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March 12, 2015

Napa County Planning Commission  
1195 Third Street, Room 210  
Napa, CA 94559

David Morrison, Director  
Napa County Planning, Building and  
Environmental Services Department  
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Napa County Planning, Building  
& Environmental Services

**Re: Response to Single Parcel Argument Set Forth in January 20, 2015 Shute, Mihaly & Weinberger Letter**

Ladies and Gentlemen:

This letter is submitted on behalf of Girard Winery, who has submitted Conditional Use Application P14-00053 for a winery use permit. The Planning Commission initially heard this Application on December 17, 2014 and conducted another hearing on the matter on January 21, 2015. On January 20, 2015, Shute, Mihaly & Weinberger LLP attorney Ellison Folk and urban planner Laurel Impett submitted a letter to you regarding the Application on behalf of the Tofanelli family (the "Tofanelli Letter"). The Tofanelli Letter provided comments on the Initial Study and proposed Negative Declaration. At the January 21, 2015 hearing, County staff and the Applicant requested a further continuance of the matter in order to review and address those comments. This letter addresses one such comment.

On page 14 of the Tofanelli Letter, the author provides: "The Girard Parcel and The Clos Pegase Winery Parcel Should be Treated as a Single Parcel." The text of this Comment is attached for your review. Fermented, the Comment asserts that the Girard Parcel and the Clos Pegase Parcel should be treated as one parcel because (i) Girard and Clos Pegase have common ownership, and (ii) the Girard Parcel has a well and wastewater facility used by Clos Pegase.

The entirety of Napa County's Conditional Use Permit regulatory process for wineries exists to ensure that a project (like that proposed by Girard) meets stringent standards, with review governed under a comprehensive CEQA analysis. The process does not involve the Planning Commission analyzing ownership structures of the parcel to be improved. If the Girard winery meets those established standards—standards that were adopted by the people of the County of Napa for permitting wineries—and also complies with CEQA, the Commission will only then permit it.

Sharing water facilities is efficient and an example of good planning. It should be encouraged because it protects agriculture and natural resources. Napa Valley is full of situations where common ownership of adjacent parcels has resulted in a winery on one parcel and where water and wastewater facilities, roads, caves, and so forth are located on another parcel or parcels. In doing so, Napa County actively seeks to

ensure that proper easements are recorded so that the rights incumbent with such facilities can survive a transfer of the burdened parcels (as is the case here).

It would be a sea change indeed, if a wastewater pond and a well, on a parcel serving a winery on another parcel were to preclude the development of a winery on the burdened parcel merely because of common ownership. Such a flawed policy, if it were legal, and adopted by the Board of Supervisors or by a vote of the citizens, would force families and business entities holding multiple parcels under common ownership into protecting their property rights by engaging in elaborate, expensive corporate ownership structures (sometimes referred to as "Christmas Trees") like those implemented by certain farmers trying to take advantage of federal Farm Bill subsidies. It is hard to comprehend how that would benefit agriculture here in Napa County.

Additionally, the case of *Forest Properties, Inc v. United States*, which the Tofanelli Letter cites to in the Comment, is inapplicable. That case is a federal court claims case arising from a federal Section 404 permit application to the Army Corps of Engineers pursuant to the Clean Water Act. The court's ruling does not interpret or apply any California law relevant to Girard's Application.

The Comment states that the "Clos Pegase winery could not operate without the water and wastewater disposal provided by the Girard parcel." This is presumptive because Clos Pegase could indeed continue to operate. But, developing a separate wastewater disposal system on the Clos Pegase parcel would destroy and be a wasteful use of natural and agricultural resources, something antithetical to the owners of Close Pegase and Girard.

It must be emphasized that the Girard Application does not propose to remove any existing vineyard on the Girard parcel. The Application seeks to enhance the parcel to its highest and best use (also its most efficient use), and at the same time preserve existing agriculture by making wine on-site from the grapes grown there.

Thank you for your attention.

Sincerely,

DICKENSON, PEATMAN & FOGARTY



Scott Greenwood-Meinert

cc: Patrick Roney