



A Tradition of Stewardship  
A Commitment to Service

Planning, Building & Environmental Services

1195 Third Street, Suite 210  
Napa, CA 94559  
www.countyofnapa.org

David Morrison  
Director

Planning Commission Mtg.

OCT 21 2015

Agenda Item # 9A

MEMORANDUM

To: Napa County Planning Commission	From: Wytress Balcher, PBES
Date: October 21, 2015	Re: Girard Winery Use Permit P14-00053

This memorandum has been prepared to identify Staff recommended corrections and clarification on information that was included in the October 21, 2015 staff report.

- Attachment C (Conditions of Approval) had been prepared utilizing the updated Standard Conditions of Approval. However, there were some conditions that were inadvertently left out of this document which had been included and/or discussed in the August 19, 2015 Staff Report.

Condition 4.2 – Marketing: Condition language limiting large events to occur within the winery building has now been included in the new proposed conditions of approval. (See Attached)

Condition 14.1 – Wells: Condition language has been updated to incorporate Public Works recommendation (Refer to Memorandum dated April 3, 2015) to expand the County’s updated well monitoring activities associated with this project. (See Attached)

Condition 3.2 – Compliance with Other Departments and Agencies: Date of Environmental Health Division memorandum to be corrected from December 3, 2014 to December 10, 2014.

Condition 3.4 – Compliance with Other Departments and Agencies: May 12, 2014 Department of Public Works Memorandum to be replaced by Department of Public Works Memorandums dated April 3, 2015 and June 3, 2015 and dates to be corrected accordingly.

- Attachment D (Department Conditions): Attached are copies of the Departmental Memorandums to be called out in Condition #3.0.

Two large, overlapping handwritten scribbles in blue ink, likely representing signatures or initials, located below the second list item.

## REVISED CONDITIONS OF APPROVALS

### 4.2 MARKETING

Marketing events shall be conducted only in the winery building and are limited to the following:

1. Marketing Events  
Frequency: Four times per year  
Number of persons: 75 maximum  
Time of Day: 10:00 AM – 6:00 PM.
2. Marketing Events  
Frequency: Four times per year  
Number of persons: 200 maximum  
Time of Day: 10:00 AM – 6:00 PM
3. Harvest Event  
Frequency: One (1) time per year  
Number of persons: 500 maximum  
Time of Day: 10:00 AM – 6:00 PM.
4. 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 8:00 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.

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 ***of the well on the Clos Pegase Winery property and the well on the Girard Winery property.*** 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, proposed to be used for ***the Clos Pegase Girard Wineries Water System***, 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 (if applicable) 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.
- c. ***Combined groundwater from the two wells of the Clos Pegase Girard Wineries Water System (on parcels APN: 020-150-012 and APN: 020-150-017) shall not exceed 8.22 acre-ft. per year. If combined water use from the wells exceeds 8.22 acre-ft. in a given calendar year, the permittee shall notify the County, and provide the following:***
  1. *water volume used;*
  2. *the reason for exceedance;*
  3. *the plan the winery has for reducing water use so as not to exceed the allocation the following year; and*
  4. *other information which may be affecting water use as reasonably requested by the County.*
- d. ***If after two years of reporting the monitoring shows that the annual water allocation identified above continues to be exceeded, this use permit shall be scheduled for review by the Planning Commission and possible modification, revocation or suspension.***
- e. ***County Groundwater Monitoring Program***  
***The permittee shall be required to include either or both wells into the County's Groundwater Monitoring program if the County requests that they do so.***

3.2 Environmental Health Division as stated in their Memorandum dated December 10, 2014.



A Tradition of Stewardship  
A Commitment to Service

**Agenda Item No. 90**

Planning, Building & Environmental Services

1195 Third Street, Suite 210  
Napa, CA 94559  
www.countyofnapa.org

David Morrison  
Director

**MEMORANDUM**

To: Wyntriss Balcher, Planning Division	From: Jeannette Doss, Engineering and Conservation Division <i>JD</i>
---	---

Date: July 11, 2014	Re: Girard Winery Use Permit – Engineering CoA 1077 Dunaweal Lane, Napa, CA P14-00053 APN 020-150-017
---------------------	--

The Engineering Division received a referral for comment on a new use permit for the Girard Winery, generally requesting the following:

*To establish a new 200,000 gallons per year winery; construct an approximately 39,604 sq ft building for fermentation, barrel storage, tasting room and administrative uses; construct a new covered work area and tank/crush pad; construct a new 24 ft wide access road, new entry gate, and 22 space parking lot; allow the use of the existing Clos Pegase Pond Treatment system to treat the process waste for the winery; construct a new sanitary sewage system on-site to accommodate the winery employees, visitors, and events; and allow 20 full-time and 10 part-time employees. The application also includes a visitation and marketing plan that would allow for daily tours and tasting with a maximum of 294 visitors per week; four events per year with a maximum of 75 guests per event; four events per year with a maximum of 200 guests per event; and one harvest event per year with a maximum of 500 guests.*

After careful review of the Girard Winery submittal package the Engineering Division recommends approval of the project with the following recommended conditions:

**EXISTING CONDITIONS:**

1. Napa County parcel 020-150-017 is located on Dunaweal Lane in Calsitoga approximately 0.2 miles south of it's intersection with Silverado Trail.
2. Site is currently partially developed with a several ponds and an agricultural building.

**RECOMMENDED CONDITIONS:**

**PARKING:**

1. Any parking proposed by the applicant or required by the Planning Commission as a condition of this use permit must have a minimum structural section equivalent to support an H20 load designed by a licensed Civil or Geotechnical Engineer and shall not be less than two inches of asphalt concrete over 5 inches of Class II Aggregate. (County Road and Street Standards, Page 82).
2. Parking lot details shall conform to the requirements of the latest edition of the Napa County Road and Street Standards.

**NEW PRIVATE ACCESS ROADS AND DRIVEWAYS:**

3. All roadway construction associated with this application shall conform to the current Road and Street Standards of Napa County at the time of permit submittal and accepted construction and inspection practices.
4. Access drives shall meet the requirements of a commercial drive and be a minimum of 18 feet wide with 2 feet of shoulder. Structural section shall be a minimum two inches of asphalt concrete surface over five inches of Class II Aggregate or equivalent. (County Road and Street Standards, Page 12, Par. 13).
5. The applicant must obtain an encroachment permit from the Napa County Department of Public Works prior to any work performed within the Napa County Right-of-Way.
6. Structural section of all drive isles shall be calculated by a licensed Civil or Geotechnical Engineer to hold a minimum H20 loading and shall conform to the procedures contained in Chapter 600 of the State of California Department of Transportation Design Manual or approved equivalent
7. All driveway access to the public right of way must conform to the latest edition of the Napa County Road and Street Standards (Page 65, Detail P-4). Outbound driveway widths shall be a minimum of 25 feet to accommodate turning movements of large trucks.

**SITE IMPROVEMENTS:**

8. All on site civil improvements proposed, including but not limited to, the excavation, fill, general grading, drainage, curb, gutter, surface drainage, storm drainage, parking, and drive isles, shall be constructed according to plans prepared by a registered civil engineer, which will be reviewed and approved by this office prior to the commencement of any on site land preparation or construction. Plans shall be submitted with the building and/or grading permit documents at the time of permit application. A plan check fee will apply.

9. Proposed drainage for the development shall be shown on the improvement plans and shall be accomplished to avoid the diversion or concentration of storm water runoff onto adjacent properties. Plan shall also indicate the path and changes in runoff.
10. Grading and drainage improvements shall be constructed according to the latest “Napa County Road and Street Standards” and the California Building Code. Specifically, all cuts and fills slopes shall be setback to meet the latest CBC.
11. If excess material is generated that cannot be used onsite, the Owner shall furnish to the Napa County Planning, Building and Environmental Services Department evidence that the Owner has entered into agreements with the property owners of the site involved and has obtained the permits, licenses and clearances prior to commencing any off-hauling operations.

**OTHER RECOMMENDATIONS:**

12. Prior to the issuance of applicable building or grading permits the applicant must obtain all appropriate regulatory permits from the California Regional Water Quality Control Board, Army Corp. of Engineers and the California Department of Fish and Wildlife.
13. Prior to the issuance of any grading or building permit, or the signing of improvement plans, the permittee and County shall survey and document the condition of the nearest County roads before construction begins, and then reevaluate conditions at the end of construction. Prior to Occupancy of any buildings or commencement of any use, the permittee shall be responsible for repair of any pavement degraded due to its construction vehicles.
14. Prior to the granting of occupancy (be it temporary or final) of any new building permits associated with this Use Permit (i.e. the proposed new tasting building) the driveway and parking improvements as outlined above shall be implemented.

**CONSTRUCTION STORMWATER REQUIREMENTS:**

15. Any Project that requires a building or grading permit shall complete a Napa County Construction Site Runoff Control Requirements Appendix A - Project Applicability Checklist and shall submit this form to the Napa County Planning, Building and Environmental Services Department for review.
16. All earth disturbing activities shall include measures to prevent erosion, sediment, and waste materials from leaving the site and entering waterways both during and after construction in conformance with the Napa County Stormwater Ordinance 1240 and the latest adopted state regulations. Best Management Practices (BMPs) shall also be implemented to minimize dust at all times.

17. Any construction activity that equals or exceeds one acre of total disturbed area shall prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the regulations of California Regional Water Quality Control Board (SRWQCB) and shall file a Notice of Intent (NOI) prior to commencement of any construction activity. The completed SWPPP shall be submitted to the Napa County Planning, Building and Environmental Services Department for review.
18. All hazardous materials stored and used on-site during construction that could cause water pollution (e.g. motor oil, cleaning chemicals, paints, concrete, etc.) shall be stored and used in a manner that will not cause pollution, with secondary containment provided. Such storage areas shall be regularly cleaned to remove litter and debris. Any spills shall be promptly cleaned up and appropriate authorities notified.
19. All trash enclosures must be covered and protected from rain, roof, and surface drainage.
20. The property owner shall inform all individuals, who will take part in the construction process, of these requirements.

#### POST-CONSTRUCTION RUNOFF MANAGEMENT REQUIREMENTS:

21. Project must conform and incorporate all appropriate Site Design, Source Control and Treatment Control Best Management Practices as required by the Napa County manual for *Post-Construction Runoff Management Requirements* which is available at the Planning, Building and Environmental Services Department office.
22. Post-development runoff volume shall not exceed pre-development runoff volume for the 2-year, 24-hour storm event. Post-development runoff volume shall be determined by the same method used to determine pre-development conditions. If post-development runoff volume exceeds pre-development runoff volume after the site design BMPs are incorporated into the project's overall design, a structural BMP (e.g. bio-retention unit) may be used to capture and infiltrate the excess volume.
23. Parking lots and other impervious areas shall be designed to drain through grassy swales, buffer strips, sand filters or other sediment control methods which will be approved by this Department. If any discharge of concentrated surface waters is proposed into any "Waters of the State," the permittee shall consult with and secure any necessary permits from the State Regional Water Quality Control Board prior to the issuance of applicable construction permits.
24. Loading/unloading dock and processing areas must be covered or designed to preclude stormwater run-on and runoff. All direct connections to storm drains from depressed loading docks (truck wells) are prohibited. Processing areas that generate liquid wastes shall drain to the sanitary sewer system or other approved collection system per the requirements of Environmental Services.

25. Trash storage areas shall be paved with an impervious surface, designed not to allow run-on from adjoining areas, and screened or walled to prevent off-site transport of trash. Trash storage areas must contain a roof or awning to minimize direct precipitation or contain attached lids on all trash containers that exclude rain.
26. Provide concrete stamping, or equivalent, of all stormwater conveyance system inlets and catch basins within the project area with prohibitive language (e.g., “No Dumping – Drains to Napa River”). Signage shall identify the receiving water the drain discharges to and include a message in Spanish.
27. Prior to final occupancy the property owner must legally record an “implementation and maintenance agreement” approved by the Planning, Building, and Environmental Services Department to ensure all post-construction structures on the property remain functional and operational for the indefinite duration of the project.
28. Each year the entity responsible for maintenance is required to complete an annual report. The report shall be signed by the property owner and include copies of completed inspection and maintenance checklists to document that maintenance activities were conducted during the previous year. The annual report shall be retained for a period of at least five years and made available upon request by the County.

**Any changes in use may necessitate additional conditions for approval.**

If you have any questions regarding the above items please contact Jeannette Doss at 253-4417.





