

**“APPLICANT PROPOSAL”**

**PLANNING COMMISSION HEARING – NOVEMBER 18, 2015  
CONDITIONS OF APPROVAL**

**Summers Estate Wines Use Permit Major Modification and Variance  
Application Numbers P14-00232-MOD and P14-00233-VAR  
1171 Tubbs Lane, Calistoga, California  
APN #017-160-015**

**1.0 SCOPE**

This permit shall be limited to:

- 1.1 Approval of a Variance request to allow the covered tank farm to be located 327 feet from the centerline of Tubbs Lane; encroaching 273 feet into the 600 foot setback
- 1.2 Use Permit Major Modification to allow the following activities:
- a) Recognize the conversion of the existing 2,350 square foot residence to a tasting room;
  - b) Recognize the conversion of the existing 530 square foot tasting room within the winery into a storage room;
  - c) Expand the visitation program from maximum tours and tastings of 12 person per day to 20 persons per day;
  - d) Increase wine production from 50,000 to 100,000 gallons;
  - e) Construct a new 5,400 square foot covered tank farm;
  - f) On-premise consumption of the wines produced on-site, consistent with Business and Professionals Code Sections 23356, 23390, and 23396.5 also known as AB 2004 (Evans 2008, or the Picnic Bill) in the tasting room and on the adjacent patio;
  - g) Deletion of condition #10 of use permit #96408-UP that prohibits outside social activities;
  - h) Allow the sale of wine-related merchandise in compliance with Napa County Code Section 18.16.30.H.4;
  - i) Update fire suppression facilities and install two additional 21,000 gallon water storage tanks and pump\*;
  - j) Install new domestic and process wastewater treatment and disposal with authorization for the use of a hold and haul system during the construction transition period and very extended wet weather periods;
  - k) Install storm water detention and conveyance facilities;
  - l) Increase the number of on-site parking spaces to 15;
  - m) Realign the existing parking and landscaped areas;
  - n) Add one loading dock; and
  - o) Architectural modifications to the existing residential structure.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the applicant to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or changes in use shall be approved in accordance with

County Code Section 18.124.130 and may be subject to the Use Permit modification process.

\*Alternative locations for cave spoils and fire suppression tanks are permitted, subject to review and approval by the Director of Planning, Building, and Environmental Services (the PBES Director), when such alternative locations do not change the overall concept, and do not conflict with any environmental mitigation measures or conditions of approval.

## **2.0 PROJECT SPECIFIC CONDITIONS**

Should any of the Project Specific Conditions below conflict with any of the other, standard conditions included in this document (beginning in Section 3.0 and following), the Project Specific Conditions shall supersede and control.

### **2.1 On-Premises Consumption**

In accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 and the PBES Director's July 17, 2008 memo, "Assembly Bill 2004 (Evans) and the Sale of Wine for Consumption On-Premises," on-premises consumption of wine produced on-site and purchased from the winery may occur solely in the tasting room and adjacent patio as specified in the application. Any and all visitation associated with on-premises consumption shall be subject to the maximum per person weekday and weekend daily tours and tastings visitation limitation and/or applicable limitations of permittee's marketing plan set forth in Section 4.0 below.

2.2 The grape sourcing requirement, as defined in Condition 5.0 Grape Sourcing, shall be applied to 80,000 gallons of the approved 100,000 gallons. The original 20,000 gallons, permitted prior to the Winery Definition Ordinance (WDO), is not subject to the 75% rule.

## **3.0 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES**

Project conditions of approval include all of the following County, Divisions, Departments and Agency(ies) requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies at the time of submittal and may be subject to change. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

3.1 Engineering Services Division as stated in their Memorandum dated May 21, 2015.

3.2 Environmental Health Division as stated in their Memorandum dated October 28, 2015.

3.3 Building Division as stated in their Memorandum dated August 14, 20014.

3.4 Fire Department as stated in their Inter-Office Memo dated July 15, 2014.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those Divisions, Departments or Agencies. The inability to substantially comply with

the requirements of other County Divisions, Departments and Agencies may result in the need to modify the approved use permit.

#### **4.0 VISITATION**

Consistent with County Code Sections 18.16.030 and 18.20.030, marketing and tours and tastings may occur at a winery only where such activities are accessory and “clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.”

