



# TOVA

*Applied Science & Technology*

November 25, 2008

Ms. Mary Doyle  
Principal Planner  
County of Napa  
County Administration Bldg.  
1195 Third Street, Room 210  
Napa, CA 94559

**Re: Laird Family Estates Winery Use Permit #P08-00564-MOD-Major Initial Study**

Dear Ms. Doyle:

Morgan Miller Blair, a Law Corporation, has asked TOVA Applied Science and Technology to provide the County of Napa (the "County") an expert technical evaluation of the Initial Study prepared by the County for the proposed Laird Family Estates Winery Use Permit #P08-00564-MOD-Major (the "project"), on behalf of its client Phil Lamoreaux. In this regard, I offer the following comments.

**A. Qualifications**

By way of introduction, I am an environmental planner and environmental scientist, with over 25 years of experience in environmental assessments, environmental planning, and resource management. I have participated in over 400 environmental assessments, natural resource management studies, and CEQA and NEPA impact assessments in California and throughout the western U.S. My experience includes studies on the environmental impacts associated with developing new land uses and recreational facilities, supply and management of domestic water and wastewater, transportation improvements, and development and transmission of electrical energy and petroleum products. I earned my Doctorate in Ecology from the University of California, Davis in 1980.

**B. Initial Study**

My comments on the subject Initial Study are as follows:

1. Scope and Description of the Project: The project description is inadequate in scope and detail. In fact, in violation of CEQA's requirements, the Initial Study includes neither a location map nor a site map, and lacks adequate information on site layout, location of proposed new facilities, proposed grading or excavation, and phasing of site development and facility construction.

The increase of production capacity from 650,000 gallons per year to 900,000 gallons per year represents a 38 percent increase in capacity. This is a relatively substantial increase, but the Initial Study project description does not provide information on what the operational characteristics of the project would contribute to this increase. Who will use the facility to contribute to this increased production? Where will grapes or grape juice come from? How many truck-trips and over what time period would be required? The lack of a clear presentation of the operational characteristics that would contribute to a 38 percent increase in production suggests that the effect on traffic, air quality and noise may be understated in the Initial Study.

The July 16, 2007 wastewater report<sup>1</sup> attached to the Use Permit Modification application talks about the winery increasing from 500,000 gallons to 750,000 gallons crush and 150,000 gallons non-crush (i.e. import), however, the Initial Study Project Description does not contain such a restriction. The Initial Study addresses a production capacity of a 900,000 gallon production. Does this include the 150,000 gallons of non-crush import? If this quantity represents “crush” gallons, it calls into question the adequacy of the Initial Study’s treatment of onsite wastewater pond treatment capacity and the technical report may be deficient as it only evaluates a production level of less than the 900,000 gallons of crush.

There is recognition that a new mechanical pad would be constructed as part of the project, but there is no adequate discussion of what type of facility this is and what are the anticipated operational characteristics (i.e., noise projection, lighting requirements, fuel source, etc.). Without this detail it is difficult to assess with any substantial certainty the level of impact significance related to noise, light and glare, and other related environmental issues.

Furthermore, the project description indicates that screening trees would be established to “soften view of the building wall”. The effectiveness of such a project feature in achieving this intent cannot be adequately determined without a fairly detailed landscaping plan that incorporates appropriate sized trees, tree types, and tree planting densities. The absence of this detailed information calls into question the effectiveness of trees to screen a 3-story “industrial-like” building.

Finally, there seems to be a discrepancy, or inaccuracy, regarding the projected area of impervious surface coverage. The Initial Study states that the new warehouse is 34,437 square feet, with an additional 18,500 square feet of roof coverage. In actuality, it appears that the area of impervious surface is far greater, i.e. approximately 50 feet wider and 75 feet longer<sup>2</sup>, making the total cover of impervious surface closer to 62,000 square feet, with 34,437 square-foot warehouse and approx 27,500 square feet of additional roof coverage area around building.

