**BEFORE THE BOARD OF SUPERVISORS**

**OF NAPA COUNTY**

In the Matter of:

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| An Appeal by George Caloyannidis to a decision by the Planning Commission on June 17, 2015 to approve the Reverie on Diamond Mountain Winery - Use Permit Major Modification No. P13-00027 to allow the following: 1) increase the approved production capacity from 5,000 to 9,200 gallons per year with a condition on estate grown grapes for the net increase of 4,200 gallons; 2) the 1,460 sq.ft. second floor area of the winery building to be allocated to accessory use; 3) use of the 4,710 +/-sq.ft. cave for wine production, case storage and wine barrel storage; 4) increase in approved number of employees from two (2) full-time employees plus one (1) part-time employee during harvest to a maximum of five (5) full-time employees; 5) authorize on-premises consumption of the wines produced on-site, consistent with Business and Professions Code §23356, 23390, and 23396.5 (also known as AB 2004 (Evans 2008 or the Picnic Bill)) within the winery building, in the redwood grove, and other designated outdoor areas; 6) catered food and wine pairings; 7) abandonment of an existing septic system and the installation of a new code compliant domestic and winery waste system subject to Condition of Approval No. 2(I); 8) installation of a temporary crush pad cover; 9) installation of a new ADA compliant parking space; 10) installation of a new well; 11) approval of “by appointment visitation” and a marketing plan; and 12) a historic rock bridge over Teal Creek. The approval includes a Use Permit Exception (No. P15-00141) to the Conservation Regulations with regards to retention of the following: 1) the portal for the existing wine cave that encroaches into the 45-ft. creek setback for the small tributary creek on the property; and 2) the minor landscaping improvements along a portion of Teal Creek that are within the required setback of that creek. The approval also includes an Exception to the Napa County Road & Street Standards to allow for a reduction in the required 20 ft. roadway width to preserve unique features of the natural environment. The project is located on a 39.83 acre parcel approximately 1,000 ft. west of Diamond Mountain Road and approximately 4,000 ft. from its intersection with State Highway 29/128, within the AW (Agricultural Watershed) Zoning District; 1530 Diamond Mountain Road, Calistoga, CA, APN: 020-440-005. | **RESOLUTION NO. 2015-152****FINDINGS OF FACT AND DECISION ON APPEAL** |

**WHEREAS**, on February 4, 2013, Reverie on Diamond Mountain Winery (Applicant) submitted an application for a use permit modification to Napa County Planning, Building and Environmental Services (the PBES Department) to modify Use Permit No. P13-00027 to allow the following: 1) increase the approved production capacity from 5,000 to 9,200 gallons per year with a condition on estate grown grapes for the net increase of 4,200 gallons; 2) the 1,460 sq.ft. second floor area of the winery building to be allocated to accessory use; 3) use of the 4,710 +/-sq.ft. cave for wine production, case storage and wine barrel storage; 4) increase in approved number of employees from two (2) full-time employees plus one (1) part-time employee during harvest to a maximum of five (5) full-time employees; 5) authorize on-premises consumption of the wines produced on-site, consistent with Business and Professions Code Sections 23356, 23390, and 23396.5 (also known as AB 2004, the Evans Bill or the Picnic Bill) within the winery building, in the redwood grove, and other designated outdoor areas; 6) catered food and wine pairings; 7) abandonment of an existing septic system and the installation of a new code compliant domestic and winery waste system subject to Condition of Approval No. 2(I); 8) installation of a temporary crush pad cover; 9) installation of a new ADA compliant parking space; 10) installation of a new well; and 11) recognition and authorization of “by appointment visitation” and a marketing plan. The application included a request for Use Permit Exception No. P15-00141 to the Conservation Regulations to retain the following: 1) the portal for the existing wine cave that encroaches into the 45-ft. creek setback for the small tributary creek on the property; and 2) the minor landscaping improvements along a portion of Teal Creek that are within the required setback of that creek. The application further requested an Exception to the Napa County Road & Street Standards to allow for a reduction in the required 20 ft. roadway width to preserve unique features of the natural environment and a historic rock bridge over Teal Creek (collectively, the Project);

**WHEREAS**, the Project is located on a 39.83 acre parcel approximately 1,000 ft. west of Diamond Mountain Road and approximately 4,000 feet from its intersection with State Highway 29/128, within the AW (Agricultural Watershed) Zoning District; 1530 Diamond Mountain Road, Calistoga, CA, APN: 020-440-005 (the Property);

**WHEREAS**, after a preliminary review of the Project, the PBES Department determined that the Project might result in significant environmental effects and therefore required preparation of an Initial Study consistent with the requirements of the California Environmental Quality Act (CEQA);

**WHEREAS**, based upon the Initial Study and CEQA review, a Negative Declaration was prepared for the Project. The Negative Declaration was circulated for public review and comment for at least twenty days in accordance with CEQA requirements. In addition, a public hearing on the Project before the Napa County Planning Commission (the Planning Commission or Commission) was scheduled for June 3, 2015;

**WHEREAS**, on June 3, 2015, the Planning Commission held a duly noticed public hearing on the Project at which time the Commission heard and considered written and verbal testimony regarding the Project including Staff’s recommendation that the Commission approve a reduced development alternative to the Project which would allow the Applicant to retain the majority of the previously unpermitted improvements including the access road/cave portal within the blue-line creek setback and increased wine production as requested, but visitation and marketing levels would not be increased as requested. Staff’s recommendation also included a stream restoration component to offset the encroachments within the creek setbacks. This reduced development alternative to the Project is referred to as Option No. 2;

**WHEREAS,**  on June 3, 2015, the Commission took a tentative action to approve the Project with a stream restoration component, an estate fruit requirement, and other modifications and directed Staff to prepare revised documents reflective of the Commission’s intent and to bring the documents back for consideration and adoption by the Commission on June 17, 2015;

**WHEREAS**, at the continued public hearing on June 17, 2015, the Planning Commission read, received, reviewed and considered the entire administrative record, public comment and all evidence and testimony (both written and oral) submitted at the hearing, including that submitted by the Applicant, surrounding property owners, and other interested persons;

**WHEREAS**, following conclusion of the public hearing on June 17, 2015, and in reliance upon the entire record and evidence submitted, the Planning Commission voted 3-1 (Commissioner Cottrell was absent) to approve the Project subject to revised conditions of approval;

**WHEREAS**, on June 29, 2015, subsequent to the Commission’s decision and within the prescribed period, George Caloyannidis (Appellant), submitted a timely Notice of Intent to Appeal the approval and subsequently filed an Appeal Packet on July 14, 2015 (collectively the Appeal). The Appeal Packet specified the grounds on which the Appellant was basing his appeal, and the grounds are set forth with more particularity herein[[1]](#footnote-1);

**WHEREAS**, in accordance with Napa County Code[[2]](#footnote-2) Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for October 6, 2015, a date at least fifteen but no more than ninety days from the date of submittal of the Appeal;

**WHEREAS**, on October 6, 2015, the Board opened the public hearing on the Appeal, and with the concurrence of Appellant, Applicant and Staff, continued the public hearing to October 13, 2015;

**WHEREAS**, on October 13, 2015, at the continued public hearing on the Appeal, after considering all evidence presented, the Board closed the public hearing and adopted a motion of intent to: (1) grant the first ground of the Appeal in part and deny it in part; (2) deny the second through twelfth grounds of Appeal in their entirety; (3) adopt the Negative Declaration for the Project; (4) modify the conditions of approval adopted by the Planning Commission; and (5) approve the Project;

**WHEREAS**, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on December 8, 2015;

**WHEREAS**, this proposed Resolution containing the Findings of Fact and Decision on Appeal having been presented to Appellant and to Applicant for review and comment prior to the Board meeting on December 8, 2015;

**WHEREAS**, this proposed Resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on December 8, 2015 and interested persons having been given an opportunity to address the Board regarding the proposed resolution;

 **NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors finds, determines, concludes and decides as follows:

**Section 1. Recitals.**

 The Board finds and determines that the foregoing recitals are true and correct.

