

CONSERVATION, DEVELOPMENT & PLANNING COMMISSION
1195 Third Street, Suite 210, Napa, California, 94559 • (707) 253-4417

APPLICATION FOR USE PERMIT
EXCEPTION TO CONSERVATION REGULATIONS

FOR OFFICE USE ONLY

ZONING DISTRICT: AW Date Submitted: 6/10/09
TYPE OF APPLICATION: Use Permit Stream Exception Date Published: _____
REQUEST: _____ Date Complete: _____

TO BE COMPLETED BY APPLICANT
(Please type or print legibly)

PROJECT NAME: Black Forest Vineyards
Assessor's Parcel #: 018-060-068 Existing Parcel Size: 87.69 +/- ac.
Site Address/Location: Dutch Henry Road, Calistoga
No. Street City State Zip
Property Owner's Name: Peju Provence Corporation
Mailing Address: P.O. Box 478 Rutherford, California 94573
No. Street City State Zip
Telephone #: (707) 963 - 3600 Fax #: (707) 963 - 3648 E-Mail: _____
Applicant's Name: Same as above
Mailing Address: Same as above
No. Street City State Zip
Telephone #: () - - Fax #: () - - E-Mail: _____
Status of Applicant's Interest in Property: Owner
Representative Name: Royce W. Cunningham
Mailing Address: 825 Corte Malaga Vacaville, California 95688
No. Street City State Zip
Telephone # (707) 448-2066 Fax #: (707) 448-4462 E-Mail: _____

I certify that all the information contained in this application, including but not limited to the information sheet, water supply/waste disposal information sheet, site plan, plot plan, floor plan, building elevations, water supply/waste disposal system plot plan and toxic materials list, is complete and accurate to the best of my knowledge. I hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for preparation of reports related to this application, including the right of access to the property involved.

X Anthony R. Peju Signature of Applicant Date _____
X Anthony R. Peju Print Name

X Anthony R. Peju Signature of Property Owner Date 6/27/09
X Anthony R. Peju Print Name

TO BE COMPLETED BY CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT

* Application Fee Deposit: \$ 8,264.00 Receipt No.: 74723 Received by: JA Date: 6/10/09

*Total fees to be based on time and material

RECEIVED

JUN 10 2009

NAPA CO. CONSERVATION
DEVELOPMENT & PLANNING DEPT.

SUPPLEMENTAL APPLICATION FORM
USE PERMIT EXCEPTION TO CONSERVATION REGULATION

1. Please explain the reason for the exception request.

The subject parcel contains two existing vineyard blocks (#'s 1 & 2) totaling 6.9 acres. Approximately 1/3 of an acre of vineyard block #2 was planted 10-30 feet within the 65-foot setback from Dutch Henry Creek without first obtaining an exception to County setbacks. The 1/3 acres is still setback 35 feet (minimum) from Dutch Henry Creek. The remainder of the 6.9 acres of vineyards was planted in conformance with county stream setbacks. In addition to this vineyard encroachment, unauthorized grading of portions of the site occurred without appropriate permits. A settlement was reached with Napa County by which the applicant would undertake a comprehensive remediation of portions of the site where these grading activities occurred. These remedial measures are identified in more detail in the settlement agreement dated April 10, 2009. The same settlement agreement also allows the two existing vineyard blocks to remain if a use permit exception is granted for the approximate 1/3-acre portion of the vineyard that encroaches into the required stream setback.

The applicant is proposing to increase the required setback on a portion of proposed vineyard block #4 by 35 feet beyond what the conservation regulations would otherwise require. This increased setback will create an area of compensation, equal to the acreage of encroachment to 'compensate' for the 1/3-acre encroachment. The proposed enhanced setback in vineyard block #4 would result in a net setback increase. The total area of current vineyard encroachment measures 16,560 s.f. The enhanced setback area measures 17,580 s.f. an increase of 1000 s.f.