A Tradition of Stewardship  
A Commitment to Service

Planning, Building & Environmental Services

1195 Third Street, Suite 210  
Napa, CA 94559  
www.countyofnapa.org

David Morrison  
Director

**MEMORANDUM**

To: Wyntress Balcher, Project Planner	From: Kim Withrow, Environmental Health Supervisor
Date: Revised - December 10, 2014	Re: Use Permit for Girard Winery APN 020-150-017 File #P14-00053

This division has reviewed a use permit application requesting approval to construct a new 200,000 gallon per year winery and related improvements. This Division has no objection to approval of the application with the following conditions of approval:

Prior to building permit issuance:

1. Complete plans and specifications for the proposed catering kitchen, service area(s), storage area(s) and the employee restrooms must be submitted for review and approval by this Division prior to issuance of any building permits for said areas. An annual food permit will be required.
2. Prior to approval of the combined process and sanitary wastewater reuse option included in the wastewater feasibility report the applicant shall secure a discharge requirement or waiver of same, from the Regional Water Quality Control Board for the proposed waste water system.
3. A permit to construct the combined wastewater treatment system must be secured from this Division prior to approval of a building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system.
4. Prior to constructing the option for a subsurface drip system for sanitary waste and modifying the existing pond system for process waste, plans for the proposed systems shall be designed by a licensed Civil Engineer or Registered Environmental Health Specialist and be accompanied by complete design criteria based upon local conditions. No building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by these systems will be approved until such plans are approved by this Division.
5. Permits to construct the proposed sanitary wastewater treatment system and wastewater pond system improvements must be secured from this Division prior to approval of a building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system.
6. Adequate area must be provided for collection of recyclables. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to

determine the area and the access needed for the collection site. The garbage and recycling enclosure must meet the enclosure requirements provided during use permit process and be included on the building permit submittal.

7. The water supply and related components must comply with the California Safe Drinking Water Act and Related Laws. This will require plan review and approval prior to approval of building permits. Prior to occupancy, the owner must apply for and obtain an annual operating permit for the water system from this Division. The technical report must be completed by a licensed engineer with experience in designing water systems. The applicant must comply with all required monitoring and reporting.
8. An agreement to grant a water easement or an approved water easement for the water system located on and serving two parcels must be filed with this Division prior to approval of a building permit

During construction and/or prior to final occupancy being granted:

9. During the construction, demolition, or renovation period of the project the applicant must use the franchised garbage hauler for the service area in which they are located for all wastes generated during project development, unless applicant transports their own waste. If the applicant transports their own waste, they must use the appropriate landfill or solid waste transfer station for the service area in which the project is located.
10. The use of the absorption field/drain field area shall be restricted to activities which will not contribute to compaction of the soil with consequent reduction in soil aeration. Activities which must be avoided in the area of the septic system include equipment storage, traffic, parking, pavement, livestock, etc.
11. An annual alternative sewage treatment system monitoring permit must be obtained for the subsurface drip sanitary wastewater treatment system option prior to issuance of a final on the project. The septic system monitoring, as required by this permit, must be fully complied with.
12. An annual operating permit must be obtained for the process wastewater pond system. The applicant shall maintain regular monitoring of the above ground waste water treatment system as required by this Division which includes submitting quarterly monitoring reports.

Upon final occupancy and thereafter:

13. Proposed food service will be catered; therefore, all food must be prepared and served by a Napa County permitted caterer. If the caterer selected does not possess a valid Napa County Permit to operate, refer the business to this Division for assistance in obtaining the required permit prior to providing any food service.
14. Pursuant to Chapter 6.95 of the California Health and Safety Code, businesses that store hazardous materials above threshold planning quantities (55 gallons liquid, 200 cubic feet compressed gas, or 500 pounds of solids) shall obtain a permit and file an approved Hazardous Materials Business Plan with this Division within 30 days of said activities. If the business does not store hazardous materials above threshold planning quantities, the applicant shall submit the Business Activities Page indicating such.
15. The applicant shall file a Notice of Intent (NOI) and complete a Storm Water Pollution Prevention Plan with the State of California Water Resources Control Board's (SWRCB) Industrial Permitting program, if applicable, within 30 days of receiving a temporary or

final certificate of occupancy. Additional information, including a list of regulated SIC codes, may be found at:

[http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/industrial.shtml](http://www.swrcb.ca.gov/water_issues/programs/stormwater/industrial.shtml)

Additionally, the applicant shall file for a storm water permit from this Division, if applicable, within 30 days of receiving a temporary or final certificate of occupancy. Certain facilities may be exempt from storm water permitting. A verification inspection will be conducted to determine if exemption applies.

16. The applicant shall provide portable toilet facilities for guest use during events of 500 persons or more as indicated in the septic feasibility report/use permit application. The portable toilet facilities must be pumped by a Napa County permitted pumping company.
17. All solid waste shall be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors and odors.
18. All diatomaceous earth/bentonite must be disposed of in an approved manner. If the proposed septic system is an alternative sewage treatment system the plan submitted for review and approval must address bentonite disposal.



A Tradition of Stewardship  
A Commitment to Service

Napa County Fire Department  
Fire Marshal's Office  
Hall of Justice, 2<sup>nd</sup> Floor  
1125 3<sup>rd</sup> Street  
Napa, CA 94559

Office: (707) 299-1461

Pete Muñoa  
Fire Marshal

## INTER-OFFICE MEMORANDUM

---

TO: Wyntress Balcher  
Planning, Building and Environmental Services

FROM: Pete Muñoa  
Fire Department

DATE: April 3, 2014

Subject: P14-00053          APN# 020-150-017

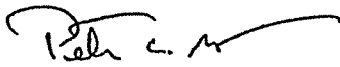
**SITE ADDRESS: 1077 Dunaweal Lane, Calistoga CA  
Girard Winery**

The Napa County Fire Marshal's Office has reviewed the Use Permit application for the project listed above. I am requesting that the comments below be incorporated into the project conditions should the Planning Commission approve this project.

1. **All construction and use of the facility shall comply with all applicable standards, codes, regulations, and standards at the time of building permit issuance.**
2. All fire department access roads and driveways shall comply with the **Napa County Public Works Road and Street Standards.**
3. The numerical address of the facility shall be posted on the street side of the buildings visible from both directions and shall be a minimum of 4-inches in height on a contrasting background. Numbers shall be reflective and/or illuminated.
4. All buildings over 3,600 square feet shall be equipped with an automatic fire sprinkler system conforming to NFPA 13 2010 edition with water flow monitoring to a Central Receiving Station.
5. All post indicator valves and any other control valve for fire suppression systems shall be monitored off site by a Central Station or Remote receiving Station in accordance with NFPA 72 2010 edition.

6. The required fire flow for this project is 500 GPM for a 60 minute duration with 20 psi residual pressure. A UL listed fire pump conforming to NFPA 20, 2010 edition may be required to meet or exceed the required fire flow for the project.
7. Provide a minimum of 27,000 gallons of water dedicated for fire protection. **Water storage for fire sprinkler systems shall be in addition to the water storage requirement for your fire flows and domestic use.**
8. Blue dot reflectors shall be installed 12-inches off centerline in front of all fire hydrants.
9. All fire hydrants shall be painted chrome/safety yellow.
10. Approved steamer fire hydrants shall be installed a maximum distance of 250 feet from any point on approved fire apparatus access roads. Private fire service mains shall be installed, tested and maintained per NFPA 24 2010 edition.
11. Currently serviced and tagged 2A 10BC fire extinguishers shall be mounted 3.5 to 5 feet from the top of all extinguishers to the finished floor and be reachable within 75 feet of travel distance from any portion of all buildings.
12. All exit doors shall open without the use of a key or any special knowledge or effort.
13. Install illuminated exit signs throughout the buildings per the California Building Code 2010 edition.
14. Install emergency back-up lighting throughout the buildings per the California Building Code 2010 edition.
15. Install laminated 11" x 17" site plans and building drawings in NCFD specified KNOX CABINET. Two Master keys to all exterior doors shall be provided in the KNOX CABINET. A PDF file shall be sent to the Napa County fire Marshal's Office.
16. Beneficial occupancy **will not be granted** until all fire department fire and life safety items have been installed, tested and finalized.
17. Provide 100 feet of defensible space around all structures.
18. Provide 10 feet of defensible space fire hazard reduction on both sides of all roadways of the facility.
19. Designated fire lanes shall be painted red with white 4 inch high white letters to read "NO PARKING FIRE LANE-CVC22500.1" stenciled on the tops of the curbs every 30 feet.
20. Barricades shall be provided to protect any natural gas meter, fire hydrants, or other fire department control devices, which may be subject to vehicular damage.

21. Technical assistance in the form of a Fire Protection Engineer or Consultant acceptable, and reporting directly to the Napa County Fire Marshal's Office. The Fire protection Engineer or Consultant shall be provided by the applicant at no charge to the County for the following circumstances:
  - a. Independent peer review of alternate methods proposals.
22. Plans detailing compliance with the fire and life safety conditions of approval shall be submitted to the Napa County for review and approval prior to building permit issuance and/or as described above.



Pete Muñoa  
Fire Marshal



A Tradition of Stewardship  
A Commitment to Service

Division of Public Works

1195 Third Street, Suite 101  
Napa, CA 94559-3092  
www.countyofnapa.org/publicworks

Main: (707) 253-4351  
Fax: (707) 253-4627

Steven E. Lederer  
Director

April 3, 2015

**From:** Steve Lederer, Director, Napa County Department of Public Works  
**To:** Planning, Building & Environmental Services

**Subject:** Girard Water Use Analysis, Girard Winery Use Permit (#P14-00053-UP)

Planning, Building, and Environmental Services (PBES) requested Public Work's review and analysis regarding water availability and water quality concerns raised during the processing of Girard Winery Use Permit (#P14-00053-UP).

Evidence offered in opposition to the project is primarily contained in:

- 1) Norma Tofanelli letter, dated January 21, 2015, which includes an attachment entitled "Dunaweal Area Well Records", dated 1987), and
- 2) Tom Myers Technical Memorandum (TM), dated January 20, 2015

Summarizing these concerns from the Myers TM (bold font added by this author):

- 1) "The proposed expansion of pumping for the Girard Winery project could possibly have two potentially significant impacts. First, the pumping could **unacceptably lower the groundwater levels** because there is not as much recharge on the area as the county assumes. This memorandum considers the river base flow and suggests that existing recharge estimates may be too high. **Pumping could also draw water from the Napa River.**
- 2) Second, the **pumping could affect groundwater flow directions and cause boron and arsenic plumes** to expand through a larger portion of the Calistoga area. There are very high concentrations of each contaminant northwest of the project site and along the base of the mountains south of the site. The project pumping, especially if it causes substantial drawdown due to too little recharge, could create a drawdown which pulls contaminants toward the project."

#### Analysis of Applicant Response

In response to these concerns, the applicant has offered a revised Water Availability Analysis (WAA) dated March 26, 2015. The key points covered in this revised WAA are as follows:

- 1) **Groundwater Levels:** While disagreeing with the analysis Myers conducted of earlier groundwater monitoring reports, the revised Girard WAA also now includes in this project record (by reference), the 2014 Annual Groundwater Monitoring Report, which clearly states

that, 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. (The 2014 Annual Report was not available to either party until it was presented to the Board of Supervisors at their March 3, 2015 meeting). 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. This substantial evidence provided by the Girard WAA indicates that the Myers report is not factually supported by evidence.

**Drawing Water From The Napa River:** While the Myers report presents this hypothesis, the Girard WAA (under response to concerns), points out, among other site specific facts, that the project wells are approximately 1500 feet from the Napa River (the normal distance limit beyond which this issue is not a concern), and that the groundwater level in this area is below the level of the riverbed, meaning that the river and the groundwater are likely not hydraulically connected.

- 2) **Drawing Arsenic and Boron Into the Area:** The revised WAA provides water quality data from the project well, showing that arsenic above Maximum Contaminant Levels (MCLs) has not been found in samples from the project well, and that water quality sampling from 3 nearby wells tested for boron found levels below the State Notification Level (Boron does not have an MCL). The WAA continues (under response to concerns) calculating reasonably expected drawdown and cones of depression expected from project pumping, and finds that the proposed pumping is “highly unlikely” to result in contaminant migration.

#### Public Works Review

While the Applicant’s submittal provides substantial evidence, Public Works (PW) conducted its own review and evaluation of available evidence as well. This review included input and discussions with Vicki Kretsinger, who was the lead licensed professional in producing the various LSCE reports referenced herein.

Public Works comments to the Myers report are as follows:

- 1) **Recharge and Groundwater Levels:**
  - 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.
  - b. Myers discusses the recharge analyses conducted by LSCE & MBK (2013) and goes on to describe 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.
  - 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.



