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ENDORSED

MAR 03 2014

Clerk of the Napa Superior Court
By: L. WALKER
Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9

10 IN AND FOR THE COUNTY OF NAPA

11 NAPA COUNTY,

12 Plaintiff,

13 v.

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

15 Defendants.
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Case No.: 26-61207

**COUNTY'S OPPOSITION TO
DEFENDANTS' MOTION TO
DISSOLVE THE PRELIMINARY
INJUNCTION**

Date: March 14, 2014

Time: 8:30 a.m.

Dept.: N

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INTRODUCTION

Defendants own and operate Altamura Winery (Winery) on that real property located in Napa County identified at 1701 Wooden Valley Road, Napa (Property). Defendants applied for a building permit to construct the Winery, storage, dwelling and a garage on the Property in 1997. The building permit was issued, expired, and re-issued multiple times since 1997. The last re-issuance was in 2012 under building permit number B98-00096 (Building Permit). The plans associated with the Building Permit show the Winery on the first floor in a building on the Property. The second floor of the building is an unfinished residence. Defendants were occupying and operating the Winery within an unauthorized cave (Cave) and on the first floor of the building on the Property without a valid Certificate of Occupancy issued by the Building Official. In addition, the Building Permit and the approved Use Permit for the Winery did not contain information and approval for the Cave. On March 20, 2013, Napa County (County) filed a civil complaint for preliminary and permanent injunction to abate a public nuisance, civil penalties and attorney's fees.

On April 15, 2013, Defendants stipulated to a Preliminary Injunction prohibiting Defendants from conducting wine tastings at the Winery until the code violations were corrected and the Building Official issued a Certificate of Occupancy. In addition, Defendants agreed to cease all use and occupancy of the Winery until the code violations are corrected and the Building Official issues a Temporary Certificate of Occupancy for wine production purposes only, or a Certificate of Occupancy.

After a lengthy hearing on the request for a Preliminary Injunction associated to the Cave, on May 23, 2013, the Court entered a Preliminary Injunction, ordering the Defendants to cease all use and occupancy of the Cave on the Property until the Building Official issued a Certificate of Occupancy.

Defendants are requesting that the Court dissolve the Preliminary Injunctions. The request to dissolve the Preliminary Injunction for the Cave is moot, as the terms of the Stipulation to Modify the Preliminary Injunction have been met and the Cave has been issued a Certificate of Occupancy. However, the final inspections for County's Environmental Services, Planning, Engineering Services and Fire have not been requested or performed on the building and are required in order for the Building Official to issue a Certificate of Occupancy. In addition, the Temporary Certificate of Occupancy has expired for the production of wine on the first floor of the Winery building. Therefore, the Winery

1 building does not have a Temporary Certificate of Occupancy or a Certificate of Occupancy and the
2 Preliminary Injunction should remain in effect in order to prevent the Defendants from operating a
3 commercial business and conducting wine tastings, without a valid Certificate of Occupancy.

4 **STATEMENT OF FACTS**

5 **A. Complaint and Preliminary Injunction**

6 On March 20, 2013, County filed a civil complaint for preliminary and permanent injunction to
7 abate a public nuisance, civil penalties and attorney's fees. On March 21, 2013, County filed an ex parte
8 application for a temporary restraining order and order to show cause regarding preliminary injunction.
9 On March 21, 2013, the Court heard County's ex parte application and issued a temporary restraining
10 order requiring the Defendant's to immediately cease all use and occupancy of the Cave on the Property
11 for any and all Winery related purposes. The Court set the preliminary injunction hearing for April 3,
12 2013, which was rescheduled for April 9, 2013.

13 On April 9, 2013, the Court heard comments from counsel, testimony from the Deputy Director
14 of Planning John McDowell and testimony from the Building Official Darrell Mayes. The Court
15 continued the hearing to April 15, 2013. On April 15, 2013, Darrell Mayes continued testifying on
16 behalf of the County. After his testimony, the parties settled the issues pertaining to the Winery outside
17 the court room. The settlement was entered as a stipulation on the record. Defendants agreed to cease
18 all wine tastings at the Winery until the code violations are corrected and the Building Official issues a
19 certificate of occupancy. Defendant agreed to cease all use and occupancy of the Winery until the code
20 violations are corrected and the Building Official issues a Temporary Certificate of Occupancy for wine
21 production purposes only, or a Certificate of Occupancy. The temporary restraining order for the Cave
22 was extended until the issues were resolved by the Court and the parties at the next hearing date. In
23 addition, other deadlines were agreed upon and imposed by the Court. (Court Minute Order dated April
24 15, 2013; Preliminary Injunction filed April 18, 2013) The hearing was continued to April 18, 2013.

25 On April 18, 2013, the parties informed the Court that they had not reached a settlement
26 regarding the Cave issue, so the Preliminary Injunction as to the Cave only was set for May 20, 2013.
27 On May 20, 2013, the Court heard comments from counsel, testimony from Defendant Frank Altamura,
28 Malcolm MacKenzie, Building Inspector David DeLong, and the County Assessor John Tuteur. After

1 hearing closing arguments, the Court continued the matter to May 23, 2013 for an oral ruling. On May
2 23, 2013, the Court stated on the record that the County sustained its burden of proof and it was clear
3 that there was not a Certificate of Occupancy for the Cave. The Court stated that the Defendants did not
4 have a vested right to continue operating without a Certificate of Occupancy and that all businesses must
5 have a Certificate of Occupancy. The Court entered a Preliminary Injunction, ordering the Defendants
6 to cease all use and occupancy of the Cave on the Property until the County Building Official issues a
7 Certificate of Occupancy.

8 On June 4, 2013, the parties entered into settlement negotiations. As a result of those
9 negotiations, the parties agreed to modify the Preliminary Injunction for the Cave. The Stipulation to
10 Modify the Preliminary Injunction was signed by the parties on June 4, 2013 and became an order for
11 the Court on June 11, 2013.

12 **B. Cave Certificate of Occupancy**

13 The request to dissolve the Preliminary Injunction for the Cave is moot, as the County issued a
14 Certificate of Occupancy for the Cave on February 28, 2014.

15 **C. Winery Building Temporary Certificate of Occupancy**

16 On April 9, 2013, Chief Building Official Darrell Mayes testified at the Preliminary Injunction
17 hearing. Mr. Mayes stated that he could issue a Temporary Certificate of Occupancy for a small portion
18 of the Winery. (4/9/13 Transcript p. 61) Mr. Mayes indicated that Temporary Certificate of
19 Occupancies are typically for wine production only, "and, usually, when we ask, when an Applicant
20 asks us for a TCO, we ask them to show us on a floor plan the area that they are asking for a TCO. And,
21 typically, on a TCO, all we can do is issue that for production purposes only." (4/9/13 Transcript p. 62)
22 Mr. Mayes testified that there were eight outstanding items that needed to be completed prior to him
23 issuing a Temporary Certificate of Occupancy for a portion of the Winery. (4/9/13 Transcript p. 59)

24 On April 29, 2013, the County issued a 90 day Temporary Certificate of Occupancy for the
25 ground floor (wine production only) of the Winery/Storage/Residential Building (Building). (Decl.
26 Mayes §13) On August 8, 2013, County staff informed Defendants' representative that the Winery's
27 Temporary Certificate of Occupancy had expired. (Decl. Gallagher §6) Defendants' representative was
28 informed that if Defendants' intended to continue to utilize the ground floor of the Building for winery

1 production only, they would need to request an extension of the Temporary Certificate of Occupancy.
2 (Id.) On August 21, 2013, County staff informed Defendants' representative that the County had not yet
3 received an extension request for the Temporary Certificate of Occupancy. (Decl. Gallagher §7) On
4 August 22, 2013, Defendants submitted a written request for an extension of the Temporary Certificate
5 of Occupancy for the ground floor of the Building. (Decl. Mayes §14) On August 23, 2013, County
6 staff confirmed receipt of the request for an extension of the Temporary Certificate of Occupancy.
7 (Decl. Gallagher §8) The Building Official was under the impression that an oral extension was granted
8 for an extension of the Temporary Certificate of Occupancy. (Decl. Mayes §14)

9 On November 13, 2013, the Building Official informed the Defendants that the Temporary
10 Certificate of Occupancy for the bottom floor of the Winery expired on October 26, 2013. (Decl. Mayes
11 §15) Pursuant to Napa County Code section 15.08.070(B) temporary occupancy of a structure shall be
12 permitted for a maximum of one hundred and eighty days. Unfortunately, one hundred and eight days
13 had passed and the Building Official was unable to grant any further extensions. Therefore, the Building
14 Official notified the Defendants that they must immediately cease the use of the Winery until they
15 received a final Certificate of Occupancy. (Id.)

16 **D. Winery Building Certificate of Occupancy**

17 On March 28, 2013, County staff conducted a site visit at the Property to discuss the driveway
18 requirements necessary for the Winery Temporary Certificate of Occupancy and a final Certificate of
19 Occupancy. (Decl. Galambos §§3, 4) County staff explained to Defendants that the driveway, as it
20 exists, would be acceptable for a temporary certificate of occupancy for the purpose of winery
21 production only, no tours and tastings. (Decl. Galambos §3) However, for the Engineering Division to
22 sign off on the Building Permit and final Certificate of Occupancy the driveway shall be constructed to
23 meet the most current version of the Napa County Road and Street Standards. (Decl. Galambos §4)¹
24 County staff explained to Defendants that any future modification to the Winery's Use Permit would
25 trigger the Engineering Division to review the driveway utilizing the latest version of the Napa County
26 Road and Street Standards. (Decl. Galambos §7)

27 _____
28 ¹ After further discussions with County staff on April 1, 2013, it was decided that the Winery project shall be held to the standards from the date of the application for building permit in 1998. The Road and Street Standards in 1998 are consistent with the driveway conditions as provided in an interoffice memo from Public Works to Planning dated February 9, 1995. (Decl. Galambos §4)

1 On April 9, 2013, Chief Building Official Darrell Mayes testified at the Preliminary Injunction
2 hearing that he did not feel that allowing the public to come in to a building that was not finished was
3 safe. (4/9/13 Transcript p. 63) Therefore, he requires “that the building be complete with all of its life-
4 safety issues taken care of prior to the permanent certificate of occupancy for the safety of the public.”
5 (Id.) When asked what it would take for the Building Official to issue a Certificate of Occupancy, Mr.
6 Mayes stated that “all of the requirements from all of the [commenting] agencies would need to be met
7 and we would do a final inspection to make sure they were all met and then we could do a certificate of
8 occupancy.” (4/9/13 Transcript p. 69) Mr. Mayes testified that the winery portion of the building was
9 close to being finished but the second floor of the building was not complete. (4/9/13 Transcript p. 70-
10 71)

11 On or about September 5 and 10, 2013, County staff met with Defendants. (Decl. Galambos
12 §§9-10) Defendants were informed that the application for the Use Permit Modification would trigger
13 the County to apply the most current version of the Napa County Road and Street Standards as was
14 explained to him on March 28, 2013. (Id.)

