

**PLANNING COMMISSION HEARING – DECEMBER 4, 2013
EXHIBIT B – CONDITIONS OF APPROVAL**

**THEOREM WINERY
USE PERMIT #P13-00019-MOD
255 PETRIFIED FOREST RD, CALISTOGA, CALIFORNIA
APN 020-430-007-000**

1. SCOPE

The permit shall be limited to:

- A. construct new winery structures to include: a 7,249 square foot fermentation and barrel storage building, a 713 square foot covered crush pad, a 2,670 square foot tasting room, and a 1,438 square foot storage and administrative building for an increase from the approved 11,855 square feet to a total of 23,925 square feet;
- B. rehabilitate the historic poultry barn for winery use and stabilize the existing historic barn, both in accordance with the Secretary of the Interior's (SOI) Standards for historic structures;
- C. convert approved tasting room from winery use and utilize it as a residential home study;
- D. increase hours of operation from 10:00am-4:00pm to 7:00am-7:00pm seven days per week and hours of visitation from 10:00am-4:00pm to 10:00am-6:00pm seven days per week; and,
- E. allow on-site consumption consistent with AB2004.

No changes to the production (20,000 gallons per year), visitation (a maximum of 15 visitors per day), the marketing plan (three events per year for a maximum of 40 guests at each event and one event per year for a maximum of 100 guests), employees numbers (4 full time and 2 part time), or parking (15 spaces with 2 ADA accessible) have been proposed.

The changes 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 approved in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.

2. PROJECT SPECIFIC CONDITIONS

Should any of the Project Specific Conditions below conflict with any of the other, standard conditions included in this document, the Project Specific Conditions shall supersede and control.

- A. Evans Consumption - Consistent with Assembly Bill 2004 (Evans) and the Planning, Building, and Environmental Services Director's July 17, 2008 memo, "Assembly Bill 2004 (Evans) & the Sale of Wine for Consumption On-Premises," on-premise consumption may occur solely in Hospitality Building (tasting room), and outdoor winery garden areas. Any and all visitation associated with on-premise consumption shall be subject to the 15 person maximum daily tours &

tastings visitation limit and/or applicable limitations on permittee's marketing plan (see item 1F above).

- B.** The permittee shall comply during all construction activities with the Bay Area Air Quality Management District Basic Construction Mitigation Measures as provided in Table 8-1, May 2011 Updated CEQA Guidelines.
- All exposed surfaces (e.g. parking areas, staging areas, soil piles, grading areas, and unpaved access (road) shall be watered two times per day.
 - All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - All visible mud or dirt tracked out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- C.** The permittee shall comply with all standards set by the Secretary of the Interior's Standards for Rehabilitation as set forth in Title 36 Code of Federal Regulations (CFR) Part 67, and Napa County Ordinance No. 1367 (Landmark Preservation) when restoring and rehabilitating the historic structures onsite to include the large barn, poultry barn, and original residence.
- D.** Proposed single family residence and office is classified for residential purposes only and cannot be used in conjunction with the operation and/or visitation/marketing program for the winery. If rented, the residence shall only be rented out for periods of 30 days or more, pursuant to Napa County Code Section 18.104.410, Transient Commercial Occupancies of Dwelling Units Prohibited.
- E.** Mitigation Measures:

The permittee shall comply with all mitigation measures identified in the adopted Initial Study /Subsequent Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project, inclusive of the following:

1. Prior to commencement of earthmoving activities, a qualified biologist shall conduct a survey to determine the presence or absence of any raptor (including spotted owl) or special-status bird nests prior to any permits or tree removal on the site. If present, adequate setbacks shall be per the Department of Fish and Wildlife, until the nestlings have fledged as determined by a qualified biologist, per study methods established by Fish and Wildlife. This survey shall study an exclusionary area with biological monitoring. If any raptor nests or foraging habitat are found, then a buffer zone based on the species and the behavior shall be established. A qualified biologist shall monitor the activities of the nesting birds. If the birds show signs of distress or change in behavior, then work would cease. The buffer/exclusionary areas may be increased after a period of inactivity to allow the birds to resume normal behavior. If the birds show no change in behavior, the work may continue.

Method of Monitoring: This Mitigation Measure requires submission of a pre-construction raptor/owl survey prior to commencing construction. **RESPONSIBLE AGENCY(IES)** – Planning, Building, and Environmental Services Department.

3. **COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES**

Project conditions of approval include all of the following County, Divisions, Departments and Agency(ies) requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies at the time of submittal and may be subject to change. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- A. Engineering Services Division as stated in their Memorandum dated, October 23, 2013.
- B. Fire Department as stated in their Inter-Office Memo dated February 5, 2013.
- C. Environmental Health Division as stated in their Memorandum dated May 13, 2013.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the approved use permit.

4. **RENTAL/LEASING**

No winery facilities, or portions thereof, including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons producing and/or storing wine at the on-site winery, such as alternating

proprietors and custom producers, except as may be specifically authorized in this use permit or pursuant to the Temporary Events Ordinance (Napa County Code Chapter 5.36).

5. **SIGNS**

Prior to installation of any winery identification or directional signs, detailed plans, including elevations, materials, color, and lighting, shall be submitted to the Planning, Building, and Environmental Services 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 Napa County Code.

6. **LIGHTING**

All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, 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. Lighting utilized during harvest activities is not subject to this requirement.

Prior to issuance of any building permit pursuant to this approval, two 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 Planning Division review and approval. All lighting shall comply with the California Building Code.