- 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 surface waters by a confining geologic unit.
  - 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.
  
- 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.

To further investigate the condition of the area, PW requested that PBES query their permit database for new wells constructed within 1500 feet of the subject parcel. The database produced records for 7 new wells since 2004. While the reason for new wells is not formally tracked, information provided by Kim Withrow (who has been in the Department this whole time period and is the current supervisor of the section responsible for well permits) indicates that only one of the 7 wells was drilled to replace an existing well, and that that was done because the existing well was located too close to a septic system, not because of water quantity issues. While PW appreciates the 1987 well data supplied by Ms. Tofanelli, we consider the well data from the past 10 years to be more relevant.

PW also requested water quality data from Ms. Withrow on the existing project wells. Her response is as follows:

“The well serving the Clos Pegase water system was tested for arsenic in 2009 and the result was 4.1 ug/L. The MCL for arsenic in drinking water is 10 ug/L. Clos Pegase isn’t required to sample for arsenic on a regular basis because of their permit type. Sterling sampled one of their wells in 2014 and the result for arsenic was 2.1 ug/L. Another of the wells was sampled in 2010 and the level of arsenic was 5.6 ug/L. Sterling had some elevated sample results in one well (I believe in 2009) for arsenic (16 ug/L), zinc (7200 ug/L), mercury (8.3 ug/L) and aluminum (4600 ug/L). Sample results from 2014 indicated arsenic at 2.1 ug/L, aluminum at 230 ug/L and zinc at 4800 ug/L in the same well.”

This information is consistent with that provided in the Girard WAA, indicating that naturally occurring arsenic (but not above the MCL level) is already chronic in the area, but there is no evidence to support the hypothesis that there are, or will be, increasing levels from Calistoga. (Please note that the 2009 Sterling sample was most likely a result of laboratory contamination as it is inconsistent with all other sampling data in the area, but it is nonetheless reported here for full disclosure purposes).

Ms. Tofanelli offered anecdotal reports of water problems on neighbor lands, as well as certain parties trucking in water. In the interest of full disclosure this information is repeated here, though we have no additional information to corroborate or investigate this.

### Summary and Recommendations

In summary, the substantial evidence in the record indicates 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;
- 3) The project is unlikely to cause directional flow changes with would draw chemicals from Calistoga into the area.

Public Works does recommend that the Planning Commission include the following conditions of approval if the permit is approved:

- 1) The permittee shall be required for the life of the project to monitor and maintain records of water volumes pumped from the two wells. This data will be made available to the County upon request.
- 2) If combined water use from the wells exceeds 10 acre-ft. in a given calendar year, the permittee shall proactively notify the county, providing
  - a. water volume used,
  - b. the reason for increased use,
  - c. the plan the winery has for reducing water use, and
  - d. other information which may be affecting water use as reasonably requested by the County.
- 3) The permittee shall be required to include either or both wells into the County's Groundwater Monitoring program if the county requests that they do so.



A Tradition of Stewardship  
A Commitment to Service

Department of Public Works

1195 Third Street, Suite 101  
Napa, CA 94559-3092  
[www.countyofnapa.org/publicworks](http://www.countyofnapa.org/publicworks)

Main: (707) 253-4351  
Fax: (707) 253-4627

Steven Lederer  
Director

## MEMORANDUM

To: PBES Staff	From: Rick Marshall Deputy Director of Public Works
Date: June 3, 2015	Re: Girard Winery P14-00053

Thank you for the opportunity to review the subject permit application. I have reviewed the *Traffic Impact Study for the Girard Winery Project*, by W-Trans, dated December 18, 2014; the Initial Study prepared by your office; the letter from Ellison Folk and Laurel Impett, Shute Mihaly & Weinberger, dated January 20, 2015; and the response to the Folk & Impett letter by W-Trans, dated April 9, 2015.

I generally concur with the methods used, assumptions made, and conclusions reached by W-Trans in their original study and in their response to the Folk & Impett letter. I offer the following comments and recommendations:

**Study area evaluated.** The study area evaluated is appropriate for the proposed project, and is consistent with other project reviews conducted in the County of Napa. Traffic from the proposed project beyond the area studied in this analysis would be greatly diluted as it spreads throughout the roadway network and mixes with other traffic from the area.

**Peak hour appropriate for analysis.** I concur with W-Trans response that the scenarios evaluated in their analysis, weekday PM peak hour and weekend midday peak hour, are appropriate for this type of study, and this is consistent with other project reviews conducted in the County of Napa.

**Thresholds of significance.** W-Trans correctly identifies that the proposed project will add traffic to nearby roads and intersections which will operate at unacceptable levels of service under future conditions. However, they incorrectly conclude that because the Napa County General Plan includes a policy restricting the addition of traffic lanes, that this does not constitute a significant impact. In reality, it does constitute a significant cumulative impact, but evaluation of each project must consider alternatives other than just adding lanes in order to determine whether this impact can be mitigated to a less-than-significant level.

A recommendation that the project contribute to a traffic impact fee program would be appropriate if the County had one in place at this time. Since such a program is not yet developed, in order to move forward this proposed development must incorporate some other type of measure which could be found to adequately mitigate this impact, or else prepare an Environmental Impact Report to enable the adoption of overriding findings. It is my recommendation that the applicant modify their proposal so that the number of weekday afternoon or weekend midday peak hour trips generated by the project do not increase volumes on SR 29 or Silverado Trail by more than 1%. This is a threshold which is supported by other recent approvals in this County.

In order to reduce the number of peak hour trips added, the applicant could implement a Transportation Demand Management (TDM) plan such as is mentioned in W-Trans reports. In order to determine whether the TDM plan will adequately mitigate the cumulative impact as noted above, the traffic study should quantify the resulting number of trips which would be added to the impacted facilities, to demonstrate to decision makers whether the project would add more or less than a 1% increase with these measures in place.

Specific to the proposed TDM plan as described so far, I concur with Folk & Impett that the project applicant must provide more details about the proposed shuttle service. We need this information to determine whether there will be any secondary traffic or parking impacts at the location where visitors will gather to catch the shuttles.

**Evaluation of special events.** I concur with W-Trans position that the evaluation of weekday and weekend peaks, during regular operations, is what is appropriate for this analysis. It is the standard practice of our industry to assume that a small number of periods each year will have volumes which exceed these levels, and are not appropriate for analysis or design of facilities.

**Left-Turn Lane not required.** I concur with the determination by W-Trans that a left-turn lane at the project access location on Dunaweal Lane is not warranted.

**Cumulative Impacts.** By evaluating the volumes obtained from the countywide traffic forecasting model, the study has effectively included all recent approved projects and more. I do not recommend that further analysis along this line is needed.

Please contact me at [Rick.Marshall@countyofnapa.org](mailto:Rick.Marshall@countyofnapa.org) or call (707) 259-8381 if you have questions or need additional information.

**Frost, Melissa**

**Subject:** FW: Girard application

-----Original Message-----

From: Donald Williams [<mailto:dcedar@sonic.net>]

Sent: Tuesday, October 20, 2015 10:09 AM

To: McDowell, John

Subject: Girard application

Planning Commission Mtg.

OCT 21 2015

Agenda Item # 9A

Dear Mr. McDowell,

Please communicate this message to the County Planning commission. Thank you.

Dear Planning Commissioners,

I respectfully suggest you deny the application of Girard winery in Calistoga for permission to build new facilities for visitors.

I am dismayed by the increasing traffic upvalley, and the reluctance of our elected officials to curb it.

Furthermore, event-centers have no place in a rural setting like Dunaweal Lane.

When will our boards and commissioners have the courage and foresight to acknowledge that the growth of visitors cannot continue unabated?

It must stop sooner or later. Why wait till it's entirely overdeveloped? Please stop it now.

Thank you.

Sincerely,

Donald Williams

Calistoga

CONFIDENTIALITY NOTICE: This email message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and/or exempt from disclosure under applicable law.

SHUTE, MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

LAUREL L. IMPETT, AICP  
Urban Planner  
impett@smwlaw.com

October 20, 2015

Planning Commission Mtg.

Via E-Mail

OCT 21 2015

Agenda Item # 9A

Members of the Planning Commission  
Napa County  
1195 Third Street, Suite 210  
Napa, CA 94559  
Attn: David Morrison, Department Director  
David.Morrison@countyofnapa.org

Re: Girard Winery Use Permit P14-00053 Initial Study/Proposed  
Negative Declaration

Dear Planning Commissioners:

On behalf of the Tofanelli family, we submit this letter to provide comments on the Initial Study/ proposed Negative Declaration ("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 and August 28, 2015, this firm submitted letters on the IS/ND and the revised IS/ND for the proposed Project. These letters are incorporated by reference into this letter. The issues raised in these letters remain valid.

This letter responds to the County's staff report, including the supporting documents, prepared in connection with the Commission's October 21, 2015 hearing. One of the supporting documents, a September 29, 2015 memorandum from Jeremy Kobor, is a response to a technical memorandum prepared by Tom Myers Ph.D. Consequently, Tom Myers has prepared a third hydrological report. We request that our three letters, the three reports prepared by Dr. Myers (January 20, 2015, August 15, 2015,

and October 19, 2015 (the latter is attached as Exhibit 1) be included in the administrative record for this Project.

**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. There is a Fair Argument That the Project-Specific and Cumulative Water Supply Impacts Would Be Significant.**

The IS/ND concludes that pumping to support the proposed Project would have a less than significant impact on groundwater levels and the Napa River. Ample evidence has been provided to the County that contradicts these conclusions. The County should not consider action on this Project until such time as it fully understands the effect that the Project, together with cumulative development, would have on groundwater levels. As a recent Napa County Grand Jury investigation and the Myers reports make clear, the County does not have sufficient information to make this determination.

According to the Napa County Grand Jury investigation of the County's groundwater, 80 percent of groundwater in the County is used for agricultural purposes. *See* Napa County Grand Jury 2014-2015 Final Report Management of Groundwater and Recycled Water, March 31, 2015 ("Water GJI"), attached as Exhibit 2, at 4, 7. Despite the agricultural industry's high rate of groundwater use, the County does not require agricultural users to monitor their groundwater consumption. *Id.* Therefore, while most well owners have groundwater extraction limits, the County has no way of enforcing these limits. *Id.* at 14, 18. Moreover, the County does not have a contingency plan to manage its groundwater supply in light of the current drought. *Id.*

Inasmuch as the County does not monitor groundwater consumption, it does not have the data with which to evaluate the effect that *any* specific project, such as proposed Girard winery, would have on existing groundwater levels. Moreover, the County cannot consider the Girard Winery Project in isolation; it must consider the cumulative effect of all projects that rely on the County's groundwater basin. According to a second grand jury investigation of the Napa County wineries' regulatory compliance, the County continues to issue numerous permits for new and expanded wineries every year. *See* Napa County Grand Jury 2014-2015 Final Report: Are Napa County Wineries Following the Rules, May 12, 2015 ("Winery GJI"), attached as Exhibit 3, at 3, 9. As the Winery GJI states, for the seven-year period ending in 2014, the County has approved an average of 18 new permits issued each year. *Id.* These use permits authorized an average

production of approximately 180,000 gallons of additional wine per year. *Id.* At this rate, water consumption from the winery industry alone has the potential to severely impact groundwater levels.

It is alarming that the County continues to turn a blind-eye to projects that would substantially increase groundwater demand despite ample evidence of diminishing groundwater supplies. As Dr. Myers' explains, the County's 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) show the effects of pumping and drought. *See* Myers August 15, 2015 Report at 2. Residents in the immediate vicinity of the proposed Girard Winery have also provided first-hand accounts of water scarcity, explaining that water availability has declined substantially within the last few years. *See* this firm's August 18, 2015 letter. The Napa County Grand Jury confirms this fact. A groundwater geologist told the Grand Jury that aquifers are recharged only by rainwater and surface water runoff. If there is no rain or limited rain, the aquifer will not recharge to normal levels. There will be a steady decline in the water level until the rains come back. *See* Exhibit 2 (Water GJI) at 13. The Water Grand Jury Report goes on to explain that well drillers are reporting that wells on the Valley floor must be drilled to depths of 300-750 feet and in some cases over 1,000 feet to find water versus a drilling depth of 100-200 feet or less in previous years. Well drillers still find water on the Valley floor 90-95% of the time, just at lower depths. *Id.* at 14. Myers explains that the increased seasonal drawdown and slow recovery indicates that stresses on the aquifer are increasing. The stresses are due to a combination of pumping and drought. Pumping in association with the proposed Girard Winery project will add to that stress.

