

**Exhibit A**

**BACKGROUND**

**Swanson Winery  
Use Permit Application № P08-00550 and Variance Application № P08-00551  
7711 Money Road, Oakville, Calif., 94562  
Assessor's Parcel №. 031-040-033**

Owner: W. Clarke Swanson, Jr.

Applicant: W. Clarke Swanson, Jr.

Representative (Attorney): Richard Mendelson - Dickenson, Peatman & Fogarty

Zoning: AP (Agricultural Preserve)

General Plan Designation: AR (Agricultural Resource)

Filed: September 22, 2008 Complete: May 3, 2011

Winery Size - Proposed: +/- 38,500 square feet (and +/- 14,680 square feet of covered and uncovered patio areas)

Production Capacity - Proposed: 100,000 gallons per year

Visitation - Proposed: By-appointment tours and tastings; 200 or fewer visitors per day

Number of Employees - Proposed: up to 30 employees (35 during harvest)

Hours of Operation - Proposed: 8 am to 6 pm, daily

Marketing - Proposed: Private promotional tastings and meals including 3 36-person events per week (156 annually), 4 100-person events annually, 1 250-person event annually, and participation in Auction Napa Valley. *All figures are max.*

Parking - Proposed: 69 spaces- including 44 customer spaces, 25 employee spaces, and 3 ADA-accessible spaces

Parcel Size - Existing: 74 acres

Accessory/Production Ratio - Proposed: 33% (40% allowed)

Winery Coverage - Proposed: Approx. 3.1 acres (15 acres max) and/or 4% of the lot area (25% max)

Property Line & Road Setbacks – Existing: 25' front/Money Road (48' required); 420' south side/Oakville Cross Road (50' required); 310' north side (20' required); and 3,140' rear (20' required)

Property Line & Road Setbacks - Proposed: 30' front/Money Road (48' required); 350' south side/Oakville Cross Road (50' required); 66' north side (20' required); and 3,100' rear (20' required)

Winery Road Setbacks - Existing: N/A

Winery Road Setbacks – Proposed – Money Road: 56' (300' required)

Winery Road Setbacks – Proposed – Oakville Cross Road: 350' (300' required)

### **Adjacent General Plan Designation/ Zoning / Land Use**

#### North

Agricultural Resource General Plan designation - AP zoning

Agricultural and residential uses on large lots; including a 5 acre vineyard/residential parcel (Swanson), a 9 acre vineyard/residential parcel (Navone), a 100 acre vineyard/residential parcel (Laird), and a 7 acre residential parcel (Swanson).

#### South

Agricultural Resource General Plan designation - AP zoning

Agricultural, residential, and winery uses on large lots; including a 23 acre vineyard/winery parcel (Silver Oak), a 1 acre residential parcel (Duncan/Silver Oak), a 20 acre vineyard/residential parcel (Delbondio), a 3 acre vineyard/residential parcel (Rydman), a 17 acre vineyard parcel (David), a 5 acre vineyard/residential parcel (Swanson), a 40 acre vineyard/residential parcel (Franciscan Vineyards), a 7 acre vineyard/residential parcel (Swanson), and a 26 acre vineyard/residential parcel (Delbondio).

#### West

Agricultural Resource General Plan designation - AP zoning

Riparian corridor and agricultural and winery uses on large lots; including the Napa River and a 49 acre vineyard/winery parcel (Opus One).

#### East

Agricultural Resource General Plan designation - AP zoning

Agricultural uses on large lots; including a 43 acre vineyard parcel (Crossroads Associates/Garvey).

