

## ATTACHMENT E

### APPLICANT'S SUPPLEMENTAL INFORMATION

July 14, 2017

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**VIA ELECTRONIC MAIL**

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**Re: Raymond Vineyard and Cellar, Inc.—Beckstoffer Vineyards, et al.  
Appeal of March 15, 2017 Decision of Napa County Planning Commission to  
approve application for Use Permit Major Modification #P15--00307 MOD**

**Applicant's Submission of Additional Information Regarding Appeal**

Dear Chair Ramos and Ms. Anderson:

Applicant Raymond Vineyard and Cellar Inc. ("Raymond") responds to the assertions of Appellants on Appeal. As discussed, the Project is consistent and complies with the General Plan land use designation; Winery Definition Ordinance (WDO) ; Zoning Code; Noise Ordinance; and the California Environmental Quality Act (CEQA).

Appellants misinterpret the County's winery development policies, standards and zoning regulations, with which the Planning Commission properly found the Project fully consistent, in a misguided attempt to create purported policy and development conflicts where none exist. Further, there is no evidence, let alone substantial evidence that the modest changes proposed for the Project--which do not seek any intensification of use--would result in any potentially significant Project-related environmental effects.

The proposed modification is, essentially: (1) Integration of Ticen Ranch into existing Raymond operations; (2) Reconciliation of several minor Code compliance issues; (3) Recognition of an existing level of employees as compared to levels reported quite a few years back in the winery's history; and (4) Addition of spaces to an existing parking area, which are needed to meet the currently approved visitation demand and nature of in-depth winery tastings/tours (overlap in arrival times).

## I. The Project Property

Raymond is located on 60.2 acres at 849 Zinfandel Lane, south of the City of St. Helena (APN 030-270-013). Raymond also owns the adjacent 25.4 acre Ticen Ranch property located at 1584 St. Helena Highway (APN 030-270-012).<sup>1</sup> Both properties have a General Plan land use designation of Agricultural Resource (AR) and are located in the Agricultural Preserve (AP) Zoning District. If the Appeal is denied and the Project is approved, Raymond would merge the two parcels, thus removing Ticen Ranch as a potential site for a new winery by a third party.<sup>2</sup>

## II. The Project

Raymond seeks to add the Ticen Ranch property to existing winery operations, with conversion of the Ticen residence and barn to accessory space (tasting room, administrative offices), and a new access driveway from St. Helena Highway across the Ticen Ranch parcel. The proposed new Highway 29 entry will divert significant traffic from the current Zinfandel Lane entry.<sup>3</sup>

Raymond does *not* request any new structures or increase in previously approved and existing production<sup>4</sup>, tours/tastings<sup>5</sup>, or winery marketing events<sup>6</sup>, only operational changes--extension of operations until 11:00 p.m. during harvest (August through November) and visitation until 6:30 p.m. year round; on-site consumption of wine in specified areas; and up to half of currently permitted marketing events to be held outdoors.<sup>7</sup>

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<sup>1</sup> Raymond owns an adjacent, 27.68-acre parcel (APN 030-050-031), with longstanding orchard or vineyard use.

<sup>2</sup> See attached Summit Engineering site plan for hypothetical Ticen winery, with 1.58-1.98 acre vineyard removal.

<sup>3</sup> Although the Ticen residence is located within the 600-ft. setback from Highway 29, the zoning ordinance allows a reduced setback of 300 feet from highway centerline for such structures upon findings of historic significance.

<sup>4</sup> 750,000 gal/ yr. averaged over any consecutive three-year period; production in any year not to exceed 900,000 gal.

<sup>5</sup> Existing entitlement is 400 visitors per day (up to 200 public).

<sup>6</sup> Daily events for up to 10 people, twice weekly events for 10 to 30 people, twice monthly events for 30 to 100 people. Modification seeks no increase, but requests half of events to occur outdoors.

