



June 28, 2013

Nate Galambos  
Napa County Engineering Services  
1195 Third Street  
Napa, California 94559

Subject: Kitchak Cellars  
1094 Hardman Avenue, Napa APN: 039-190-055 (previously APN: 039-190-038)  
Road Exception Request for Access Drive to Winery

Nate,

This letter is to request road exceptions for an existing improved access drive from Hardman Avenue to an existing winery and residence located at 1094 Hardman Avenue on Napa County Assessor's parcel 039-190-055 (the previous APN of the parcel was 039-190-038, and was updated to 039-190-055 in a recent lot line adjustment). The owner, Peter Kitchak, has submitted a request for a major modification to the existing use permit to construct a new barrel building in conjunction with expanding annual wine production from 5,000 gallons to 15,000 gallons and increasing daily visitation from 12 guests to 20 guests (by appointment only).

The winery is located adjacent to the owner's residence and the proposed barrel building will be in the vicinity of the winery. The winery and residence is accessed by an existing driveway of approximately 800 feet in length from Hardman Avenue. The driveway also provides access to a residence located at 1100 Hardman Avenue via an existing legal access and utility easement. The driveway transitions to a one-way loop road when it reaches the winery and residence. See **Exhibit A** for the existing site plan with dimensions.

The main 800 foot section of the driveway is unique; it consists of two concrete wheel strips, each of which is 3.25 feet wide and the driveway is lined by approximately 55 mature cypress trees with typical trunk diameters of 8 inches breast diameter height. The trees are spaced on approximate 30 foot centers along the driveway. In between and between the concrete wheel strips, is a double chip seal pea gravel surface which creates an overall driveway width between 15.5 and 17 feet. Immediately adjacent to the edge of the outer travel way on each side are the mature cypress trees and row of mature vines. Three turnouts are located along the driveway; at the front gate (71 feet in length) at the midpoint (50 feet in length), and at the end of the road (75 feet in length) where it transitions into a one-way loop road.

The one-way loop road is approximately 650 feet in length. The horizontal radii of the loop road do not meet the current 50-foot inside radius requirement. For the first 150 feet (stations 8+00 to 9+50), the loop road wraps around mature olive and cypress trees. The road then opens up to a vehicle courtyard large enough to support a fire truck turnaround. The road wraps around the existing garage and existing vines. At station 12+50, the loop road crosses the property line onto the eastern neighbor's parcel, where an access easement grants permission for egress from the Kitchak property.

The one-way loop road from stations 11+00 to 13+00 is proposed to be improved to meet the Road and Street Standards. These improvements include widening the horizontal curves to 50 feet along the road, and adding a stop sign at the 90-degree intersection where the road connects to the north-south section of road travelling toward Hardman Avenue. The stop sign reduces the horizontal radius requirement to 30-foot centerline per Fire Standard #6.



According to the Napa County Road & Street Standards as revised August 9, 2011, the stated objectives of the Standards are to 1a) provide reasonable standards (emphasis added) that relate to terrain and parcel size and to 1b) strive to preserve the natural landscape and desirable aesthetic features (emphasis added). The Standard also discusses that "these Standards that were developed and revised over the years represent an effort to meet all of the objectives noted above (referring to Section 1a-j) while striving to maintain the preservation of the health, safety, and welfare of the public. The 2011 revisions are intended to provide clarification and flexibility to the standards, in order to balance conformant with local, state, and federal regulations, general engineering, and construction practices, and accommodation of unique project elements (emphasis added)."

In addition, Section 3 of the Standards (Exception to Standards) describes that "an exception to these Standards, when properly submitted, reviewed, and approved by the Director, the Planning Commission or other approving body, is intended to serve as an alternative method by which adherence to these Standards may be achieved at the same time as the County assures compliance with its goal to protect and ensure the preservation of the unique features of the natural environment (emphasis added). It is also intended to ensure compliance with the SRA Fire Safe Regulations (14 CCR 1270-1274)."

Section 3.D of the Standard describes granting exceptions if "the exception will preserve unique features (emphasis added) of the natural environment which includes, but is not limited to, natural water courses, steep slopes, geological features, heritage oak trees, or other trees of (at) least 6" diameter breast height and found by the decision-maker to be of significant importance (emphasis added), but does not include man made environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences or the like (Section 3.D.1). Note that the term "other trees" is not limited in any way and the phrase "but does not include man made environmental features such as vineyards, rock walls, ornamental or decorative landscaping, fences and the like" quite clearly modifies the phrase "the unique features of the natural environment" and not the word "trees". In addition, Section D describes that "the exception is necessary to accommodate other limiting factors such as recorded historical sites or legal constraints (emphasis added)" (Section 3.D.3).

In the recognized exceptions within the Road and Street Standards, the code references trees with a diameter breast height greater than 6 inches and determined to be of significant importance by the decision-maker. The driveway was constructed in or around 1995 in conjunction with a remodeling project at the residence located at 1100 Hardman Avenue. The winery use permit was issued in 2010. In the use permit conditions of approval, the approval document makes considerations to the existing conditions and required that the driveway "be improved in a manner so as to: 1) have the least amount of effect on existing landscaping improvements; 2) conserve costs to the permittee; and, 3) preserve the existing landscape design aesthetics." See Paragraph 1 "Scope" of **Exhibit B** for the copy of the conditions of approval from the 2010 Use Permit Hearing. Based on this comment, it is evident the commission at the time of the issuance of the original Kitchak Winery Use Permit were already noting significant importance of the Cyprus trees along the driveway.

