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August 18, 2015

Via E-Mail

Wyntress Balcher, Planner
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Building & Environmental Services Department
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Re: Girard Winery Use Permit P14-00053 Initial Study/Proposed
Negative Declaration

Dear Ms. Balcher:

On behalf of the Tofanelli family, we submit these comments on the Initial Study/ proposed revised Negative Declaration (“Revised IS/ND”) for the proposed Girard Winery Use Permit (“Project”). Substantial evidence shows that the Project could have a number of potentially significant impacts on the environment. Accordingly, and as a matter of law, the County would be in violation of the California Environmental Quality Act, Pub. Res. Code § 21000 et seq. (“CEQA”) if it adopts the proposed Negative Declaration and approves the Project without first requiring the preparation of an environmental impact report (“EIR”).

On January 20, 2015, this firm submitted a letter on the prior IS/ND for the proposed Project. That letter is incorporated by reference into this letter. The issues raised in the January 20, 2015 letter remain valid. This letter focuses on the new issues raised in the Revised IS/ND. One of the most significant revisions to the prior IS/ND relates to the treatment of the Project’s impacts on water supply, and specifically the potential for the Project to impact neighboring wells and the Napa River. Accordingly, we include a second technical memorandum prepared by Tom Myers Ph.D. Our two letters, the two reports prepared by Dr. Myers (January 20, 2015 and August 15, 2015, the latter is attached as Exhibit 1) constitute the Tofanelli family’s comments on the Revised IS/ND.

I. The Project Violates CEQA and the Project's Potentially Significant Impacts Prohibit the County From Approving the Project Without First Preparing an EIR.

A. The Revised IS/ND's Analysis of Groundwater Impacts Is Inadequate and There is a Fair Argument That These Impacts Would Be Significant.

The Revised IS/ND incorrectly concludes the Project would have a less than significant impact on groundwater supplies and groundwater quality. Revised IS/ND at 12. Contrary to this conclusion, and as the reports prepared by Dr. Myers clearly demonstrate, the Project has the potential to result in a significant impact on groundwater supplies and groundwater quality with corresponding impacts on neighboring residential and agricultural wells and the Napa River.

A letter from Steve Lederer, the County's Director of Public Works, included in the Revised IS/ND states that there is substantial evidence in the record that: (1) the groundwater table in the area shows a long term stable trend; (2) impacts on neighboring wells or the Napa River are not anticipated; and (3) the Project is unlikely to cause directional flow changes which would draw chemicals from Calistoga into the area. *See* April 3, 2015 Letter from S. Lederer.

We disagree with Mr. Lederer's statements; the record does not provide this evidence. Moreover, even if it did, this is not the standard for preparation of an EIR. Under CEQA, an EIR is required whenever substantial evidence in the administrative record supports a "fair argument" that significant impacts may occur, *even if other substantial evidence supports the opposite conclusion*. Guidelines §§15064(a)(1), (f)(1) (emphasis added). CEQA further establishes a "low threshold" for initial preparation of an EIR, especially in the face of conflicting assertions concerning the possible effects of a proposed project. *The Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 928 (2005). An impact need not be momentous or of a long enduring nature; the word "significant" "covers a spectrum ranging from 'not trivial' through 'appreciable' to 'important' and even 'momentous.'" *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 83 n. 16 (1974). The fair argument test thus reflects a "low threshold requirement for initial preparation of an EIR" and expresses "a preference for resolving doubts in favor of environmental review." *Stanislaus Audubon Society, Inc. v. County of Stanislaus*, 33 Cal.App.4th 144, 151 (1995).

Further, where the agency fails to study an entire area of environmental impacts, deficiencies in the record “enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” *Sundstrom v. County of Mendocino* (1988), 202 Cal.App.3d 296, 311. In marginal cases, where it is not clear whether there is substantial evidence that a project may have a significant impact and there is a disagreement among experts over the significance of the effect on the environment, the agency “shall treat the effect as significant” and prepare an EIR. Guidelines § 15064(g); *City of Carmel-By-The-Sea v. Board of Supervisors*, 183 Cal.App.3d 229, 245 (1986). Given this standard, an EIR is required for this Project.

1. The Groundwater Table Does Not Show A Long Term Stable Trend.

Dr. Myers’ January 20, 2015 memorandum (“Myers’ January report”) explained that the prior IS/ND erred in its assertion that the groundwater levels in the Napa Valley floor exhibit stable long-term trends with shallow depth to water. The County now looks to a new groundwater monitoring report to suggest that groundwater levels in the Project vicinity are stable. Lederer letter at 2. Yet, the 2014 Groundwater Monitoring Report does not show stable groundwater levels. The hydrographs in the Calistoga area (shown on Figure 5-7 of the 2014 Annual Groundwater Monitoring Report) still show the effects of pumping and drought. See Myers August 15, 2015 report at 2. Well NapaCounty-129 is a good example. The maximum level declined significantly from 2007 to 2009 and has been declining again since 2012 (with little recovery shown). Well NapaCounty-127 also shows extreme drawdowns in 2004 and 2012 with only marginal recovery, and Well 08N06W10Q001M shows much more drawdown occurring during dry years. *Id.*

Other evidence exists demonstrating deficient groundwater supplies in the area. Residents near the proposed Project site have informed the County that their wells are drying up and that some area residents are trucking water to their properties. Under CEQA, an agency should heed personal observations of environmental conditions near a project site. See *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 34 (residents’ observations can constitute substantial evidence of traffic impacts). David Clark, for example (4704 Silverado Trail – about one mile north of the proposed Project), explains a situation where his neighbor’s valley floor winery vineyard and home needed more water than their existing three wells could provide. See letter from D. Clark to J. McDowell, January 19, 2015, included in August 19, 2015 Planning Commission Hearing Supporting Documents (Exhibit P: Public Comments Received). Mr. Clark states that the neighbor

drilled another well fifty feet from Mr. Clark's well at which point Mr. Clark's available water decreased. He explains:

Later, new owners converted some of that vineyard into Venge Winery, and constructed a large metal water storage tank to increase their capacity. However, during the growing season, despite pumping as much as they can from groundwater, their system does not supply enough. They've had to truck water in regularly for years, perhaps more than once a week. They probably would have had to show sufficient supply was available to get their winery permit, but that "proof" clearly turned out to be wrong.

Properties around us have multiple wells (some abandoned) in order to try to meet their water needs. After the neighboring vineyards reduced our well's output, we drilled 3 or 4 "dry" wells before we found more water. Only the variety of terrain on our property allowed that; we could have drilled on the valley floor forever without success, and simply drilling deeper to reach more water was not an option because drillers want to avoid hitting boron and geothermal, common to the Calistoga area. *Id.*

There is ample documentation, from the County's own groundwater reports to personal observations, that this area of the County already experiences groundwater deficiencies. Pumping from the Project will exacerbate these deficiencies which, in turn, will adversely affect neighboring wells and the Napa River.

2. The Project, Together With Other Projects, Has the Potential to Result in Significant Impacts on Neighboring Wells and the Napa River.

A fundamental flaw in the Revised IS/ND's analysis is its failure to take into account the effects of cumulative pumping on neighboring wells and the Napa River. Instead, the County's analysis only identifies the demand from the proposed Project alone, ignoring entirely other uses and projects that will extract groundwater. This approach is a clear violation of CEQA.

CEQA requires the lead agency to analyze and mitigate a Project's potentially significant cumulative impacts. CEQA defines cumulative impacts as "two or more individual effects which, when considered together, are considerable or which

compound or increase other environmental impacts.” Guidelines § 15355; *see also Communities for a Better Env’t v. Cal. Res. Agency*, 103 Cal.App.4th at 120. An effect is “cumulatively considerable” when the “incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” Guidelines § 15065(a)(3). A proper cumulative impact analysis is “absolutely critical,” *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal.App.4th 1184, 1217 (2004) , as it is a mechanism for controlling “the piecemeal approval of several projects that, taken together, could overwhelm the natural environment,” *Las Virgenes Homeowners Fed’n, Inc. v. County of Los Angeles*, 177 Cal.App.3d 300, 306 (1986). The revised IS/ND provides no analysis of cumulative impacts on water supply. Specifically, as the Myers’ reports explain, cumulative pumping from all of the wells in the Napa alluvium and connected aquifers has the potential to impact the Napa River and neighboring wells.

Pumping from multiple wells can cause a drawdown in the aquifers near the Napa River. Drawdown is replenished with water diverted from the river. This means the water never discharges into the river or it is being diverted from the river due to the water level being drawn down below the level of the river. Most of the recovery is due to water being diverted from the river. Increasing the total cumulative pumpage from aquifers near the river will increase the deficit in those aquifers and decrease flow in the river by either drawing from the river or preventing groundwater flow from reaching the river. The Revised IS/ND and the Lederer letter ignore this fact entirely.

In addition, and in direct contrast to Mr. Lederer’s assertion that drawdown will not change the flow gradient for discharge to the river, Dr. Myers’ explains that any pumping from wells near the river will affect the river’s flow gradient; that is simply well hydraulics (Fetter 2001). Myers August 15, 2015 report at 7. A well changes the gradient to draw water to the well. All discharge from a near-surface aquifer originated as recharge to that aquifer. Natural discharge is to rivers, springs, or groundwater-dependent vegetation. Groundwater pumping takes some of that natural discharge, as conservation of mass requires. Initially pumping will draw from storage and cause drawdown and change gradients for discharge to the river (or other natural discharge points). Pumping water from the valley near the river will take water from the river, either by diverting groundwater discharge to the river or actually pulling water from river. All pumping, past, current and future, takes or will take water from those discharges. Groundwater extraction from the Project and other cumulative development certainly has the potential to result in significant effects on the River.

Groundwater extraction from the Project and other cumulative development also has the potential to impact neighboring wells. The Lederer letter asserts that “there does not appear to be factually supported evidence that there would be a significant effect on wells in the vicinity of the project.” Lederer letter at 3. This is incorrect. Dr. Myers performed calculations to determine groundwater drawdown in the Project vicinity. He concludes that, “even when using the applicant’s assumptions, pumping the Girard well will cause some drawdown to occur at distances that correspond to neighbors’ wells.” See Myers August 2015 Report at 9. Drawdown at the Girard well exceeds 60 feet and at a distance of 1,000 feet (the estimated distance of certain neighboring wells) is about 8 feet after 11 days of pumping at 5.8 gpm. “There will clearly be drawdown at neighboring wells within 1,000 feet.” *Id.*

We can find no credible explanation for the County’s failure to take into account cumulative development. This is especially disconcerting because, in our January 20, 2015 letter on the prior IS/ND, we identified at least 19 new or modified wineries that were proposed to be developed in the County. In addition, Sterling Winery, within one-half mile of the proposed Project site, drilled a new well in May 2015. Water demand from these projects will further tax already constrained groundwater supplies. In addition to these other projects, the Clos Pegase Winery is expected to substantially increase its winery production. Clos Pegase is currently producing about 25,000 cases or 60,000 gallons. It plans to increase that production to 200,000 gallons. See January 19, 2015 letter from D. Clark, citing *Wine Spectator* 8/21/13. Together with the Girard application, the total production of the two wineries would be 400,000 gallons or 6.7 times the current 60,000 gallons of Clos Pegase. *Id.*

Nor does the Revised IS/ND provide any evidentiary support that the applicant will be restricted to using the amount of water specified in the revised IS/ND.¹ The County’s draft Conditions of Approval (“COA”) purport to limit the Project to a “not to exceed” volume of 10-acre feet (“ac/ft”) per year. See August 19, 2015 COA at 9.

¹ The Project’s (and the Clos Pegase winery) projected water demand has declined substantially compared to the amount identified in the prior IS/ND, yet the revised IS/ND does not provide a satisfactory explanation for this reduction. The revised IS/ND states that the overall water use for the proposed Girard Winery and the existing Clos Pegase winery would be 8.22 af/yr. whereas the prior IS/ND identified the total demand for both wineries as 12.49 af/yr. Revised IS/ND at 15; prior IS/ND at 14. We can find no logical explanation for this discrepancy since both versions of the IS/ND state that all vineyard irrigation (both parcels) and all winery landscaping is and will be provided for using the existing process wastewater irrigation pond located on the Girard winery property. *Id.*

Yet, rather than require the winery operations to be discontinued if its water use exceeds 10 ac/ft. per year, the COA call for the applicant to provide “the plan the winery has for reducing water use.” COA at 9. A plan for reducing water use provides no assurance that water use will, in fact, be reduced. More importantly, a plan does not ensure the protection of neighboring wells or the Napa River. Indeed, if this “condition” is indicative of the conditions being placed on each of the pending winery projects proposed by the County, existing groundwater deficiencies in the County are likely to be greatly exacerbated.

In addition to causing diminished groundwater supplies, the Project also has the potential to cause groundwater contamination. The Revised IS/ND concludes that it is “highly unlikely” that the proposed pumping would affect boron and arsenic levels. Revised IS/ND at 13. The document arrives at this conclusion based on the assertion that the proposed pumping is significantly less than the mean annual recharge and that long-term reduction in groundwater elevations are unlikely to occur as a result of the project pumping. *Id.* As discussed previously, there is ample evidence that contradicts these findings. As Dr. Myers explains, additional pumping downgradient of the high concentrations of arsenic and boron could certainly draw these contaminants toward the Project area. *See* Myers’ August 15, 2015 report at 12. Moreover as the Clark letter explains, arsenic and boron could also contaminate adjacent groundwater if neighbors are forced to drill deeper wells as a result of diminishing groundwater.

Given the uncertainty about the effects of groundwater pumping, especially pumping on a cumulative basis, the Revised IS/ND cannot simply assert that the Project would not result in boron and /or arsenic contaminating area wells. To conclude that an impact is less than significant, the IS/ND must be supported by substantial evidence. Substantial evidence consists of “facts, a reasonable presumption predicated on fact, or expert opinion supported by fact,” not “argument, speculation, unsubstantiated opinion or narrative.” Pub. Res. Code § 21080(e)(1)-(2). Because the Revised IS/ND’s conclusion of insignificance is premised on unsupported assumptions, it fails far short of this threshold.

Faced with overwhelming evidence of deficient groundwater conditions in the area, and the potential for the Project, together with cumulative development, to impact neighboring wells and the Napa River, the County must prepare an EIR prior to taking action on the proposed Project.

B. The Revised IS/ND's Analysis of Impacts Relating to Wastewater Treatment is Inadequate, and There is a Fair Argument that the Project May Have Significant Groundwater Impacts.

The revised IS/ND raises more questions than it answers with regard to the Project's processing of wastewater. The IS/ND states that the Project includes a new sanitary sewage system. Revised IS/ND at 10. Yet the IS/ND does not describe this system or provide any analysis of the potential impacts that could accompany the installation of a septic system on the Project site.

Septic systems are a significant source of groundwater contamination that can lead to waterborne disease outbreaks and other adverse health effects. *See* Source Water Protection Practices Bulletin: Managing Septic Systems to Prevent Contamination of Drinking Water, U.S. EPA, July 2001, attached as Exhibit 2. A septic system's potential to contaminate surface and groundwater is dependent upon soil types and groundwater depths. It is critical to avoid areas with high water tables and shallow impermeable layers because there is insufficient unsaturated soil thickness to ensure sufficient treatment septic system effluent. *Id.*

It is clear that the applicant has no idea whether the site can even support a septic system. According to the IS/ND, the applicant attempted to evaluate the site in November 2013 but there was not sufficient rainfall to perform groundwater monitoring. Revised IS/ND at 10. Nevertheless, the applicant simply assumed that the site's soils would be adequate for a septic system. *Id.* Later, however, the revised IS/ND states that in the event groundwater monitoring cannot occur prior to the application for construction permits, an irrigation reuse alternative system would be implemented. The document does not describe this alternative system nor does it explain how or whether such a system would avoid groundwater impacts. Instead it simply asserts that any alternative system would require approval from the Regional Water Quality Control Board ("RWQCB"). Revised IS/ND at 10.

