

## **Exhibit B**

### **CONDITIONS OF APPROVAL**

#### **Peju Black Forest Vineyard Conversion**

**Use Permit Exception Application No. P09-00243-UP**

**and Agricultural Erosion Control Plan Application No. P09-00385-ECPA**

**321 Dutch Henry Canyon Road, Calistoga CA 94515**

**Assessor's Parcel No. 018-060-068**

1. **SCOPE:** This approval shall be limited to the following:
  - a. A Conservation Regulations Use Permit Exception for the retention of 2,780 square feet of existing vineyard installed within required creek setbacks allowing 1 to 50 foot encroachments into the required setbacks as detailed in #P09-00385-ECPA; and,
  - b. An Agricultural Erosion Control Plan for the retention, construction, and maintenance of 13.8-acres of vineyard that includes the following:
    - Installation of a 10,000 gallon water tank within proposed Vineyard Block #6 for irrigation purposes.
    - Installation of wildlife exclusion fencing (8 foot tall deer fencing) around the perimeter of proposed Vineyard Blocks 3, 4, 5, and 6.
    - Installation of vineyard trellis and drip irrigation systems, and planting rootstock.
    - The planting of 24 native oak trees on-site.
    - Ongoing inspection and maintenance of temporary and permanent erosion control measures.
    - Ongoing operation and maintenance of the vineyard, which includes: vine management (pruning, fertilization, pest, and disease control), weed control, irrigation and trellis system maintenance, and fruit harvesting. Fertilization, pest and disease control would utilize state and/or federally approved fertilizers, pesticides, and herbicides.
    - A set aside of approximately 28,620 square feet (0.66 acres) of land outside the required stream setback (located on the west side of Dutch Henry Creek adjacent to proposed Vineyard Block 4) to offset potential impacts of the project, primarily the proposed retention of existing vineyard development and associated improvements (i.e. end posts, irrigation lines, vineyard avenues) currently located in the required stream setbacks along the eastern side of Vineyard Block #2.
2. The owner/applicant shall strictly conform to all provisions of approved Use Permit Exception #P09-00243 and Agricultural Erosion Control Plan #P09-00385-ECPA.
3. The owner/applicant shall comply with the two (2) Mitigation Measures pertaining to Biological Resources contained in the attested Project Revision Statement and adhering to the Mitigation Monitoring and Reporting Program (attached).
4. Prior to commencement of work the owner/applicant shall submit revised plans for review and authorization by the Director to confirm conformance with project mitigation measures, conditions of approval, and/or requirements specific to the Commission's action.

5. The owner/applicant shall adhere throughout the duration of the project to the Oversight and Operation regulations specified in County Code Section 18.108.135 enclosed, which deal with among other things installation oversight, erosion control measure maintenance, monitoring, failure response, and non-compliance.
6. The owner/applicant shall obtain any and all other required local, state and federal permits necessary to implement the project prior to the commencement of work associated with the project, or as necessary for the restorative measures associated with Stipulated Judgment NSC 26-39559, or for past activities associated with the subject vineyard development that such permits were necessary. Authorization of #P09-00243-UP and #P09-00385-ECPA by the Napa County Planning Commission shall not absolve the owner of any fines associated with acquisition of such permits, as determined by the issuing agency, and shall be the burden of the owner.
7. The owner/applicant shall conduct the following preconstruction surveys and provide copies of the surveys to Napa County and California Department of Fish and Game (DFG) prior to the commencement of vineyard development and implementation activities:
  - a. Bird Preconstruction survey: For earth-disturbing activities occurring during the bird breeding season (March 1 through July 31), a qualified wildlife biologist shall conduct preconstruction surveys for special status birds and their nests within 500-feet of earthmoving activities. The preconstruction survey shall be conducted no more than 14 days prior to vegetation removal and ground disturbing activities are to commence. If active bird nests are found during preconstruction surveys, a 300-foot no-disturbance buffer will be created around active raptor, bird of prey or owl nests and a 50-foot buffer zone will be created around the nests of other special-status birds during the breeding season or until it is determined by a qualified biologist that all young have fledged. These buffer zones may be modified in coordination with DFG based on existing conditions at the project site. Buffer zones shall be fenced with temporary construction fencing and remain in place until the end of the breeding season or until young have fledged. If a 15 day or greater lapse of project-related work occurs during the breeding season, another preconstruction survey and consultation with DFG will be required before project work can be reinitiated
  - b. Bat Preconstruction survey: A qualified wildlife biologist shall conduct preconstruction surveys for signs of bats, their roosts, or maternity sites within 500-feet of earth-disturbing activities. The preconstruction survey shall be conducted no more than 3 days prior to vegetation removal and ground disturbing activities are to commence. If bats are discovered during preconstruction surveys, a 150-foot no-disturbance buffer will be created around roosts or maternity sites. These buffer zones may be modified in coordination with DFG based on existing conditions at the project site. Buffer zones shall be fenced with temporary construction fencing and remain in place until it is determined by a qualified biologist that roosts or maternity sites are no longer in use and/or all young have fledged.
8. The owner/applicant shall implement the following tree protection and replacement measures:
  - a. The applicant/owner shall provide a tree replacement plan showing the location of the 24 replacement trees for review and approval by the Planning Division. The tree planting plan shall include the location, species, planting details, irrigation notes, and management plan to ensure the survival of the trees. The 24 replacement trees shall be five-gallon trees (or larger) of a native