In addition, in the 2011 revisions to the Road and Street Standards, *legal constraints* were added as a recognizable exception to the Road and Street Standards. The total length of the main access drive into the Kitchak Cellars property is bounded by a legal easement shared by the owners of 1100 Hardman Avenue. The driveway is also the subject of a driveway easement and maintenance agreement between the owners of the 1100 property and the Kitchak's. That agreement, a copy of which is attached as **Exhibit C**, does not permit either party to make changes to the driveway unilaterally, and it requires, even for maintenance work, the written approval of both parties. The owners of the 1100 Hardman Avenue property have indicated in an email to the Kitchaks that they have no objection to the construction of the new building, the production increase of the winery



or the slight increase in tastings. However, they purchased the property with the driveway in its current configuration and have indicated verbally to the Kitchaks that they are not interested in approving the removal of a large number of the driveway trees. Thus, the driveway maintenance agreement with the neighbor can be found to constitute a legal constraint on the driveway and the Kitchak's ability to make any changes to it. In addition, Paragraph 8 of the original conditions of approval for the winery permit (**Exhibit B**) provides that "No trees greater than 6" dbh shall be removed, except for those identified on the site plan." And, no such trees were shown on that site plan. As a result, the Kitchaks would be in violation of the conditions of the original winery permit were they to remove the Cypress trees lining the driveway. Thus, the original conditions of approval of the winery constitute a second legal constraint on the driveway and the Kitchak's ability to make any changes to it.

Section 3.E describes that the "zoning administrator, Planning Commission or other approving body shall not grant an exception unless it finds that grant of the exception, as conditioned by the Zoning Administrator, the Planning Commission or other approving body, provides the same overall practical effect as these Standard towards providing defensible space, and consideration towards life, safety, and public welfare. Monetary hardship alone shall not be considered as a basis for an exception".

Oftentimes when analyzing the site accessibility, an emergency vehicle ingress/egress analysis will be performed using a program called "AutoTurn by AutoDesk". This program allows the user to input the parameters of a typical Napa County Fire Apparatus and 'drive' the vehicle through the site plan to determine the feasibility of the truck travelling through the property. It is known a fire access vehicle is able to travel along the 800+ feet of the main access road, and is not shown in the exhibits. Sheet 2 of attached **Exhibit D** shows the site accessibility of the typical fire apparatus. Based on this analysis, the largest expected emergency vehicle, the Napa County Fire Apparatus, is able to travel through the site with only the aforementioned slight improvements made to the access drive. Thus, the access drive provides the same overall practical effect that the Napa County Road and Street Standards intended.

### Road Exception Request Descriptions

All station locations referenced below correlate with the Existing Dimension Plan for Kitchak Cellars, included with this submittal as **Exhibit A**

#### **Station 0+00 to 8+00:** Road Exception Request for Travel Way Less than 20'

The travel way does not meet County Standards for driveway width between these stations. A narrow travel way lined with mature 8" diameter cypress trees limits the available travel way to between 15.5 and 17 feet. In addition, the neighboring property (APN 039-190-039) holds an access easement and maintenance agreement over this section of road. To mitigate for the reduced width, three existing turnouts are located along the driveway access

#### **Station 8+00 to 9+75:** Road Exception Request for Inside Horizontal Radii Less than 50'

The path of travel between these stations provides both adequate width for a one-way loop road per the Napa County Road and Street Standards. However, the inside radius of the three horizontal curves within this section of road are 45.5 feet, 48.1 feet, and 27.2 feet. At station 9+00, the road opens onto an open court, large enough for a fire truck turnaround. Improving this section of road requires demolition of existing 8" diameter trees along



the one-way loop road. These trees, if deemed 'significant' as was found in the 2010 winery use permit hearing, constitutes an allowable exception within Section 3.d of the Road and Street Standards.

We have also prepared, in order to attempt to expedite matters, a set of proposed findings for the Planning Commission as **Exhibit E**.

Please feel free to contact me if you have any questions.

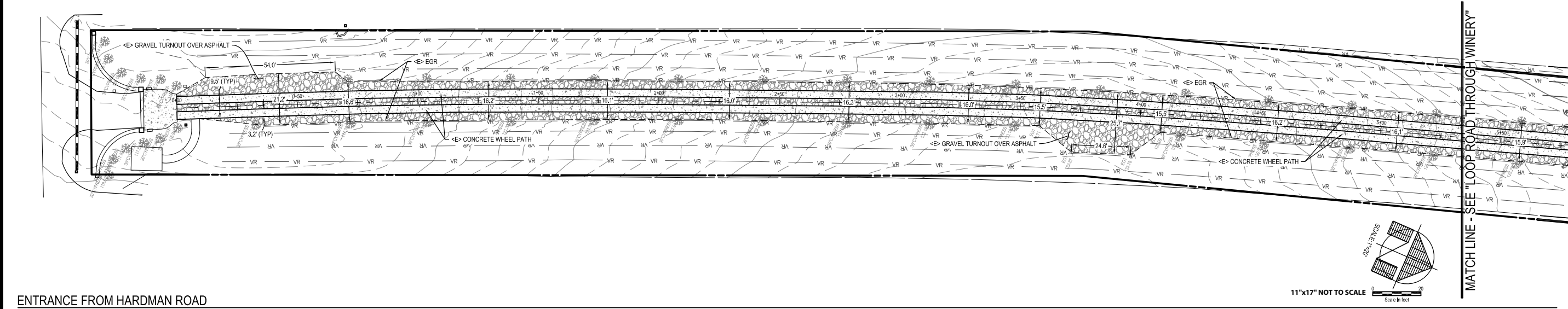
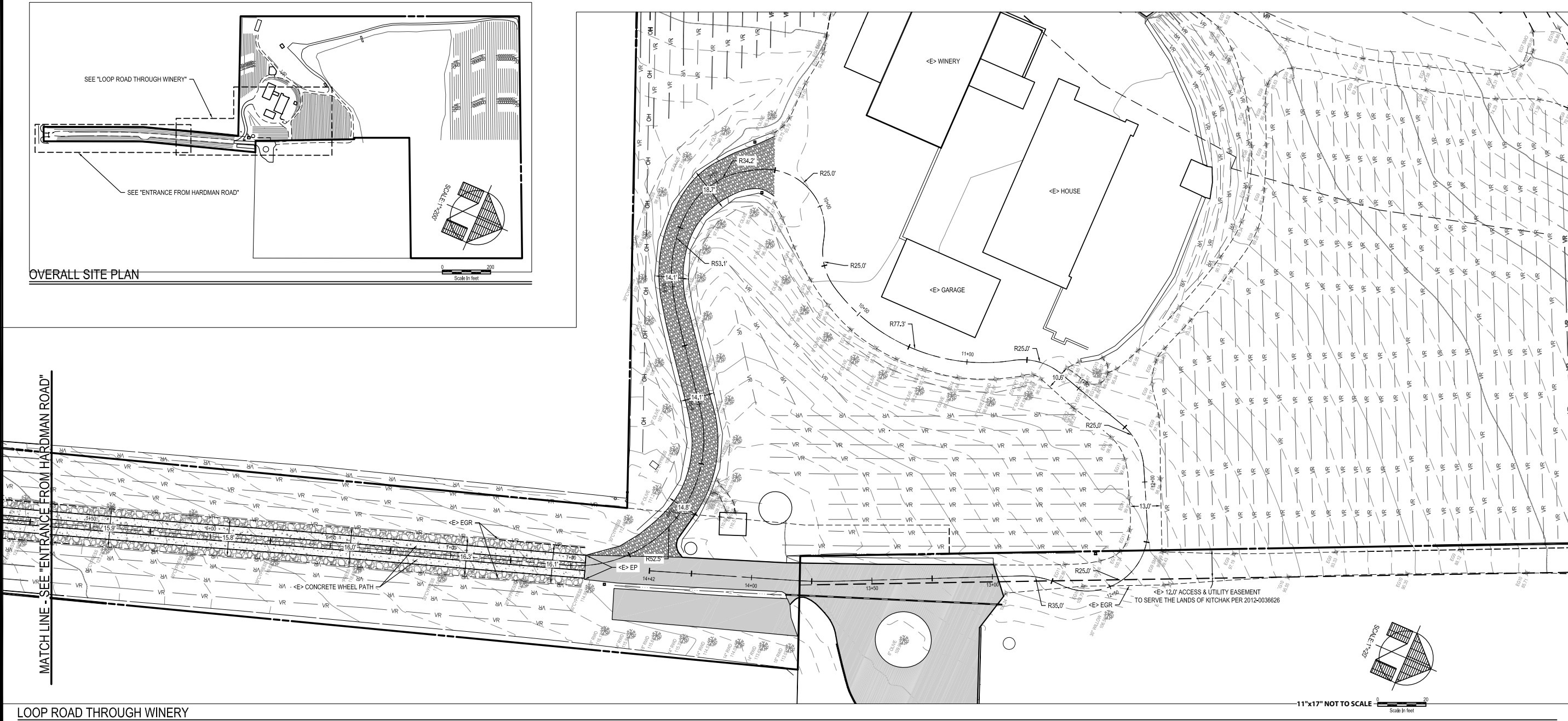
Sincerely,

