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COUNTY OF NAPA  
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CLERK OF THE NAPA SUPERIOR COURT  
BY D. HERICH  
DEPUTY

1 MICHAEL T. CARLSON, ESQ., SBN 184674  
2 MATTHEW K. GOOD, ESQ., SBN 226962  
3 GEARY, SHEA, O'DONNELL, GRATTAN & MITCHELL, P.C.  
37 Old Courthouse Square, Fourth Floor  
Santa Rosa, California 95404  
Telephone: 707/545-1660  
4 Facsimile: 707/545-1876

5 Attorneys for Defendants  
6 CARLICE, LLC, FRANK C. ALTAMURA and  
KAREN L. ALTAMURA

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA

10 NAPA COUNTY,

11 Plaintiff,

12 v.

13 CARLICE, LLC, FRANK C. ALTAMURA,  
14 KAREN L. ALTAMURA and DOES 1 through  
10, inclusive,

15 Defendants.

CASE NO.: 26-61207

DECLARATION OF MICHAEL T.  
CARLSON AND REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION TO DISSOLVE PRELIMINARY  
INJUNCTION OR IN THE  
ALTERNATIVE MODIFY PRELIMINARY  
INJUNCTION

Date: March 14, 2014

Time: 8:30 a.m.

Dept.: ~~X~~ A

Honorable Michael Byrne TBA

Unlimited Civil

19 I, Michael T. Carlson, declare as follows:

20 1. I am an attorney with the Law Offices of Geary, Shea, O'Donnell, Grattan &  
21 Mitchell, P.C., counsel of record for defendants in the above-referenced matter. I have personal,  
22 first-hand knowledge of the following and, if called as a witness, could and would competently  
23 testify thereto.

**BY FAX**

24 2. The California State Fire Marshall promulgates guidelines for the issuance of  
25 Certificates of Occupancy. Attached hereto as Exhibit A is a true and correct copy of the  
26 Guidelines taken from the Fire Marshall's website. The guidelines contemplate issuance of  
27 certificate on a portion of a property.

28 "Occupiable in part -- These are buildings or structures with complete life safety

LAW OFFICES OF  
GEARY,  
SHEA,  
O'DONNELL  
GRATTAN &  
MITCHELL  
P.C.

Declaration of Michael T. Carlson and Request for Judicial Notice in Support of Motion to Dissolve  
Preliminary Injunction or in the Alternative Modify Preliminary Injunction

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MICHAEL T. CARLSON, ESQ., SBN 184674  
MATTHEW K. GOOD, ESQ., SBN 226962  
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Attorneys for Defendants  
CARLICE, LLC, FRANK C. ALTAMURA and  
KAREN L. ALTAMURA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

NAPA COUNTY,

Plaintiff,

v.

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KAREN L. ALTAMURA and DOES 1 through  
10, inclusive,

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Honorable Michael Byrne

*Unlimited Civil*

I, Michael T. Carlson, declare as follows:

1. I am an attorney with the Law Offices of Geary, Shea, O'Donnell, Grattan & Mitchell, P.C., counsel of record for defendants in the above-referenced matter. I have personal, first-hand knowledge of the following and, if called as a witness, could and would competently testify thereto.

2. The California State Fire Marshall promulgates guidelines for the issuance of Certificates of Occupancy. Attached hereto as Exhibit A is a true and correct copy of the Guidelines taken from the Fire Marshall's website. The guidelines contemplate issuance of certificate on a portion of a property.

"Occupiable in part – These are buildings or structures with complete life safety

LAW OFFICES OF  
GEARY,  
SHEA,  
O'DONNELL  
GRATTAN &  
MITCHELL  
P.C.

1 systems that have a portion of their area completed and are in compliance with all  
2 applicable codes and ordinances. Site and off-site requirements must be constructed  
3 installed, and accepted for the portion being granted a Certificate of Occupancy.  
4 This would include but not be limited to fire department access, parking, and  
5 accessibility to the proposed use.”

6 3. Selected portions of the Reporter’s transcript on the April 9, 2013 hearing are  
7 attached hereto as Exhibit B.

