

**BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF NAPA**

In the Matter of:

Appeal by Thomas Lippe, as Attorney for the Sierra Club, of the decision of the Conservation, Development and Planning Commission to certify the Final Environmental Impact Report and to Adopt Findings, Conditions of Approval, a Statement of Overriding Considerations and a Mitigation Monitoring Plan pursuant to CEQA and to approve Use Permit No. 98597-UP for the Beringer Wine Estates Devlin Road Facility within an IP:AC zoning district, APN 57-090-069))	
)	
)	RESOLUTION NO. 02-72
)	
)	FINDINGS OF FACT AND
)	DECISION ON APPEAL
)	
)	
)	
)	
)	
)	

WHEREAS, an application for a use permit was filed with the Napa County Conservation, Development and Planning Department (the "Department") by Beringer Wine Estates (the "Applicant") for a use permit to establish a 1,424,400 square foot facility consisting of 1,167,590 square feet of wine warehouse and storage area; 60,000 square feet of ancillary offices, administrative, and laboratory area; and 196,810 square feet of related uses (wine crushing, fermenting, blending, bottling, and employee areas, etc.). The project also proposes approximately 115 acres of vineyards; preservation of a riparian and wildlife corridor along No-Name Creek; a wetlands mitigation program; winery process wastewater ponds; storage ponds for irrigation of vineyards with reclaimed and treated wastewater; and extensive site landscaping, all such uses and facilities (collectively referred to hereinafter as "the Project") being located on property (Assessor's Parcel Number 57-090-069) zoned Industrial Park: Airport Compatibility (IP:AC), designated Industrial Park/Business Park by the 1986 Napa County Airport Industrial Area Specific Plan (the "1986 Specific Plan") and designated Industrial by the Napa County General Plan;

WHEREAS, the project site is 218 acres, located at the southwest intersection of South Kelly Road and Devlin Road, adjacent to the Napa County Airport on the south side within an IP:AC (Industrial Park: Airport Compatibility Combination) zoning district. The site is bounded on the east by the Union Pacific Railroad right-of-way;

WHEREAS, on September 7, 2001, the County, as the lead agency for the project, caused to be prepared a Final Environmental Impact Report ("FEIR"). Pursuant to State CEQA Guidelines section 15132, the FEIR consists of the following documents and records: *Beringer Wine Estates Devlin Road Facility Draft Environmental Impact Report (dated May 25, 2001)*;

Beringer Wine Estates Devlin Road Facility Final Environmental Impact Report (dated September 7, 2001), and all documents, reports and records incorporated therein. The DEIR and FEIR are hereafter collectively referred to as the FEIR or Final EIR;

WHEREAS, on December 5, 2001, the Napa County Conservation, Development and Planning Commission ("Planning Commission") after a duly noticed public hearing adopted Planning Commission Resolution No. 01-08 certifying the Final EIR for the Project;

WHEREAS, on December 19, 2001, after a duly noticed public hearing, the Commission approved Planning Commission Resolution No. 01-09 which adopted Findings, Conditions of Approval, a Statement of Overriding Considerations and a Mitigation Monitoring Plan pursuant to CEQA, and approved Use Permit No. 98597-UP ("Use Permit") for the Project;

WHEREAS, on January 4, 2002, Thomas Lippe, acting as attorney for the Sierra Club ("Appellant"), filed a notice of appeal of the Planning Commission's approval of the Use Permit in a timely manner in accordance with the procedures set forth in Napa County Code chapter 2.88. The grounds for the appeal were set forth in Appellant's letter dated January 18, 2002, to the Napa County Board of Supervisors ("Board") and to Charles Wilson, the Napa County Director of Conservation, Development and Planning ("Planning Director");

WHEREAS, on February 15, 2002, and again on February 20, 2002, Appellant attempted to amend its appeal by filing what it characterized as a first supplemental appeal and second supplemental appeal, respectively, both actions occurring after expiration of the deadline under Chapter 2.88 for perfecting the appeal and statement of grounds on appeal;

WHEREAS, on February 26, 2002, at a duly noticed public hearing, the Board heard and considered all of the evidence submitted before the Board on the appeal, including the administrative record before the Planning Commission, the certified FEIR and related documentation, transcripts of the Planning Commission proceedings, the documentation submitted by the Appellant and Applicant in relation to the appeal, and all oral and written evidence and arguments presented to the Board during the hearing on the appeal;

WHEREAS, after closing the public hearing on all matters except for the limited purpose of accepting a condition of approval regarding consolidation of the Applicant's operations, the Board declared its intent to: 1) deny the appeal; 2) affirm the certification of the FEIR by the Planning Commission and re-certify the FEIR; and, 3) uphold the approval by the Planning Commission of Use Permit No. 98597-UP. Thereafter, the Board directed County Counsel to prepare appropriate findings in support of its intent and to bring a proposed resolution containing such findings and decision on appeal back to the Board for consideration and approval on April 9, 2002;

WHEREAS, the proposed resolution of findings and decision on appeal having been presented to the Board for possible adoption at a regular meeting of the Board on April 9, 2002, and all interested persons having been given an opportunity to address the Board regarding the proposed resolution; and

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

SECTION 1. Recitals.

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

SECTION 2. Findings of Fact and Conclusion of Law on Appeal.

The Board hereby makes the following findings of fact and conclusions of law in regard to each of the grounds for appeal as stated by the Appellant in its appeal and its purported amendments to its appeal:

A. First Ground of Purported Amended Appeal.

Appellant's Position: The Planning Commission did not have the authority to approve Use Permit No. 98597-UP for the Project because the Napa County zoning ordinances do not allow wineries as either permitted or conditional uses in the Industrial Park: Airport Compatibility (IP:AC) zoning district in which the Project is located.

Findings of Fact:

1) Napa County Code section ¹ 2.88.040 (A) provides that an appeal must be filed within ten working days of the decision of the approving body. Section 2.88.060 (A) provides that all of the material required to be filed by section 2.88.050, including a statement of the grounds for the appeal, and the required appeal fee must be received within ten working days following the date of filing of the notice of appeal.

2) The Planning Commission approved Use Permit No. 98597-UP on December 19, 2001. On January 4, 2002, the tenth County working day following the date of the decision, Appellant filed a notice of intent to appeal the Commission's decision.

3) Pursuant to Section 2.88.050, Appellant had until January 18, 2002, to perfect its appeal. Under this section, the Board may deem grounds for appeal waived by the Appellant if not expressly stated when perfecting the appeal. On January 18, 2002, Appellant submitted its perfected appeal, expressly stating eleven grounds as the basis for its appeal. The assertion that the Project is not permitted within or is not compatible with the IP:AC zoning was not included expressly or implicitly in the eleven grounds stated.