2. Are there any alternatives to the project which would not require an exception? Please explain.

Removal of portions of the existing vineyard that was planted within the required setback from Dutch Henry Creek is the alternative to the granting of the requested exception for the 1/3-acre encroachment. To remove this vineyard would require alteration to the remaining existing vineyard rows, including the removal of end posts, modification of existing irrigation and permanent loss of revenue without increasing the environmental values of the site. The areas where encroachments occurred was void of significant vegetation, is set back 35-feet from Dutch Henry Creek and outside of the riparian area. As the accompanying erosion control plan indicates that the encroachment that poses no significant unmitigatable erosion potential. Analyses included with the erosion control plan documents that the existing setback together with the proposed erosion control measures provide sufficient protection for the water quality of Dutch Henry Creek.

3. Describe how the project can meet the findings described in Section 18.104.040 A (structural or road project), or Section 18.108.040B (agricultural project).

Section 18.108.040.A. Structural/road development projects

a. Roads, driveways, buildings and other man-made structures have been designed to complement the natural landform and to avoid excessive grading:

b. Primary and accessory structures employ architectural and design elements which in total serve to reduce the amount of grading and earthmoving activity required for the project, including the following elements:

- i. Multiple-floor levels which follow existing, natural slopes;
- ii. Foundation types such as poles, piles, or stepping level which minimize cut and fill and the need for retaining walls;
- iii. Fence lines, walls, and other features which blend with the existing terrain rather than strike off at an angle against it.

c. The development project minimizes removal of existing vegetation , incorporates existing vegetation into final design plans, and replacement vegetation of appropriate size, quality and quantity is included to mitigate adverse environmental effects.

4. Adequate fire safety measures have been incorporated into the design of the proposed development.

5. Disturbance to streams and watercourses shall be minimized, and setbacks shall be retained as specified in Section 18.108.025.

6. The project does not adversely impact threatened or endangered plant or animal habitats as designated by state or federal agencies with jurisdiction and identified on the county's environmental sensitivity maps.

Section 18.108.040.B. Agricultural projects, or Agricultural roads as defined by Napa County Department of Public Works:

7. The erosion rate that results two years from the completion of the proposed agricultural development does not exceed the soil tolerance factor approved by the Natural Resource Conservation Service for the soil type, topography and climatic conditions in which the project is located; (Please attach a copy of the USLE worksheet used to determine the erosion rate).

A copy of the USLE worksheet is included in the June 2009 narrative prepared by Royce Cunningham, P.E. Appendix D of the document entitled, "Site Improvement and Erosion Control Plans Project Narrative and Back Up Data" indicates that at the three points of measurement, the soil loss was less than the soil tolerance factor approved by NRCS.

8. Impacts on streams and watercourses are minimized, and adequate setbacks along these drainageways are or will be maintained.

Even with the 1/3 acre encroachment, the existing vineyards are all a minimum of 35 feet from Dutch Henry creek. This buffer area together with the measures included in the June 2009 erosion control plan will ensure that impacts of earthmoving from both the existing and proposed vineyards will be minimized. In addition to controlling erosion from vineyard development, the ECP provides for the installation of water bars and other remedial measures on perimeter roads. Permanent cover crop will be planted and maintained at 70% ground cover. Analyses provided by the project engineer indicates that post-project soil loss is within acceptable limits. no riparian vegetation will be removed as a result of the installation and recognition of the five (5) vineyard blocks proposed as part of the accompanying ECP. Existing vegetation on the south side of Dutch Henry creek will remain undisturbed and continue to filter and remove sediment from upland areas.

9. The project does not adversely impact sensitive, rare, threatened or endangered plant or animal habitats as designated by state or federal agencies with jurisdiction and identified on the county's environmental sensitivity maps.

A review of the county's environmental sensitivity maps revealed no sensitive, rare, threatened or endangered plants or animal habitats within the projects' bouundaruies.