Bryan Jackson, P.E.  
Engineering Supervisor

Project: M-101  
Kitchak Cellars



**EXHIBIT A**  
**EXISTING SITE PLAN AND DIMENSIONS PLAN**



ENTRANCE FROM HARDMAN ROAD

OVERALL SITE PLAN

LOOP ROAD THROUGH WINERY

CIVIL IMPROVEMENT PLANS  
EXISTING DIMENSION PLAN

KITCHAK CELLARS  
1094 HARDMAN AVENUE  
NAPA, CA 94558  
APN: 039-190-0355  
PROJECT: M-101



EVERY PERSON PLANNING TO DRG  
CALL USA AT 1-800-421-2800



DATE: 06/26/13  
ISSUE: PROGRESS SET

SHEET:

EXHIBIT

DELTA CONSULTING & ENGINEERING  
OF ST. HELENA



1104 ADAMS STREET, SUITE 203 - ST. HELENA, CALIFORNIA 94574  
707-963-9456 • 707-963-9528 FAX

THESE PLANS AND THE DATA INCORPORATED HEREIN ARE PREPARED BY THE ENGINEER AND ARE NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE ENGINEER. THE ENGINEER ASSUMES NO LIABILITY FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING FROM THE USE OF THESE PLANS. THE USER OF THESE PLANS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR THE ACCURACY OF THE DATA INCORPORATED HEREIN. THE ENGINEER'S LIABILITY IS LIMITED TO THE DESIGN OF THE PROJECT AND THE USER SHALL BE RESPONSIBLE FOR THE CONSTRUCTION OF THE PROJECT. IT IS THE USER'S SOLE RESPONSIBILITY TO VERIFY THAT THE DRAWING REPRESENTS THE PROJECT TO BE CONSTRUCTED.



**EXHIBIT B**  
**2010 CONDITIONS OF APPROVAL**

## EXHIBIT B

### PROPOSED CONDITIONS OF APPROVAL

**Kitchak Winery Use Permit  
#P09-00148-UP & #P09-00149-VAR  
1094 Hardman Avenue, Napa  
Assessor's Parcel #'s: 039-190-038-000**

#### **Approval of Variance request #P09-00149- VAR to allow the following:**

Approval of a Variance (#P09-00149-VAR) from the required winery road setbacks set forth in Napa County Code section 18.104.230 (A.) (2.) to allow a winery to be established 196 feet from the centerline of a private road where 300 feet is required.

#### **Approval of a Use Permit request #P09-00148-UP to allow the following:**

**1. SCOPE:** The use permit shall be limited to:

- Establishment of a new, 5,000 gallon maximum per year winery (consistent with the Napa County Winery Production Process);
- Conversion of an existing 2,048 square foot, single-story, residential garage to be used as a winery production / wine tasting retail sales building for a winery totaling 2,048 square feet;
- Construction of a 300 square foot covered crush pad or Napa County Public Works approved alternative;
- Use of a 400 square foot uncovered hospitality patio;
- One full-time and two part-time employees;
- Six parking spaces;
- Tours and tasting by appointment only with a maximum of 12 visitors per day (84 visitors per week max.);
- A marketing plan with: six 20-person promotional events with catered meals per year; four 30-person release events per year with No Tours & Tasting Appointments or Marketing Events to be held on the same day and will hold no Temporary Events;
- Installation of a hold and haul winery process wastewater system;
- Improvement of the existing driveway from Hardman Avenue to the winery structure to comply with Napa County Road and Street Standards **with consideration for the existing conditions so as to: 1) have the least amount of effect on existing improvements; 2) conserve costs to the permittee; and, 3) preserve existing landscape design aesthetics.**

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code. It is the responsibility of the applicant to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or changes in use shall be in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.