4) Appellant first raised the IP:AC zoning issue as a ground of appeal when attempting to amend its appeal on February 15, 2002, after all deadlines for filing and/or perfecting an appeal under Chapter 2.88 had expired.

5) The only uses permitted in the IP zoning district without a use permit are agriculture and certain minor antennas and types of telecommunications facilities.

¹ All statutory references are to the Napa County Code unless otherwise stated.

6) All other uses in the IP zoning district are allowed upon issuance of a conditional use permit, including the following uses: professional, financial, administrative or general business offices; research, development, design or testing laboratories and facilities; cooperage, bottling plants or wine warehousing and distributing facilities; and manufacturing, compounding, processing, packing, treating or storing of products such as food stuffs (Section 18.40.020) as well as "other uses which, in the opinion of the approving officer or body, are non-nuisance causing and similar in character to the listed uses" (Section 18.40.20(B)(8)). To the extent that the proposed winery wastewater treatment and storage ponds are considered more than mere accessory uses to the wine warehousing and bottling primary uses, such uses (as "sanitation treatment plants and oxidation ponds") are independently allowed in any zoning district upon issuance of a use permit (Section 18.120.010(B)(5)).

7) That the foregoing list clearly includes the Project's winery ("manufacturing...of foodstuffs"), wine bottling ("bottling plant"), wine warehousing ("warehousing and distributing facilities"), wine laboratories ("testing laboratories and facilities"), and administrative office ("administrative or general business offices"), and all accessory uses inherent in and necessary to such uses including the wastewater treatment, storage, and disposition uses, is not only obvious from the description of these uses in the County's zoning regulations but also from the fact that the Planning Commission, as the County's planning agency, has previously approved other wineries in the IP zoning district. One of the most notable is the Kohnan Inc. Hakusan sake facility which for many years has functioned as a sake winery, with public tours, tasting, and administration facilities (Use Permit No. U-88788). A second facility for which a use permit was approved by the Planning Commission in this zoning district, and which is devoted to the making of wine from grapes rather than rice, is the Barrel Ten Quarter Circle wine processing, bottling, fermenting, and marketing facility (Use Permit No. 98068-UP).

8) This finding is not altered by the inclusion of the Project site within the :AC (Airport Compatibility) combination district, since under Section 18.30.040, all structures or uses permitted in the principal zoning district are allowed in the :AC combining district except outdoor amphitheaters, sanitary landfills and any other structures or uses "not normally acceptable" in the applicable compatibility zone as shown in Section 18.80.070, which for the Project site is Airport Compatibility Zone D. The proposed wastewater ponds are not prohibited by or incompatible with section 18.80.040(C). Table 18.80.070(B) of the zoning ordinance has not been amended by the Board to include ponds as an incompatible use in Airport Compatibility Zone D.

Conclusions:

1) The Board finds and concludes that Appellant waived as a ground of appeal its current contention that the Project is not consistent with the IP:AC zoning district, because Appellant failed to expressly raise this contention as a ground of appeal prior to expiration of the time permitted under Chapter 2.88 to perfect its appeal and raised this issue for the first time 28 days after such deadline had passed.

2) The Board further concludes, as an independent ground for decision, that even if Appellant's contention was not waived on timeliness grounds, Appellant's contention is not

supported by any substantial evidence in the record before the Board on appeal, in that all of the uses authorized by the Planning Commission when approving this Use Permit are, as a matter of law, clearly and unambiguously allowed within the IP:AC zoning districts upon issuance of a use permit, except for the agricultural component, and that is a use which is permitted by the County's zoning regulations on this Project site without the Applicant having to obtain any use permit or other discretionary zoning approval.

3) Based on the above findings of fact and conclusions of law, the Board hereby concludes that even if this ground for appeal was not waived by Appellant for being untimely raised, it is legally unfounded since no facts have been asserted or proven to show that the Project is other than an allowed use consistent with the IP:AC zoning district. The Board therefore finds, determines and concludes that the Planning Commission did not abuse its discretion in this regard when it approved the Project. The Board hereby upholds the Planning Commission's determination that the proposed uses are allowed uses under the applicable zoning district regulations upon issuance of use permit.

B. Second Ground of Appeal.

Appellant's Position: The Project as approved by the Planning Commission is inconsistent with the 1986 Specific Plan because the Plan requires that "all wetland and stream habitat shall be protected in their natural state, unless this is proved to be infeasible. Mitigation compensation shall be provided on a replacement basis for all such habitat impacted." Appellant asserts that the Planning Commission prejudicially abused its discretion because it improperly rejected the FEIR's Wetlands Preservation Alternative on the basis of infeasibility, the Appellant asserting that such Alternative may be feasible and if implemented would mitigate impacts associated with fairy shrimp habitat.

Findings of Fact:

1) The FEIR describes the Applicant's objectives for the proposed Project as including construction of a facility large enough to allow consolidation of its blending and bottling operations and location of its fermenting and barreling facility adjacent to the blending operations, in order to reduce or eliminate inter-facility truck trips on State Highway 29; with onsite wastewater treatment ponds and onsite vineyard acreage sufficient both for wine production and to accommodate treated wastewater recycling for the facility to avoid or reduce impacts of the facility on local water and/or sewer treatment resources. (DEIR, pp. III-9)

2) At the appeal hearing before the Board on February 26, 2002, the Applicant presented written and oral testimony before the Board which demonstrated, along with the evidence already in the record from the proceedings below, that the Wetlands Preservation Alternative is indeed infeasible, based on the following additional facts:

a) Implementation of the Wetlands Preservation Alternative would preclude Applicant from successfully developing the large, integrated facility, of the size and layout proposed rather than any other configuration, necessary to accomplish the Project's cost-saving, operational, and environmental objectives of consolidating existing

bottling, warehousing and distribution operations now spread among multiple facilities over a wide geographic area and of protecting wine quality and reducing truck traffic by minimizing bulk shipments and inter-facility transfers of wine;

b) Implementation of the Wetlands Preservation Alternative is incompatible with maintaining access for the Project facilities to existing rail and road connections located along the eastern boundary of the Project site, order to reduce impacts of the facility on transportation infrastructure;

