

Roland DeGuarda

901 Foothill Blvd.
Calistoga, CA 94515

RECEIVED
MAY 27 2015
Napa County Planning, Building
& Environmental Services

May 26, 2015

John McDowell
Deputy Planning Director
1195 Third Street, Suite 210
Napa, CA 94559

RE: Reverie Use Permit

Dear Mr. McDowell-

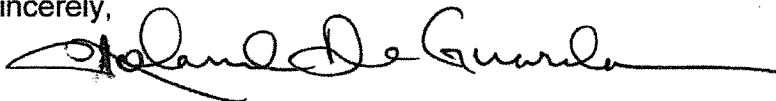
This letter is being written in order to lend my support for approving the Reverie Winery Use Permit Modification.

As a lifelong resident of Calistoga at the foothill of Diamond Mountain, I was around when wineries first started on this appellation. Reverie, like many others, have been nothing but good stewards of the land and respected members of the community.

Its become very frustrating when folks down Valley and outside our local Calistoga community cast stones saying how things are to be done when they have no direct impact or knowledge of the local environment. Reverie for years has been a responsible business and when guest come to visit; I enjoy sending them there for a unique and memorable experience. They are the model small business we need to continue to support rather than the corporate mega wineries down Valley.

Please vote to approve their Use Permit so they can continue to serve as great local winery asset to our community.

Sincerely,



Roland DeGuarda

May 14, 2015

John McDowell
Napa County Deputy Planning Director
1195 Third Street, Suite 210
Napa, CA 94559

RECEIVED
MAY 27 2015
MB
Napa County Planning, Building
& Environmental Services

Dear John:

I write this letter to voice my support for the use permit modification application for Reverie Winery.

As a longtime resident of Calistoga and former vintner and owner of Robert Pecota Winery, I know the challenges of operating a small family business in Napa County. The multitude of regulatory compliance issues, competitive market place, and ever changing environment make running a small farming/winery ever so complex. My goal was always to be a good steward of the land, to produce a wine to be proud of and make a contribution to the rural quality of life for my neighbors.

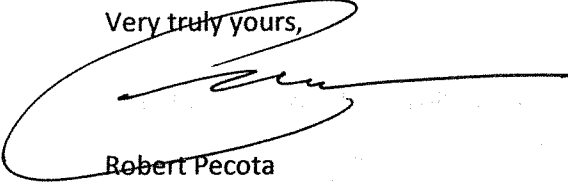
I have known Norm Kiken for well over 20 years, as fellow Calistoga family winery owner and I know he shares these same values. I understand he is coming before you voluntarily to be sure Reverie is in compliance with and operated at the highest standards.

Unfortunately, a few people have decided to drum up a "crisis" and are protesting all winery permits regardless of the merits. What these critics fail to acknowledge is the unique quality of the agricultural preserve supported and protected by the thriving Napa Valley wine industry. The progress over the past thirty years is nothing short of amazing. Census data from 1980 to 2010 shows population growth in Napa increased by 37,000 residents from 99,000 to 136,000, while Sonoma County on our west added 183,000 residents and Solano County on our east added 178,000 residents, that is, between them, "three more Napa Counties in thirty years"! During this thirty year period the Bay Area (ABAG) population grew some 38% adding 1,969,000 residents. Napa County is among just a few counties in the United States that encourages growth in the townships and the maintenance of open space agriculture between the townships. Protecting the open space vineyard-winery zoning is our highest priority.

I am sure the planning staff will accurately review the use permit modification and I am also certain Norm Kiken will comply with the findings, so that Reverie Winery can continue to operate as a longtime producer of high quality Napa Valley wines.

I urge your approval of the Reverie Winery use permit modification application.

Very truly yours,



Robert Pecota
1010 Cedar Street
Calistoga

Edward and Irene Ojdana
511 Kortum Canyon Road
Calistoga, CA 94515

RECEIVED

MAY 27 2015

Napa County Planning, Building
& Environmental Services

May 25, 2015

Ms. Charlene Gallina
Supervising Planner
Napa County Planning, Building & Environmental Services Dept.
1195 Third Street, Suite 210
Napa, CA 94559

Via Email and USPS

Re: Reverie Use Permit Modification #P13-00027 and Exception (P15-00141)

Dear Ms. Gallina,

This letter is in support of modifying Reverie on Diamond Mountain Winery Use Permit (#P13-00027) and Use Permit Exception to the Conservation Regulations (P15-00141).

We own the property adjacent to Reverie on Diamond Mountain. In fact, our residences are only a "stone's throw" apart. We have known Norman Kiken since purchasing our property in 2008 and consider him and his wife Suzie to be among our best friends. We also believe that the proposed modifications do not represent any change to existing traffic, water usage or noise. We believe the proposed modifications will result in improving the infrastructure of Reverie on Diamond Mountain for the better.

Norm Kiken and Reverie on Diamond Mountain Winery have been exceptional neighbors and community contributors and should be granted the above-referenced Use Permit Modifications.

Sincerely yours,

Edward S. Ojdana
Irene Ojdana

Edward and Irene Ojdana

Gallina, Charlene

From: Ed Ojdana <ed@vineyard511.com>
Sent: Tuesday, May 26, 2015 9:59 AM
To: Gallina, Charlene
Subject: Letter Supporting Reverie Winery
Attachments: Ltr Supporting Reverie Winery.pdf

Please find attached a letter in support of Reverie Winery regarding Use Permit Modification #P13-60027 and Use Permit Exception P15-00141.

Sincerely yours,

--

Edward and Irene Ojdana
Vineyard511.com

Middletown Rancheria
Tribal Historic Preservation Department
P.O. Box 1035
Middletown, CA 95461

May 21, 2015

Napa County Planning, Building & Environmental Services Department
Ms. Charlene Gallina, Supervising Planner
1195 Third Street, Suite 210
Napa, CA 94559

RE: Diamond Mountain Winery Use Permit Modification #P13-00027 and Use Permit Exception to the Conservation Regulations (P15-00141)

Dear Ms. Gallina:

The Middletown Rancheria Tribal Historic Preservation Department has received your request of May 13, 2015 requesting information/comment on the Diamond Mountain Winery Use Permit Modification #P13-00027 and Use Permit Exception to the Conservation Regulations (P15-00141). Our comment on this project and its potential to affect historic, archaeological, Traditional Cultural Properties (TCP) or sacred Lake Miwok sites or properties is required by Section 106 of the National Historic Preservation Act of 1966 (NHPA), and 36 CFR Part 800. We thank you for submitting your project proposal for our review and comment.