2. Supporting Information Sources: There needs to be a listing of information sources reviewed or individuals consulted by the County to support discussions under each environmental issue category and determination of impact significance. For example, the Initial Study discussions under Cultural Resources, Geology and Soils, and Mineral Resources indicate sources of information (Napa County BDR and GIS) but, elsewhere, the Initial Study makes rather broad statements about impact significance without

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<sup>1</sup> July 16, 2007, Laird Family Estate Winery Expansion Wastewater Disposal, letter report to Napa County Dept. of Environmental Management prepared by Napa Valley Vineyard Engineering, Inc.

<sup>2</sup> Site Plan, October 23, 2008 letter from Mary Doyle, Napa County, to Todd Williams, Morgan Miller Blair

referring to specifically to information sources that support conclusions. One example is the statement under the discussion of the Hydrology and Water Quality issue area that concludes:

*Additional run-off will occur as a result of increased impervious services. However, the increased run-off is considered less-than-significant because it will not result in a discernable change to the amount of off-site surface drainage...*

Such a conclusion is unsubstantiated by any source materials specifically and clearly documented in the Initial Study. There is no support for the “less than significant” impact conclusion? The California Public Resources Code requires staff to base its determination that a project will have a significant or less than significant environmental impact on substantial evidence (Section 21082.2). As defined in Section 15384(b) of the CEQA Guidelines, “*Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.*” Further, Pub. Res. Code sect. 21080 (e), concludes, “*Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.*” Here, the County cites no substantial evidence to support this conclusion in light of an addition of well over 60,000 square feet of impervious surfaces to the site.

3. Aesthetics: The Initial Study incorrectly states that the “*proposed project is not located in close proximity to any scenic vista, or scenic resource*”. In actuality, westerly views of the project site are available from SR 29 (a route that is eligible to be a state scenic highway), and from Solano Avenue. California’s Scenic Highway Program was created by the Legislature in 1963 to preserve and protect scenic highway corridors from change, which could diminish the aesthetic value of lands adjacent to highways. The portion of SR 29 that is parallel to the project frontage is identified as eligible for designation as a state scenic highway. An “eligible” route becomes a “designated route or highway” when the local jurisdiction adopts a scenic corridor protection program, applies to Caltrans for scenic highway approval, and receives notification from Caltrans that the highway has been designated as a Scenic Highway. Napa County General Plan Policy CC-8 states “*Scenic roadways which shall be subject to the Viewshed Protection Program are those shown in Figure CC-3, or designated by the Board of Supervisors in the future.*” Figure CC-3 (on page CC-19) appears to indicate that Highway 29 is a Scenic Roadway Subject to the Viewshed Protection Program.

Of particular note is an acknowledgement by the County in 2000<sup>3</sup> regarding Findings of Use Permit #99506-UP that:

*Because of the high visibility of the site and proximity to Highway 29, the winery was designed to be unobtrusive and aesthetically pleasing. Specific design features of the winery include a sub-grade production area to minimize building mass, a berm planted with grapevines surround the base of the structure, use of earth-tone and neutral colors on the exterior, and a distinctive hipped roof that blends with surrounding natural land forms.*

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<sup>3</sup> Napa County Conservation, Development and Planning Department, Department Report and Recommendation, Meeting of January 17, 2000, Agenda Item: #11

This acknowledgement of the high visibility of the project site from the Highway 29 corridor and from off-site vantage points is in direct conflict with the discussion and conclusions regarding this issue in the Initial Study.

The Initial Study further asserts that “*views of the new building will be obstructed from most vantage points*” and “*the addition of the building is not considered to substantially alter neighbors’ views across the property*”. There is no visual analysis in the Initial Study to support this conclusion. Absent a photomontage or other visual analysis modeling of the project site, showing existing conditions and the “with-project” condition, the Initial Study conclusions appear to violate the CEQA requirements that conclusions established by the Initial Study must have fact-based explanations to support the checklist.