15 On September 16, 2013, the Engineering Division made specific recommendations for the road
16 improvements, fire access road, and site improvements which were ultimately adopted by the Use
17 Permit Modification. (Exhibit A to Decl. McDowell §6; Decl. Galambos §11) The plans were to be
18 submitted with the Building Permit. The Engineering Division stated that “[a]ll permits necessary to
19 complete the improvements from other departments, divisions, or entities with approving authority of
20 the work shall be obtained prior to granting of final occupancy from the Engineering Division. (Id.)

21 On September 20, 2013, the County approved the Use Permit Minor Modification subject to
22 multiple conditions. (Decl. McDowell §6) The Use Permit Minor Modification clarified that the second
23 story of the main winery building was converted to a residence and therefore the original Use Permit no
24 longer entitles winery-related activities to occur within the second story. (Decl. McDowell §7) The Use
25 Permit Minor Modification requires that Defendants comply with all applicable building codes, zoning
26 standards, and requirements of County Divisions, Departments and Agencies, including but not limited
27 to, the conditions required by Engineering Services, Environmental Health, and the Building Division.
28 (Decl. McDowell §8) The Use Permit Minor Modification states that all project improvements,

1 including compliance with applicable codes, conditions, and requirements of all departments and
2 agencies with jurisdiction over the project, shall be completed prior to granting of a Certificate of Final
3 Occupancy by the Building Official, which, upon granting, authorizes all use permit activities to
4 commence. (Decl. McDowell §9)

5 On November 14, 2013, County staff informed Defendants representative that in order to finalize
6 the Building Permit, all items included in the permit need to be completed. County staff requested that
7 Defendants provide a status update on the remaining items in the entire building. (Decl. Gallagher §10)
8 Specifically, of concern was that there had not been any recent inspections of the second floor of the
9 building. (Id.)

10 On November 20, 2013, Defendants' representative was informed that (1) the final inspection for
11 the entire building had not occurred; (2) all work under the permit must be completed in order for the
12 final inspection to occur and the certificate of occupancy to be issued; and (3) until the work on the
13 permit is completed and a certificate of occupancy is issued, the Building cannot be used or occupied.
14 (Decl. Gallagher §12)

15 On or about November 21, 2013, Defendants' requested that a Certificate of Occupancy be
16 issued for the bottom floor of the building, only a portion of the construction authorized under the
17 Building Permit. (Decl. Gallagher §13) That same day, County staff provided the Defendants with an
18 option of separating the residential portion of the building from the Building Permit so that the 1998
19 Building Permit could be finaled and the residential portion of the Building could be completed and
20 finaled at a later date. (Id.) After multiple correspondences between counsels regarding the request, on
21 January 6, 2014, the Building Official informed Defendants that the County cannot issue a Certificate of
22 Occupancy for a portion of the Building while other work under the Building Permit remains
23 incomplete. (Decl. Mayes §21) The Building Official suggested that the Defendants modify the
24 Building Permit to delete the portion of the work that is not yet completed in the second floor residence.
25 (Id.) Once the Building Permit is modified, County staff would inspect the Building and issue a
26 Certificate of Occupancy providing that the Building conforms to the code and the modified approved
27 plans. (Id.) Defendants could obtain a new permit for the residential portion of the building. (Id.)
28 County staff explained multiple times that the work description in the Building Permit must be

1 completed, inspected and finalized by each Division prior to the Certificate of Occupancy being issued.
2 (Decl. Gallagher §14) County staff has also explained that the plans can be amended and the Building
3 Permit modified to reflect the actual work that has been completed on the Property. (Id.) On January 10,
4 2014, Defendants filed a Notice of Intent to Appeal the Building Official's decision to the County Board
5 of Supervisors. (Decl. Gallagher §15) The hearing for the appeal has been scheduled for March 18,
6 2014 at 9:35 a.m. (Id.)

7 In order for the Building Permit to be finalized and a Certificate of Occupancy to be issued by the
8 Building Official, Planning, Building, Environmental Services, Engineering and Fire must conduct final
9 inspections related to the Building Permit and provide final approval. (Decl. Mayes §16) To date, no
10 Divisions or Departments have conducted final inspections associated with the work description and
11 scope of work listed in the Building Permit. (Decl. Mayes §17)

12 To date, the final inspections for Environmental Services, Planning, Engineering Services and
13 Fire have not been requested or performed and are required for the Building Division to be able to issue
14 a Certificate of Occupancy. (Decl. Mayes §18) The Building Division has completed its final
15 inspection for the bottom floor of the Building which contains the winery; however, the second floor
16 residence is unfinished and will need to be completed pursuant to the plans submitted for the issued
17 Building Permit. (Id.)

18 To date, the driveway improvements have not been installed. (Decl. Galambos §12)
19 Accordingly, the Engineering Division cannot approve the issuance of a final Certificate of Occupancy
20 for the Winery until the improvements have been installed and inspected to the satisfaction of the
21 Engineering Division. (Id.)

22 The Building Official cannot issue a Certificate of Occupancy for a portion of the Building while
23 other work authorized under the Building Permit remains incomplete, no final inspections have been
24 done by the various County Divisions and Departments, and final approval has not been obtained by
25 those Divisions and Departments. (Decl. Mayes §§ 18, 20)

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I.**

28 **DEFENDANTS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES;
THEREFORE THE MOTION SHOULD BE DISMISSED**

1 Defendants filed this Motion to Dissolve the Preliminary Injunction and set it for hearing five
2 days before the County Board of Supervisors will have an opportunity to hear the Appeal regarding the
3 Building Official's decision to not issue a Certificate of Occupancy for half the building under the
4 Building Permit. Defendants are arguing that the County is withholding the Certificate of Occupancy
5 and that they do not have the authority to do so. (Defendants' Motion p. 11)

6 The requirement of exhaustion of administrative remedy is founded on the theory that the
7 administrative tribunal is created by law to adjudicate the issue sought to be presented to the
8 court, and the issue is within its special jurisdiction. If a court allows a suit to go forward prior to
9 a final administrative determination, it will be interfering with the subject matter of another
10 tribunal. (See 3 Witkin, Cal. Procedure (3d ed. 1985) Actions, § 234, pp. 264-265.)
11 Consequently, the requirement of exhaustion is a jurisdictional prerequisite, not a matter of
12 judicial discretion. (*Environmental Law Fund, Inc. v. Town of Corte Madera* (1975) 49 Cal. App.
13 3d 105, 111 [122 Cal. Rptr. 282].)
14 (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal. App. 4th 577, 590.)

15 Where an administrative remedy is provided, relief must be sought from the administrative body
16 and this remedy exhausted before the Court should act. (*Insurance Company of North America vs.*
17 *Department of Industrial Relations* (1988) 209 Cal. App. 3d 760, 768.) As a rule of general application,
18 state courts have required litigants to exhaust their administrative remedies. The exhaustion requirement
19 is jurisdictional: a court cannot hear a case before a litigant exhausts administrative remedies. (*Wright v.*
20 *State of California* (2004) 122 Cal. App. 4th 659, 665 citing *Abelleira, supra*, 17 Cal.2d at pp. 291-293;
21 *McHugh, supra*, 33 Cal. App. 3d at p. 539.)

22 The exhaustion of administrative remedies requirement bolsters administrative autonomy,
23 mitigates damages, gives agencies opportunity to make factual findings, encourages settlement, filters
24 out frivolous claims, and fosters better prepared litigation, and promotes judicial economy. (*Id* at 667.)

25 Although Defendants recognize that they are not in a position to ask the Court to compel the
26 County to issue a Certificate of Occupancy, they are relying on the Building Official's decision to not
27 issue a Certificate of Occupancy for half a building as a basis for requesting that the Preliminary
28 Injunction be dissolved. Defendants have not exhausted their administrative remedies; and therefore,
this Motion is premature and should be dismissed.

II.

**IN THE ALTERNATIVE, DEFENDANTS FAIL TO SHOW A MATERIAL CHANGE IN THE
FACTS AND THEREFORE THE PRELIMINARY INJUNCTION SHOULD REMAIN IN
EFFECT**

1 Defendants misstate the standard of review for a Motion to Dissolve a Preliminary Injunction.
2 Defendants claim that when evaluating whether to modify or dissolve a preliminary injunction, a court
3 must balance the equities between the parties. (Defendants' Motion p. 8) Defendants rely on *Smith c.*
4 *Adventist Health System West* to support their claim that the Court must balance the equities between the
5 parties in addition to re-evaluating the likelihood that the County will prevail on the merits at trial.
6 *Smith v. Adventist Health System West* is a case that discusses the factors necessary to request a
7 preliminary injunction, not a case that analyzes a request to dissolve a preliminary injunction.

8 California Code of Civil Procedure Section 533 provides as follows:

9 In any action, the court may on notice modify or dissolve an injunction or temporary restraining
10 order upon a showing that there has been a material change in the facts upon which the
11 injunction or temporary restraining order was granted, that the law upon which the injunction or
temporary restraining order was granted has changed, or that the ends of justice would be served
by the modification or dissolution of the injunction or temporary restraining order.

12 Clearly, the Court must determine whether there has been a material change in the facts, the law
13 has changed, or the ends of justice would be served by the dissolution when analyzing Defendants
14 request to dissolve the Preliminary Injunction.

15 It is settled that where there has been a change in the controlling facts upon which a permanent
16 injunction was granted, or the law has been changed, modified or extended, or where the ends of
17 justice would be served by modification or dissolution, the court has the inherent power to vacate
or modify an injunction where the circumstances and situation of the parties have so changed as
18 to render such action just and equitable. (*Sontag Chain Stores Co. v. Superior Court*, 18 Cal.2d
92, 94-95, 113 P.2d 689; *Union Interchange, Inc. v. Savage*, 52 Cal.2d 601, 604, 342 P.2d 249;
19 *Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara County Transit Dist.*, 65 Cal.App.3d 121,
130, 135 Cal.Rptr. 192; *Brunzell Constr. Co. v. Harrah's Club*, 253 Cal.App.2d 764, 772, 62
Cal.Rptr. 505.)