<sup>7</sup> The Project also requests construction of a vineyard viewing platform, pet dog comfort station, 61 new parking stalls, improvements to the existing sanitary wastewater treatment system, and installation of two, 10,000-gallon, water storage tanks.

Raymond further seeks to bring into compliance its existing 90 employees from the 26 approved in an earlier use permit) and additional site modifications and conversions of building uses that are already in place, but were completed without the benefit of County permit approvals.<sup>8</sup>

## II. Project Approval

The Project history is detailed in the Staff Report prepared for the continued March 15, 2017 Planning Commission hearing. Staff found the Project consistent with the County General Plan AR land use designation; AP Zoning District; the Winery Definition Ordinance (WDO); and recommended adoption of a Mitigated Negative Declaration after concluding the Project would not have any significant environmental impacts after implementation of mitigation measures related to potential impacts to Biological Resources and Tribal Cultural Resources.

On a 3-2 vote, the Planning Commission agreed with Staff's recommendations and approved the Project. On April 11, 2017, Appellants appealed.

## III. Standard of Review on Appeal

The Board of Supervisors exercises its independent judgment to determine whether the Planning Commission's decision was correct, based on review of the documentary record, including a transcript of the hearing, and such additional evidence which could not have been presented at the time the decision appealed was made. No other evidence shall be permitted, except upon a showing of good cause. Napa County Code §2.88.090. None was submitted here.

## IV. The Project is Consistent with County Land Use Policies and the Zoning Code.

Appellants' assert the Project "makes a mockery" of the General Plan and Zoning Code because it purportedly would result in a "fundamental change" in the character of the Raymond Winery and Ticen Ranch by allegedly "transforming" them into a "hospitality facility", illegally creating a "new" (Ticen) winery on the two parcels proposed to be merged. Appellants further erroneously claim the removal of approximately two acres of vineyards for the proposed new Highway 29 access road is prohibited under the General Plan, and speculate that the Project would somehow violate County Noise Control Regulations based on purported noise measurements taken at a licensed charity temporary event held in April 2017 on the Project property pursuant to a temporary event permit. Appellants' claims are without merit.

### A. The Project is Consistent with the General Plan.

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<sup>8</sup> These include conversion of offices and production areas in Building A and the residential pool house to private tasting rooms; construction of several small outbuildings near the biodynamic garden on the west side of Building A, placement of an outdoor, self-contained demonstration kitchen near the existing single-family residence on the east side of Building A; and exterior improvements facilitating outdoor visitation, on the east side of Building A.

Courts give great deference to an agency's determination concerning general plan consistency due to its "unique competence" to interpret its policies and need for broad discretion to balance and construe those policies in light of the purposes of the General Plan. *Pfeiffer v. City of Sunnyvale City Council*, 200 Cal.App.4th 1552, 1562-63. (2011). A project need not be an "exact match" with a General Plan, only compatible with its objectives and policies; consistency findings can be reversed only if no reasonable person could have reached the same conclusion based on the evidence presented. *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* 102 Cal.App.4th 656,678 (2002). Under any reasoned balancing analysis, the Project is consistent with the overall goals and objectives of the General Plan.

As noted in Staff's report to the Planning Commission, the General Plan land use designation for the subject parcels is Agriculture Resource. Agricultural Preservation and Land Use Goal AG/LU-1 guides the County to "preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County." Goal AG/LU-3 states that the County should "support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands." Goal AG/LU-3 and Policy AG/LU-2 recognize wineries as agricultural uses. The Project's wine processing use supports the economic viability of agriculture within the County, consistent with Goal AG/LU-3 and Policy AG/LU-4. Policy AG/LU 9 further provides that conversion of farmland shall be avoided where feasible.

The Raymond winery supports the economic viability of vineyard use on the Project property, consistent with Economic Development Goal E-1 and Policy E-1. Project water demand is consistent with General Plan goals supporting prioritization of groundwater for agricultural purposes (Goal CON-11). Restoration of the historic Ticen Ranch residence and removal of its non-original additions, is consistent with General Plan Policies CC-19 and CC-26.5, which support evaluation and preservation of resources from the County's history.