INDEMNIFICATION AGREEMENT

Pursuant to Chapter 1.30 of the Napa County Code, as part of the application for a discretionary land use project approval for the project identified below, Applicant agrees to defend, indemnify, release and hold harmless Napa County, its agents, officers, attorneys, employees, departments, boards and commissions (hereafter collectively "County") from any claim, action or proceeding (hereafter collectively "proceeding") brought against County, the purpose of which is to attack, set aside, void or annul the discretionary project approval of the County, or an action relating to the project required by any such proceeding to be taken to comply with the California Environmental Quality Act by County, or both. This indemnification shall include, but not be limited to damages awarded against the County, if any, and cost of suit, attorneys' fees, and other liabilities and expenses incurred in connection with such proceeding that relate to this discretionary approval or an action related to this project taken to comply with CEQA whether incurred by the Applicant, the County, and/or the parties initiating or bringing such proceeding. Applicant further agrees to indemnify the County for all of County's costs, attorneys' fees, and damages, which the County incurs in enforcing this indemnification agreement.

Applicant further agrees, as a condition of project approval, to defend, indemnify and hold harmless the County for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or amending any document (such as an EIR, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if the Applicant desires to pursue securing approvals which are conditioned on the approval of such documents.

In the event any such proceeding is brought, County shall promptly notify the Applicant of the proceeding, and County shall cooperate fully in the defense. If County fails to promptly notify the Applicant of the proceeding, or if County fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The County shall retain the right to participate in the defense of the proceeding if it bears its own attorneys' fees and costs, and defends the action in good faith. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.

X [Signature]
Applicant

X [Signature]
Property Owner (if other than Applicant)

X 5/27/09
Date

Project Identification

RECEIVED
JUN 10 2009

DEVELOPMENT & PLANNING DEPT.



Napa County
CONSERVATION, DEVELOPMENT & PLANNING COMMISSION
 1195 Third Street, Room 210, Napa, California 94559
 (707) 253-4416

BASIC APPLICATION FOR EROSION CONTROL PLAN REVIEW

FOR OFFICE USE ONLY SUBMITTAL DATE: _____

FILE #: _____ APN #: _____ USGS QUAD: _____

[] STRUCTURAL [] AGRICULTURAL TOWNSHIP/RANGE: _____

REQUEST: _____

PROJECT TYPE: Agriculture: New ___ Vineyard Replant (Process I: ___ II: ___) Other: _____

Non-Agriculture: Structure ___ Driveway ___ Road ___ Reservoir ___ Other _____

PERCENT SLOPE: Cropland: _____ Structure: _____ Pad: _____ Driveway: _____ Road: _____

OTHER PERMITS: Grading Permit ___ Use Permit: ___ Variance: ___ Septic System Permit: ___ Groundwater Permit: ___

REVIEW AGENCIES: CDPD: X County Consultant: ___ OR RCD: _____

FINAL APPROVAL: CDPD: X Date: _____

TO BE COMPLETED BY APPLICANT
 (Please type or print legibly)

Applicant's Name: TONY PEJU

Telephone #: (707) 963-3600 Fax #: (707) 963-3648 E-Mail: tpeju@peju.com

Mailing Address: 8466 ST. HELENA HWY RUTHERFORD CA 94573
No Street City State Zip

Status of Applicant's Interest in Property: OWNER

Property Owner's Name: SAME

Telephone #: () Fax #: () E-Mail: _____

Mailing Address: _____
No Street City State Zip

Site Address/Location: 321 DUTCH HENRY CANYON RD. CALISTOGA, CA.
No Street City

Assessor's Parcel #: 018-060-068 Existing Parcel Size: 87.7 acres Development Area Size: 13.3 acres

Slope Range: 5 % to 15 % Total Acreage ≥ 30%: 0 acres Estimated Total Amount of Cut & Fill: 0 cubic yards

Land or Aerial Survey Prepared By NAPA CO. GIS - MONTECELLO ENGR. Date: 6/5/09

(NOTE: Contour map/survey is required for all development areas with an estimated slope of 15% or greater and for all road/driveway projects, Contour map must include all areas within 100' of the cut and fill edges. Percent slope shall be calculated and presented as whole numbers.)