20 (*Welsch v. Goswick* (1982) 130 Cal.App.3d 398, 404-05 [181 Cal.Rptr. 703, 707])

21 Defendants claim that there has been a significant change in the material facts since the hearing
22 on the Preliminary Injunction and therefore, the Court should dissolve the Preliminary Injunction.
23 (Defendants' Motion p. 9) Defendants argue that they have complied with Napa County Code Section
24 15.08.070, they have complied with all the County's requirements to bring the Winery Building up to
25 code, have passed all inspections and that the Building has been finaled. Defendants misstate the facts.
26 There has not been a substantial change in the circumstances to warrant dissolution of the Preliminary
27 Injunction. To begin with, the Court never heard any arguments related to the Preliminary Injunction for
28 the Winery. The Court only heard testimony from two of the County's witnesses and absolutely no

testimony from Defendants related to the Preliminary Injunction for the Winery. Because the parties reached an agreement for the Preliminary Injunction to issue, the hearing was stopped midstream and the Court entered the Preliminary Injunction. No specific findings were made by the Court related to the likelihood to prevail at trial or a balancing of equities. Rather, Defendants agreed to the Preliminary Injunction, agreed to obtain a Temporary Certificate of Occupancy and agreed to obtain a Certificate of Occupancy. The substantial change in these facts are that (1) Defendants allowed their Temporary Certificate of Occupancy to expire and (2) Defendants do not want to complete all the work described in the Building Permit and the conditions in the Use Permit so that the Building Permit can be finalized and a Certificate of Occupancy can issue. These facts clearly support the continuance of the Preliminary Injunction.

A. The Building Permit Cannot Be Finalized by the County at this Time

California Building Code section 105.3 states that in order to “obtain a *permit*, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the *permit* for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by *construction documents* and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

Pursuant to California Building Code Section 110.1, “[c]onstruction or work for which a *permit* is required shall be subject to inspection by the *building official* and such construction or work shall remain accessible and exposed for inspection purposes until *approved*.” “The final inspection shall be made after all work required by the building *permit* is completed.” (California Building Code Section 110.3.10)

Defendants, applied for the Building Permit in 1997 and the work description on that application indicated construction of a Winery, storage, dwelling and a garage. The plans show a building with a winery on the first floor and a residence on the second floor. Although Defendants state that the final

1 inspection of the Winery Building has been completed and that all issues had been addressed, that is
2 simply not the circumstances.

3 To date, the final inspections for Environmental Services, Planning, Engineering Services and
4 Fire have not been requested or performed. (Decl. Mayes §18, 20) The Building Division has
5 completed its final inspection for the bottom floor of the Building; however, the second floor residence
6 is unfinished and will need to be completed pursuant to the plans submitted for the issued Building
7 Permit. (Id.)

8 In order for the Building Permit to be finalized, Planning, Building, Environmental Services,
9 Engineering and Fire must conduct final inspections related to the Building Permit and provide final
10 approval. (Decl. Mayes §16) To date, not all Divisions or Departments have conducted final
11 inspections associated with the work description and scope of work listed in the Building Permit. (Decl.
12 Mayes §17) Final inspection will be made after all work required by the Building Permit is completed.
13 (California Building Code §110.3.10)

14 **B. Not All Use Permit Conditions Have Been Met**

15 On September 20, 2013, the County approved the Use Permit Minor Modification for the Winery
16 project subject to multiple conditions. (Decl. McDowell §6) The Use Permit Minor Modification
17 requires that Defendants comply with all applicable building codes, zoning standards, and requirements
18 of County Divisions, Departments and Agencies, including but not limited to, the conditions required by
19 Engineering Services, Environmental Health, and the Building Division. (Decl. McDowell §8) The Use
20 Permit Minor Modification states that all project improvements, including compliance with applicable
21 codes, conditions, and requirements of all departments and agencies with jurisdiction over the project,
22 shall be completed prior to granting of a Certificate of Final Occupancy by the County Building Official,
23 which, upon granting, authorizes all use permit activities to commence. (Decl. McDowell §9)

24 In the Engineering Services 9/16/13 memorandum, specific recommendations were made for the
25 road improvements, fire access road, and site improvements which were ultimately adopted by the Use
26 Permit Modification (Exhibit A to Decl. McDowell §6; Decl. Galambos §11) The Engineering Division
27 stated that “[a]ll permits necessary to complete the improvements from other departments, divisions, or
28

1 entities with approving authority of the work shall be obtained prior to granting of final occupancy from
2 the Engineering Division. (Id.)

3 To date, the driveway improvements have not been installed. (Decl. Galambos §12)
4 Accordingly, and in compliance with the Use Permit conditions, the Engineering Division cannot
5 approve the issuance of a final Certificate of Occupancy for the Winery until the improvements have
6 been installed and inspected to the satisfaction of the Engineering Division. (Id.)

7 **C. A Certificate of Occupancy Cannot Be Issued for the Winery Building at this Time**

8 Although much of the discussion at the Preliminary Injunction hearing pertained to the items
9 necessary for a Temporary Certificate of Occupancy, the Building Official did briefly discuss the
10 requirements for a Certificate of Occupancy. On April 9, 2013, Building Official Darrell Mayes
11 testified that he did not feel that allowing the public to come in to a building that is unfinished was safe.
12 (4/9/13 Transcript p. 63) Therefore, he requires “that the building be complete with all of its life-safety
13 issues taken care of prior to the permanent certificate of occupancy for the safety of the public.” (Id.)
14 When asked what it would take for the Building Official to issue a Certificate of Occupancy, Mr. Mayes
15 stated that “all of the requirements from all of the [commenting] agencies would need to be met and we
16 would for a final inspection to make sure they were all met and then we could do a certificate of
17 occupancy.” (4/9/13 Transcript p. 69) Mr. Mayes testified that the winery portion of the building was
18 close to being finaled but the second floor of the building was not complete. (4/9/13 Transcript p. 70-
19 71)

20 Napa County Code Section 15.08.070 states:

21 A. No new building shall be occupied and no permanent electrical service connection to a new
22 structure shall be provided until:

- 23 1. The building is completed as approved;
- 24 2. All conditions of any applicable development permit are satisfied;
- 25 3. All applicable zoning, planning, environmental, public works and fire official
26 requirements have been met; and
- 27 4. The final building inspection of the building permit is approved.

28 The Building is not yet complete. To date, the final inspections for Environmental Services, Planning,
Engineering Services and Fire have not been requested or performed and are required for the Building
Division to be able to issue a Certificate of Occupancy. (Decl. Mayes §18) The Building Division has
completed its final inspection for the bottom floor of the Building which contains the winery; however,

1 the second floor residence is unfinished and will need to be completed pursuant to the plans submitted
2 for the issued Building Permit. (Id.)

3 In addition, all applicable Planning, Environmental, Public Works and Fire Official requirements
4 have not been met. To date, the driveway improvements have not been installed. (Decl. Galambos §12)
5 Specific recommendations were made for the road improvements, fire access road, and site
6 improvements which were adopted by the Use Permit Modification (Decl. Galambos §11)
7 Accordingly, and in compliance with the Use Permit conditions, the Engineering Division cannot
8 approve the issuance of a final Certificate of Occupancy until the improvements have been installed and
9 inspected to the satisfaction of the Engineering Division. (Id.) Therefore, pursuant to Napa County Code
10 Section 15.08.070, the Building cannot be occupied.

11 Pursuant to California Building Code section 111.2, after the Building Official inspects the
12 building and finds no violations of the provisions of the Building code or other laws that are enforced by
13 the department of building safety, the Building Official shall issue a certificate of occupancy. The
14 Building Official cannot issue a Certificate of Occupancy for a portion of the building while other work
15 authorized under the Building Permit remains incomplete, no final inspections have been done by the
16 various County Divisions and Departments, and final approval has not been obtained by those Divisions
17 and Departments. (Decl. Mayes §§ 18, 20) Defendants cite the Guidelines from the State Fire Marshall
18 to support issuing a Certificate of Occupancy for part of a building. (Defendants Motion p. 13)
19 However, as this Guideline indicates the fire department access, parking, and accessibility to the
20 proposed use must be installed. Here, Defendants have not installed the road improvements, fire access
21 road, parking and site improvements for the Winery.

22 The Building Official is authorized to determine whether or not a particular project satisfies all
23 the conditions of the Building Permit, as well as applicable code and other requirements, before issuing
24 the Certificate of Occupancy. The permittee must satisfy all the elements of the permit before the
25 Certificate of Occupancy is issued. Once the building is approved and the final inspections are
26 completed and signed off on for the entire building, then there is a duty to issue the Certificate of
27 Occupancy. (See *Thompson v. City of Lake Elsinore* (1993) 18 Cal.App.4th 49)

Defendants misinterpret the holding in *Thompson v. City of Lake Elsinore* and once again misstate the facts of the present case in an effort to argue that the County has a mandatory duty to issue the Certificate of Occupancy. The County does not have a mandatory duty to issue a Certificate of Occupancy for half a building when the Building Permit has not been finalized and there remains outstanding work to be done under the Building Permit. Defendants are not automatically entitled to a Certificate of Occupancy merely because they obtained a building permit. (*Id.* at 59.) “The building permit holder must first satisfy the building official, in the exercise of official discretion, that the project meets the requirements contained in the applicable statutes, codes, and regulations, and in the permit itself.” (*Id.*) Once a building receives a final inspection “OK” from the Building Official, the Building Official does not have discretion to withhold the Certificate of Occupancy. (*Id.*) In *Thompson* the owner complied with all the appropriate building codes, regulations and requirements. (*Id.* at 54.) The owner argued that the Defendants were withholding the Certificate of Occupancy in an attempt to cause the owner to comply with other demands on a different parcel. (*Id.*) The present case is clearly distinguishable for *Thompson*, as the Building has not received a final inspection “OK”, the various County Divisions and Departments have not finalized the Building Permit, and there remains outstanding items that need to be completed prior to the final inspection. The County has not added any additional requirements for obtaining the Certificate of Occupancy. Defendants were aware of the work described in the Building Permit that would need to be inspected, the conditions of the Use Permit and the Use Permit Modification. In addition, Defendants were informed on multiple occasions that they could not use or occupy the building until the work was completed, the Building Permit was finalized, and a Certificate of Occupancy was issued.