In summary, recharge in the Napa Valley is too poorly understood to claim that the pumpage from the Girard Winery will not exceed the local recharge and contribute to pumpage from the valley exceeding recharge over the valley. In order to understand existing groundwater conditions and to evaluate the effect that the proposed Project together with cumulative development would have on groundwater, the County must undertake a comprehensive hydrogeological investigation. *See* Myers October 2015 report at 1.

**B. The IS/ND Lacks a Valid Baseline For Evaluating the Project's Environmental Impacts.**

Under CEQA, lead agencies must identify the existing physical environment – i.e., the baseline set of environmental conditions – against which to



compare a project's expected impacts, in order to determine whether project impacts are "significant." *Save Our Peninsula Committee v. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 119.) The lead agency does this by measuring the increment between pre-project and likely post-project environmental conditions. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955. CEQA Guidelines section 15125 generally defines the baseline as the physical conditions then in existence when the Notice of Preparation ("NOP") is published at the inception of the environmental review:

An EIR must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time the Notice of Preparation is published, or if no notice is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.

Given the Napa Valley wineries' history of regulatory non-compliance (this issue is discussed further below) and the fact that the County does not consistently monitor or enforce wineries' permit extraction limits, the IS/ND lacks the basis for evaluating the Project-specific and cumulative environmental impacts. Nowhere is this more apparent than the context of groundwater. As discussed previously, many wineries have groundwater extraction limits but the County does not consistently monitor these limits. This is tremendously important because the County's own winery compliance review/audits indicate that many wineries are in violation of their permitted production limits and therefore very likely consuming more water than the County anticipated when it approved each winery's use permit. Until the County audits all winery production, it has no idea how much water is being used in wine production in the County. Consequently, as the Myers report and the Grand Jury investigation explain, the County does not have a valid measure of existing groundwater conditions. Without a thorough understanding of "pre-project" water conditions, it is simply not possible to evaluate the effect that the Project, together with cumulative development would have on groundwater conditions.

Furthermore, if Clos Pegase continues to operate illegally and hold events, or if Clos Pegase seeks a permit for these events, they would be using the same water source and wastewater system as the Girard Winery. The County must analyze the cumulative effects from the proposed Girard Winery and Clos Pegase's operations. In

addition, the County should include a permit condition that no events will be held at the Clos Pegase Winery.

**C. The County Relies on Highly Unrealistic Measures to Avoid Potentially Significant Project Impacts.**

In numerous instances, the IS/ND relies on ineffective measures to conclude the Project's environmental impacts would be less than significant. For example, the applicant promises that all events would occur indoors therefore reducing the potential for any significant noise events. The applicant also promises to ensure that all project-generated vehicular trips would be shifted outside of the peak periods of traffic congestion. *See Consolidated Traffic Analysis for Girard Winery*, September 25, 2015, at 6. As discussed below, the applicant promises that all visitors to the winery would not be allowed to stray from the landscaped garden' pathways. The Finally, the County's draft Conditions of Approval ("COA") purport to limit the Project to a "not to exceed" volume of water of 10-acre feet ("ac/ft") per year. *See August 19, 2015 Board Staff Agenda* at 4, 5. The COA also call for the applicant to provide "the plan the winery has for reducing water use." COA at 9.

The IS/ND cannot rely on these assurances to conclude that the Project's impacts would be less than significant. As we have explained, the applicant has routinely conducted events in violation of its current conditional use permit at the Clos Pegase Winery. Moreover, the County has historically been unable to effectively monitor wineries for violations and we see no indication that the County will be in a position to effectively monitor wineries in the future. This fact is confirmed by the Winery Grand Jury Investigation which concluded that the County has only 30 percent of one code enforcement inspector devoted to auditing winery compliance.<sup>1</sup> *See Exhibit 3 (Winery GJI)*, at 4.

In fact, the County has only been able to audit 20 wineries per year out of the approximately 467 wineries in the Napa valley database.<sup>2</sup> *See Exhibit 3 (Winery GJI)*

---

<sup>1</sup> While an additional code enforcement inspector was added to the staff in January 2015, this additional staff person will have a range of duties other than winery audits. At 4.

<sup>2</sup> There may be considerably more than 467 wineries in Napa County. The Federal Alcohol, Trade and Tax Bureau, which taxes the alcohol content produced by all wineries reported that there were 603 wineries in Napa County in 2014. *See Exhibit 3 (Winery*

at 4, 11. According to the Grand Jury Investigation, winery audits are performed on a seven-year cycle such that if a winery is deemed to be in compliance it will not be subject to another audit for at least seven years. *Id.* at 10. Wineries that are not in compliance are audited again the following year. However at this rate of 20 winery audits per year out of the County' database of approximately 467 wineries, it will take decades before all wineries have been audited and are audited again. <sup>3</sup>*Id.*

It is unacceptable that the County would simply trust the applicant to take the measures that are necessary to reduce the Project's environmental impacts especially since certain of the measures would effectively curtail visitors' use and enjoyment of the winery. Wineries make every effort to attract tourists; it is how they increase their direct sales. It is implausible that a winery would abide by its *promise* to not allow individuals to visit the winery during afternoons (how many people prefer to sample wine in the mornings?).<sup>4</sup> Nor can we expect that the Winery would not allow its visitors to use a fully landscaped garden. Moreover, the County has a vested interest in ensuring that visitors to Napa Valley are afforded every convenience since tourism attraction secures the competitiveness of Napa Valley as a wine region, i.e., the County may choose to turn a blind-eye to practices that discourage visitors.

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.

---

GJI) at 9. (There are other estimates of the number of wineries from the State Alcohol Beverage Control Board and the Napa Valley Vintners membership and the planning staff has estimated that the number of wineries with separate labels and addresses could be as high as 1,260.) *Id.*

<sup>3</sup> It is our understanding that the County is working on a plan for "voluntary compliance reporting," i.e., wineries will annually report data showing permitted versus actual data for production and marketing. Only if the self-reported data indicates the winery is not in compliance will the County more closely audit the winery. Once again, "voluntary compliance" does very little to ensure that wineries are operating within their permit limits.

<sup>4</sup> The Traffic report explains that the Project will be modified to *eliminate* any peak hour trips." See Revised IS/ND at 21-22 and Consolidated Traffic Analysis for Girard Winery, September 25, 2015 at 7.

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

In response to our comment that the Project is inconsistent with the Winery Definition Ordinance (“WDO”) and the County General Plan because it would exceed the numerical cap of the square footage of structures that may be “used for accessory uses,” the County now suggests that the maximum square footage of “accessory uses” such as “marketing of wine” and “tours and tastings,” would be 33 percent. The County arrives at this unrealistic and inaccurate ratio by asserting that only the paths within the 13,000 square foot landscaped garden would be available to the public. *See* October 21, 2015 Staff Report at 4. As we have explained, it is completely unrealistic that the winery’s outdoor areas would not be used for events, especially given the applicant’s propensity to hold regular unpermitted events at the Clos Pegase site. We find it similarly unreasonable that visitors would not be allowed to stray off of the garden’s paths. Given the failure of the County to enforce wineries’ activities, the County must include the entire landscaped garden as an accessory use. Once the entire outdoor garden is included along with the 2,600 square foot covered veranda, the Project would far exceed the 40 percent limit in the WDO. The uses would constitute 67 percent of the area of the production facility. Alternatively, if the winery intends to not allow the public to use its outdoor garden space, it should cordon it off and post “no-entry” signs.

**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 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

Napa Valley Planning Commission  
October 20, 2015  
Page 8

cc: Wyntress Balcher, County Planner  
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, October 19, 2015.
- Exhibit 2      Napa County Grand Jury 2014-2015 Final Report Management of Groundwater and Recycled Water, March 31, 2015
- Exhibit 3      Napa County Grand Jury 2014-2015 Final Report: Are Napa County Wineries Following the Rules, May 12, 2015

717890.4

# EXHIBIT 1

---

Tom Myers, Ph.D.  
Hydrologic Consultant  
6320 Walnut Creek Road  
Reno, NV 89523  
775-530-1483  
tommyers1872@gmail.com

---

## Technical Memorandum

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

October 19, 2015

Prepared for:

Laurel Impett  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102-4421

## Summary

The proposed expansion of pumping for the Girard Winery project would impact groundwater levels and river flows. Increased pumping for the Girard Winery in combination with the other users in the area could unacceptably lower the groundwater levels. The County and its consultants err in their view that there is adequate groundwater to serve the Girard Project and all proposed projects in the County. As I have explained in my prior reports, there is not as much recharge in the area as the County assumes. Recharge to the tuffaceous aquifer in which the Girard Winery well is completed may occur a significant distance from the project site.

Every change in pumping from wells near a river affects the gradient of the groundwater surface connected with the river and therefore affects the amount of water discharging from the river into the surrounding groundwater. This is due to the fact that everything in the flow system near the river is connected. Pumping has a cumulative effect on groundwater flows near the river, but the effects of pumping take time to manifest depending on their distance from the river and complexity of the system. It is simply not credible to conclude, as the revised NegDec does, that pumping will have no effect on groundwater levels.

The County does not know the level of pumping required to cause the current year-to-year and seasonal trends in water level because it does not require that pumpage rates be measured and reported. The recharge rates for Napa Valley used by the County are not measured. Instead they are estimated using a water balance calculation for which all of the parameters are

empirically estimated and therefore very uncertain. Because of the uncertainty in all of the parameters, the resulting estimated recharge rate is also highly uncertain. It is simply unknown how much additional recharge from the river the current pumping induces. Because there are numerous demands on the County's limited groundwater sources and because the County does not monitor groundwater usage, the County has no way of knowing how close it is to a tipping point.

As I suggested in my previous memoranda, because of these potentially significant impacts, the Girard Winery use permit should not be granted until a thorough hydrogeologic study is completed which can assess overall water demand. Such a study would include detailed monitoring of pumpage and seasonal monitoring of groundwater levels at more than four wells (as is currently done in the north Napa Valley). To understand induced recharge from surface water, gaging stations that have been discontinued should be reestablished.

### **Introduction**

This technical memorandum responds to the letter prepared by O'Connor Environmental (Kobor and O'Connor 2015) which reviewed my most recent technical memorandum. This memorandum reviewed the revised negative declaration (NegDec) for the Girard Winery Use Permit P14-00053 and the water supply assessment (O'Connor 2015) prepared in support of the Girard Winery Project (Myers 2015b). I have also read the recent Napa County Grand Jury report regarding the management of groundwater in Napa and summarize those findings that affect the proposed Girard Winery Use Permit.

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

### **Grand Jury Findings**

Every year, the Napa County Grand Jury investigates the performance of county government. This year it published a review of the way the County manages groundwater, issuing a report titled: *Napa County Grand Jury 2014-2015 Final Report Management of Groundwater and Recycled Water: is Napa County in Good Hands*, dated March 31, 2015 (hereinafter referred to GJF). Several of its findings, summarized here, are relevant to the review of the Girard Winery Project:

- The GJF found that approximately 80% of groundwater is used for agricultural purposes (GJF, p 7), but that the County does not require the monitoring of groundwater usage and currently, all well monitoring is voluntary (GJF, p 4). Most well owners have groundwater extraction limits that cannot be enforced by the County because they do



not monitor usage of groundwater or enforce limits on groundwater extraction (GJF, p 14, 18).

- The County does not have a formalized contingency plan to manage its groundwater supply in case the drought continues (GJF, p 5 and 14). Considering that it does not measure any aspect of groundwater except the levels of some groundwater wells, the County does not have the data with which to do drought planning.
- A groundwater geologist told the Grand Jury that aquifers are recharged only by rainwater and surface water runoff. If there is no rain or limited rain, the aquifer will not recharge to normal levels. There will be a steady decline in the water level until the rains come back (GJF, p 13). Also, well drillers reported that wells on the Valley floor must be drilled to depths of 300-750 feet and in some cases over 1,000 feet to find water vs. a drilling depth of 100-200 feet or less in previous years. They still find water on the Valley floor 90-95% of the time, just at lower depths (GJF, p 14).

The Grand Jury made the following recommendations to remedy current lack of monitoring that should be made a condition of approval for Girard:

1. By June 30, 2016, the Napa County Public Works Department to require major groundwater users to meter and report their water usage on a quarterly basis to ensure all well owners are following prescribed usage rates.
2. By June 30, 2016, the Napa County Public Works Department to adopt policies to encourage all other groundwater users to meter and monitor their well water usage.