## **EXHIBIT B**

### **PROPOSED CONDITIONS OF APPROVAL**

**Kitchak Winery Use Permit  
#P09-00148-UP & #P09-00149-VAR  
1094 Hardman Avenue, Napa  
Assessor's Parcel #'s: 039-190-038-000**

**2. \*MARKETING:** Marketing events shall be limited as follows:

- a. Frequency: 6 times per month (and shall not be held on the same day as any other marketing event or any tours and tasting appointment.)  
Number of persons: 20 maximum  
Time of Day: 11:00 AM to 10:00 PM  
Days per Week: Seven  
Meals shall be catered with food prepared at an off-site, County approved location.
- b. Frequency: 4 times per year (and shall not be held on the same day as any other marketing event or any tours and tasting appointment.)  
Number of persons: 30 maximum  
Time of Day: 11:00 AM to 10:00 PM  
Days per Week: Seven
- c. No Temporary Events shall be allowed.

**\*\*"Marketing of wine"** means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis.

Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development. (Ord. 1104 § 11, 1996: Ord. 947 § 9 (part), 1990: prior code § 12071). All activity, including cleanup, shall cease by 10:00 PM. Start and finish time of all activities shall be scheduled to minimize all vehicles arriving or leaving between 4:00 PM and 6:00 PM.

**3. \*TOURS AND TASTING:**

Tours and tastings shall be limited to a maximum of 12 visitors per day (84 maximum visitors per week;

**\*\*"Tours and tastings"** means tours of the winery and/or tastings of wine, where such tours and tastings are limited to members of the wine trade, persons invited by a winery who have pre-established business or personal relationships with the winery or its owners, and

## **EXHIBIT B**

### **PROPOSED CONDITIONS OF APPROVAL**

**Kitchak Winery Use Permit  
#P09-00148-UP & #P09-00149-VAR  
1094 Hardman Avenue, Napa  
Assessor's Parcel #'s: 039-190-038-000**

persons who have made unsolicited prior appointments for tours or tastings. (Ord. 947 § 9 (part), 1990: prior code § 12070).

Start and finish time of tours and tastings shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM, and shall be limited to those wines set forth in Napa County Code Sec. 18.16.030(G)(5)(c). A log book (or similar record) shall be maintained which documents the number of visitors to the winery, and the dates of their visit. This record of visitors shall be made available to the Department upon request.

#### **4. GRAPE SOURCE:**

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

#### **5. SIGNS:**

Prior to installation of any winery identification or directional signs, detailed site plans and sign design plans, including locations, elevations, materials, color, and lighting, shall be submitted to the Planning Department for administrative review and approval. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this use permit approval. All signs shall meet the design standards as set forth in Chapter 18.116 of the County Code. At least one sign placed and sized in a manner to inform the public must legibly and visibly include wording stating "Tours and Tasting by Prior Appointment Only".

#### **6. GATES/ENTRY STRUCTURES:**

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

## EXHIBIT B

### PROPOSED CONDITIONS OF APPROVAL

Kitchak Winery Use Permit  
#P09-00148-UP & #P09-00149-VAR  
1094 Hardman Avenue, Napa  
Assessor's Parcel #'s: 039-190-038-000

#### 7. LIGHTING:

All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, and shall be the minimum necessary for security, safety, or operations and shall incorporate the use of motion detection sensors to the greatest extent practical. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Prior to issuance of any building permit for construction of the winery, two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Department review and approval. All lighting shall comply with Uniform Building Code (UBC).

#### 8. LANDSCAPING/PARKING:

Two (2) copies of a detailed landscaping plan, including parking details, shall be submitted for review and approval prior to issuance of building permits. The plan shall indicate the names and locations of all plant materials to be used along with the method of maintenance. **Plant materials shall be purchased locally when practical. The Agricultural Commissioner's office (707-253-4357) shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.** The location of employee and visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any). Landscaping and parking shall be completed prior to occupancy, and shall be permanently maintained in accordance with the landscaping plan.

All existing trees within the area planned for development shall be indicated on the landscaping plan according to species and size. Trees planned for removal shall be indicated on the detailed landscaping plan. **No trees greater than 6" DBH shall be removed, except for those identified on the submitted site plan.** Any trees that are removed shall be replaced elsewhere on the property on a 2 for 1 basis of equivalent caliper. Replaced trees shall be identified on the landscaping plan. Trees to be retained shall be protected during construction.

Evergreen screening shall be permanently installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and off-site residences that can view these areas. This permanent screening requirement shall also include any cave portal, cave portal retaining wall and entrance pad that are visible from a public or private road.

Parking shall be limited to approved parking spaces only and shall not occur along access roads or in other locations except during harvest or approved marketing events. In no case shall parking impede emergency vehicle access or public roads. If any event is held which will exceed the available on-site parking, the applicant shall arrange for off-site parking and shuttle service to the winery.

Project: M-101  
Kitchak Cellars



EXHIBIT C  
LEGAL EASEMENT AND MAINTENANCE AGREEMENT

2006-0011396

**RECORDING REQUESTED BY:**

Fidelity National Title Company  
Escrow No.: 06-280200119-DC  
Locate No.: CAFNT0928-0928-0002-0280200119  
Title No.: 06-280200119-CM

Recorded | REC FEE | 13.00  
Official Records |  
County of |  
Napa |  
JOHN TUTEUR |  
Assessor Clerk Record |  
VB  
012:18PM 03-Apr-2006 | Page 1 of 3

**When Recorded Mail Document  
and Tax Statement To:**  
Mr. and Mrs. Peter R. Kitchak  
1922 IDS Center, 80 S. Eighth Street  
Minneapolis, MN 55402

APN: 039-190-038

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED  
(COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP)**

THE UNDERSIGNED GRANTOR(s) DECLARE(s):  
DOCUMENTARY TRANSFER TAX is -----  
DOCUMENTARY TAX DECLARATION FILED

- [ X ] computed on full value of property conveyed, or  
[ ] computed on full value less value of liens or encumbrances remaining at time of sale or transfer,  
[ ] Unincorporated Area: [ ] City of and  
[ ] Check when grantees are expressly declaring that the transfer of the property is to be community property  
with right of survivorship.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
**Robert Williamson, Jr. and Joni Lynn Williamson, husband and wife**

hereby GRANT(s) to **Peter R. Kitchak and Patricia D. Kitchak, husband and wife as community property with  
rights of survivorship**

the following described real property in the County of **Napa**, State of **California**:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Grantor:  
✓ Robert Williamson  
Robert Williamson, Jr.  
✓ Joni Lynn Williamson  
Joni Lynn Williamson

Date: 3/27/06  
Date: 3/27/06

"GRANTEES HEREBY EXPRESSLY DECLARE AND ACCEPT THE TRANSFER OF THE HEREIN DESCRIBED PROPERTY AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP."