Details relating to the processing of the Project's wastewater are critical details; they cannot be deferred until after Project approval. *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 306-07 (1988). Nor can the County evade its obligation to conduct this necessary impact analysis by suggesting that the Project would require approval from the RWQCB. The fact that a wastewater system would need regulatory approval does not release an agency from its obligation to fully describe the system and analyze all impacts that would arise from the system.

The County must provide a comprehensive analysis of the potential impacts from the Project's proposed wastewater treatment system in an EIR as evidence indicates that these impacts could be significant.

C. The Revised IS/ND's Noise Analysis is Inadequate, and There is a Fair Argument that the Project May Have Significant Noise Impacts.

Notwithstanding our request that the County study the effects of the increase in noise associated with construction and operation of the proposed Project, the Revised IS/ND fails to conduct this necessary evaluation. This omission is especially egregious since the IS/ND acknowledges that the County General Plan EIR confirms that concerns relating to a project's noise impacts should be addressed and considered in the planning and environmental review process. Revised IS/ND at 18.

The Revised ND concedes that the proposed marketing activities could create additional noise impacts. Revised IS/ND at 18. Yet the IS/ND stops short of actually analyzing the effect these marketing events would have on surrounding properties. Instead it states that the potential for the creation of significant noise from visitation would be significantly reduced since large gatherings for events will occur indoors within the barrel areas of the winery. *Id.* The County's conditions of approval do not include a prohibition on outdoor events. Moreover, the Revised IS/ND indicates that lawn areas will be used for tasting and picnic areas. Revised IS/ND at 2. As discussed below, as the current owners of Clos Pegase, the applicant conducts events in violation of its current conditional use permit. Napa County has not effectively monitored Clos Pegase for these violations and there is no indication that the Girard Winery will be monitored for event violations. Consequently, the Revised IS/ND lacks the evidentiary basis that the Project's noise impacts would be less than significant.

D. The Revised IS/ND's Transportation Analysis is Inadequate, and There is a Fair Argument that the Project May Have Significant Transportation Impacts.

As we discussed in our prior letter, SR 29 immediately adjacent to Dunaweal Lane is projected to operate at LOS F in 2030. Traffic generated by the Project will contribute to this deficient service level resulting in a significant impact. This fact is confirmed by Napa County's Deputy Director of Public Works. He explains that the increase in vehicular trips caused by the Project will result in a significant impact because nearby roads and intersections will operate at an unacceptable level. *See* Letter from Rick Marshall, June 3, 2015.

Rather than identify this impact as significant, the applicant now asserts that the Project's PM peak hour vehicular trips can be *eliminated* altogether. Revised IS/ND at 21 (emphasis added). While it may be possible to manage employee's schedules, unless the County places a condition on the Project to close the winery during peak hours, the Revised IS/ND does not provide the necessary assurance that visitors will not travel to the winery during these hours.

Nor as we discussed in our prior letter does the Revised IS/ND take into account traffic from the Project, together with planned development projects in the area. In addition to the numerous new wineries or winery expansions in the area, two massive development projects are proposed within the City of Calistoga. The Calistoga Hills resort includes the development of a 110-room luxury hotel with 20 villas and 13 estate homes. The Silver Rose Project includes the development of 57,630 square feet of resort facilities, 85 guest rooms, a 110-seat restaurant and 21 single family dwellings. See City of Calistoga Planning and Building Department Proposed and Approved Development, March 2015, attached as Exhibit 3. The IS/ND is obligated to analyze the effect that the Project's traffic, together with traffic from planned development, would have on the County's roadways and intersections. These impacts certainly have the potential to be significant.

E. The County May Not Rely on Unrealistic and Ineffective Conditions of Project Approval to Avoid Potentially Significant Project Impacts.

Throughout the IS/ND the County asserts that potentially significant Project impacts will be mitigated through the imposition of conditions of approval. For example, as discussed previously, significant traffic impacts are purportedly addressed through restrictions on the time that employees will travel to work and visitors will travel to the winery. Revised IS/ND at 21-22. The County also claims that potentially significant noise impacts (which the County even declined to study) will be avoided because outdoor areas will not be used for events or wine tastings. *Id.* at 18. Similarly, potential impacts to water are addressed by a plan to reduce water use, but no enforceable conditions. COA at 9.

The California courts have soundly rejected the County's approach. Specifically, in *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, the California Department of Transportation ("Caltrans") asserted that many impacts associated with the Highway 101 widening would be avoided through conditions of project approval. Therefore, Caltrans did not study these impacts or impose mitigation on them. The Court of Appeal found that agencies may not avoid analyzing the

potentially significant impacts of a project by asserting they will be avoided through conditions of approval. Instead, the agency must conduct the analysis and then adopt mitigation measures that will reduce the project's impacts below a level of significance. 223 Cal.App.4th at 658; CEQA Guidelines §15126.4 (a)(1)(A). As stated by the court:

The failure of the EIR to separately identify and analyze the significance of the impacts to the root zones of old growth redwood trees before proposing mitigation measures is not merely a harmless procedural failing. Contrary to the trial court's conclusion, this shortcutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences. The deficiency cannot be considered harmless.

Similarly here, the County failed to consider the environmental effects of the Project before simply assuming that measures, such as readjusting employee and visitor schedules or asserting that events be held indoors, would reduce these impacts to a level of insignificance.

This failing is made all the worse by the reliance on what are clearly unrealistic measures. CEQA requires that mitigation measures be feasible, effective, and capable of being implemented over the lifetime of the project. There can be no such assurance here. In fact, evidence in the record demonstrates that the owner of the Girard property, who also owns Clos Pegase Vineyards, has repeatedly failed to comply with either its conditional use permit or the limits of the County's zoning ordinance and the WDO. *See* Exhibit 4 (June 8, 2015 letter from Shute, Mihaly & Weinberger to Napa County). These violations extend beyond the weddings that the County has identified in the staff report and include any number of unpermitted events, such as "anniversaries, rehearsal dinners, birthdays, holiday parties, private parties and more" on its website. *See* Clos Pegase website attached as Exhibit 5. Notwithstanding the County's enforcement action against Clos Pegase, these events continue to this date and have caused substantial noise and disruption for surrounding neighbors.

Finally, because a fair argument can be made that the measures relied upon by the County to avoid the Project's significant impacts will not be effective, the County

must prepare an EIR. *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359.

II. The Project Remains Inconsistent with the Winery Definition Ordinance and the County General Plan.

The County has not responded to arguments raised in our earlier letter regarding the Project's inconsistency with the Winery Definition Ordinance ("WDO") and the County General Plan. In particular, the Project is inconsistent with the WDO provisions that restrict the scope and maximum square footage of "accessory uses" such as "marketing of wine" and "tours and tastings." Specifically, all such accessory uses, "in their totality[,] must remain clearly incidental, related and subordinate to the primary operation of the winery as a production facility." *See, e.g.*, NCC § 18.08.370; 18.16.030(G)(5); 18.08.020. In addition, the WDO places an absolute numerical cap of the square footage of structures that may be "used for accessory uses." *See* NCC 18.104.200 ("The maximum square footage of structures used for accessory uses that are related to a winery shall not exceed forty percent of the area of the production facility.").

In addition to the 3,800 square feet of accessory uses identified in the August 19, 2015 staff report, the Project also includes a 13,000 square foot outdoor garden and tasting area, as well as a 2,600 square foot covered veranda. Together these uses constitute 67 percent of the area of the production facility – far in excess of the 40 percent limit in the WDO.

The assertion in the Revised IS/ND that the outdoor areas will not be used for events is completely unrealistic as discussed above. The statement is also contradicted by earlier architectural renderings for the Project. Accordingly, excluding these outdoor areas from the 40 percent calculation is inconsistent with NCC section 18.104.200. This exclusion is also inconsistent with the manner in which the Planning Commission calculated accessory use square footage in two recent actions concerning the B Cellars and Titus Vineyards projects. For both projects, the outdoor terraced spaces were counted as part of the percentage of the project used for accessory uses. The County should treat the present Project in the same manner.

III. Conclusion

For the reasons set forth above, the Tofanelli family requests that the County defer action on the proposed Project until an EIR is prepared that fully complies with CEQA. As described above, there is substantial evidence to indicate that the

Wyntress Balcher
August 18, 2015
Page 13

proposed Project may have a number of significant environmental impacts. Under CEQA, the County must provide an adequate analysis of these adverse effects and include feasible measures to mitigate impacts.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Laurel L. Impett, AICP, Urban Planner

cc: Norma Tofanelli
Vince Tofanelli
Pauline Tofanelli

List of Exhibits

- Exhibit 1 Technical Memorandum from Tom Myers, Ph.D. re: Review of Girard Winery Use Permit P14-00053, Revised NegDec and County Responses to Previous Comments, August 15, 2015
- Exhibit 2 Source Water Protection Practices Bulletin: Managing Septic Systems to Prevent Contamination of Drinking Water, U.S. EPA, July 2001
- Exhibit 3 City of Calistoga Planning and Building Department Proposed and Approved Development, March 2015
- Exhibit 4 Letter from Shute, Mihaly & Weinberger LLP to Napa County, June 8, 2015
- Exhibit 5 Clos Pegase Event Hosting Webpage, Viewed August 17, 2015

701903.1

EXHIBIT 1

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Technical Memorandum

Review of Girard Winery Use Permit P14-00053, Revised NegDec and County Responses to Previous Comments

August 15, 2015

Prepared for:

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Summary

The proposed expansion of pumping for the Girard Winery project could have three significant impacts. First, the pumping could unacceptably lower the groundwater levels because there is not as much recharge in the area as the County assumes. Second, the pumping could affect groundwater flow and decrease flow in the river. Third, pumping could cause arsenic and boron to be drawn from the northwest toward the project site. Groundwater pumping from the Project, combined with pumping from the other wells in the area, could cause each of these impacts to occur. The County's response to my January 20, 2015 memorandum on the project showed a lack of understanding of the cumulative and overlapping effects of this project with all of the other wells in the area.

Because of these potentially significant impacts, the project should not be permitted until a much more detailed hydrogeologic study is completed. All of the issues raised in this review could be analyzed with the completion of a numerical flow and transport model. A numerical model uses commonly available computer software which solves the equations of groundwater flow to simulate how groundwater and contaminants move around the area. The model would have to be large enough to include the significant pumping in the area so it should extend to the boundaries of the valley or to areas with reduced pumping, southeast of the site. It would help assess the potential change in groundwater levels, flow paths, and the extent of the boron and arsenic plumes. If the project goes forward after such a study, the flow and transport

model should be used on an ongoing basis to monitor groundwater levels, flow paths and water quality in the project vicinity.

Introduction

This memorandum reviews the revised negative declaration for the Girard Winery Use Permit P14-00053 (hereinafter NegDec), primarily the response by the Napa County Department of Public Works (Lederer 2015) to my January 20, 2015 memorandum reviewing the project (Myers 2015). The NegDec included a revised Water Availability Analysis, prepared by the applicant, dated March 26, 2015 (O'Connor 2015).

I described my experience and attached my curriculum vitae to my previous memorandum (Myers 2015) and that memorandum is incorporated here by reference.

I have divided the response into sections. Because those responses rely on Lederer (2015), I am also commenting on that report. Lederer's assessment incorrectly asserts that the Project would have a less than significant impact on groundwater supplies and groundwater quality. I address each of the issues raised in his assessment below.

Recharge

Lederer's assessment of recharge related specifically to water levels. Specifically, "based on the network of monitored groundwater levels in the area, the groundwater levels in the area south of Calistoga are stable, even in the context of the current drought" (Lederer 2015, p 2).

Additionally, under Public Works Review, Lederer (2015) makes the following assertions:

- 1) *a. The suggested impact relating to recharge is technically unsupported. Groundwater levels in the Calistoga area are stable based on hydrographs that have been updated in the 2014 Annual Report. (Id.)*

Contrary to Lederer's interpretation of the 2014 Annual Groundwater Monitoring Report, the hydrographs in the Calistoga area (shown on Figure 5-7 of the 2014 Annual Groundwater Monitoring Report) still show the effects of pumping and drought, with recovery during wet years. As I describe below, the lower groundwater levels in the valley recover by drawing water from the river. Well NapaCounty-129 is a good example. The maximum level declined significantly from 2007 to 2009 and has been declining again since 2012 (with little recovery shown). Well NapaCounty-127 shows some extreme drawdowns in 2004 and 2012 with only marginal recovery. Well 08N06W10Q001M also shows much more drawdown occurring during dry years. The Girard Well was developed in a confined volcanic aquifer beneath the alluvium which is on the surface through much of the valley and much of the project area. It is not clear

that any of the wells in the 2014 Annual Monitoring Report are completed in the volcanics so there may be little indication of trends in the aquifer in which the Girard Well is completed.

The Lederer report also suggests that I relied on an incorrect recharge rate:

The WAA continues by comparing proposed groundwater use on the parcels (8.23 acre-ft/year for both wineries combined) to a calculated recharge number (34.5 acre-ft/year) and found that the proposed use is only some 25% of the recharge rate. The Myers report also calculated a recharge rate, but then compared it to a use of 29 acre-ft/year, their presumed maximum use of the well if it was operated on a full basis. That assumption of 100% well run time is not contained in the project proposal. (Id.)

My prior report assumed a full-time use rate since water would be required to serve both Clos Pegas and the Girard Winery, as indicated on page 14 of the original Negative Declaration. Unless the County places a condition on the Project to pump at a reduced rate, sound engineering practice dictates that pumping rates are calculated assuming maximum usage.

1).b Myers discusses the recharge analyses conducted by LSCE & MBK (2013) and goes on to described why he believes recharge is overestimated. However, his analysis relies on very generalized application of base flow separation techniques which do not account for climatic variation or other factors that could affect base flow.

Lederer's assertion regarding my recharge analysis is incorrect. My analysis of baseflow clearly encompasses climatic variation because it accounted for all available years at the relevant gage, meaning that all climate variations within that time period are accounted for. As my January report explains, annual recharge is frequently set equal to baseflow because baseflow by definition is groundwater discharge to streams (Cherkauer 2004, Scanlon et al. 2002).

The revised Water Availability Analysis (O'Conner (2015)) estimated recharge to the tuff aquifer to be on the order of 575 to 4943 af/y (O'Conner 2015, p 14) by applying the watershed-averaged recharge rates that they had discussed previously to the tuff outcrop area. This essentially means they used the product of the various rates expressed as a depth per year and the area of exposed tuff. This approach is not accurate because it does not account for differing ability of the formations to accept recharge. The tuff conductivity is about two orders of magnitude less than that in the alluvium so it would be expected to have a much lower recharge. Much of the precipitation on the tuff would runoff to the alluvium, although some of the runoff would recharge the tuff through the streambeds in the tuff, as O'Conner notes (Id.).

It is likely therefore that most of the recharge occurs in the alluvium. Because the primary groundwater discharge is to the Napa River (as baseflow, see Myers (2015)), this concept is consistent with total recharge amounts reported by O'Conner (2015) or Myers (2015); all of the methods are effectively based on a water balance. Myers (2015) set baseflow equal to

recharge, following Cherkauer (2004) (and Myers 2013) while L&S (2013) started with total precipitation and attempted a soil moisture balance.

In summary, it is essential to compare recharge above the point in the watershed at which the project would be constructed with all of the pumpage above that point to assess the overall impacts the project could have on water levels and river flow in the project area. The evidence discussed above in this section shows that current groundwater levels decline more during dry periods than in the past due to increased pumping which means that groundwater pumping affects water levels and groundwater discharge to or from the river more than in the past. Because the groundwater levels drop further prior to recover than they did previously, recovery draws more water from the river as described in the next section.