The Project is also consistent with the "Right to Farm", specifically referenced in Policy AG/LU-15 and throughout the County Code. "Right to Farm" provisions ensure that agriculture remains the primary land use in Napa County and is not threatened by potentially competing uses or neighbor complaints. The General Plan reinforces the County's long-standing commitment to agricultural preservation, urban centered growth, and resource conservation.

Contrary to Appellants' assertions, the Project will not change the character of the Project property or operations or its existing entitlements. It does not request any increase in production, visitation or annual marketing events, all subject to previously approved entitlements, most recently in 1991.<sup>9</sup> The "unauthorized improvements" referred to by Appellants (principally conversion of office and production areas in Building A) that Raymond seeks to bring into

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<sup>9</sup> Recommended conditions of approval would limit the total area of public visitation spaces in the structures on both parcels, to an equal or smaller area than that recognized in existing entitlements.

compliance by this application in no way impact these entitlements. Nor will incorporation of the Ticen Ranch property into existing Raymond operations effect any such changes or result in any new winery production facilities. In short, the merged parcels would constitute one winery, not two--in contrast to the potential alternative had Ticen Ranch been sold to an unrelated purchaser who might have applied for a separate winery use permit to create an *actual* “second” winery. (See attached Summit Engineering site plan of such a potential scenario.)

Appellants’ attempt to create a land use inconsistency issue with the removal of about two acres of vineyards also fails. Policy AG/LU-9 only supports evaluation of discretionary projects for potential farmland impacts and evokes a policy to avoid converting farmland “where feasible”. The Planning Commission appropriately found that the removal of a small percentage of overall Raymond vineyards<sup>10</sup> and access road construction was common in winery project applications, and necessary and appropriate to achieve operational integration of both parcels in one winery, would potentially result in less or comparable vineyard removal as would be involved in a new winery project and would provide a benefit by improving Zinfandel Lane traffic conditions.

B. The Project Complies with the County Code Zoning Ordinance and the WDO.

The Project is consistent with the AP Zoning District ordinance. Wineries (Napa County Code §18.08.640) and uses in connection with a winery (Napa County Code §18.16.030) are permitted in the AP District subject to an approved use permit.<sup>11</sup> Facilities for temporary boarding of four or fewer dogs are also permitted uses in the AP District (Napa County Code §§18.08.480 and 18.16.030). Project site improvements fully comply with all development regulations of the AP District, including without limitation, building height, lot coverage, accessory to production ratio and setbacks. Proposed conditions of approval will preclude construction of any new structures on the Raymond parcel, including additions to Building A and the vineyard viewing platform, prior to correcting the existing building violations within specified timelines.<sup>12</sup>

Neither the County Code or the WDO precludes removal of vineyard in connection with the new Project main access driveway off Highway 29. Indeed, the proposed vineyard removal is comparable with what would have occurred under any independent winery development on Ticen Ranch (see attached Site Plan), is a small percentage of overall Raymond vineyards, and facilitates a significant improvement of traffic conditions on the existing Zinfandel Lane entrance.

E. Staff Appropriately Recommended and The Planning Commission Correctly Adopted a Mitigated Negative Declaration for the Project.

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<sup>10</sup> The Raymond winery parcel has over 40 acres of vineyards.

<sup>11</sup> The agricultural plantings in biodynamic gardens also are permitted as agricultural uses of both properties.

<sup>12</sup> Recommended conditions would also delay on-premises wine consumption until existing violations are corrected.

Appellants assert that the Planning Commission applied an improper “baseline” for the Project based on their unfounded assertions that the claimed “actual” visitation levels Raymond has achieved “appear to be less” than the maximum allowed under its existing entitlements, and an EIR should have been required for the Project due to purported, potentially significant traffic, hydrology/water quality, wildlife and noise impacts. Not so.