**Section 2. Conduct of Appeal.**

A. Napa County Code Section 2.88.090 (B) provides that if the hearing before the approving authority was recorded electronically or by a certified court reporter, then upon request by the appellant or any interested party and upon a showing of good cause, the Board may permit additional evidence to be presented which could have been presented at the time of the decision appealed from was made but was not. Here, the Planning Commission proceedings were recorded electronically and transcripts of the Planning Commission proceedings were provided to the Board.

B. Neither Appellant nor any interested party requested that the Board of Supervisors find good cause to permit additional evidence to be presented. Therefore, the hearing was based on the record and transcripts of the Planning Commission proceedings.

**Section 3. Findings of Fact and Conclusions of Law on Appeal.**

 The Board makes the following findings of fact and conclusions of law with regard to each of the grounds for appeal as stated by Appellant in his Appeal:

**A. First Ground of Appeal.**

 **Appellant’s Position:** Appellant contends that the Commission’s findings are inadequate for failure to address the requirement that that the Project will not adversely affect the…welfare of the County pursuant to County Code Section 18.124.070(C). Therefore, the findings do not provide the analytic route from evidence to action as articulated by the California Supreme Court in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. Issuing a use permit to legalize uses that have been illegally initiated and maintained for years can adversely affect the public welfare. The Commission believed it could not consider the illegality of Applicant’s prior conduct. The Staff Report erroneously implies as much. The Commission should have denied the permit because the Commission failed to consider the impact on the welfare of the County by authorizing existing code violations.

 **Findings and Decision:**

1) The Planning Commission approved the Project subject to the following, among other, conditions of approval: installation and completion of a restoration plan; use of hold and haul for sewage removal for the 2016 winery crush only; the use of estate grown grapes for the production increase of 4,200 gallons per year; 40 by appointment visitors per day with an average of 200 persons per week; and a marketing plan.

2) The Board partially concurs with Appellant in that the weekly levels of visitation approved by the Commission of 200 persons per week could adversely affect the general welfare of the County and therefore the Board reduces the level of permitted visitation to a maximum of 20 by appointment visitors per day and a maximum of 100 by appointment visitors per week. The Board finds that this reduction is consistent with Option No. 2 set forth in the June 3, 2015 Planning Commission Staff report. In that report, Staff advised the Commission that it did not support the requested level of visitation. Staff submitted a spreadsheet showing that the requested level of visitation was “far above its peers” and submitted Option No. 2 as an alternative to address visitation levels. The Board concurs with Staff’s recommendation and modifies the Planning Commission’s conditions of approval accordingly. However, the Board finds that the Commission’s findings were in technical compliance with the requirements of *Topanga* as to the remainder of the Commission’s actions*.*

3) County Code Section 18.124.070 contains the seven “findings” that must be made for issuance of a use permit or modification thereto. It is well established under *Topanga* and its progeny that the findings must be supported by substantial evidence in the record as a whole and must provide the analytical route the administrative agency traveled from evidence to action. (*Topanga* at p. 515) County Code Section 18.124.070 (C) requires the Commission to find: “That grant of the use permit, as conditioned, will not adversely affect the public health, safety or welfare of the county.” Here, the Commission specifically made a finding (Finding No. 11) that the Project will not adversely affect the public health, safety or welfare of the County of Napa. Finding No. 11 was supported by the following analysis in the Staff Report:

“Analysis: Various County divisions and departments have reviewed the project and commented regarding water, waste water disposal, access and fire protection. Conditions are recommended which will incorporate these comments into the project to assure ongoing protection of the public health and safety.”

4) The Board finds that Conditions of Approval Nos. 3 (A) – (D), adopted by the Commission incorporate more than 75 specific requirements from Engineering Services, Environmental Health, Fire and the Building departments or divisions all of which ensure compliance with applicable County regulations and protection of public health, safety and welfare.

5) The Board finds that although the analysis underneath Finding No. 11 omitted a specific reference to the words “welfare of the County”, this is not a fatal error because case law is clear that although findings must be discernable, strict formality is not required. (*Craik v. City of Santa Cruz* (2001) 81 Cal.App. 4th 880, 884.) It is proper to look to transcripts of the hearing for findings contained in statements made by decision-makers and oral remarks made at a public hearing. (*Harris v. City of Costa Mesa* (1994) 25 Cal.App. 4th 963, 971.) “Findings need not be stated with judicial formality. Findings must simply expose the mode of analysis, not expose every minutia.” (*Craik*, at p. 884.) “Findings are to be liberally construed to support rather than defeat the decision under review.” (*Topanga*, at p. 1356.) Administrative findings may be general as long as they satisfy the dual requirements of making intelligent review by the courts possible and apprising the parties of the basis for administrative action. (*Swars v. Council of City of Vallejo* (1949) 33 Cal.2d 867, 873.) Here, the Board finds that the Commission properly referred to the Staff Report, the Conditions of Approval, oral remarks at the hearings and the record as a whole and determined that the whole Project would not adversely affect the County’s welfare.

6) The Board determines that none of the seven findings required for grant of a use permit under County Code Section 18.124.070 require the Commission to find that an applicant has not violated the terms of a previously issued conditional use permit. In *Baird v. County of Contra Costa* (1995) 31 Cal.App.4th 1265, a neighbor group claimed that the county erred by refusing to consider evidence of purported violations of the original use permit. The Court rejected the neighbor’s claim and noted that none of the findings required by the county’s ordinance for issuance of a use permit required a finding that the applicant has not violated the terms of a previously issued conditional use permit. Therefore, the County was not required to consider evidence of purported violations of an original conditional use permit pursuant to which the applicant operated an addiction treatment facility in determining whether to grant a permit expansion. As in the *Baird* case, Napa County’s use permit ordinance does not require a finding that the applicant has not violated the terms of a previously issued use permit.

7) Even though the Commission was not legally required to consider violations of Applicant’s previous use permit, the record is clear that the nature and extent of the violations was a focus of public comment, the Staff Report and the Commission’s discussions. Appellant’s assertion that the Commission somehow believed it could not consider the illegality of Applicant’s prior conduct is belied by the administrative record. The first page of the Initial Study/Negative Declaration prepared for the Project clearly states in bold and underline: “**The use permit entitlement request evaluated in this Initial Study pertains to an existing winery that has previously expanded beyond the limits of its use permit without required County approvals. The subject property is presently in violation of County Code, although it is noted that the subject use permit modification was submitted voluntarily by the applicant prior to the County initiating a code enforcement case.**” (See Initial Study Negative Declaration page 1.)