Drawing Water from the Napa River

The County compares only the proposed project to recharge in the watershed above the project rather than considering the cumulative draws of all pumping, which will determine whether the aquifer will be depleted. The NegDec (p. 14) suggests that because water levels are not on a long-term decline, recharge must be replenishing the aquifer. The Lederer letter states:

1).c There is no basis in the data presented to support his opinion that groundwater extraction is exceeding the rate of recharge to the aquifer system. On the contrary, groundwater levels for representative wells in the area suggest otherwise (Lederer 2015, p 2)

Groundwater levels decline in some years, but then recover in other years. Most of the recovery is due to water being diverted from the river. This means the water never discharges into the river or it is being diverted from the river due the water level being drawn below the level of the river. Figures 1 and 2, below, demonstrate how this occurs. Figure 1 is a graph of water levels in the Girard Well included within the Water Availability Analysis (O'Connor (2015)). Water levels increased about 10 feet over the 11-day monitoring period, conducted in February 2015. O'Conner attributed the ten-day increase to the aquifer receiving recharge (O'Conner 2015, p 17), but does not identify the source of the recharge. February 2015 was the end of a dry winter, so O'Conner should have identified the source. Figure 2 is a hydrograph of flows in the Napa River at Napa showing that a significant flow began about five days before the period in Figure 1. Napa River flow increased from less than 30 cfs to relatively high rates, 1260, 855, 1860, and 1010 cfs for four days beginning February 7 (Figure 2). These high river flows would have recharged the aquifers near the river, including the volcanic tuffs in which the Girard well is constructed and caused the observed groundwater level increases. It is not known when the groundwater level actually began to increase but, at the most, it was five days after the river levels rose and recharge likely began. This means that, at most, the time for the

Girard Well to respond to changes in the water level in the river is five days. The Girard Well is from 1500 to 2000 feet from the Napa River (O’Conner 2015, Figure 1). In summary, O’Connor’s graph of Girard well water levels (Figure 1) and the hydrograph of river flows (Figure 2) demonstrate that recharge from the river makes up the drawdown in the aquifer. If that drawdown had not existed, whatever its cause, the water would have remained in the river.

Cumulative pumping from all of the wells in the Napa alluvium and connected aquifers therefore cause a drawdown in the aquifers near the river. This drawdown is replenished with water from the river as described in the previous paragraph. Increasing the total cumulative pumpage from aquifers near the river will increase the deficit in those aquifers and decrease flow in the river by either drawing from the river or preventing groundwater flow from reaching the river. The revised negative declaration and the Lederer letter ignore this fact entirely.

The County also ignores how groundwater/surface water interactions occur. The Lederer letter states:

2) Myers states that “drawdown will eventually change the flow gradient for discharge to the Napa River and pumping will affect the river.”

a. There is no technical basis provided to justify this conclusion. Pumping of a well for some unspecified period of time at an uncertain rate from a well constructed in uncertain geologic conditions is not evidence that the gradient will change. He actually says “treating the aquifer as confined is preferable based on the low conductivity clay in the upper part of the log.” This does not support his hypothesis relating to eventual change in the flow gradient for discharge to the River since a confined aquifer would, by definition, be physically separated from the surface waters by a confining unit. (Lederer 2015, p. 3.)

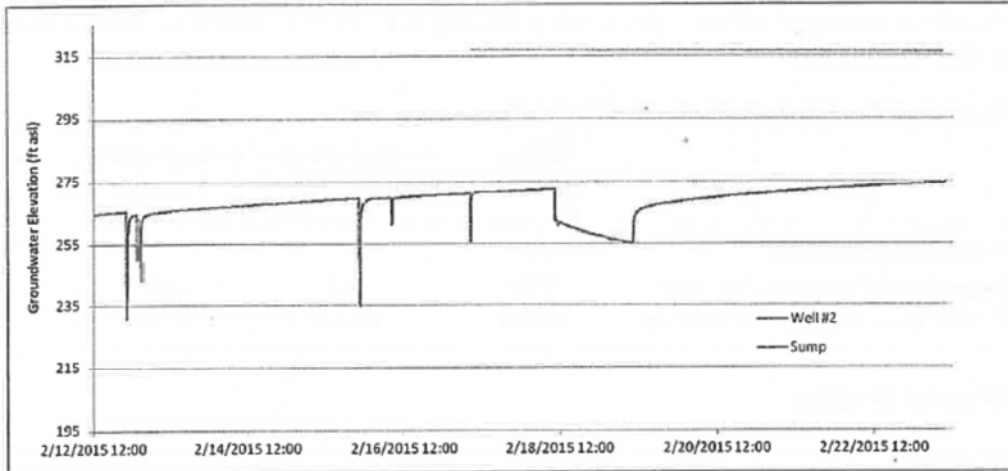


Figure 6: Hydrographs of groundwater elevations at Well #2 and the sump for the 2/12/2015 to 2/23/2015 observation period.

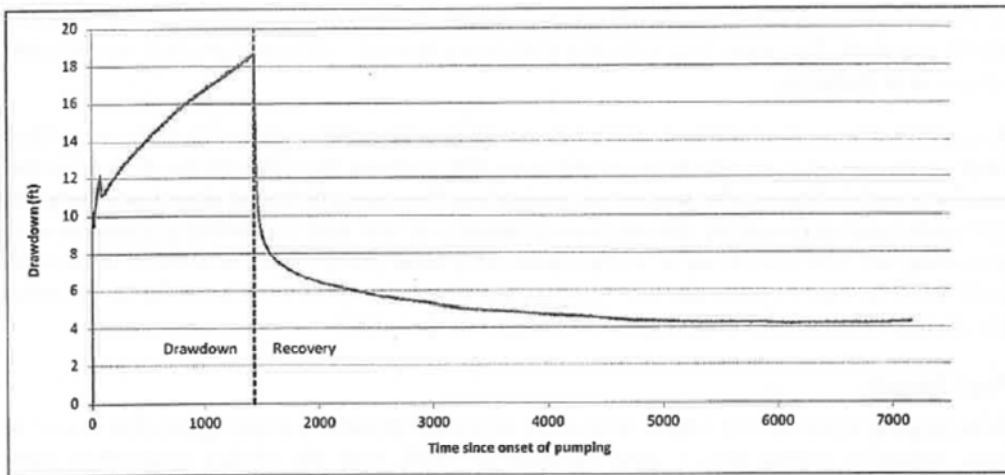


Figure 7: Time/drawdown data for the aquifer test conducted at Well #2.

Figure 1: Figures 6 and 7 from the Revised Water Availability Analysis (O'Conner (2015)) showing a hydrograph of groundwater elevation from February 12, 2015 through February 23, 2015 for the Girard Well and a drawdown time plot for a pump test on the well.

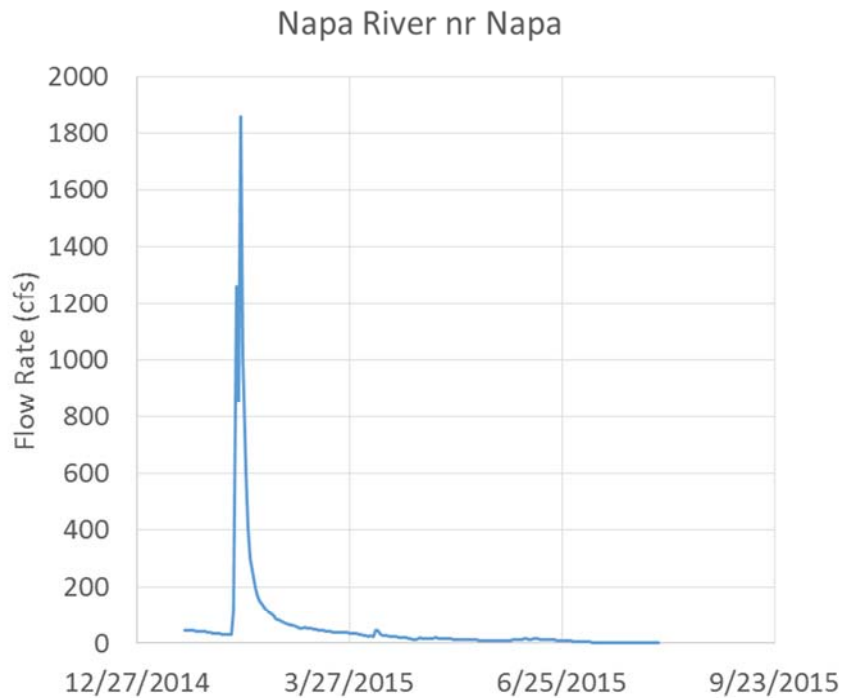


Figure 2: Flow hydrograph from January 16, 2015 to August 5, 2015, Napa River at Napa, #11458000

Every change in pumping from wells near a river will affect the river's flow gradient; that is simply well hydraulics (Fetter 2001). A well changes the gradient to draw water to the well. Conservation of mass requires that all groundwater pumping draw water from somewhere.

All discharge from a near-surface aquifer originated as recharge to that aquifer. Natural discharge is to rivers, springs, or groundwater-dependent vegetation. Groundwater pumping takes some of that natural discharge, as conservation of mass requires. Initially pumping will draw from storage and cause drawdown and change gradients for discharge to the river (or other natural discharge points). The change may be small enough to not be perceptible in the coarse scale of groundwater level monitoring, but basic science indicates it must occur. Pumping water from the valley near the river will take water from the river, either by diverting groundwater discharge to the river or actually pulling water from river. All pumping, past, current and future, takes or will take water from those discharges. The issue that requires analysis is the effect that the cumulative loss of flow has on the river. The revised negative declaration does not examine this impact.

Regarding the issue of whether pumping from a confined aquifer can pull water from the river, the log summary (O'Connor 2015) shows the wells are completed in volcanics (a fact not disclosed in the initial analysis) and also shows the alluvium above the volcanics to be clay (O'Connor 2015). Clay tends to have a low conductivity and would probably be a confining

layer so that the aquifer near the well would respond as if it is confined. Also, the pump test analyses included in the Water Availability Analysis (O'Connor 2015) were based on an assumption of a confined aquifer. Being confined in no way prevents the pumping from affecting the river because:

- The groundwater system is probably not confined everywhere and there is a mixing of the water
- The confined aquifer may outcrop near the river which facilitates the connection and mixing of the water.

Figures 1 and 2 above and the accompanying discussion document that pumping the aquifer draws flow from the river.

The County's final argument relating to impacts to the Napa River concerns incrementalism but actually confirms the County's failure to evaluate the Project's cumulative impacts on groundwater resources. Mr. Lederer states:

b. From a practical standpoint, the existing conditions surrounding the property argue against the hypothesis of this project causing a flow gradient change. The two wells involved are both existing (constructed in 1971 and 1985). In addition, according to the December 17, 2014 staff report, there are 10 other wineries operating within one mile of the proposed project, along with numerous residences and vineyards, all with their own groundwater wells. Given this existing network of groundwater wells, data indicating a stable water table, and the small increase in pumping associated with the proposed project, it is simply not credible in the eyes of this engineer that this small percentage of additional pumping is likely to change the direction of the flow gradient. (Lederer 2015, p 3)

From a "practical standpoint", one more well may not "change the direction of the flow gradient", but as explained above, basic physics require that pumping changes the discharge to a river and changes the baseflow. The County must evaluate the cumulative effects of pumping from all of the wineries and all other proposed development that relies on groundwater.

Finally, the Lederer letter disagrees with my Theis calculations (Myers 2015):

3) Myers describes use of the standard Theis equation to assess potential drawdown.

a. Drawdown calculations conducted by the Girard WAA, and admittedly quick computations by LSCE using variables cited by Myers, came to an entirely different conclusion relating to drawdown. Drawdown estimates that we arrived at are a couple of orders of magnitude lower than what Myers shows in plots. There does not appear to

be factually supported evidence that there would be a significant effect on wells in the vicinity of the project.

In response to this comment, I have revised the calculations to include the following assumptions: (1) transmissivity, 73 and 23 ft²/d (the median and low values determined by O'Conner (2015)); (2) storage coefficient equal to 0.0001; and (3) pumping rates specified by O'Connor (2015). (See Figure 3). As I demonstrate below, even when using the applicant's assumptions, pumping the Girard Well will cause some drawdown to occur at distances that correspond to neighbors and the river. The County's dismissive way of considering drawdown misses two important points.

- The drawdown shown in Figure 3 is due to pumping just one well. Actual drawdown in the area will be considerably more than that caused by one well because it will be the cumulative amount from all of the wells pumped in the area.
- The Lederer letter implies that the Project's wells may not be pumped continuously, as I did in the creation of Figure 3. The Theis equation can only provide drawdown after a period of continuous pumping at a constant rate. Figure 3 shows drawdown that occurs after pumping for any time period up to 11 days. Actual pumping may involve starting and stopping, so that some recovery may occur between pumping periods, but over the long run, pumping any well creates a deficit because recovery is not instantaneous. Recovery also requires that water be drawn from a distance which eventually depletes the aquifer if the amount of water withdrawn exceeds the recharge rate. Or, pumping may increase recharge by drawing water from the overlying alluvial aquifer or from the river. The longer term recovery shown for the Girard Well (Figure 1, above) shows that drawdown can be residual, depending on its cause and the availability of recharge to replenish it.

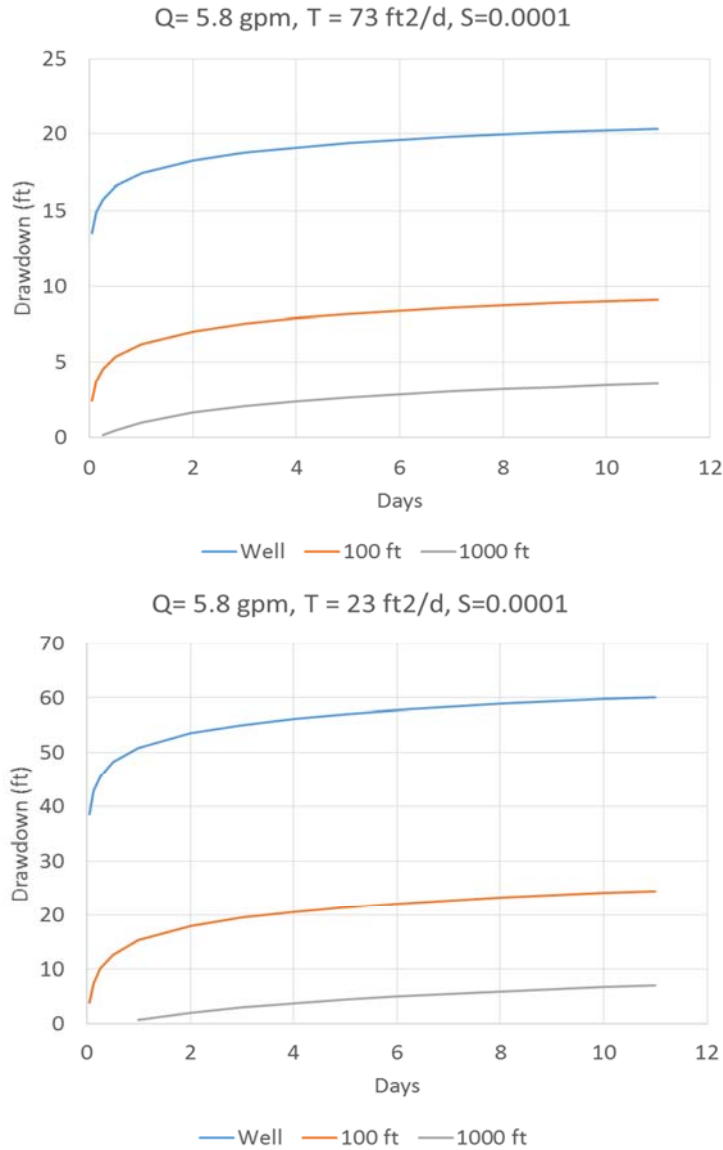


Figure 3: Drawdown with time plots for a well pumping 5.8 gpm with the specified transmissivity and storage coefficient.

Drawdown at the Girard well exceeds 60 feet and at a distance of 1000 feet is about 8 feet after 11 days of pumping at 5.8 gpm (Figure 3, above). Drawdown estimates for other times -- up to 11 days -- may be read from Figure 3. As shown on Figure 3, there will clearly be drawdown at neighboring wells within 1000 feet. Similar drawdown curves could be drawn for larger distance, including the river at about 1500 feet.

All pumping will draw water from the Napa River, but the Neg Dec’s analysis of the project does not adequately assess the amount or the cumulative effects pumping would have on flows in the river.

