Defense Council v. City of Los Angeles* case.<sup>38</sup> In that case, the Port of Los Angeles analyzed Phase 2 of a three-phase project in a negative declaration. The Court held that an EIR was required to analyze the entire three-phase project as a whole, even though earlier CEQA review had been completed on Phase I of the project.<sup>39</sup> Similarly here, the County must prepare an EIR to analyze the impacts of the entire winery expansion as a whole, rather than analyzing each individual phase in a series of separate negative declarations.

2. Informational Requirements: The Initial Study failed to include a Water Supply Assessment (“WSA”).

The County must prepare a Water Supply Assessment (“WSA”) for this project and include it in a revised environmental review document. The County admits that the applicant “must supply a water demand study that demonstrate the onsite Public Water Well is capable of meeting the existing water demands and the new water demands of the proposed facility.”<sup>40</sup> But the County errs in its belief that the applicant has this duty to prepare a WSA, rather than the County. Also, the County errs in believing the applicant can provide this information at a later date. The WSA should have been included in this IS/ND. By not including the WSA in its IS/ND, the County has failed to comply with CEQA and the Water Code.<sup>41</sup>

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<sup>37</sup> *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 284; CEQA Guidelines § 15378, subd. (a); *Burbank- Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

<sup>38</sup> *Natural Resources Defense Council v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 284; see also *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 665 (a program EIR may not be used to support a multiphase project if the program EIR does not cover all phases of the project).

<sup>39</sup> *Id.*

<sup>40</sup> Initial Study, p. 10.

<sup>41</sup> Water Code, § 10911 (“The city or county shall include the water supply assessment provided pursuant to Section 10910, and any information provided pursuant to subdivision (1), in any environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.”).



There is no dispute that the Project requires a WSA.<sup>42</sup> According to section 10912, a “project” is defined as “a proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.”<sup>43</sup> In *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 887, the court applied the dictionary definition of “plant” to determine whether the project required a WSA. “The Water Code does not define the term ‘processing plant’ but the term ‘plant’ is commonly defined as including the land, as well as buildings, machinery and fixtures used in carrying out a trade or industrial business.”<sup>44</sup>

Here, the Project meets the definition of “project” under section 10912. It includes, among others, constructing “801,305 square feet of buildings, including administration, bottling, warehouse, lab, and maintenance,” and “4 refrigeration units with canopies totaling 8,568 square feet, a 25,000 square foot warehouse building, and a 6,000 square foot bottling cellar; and the installation of tanks, fermenters, and other ancillary equipment.”<sup>45</sup> First, the Delicato Project exceeds 650,000 square feet of floor area. Second, it describes itself as a winery processing plant.<sup>46</sup> Third, the components listed above are consistent with the common definition of “plant,” including “buildings, machinery and fixtures used in carrying out a trade or industrial business.”<sup>47</sup>

The IS/ND, however, violates the Water Code by directing the applicant to prepare the WSA. County is responsible for preparing a WSA, not the applicant. The Water Code states that at the time the county determines environmental review is required, the county must identify any water system whose service area includes the project site and any adjacent water system.<sup>48</sup> If the county is not able

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<sup>42</sup> Initial Study, p. 10.

<sup>43</sup> Water Code, § 10912, subd. (a)(5).

<sup>44</sup> *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 887-888 (emphasis removed) (citing Merriam-Webster’s Collegiate Dictionary and Webster’s 3d New International Dictionary).

<sup>45</sup> Initial Study, p. 1.

<sup>46</sup> Initial Study, p. 1 (e.g., bottling cellar, barrel storage); see also Staff Report for Apr. 20, 2017 hearing on Use Permit Application No. 1700032, pp. 1, 4; Initial Study from March 2017, p. 1 (“wine processing”).

<sup>47</sup> *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 887-888.

<sup>48</sup> Water Code, § 10910, subd. (b).

to identify any public water system that may supply water for the project, or a public water system is uninvolved,<sup>49</sup> the county is responsible for preparing the WSA.<sup>50</sup> If a proposed project's water supply includes groundwater, then additional information must be included in the WSA, such as a description of the groundwater basin.<sup>51</sup> Here, the IS/ND states that the project has an existing Small Public Water System. It does not provide any other information that another entity is responsible for providing water to the Project site. Thus, the County is responsible for preparing the WSA.