Given the information provided, you are hereby notified that there should be no Lake Miwok archaeological, historic, TCP's or sacred sites in or near your proposed project site to be adversely affected by your project. Therefore, in accordance with 36 CFR 800.4(d)(1), please proceed with your proposed project. However, please be aware that you may encounter undiscovered properties or remains which must be immediately reported to us under both NHPA and NAGPRA regulations.

This information is provided at your request to assist you in complying with 36 CFR 800 for Section 106 consultation procedures. Please retain this correspondence to show compliance with Section 106. Should you have any questions regarding your request and or our comments you may contact me at the address or telephone number listed herein.

Sincerely,



Stephanie L. Reyes
Tribal Historic Preservation Officer
Middletown Rancheria
Phone (707) 987-3670 ext 115

RECEIVED

Fax (707) 987-9091

MAY 26 2015
RJ8
Napa County Planning, Building
& Environmental Services

Rudy and Rita von Strasser
1510 Diamond Mountain road
Calistoga, Ca 94515

RECEIVED

MAY 19 2015

Napa County Planning, Building
& Environmental Services

Napa County Planning, Building & Environmental Services

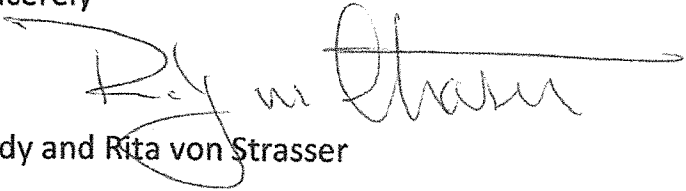
Re: Reverie use-permit mod # P13-00027

My wife Rita and I have lived at 1510 Diamond Mountain Road for the past 26 year. For 22 of these years, Norm Kiken and his winery operation, Reverie on Diamond Mountain has been our neighbor. In fact, his only method of ingress and egress is through our property.

I am sending this letter to state that Mr. Kiken has been a good neighbor. Given the perceived potential conflict due to the proximity of our residential and his commercial interests, I would like to say that in the 22 year period there have been very few issues that have arisen. In my opinion the proposed increase in production and visitation is modest and appropriate, and does not pose any additional inconveniences on us, on the neighborhood, or on the micro and macro environment. The success of such small wineries within the Diamond Mountain District appellation, and the Napa Valley as a region, has helped to bolster the value of all of our properties over the years, and the entire neighborhood and community reaps these benefits, directly or indirectly.

In closing, we support this application.

Sincerely


Rudy and Rita von Strasser

Gallina, Charlene

From: Rudy von Strasser <rudy@vonstrasser.com>
Sent: Tuesday, May 19, 2015 9:35 AM
To: Gallina, Charlene
Cc: Norman Kiken (normkiken@gmail.com)
Subject: written comment submission P13-00027
Attachments: Scan0516.pdf

Charlene,

Attached is my comment on the Reverie Use Permit modification request.

Please feel free to call me if you have any further information.

Rudy

Edward Wallis
1670 Diamond Mountain Road
Calistoga, California, 94515

May 18, 2015

Charlene Gallina, Supervising Planner
Napa County Planning, Building and Environmental Services
1195 Third Street, Suite 210
Napa, California, 94559

Re: Reverie Winery Use Permit
1520 Diamond Mountain Road, Calistoga, California, 94515

To Whom It May Concern,

I have lived at 1670 Diamond Mountain Road since 1975. Reverie Winery under the stewardship of Norman Kiken has been an excellent neighbor. I support their requested changes to Reverie Winery Use Permit under consideration at Napa County Planning Commission hearing scheduled for June 3, 2015.

Most Sincerely



Edward Wallis

RECEIVED

MAY 20 2015 *AT*

Napa County Planning, Building
& Environmental Services

George Caloyannidis, Architect, PhD
2202 Diamond Mountain Road
Calistoga, CA 9451
calti@comcast.net

John McDowell
cc: Charlene Gallina
Napa County Planning
1195 3rd Street
Napa, CA 94559
john.mcdowell@countyofnapa.org

May 18, 2015

RE: REVERIE WINERY MAJOR USE PERMIT MODIFICATION # P13-00027MOD

I reviewed the Reverie Use Permit Application file on May 15, 2015.

A) CEQA MANDATORY FINDINGS OF SIGNIFICANCE (XVII "b")

"Does this project have impacts that are individually limited, but cumulatively considerable? ('Cumulatively considerable' means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects and the effects of probable future projects)".

Planning has determined that there are "less than significant" impacts. I believe the impacts are significant.

B) "PAST PROJECTS":

The number of projects without permits Mr. Kiken has undertaken on his property over the years have had considerable impacts as we will see below which are not easy to quantify due to the passage of time. However, by any definition these are "Past Projects" the impacts of which CEQA needs to account for.

This is a serious systemic problem when past projects are undertaken without permits and accommodated with new Use Permits because any subsequent CEQA will be deficient unless it fully accounts for their impacts.

Unless the impacts of past violations are identified, accounted for and mitigated, any subsequent CEQA such as this, sanctifies and issues a clean bill on the entire project including its past violations and its unmitigated impacts.

CEQA must address this issue in a satisfactory manner.

C) MISSING MATERIAL INFORMATION:

C-1) EXTENT OF PAST USE PERMIT VIOLATIONS:

While both the applicant and CEQA document state that the winery has been in violation of its Use Permit, neither state the extent of the violations or the time period of same. In a letter to the Diamond Mountain Road community, Mr. Kiken states that: *"While the new permit may appear to increase these (visitations and wine production limits), the new permit will allow less than what we have been doing"* (1). The applicant must provide the extent of *"what we have been doing"* so that CEQA can begin to identify the extent of the past project.