Edge of the Cone of Depression

The Water Availability Analysis (O'Connor (2015)) made several claims that are not supported by evidence. The Analysis estimated the extent of the cone of depression resulting from 24 hours of continuous pumping at 5.37 gpm using an equation (Equation 1 in O'Connor 2015). This equation, however, was never intended for the purpose of identifying a point of zero drawdown. The equation is part of the Cooper-Jacob straight line method, which is a means of analyzing pumping-test data (Fetter 2001). Drawdown at any monitoring well at radius r from the pumping well is plotted against time with 0 drawdown on the top and increasing drawdown plotted downward on the y axis; time on the x axis is logarithmic, as shown on Figure 4 below. This is an example of the method from a textbook (Fetter 2001). The plot is semi-logarithmic which means on one axis, the y axis, points are plotted arithmetically while on the other axis, the x axis, the points are on a logarithmic scale (see Figure 4). Data collected from a pumping test, drawdown at a monitoring well a given distance from the well being pumped, is plotted against time (drawdown on the y axis and time on the x axis). The points form a straight line, except at very small times, if the Cooper-Jacob method is applicable. A straight line may be extended from the line drawn through the data to the top of the graph. The top of the graph corresponds to the point where drawdown equals 0. For zero drawdown, time can be read from the x axis (Figure 4). This time value is used in the Cooper-Jacobs equations but, as can be seen by the fact that the data points do not plot on the straight line near the point of zero drawdown, the zero drawdown point does not actually occur in the field. Assuming it does is a misapplication of the Cooper-Jacob method.

5.5 Determining Aquifer Parameters from Time

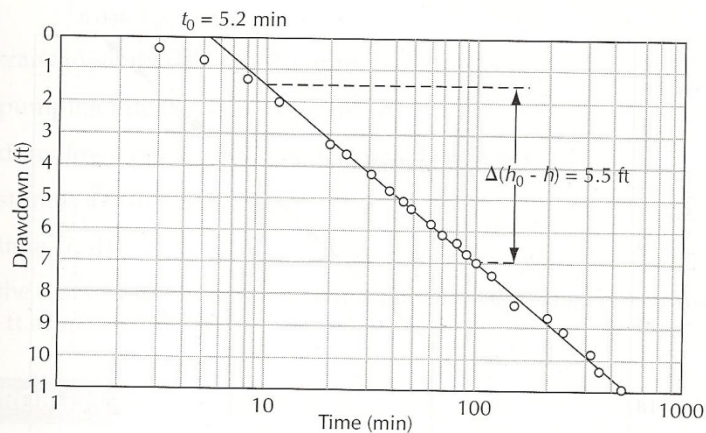


FIGURE 5.9

Cooper-Jacob method of solution of pumping-test data for a fully confined aquifer. Drawdown is plotted as a function of time on semilogarithmic paper.

Figure 4: Figure 5.9 from Fetter (2001) showing an example of applying the Cooper-Jacob method to drawdown/time data.

The Water Availability Analysis (O'Connor (2015)) misapplied the equation to “estimate the duration of continuous pumping that would be necessary for the associated cone of depression to reach various points of interest” (O'Connor 2015, p 19). For this reason, the information in O'Connor's Tables 11 and 12 is not useful because they are based on an inappropriate application of a Cooper Jacob well-pumping test equation. The County should not rely on this analysis to assume there will be no drawdown beyond the points specified.

Arsenic and Boron

The Lederer Report ignores the discussion regarding the potential for arsenic and boron to be drawn from the northwest through the project site. The County's argument primarily relies on the fact that since the existing pumping has not drawn the contaminants, the increase in pumping from the Girard well would not cause groundwater contamination. The same argument as made above regarding flow directions due to cumulative pumping applies. Combined, the pumping of all wells in the area could certainly draw contaminants toward the project area. As I explained in my January 2015 report, cumulative pumping in the Calistoga area controls the flow directions in the area. Additional pumping downgradient of the high concentrations, in what appears to be both an arsenic and boron plume, will draw the contaminants further into Calistoga and beyond to the southeast. The County must analyze this potential impact using, for example, a flow and transport model.

Conclusion and Recommendation

This memorandum, along with my prior memorandum, demonstrates the proposed expansion of pumping for the Girard Winery project could have three potentially significant impacts. First, the pumping could unacceptably lower the groundwater levels because there is not as much recharge in the area as the County assumes. Second, the pumping could affect groundwater flow and decrease flow in the river. Third, pumping could cause arsenic and boron to be drawn from the northwest toward the project site. Groundwater pumping from the Project, combined with pumping from the other wells in the area, could cause each of these impacts to occur.

The County's response to my January 20, 2015 memorandum on the project showed a lack of understanding of the cumulative and overlapping effects of this project with all of the other wells in the area.

Because of these potentially significant impacts, a much more detailed hydrogeologic study is needed. All of the issues raised in this review should be analyzed with a numerical flow and transport model. A numerical model would use commonly available computer software which solves the equations of groundwater flow and contaminant transport to provide estimates of groundwater level, flow rates to and from the river, and the movement of contaminants. Such a model could be applied to this area and account for various recharge sources and all of the current and proposed future pumping. The County could then assess how much river flow existing pumping removes from the river, how drawdown would occur at the various wells, and whether the pumping can draw the boron and arsenic plumes toward the project site.

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Myers T (2015) Technical Memorandum, Review of Girard Winery Use Permit P14-00053. January 20, 2015.

Myers, T., 2013. Remediation scenarios for selenium contamination, Blackfoot Watershed, southeast Idaho, USA. *Hydrogeology*. DOI 10.1007/s10040-013-0953-8

O'Connor Environmental Inc (2015) Girard Winery Water Availability Analysis, Prepared for Vintage Wine Estates. Healdsburg CA

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EXHIBIT 2



Source Water Protection Practices Bulletin

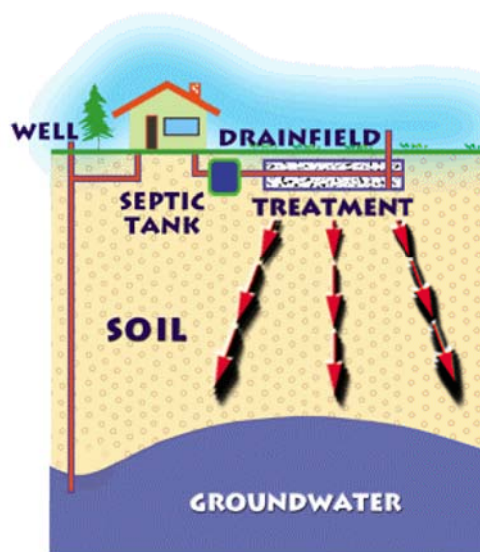
Managing Septic Systems to Prevent Contamination of Drinking Water

Septic systems (also known as onsite wastewater disposal systems) are used to treat and dispose of sanitary waste. When properly sited, designed, constructed, and operated, they pose a relatively minor threat to drinking water sources. On the other hand, improperly used or operated septic systems can be a significant source of ground water contamination that can lead to waterborne disease outbreaks and other adverse health effects.

This fact sheet discusses ways to prevent septic systems from contaminating sources of drinking water. Septic systems that receive non-sanitary wastes (e.g., industrial process wastewater) are considered industrial injection wells, and are not the primary focus of this fact sheet. Other fact sheets in this series address prevention measures for contamination sources such as fertilizers, pesticides, animal feeding operations, and vehicle washing.

SOURCES OF SEPTIC SYSTEM EFFLUENT

About 25 percent of U.S. households rely on septic systems to treat and dispose of sanitary waste that includes wastewater from kitchens, clothes washing machines, and bathrooms. Septic systems are primarily located in rural areas not served by sanitary sewers.



A typical household septic system consists of a septic tank, a distribution box, and a drain field. The septic tank is a rectangular or cylindrical container made of concrete, fiberglass, or polyethylene. Wastewater flows into the tank, where it is held for a period of time to allow suspended solids to separate out. The heavier solids collect in the bottom of the tank and are partially decomposed by microbial activity. Grease, oil, and fat, along with some digested solids, float to the surface to form a scum layer. (Note: Some septic tanks have a second compartment for additional effluent clarification.)

The partially clarified wastewater that remains between the layers of scum and sludge flows to the distribution box, which distributes it evenly through the drain field. The drain field is a network of perforated pipes laid in gravel-filled trenches or beds. Wastewater flows out of the pipes, through the gravel, and into the surrounding soil. As the wastewater effluent percolates down through the soil, chemical and biological processes remove some of the contaminants before they reach ground water.

Large capacity septic systems are essentially larger versions (with larger capacities and flow rates) of single family residential septic systems, but they may have more than one septic tank or drain field for additional treatment capacity. In some cases, an effluent filter may be added at the outlet of the large capacity septic tank to achieve further removal of solids. Many large systems rely on pumps rather than gravity to provide an even flow distribution into the drain field.

WHY IS IT IMPORTANT TO MANAGE SEPTIC SYSTEMS NEAR THE SOURCES OF YOUR DRINKING WATER?

Septic systems are a significant source of ground water contamination leading to waterborne disease outbreaks and other adverse health effects. The bacteria, protozoa, and viruses found in sanitary wastewater can cause numerous diseases, including gastrointestinal illness, cholera, hepatitis A, and typhoid.

Nitrogen, primarily from urine, feces, food waste, and cleaning compounds, is present in sanitary wastewater. Consumption of nitrates can cause methemoglobinemia (blue baby syndrome) in infants, which reduces the ability of the blood to carry oxygen. If left untreated, methemoglobinemia can be fatal for affected infants. Due to this health risk, a drinking water maximum contaminant level (MCL) of 10 milligrams per liter (mg/l) or parts per million (ppm) has been set for nitrate measured as nitrogen. Even properly functioning conventional septic systems, however, may not remove enough nitrogen to attain this standard in their effluent.

AVAILABLE PREVENTION MEASURES TO ADDRESS SEPTIC SYSTEMS

Septic systems can contribute to source water contamination for various reasons, including improper siting, poor design, faulty construction, and incorrect operation and maintenance. Most States and localities regulate siting, design, and construction of septic systems and only regulate operation and maintenance for large capacity septic systems. Some of the more widely used prevention measures are described below. Your local health department should be able to advise you on specific requirements for your community.

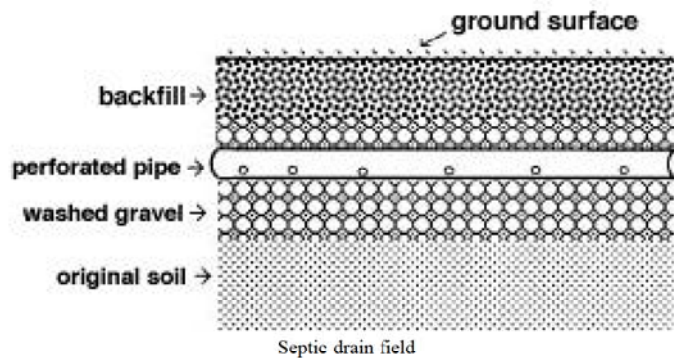
Please keep in mind that individual prevention measures may or may not be adequate to prevent contamination of source waters. Most likely, individual measures should be combined in an overall prevention approach that considers the nature of the potential source of contamination, the purpose, cost, operational, and maintenance requirements of the measures, the vulnerability of the source water, the public's acceptance of the measures, and the community's desired degree of risk reduction

Siting

Most jurisdictions have adopted, for septic systems, ***minimum horizontal setback distances*** from features such as buildings and drinking water wells and ***minimum vertical setback distances*** from impermeable soil layers and the water table. Septic systems should be located a safe distance from drinking water sources to avoid potential contamination. Areas with high water tables and shallow impermeable layers should be avoided because there is insufficient unsaturated soil thickness to ensure sufficient treatment. ***Soil permeability must be adequate*** to ensure proper treatment of septic system effluent. If permeability is too low, the drain field may not be able to handle wastewater flows, and surface ponding (thus contributing to the contamination of surface water through runoff) or plumbing back-ups may result. If permeability is too high, the effluent may reach ground water before it is adequately treated. As a result, alternative systems may be necessary in karst areas. Well-drained loamy soils are generally the most desirable for proper septic system operation. In making siting decisions, local health officials should also evaluate whether soils and receiving waters can absorb the combined effluent loadings from all of the septic systems in the area.

Design and Construction

Septic tanks and *drain fields should be of adequate size* to handle anticipated wastewater flows. In addition, soil characteristics and topography should be taken into account in designing the drain field. Generally speaking, the lower the soil permeability, the larger the drain field required for adequate treatment. Drain fields should be located in relatively flat areas to ensure uniform effluent flow.



Effluent containing excessive amounts of grease, fats, and oils may clog the septic tank or drain field and lead to premature failure. The installation of *grease interceptors* is recommended for restaurants and other facilities with similar wastewater characteristics.

Construction should be performed by a *licensed septic system*

installer to ensure compliance with applicable regulations. The infiltration capacity of the soil may be reduced if the soil is overly compacted. Care should be taken not to drive heavy vehicles over the drain field area during construction or afterward. Construction equipment should operate from upslope of the drain field area. Construction should not be performed when the soil is wet, or excessive soil smearing and soil compaction may result.

Operation and Maintenance

Proper operation and maintenance of septic systems is perhaps the most crucial prevention measure to preventing contamination. Inadequate septic system operation and maintenance can lead to failure even when systems are designed and constructed according to regulation. Homeowners associations and tenant associations can play an important role in educating their members about their septic systems. In commercial establishments such as strip malls, management companies can serve a similar role. Septic system owners should continuously monitor the drain field area for signs of failure, including odors, surfacing sewage, and lush vegetation. The septic tank should be *inspected annually* to ensure that the internal structures are in good working order and to monitor the scum level.

Many septic systems fail due to hydraulic overloading that leads to surface ponding. Reducing wastewater volumes through *water conservation* is important to extend the life of the drain field. Conservation measures include using water-saving devices, repairing leaky plumbing fixtures, taking shorter showers, and washing only full loads of dishes and laundry. Wastewater from basement sump pumps and water softeners should not be discharged into the septic system to minimize hydraulic load. In addition, surface runoff from driveways, roofs, and patios should be directed away from the drain field.

If an excessive amount of sludge is allowed to collect in the bottom of the septic tank, wastewater will not spend a sufficient time in the tank before flowing into the drain field. The increased concentration of solids entering the drain field can reduce soil permeability and cause the drain field to fail. Septic tanks should be pumped out every two to five years, depending on the tank size, wastewater volume, and types of solids entering the system. Garbage disposals increase the volume of solids entering the septic tank, requiring them to be pumped more often.



Household chemicals such as solvents, drain cleaners, oils, paint, pharmaceuticals, and pesticides can interfere with the proper operation of the septic system and cause ground water contamination. Homeowners should take advantage of *local hazardous waste collection programs* to dispose of these wastes whenever

possible. Grease, cooking fats, coffee grounds, sanitary napkins, and cigarettes do not easily decompose, and contribute to the build-up of solids in the tank. The use of additives containing yeast, bacteria, enzymes, and solvents has not been proven to improve the performance of septic systems, and may interfere with their normal operation. Bacterial “starters” are not necessary because a wide range of bacteria are normally present in sewage entering the tank. Additives containing solvents or petrochemicals can cause ground water contamination.



Vehicles and heavy equipment should be kept off the drain field area to prevent soil compaction and damage to pipes. Trees should not be planted over the drain field because the roots can enter the perforated piping and lead to back-ups. Last, any type of construction over the drain field should be avoided. Impervious cover can reduce soil evaporation from the drain field, reducing its capacity to handle wastewater.

FOR ADDITIONAL INFORMATION

For information on septic system regulations in your community, contact your state or local health department. The information sources below contain information on measures to prevent septic system failures. All of the documents listed are available free of charge on the Internet.