7. **LANDSCAPING**

Two (2) copies of a detailed final landscaping plan shall be submitted with the Building Permit application package for the Planning Division's review and approval prior to the issuance of any building permit associated with this approval.

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.

Landscaping shall be completed prior to final occupancy, and shall be permanently maintained in accordance with the landscaping plan.

8. **OUTDOOR STORAGE/SCREENING/UTILITIES**

All outdoor storage of winery equipment shall be screened from the view of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No item in storage is to exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.

New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and Chapter 18.106 of the Napa County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

9. **COLORS**

The colors used for the exterior walls and built landscaping features shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation and the applicant shall obtain the written approval of the Planning, Building & Environmental Services Department prior to painting the building. Highly reflective surfaces are prohibited.

10. **SITE IMPROVEMENTS AND ENGINEERING SERVICES-SPECIFIC CONDITIONS**

Please contact (707) 253-4417 with any questions regarding the following.

A. **GRADING AND SPOILS**

All grading and spoils generated by construction of the project facilities shall be managed per Engineering Services direction. All spoils piles shall be removed prior to final occupancy.

B. **TRAFFIC**

Reoccurring and scheduled vehicle trips to and from the site for employees, deliveries, and visitors shall not occur during peak (4-6 PM) travel times to the maximum extent possible. All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

C. **DUST CONTROL**

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur during windy periods.

D. **STORM WATER CONTROL**

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the California Regional Water Quality Control Board (SRWQCB).

E. **PARKING**

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).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and 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 permittee shall prepare an event-specific parking plan which may include but, shall not necessarily be limited to, valet service or off-site parking and shuttle service to the winery.

F. **GATES/ENTRY STRUCTURES**

Any gate installed at the winery entrance shall be reviewed by the Planning, Building & Environmental Services 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 Napa County Code and in accordance with the Napa County Roads and Street Standards. 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.

11. **ENVIRONMENTAL HEALTH-SPECIFIC CONDITIONS**

Please contact (707) 253-4471 with any questions regarding the following.

A. **WELLS**

The permittee may be required (at the permittee's expense) to provide well monitoring data if the Director of Planning, Building and Environmental Services determines that water usage at the winery is affecting, or would potentially affect, groundwater supplies or nearby wells. Data requested could include, but would not necessarily be limited to, water extraction volumes and static well levels. If the applicant is unable to secure monitoring access to neighboring wells, onsite monitoring wells may need to be established to gauge potential impacts on the groundwater resource utilized for the project proposed. Water usage shall be minimized by use of best available control technology and best water management conservation practices.

In the event that changed circumstances or significant new information provide substantial evidence that the groundwater system referenced in the use permit would significantly affect the groundwater basin, the Director of Planning, Building and Environmental Services shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety, and welfare. That recommendation shall not become final unless and until the Director has provided notice and the opportunity for hearing in compliance with the Napa County Code §13.15.070 (G-K).

B. **NOISE**

Construction noise shall be minimized to the greatest extent practical and allowable under State and local safety laws. Construction equipment muffling and hours of operation shall be in compliance with Napa County Code Chapter 8.16. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur between the hours of 8 AM to 5 PM. Exterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the Napa County Code. There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

12. **ARCHEOLOGICAL FINDING**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The

permittee shall contact the Planning, Building and Environmental Services Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during the development, all work in the vicinity must be, by law, halted, and the Napa County Coroner informed, so that he can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the nearest tribal relatives as determined by the State Native American Heritage Commission would be contacted to obtain recommendations for treating or removal of such remains, including grave goods, with appropriate dignity, as required under Public Resources Code Section 5097.98.

13. **ADDRESSING**

All project site addresses shall be determined by the Planning, Building and Environmental Services Director, and be reviewed and approved by the United States Post Office, prior to issuance of any building permit. The Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

14. **INDEMNIFICATION**

If an indemnification agreement has not already been signed and submitted, one shall be signed and returned to the County within twenty (20) days of the granting of this approval using the Planning, Building and Environmental Services Department's standard form.

15. **AFFORDABLE HOUSING MITIGATION**

Prior to County issuance of a building permit, the applicant shall pay the Napa County Affordable Housing Mitigation Fee in accordance with the requirements of Napa County Code Chapter 18.107 or as may be amended by the Board of Supervisors.

16. **PREVIOUS CONDITIONS**

As applicable, the permittee shall comply with any previous conditions of approval for the winery use except as they may be explicitly modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control.

17. **MONITORING COSTS**

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until grant of final occupancy. Violations of conditions of approval or

mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Commission at some time in the future, the Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation hearings in accordance with §18.124.120 of the Napa County Code.

18. **TEMPORARY AND FINAL OCCUPANCY**

All project improvements, including compliance with applicable codes, conditions, and requirements of all departments and agencies with jurisdiction over the project, shall be completed prior to granting of a Certificate of Final Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence. The County Building Official is authorized to grant a Temporary Certificate of Occupancy to allow specified limited use of the project, such as commencement of production activities, prior to completion of all project improvements. Marketing and/or Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions where extenuating circumstances exists and are subject to review and approval by the County Building Official, County Fire Marshal, and the Director of Planning, Building and Environmental Services. In special circumstances, departments and/or agencies with jurisdiction over the project are authorized as part of the Temporary Certificate of Occupancy process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements. Consistent with Board of Supervisors Resolution № 2010-48, "Temporary Certificates of Occupancy are generally not to be used to allow production of wine for more than one year."