Finally, the WSA must be included with the environmental review document. It may not be provided at a later time. If a project requires an EIR, negative declaration, or a mitigated negative declaration, the Water Code requires that the WSA must be completed before this review and be included in the environmental review document prepared for the project pursuant to CEQA.<sup>52</sup>

The County must prepare a WSA that is consistent with the Water Code and include it the revised environmental review document for this Project before this Project may be approved.<sup>53</sup>

**3. Informational Requirements: The Initial Study erroneously indicated that no additional permits were needed.**

The Initial Study, on page 2, erroneously indicated that the project would not require approval or permits by agencies other than the County. This is directly contradicted on page 9 of the Initial Study, which indicates "the project . . . will require [Air] District permits."<sup>54</sup> The County must fully disclose the scope of this Project.

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<sup>49</sup> *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 889-890 (WSA is required, ". . . even when a public water system is uninvolved.")

<sup>50</sup> Water Code, § 10910, subd. (b).

<sup>51</sup> Water Code, § 10910, subd. (f).

<sup>52</sup> Water Code, § 10911, subd. (b).

<sup>53</sup> Water Code, § 10910, subd. (b); *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 889-890.

<sup>54</sup> Compare IS/ND, p. 2, with IS/ND, p. 9.



**C. The Initial Study failed to provide an adequate factual basis for the Project's impact findings.**

A conclusory, bare-bones Initial Study is insufficient to support a Negative Declaration.<sup>55</sup> The Initial Study provides little to no support in its impact findings determination. There must be some evidence to support the entries.<sup>56</sup> Yet some entries have no evidentiary support, such as water.<sup>57</sup> In most cases, the document does not even describe the changes in the environment that are expected from the Project.

**1. Factual Basis: The air quality analysis relied on in the Initial Study failed to evaluate all construction activities.**

The applicant prepared a California Emissions Estimator Model ("CalEEMod") that it provided to the Air District to quantify the Project's criteria air pollutant emissions.<sup>58</sup> The Air District provided a letter incorporating the emissions data.<sup>59</sup> The County consequently used that Air District letter to support its findings in the IS/ND.<sup>60</sup>

The IS/ND's conclusion that the Project would not result in a significant air quality impact is not supported by substantial evidence. Our air quality consultant, Hadley Nolan and Matt Hagemann of SWAPE (collectively, "SWAPE"), determined that the IS/ND's assertion that the Project would not result in a significant impact lacks evidentiary support because (1) the Project's construction emissions were modeled using incorrect input parameters, and (2) the analysis failed to quantify the Project's operational emissions.<sup>61</sup> As discussed in more detail below, SWAPE has determined that the Project would result in a significant air quality impact, contrary to what is stated in the IS/ND. Therefore an EIR is required to adequately assess and mitigate the Project's emissions.

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<sup>55</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

<sup>56</sup> CEQA Guidelines, § 15063(d)(3).

<sup>57</sup> Initial Study, p. 2.

<sup>58</sup> SWAPE Comments, pp. 1-2; IS/ND, p. 8.

<sup>59</sup> Initial Study, p. 8.

<sup>60</sup> Initial Study, pp. 8-9.

<sup>61</sup> SWAPE Comments, pp. 2-9.

SWAPE reviewed the CalEEMod and determined that the applicant used values that are inconsistent with the Project description and are therefore unsubstantiated.<sup>62</sup> For example, the CalEEMod output files assume construction of 37,570 square feet of “General Light Industry” land uses, during Phase 2 construction.<sup>63</sup> However, Phase 2 construction consists of a parking lot area totaling approximately 54,000 square with mounted roof solar panels; 4 refrigeration units with canopies totaling 8,568 square feet; construction of a 25,000 square foot warehouse; construction of a 6,000 square foot bottling cellar, and other ancillary equipment.<sup>64</sup> The emissions analysis provides no support for why the applicant determined 37,570 square feet of “General Light Industry” was appropriate in Phase 2 emissions calculations.