Source(s) of Water: EXISTING WELL AND POND

Related Permits Filed: Water Rights Groundwater Well Sewage Disposal Use Permit/Variance?
 Timber Harvest Stream Alteration Others: _____

I hereby certify that all the information contained in this application, including but not limited to, this application form, the supplemental information sheets, site plan, plot plan, cross sections/elevations, is complete and accurate to the best of my knowledge. I hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for evaluation of this application and preparation of reports related thereto, including the right of access to the property involved.

[Signature] 6-15-09 [Signature] 6-15-09
 Signature of Applicant Date Signature of Property Owner Date

TO BE COMPLETED BY CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT

\$ _____
 Estimated Fee Receipt Number: _____ Received By: _____ Date: _____

EROSION CONTROL PLAN SUPPLEMENTAL INFORMATION

Project/Construction Phasing Information

1. Project Description: APN: 01P-060-068
CLEARING OF ACRES OF MIXED BRUSH AND WOODLAND
FOR CONVERSION TO VINEYARD
- Parcel size: 87.7 acres Total land area disturbed: 12.8 acres
 Agriculture: NEW plant acres: 5.9 Replant acres: _____
 Structures: residence building driveway road other NONE
2. Project Phases: one two or _____
3. Anticipated date to start construction (month/year): JULY, 2009
4. Estimated date of completion of each phase: Phase 1: OCTOBER 1, 2009
Phase 2: _____
Phase 3: _____
5. Total construction time estimated: 11 WEEKS
6. Work scheduled between Oct. 1 and Apr. 1? Yes No OR
 between Sept. 1 and Apr. 1? Yes No (municipal watershed)
7. Winterization measures in the Erosion Control Plan FIBER-ROLLS, VEGETATIVE MEASURES
8. Is a grading permit, a well permit, or a sewage disposal permit required? Yes No
 If yes has the Napa Co Public Works and/or Environmental Management Departs. been notified? Yes No

Slope Information

9. Earth moving, grading or land clearing on slope(s) of: 3 % to 25 %
10. Total acreage with slopes greater than or equal to 30%: 0 acres
11. Contour mapping source: NAPA COUNTY GIS ORTHOMAPPING

Water Deficient Area, Watershed Area, & Water Rights Diversion Permits

12. Water-deficient area: Yes (applicant must contact Co Env Mgmt Dept) No
13. Sub-Watershed Name: NAPA RIVER
 Municipal Reservoir Watershed: Yes No
 If yes: Bell Canyon Kimball Milliken Lake Hennessey Rector
14. Have any other erosion control plans effecting this parcel been approved since 1991? Yes No
15. Coverage information (required for projects in any watershed):
 (a) Existing acres of tree canopy cover per parcel: 60.5 acres
 Proposed acres of canopy cover to be removed: 0 acres
 Percent of canopy cover to be retained per parcel: 100 %
 (b) Existing acres of shrub, brush, grass without tree canopy per parcel: 17.9 acres
 Proposed acres of shrub, brush, grass cover to be removed: 5.9 acres
 Percent of shrubs, brush, grass to be retained per parcel: 67 %
16. Is there a Water Rights permit associated with the project or parcel? Yes No *
 a) Copy of permit from the State Dept of Water Resources attached? Yes No OR
 b) Date application for necessary permit submitted to this board: _____
 c) Copy of associated CEQA document attached? Yes No acre/feet _____
* PREVIOUS APPLICATION #31694 ABANDONED

Streams, Watercourses, & Streambed Alteration Agreements

17. All streams and watercourses in vicinity of project area(s) shown and the required setback(s) indicated with the distance and slope? Yes No
18. Is there a State Dept of Fish & Game Streambed Alteration (1603) Permit associated with the project or parcel? Yes No
- (a) Copy of State Dept of Fish & Game Permit attached? Yes OR
- (b) Date application for necessary permit submitted to this agency: _____
- (c) Copy of CEQA document prepared attached? Yes No

Environmental Setting

19. Is any portion of the project located on or within 500' of a landslide? Yes No
Cite source: _____
20. Is any portion of the project located in the vicinity of rare/endangered species, species of special concern (plant, animal), wetland (type), riparian habitat, critical habitat, etc.? Yes No
If yes, list: _____
Cite source/reference(s): _____
Specific study prepared: _____ by _____ date: _____
21. Is any portion of the project located on or within 500' of an archeological or historic site? Yes No
Cite source: _____
Specific study prepared: _____ by _____ date: _____