8 4. By way of this Declaration, I request that this Court take judicial notice of Exhibits  
9 A and B hereto pursuant to California Evidence Code §§ 451-452.

10  
11 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
12 and correct. Executed this 11<sup>th</sup> day of February, 2014, at Santa Rosa, California.

13  
14  
15   
16 MICHAEL T. CARLSON

17  
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25  
26 LAW OFFICES OF  
27 GEARY,  
28 SHEA,  
O'DONNELL  
GRATTAN &  
MITCHELL  
P.C.





**State Fire Marshal**  
Code Enforcement Division

**CERTIFICATE OF OCCUPANCY  
GUIDELINES**

---

This guideline explains and outlines the processes for obtaining a conditional and final Certificate of Occupancy from the State Fire Marshal. For further information, contact the Code Enforcement Division at (916) 445-8550 – North or (626) 305-1908 – South.

**APPLICABILITY:**

Section 109 of the California Building Code defines when a Certificate of Occupancy is required and when it is issued. A Certificate of Occupancy will not be issued to any building or structure, or portion thereof, until all the provisions of the laws and regulations of the State Fire Marshal are met. For this reason, buildings or structures may be classified as follows:

- **Non-occupiable** – These are buildings or structures or portions thereof with incomplete life safety and accessibility systems. These types of structures or buildings may entail utility stub-ups, dirt floors, an absence of restrooms, partial or incomplete fire suppression systems and/or smoke control systems. These are roofed structures that may not be occupied. No Certificate of Occupancy can be issued for this application.
- **Occupiable in part** – These are buildings or structures with complete life safety systems that have a portion of their area completed and are in compliance with all applicable codes and ordinances. Site and off-site requirements must be constructed, installed, and accepted for the portion being granted a Certificate of Occupancy. This would include but not be limited to fire department access, parking, and accessibility to the proposed use.
- **Occupiable** – These are buildings or structures that are issued a Certificate of Occupancy because they are complete and in compliance with the laws and regulations for which the occupancy has been applied. These buildings and structures, or portions thereof, may or may not have a specific tenant. A Certificate of Occupancy may be issued for the applied-for occupancy. Additional signage and tenant improvement requirements may be under separate permits and separate Certificates of Occupancy.

**RESOLUTION OF DEVELOPMENT ISSUES**

The following is a list of issues that, if outstanding, could prevent the issuance of a Certificate of Occupancy until the issues are resolved to the State Fire Marshal's satisfaction. This list is not inclusive:

- Finalization of all on-site permits (Fire, Site, Civil, Building)
- Completion of all off-site improvements – includes removal of and repairs to street lights
- Resolution of all project holds
- Submittal and acceptance of as-builts for water supply, including testing reports
- Acceptance of water supply
- Acceptance of the Fire Alarm System
- Acceptance of the Fire Sprinkler System

Issuance of a Certificate of Occupancy shall not be construed as an approval of a violation of the provisions of the code or any other requirements of the State Fire Marshal.

**CONDITIONAL CERTIFICATE OF OCCUPANCY**

If the Fire Marshal finds that no substantial hazard will result from occupancy of any building before completion, or portion thereof, a Conditional Certificate of Occupancy may be issued. This includes such uses as storage (stocking) or inventory (of non-construction related material, such as furniture) for the proposed occupancy. A Conditional Certificate of Occupancy is not extendable or renewable beyond 60 days.

**RESOLUTION OF DEVELOPMENT ISSUES:**

The following is a list of minimum requirements that must be met before consideration is given by the Fire Marshal to allow the issuance of a Conditional Certificate of Occupancy. The list is not all-inclusive:

- A written request from the owner or owner's agent for the Conditional Certificate of Occupancy (inspections clearance is required for any application for a Conditional Certificate of Occupancy).
- Fire Department clearance
- No overhead lifting above floor(s) of occupancy
- Building must be enclosed at all levels
- Associated Site and Civil requirements must be met
- Code-required fire and life safety systems, i.e., sprinklers, fire alarms, smoke detectors, fire rated floor systems, duct, shafts, and penetrations, elevators, exit illuminations, exits and exit stairways, must be in place and functional
- Accessibility requirements must be in complete compliance to, throughout, and from the area under consideration
- Parking, including accessible spaces, must be available for the occupancy of the area under consideration
- Extinguishing Systems and Standpipes must be functional
- Other issues pursuant to field conditions

Issuance of a Conditional Certificate of Occupancy shall not be construed as a dismissal of a violation of any State Fire Marshal regulatory provisions.