c) Implementation of the Wetlands Preservation Alternative would preclude full development by Applicant of the proposed vineyard of approximately 120 acres on the Project site which is essential to Project functioning both in order to balance the proposed environmentally sound disposition of the eventual process wastewater output from the Project with fluctuating irrigation demand as well as to provide an onsite additional grape supply as a relatively minor component of the overall manufacturing facility;

d) Simultaneous implementation of the Wetlands Preservation Alternative and the Project facilities is infeasible due to physical constraints of the Project site resulting from the bisecting of the entire Project site to the west of the proposed buildings by the City of American Canyon utilities easement and by development of site access, in light of the need to avoid placement of improvements, including road and rail crossings, on top of or immediately adjacent to either side of the easement, and to avoid interference with efficient operation and maintenance of the utility easement by its third-party owner;

e) Implementation of the Wetlands Preservation Alternative is incompatible with Applicant's need and desire to maximize environmental protection of wetlands and possible vernal pool fairy shrimp habitat by minimizing Project site grading and to maximize Project setbacks from the majority of such wetlands and assumed vernal pool fairy shrimp habitat in the northwestern portion of the site and No-Name Creek corridor proposed for preservation and revegetation;

f) The Wetlands Preservation Alternative is infeasible because the Corps of Engineers' approved wetlands delineation for the Project site has determined Drainage Channel "O" to be a seasonal wetland, which prevents development of the Project site in any configuration, or any Project site access if a 250 foot setback must be maintained from this wetland, since it must be crossed to access any site development from Devlin Road (see Exhibit "A" to Applicant's letter of 2/21/02);

g) The Wetlands Preservation Alternative is also infeasible due to the infeasibility of saving and setting back 250 feet from seasonal wetland areas "C", "D", "E", "F", and "O" because of their location in the middle of the proposed integrated bottling, warehousing and distribution facility, or in the planned vineyard, given the site constraints, including the American Canyon sewer/utilities easement, the wastewater treatment and storage ponds location and avoiding their placement uphill from the facility, No-Name Creek and the setbacks from it and from the adjacent wetlands and

vernal pool restoration area, and because of the need to preserve adequate vineyard for wastewater disposal, given site coverage by the proposed Project and the approximately 30 acres to be preserved within the wetlands and Creek setback areas (see Exhibits "A", "B" and "C" to Applicant's letter of 2/21/02);

h) The Wetlands Preservation Alternative is infeasible because it would preclude achievement of Applicant's objective of reducing energy consumption, operational temperature exposure changes, truck traffic, pollution, cost, noise and safety concerns by the proposed integrated layout of its buildings along the eastern boundary of the site immediately adjacent to rail and road access, including particularly Applicant's objective for major reduction of the existing and future traffic from its present scattered facilities along the congested Napa-St. Helena Highway 29 corridor, in that the Project designed and approved as an integrated facility is expected to reduce existing truck trips between Napa and Applicant's St. Helena facility by an estimated 5,000 trips per year and between the Napa Airport area and Applicant's Fairfield facility via Jamieson Canyon by an estimated 3,200 trips per year, whereas by contrast an equivalent expansion of bottling operations at Applicant's existing facilities in St. Helena in the northern end of the Napa Valley as an alternative would add an estimated 10,000 truck trips per year to those currently existing on the Napa-St. Helena Highway 29 corridor;

i) The inability to place the proposed Project, as presently designed to maximize operational, costs and energy efficiency, including truck and rail transfers, so as to permit a required setback of 250 feet from all existing, seasonal wetlands, as referenced above;

j) The inability of the Applicant to recycle and dispose of all expected process wastewater by vineyard irrigation if setbacks from all existing, seasonal wetlands (including "C", "D", "E", "F" and "O") were required, due to a loss of approximately 30% of vineyard acreage;

k) The inability to meet basic Project objectives with a downsized or reduced development alternative, given Applicant's objective to optimize operating costs and efficiency and its current need to immediately utilize approximately two-thirds of the proposed facility's capacity to accommodate warehousing and distribution of approximately 24 million gallons of wine, and its projected need to utilize full facility capacity of 36 million gallons within five to ten years;

l) If the facility, as sized and sited was not approved, the Applicant had determined that it would have to locate such a facility outside Napa County; and

m) The Applicant had concluded that complete avoidance of all site wetlands with the setbacks would render the site unusable for Applicant's needs.

Conclusions:

1) Based on the above facts, the Board finds that the proposed Project is consistent with the 1986 Specific Plan policy that "all wetland and stream habitat shall be protected in their natural state, unless this is proved to be infeasible" in that, while the proposed Project avoids impacts to wetlands and vernal pool fairy shrimp habitat to the maximum extent feasible, consistent with the basic Project objectives, it is not feasible to protect all such habitat and also meet most of the basic objectives of the proposed Project. The Board further finds that the Project will do more than "protect" existing wetland and stream habitat on the Project site, which is at present seriously degraded from many decades of cattle grazing, but rather will actually restore, enhance and significantly expand such habitat on site.

2) The Board independently finds, on its review of the entire record including new evidence presented before the Board, that the loss of all wetland habitat on site could only be avoided by either the Wetlands Preservation or Reduced Development (see Reduced Development Alternative discussion below under (D)) Alternatives to the Project, but that neither Alternative is feasible in that neither would meet the Applicant's basic Project objectives, and be accomplished successfully, within a reasonable time, considering economic, social, technological and environmental factors.

3) Based on the above findings of fact, and the entire record, the Board concludes that the Planning Commission properly determined that the Wetlands Preservation Alternative is infeasible and that protecting all wetland and stream habitat in its natural state is infeasible. The Board further finds, determines and concludes that the Commission's determination was based on substantial evidence in the record and that the Planning Commission did not abuse its discretion. Therefore, the Board hereby upholds the Commission's determination.

C. Third Ground of Appeal.

Appellant's Position: The evidence in the record fails to prove that protecting all wetland and stream habitat in its natural state is infeasible. The EIR provides no assessment of whether the Reduced Development Alternative would meet the basic objectives of the Applicant or is infeasible. In approving the Project, the Planning Commission prejudicially abused its discretion because the evidence failed to prove that protecting wetland and stream habitat in its natural state is infeasible.

Findings of Fact: See findings set forth in Section 2(B) of this Resolution.

Conclusion: Based on the above findings of fact, and the entire record, the Board concludes that the Planning Commission properly determined that the Reduced Project Alternative is infeasible and that protecting all wetland and stream habitat in its natural state is infeasible. The Board further finds, determines and concludes that the Commission's determination was based on substantial evidence in the record and that the Planning Commission did not abuse its discretion. The Board hereby upholds the Commission's determination.