8) The Board finds that the Commission properly considered the nature and extent of the code violations before rendering their decision. As explained by Deputy Director McDowell in his written Staff Report and verbal presentation to the Commission and to the Board, code violations essentially come in two forms: 1) activities/actions that are prohibited by code and thus are not approvable; and/or 2) activities/action that are otherwise permissible but required permits have not been obtained. In this case, the violation was the result of the Applicant exceeding the bounds of their permit and constructing facilities without the benefit of a permit. The violations were not prohibited activities. As a discretionary use permit, the Commission was under no obligation to approve the Project as submitted, but there was also no aspect of the Project directly in conflict with County Code. The Commission, and the Staff Report, noted that the approach in evaluating the proposed Project was to consider the existing unauthorized improvements and uses from the perspective as if they did not already exist. The Commission ultimately found that the improvements and expanded uses, as conditioned, were acceptable as does the Board.

 **Conclusions:**

For the foregoing reasons only, the Board grants in part and denies in part the first ground of appeal and modifies the conditions of approval adopted by the Planning Commission by reducing the by appointment visitation to 20 persons maximum per day and 100 persons maximum per week as set forth in the modified Conditions of Approval attached as Exhibit A.

**B. Second Ground of Appeal.**

 **Appellant’s Position:** Appellant disputes Applicant’s contention and credibility that the permit application was “voluntary.” It appears Applicant did not seek a permit to legalize existing uses until the threat of a County audit and when Applicant decided to sell the property.

 **Findings and Decision:** The Board finds that whether or not the permit application was “voluntary” or motivated in part by some other factor such as a potential sale of the Property are not factors that would legally justify denial by the Commission or the Board. As noted above in Section 3(A), the findings required for issuance of a use permit are located in County Code section 18.124.070. That section contains the seven findings that must be made by the Commission (or the Board on appeal) in order to grant a use permit or modification thereto. None of the seven findings require that an application for a use permit be made voluntarily or with good faith intentions “to come clean.” The findings required for issuance of a use permit are specifically related to the use being proposed and are not designed nor intended to be used to judge an applicant’s intentions, credibility, and motivations.

 **Conclusions:**

For the foregoing reasons, the Board denies the second ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**C. Third Ground of Appeal.**

 **Appellant’s Position:** Appellant contends that the Applicant’s credibility is undermined by several factors including, but not limited to, Applicant’s statements that he was unaware of required County approvals, Applicant’s inconsistent positions about scope of the “existing” illegal uses, and statements to neighbors about the size and scope of the requested permit.

**Findings and Decision:**

1) The Board finds that Applicant’s credibility had little bearing on the Staff’s recommendation, as well as the Commission’s decision and the Board’s decision. As noted in the Staff Report and in Staff’s presentation, arriving at a recommendation on the Project was difficult given that the code violations were not outright prohibited activities. The Applicant had a right to request approval for these activities, so it was necessary to determine if the various components of the Project were otherwise supportable had they not already been implemented. Whether the Applicant was forthright in disclosing how the violations occurred was not pertinent to the question of whether they should now be approved.

2) The Board finds that applying for the necessary permits from PBES remains the proper policy for correcting potential violations of use permits. In moving forward with a request to legitimize past unauthorized actions, an applicant who has years of multiple code violations generally has either been unfamiliar with the code requirements, has knowingly chosen to ignore the code, or as is typical in most code cases, involves some combination thereof. For this matter, whether this was a case of unfamiliarity with code requirements or willful disregard is not a factor in determining if the request to correct the violations warrants approval.

3) The Board finds that Staff properly made recommendations on the individual components of the proposal based on whether they would have been supported had they not yet been implemented. Staff made the following recommendations based on that perspective: 1) the increase in production was modest and reasonable; 2) that some level of increased visitation and marketing was reasonable, but not to the extent requested by the Applicant; 3) that the amount of outdoor visitation/marketing areas was extensive and did not need to encroach within creek setbacks; 4) an alternative location for one of the cave portals outside of the creek setback would have been possible, but some level of creek setback encroachment was supportable given that the original winery was allowed within the creek setback; and 5) that creek setback encroachments were only supportable if the Project included some form of environmental enhancement component. The Commission generally agreed with Staff’s points, except that they granted higher levels of visitation and marketing than Staff recommended and allowed the owner to maintain the existing extent of outdoor visitation/marketing areas. As stated in Section 3 (A) above, the Board determined that the visitation levels approved by the Commission could adversely affect the general welfare of the County and therefore reduced visitation levels.

 **Conclusions:**

For the foregoing reasons, the Board denies the third ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**D. Fourth Ground of Appeal.**

 **Appellant’s Position**: Appellant contends the Commission’s authorization of the alleged illegal improvements distorts the CEQA process and creates a CEQA loophole which violates the spirit of the CEQA process. When an illegal use is allowed to continue, the illegal use sets the baseline for any CEQA analysis. As a result, no meaningful CEQA review can be performed where the landowner seeks to authorize an existing illegal use. This creates incentives to build or expand uses without obtaining prior approvals. The County’s widespread non-enforcement creates a CEQA loophole and violates the CEQA spirit.

**Findings and Decision:**

1) CEQA is an environmental disclosure statute and is not intended to be an enforcement mechanism or punitive. Public agencies have other enforcement or punitive tools outside of the purview of CEQA that may be utilized to redress illegal activity. The CEQA Guidelines and case law interpreting the guidelines hold that the baseline for a continuing project is the current environmental condition, even if the project has not undergone prior environmental review. (*Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 234 Cal.App.4th 214, 248*.*) The “normal” rule is that the baseline must reflect the “physical conditions existing at the time [the] environmental analysis” begins. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320; 106 Cal.Rptr.3d 502; 226 P.3d 985.) This is true even if the current condition includes unauthorized and even environmentally harmful conditions that never received, and, as a result of being incorporated into the baseline, may never receive environmental review. (*Citizens for East Shore Parks v. California State Lands Com.* (2011) 202 Cal.App.4th 549, 561; 136 Cal.Rptr.3d 162.) (*Center for Biological Diversity v. Department of Fish and Wildlife, supra,* 234 Cal.App.4th at 249*.*)

2) A long line of appellate cases have addressed Appellant’s contentions and provide legal support for the County’s use of existing, unauthorized activity as the baseline for the Reverie Winery. “For example, in *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428 (*Riverwatch*), [Division One of the Fourth Appellate District] approved the county's chosen baseline, *which included illegal development that had occurred at a mining operation seeking a use permit*. The respondents could not, said the court, essentially turn back the clock and insist upon a baseline that excluded existing conditions. (*Id.* at pp. 1452–1453 [91 Cal.Rptr.2d 322].) How present conditions come to exist may interest enforcement agencies, but that is irrelevant to CEQA baseline determinations—even if it means preexisting development will escape environmental review under CEQA*.*” (*Riverwatch,* at pp. 1452–1453 [91 Cal.Rptr.2d 322].) *Center for Biological Diversity v. Department of Fish and Wildlife, supra* 234 Cal.App.4th at 249-250. (Emphasis added.)