CARL9

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NAPA

The Honorable J. MICHAEL BYRNE, Judge Pro Temp

--000--

NAPA COUNTY,

Plaintiff,

vs.

CARLICE, LLC, et al.,

Defendant.

No. 26-61207

--000--

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
HAD AT TIME OF HEARING

--000--

Napa, California  
Tuesday, April 9, 2013  
3:00 o'clock p.m.

--000--

Transcribed by:

SUSAN L. STRAUB, CSR No. 7608

---

SUSAN L. STRAUB  
CERTIFIED SHORTHAND REPORTER  
105 Ventura Street  
Vallejo, California 94590  
(707) 246-8850

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I N D E X

Page 1



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|---|-------------|------|
| 3 | CARL9       |      |
|   | --oOo--     |      |
| 4 |             | PAGE |
| 5 | APPEARANCES | 4    |
| 6 | PROCEEDINGS | 5    |

7

8 --oOo--

9

10 PLAINTIFF'S WITNESSES:

|    |                                       |    |
|----|---------------------------------------|----|
| 11 | JOHN MCDOWELL                         |    |
| 12 | Direct Examination by Ms. Gallagher   | 19 |
|    | Cross-Examination by Ms. Cunningham   | 35 |
| 13 | Redirect Examination by Ms. Gallagher | 48 |
| 14 | DARRELL MAYES                         |    |
| 15 | Direct Examination by Ms. Gallagher   | 53 |
| 16 | Cross-Examination by Ms. Cunningham   | 71 |

17 --oOo--

18 EXHIBITS

19 FOR IDEN. IN EVID.

20 FOR THE PLAINTIFF:

|    |                                   |    |
|----|-----------------------------------|----|
| 21 | 1 -- Approval letter dated 3/1/95 | 43 |
| 22 | 2 -- Letter to M. Mackenzie       |    |
| 23 | dated 4/1/97                      | 43 |
| 24 | 3 -- Temporary Certificate of     |    |
| 25 | Occupancy letter dated            |    |
|    | 11/26/12                          | 58 |

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1 --oOo--

2 I N D E X (CONTINUED)

3 --oOo--

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5 EXHIBITS

6 FOR IDEN. IN EVID.

CARL9

7 FOR THE DEFENDANT:

8 A -- Napa County - Invoice dated 44  
6/17/1998

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11 --000--

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13 REPORTER'S CERTIFICATE 90

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15 --000--

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--000--  
A P P E A R A N C E S  
--000--

2

3

4 For the Plaintiff: NAPA COUNTY COUNSEL  
County of Napa  
1195 Third Street, Room 301  
Napa, California 94559

5

6

7

By: CARRIE GALLAGHER, ESQ.  
Deputy County Counsel

8

9 For the Defendant: GAW, VAN MALE  
Attorneys at Law

Page 3

10 CARL9  
11 1000 Main Street  
12 Napa, California 94559  
13 BY: TERESA CUNNINGHAM, ESQ.  
14 - and -  
15 ROBYN CHRISTO, ESQ.  
16 Attorneys at Law

17 --000--  
18  
19  
20  
21  
22  
23  
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4

1 TUESDAY, APRIL 9, 2013 3:00 O'CLOCK P.M.

2 --000--

3 The above-entitled matter came on regularly  
4 this day for hearing before the Honorable J. MICHAEL BYRNE,  
5 Judge Pro Temp.

6 NAPA COUNTY COUNSEL, County of Napa, 1195  
7 Third Street, Room 301, Napa, California 94559,  
8 represented by CARRIE GALLAGHER, Deputy County Counsel,  
9 appeared as counsel on behalf of the Plaintiff.  
10 GAW, VAN MALE, Attorneys at Law, 1000 Main  
11 Street, Napa, California 94559, represented by TERESA  
12 CUNNINGHAM and ROBYN CHRISTO, Attorneys at Law, appeared as  
13 counsel on behalf of the Defendant.