Numerous documents on septic systems are available for download from U.S. Department of Agriculture Cooperative State Research, Education, and Extension Service State Partners. Links to the various State Partners can be found at <http://www.reeusda.gov/1700/statepartners/usa.htm>. Several examples of these documents are presented below:

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Hiller, Joe and Andrea Lewis. (October 1994). *Septic System Failure: What To Do*. University of Wyoming Cooperative Extension Service. B-1007. Retrieved February 27, 2001 from the World Wide Web: <http://www.uwyo.edu/ag/ces/PUBS/Wy1007.pdf>.

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Washington State University Cooperative Extension and U.S. Department of Agriculture. (Reprinted January 1998). *Properly Managing Your Septic Tank System*. EB1671. Retrieved February 26, 2001 from the World Wide Web: <http://cru.cahe.wsu.edu/CEPublications/eb1671/eb1671.html>.

The National Small Flows Clearinghouse has developed a series of brochures on septic systems. They can be found at http://www.estd.wvu.edu/nsfc/NSFC_septic_news.html.

North Carolina State University Water Quality Group. *Septic Systems*. Retrieved February 27, 2001 from the World Wide Web: <http://h2osparc.wq.ncsu.edu/estuary/rec/septic.html>.

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EXHIBIT 3

**CITY OF CALISTOGA
 PLANNING AND BUILDING DEPARTMENT
 PROPOSED AND APPROVED DEVELOPMENT REPORT
 MARCH 2015**

<u>Location</u>	<u>Project Name/Applicant</u>	<u>Project Description</u>	<u>Status</u>	<u>Planner</u>
411 Foothill Boulevard	CALISTOGA HILLS (Formerly Enchanted Resorts) Aaron Harkin 1019 Myrtle Street Calistoga, CA 94515 707-332-8917	Resort/Residential Project 13 single-family dwellings 20 Fractional Units 110 Hotel Units	Approved	Erik Lundquist
1300 Washington Street	ROMAN SPA Michael and Kathy Quast 1300 Washington Street Calistoga, CA 94515 707-942-4441 ext. 7242	Resort Expansion Project	Proposed	Erik Lundquist
207 Wappo Avenue	Wappo Avenue Guest Accomodations Thomas Hodge and Margaret Nicholson PO Box 6942 Napa, CA 707.501.8550	3 Family and/or Group Guest Suites	Approved	Erik Lundquist
1998 Cedar Street	IMPER RESIDENCE Patrick Mervin + Associates c/o Allisa McNair 4668 Petrified Forest Road Calistoga, CA 94515 707-942-6540	4,000+ sf single-family dwelling	Approved	Lynn Goldberg
400 Silverado Trail	SILVER ROSE RESORT Silver Rose Venture, LLC 1 Post Office Square 3520 Boston, MA 02109 650-868-3708	Resort/Residential Project 85 guest rooms 57,630 sf resort facilities 110-seat restaurant 21 single-family dwellings	Under Construction	Erik Lundquist
1801 & 1805 Michael Way	NEW VINE HOMES LLC 1301 Farmer's Lane, Suite 302 Santa Rosa, CA 95405	2 New Single Family Dwellings	Pending	Erik Lundquist

**CITY OF CALISTOGA
 PLANNING AND BUILDING DEPARTMENT
 PROPOSED AND APPROVED DEVELOPMENT REPORT
 MARCH 2015**

<u>Location</u>	<u>Project Name/Applicant</u>	<u>Project Description</u>	<u>Status</u>	<u>Planner</u>
957 Petrified Forest Road	BRANSTAD PARCEL MAP PM 2014-4 c/o Robert Branstad PO Box 1009 Winnemucca, NV 89446 510.334.2232	2-lot Subdivision	Pending	Erik Lundquist
2085 Mora Avenue	DECKARD AND FRANQUELIN PARCEL MAP PM 2014-3 1718 Michael Way Calistoga, CA 94515 707.544.2104	3-lot Subdivision	Pending	Erik Lundquist
2960 Foothill Boulevard	CALISTOGA PET CLINIC PARCEL MAP PM 2014-1 c/o RKMS Investments, LLC (Jimmy Quita) 34501 7th Street Union City, CA 94587 510-385-2236	2-lot Subdivision	Pending	Erik Lundquist
2309 Grant Street	CARAVAS SETBACK VARIANCE 2309 Grant Street Calistoga, CA 94515	Front Yard Setback Variance	Pending	Erik Lundquist
2960 Foothill Boulevard	CALISTOGA PET CLINIC USE PERMIT AMENDMENT UP 2013-7 Steve Franquelin 2960 Foothill Boulevard Calistoga, CA 94515 707.942.0404	Expansion of Use	Pending	Erik Lundquist

**CITY OF CALISTOGA
 PLANNING AND BUILDING DEPARTMENT
 PROPOSED AND APPROVED DEVELOPMENT REPORT
 MARCH 2015**

<u>Location</u>	<u>Project Name/Applicant</u>	<u>Project Description</u>	<u>Status</u>	<u>Planner</u>
1213 & 1303 Foothill Boulevard	General Plan Amendment 2015-2 and Zoning Map Amendment ZOA 2015-4 Nicholas Kite 1213 Foothill Boulevard Calistoga, CA 94515	Designate Property Downtown Commercial	Pending	Erik Lundquist
2412 Foothill Boulevard	Rancho de Calistoga Clubhouse Design Review DR 2015-1 and Variance VR 2015-1 HCA Management c/o Dean Moser 7250 Redwood Blvd., #350 Novato, CA 94945 415.892.4795 x217	New Clubhouse	Pending	Erik Lundquist

EXHIBIT 4

SHUTE, MIHALY
& WEINBERGER LLP

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ROBERT "PERL" PERLMUTTER
Attorney
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June 8, 2015

Via U.S. Mail

County of Napa
Board of Supervisors
1195 Third Street, Suite 310
Napa, California 94559

Re: Enforcement Action Against Clos Pegase Winery, Inc.

Dear Chair of the Board:

This firm represents the Tofanelli family on matters related to the unpermitted use of the Clos Pegase Winery. These uses include weddings and similar social events, such as anniversaries, rehearsal dinners, birthdays, holiday parties, and private parties unrelated to the education and development of customers and potential customers. We are writing to support Napa County's enforcement action against Clos Pegase and to detail why there is no legal basis under which Clos Pegase can pursue such a practice.

In 1990, the Board of Supervisors adopted the Winery Definition Ordinance (WDO), which limits commercial activities on wineries approved in agricultural zoning districts to ensure that winery management remains focused on the production of world-class wines. The WDO was amended in 2010 to allow for "[c]ultural and social events directly related to the education and development of customers and potential customers" under a use permit for the "marketing of wine," as long as "such events are clearly incidental, related and subordinate to the primary use of the winery." Napa County Code § 18.08.370 (as amended by Ord. No. 1340, § 1, May 11, 2010). The WDO also states that these marketing 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." *Id.*

The County's Planning, Building and Environmental Services Department has interpreted the WDO, even after the 2010 amendments, as prohibiting wineries from holding weddings, parties, and other similar cultural and social events. *See Memo From*

Hillary Gitelman to Napa County Planning Commission, October 26, 2009 (“Gitelman Memo,” attached); *see also* Email from David Morrison to Norma Tofanelli, January 20, 2015 (attached). Thus, under the WDO, Clos Pegase cannot legally use its winery as a wedding venue or special event center. Nonetheless, Clos Pegase continues to advertise “anniversaries, rehearsal dinners, birthdays, holiday parties, private parties and more” on its website. *See* <http://www.clospegase.com/eventhosting>.

There are two limited exceptions to the WDO’s restriction on the use of wineries for weddings and other social and cultural events, but neither apply to Clos Pegase. The ordinance first makes an exception for existing wineries that commenced operations prior to 1974, “and whose activities were lawful when established and have not been abandoned.” Ord. No. 947, § 2. Under this provision, wineries that held weddings or similar social events on their premises prior to 1974 and have continued to do so since that time may operate as legally nonconforming wedding venues or special event centers, as long as the nonconforming use is not expanded beyond the pre-1974 levels and is recognized via a county-approved certificate of conformity. *Id.*; *see* Gitelman Memo. Clos Pegase commenced operations in 1984 and, thus, cannot make an argument under this exception. *See* Clos Pegase Use Permit, October 3, 1984 (“1984 Use Permit,” attached)(“request to establish a winery...”).

The second exception concerns wineries that commenced operations after 1974 and secured the required use permit to make their social event-hosting activities lawful. Ord. No. 947, § 3. This exception allows wineries the continued “right to operate within the conditions of their approved use permits,” if those use permits explicitly allowed for social and cultural event hosting. *Id.* Any activity beyond the winery’s use permit could only be allowed “upon securing a modification of said use permit in accordance with [the Winery Definition Ordinance].” *Id.* Clos Pegase also has no argument under this exception. Its use permit, dated October 3, 1984, provides only for “public tours and tastings” and contains no language authorizing the use of the winery for weddings or other similar social and cultural events. *See* 1984 Use Permit. Clos Pegase sought and received a second use permit in 1987, which also makes no mention of using the winery for weddings or social events. *See* Clos Pegase Use Permit, May 28, 1987 (“1987 Use Permit,” attached); *see also* Letter from Jeffrey Redding to Michael Wilson, April 6, 1990 (indicating that the 1987 use permit for public tours and tastings does not extend to general social events) (attached). Thus, Clos Pegase’s right to operate within the conditions of its pre-1990 use permits does not in any way allow it to function as a wedding venue or a special event center.

Clos Pegase may argue that its winery had been continuously used for weddings and similar social events before the adoption of the WDO, but any such prior

practices are irrelevant. Since 1974, the County required all winery owners to obtain use permits for myriad uses, including marketing of wine and tours and tastings. Napa County Code § 18.16.030. In the absence of a pre-1990 permit expressly authorizing use of Clos Pegase Winery for weddings and similar social and cultural events, such actions, even if proven, were illegal. Those illegal actions cannot now be leveraged to create a legal, permitted use. *See, e.g., Edmonds v. Cnty. of Los Angeles* (1953) 40 Cal.2d 642, 651 (a vested right is the right to continue a legal activity that existed prior to the enactment of a regulatory program); *Hansen Bros. v. Bd. of Supervisors of Nevada Cnty.* (1996) 12 Cal.4th 533, 540 fn. 1, 541 (Nonconforming uses do not require permits because they “*existed lawfully* before a zoning restriction became effective,” even though they are “not in conformity with the ordinance when it continues thereafter.” [emphasis added]). Because Clos Pegase did not have a legal right to use its winery for weddings or other social and cultural events between 1984 and 1990, it does not have a vested right to do so after the enactment of the WDO in 1990. This nonconforming use must cease.

Should Clos Pegase seek to modify its use permit or claim a vested right, neighboring property owners “are entitled to reasonable notice and an opportunity to be heard in an evidentiary public adjudicatory hearing before that vested rights claim is determined.” *Calvert v. Cnty. of Yuba* (2006) 145 Cal.App.4th 613, 627 (“approvals . . . which ‘substantially affect’ the property rights of adjacent landowners may constitute property ‘deprivation[s]’ within the context of procedural due process, requiring reasonable notice and an opportunity to be heard for those landowners before the land use decision is made” [citations omitted]). For the reasons outlined above, there are no means by which Clos Pegase’s use of its winery as a wedding and special events venue can be considered a legal nonconforming use under Napa County law; nevertheless, should the County entertain the possibility of granting Clos Pegase a certificate of conformity, we request the County provide notice and an opportunity to be heard to our firm and to the Tofanelli family prior to making that decision.

In closing, we commend the County for bringing an enforcement action to prevent Clos Pegase’s illegal operation as a wedding venue and special event center, but express our dismay and disappointment regarding the County’s five-month delay in preventing unauthorized activities at this winery. Though Clos Pegase’s website no longer promotes use of the winery as a wedding venue, Clos Pegase continues to advertise use of its premises for various social events, including “anniversaries, rehearsal dinners, birthdays, holiday parties, private parties and more.” *See* <http://www.clospegase.com/eventhosting>. Despite the County’s ongoing investigation, Cos Pegase’s event calendar web page is currently riddled with activities unrelated to the primary use of the winery. *See* <http://www.clospegase.com/upcomingevents> (advertising

County of Napa
June 8, 2015
Page 4


“Yoga in the Vineyards,” “Floral Arranging with EV Floral Design,” “Puppies and Pinot,” etc.). In order to introduce some much-needed transparency into the enforcement process, we request that the County advise us in writing as to exactly what is allowed under Clos Pegase’s use permit: how many events, the nature and size of those events, and how frequently they may occur.

We request the County to enforce its laws and stop the unauthorized use of Clos Pegase Winery to ensure protection of the public and avoid unnecessary litigation over what is a clear violation of Clos Pegase’s use permit.

Thank you for your attention to this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in black ink, appearing to read 'R. Perl', with a long horizontal line extending to the right.

Robert “Perl” Perlmutter

Attachments

663883.5

1. Memo From Hillary Gitelman to Napa County Planning Commission, October 26, 2009.
2. Email from David Morrison to Norma Tofanelli, January 20, 2015.
3. Clos Pegase Use Permit, October 3, 1984.
4. Clos Pegase Use Permit, May 28, 1987.
5. Letter from Jeffrey Redding to Michael Wilson, April 6, 1990.

683109.1



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Hillary Gitelman
Director

MEMORANDUM

To: Napa County Planning Commission and Interested Stakeholders	From: Hillary Gitelman
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Date: October 26, 2009	Re: WDO & Temporary Events
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At the October 6, 2009 joint meeting of the Planning Commission and the Board of Supervisors, planning staff was directed to:

1. quickly review any options that might exist for using our temporary events ordinance as a way to permit social and cultural events at wineries;
2. offer support to industry group discussions about potential changes to the Winery Definition Ordinance (WDO) of 1990; and
3. assemble some data regarding regional economic conditions and characteristics of Napa County wineries.

The first of these subjects is addressed in this memo via a series of five questions and answers which reference relevant sections of the Napa County General Plan and Napa County Code. The staff interpretations and suggestions inherent in these questions and answers are simply initial thoughts, and are provided to frame discussion by the Commission at their November 18, 2009 meeting. Based on input from the Commission and interested stakeholders at that time and in the weeks that follow, staff will formulate a recommendation for consideration by the Commission and the Board around the end of January, when the Board of Supervisors has requested a report on industry group discussions and staff's data gathering efforts.

Question 1: Are wineries currently allowed to hold weddings, parties and similar cultural and social events?

Answer: Generally no, but it depends on when the winery was established and on what conditions were placed on the winery at the time of its approval. Some wineries were established prior to 1974, before there was a requirement for a use permit. These wineries may continue to host cultural and social events if it was part of their operations prior to 1974 (and if they are recognized via a county-approved certificate of conformity). Wineries approved between 1974 and when the WDO was adopted in 1990 may only host cultural and social events

October 26, 2009
WDO & Temporary Events

if they were permitted as part of the winery's use permit. Wineries approved after adoption of the WDO in 1990 may not host cultural and social events because of language included in the definition of "marketing" adopted at that time unless the event qualifies as a "temporary event" and has required permits. Generally, "temporary events" are events protected under the First Amendment of the US Constitution, and are open to the public. (See Question 4 & the definitions provided.)

It should be noted that the prohibition on cultural and social events at post-WDO wineries does not mean that marketing events cannot have a cultural or social component. For example, wine club members may be invited to an event featuring the winery's wine, which also involves music, art, etc. However, the code has been consistently interpreted to prohibit these wineries from hosting weddings, birthday parties, wedding anniversary celebrations, and other purely social events because they have been deemed "unrelated to... education and development" of the persons/groups specified in the definition of "marketing."

Question 2: Are wineries currently allowed to hold business meetings, conferences, and similar events?

Answer: Only if the business meetings are non-commercial and primarily focused on wine education and development. As noted above, wineries established prior to 1974 -- before there was a requirement for a use permit -- may continue to host business meetings, conferences, etc. if these activities were part of their operations prior to 1974 (and if they are recognized via a county-approved certificate of conformity). Wineries approved between 1974 and when the WDO was adopted in 1990 may hold such events if they were permitted as part of the winery's use permit.