The extent and duration of Use Permit violations is missing material information.

It has been reported and confirmed that the Reverie Winery is under contract for sale. In this particular case, this may have major implications. Mr. Kiken by his own statement is *"contractually prohibited from directly responding"* to the question on whether his winery is under a sales contract (2).

More important, it is also reported from a credible source that the buyer is the same - or an entity controlled by - the new owner (Rosewood Hotels) of the adjoining Calistoga Hills entitled development located within the City of Calistoga.

If the buyer is indeed the one reported, serious issues arise. The driveway to Mr. Kiken's residence directly abuts the development at the ridge level which raises the likelihood of joint uses between the two which may be the reason why it is Mr. Kiken and not the future Reverie Winery owner who is the front person to this application.

Rosewood Hotels is not in the wine business but the physical connection of the two properties present a unique angle to the future use of the winery as it can easily comingle the unlimited events at the adjacent resort which lies in a different jurisdiction making it impossible for the County to regulate traffic and various exchanges between the two entities. Even audits of income and charges recorded between the entities completely according to the law, will not be able to pinpoint and police the actual winery activity.

This is missing material information in assessing the future impacts of the Use Permit as required by CEQA.

C-2) IMPACTS OF "PAST PROJECTS" - GRADING / EROSION CONTROL:

The existing caves were constructed reportedly at a time when no drilling permits for caves were required. However, the Clos Pegase Winery permit issued in 1987 included the permit for its caves. The Reverie caves were drilled after that date.

Planning needs to confirm this fact by citing the time as of which such permits were required.

However, the applicant states and CEQA has accepted the fact that the cave tailings *"were kept on the property and used to improve the vineyard roads"*. According to my calculations these tailings were in the order of a minimum 20,000 cubic yards, the equivalent of 2,000 truck loads. Having used such quantities to improve vineyard roads is not credible due to the sheer volume of soil. Obviously, they were also used as fill for other purposes in a hillside setting, an activity which would have required

grading permits at the time as well as an erosion control plan, none of which were obtained. These were violations with potentially serious environmental consequences, especially due to the immediate proximity of streams. They violated County RSS, California Building Code CBC and Napa County Regulations Sec. 18.108.

CEQA refers to Erosion Control Plan # 93391-ECPS administratively approved by Conservation, Development & Planning Department in 8/9/1994 authorizing *"the construction of the residence, access drive, swimming pool and septic water system"*. However, I could find no record of an erosion control plan - required since 1991 - for the vineyard which was planted after that date on 20% steep slopes.

Further related violations as a direct result of failing to obtain the required permits and avoid inspections is the fact that the Portal of the cave encroaches into the setback of the tributary creek and that portions of the caves lie within the leach field setback requirement.

Failure to obtain the above permits for grading, fill, compaction, encroachments to stream setbacks all in such close proximity to streams were serious violations for which, had Mr. Kiken been caught by the Department of Fish & Game, the California Water Quality Control Board or Napa County, would have triggered serious penalties, fines and orders to undertake remedial actions.

The obvious purpose for procuring permits with their associated studies and inspections is to prevent negative impacts on the environment. It is obvious that construction activity was undertaken in an environment sensitive setting.

The above amount to a minimum of 6 serious primary environmental quality violations - with numerous derivative ones - the negative impacts of which none of the respective agencies were given a chance to identify and remedy at the time.

CAB Consultants now states that a CRMR has been prepared for the current use permit modification purposes.

The CEQA Negative Declaration implicitly sanctifies all past environmental violations and gives the winery a clean bill.

In view of the above, CEQA finding: *"The proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared"* is not credible because it fails to account for prior environmental damage of a *"Past Project"* unless it can certify that none had occurred.

The same applies to CEQA finding that the project will have a, *"less than significant impact in substantial soil erosion or the loss of top soil"* unless it can certify that the amount of fill from 20,000 cubic yards of cave tailings did not cause loss of top soil and that erosion control measures were undertaken in its placement and that an erosion control permit was procured during vineyard planting operations on 20% slopes.

CEQA must provide proof of the vineyard erosion control plan if one exists.

C-3) IMPACTS OF "PAST PROJECTS" - BUILDING PERMITS:

Mr. Kiken converted the winery second floor for winery purposes without building permits, including structural, electrical, plumbing, heating. Though the cave drilling may not have required a permit, electrical, plumbing and ventilation in it did require them.

The two pre-existing structures for winery material storage and vineyard equipment shop located within a stream setback were modified, enclosed and expanded, and one other was built from the ground up, all without building permits. They were subsequently demolished by Permit B14-01281 which was issued 18 months **after** the current Use Permit Modification was submitted, for obvious reasons. A minimum of **12** building code violations are indicative of the prevailing culture at this winery.

C-4) TRAFFIC IMPACT HWY 29 - NEARBY "FUTURE PROJECTS":

CEQA finds that the traffic impact of the project will be "*less than significant*". It bases this finding on a W-Trans study, not included in the file provided to me for review.

When one considers that under this application, wine production will almost double, bottling lines, packaging deliveries and bottle exports will double, total winery area including the improved caves will more than triple, daily visitors will double, event guests will double along with double the caterers, serving personnel, food preparers, party supply trucks, sewage export trucks etc, finding that traffic impact will be "*less than significant*" is simply not credible.

With almost 50% of county wineries operating in excess of Use Permit limits, County data on traffic projections are no longer accurate making CEQA and EIR findings questionable. We have no reliable data on traffic counts from the existing Diamond Mountain Road wineries unless they are audited.

More important, CEQA has failed to consider the traffic impacts of two important future projects:

* The already entitled Wallis Winery and event center at its to be restored historic winery with additional buildings at 1670 Pachateau Road, a tributary to Diamond Mountain Road.

* The aforementioned Calistoga Hills resort major development which according to its own traffic study is projected to add 1,500 vehicle trips per day on to Hwy 29 just 1/4 mile north of the Diamond Mountain Road intersection.