Defendants applied for the Building Permit to construct the winery, storage, dwelling and garage in 1997. It has been 16 years since the application for the Building Permit was submitted. The County would like to see the work completed, the Building Permit finalized, and a Certificate of Occupancy issued for the Building.

D. Dissolving the Preliminary Injunction Will Result in the Winery Being Used and Occupied in Violation of Napa County Code and the California Building Code

Pursuant to California Building Code Section 111.1, “[n]o building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or

1 structure or portion thereof shall be made, until the building official has issued a certificate of
2 occupancy therefore as provided herein.” In addition, Chapter 1, Section 114.1 of the California
3 Building Code makes it unlawful for a person to occupy any building or structure regulated by
4 the California Building Code or causes the same to be done in conflict or in violation of any
5 provision of the California Building Code.

6 Any portions of the building that are not finished and have not been inspected are considered a
7 danger to any and all occupants of the building. In addition, any building that does not have a
8 Certificate of Occupancy and is being occupied illegally or improperly is deemed unsafe under Section
9 116.1 of the California Building Code. (Decl. Mayes §19; CBC §116.1)

10 If the Preliminary Injunction is dissolved Defendants will use and occupy the Building in
11 violation of Napa County Code and the California Building Code. Defendants’ very use without a
12 Certificate of Occupancy makes the use or occupancy of the Building by Defendants illegal. Further,
13 the illegality of the offense and the effect on the community should outweigh any detrimental effect
14 upon the Defendants. Loss of revenue is not standing by itself grave irreparable harm. (*IT Corp. v.*
15 *County of Imperial* (1983) 35 Cal. 3d 63, 75.)

16 As the Court stated on May 23, 2013 Defendants do not have a vested right to continue operating
17 without a Certificate of Occupancy and all businesses must have a Certificate of Occupancy. Therefore
18 there should be no surprise to the Defendants to hear from this Court that they cannot illegally use the
19 Property and violate County Codes. The County has offered creative and legal solutions to assist the
20 Defendants in obtaining a Certificate of Occupancy in the near future, but instead of working with the
21 County, Defendants continue to resist bringing the Property into compliance with the codes. (Decl.
22 Mayes §21; Decl. Gallagher §§13-15)


23 CONCLUSION

24 Based on the aforementioned, the County respectfully requests that this Court deny Defendants
25 Motion to Dissolve the Preliminary Injunction.

26 DATED: 3/3/14

MINH C. TRAN, County Counsel

27 By


28 Carrie R. Gallagher, Deputy County Counsel
Attorneys for Plaintiff, County of Napa

DECLARATION OF CARRIE R. GALLAGHER
IN SUPPORT OF COUNTY'S OPPOSITION TO DEFENDANTS' MOTION TO
DISSOLVE THE PRELIMINARY INJUNCTION

I, CARRIE R. GALLAGHER declare:

1. I am an attorney licensed to practice law in California, and am employed by the County Counsel to represent the Napa County Department of Planning, Building & Environmental Services, Petitioner herein.
2. In the course of my job duties, I became familiar with Altamura Winery ("Winery") located at 1701 Wooden Valley Road, Napa, California and having Assessor Parcel Number 033-070-045 ("Property").
3. On August 2, 2011, I wrote a letter to Frank and Karen Altamura regarding the code violations on the Property. I informed Mr. and Mrs. Altamura that no building or structure shall be used or occupied on the Property until the Building Official has issued a Certificate of Occupancy. In order to rectify the code violations, I requested that they re-activate permit number B98-00096 and permit number B97-00218 by August 12, 2011. I also informed Mr. and Mrs. Altamura that if they failed to re-activate the necessary permits and obtain final inspections, County Counsel would file a civil action seeking injunctive relief from the Superior Court. (Attached as Exhibit 1 is a true and correct copy of the 8/2/11 letter.)
4. On November 8, 2012, I wrote a letter to Conor Massey, attorney for Mr. and Mrs. Altamura following up after our September 18, 2012 meeting. I informed Mr. Massey that the County agencies listed in the September 24, 2012 letter from the Building Official had not heard from Mr. Altamura or a member of his team regarding the Temporary Certificate of Occupancy for the Winery. I indicated that Mr. Altamura does not have a Certificate of Occupancy for the Winery and cannot occupy the Winery for any purpose at all. I also stated that the County did not receive an application for a use permit modification for the Cave or a response to the Notice of Violation sent to Mr. Altamura on September 19, 2012. I stated that if Mr. Altamura occupied the Winery without a Certificate of Occupancy, utilized the Cave without a use permit modification, and failed to pursue the request for a Temporary Certificate of Occupancy for crush only, County

Counsel would file a civil action seeking injunctive relief from the Superior Court. (Attached as Exhibit 2 is a true and correct copy of the 11/8/12 letter.)

5. Over the past two and a half years I have participated in approximately nine meetings and had multiple communications with Mr. Altamura and/or his representatives to discuss the code violations on the Property and the actions he would need to take to resolve the violations.

6. On August 8, 2013, I informed Defendants' former counsel that the Winery's Temporary Certificate of Occupancy had expired. Counsel was informed that if Defendants' intended to continue to utilize the ground floor of the Winery/Storage/Residential Building for winery production only, they would need to request an extension of the Temporary Certificate of Occupancy.

7. On August 21, 2013, I informed Mike Carlson that the County had not yet received an extension request for the Temporary Certificate of Occupancy from Defendants.

8. On August 22, 2013, Defendants submitted a written request for an extension of the Temporary Certificate of Occupancy for the ground floor of the Winery/Storage/Residential building. On August 23, 2013, I confirmed receipt of the request for an extension of the Temporary Certificate of Occupancy.

9. On November 13, 2013, I informed Mike Carlson that the Winery's Temporary Certificate of Occupancy expired and the County Code did not allow for further extensions. I indicated that the Building Official did not have the authority to extend the Temporary Certificate of Occupancy past the 180 days. I stated that the Winery building could not be used or occupied until a final Certificate of Occupancy is issued.

10. On November 14, 2013, I informed Mike Carlson that in order to finalize permit B98-00096, all items included in the permit need to be completed. I requested that Defendants provide a status update on the remaining items in the entire building. Specifically, I stated there had not been any recent inspections of the second floor of the building, which is the dwelling.

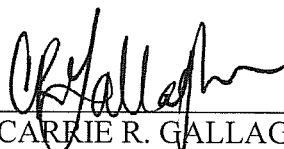
11. On November 19, 2013, Mike Carlson informed me that the final inspection of the Winery building was completed and that all issues had been addressed for issuance of the final Certificate of Occupancy.

12. On November 20, 2013, I informed Mike Carlson that the building inspector went out to the Property and signed off on the ceiling/sheet rock only. I further informed Mr. Carlson that (1) the final inspection for the entire building had not occurred; (2) all work under the permit must be completed in order for the final inspection to occur and the certificate of occupancy to be issued; and (3) until the work on the permit is completed and a certificate of occupancy is issued, the winery building cannot be used or occupied.
13. On November 21, 2013, Mike Carlson requested on behalf of his clients that a Certificate of Occupancy be issued for the bottom floor of the building which contains the Winery. That same day, I provided the Defendants with an option of separating the residential portion of the building from the Building Permit so that the 1998 permit could be finaled and the residential portion of the building could be completed and finalized in a new permit.
14. Over the past few months, County staff, including myself, have corresponded multiple times with Defendants and their counsel regarding the request for a Certificate of Occupancy. We've explained that the work description in the Building Permit must be completed, inspected and finaled by each Division prior to the Certificate of Occupancy being issued. We've also explained that the plans can be amended and the Building Permit modified to reflect the actual work that has been completed on the Property.
15. On January 10, 2014, Defendants filed a Notice of Intent to Appeal the Building Official's decision to the County Board of Supervisors. The hearing for the appeal has been scheduled for March 18, 2014 at 9:35 a.m.

I declare under the penalties of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 3/3/14

MINH TRAN, County Counsel

By 
CARRIE R. GALLAGHER, Deputy



Tradition of Stewardship
Commitment to Service

ROBERT WESTMEYER
County Counsel

MINH C. TRAN
Assistant County Counsel

SILVA DARBINIAN
Chief Deputy

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ROBERT C. MARTIN
ROBERT W. PAUL
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CARRIE R. GALLAGHER
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SUSAN B. ALTMAN
THOMAS S. CAPRIOLA

JAYNE HERMAN
SUSAN McGUIGAN

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TELEPHONE:
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COUNTY *of* NAPA

OFFICE OF COUNTY COUNSEL

August 2, 2011

Via First-Class Mail and Certified Mail, Return-Receipt Requested

Frank & Karen Altamura
P.O. Box 3209
Napa, CA 94558-0320

Re: APN 033-070-045, 1701 Wooden Valley Rd., Napa
County Code Violations

Dear Mr. and Mrs. Altamura,

This office represents the Napa County Conservation, Development & Planning Department ("Department"). The Department has requested this office take action with respect to the expired permits associated with APN 033-070-045. By failing to have valid building permits, you are in violation of section 105.1 of the California Building Code. (Napa County has adopted the Building Code by reference, in Chapter 15.12 of the Napa County Code.) The permits issued on your property (i.e. B98-00096 and B97-00218) have become "null and void" pursuant to Napa County Code section 15.04.070. In addition, as a result of the expired permit for the winery, your winery located at 1701 Wooden Valley Road is in violation of Section 111.1 of the California Building Code which requires a certificate of occupancy.

The building permit for the winery, storage, dwelling and garage has been issued, expired, and re-issued multiple times since 1997. The last re-issuance was in 1998 under permit B98-00096. However, not all final inspections were obtained and the certificate of occupancy was never issued. In addition, building permit B97-00218 for the retaining wall that was built on the property, has also expired.

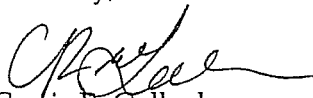
Pursuant to the California Building Code section 110.5, it is the duty of the holder of the building permit to notify the building official when work is ready for inspection. In addition, pursuant to section 111.1 of the California Building Code, no building or structure shall be used or occupied until the building official has issued a certificate of

occupancy. In order to rectify this situation, you must re-activate permit B98-00096 and permit B97-00218 by **August 12, 2011**.