3) Consistent with the state CEQA Guidelines and the County’s Local Guidelines for Implementing CEQA, the Board finds that the Negative Declaration properly relied on the existing, unauthorized activities as the appropriate baseline. The Board further finds that no credible substantial evidence was submitted by Appellant or others at the Appeal hearing that contradicted the findings and conclusions stated in the Negative Declaration.

 **Conclusions:**

For the foregoing reasons, the Board denies the fourth ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**E. Fifth Ground of Appeal.**

 **Appellant’s Position:** Appellant contends that the Project has cumulatively considerable traffic impacts. The W-Trans Traffic Study relied upon by the Commission was compiled from outdated records as traffic in the vicinity has increased substantially in the past two years. The traffic study did not account for the unknown actual data for traffic generated by wineries and vineyards in the vicinity and several undeveloped sites. The already entitled and likely future additional vehicle trips in the immediate vicinity should have been considered in assessing cumulative traffic impacts. Additionally, the proposed mitigation measure requiring use of an eight-passenger vehicle for carpooling is disingenuous.

**Findings and Decision:**

1) The Board finds thatthe Project’s contribution to cumulative traffic impacts was evaluated in the Negative Declaration adopted by the Planning Commission. The Project traffic engineer, W-Trans, properly calculated the potential for additional traffic generated from the proposed increase in the Project’s intensity, and relied upon current information. Appellant claims that traffic has increased substantially but provided no evidence to substantiate the claim. The traffic analysis did factor in traffic generated by other wineries, vineyards, as well as all other land uses generating traffic in the vicinity. The analysis found that the Project would result in 15 additional daily trips, of which six would occur during the weekday p.m. peak hour which is the period of highest general road congestion in Napa County. The report also found that Diamond Mountain Road functions at Level of Service A, which is a free flowing traffic condition, and that these conditions would not degrade as a result of the Project.

2) With respect to cumulative impacts, the Negative Declaration relies on the 2008 Napa County General Plan EIR to account for reasonably foreseeable future traffic generated by other possible new land uses in the vicinity of the Project. The Negative Declaration properly concludes that six additional trips to the network during the weekday p.m. peak period would not result in a cumulatively considerable contribution to the significant cumulative traffic impacts identified in the 2008 Napa County General Plan EIR.

3) Appellant mischaracterizes the Applicant’s commitment to use an eight-passenger van for carpooling as a “mitigation measure.” The Negative Declaration found that the Project’s incremental contribution (e.g., six additional trips in the weekday p.m. peak hour) would not result in a cumulative contribution to future cumulatively significant traffic impacts. Six trips in the course of a one-hour period is the equivalent of one trip every 10 minutes. Mitigation is not required. In addition, Appellant asserts that the passenger van is a disingenuous commitment on behalf of the Applicant; however, Appellant failed to provide any evidence that the passenger van will not be utilized as committed to by the Applicant. It is speculative to claim that Applicant’s commitment is disingenuous. Further, use of the van is not obligatory to mitigate traffic congestion. The Board further finds that with the reduction in visitation approved by the Board, there is no increase in traffic and no need for the passenger van.

**Conclusions:**

For the foregoing reasons, the Board denies the fifth ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**F. Sixth Ground of Appeal.**

 **Appellant’s Position:** Appellant asserts that the County did not properly evaluate the impact of the Applicant’s use of tailings from the cave excavation. The disposition of the amount of fill from the cave would have required a grading permit and an erosion control plan. An engineering analysis could determine the original terrain configuration by extracting 2,348 or 3,510 cubic yards of fill from the vineyard paths and quite accurately evaluate the effects of non-engineered fill placement on them through computer simulations. Erosion events into Teal Creek could be ascertained, contrary to Staff’s position, by factoring in available rainfall data.

**Findings and Decision:**

1) The Board concurs with Appellant that the County did not evaluate the impact of the cave tailings. However, the County’s position is consistent with CEQA case law on baseline. Under CEQA, the County properly considered the past use of tailings from the cave excavation as part of the existing setting, although the use permit request sought after-the-fact approval of this component. As noted in Section D., the baseline under CEQA is normally the physical conditions existing at the time CEQA review is commenced or at the time at which the application is submitted. This is appropriate even if the existing physical condition is the result of illegal or unpermitted activity as was the case for this Project.

2) The Board finds that it cannot be determined with certainty where all cave spoils were taken and whether those spoils would have triggered a grading permit and/or engineered fill. Applicant has represented that the cave spoils were spread on vineyards and vineyard roads, which would not necessarily trigger a grading permit or require an engineered fill analysis. The cave was constructed in 2001 and 2008. Cave spoils have been in place for at least seven years so that evaluation of erosion potential at this point would serve little to no purpose assuming it were possible to determine with certainty the final resting place of the cave spoils.

3) In addressing the code violations on the Property, Staff requested that the Applicant include a stream restoration component. The stream restoration component also served to address the required findings for grant of a Conservation Regulation Exception in the form of a Use Permit (the Conservation Exception) to allow the previously unauthorized improvements within the creek setbacks to remain.

4) Generally, the Board acknowledges that property owners are more likely to be willing to correct violations if they retain some level of benefit to their land. Forcing the Applicant to remove the cave portal, work areas and driveways in the creek setback would have resulted in substantial new earth disturbance in the creek areas. Given the decades of creek channel and setback encroachment that had occurred on this site and sites both up and downstream of the Project (legally before the Conservation Regulations were adopted), the Board finds that the Commission properly determined that Staff believed requiring offsetting stream restoration was a better path to enhance and preserve (what remains of) the creek corridor than would have been served by removal of the unauthorized improvements.

 **Conclusions:**

For the foregoing reasons, the Board denies the sixth ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**G. Seventh Ground of Appeal.**

**Appellant’s Position:** Appellant claims Applicant’s contention that the use permit is necessary to prevent the Winery from going out of business is unsupported by the record.

**Findings and Decision:**

1) At the Planning Commission hearings, Applicant and his representatives provided substantial testimony, including submission of a written business plan, in support of the requested visitation and marketing levels. The Commission considered this business plan as well as how the proposed Project compared to other similarly sized wineries. The Applicant and his representatives claimed that the Reverie Winery would be forced out of business if they had to comply with the level of visitation authorized in the prior use permit.

2) The Board finds that notwithstanding the submitted business plan, the amount of visitation approved by the Commission may be detrimental to the general welfare of the County as discussed above in Section 3 (A) as it would far exceed the level of visitation approved at other 10,000 gallons or less wineries. Therefore, the Board modifies the conditions of approval by reducing the visitation levels to allow a maximum of 20 visitors per day and a maximum of 100 visitors per week.

 **Conclusions:**

For the foregoing reasons, the Board denies the seventh ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**H. Eighth Ground of Appeal.**

 **Appellant’s Position:** Appellant contends that there are numerous gaps in the administrative record and without this information (fully set forth in Appellant’s Appeal), the Commission could not make an informed decision and the public could not knowledgeably comment on the proposal.