D. Fourth Ground of Appeal.

Appellant's Position: The Project as approved is inconsistent with the 1986 Specific Plan policy which requires that all plans for drainage improvements be reviewed by the County and State Department of Fish & Game ("DFG") prior to approval of projects. The Planning Commission prejudicially abused its discretion by approving the Project before development of the drainage plan and before the DFG reviewed the drainage plan.

Findings of Fact:

1) The Applicant's "Wetland and Water Associated Permit Applications (May 8, 2001)" was submitted to the County and DFG prior to project approval. That application included plans for stream improvements and general construction plans along with proposed site drainage patterns, locations of water retention ponds and proposed outfalls. Additionally, as part of the Applicant's 1603 Streambed Alteration Agreement, DFG reviewed the proposed drainage improvements to two drainages, a proposed bridge access to and within the Project site and a proposed pipeline that would traverse No-Name Creek and found the drainage improvements acceptable.

2) Submittal and review of drainage improvements for the Project by the County and DFG was conducted prior to the Planning Commission's approval of the Project.

3) The files and records reflect that the latest drainage plans for the Project were sent to DFG for review by the Project engineers on February 8, 2002, and were received by DFG on that same date.

Conclusion:

1) Based on the above facts, the Board hereby finds that submittal and review of drainage improvements for the Project by the County and DFG was conducted prior to the Planning Commission's approval of the Project. The Board further finds that the Project satisfies the 1986 Specific Plan policy which requires same and therefore the Planning Commission did not abuse its discretion.

2) The Board independently finds, based on its review of the entire record and including new evidence presented before the Board, that drainage plans for the project were submitted for review and received by DFG and the County prior to approval of the project and therefore the project satisfies the 1986 Specific Plan policy which requires same.

3) Based on the above findings of fact, and the entire record, the Board concludes that the drainage improvement plans for the Project were submitted for review by the County and DFG prior to approval of the Project in accordance with the requirements of the 1986 Specific Plan. Therefore, the Board further finds, determines and concludes that the Project is consistent with the referenced policy of the 1986 Specific Plan and that the Planning Commission did not abuse its discretion. The Board hereby upholds the Planning Commission's determination.

E. Fifth Ground of Appeal.

Appellant's Position: The Project is inconsistent with the 1986 Specific Plan's Land Use goal of minimizing conflicts between planning area land use activities and natural constraints and the Visual and Natural Resources Preservation goal of preserving and protecting significant vegetative and wildlife values in the planning area.

Findings of Fact:

1) The two goals of the 1986 Specific Plan applicable to the issues raised by Appellant are:

Land Use Goal 4: Minimize conflicts between planning land use activities and natural constraints.

Visual and Natural Resource Preservation Goal 7: Preserve and protect significant vegetative and wildlife values in the planning area.

2) The FEIR found that "high-quality wildlife habitat, as determined by the combination of a variety of healthy, stable vegetation communities allowing for wildlife diversity or extensive tracts of single, rare habitats, is not present on most of the Project site due to the site's intensive agricultural history" and further concluded that "the project site offers moderate, but relatively limited, wildlife habitat values." (DEIR, pp. IV.F-2)

3) Testimony before the Planning Commission on September 26, 2001, from ESA Senior Wildlife Biologist Brian Pittman described the existing Project site as not especially diverse biologically, lacking riparian and upland habitat for small mammal burrows or migration corridors, stripped of vegetative cover, and as a result characterized No-Name Creek as low quality.

4) The Conditions of Approval and Mitigation Measures imposed by the Planning Commission and the FEIR for the proposed Project require construction, protection, enhancement and preservation of approximately 20 acres of high quality wetland and riparian habitat.

Conclusions:

1) Based on the above facts, and the entire record, the Board finds that, as designed, sized, sited, conditioned and mitigated, the Project will minimize conflicts between land use activities and natural constraints and will preserve and protect wildlife and vegetative value in that the Project will: (a) be located along the eastern boundary of the site, as far removed as possible from No-Name Creek and the primary wetlands and assumed fairy shrimp habitat located in the northwest portion of the site; (b) consist of low density development with no more than 15% of the 218 acre site developed with structures as opposed to 35% coverage which is allowed by the zoning; (c) provide for a 250 foot setback from all wetland habitat on site, except for the several, small, isolated, seasonal wetlands on site, to be filled, which together total only .4

acre, but which will be replaced on at least a ratio of 2:1 and integrated into viable wetland habitat to be restored and enhanced at the northwest portion of the property; (d) create a 50 foot setback on each side of No-Name Creek and result in a revegetated, riparian corridor approximately 120 feet wide along the Creek; and (e) will permanently preserve and result in the creation of substantially more vernal pool fairy shrimp habitat than is currently available on the Project site.

2) Based on the above conclusions and findings of fact, the 1986 Specific Plan and the entire record, the Board finds, determines and concludes that the Planning Commission properly found the proposed Project consistent with the above referenced Land Use and Visual and Natural Resources Preservation goals of the 1986 Specific Plan. The Board hereby upholds the Commission's determination.

F. Sixth Ground of Appeal.

Appellant's Position: The Project is inconsistent with the following Napa County General Plan Policies: Land Use Open Space and Watershed Policies 1.6 and 1.10; Conservation Policies I.A.6(a)(1) and I.A.6(a)(2); and Conservation Policy II.C.3(f).

Findings of Fact:

1) The General Plan policies applicable in responding to the issues raised by the Appellant are as follows:

Land Use Open Space and Watershed Policy 1.6: The County will preserve suitable land for greenbelts, forest, recreation, flood control, adequate water supply, air quality improvement, habitat for fish, wildlife and wild vegetation and natural beauty. The County will encourage management of these areas in ways that promotes wildlife habitat renewal, diversification and protection. It will enhance the open space character of the County through development and use of open space and scenic easements and Williamson-type contracts.

Land Use Open Space and Watershed Policy 1.10: The County will protect the public interest in drainage systems and water impoundments from sedimentation, siltation and contamination and ensure that urban, agricultural and resource development projects utilize sound short-term and long-term erosion control measures.

Conservation and Open Space Policy I.A.6(a)(1): Residential, commercial, industrial, agricultural and water development projects should include management plans for fishery, wildlife and recreation purposes, including provision to: (a) employ supplemental planting and maintenance of grasses, shrubs and trees of similar quality and quantity to provide adequate vegetation cover to keep the watersheds, especially stream side, in good condition and to provide shelter and food for wildlife; (b) to provide protection for wildlife habitat; and (c) provide replacement habitat of like quantity and quality.