Pursuant to Napa County Code section 15.04.070 permits issued to correct code violations or for work that has been commenced or completed prior to permit issuance shall have sixty days to obtain a final inspection and all required inspections. In the event you fail to re-activate the necessary permits and obtain final inspections it is the intention of this office to file a civil action seeking injunctive relief from the Superior Court requiring you to do so. In addition to obtaining injunctive relief, the County is also authorized in the court action to seek civil penalties in the amount of \$1,000 per day for each day the violation exists (County Code §1.20.155.B), as well as an award of attorney's fees (County Code §1.20.030).

Hopefully, your prompt compliance rectifying this situation will make such a civil action unnecessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carrie R. Gallagher', with a stylized flourish at the end.

Carrie R. Gallagher

Deputy County Counsel

cc: Darrell Mayes, Chief Building Official
David Giudice, Supervising Code Enforcement Officer
Bill Dodd, Board of Supervisors

cc\D\C E\BLDG\Cases\Altamura\045\Demand Letter.doc



A Tradition of Stewardship
A Commitment to Service

Minh C. Tran
County Counsel

Silva Darbinian
Chief Deputy County Counsel

**NAPA COUNTY
OFFICE OF COUNTY COUNSEL**

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Carrie R. Gallagher
Janice D. Killion
Chris R. Y. Apallas
Susan B. Altman
Thomas C. Capriola

November 8, 2012

Conor Massey
cmassey@gawvanmale.com

Re: APN 033-070-045, 1701 Wooden Valley Rd., Napa
County Code Violations

Dear Mr. Massey,

On September 18, 2012, we met to discuss the above referenced property. We agreed that Mr. Altamura needed to re-activate the winery permit and pay the associated fees, submit a Temporary Certificate of Occupancy (TCO) request to the Building Official for the purpose of crush only, address the Notice of Violation that would be going out regarding the unauthorized use of the cave and submit an application for a use permit modification if the cave was to be used for winery purposes.

On September 19, 2012, the County received your request on behalf of Mr. Altamura for a TCO. On September 24, 2012, the Building Official responded to the request indicating that it would be Mr. Altamura's team's responsibility to contact each agency listed in the letter to discuss the requirements, inspections and conditions for the TCO. Unfortunately, the County agencies listed in the September 24, 2012 letter have not heard from Mr. Altamura, you or any member of the "team".

On September 19, 2012, the County sent Mr. Altamura a Notice of Violation for the unauthorized use of the cave for wine tasting and winery associated barrel storage. The County requested that an application for a use permit modification be submitted with 15 days from the date of the letter. Unfortunately, the County has not received an application for a use permit modification or a response to this Notice of Violation.

At this time, Mr. Altamura does not have a certificate of occupancy for the winery and cannot be occupying the winery for any purpose at all. In the event Mr. Altamura occupies the winery without a Certificate of Occupancy, utilizes the cave without a use permit modification, and fails to pursue the request for a TCO for crush only, this office will file a civil action seeking injunctive relief from the Superior Court. In addition to obtaining injunctive relief, the County is also authorized in the court action to seek civil penalties in the amount of \$1,000 per day for

each day the violation exists (County Code §1.20.155.B), as well as an award of attorney's fees (County Code §1.20.030). Hopefully, your prompt compliance rectifying this situation will make such a civil action unnecessary.

The County would like to do an inspection on the Property for the purposes of the TCO request and compliance with the Notice of Violation. Please contact David Giudice at 707-299-1347 within two weeks to schedule the inspection.

Regards,

A handwritten signature in black ink, appearing to read 'Carrie R. Gallagher', with a stylized, flowing script.

Carrie R. Gallagher
Deputy County Counsel

Cc: Darrell Mayes, Chief Building Official
David Giudice, Supervising Code Enforcement Officer

**DECLARATION OF DARRELL MAYES
IN SUPPORT OF COUNTY'S OPPOSITION TO DEFENDANTS' MOTION TO
DISSOLVE THE PRELIMINARY INJUNCTION**

At all times herein mentioned I was employed as the Chief Building Official for Napa County Department of Planning, Building & Environmental Services ("Department"). If called to testify as a witness in this matter, I could and would testify hereto from my own personal knowledge as follows:

1. In the course of my job duties, I became familiar with Altamura Winery ("Winery") located at 1701 Wooden Valley Road, Napa, California and having Assessor Parcel Number 033-070-045 ("Property").

2. The Winery is included under Building Permit B98-00096 (Permit), which was applied for in 1997 and issued in 1998. This Permit was issued for the construction of the winery/storage/dwelling/garage on the Property.

3. The Permit authorizes construction of a single structure with a winery on the first floor and a residence on the second floor. The Winery is contained within the first floor of the building.

4. On August 2, 2011, I participated in a meeting with County staff and Frank Altamura to discuss the code violations on the Property. Mr. Altamura was informed that he needed to reactive the permits for the Property and apply for a Temporary Certificate of Occupancy to operate the Winery for production purposes only. Mr. Altamura was also informed that no building or structure should be used or occupied until I issued a Certificate of Occupancy.

5. On or about September 22, 2011, Mr. Altamura provided a request for a Temporary Certificate of Occupancy and reactivated his building permit. However, Mr. Altamura never followed through with the necessary approvals from the various divisions in the County therefore; I was unable to issue the Temporary Certificate of Occupancy.

6. On August 8, 2012, I participated in a meeting with County staff and Mr. Altamura's attorney, Conor Massey to discuss the County Code violations. Mr. Massey was informed that a Temporary Certificate of Occupancy had not been issued and although the

1 building permit was re-activated, Mr. Altamura had not requested inspections, and therefore it
2 once again expired.

3 7. On September 18, 2012, I participated in a meeting with County staff and Conor
4 Massey regarding the County Code violations. We discussed the newly discovered Cave on the
5 Property. Mr. Massey was informed that a Notice of Violation would be issued regarding the
6 Cave since it appeared it was being used for Winery purposes and the Cave was not part of the
7 approved Use Permit for the Winery and was never permitted through the County. Mr. Massey
8 was also informed that Mr. Altamura once again needed to reactive the building permit, submit a
9 request for Temporary Certificate of Occupancy for production purposes only, address the
10 Notice of Violation that will be issued for the use of the Cave and the Winery, and obtain a use
11 permit modification if the Altamura's wanted to use the Cave for Winery purposes.

12 8. On September 19, 2012, Mr. Massey submitted a request for a Temporary
13 Certificate of Occupancy for the Winery. On September 24, 2012, I responded to Mr. Massey
14 outlining the procedures for obtaining the Temporary Certificate of Occupancy.

15 9. On November 21, 2012, I participated in a site visit on the Property with County
16 Staff based on the request for a Temporary Certificate of Occupancy. I observed the following
17 during the site visit:

- 18 a. The driveway for the Winery does not meet Napa County Fire Department standards.
- 19 b. Fermentation tanks were not seismically anchored.
- 20 c. Exiting signs were not illuminated or positioned properly throughout the Winery.
- 21 d. Electrical boxes, receptacles, and switches were not provided with cover plates in the
22 Winery leaving exposed wires.
- 23 e. The electrical panel located near the rear doors and entrance to the cave was missing
24 caps on the open slots.
- 25 f. The barrels within the Cave were stacked high and were not seismically strapped
26 down.
- 27 g. The barrels in the cave were blocking exit ways. The junction boxes in the Cave
28 were open with bare wires exposed.

- 1 h. There was inadequate emergency lighting or exit illumination in the Cave.
2 i. There was no mechanical ventilation system within the Cave.
3 j. There was an area in the Cave that appeared like a tasting area, with wine glasses set
4 up for a tasting.

5 10. After the site visit, I found that the Winery portion of the building was not safe for
6 occupancy due to the fermentation tanks not being seismically anchored, the lack of compliant
7 exiting signs, and electrical hazards. The building was not approved for occupancy under its
8 current condition. In addition, the building had not been inspected and approved by the County
9 for occupancy. If occupied, there would be a danger to human life or public welfare.

10 11. On November 26, 2012, I provided Mr. Massey with a list of
11 corrections/additional information that was required prior to issuance of the Temporary
12 Certificate of Occupancy.

13 12. On December 12, 2012, I participated in a meeting with County staff and Mr.
14 Massey to discuss the additional items needed for the Temporary Certificate of Occupancy. In
15 addition, Mr. Massey was informed that a use permit modification is needed if the Altamura's
16 planned to use the Cave for Winery purposes.

17 13. On April 29, 2013, I issued a 90 day Temporary Certificate of Occupancy for the
18 ground floor (wine production only) of the Winery/Storage/Residential Building.

19 14. On August 22, 2013, Defendants submitted a written request for an extension of
20 the Temporary Certificate of Occupancy for the ground floor of the Winery/Storage/Residential
21 Building. It is my understanding that Defendants were granted an oral extension.

22 15. On October 26, 2013, the Temporary Certificate of Occupancy for the ground
23 floor of the Winery/Storage/Residential building expired. Pursuant to Napa County Code section
24 15.08.070(B) temporary occupancy of a structure shall be permitted for a maximum of one
25 hundred and eighty days. Unfortunately, one hundred and eight days had passed and I was
26 unable to grant any further extensions. Therefore, I notified the Defendants on November 13,
27 2013 that they must immediately cease the use of the Winery until they received a final
28 Certificate of Occupancy.

1 16. In order for the Permit to be finalized and a Certificate of Occupancy to be issued,
2 Planning, Building, Environmental Services, Engineering, and Fire must conduct final
3 inspections related to the Permit and provide final approval prior to the Certificate of Occupancy
4 being issued.

5 17. To date, no Divisions/Departments listed in paragraph 16 have conducted final
6 inspections on the Permit.

7 18. To date, the final inspections for the other Divisions, such as Environmental
8 Health, Planning, Engineering Services and Fire have not been requested or performed and are
9 required for the Building Division to be able to issue a Certificate of Occupancy. The Building
10 Division has completed its final inspection for the bottom floor of the building which contains
11 the winery; however, the second floor residence is unfinished and will need to be completed
12 pursuant to the plans submitted for the issued Permit.

13 19. Any portions of the building that are not finished and have not been inspected are
14 considered a danger to any occupants of the building. In addition, any building that does not
15 have a certificate of occupancy and is being occupied illegally or improperly is deemed unsafe
16 under the California Building Code.

17 20. It is my understanding that construction of the building shell and the winery floor
18 is substantially complete. However, the second floor residence, which is contained entirely
19 within the building shell, is not complete. I cannot issue a Certificate of Occupancy for a portion
20 of the building while other work authorized under the Permit remains uncompleted.