1. Appellants’ “Baseline” Assertion is Inapplicable to the Project.

Appellants fail to cite any applicable authority for the proposition that a winery that seeks a modification of a use permit which requests no increase in existing visitation or marketing entitlements must demonstrate that it has “maxed out” its previously permitted visitation or be subject to renewed CEQA analysis predicated on a revisited “baseline” based on historical actual visitation levels. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* 48 Cal.4th 310, 322 (2010), cited by Appellants, involved a refinery requesting a new industrial process that would result in increased boiler emissions from existing use, in excess of the agency’s significance threshold. The court rejected maximum permitted operating capacity as a baseline where it did not reflect actual emission conditions at the refinery, and where operation of the boilers simultaneously at their collective maximum was only a “hypothetical condition” and an “illusory comparison.” *North County Advocates v. City of Carlsbad* 241 Cal.App.4th 94 (2015), in contrast, distinguished the unique circumstances in *Communities for a Better Environment* and held that it was appropriate to consider fluctuating levels of shopping center occupancy and use a traffic baseline that assumed maximum occupancy. Unlike the refinery in *Communities for a Better Environment*, the Project does not include any increase in use from existing entitlements. Like the shopping center in *North County Advocates*, the Raymond Winery has fluctuating levels of visitation, both at and below maximum permitted levels.<sup>13</sup>

Nor is there any basis for Appellants’ assertion that the Project includes “existing, unlawful conditions and expansions in the baseline” for certain activities that purportedly resulted in traffic, visitors, noise, and water impacts never evaluated under CEQA. None of the unpermitted structures changed or increased the existing Project production, visitation or marketing in any respect, and therefore there was no new impacts from those activities. As Appellants admit, the Initial Study evaluated traffic generation from the increased level of employees over the level previously approved in 1991. It also thoroughly evaluated noise from all existing (including unpermitted) facilities and from proposed outdoor marketing activities.

2. Appellants Failed to Identify Substantial Evidence To Support A Fair Argument of Any Potentially Significant Project-Related Environmental Impact.

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<sup>13</sup> Appellants incongruous alternative assertion--that the Project would somehow result in *more than* the approved 400 visitors per day --lacks foundation and is speculative.

A Mitigated Negative Declaration may only be set aside under CEQA if there is (1) *substantial* evidence (2) sufficient to support a *fair* argument (3) that the Project may have a *significant* effect on the environment based on the agency's applicable thresholds of significance. *Rominger v. Cnty. of Colusa*, 229 Cal. App. 4th 690, 713 (2014). "Substantial evidence" is "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Cal. Pub. Res. Code (hereinafter "PRC") § 21080(e)(1); *see also* Guidelines § 15384(b). What is *not* substantial evidence is argument, speculation, unsubstantiated opinion, or narrative, clearly inaccurate or erroneous evidence. PRC §§ 21080(e)(2), § 21082.2(c); *see also* Guidelines § 15384(a)<sup>14</sup>.

Environmental impacts are significant only if they effect "a substantial, or potentially substantial, adverse change in the environment." PRC § 21068; Guidelines § 15382. Agencies evaluate potential adverse environmental change by developing standards of significance. *Rominger*, 229 Cal. App. 4th 690, 716 (2014). Guidelines § 15064(b). Appellants have failed to identify substantial evidence of any significant Project impact. An EIR is not required.

(a) Traffic. The Project would recognize and legitimize an increase from 75 permitted to 89 existing parking stalls; and allow an additional increase of 61 parking stalls<sup>15</sup>. Increased parking would not result in additional visitors or marketing events, but is requested to reflect changes in the dynamics of the visitor experience, to accommodate marketing events visitors, and to provide on-site parking for the 64-person employees requested to be recognized and legitimized. The Project also includes construction of a left-hand turn lane on Zinfandel Lane at Wheeler Lane, and improvement to the existing driveway access onto the Ticen Ranch parcel, opposite an existing private drive, to provide a secondary access to the winery and tasting rooms.<sup>16</sup>