In addressing the traffic congestion at the Hwy 29 / Lincoln Avenue intersection, the development's EIR states: "*For these reasons (lack of space), physically constructing the improvements is not feasible; therefore, the residual significance of the impact is significant and unavoidable*". Short of denying the resort's application, the City of Calistoga accepted a \$ 267,795 in lieu fee. However, this fee does nothing to enhance traffic flow at an intersection with an "F" rating even before the impact of 1,500 daily vehicle trips.

While CEQA states that the 3/4 mile section of Hwy 29 to the Diamond Mountain Road intersection "*operates without capacity limitation*", it must rely on data from an outdated study. During the past 12 to 18 months, traffic at times exceeds the resort's traffic study maximum waiting period of a little over 1 minute. It can now be 3 minutes and longer with traffic at times backed up all the way to Diamond Mountain Road; on certain Fridays, traffic has been backed up all the way to Azalea Springs Road.

CEQA must account for the impacts of verified traffic data from existing wineries on Diamond Mountain Road, impacts from the Wallis Winery and the Calistoga Hills Resort future developments as well as from current traffic counts on Hwy 29 from Diamond Mountain Road to Calistoga.

C-5) TRAFFIC - COUNTY WIDE "FUTURE PROJECTS" - "CUMULATIVE IMPACTS":

CEQA guidelines do not limit the impact radius of *"future projects"* within a municipality. There is no doubt that traffic patterns within the county have already reached unsustainable levels. One only needs to look at the projections in the county's General Plan EIR's Circulation Element to see how many dysfunctional Level "D -F" road segments and intersections were in 2007. The 2030 projections are downright frightening requiring 6 and 4 - lane arteries traversing the county just to bring levels to a "C" rating. This of course will not happen. What will happen is that traffic on the existing roads will deteriorate to intolerable - downright dysfunctional - levels.

As far as *"future projects"* are concerned in assessing the traffic impacts of this application, there are approximately **55 pending minor, major and new winery applications in the pipeline**, all contributing in a minor or major extent to traffic increases to an overburdened network.

At this time, there is no project with no matter how small a contribution it makes to overall traffic levels within the county which qualifies for a *"less than significant"* impact assessment. Unfortunately, CEQA provides no check box for a *"more than significant"* rating, because this is the true impact of any addition to traffic no matter how small.

CEQA must recognize that there is no *"less significant"* impact to an already significant condition any longer. Any addition to traffic must analyze and factor in county wide cumulative impacts.

D) DIAMOND MOUNTAIN ROAD LEVEL "A" RATING:

The Diamond Mountain Road residents are proud of their road Level "A" rating and so are numerous hikers, bikers from the Napa Valley and from all over the world who use it. It is safe, it is shady and pristine with the best redwoods in the county and a stream along the road.

It, and most neighborhood hillside roads in the county - Soda Canyon is another good example - need protection as a natural resource rather than being viewed by the County as opportunity sites for increased development until they are degraded to level "C" and worse as County policies have been doing but must stop doing with most of its roads.

All neighborhood level "A" hillside roads in the county are an integral part of the spirit of the AW environment. We cannot afford to degrade that as well.

E) HOLD AND HAUL WASTE SYSTEM:

The increased levels the Reverie winery seeks require a Hold and Haul waste system, meaning that its waste needs to be hauled away in trucks in order for it to operate under sanitary conditions. This adds more trucks on Diamond Mountain Road and indicates that this winery is stretching the limits of sustainability. Its life depends on mechanical devices commonly referred to in the medical field as "life support".

What has the Reverie Winery been doing with its excess sewage waste?

F) WINERY OPERATIONS IN A SUBSTANDARD ENVIRONMENT:

The application review contains a number of conditions before increased production and visitations are permitted. They range from a code compliant new well and sewage disposal system (Hold and Haul),

wider access roads for fire safety, setbacks from streams etc. all of which were not required for operation within the limits of the existing Use Permit; all designed for a safe and sanitary operation for the authorized production and number of visitors.

For many years the Reverie winery, by Mr. Kiken's own admission, has been **exceeding** even the production and visitation levels it is seeking to have recognized under this Use Permit Modification.

It follows that the winery has been producing wines and accepting visitors in a substandard and unsafe, unsanitary environment without a code compliant well or sewage disposal system. This is an even more serious violation to be added to its record.

G) VOLUNTARY DISCLOSURE / CREDIBILITY:

The CEQA review states that "On February 4, 2013, Use Permit Major Modification P13-00027 was voluntarily submitted by the property owner, *"as well as, in response to being selected to participate in the Winery Audit process"*. This language is ambiguous in as much as it implies that the disclosure of Use Permit violations was voluntary.

However, if the disclosure was made **after** the owner was notified that he would be subject to an audit, characterizing the action as *"voluntary"* is misleading at best and may solicit more lenient treatment under false premises.

Planning must clarify that timeline because if the disclosure took place after the notification of the pending audit, it cannot be considered voluntary.

With a minimum of 6 major environmental violations and a minimum of 12 building code violations to his record, the applicant lacks any credibility that he will comply with any of the terms of any new Use Permit.

H) THE CONDITIONAL USE PERMIT LAW:

In examining California case law as laid out in the *Governor's Office of Planning and Research* (3), it is my opinion that it is time for the County to reexamine the way it has been applying it, especially in recent past and in view of the changing environment and conditions.

H-1) QUOTES FROM THE GOVERNOR'S GUIDLINES:

** "A Conditional Use Permit (CUP) allows a city or county to consider special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district".*

H-2) CASE LAW PROTECTING THE PUBLIC INTEREST:

** "To enable a municipality to control certain uses which could have detrimental effects on the community" (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal. App.3d 1176).*

** "The proposed use is in the best interest of public convenience and necessity and will not be contrary to the public health, morals, or welfare (Upton v. Gray (1969) 269 Cal.App.2d 352).*

** "The establishment, maintenance and conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood" (Hawkins v. County of Marine (1976) 54 Cal.App.3d 586).*

* "Any use found to be objectionable or incompatible with the character of the city and its environs due to noise, dust, odors or other undesirable characteristics may be prohibited" (*Snow v. City of Garden Grove* (1961) Cal.App.2d 496).