Since adoption of the WDO, it has not always been clear whether business meetings and similar events qualify as marketing events. A strict reading of the ordinance would suggest that wineries may *not* host business meetings and the like unless they are "limited to activities for the education and development" of the persons or group involved and are singularly focused on "wine which can be sold at the winery on a retail basis." Under this interpretation, only a business meeting solely focused on the production and sale of wine would be acceptable. However, business meetings that have a marketing objective (e.g. a wine tasting or education event scheduled for a group of bankers as part of a corporate retreat), have often been considered marketing events, as long as a prevalence of such events does not constitute commercial activity or turn the winery into a conference center. Clearly this is one area of the code and the WDO that would benefit from clarification via a code amendment, or the kind of "administrative interpretation" discussed in response to Question 3.

Question 3: Could the County use an "administrative interpretation," rather than a code amendment to allow wineries to hold weddings, parties, business meetings, etc?

Answer: The County could use an interpretation to clarify when business meetings are acceptable. However the County could not use an administrative interpretation to allow weddings, parties, and similar social events. Also, administrative interpretations in general have significant disadvantages over formal code amendments.

By law, "administrative interpretations" or other policies that are adopted by staff or decision-makers may not conflict with regulations or policies formally adopted as part of the County's zoning ordinance or General Plan. Also, because such interpretations may be reversed or re-interpreted with little public notice any time there is a change in staff or a change in the composition of the Commission and/or the Board, they can be considered arbitrary and are not generally viewed as good public policy. Use of an interpretation may also be at odds with General Plan Policy AG/LU-107 which states that "The County shall provide a clear, consistent, timely, and predictable review process..." [emphasis added].

With that said, planning staff understands that the prohibition on cultural and social events and the issues surrounding business meetings described in response to Question 1 & 2 are themselves based on interpretations of code language. In the case of cultural and social events, County staff and policy makers have routinely interpreted birthday parties, weddings, etc. to be cultural and social events that are "unrelated to ... education and development" of the persons and groups called out in the definition of "marketing." This interpretation is supported by the last statement in the definition of marketing: "...but shall not include cultural and social events unrelated to such education and development..."

In the case of business meetings, County staff and policy makers have interpreted some business meetings as falling within the definition of "marketing," while acknowledging that the practice of hosting other business meetings can be considered a commercial activity outside the definition of "marketing." Careful consideration should be given to legal issues and potentially preferable alternatives before using an administrative interpretation to clarify when business meetings are acceptable. While there is no phrase in the code expressly describing these meetings as *not* falling within the definition of marketing (as there is for social and cultural events), there is still the disadvantage that an administrative interpretation can be reversed with little public notice (i.e. only by posting an agenda 72 hours in advance of the meeting) whenever the composition of the Commission or the Board changes.

Question 4: Could the County use the existing temporary events ordinance to allow weddings, parties, business meetings, etc. at wineries?

Answer: Not without amending the ordinance. Temporary events are by definition (see below) related to "expressive activities" protected by the First Amendment of the US Constitution and are open to the public. Common examples include concerts, lectures, and benefit dinners held by non-profit organizations. Wineries may hold social, cultural, and business-related events using the temporary event ordinance (and independent of their approved marketing programs), but only if the events are open to the public (with or without

payment of an admission charge), and are permitted via the procedures outlined in Chapter 5.36 of Napa County Code. Generally, any temporary event with more than 50 attendees requires a permit, which must be applied for at least 60 days in advance of the event. Obviously, weddings, birthday parties and other events that are *by invitation only* do not fall within the definition of temporary events, so the ordinance would have to be amended to provide another category of temporary event that is by invitation, presuming the Commission and the Board can make the case that such events are expressive activities protected under the First Amendment. This idea is discussed in response to Question 5, below.

Question 5: How could the existing temporary events ordinance be amended to permit weddings, parties and similar cultural or social events at wineries?

Answer: While it would be possible to amend the rules governing temporary events to permit "by invitation only" cultural and social events if these events were considered a form of public expression related to First Amendment rights, there may be unintended consequences of such a change and alternative code amendments would be preferable. Four options are evaluated here.

If the temporary events ordinance was simply amended to allow events that are by invitation only (events like weddings, birthday parties, etc.) by making the argument that these events provide for public expression, then these types of events could be permitted at homes, barns, warehouses, and at other properties throughout the County as well as at wineries. As a result, there could be an excessive number of events, and properties that hold regular events could become commercial enterprises in violation of General Plan policies and zoning restrictions.

This unintended consequence (i.e. the potential over-proliferation of events) could be addressed by enacting a new special events ordinance that is unrelated to the First Amendment and that limits the number of events allowed by invitation only (e.g. up to 100 weddings per year on a first come first served basis, and no more than one such event per property per year). The new special events ordinance would not be specific to wineries, and would allow events at a wide variety of locations via an administrative permit, similar to permit required for hot air balloon launching facilities. Strict limitations would have to be included in the new ordinance to avoid conflicting with General Plan policies and zoning restrictions prohibiting commercial activities in agricultural areas.

Another variation on this theme would be to create a new special events ordinance allowing social and cultural events, but only at wineries and only when such events are held in lieu of permitted marketing events. This approach could make use of the same kind of administrative permit process described above, but also would necessitate changing the definition of "marketing" to avoid internal inconsistencies within Napa County Code. Specifically, the definition of "marketing" would need to be amended along the following lines (proposed new text is underlined):

"Marketing of wine" means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development except as provided in Section [insert section number].

The most efficient way to provide wineries with greater flexibility regarding events would be to avoid establishment of a new administrative permit process and simply adjust the definition of "marketing" further. For example, the following amendment was proposed in 2005 (proposed new text is underlined):

"Marketing of wine" means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development.

Notwithstanding the preceding paragraph, "marketing of wine" may include a cultural, social or business event if such event occurs during the period commencing on the effective date of Ordinance No. 1267 and ending two years from the effective date of Ordinance No. 1267 and if the event conforms to all of the following requirements:

- A. the winery has a valid use permit which specifically allows marketing events to be held at the winery;
- B. the event is limited to members of the wine trade or persons who have pre-established relationships with the winery or its owners, or is being conducted for a particular group on a prearranged basis;
- C. the event involves the education and development of customers for the winery;
- D. the only alcoholic beverages served at the event are wines which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20 of this Code;
- E. the only food service provided in association with the event is without charge, except to the extent of cost recovery;
- F. the event is not scheduled to begin or end during "peak" travel times of 4:00 to 6:00 p.m. on weekdays and 1:00 to 4:00 p.m. on weekends;

- G. the event may not include the use of outdoor amplified music unless it is specifically authorized by a use permit modification approved by the zoning administrator pursuant to section 18.10.020 of this Code and is based on an analysis outlining feasible methods for complying with the County's noise ordinance and those methods are included as conditions of approval on the use permit modification;
- H. events within one-quarter mile of residential uses must end (including clean-up) by 10:00 p.m. unless a different time is authorized by a use permit modification approved by the zoning administrator and is based on an analysis outlining feasible methods for complying with the County's noise ordinance and such methods are included as conditions of approval on the use permit modification pursuant to section 18.12.020 of this Code;
- I. the event will not exceed the number of attendees specified in the winery's use permit for visitors to a particular marketing event; and
- J. the event will be counted towards the total number of marketing events per year authorized by a winery's use permit.

Pre-WDO wineries which have not established specific marketing plans may continue to do marketing activities consistent with the visitation allowed in their existing use permits. Where it is unclear what marketing activities were previously authorized, a use permit modification request or a certificate of extent of legal non-conformity shall be submitted by the permittee to clarify the intensity of marketing activities allowed.

Definitions from Napa County Code

- "*Agriculture*" means the raising of crops or livestock and includes the following:
 - A. Growing and raising trees, vines, shrubs, berries, vegetables, nursery stock, hay, grain and similar food crops and fiber crops;
 - B. Grazing of livestock and feeding incidental thereto;
 - C. Animal husbandry, including, without limitation, the breeding and raising of cattle, sheep, horses, goats, pigs, rabbits and poultry and egg production;
 - D. Sale of agricultural products grown, raised or produced on the premises;
 - E. Farm management uses meeting all of the standards in subsections (E)(1) through (E)(6) of this section.... (excerpt from Napa County Code Section 18.08.040)
- "*Marketing of wine*" means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have pre-established business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development. (Napa County Code Section 18.08.370)
- "*Commercial use*" means a use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over a period of time. It does not include the growing and subsequent sale of crops or livestock, the manufacturing, assembly, or processing and subsequent sale at wholesale of a product, or the operation of a telecommunication facility. (Napa County Code Section 18.08.170)
- "*Temporary event*" or "*event*" means any festival, fair, show, showcase, house or garden design tour, concert, dance, rally, parade, demonstration or competition of creative athletic form, or any other gathering or assemblage of individuals for the purpose of observing or engaging in expressive activities within the ambit of the First Amendment of the United States Constitution and Sections 2, 3 and 4 of Article 1 of the California Constitution, including, but not limited to, music, dance, theater, speech, athletics, or any other visual, audio, or tactile arts or combination thereof, including incidental retail sales of the products of such activities, as long as such sales are not advertised off-site; which is held at any place other than a highway as defined in Section 10.24.010 of this code, a permanent building or installation constructed and primarily used for the

purpose of conducting such activity or one similar thereto, property owned or leased by the state of California, or property owned or leased by a public school district for use as a public school site, and to which the public is invited or admitted with or without the payment of an admission charge. (excerpt from Napa Count Code Section 5.36.101)

Relevant Policies from the Napa County General Plan

- Goal AG/LU-1:** Preserve existing agricultural land uses and plan for agriculture and related activities as the primary land uses in Napa County.
- Policy AG/LU-1:** Agriculture and related activities are the primary land uses in Napa County.
- Policy AG/LU-2:** "Agriculture" is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing.
- Action Item AG/LU-2.1:** Amend County Code to reflect the definition of agriculture" as set forth within this plan, ensuring that wineries and other production facilities remain as conditional uses except as provided for in Policy AG/LU-16, and that marketing activities and other accessory uses remain incidental and subordinate to the main use.
- Policy AG/LU-13:** The 1990 Winery Definition Ordinance, recognized certain pre-existing wineries and winery uses as well as new wineries. For wineries approved after the effective date of that ordinance, agricultural processing includes tours and tastings by appointment only, retail sales of wine produced by or for the winery partially or totally from Napa County grapes, retail sale of wine-related items, activities for the education and development of consumers and members of the wine trade with respect to wine produced by or at the winery, and limited non-commercial food service. The later activity may include wine-food parings. All tours and tastings, retail sales, marketing activities, and non-commercial food service must be accessory to the principal use of the facility as an agricultural processing facility. Nothing in this policy shall alter the definition of "agriculture" set forth in Policy AG/LU-2.
- Policy AG/LU-16:** In recognition of their limited impacts, the County will consider affording small wineries a streamlined permitting process. For purposes of this policy, small wineries are those that produce a small quantity of wine

using grapes mostly grown on site and host a limited number of small marketing events per year.

Action Item AG/LU-16.1: Consider amendments to the Zoning Ordinance defining “small wineries,” a “small quantity of wine,” “small marketing events,” and “mostly grown on site,” and establishing a streamlined permitting process for small wineries which retains the requirement for a use permit when the winery is in proximity to urban areas.

NAPA COUNTY
CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT

USE PERMITS

DEPARTMENT REPORT AND RECOMMENDATION

Meeting of October 3, 1984

Agenda Item: 2
A

APPLICATION DATA:

APPLICANT:

Clos Pegase, Inc (#U-698384, filed 6-21-84)

REQUEST FOR:

To establish a 55,000 gallons/year Winery
with public tours and tasting on a 2.192
acre parcel.

LOCATION:

on the west side of Dunawear Lane, 600
feet south of its intersection with The
Silverado Trail within an AP District. (AP # 20-150-12)

FINDINGS: [All checked (X) Items Apply to This Application]

SPECIAL INFORMATION:

1. Details of the proposal are contained in the attached supplemental information sheet.
2. Comments and recommendations from various County departments and other agencies are attached.
3. _____

ENVIRONMENTAL ANALYSIS:

4. General Rule (Not Subject to CEQA).
5. Categorically Exempt pursuant to the California Environmental Quality Act (Class # _____).
6. Final Environmental Impact Report # _____ prepared by: _____
(See Agenda Item # _____).
7. The project is not anticipated to result in significant environmental effects, either individually or cumulatively. There are no unique or rare biological or physical resources that will be adversely effected. A Negative Declaration is recommended. See attached copy.
8. Denial Not Subject to CEQA.

Page 2
Report and Recommendation

Meeting Date: October 3, 1984

Use Permit #U-698384

PLANNING AND ZONING ANALYSIS:

- 9. The procedural requirements for Use Permit outlined in the Zoning Ordinance have been satisfied in regard to this application.
- 10. The submitted proposal is in general compliance with Ordinance requirements.
- 11. Approval of this proposal would not result in detrimental effects to the public health, safety or general welfare.
- 12. The proposal is in conformance with the General Plan designation of Agricultural Resource specified for the property.
- 13. The property is within the district boundary and/or the Sphere of Influence of the following districts:

American Canyon County Water District Within district Within Sphere
(See attached map).
 American Canyon Fire Protection District Within district Within Sphere
(See attached map).
 _____ _____ _____

- 14. This proposal should be denied pursuant to findings contained in the attached Exhibit _____.
- 15. _____

RECOMMENDATION:

- Continue to meeting of _____.
- Action

ENVIRONMENTAL:

- None Required.
- Adopt a Negative Declaration.
- Find that the Commission has read and considered the environmental documents relative to #U-698384.
- Certify Final EIR as adequate.

PLANNING:

- DENIAL based on Finding # _____.
- APPROVAL with Findings and subject to the attached Conditions of Approval.

CONDITIONS OF APPROVAL

Agenda Item: 2
A

Meeting Date: October 3, 1984

Use Permit: #U-698384

- 1) The permit be limited to: Construction of a 55,000 gallons/year winery with public tours and tasting.
Any expansion or changes in use to be by separate Use Permit submitted for Commission consideration.
 - 2) Submission of a detailed landscaping, fencing and parking plan to the Department for review and approval indicating names and locations of plant materials, method of maintenance and location of off-street parking spaces. Said plan to be submitted prior to issuance of the Building Permit. Landscaping, fencing and parking to be completed prior to finalization of Building Permit.
 - 3) Provisions for a minimum of 20 off-street parking spaces on a dust free, all weather surface approved by Public Works.
 - 4) Plans for any outdoor signs be submitted to the Department for review and approval with regard to design, area, height and placement.
 - The applicant enter into an agreement with the County not to oppose annexation to an appropriate service district when deemed necessary by the County. The agreement to be reviewed by Environmental Health and approved by County Counsel.
 - Annexation of the property to the following districts:
 - American Canyon County Water District
 - American Canyon Fire Protection District
 - _____
 - All open storage of _____ be screened from view of _____ and adjacent properties by a visual barrier. No open storage to exceed height of screening.
 - The permit be limited to a _____ year period.
 - 5) Compliance with all applicable building codes, zoning standards and requirements of various County departments and agencies.
 - 6) Mitigation Measures contained in the attached Negative Declaration
-
-
-
-

CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT
SUPPLEMENTAL INFORMATION SHEET
USE PERMIT APPLICATION

1. DESCRIPTION OF PROPOSED USE:

USE: Winery and Vineyard Operation

PRODUCT OR SERVICE PROVIDED: Table wines

FLOOR AREA: EXISTING STRUCTURES none SQ. FT. NEW CONSTRUCTION 25,000 SQ. FT. [±]

INDICATE SQUARE FOOTAGE ON EACH FLOOR DEVOTED TO EACH SEPARATE USE WITHIN ~~AN ENCLOSURE~~

AND/OR PROPOSED BUILDING: See attached letter.