As SWAPE explains, the inconsistencies between the types of land uses and sizes are significant because CalEEMod uses the square footage of a land use to estimate emissions.<sup>65</sup> If the modeler deviates from default values (i.e., by inputting land use type and square footage that is not consistent with the Project description), substantial evidence must support that decision.<sup>66</sup> Here, the applicant did not provide an explanation, as required, about why the Project consists of 37,570 square feet of “General Light Industry”, when neither the size nor the land use type is provided in the Project description.<sup>67</sup>

2. Factual Basis: The Initial Study fails to quantify emissions from operation.

The IS/ND fails to quantify the Project’s operational criteria air pollutant emissions, yet determines that the Project’s operational air quality impact would be

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<sup>62</sup> SWAPE Comments, pp. 3-4.

<sup>63</sup> SWAPE Comments, p. 3.

<sup>64</sup> SWAPE Comments, p.3; Initial Study, p. 1.

<sup>65</sup> SWAPE Comments, pp. 3-4.

<sup>66</sup> SWAPE Comments, pp. 3-4; Attachment I, CalEEMod User Guide, pp. 1,11-12, *available at* <http://www.caleemod.com/> (“CalEEMod was designed with default assumptions supported by substantial evidence to the extent available at the time of programming. . . . However, CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA.”)

<sup>67</sup> SWAPE Comments, pp. 3-4.



less than significant.<sup>68</sup> The IS/ND provides *no evidence* to support its finding that the Project would not result in a net increase in criteria air pollutant emissions.<sup>69</sup> The IS/ND's finding is inconsistent with Air District guidance: "[i]f it is not obvious that a project's air quality impacts are less than significant, Lead Agencies should prepare an analysis report that includes a quantitative air quality assessment to determine the project's impact on air quality."<sup>70</sup>

By not quantifying the Project's operational criteria air pollutant emissions, the County could not compare those emissions to applicable Air District thresholds.<sup>71</sup> As discussed in further detail below, SWAPE calculated the Project's operational emissions and determined they would result in significant emissions.

3. Factual Basis: The Initial Study fails to quantify and assess greenhouse gas ("GHG") emissions.

The IS/ND fails to provide evidence to support its conclusion that the Project will not result in a significant greenhouse gas ("GHG") impact. The Applicant states that the San Joaquin Air District has not adopted a GHG threshold of significance.<sup>72</sup> "Therefore, it is not possible to assign a significance level to GHG emissions."<sup>73</sup> This is inconsistent with CEQA Guidelines, section 15064.4 and San Joaquin Air District Guidance.<sup>74</sup>

If there is no climate action plan (or other community-wide GHG reduction plan) in place, then lead agencies usually rely on GHG thresholds that have been adopted by the local air district to determine an individual project's significance. However, here, the local air district, San Joaquin Air District, does not have a

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<sup>68</sup> SWAPE Comments, pp. 5-11.

<sup>69</sup> SWAPE Comments, p. 5.

<sup>70</sup> SWAPE Comments, p. 5 (citing Attachment J, Guidance for Assessing and Mitigating Air Quality Impacts." SJVAPCD, March 2015, available at: [http://www.valleyair.org/transportation/GAMAQI\\_3-19-15.pdf](http://www.valleyair.org/transportation/GAMAQI_3-19-15.pdf), p. 54).

<sup>71</sup> SWAPE Comments, p. 6.

<sup>72</sup> SWAPE Comments, pp. 11-12.

<sup>73</sup> SWAPE Comments, p. 12 (citing Final Technical Memorandum from Ray Kapahi, APS, to John Yarborough, Vice President Winery Operations, Delicato Family Vineyards, Evaluation of Air Quality Impacts from Proposed Winery Expansion, July 27, 2017, p. 3)

<sup>74</sup> SWAPE Comments, p. 12.

threshold. Thus, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts.<sup>75</sup>

The South Coast Air Quality Management District ("SCAQMD") has adopted a significance threshold of 10,000 MT CO<sub>2</sub>e per year for permitted (stationary/industrial) sources of GHG emissions for which SCAQMD is the designated lead agency.<sup>76</sup> SWAPE provides substantial evidence that this threshold is an appropriate methodology for determining significance.<sup>77</sup> Here, the Project will exceed 10,000 MT CO<sub>2</sub>e, by over 6,000 MT CO<sub>2</sub>e.<sup>78</sup> In exceeding the SCAQMD threshold for significance, there is substantial evidence supporting a fair argument that the Project has a significant effect on the environment, thus requiring preparation of an EIR.