CARL9

17 Exhibit A.

18 Can you tell me what that document is?

19 A. Yes. This is and approval letter for a winery use  
20 permit.

21 Q. And what is the second page of that document?

22 A. It's the first page of the project's conditions of  
23 approval.

24 Q. And how many conditions are listed in that document?

25 A. There are 14 conditions.

24

1 Q. And is one of the conditions for the Altamuras to  
2 comply with all of the Building Codes and zoning codes?

3 A. Yes, it's the second condition of approval.

4 Q. Okay.

5 In your knowledge and review of the file,  
6 have all of those conditions listed in the use permit been  
7 met?

8 A. No, I don't believe so.

9 MS. CUNNINGHAM: Objection, lacks  
10 foundation.

11 THE COURT: I will overrule it.

12 MS. GALLAGHER: Your answer again, I  
13 apologize.

14 THE WITNESS: No, I do not believe the  
15 conditions have been met.

16 BY MS. GALLAGHER:

17 Q. Does the use permit that you have in front of you,  
18 include the use of the cave on the property for  
19 winery-related purposes?

20 A. No, it does not.

CARL9

21 Q. Did the Altamuras, at any time indicate that they  
22 wanted too use the cave for winery related purposes?

23 MS. CUNNINGHAM: Objection, lacks  
24 foundation, calls for --

25 THE COURT: It's vague.

25

1 what do you mean, to him personally or  
2 anything in the documents?

3 MS. GALLAGHER: I will be more specific.

4 THE COURT: Tie that down a little.

5 BY MS. GALLAGHER:

6 Q. In your use-permit file, do you have any  
7 documentation that the Altamuras formally requested a  
8 use-permit modification for the cave to be used as part of  
9 this project?

10 A. There is no formal application for modification;  
11 however, there is a letter, I believe from March 1997, the  
12 date might be March 14th, 1997, from Mr. Malcolm McKenzie  
13 and that letter indicates the permittees intent to convert  
14 the second story of the winery structure to a residence and  
15 move that portion of the winery entitlement to the  
16 adjoining cave structure.

17 Q. Did the county respond to this March 14th, 1997  
18 letter from Mr. McKenzie?

19 A. Yes.

20 Q. And what was the county's response regarding the  
21 issue of the cave?

22 A. There is an April 1st, I believe, letter, 1997 from  
23 then director Jeff Reading stating -- let me back up a

14 it's also quite evident, when you do file research on older  
15 files, that that was occurring.

16                   So if I could give an example.

17                   I was recently going through the Jarvis  
18 winery file, and that project was originally approved in  
19 the mid 19 -- I think it was '92, when it was approved.  
20 And at that time the winery cave was under construction  
21 when the project came in for planning commission approval;  
22 and then subsequent to the planning commission approval,  
23 changes occurred to that winery's design that resulted in a  
24 code enforcement case.

25                   And there is a letter in that file from 1992

41

♀

1 stating that a use-permit modification was necessary and  
2 that plumbing and mechanical permits were also necessary.  
3 Q.       Do you have any information that the caves as  
4 constructed on the Altamura property were not constructed  
5 with mining and geology standards at the time?

6 A.       I am not familiar with the mining and geology  
7 standards.

8 Q.       Do you have any information that, at the time the  
9 caves were constructed, that the plumbing and the  
10 electrical were not approved by the county?

11 A.       I have found no record of a plumbing or mechanical  
12 or electrical permit for the cave.

13 Q.       I would like to show you a document.

14                   MS. CUNNINGHAM: Your Honor, can we mark  
15 this as Defendant's 1?

16                   Did Ms. Gallagher have an exhibit that she

18 MS. GALLAGHER: I just utilized your  
19 exhibits.

20 MS. CUNNINGHAM: Okay.  
21 I will just mark this as Defendant's 1.

22 THE COURT: The only one I have got so far  
23 is an A, which was one of your -- I guess we referred to  
24 them. We probably should mark them, so they are clear.

25 MS. GALLAGHER: He has two. I had him refer

42

1 to two exhibits.