* "Such use would be essential or desirable to the public convenience or welfare, and will not impair the integrity and character of the zoned district or be detrimental to the public health, safety, morals or welfare" (*O'Hagen v Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151).

H-3) LAW PROTECTING THE OWNER:

* "The condition must substantially further a legitimate public purpose; the condition must further the same public purpose for which it was imposed; and the property owner may not be required to carry a disproportionate load in furthering the public purpose (*California Land-Use and Planning Law*, 9th edition).

H-4) CHANGING CRITERIA IN EVALUATING USE PERMITS:

Napa County is at a cross roads due to changing conditions affecting public interest criteria.

While the case could be made in the past to justify an overall benefit to the community in evaluating a certain development - generally that being increased revenue to the county - the standards for evaluating overall benefit have changed due to the strained infrastructure to unsustainable levels, its accelerating wear and tear due to overcapacity and the associated degradation of the quality of life.

Much of what in the past was considered a benefit may now be outweighed by overall detrimental effects. This changes the criteria and requires a different analysis by which a Conditional Use Permit may be evaluated so than on balance it serves rather than works against the public interest.

CEQA Negative Declarations and acceptable EIRs assess only the lack of negative environmental impacts. The granting of a Conditional Use Permit must satisfy an additional requirement, that of a public benefit. Much of the Case Law requires that it's effect is "essential or desirable to the public convenience or welfare". In other words, it must have a residual positive outcome. Current coditions make such an assessment much more complex than it used to be.

At this point in time, a credible argument can be made that the current County's policy of granting Conditional Use Permits while consistently ignoring public input on the detrimental effects on neighborhoods and the community who are the at the forefront of quality of life, is acting directly against California Case Law.

I) CONCLUSIONS:

At issue is how to handle the Reverie violations for its skirting both environmental and building codes to its advantage and contrary to the public interest. Sanctions must be severe because if they are not, they will accelerate the rapidly increasing culture of permissiveness.

*** The granting of the Use Permit Modification to the Reverie winery furthers no public purpose, neither does it provide any benefit to the community or the neighborhood as the spirit of that law requires.**

* All impacts of such a Use Permit - even "insignificant" ones - have negative impacts on the community, especially cumulative ones, designed solely to further the financial interest of a single person at the expense of the community. This is contrary to the spirit of the Conditional Use Permit Law.

* The Reverie winery is not being forced to carry an undue burden for any public purpose. It already was granted a Use Permit which it has been violating in both production and visitation levels, presumably for many years.

* The Reverie winery by its patent disregard for the laws and regulations of the county by making "improvements" on its lands without environmental and building permits is the last to be deserving discretionary treatment afforded by a Use Permit Modification.

As a result, all assurances by the applicant regarding production levels, visitation levels, event numbers, modes of transportation by high capacity passenger vehicles to minimize traffic impacts and all assurances towards land stewardship and respect for the law and the neighborhood lack credibility. Yet, this is the sole premise on which this CEQA Negative Declaration relies on and by which it assures the public.

* The Reverie winery must bring all its structures to Building Code compliance and use them under its existing Use Permit levels without a Use Permit Modification. It is obvious that its location on this particular site cannot sustain increased production or visitations as it has reached levels beyond sustainability as evidenced by the need of a Hold and Haul sewage disposal system. There is no reason why the County ought to accommodate this kind of winery environment.

* As demonstrated by the County in the past, its lax policy of monitoring Use Permit compliance has resulted in an environment of lawlessness. It is unfortunate that compliance which was based on trust and good faith has been taken widespread advantage of. Among other effects, it has resulted in the County's loss of reliable data in preparing credible CEQA and EIRs.

It also demonstrates that the honor system on which almost all CEQA Negative Declarations on Use Permits rely has been compromised exposing the urgent need for a more effective system.

It is imperative for the County to restore its waning credibility or the public will have no alternative but to resort to the initiative process. This is not a healthy way to govern.

The fate of the Reverie application will be a significant test case

Enclosures / Attachments:

- (1) Kiken Letter dated May 12, 2015
- (2) Kiken email dated May 14, 2015
- (3) Governor's Conditional Use Guidelines and Case Law

Norman Kiken
Reverie Winery
1520 Diamond Mountain Road
Calistoga, CA 94515
(707) 974-9453

George + Christine

May 12, 2015

Dear Neighbor,

We wanted to keep you informed as to what we are doing at Reverie.

We have applied for a change in our winery operating permit. A hearing before the Napa County Planning Commission is scheduled for June 3, 2015.

Most important to our neighbors is that the approval of this change will have **no effect** on what is likely to be your major concerns. Importantly, there will be **no additional traffic, no additional water usage and no additional noise**. However there may be limited additional traffic or noise during the construction described below.

By way of background our existing winery operating permit allows us very limited customer visitations and limited wine production. We have exceeded both the currently permitted visitation and wine production (even though we have only used our Diamond Mountain estate grapes.) **While the new permit may appear to increase these, the new permit will allow less than what we have been doing.**

The new permit will require the following construction:

- Limited widening of the road from Diamond Mountain Road that runs through the Von Strasser property to Reverie. This improvement is required to satisfy safety concerns and meet current code requirements.
- A new well will need to be dug. Our existing well does not meet the current code requirements for the depth of a sanitary seal. The existing well cannot economically be improved to satisfy this requirement. There will be no increase in water consumption.

continued

page 2, concluded.

- Fire protection for the cave and winery building will be improved.
- Our current septic system needs to be replaced. A new septic field will be constructed near the redwood area meeting creek set back requirements.

Our immediate Diamond Mountain neighbors, the Von Strassers, and the Brounstein's of Diamond Creek have been kept informed of these changes and will support our application.

We understand several neighbors have expressed concern that our property could be used as an entry from Diamond Mountain Road to the development formerly known as Enchanted Resorts. There is nothing in our application that would permit that.

We believe we have been good Diamond Mountain neighbors and have been strong supporters of Diamond Mountain and local organizations. We welcome your support of our application.

Feel free to call me direct at (707) 974-9453 with any questions. I would be pleased to give you a personal tour and explain what we are doing.

If you do not support our application definitely contact me so I can more fully explain and show you what we are doing and why it will have minimal or no negative effect.