The IS/ND must quantify the Project's GHG emissions and then determine if the Project's emissions will result in a significant impact on the environment. By failing to quantify these emissions, the IS/ND lacks substantial evidence to support its assumption that GHG emissions will not be significant. As discussed in further detail in Section D.2., SWAPE calculated the Project's GHG emissions and determined it would result in a significant GHG impact.

4. Factual Basis: The Initial Study failed to provide an adequate factual basis for its conclusion that compliance with laws will reduce impacts.

Additionally, the Initial Study concludes in several sections that the Project's compliance with laws and regulations are sufficient to reduce potentially significant impacts to a level of insignificance.<sup>79</sup> However, compliance with a regulation or law is not an indication of the sufficiency of mitigation measures where there is

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<sup>75</sup> CEQA Guidelines, § 15064.7 (thresholds of significance).

<sup>76</sup> Attachment K, SCAQMD, CEQA Significance Thresholds, available at [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2); SWAPE Comments, p. 13.

<sup>77</sup> SWAPE Comments, p. 3.

<sup>78</sup> SWAPE Comments, p. 13.

<sup>79</sup> See e.g., Initial Study, Biological Resources (compliance with San Joaquin County Multi-Species Habitat Conservation and Open Space Plan; see also Initial Study, Transportation/Circulation (compliance with the rules and regulations of the Airport Land Use Commission to reduce the impact to airport flight paths to less than significant).



substantial evidence that the project may result in significant impacts.<sup>80</sup> CEQA requires an agency to fully assess the significance of a Project's impacts in light of substantial evidence "notwithstanding compliance with the adopted regulations or requirements."<sup>81</sup>

The Initial Study's conclusion that impacts from fugitive dust emissions and hazardous air pollutants will be less than significant because the Project will comply with Air District rules and regulations lacks evidentiary support. The Initial Study provides no factual basis to support this conclusion. The Initial Study did not quantify or evaluate the Project's potential emissions.<sup>82</sup>

The County cannot rely on purported mitigation measures without first identifying and assessing the potential impacts. Only then can it evaluate the efficacy or feasibility of possible mitigation measures and explain how such measures would reduce impacts to a less-than-significant level. Moreover, compliance with Air District rules and regulations does not necessarily render the Project's impacts less than significant. Additional mitigation would likely be required to reach a less than significant level. Finally, reliance on mitigation is itself evidence that a significant impact may occur and that the proposed Negative Declaration is improper.

5. Factual Basis: The Initial Study fails to disclose that wine production capacity will increase.

The IS/ND's determination that air quality impacts will not be significant are also not supported by substantial evidence because the determination fails to take into account GHG and reactive organic gas ("ROG") emissions from increased wine production.<sup>83</sup> Although the IS/ND includes an air quality impact analysis for part of the Project, it failed to consider emissions from operation of Phases 2 and 3, which contain process equipment that would emit Reactive Organic Gases ("ROG") and greenhouse gases ("GHG").<sup>84</sup> As discussed below, Dr. Fox and SWAPE both

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<sup>80</sup> *Keep our Mountains Quiet v. County of Santa Clara* (2015) Case No. H039707; *Communities for a Better Env't v. California Res. Agency* (2002) 126 Cal.Rptr.2d 441.

<sup>81</sup> CEQA Guidelines § 15064.4.

<sup>82</sup> See also *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645m 650.

<sup>83</sup> Fox Comments, p. 3.

<sup>84</sup> Fox Comments, p. 3.

calculated ROG emissions from increased wine production and determined that they would be significant.<sup>85</sup>

**D. Substantial evidence supports a fair argument that the Project will have a significant effect on the environment triggering the preparation of an Environmental Impact Report.**

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR, except in certain limited circumstances.<sup>86</sup> The EIR is the very heart of CEQA.<sup>87</sup> The EIR aids an agency in identifying, analyzing, disclosing, and, to the extent possible, avoiding a project's significant environmental effects through implementing feasible mitigation measures.<sup>88</sup> The Initial Study procedure implements CEQA's requirement that the agency prepare an EIR if it finds that a proposed project may have a significant effect on the environment.<sup>89</sup> Information from the Initial Study provides the agency with information to use as the basis for deciding whether to prepare an EIR or a Negative Declaration.

