

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

In the Matter of:

The Appeal by Citizens for Protection of Coombsville)
Environment from the Decision by the Conservation,)
Development And Planning Commission Approving)
Use Permit No. 00243 UP, the Palmaz Vineyards)
Winery, APN 049-270-015, 016, 017 (sfap) &)
018 (ptn), 049-320-012 & 015)

RESOLUTION NO. 01-150

**FINDINGS AND DECISION
ON APPEAL**

WHEREAS, on September 22, 1999, and as revised on November 16, 2000, Palmaz Vineyards, Amalia Palmaz as Trustee ("the Applicant"), applied to the Napa County Conservation, Development and Planning Department ("the Department") for a use permit to establish a new winery ("the Project") on a 120 acre parcel of land to be created by lot line adjustment ("the subject property") which is adjacent to other property owned by the Applicant ("the site") on Hagen Lane east of Hagen Road in the unincorporated area of Napa County west of the City of Napa in an Agricultural Watershed ("AW") zoning district bearing Assessor's Parcel Numbers 049-270-015, 016, 017 (sfap) & 018 (ptn), 049-320-012 & 015; and

WHEREAS, the Project as proposed would consist of a \pm 50,000 square foot cave to be used for winery purposes, and would produce up to 35,000 gallons of wine each year. The winery would be located in a knoll adjacent to an existing vineyard on the property. Visits to the winery for tours and tastings would be by prior appointment only, and there would be a total of only 4 events with no more than 40 persons per event and 2 events with no more than 40 persons; and

WHEREAS, in accordance with the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"), the Department conducted an initial study of the Project; and

WHEREAS, after evaluating the Project pursuant to CEQA, the Department concluded that a negative declaration was legally and factually sufficient, and the Department prepared a negative declaration; and

WHEREAS, on June 20, 2001, at a duly noticed public hearing, the Napa County Conservation, Development and Planning Commission ("the Planning Commission" or "the Commission") heard and considered both oral and documentary evidence regarding the Project, including evidence presented by the Department, the Applicant, and Thomas Lippe and others ("the Appellants"); and

WHEREAS, at the conclusion of the public hearing, and in reliance upon the record as whole, the Planning Commission adopted a negative declaration and approved the Project, subject to 12 conditions of approval; and

WHEREAS, on July 3, 2001, the Appellants appealed the decision of the Planning Commission in a timely manner in accordance with Chapter 2.88 of the Napa County Code on the following grounds:

1. The Planning Commission abused its discretion by adopting a Negative Declaration rather than requiring an EIR.
2. The Negative Declaration did not adequately address groundwater use or recharge.
3. The Project should include an Erosion Control Plan for cave excavation.
4. The Negative Declaration did not adequately address traffic impacts.
5. The Negative Declaration did not adequately address peak flows, watershed and fishery impacts.
6. The Negative Declaration did not adequately address landslide risk.
7. The Negative Declaration did not adequately address wastewater treatment.

WHEREAS, at a duly noticed public hearing on November 13, 2001, and based on the entire record on appeal, the Napa County Board of Supervisors ("the Board") heard and considered the appeal, but allowed the Appellants, the Applicant, and others to present additional oral and documentary evidence; and

WHEREAS, during the hearing the Appellants and Applicant met independently and reached an agreement that some of the conditions of approval would be revised and some conditions of approval would be added that were satisfactory to both parties and that the Appellants would no longer pursue the appeal provided the agreed on modifications were included in the Project; and

WHEREAS, at the conclusion of the public hearing, the Board passed a motion of intent upholding in part and denying in part the decision of the Planning Commission approving the Project subject to the terms and conditions of the agreement of the parties.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The foregoing recitals are true and correct.

2. First Ground of Appeal

(a) Appellants' position:

The Planning Commission abused its discretion by adopting a Negative Declaration rather than requiring an EIR. The Appellants contend that the Mitigated Negative Declaration was not

based on a proper baseline as it did not include previously approved vineyard development on the property in the analysis of environmental impacts.

(b) Findings:

The Initial Study prepared by the County analyzed the environmental impacts of the Project being proposed, and there is no evidence that the use of a cave for winery purposes on the subject property with an existing approved vineyard will result in significant adverse environmental impacts. The prior approval by the County of the erosion control plan for the vineyard on site was consistent with the policies and interpretations of the County Code at the time of approval. There was no appeal of the approval of the erosion control plan, and the statute of limitations to challenge the approval has long since lapsed. The vineyard exists legally and environmental impacts of the vineyard, if any, are not required to be included in the consideration of the potential impacts of using a cave on the property for a winery.

Based on the conclusions of the Initial Study, the Board finds that the Planning Commission properly adopted a Negative Declaration and that an Environmental Impact Report is not warranted.

3.) Second Ground of Appeal

a.) Appellants' position:

The Appellants contend that the Negative Declaration did not adequately address groundwater use or recharge.

b.) Findings:

The revised Project approved by the Planning Commission established that the Project would not use any additional groundwater than what currently is used. The proposal to recycle winery process wastewater for irrigation and the importation of all winery domestic water will prevent any impact to the groundwater table. While there is no evidence that the use of the cave for winery purposes will have any impact on water recharge, the Applicant has agreed to not seek approval of any increase in production capacity until the ongoing United States Geological Survey/County of Napa study of groundwater into the Milliken-Sarco-Tulocay Basin or until a new water source other than groundwater from the Coombsville area is available. The Applicant has also agreed to not protest the future formation of an assessment district that may be formed with the purpose of bringing new surface water to the Coombsville area. The Applicant has further agreed to limit groundwater use on the winery parcel to not exceed an average annual amount of 34 acre feet per year, which is less than the fair share groundwater allocation in the Milliken-Sarco-Tulocay Basin for a 120 acre parcel.