The Project will not have a significant transportation impact, and no mitigation for traffic impacts is required.<sup>17</sup> Indeed, Raymond's traffic analysis<sup>18</sup> concluded the Project would *reduce*

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<sup>14</sup> 14 Cal. Code Regs. §§ 15000 *et seq.* ("Guidelines"). Public comments not based on an adequate factual foundation are not substantial evidence. PRC § 21082.2(c); *Newberry Springs Water Ass'n v. Cnty. of San Bernardino*, 150 Cal. App. 3d 740, 749 (1984). Nor are generalized concerns, fears, and suspicions about potential environmental impacts substantial evidence. *See Taxpayers for Accountable Sch. Bond Spending v. San Diego Unified Sch. Dist.*, 215 Cal. App. 4th 1013, 1042 (2013) (general noise objections); *Lucas Valley Homeowners Ass'n v. Cnty. of Marin*, 233 Cal. App. 3d 130, 162–63 (1991) (generalized traffic and parking concerns).

<sup>15</sup> Fifty (50) stalls would be added to the Raymond parcel guest parking lot and 11 next to the Ticen Ranch residence.

<sup>16</sup> Proposed operational changes include varying work schedules (early shifts for production employees and later shifts for hospitality staff), and extension of the end of winery visitation hours from 4:00 p.m. to 6:30 p.m. to reduce employee-generated vehicle trips during peak hours, and to distribute winery visitor trips over a longer day.

<sup>17</sup> Under County significance thresholds, a project does not have a significant impact on already impacted road segments (LOS E or F) during peak hours unless it would result in an increase of 1% or more to existing volumes of an unsignalized intersection or road segment; or result in an increase of 10% or more to the stop sign controlled minor approach. For intersections or road segment operating at acceptable levels (LOS A-D) during peak hours under existing conditions, no mitigation is required if the project would not have the effect of deteriorating the LOS



existing traffic volumes at Highway 29/Zinfandel Lane and the southbound lanes of Silverado Trail south of Zinfandel Lane, and would have a negligible effect on the Zinfandel Lane stop-controlled minor approach to Silverado Trail. Traffic volumes on Highway 29 would generally remain static in both near-term and long-term horizons. Traffic contributions to other studied intersections and road segments would not exceed 0.6 percent of existing volumes or 0.5 percent of projected traffic volumes in the long-term horizon, well below the County's significance thresholds.<sup>19</sup> The County's traffic engineer reviewed and agreed with these conclusions.

Appellants' traffic consultant, MRO Engineers failed to demonstrate improper Project traffic study design or Project traffic impacts. As reflected in Crane's responses to MRO<sup>20</sup>, Project traffic study locations were appropriately selected by County Public Works<sup>21</sup>, updated traffic counts and signal warrant evaluation were neither requested nor necessary<sup>22</sup>; LOS standards Crane used were the same as those approved in at least 15 prior studies, were properly based upon the County's updated significance criteria<sup>23</sup>, were specifically directed for use by Public Works, and were found not to be significant; the County approved Crane's detailed approach for determining maximum acceptable operation at side street stop sign controlled intersections; Project trip generation estimates were conservatively projected and would not result in any new significant impacts; the Project would cause no change or a reduction in traffic on the segment of SR 29 with the Whitehall Lane Wine Train crossing; cumulative traffic projections were analyzed from the most up-to-date General Plan traffic model, and in light of already impacted peak conditions along Highway 29 and Silverado Trail and the affected intersections, the Project would not result in any significant cumulative impacts.

(b) Water. The Project will have no impact on water use. The Project property is not located in any groundwater deficient area (per Napa County Code Title 13, Map 13-1). Staff estimated Raymond winery and vineyard irrigation existing water needs at 89.9 acre-feet of water per year, from the 60.2 acre Raymond winery parcel, the 25.48-acre Ticen Ranch parcel, and the 27.68-

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to an unacceptable level (LOS E or F) or trigger peak hour warrants for installation of a traffic signal. Under cumulative conditions (i.e., General Plan buildout), a project would require traffic mitigation if it would contribute five or more percent of long-term projected traffic volumes. None of these conditions are present for the Project.