CEQA creates a strong presumption in favor of preparing an EIR. Because "[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 there is not even a "fair argument" that the project will have a significant environmental effect.<sup>90</sup> The phrase "significant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."<sup>91</sup>

The "fair argument" standard requires preparation of an EIR if any substantial evidence in the record indicates that a project may have an adverse environmental effect.<sup>92</sup> The CEQA Guidelines define the term "substantial

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<sup>85</sup> Fox Comments, p. 3; SWAPE Comments, p. 9.

<sup>86</sup> See, e.g., Pub. Resources Code, § 21100.

<sup>87</sup> *Dunn-Edwards v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 652.

<sup>88</sup> Pub. Resources Code, § 21002.1, subd. (a); CEQA Guidelines, § 15002, subd. (a) & (f).

<sup>89</sup> See Pub. Resources Code, § 21080(c)(2); CEQA Guidelines, § 15063.

<sup>90</sup> *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440; Pub. Resources Code, §§ 21100, 21064.

<sup>91</sup> Pub. Resources Code, § 21068.

<sup>92</sup> CEQA Guidelines, § 15064, subd. (f)(1); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 931.



evidence” to mean “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>93</sup> Substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,” but does not include “argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate.”<sup>94</sup>

The “fair argument” standard is an exceptionally “low threshold” favoring environmental review in an EIR rather than a negative declaration.<sup>95</sup> Under the fair argument standard, even if other substantial evidence supports the opposite conclusion, the agency nevertheless must prepare an EIR because CEQA always resolves the benefit of the doubt in favor of the public and the environment.<sup>96</sup> A court reviewing an agency’s decision not to prepare an EIR must set aside the decision if the administrative record contains substantial evidence that a proposed project might have a significant environmental impact.<sup>97</sup> “[D]eference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.”<sup>98</sup>

As detailed in the following sections, there is a fair argument supported by substantial evidence that the Project may result in significant impacts to air quality and greenhouse gas impacts, Valley Fever, and on-site hazards and hazardous materials. Because the Project will have significant impacts that cannot be fully mitigated, an EIR is required and a Negative Declaration is not appropriate. The County is required to prepare an EIR to evaluate the Project’s potentially significant impacts and propose all feasible mitigation measures that are necessary to reduce those impacts to less than significant levels.

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<sup>93</sup> CEQA Guidelines, § 15384 (a).

<sup>94</sup> CEQA Guidelines, § 15384 (a)-(b).

<sup>95</sup> *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

<sup>96</sup> Pub. Resources Code, § 21080, subd. (e)(1); CEQA Guidelines, § 15064, subd. (f)(5); *Arvin Enterprises v. South Valley Area Planning Comm.* (2002) 101 Cal.App.4th 1333, 1346; *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597.

<sup>97</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1317.

<sup>98</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1317.

1. **Significant Impact: Substantial evidence supports a fair argument that the Project's air quality impacts are significant.**

Substantial evidence exists that the Project will result in significant nitrogen oxide ("NOx") and Volatile Organic Compound ("VOC") emissions, requiring preparation of an EIR.<sup>99</sup> SWAPE calculated the Project's air quality impacts using correct site-specific input parameters into the California Emissions Estimator Model.<sup>100</sup> Based on these calculations, SWAPE determined that the Project's construction-related NOx emissions will exceed the 10 tons/year threshold set for by the Air District.<sup>101</sup>

In addition, construction and operation of the proposed Project will generate a VOC emissions that exceed the Air District's established thresholds of 10 tons/year. SWAPE's calculations are provided below.<sup>102</sup>

<b>Maximum Annual Operational Emissions (tons/year)</b>					
<b>SWAPE Model</b>	<b>VOC</b>	<b>NOx</b>	<b>CO</b>	<b>PM10</b>	<b>PM2.5</b>
Phase One	4.85	10.83	18.01	3.69	1.10
Phase Two	1.82	6.86	11.42	1.70	0.55
Phase Three	0.83	1.24	1.81	0.85	0.24
Wine Fermentation	208.8	-	-	-	-
<b>Total Emissions</b>	<b>216.3</b>	<b>18.9</b>	<b>31.2</b>	<b>6.2</b>	<b>1.9</b>
<b>SJVACPD Threshold (tons/year)</b>	<b>10</b>	<b>10</b>	<b>100</b>	<b>15</b>	<b>15</b>
<b>Exceed Threshold?</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>

SWAPE's analysis provides substantial evidence that when the Project's emissions are properly quantified and compared to thresholds, Project construction and operation will have a potentially significant air quality impact that was not previously identified in the IS/ND.<sup>103</sup> An EIR must therefore be prepared to

<sup>99</sup> Fox Comments, pp. 9-12; SWAPE Comments, pp. 6- 9, 9-11.