*Pub. Res. Code Sec. 21080 (e) (1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.*

The Initial Study should clearly state the environmental setting baseline for the assertion that “*view of the new building will be obstructed from most vantage points...*” The Initial Study does not explain what the obstructions are or what vantage points they are referring to? The view of the site through a vineyard with vines fully in leaf would be significantly different from such a view through seasonally senescent vines, lacking leaves.

The County General Plan’s Agricultural/Land Use Element Policy AG/LU-10 states: New wineries and other agricultural processing facilities as well as expansion of existing wineries and facilities in agricultural areas should be designed to convey their “permanence and attractiveness.” Action item AG/LU-10.1 states “Maintain a data base of all wineries including their production capacity, marketing events and other characteristics that could influence analysis of cumulative effects or the winery’s effect on neighbors.”

In the Community Character element, policy CC-2 similarly states “New wineries and other uses requiring the issuance of a Use Permit should be designed to convey their permanence and attractiveness.” The inadequate scope and detail of the potential visual/aesthetic impacts, absent a photomontage study or visual assessment modeling, does not provide the “fact-based” information from which to consider whether or not an “industrial-looking” warehouse conveys “permanence and attractiveness” and whether or not it would have cumulative effects on the neighbors.

CEQA defines cumulative impacts as “two or more individual effects which, when considered together, are considerable, or which can compound or increase other environmental impacts.” Section 15130 of the *CEQA Guidelines* requires that assessments evaluate potential environmental impacts that are individually limited, but cumulatively significant. These impacts can result from the proposed project alone or together with other projects. In the case of the Laird Winery Expansion Project, it is not unreasonable to consider the project in relation to, for example, the “Red Hen” commercial complex, that is now boarded up and waiting for new development planning, in addition to any future expansion of facilities at the winery to the maximum allowable 25% of the existing parcel<sup>4</sup>.

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<sup>4</sup> Pursuant to Section 18.104.220 of the Napa County Code, the maximum coverage of new or expanded wineries is 25% of the existing parcel or fifteen acres, whichever is less. The subject parcel is 40.06 acres, resulting in a maximum coverage are of 10.02 acres.

When evaluating cumulative impacts, CEQA allows the use of either a list of past, present or reasonably anticipated relevant projects (including projects outside the control of the lead agency) or a summary of the projections in an adopted planning document. Therefore, an adequate assessment of the visual/aesthetic cumulative impacts to the neighbors, with consideration of aesthetic permanence and attractiveness, should consider development that is likely to occur in the immediate vicinity of the project site, such as the “Red Hen” complex, particularly given the site’s current CL-Commercial Limited zoning, as well as future expansion of the winery.

The consideration of future actions is critical in view of the history of project expansions at the Laird Winery. CEQA defines a project broadly, as the “whole of an action.” CEQA therefore prohibits “piecemealing,” dividing one project into several and conducting environmental review of some or all of the parts, each with a minimal potential impact on the environment, rather than the whole, and leading to cumulatively adverse impacts<sup>5</sup>.

The Initial Study states that “*Project lighting will be consistent with existing lighting, which does not cause substantial nighttime glare or off site-spillage*”, without acknowledging that the project would increase the coverage of land area, which would result in a proportional increase in outdoor lighting requirements. The Initial Study contains no information to document the type of lighting proposed, or a lighting plan to support the conclusion that the project would not cause substantial nighttime glare or off-site spillage. The Initial Study should include in the Project Description all adopted Standard Conditions of Approval to managed project nighttime glare and visual intrusion, including requirements for shielding, directed lighting, and screening landscaping.

Finally, as discussed in Section 1 of this letter, the project description indicates that screening trees would be established to “soften view of the building wall”. The effectiveness of such a project feature in achieving its intention cannot be adequately determined without a fairly detailed landscaping plan that incorporates appropriate sized trees, tree types, and tree planting densities. The selection of tree type, canopy or foliage architecture, and effective screening size of these trees should be specified. The short-term effectiveness of these trees as visual screening is questionable given that the Initial Study acknowledges that the effective screening of the new building structure will only materialize when trees mature.