**Findings and Decision:**

1) The Board finds that all relevant information was provided to the Commission and the public. Appellant has not articulated how any alleged gaps in the administrative record, assuming any exist, resulted in a prejudicial abuse of discretion, resulted in the lack of a fair and impartial hearing or resulted in a lack of facts supporting the Commission’s decision.

2) As is common practice, Staff provided the Commission with a complete set of the Project’s administrative record in advance of the hearings. Commissioners diligently read and familiarize themselves with all background materials, as well as conducting site visits if they deem it necessary. The Commission’s record was thorough, detailed and provided an ample evidentiary basis from which to make an informed decision. Likewise, public notice of the environmental document’s availability and notice of the hearing was provided in accordance with County Code and State Law. Project files containing the entire administrative record were available throughout the process.

First Point – Appellant contends a folder from Party in Interest Representative David Gilbreth did not contain all permits for the Project and was not examined by the Commission.

Response: Late in the public hearing shortly before the Commission conducted their deliberations, Mr. Gilbreth submitted a notebook dated June 16, 2015 containing a letter and evidence on historical approvals and permits that he claimed had authorized the caves (see Attachment F, June 17, 2015 Planning Commission Staff Report - Correspondence Received after Packet Mail Out or at the Meeting). This evidence was provided during the public hearing to Commissioners, Staff, and copies were made available to the public. In connection with the Appeal hearing, Mr. Gilbreth submitted a letter dated September 16, 2015 from the State of California Department of Industrial Relations, Division of Occupational Safety & Health Mining and Tunneling Unit confirming that the “Classifications and Permits required from the State of California were obtained” and that the State does not regulate the size of wine caves.

Second Point – The exact date of the cave excavation should have been part of the public record and the date upon which the County began to require cave permits.

Response: The initial date of completion of the first phase of the cave was stated in the Project Statement submitted by the Applicant. The Appellant appears to have missed that fact. Shortly before close of the public hearing on June 17, 2015, Real Party in Interest representative Mr. Gilbreth submitted additional evidence that the initial phase of the cave was constructed in 2001 and later expanded in 2008. Although this augmented information was revealed late in the process, it was revealed in the public hearing and was part of the public record.

The Staff Report and a considerable amount of the Commission’s discussion focused on trying to understand the County’s regulatory process for allowing winery uses within caves. The administrative record is clear that even prior to the County’s current permitting practices for caves that use permit entitlements and tenant improvement building permits (plumbing/mechanical/ventilation, etc.) were required for the caves (and other unauthorized building construction) at the time Applicant installed the improvements. This point is not disputed by Applicant. The exact date of the violation was not pertinent to the Commission’s decision to authorize the cave after-the-fact.

Third Point – The information that the cave was constructed in two phases rather than one was missing from the Staff Report.

Response: During processing of the application, Applicant could not say with certainty when the cave was constructed other than to represent that it had occurred at some point in the mid to late 1990’s. Applicant did not represent that the cave had been constructed in phases. At the time the Staff Report was composed, evidence that the cave had been constructed in 2001 and 2008 had not yet been revealed and therefore was not included in the Report. As noted earlier, the request before the Commission was to determine if the existing cave should be allowed for winery use. Whether that cave was constructed in one phase in the 1990’s or in two phases in the 2000’s had little bearing on the Commission’s decision on how the cave would be treated going forward.

Fourth Point – The size of the cave on record varies from 3,510 sq. ft. to 3,700 sq. ft. The Commission “recognized” a cave of 4,710 sq. ft.

Response: The “as built” Project plans submitted with the use permit application, which were prepared by a licensed engineer, identify the cave as 4,710 sq. ft., which is what was “recognized” and approved by the Commission. It is not disputed that the property owner failed to obtain all required County permits or submit all required plans at the time the Project was constructed. However, in connection with the Appeal hearing, Mr. Gilbreth submitted a letter dated September 16, 2015 from the State of California Department of Industrial Relations, Division of Occupational Safety & Health Mining and Tunneling Unit confirming that the “Classifications and Permits required from the State of California were obtained” and that the State does not regulate the size of wine caves.

Fifth Point – The June 3, 2015 Staff Report indicates that the Property was selected for the 2012 Napa County Wine Audit, but the results of that audit, which Appellant asserts are crucial to the CEQA analysis, were not included in the CEQA documentation.

Response: The Reverie Winery was selected to participate in and did participate in the audit process even though they had applied for a use permit modification to update their entitlement and bring their permit into compliance. The Planning Commission Report dated July 17, 2013 disclosed that their tours and tastings/marketing program was not in compliance, as well as unauthorized production levels (8,400 gallons actual versus 5,000 gallons). Appellant contends that the results are crucial to the CEQA process, but does not state why they are crucial. The CEQA document prepared for the Project properly described the full extent of the violations existing on the Property.

Sixth Point – While the Commission was lead to believe the Reverie Winery was audited in the 2012 Wine Audit, the Planning Director responded to Appellant’s correspondence submitted after the Planning Commission’s decision by stating that the Winery was not included in the audit.

Response: The June 3, 2015 Staff Report correctly acknowledged that the Reverie Winery was selected for the 2012 Wine Audit and remained in the audit process until its completion. However, a follow up evaluation was not conducted in 2013 because the Applicant was actively processing their use permit modification. As previously noted, the extent of the violations that existed prior to the use permit modification submittal was disclosed to the Commission and public.

Seventh Point – The extent of the violations were acknowledged by Applicant, but the duration of the violations was not made available to the public.

Response: The June 3, 2015 Staff Report provides a detailed listing of the violations plus a development history of the Property. The Property history section of the Staff Report provides general information on the duration of violations, and was made available to the public in advance of the hearing.

Eighth Point – No computer simulation of potential environmental damage to Teal Creek from deposition of cave tailings without erosion control measures was provided.

Response: Cave tailings were deposited on the site a minimum of seven years ago. County Staff from Planning, Engineering and Environmental Management Divisions visited the site over the course of processing the application and found no evidence of erosion hazard violations. Appellant assumes cave tailings were applied to the Property without erosion control measures, but site inspections by qualified Engineering Division Staff found no evidence of environmental damage from erosion hazards.

 **Conclusions:**

For the foregoing reasons, the Board denies the eighth ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**I. Ninth Ground of Appeal.**

 **Appellant’s Position:** Appellant argues the Commission should have imposed a condition prohibiting the Property from creating a connection with the Calistoga Hills Resort. It will be impossible to monitor whether the properties have been illegally joined and therefore a condition should be required specifying no access between the properties and that a six-foot high solid concrete wall with no openings should be built.

**Findings and Decision:**

1) During the course of the Commission’s hearings it was disclosed that the owner of the property adjoining this Winery site is or was in contract to purchase the Property. That adjoining property, which is located within the city limits of the City of Calistoga, is approved for a large resort hotel development. Concerns were raised at the hearings that the Reverie Winery could be used by the resort in a manner inconsistent with County policies if the use permit modification was granted. It was speculated that resort guests would access the Reverie Winery if a connection were installed.

