

**PLANNING COMMISSION HEARING – JULY 16, 2014  
EXHIBIT B – REVISED CONDITIONS OF APPROVAL**

***LMR Rutherford Estate Winery  
USE PERMIT #P13-00167 & VARIANCE #P13-00185  
1790 ST. HELENA HIGHWAY S.(State Hwy 29), RUTHERFORD, CA 94573  
(APN 030-100-016)***

**1. SCOPE**

The permit shall be limited to:

- A. Approval of a Variance (P13-00185) to allow the construction of the proposed wine production building (winery) 160± feet from State Highway 29; construct the proposed administrative office building 160± feet from State Highway 29; and construct the proposed winery equipment storage building 260± feet from State Highway 29 in lieu of the required 600-ft. winery setback (§18.104.230(A)(1.))
- B. Approval of a use permit application (13-00167) to establish a new winery with an annual production capacity of 100,000 as follows:
  1. Construct a new 11,000 ± sq. ft. wine production building, with a 4,164 sq. ft. covered tank pad and a 4,164 sq. ft. covered crush pad for a total 19,328 sq.ft.;
  2. Construct a new 816± sq. ft. Storage building; and,
  3. Construct a new 1,360± sq. ft. administrative office building with conference rooms;
  4. Establish the existing open-air pavilion for use as the hospitality/visitor center, only;
  5. Six (6) full-time and three (3) part-time employees;
  6. Hosted tours and tastings for wine trade personnel and consumers by appointment only on a daily basis up to a maximum 50 visitors Monday through Thursday and a maximum 40 daily visitors Friday and Saturday, limited to the Open-air pavilion hospitality/visitor center (Maximum 330 per week);
  7. On-premise consumption of the wines produced on-site in the portion of the Open –air pavilion hospitality/visitor center or on the south porch of the winery in accordance with AB 2004;
  8. A Marketing Plan that includes the following:
    - a. Private promotional tastings with meals, 24 per year for a maximum of 35 people per event;
    - b. Two (2) harvest party events per year for a maximum of 100 guests at each event;
    - c. Six (6) marketing events such as barrel tastings, auctions and other social events, including meals and music, 6 times per year for up to 60 people in the open air pavilion or on the south porch of the winery;
  9. Winery hours of operation Monday through Sunday from 7:00 AM to 6:00 PM (non-harvest production hours);
  10. Visitation hours Monday through Sunday 10:00 AM to 4:00 PM;
  11. Relocation of the existing driveway approximately 50 feet northward, to be located directly across from the driveway of the existing winery on the westerly side of the State Highway 29; construction of a new 20' wide driveway to the new office building;

12. Relocation of the existing commercial farm greenhouse approximately 30 feet to allow for the construction of the new 7-space employee parking lot; expand the existing farm stand visitor parking area from 4 to 12 spaces, for a total of 19 parking spaces on-site;
13. Remodel of the existing bathroom/wash area into visitor and employee restrooms;
14. Construction of the new on-site winery process and domestic wastewater treatment system;
15. Construction of the transient, non-community water system;
16. Removal of the existing barn delineated on the site plan;
17. Construction of new water storage tank(s) for fire suppression (6,000 gallons); and,
18. New landscaping and signage.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code. It is the responsibility of the applicant to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and the general public to ensure compliance is achieved. Any expansion or changes in use shall be by the 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 of wine purchased from the winery may occur solely within the Hospitality Area and/or Outdoor Porch as specified in the application. Any and all visitation associated with on-premise consumption shall be subject to the fifty (50) persons maximum weekday and forty (40) persons maximum weekend, tours and tastings visitation limitations and/or applicable limitations of permittee’s marketing plan.
- B. The permittee shall comply during all construction activities in the Bay Area Air Quality Management District Basic Construction Mitigation Measures (Table 8-1, May 2011 Updated CEQA Guidelines) as provided below:
  1. All exposed surfaces (e.g. parking areas, staging areas, soil piles, grading areas, and unpaved access (road) shall be watered two times per day.
  2. All haul trucks transporting soil, sand, or other loose materials off-site shall be covered.
  3. 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.
  4. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible after grading unless seeding or soil binders are used.

6. 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 the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be check by a certified visible emissions evaluator.
  8. Post a publicly visible sign with 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 existing farm labor dwelling is classified for farm labor residential purposes only and cannot be used for commercial purposes or in conjunction with the operation and/or visitation/marketing program for the winery. If the residence is 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.
  - D. Prior to Issuance of a Building Permit by the Building Division or the commencement of use of a portion of the open air pavilion for tastings or hospitality/marketing activities, a floor plan of the pavilion delineating the separate floor area of the commercial farms and the separate floor area of the winery tasting room and hospitality/marketing event area to the Planning Director for approval.
  - E. Any food provided with wine during marketing activities may be provided by a licensed catering service.
  - F. Prior to issuance of Building Permit for the winery, the applicant shall submit documentation that an application has been filed with Caltrans Office of Encroachment Permits to construct a left turn lane at the new project driveway for traffic approaching from the southbound direction. The construction of the left turn lane and any other work inside the Caltrans right of way necessary to complete the driveway approaches shall be completed prior to operation of the winery.
  - G. Any removal of the existing screening trees along Highway 29 shall be subject to the submittal of a detailed landscape plan for Planning Division review and approval prior to installation to ensure that adequate screening of the winery is maintained. All tree removal shall be replaced with fifteen gallon trees at locations approved by the Planning, Building, & Environmental Services Director or designee.