### **Nearby Wineries (located within 1 mile of the project)**

Opus One~7900 St. Helena Highway~Producing~110,000 gallons per year~By appointment

Ashe Vineyard and Winery~7688 St. Helena Highway~Producing~2,500 gallons per year~No visitation

Silver Oak Wine Cellars~915 Oakville Cross Road~Producing~132,500 gallons per year~Open to the public

Nemerever Winery~711 Oakville Cross Road~Not Yet Producing (approved 2003)~10,000 gallons per year~By appointment

Miller Winery~701 Oakville Cross Road~Not Yet Producing (approved 2007)~10,000 gallons per year~By appointment

Groth Winery and Oakcross Vineyards~750 Oakville Cross Road~Producing~200,000 gallons per year~By appointment

Plump Jack Winery~620 Oakville Cross Road~Producing~25,000 gallons per year~Open to the public

Villa Ragazzi~7878 Money Road~Producing~20,000 gallons per year~By appointment

Saddleback Cellars~7802 Money Road~Producing~8,000 gallons per year~By appointment

### **Parcel History and Evolution of this Application**

September 1978 – Then-owner Henry Spicer requests, and the Planning Commission approves, **use permit № U-647778**, “designating the existing dwelling as farm labor quarters in order to construct a new dwelling for the owner.” The approved use permit was never used and no new residence was constructed.

1985-1987 – Clarke Swanson purchases the subject property and other parcels fronting Oakville Cross Road between Money Road and the Napa River.

February 2002 – Mr. Swanson requests, and the Conservation Division approves, **environmental review № 01266-ENV**, finding the expansion of an existing irrigation pond on the subject parcel (then 031-040-014 and now 031-040-033) from 2.61 acre feet to 7.59 acre feet categorically exempt from CEQA. It appears that the approved reservoir expansion was never completed.

September 2008 – Mike Witek files the subject application (**use permit application No. P08-00550 and variance application P08-00551**) on behalf of Clarke Swanson.

October 2008 – The Planning, Public Works, and Environmental Management Departments formally determine applications **P08-00550 and P08-00551** to be incomplete and request additional information.

December 2008 – **Lot line adjustments** affecting four adjoining parcels north of Oakville Cross Road, west of Money Road, and east of the Napa River are approved by the Director of Public Works. The subject parcel increases in size from 18 acres to 74 acres.

September 2010 – Richard Mendelson, now representing Mr. Swanson in the matter, submits additional information and revised plans in response to the County various 2008 completeness determinations. The extended delay is largely due to regional revisions to FEMA Floodplain and

Floodway mapping affecting the subject property which were in process in the meantime.

May 2011 - The applicant team submits final revised plans. The application is deemed complete for processing.

June 2011 - The Planning Division releases the **P08-00550 and P08-00551** mitigated negative declaration for public comment and agendas the requested use permit modification for review by the Planning Commission at their August 3, 2011 regular meeting. The subsequent mitigated negative declaration comment period runs from June 27, 2011 to July 27, 2011.

### **Code Compliance History**

Having discussed the application with Enforcement staff, toured the property, and reviewed the Department's files, Planning Staff is not aware of any code compliance issues on the subject parcel.

### **Discussion Points**

#### **Setting**

The project is proposed on a 74 acre parcel located on the north side of Oakville Cross Road, approximately one mile east of its intersection with Highway 29 and directly adjacent to and northwest of its intersection with Money Road. The property presently includes a residence, barn, a small irrigation reservoir, and extensive vineyard areas. Approximately 70 acres of existing producing vineyard would remain upon completion of the proposed winery. The property stretches from Money Road on the east to the Napa River on the west and includes large areas of historic floodplain terrace. The entire parcel is located within the 100-year floodplain and much of the property is also located in the Napa River floodway.

Land uses in the vicinity of the project are a mix of large lot residential uses, active vineyard operations on lots ranging (generally) from ten to seventy acres, and wineries with production ranging from 8,000 to 200,000 gallons annually. Residential uses in the project area are fairly sparse, with less than a dozen residences located within a mile of the proposed winery; most of the residential uses are, however, clustered around Money Road, which runs just to the east of the subject property.

#### **The Proposed Winery, the Floodplain, the Floodway, and Variances**

The entirety of the subject parcel is, like almost every other property in the vicinity, located within the 100-year floodplain. FEMA mapped floodplains are divided into two areas, the larger "floodplain," which is the area adjoining a river or stream which has been, or may in the future be, covered by flood water and the smaller "floodway," which includes the channel of a river or stream and the parts of the floodplain adjoining the channel that are reasonably required to carry and discharge flood water in the event of a 100-year storm. The calculation and definition of floodplain and floodway boundaries is a highly complicated and technical business, beyond both the scope of this report and the capacity of its author. However, for our purposes here, the key regulatory difference between the floodplain and the floodway is that while new structures

are *generally* not allowed in the floodway, in the floodplain they are *generally* allowed, provided that the finished floor level of the building is located above the base flood elevation.