A log book (or similar record) shall be maintained to document the number of visitors to the winery (for either tours and tastings or marketing events), and the date of the visits. This record of visitors shall be made available to the Department of Planning, Building and Environmental Services (PBES Department) upon request.

##### **4.1 TOURS AND TASTING**

Tours and tastings shall be limited to the following:

- a. Frequency: 7 days per week, Monday through Sunday
- b. Maximum number of persons per day: 20
- c. Maximum number of persons per week: 140
- d. Hours of operation: 10am to 5pm

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

Tours and tastings may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant (County Code Section 18.08.620 - Tours and Tastings).

Tours and Tastings shall be limited to those wines set forth in the County Code Section 18.20.030(I)(5)(c) - AW Zoning and 18.16.030(G)(5)(c) - AP Zoning.

##### **4.2 MARKETING**

Marketing events are limited to the following previously approved events:

- a. Food and wine tasting
  1. Frequency: 8 times per year
  2. Number of persons: 30 maximum
- b. Participation in Auction Napa Valley

“Marketing of wine” means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to the County Code Chapters 18.16 and 18.20. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery.

Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

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

Careful consideration shall be given to the intent of the event, the proportion of the business event’s non-wine-related content, and the intensity of the overall marketing plan (County Code Section 18.08.370 - Marketing of Wine).

All activity, including cleanup, shall cease by 10 PM. If any event is held which will exceed the available on-site parking, the applicant shall prepare an event-specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

## **5.0 GRAPE SOURCE**

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

## **6.0 COMPLIANCE REVIEW**

Permittee shall obtain and maintain all permits (Use Permits and Modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC), United States Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) Grape Crush Inquiry data, all of which are required to produce and sell wine. In the event permittee loses the required ABC or TTB permits and licenses (or permit/license is revoked), permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are re-established.

Visitation log books, custom crush client records, and any additional documentation determined by staff to be necessary to evaluate compliance may be requested by the County for any code compliance or code enforcement process. The permittee (and their successors) shall be required to participate fully in the winery code compliance or enforcement process.

## **7.0 RENTAL/LEASING**

No winery facilities, or portions thereof including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons or entities producing and/or storing wine at the winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this use permit or pursuant to the Temporary Events Ordinance (County Code Chapter 5.36).

## **8.0 SIGNS**

Prior to installation of any winery identification or directional signs, detailed plans, including elevations, materials, color, and lighting, shall be submitted to the PBES Department for administrative review and approval. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this use permit approval. All signs shall meet the design standards as set forth in County Code Chapter 18.116. At least one sign placed and sized in a manner to inform the public must legibly post the words "Tours and Tastings by Prior Appointment Only".

## **9.0 LIGHTING**

All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations, shall be on timers, and shall incorporate the use of motion detection sensors to the greatest extent practical. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Lighting utilized during harvest activities is not subject to this requirement.

Prior to issuance of any building permit pursuant to this approval, two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the California Building Code.

## **10.0 LANDSCAPING**

Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the building permit application package for the Planning Division's review and approval prior to the issuance of any building permit associated with this approval. The plan shall be prepared pursuant to the County's Water Efficient Landscape Ordinance (WELO), (County Code Chapter 18.118), as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.

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

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

Landscaping shall be completed prior to issuance of a Final Certificate of Occupancy, and shall be permanently maintained in accordance with the landscaping plan.

#### **11.0 OUTDOOR STORAGE/SCREENING/UTILITIES**

All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No item in storage shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.

New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and County Code Chapter 18.106) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

#### **12.0 COLORS**

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation and the applicant shall obtain the written approval of the PBES Department prior to painting the building. Highly reflective surfaces are prohibited.

#### **13.0 SITE IMPROVEMENT CONDITIONS**

Please contact Engineering Services with any questions regarding the following:

##### **13.1 GRADING AND SPOILS**

All grading and spoils generated by construction of the project facilities, including cave spoils, shall be managed per Engineering Services direction. All spoils piles shall be removed prior to issuance of a Final Certificate of Occupancy.

##### **13.2 TRAFFIC**

Reoccurring and scheduled vehicle trips to and from the site for employees, deliveries, and visitors shall not occur during peak weekday traffic (5PM to 6PM) and peak weekend traffic (3PM to 4PM) travel times to the maximum extent possible. All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

##### **13.3 DUST CONTROL**

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.