2 THE COURT: I don't think you mentioned any  
3 other exhibits. I don't believe we had any of them marked.

4 MS. GALLAGHER: I don't think we did either.  
5 Maybe we should Plaintiff Exhibit 1 and 2.

6 THE COURT: Let's call those 1 and 2.

7 MS. CUNNINGHAM: And I will do alpha.

8 THE COURT: Why don't you do that.

9 MS. CUNNINGHAM: Okay. That's fine.  
10 Do you want to mark those now, Ms.

11 Gallagher.

12 THE COURT: So we have a 1 and a 2 and A.  
13 Exhibit 1 will be the approval letter.

14 (Approval letter was marked as  
15 Plaintiff's Exhibit No. 1 for  
identification.)

16 THE COURT: And what was 2?

17 MS. GALLAGHER: April 1st, 1997 letter.

18 THE COURT: Okay, I saw that. That will be  
19 2.

20 (Letter was marked as Plaintiff's Exhibit

CARL9

14 entitlement.

15 Q. And did you make that statement at that meeting?

16 A. Yes, I did.

17 Q. Do Phil Crundell and Sylvia Toth still work for the  
18 county?

19 A. No.

20 Q. When a permit is finalized, is there some way that  
21 it's recognized in the county's system?

22 A. Yes.

23 Q. And how is that recognized in the county's system?

24 MS. CUNNINGHAM: Objection, your Honor.

25 It's vague and Ambiguous as to time.

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0

1 THE COURT: Sustained.

2 BY MS. GALLAGHER:

3 Q. Right now a permit is finalized. How is that  
4 recognized in the system?

5 A. It's recorded in the computer under "inspection" and  
6 there is a paper copy issued and placed in the file and  
7 provided to interested parties stating that a permit has  
8 been finalized.

9 In this case, a finalized permit would be a  
10 certificate of occupancy.

11 Q. And did you find a certificate of occupancy for the  
12 winery in the Altamura file?

13 A. No.

14 Q. Did you find a certificate of occupancy for the cave  
15 in the Altamuras' file?

16 A. No.



17 Q. In the later '90's, pre-Excella, how would the file  
18 recognize that a permit was final.

19 MS. CUNNINGHAM: Objection, lacks  
20 foundation, calls for speculation, calls for hearsay.

21 THE COURT: I would like to know if he does  
22 know that, if there are procedures and practices that exist  
23 in the county that have to deal with that, but I haven't  
24 heard her say that he has to know that to do his job. I  
25 would imagine he does, but I think he ought to say it so we

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1 have a record of it.

2 BY MS. GALLAGHER:

3 Q. In early 2001 when you began at the county, what  
4 system was in place for entering the permit information?

5 A. It was the Permits Plus system.

6 Q. How long had the county had that Permits Plus  
7 system?

8 A. For approximately ten years; a little less than ten  
9 years.

10 Q. So when it was Permits Plus, how was it entered into  
11 the system?

12 A. In a similar fashion to the Excella program where  
13 the computer entry would list the permit has being  
14 finalized or certificate of occupancy granted. Likewise,  
15 there would be a certificate of occupancy document placed  
16 in the file.

17 Q. Based on your knowledge of the current system, would  
18 the practice have been any different now than in 1997/1998.

19 MS. GALLAGHER: No further questions.

20 THE COURT: Any recross?

CARL9

3 THE COURT: I will allow it. It would  
4 probably be a summary and be a little clearer if I can get  
5 it from him. You can always question him on cross but it  
6 would be best if I get it from Mr. Mayes.

7 THE WITNESS: I believe that permit was  
8 issued for a winery building with a residence on top.  
9 BY MS. GALLAGHER:

10 Q. Have you issued a certificate of occupancy for that  
11 building?

12 A. No.

13 Q. What still needs to be completed in order for you to  
14 be able to issue a certificate of occupancy?

15 A. There are minor issues in the building itself and,  
16 also, all of the other divisions need to have their  
17 requirement met and they need to approve it. And then  
18 after that, they will issue a certificate of occupancy.

19 Q. Did you inform Mr. Altamura that he could not use or  
20 occupy that winery building until you issued a certificate  
21 of occupancy?