2) Applicant’s representatives testified that no connection was proposed as part of this Project, and asserted that the real estate deal was not a certainty. Applicant’s representatives also noted that ownership of a winery is not evidence that the winery would be operated in a fashion conflicting with County Code and/or its use permit entitlement.

3) The Board finds that conditions imposed by the County must have a rational nexus to the project being regulated. No connection to the resort was proposed with the modification. The Board determines it is remote and speculative to assume that a connection would be requested if the resort property owner acquires this site. Should the resort acquire this site, and desire a connection, that change to the Project would be subject to a use permit modification. Any requested modification would be evaluated for consistency with County Zoning and the General Plan, most notably, the provisions of Measure J/P concerning expansion of urban uses onto agriculturally designated land.

 **Conclusions:**

For the foregoing reasons, the Board denies the ninth ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**J. Tenth Ground of Appeal.**

 **Appellant’s Position:** Appellant claims the County is aiding in unfair business practices by turning a blind eye to use permit violations by Applicant.

**Findings and Decision:**

1) The Property is presently in violation of County Code. The Board finds that under current and long-standing code enforcement practices that have been in place for more than 25 years, property owners with violations are afforded the opportunity to request retroactive approval of developments/uses implemented without required permits.

2) The Board finds that if code enforcement policies need to be changed, that change should be done on a more global basis and not by singling out an individual project or property owner.

3) The Board finds that the Planning Commission acted consistently with how the County has treated similar code violation cases in the past.

 **Conclusions:**

For the foregoing reasons, the Board denies the tenth ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**K. Eleventh Ground of Appeal.**

 **Appellant’s Position:** Appellant contends that approving illegal uses without consequences encourages more violations of the County Code and prevents appropriate CEQA review. It is also an insult to the majority that do comply

**Findings and Decision:**

1) Please see the Board’s Findings and Decision to Appeal Ground No. 4 in Section 3(F) incorporated here by reference. Were the County to evaluate the Project utilizing any other baseline, the County would potentially be running afoul of judicial interpretations of CEQA.

2) The Applicant’s representatives claimed they had been subject to significant consequences associated with the cost of processing an after-the-fact application, including double the usual building permit fees and costs from the imposition of the restoration plan imposed by the Commission. Testimony was provided by interested third parties that these costs to the Applicant were costs they would have been subject to anyway had they requested approval before implementing the Project and that the doubled building permit fees was inconsequential.

3) The Board finds that a majority of the Commission properly determined that their role was to focus on weighing the merits of the proposal before them over applying consequences or punitive measures beyond the double fee building permit requirement stated in the County Fee Resolution.

 **Conclusions:**

For the foregoing reasons, the Board denies the eleventh ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**L. Twelfth Ground of Appeal.**

 **Appellant’s Position:** Appellant asserts that forcing an appellant to challenge a decision without having the final decision available to him is unfair. The Commission’s final decision, including the findings, was not available in the file when Appellant reviewed it on July 10 in preparation for this Appeal. The County failed to produce the requested documents by the Appeal filing date.

**Findings and Decision:**

1) The Board finds that the Commission’s decision was final on June 17, 2015. Commissioner Basayne made a motion at that hearing which accomplished several things, including adopting the modified Conditions of Approval which limited maximum annual visitation to no more than 10,800 visitors. A video of the Commission’s June 17 hearing was available for review prior to Appellant’s deadline for filing an appeal packet.

2) The Board finds that County Code Section 2.88.050 requires an appellant to file an appeal packet within ten working days following submittal of a notice of intent to appeal. A notice of intent to appeal must be filed within ten working days from the date of decision of the approving authority.

3) Although Staff was finalizing the Conditions of Approval to reflect the Commission’s final action on June 17, the Board finds that the Commission’s final decision was available for review by Appellant prior to the deadline for filing an appeal packet.

 **Conclusions:**

For the foregoing reasons, the Board denies the ninth ground of appeal and upholds the Planning Commission's approval of the Project subject to the modified Conditions of Approval attached as Exhibit A.

**Section 4. CEQA Determination.**

The Board has received and reviewed the proposed Negative Declaration pursuant to the provisions of CEQA and of Napa County’s Local Procedures for Implementing CEQA, and finds that:

1) Prior to taking action on the Negative Declaration and the Project, the Board read and considered said Negative Declaration.

2) The Negative Declaration is based on independent judgment exercised by the Board.

3) The Negative Declaration was prepared and considered in accordance with the requirements of CEQA.

4) Considering the record as whole, there is no substantial evidence that the Project will have a significant effect on the environment.

5) The Clerk of the Board of Supervisors is the custodian of the records of the proceedings on which this decision is based. Records are located at the Napa County Planning, Building, and Environmental Services Department, 1195 Third Street, Second Floor, Napa, CA.

6) The Project is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

**Section 5. Modified Conditions of Approval.**

 The Board modifies the Planning Commission’s conditions of approval as set forth in Exhibit A.

**Section 6. Substantial Evidence.**

 Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

**Section 7. Summary of Decision.**

 Based on the foregoing facts, findings, and determinations, the Board of Supervisors:

 A. Adopts the Negative Declaration prepared for the Project;

B. Finds that neither Appellant nor anyone else demonstrated a prejudicial abuse of discretion by the Planning Commission, a lack of fair and impartial hearing, or that there were no facts presented to the Commission to support its decision;

 C. Upholds the first ground of appeal in part and denies it in part;

D. Denies the second through twelfth grounds of appeal in their entirety;

 E. Modifies the Planning Commission’s conditions of approval by reducing the Winery’s visitation to 20 people maximum per day and 100 people maximum per week as shown in the modified Conditions of Approval attached as Exhibit A;

 F. Finds that the modified Conditions of Approval attached as Exhibit A are both necessary and well justified; and

 G. Approves Use Permit No. P13-00027 for the Project subject to the modified Conditions of Approval attached as Exhibit A.

**Section 8. Effective Date.**

 This resolution shall take effect in accordance with the provisions of Napa County Code Section 2.88.090.

**Section 9. Judicial Challenge.**

 Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

 **THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the Napa County Board of Supervisors, State of California, at a regular meeting of said Board held on the 8th day of December, 2015, by the following vote:

 AYES: SUPERVISORS WAGENKNECHT, PEDROZA, LUCE,

 CALDWELL and DILLON

 NOES: SUPERVISORS NONE

 ABSENT: SUPERVISORS NONE

 ABSTAIN: SUPERVISORS NONE

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 DIANE DILLON, Chair of the

 Board of Supervisors

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| APPROVED AS TO FORMOffice of County CounselBy:  *Laura J. Anderson*Deputy County CounselDate: November 30, 2015 | APPROVED BY THE NAPA COUNTYBOARD OF SUPERVISORSDate: December 8, 2015Processed By:  Deputy Clerk of the Board | ATTEST: GLADYS I. COILClerk of the Board of SupervisorsBy: |

Attachments:

 Exhibit A - Modified Conditions of Approval

cc\D\BOS\Appeals-PC\Reverie\Reverie FF 12.01.15Final.doc

**EXHIBIT A**

**BOARD OF SUPERVISORS – DECEMBER 8, 2015**

**CONDITIONS OF APPROVAL**

**REVERIE ON DIAMOND MOUNTAIN**

**Use Permit Modification #P13-00027-MOD, Use Permit Exception to the Conservation Regulations #P15-00141, & Exception to the Napa County Road & Street Standards**

**1530 Diamond Mountain Road, Calistoga, CA**

**APN: 020-440-005**

**1.0 SCOPE**

This permit shall be limited to:

1.1 An Exception in the form of a Use Permit Exception (#P15-00141) to the Conservation Regulations to allow retention of the following:

a. The portal for the existing wine cave that encroaches into the setback for the small tributary creek on the property; and

b. The minor landscaping improvements along a portion of Teal Creek that are within the required setback of that creek.