Conservation and Open Space Policy I.A.6(a)(2): Provide the following essentials for fish and wildlife resources: (a) sufficient oxygen in the water; (b) adequate amounts of proper

food; (c) adequate amounts of feeding, escape and nesting habitat; and (d) proper temperature, chemical content, salt content and velocity of water.

Conservation and Open Space Policy II.C.3(f): Minimize pesticide and herbicide use and encourage research and use of integrated pest control methods such as cultural practices, biological control, host resistance and other factors.

- 2) See facts set forth in Section 2 (E)(2) through (E)(4) of this Resolution

Conclusions:

1) Based on the above facts and entire record, the Board finds and concludes that the Project as designed, sized and sited is consistent with the Napa County General Plan including, but not limited to the policies referenced above, in that the Conditions of Approval and Mitigation Measures minimize conflicts between development and the natural environment; include management plans which provide protection and enhancement of wildlife habitat; promote wildlife habitat renewal and diversification; utilize erosion control measures to prevent sedimentation, siltation and contamination; restore and revegetate the riparian corridor along No-Name Creek to provide shelter and cover for wildlife; minimize pesticide and herbicide uses, encourage integrated pest control methods; and, avoids impacts to wetlands and fairy shrimp habitat to the maximum extent feasible, consistent with the basic Project objectives.

2) The Board's findings and conclusions are based upon the facts, among others, that the Project: (a) has a floor area ratio of only 15% of the site, not up to 35% as permitted; (b) is located along the eastern boundary, as far removed as possible from No-Name Creek and the primary wetlands and area assumed as fairy shrimp habitat which is located in the northwest portion of the site; (c) provides for a 250 foot setback from all wetland habitat on site, except for several, small, isolated, seasonal wetlands on site, to be filled, which together total only .4 acre, but will be replaced on a ratio of at least 2:1 and integrated into the viable wetland habitat to be restored and enhanced at the northwest portion of the property; (d) provides a 50 foot setback on each side of No-Name Creek and will result in a revegetated, riparian corridor there of approximately 120 feet wide; (e) will be developed in strict conformity with the requirements of concerned Federal, State and local agencies, which consultation will, for example, permanently preserve and result in the creation of substantially more vernal pool fairy shrimp habitat than is currently available on the Project site; and (f) includes implementation of pesticide and fertilizer management plans and an Integrated Pest Management program for the site, subject to strict performance standards.

3) Based on the above findings of fact, and the entire record, the Board finds, determines and concludes that the Planning Commission properly found the proposed Project consistent with the General Plan policies referenced above and further concludes that the Commission did not abuse its discretion. The Board hereby upholds the Planning Commission's determination.

G. Seventh Ground of Appeal.

Appellant's Position: There is no basis for Response to Comment A-1 in the FEIR to conclude that the loss of wetlands on-site will be "offset." The record does not support the conclusion that replacement wetlands areas will provide functional wetland values such as wildlife habitat.

Findings of Fact:

- 1) CEQA requires that responses to comments be detailed and provide a reasoned good faith analysis although a more general response is sufficient when the comments are general in nature. (14 CCR § 15088(b).)
- 2) Response to Comment A-1 in the FEIR contains two paragraphs of analysis and explanation. (FEIR, pp. IV-7)
- 3) Evidence presented to the Planning Commission from ESA Senior Wildlife Biologist Brian Pittman and evidence in the FEIR demonstrate that the existing Project site has already been heavily degraded by cattle-grazing, contains a monocrop of non-native grasses and essentially provides no upland habitat for small mammal burrows. The riparian corridor along No-Name Creek lacks any woody or vegetative cover and therefore does not provide cover or habitat for wildlife and aquatic species. As part of Project development, approximately 20 acres of high quality wetland and riparian habitat will be created. The created wetland and riparian habitat will be permanently preserved, located in an upland area protected from contamination and flows, will consist of a 2:1 wetlands replacement ratio and provide permanent protection and preservation to the fairy shrimp, and 250' setbacks from all preserved or created wetlands will be observed.
- 4) On appeal, written evidence from Dr. Robert Curry was presented before the Board which raised an issue that in order to predict with confidence the success of recreating wetlands, detailed information about soil conditions in the location of the re-created wetlands is necessary. Mr. Pittman responded to this issue when he testified before the Board that the on-site area selected for replacement wetlands is suitable because: (a) the four small pools that will be created are located in an area that already naturally floods; (b) the hydrology already exists on the site; (c) the soil will be lowered slightly and topsoil from existing wetlands will be used in the created wetlands as a means of jump starting the system; (d) the topography of the area is naturally suited and contoured for wetlands and therefore will require minimal excavation to turn the area into functioning wetlands; (e) the soils are hardpan vernal pool soils of about 24" deep; (f) the pools will be located in close proximity and down flow from the site where vernal pool fairy shrimp were actually found; and (g) eggs from fairy shrimp in the vicinity would be introduced either naturally via stream flows or relocated into the four created pools.

Conclusions:

- 1) Based on the above facts, the FEIR and the record, the Board finds and concludes that the wetlands mitigation plan and other mitigation measures are feasible because of the

location, size, hydrology, topography, soils and other physical conditions on the Project site including the 250' wetland setbacks and 50' setbacks from No-Name Creek, and because such mitigation measures either impose established and recognized performance criteria, or require compliance with recognized standards and criteria to be imposed by affected public agencies with jurisdiction, expertise and experience in the area of concern after completion of pending review of the site and studies conducted thereon by qualified professionals in consultation with such agencies, including the Corps of Engineers, US Fish & Wildlife Service, California Department of Fish & Game, Regional Water Quality Control Board, and the Department of Agriculture.

2) The Board independently finds and concludes, based on its review of the entire record including new evidence presented before the Board, that the wetlands mitigation plan and other mitigation measures are feasible because of the location, size, hydrology, topography, soils and other physical conditions on the Project site.

3) Based on the above findings and conclusions, and the entire record, the Board finds, determines and concludes that substantial evidence exists in the record to support the Planning Commission's determination that the proposed replacement wetland areas will provide functional habitat. The Board further concludes that the Responses to Comments in the FEIR are supported by substantial evidence and therefore the Planning Commission did not abuse its discretion. The Board hereby upholds the Planning Commission's determination.

H. Eighth Ground of Appeal.

Appellant's Position: Response to Comments from the Sierra Club in the FEIR regarding impacts on steelhead, use of herbicides, pesticide and fertilizer runoff, increases in off site runoff and the demand for new housing are not supported by empirical or expert opinion evidence or sufficient explanatory information.