As noted above, not only is the entirety of the Swanson property located within the FEMA-mapped 100-year floodplain, but the vast majority of the large 74 acre parcel is also located within the FEMA floodway. Only a small 150 to 200 foot wide strip of land along the eastern property line (adjacent to Money Road) is located outside of the floodway. All of the structural development proposed in this application is to be located in this thin strip of land, where it will be placed atop 6,600 cubic yards of imported fill in order to raise the finished floor level above the base flood elevation.

The effective floor level of the approximately 40,000 square feet of new winery buildings will be 8 feet above existing grade at the building's southeast corner (adjacent to Money Road, at the corner nearest Oakville Cross) and 6 feet above existing grade at its northeast corner (also adjacent to Money Road, at or about the location of the existing reservoir). While the placement of the proposed winery above such a relatively large volume of fill will increase the buildings' perceived height and mass, the structures have been designed to comply with the County's 35 foot maximum height limitation. Swanson Winery building heights, when measured from existing grade, will run from slightly less than 28 feet to slightly less than 35 feet. No structural development is proposed within the floodway, though flatwork such as the facility's parking lot will be located in that zone.

The fact that only an approximately 150 foot wide strip of the applicant's more than 74 acre parcel is located outside of the floodway forces winery development hard against Money Road and its associated right-of-way. While the proposed winery would meet required setbacks from Oakville Cross Road and the property's northern, western, and southern property lines, variances are requested to allow the winery building itself to be located 56 feet from the center line of Money Road (within the required 300 foot winery road setback) and to allow the construction of a retaining wall 30 feet from the centerline of Money Road (within the 48 foot combined road and sideyard setbacks.) Planning staff has reviewed the applicant's arguments regarding required variance findings and we concur that the existence of the Napa River floodway on all but the easternmost portion of this property represents a special circumstance under which the strict application of the Zoning Ordinance would, "deprive the property of privileges enjoyed by other property in the vicinity."

#### Black Walnuts

Northern California Black Walnut, a California Native Plant Society and Napa County 2008 General Plan Update EIR-identified special status species has been mapped adjacent to the Napa River, west of the proposed Swanson Winery. Submitted plans initially identified at least 20 "walnut" trees which were to be removed in order to construct the proposed winery. The trees in question are generally quite large (diameters at breast height, or dbh, range from 8" to 52") and are scattered along and around the subject parcel's eastern property line with the 4 largest trees (42", 38", 49", and 52" dbh respectively) running parallel to and about 10 feet to the west of the Money Road pavement edge.

Out of concern that the walnut trees to be removed might be special status black walnuts, Planning staff requested a biological report, which was completed by Steve Zalusky of Northwest Biosurvey in early December 2010 (Northwest Biosurvey, *Tree Survey for Swanson Vineyard Project*, December 7, 2010 and *Addendum to 12-7-10 Tree Survey for Swanson*

*Vineyard Project*, December 16, 2010). The initial report, which was based on a site visit and a review of historic aerial photos determined that 16 of the trees slated for removal were Northern California black walnuts. Additional surveying, completed by Joann Goodwin ASLA in or about April 2011, reduced the number of confirmed Northern California black walnuts to 14.

Although Northern California black walnut (*Juglans hindsii*) has become naturalized along riparian corridors in the Great Central Valley, natural populations were only known from a few locations prior to European settlement. According to botanical experts, one of the main threats to the survival of the Northern California black walnut is hybridization with other non-native walnut species. (Brian Bordona, Napa County Conservation Division, personal communication.) To the extent that non-native walnuts were introduced to and widely distributed in California primarily in the post-statehood period, the age of a given black walnut tree can function as a rough predictor of the tree's hybrid status. Put another way, the older a tree is the less likely it is to be hybridized. In his December 16 addendum, Mr. Zalusky estimates that the oldest of the Black Walnuts on site are likely between 115 and 140 years of age, meaning that the trees germinated sometime between 1870 and 1895.