Sincerely,



Norm Kiken

George Caloyannidis

From: Norman Kiken [normkiken@gmail.com]
Sent: Thursday, May 14, 2015 5:52 PM
To: George Caloyannidis
Subject: Re: USE PERMIT P 13 - 00027

Thanks for the email. I am contractually prohibited from responding directly to your question but I think u can take my words as responsive to your question. I would like to discuss any questions or concerns u have with you directly rather than by email. I am generally around. My cell is 974-9453.

Best regards
Norm

On Thu, May 14, 2015 at 5:11 PM, George Caloyannidis <gecalo@comcast.net> wrote:

Dear Norm,

We received your letter asking us to support your use permit application. However, it has been reported to us and there is the general belief among neighbors that your winery is under contract to be sold.

I had asked you this question about six months ago when this was circulating as a rumor and you had told me that you knew nothing about it. This time though, the source is very reliable.

As the tone of your letter is more or less a neighborly appeal, we would like to know what the true status is.

Thank you,

George



THE PLANNER'S TRAINING SERIES:

The Conditional Use Permit

Governor's Office of Planning and Research
1400 Tenth Street • Sacramento, CA 95814 • 916-445-0613

August 1997

This document is one in a series prepared by the Office of Planning and Research (OPR) on topics of general interest to planners. As with the rest of this series, its primary purpose is to provide both a reference for experienced planners and training materials for new planners, planning commissioners, and zoning board members. Citations are made to pertinent sections of the California statutes and to court decisions in order to provide the reader the opportunity to do additional research on their own. Unless otherwise noted, all statutory references are to the California Government Code.

- What is a Conditional Use Permit?
- Enabling Legislation
 - Constitutional Authority
 - Statutory Authority
 - Case Law
- Procedure
 - Public Hearing
 - California Environmental Quality Act
 - Permit Streamlining Act
- Limitations on Conditional Use Permits
 - General Welfare Standard
 - Nuisance Standard
 - General Plan Consistency Standard
 - Zoning Consistency Standard
- Other Types of Conditional Use Permits
 - "Granny" Units
 - Second Dwelling Units
 - Mobilehome Parks
- Findings
- Conditions of Approval
- Conditional Use Permit Checklist
- Examples
 - Cases Upholding Conditional Use Permit Approvals
 - Cases Overturning Conditional Use Permit Approvals
- Bibliography

WHAT IS A CONDITIONAL USE PERMIT?

A CONDITIONAL USE PERMIT (CUP) allows a city or county to consider special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district, through a public hearing process. A conditional use permit can provide flexibility within a zoning ordinance. Another traditional purpose of the conditional use permit is to enable a municipality to control certain uses which could have detrimental effects on the community (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176).

Consideration of a CUP is a discretionary act. A CUP application tendered by a project proponent is considered at a public hearing and, if approved, is generally subject to a number of pertinent conditions of approval. Depending on local ordinance requirements, hearings are typically held by a board of zoning, the planning commission, or a zoning administrator. The owners of property near the site are sent advance notice of the date, time, and place of the hearing.

Examples of common uses allowed with a conditional use permit can be found in any city or county zoning ordinance. For example, Santa Rosa's zoning ordinance lists uses which may be permitted within single-family residential districts with a conditional use permit. These uses include churches, public or private schools, public building or utility structures, parking lots, temporary subdivision sales offices, and community care and health care facilities. Chico's zoning ordinance lists various uses permitted with a use permit issued by either a planning director or planning commission. These uses include temporary amusement attractions, the placement of a building or structure on a lot or parcel which has been moved from another lot or parcel, public buildings and facilities, parking or access located off-site from the site being served, private recreation centers, and planned developments. Each city or county may include in their zoning ordinance a wide variety of uses which they will permit with a conditional use permit.

TOP

ENABLING LEGISLATION

The rules under which counties and general law cities may issue a conditional use permit are provided by state and case law. Charter cities are not subject to state zoning law, except in special circumstances, but may still use its provisions (Section 65803). The following is a brief examination of the authority and rules under which local governments act in issuing use permits.

Constitutional Authority:

Local governments have the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The "police power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws. The police power is the basis for charter city zoning powers.

(California Constitution, Article XI, Section 7)

Statutory Authority:

California code reiterates the Constitutional police powers of cities and counties to enact zoning regulations, but has little to say about CUPs in particular.

"The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

"Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes...."

(Section 65850(a))

"The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters...."

"The board of zoning adjustment or zoning administrator may also exercise any other powers granted by local ordinance and may adopt all rules and procedures necessary or convenient for the conduct of the board's or administrator's business."

(Section 65901(a))

Case Law:

California case law has established a number of fundamental principles relating to conditional use permits. In addition to the basic uses permitted within a zoning district, a city or county zoning ordinance can provide other specified uses which may be permitted after consideration and resolution by an administrative agency that the proposed use is in the best interest of public convenience and necessity and will not be contrary to the public health, morals, or welfare (*Upton v. Gray* (1969) 269 Cal.App.2d 352).

Local governments must have a complete and valid general plan before they can issue conditional use permits (*Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800 and *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176).

The authority to consider conditional use permits, delegated to planning commissions or other administrative bodies by elected officials, must include standards of guidance. These standards of guidance are provided to insure that the delegation of discretion to an administrative agency is not unbridled and, thus, not invalid. The doctrine of the need of an ascertainable standard to guide an administrative body applies where the legislative body of a city attempts to delegate its law-making functions (*Stoddard v. Edelman* (1970) 4 Cal.App.3d 544).

TOP

It is often the case that local agencies follow a general set of standards in considering a conditional use permit. These standards are generally acceptable since it is a near impossibility to devise standards to cover all possible situations in which a use permit can be issued (*Tustin Heights Association v. Board of Supervisors* (1959) 170 Cal.App.2d 619). There are several cases in which these standards have been upheld.

General Welfare Standard:

"The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood" (*Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586).

Nuisance Standard:

"Any use found to be objectionable or incompatible with the character of the city and its environs due to noise, dust, odors or other undesirable characteristics may be prohibited" (*Snow v. City of Garden Grove* (1961) Cal.App.2d 496).