Based on the Project proposal and modifications discussed above, the Board finds that the Project could not adversely impact groundwater resources.

4.) Third Ground of Appeal

a.) Appellants' position:

The Appellants contend that the Project should include an Erosion Control Plan for cave excavation.

b.) Findings:

**SR to BOS (11-8-01)
xg. 11-8-01
7-270-018
10001-011*
Co doesn't regulate storage of cave spoils
The County has consistently found that the excavation of caves is not an activity subject to the provisions of the Conservation Regulations, and as such all inherent activities surrounding cave construction such as access roads and portal excavation are likewise not subject to county approval. The construction of the caves and portal excavation occurred with the full knowledge of County staff and the Appellants, and no challenge to the activity was ever filed.

Based on the Project proposal, the Board finds that the use of caves for winery purposes does not require the approval of an erosion control plan to construct the caves.

5.) Fourth Ground of Appeal

a.) Appellants' position:

The Appellants contend that the Negative Declaration did not adequately address traffic impacts.

b.) Findings:

The Applicant provided the County with a traffic study prepared by a registered traffic engineer. The study analyzed the Project as originally proposed, which included retail sales open to the public and marketing events allowing up to 1,960 visitors per year. The study was reviewed by the County Department of Public Works and, Conservation, Development and Planning Department was found to be accurate in its conclusion that additional traffic generated by the Project would not result in any adverse environmental impacts related to traffic or result in any significant increase in traffic hazards. Based on concerns by the public, marketing events were reduced by the Applicant to allow no more than 390 visitors to such events per year. The Planning Commission further reduced marketing events to 260 persons per year, resulting an average daily increase in traffic from the winery to 20 trips per day, or the equivalent of two single family dwellings. Based on an agreement between the Applicant and Appellant, marketing events now allow a maximum of 130 persons per year, and retail sales will be by appointment only, and to not install any signs for the winery visible from Hagen Road or North Third Avenue. In addition, the Applicant agreed to deposit the remaining cave tailings on site incorporating standard erosion control measures, thereby reducing the amount of large trucks coming to and leaving the area during cave construction. The Applicant will also provide an updated traffic study addressing conditions at the intersections of Hagen Lane, Hagen Road, Olive Hill (east) and Third Avenue after one year of operation.

Based on the Project proposal and the modifications discussed above, the Board finds the Project will not result in a significant adverse effect on traffic.

6.) Fifth Ground of Appeal

a). Appellants' position:

The Appellants contend that the Negative Declaration did not adequately address peak flows, watershed and fishery impacts.

b.) Findings:

The Project seeks approval to use caves for winery purposes. The only increase in runoff will come from the paving of existing vineyard access roads. An erosion control plan for the widening and improvement of these roads was submitted with the Project and has been determined to include adequate measures to reduce potential erosion to insignificant levels. The Project does not propose any alteration to Hagen Creek or any other natural stream.

Based on the Project proposal, the Board finds there is no evidence the Project will result in any impacts to peak flows, the watershed, or fisheries.

7.) Sixth Ground of Appeal

a). Appellants' position:

The Appellants contend that the Negative Declaration did not adequately address landslide risk.

b.) Findings:

The appeal includes statements relative to landslides that occurred on another property. The Applicant provided a geotechnical evaluation of the winery area prepared by a geotechnical engineer. The conclusion of the report is that the area where the winery is located is not subject to significant landslide risk.

Based on the Project proposal, the Board finds there is no evidence the Project will result in any significant exposure of persons to landslide risk.

8.) Seventh Ground of Appeal

a). Appellants' position:

The Appellants contend that the Negative Declaration did not adequately address wastewater treatment.

b.) Findings:

The appeal states that the Negative Declaration fails to address the potential adverse impacts of the proposed underground winery process wastewater treatment system. The unique system proposed by the Applicant is intended to eliminate unnecessary water loss through evaporation required by other conventional systems. The information provided by the Applicant shows that the system has successfully been used to treat sanitary sewage in other applications, while this system will only treat winery process wastewater that does not include sewage or gray water. The system has been reviewed by both the Regional Quality Control Board and County Division of Environmental Management.

Based on the Project proposal, the Board finds there is no evidence the wastewater system will not adequately treat the wastewater to a level safe enough to use for irrigation.

9.) Decision on Appeal.

Based on the foregoing findings, the Board of Supervisors upholds in part and denies in part the Appellants' appeal from the decision of the Planning Commission approving Use Permit No. 00243-UP, the Palmaz Vineyards Winery, subject to modifications discussed above, each of which shall be made a part of and incorporated into the Project.

10.) Effective date.

This resolution shall take effect immediately upon its adoption.

THE FOREGOING RESOLUTION was adopted by the Napa County Board of Supervisors at a regular meeting of the Board on December 4, 2001, by the following vote:

AYES:	SUPERVISORS	<u>DODD, LUCE, WAGENKNECHT,</u> <u>AND RIPPEY</u>
NOES:	SUPERVISORS	<u>NONE</u>
ABSENT:	SUPERVISORS	<u>VARRELMAN</u>

ATTEST:

Mary Jean McLaughlin,
Clerk of the Board

By Teri Lissou, Deputy

APPROVED AS TO FORM

Office of County Counsel

By Joseph Toldard, Deputy
Date: December 24, 2001