Grading Information

22. Are any new roads/driveways associated with the project? Yes No
23. Are any new vineyard avenues associated with the project? Yes No
24. Will the project involve any recontouring of the land? Yes No
25. Will there be any excavation or fill deeper than 12 inches? Yes No
26. Total cubic yards of cut & fill: _____
Cubic yards of cut: 40 fill: 0
Spoils location: on-site 40 cy spread in vineyard off-site _____
27. Has a grading permit been filed with the Co Public Works Dept? Yes No
28. Will the project involve repair of a landslide? Yes No
Location _____ Size _____ Report _____

TIMBER HARVEST/TIMBER CONVERSION PERMITS

29. Is there a Timber Harvest or Conversion permit associated with the project/parcel? Yes No
Number of Acres: _____
a) Copy of State Dept of Forestry Permit attached? Yes OR
b) Date application for necessary permit submitted to this agency: _____
c) Copy of associated CEQA document attached? Yes No
d) Date other County erosion control plan(s) submitted if different than the application date for this plan: _____
30. Is there a Timberland Conversion Exception associated with the project or parcel? Yes No

SUPPLEMENTAL ENVIRONMENTAL INFORMATION (ECP)

To be provided by Property Owner: TONY PEJU

Attach response sheets to this page.

A. GENERAL INFORMATION

1. Name, address, telephone number of property owner.
2. Address of project.
3. APN.
4. Name, Address and telephone number of person to be contacted concerning this project, if different than owner.
5. Indicate type or number of the permit application for the project to which this form pertains.
6. List and describe any other related permits and/or other public approvals required for this project or parcel, including those required by city, regional, state and federal agencies.
7. Existing zoning district.
8. Proposed use of entire site and/or parcel. List and describe any other projects or improvements with site locations anticipated within the next several years (1-3-5 years).

B. PROJECT DESCRIPTION

9. Parcel(s) size(s), acres per parcel.
10. Project(s) size(s), acres per project.
11. Attach plans.
12. Proposed scheduling.
13. Anticipated incremental or phased development.
14. If the project involves Napa County grading permit, use permit, variance or rezoning application, state this and indicate clearly why the application is required.

Discuss and check yes the following items which are applicable to your project or its effects (attach additional sheets)

YES NO

15. Change in existing features of any watercourses, wetlands, tidelands, beaches, hills or alteration of ground contours.
16. Change in scenic views or vistas from existing residential areas or public lands or roads.
17. Change in the pattern, scale or character of general area of project.
18. Change in bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.
19. Site on filled land or on slopes of 5% or more.
20. Substantial change in demand for Napa County services (police, fire, water, sewage, etc.)
21. Relationship to a larger project or series of projects.

C. ENVIRONMENTAL SETTING

22. Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, wetlands (types), riparian habitat and any cultural, historical or scenic aspects. Describe any/all existing structures on the site, and the use of the structures. Attach photographs of the site, could include current aerial photo.
23. Describe the surrounding properties (approximately ¼ mile radius form parcel boundary), including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (agriculture, residential, commercial, etc.), intensity of land use (vineyards, winery, one-family, multi-family, industry, etc.), and scale of development (acres, height, setback, yard, etc.). Attach photographs of the vicinity, could include current aerial photo.

D. CERTIFICATION

I hereby certify that the statements furnished responding to the above and in the attached sheets present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

6-15-09
Date

Tony Peju
Signature of Property Owner

SUPPLEMENTAL ENVIRONMENTAL INFORMATION (ECP)

A. General Information

1. Property Owner: Anthony Peju
8466 St. Helena Hwy
Rutherford, CA 94573
(707) 963-0306
2. Project Address: 321 Dutch Henry Canyon Road
Napa County, CA
3. APN: 018-060-068
4. Contact: Royce W. Cunningham, PE
Monticello Engineering
825 Corte Malaga
Vacaville, CA 95688
(707) 448-2066
5. Permit Type: Agricultural ECP
6. Other Permits: Grading Permit
Napa County

