



## Public Works Department Water Division

1340 Clay Street - P.O. Box 660

Napa, CA 94559-0660

Phone: (707) 257-9521 Fax: (707) 258-7831

# Fax

To: Chris Cahill

From: Megan Thomas

Fax: 299-4285

Date: 3/4/08

Phone:

Pages: 4

Re: Sage Hill Winery

cc:

☐ Urgent ☐ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

### •Comments:

Chris,

I tried to send this via email but the county's email system returned it to me. I wanted to make sure you knew the status of the applicant's agreement with the City of Napa.

Please call if you have questions.

Megan  
257-9341

**Thomas, Megan**

**From:** Thomas, Megan  
**Sent:** Tuesday, March 04, 2008 9:52 AM  
**To:** 'cmcahill@co.napa.ca.us'  
**Subject:** Sage Hill Winery

Chris,

I wanted to let you know that we, the City, are still waiting for the applicant to officially sign and return the agreement required for his project. Our City Clerk's office will be requesting the agreements again as a reminder.

Thank you.

Sincerely,

Megan E. Thomas, P.E.  
City of Napa, Water Division

SIGNED & RECORDED  
R-O-W AGREEMENT  
SUBMITTED 3.12.08



3/4/2008



**CITY ATTORNEY**  
P.O. Box 660  
Napa, CA 94559-0660  
Telephone: (707) 257-9516  
Facsimile: (707) 257-9274  
[www.cityofnapa.org](http://www.cityofnapa.org)

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Michael Barrett, City Attorney  
[mbarrett@cityofnapa.org](mailto:mbarrett@cityofnapa.org)  
Lynda Millsbaugh, Assist. City Attorney  
[lmillsba@cityofnapa.org](mailto:lmillsba@cityofnapa.org)  
David C. Jones, Deputy City Attorney  
[dcjones@cityofnapa.org](mailto:dcjones@cityofnapa.org)

January 7, 2008

Randolph Skidmore, Esq.  
COOMBS & DUNLAP, LLP  
1211 Division Street  
Napa, CA 94559-3398

**RE: SAGE HILL VINEYARDS, LLC**

Dear Mr. Skidmore:

Enclosed please the executed Right of Way Agreement in the above-referenced matter. Once you receive your client's signature, please forward a copy to me.

I appreciate your cooperation in this regard. Should you have any questions, please feel free to contact me.

Very truly yours,

  
DAVID C. JONES  
Deputy City Attorney

Enclosure

COP of Document Recorded

5-Mar-2008 2008-0005459

Has not been compared with  
original

NAPA COUNTY RECORDER

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

L. Randolph Skidmore  
COOMBS & DUNLAP, LLP  
1211 Division Street  
Napa, CA 94559

**RECEIVED**

MAR 12 2008

NAPA CO. CONSERVATION  
DEVELOPMENT & PLANNING DEPT.

**RIGHT OF WAY AGREEMENT**

This Right of Way Agreement (Agreement) is made as of this 1st day of January, 2008 by and between Sage Hill Vineyards, LLC (Sage Hill) and the City of Napa (City) and is as follows:

**RECITALS:**

A. Sage Hill owns a parcel of real property in the unincorporated area of Napa County commonly known as 1535 Sage Canyon Road and APN 032-010-059, consisting of approximately 117 acres;

B. The City owns a parcel of real property fronting Sage Canyon Road (aka Highway 128) commonly known as APN 032-010-020, consisting of approximately 120.40 acres, in the unincorporated area of Napa County, California;

C. Sage Hill has a recorded right of way across the City's property (Right of Way);

D. Sage Hill has applied to Napa County to amend its existing use permit, and City has requested a Right of Way Agreement as a part of that process;

E. Sage Hill and the City wish to define and agree upon the following terms and conditions for the use, improvement and maintenance of the Right of Way, as follows.

**AGREEMENT:**

1. **Use of Gate.** A cyclone fence gate fronts the Right of Way with Highway 128. The City would prefer that the gate be locked during "non-business hours", defined below. However, at least two other property owners, Gregory Melanson and Robert Long, Jr., use the Right of Way, and the parties recognize that any undertaking to keep the gate locked would have to be subject to their agreement. As a result of the foregoing, Sage Hill agrees to use its reasonable best efforts to see to it that the gate is locked during "non-business hours", defined as after 6:00 pm Monday through Saturday, and after noon on Sunday.

**2. Indemnity/Insurance.** Sage Hill shall release, defend, indemnify and hold the City, its officers, employees and agents harmless from any claims, damages, actions, losses, expenses or liabilities of any kind, including claims for personal injury, including death or property damage that may be asserted by any person or entity including Sage Hill, its officers, employees or agents, arising out of use of the Right of Way by Sage Hill, its employees, guests, business or social invitees. Sage Hill shall obtain and maintain at all times a commercial liability insurance policy, with limits of not less than two million dollars (\$2,000,000) per occurrence, and shall at all times maintain the City as an additional insured on said insurance coverage. The coverage shall not be a "wasting" policy (i.e. defense costs and attorneys fees shall not diminish the coverage). The insurance coverage shall expressly provide coverage for any personal injury, death or property damage, including damage to City property, arising out of the use of the Right of Way by Sage Hill, its employees, guests, and business and social invitees. Sage Hill shall provide the City with periodic documentation establishing that such coverage is current at all times. Sage Hill shall specifically require the carrier to provide the City with 30 days notice of termination or non-renewal. If Sage Hill does not provide proof of renewal within 10 days of the deadline for renewal, City shall have the right to renew or purchase insurance at Sage Hill's expense.