Findings of Fact:

1) CEQA requires that responses to comments be detailed and provide a reasoned good faith analysis although a more general response is sufficient when the comments are general in nature. (14 CCR § 15088(b))

2) The FEIR's Response to Comments submitted by the Sierra Club contains six pages of analysis and discussion. (FEIR, pp. IV-39 through IV-44)

3) A public hearing was held before the Planning Commission on September 26, 2001, to discuss the adequacy of the Responses to Comments incorporated into the FEIR. At that hearing, oral and written evidence was presented including:

a) ESA Senior Wildlife Biologist Brian Pittman's testimony that No-Name Creek is an intermittent blueline drainage and does not provide sufficient water flows or suitable breeding substrate to support steelhead.

- b) ESA Senior Geologist/Hydrologist Peter Hudson's testimony regarding hydrology and storm water management for the proposed Project.
- c) Testimony from Dr. Ed Lee of Swanson International Engineering regarding hydrology, storm water and wastewater management for the proposed Project.
- 4) See findings of fact regarding housing impacts set forth in Section 2(L) of this Resolution.

Conclusions:

- 1) Based on the above facts and entire record, the Board finds and concludes that the Responses to Comments incorporated into the FEIR regarding steelhead, use of herbicides, hydrology and housing are supported by credible, expert opinion evidence and contain sufficient analysis and explanatory information. The Board further finds that no credible evidence has been presented controverting the expert opinions or evidence contained in the FEIR.
- 2) Based on the above findings and conclusions, and the entire record, the Board finds, determines and concludes that the Responses to Comments incorporated into the FEIR, are supported by expert opinion evidence, contain sufficient analysis and therefore the FEIR satisfies the requirements of CEQA. The Board hereby upholds the Planning Commission's determination.

I. Ninth Ground of Appeal.

Appellant's Position: The FEIR and Planning Commission Resolution No. 01-09 defer, until after project approval and until after the public's opportunity to review and comment on the EIR has expired, the development of mitigation measures that are necessary to substantially reduce significant adverse environmental impacts. Therefore, the Planning Commission and the Board cannot make the use permit findings required by section 18.124.070 (C) regarding impacts to the public welfare of the county.

Findings of Fact:

- 1) A mitigation measure that requires compliance with another agency's environmental regulations or standards is reasonable when the lead agency has a meaningful expectation that would reasonably justify an expectation of compliance and when compliance would avoid significant impacts. (*Sundstrom v. County of Mendocino* (1988) 202 CA3d 296, 308.) Mitigation measures, such as requiring engineering department approval of drainage facilities or flood control district approval of grading plans, are appropriate when these approvals or plans are subject to performance standards such as those typically found in applicable ordinances, rules and standards. (*Gentry v. City of Murieta* (1995) 36 CA4th 1359, 1395.)
- 2) Mitigation Measure E.1d (implemented as Condition of Approval No. 53) requires development and implementation of a pesticide and fertilizer management plan. Mitigation Measure F.5b (implemented as COA No. 86) requires development of an Integrated

Pest Management Plan. These plans, a function of the vineyard and landscape development proposed for the Project, are incorporated into the wetland (vernal pool) management plan subject to review, approval and compliance with the guidelines, standards and criteria of the Department of Fish & Game, US Fish & Wildlife Services and Corps of Engineers.

3) Mitigation Measure F.1a requires preparation of an Army Corps of Engineers' verified wetland delineation plan. A Wetland Delineation Report for the proposed Project was prepared by Kjeldsen Biological Consulting on June 7, 1999, and that report provided a basis for Project site planning efforts. ESA Senior Wildlife Biologist Brian Pittman provided testimony to the Planning Commission on September 26, 2001 that the wetlands delineation plan was approved by the Corps of Engineers in December 2000. Written evidence was also presented before the Board on February 26, 2002, which demonstrated that a routine wetlands delineation was performed by ESA in the summer of 2000, and was verified by the Corps of Engineers in December 2000.

4) Mitigation Measure F.2 (implemented as COA Nos. 65 and 66) requires development of a wetland (vernal pool) management plan. The FEIR contains detailed performance criteria related to the management plan which is subject to review, approval and compliance with the guidelines, standards and criteria established by the Department of Fish & Game, US Fish & Wildlife Services and Corps of Engineers.

5) Mitigation Measure F.3 (implemented as COA Nos. 64 and 70) requires future pre-construction surveys to determine the presence or absence of active raptor nests or roosts for special status bats. Although the FEIR found that no raptor or special status bat habitat exists on the Project site, this condition was imposed as a precautionary measure to reduce impacts on non-listed nesting raptors and birds.

6) Mitigation Measure F.5a (implemented as COA No. 85) requires that appropriate vegetative buffers consistent with guidelines set forth by the US Fish & Wildlife Service. USFWS will coordinate and consult with other resource agencies to determine the appropriate buffer needed to ensure that direct or indirect impacts to vernal pool invertebrates are avoided.

Conclusions:

1) Based on the above facts, and entire record, the Board finds and concludes that the FEIR does not improperly defer mitigation measures or studies until after Project approval because requiring the proposed Project to comply with environmental regulations of responsible public agencies with experience and expertise in the area of concern is a recognized and reasonable mitigation measure. The Board further finds that while all the requirements of these agencies have not been finalized at this early stage in the proposed Project, the affected public agencies, including the Corps of Engineers, US Fish & Wildlife Service, California Department of Fish & Game and the Regional Water Quality Control Board will impose established performance standards upon the permittee to the extent that the FEIR does not already do so. Furthermore, the Board finds that the County and its respective departments, including Conservation, Development and Planning, Public Works, and Environmental Management has committed itself through Conditions of Approval Nos. 1 through 103 to see that all required

Project mitigation measures are implemented. The Board further finds that both the FEIR and the Conditions of Approval, and the Mitigation Monitoring Plan contain numerous, specific performance standards and criteria including plans for wildlife and habitat protection, restoration and enhancement (for example, Conditions Nos. 25,26, 30, 32-36, 40, 50-60, 62-71, 74, 78-79, 84-88, 96-97, and related mitigation measures).

2) Based on the above findings of fact, and the entire record, the Board finds, determines and concludes that the FEIR does not improperly defer mitigation measures or studies until after Project approval and therefore the Planning Commission did not abuse its discretion. The Board hereby upholds the Planning Commission's determination.