##### **13.4 AIR QUALITY**

During all construction activities the permittee shall comply with the Bay Area Air Quality Management District Basic Construction Best Management Practices, as provided in Table 8-1, May 2011 Updated CEQA Guidelines:

- a. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The Air District's phone number shall also be visible.
- b. All exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) shall be watered two times per day.
- c. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- d. All visible mud or dirt tracked out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- e. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- f. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- g. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations (CCR)). Clear signage shall be provided for construction workers at all access points.
- h. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.

13.5. STORM WATER CONTROL

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the State Regional Water Quality Control Board (SRWQCB).

13.6 PARKING

The location of employee and visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and approved marketing events. In no case shall parking impede emergency vehicle access or public roads.

13.7 GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Napa County Fire Department to assure that it is designed to allow large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is

available at all times. If the gate is part of an entry structure an additional permit shall be required according to the County Code and in accordance with the Napa County Roads and Street Standards. A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed, and approved as part of this use permit approval.

#### **14.0 ENVIRONMENTAL HEALTH-SPECIFIC CONDITIONS**

Please contact Environmental Health with any questions regarding the following:

##### **14.1 WELLS**

The permittee shall (at the permittee's expense) provide well monitoring data monthly and the total annual groundwater pumped. Data requested shall include, but not necessarily be limited to, water extraction volumes and static well levels. Water usage shall be minimized by use of best available control technology and best water management conservation practices.

- a. No new on-site or off-site water sources, including but not limited to wells, imported water, new ponds/reservoir(s) or other surface water impoundments, or use of an existing pond shall be permitted without additional environmental review and may be subject to a modification to this use permit. A new Water Availability Analysis shall be required prior to approval of any new water source(s) on the property.
- b. All monitoring shall commence within six months of the issuance of the use permit, or immediately upon commencement of the winery use, whichever occurs first and shall be submitted annually thereafter.

##### **14.2 NOISE**

Construction noise shall be minimized to the greatest extent practical and allowable under State and local safety laws. Construction equipment muffling and hours of operation shall be in compliance with County Code Chapter 8.16. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur between the hours of 8 AM to 5 PM. Exterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the County Code. There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

#### **15.0 ARCHEOLOGICAL FINDING**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during the development, all work in the vicinity must be, by law, halted, and the Napa County Coroner informed, so that the Coroner can



determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the nearest tribal relatives as determined by the State Native American Heritage Commission shall be contacted by the permittee to obtain recommendations for treating or removal of such remains, including grave goods, with appropriate dignity, as required under Public Resources Code Section 5097.98.

#### **16.0 ADDRESSING**

All project site addresses shall be determined by the PBES Director, and be reviewed and approved by the United States Post Office, prior to issuance of any building permit. The PBES Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

#### **17.0 INDEMNIFICATION**

If an indemnification agreement has not already been signed and submitted, one shall be signed and returned to the County within twenty (20) days of the granting of this approval using the PBES Department's standard form.

#### **18.0 AFFORDABLE HOUSING MITIGATION**

Prior to County issuance of a building permit, the applicant shall pay the Napa County Affordable Housing Mitigation Fee in accordance with the requirements of County Code Chapter 18.107.

#### **19.0 MONITORING COSTS**

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the owner. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until grant of Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Commission at some time in the future, the Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation hearings in accordance with County Code Section 18.124.120.

#### **20.0 TEMPORARY AND FINAL OCCUPANCY**

All project improvements, including compliance with applicable codes, conditions, and requirements of all departments and agencies with jurisdiction over the project, shall be completed prior to granting of a Final Certificate of Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence.

However, a Temporary Certificate of Occupancy may be granted pursuant to County Code Section 15.08.070(B) to allow commencement of production activities prior to completion of all project improvements. In special circumstances, departments and/or agencies with jurisdiction over the project are authorized as part of the Temporary Certificate of Occupancy process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

**21.0 STATUTORY AND CODE SECTION REFERENCES**

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

**22.0 PAYMENT OF FEES AS PREREQUISITE FOR ISSUANCE OF PERMITS**

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full.

**23.0 PREVIOUS CONDITIONS**

As applicable, the permittee shall comply with any previous conditions of approval for the winery use except as they may be explicitly modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control.