21 21. On January 6, 2014, I informed Defendants that the County would not issue a
22 Certificate of Occupancy for a portion of the building. I suggested that Defendants modify the
23 Permit to delete the portion of the work that is not complete and submit revised plans that show
24 the changes. Once the Permit is modified, the building would be inspected pursuant to the
25 modified plans and approved plans. When the Defendants wanted to complete construction of
26 the second floor, a new building permit could be applied for. This would allow for the Permit to
27 accurately reflect the work being performed on the Property and the construction approved by
28 the County. (Attached as Exhibit A is the January 6, 2014 Letter)

22. On February 28, 2014, I issued a Certificate of Occupancy for the Cave on the Property.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 2-28-14

By: Darrell Mayes
Darrell Mayes



A Tradition of Stewardship
A Commitment to Service

Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

Pete Parkinson
Interim Director

Michael T. Carlson
Geary, Shea, O'Donnell, Grattan & Mitchell, P.C.
37 Old Courthouse Square, 4th Floor
Santa Rosa, CA 95404

Re: Issuance of Certificate of Occupancy for Permit #B98-00096

Dear Mr. Carlson,

You have asked the County of Napa to issue a Certificate of Occupancy (CO) for a portion of the construction authorized under Building Permit # B98-00096, issued in 1998. This building permit authorizes construction of a single structure with a winery on the first floor and a residence on the second floor. Construction of the building shell and the winery is substantially complete. The residence portion of the building, which is contained entirely within the building shell, is not complete and currently at the framing stage based on the last inspection of the area. You have asked the County to issue a CO only for the winery portion of the building.

The County will not issue a CO for a portion of a building while other work authorized under the building permit remains uncompleted. If your client does not wish to complete construction of the residence at this time, his option is to modify Building Permit B98-00096 to delete that portion of the work. Revised plans would be required to show the changes. Once the permit is modified, County staff will inspect the building and issue a CO provided that the building conforms with the code and the approved plans. If your client wishes to complete construction of the residence in the future, a new building permit would be required. This subsequent permit would be subject to the codes in effect at the time the application is filed.

The decision of the Building Official in this matter may be appealed to the Board of Supervisors in accordance with the provisions of Chapter 2.88 of the Napa County Code. However, due to the recent changes to the Code, this type of decision will be no longer be appealable to the Board of Supervisors once the changes to the Code become effective on January 16, 2014. Failure to file such an appeal on or before January 15, 2014, shall constitute an irrevocable waiver of the right to an administrative hearing and final adjudication of the Building Official's order.

Sincerely,

A handwritten signature in dark ink, appearing to read "Darrell Mayes".

Darrell Mayes
Chief Building Official
Planning, Building and Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559

Planning Division
(707) 253-4417

Building Division
(707) 253-4417

Engineering & Conservation
(707) 253-4417

Environmental Health
(707) 253-4471

Parks & Open Space
(707) 259-5933

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- 1 b. Exiting signs were not illuminated or positioned properly throughout the Winery.
2 c. Electrical boxes, receptacles, and switches were not properly capped off in the
3 Winery.
4 d. The electrical panel located near the rear doors and entrance to the cave was
5 missing caps on the open slots.

6 In addition, I observed the use and occupancy of the Cave which included wine barrels
7 and wine case storage.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Dated: 2-27-14

12 By: Greg Baxter
13 Greg Baxter
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**DECLARATION OF NATE GALAMBOS
IN SUPPORT OF COUNTY'S OPPOSITION TO DEFENDANTS' MOTION TO
DISSOLVE THE PRELIMINARY INJUNCTION**

At all times herein mentioned I was employed as an Engineering Manager for Napa County Department of Planning, Building & Environmental Services ("Department"). If called to testify as a witness in this matter, I could and would testify hereto from my own personal knowledge as follows:

1. In the course of my job duties, I became familiar with Altamura Winery ("Winery") located at 1701 Wooden Valley Road, Napa, California and having Assessor Parcel Number 033-070-045 ("Property").

2. On March 28, 2013, I met with Frank Altamura and his representatives at the Property to discuss driveway requirements necessary for a Temporary Certificate of Occupancy (TCO) to be issued for the Winery. Mr. Altamura's consultants/representatives were Pat Abernathy and Teresa Cunningham. Other attendees at the meeting included Mrs. Altamura, Pete Munoa with Cal Fire and Peter Corelis with the Department of Planning, Building & Environmental Services ("Department") Engineering Division.

3. While at the Property on March 28, 2013, I explained to Mr. Altamura and his representatives that the driveway, as it exists in its current state from Wooden Valley Road to the Winery site would be acceptable for a TCO where the occupancy was for the purpose of winery production only, no tours and tastings. The driveway currently is a gravel road with center line slope that varies from 0% up to 13%.

4. On March 28, 2013, I also explained to Mr. Altamura and his representatives that for the Department's Engineering Division to approve a certificate of occupancy (CO) for his Winery, the driveway shall be constructed to meet the most current version of the Napa County Road and Street Standards. However, after discussing with Napa County staff on April 1, 2013, it was decided that Mr. Altamura's Winery project shall be held to the standards from the date of the application for building permit in 1998. The Road and Street Standards in 1998 are consistent with the driveway conditions as provided in an interoffice memo from Public Works to Planning dated February 9, 1995.

1 5. The Public Works memo dated February 9, 1995 indicated that the Winery was to
2 be considered a two phase project with the following conditions for each phase:

3 • Phase I – Under 20,000 gal/year:

4 The access road shall be a minimum width of 10 feet with earth shoulders and
5 intervisible turnouts at approximately 500 foot intervals (Max.) as per the latest edition
6 of the “Napa County Road and Street Standards” for “Agricultural Special Purpose
7 Road”. The access road shall have a minimum structural section equivalent to five inches
8 of Class II Aggregate base plus a double seal coat.

9 • Phase II 20,000 to 50,000 gal/year:

10 The access road shall be a minimum width of 16 feet with earth shoulders as per the latest
11 edition of the “Napa County Road and Street Standards” for “Common Drive Without
12 Parallel Parking Lanes, Low Density”. The access road shall have a minimum structural
13 section equivalent to five inches of Class II Aggregate Base plus a double seal coat.

14 6. The above noted conditions in paragraph 5 are consistent with the Napa County
15 Road and Street Standards dated June 5, 1990. While the above noted phased conditions
16 provides that a winery with a production rate of less than 20,000 gal/year, the Napa County Road
17 and Street Standards at the time of approval indicate that a Agricultural Special Purpose Road
18 can serve a winery building but is not applicable to wineries having public tours and tastings
19 (Napa County Road and Street Standards, Revised June 5, 1990, Section 9(j), page 6).
20 Therefore, if the Winery has a production rate of less than 20,000 gal/year, but has public tours
21 and tastings, then the Phase II driveway condition shall apply.

22 7. Additionally, on March 28, 2013, I explained to Mr. Altamura and his
23 representatives that if the road standards of the 1998 permit apply and are installed, and if Napa
24 County issues a CO; any future modification to the Winery’s Use Permit would trigger the
25 Department’s Engineering Division to review the driveway in terms of complying with the latest
26 version of the Napa County Road and Street Standards.

27 8. Based on the information provided above, the Department’s Engineering Division
28 provided its approval for driveway access for a TCO as the driveway currently exists. Prior to

1 the Department's Engineering Division approving the driveway for a CO, the driveway would
2 need to be improved to meet the conditions of approval from the 1998 building permit.

3 9. On or about September 5, 2013, County staff met with Mr. Altamura and his
4 representatives. In that meeting, Mr. Altamura was informed that he would have to file a Use
5 Permit Modification to allow the use of his cave that was being used without the proper
6 permitting. Mr. Altamura was also informed that the application for the Use Permit Modification
7 would trigger Napa County to apply the most current version of the Napa County Road and
8 Street Standards as was explained to him on March 28, 2013. Mr. Altamura indicated that he
9 was concerned that the processing of this Use Permit Modification, which would include a
10 request for a road modification for his access driveway, would take a long time and he needed to
11 utilize his cave for storage as soon as possible. Napa County assured him that the use permit
12 would be processed expeditiously, and a site visit to review the driveway would be necessary to
13 accomplish the expedited processing.

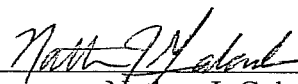
14 10. On September 10, 2013, I met with Mr. Altamura and his engineering consultant
15 at his project site. We reviewed the driveway with respect to the required improvements and the
16 existing constraints that would meet the necessary criterion for a road modification under the
17 Napa County Road and Street Standards.

18 11. On or about September 13, 2013, I received a request for road modification from
19 Mr. Altamura's engineering consultant as a portion of Mr. Altamura's Use Permit Modification
20 application. I assigned the task of processing the road modification to a staff engineer. The staff
21 engineer provided an interoffice memo from the Engineering Division to the Planning Division
22 dated September 16, 2013 identifying all conditions related to the proposed use permit
23 application, including the road modification, imposed by the Engineering Division. The
24 Engineering Division made specific recommendations for the road improvements, fire access
25 road, and site improvements which were adopted by the Use Permit Modification. Specifically,
26 condition number 16 of the Engineering Memo states, "*All permits necessary to complete the*
27 *improvements from other departments, divisions, or entities with approving authority of the work*
28 *shall be obtained prior to granting of final occupancy from this Division.*"

1 12. To date, and to the best of my knowledge, the use permit conditioned driveway
2 improvements for Mr. Altamura's Winery project have not been installed. Accordingly, and in
3 compliance with the Use Permit conditions, the Engineering Division cannot approve the
4 issuance of a final Certificate of Occupancy for Mr. Altamura's winery until the improvements
5 have been installed and inspected to the satisfaction of the Engineering Division.

6
7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9
10 Dated: 2-27-2014

By: 
Nathan J. Galambos

1 **DECLARATION OF JOHN MCDOWELL**
2 **IN SUPPORT OF COUNTY'S OPPOSITION TO DEFENDANTS' MOTION TO**
3 **DISSOLVE PRELIMINARY INJUNCTION**

4 At all times herein mentioned I was employed as a Deputy Director of the Napa County
5 Department of Planning, Building & Environmental Services ("Department"). If called to testify
6 as a witness in this matter, I could and would testify hereto from my own personal knowledge as
7 follows:

8 1. In the course of my job duties, I became familiar with Altamura Winery
9 ("Winery") located at 1701 Wooden Valley Road, Napa, California and having Assessor Parcel
10 Number 033-070-045 ("Property").