General Plan Consistency Standard:

"Although use permits are not explicitly made subject to a general plan meeting the requirement of state law, that condition is necessarily to be implied from the hierarchical relationship of land use laws. Thus, use permits are struck from the mold of the zoning law, the zoning law must comply with the adopted general plan, and the adopted general plan must conform with state law; the validity of the permit process derives from compliance with this hierarchy of planning laws (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176).

Zoning Consistency Standard:

"To obtain a use permit, the applicant must generally show that the contemplated use is compatible with the policies in terms of the zoning ordinances, and that such use would be essential or desirable to the public convenience or welfare, and will not impair the integrity and character of the zoned district or be detrimental to the public health, safety, morals or welfare" (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 Cal.App.3d 151).

In addition to the general standards discussed, there also exist other limitations on conditional use permits. Conditional use permits run with the land not the applicant (*Cohn v. County Board of Supervisors* (1955) 135 Cal.App.2d 180). That is, where conditional use permits are concerned, all related property and personal rights are freely transferable, unless expressly prohibited by law (*Anza Parking Corporation v. City of Burlingame* (1988) 195 Cal.App.3d 855). Inversely, a conditional use permit may not lawfully limit the permittee from transferring it with the land since such a condition is beyond the power of the zoning authority (*Anza*, supra).

The conditions which are imposed on a conditional use permit must be expressly attached to the permit and cannot be implied. For example, if a conditional use permit contains language that restricts a building's height to five stories and requires the developer to submit and obtain planning commission approval of a landscaping plan, among other things, the permit itself does not imply a height limitation on trees within the development (*Pacifica Homeowners' Association v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147).

TOP

CONDITIONS OF APPROVAL

Section 65901 empowers local decision-making bodies to take action on use permit proposals when zoning ordinances make provisions and set criteria for them. The hearing body may also modify a conditional use permit's terms by imposing new or revised conditions, if the ordinance, interim ordinance, or original conditional use permit so provides (*Garavatti v. Fairfax Planning Commission* (1971) 22 Cal.App.3d 145).

Just as there are limitations in approving a conditional use permit, there are also limitations in establishing conditions of approval. Four general rules of thumb in applying conditions of approval include: (1) the jurisdiction must be acting within its police powers; (2) the condition must substantially further a legitimate public purpose; (3) the condition must further the same public purpose for which it was imposed; and (4) the property owner may not be required to carry a disproportionate load in furthering the public purpose (*California Land-Use and Planning Law*, 9th edition).

Section 65909 provides that dedications of land, as conditions of approval, must be "reasonably related" to the use of the property for which the conditional use permit is requested. There must also be a "rough proportionality" between the extent of the condition and the particular demand or impact of the project (*Dolan v. City of Tigard* (1994) 129 L.Ed2nd 304). In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use. Limitations on impact fees are described in the Mitigation Fee Act (Section 66000, et seq.).

If a condition applied to a conditional use permit is not linked to some legitimate public need or burden the project creates, the condition imposed could be deemed a taking of property in violation of the U.S. Constitution's Fifth and Fourteenth Amendments (*Nollan v. California Coastal Commission* (1987) 97 L.Ed2nd 677). Where a regulatory taking has been found to occur, the courts will overturn the agency's action and may require the agency to pay the applicant compensation for the taking (*Dolan*, supra).

TOP

CONDITIONAL USE PERMIT CHECKLIST

If a conditional use permit is to be approved, all of the following questions must be answered affirmatively.

1. Is the public hearing notice complete in its description of the project?
2. Has the public hearing notice been issued in accordance with all procedures?

Gallina, Charlene

From: RICHARD W SVENDSEN <rsvendsen@sbcglobal.net>
Sent: Thursday, May 14, 2015 3:22 PM
To: Gallina, Charlene
Subject: Fw: Reverie Winery Permit Modification #P13-00027

From: RICHARD W SVENDSEN
Sent: Thursday, May 14, 2015 3:13 PM
To: ruthannesvendsen@sbcglobal.net
Subject: Reverie Winery Permit Modification #P13-00027

Dear Planning Commissioners:

I have written to each of you earlier this spring to address my concerns regarding the possibility of this proposal being passed. The current use permit is being regularly abused by allowing many more visitors to this winery than allowed under the permit. Why would this change with 40 per day and up to 200 persons per week? Speaking for many people who live on this road, this kind of traffic is totally above what a small, narrow county road can handle. There's got to be a "reasonable traffic flow" commitment for those of us who live on this road. I have personally addressed the visitation abuse with Mr. Kiken over two years ago and was 'promised' this excess of his permit would discontinue. Two weeks ago, on a Tuesday week day, I followed 3 large limousines to his winery to observe at least 25 people unload with already 6-8 people in private cars in attendance. This was only one early afternoon.

This permit expansion of visitation does not seem to take into assessment Part E, F and H that would easily add more people to this winery and of course a huge increase of traffic.

Item I: What is a "Compliant domestic and winery waste system"? There does not appear to be much explanation of this for a common reader to ascertain what environmental impact this may have on neighbor land below this winery.

Item J: Installation of a new well? How many gallons per minute draw? What impact will this have on existing water storage of neighbors? A family directly below this winery lost their well approximately 6 years ago. Is Napa County willing to risk new wells with the drought situation that now exists? All of us living on Diamond Mtn Road are dependent upon water for our home use. Windwhistle creek that flows through this property and down Diamond Mtn Rd used to flow ALL year and with the advent of new wineries and "lakes" it dries up each year. This is a shame.

And why a Use Permit Exception(#P15-00141)? Especially located into the setback of Teal Creek? Water is more important.

Finally, and an issue I addressed in my earlier letter, "Why is this winery being sold and is there a coincidence this permit comes at this time"? The answer is because Mr. Kiken has been offered a deal for this property 'only' if these permit changes can be approved. Why should the residents of Diamond Mtn Rd be held to suffer for this kind of opportunity. Regardless of the sale of this winery,

the negative mitigating factors far outweigh the approval of this new permit. I suggest the current permit be better regulated and this new permit request be denied.