### **Recharge**

Kobor and O'Connor (2015) argues that because the total expected use on the Girard parcel is 8.2 af/y and the estimated mean annual recharge is 34.6 af/y, based on analyses in Luhdorff and Scalmanini (L&S) (2013), there is "no basis for concluding the groundwater pumping for this project would result in reduced water availability in the aquifer over time" (Kobor and O'Connor 2015, p 1). As I have explained, Kobor and O'Connor's conclusion is inaccurate. The root zone water balance model completed by L&S is inaccurate because too many terms are estimated rather than measured. The water balance model estimates infiltration to the soil water as the difference between total precipitation and total stream runoff, without actually estimating the stream runoff (L&S, p 74). Runoff is not measured separately and L&S used stream gage flow records as runoff (L&S, p 75). L&S acknowledges "[i]t is important to recognize this when interpreting the results of this analysis" (L&S, p 81). This leads to highly inaccurate estimates of infiltration because gage streamflow is both runoff from the surface

(the desired value for this calculation) and discharge of groundwater. Evapotranspiration (ET) also does not vary for wet or dry years (L&S, Table 8-8), which means that during wet years, too much water is available for recharge.

River baseflow equals groundwater discharge and in many studies the natural recharge over an area is set equal to the measured baseflow at a stream gage (Myers 2013, Cherkauer 2004), perhaps with adjustments made for streamside ET. An exception is that pumping, which induces recharge from the river, reduces the baseflow which renders low the recharge estimate based on baseflow. In this case it is essential to account for pumping in the valley that draws from the river, but due to a lack of groundwater pumpage monitoring, this is not possible. Induced recharge is not extra water but rather is a usage of natural recharge and a diversion from downstream uses.

The most accurate way to estimate recharge is to estimate baseflow for the watershed above a gaging station. Doing so accounts for all of the intricacies affecting recharge in the watershed without attempting to model or estimate each one specifically, a task which requires far more information about processes in the watershed than L&S has for the watershed above Calistoga.

Kobor and O'Connor (2015) suggest that L&S' recharge estimates are likely too low because they do "not account for recharge through the alluvium or recharge from streambed infiltration" (Kobor and O'Connor, p 2). Because the water balance estimate includes the entire watershed, by definition it includes the alluvium. If it is seepage during baseflow conditions, it is essentially secondary recharge and should not be counted a second time. Additionally water may seep from the stream into groundwater, but the gage is at a narrows in the basin so most groundwater would discharge back into the stream and be measured as streamflow.

One obvious error with the County's analysis is they establish recharge for the Girard project based on the area. The implication is that recharge occurs at the point of use, or on the project property. Especially if the tuff is confined, the recharge regardless of source is not on the project property.

In summary, recharge in the valley is too poorly understood to claim that the pumpage from the Girard Winery will not exceed the local recharge and contribute to pumpage from the valley exceeding recharge over the valley.

### **Trends in Groundwater Elevations**

Kobor and O'Connor (2015) are correct that the water levels generally recover each year, with some exceptions (I pointed these exceptions out previously (Myers 2015a)). During dry years, the Calistoga area well level hydrographs (L&S 2015) show that dry period water levels decline more than during wet years. This reflects the fact that recharge ceases once the runoff ceases which occurs earlier during dry years. During some dry periods, there is not full recovery from

year to year. For example, well NapaCounty 127 (L&S Figure 5-6) shows seasonal variability with the high water levels being lower during dry years (1976, 2003, and 2013-present). Similar observations can be made of water levels at the other wells (NapaCounty 128, 129, and 130).

The increased seasonal drawdown and slow recovery indicates that stresses on the aquifer are increasing. The stresses are due to a combination of pumping and drought. Pumping in association with the proposed Girard Winery project will add to that stress.

### **Potential for Impacts to the Napa River**

Increasing pumpage at the Girard Winery would add to the cumulative drawdown in the valley. It will increase drawdown and induce even more flow from the river.

Kobor and O'Connor (2015, p 4) disagree that rising water levels observed at the Girard well are related to high flow on the Napa River. They identify the cause of the high flows as being heavy rainfall and suggest that rainfall has caused the increases in the well water level. The reality is that an increase in well water level would be due to both rainfall recharge on the valley floor and to induced river seepage. In fact their arguments regarding the "complexity of conditions surrounding the project aquifers" (Id.) counter the argument above that recharge onsite will replenish pumping from the project. If the aquifer is confined at the project site (Id.), by definition there would be no recharge at that point because the confining layer would prevent the recharge from reaching the aquifer. The rate the well level increased, almost ten feet in a week, indicates that rainfall at the site likely did not cause the level to rise.

Kobor and O'Connor correctly note that the water in the tuffaceous aquifer is "more likely being supplied from inflows from upgradient portions of the tuffaceous aquifer" (Id.) but are incorrect in suggesting that inflows is "rather than from river flows" (Id.). Unless they conclusively identify the recharge zone for the aquifer, which Kobor and O'Connor have not done, the recharge zone for the tuff could be the river upstream at a location where the tuff intersects the river. Drawdown from the tuff aquifer, caused by the cumulative pumping of all wells completed in that aquifer, would cause a gradient to induce recharge from the river. Cumulative well development of that aquifer would also have caused a deficit beyond that caused by the drought.

During a dry year, the groundwater level throughout the valley floor would be lower due to pumpage from the previous year that has not recovered, as discussed in the previous section. Increasing the river stage increases the gradient driving flow into the groundwater, with the amount of induced recharge and the rate that groundwater levels recover dependent on the conductivity of the connection. Observations of well water levels increasing due to high river flows complements the observations in the previous section regarding long-term groundwater level observations.

Kobor and O'Connor suggest that the fact that static water levels are 15 to 20 feet below the elevations of the riverbed is evidence of a lack of connection. In contrast, this is evidence for a significant gradient for flow to be drawn from the river. Kobor and O'Connor also suggest that a lack of response in the alluvial aquifer indicates a lack of connection. This ignores the fact that the connection is due more to the overall drawdown in the valley floor and its connection to the river rather than the specific connection of one well to one observation point. It is a cumulative pumping issue and increasing pumpage at Girard would increase the cumulative drawdown.

In summary, increased use of groundwater from near a river is essentially unplanned conjunctive use management. More groundwater water storage is used during dry years inducing more water to recharge during wet years; this decreases flows in the river. As groundwater pumpage increases with time, downward trends in water level over years and slower seasonal recovery from dry-season pumping will be observed more frequently. Because the County does not monitor pumpage, it has no way of distinguishing whether pumping or drought is causing the observed drawdown.

### **Conclusion**

Every change in pumping from wells near a river affects the gradient of the groundwater surface connected with the river and therefore affects the amount of water discharging from the river into the surrounding groundwater. This is due to the fact that everything in the flow system near the river is connected. Pumping has a cumulative effect on groundwater flows near the river, but the effects of pumping take time to manifest depending on their distance from the river and complexity of the system.

It is simply not credible to conclude, as the revised NegDec does, that pumping will have no effect on groundwater levels. The County does not know the level of pumping required to cause the current year-to-year and seasonal trends in water level because the County does not currently require pumpage rates be measured and reported. Essentially, the County does not know how much recharge is actually pumped. The County has an assumed rate of recharge that is not measured; rather it is estimated based on a highly uncertain water balance calculation. Consequently, the County has no way of knowing how much additional recharge from the river the current pumping induces.

It is clear however, that the pumping associated with the Girard Project together with pumping for other proposed projects will adversely affect the Valley's groundwater levels.

## References

Cherkauer DS (2004) Quantifying ground water recharge at multiple scales using PRMS and GIS. *Ground Water* 42(10:97-110

Fetter CW (2001) *Applied Hydrogeology*, 4<sup>th</sup> Edition. Prentice-Hall

Kobor J, O'Connor M (2015) Letter to Vintage Wine Estates, Summary of Water Availability Analysis findings and response to 09/18/15 letter from Shute, Mihaly, and Weinberger concerning the proposed Girard Winery. O'Connor Environmental, Inc., Sept 29, 2015.

Luhdorff and Scalmanin Consulting Engineers (L&S) (2015) Napa County Comprehensive Groundwater Monitoring Program, 2014 Annual Report and CASGEM Update, Prepared for Napa County, February 2015.

Luhdorff and Scalmanin Consulting Engineers (L&S), MBK Engineers Consulting Engineers (2013) Updated Hydrogeologic Conceptualization and Characterization of Conditions. Prepared for Napa County. January 2013.

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

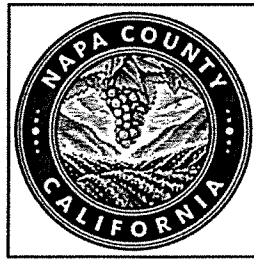
Myers T (2015b) Technical Memorandum, Review of Girard Winery Use Permit P14-00053 and County Responses to Previous Comments. August 15, 2015.

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, March 26, 2015

717745.2

# EXHIBIT 2



**NAPA COUNTY GRAND JURY  
2014-2015**

**MARCH 31, 2015  
FINAL REPORT MANAGEMENT OF**

**GROUNDWATER**

**AND RECYCLED WATER:  
IS NAPA COUNTY IN GOOD HANDS?**





# **MANAGEMENT OF GROUNDWATER AND RECYCLED WATER: IS NAPA COUNTY IN GOOD HANDS?**

## **SUMMARY**

Every year the Napa County Grand Jury is asked to be the citizens' watchdog of city and county government. It is the Grand Jury's job to report on the performance of individual agencies and officials and make recommendations for improvements when warranted.

This Grand Jury chose to look at two distinct water supplies within the county:

- Groundwater
- Recycled Water

We investigated Napa County's management of groundwater for the following reasons:

- Continued drought
- Napa County's reliance on agriculture and its need for water
- Many newspaper articles expressing concern over increased development and asking, "Where will the water come from?"

We investigated the management of recycled water to determine the following:

- Is recycled water a viable alternative to potable water for irrigation purposes?
- Who is using recycled water?
- Who is not using recycled water but should be?

Accordingly, the 2014-2015 Napa County Grand Jury chose to investigate current practices, criteria, regulations, and processes that have been put in place to govern the availability of groundwater and recycled water within Napa County.

The investigation was conducted through interviews with:

- Personnel of city, county and independent agencies
- Well drilling companies
- A major winery that owns and manages several vineyards in and outside of Napa County
- A groundwater geologist who has worked with individual Napa County cities, wineries, and vineyard owners on groundwater issues

The Grand Jury also reviewed many state and local governmental documents, newspaper and periodical articles, and did Internet research to complete this investigation.

## **GROUNDWATER SUMMARY**

After completing the investigation, this Grand Jury was impressed with the expertise, professionalism, and overall responsiveness to local conditions by the County and the agricultural community.

The Grand Jury's investigation found that for many years the County has studied the hydrogeology of Napa County and has worked cooperatively with consultants and water users to establish guidelines and limits on groundwater extraction. Specific examples of the County's involvement include but are not limited to the following:

- Monitoring the Valley floor and Pope Valley aquifers twice yearly through a network of 115 wells, which are mostly privately owned.
- Implementing a well permitting process requiring a Water Availability Analysis to study whether sufficient water is available for the requested project and the potential impact of new wells on nearby existing wells.
- Appointing a citizen Groundwater Resources Advisory Committee (GRAC) to advise them on effective measures to control groundwater usage, and to encourage groundwater users to conserve water and to join the County's well monitoring program.
- Working with the Farm Bureau, the Watershed Information Center and Conservancy of Napa County (WICC), and other organizations to provide educational outreach programs to all involved with groundwater.

However, the investigation did uncover information that was troubling to the Grand Jury:

- The County does not monitor groundwater usage and thus is unable to enforce rules or guidelines on water extraction. Currently, all well monitoring is voluntary.
- Finding water on the county's hillsides is problematic when compared to the Valley floor. Water is easily found on the floor, but hillsides are a 50-50 proposition.

- The County’s use permit process may not be adequate to decide whether new vineyards should be planted on the hillsides.
- The County does not have a formalized contingency plan (What If) to manage its groundwater supply in case the drought continues.

## **RECYCLED WATER SUMMARY**

Recycled water is becoming an important aid in the conservation of both groundwater and potable city water. Napa Sanitation District (NSD) is by far the largest source of recycled water in the county. However, they are limited in how much wastewater can be recycled due to storage and infrastructure limitations.

Currently, NSD processes 11,000 acre-feet (3.5 billion gallons) of wastewater annually and produces about 20% of this as recycled water. This percentage will grow to about 45% once the new Milliken-Sarco-Tulocay (MST) and the Los Carneros-Stanley Ranch pipelines are completed.