SEATING CAPACITY: RESTAURANT N/A BAR N/A OTHER _____

EXISTING STRUCTURES OR IMPROVEMENTS TO BE REMOVED: 1100 sq. ft. residence

RELATED NECESSARY CONCURRENT OR SUBSEQUENT PROJECTS ON THE SITE OR IN SURROUNDING

AREAS: None

2. NEW CONSTRUCTION:

PROJECT PHASING: 1) 8,000 cases (tours & tasting) 2) 25,000 cases 3) 50,000 cases

CONSTRUCTION TIME REQUIRED (EACH PHASE): 1) 1 year 2) 3 years 3) 5 years

TYPE OF CONSTRUCTION: Conc. slab/ Wd. frame/ Stucco/ Tunnels

MAX. HEIGHT (FT.): EXISTING STRUCTURES N/A PROPOSED STRUCTURES 35'

DESCRIPTION OF PROPOSED EXTERIOR NIGHT LIGHTING: Security and crushing pad. H.I.D. fixtures

3. AVERAGE OPERATION:

HOURS OF OPERATION 8 A.M. TO 5 P.M. DAYS OF OPERATION 5 days/wk.

NUMBER OF SHIFTS: N/A EMPLOYEES PER SHIFT: N/A FULL TIME N/A PART TIME N/A
(CURRENTLY) (CURRENTLY)

NUMBER OF SHIFTS PROPOSED: 1 TOTAL EMPLOYEES PER SHIFT PROPOSED: 3 FULL TIME 3 PART TIME 0
(initially)

NUMBER OF DELIVERIES OR PICK-UPS: PER DAY 3 PER WEEK 15

NO. VISITORS ANTICIPATED: PER DAY 100 PER WEEK _____

ARE THERE SPECIAL OPERATIONS? PLEASE DESCRIBE ON SEPARATE PAGE

4. LANDSCAPING AND PARKING:

EXISTING LANDSCAPING PLAN SUBMITTED: YES X NO _____ Existing vineyard and oak forest (See aerial photo)
PROPOSED LANDSCAPING PLAN SUBMITTED: YES _____ NO X To be designed.

PARKING SPACES: EXISTING SPACES 0 EMPLOYEE _____ CUSTOMER _____
PROPOSED SPACES 20 EMPLOYEE 3 CUSTOMER 17

5. UTILITIES:

WATER SUPPLY SOURCE: Existing well, storage tank & reservoir METHOD OF SEWAGE DISPOSAL: Underground septic system

IS ANNEXATION TO A SPECIAL SERVICE DISTRICT PROPOSED?: YES NO X

NAME OF DISTRICT:

6. LICENSES OR APPROVALS REQUIRED:

DISTRICT N/A REGIONAL N/A STATE A.B.C. FEDERAL B.A.T.F. (Bond)

7. WINERY OPERATION:

Yes CRUSHING Yes FERMENTATION Yes STORAGE/AGING Yes BOTTLING/PACKING Yes SHIPPING: VIA: Truck; Yes ADMINISTRATIVE: Yes TOURS/PUBLIC TASTING No OTHER:

GALLONS OF WINE TO BE PRODUCED: INITIAL OR CURRENT PRODUCTION 20K GALLONS/YEAR ULTIMATE ESTIMATED PRODUCTION 55,000 -120K GALLONS/YEAR REQUESTED PRODUCTION CAPACITY 55,000 -120K GALLONS/YEAR

METHOD OF DOMESTIC WASTE DISPOSAL: Underground septic & leach lines

METHOD OF INDUSTRIAL WASTE DISPOSAL: " " " "

GALLONS OF DOMESTIC WASTE PRODUCED: 300 gal. PER day (100 visitors)

GALLONS OF INDUSTRIAL WASTE PRODUCED: 30,000 gal. PER year (Phase I)

METHOD OF SOLID WASTE DISPOSAL: Returned to and plowed into vineyard.

CAPACITY OF WATER SUPPLY: Well GALLONS.

WATER AVAILABILITY: GALLONS PER MINUTE.

ON-SITE FIRE PROTECTION: Yes

EMERGENCY WATER STORAGE: 6,000 GALLONS. and 14 acre-ft. reservoir

TYPE OF STORAGE FACILITY: 6,000 gallon tank and reservoir

8. SPECIFIC INFORMATION FOR REST HOMES/DAY CARE CENTERS: N/A

TYPE OF CARE:

TOTAL NUMBER OF GUESTS: EXISTING: PROPOSED:

NUMBER OF BEDROOMS: EXISTING: PROPOSED:

SPECIAL CARE HOME WITHIN 300 FEET OF PROPERTY?:

NUMBER OF EMPLOYEES: FULL TIME: PART TIME:



NAPA COUNTY

CONSERVATION — DEVELOPMENT AND PLANNING DEPARTMENT

JAMES H. HICKEY
Director

1195 THIRD STREET, ROOM 210 • NAPA, CALIFORNIA 94559-3092
AREA CODE 707/253-4416

May 28, 1987

Assessor's Parcel # 20-150-12

Clos Pegase Winery
P.O. Box 305
Calistoga, Ca. 94515

Please be advised, that Use Permit Application Number U-458687 to

expand the winery with the increase in annual production, roof an existing work area, add 19,000 sq. ft. in caves on the winery site and to construct wastewater treatment ponds on the adjacent parcel across Dunaweal Lane

along Dunaweal Lane approximately 500 feet south of Silverado Trail within located an AP (AGricultural Preserve) District.

has been approved by the Napa County Conservation, Development and Planning Commission based upon the following conditions:

(SEE ATTACHED LIST OF CONDITIONS OF APPROVAL)

APPROVAL DATE: May 27, 1987

The use permit becomes effective ten (10) working days from the approval date unless an appeal is filed with the Napa County Board of Supervisors pursuant to Title XIII of the Napa County Code. In the event an appeal is made to the Board, you will be notified.

Pursuant to Section 12806 of the Napa County Code, the use permit must be activated within one (1) year and ten (10) calendar days from the approval date or the use permit shall automatically expire and become void. A one-year extension of time in which to activate the use permit may be granted by the County provided that such extension request is made thirty (30) days prior to the expiration date. A request for an extension of time is subject to payment of a \$190.00 filing fee.

Very truly yours,

[Signature]
JAMES H. HICKEY
Secretary/Director

NOTE: Approved with modification of condition #3:

Director authorized to increase minimum parking spaces to 70 if circumstances require.

JHH:ml:l

Approved with additional Mitigation Measures (see Attachment A)

cc: Bill L. Hall, Building Codes Administrator
Assessor's Office

EXHIBIT 15

PAGE 1 OF 2

ATTACHMENT A . . .

Additional Mitigation Measures
imposed by the Conservation, Development and
Planning Commission

Meeting: May 27, 1987
File #: U-458687

AESTHETICS

- Screen visible portions of the waste water treatment ponds from residences along the Silverado Trail south easterly of Dunaweal Lane with strategically placed native vegetation.

AIR QUALITY

- Use gravel and chemical suppressants as often as necessary for on-site roads used by heavy equipment, to mitigate particulate emission impacts.
- Use watering of working areas, storage pile surfaces and traffic areas, to mitigate particulate emission impacts.
- Cover cave tailings storage pile surfaces with topsoil and revegetate prior to the start of the wet season (October 15), to prevent erosion and minimize particulate emission impacts.

CONDITIONS OF APPROVAL

Agenda Item: 10

Meeting Date: May 20, 1987

Use Permit: #U-458687

1. The permit be limited to an increase in annual production capacity not to exceed 200,000 gallons.
2. Winery expansion shall be in accordance with project description and drawings submitted on January 23, 1987, made as part of this application, including 1) project phasing, 2) location and 3) design (as maybe modified by the Commission).

Any expansion or changes in use to be by separate Use Permit submitted for Commission consideration.

3. Provisions for a minimum of 35 off-street parking spaces on a dust free, all weather surface approved by Public Works *Department*
4. Excavated material related to 19,000 square feet of addition tunnels, shall not be sold for commercial purposes, but shall be disposed of in a manner approved by the Director.
5. Compliance with all applicable building codes, zoning standards and requirements of various County departments and agencies.
6. Mitigation measures contained in the attached Negative Declaration.

:3f

ATTACHMENT 1

Mitigation Measures for
Clos Pegase - Kiriko Ltd.
Use Permit (#U-458687)

HYDROLOGY, WATER QUALITY

1. Plans for the proposed private sewage disposal system shall be designed by a licensed Civil Engineer and be accompanied by complete design criteria based upon local conditions and shall be subject to approval by the Department of Environmental Health prior to issuance of any permits.
2. That the use of the drainfield area be restricted to activities which will not contribute to compaction of the soil with consequent reduction in soil aeration. This includes equipment storage, traffic, livestock, etc., over the system.
3. The applicant shall maintain regular monitoring of the waste water system required by the Department of Environmental Health and submit quarterly reports. An annual permit is required.
4. Since the proposed ponds are to be installed on a separate parcel from the facility they are to serve, an agreement to grant a sewage easement must be filed with the Department of Environmental Health prior to issuance of sewage permits.
5. That the water supply system comply with the California Safe Drinking Water Act. This will require an annual permit from the Department of Environmental Health. A plan review of the water system will also be required.
6. That all solid waste be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors and odors.
7. Restriction of all ground disturbing activities (i.e., grading) to the dry season between April 15 and October 15.
8. Replanting of all areas disturbed by grading and construction activities prior to the beginning of the rainy season (by mid-October) to the satisfaction of the Resource Conservation District. It is recommended that topsoil be stockpiled to be redistributed on cut and fill slopes for more successful revegetation efforts.
9. Erosion control be provided to dispose of any concentrated runoff from all buildings constructed on parcel, including a storm drain plan indicating energy dissipation structures to be installed.
10. Water shall not be allowed to flow over cut and fill slopes. Drainage shall be intercepted and diverted away from cut and fill slopes by use of up slope berms or interceptor ditches and energy dissipation structures shall be installed when necessary.

11. Sediment catch basins shall be installed to contain the sediment runoff and keep it from moving into water channels beyond the property boundaries.

NOISE

12. Limitation of all construction activities on the proposed facilities to weekdays between Monday and Friday when they will cause the least amount of annoyance (i.e., between 7:30 AM and 4:30 PM).
13. All construction equipment shall be properly and adequately muffled at all times.
14. Place noisy stationary equipment such as compressors and pumps away from developed areas off-site and/or the provision of acoustical shielding around such equipment.

AESTHETICS

15. All exterior lighting shall be shielded and directed away from residences and roadways off-site.

CULTURAL

16. Placement in the specifications covering this project of a stipulation binding the applicant, his employees, and/or contractor(s) to stop all work within 35 feet if buried archaeological or historic materials are discovered during future development. A qualified archaeologist shall be retained to evaluate the find(s) and to recommend mitigation procedures, if necessary. Prehistoric archaeological materials include, but are not limited to, obsidian, chert, and basalt flakes and artifacts, groundstone (such as portars and pestles), shell beads and pendants, midden (locally darkened soil), and human graves. Historic archaeological materials include, but are not limited to, glass bottles, privys, and ceramics. All such recommendations, with the concurrence of the County Planning Director, be implemented.

TRAFFIC

17. Right of way widening to 30 feet from the centerline of Dunawael Lane be granted to the County for roadway and utility purposes.
18. The access road serving the winery be a minimum width of 20 feet and consist of a minimum structural section equivalent to 5 inches of Class II Aggregate Base plus 2 inches of Asphalt Concrete.
19. Visitor parking areas shown on the site plan and any additional visitor parking required by the Commission have a minimum structural section equivalent to the same as the above access road.
20. Employee parking areas shown on the site plan and any additional areas required by the Commission have a minimum structural section equivalent to 5 inches of Class II Aggregate Base plus a double seal coat.

21. Any necessary storm drainage improvements be constructed.
22. All the above improvements be constructed according to plans prepared by a registered civil engineer and reviewed and approved by this department. A plan check and inspection fee in an amount equal to 3% of the estimated cost of construction of the above improvements be paid this department.
23. All construction within the County road right of way be in accordance with an encroachment permit issued by the Department of Public Works.

PUBLIC HEALTH

24. Compliance with Napa County Mosquito Abatement District Guidelines including:
 - A. Access to ponds for maintaining mosquito control, weed control, and aquatic midge (gnats) control.
 - B. Good access road to ponds.
 - C. All levees, cross levees, and dikes wide enough for vehicular traffic (minimum 12 feet).
 - D. Keys to locks or a place for Mosquito Abatement District lock on any gate to ponds.
 - E. Fences on outside of levees enough to facilitate vehicular traffic.
 - F. All levees, cross levees, and dikes clear of obstructions (pipes, pumps, electrical boxes, fuel tanks, etc.) to permit vehicular traffic.
25. Weed Control
 - A. Property owners shall furnish soil sterilant (Aetrex, Krovar, Karmex, etc.).
 - B. Mosquito Abatement District will apply on yearly basis.
26. Aquatic Midge Control
 - A. Be able to launch boat in ponds (or lakes) for midge control.

NOTE: Any pond, lake, or reservoir, is a good potential midge source.

I understand and explicitly agree that with regards to all CEQA and Permit Streamlining Act (i.e., GCS 63920-63962) processing deadlines, this revised application will be treated as a new project. The new date on which said application will be considered complete is the date this project revision statement is received by the Napa County Conservation, Development and Planning Department.

I AGREE TO INCLUDE THE ABOVE MITIGATION MEASURES IN THE PROJECT.

4/21/87
Date

-34- _____
Date

CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT
 SUPPLEMENTAL INFORMATION SHEET
 USE PERMIT APPLICATION

DESCRIPTION OF PROPOSED USE:

USE: operation of vineyard and bonded winery

PRODUCT OR SERVICE PROVIDED: Table wine

FLOOR AREA: EXISTING STRUCTURES 25,000 SQ. FT. NEW CONSTRUCTION 1,600 SQ. FT. of
 for existing work area and 19,000 sq.ft. additional tunnels.

INDICATE SQUARE FOOTAGE ON EACH FLOOR DEVOTED TO EACH SEPARATE USE WITHIN AN EXISTING
 ground floor: 1,600 sq.ft. roof for existing work area;

AND/OR PROPOSED BUILDING: 19,000 sq.ft. caves for barrel and bottle aging of
 (underground)

SEATING CAPACITY: RESTAURANT N/A BAR N/A OTHER N/A

EXISTING STRUCTURES OR IMPROVEMENTS TO BE REMOVED: N/A

RELATED NECESSARY CONCURRENT OR SUBSEQUENT PROJECTS ON THE SITE OR IN SURROUNDING
 Install process wastewater system of approx. 1.5 million gallons capacity
 AREAS: on approx. 2 acres of AP# 20-150-17 with pipelines

2. NEW CONSTRUCTION: PHASE I: pave drive, install process wastewater system and
1,600 sq.ft. roof. PHASE II: install aging caves.
 PROJECT PHASING: _____

CONSTRUCTION TIME REQUIRED (EACH PHASE): PHASE I: 1987-1988. PHASE II: 1988-

TYPE OF CONSTRUCTION: Wood Frame Roof and Supports; Earth-fill Ponds; Excavate

MAX. HEIGHT (FT.): EXISTING STRUCTURES 35' PROPOSED STRUCTURES 10'± (Pc)
Caves 25'±/70'

DESCRIPTION OF PROPOSED EXTERIOR NIGHT LIGHTING: No change

3. AVERAGE OPERATION: N-Normal Season
 H-Harvest Season
 HOURS OF OPERATION 0700 N 1800 N
0500 H A.M. TO 2400 H P.M. DAYS OF OPERATION 7 Days M-F N

NUMBER OF SHIFTS: 1 N EMPLOYEES PER SHIFT: 5 N
2 H (CURRENTLY) 10 H (CURRENTLY) FULL TIME X PART TIME _____

NUMBER OF SHIFTS 1 N TOTAL EMPLOYEES PER 10 N FULL TIME Y PART TIME _____
 PROPOSED: 2 H SHIFT PROPOSED: 15 H

NUMBER OF DELIVERIES OR PICK-UPS: PER DAY 2N / 6 H PER WEEK 10 N / 30 H

NO. VISITORS ANTICIPATED: 75 Average (est.)
 PER DAY 200 Peak (est.) PER WEEK 775 week (est.)