species comparable to those occurring on-site and native to Napa County: replacement trees shall have a 100% survivability rate. Replacement trees shall be installed and documented that they are in good health prior to completion and finalization of the erosion control plan by the Napa County RCD. Documentation of the health and survivability of replacement vegetation shall be prepared by a qualified professional and submitted to the Planning Division for review prior to finalization of the erosion control plan.

- b. Prior to any earthmoving activities, temporary fencing shall be placed at the edge of the dripline of trees to be retained that are located within 50-feet of the project area. The precise locations of said fences shall be inspected and approved by the Planning Division prior to the commencement of any earthmoving activities. No disturbance, including grading, placement of fill material, storage of equipment, etc. shall occur within the designated area for the duration of erosion control plan installation and vineyard installation.
  - c. Trees removed that are not within the boundary of the project and/or not identified for removal as part of #P09-00243-UP and #P09-00465-ECPA shall be replaced on-site with fifteen-gallon trees at a ratio of 2:1 at locations approved by the director.
  - d. Refraining from severely trimming the trees and vegetation to be retained adjacent to the vineyard conversion area.
9. The owner/applicant shall implement the following Air Quality Best Management Practices during construction activities, and vineyard maintenance and operations:
- a. All exposed surfaces (graded areas, staging areas, stockpiles, and unpaved roads) shall be covered or water twice per day.
  - b. All trucks hauling soil, sand and other loose materials shall be covered in accordance with Section 23114 of the California Vehicle Code during transit to and from the site.
  - c. The site access road and adjacent public roads shall be swept daily with wet power vacuum street sweepers, if visible soil material is carried/tracked out onto roadways.
  - d. Traffic on unpaved areas and roads shall be limited to 15 mph.
  - e. Grading and earthmoving activities shall be suspended when winds exceed 25 mph.
  - f. 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). Signs clearly indicating this provision shall be installed at all access points.
  - g. All construction equipment shall be maintained and properly tuned in accordance in manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
  - h. A sign with the telephone number and person to contact at the Lead Agency regarding dust complaints shall be visibly posted at the site. The contact 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.
10. The owner/applicant shall refrain from disposing of debris, storage of materials, or constructing/operating vineyard avenues outside the boundaries of the approved plan.

11. The owner/operator shall implement the following Best Management Practices (BMPs) during construction activities and vineyard maintenance and operations:
  - a. Workers shall follow manufacturer's recommendations on use, storage and disposal of chemical products;
  - b. Workers shall avoid overtopping fuel gas tanks and use automatic shutoff nozzles where available;
  - c. During routine maintenance of equipment, properly contain and remove grease and oils;
  - d. Discarded containers of fuel and other chemicals shall be properly disposed of;
  - e. Spill containment features shall be installed at the project site wherever chemicals are stored overnight;
  - f. All refueling, maintenance of vehicles and other equipment, handling of hazardous materials, and staging areas shall occur at least 100 feet from Dutch Henry Creek and its unnamed tributaries, existing groundwater well(s), the existing pond, and any other watercourses to avoid the potential for risk of surface and groundwater contamination; and,
  - g. To prevent the accidental discharge of fuel or other fluids associated with vehicles and other equipment, all workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.
  
12. Vineyard and Cover Crop Management/Practice – Conditions of Approval:
  - a. The permanent vineyard cover crop shall not be tilled (i.e. managed as a no till cover crop) for the life of the vineyard and the applicant/owner shall maintain a plant residue density of 70% as specified in the plan and narrative.
  - b. Should the permanent no till cover crop need to be replanted/renewed during the life of the vineyard, cover crop renewal efforts shall follow the County "Protocol for Replanting/Renewal of Approved Non-Tilled Vineyard Cover Crops" July 19, 2004, or as amended.
  
13. Vineyard Avenue Management/Practice – Conditions of Approval:
  - a. Perimeter Vineyard Roads and Vineyard Avenues that are not surfaced with rock shall maintain a minimum plant residue density of 70%.
  - b. The entirety of the perimeter vineyard avenue along the eastern side of Vineyard Block 2 shall be surfaced and maintained with rock, as specified by the Napa County Resource Conservation District RCD memo dated September 28, 2010. This surfacing treatment shall be shown on revised plans prior to authorization/approval by the County/Director.
  