<sup>100</sup> SWAPE Comments, pp. 9-11.

<sup>101</sup> SWAPE Comments, pp. 10-11.

<sup>102</sup> SWAPE Comments, p. 11.

<sup>103</sup> SWAPE Comments, p. 11.



adequately analyze the air quality impacts and propose mitigation measures to reduce these emissions.

**2. Significant Impact: Substantial evidence supports a fair argument that the Project's greenhouse gas ("GHG") impacts are significant.**

SWAPE modeled the Project's GHG emissions and compared the emissions to the South Coast Air Quality Management District's Screening threshold of 10,000 metric tons of carbon dioxide equivalents per year for industrial projects.<sup>104</sup> SWAPE used the South Coast Air District's screening threshold because the San Joaquin Air District has not established any GHG thresholds of significance.<sup>105</sup> Lacking a threshold of significance does not excuse the County from preparing and analyzing the Project's GHG impact analysis.<sup>106</sup> SWAPE relied upon SCAQMD Guidance to assess the Project's GHG impact.<sup>107</sup> The results of SWAPE's analysis demonstrate that the Project's emissions from construction and operational emissions would exceed this significance threshold.<sup>108</sup> These results are provided below.

<b>Estimated Project Build Out Annual Greenhouse Gas Estimates</b>	
<b>Phase</b>	<b>Proposed Project (MT CO<sub>2</sub>e/year)</b>
Construction (Amortized)	98
Operation	16,304
<b>Total</b>	<b>16,402</b>
<b>SCAQMD Screening Level Threshold</b>	<b>10,000</b>
<b>Exceeded?</b>	<b>Yes</b>

<sup>104</sup> SWAPE Comments, p. 11.

<sup>105</sup> SWAPE Comments, pp. 11-13.

<sup>106</sup> SWAPE Comments, pp. 11-13.

<sup>107</sup> SWAPE Comments, pp. 11-13.

<sup>108</sup> SWAPE Comments, p. 13.

Accordingly, substantial evidence exists that the Project's GHG emissions could result in a potentially significant impact, which the IS/ND failed to address or evaluate.<sup>109</sup> An EIR must be prepared to include an updated analysis of the Project's GHG emissions and identify and incorporate mitigation measures to reduce emissions.

3. Significant Impact: Substantial evidence supports a fair argument that the Project's Reactive Organic Gases ("ROG") emissions are significant.

Dr. Fox writes in her comments that the ROG emissions from increased wine production are significant.<sup>110</sup> Exhibit 3 to the Use Permit indicates that the current facility is designed to produce 15 million (M) cases of wine per year.<sup>111</sup> However, recent articles indicate that it is producing half of its design capacity, at around 7.2 million cases per year.<sup>112</sup> The baseline — based on the actual, not permitted conditions — for this Project is 7.2 million cases per year.<sup>113</sup>

After completion of Phase 3 of the Project, the applicant states that the facility will produce 20 million cases of wine per year.<sup>114</sup> Wine production relative to the current baseline thus increases by nearly a factor of three.<sup>115</sup> Dr. Fox writes that this "will result in a significant increase in ROG emissions."<sup>116</sup>

Dr. Fox calculates the ROG emissions using the baseline of current annual production of 7.2 million cases and considers the impact that producing 20 million cases of wine will cause.<sup>117</sup> Assuming future compliance with Air District winery rules, the ROG emissions from fermentation tanks will be reduced at least 35% relative to baseline fermentation emissions, pursuant to Rule 4694 (Wine

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<sup>109</sup> SWAPE Comments, p. 13.

<sup>110</sup> FOX Comments, pp. 9-12.

<sup>111</sup> Fox Comments, pp. 9-10.

<sup>112</sup> Fox Comments, p. 9 (citing Attachment H, *supra*).

<sup>113</sup> Fox Comments, pp. 9-10.