11 2. In early 2013, I reviewed Use Permit, #93433. On March 1, 1995, the Napa
12 County Planning Commission granted a Use Permit (number 93433-UP) which established a
13 fifty thousand (50,000) gallons per year Winery on the Property. The Use Permit was limited to
14 the Winery within a two-story building with an outdoor crushing and work area. Any changes in
15 use or changes in construction are subject to the approval of the County.

16 3. On September 19, 2012, a former employee of the Department, Ed Colby, sent a
17 Notice of Violation to Frank Altamura and the Winery, notifying them that the unpermitted cave
18 would be considered a Type 3 Cave because it was being used for public wine tasting and also
19 for Winery associated storage. Mr. Altamura was notified that the uses of the Cave were
20 violations of the approved use permit and the Napa County Code. Mr. Altamura was directed to
21 promptly cease all public visitation and wine tasting as well as remove all winery associated
22 storage within the Cave. Mr. Altamura was advised that if he desired to utilize the Cave in
23 connection with the Winery, he would need to submit a complete application for a Modification
24 to Use Permit #93433 within 15 days from the date of the letter. In addition, Mr. Altamura was
25 informed that the Winery could not be occupied until the Chief Building Official granted a
26 certificate of occupancy. Mr. Altamura was informed that he could apply for a Temporary
27 Certificate of Occupancy for crush only to produce wine at the Winery.
28

1 4. Over the past few years, I have had multiple correspondences with County staff
2 and the Defendants regarding the Winery's Use Permit.

3 5. On June 19, 2013, Defendants submitted a Use Permit Minor Modification
4 Application (P13-00206-MOD) consisting of an existing cave into the adjoining, previously
5 approved Winery project.

6 6. On September 20, 2013, I approved the Use Permit Minor Modification subject to
7 multiple conditions. (A true and correct copy of the 9/20/13 Approval letter and attached
8 conditions is attached as Exhibit A.)

9 7. The Use Permit Minor Modification clarified that the second story of the main
10 winery building was converted to a residence and therefore the original Use Permit no longer
11 entitles winery-related activities to occur within the second story.

12 8. The Use Permit Minor Modification requires that Defendants comply with all
13 applicable building codes, zoning standards, and requirements of County Divisions, Departments
14 and Agencies, including but not limited to, Engineering Services Division memorandum dated
15 9/16/13, Environmental Health Division memorandum dated 9/18/13, and the Building Division
16 memorandum dated 8/28/13.

17 9. The Use Permit Minor Modification includes a standard condition of approval,
18 condition #12, citing the terms for granting temporary and final occupancy of the Winery which
19 states that all project improvements, including compliance with applicable codes, conditions, and
20 requirements of all departments and agencies with jurisdiction over the project, shall be
21 completed prior to granting of a Certificate of Final Occupancy by the County Building Official,
22 which, upon granting, authorizes all use permit activities to commence.

23
24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Dated: 2/25/2014

27 By: 

John McDowell

28
DECLARATION OF JOHN MCDOWELL



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Hillary Gitelman
Director

September 20, 2013

Frank and Karen Altamura
Altamura Winery
P.O. Box 3209
Napa, CA 94558

Re: **Altamura Winery Cave Modification**
Use Permit Very Minor Modification P13-00206-MOD
1701 Wooden Valley Road
APN 033-070-045

Dear Mr. and Mrs. Altamura:

The Napa County Conservation, Development and Planning Department has completed review of your Use Permit Minor Modification Application #P13-00206-MOD consisting of incorporation of an existing cave into the adjoining, previously approved Altamura Winery project (Use Permit 93433-UP) located at 1701 Wooden Valley Road. Please be advised that the application has been APPROVED by the Zoning Administrator subject to the following conditions. (SEE ATTACHED LIST OF CONDITIONS OF APPROVAL). This approval includes grant of a design exception to the Napa County Road and Street Standards for an alternate design of the main winery access road. The application has been processed and approved pursuant to Napa County Zoning Section 18.124.130.B, which provides for Zoning Administrator-level review of minor, non-controvesial modifications to previously approved use permit entitlements resulting in no changes in intensity, density or environmental impact.

In approving the above application, the Zoning Administrator found the project Categorically Exempt pursuant to Section 15301 of the California Environmental Quality Act (Class 1 – Existing Facilities) and Appendix B, Class 1, Subsection 3, of Napa County's Local Procedures for Implementing the California Environmental Quality Act. The project is a minor alteration to a previously approved winery facility including no increase in production, visitation, or marketing activities, and an increase in winery area of less than 25%. The subject cave has existed since the late 1990's and this action to incorporate the cave into the winery use permit will not result in a discernable change in the existing surrounding environment.

The Zoning Administrator has found that the project, as proposed, qualifies for grant of a design exception to the Napa County Road and Street Standards, as set forth in the attached Engineering Services Division Memo dated September 16, 2013. In granting the exception, the Zoning Administrator

Planning Division (707) 253-4417	Building Division (707) 253-4417	Engineering & Conservation (707) 253-4417	Environmental Health (707) 253-4471	Parks & Open Space (707) 259-5933
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EXHIBIT A

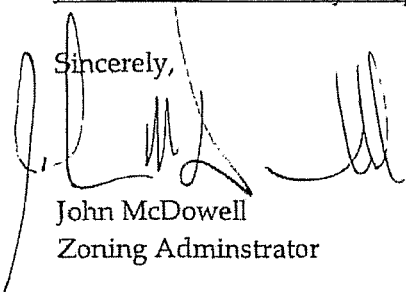
has determined that there are unique environmental features, such as streams and native trees, that would be negatively impacting if the access road was widened to a commercial design width. The Zoning Administrator has also found that the alternative road design contains features that achieve the same overall practical effect as an access road that meets the standards. This determination is based on the size of project entitled by this action. In the event of a winery expansion request, or other new development on this roadway, reevaluation of the road design will be necessary.

The modification to the use permit will become effective immediately unless an appeal is filed with the Napa County Board of Supervisors pursuant to Chapter 2.88 of the Napa County Code. You may appeal the conditions of approval. In the event an appeal is made to the Board by another, you will be notified.

Pursuant to Napa County Code §18.124.080, this use permit minor modification must be activated within two (2) years of the date of this letter, or it will automatically expire and become void. This letter serves as the only notice you will receive regarding the expiration date of your permit.

Pursuant to Government Code §66020(d)(1), you are hereby further notified that the ninety day period in which to protest the imposition of any fees, dedications, reservations, or other exactions which may have been adopted as conditions of approval has begun. Please contact me at (707) 299-1354 or John.McDowell@countyofnapa.org if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'John McDowell', is written over a horizontal line.

John McDowell
Zoning Administrator

cc: John Tuteur, County Assessor
Darrell Mayes, Building Official
Nate Galambos, Engineering Services Manager

CONDITIONS OF APPROVAL

***Altamura Winery Cave Project
Use Permit Minor Modification P13-00206-MOD
1701 Wooden Valley Road
APN 033-070-045***

1. SCOPE

The permit shall be limited to:

Modifying Use Permit Major Modification #93433-UP including:

- Incorporation of an existing 3, 372 sq. ft. cave into the winery use permit as winery production space;
- There is no designated wine tasting area within the cave (project revision as set forth in July 18, 2013 Gaw VanMale Letter);
- No changes to approved visitation, marketing, hours of operation or number of employees as set forth in Use Permit 93433-UP;
- Design Exception to County Road and Street Standards as set forth in the September 12, 2013, Applied Civil Engineering letter.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code. It is the responsibility of the applicant to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or changes in use shall be by the approved in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.

2. PROJECT SPECIFIC CONDITIONS

Should any of the Project Specific Conditions below conflict with any of the other, standard conditions included in this document, the Project Specific Conditions shall supersede and control.

- A. The second story of the main winery building was converted to a residence under building permit B98-00096 (October 7, 1998 letter from Frank and Karen Altamura). Therefore, this use permit modification clarifies that the Use Permit 93433-UP no longer entitles winery-related activities to occur within the second story of the structure. The second story residence shall not be used for wine production, or winery related tastings, visitation, events or marketing.
- B. Use Permit 93433-UP does not designate an accessory space area for tasting and marketing events. No formal wine tasting area has been proposed or approved with this action. Wine tasting may occur within the first floor production area of the winery building upon grant of final occupancy. There is no designated wine tasting area within the cave.

3. COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES

Project conditions of approval include all of the following County, Divisions, Departments and Agency(ies) requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies at the time of

submittal and may be subject to change. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- A. Engineering Services Division as stated in their Memorandum dated September 16, 2013.
- B. Environmental Health Division as stated in their Memorandum dated 18, 2013.
- C. Building Division as stated in their Memorandum dated August 28, 2013.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the approved use permit.

5. **SIGNS**

Prior to installation of any winery identification or directional signs, detailed plans, including elevations, materials, color, and lighting, shall be submitted to the Planning, Building, and Environmental Services Department for administrative review and approval. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this use permit approval. All signs shall meet the design standards as set forth in Chapter 18.116 of the Napa County Code. At least one sign placed and sized in a manner to inform the public must legibly include wording stating "Tours and Tasting by Prior Appointment Only".

6. **OUTDOOR STORAGE/SCREENING/UTILITIES**

All outdoor storage of winery equipment shall be screened from the view of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No item in storage is to exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.

New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and Chapter 18.106 of the Napa County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

7. **ADDRESSING**

All project site addresses shall be determined by the Planning, Building and Environmental Services Director, and be reviewed and approved by the United States Post Office, prior to issuance of any building permit. The Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

8. **INDEMNIFICATION**

If an indemnification agreement has not already been signed and submitted, one shall be signed and returned to the County within twenty (20) days of the granting of this approval using the Planning, Building and Environmental Services Department's standard form.

9. **AFFORDABLE HOUSING MITIGATION**

Prior to County issuance of a building permit, the applicant shall pay the Napa County Affordable Housing Mitigation Fee in accordance with the requirements of Napa County Code Chapter 18.107 or as may be amended by the Board of Supervisors.

10. **PREVIOUS CONDITIONS**

As applicable, the permittee shall comply with any previous conditions of approval for the winery use except as they may be explicitly modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control.

11. **MONITORING COSTS**

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until grant of final occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Commission at some time in the future, the Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation hearings in accordance with §18.124.120 of the Napa County Code.