1.2 An Exception to the Napa County Road & Street Standards (RSS) to allow for a reduction in the required 20 foot roadway width to preserve unique features of the natural environment and the historic bridge over Teal Creek. Access to the project site is from an approximately 1,000 ft. long paved private drive crossing several properties which outlets onto Diamond Mountain Road, a County maintained public right of way. Minor widening will occur on portions of this road on the adjoining property where no mature trees are located and outside of creek setbacks. The RSS exception shall apply only to areas where natural features are to be preserved. (See RSS exception request and drawings dated February 6, 2014 for details.)

1.3 Approval of a modification to Use Permit #94254-UP to allow the following:

1. An increase in the approved production capacity from 5,000 to 9,200 gallons per year with a condition on estate grown grapes for the net increase of 4,200 gallons set forth in Condition of Approval (COA) No. 2.4 below;
2. The 1,460+/- sq.ft. (Second Floor) of the winery building for accessory use;
3. The use of the 4,710 +/-sq.ft. cave for wine production, case storage and wine barrel storage. Visitation and marketing activities are prohibited within the cave;
4. Visitation as set forth in COA No. 4.1 below;
5. A marketing plan as set forth in COA No. 4.2 below;
6. An increase in the previously approved number of employees from two employees plus one temporary employee during harvest to a maximum of five employees;
7. On-premise consumption of the wines produced on-site as set forth in Section 2.1 below;
8. Catered wine and food pairings;
9. Abandonment of an existing septic system and the installation of a new code compliant domestic and winery waste system as set forth in COA No. 2.5 below;
10. Installation of a new well;
11. Installation of a new automatic storm water diversion valve and a temporary crush pad cover; and
12. Installation of a new ADA compliant parking space.

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 (the 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 approved in accordance with County Code Section 18.124.130 and may be subject to the Use Permit modification process.

\*\*Alternative locations for cave spoils and fire suppression tanks are permitted, subject to review and approval by the Director of Planning, Building, and Environmental Services (the PBES Director), when such alternative locations do not change the overall concept, and do not conflict with any environmental mitigation measures or conditions of approval.

**2.0 PROJECT SPECIFIC CONDITIONS**

Should any of the Project Specific Conditions below conflict with any of the other, standard conditions included in this document (beginning in COA No. 3.0 and following), the Project Specific Conditions shall supersede and control.

2.1 On-Premises Consumption

In accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 and the PBES Director’s July 17, 2008 memo, “Assembly Bill 2004 (Evans) and the Sale of Wine for Consumption On-Premises,” on-premises consumption of wine produced on-site and purchased from the winery may occur solely in the winery building, the improved areas south of Teal Creek consisting of the existing picnic area, existing redwood grove area, existing lawn areas and connecting paths as specified in the application. Any and all visitation associated with on-premises consumption shall be subject to the maximum per person weekday and weekend daily tours and tastings visitation limitation and/or applicable limitations of permittee’s marketing plan set forth in COA No. 4.0 below.

2.2. The existing single-family residence is for residential purposes only and shall not be used for commercial purposes or in conjunction with the operation and/or visitation/marketing program for the winery. If the residence is rented, the residence shall only be rented out for periods of 30 days or more, pursuant to Napa County Code Section 18.104.410, Transient Commercial Occupancies of Dwelling Units Prohibited.

2.3. Prior to the issuance of a building permit for the cave portal, conversion of the second floor of the winery building and/or the increase in wine production, a final Conservation and Restoration Plan substantially in conformance with First Carbon Solution’s letter and report dated June 5, 2015 shall be submitted for review and approval by the Planning Division. The restoration project called for in the approved plan shall be implemented and installed prior to issuance of a final certificate of occupancy.

2.4. The production increase authorized by this Permit (4,200 gallons per year) shall be restricted to use of estate grown grapes. The permittee shall keep records of annual production documenting the source of grapes to verify use of estate grown grapes. The report shall recognize the Agriculture Commission’s format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the PBES Department upon request, but shall be considered proprietary information not available to the public for purposes of this Condition, “estate grown grapes” means grapes grown within a vineyard located on the subject property (APN 020-440-005).

2.5. The Hold and Haul Sewage Program shall be restricted to the 2016 winery crush season. Prior to any crushing after 2016, a new on-site sewage treatment system shall be permitted and installed pursuant to the Environmental Health Division’s conditions of approval dated March 21, 2014.

**3.0 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:

3.1 Engineering Services Division as stated in their Memorandum dated March 10, 2015 & March 5, 2014.

3.2 Environmental Health Division as stated in their Memorandum dated March 21, 2014.

3.3 Building Division as stated in their Memorandum dated February 28, 2013.

3.5 Fire Department as stated in their Inter-Office Memo dated January 21, 2014 & February 13, 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.

**4.0 VISITATION**

Consistent with County Code Sections 18.16.030 and 18.20.030, marketing and tours and tastings may occur at a winery only where such activities are accessory and “clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.”

A log book (or similar record) shall be maintained to document the number of visitors to the winery (for either tours and tastings or marketing events), and the date of the visits. This record of visitors shall be made available to the PBES Department upon request.

4.1 TOURS AND TASTING

Tours and tastings by appointment only shall be limited to the following:

a. Frequency: 7 days per week, Monday through Sunday

b. Maximum number of persons per day: 20

c. Maximum number of persons per week: 100

d. Maximum yearly: 5,200

e. Hours of operation: 8:00 am to 5:00 pm

f. Catered Food Pairings

“Tours and tastings” means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings.

Tours and tastings may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant (County Code Section 18.08.620 - Tours and Tastings).

Tours and Tastings shall be limited to those wines set forth in the County Code Section 18.20.030(I)(5)(c) - AW Zoning and 18.16.030(G)(5)(c) - AP Zoning.

4.2 MARKETING

Marketing events shall be limited to the following:

a. 1. Frequency: 4 times per year

2. Number of persons:- 60 maximum

3. Catered Food Pairings

b. 1. Frequency: 2 times per year

2. Number of persons: 40 maximum

3. Catered Food Pairings

c. 1. Frequency: 12 times per year

2. Number of persons: 10 maximum

3. Catered Food Pairings

d. Participation in Auction Napa Valley

“Marketing of wine” means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to the County Code Chapters 18.16 and 18.20. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as “marketing of wine” if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery’s use permit. Marketing plans in their totality must remain “clearly incidental, related and subordinate to the primary operation of the winery as a production facility” (County Code Sections 18.16.030(G)(5) and 18.20.030(I)(5)). To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of recovery of variable costs, and any business content unrelated to wine must be limited.