<sup>114</sup> Fox Comments, p. 10.

<sup>115</sup> Fox Comments, p. 10.

<sup>116</sup> Fox Comments, p. 10.

<sup>117</sup> Fox Comments, pp. 10-12.



Fermentation and Storage Tanks).<sup>118</sup> The ROG emissions from Brandy Aging and Wine Aging operations would need to be reduced by 50%, pursuant to Rule 4695 (Brandy Aging and Wine Aging Operations).<sup>119</sup> Dr. Fox conservatively assumes these conditions were not met, but that compliance will be achieved at the end of Phase 3.<sup>120</sup> She also assumes a scenario consisting of 100% red wine production and alternatively 100% white wine production to calculate emissions.<sup>121</sup> Though, it appears that the Project will result in 100% red wine production because the Project includes 40 “new red fermenters” and no identifiable white wine screens and presses.<sup>122</sup>

The Air District significant threshold for ROG emissions is 10 tons/year.<sup>123</sup> Even assuming the Project will comply with Air District regulations, the increase in ROG emissions relative to the CEQA baseline will exceed the significance threshold by nearly a factor of three in both all red and all white scenarios.<sup>124</sup> Total emissions for all red production are 271.3 tons/year of ROG and total emissions for all white production is 219.8 tons/year.<sup>125</sup> Accordingly, ROG emissions from the operation of the Project will be significant.

SWAPE affirms the conclusion that ROG emissions will be significant.<sup>126</sup> SWAPE finds that ROG emissions would be significant even using the improper baseline of 15 million cases per year rather than the actual baseline of 7.2 million cases.<sup>127</sup> SWAPE also determines that the VOC emissions generated by wine fermentation activities will have a potentially significant air quality impact.<sup>128</sup> These impacts must be evaluated in an EIR.

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<sup>118</sup> Fox Comments, pp. 10-12.

<sup>119</sup> Fox Comments, pp. 10-11.

<sup>120</sup> Fox Comments, pp. 11-12.

<sup>121</sup> Fox Comments, pp. 11-12.

<sup>122</sup> Fox Comments, p. 11.

<sup>123</sup> Fox Comments, p. 12.

<sup>124</sup> Fox Comments, p. 12.

<sup>125</sup> Fox Comments, p. 12.

<sup>126</sup> SWAPE Comments, pp. 6-9.

<sup>127</sup> SWAPE Comments, p. 7.

<sup>128</sup> SWAPE Comments, p. 9.

4. Significant Impact: Substantial Evidence Supports a Fair Argument That the Project's Valley Fever Impacts are Significant

Valley Fever is contracted by inhaling spores of the dimorphic fungus *Coccidioides spp.* (*Coccidioides immitis* and *Coccidioides posadasii*) from soil or airborne dust can cause coccidioidomycosis, also known as Valley Fever.<sup>129</sup> The fungus lives in the top 2 to 12 inches of soil.<sup>130</sup> When soil containing the fungus is disturbed during earth moving activities, such as digging, construction, vehicles, the fungal spores become air borne.<sup>131</sup> The spores are too small to be seen by the naked eye and there is no reliable way to test the spores before working in a particular area.<sup>132</sup> However, some areas carry higher risk because they are native and common, or endemic, to the disease.<sup>133</sup> San Joaquin County, where the Project is located, is within the established endemic range of Valley Fever.<sup>134</sup> The disease is a growing concern to local public health officials due to significant increases over the past decade. In San Joaquin County there were 187 cases in 2016.<sup>135</sup>

"Typical symptoms of Valley Fever include fatigue, fever, cough, headache, shortness of breath, rash, muscle aches, and joint pain. Symptoms of advanced Valley Fever include chronic pneumonia, meningitis, skin lesions, and bone or joint infections."<sup>136</sup> As Dr. Fox writes, no vaccine or known cure exists for the disease.<sup>137</sup> The disease is debilitating particularly to construction and agricultural workers because it prevents them from working.<sup>138</sup>

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<sup>129</sup> Attachment L, Tabnak F, Knutson K, Cooksey G, Nguyen A, Vugia D, *Epidemiologic Summary of Coccidioidomycosis in California*, 2016 (June 2017) CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, p. 4, available at

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2016.pdf> ("*Epidemiologic Summary*")

<sup>130</sup> Fox Comments, p. 15.