22 A. Yes.

23 Q. And when did you notify Mr. Altamura of that?

24 A. I believe it was February of 2008.

25 MS. CUNNINGHAM: I'm sorry?

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1 THE COURT: February of when?

2 THE WITNESS: 2008.

3 BY MS. GALLAGHER:

4 Q. I'm going to backtrack because I don't believe you  
5 were working for the county in 1998.

6 A. 2008.

CARL9

1 A. I did look through them.

2 Q. What was the result of that search?

3 A. I couldn't find any permits or anything associated  
4 with them for that cave.

5 Q. Did you conduct a search to see if the county ever  
6 went out and inspected the cave for the electrical,  
7 plumbing and mechanical?

8 A. I reviewed the electrical volts out there and there  
9 was nothing to do with the cave.

10 Q. Are you familiar with the county requirement for  
11 permits needed for caves back in 1996?

12 A. Yes.

13 Q. What did the county require in order for a cave to  
14 be used back in 1996?

15 A. Well, they have to get a use permit approval.  
16 Right? And then they had to get approval from all of the  
17 other divisions.

18 Q. What type of permits would they need in order to  
19 have the public inside a cave?

20 A. They would also have to get a use permit and also  
21 building, plumbing and electrical permits for all of the  
22 things that go into a cave.

23 Q. What does the county require now for cave -- from  
24 the building division's point of view for a cave to be  
25 utilized for winery-related purposes?

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1 A. They would have to get all of the approvals for  
2 permits from all of the divisions first prior to -- can you

CARL9

3 repeat the question.

4 Q. I am asking what permits are necessary now to --

5 A. All the building and plumbing and electrical  
6 permits, approvals from the zoning department.

7 Q. For the building division, are the same permits  
8 required in 1996 that are required today?

9 A. Are you talking for caves?

10 Q. Yes, for the caves; the building, electrical, I  
11 think you said --

12 A. Building, plumbing, mechanical, electrical permits  
13 were required for caves back in 1996.

14 Q. And are they still required today?

15 A. Yes.

16 Q. Have the Altamuras applied for and obtained the  
17 necessary building permits for the cave?

18 A. No.

19 Q. When did you personally become aware, in your  
20 position as chief building official, that the cave was  
21 being used for winery storage and tasting.

22 A. Please state that question again.

23 Q. When did you become aware that the cave was being  
24 used for winery storage and tasting?

25 A. I believe when I went out there for an inspection of

65

1 the winery building itself was the first time I seen the  
2 cave.

3 Q. And what was the date of that?

4 A. I can't recall the exact date.

5 Q. What year was it in?

6 A. 2012.

CARL9

10 Q. Are you able to issue a Certificate of Occupancy  
11 without inspecting that work?

12 A. No.

13 Q. Is it your understanding that use-permit  
14 modification is necessary prior to you issuing a  
15 certificate of occupancy?

16 A. I'm sorry, can you repeat that.

17 Q. Is it your understanding that a use-permit  
18 modification needs to occur prior to you issuing a  
19 certificate --

20 A. Oh, sure. Oh, yes.

21 Q. And, in your opinion, is the use and occupancy of  
22 that cave today a violation of Napa County codes?

23 A. Yes.

24 Q. If the Altamuras do obtain these permit  
25 modifications and all the work is inspected and signed off

67

1 on and finalized, would you be able to issue a Certificate of  
2 occupancy?

3 A. With approval of all of the division's requirements  
4 being met, yes.

5 Q. Once a Certificate of Occupancy is issued for the  
6 cave, what would that allow?

7 A. It would allow for full occupancy of the cave for  
8 what the application was for. If it was for tasting, it  
9 would allow tasting.

10 Q. What type of cave do you currently consider the  
11 Altamuras' cave?

12 A. Well, that is kind of hard to answer. I think it's  
13 being used for a type three cave, allowing tasting.

CARL9

- 14 Q. And what -- how do you define a type three cave?  
15 A. You have type one, type two and type three caves.  
16 Type one caves are only for employees only. Type two  
17 caves, you can actually invite the public in for a tour,  
18 but no tasting or anything like that. Type three caves are  
19 for activities that occur in any assembly-type building.  
20 Q. Are there specific Building Code requirements for  
21 type three caves?  
22 A. Certainly.  
23 Q. And would you need to inspect to make sure those  
24 requirements are met prior to issuing a Certificate of  
25 Occupancy?