J. Tenth Ground of Appeal.

Appellant's Position: The FEIR's and Planning Commission's findings that cumulative impacts on hydrology, biological resources and traffic are not supported by substantial evidence in the record.

Findings of Fact:

The FEIR includes a cumulative impact analysis for impacts on hydrology, biological resources and traffic. The analysis was based on opinions of experts in the field of hydrology, biology and traffic.

Conclusions:

1) Based on the above facts and the entire record, the Board finds and concludes that no credible evidence has been presented by Appellant as to how or why the cumulative impact analysis in the FEIR is inadequate. The Board finds that the cumulative impact analysis in the FEIR is adequate.

2) Based on the above findings and conclusions, and the entire record, the Board finds, determines and concludes that the FEIR contains substantial evidence in support of its cumulative impact analysis on hydrology, biological resources and traffic. Therefore, the Board concludes that the Planning Commission did not abuse its discretion and that the FEIR is adequate. The Board hereby upholds the Planning Commission's determination.

K. Eleventh Ground of Appeal.

Appellant's Position: The FEIR lacks substantial evidence to support many of its impact conclusions, therefore, the Planning Commission's statement of overriding considerations is not supported by substantial evidence in the record. The nature and extent of significant impacts on vernal pool fairy shrimp is unknown because USFWS protocol level surveys have not been conducted by the Applicant; the nature and extent of direct and cumulative impacts on steelhead in Fagan Marsh and Napa River is unknown; the FEIR does not demonstrate that preparation of a Storm Water Pollution Prevention Plan will mitigate otherwise significant

impacts on watershed resources; and complete surveys for flora and fauna (in particular the Suisun Marsh Aster) are required to adequately evaluate biological impacts.

Findings of Fact:

1) ESA Senior Wildlife Biologist Brian Pittman testified before the Planning Commission on September 26, 2001, that a precursor to conducting a protocol level survey is to conduct a habitat assessment. Since there is a complete absence of essential habitat features to support the presence of the red-legged frog on the Project site, a protocol level survey was not necessary to search for actual red-legged frogs on site.

2) Testimony from Mr. Pittman before the Planning Commission on September 26, 2001, and before the Board, and in the FEIR demonstrates that No-Name Creek is an intermittent blue line drainage, that water flows cease during the late spring, summer and fall seasons, and are at their peak during the winter and early spring months and therefore No-Name Creek does not provide sufficient water flows or suitable breeding substrate to support steelhead. Additionally, the 50' setback from No-Name Creek and implementation of erosion control measures and a Stormwater Pollution Prevention Plan will reduce potential secondary water quality impacts to steelhead.

3) Testimony from Mr. Pittman before the Planning Commission on September 26, 2001, and before the Board, and evidence in the FEIR demonstrates that focused, in-season botanical surveys were conducted on the Project site between 1999 and 2001. Although the Suisun Marsh Aster was identified on the banks of No-Name Creek in 1999 by Kjeldsen Biological Consulting, these plants were not observed in subsequent surveys in 2000 and 2001. Due to the extensive cattle grazing on site, Mr. Pittman opined that the plants were likely consumed by cattle. Suisun Marsh Aster is limited to wetland habitat areas and the banks of No-Name Creek were considered its potential habitat. Since the Project includes a 50' setback from No-Name Creek, Mr. Pittman further opined that the Project would not impact the Suisun Marsh Aster.

4) Based on the evidence before it, in adopting Resolution No. 01-09, the Planning Commission found that development of the Project would have the following specific overriding economic, social, environmental and other benefits: creation of approximately 20 acres of wetland and riparian habitat on the site; 5,215 less truck trips on Highway 29 between St. Helena and Jamison Canyon Road; construction of and payment of its fair share contribution for various traffic improvements; promotion of the Airport Industrial Specific Plan area as an industrial center; preservation and enhancement of the Napa County economy; promotion of alternative transportation methods and the maintenance of 120 acres of open space and contribution to the County's primary industry of agriculture. The Planning Commission further found that these benefits substantially outweighed the significant environmental impacts resulting from the Project.

5) Testimony was presented before the Planning Commission and the Board that the Applicant agreed to pay double the County's housing mitigation fee or approximately \$750,000 in connection with development of the Project.

6) On February 26, 2002, Beringer Vice President of Operations Doug Walker testified before the Board that the Project would generate approximately \$1,000,000 annually in property taxes and that by locating the Project in an industrial park zone, it will preserve agricultural lands for agricultural use. Mr. Walker's letter of February 21, 2002, submitted to the Board, also noted that the Applicant supports more than 600 Napa County employees and that the proposed Project would preserve jobs of Applicant's Napa County employees by locating the needed facility in Napa County. Mr. Walker and Project engineer Monty McGlincy testified before the Board that consolidating current operations into the proposed project, will reduce energy consumption, allow design of the Project to take advantage of cool breezes in the area, encourage alternative energy sources which can recapture and re-use heat and thereby increase energy efficiency and conservation.

Conclusions:

1) The Board finds and concludes that the Planning Commission's statement of overriding considerations in Resolution No. 01-09 was based on substantial evidence in the record.

2) The Board independently finds and concludes, based on its review of the entire record including new evidence presented before the Board, that in addition to the grounds found by the Planning Commission, the following additional benefits substantially outweigh the significant effects on the environment resulting from the Project:

a) **Revenues:** The County will derive substantial revenue from the Project in that it will generate over \$1,000,000 annually in property taxes. The County will also receive housing mitigation fees of approximately \$750,000 (or double the housing mitigation fee required under Napa County Code Chapter 15.60) in connection with development of the Project.

b) **Preservation of Agricultural Lands:** The Project will be constructed in the Airport Industrial Area which is an area specifically designated for industrial development. Wine warehousing and processing facilities are allowed uses in the AW and AP zoning districts and therefore the Project could have been proposed for development in one of the agricultural zoning districts. By locating the Project in an industrial area in an industrial zone rather than in the AW or AP zones, agricultural lands in the AW and AP remain protected and preserved for agricultural use.

c) **Energy Reduction and Efficiency:** The Project will consolidate current operations which will result in reduced energy consumption, take advantage of local natural climatic conditions, encourage the use alternative energy sources and increase energy efficiency and conservation.

d) **Preservation of Napa County Jobs:** The Project will preserve the jobs of existing Napa County employees of the Applicant.

e) **Support the Continued Operation of an Important Member of the Napa County Agricultural Community:** The project will support the continued operation of Applicant, an important member of the agricultural community, operator of the oldest operating winery in Napa County (1876), farmer of 2,300 acres and supporter of approximately 200 independent grape growers in Napa County.