At present there is no commercially-available genetic test which could be used to differentiate native from hybridized black walnuts. In the absence of a genetic test or alternate definitive analysis proving otherwise, Planning staff has assumed presence and is treating the rather large stand of black walnuts located along the subject parcel's eastern property line as a community of non-hybridized native Northern California black walnuts. As a result, the impacted trees represent a potentially significant environmental resource. Mitigating for that significance, however, is the fact that, as the project biologist states, the trees are "not part of a natural community including other native trees, shrubs, and ground cover." Additionally, the 115 to 140 year old walnuts are nearing the end of their expected lifespan and continuing human-caused disturbance, such as mowing and other landscaping activities, near the existing stand all but eliminates the possibility that seedlings will grow to maturity in that location.

To the extent that the existing trees may potentially represent one of the very few native stands of non-hybridized Northern California black walnut remaining in existence, staff's review indicates that their primary value is as a source of native genetic stock. That resource can best be protected by cultivating seedlings derived from the trees in a more natural riparian setting, where there can be some hope of natural regeneration on an ongoing basis, and where they can form part of a more complete natural community. To that end, the proposed negative declaration includes a mitigation measure requiring that seedlings be propagated from the existing walnut trees and that viable seedlings be planted at a 3 to 1 ratio at the property's western boundary in the Napa River riparian zone. In addition, the mitigation measure requires that appropriate material from the existing trees be placed in the collection of the California Native Plant Society (or some other equivalent group) to serve as planting stock and as a future source for scientific testing.

As mitigated, staff believes that the project will effectively increase the number of individuals in, and long term viability of, the stand of potentially genetically pure Northern California Black Walnuts on the Swanson property. Staff is confident that the project will not substantially reduce the number or restrict the range of an endangered, rare, or threatened species and believes that impacts to special status species will be less than significant.

### Access and Roadway Improvements

Access to the proposed winery would be from a new 20 foot wide driveway located some 100 feet west of the main driveway entrance to Silver Oak Wine Cellars and approximately 160 feet west of Money Road. No access, whether pedestrian or vehicular, is proposed from Money Road. To ensure that impacts on Money Road are kept to an absolute minimum, staff has incorporated a condition of approval disallowing winery access from or winery parking along Money Road.

As a component of the project, the applicant is proposing to extend the existing Silver Oak center left hand turn lane at Oakville Cross Road some 300 feet west from the centerline of the Silver Oak driveway. The expanded turn lane would taper from that point over a run of approximately 400 additional feet to the west. Public Works indicates that there is an adequate combination of existing right-of-way width and land area which will be dedicated by the applicant as a component of this project to allow the proposed road widening.

The applicant has submitted a traffic study which analyzes existing and proposed traffic conditions in the project vicinity (Nickelson, George, P.E, *Updated Traffic Analysis for a Proposed Swanson Winery on Oakville Cross Road in Napa County*, August 26, 2010). The Nickelson study finds that, with the construction of turn lane improvements as proposed by the applicant team, traffic would flow freely to and from the site and along Oakville Cross Road and there would be adequate site distances, given surveyed vehicle speeds on Oakville Cross, to ensure safe operation of the intersection.

### Greenhouse Gas Reduction Strategies

The applicant team has completed the Department's required Checklist of Voluntary Greenhouse Gas Emission Reduction Measures, which is attached to this report at **Submitted Application Materials**. The project incorporates greenhouse gas reduction methods including, without limitation: solar panels, secured bicycle parking, high-efficiency irrigation, habitat restoration (riparian black walnut propagation), and recycled and/or low VOC construction materials. As a general rule, the applicant team has indicated that they "do not know" whether or not measures will be implemented where they are difficult to judge in advance of finalizing construction-level plans and specifications. For example, they "do not know" whether they will be using certified wood and have yet to determine whether or not a cool roof will be utilized. On the whole, staff believes that the project is environmentally friendly and that it will implement a substantial number of effective greenhouse gas emission measures.