Grantee:

✓ Peter R. Kitchak  
Peter R. Kitchak

Date: 3-24-06

✓ Patricia D. Kitchak  
Patricia D. Kitchak

Date: 3-24-06

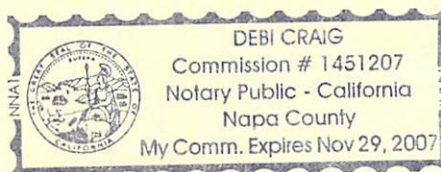
STATE OF CALIFORNIA )  
COUNTY OF Napa )

ON March 27, 2006 before me,  
Debi Craig, Notary Public (here insert name and title of the officer), personally appeared  
Robert Williamson, Jr., Joni Lynn Williamson

personally known to me (or 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.

Witness my hand and official seal.

Signature Debi Craig



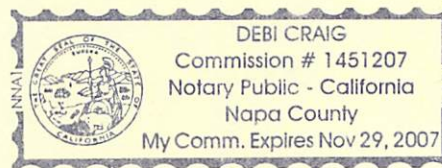
STATE OF CALIFORNIA )  
COUNTY OF Napa )

ON March 24, 2006 before me,  
Debi Craig, Notary Public (here insert name and title of the officer), personally appeared  
Peter R. Kitchak, Patricia D. Kitchak

personally known to me (or 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.

Witness my hand and official seal.

Signature Debi Craig



END OF DOCUMENT

Escrow No.: 06-280200119-DC  
Locate No.: CAFNT0928-0928-0002-0280200119  
Title No.: 06-280200119-CM

## EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN AN UNINCORPORATED AREA, COUNTY OF NAPA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Parcel A and X as shown on the map entitled, "Parcel Map of the Lands of Ernest Eun-Ho Shin, et ux", filed August 30, 1977 in Book 9 of Parcel Maps at page 11 in the office of the County Recorder of said Napa County.

Parcel Two:

That portion of Parcel B according to the Parcel Map of the Lands of Ernest Eun-Ho Shin, et ux, recorded August 30, 1977 in Book 9 of Maps at Page 11, in the Office of the County Recorder lying within the lines of Parcel X as shown on said Parcel Map. "Parcel X (60' Wide)", all as shown on said Map.

Reserving from the above referenced Parcels:

A non-exclusive easement in favor of the Grantors for ingress and egress, and the installation, use and maintenance of utilities, over, under, and across said Parcel X, and that portion of Parcel B lying with the lines of said Parcel X as shown on said Map.

✓ PRW  
✓ JW

✓ PRK  
✓ pdk

Initials: \_\_\_\_\_

01/26/2006 12:15 7079630300

PAGE 02/03

10/01/2004 11:27 7079633594

+028022798

T-512 P.002/003 F-310

OCT-01-04 12:17PM FROM-INTERO REAL ESTATE

## PRIVATE ROADWAY MAINTENANCE AGREEMENT

This agreement is made this 1<sup>st</sup> day of October 2004, between Anthony & Ione Cataldo and Robert & Joni Williamson herein referred to as the owners of 1100 and 1094 Hardman Ave, Napa Ca 94558.

### Article I - Easements

- 1.1 Easements Established: The portions of said parcels that lie within the private road on exhibit "A" are subject to an easement of ingress and egress and roadway purposes for the benefit of 1100 and 1094 Hardman avenue, Napa Ca.

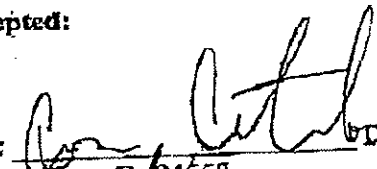
### Article II - Maintenance

- 2.1 Roadway: It shall be the responsibility of the owners of 1100 and 1094 Hardman to maintain, repair and reconstruct as necessary.

- 2.2 Maintenance: The owners of 1100 and 1094 Hardman shall be responsible for the maintenance of said roadway and utility facilities, including patching and sealing and shall be responsible for maintaining the surface in substantially the same condition of repair as public streets in the area.

- 2.3 Cost Allocation: The cost and expense of maintenance and repair including reconstruction as needed, shall be split on a 50/50 basis between the owners of 1100 and 1094 Hardman.

Agreed and Accepted:

Anthony Cataldo:   
1100 Hardman Ave, Napa Ca 94558

Date: 10-1-04

Ione Cataldo: 

Date: 10-1-04



2004-0044021

**RECORDING REQUESTED BY:**

Fidelity National Title Company

**WHEN RECORDED MAIL TO, AND  
MAIL TAX STATEMENTS TO:**Robert and Joni Williamson  
PO Box 1004  
Half Moon Bay, CA 94019Recorded  
Official Records  
County Of  
NAPA  
JOHN TUTEUR  
Recorder

REC FEE 37.00

01:03PM 21-Oct-2004

EU  
Page 1 of 11

810217FB

039-190-038

**ROADWAY MAINTENANCE AGREEMENT**

THIS ROADWAY MAINTENANCE AGREEMENT ("Agreement") is entered into as of this 14 day of October 2004, by and between ANTHONY J. CATALDO and IONE A. CATALDO, husband and wife (collectively, the "Cataldos") and ROBERT WILLIAMSON JR. and JONI LYNN WILLIAMSON, husband and wife as Joint Tenants (collectively, the "Williamsons").