### **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. Environmental Health Division as stated in their Memorandum dated April 28, 2014.

- B. Engineering Services Division as stated in their Memorandum dated May 8, 2014.
- C. Department of Public Works as stated in their Memorandums dated May 12, 2014 and May 21, 2014.
- D. Fire Department as stated in their Inter-Office Memo dated June 26, 2013 and their e-mail dated April 24, 2014.
- E. California Department of Transportation stated in their letter dated September 4, 2013 and June 5, 2014.

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. VISITATION:**

Consistent with Sections 18.16.030 and 18.20.030 of the Napa County Code, marketing and tours and tastings may occur at a winery only where such activities are accessory and “clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.” Marketing and/or Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions where extenuating circumstances exist and are subject to review and approval by the County Building Official, County Fire Marshal, and the Director of Planning, Building, and Environmental Services.

Permittee shall obtain and maintain all permits and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB) required to produce and sell wine, including minimum levels of crush and fermentation. In the event permittee loses required ABC and/or TTB permits and licenses, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are re-established.

A log book (or similar record) shall be maintained which documents the number of visitors to the winery (be they tours and tastings or marketing event visitors), and the dates of their visit. This record of visitors shall be made available to the Department upon request.

**A. TOURS AND TASTING**

Tours and tastings are limited to the following:

1. Frequency: 7 days per week, Monday through Sunday.
2. Maximum number of persons per day: 50 Sunday through Thursday; 40 Friday and Saturday.
4. Maximum number of persons per week: 330
3. Time of operation: 10:00 AM to 4:00 PM

“Tours and tastings” means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings.

Tours and tastings may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant. (Ord. 1340, 2010; Ord. 947 § 9 (part), 1990; prior code § 12070).

Start and finish time of tours and tastings shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM, and shall be limited to those wines set forth in Napa County Code 18.16.030(G)(5)(c) – AP Zoning.

## **B. MARKETING**

Marketing events are limited to the following:

1. Private promotional tastings with food  
Twenty-four (24) per year  
Number of persons: 35 maximum  
Meals: Catered  
Time of Day: Between 10:00 AM to 10:00 pm
2. Harvest Party Events  
Two (2) per year  
Number of persons: 100 maximum  
Time of Day: Between 10:00 am to 10:00 pm
3. Marketing events such as barrel tastings, auction, and other social events, including meals and music;  
Six (6) per year  
Number of persons: 60 maximum  
Time of Day: Between 10:00 am to 10:00 pm

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20 of the Napa County Code. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery's use permit. Marketing plans in their totality must remain "clearly incidental, related and subordinate to the primary operation of the winery as a production facility" (subsection (G)(5) of Sections 18.16.030 and subsection (I)(5) of 18.20.030 of the Napa County Code). To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of recovery of variable costs, and any business content unrelated to wine must be limited. Careful consideration shall be given to the intent of the event, the proportion of the business

event's non-wine-related content, and the intensity of the overall marketing plan. (Ord. 1340, 2010; Ord. 1104 § 11, 1996; Ord. 947 § 9 (part), 1990; prior code § 12071).

All activity, including cleanup, shall cease by 10:00 PM. Start and finish time of activities shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM. If any event is held which will exceed the available on-site parking, the applicant shall have prepared an event specific parking plan which may include, but not be limited to, off-site parking and shuttle service to the winery.

## **5. GRAPE SOURCE**

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

## **6. 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).

## **7. SIGNS**

Prior to installation of any project 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.

## **8. 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.

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.

**9. LANDSCAPING**

Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, 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. The plan shall be prepared pursuant to the County's Water Efficient Landscape Ordinance (WELO), as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.

Plant materials shall be purchased locally when practical. The Agricultural Commissioner's office (707-253-4357) shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.

No trees greater than 6" DBH shall be removed, except for those identified on the submitted site plan. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with project construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.

Evergreen screening shall be installed between the industrial portions of the project (e.g. tanks, crushing area, parking area, etc.) and off-site residence that can view these areas.

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

**10. OUTDOOR STORAGE/SCREENING/UTILITIES**

All outdoor storage and ground mounted 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.

**11. COLORS**

The colors used for the roof, exterior walls and built landscaping features of buildings shall be limited to earth tones that will blend the project 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.

**12. 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, including cave spoils, 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 public 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. In no case shall parking impede emergency vehicle access or public roads.

**F. GATES/ENTRY STRUCTURES**

Any gate installed at the property's 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 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.

**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 mechanical 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, buildings.

**14. 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.

**15. ADDRESSING**

All project site addresses shall be determined by the Planning, Building & 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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."