### Visitation and Marketing

Tours and tastings visitation to the proposed Swanson Winery would be by-appointment, with a maximum of 200 visitors per day and an average of 500 per week. A marketing plan is also proposed, consisting of 160 events annually including 3 36-person events per week, 4 100-person events per year, and 1 250-person event per year. Staff has provided a table comparing marketing and tours and tastings visitation at similarly sized wineries below; it makes a series of general assumptions regarding marketing event visitation which cause it to be somewhat imprecise in specific cases, but it is useful and valid for purposes of broad-brush comparison.

When marketing and tours and tastings visitation are combined, the proposed Swanson Winery visitation program falls roughly into the most intensive 1/3 amongst its peer group of wineries producing at or about 100,000 gallons per year. Given the increasing importance of direct-to-

consumer sales for Napa Valley wineries, the 620 average weekly visitors proposed here does not strike staff as outlandish or disproportionate.

<i>Winery</i>	<i>Approved Production</i>	<i>Tours &amp; Tasting</i>	<i>Marketing (Ave/Week)</i>	<i>Tours and Tasting (Ave/Wk)</i>	<i>Total Visitation (Ave/Wk)</i>
TWOMEY	81,480	Public	7	75	82
KENZO	85,000	By Appointment	45	75	120
PROVENANCE	85,000	Public	245	300	545
MCKENZIE MUELLER	96,000	By Appointment	<i>no data</i>	50	50
V. SATTUI	96,000	Public	811	3,850	4,661
ANDRETTI	100,000	Public	<i>no data</i>	100	100
CAREVAN SERAI	100,000	By Appointment	Included in T&T Avg--->	2,800	2,800
MONTICELLO	100,000	Public	<i>no data</i>	84	84
MOSS CREEK	100,000	Public	<i>no data</i>	600	600
BLACK STALLION	100,000	Public	<i>no data</i>	350	350
TRINCHERO NAPA VALLEY	100,000	Public	6	1,000	1,006
DI AMBROSIO	100,000	By Appointment	13	100	113
BARREL STOP	100,000	By Appointment	26	50	76
PAHLMEYER	100,000	By Appointment	26	70	96
CE2V WINERY (COSENTINO)	100,000	None	17	20	37
ROUND POND	100,000	By Appointment	23	90	113
DARIOUSH	100,000	Public/By Appointment	225	2,000	2,225
DUCKHORN	110,000	Public	29	50	79
CAYMUS	110,000	Public	<i>no data</i>	180	180
OPUS ONE	110,000	By Appointment	<i>no data</i>	100	100
HAVENS	120,000	By Appointment	<i>no data</i>	85	85
FLORA SPRINGS	120,000	By Appointment	<i>no data</i>	175	175
ZAPOLSKI RUDD	120,000	By Appointment	<i>no data</i>	2	2
PALISADES	120,000	By Appointment	35	60	95
PEJU PROVINCE	120,000	By Appointment	17	450	467
<b>Swanson Winery (Proposed)</b>	<b>100,000</b>	<b>By Appointment</b>	<b>120</b>	<b>500</b>	<b>620</b>

Note:

Marketing Ave/Wk numbers are approximate.

### Consistency with Standards

#### Zoning

The project is consistent with AP (Agricultural Preserve) zoning district regulations. A winery (as defined in Napa County Code § 18.08.640) and uses in connection with a winery (see Napa County Code § Section 18.16.030) are permitted in the AP district with an approved use permit. This application complies with the Winery Definition Ordinance and those other requirements of the Zoning Code as applicable.



Building Division Requirements

The Building Division recommends approval with standard conditions. Please see their attached memo.

Fire Department Requirements

The Fire Marshal's office recommends approval with standard conditions. Please see their attached memo.

Department of Public Works Requirements

The Department of Public Works recommends approval with conditions addressing roadway improvements, drainage, and floodplain management. Please see their attached memo.

Department of Environmental Management Requirements

The Department of Environmental Management recommends approval with standard conditions. Please see their attached memo.

**Site Photos**



Existing Residence (2008, from Money Road)



Putative Northern California Black Walnuts with Existing House and Barn in Background





Black Walnuts and Money Road Right-of-Way



Existing Barn (from Money Road)