3) Based on the above findings and conclusions, the Board finds, determines and concludes that the Planning Commission's statement of overriding considerations was based on substantial evidence and that the Commission did not abuse its discretion when it approved the Project. The Board also concludes, based on the entire record and new evidence presented before the Board, that further substantial evidence exists in the record that the Project benefits substantially outweigh the significant environmental effects resulting from the Project. The Board hereby upholds the Commission's determination.

L. Twelfth Ground of Appeal.

Appellant's Position: The EIR fails to adequately evaluate the effect of the Project on the demand for new housing.

Findings of Fact:

1) CEQA does not require evaluation of socio-economic factors such as housing. CEQA primarily addresses physical impacts associated with a project and therefore an EIR is not required to evaluate housing impacts beyond the physically-based criteria such as whether the project will result in the removal of viable housing stock.

2) On February 26, 2002, testimony was presented by the Applicant before the Board that over the next ten years the proposed Project will generate approximately 86 not 232 new jobs as reflected in the FEIR.

Conclusions:

1) Based upon the FEIR and the entire record, including the "Market & Jobs/Housing Analysis Napa Airport Industrial Area Specific Plan" (July 1995) and the "Jobs and Housing Impact Analysis Napa Airport Industrial Plan (A.I.A.) Specific Plan" (April, 1996) relied upon by the FEIR (DEIR, p. IV. K-9), the Board finds that the Project will have no significant impact, directly or cumulatively, on housing or the demand for new housing in Napa County because:

a) The number of new jobs created over the next ten years by the proposed Project is only approximately 86, not 232 as reflected in the FEIR, since most employees will be transfers of existing employees from permittee's facilities in Napa and St. Helena from the Biagi Brothers Napa warehouse facility, which transferred employees are not planned to be replaced due to the consolidation of Applicant's facilities and operations;

b) Condition of Approval No. 101 requires the Applicant to pay into the Napa County Affordable Housing Trust Fund an affordable housing mitigation fee double that required pursuant to Napa County Code §15.60 (or approximately \$750,000);

c) The aforesaid Analyses project an additional 9,881 employees in the Airport Area by 2015, requiring construction of 5,457 housing units, but also show a housing surplus in Napa of 6,130 units and in American Canyon of 2,470 units as of 1995 and continuing surpluses of 4,930 units and 2,000 units respectively by 2015 (1996 Analysis, p.12), which projected surpluses are in the two jurisdictions closest to the Project and most likely to have housing impacts from it;

d) As many as 55% of employees in the Area will live outside of Napa County (1995 Analysis, p. VII);

e) The October 2001 draft of the Keyser Marston Jobs Housing Nexus Analysis was not in point and not relied upon because it was based on prior studies for dissimilar, more employee intensive, resort-commercial hotel projects not expressly subject to the Napa County Housing Fee Ordinance 15.60, said Ordinance is applicable and mandates the appropriate housing impact mitigation fee for the proposed Project, said draft analysis was based on the incorrect assumption that the proposed Project would create nearly three times the number of new jobs (238) than is actually projected (86) due to employee transfers and consolidation, and in any event it was a draft only and it did not present an affordable housing mitigation fee recommendation, but rather only a ceiling or maximum supported by the draft analysis;

f) The proposed Project will only have a 15% floor area ratio to the size of the parcel, rather than up to 35% coverage, with the potential for substantially more new jobs at a higher job to floor area ratio, permitted by the existing 1986 Airport Area Specific Plan; and,

g) Even at the higher new job level relied upon in the FEIR, the Project-related demand for new housing units will be easily accommodated within ABAG's demographic projections to 2020 (DEIR, p.IV. K-8).

Conclusion: Based on the above findings of fact, and the entire record, the Board concludes that the FEIR properly evaluated the effects of the proposed project on the demand for new housing. The Board hereby upholds the Planning Commission's determination.

SECTION 3. Final Determinations.

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

- 1) Denies the appeal of the Sierra Club filed by Thomas Lippe;

- 2) Finds that the Final EIR has been completed in accordance with CEQA; that the FEIR reflects the County, as lead agency's, independent judgment and analysis; and that the Board has reviewed and considered the information contained in the Final EIR before considering upholding the Commission's approval of Use Permit No. 98597-UP;
- 3) Re-certifies the Final EIR for the Project;
- 4) Adopts the findings of facts, conclusions and rationales including, but not limited to, the statement of overriding consideration as set forth in this Resolution; and
- 5) Upholds the Planning Commission's approval of Use Permit No. 98597-UP subject to the approved Conditions of Approval (as modified by the attached Exhibit "A") and feasible mitigation measures.

SECTION 5. Effective Date.

This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was read, considered, and adopted at a regular meeting of the Board of Supervisors of the County of Napa, State of California, on the 9th day of April, 2002 by the following vote:

AYES:	SUPERVISORS	RIPPEY, WAGENKNECHT, LUCE and DODD
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	VARRELMAN

Attest:
MARY JEAN MCLAUGHLIN
Clerk of the Board

By: Veri Lissou, Deputy

APPROVED AS TO FORM	
Office of County Counsel	
By:	<u>[Signature]</u>
Date:	<u>4/9/02</u>

Attachments:

Exhibit "A" - Condition of Approval No. 103

...PL/Beringer/Decision On Appeal FF.doc

APPROVED 4-9-02
BOARD OF SUPERVISORS
COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

BY [Signature] Findings of Fact and
Decision on Appeal - Beringer
Use Permit No. 98597-UP

103. To verify the permittee's present plans to consolidate operations at this Devlin Road Facility and thereby reduce existing truck traffic trips on Highway 29 from Napa to its St. Helena facility and on Jamieson Canyon from Fairfield, the permittee will provide to the Director of the Conservation, Development and Planning Department, within six months after a final certificate of occupancy has been issued for the Devlin Road Facility, with written verification that it has ceased operations at its existing Fairfield warehouse located at 5200 Watt Court which result in the shipment of any of permittee's wine from there to Napa County for bottling, warehousing or distribution, and within twelve months after such final certificate of occupancy has issued, the permittee will provide the Director of the Conservation, Development and Planning Department with further written verification that it has transferred approximately 3,000,000 cases of annual bottling activity from its St. Helena winery facility at 1000 Pratt Ave., St. Helena, to the Devlin Road Facility. Permittee may apply to the Board of Supervisors for an extension or revision of this condition, upon a showing of good cause, should unexpected business developments in the interim necessitate such a request.