<sup>18</sup> See Crane Transportation Group Traffic Impact Report dated August 26, 2016.

<sup>19</sup> Recommended conditions of approval require circulation changes on the Ticen Ranch parcel to be implemented within certain timeframes to alleviate existing traffic volumes on Zinfandel Lane.

<sup>20</sup> Crane Transportation Group responses (February 28, 2017) to MRO Engineers January 23, 2017 letter.

<sup>21</sup> The new Project driveway connection and Zinfandel Lane was not evaluated since the Project results in either no new traffic or a decrease in traffic, and driveway connections to Highway 29 and Zinfandel Lane did not have LOS and delay calculated because the County does not require LOS and delay analysis for low or medium volume private driveway connections to public roads. Left turn lanes are being provided on both Project driveway approaches.

<sup>22</sup> Counts taken in 2016 for another project along Highway 29 about 1.5 miles north of the Zinfandel Lane intersection were similar to the 2015 Project traffic counts at Zinfandel Lane.

<sup>23</sup> Contrary to MRO's assertions, Caltrans standards and significance criteria are only appropriate if no other minimum acceptable standards and significance criteria apply. Caltrans accepts Napa County standards and significance criteria for traffic studies within the County evaluating state highways.

acre Raymond vineyard parcel (whose well provides irrigation water to the Raymond winery parcel). Conservatively projected water use of 90.8 acre-feet per year for all three parcels is well below County Water Availability Analysis (WAA) Guidelines, without accounting for any reduction in demand from the winery's reuse of process wastewater for vineyard irrigation.<sup>24</sup>

Appellants' consultant Tom Myers provided no evidence of Project-related hydrology impacts, only speculative assertions regarding potential wastewater seepage from leach field expansion, general claims of decreased Napa Valley recharge, and increased erosion and sediment transport from impervious areas runoff. To the Planning Commission, Mr. Myers identified existing drainage conditions on the Project property site as his main concern, and "was not sure what the solution was" to address the existing conditions. But CEQA does not consider the effects of existing environmental conditions on future users or residents, only whether a project might exacerbate existing environmental hazards. *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 (2015). The Project will not do so.

(c) Noise. Staff properly found the Project (particularly outdoor marketing events) would generate no significant noise impacts and would not exceed County noise standards<sup>25</sup> with respect to the surrounding agricultural and residential land uses.<sup>26</sup> Staff further concluded the proposed pet comfort station would produce less than significant sound.

Appellants' unconfirmed claims of episodic minimally above-ambient noise levels at certain locations near the Raymond winery during a licensed special charity event held at Raymond winery on February 24, 2017<sup>27</sup> have no nexus with the Project application, and offer only speculation regarding the potential for future noise issues at Project marketing events.

(d) No other impacts. Appellants offer no evidence the Project would generate any other environmental impacts, or that the mitigation measures recommended are inadequate.

Very truly yours,



Brien F. McMahon

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<sup>24</sup> WAA (May 2015) Guidelines specify one acre-foot of water per parcel acre per year as a sustainable water use level in Valley floor non-deficient groundwater areas. Staff conservatively estimated water use under the Project at approximately 90.8 acre-feet per year for the 113.4 acres encompassed in all three parcels, or only approximately 77.9 acre-feet per year for the approximately 86 acres of the Raymond winery and Ticen Ranch parcels.

<sup>25</sup> Fifty (50) decibels during 50 % of daytime hours for any residence in the vicinity of the Project property.

<sup>26</sup> Outdoor amplified music would be precluded, and no event would begin before 10:00 a.m. or end later than 10:00 p.m. Events proposed for the proposed garden area also were determined not to cause excessive noise levels.

<sup>27</sup> Papadimos Group claimed to have taken uncorroborated noise measurements for Beckstoffer Vineyards in connection with the charity event and to observed noise that purportedly exceeded ambient levels "by up to 3 db".

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