4. Agricultural Resources: The Initial Study states that the project site is not classified as a state farmland; however, it appears that only a portion of the site is classified by the State (California Department of Conservation, 2006) as “Urban and Built-up Land”, other areas within the Laird property appear to be designated as “Prime Farmland.” Some of this land may be impacted by project expansion. This needs to be clarified in the Initial Study document.
5. Air Quality: The Initial Study states that project construction activities would create air emissions and indicates that BAAQMD CEQA Guidelines “construction” impact significance is based on the inclusion of “*feasible control measures for PM-10*”. The Initial Study, however, does not include dust control measures and does not make a determination of the adequacy of these measures to ensure that dust is not entrained off site.

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<sup>5</sup> *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 165 [217 Cal. Rptr. 893]

The Initial Study makes no commitment to carry out the dust control measures, and does not provide any mechanism or commitment to implement measures that would reduce impacts.

At a minimum, the Initial Study should include mitigation measures, and subsequent preparation of a Mitigated Negative Declaration rather than a Negative Declaration, or incorporation of Standard Conditions of Approvals into the project description. The specific language of these Standard Conditions of Approval should be clearly and definitively stated and listed in the Project Description, along with enforceable compliance and monitoring procedures.

6. Cultural Resources: The Initial Study suggests that a “condition of approval” would be incorporated into the project to assure that the discovery of unknown cultural resources during site construction would not result in significant impacts to such resources. If the County has an adopted Standard of Conditions, these should be incorporated into the Project Description; otherwise the procedures outlined in the Initial Study discussion read like CEQA mitigation measures, warranting the preparation of a Mitigation Negative Declaration, rather than a Negative Declaration.

Since the project description does not indicate project monitoring of the construction area in order to “trigger” implementation of the Condition of Approval avoidance mechanisms, the adequacy of the measures outlined in the Initial Study cannot be determined. Standard procedures to protect cultural resources usually include construction monitoring, along with established procedural and reporting steps. The Initial Study makes no commitment to these steps/procedures, and does not provide any mechanism or commitment to implement the measures that would avoid impacts to cultural or archaeological resources.

7. Hazards and Hazardous Materials: The Initial Study appears to suggest that a mitigation measure to avoid impacts of the transport, storage and use of hazardous materials would be the updating the winery’s Hazardous Materials Business Plan. The Initial Study does not provide a mechanism or commitment to implement the measures contained in the Hazardous Material Business Plan representing an improper deferral of mitigation. Furthermore, if the Plan is a mitigation measure, it should be so stated and a Mitigated Negative Declaration, rather than a Negative Declaration is required. If the Hazardous Materials Business Plan is a County-approved “Standard Condition of Approval”, the language should be incorporated into the Project Description.
8. Hydrology and Water Quality: The Initial Study acknowledges that increased run-off will occur as a result of increased impervious surfaces. It concludes that the increased run-off would not result in a discernable change. The absence of information provided in the Project Description, however, calls into question the analysis of increased stormwater runoff, since it is unclear whether the entire increase in impervious surface area is addressed (for example, at a minimum, the increase of 34,000 square feet of new building structures, as well as, at least 27,500 square feet of covered roof work area and ancillary areas). Quantification of projected impervious surface areas should be presented to substantiate the assessment of site runoff and requirements for stormwater management. The absence of this information suggests that the project’s impacts on stormwater runoff may not be accurately characterized and evaluated in the Initial Study.

The Initial Study makes references to the fact that the “*subject property is generally level with slopes of less than 1%*” (Environmental Setting, p.3) and states, without quantification, that the amount of grading would be minor, but a grading permit is required. How much grading

would be required? How much earth would be removed or added and what are the effects?  
No such analysis is included.