**3. Maintenance.** As between Sage Hill and the City, Sage Hill agrees that the City shall have no obligation to maintain the Right of Way. Since Sage Hill shares use of the Right of Way with two other property owners, Sage Hill's obligation to maintain the Right of Way shall be consistent with Civil Code Section 845. The improvements within the Right of Way shall be consistent with the current county road, fire, and other standards required by the Napa County Department of Public Works.

**4. Use Permit Conditions.** Sage Hill agrees that its use of the Right of Way under the amended use permit described in recital D shall be limited to the following uses and standards:

- a. An increase in production from 5,000 gallons per year to the lesser of 20,000 gallons per year or production limits approved by Napa County;
- b. The maximum number of visitors shall be 20 per week;
- c. The maximum number of marketing visits shall be the lesser of five yearly events with 15 people per event, with food service or the production limits approved by Napa County;
- d. The maximum number of people attending an annual promotional event shall be the lesser of 50 or the production limits approved by Napa County.
- e. Notwithstanding the foregoing, Sage Hill may apply to Napa County to increase its production limits and/or site visits, set forth in paragraph 3 (a)-(d), above, if the City is given written notice of such application by first class U.S. mail, postage prepaid, along

with a copy of the application, within seven (7) days after its filing. If the City objects to the increase in production limits and/or site visits, it shall set forth the basis of its objections in writing, along with proposed solutions to the issues raised, within seven (7) days after Sage Hill had mailed written notice of its application to the City. If the City objects to the proposed increase in production and/or site visits as set forth above, and complies with the terms set forth herein, Sage Hill agrees to meet and confer with City Representatives in order to determine whether the City's objections can be addressed and settled. Sage Hill shall propose a date or dates for such a meeting to the City, in writing, not later than seven (7) days after the City mailed its objections to Sage Hill's application. Sage Hill and the City shall thereafter meet and confer to address the issues presented by the City. The obligation to meet and confer to discuss those issues shall continue for a period of not to exceed fourteen (14) days after Sage Hill mails its written proposal for a date or dates for such a meeting. The parties' agreement to meet and confer is independent of the right of the parties to mediate, set forth in paragraph 4, below.

**5. Notices** Notices in demand or notices which either party shall be required to give to the other shall be delivered personally upon the other or sent by prepaid certified mail addressed to the respective parties as follows:

TO CITY OF NAPA: Attn: City Attorney, City of Napa  
955 School Street, Napa, CA 94559

TO SAGE HILL: 1535 Sage Canyon Road, St. Helena, CA 94574  
cc: Coombs & Dunlap, LLP,  
1211 Division Street, Napa, CA 94559

Notices are effective upon personal delivery or, if sent by mail, three days after mailing.

**6. General**. The Right of Way, as amended by this Agreement constitutes the entire agreement between the parties hereto with regard to the future use of the Right of Way, and any prior or contemporaneous oral or written agreements shall be null and void. This Agreement may be amended in a written instrument, signed by both Sage Hill and the City. This Agreement does not otherwise modify the Right of Way, other than specifically provided herein. The Right of Way is an appurtenance to both Sage Hill's and the City's properties, and as such shall run with the land and shall be binding upon the parties' respective heirs, successors, and assigns. Any legal action to enforce, defend or construe this Agreement shall be preceded by non-binding mediation with a mutually acceptable mediator. Any party refusing to participate in such mediation shall not be entitled to recover attorney fees pursuant to this Agreement in any subsequent legal action or proceeding. If the mediation is unsuccessful or is not concluded within 45 days of written notice from party to the other demanding mediation, then either party may file an action in Napa County Superior Court. Alternatively, the parties may arbitrate any such dispute if it is agreed in writing, including the terms and conditions of such arbitration and whether it will be handled under California Code of Civil Procedure Section 1280 and following, or under the rules of the American Arbitration

Association, the Judicial Arbitration and Mediation Service, or otherwise. The prevailing party to any such action or proceeding shall be entitled to reasonable attorneys' fees and costs incurred therein.

WITNESS the following signatures:

CITY OF NAPA

By: 

Jeff Freitas

Its: \_\_\_\_\_

Property Manager

SAGE HILL VINEYARDS, LLC

By: 

Manuel Pires, Manager

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

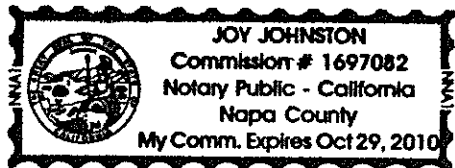
County of Napa

On 1-3-08 before me, Jay Johnston, Notary Public

personally appeared Jeff Freitas

Here Insert Name and Title of the Officer

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Joy Johnston  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Right of Way Agreement

Document Date: 1-1-08

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

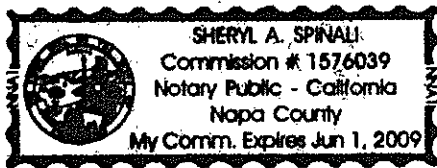
RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

STATE OF CALIFORNIA    )  
                                      )   ss.  
COUNTY OF NAPA         )

On January 16, 2008, before me, Sheryl A. Spinali, a Notary Public for the State of California, personally appeared MANUEL PIRES, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Sheryl A. Spinali  
Notary Public