1. **Recitals.** This Agreement is entered into with respect to the following facts and objectives:

1.1 The Cataldos are the owners of that certain real property described in Exhibit A (the "Cataldo Parcel").

1.2 By grant deed of even date herewith (the "Grant Deed"), the Williamsons have acquired from the Cataldos, and are now the owners of, that certain real property described in Exhibit B (the "Williamson Parcel"). The Williamson Parcel and the Cataldo Parcel are from time to time referred to herein as the "Parcels."

1.3 The Cataldos and Williamsons gain access to their respective Parcels over an access road (the "Roadway") on the portion of the Williamson Parcel described in Exhibit C (the "Roadway Strip"), which Roadway runs from the Cataldo Parcel to Hardman Avenue. The approximate boundaries of the Parcels and the Roadway Strip are shown on Exhibit D. The Cataldos reserved an easement over the Roadway Strip for ingress, egress and utility purposes in the Grant Deed, for the benefit of the Cataldo Parcel.

1.4 The Cataldos and Williamsons desire to enter into this Agreement regarding the maintenance of the Roadway.

2. **Road Maintenance.**

2.1 **Roadway.** The owners and occupants of the Williamson Parcel and Cataldo Parcel shall be jointly and severally responsible for the repair and maintenance of the Roadway. The Roadway shall be maintained in good, clean condition, free of potholes and other

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hazards or other obstructions and in a condition that ensures the safe and efficient ingress and egress of pedestrians and motor vehicles. The costs for repairs and maintenance of the Roadway shall be allocated between the Williamson Parcel and Cataldo Parcel on an equal basis. The foregoing provisions of this Section 2.1 to the contrary notwithstanding, to the extent that any repair or maintenance work to the Roadway is necessitated due to the negligence or disproportionate heavy use by the owners or occupants of the Williamson Parcel or Cataldo Parcel, such responsible party shall fully bear the costs of such repair or maintenance work without the right of contribution from the other party.

**2.2 Initiating Work.** In the event that the owner of the Williamson Parcel or the owner of the Cataldo Parcel desire to have repair or maintenance work performed upon the Roadway, such party (the "Initiating Party") shall give written notice upon the other party (the "Other Party"). This repair/maintenance notice shall contain a description of the proposed work and an estimate of the costs of the proposed maintenance or repair. Such notice shall be given at least ten (10) days prior to the commencement of such maintenance or repair. Within such ten (10) day period, the Initiating Party must secure the written consent of the Other Party. Upon obtaining such approval, the costs of such maintenance or repair work shall be allocated between the Williamson Parcel and Cataldo Parcel as provided above in Section 2.1, and all the parties shall be unconditionally obligated to pay their allocated share of such costs in the proportions set forth in Section 2.1.

**2.3 Default.** Upon the failure of a responsible party to promptly pay its designated share of the maintenance and repair costs pursuant to this Section 2, such party shall be in default of this Agreement.

**3. Gates.** No gates shall be erected on the Roadway in a manner or location which creates an unsafe condition for pedestrians or vehicles, or in any case without the approval of the owners of both Parcels.

**4. Indemnity.** The owners and occupants of the Williamson Parcel and Cataldo Parcel shall each indemnify, protect, defend and hold the occupants and owners of the other parcel harmless from all damages, actions, judgments, costs, claims, demands, liabilities and expenses (including reasonable attorneys' fees and defense costs) to the extent arising out of the negligence by the indemnitor related to the use or maintenance of the Roadway or Roadway Strip.

**5. Successors.** All deeds and other instruments by which any portion of either Parcel may be conveyed after the recording of this Agreement shall be subject and subordinate to the terms and provisions of this Agreement whether or not such deed or other instrument makes reference to this Agreement. It is the express intent of the parties to this Agreement that the covenants and obligations pursuant to this Agreement are intended to run with the land and be for the benefit of, or burden, the respective Parcels.

**6. Miscellaneous.**

**6.1 Attorneys' Fees.** If any action is commenced against a party to this Agreement or any successor owner or occupant of either of the Parcels to enforce any of the

provisions of this Agreement or because of the breach or threatened breach of any provision of this Agreement (after notice to the other party and reasonable opportunity for such party to cure such breach or threatened breach), the prevailing party in such action shall be entitled to collect from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

**6.2 Severability.** If any provision or a portion of any provision of this Agreement is or shall become illegal or void for any reason, or be so held by any court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

**6.3 Amendments.** This Agreement may only be amended or modified by a written agreement signed by the then-owners of the Parcels, which agreement shall take effect upon the recordation thereof in the Official Records of Napa County.

**6.4 Remedies for Breach.** In the event of any violation or threatened violation of any provision contained in this Agreement, in addition to any other remedies provided in this Agreement or available at law or in equity, any party shall have the right to enjoin such violation or threatened violation in any court of competent jurisdiction.

**6.5 Breach Shall Not Terminate.** No breach of this Agreement by any party hereto shall entitle any other party to cancel, rescind, or otherwise terminate this Agreement.

**6.6 No Waiver.** The failure by a party to enforce any provision of this Agreement by any party to this Agreement shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision of this Agreement.

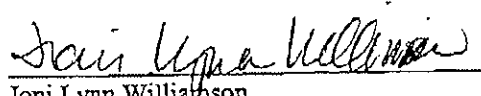
**6.7 No Third Party Beneficiaries.** This Agreement is made for the sole benefit and protection and benefit of those persons (including their successors) and those parcels referred to in this Agreement, and no other person, entity shall have any right of action based upon this Agreement.


**6.8 No Merger.** There shall be no merger of any easement rights, interests or obligations created by or referred to in this Agreement by reason of the fact that the parcels or any portion thereof may be owned or held, directly or indirectly, by or for the account of the same person, unless and until all persons at the time having an interest in the Parcels (including, but not limited to, the holders of any bona fide deed of trust or mortgage) shall join in and properly record a written agreement effecting such merger.

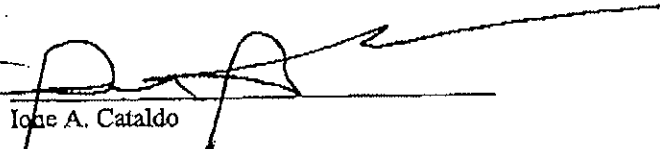
**6.9 Recitals/Exhibits.** The recitals contained in Section 1 and the Exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

IN WITNESS WHEREOF, the Agreement is effective as of the date first written above.