An opportunity to increase the use of recycled water further rests with the Napa State Hospital (NSH). NSH personnel told the Grand Jury they could cut their city water bill in half by converting their irrigation system to recycled water from city potable water. According to the City of Napa Water Department, NSH currently uses approximately 56 million gallons (172+ acre feet) of city water for irrigation of their common areas.

If NSD weren’t limited by wastewater storage and infrastructure capacity, they could produce substantially more recycled water for additional irrigation usage.

## **GLOSSARY**

DWR	Department of Water Resources (State)
GRAC	Groundwater Resources Advisory Committee
MST	Milliken-Sarco-Tulocay area (rural area east of Napa)
NSD	Napa Sanitation District
NSH	Napa State Hospital
SGMA	Sustainable Groundwater Management Act (State)
WAA	Water Availability Analysis
WICC	Watershed Information Center and Conservancy

## **BACKGROUND**

### **Groundwater**

Napa County, like the rest of California, is suffering from a three-year drought. Despite sparse rainfall, residential, commercial, and agricultural development projects continue to be brought forward to the County Planning Department and eventually to the Board of Supervisors for approval. Locally, many citizens have expressed concern through “Letters to the Editor” to the *Napa Valley Register* and have asked the question, “*Where will the water come from for additional development?*”

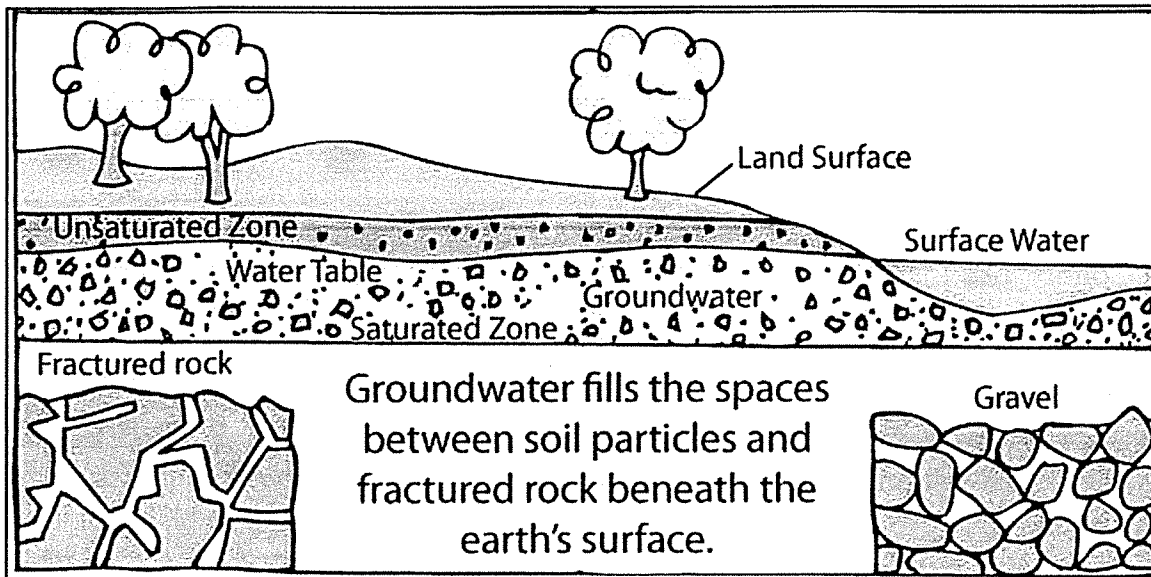
Many leading groundwater experts have said the state will need at least 150% of a normal rainfall year to begin to think of the drought ending. An article in the December 16, 2014 *San Francisco Chronicle* reported that California has a water deficit of 11 trillion gallons, about one and a half times the maximum volume of Lake Mead, America’s largest reservoir.

These concerns led the 2014-2015 Grand Jury to study the groundwater supply in Napa County. Because “water” is such a huge and complex subject, we limited our research to whether the County is adequately measuring and managing its groundwater supply in order to insure its continued availability for generations to come. Specifically, the Grand Jury wanted to identify the following:

- Current practices, criteria, regulations, and processes that have been put in place to govern the continued availability, monitoring, and sustainability of groundwater within Napa County.
- The availability of recycled water as a viable alternative for irrigation use to reduce the pressure on both the groundwater and city potable water supplies.

### **What is Groundwater?**

*The Groundwater Foundation* describes groundwater as the water found underground in the cracks and spaces in soil, sand, and rock. It is stored in and moves slowly through geologic formations of soil, sand, and rocks called aquifers.



Groundwater is used for drinking water by more than 50% of the people in the United States and 99% of all people who live in rural areas. The largest use of groundwater is to irrigate crops. In Napa County approximately 80% of groundwater is used for agricultural purposes. Groundwater supplies are replenished or recharged by rain and snow melt that seeps down into the cracks and crevices beneath the land's surface.

Water in aquifers is brought to the surface naturally through a spring or can be discharged into lakes and streams. Groundwater can also be extracted through a well drilled into the aquifer. A well is a pipe in the ground that fills with groundwater. This water can be brought to the surface by a pump. Most groundwater in Napa County is extracted through wells.

### What is Recycled Water?

Recycled water is the fastest growing water supply in California. Recycled water is wastewater effluent that is treated and disinfected to provide a non-potable supply that is safe and suitable for food crop and landscape irrigation and some industrial processes. In California, recycled water is regulated by the California Department of Public Health for quality and usage. There are several categories of recycled water. The highest quality is "disinfected, tertiary treated water" and the Grand Jury refers to this quality when speaking of recycled water. Recycled water is widely used and accepted as an environmentally responsible way to conserve scarce and expensive potable water supplies throughout the arid and semi-arid portions of the United States.

Recycled water is clean, clear, and safe. No health-related incidents have ever been linked to the use of recycled water. Recycled water quality standards are more stringent than those for surface streams, rivers, and the Bay. The California Department of Health Services and the California Regional Water Quality Control Board regulate the production, distribution, and use of recycled water. California's regulations are some of the most stringent in the world.

Napa Sanitation District's recycled water meets the highest quality standard, 'Unrestricted Use,' as specified by the California Water Recycling Criteria, Title 22 of the California Code of Administration.

## **METHODOLOGY**

### **Interviews**

To complete this study, the Grand Jury interviewed personnel from the following local agencies:

- Napa County Public Works Department
- Napa Sanitation District
- City of Napa Water Department
- Napa County Farm Bureau
- Napa State Hospital
- Napa County Groundwater Advisory Committee

Additional interviews were conducted with:

- Personnel from several city, county, and independent agencies
- Well drillers with many years of experience drilling and maintaining wells in the county
- A major winery that owns and manages several vineyards in and outside Napa County, and
- A groundwater geologist who has worked with individual Napa County cities, wineries, and vineyard owners on groundwater issues

All interviewees were selected for their expertise and their willingness to speak candidly with the Grand Jury.

### **Documents Reviewed**

- Organization Charts for City of Napa Water Department
- Organization Chart for Napa County Public Works

- Contract between NSD and The City of Napa Water Department
- Contracts between NSD and landowners who sign up for the Recycled Water Pipeline in the MST and Los Carneros areas
- Documents produced by the State of California and County of Napa
- California Senate Bill 1739, SB1319, and Assembly Bill 1178 which were combined to form California's *Sustainable Groundwater Management Act* (SGMA)
- Napa County *Water Availability Analysis*
- Napa County *Groundwater Conservation Ordinance*
- "Napa County Groundwater Monitoring Plan" – January 2014 report from Luhdorff & Scalmanini Consulting Engineers
- "Understanding Groundwater in Napa County" - March 2014 report from Luhdorff & Scalmanini Consulting Engineers
- *Understanding Groundwater in Napa County* – Luhdorff & Scalmanini, Consulting Engineers – Updated February 2015
- NSD's *Strategic Plan for Recycled Water Use In the Year 2020* – Adopted in 2005

### **Internet Searches**

- Napa County Board of Supervisors: [www.countyofnapa.org/bos/](http://www.countyofnapa.org/bos/)
- Napa County Public Works: [www.countyofnapa.org/PublicWorks/](http://www.countyofnapa.org/PublicWorks/)
- Napa County Planning, Building and Environmental Services: [www.countyofnapa.org/planning/grac](http://www.countyofnapa.org/planning/grac)
- Groundwater Resources Advisory Committee: [www.countyofnapa.org/bos/grac/](http://www.countyofnapa.org/bos/grac/)
- Napa County Assessor: [www.countyofnapa.org/assessor /](http://www.countyofnapa.org/assessor/)
- Napa Sanitation District : [www.napasan.com](http://www.napasan.com)
- Source Water Collaborative Forum: [www.sourcewatercollaborative.org](http://www.sourcewatercollaborative.org)
- Groundwater Foundation : [www.groundwater.org](http://www.groundwater.org)

## **DISCUSSION**

### **Groundwater**

Whether it is the source of your drinking water or the water used to grow the food on your table, groundwater is vital to life. As such, every person plays a role in protecting and conserving groundwater.

For decades the State has stumbled when it comes to managing groundwater supplies. California has managed the state's groundwater as if its supply were

unlimited, instead of considering it a precious resource that must be managed properly and efficiently.

- In its August 15, 2014 editorial, the *Sacramento Bee* notes that it was in 1962 that an Assembly Interim Committee on Water dodged the issue of needed groundwater management by advising the Legislature it should act if the situation got worse. It got worse.
- Sixteen years later in 1978 the *Governor's Commission to Review California Water Rights*, a group commissioned by Governor Jerry Brown, found the groundwater situation was critical and that comprehensive local management had not been undertaken in many overdrafted areas of the state. Again there was no action.
- An August 18, 2014, *Los Angeles Times* column said the State has been ignoring experts' increasing warnings regarding groundwater depletions for decades holding off on groundwater regulation since statehood.
- Assembly Bill 1739 stated that between 2003 and 2009 the groundwater aquifers for the Central Valley and its major mountain water source, the Sierra Nevadas, lost almost 26 million acre-feet of water (greater than 8 trillion gallons of water), nearly enough water to fill Lake Mead, America's largest reservoir.

On September 16, 2014, Governor Jerry Brown signed into law a historic three-bill package (SB1168/AB1739/SB1319) named the *Sustainable Groundwater Management Act* (SGMA) that creates a statewide system of groundwater regulations for sustainable management of California's groundwater basins. This is the first law enacted since statehood that focuses on the management of groundwater.

A key requirement of California's SGMA (Assembly Bill 1739, SEC. 19, Chapter 11) mandates that groundwater be managed locally, and if a local community fails to do so, the state will step in and take over the management of that community's groundwater supply.

Additional requirements include:

- By January 31, 2015: Department of Water Resources (DWR) is to prioritize and publish a list of all groundwater basins classified as high, medium, low, or very low priority based on the existence and severity of overdraft conditions (all of Napa County basins are classified as "medium" priority).
- By January 1, 2016: DWR is to adopt regulations on criteria for modifying groundwater basin boundaries.



- By June 30, 2017: Napa County must designate or elect a local agency (e.g., the Board of Supervisors) to be a sustainability agency for water basins.
- By January 31, 2020: Groundwater sustainability plans are required for medium and high-priority basins that are determined to be in critical overdraft.
- By January 31, 2022: Groundwater sustainability plans are required for medium and high-priority basins that are determined not to be in critical overdraft.
- Twenty years after plan adoption: Groundwater management plans to achieve the sustainability goal.

The SGMA is a good step forward and one that is long overdue. However, the SGMA is focused on long-term results and does not address immediate concerns about groundwater. It becomes incumbent upon local entities to be proactive and to take steps now to insure adequate groundwater is available into the future.

The Grand Jury learned during interviews with Napa County Public Works Department that 80% of groundwater use in Napa County is used by agriculture. However, a groundwater geologist we interviewed disputed the 80% figure, saying vineyards use relatively little water and that an acre of vineyards uses less water than an acre of average size residential homes would use. Regardless of the exact percentage, most agree that the County, grape growers, and large landowners must work together proactively to develop policies and procedures for managing groundwater efficiently and to insure its sustainability for generations to come.

### **Napa County Groundwater Management**

Napa County Public Works Department's opinion is that the SGMA's impact on Napa County will be minimal and that Napa County has been ahead of the curve for years on groundwater management.

The Grand Jury's investigation shows that for decades the County has been ahead of the State regarding its position on groundwater being a resource that must be preserved. For example, they:

1. Studied for decades the availability of groundwater, especially as it impacts agriculture.
2. Employed technical consultants to conduct several geohydrologic studies of the county.
3. Implemented regulations and other actions to manage the groundwater supply, including well monitoring and stricter permitting rules.