Careful consideration shall be given to the intent of the event, the proportion of the business event’s non-wine-related content, and the intensity of the overall marketing plan (County Code Section 18.08.370 - Marketing of Wine).

All activity, including cleanup, shall cease by 10:00 PM. If any event is held which will exceed the available on-site parking, the permittee shall prepare an event-specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

**5.0 GRAPE SOURCE**

At least 75% of the grapes used to make the winery’s wine shall be grown within Napa County. The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the annual production is from Napa County grapes. The report shall recognize the Agricultural Commissioner’s format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the PBES Department upon request, but shall be considered proprietary information and not available to the public.

**6.0 COMPLIANCE REVIEW**

Permittee shall obtain and maintain all permits (Use Permits and Modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC), United States Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) Grape Crush Inquiry data, all of which are required to produce and sell wine. In the event permittee loses the required ABC or TTB permits and licenses (or permit/license is revoked), permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are re-established.

Visitation log books, custom crush client records, and any additional documentation determined by staff to be necessary to evaluate compliance may be requested by the County for any code compliance or code enforcement process. The permittee (and their successors) shall be required to participate fully in the winery code compliance or enforcement process.

**7.0 RENTAL/LEASING**

No winery facilities, or portions thereof including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons or entities producing and/or storing wine at the winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this use permit or pursuant to the Temporary Events Ordinance (County Code Chapter 5.36).

**8.0 SIGNS**

Prior to installation of any winery identification or directional signs, detailed plans, including elevations, materials, color, and lighting, shall be submitted to the PBES 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 County Code Chapter 18.116. At least one sign placed and sized in a manner to inform the public must legibly post the words “Tours and Tastings by Prior Appointment Only”.

**9.0 LIGHTING**

All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations, shall be on timers, and shall incorporate the use of motion detection sensors to the greatest extent practical. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Lighting utilized during harvest activities is not subject to this requirement.

Prior to issuance of any building permit pursuant to this approval, two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the California Building Code.

**10.0 LANDSCAPING**

 Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the building permit application package for the Planning Division’s review and approval prior to the issuance of any building permit associated with this approval. The plan shall be prepared pursuant to the County’s Water Efficient Landscape Ordinance (WELO), (County Code Chapter 18.118), as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.

 Plant materials shall be purchased locally when practical. The Agricultural Commissioner’s office shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.

 No trees greater than 6” diameter at breast height shall be removed, except for those identified on the submitted site plan. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.

Landscaping shall be completed prior to issuance of a Final Certificate of Occupancy, and shall be permanently maintained in accordance with the landscaping plan.

**11.0 OUTDOOR STORAGE/SCREENING/UTILITIES**

All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No item in storage shall 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 County Code Chapter 18.106) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

**12.0 COLORS**

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation and the applicant shall obtain the written approval of the PBES Department prior to painting the building. Highly reflective surfaces are prohibited.

**13.0 SITE IMPROVEMENT CONDITIONS**

Please contact Engineering Services with any questions regarding the following:

13.1 GRADING AND SPOILS

All grading and spoils generated by construction of the project facilities, including cave spoils, shall be managed per Engineering Services direction. All spoils piles shall be removed prior to issuance of a Final Certificate of Occupancy.

13.2 TRAFFIC

All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

13.3 DUST CONTROL

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.

13.4 AIR QUALITY

During all construction activities the permittee shall comply with the Bay Area Air Quality Management District Basic Construction Best Management Practices, as provided in Table 8-1, May 2011 Updated CEQA Guidelines:

a. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The Air District’s phone number shall also be visible.

b. All exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) shall be watered two times per day.

c. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

d. All visible mud or dirt tracked out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

e. All vehicle speeds on unpaved roads shall be limited to 15 mph.

f. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

g. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations (CCR)). Clear signage shall be provided for construction workers at all access points.

h. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified visible emissions evaluator.

13.5. STORM WATER CONTROL

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the State Regional Water Quality Control Board (SRWQCB).

13.6 PARKING

The location of employee and visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and approved marketing events. In no case shall parking impede emergency vehicle access or public roads.

13.7 GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Napa County Fire Department to assure that it is designed to allow large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at all times. If the gate is part of an entry structure an additional permit shall be required according to the County Code and in accordance with the Napa County Roads and Street Standards. A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed, and approved as part of this use permit approval.

**14.0 ENVIRONMENTAL HEALTH-SPECIFIC CONDITIONS**

Please contact Environmental Health with any questions regarding the following:

14.1 WELLS

The permittee shall (at the permittee’s expense) provide well monitoring data monthly and the total annual groundwater pumped. Data requested shall include, but not necessarily be limited to, water extraction volumes and static well levels. Water usage shall be minimized by use of best available control technology and best water management conservation practices.

a. No new on-site or off-site water sources, including but not limited to wells, imported water, new ponds/reservoir(s) or other surface water impoundments, or use of an existing pond shall be permitted without additional environmental review, if necessary, and may be subject to a modification to this Permit. A new Water Availability Analysis shall be required prior to approval of any new water source(s) on the property.

b. All monitoring shall commence within six months of the issuance of this Permit, or immediately upon commencement of the winery use, whichever occurs first and shall be submitted annually thereafter.

c. Groundwater pumping shall not exceed 0.36 af/yr for the winery. If after two years of reporting the monitoring shows that the annual water allocation continues to be exceeded, this Permit shall be scheduled for review by the Planning Commission and possible modification, revocation or suspension.

14.2 NOISE

Construction noise shall be minimized to the greatest extent practical and allowable under State and local safety laws. Construction equipment mufflering and hours of operation shall be in compliance with County Code Chapter 8.16. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur between the hours of 8 AM to 5 PM. Exterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the County Code. There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

**15.0 ARCHEOLOGICAL FINDING**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during the development, all work in the vicinity must be, by law, halted, and the Napa County Coroner informed, so that the Coroner can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the nearest tribal relatives as determined by the State Native American Heritage Commission shall be contacted by the permittee to obtain recommendations for treating or removal of such remains, including grave goods, with appropriate dignity, as required under Public Resources Code Section 5097.98.

**16.0 ADDRESSING**

All project site addresses shall be determined by the PBES Director, and be reviewed and approved by the United States Post Office, prior to issuance of any building permit. The PBES 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.

**17.0 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 PBES Department’s standard form.

**18.0 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 County Code Chapter 18.107.

**19.0 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 to the owner. 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 Certificate of 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 County Code Section 18.124.120.

**20.0 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 Final Certificate of Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence. However, a Temporary Certificate of Occupancy may be granted pursuant to County Code Section 15.08.070(B) to allow commencement of production activities prior to completion of all project improvements. 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.

**21.0 STATUTORY AND CODE SECTION REFERENCES**

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

**22.0 PAYMENT OF FEES AS PREREQUISITE FOR ISSUANCE OF PERMITS**

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full.

**23.0 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.

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1. The complete Appeal Packet is on file with the Clerk of the Board of Supervisors. [↑](#footnote-ref-1)
2. All further code references are to the Napa County Code unless otherwise specified. [↑](#footnote-ref-2)