  
Robert Williamson Jr.

  
Joni Lynn Williamson

  
Anthony J. Cataldo

  
Ione A. Cataldo

STATE OF California

COUNTY OF Napa

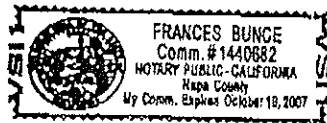
On October 18, 2004 before me, the undersigned  
(Name of Notary Public)

personally appeared Anthony J. Cataldo and Ione A. Cataldo and Robert Williamson, Jr. and Joni Lynn Williamson

personally known to me (or 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.

WITNESS my hand and official seal.

Frances Bunge  
(Signature of Notary Public)

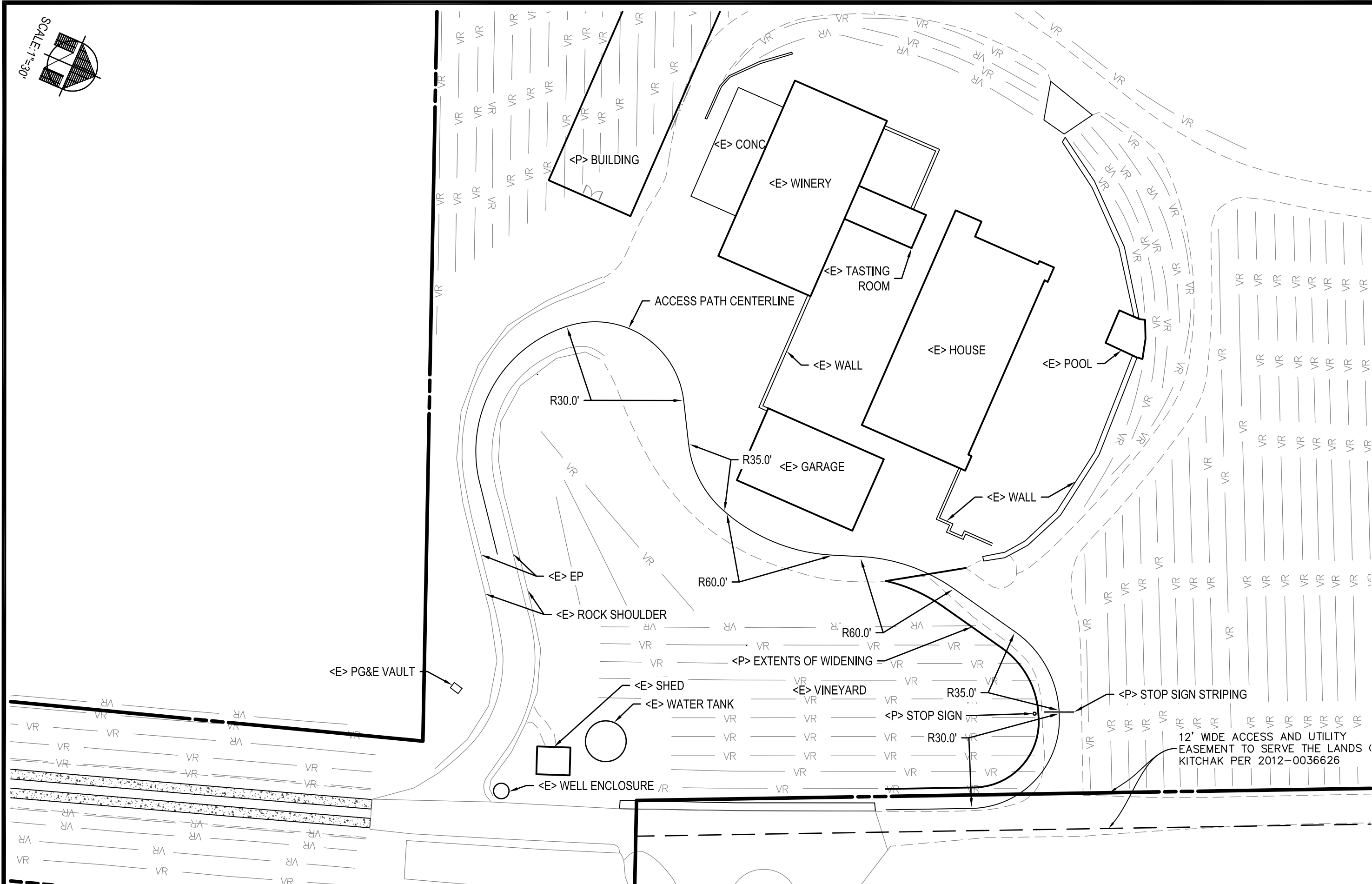


(This area for notarial seal)

(notary)(07-02)