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- 1 A. Yes.  
2 Q. What are your concerns with allowing tours and  
3 tastings inside the cave prior to you issuing a Certificate  
4 of Occupancy?  
5 A. Well, my general concern is for the safety of the  
6 public.  
7 Q. Is it your understanding today that the winery is  
8 being used and occupied?  
9 A. Yes.  
10 Q. Is that current use and occupancy of the winery in  
11 violation of the Napa County code?  
12 A. Yes.  
13 Q. There is a current active building permit for the  
14 the winery; correct?  
15 A. Yes.  
16 Q. What would it take for you to issue a Certificate of

CARL9

L 21 itself, yes.

22 Q. Is the second floor complete yet?

23 A. No.

24 Q. What is missing for the second floor?

25 A. I have not been up there but I do know it's not

70

1 complete. I am not even sure if they have called for a  
2 final yet.

3 Q. Have you received any calls for a final inspection  
4 on the winery?

5 A. Typically, the inspection request go to our  
6 inspection line and then staff takes those and schedules  
7 the inspectors out there, so I don't always have the  
8 knowledge for when they call for an inspection.

9 Q. But to your knowledge, you have issued a Certificate  
10 of Occupancy for that winery?

11 A. Correct, I have not.

12 Q. And you are the only person in the county that will  
13 issue that Certificate of Occupancy?

14 A. Yes.

15 MS. GALLAGHER: No further questions.

16 THE COURT: Cross?

17 MS. CUNNINGHAM: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MS. CUNNINGHAM:

20 Q. When was the last time you reviewed the building  
21 division file on this project?

22 A. Today.

23 Q. When was the first time you ever reviewed the file

Case No: 26-61207

Napa County Superior Court

**PROOF OF SERVICE**

I am employed in the County of Sonoma, State of California. I am over the age of 18 years and not a party to the within action. My business address is Geary, Shea, O'Donnell, Grattan & Mitchell, 37 Old Courthouse Square, Fourth Floor, Santa Rosa, CA 95404.

On February 11, 2014, I served the attached:

**DECLARATION OF MICHAEL T. CARLSON AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISSOLVE PRELIMINARY INJUNCTION OR IN THE ALTERNATIVE MODIFY PRELIMINARY INJUNCTION**

on the parties to this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Office of County Counsel  
Minh C. Tran, County Counsel  
Carrie R. Gallagher, Deputy  
1195 Third Street, Suite 301  
Napa, CA 94559

Telephone: (707) 253-4521  
Attorneys for Plaintiff Napa County

/X/ (BY MAIL) I placed a copy of the above-described document in sealed envelope, with postage thereon fully prepared for First-Class Mail, addressed to the parties as set forth above, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practice of Geary, Shea, O'Donnell, Grattan & Mitchell for processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for processing.

/ / (BY E-MAIL) I caused an electronic copy of the above-described document to be transmitted by e-mail to the address(es) known by or represented to me to be the receiving e-mail(s) of the parties noted above.

/ / (BY OVERNIGHT DELIVERY, PURSUANT TO CCP '1013(c)) I placed such sealed envelope for collection and mailing by overnight delivery at Santa Rosa, California, within the ordinary business practices of Geary, Shea, O'Donnell, Grattan & Mitchell. I am readily familiar with the practices of Geary, Shea, O'Donnell, Grattan & Mitchell for processing overnight correspondence, said practice being that in the ordinary course of business, correspondence is either picked up by or delivered to the delivery company the same day as it is placed for processing.


/ / (BY FACSIMILE) I caused the above-described document to be transmitted, pursuant to Rule 2008, by facsimile machine (which complies with Rule 2003(3)) to the parties at the number(s) indicated after the address(es) noted above. The transmission was reported as complete and without error.

/ / (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the parties at the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Santa Rosa, California, on February 11, 2014.

LAW OFFICES OF  
GEARY,  
SHEA,  
O'DONNELL  
GRATTAN &  
MITCHELL  
P.C.

11150-001

  
Molly Meroney