9. Noise: As noted above, the Project Description does not provide adequate information about the impacts of construction and operation. A new mechanical pad, new loading bay, and business offices would be constructed as part of the project. The loading bay and business offices are planned on the northeast corner of the proposed warehouse, at a point closest to the "Red Hen" complex and the nearest neighbors. There is no adequate discussion of the anticipated operational characteristics of the mechanical pad and loading bay. What are the typical noise signature, noise isopleths or contours, and noise attenuation, measured over distance from the noise generation? This is particularly important given that considerable noise may be generated from the projected 24 hours per day picking and crushing activities during the harvest period. What is the projected nighttime noise level estimated at the nearest residences, 500 to 700 feet away? The effect of interior noise generated by exterior sources have the potential to cause sleep disturbance, which does not necessarily mean awakening from sleep alone, but can also refer to altering the pattern and stages of sleep. An important way of predicting a human reaction to a new noise source is the way it compares to the existing environment (ambient noise) to which one has adapted. In general, the more a new noise exceeds the previously existing ambient noise level, the less acceptable the new noise will be judged by those hearing it.

CEQA guidelines do not establish any specific numerical thresholds of significance, but rather seek to avoid exposure of persons to "excessive" noise levels or to noise levels that exceed local standards. It appears no noise study has been performed in connection with this, or any prior expansion approvals for the winery and, therefore, no sufficient data included in the Initial Study to conclude that the Project will not cause a substantial permanent or temporary increase in ambient noise in the Project vicinity. This analysis cannot be deferred; the county must conduct it before it adopts the CEQA document for the Project.

10. Transportation/Traffic: The Initial Study includes no description of the volume of anticipated construction traffic, the duration of construction, or how construction traffic will be accommodated while winery operations and visitor use of the site continues. Construction traffic could result in air quality (dust or PM10) and noise impacts. These impacts must be assessed in the CEQA document for the Project; CEQA does not permit the County to summarily dismiss them without either data or further analysis. What is the documentation or evaluation to support the conclusion that only an additional 4 deliveries per week is anticipated at the winery? There appears to be a conflict between the 4 additional deliveries per week indicated in the Initial Study and the estimate of 20 additional deliveries per week in the Use Permit Modification Project Statement.

What would be the truck traffics associated with the increase of production from 650,000 to 900,000 gallons? Currently, the winery can import 150,000 gallons from custom crush/alternating proprietors, with a limit of 15 such custom contract customers. As part of the Use Permit Modification, the restriction on the number of custom contract customers is removed, but the 150,000 gallons of import ceiling remains in effect. Therefore, there is no limit on the number of custom crush clients. Was this considered in the analysis of traffic impacts? Finally, the Initial Study should clearly state that no increase in traffic would be on residential or neighboring streets or roads.

11. Utilities and Service Systems: The Initial Study issue discussion includes the statement that *"with the elimination of custom crush clients, it is anticipated the existing winery*

*wastewater disposal system has the capacity to accommodate the proposed project and no expansion of the existing system will occur."* In fact, the capacity is increasing independent of the elimination of crush clients. The capacity issue is one of ability to manage volume of material, irrespective of source.

### **C. CONCLUSION**

The Laird Family Estates Winery, Use Permit #PO8-00564-MOD-Major, Initial Study is deficient for all the reasons identified above. The CEQA study is cursory, relies on little "fact-based" conclusions, and has a seriously flawed and inadequate Project Description to fully disclose to the public the potential environmental effects of the project. The Initial Study also fails to offer and clearly state Napa County commitments to carry out impact avoidance measures that either appear to be CEQA "Mitigation Measures" or approved "Standard Conditions of Approval". In most cases, there is not enough information to indicate any County mechanisms or commitments to implement the measure that would reduce impacts. I urge the County to strengthen the Initial Study's analysis of potentially significant environmental impacts before determining whether its obligations under CEQA are appropriately satisfied by a Negative Declaration or whether preparing a Mitigated Negative Declaration or other appropriate CEQA document is necessary.

Sincerely,

A handwritten signature in cursive script that reads "Booker Holton".

Booker Holton, Ph.D.  
Principal  
TOVA Applied Science & Technology