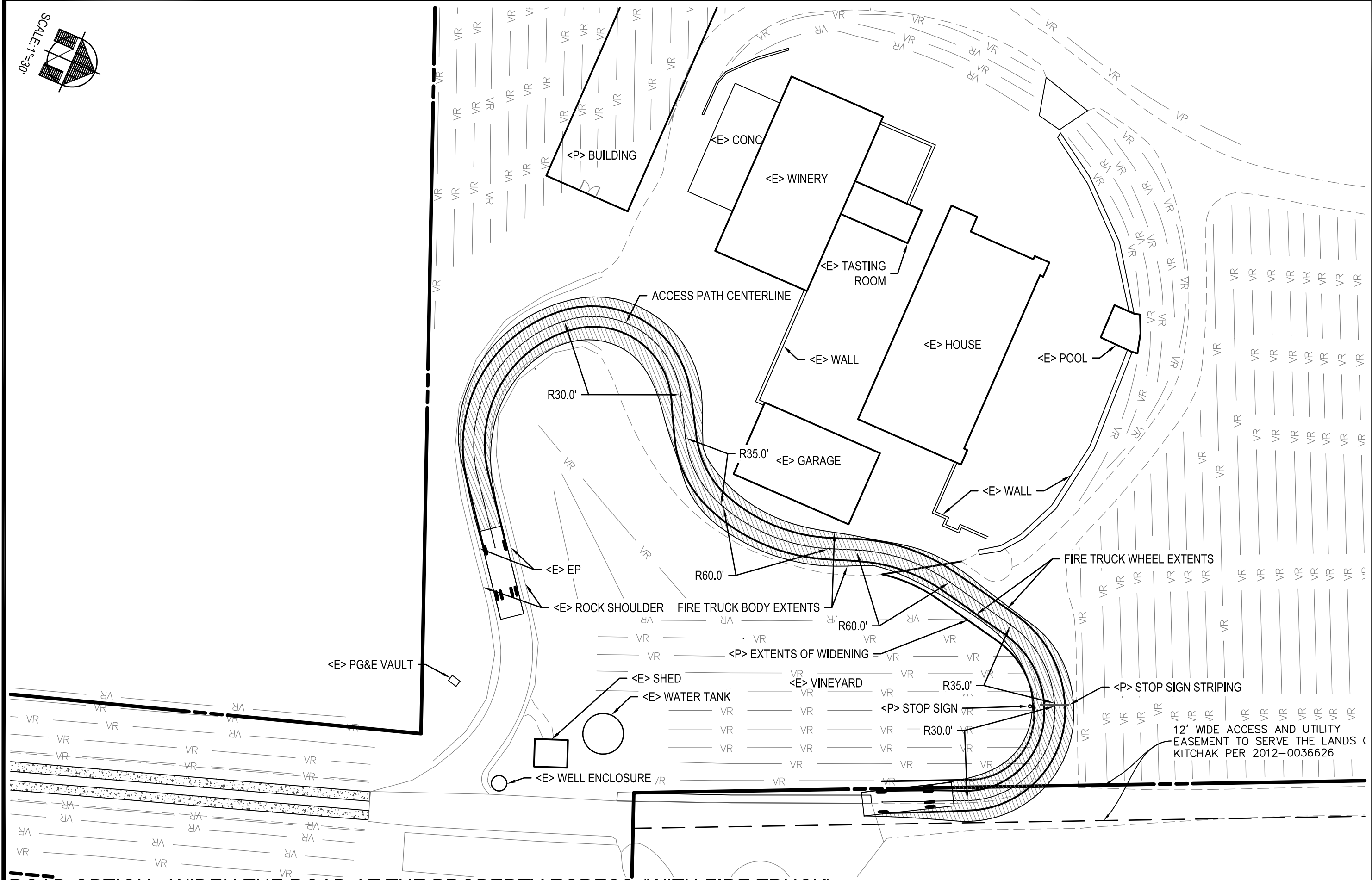


**EXHIBIT D**  
**PROPOSED ACCESS IMPROVEMENTS AND FIRE INGRESS / EGRESS ANALYSIS**



ROAD OPTION - WIDEN THE ROAD AT THE PROPERTY EGRESS

<b>KITCHACK CELLARS</b>			
<b>INGRESS/EGRESS STUDY</b>			
NAPA, CALIFORNIA			
<b>DELTA CONSULTING &amp; ENGINEERING</b> OF ST. HELENA			
1104 ADAMS STREET, SUITE 203 - ST. HELENA, CALIFORNIA 94574			
707-963-8456 + 707-963-8528 FAX			
DATE: 06/26/13	SCALE: 1"=30'	JOB #: M-101	APN: 039-190-038
1 OF 2			



KITCHACK CELLARS  
INGRESS/EGRESS STUDY

NAPA CALIFORNIA

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DATE: 06/26/13

SCALE: 1"=30'

JOB #: M-101

APN: 039-190-038



## EXHIBIT E

### PROPOSED FINDINGS FOR THE NAPA COUNTY PLANNING COMMISSION

1. The Kitchak Cellars driveway has been in place for approximately 20 years, first as a common drive serving two separate parcels, and most recently as a driveway serving two residential properties and the Kitchak Winery, and no problems with the operation of the driveway have been observed or reported during that time period.
2. During said period at least five building permits (two to the 1100 parcel and three to the 1094-96 parcel) have been issued in which the existing driveway has been reviewed and approved.
3. The original Kitchak Winery Permit required: "Improvement of the existing driveway from Hardman Avenue to the winery structure to comply with Napa County Road and Street Standards with consideration of the existing conditions so as to: 1) have the least amount of effect on existing landscaping improvements; 2) conserve costs to the permittee; and, 3) preserve the existing landscape design aesthetics."
4. The permittee is not proposing any changes to the previously approved driveway.
5. The original winery permit included a condition that no trees greater than 6" DBH shall be removed unless they were identified on the plans submitted at that time. None were identified on such plans. As a result, the permittee is prevented from removing the Cypress trees along the drive in order to comply with the original permit. Such restriction is found to be a legal constraint within the meaning of the Road and Street Standards.
6. The existing driveway with its three turnouts and one way loop road (with the changes that the Permittee has proposed to it) does not compromise the health, welfare or safety of the residences served by the driveway or employees or guests of the winery.
7. The addition of the Kitchak Winery Barrel Hall and the slight increase in people permitted for tasting will not materially adversely affect the existing driveway or the health, welfare or safety of the occupants of the two residences or the employees or guests of the winery.
8. Any requirement to widen the main driveway would include a substantial hardship to the permittee, would result in the destruction of a minimum of 25 mature Italian Cypress Trees and more than 100 mature cabernet sauvignon vines, all of which combine to be a "desirable aesthetic feature" of the property.
9. The entire driveway experience, with its 55 Italian Cypress Trees and roughly 800 Cabernet Sauvignon Vines, taken as a whole, is unique in the Napa Valley, are of significant importance, and constitutes a Unique Feature of the Natural Environment.
10. There are existing legal constraints to changing the configuration of the existing driveway which include a requirement that a neighbor must approve any changes to the driveway and a condition of the existing use permit which precludes the removal of any trees over 6" dbh.
11. The grant of an exception for this driveway from the Road and Street Standards is consistent with a stated goal of the Road and Street Standards to "Strive to preserve the natural landscape and desirable aesthetic features."
12. The grant of an Exception for this driveway provides the same overall practical effect as the Standards towards providing defensible space and consideration towards life, safety and public welfare.
13. Given the very unique nature of this driveway, the granting of this exception should not be considered a precedent for the review and consideration of any other requests for exceptions to the Napa County Road and Street Standards.