ARE THERE SPECIAL OPERATIONS? PLEASE DESCRIBE ON SEPARATE PAGE No Change.

4. LANDSCAPING AND PARKING:

EXISTING LANDSCAPING PLAN SUBMITTED: YES X NO _____

PROPOSED LANDSCAPING PLAN SUBMITTED: YES No Change NO _____

PARKING SPACES: EXISTING SPACES 35 EMPLOYEE 15 CUSTOMER 20

PROPOSED SPACES No Change EMPLOYEE _____ CUSTOMER _____

5. UTILITIES:

Domestic-septic tank and leach field
Process-aerated lagoons w/spray disposal
on vineyard and landscaping, existing

WATER SUPPLY SOURCE: Two wells METHOD OF SEWAGE DISPOSAL: _____

IS ANNEXATION TO A SPECIAL SERVICE DISTRICT PROPOSED? YES _____ NO X

NAME OF DISTRICT: N/A

6. LICENSES OR APPROVALS REQUIRED:

DISTRICT N/A REGIONAL N/A

STATE No Change FEDERAL No Change

7. WINERY OPERATION:

X CRUSHING Y FERMENTATION X STORAGE/AGING X BOTTLING/PACKING

X SHIPPING: VIA: truck; X ADMINISTRATIVE: Y TOURS/PUBLIC TASTING

X OTHER: Process wastewater treatment and disposal.

GALLONS OF WINE TO BE PRODUCED: INITIAL OR CURRENT PRODUCTION 55,000 GALLONS/YR

REQUESTED PRODUCTION CAPACITY 200,000 GALLONS/YR

METHOD OF DOMESTIC WASTE DISPOSAL: Septic tank and leachfield

METHOD OF INDUSTRIAL WASTE DISPOSAL: Septic tank and mound (existing)
Aerated lagoons and spray disposal (prop

GALLONS OF DOMESTIC WASTE PRODUCED: 450 Average PER Day
800 Peak

GALLONS OF INDUSTRIAL WASTE PRODUCED: 4,000 Normal PER Day
8,000 Harvest

METHOD OF SOLID WASTE DISPOSAL: Removal by contract garbage service and/or
application of pomace and stems to vineyards

CAPACITY OF WATER SUPPLY: 37 GPM GALLONS.

WATER AVAILABILITY: 200 GPM GALLONS PER MINUTE. (To winery)

ON-SITE FIRE PROTECTION: Hydrant/1,000GPM @ 50 PSI

EMERGENCY WATER STORAGE: 70,000 GALLONS. Tank and reservoir

TYPE OF STORAGE FACILITY: Concrete tank and frost control pond

8. SPECIFIC INFORMATION FOR RESIDENTIAL CARE FACILITY/DAY CARE CENTERS:

TYPE OF CARE: N/A

TOTAL NUMBER OF GUESTS/CHILDREN: EXISTING: N/A PROPOSED: N/A

NUMBER OF BEDROOMS: EXISTING: N/A PROPOSED: N/A

IS FACILITY LOCATED WITHIN 300 FEET OF ANOTHER FACILITY?: N/A

NUMBER OF EMPLOYEES: FULL TIME: N/A PART TIME: N/A



JEFFREY R. REDDING
Director

NAPA COUNTY

CONSERVATION — DEVELOPMENT AND PLANNING DEPARTMENT

1195 THIRD STREET, ROOM 210 • NAPA, CALIFORNIA 94559-3092
AREA CODE 707/253-4416

April 6, 1990

Michael Wilson
Clos Pegase
P.O. Box 305
Calistoga, California 94515

Re: Request for Approval of Fund-Raiser for Calistoga Educational
Foundation--May 20, 1990

Dear Mr. Wilson:

This letter is in response to your March 8, 1990 request for approval to hold a fund raiser to benefit the Calistoga Educational Foundation on May 20, 1990 from 4-8:00 p.m. at the Clos Pegase Winery, 1060 Dunaweal Lane, Calistoga, under the Board of Supervisors One-Time Only Special Events policy. Reference is also made to the March 6, 1990 letter from Steven W. Spadarotto, Controller, Clos Pegase Winery relating to the approved uses at the Clos Pegase facility, approved as part of use permit #U-458687.

As I indicated in a previous letter (dated February 23, 1990), one-time only special events of a charitable nature are approvable administratively only if similar events have taken place in the preceding year. To date, evidence that only one such event took place at Clos Pegase Winery during 1989 has been provided to the Department. The approval of this event in 1989 (held to benefit the Calistoga Educational Foundation--May 21, 1989) was used as the basis for approving the fund-raising event for the Napa Valley Opera House at the Clos Pegase Winery on March 31, 1990. Therefore, unless evidence can be provided to the Department that additional events of a similar nature were held at the Winery in 1989 and specifically authorized by the Director, the May 20th event cannot be approved administratively.

Mr. Spadarotto indicated by letter of March 6, 1990 that he felt the fund-raising event on May 20th and indeed any such event was authorized by use permit #U-458687 as part of the approved public tours and tasting permit, currently held by the Winery. After consultation with the County Counsel, it is our judgement that the public tours and tasting authorization does not authorize events such as you describe in your March letter.

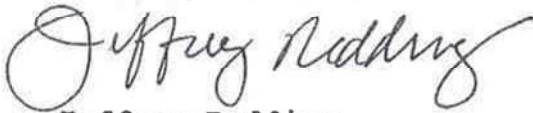
Therefore, in order for the May 20th event to be approved by the County, you must demonstrate that more than one similar event was specifically authorized by the County in 1989. Alternately, the May 20th event may be approvable by the Board of Supervisors under the procedure and authority granted by section 8020 of the Napa

Page Two
Clos Pegase Winery/Calistoga Education Foundation
April 6, 1990

County Code. Should you decide to pursue a permit under section 8020, please contact Agnes Del Zompo, Clerk of the Board of Supervisors.

If I can provide any additional clarification or answer any questions please contact me.

Sincerely,



Jeffrey Redding
Director

cc: Board of Supervisors
Jay Hull, County Administrator
Agnes Del Zompo, Clerk of the Board
Robert Westmeyer, County Counsel
Michael Miller, Supervising Planner

JR/jr
HmeDsc
ClsPgsel

INTER-OFFICE MEMO



TO: Agnes Del Zompo,
Clerk of the Board of Supervisors

FROM: Jeffrey R. Redding, Director
Conservation, Development and Planning Department

SUBJECT: Request for Approval of an Outdoor Festival Permit--
Sharpsteen Museum Association, Inc. to be held at the
Clos Pegase Winery on October 12, 13, and 14, 1990.
Assessor's Parcel No. 20-150-12.

DATE: July 19, 1990

The Department has reviewed the June 27, 1990 request from Marlys Gilmore, President, Sharpsteen Museum Association, Inc., to hold a fundraising event at the Clos Pegase Winery on Friday and Saturday, October 12 and 13 from 6:00 p.m. to 10:00 p.m. and Sunday, October 14, 1990 from 10:00 a.m. to 4:00 p.m..

Staff has reviewed this request in light of the recently adopted Winery Definition Ordinance (WDO), the provisions of the use permit which governs the operation of the Clos Pegase Winery and the previous activities authorized at the Winery under the Board of Supervisors One-Time Only Special Events Policy. In reviewing the permit history for the Clos Pegase Winery, only one (1) permit for a one-time only charitable event was issued to the Winery in 1989. Since these events now represent legal, non-conforming uses, future events under the Board's One-Time Special Events Policy may be authorized by the Director only at previously approved levels. The Clos Pegase Winery received approval for a one-time only event, benefitting the Napa Valley Opera House, on March 16, 1990 for an event held March 31, 1990. Therefore, no further approvals may be given by the Director in 1990 for activities authorized by this Board policy.

The Department has reviewed the provisions of use permit #U-458687 issued to the Clos Pegase Winery and in consultation with the County Counsel, has determined that the approved use permit does not authorize activities such as the event described in materials furnished by the applicant as part of the application for an Outdoor Festival Permit.

The Outdoor Festival Ordinance appears to be applicable to the event requested by the Sharpsteen Museum Association, Inc. since the event involves both outdoor music and events. Therefore, the following conditions are recommended, should the Board of Supervisors approve the requested Outdoor Festival Permit:

Page 2

Sharpsteen Museum, Assoc'n. Inc./Clos Pegase Winery

July 19, 1990

1. Provisions be made for all guest and employee parking to be on-site. However, if this is not possible and there is off-site parking beyond walking distance of the site, the applicant shall provide shuttle service to and from the events.
2. Any temporary signs of a limited size and number identifying each event be located on the site area. Such signs shall not be placed earlier than the day of the event. All such signs shall be removed no later than 5:00 p.m. the day following the event.
3. Adequate on-site refuse disposal facilities be provided.
4. The California Highway Patrol be alerted at least three days in advance of each event.
5. Provisions be made for adequate on-site and off-site traffic control to ensure maximum protection and safety of all persons using Dunaweal Lane as well as persons attending the event.
6. Maintain all normal access clear of obstructions so that fire equipment and other emergency vehicles will not be impeded.
7. The applicant shall submit letters to the Clerk of the Board of Supervisors obtained from the Napa County Public Works Department, Division of Environmental Management and the Sheriff's Department, as well as the State Division of Forestry and California Highway Patrol as evidence of said agencies' and Departments' review of the proposed events, including a listing of such conditions as said agencies and departments feel are appropriate for the proposed event.
8. Provide security and medical needs as necessary to ensure public health, safety and welfare.

cc: Robert Westmeyer, County Counsel
Marlys Gilmore, President, Sharpsteen Museum Ass'n. Inc.

JRR:jcact2/sharpmus.fes



NAPA COUNTY

CONSERVATION -- DEVELOPMENT AND PLANNING DEPARTMENT

JEFFREY REDDING
Director

1195 THIRD STREET, ROOM 210 • NAPA, CALIFORNIA 94559-3092
AREA CODE 707/253-4416

December 9, 1991

Patrick R. Connelly, Events Coordinator
Clos Pegase
P. O. Box 305
Calistoga, California 94515

Dear Mr. Connelly:

This letter is in response to your request to sponsor the Spring Benefit Auction, a benefit for the Calistoga Educational Foundation on May 17, 1992 at Clos Pegase Winery, 1060 Dunaweal Lane, Calistoga. All proceeds from the proposed event will be used directly to enhance the educational opportunities for students in Calistoga's public schools. You have also indicated that the Calistoga Educational Foundation is a non-profit organization that will receive the proceeds from the event to be held at the Winery.

As your letter indicates, one-time only social events under the Board of Supervisors' Limited Social Events Policy may only be granted by the Director if such events were previously authorized by the Director under this policy prior to 1990. A review of County files indicated that one (1) such event was authorized by the Director for the Clos Pegase Winery prior to 1990. As a consequence, one event of the type that you described in your letter was authorized both in 1990 and 1991. Thus, you will be permitted to sponsor/conduct one event per year authorized under the March 1988 Limited Social Events Policy. You have proposed that the May 17, 1992 be that event for 1992. Therefore, the May 17, 1992 event for the Calistoga Educational Foundation is approved and will constitute the sole event that may be authorized by the Director in calendar year 1992 under the Board of Supervisors' Limited Social Events Policy, adopted in August 1983 and revised in March, 1988.

The following conditions are applicable to this approval:

1. Provisions shall be made for all guest and employee parking to be on-site.
2. Any temporary signs of a limited size and number identifying each event be located on the site area. Such signs shall not be placed earlier than the day of the event. All such signs shall be removed no later than 5:00 P.M. the day following the event.
3. The applicant shall provide adequate on-site refuse disposal facilities.

15

Calistoga Educational Foundation/
Pegase Winery
December 9, 1991

4. The California Highway Patrol shall be alerted at least three days in advance of the event.
5. Provisions shall be made for adequate on-site and off-site traffic control to ensure maximum protection and safety of all persons using Dunaweal Lane as well as persons attending the event.
6. The applicant shall maintain all normal access clear of obstructions so that fire equipment and other emergency vehicles will not be impeded.
7. The applicant shall submit letters to the Director obtained from the Napa County Public Works Department, Division of Environmental Management and the Sheriff's Department, as well as the State Division of Forestry and California Highway Patrol as evidence of said agencies' and Departments' review of the proposed events, including a listing of such conditions as said agencies and departments feel are appropriate for the proposed event.
8. The applicant shall provide security and medical needs as necessary to ensure public health, safety and welfare.

Please call me if you have any questions.

Very truly yours,



JEFFREY R. REDDING
Director

cc: Board of Supervisors
Robert Westmeyer, County Counsel
Michael Miller, Deputy Planning Director
Bill Bickell, Director of Public Works
Trent Cave, Director of Environmental Management
Byron Carniglia, State Division of Forestry
Gary Simpson, Napa County Sheriff
Captain Charles Weaver, California Highway Patrol
Joan Rubadeneau, Calistoga Educational Foundation



NAPA COUNTY

CONSERVATION -- DEVELOPMENT AND PLANNING DEPARTMENT

JEFFREY REDDING
Director

1195 THIRD STREET, ROOM 210 • NAPA, CALIFORNIA 94559-3092
AREA CODE 707/253-4416

January 18, 1995

Patrick R. Connelly
Clos Pegas Winery
P.O. Box 305
Calistoga, CA 94515

RE: Limited Social Event/Temporary Events License
APN: 20-150-12

Dear Connelly:

We have received your letter of January 3, 1995, wherein you have requested approval of a Limited Social Event at your winery facility for the Spring Benefit Auction, to be held by the Calistoga Education Foundation on May 13, 1995.

The County adopted a new ordinance in March, 1994, which now regulates any festival, fair, show, showcase, house or garden design tour, concert, dance, public fireworks display, rally, parade, demonstration or competition of creative athletic form, or any other gathering or assemblage of individuals, including, but not limited to music, dance, theater, speech, athletics or any other visual, audio or tactile arts or combination thereof to which the public is invited or admitted with or without payment of an admission charge. A Temporary Event License from the County is required prior to holding such events.

This ordinance replaced the Outdoor Festival License and the Limited Social Events Policy.

It would appear that the non-marketing public event you propose would be subject to the temporary events ordinance. Enclosed is an application package for a Temporary Events License. Please contact me or Barbara Abate in our office weekdays, between 12:00 and 5:00 PM, if you should have any questions.

Please note that the adopted ordinance requires that applications for **Temporary Event Licenses** must be submitted to this office, at least **90 days** prior to the proposed events.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wyntriss Chatman Balcher".

Wyntriss Chatman Balcher
Planner III

cc: Mel Varrelman, Supervisor, District 3
Jeffrey Redding, Director
Sylvia Toth, Supervising Planner
Gail Feldman, Administrative Analyst

EXHIBIT 5



Search Wine



EVENTS

- Event Hosting
- Upcoming Events

WINE

- All Wines
- Homage
- White & Rosé Wines
- Red Wine
- Dessert Wine
- Library

EVENT HOSTING



Dazzling maypole lights illuminate the night sky

PLAN AN EVENT:

To speak with our Event Team, call:
707.921.2631



AT CLOS PEGASE WINERY WE HELP YOU CREATE the most unique and memorable experiences. From anniversaries, rehearsal dinners, birthdays, holiday parties, private parties and more, we will transform our winery into your unique vision for the event. Along with the stunning setting, dramatic architecture, and world-class wines, we will provide you with best in class hospitality and get all of the details just right, including food, décor, and live entertainment. No matter the occasion, events at Clos Pegase reflect a welcoming blend of elegance and magic for you to create memories you will never forget.

Clos Pegase provides several distinct spaces for your event, each delivering a unique experience depending on your needs. Whether you are looking for an indoor or outdoor location, a large area for hundreds of guests or an intimate space, Clos Pegase has several different options from which to choose.

A FEW LOCATIONS FOR OUR EVENTS:

- Portico entrance
- Courtyard
- Cave Theater
- Visitor Center
- Cask Room
- Harvest Dining Room
- Vineyard Picnic Area

Contact our Event Team at 707.921.2631 to work with you on all of the details to have the perfect event at Clos Pegase Winery.