4. Appointed in September 2011, the Groundwater Advisory Committee (GRAC), a 15 member committee consisting of volunteer citizens with a variety of backgrounds, to assist the County and outside consultants with the tasks of groundwater management. For over two years, GRAC was involved with collection and analysis of data, the development of a large well monitoring program, revisions of protocols and regulations, community educational outreach, and the development of county groundwater sustainability objectives.

5. Passed two key regulations that control the extraction and use of groundwater resources in the County and insure that groundwater use is beneficial and not wasteful:

**A. *Water Availability Analysis* (1991)**

- o Sets up guidelines to determine if a proposed project will have an adverse impact on the groundwater basin as a whole or on the water levels of neighboring wells with the overriding benefit of helping to manage groundwater resources.
- o Consists of three phases. If the amount of water to be extracted exceeds thresholds assigned to the parcel, then further study may be required before the permit is approved or denied.

▪ **Water extraction thresholds:**

Valley Floor Land Parcels: 1 acre-foot per acre of land (an acre-foot of water is the amount of water it takes to cover one acre of land to a depth of one foot, or 325,851 gallons). Therefore, a 40-acre parcel will have an acceptable level of groundwater use of 40 acre-feet per year.

Hillside Parcels: Determined through the permitting process utilizing the Water Availability Analysis Report as a guide.

“Groundwater Deficient Areas” as defined in the Groundwater Conservation Ordinance will have the threshold established for that specific area. The Milliken-Sarco-Tulocay Basin (MST) is currently the only “groundwater deficient area” and has an established threshold of 0.3 acre-feet per acre per year. Thus, a 40-acre parcel has an acceptable level of water use of 12 acre-feet per year.

**B. *Napa County Groundwater Ordinance*, (first implemented in 1999)**

- o Purpose is to regulate to the greatest extent possible the extraction and use of groundwater resources in Napa County and to prohibit wasteful extraction for unreasonable or non-beneficial

purposes in order to promote groundwater conservation and best management practices and maximize the long-term beneficial use of the county's groundwater resources.

- o Includes a Groundwater Permit section that applies to areas of the county that are designated as groundwater deficient. These requirements are currently applied only to the MST area of the county:
  - Metering of water use is mandatory.
  - Permit holders are required to take monthly meter readings and to submit their readings to the Public Works Department every six months.
  - If water use during any year exceeds the approved use, the permit holder is required to reduce water use the following year or face penalties as written into the Groundwater Conservation Ordinance.

These two regulations along with others have enabled the County to improve the well permitting process and to help insure approved projects requiring groundwater are in the best interests of the applicants, neighboring properties, and the county at large.

A key requirement of managing groundwater is to monitor the recharge of the aquifers. With the assistance of the GRAC, the County implemented an ongoing well monitoring program with 115 mostly individually owned wells. At the end of each October, when the wells are at their lowest levels, they drop a line into the wells and measure how far down the line goes to find the water levels. They repeat this process at the end of April, when the wells are at their highest levels. They then compare the results to past years' water levels and make a determination of the recharging ability of the aquifers.

Based on the data collected for years, Napa County Public Works states that the aquifers are recharging normally throughout the Valley floor and that a problem currently does not exist. (They do recognize that this is not necessarily the case on the hillsides where they say each parcel must be studied independently, and a generalization cannot be made as to the recharge ability of individual aquifers.)

However, a groundwater geologist had a different viewpoint and told the Grand Jury that aquifers are recharged only by rainwater and surface water runoff. If there is no rain or limited rain, the aquifer will not recharge to normal levels. There will be a steady decline in the water level until the rains come back.

In contrast to the County's position, the well drillers reported that wells on the Valley floor must be drilled to depths of 300-750 feet and in some cases over 1,000 feet to find water vs. a drilling depth of 100-200 feet or less in previous years. They still find water on the Valley floor 90-95% of the time, just at lower depths.

The well drillers agree that it is far less certain that water will be found on the county's hillsides. Drillers that were interviewed said finding water there is a 50-50 proposition and that reports of wells drying up are not uncommon.

### **Conclusions -- The County's Management of Groundwater**

This Grand Jury believes that the County is doing a good job as stewards of groundwater and that Napa's citizens should be pleased with the professionalism, expertise, and involvement of all parties (governmental, agricultural, and commercial) when it comes to groundwater management. It is our belief that those involved are qualified and are doing all they can to manage our groundwater supply

Despite the efforts by the County, this Grand Jury does have some concerns that we believe need to be addressed:

- The differences between what the well drillers and the geologist stated and what the County believes is happening on the Valley floor with respect to groundwater levels and aquifer recharge.
- The MST area has been overdrafted for decades and there are frequent groundwater problems in the Carneros area.
- Most well owners have groundwater extraction limits that cannot be enforced by the County. With the exception of the MST, their groundwater usage is not monitored, even for large water users. There are provisions in the new SGMA that would allow the local agency to impose fees to fund the costs of groundwater management, including the costs of monitoring users' groundwater usage.
- The County does not have a groundwater management contingency plan in place should the drought continue.

This Grand Jury would stress that there are some troubling issues and that the County would be better served planning for a potential future disaster vs. waiting for it to happen and then trying to put a plan together quickly. Citizens should expect their governmental officials to be prepared for all potential outcomes and have procedures or policies in place that they may rely on when needed.

## Recycled Water

### Napa Sanitation District (NSD)

NSD provides wastewater collection, treatment, and disposal services to customers in the City of Napa and surrounding unincorporated areas. Each year they process over 3.5 billion gallons of wastewater (11,000 acre-feet) and produce over 700 million gallons of recycled water (2,200 acre feet) for agricultural and landscaping use. Current recycled water production represents about 20% of the total wastewater processed.

Operating in accordance with the District's *Strategic Plan for Recycled Water Use*, NSD's vision is to maximize the production of recycled water in order to reduce dependence on and to preserve groundwater supplies. Specifically, their goal is for all parks, cemeteries, schools, hospitals, vineyards, and other major users of potable water for irrigation to be converted to recycled water. Currently, Napa Valley College, the airport area, Napa Corporate Park, and golf courses in South Napa are all using recycled water.

To increase the availability and use of recycled water, NSD is in the process of building two pipelines that will carry recycled water to the MST and Los Carneros/Stanly Ranch areas. The pipelines are scheduled to be completed this year. Once the pipelines are completed, NSD's recycled water production will increase from 20% to more than 45% of all wastewater processed.

#### 1. Milliken-Sarco-Tulocay (MST) Pipeline

MST customers will be assessed a flat amount on their tax bills for 20 years and also will be responsible for all costs associated with hooking up to the main pipeline. Additionally, the consumers will pay for the water they use. All hook-ups will be metered and monitored by NSD personnel.

The pipeline will be available (on a voluntary basis) to all parcels along the pipeline route in the MST area. However, the primary focus is to convert large landowners and agricultural users to recycled water from groundwater for irrigation purposes.

It should be noted that once a property "opts in" to hook up to the pipeline, that property cannot later "opt out". Even if the property is later sold, the new owner will be obligated to remain on the pipeline and pay the tax assessment. NSD personnel reported that as more customers sign up for recycled water, the tax assessment may be decreased.

## **2. Los Carneros/Stanly Ranch Pipeline**

Connecting to the pipeline in the Los Carneros/Stanly Ranch area is optional. However, if a landowner opts out, the pipeline may go around the property and the owner may not be able to connect in the future. The cost is \$5,700 per acre plus hook up and water usage costs. Over 100 landowners have voluntarily signed up to date.

NSD has written agreements with each customer that opts in. These spell out how the recycled water is to be used. Water meters will be installed and read by NSD personnel to insure an individual property is not exceeding their approved amount of recycled water usage.

## **3. Napa State Hospital Recycled Water Potential**

Another opportunity to reduce reliance on groundwater would be to convert Napa State Hospital's landscape irrigation from potable water to recycled water. Even though they are in the county, they are using Napa city potable water for all their water needs including irrigation.

According to the City of Napa Water Department, the State Hospital historically averages 142 million gallons (435 acre-feet) of potable water annually. An estimated 56 million gallons (172 acre-feet) is used for irrigation. Converting their landscape water needs to recycled water would increase NSD's current recycled water production by 8%.

Those interviewed stated that Napa State Hospital could cut their city water bill substantially by converting their irrigation system to recycled water. The pipeline to the MST is already located underneath the hospital property and only needs to be hooked up to their irrigation system.

The Grand Jury was told the cost to do the hook-up was about \$5,000,000 and the estimated payback would be 10 years. Funding has been requested multiple times, but the State of California has not approved this project as yet. This is a priority for the Hospital Administration and is supported by many at the state level; but so far, funding has not come through.

The State has made water conservation mandatory since 2014. It would make sense for the State to fund the conversion of the State Hospital's irrigation system to recycled water. This would be a true win-win situation. This Grand Jury strongly recommends that the County and City of Napa

get involved with the State through their local and state government officials and lobbyists to make this a priority for the State.

#### **NSD's Ability to Produce Additional Recycled Water**

Lack of available storage is keeping NSD from processing more recycled water. To increase storage, NSD would have to increase the size of existing ponds and/or build new ponds. However, finding large quantities of land that would be needed for new ponds is difficult and very expensive.

NSD works with the North Bay Water Reuse Authority, a group of water and sanitation agencies in Sonoma, Marin, and Napa Counties, to coordinate and seek state and federal funding for recycled water expansion projects. Funds for the pipelines under construction are coming from a variety of governmental sources including a federal grant, a state revolving loan from the State Water Board, and funds from Napa County Measure A.

NSD now has a new funding opportunity through the passage of California's Proposition 1, "Water Quality, Supply, and Infrastructure Improvement Act of 2014." This act authorizes \$7.12 billion in general obligation bonds for state water supply infrastructure projects such as water system improvements, surface and groundwater storage, water recycling, and a myriad of other water related undertakings. Of the total money authorized, \$725 million will be available for water recycling and treatment, which includes recycled water storage and infrastructure projects. To obtain grants or loans from the state NSD will have to compete against other projects requesting funds and must pay at least 50% of the project costs.

#### **NSD's Agreement with the City of Napa Water Department**

It was learned through interviews that NSD has an agreement with the City of Napa Water Department to reimburse the city one year's revenue for every customer switched from city water for irrigation purposes to recycled water. This agreement ends in 2017 and currently there are no renewal discussions scheduled.

This Grand Jury recommends that both NSD and the City of Napa Water Department begin discussions to ensure that this agreement is renewed at the appropriate time. Everyone wins by reducing the need for potable water and groundwater resources.

## **FINDINGS – GROUNDWATER**

F1. The County has done an effective job of managing groundwater resources to date. However, there is no contingency plan in place that details the steps to

be taken in case the drought continues and groundwater supplies are further depleted.

- F2. Despite the continuing drought and some evidence that aquifers on the Valley floor may not be fully recharging, there appears to be sufficient groundwater available on the Valley floor at this time.
- F3. Groundwater is less plentiful on the county's hillsides, and each parcel must be studied independently. There have been a number of reports of existing wells drying up, and finding water for new wells is often difficult.
- F4. The County cannot enforce their usage restrictions effectively because they do not monitor usage of groundwater or enforce limits on groundwater extraction.

## **FINDINGS – RECYCLED WATER**

- F5. The lack of adequate storage capacity and the need for additional infrastructure prevent NSD from maximizing the amount of recycled water that could be processed.
- F6. There have been no discussions to date to renew the agreement between NSD and the City of Napa Water Department, expiring in 2017, requiring NSD to reimburse the city one year's revenue for every customer converted from city water to recycled water.
- F7. Napa State Hospital could cut their potable water usage substantially if they converted their irrigation system to recycled water.

## **RECOMMENDATIONS – GROUNDWATER**

- R1. By December 31, 2015, the Napa County Public Works Department to develop a contingency plan, approved by the Board of Supervisors, that lays out the major steps to be taken in the event of severe drought conditions.
- R2. By June 30, 2016, the Napa County Public Works Department to require major groundwater users to meter and report their water usage on a quarterly basis to ensure all well owners are following prescribed usage rates.
- R3. By June 30, 2016, the Napa County Public Works Department to adopt policies to encourage all other groundwater users to meter and monitor their well water usage.