Sincerely;

Richard Svendsen
1309 Diamond Mtn Rd
Calistoga, Ca

Gallina, Charlene

From: Donald Williams <dcedar@sonic.net>
Sent: Thursday, May 14, 2015 3:32 PM
To: Gallina, Charlene
Subject: Reverie, #P13-00027

Dear Ms. Gallina,

I strongly object to the modifications, use permit exceptions, and variances requested by Reverie and Diamond Mountain Winery in Calistoga.

The Grand Jury reminded us that the intent of the General Plan is "to preserve agriculture, and concentrate urban uses in existing urban areas." Marketing, increased numbers of visitors, events, and cooking classes are not needed for the winery's purpose and the General Plan's intent: agriculture, "the production of food."

The Jury stated the increased "movement of people from populated urban areas to less populated rural areas opposes the major intent of the Plan and creates problems of traffic, sanitation, and other services.... The occurrences of these activities is a threat to the permanent preservation of agricultural soil and are illegal as defined by the current Napa County General Plan."

The Grand Jury also reminded that "the Board of Supervisors, Planning Commission, Planning Department, and County Counsel's Office are legally bound to uphold ... the General Plan."

Furthermore, "failure to enforce the General Plan can only lead to the erosion and ultimate demise of the Ag Preserve."

The Grand Jury offered this specific direction: "The continuing process of redefining a winery based upon non-conforming accessory uses should cease."

Diamond Mountain Road is narrow and already over-burdened with existing traffic. Doubling the activity at Reverie would be an unconscionable, egregious violation of the spirit and letter of the General Plan and a gross insult to the up valley.

I beg you, the people's representative, to honor the Plan and the mounting public frustration with exceptions and variances that enrich a few, but for which the rest of the public pays with the loss of rural character, the increase in traffic, and eventual cynicism towards a government that would serve the few and slight the many. These consequences of exceptions and variances are far too serious to ignore. Now---now!---is the time. I respectfully request: deny the requested permit modifications.

Sincerely,
Donald Williams
59 View Road
Calistoga

Gallina, Charlene

From: McDowell, John
Sent: Wednesday, April 15, 2015 1:30 PM
To: Gallina, Charlene
Subject: FW: Reverie Winery application

From: RICHARD W SVENDSEN [<mailto:rsvendsen@sbcglobal.net>]
Sent: Sunday, April 12, 2015 8:52 PM
To: McDowell, John
Cc: heather@vinehillranch.com; napacommissioner@yahoo.com; anne.cottrell@lucene.com; tkscott@aol.com; mattpope384@gmail.com
Subject: Reverie Winery application

Mr. McDowell;

I have read the proposed request by Mr. Norman Kiken at Reverie Winery to expand his winery production as well as increase visitations. I would like to enumerate a number of concerns I have regarding this proposal.

As a Diamond Mtn Road resident for 46 years I have witnessed the increase of traffic and proliferation of wineries on this road to the detriment of residents. Here is my concerns:

1. The traffic alone should be serious subject to ANY consideration of increased production and visitations for any business on this road. From early morning(5:00am) to often late in the evenings, large trucks, farm equipment, workers, and now more visitors continue to play a detrimental role toward any kind of normal residential life for those of us living on this road. This is not a simple road and a simple solution, but to allow more limousines, tour buses and tourists and workers it simply cannot handle much more.

2. It is hoped some discussion of increase water usage with this application is addressed. 2 neighbors living below Reverie have lost their wells in the past 8 years after 3 wineries have built lakes to support their endeavors. The creek that flows adjacent to Diamond Mtn Rd has run dry every year since these lakes and wineries have been established. It never did before, even in the drought of 1976.

3. Approximately 3 years ago I approached Mr. Kiken to inform him(after checking with the Planning Commission) that his allowance of 20 visitors a week was being misused. This was after a 66 passenger bus went to the winery and I went to see what was going on. After informing him that he was out of compliance with his permit he begged me to not call the Commission in fear of some retribution. I honored his request but it is very clear that the limousines and buses have not stopped. Later that same summer a 66 passenger bus attempted to drive up Diamond Mtn Rd and eventually had to back down and the people shuttled to Reverie Winery.

4. After reading his request and the notes regarding the wine caves many items in the commentary and past practices seem a bit unethical.

5. It is my understanding that Mr. Kiken is selling this winery(or has sold) to a large Chinese conglomerate and if this is so, I have 2 final questions.

a. Why is this permit even being considered if this winery is being sold?

b. If this winery is being sold to a very large financial group, what does this hold in store for this mountain as well as the road and the life and habitat surrounding its residents?

Certainly Napa County is agricultural and wine is the main attraction, but it appears the balance of life in this valley is being sold off for a supposed betterment of the valley.

Richard Svendsen
1309 Diamond Mtn Rd
Calistoga, Ca
94515

CONFIDENTIALITY NOTICE: This email message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and/or exempt from disclosure under applicable law. If you are not the intended recipient of the message, please contact the sender immediately and delete this message and any attachments. Thank you.

Gallina, Charlene

From: Cara O'Neill <ocara2004@gmail.com>
Sent: Tuesday, April 14, 2015 1:57 PM
To: Gallina, Charlene
Subject: OPPOSE Proposed expansion of Reverie Winery on Diamond Mountain Road

I guess I qualify as an "ole timer" having lived on Diamond Mountain Road since 1964
Let me be quick to say, I am also a proponent of progress and change...as long as the proposal respects the integrity of the area it proposes to change

Thus it was in the early 80's the then Planning Commission refused a proposal to build a HUGE winery at the bottom of Diamond Mountain Road. Furthermore they granted all properties under 20 acres Residential Country Zoning....recognizing that the road was essentially residential in its use

That has not changed....yet a growing number of wineries have been given permission to build.plant. dam water, add to traffic...etc posing an actual threat to the SAFETY of those walking, biking, LIVING on the Road

It appears to those of us living on the Road, that Reverie has already gone past its permitted use. This proposal to expand shows complete LACK OF RESPECT

Enough is enough

Please DO NOT ALLOW THIS EXPANSION TO TAKE PLACE

Respectfully
Cara O'Neill
1260 Diamond Mtn Rd