Use Permit
Napa County
7. Existing Zoning: Agricultural
8. Proposed Use: 13.3 total acres of vineyard
Remaining 74.4 acres woodland/ranch

B. Project Description

9. Parcel Size: 87.7 acres
10. Project Size: 13.3 acres
11. Plans: Attached
12. Proposed Schedule: May 1, 2010 – October 1, 2010
Schedule dependent upon obtaining permits

- | | |
|-----------------------------|--|
| 13. Phasing: | One phase (an initial clearing phase previously occurred in 2006 and 2007) |
| 14. Other Napa Co. Permits: | Grading Permit to construct diversion channel
Use Permit to allow stream setback variance |
| 15. | Yes, construction of a new drainage channel (Channel #2) is proposed |
| 16. | No |
| 17. | Yes, change from mixed brush and grassland to vineyard |
| 18. | No |
| 19. | Yes, portions of new vineyard on slopes from 5% to 30% |
| 20. | No |
| 21. | No |

C. Environmental Setting

22. The proposed project consists of 13.3 acres of vineyard development located in the Dutch Henry Canyon area of Napa Valley. Elevations range from approximately 400 feet msl to 550 feet msl. Most of the new vineyard is on slopes of less than ten percent (10%). However, some of the vineyard will be planted on hillside slopes to just under thirty percent (30%).

Vegetative cover in the project area consists primarily of mixed brush and grassland. Dutch Henry Canyon Creek runs through the center of the property, with a heavily wooded eastern bank.

The soil type on the property consists of Boomer-Forward-Felta Complex on the slopes and in the contributing watershed. Preliminary soil investigations indicate soil depths of between 36 and 42 inches in the proposed development area. The proposed development area consists of six (6) separate vineyard blocks, two of which are already planted.


23. The surrounding properties to the south, as Dutch Henry Canyon opens up into the Napa Valley, are primarily vineyard. The properties to the north, west and east are steep, rugged, heavily forested undeveloped properties. Most of the other properties surrounding the project property are large parcels, or smaller (10 to 20 acres) family-owned ranchette-style properties.

INDEMNIFICATION AGREEMENT

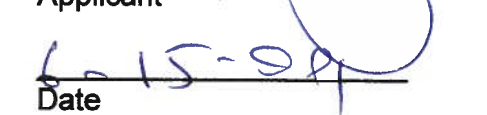
Pursuant to Chapter 1.30 of the Napa County Code, as part of the application for a discretionary land use project approval for the project identified below, Applicant agrees to defend, indemnify, release and hold harmless Napa County, its agents, officers, attorneys, employees, departments, boards and commissions (hereafter collectively "County") from any claim, action or proceeding (hereafter collectively "proceeding") brought against County, the purpose of which is to attack, set aside, void or annul the discretionary project approval of the County, or an action relating to this project required by any such proceeding to be taken to comply with the California Environmental Quality Act by County, or both. This indemnification shall include, but not be limited to damages awarded against the County, if any, and cost of suit, attorneys' fees, and other liabilities and expenses incurred in connection with such proceeding that relate to this discretionary approval or an action related to this project taken to comply with CEQA whether incurred by the Applicant, the County, and/or the parties initiating or bringing such proceeding. Applicant further agrees to indemnify the County for all of County's costs, attorneys' fees, and damages, which the County incurs in enforcing this indemnification agreement.

Applicant further agrees, as a condition of project approval, to defend, indemnify and hold harmless the County for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or amending any document (such as an EIR, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if the Applicant desires to pursue securing approvals which are conditioned on the approval of such documents.

In the event any such proceeding is brought, County shall promptly notify the Applicant of the proceeding, and County shall cooperate fully in the defense. If County fails to promptly notify the Applicant of the proceeding, or if County fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The County shall retain the right to participate in the defense of the proceeding if it bears its own attorneys' fees and costs, and defends the action in good faith. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.



Applicant



Date

Property Owner (if other than Applicant)

Project Identification