<sup>131</sup> Fox Comments, p. 15.

<sup>132</sup> Fox Comments, p. 15.

<sup>133</sup> Fox Comments, pp. 15-16.

<sup>134</sup> Fox Comments, p. 15; Attachment L, *supra*, *Epidemiologic Summary*, p. 4 ("Although *Coccidioides* grows in localized areas of the southwest United States (US), the southern San Joaquin or Central Valley and Central Coast are the major endemic regions in California.")

<sup>135</sup> Attachment L, *supra*, *Epidemiologic Summary*, p. 8.

<sup>136</sup> Fox Comments, p. 16.

<sup>137</sup> Fox Comments, p. 17.

<sup>138</sup> Fox Comments, p. 19.



Dust exposure is one of the primary risk factors. Construction workers, alongside agricultural workers, are the most at-risk populations.<sup>139</sup> Additionally, the California Department of Public Health, specifically notes that construction workers in endemic areas are at risk due to exposure to land disturbance activities.<sup>140</sup> Conventional dust control measures for construction are not effective at controlling Valley Fever.<sup>141</sup> Freshly generated dust clouds contain larger particles compared to cocci spores.<sup>142</sup> As the larger particles settle, the remaining fine respirable particles, which contain the spores, remain, are difficult to see, and not controlled by conventional dust control measures.<sup>143</sup> Additionally due to their low settling rates, the spores can be carried hundreds of miles from the point of origin.<sup>144</sup> By failing to discuss Valley Fever in its IS/ND, the County does not disclose this significant risk to both on-site workers and the general public.

Because the Project site is located in an endemic area and will require extensive earthmoving activities, Dr. Fox concludes that construction activities could create a significant health risk to workers and nearby residents.<sup>145</sup> This impact must be evaluated in an EIR.

5. Significant Impact: Substantial evidence supports a fair argument that the Project may result in a significant public health risk due to hazardous soil conditions.

Substantial evidence supports a fair argument that the Project may result in potential hazards. Mr. Hagemann analyzed historic aerial photographs that indicate agriculture has been practiced at the Project site for at least 50 years.<sup>146</sup> Mr. Hagemann provides substantial evidence that residual pesticides, including dichloro-diphenyl-trichloroethane (DDT), which was not banned until 1972, may have been used at the Project site.<sup>147</sup> These residual pesticides may exist at the Project site and would pose a risk to construction workers and future worker

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<sup>139</sup> Fox Comments, pp. 18-19.

<sup>140</sup> Fox Comments, pp. 17-18.

<sup>141</sup> Fox Comments, p. 20.

<sup>142</sup> Fox Comments, p. 20.

<sup>143</sup> Fox Comments, pp. 20-21.

<sup>144</sup> Fox Comments, pp. 20-21.

<sup>145</sup> Fox Comments, pp. 15-21.

<sup>146</sup> SWAPE Comments, pp. 24-26.

<sup>147</sup> SWAPE Comments, pp. 24-26.

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health.<sup>148</sup> The County must prepare an EIR to analyze and mitigate this potential hazard impact.

Additionally, Mr. Hagemann writes that the IS/ND is further deficient because it fails to evaluate and analyze the presence of hazardous conditions at the Project site using standard environmental due diligence practices.<sup>149</sup> Mr. Hagemann suggests that a Phase I Environmental Site Assessment should be prepared for the Project to ensure that hazardous soil or groundwater conditions do not exist that would pose a risk to construction workers or the public.<sup>150</sup>

#### IV. CONCLUSION

For the reasons described above, the IS/ND fail to comply with CEQA. The IS/ND is procedurally and substantively defective. Moreover, CEQA requires that an EIR be prepared for this project because substantial evidence exists that it may have a significant impact on the environment. Therefore the County may not adopt a Negative Declaration for this Project and cannot approve Use Permit #PA-1700032.

We urge the County to fulfill its responsibilities under CEQA by withdrawing the IS/ND and preparing an EIR.

Sincerely,

  
Linda Sobczynski

LTS:acp

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<sup>148</sup> SWAPE Comments, p. 26.

<sup>149</sup> SWAPE Comments, pp. 23-24.

<sup>150</sup> SWAPE Comments, pp. 23-24.