14. The owner and/or the owner's representatives shall install the deer exclusion fencing as follows:
  - a. The existing wildlife exclusion fencing located along the eastern side of Vineyard Block 4 shall be maintained in its current location and as specified in **Mitigation Measure BR-1** to coincide with the eastern limits of this vineyard block as mitigated.
  - b. The existing wildlife exclusion fencing located along the eastern periphery of Vineyard Block 2, bordering the existing vineyard plantings and associated vineyard avenue, shall be relocated as specified in #P09-00243-UP and #P09-00385-ECPA, which is no greater than 20 feet from the end of vine rows.
  - c. All other existing and proposed fencing shall be subject to #P09-00243-UP and #P09-00385-ECPA, and be installed and maintained as shown therein: installation of proposed deer exclusion fencing shall be limited to the perimeter of the proposed vineyard areas only as specified in approved Use

Permit #P09-00243-UP and Erosion Control Plan P09-00385-ECPA, which is no greater than 20 feet from the end of vine rows.

- d. Installation of deer exclusion fencing shall be limited to the perimeter of the proposed vineyard areas only as specified in approved Erosion Control Plan #P09-00385, designed to ensure adequate wildlife movement through the remainder of the property. Any modifications to the location of deer fencing as specified in #P09-00243-UP and #P09-00385-ECPA shall be strictly prohibited: any proposed modification will require County review and approval to ensure the modified deer fencing plan would not result in potential impacts to wildlife movement.
15. Discovery of historical, archaeological, paleontological resources, or human remains during construction, grading, or other earth moving activities.
- a. In accordance with CEQA Subsection 15064.5(f), should any previously unknown historic or prehistoric resources, including but not limited to charcoal, obsidian or chert flakes, grinding bowls, shell fragments, bone, pockets of dark, friable solids, glass, metal, ceramics, wood or similar debris, be discovered during grading, trenching or other on-site excavation(s), earth work within 100-feet of these materials shall be stopped until a professional archaeologist certified by the Registry of Professional Archaeologists (RPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation(s), as determined necessary.
  - b. If human remains are encountered the Napa County Coroner shall be informed to determine if an investigation of the cause of death is required and/or if the remains are of Native American origin. Pursuant to Public Resources Code Section 5097.98, if such remains are of Native American origin the nearest tribal relatives as determined by the State Native American Heritage Commission will be contacted to obtain recommendations for treating or removal of such remains, including grave goods, with appropriate dignity.
  - c. In the event that a discovery of a breas, true, and/or trace fossils are discovered during ground disturbing activities, all work within 100 feet of the fined shall be temporarily halted of diverted until the discovery is examined by a qualified paleontologist. The paleontologist shall notify the appropriate agencies to determine procedures that should be followed before ground disturbing activities are allowed to resume at the location of the find.
  - d. All persons working on-site shall be bound by contract and instructed in the field to adhere to these provisions and restrictions.
16. Re-establishment of Unnamed Tributary No. 2:
- a. Prior to commencement of earthmoving activities associated with #P09-00385-ECPA and P09-00243-UP, the owner/applicant shall provide detailed plans and documentation (i.e. Watercourse Plan) that the re-routed watercourse (i.e. Unnamed Tributary #2) is designed and installed to have sufficient capacity to handle maximum downstream flows calculated for the watershed of Unnamed Tributary #2.
  - b. Prior to commencement of earthmoving activities associated with #P09-00385-ECPA and P09-00243-UP, the owner/applicant shall provide documentation that the re-routed watercourse (i.e. Unnamed Tributary #2) and associated 10 foot setback from the vineyard (including vineyard avenues) is located wholly on the subject property.

- c. The owner/applicant shall include with the Watercourse Plan a re-vegetation plan and documentation, showing that the re-routed watercourse has been designed, and installed, to minimize any sedimentation arising from water flow into and through it. The re-vegetation plan shall include the following design details: planting details and notes, plant pallet with seeding and planting specifications, implementation and monitoring schedule and management plan for the re-routed watercourse. The plant pallet shall utilize native plant species that are appropriate for the site and intended purpose and shall have a minimum 80% survival rate. Restoration vegetation shall be installed and documented that it is good health prior to completion and finalization of the erosion control plan by the Napa County RCD.
  - d. The Watercourse Plan and Re-vegetation Plan described herein shall be subject to review and approval by the Planning Director.
17. The permittee may be required (at the permittee's expense) to provide well monitoring data if the Director of Environmental Management determines that water usage at the vineyard is affecting, or would potentially affect groundwater supplies or nearby wells. Data requested could include, but may not be limited to, water extraction volumes and static well levels. If applicant is unable to secure monitoring access to neighboring wells, onsite monitoring wells may need to be established to gage 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 permit would significantly affect the groundwater basin, the director of environmental management 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 County Code section 13.15.070.G - K.
18. All persons working on-site shall be bound by contract and instructed in the field to adhere to all provisions and restrictions specified above.
19. Monitoring Costs: All staff costs associated with monitoring compliance with the above conditions 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 at the rate in effect at the time monitoring occurs. Violations of conditions of approval or mitigations measures caused by the permittee's contractors, employees, and guests are the responsibility of the permittee.