12. **TEMPORARY AND FINAL OCCUPANCY**

All project improvements, including compliance with applicable codes, conditions, and requirements of all departments and agencies with jurisdiction over the project, shall be completed prior to granting of a Certificate of Final Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence. The County Building Official is authorized to grant a Temporary Certificate of Occupancy to allow specified limited use of the project, such as commencement of production activities, prior to completion of all project improvements. Marketing and/or Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions where extenuating circumstances exists and are subject to review and approval by the County Building Official, County Fire Marshal, and the Director of Planning, Building and Environmental Services. In special circumstances, departments and/or agencies with jurisdiction over the project are authorized as part of the Temporary Certificate of Occupancy process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements. Consistent with Board of Supervisors Resolution № 2010-48, "Temporary Certificates of Occupancy are generally not to be used to allow production of wine for more than one year."



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Hillary Gitelman
Director

MEMORANDUM

To: Charlene Gallina, Planning Division	From: Peter Corelis Engineering and Conservation Division	PSC
Date: September 16 th , 2013	Re: Altamura Winery Use Permit Minor Mod: P13-00206 APN: 033-070-045	

The Engineering Division received a request for an exception to the Napa County Road and Street Standards in conjunction with a submittal of a proposal for a minor modification to a use permit generally requesting the following:

To approve the proposed use of caves for winery storage and production purposes at the Altamura Winery. The proposed project is located at 1701 Wooden Valley Road in the County of Napa.

After careful review of the road exception request and the Altamura Winery Use Permit minor modification application package the Engineering Division supports the findings and overall recommendation for approval of the request and offers the following findings and recommendations for approval of the use permit.

RECOMMENDED CONDITIONS:

ROAD IMPROVEMENTS

1. In a request letter (the Request) dated September 12, 2013, prepared by Applied Civil Engineering, Inc., the existing and proposed configuration of the winery access road is characterized with respect to existing natural site features and how an exception to the standards is necessary for their preservation. The Request is for an exception to the standards with respect to travelway width due to constrictions arising from stream crossings, riparian vegetative zones, and specimen native trees, where less than the total required 20-foot driveable width would be provided. It is the finding of this Division that the constrictions as noted in the Request meet the findings of Section 3(D) of the Napa County Road and Street Standards for a qualifying constraint to warrant a road exception. Furthermore, this Division finds the proposed roadway design would provide the same overall practical effect of a road meeting the road standards if built as proposed in the Request.

2. All driveable shoulders, travelways and paved portions of the road shall be constructed with a surface composition/structural section meeting H20 live loading criteria capable of supporting the loads of a 40,000 lb. vehicle.

FIRE ACCESS ROAD REQUIREMENTS:

3. A firetruck turnaround shall be provided within 50 feet of the winery building.
4. Numerical address shall be posted at the public roadway and at any other intersection on the commercial driveway. Height of numbers shall be a minimum of 4-inch reflective, or, on a contrasting background, and/or illuminated.
5. Horizontal defensible space clearance shall be a minimum of 10 feet on each side of the driveway.
6. Overhead clearance of tree limbs and brush along the entire length of the driveway shall be a minimum of 15 feet vertical clearance
7. All gated entrances shall have a means of fire department entry. Manual gates shall provide a Knox padlock. Electronic gates shall provide a Knox key switch.
8. All gates shall open inward and provide a minimum 20 feet clear distance between posts/piers/columns, etc.

SITE IMPROVEMENTS:

9. All earth disturbing activities shall include measures to prevent erosion, sediment, and waste materials from leaving the site and entering waterways both during and after construction in conformance with the Napa County Storm Water Ordinance. Best Management Practices shall also be implemented to minimize dust at all times.
10. Proposed drainage for the development shall be shown on the improvement plans and shall be accomplished to avoid the diversion or concentration of storm water runoff onto adjacent properties. Plans shall also indicate changes in runoff and alterations to drainage patterns.
11. Grading, drainage and parking improvements shall be constructed according to the latest "Napa County Road and Street Standards".
12. All grading shall conform to the requirements of the 2007 California Building Code: Appendix J – Grading, including surface preparations, benching, fill material specifications, compaction and maximum slopes, as required.
13. If the construction activity results in a disturbance greater than one acre of total land area, the permittee shall file a Notice of Intent with the California Regional Water Quality Control Board (SRWQCB) prior to any grading or construction activity.

14. Improvements shall be constructed according to plans prepared by a registered civil engineer, which will be reviewed and approved by this office. Improvement plans shall be submitted with the building permit. A plan check fee will apply.

OTHER REQUIREMENTS:

15. All improvements located within a Federal Emergency Management (FEMA) regulatory floodplain require a separate application for a floodplain permit at the time an application for a construction permit is filed.
16. All permits necessary to complete the improvements from other departments, divisions, or entities with approving authority of the work shall be obtained prior to granting of final occupancy from this Division.

Should you have any questions of me, please feel free to contact me at (707) 259-8757 or peter.corelis@countyofnapa.org

For questions relating to fire requirements please contact Fire Marshall Pete Munoa at (707) 967-1421.




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Hillary Gitelman
Director

MEMORANDUM

To: John McDowell, Deputy Planning Director	From: Kim Withrow, Senior Environmental Health Specialist 
Date: September 18, 2013	Re: Altamura Winery Located at 1701 Wooden Valley Road APN: 033-070-045 File # P13-00206

The Environmental Health Division has reviewed the application requesting recognition of an existing cave for barrel storage in approximately 3115 square feet and wine tasting in approximately 450 square feet. The applicant has not requested any changes to production, visitation or marketing with this application. This Division has no objection to approval of the minor modification with the following conditions of approval:

1. A permit for the sewer line between the cave and the existing septic system must be secured from this Division prior to approval of a building clearance (or issuance of a building permit) for the cave.
2. Prior to the approval of a building permit, an inspection of the existing sewage disposal system must be performed by a licensed sewage contractor and a report submitted to this Division for review and approval.
3. The use of the absorption field/drain field area shall be restricted to activities which will not contribute to compaction of the soil with consequent reduction in soil aeration. Activities which must be avoided in the area of the septic system include equipment storage, traffic, parking, pavement, livestock, etc.
4. Pursuant to Chapter 6.95 of the California Health and Safety Code, businesses that store hazardous materials above threshold planning quantities (55 gallons liquid, 200 cubic feet compressed gas, or 500 pounds of solids) shall obtain a permit and file an approved Hazardous Materials Business Plan with this Division within 30 days of said activities. If the business does not store hazardous materials above threshold planning quantities, the applicant shall submit the Business Activities Page indicating such.

5. The applicant shall file a Notice of Intent (NOI) and complete a Storm Water Pollution Prevention Plan with the State of California Water Resources Control Board's (SWRCB) Industrial Permitting program, if applicable, within 30 days of receiving a temporary or final certificate of occupancy. Additional information, including a list of regulated SIC codes, may be found at: http://www.swrcb.ca.gov/water_issues/programs/stormwater/industrial.shtml

Additionally, the applicant shall file for a storm water permit from this Division, if applicable, within 30 days of receiving a temporary or final certificate of occupancy. Certain facilities may be exempt from storm water permitting. A verification inspection will be conducted to determine if exemption applies.

6. All solid waste shall be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors and odors.
7. Adequate area must be provided for collection of recyclables. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the access needed for the collection site.
8. All diatomaceous earth/bentonite must be disposed of in an approved manner. If the proposed septic system is an alternative sewage treatment system the plan submitted for review and approval must address bentonite disposal.
9. All food for marketing event guests must be prepared and served by a Napa County permitted caterer. If the caterer selected does not possess a valid Napa County Permit to operate, the applicant shall refer the business to this Division for assistance in obtaining the required permit prior to providing any food service.



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Conservation Development and Planning

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Hillary Gitelman
Director

Building Inspection Division Planning Use Permit Review Comments

Date: August 28, 2013

Planning Use Permit #: P13-00206

APN: 033-070-045

Owner: Frank and Karen Altamura

Description of Use Permit: Use Permit P13-00206 is for a minor modification to an existing winery's use permit, UP 93433. The minor modification request is to incorporate an existing unpermitted man made cave into winery use.

Comments: The Building Division is not reviewing this project for compliance with the California Building Standards at this time; the Division is reviewing the proposed Planning entitlements only. The Building Division has no issues or concerns with the approval of the Use Permit; it is a Planning entitlement only and does not in itself authorize any construction or change in occupancy.

The plans provided for Use Permit application #P13-00206 does not provide enough information in sufficient clarity and detail to determine all code requirements. A complete and thorough plan review will be performed at the time an application is made for the required building construction permits. The following comments are provided to bring the applicant aware of some of the code items that will need to be addressed in plan review when the applicant submits plans and applies for the required Building, Plumbing, Mechanical and Electrical Permits.

1. In accordance with the California Building Code, Chapter 1, Division 1, Section 1.1.9 Effective date of this code, which states **"only those standards approved by the California Building standards Commission that are effective at the time of application for a building permit is submitted shall apply to the plans and specifications for, and to the construction performed under, that permit"**. At the time of the building permit application the current editions adopted are the 2010 Building, Plumbing, Mechanical, Electrical, Energy, and the Green Building Standards Code.

2. The documents submitted on July 19, 2013 for this "use permit" modification have some conflicting information. With the use permit application the applicant submitted a "Statement of Request for Minor Modification of Use Permit Application" dated June 19, 2013. Under where it says **Proposed Modification**, in the third paragraph it states there will be tastings in the cave, which would require the cave to be classified as a Type-3 cave. On July 18, 2013 another letter was added to the application package, dated July 18, 2013, which states that there will not be any tastings in the cave. The building permit application (B13-00935) includes a Type-2 designation for the cave. Allowed uses in a Type-2 cave are:

Type-2 Winery Caves are natural or manmade caves used for the storage and/or processing of wine at a winery facility. Type-2 winery caves are accessible to the public on guided tours only.

Issues of compliance with the California Building Standards Codes, Title 24, will be addressed during the building permit application, review and approval process. It is very important for the applicant to label the use and activities of all areas on the floor plan so that appropriate code requirements can be addressed. If the applicant has any question please do not hesitate contact me at (707) 253-4417.

All plans and documents for commercial projects are required by California Law to be prepared and coordinated under the direction of a California Licensed Architect (Business and Professions Code, Chapter 3, Division 3 and California Building Code Chapter 1).

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