## **RECOMMENDATIONS – RECYCLED WATER**



- R4. NSD to immediately begin exploring additional opportunities to expand their wastewater storage and infrastructure capacity through funds that may be available from the passage of California Proposition 1, the \$7.1 Billion “Water Quality, Supply, and Infrastructure Improvement Act of 2014.”
- R5. By June 30, 2016, NSD and the City of Napa Water Department to begin negotiations to extend the current agreement that requires NSD to reimburse the Water Department for lost revenue when a city water customer converts to recycled water.
- R6. By December 31, 2015, that NSD and the City of Napa Water Department to begin working with local officials, lobbying groups, and trade associations to persuade the State to fund the conversion of Napa State Hospital to recycled water for their irrigation purposes.

## **REQUEST FOR RESPONSES**

Pursuant to California Penal Code section 933.05, the 2014-2015 Grand Jury requests responses as follows:

- Napa County Board of Supervisors: R1, R2, R3
- Napa Sanitation District Board of Directors: R4, R5, R6
- City of Napa: R5, R6

# EXHIBIT 3



**NAPA COUNTY GRAND JURY  
2014-2015**

**MAY 12, 2015**

**FINAL REPORT**

**ARE NAPA COUNTY WINERIES  
FOLLOWING THE RULES?**



1 **ARE NAPA COUNTY WINERIES FOLLOWING THE RULES?**

2 **SUMMARY**

3 The Grand Jury undertook an investigation to determine if the Napa County  
4 Planning Department is issuing winery use permits that conform to the  
5 requirements of the Winery Definition Ordinance (WDO), which regulates wineries  
6 located within the Napa County Agriculture Preserve. The Grand Jury also  
7 investigated if the Planning Department is adequately monitoring the compliance  
8 of the wineries with their use permit requirements.

9 Wineries and the attendant vineyards are Napa County's largest industry providing  
10 the most jobs and greatest economic impact on the county. Wineries have been  
11 present since the earliest Europeans settled in the region, but the growth of  
12 wineries and the expansion of existing wineries have dramatically increased their  
13 footprint in the county in recent years. Increasing public concern over the impact  
14 of winery growth on traffic, water resources, and other quality of life issues has  
15 been expressed in the news media and in public hearings.

16 The approvals of new wineries and winery expansions are regulated through use  
17 permits issued by the County and are administered by the County Planning  
18 Department. The Planning Department is also charged with enforcing winery  
19 compliance with the conditions of their use permits. Wineries established before  
20 the enactment of the current regulations are to some extent exempt from these  
21 regulations, but if these wineries expand, the current regulations do apply. Public  
22 concern has also been expressed about the lack of transparency in winery  
23 compliance with their use permit conditions.

24 The number of wineries in Napa County is growing. According to data published  
25 by the Planning Department, in the seven-year period ending in 2013 a yearly  
26 average of 18 use permits were approved. These use permits authorized an  
27 average of eight new wineries each year, plus 10 winery expansions allowing  
28 approximately 180,000 gallons of additional wine production. There was an  
29 attendant approval of about an additional 28,000 visitors for tasting and 3,000  
30 visitors for marketing events for each year.

31 The focus of this investigation was to determine if the Planning Department has  
32 followed the guidance of the WDO in issuing use permits and if the winery audits

33 are sufficient to determine if the wineries are in compliance with their use permit  
34 requirements.

35 The Grand Jury concluded that the planning staff does a conscientious job of  
36 reviewing use permit applications for new wineries and for winery expansions to  
37 ensure their conformance with the WDO and the Napa County General Plan.  
38 Because of the number of applicants and the complexity of the permitting process,  
39 the length of time to obtain a permit frequently requires a year or more. The  
40 applicants bear the costs of the staff's time required to issue permits.

41 The Napa County Planning Department also has the responsibility for auditing the  
42 compliance of the wineries with their use permit conditions. The Grand Jury also  
43 concluded that the code enforcement staff is doing a professional job in its audit  
44 and compliance function in so far as their limited resources permit. There has been  
45 approximately 30% of one code enforcement inspector devoted to auditing winery  
46 compliance. An additional code enforcement inspector was added to the staff in  
47 January of 2015, but will have a range of duties other than winery audits. The  
48 Grand Jury reviewed the audit results of winery compliance with their use permits  
49 for calendar years 2011-2013.

50 The investigation revealed that only 20 wineries are audited each year out of the  
51 approximately 467 wineries in the Napa County winery database. In the audits of  
52 2011-2013 from 30% to 40% of the wineries audited were not in compliance for  
53 one or more requirements of their permits. The audits are limited in scope and all  
54 conditions specified by the use permits are not reviewed. This coupled with the  
55 relatively small number of wineries audited may not give a full picture of  
56 compliance.

57 The Grand Jury urges that the number and scope of the audits be increased to give  
58 a broader indication of compliance with the WDO even though this may require  
59 more code enforcement staff than currently employed. The identifications of the  
60 wineries that are audited are not released. The Grand Jury also urges that the  
61 names of non-compliant wineries be released to give greater transparency to the  
62 process and to raise public awareness.

63 Finally, the Grand Jury urges the Board of Supervisors and the Planning  
64 Commissioners to determine whether the WDO as written provides the regulatory  
65 framework necessary to maintain a winery industry that is consistent with the  
66 Agriculture Preserve Ordinance.

67

68 **GLOSSARY**

69 Ag Preserve: Agriculture Preserve of Napa County, Ordinance 274 of April  
70 9, 1968

71 General Plan: Napa County General Plan of 2007

72 TTB: Federal Alcohol and Tobacco Tax and Trade Bureau

73 WDO: Collective term for the Winery Definition Ordinances

74 Winery Definition Ordinance, Ordinance NO. 947 January 23,  
75 1990

76 Winery Definition Ordinance, Ordinance NO. 1340 May 11,  
77 2010

78 **BACKGROUND**

79 **AGRICULTURE PRESERVE OF NAPA COUNTY**

80 Concerned that residential and commercial development would slowly overwhelm  
81 the agricultural nature of Napa County, in 1968 the Board of Supervisors passed a  
82 landmark-zoning ordinance that created the first Agricultural Preserve in the  
83 United States. This ordinance reflected a commitment to agriculture as the  
84 "highest and best use" of most of the land outside of the local towns and the city of  
85 Napa. The ordinance dictated that the only commercial activity allowed in these  
86 areas was agriculture and, furthermore, set minimum lot sizes that prevented  
87 fragmentation of existing parcels, thus limiting the potential for development. The  
88 pertinent sections of the Agricultural Preserve Ordinance have been incorporated  
89 into the "Agricultural Preserve and Land Use" elements of the General Plan. The  
90 County's General Plan is the official policy statement of the Board of Supervisors  
91 and serves as a broad framework for guiding the development of Napa County.

92 **THE WINERY DEFINITION ORDINANCE (WDO)**

93 Wineries had been allowed in the Ag Preserve. But, with the ensuing pace of  
94 winery development in the county, it became clear that specific winery definitions  
95 were necessary as to what sorts of activities would be allowed in wineries to  
96 comply with the Agriculture Preserve Ordinance. To accomplish this, the County  
97 Board of Supervisors passed the WDO, Ordinance No. 947, in 1990. This

98 ordinance set out regulations and required a use permit for all wineries established  
99 after July 31, 1974. Wineries that were established before this date and were  
100 operating in a legal fashion could continue operation without a use permit.  
101 However, any expansion beyond the level that existed before July 31, 1974, would  
102 require obtaining a use permit.

103 The WDO regulates many facets of a winery's operations and design, including  
104 size, location, signage, availability of tours and tastings, production capacity, grape  
105 sourcing, special events, and retail sales. It also regulates the accessory uses of the  
106 winery facilities for promotion and marketing of wine. The WDO defines certain  
107 other activities that may be present on the winery property such as farm labor  
108 housing and day care for children, but does not allow non-winery related  
109 commercial development.

110 With some important qualifications, the WDO defines a winery as a business that  
111 makes wine. Specifically, it says a winery is an "agricultural processing facility"  
112 for "the fermenting and processing of grape juice into wine." The WDO allows for  
113 wineries to sell and market wine, but such marketing activity must be "accessory"  
114 and subordinate to production. The maximum square footage of structures devoted  
115 to accessory uses related to the winery must be 40% or less than the area used for  
116 wine production.

117 With the principal goal of preserving Napa County's agricultural lands, as well as,  
118 providing a reliable market for its agricultural products, the WDO dictates that new  
119 wineries or any expansion of existing wineries after January 23, 1990, must source  
120 at least 75% of their grapes from Napa County. Wineries that were established  
121 prior to this date, but obtained a use permit to expand their production must also  
122 use at least 75% Napa County grapes for the additional wine produced from the  
123 expansion.

124 The WDO was amended in 2010 by County Ordinance NO. 1340 to address  
125 certain issues related to the marketing of wine and the sale of other items in the  
126 wineries. Specifically covered in this ordinance are: the marketing of wine, food,  
127 and wine pairings conducted as part of "tours and tasting" and the sale of wine and  
128 wine related products at the winery. Retail sales of non-wine related products were  
129 prohibited.



130

## 131 **WINERY USE PERMITS**

132 As a result of the WDO, wineries that were established after July 31, 1974, were  
133 required to obtain a "use permit." Wineries that legally existed before July 31,  
134 1974, did not require a use permit to continue operation. These wineries are  
135 considered to be "grandfathered in" as to their production and marketing activities.  
136 However, any modification of a pre-July 31, 1974 winery's activities or expansion  
137 of its production of wine required a use permit conforming to the WDO. There is,  
138 however, no legal limit on the number of wineries operating in the county.  
139 The WDO established a minimum parcel size of 10 acres for new wineries, but  
140 recognized that many legally existing wineries were on smaller parcels. For these  
141 "small wineries" the WDO specified that a "Certificate of Exemption" must be  
142 obtained. Any expansion of the "small wineries" however, required that the  
143 winery proceed in accordance with the requirements of the WDO ordinance.

## 144 **METHODOLOGY**

145 The Grand Jury undertook a series of interviews with the Napa County Planning  
146 Department and Code Enforcement executives and working level professionals.  
147 Interviews were also conducted with a planning commissioner and a county  
148 supervisor. Additional interviews were held with a number of independent  
149 consultants and engineers who support and guide winery use permits applications  
150 with the county planning staff. The Napa Valley Vintner's staff was another  
151 valuable source of information on the winery industry in Napa County. The Grand  
152 Jury also attended a public hearing of a joint session of the Supervisors and the  
153 Planning Commissioners that heard over 60 comments from the public on the wine  
154 industry and its impact on the community.

155 In every case, all information and facts in this report were confirmed by a second  
156 source and in many cases by multiple sources unless otherwise noted in the report.  
157 Valuable insights to the audit process were gained by reviewing the Code  
158 Enforcement audit reports for wineries for calendar years 2011-2013. The WDO  
159 provided a framework for understanding winery regulations and the winery  
160 permitting process. The Napa General Plan provided general guidelines for the  
161 planned pace of winery and vineyard development in the County.

162

## 163 **DISCUSSION**

### 164 **USE PERMITS**

165 Use permits for new wineries or winery modifications are under the jurisdiction of  
166 the Napa County Planning Department. Applicants for winery permits are required  
167 to provide a detailed description of their winery business including the number of  
168 employees, maximum production rate, number and description of winery  
169 structures, and marketing programs. The reviews by the Planning Department are  
170 thorough and time consuming and frequently require 9 to 12 months or more  
171 before a permit is issued. The applicant bears the cost of the reviews.

172 Although the details of all winery permit applications are reviewed and vetted by  
173 the Planning Department, the final decision on approval or disapproval is the  
174 responsibility of the Napa County Planning Commissioners. The meetings of the  
175 Planning Commissioners are open to the public. If there is an aggrieved party to  
176 the issuance of a permit, the application may be brought before the County Board  
177 of Supervisors. The County Zoning Code does, however, define certain minor  
178 modifications to use permits that may be approved directly by the Planning  
179 Department without the involvement of the Planning Commissioners.

180 There has been considerable discussion in the local press and the community about  
181 opposition to certain winery and vineyard projects in the Valley and the impact of  
182 the industry's growth on traffic, the environment and other quality of life issues.  
183 These public concerns pose the question as to whether the WDO should be revised  
184 to moderate the growth of wineries. The planning staff was clearly sensitive to this  
185 public discourse and appeared to be proceeding cautiously in approving new use  
186 permits.

187 Considerable effort was expended to determine the actual number of wineries in  
188 the county. The Planning Department's public data indicates that there are 467  
189 wineries that have been issued use permits, but this does not include all wineries.  
190 Part of the difficulty in estimating the number of wineries is due to the number of  
191 "virtual wineries" These are wineries that do not own their own crushing and  
192 processing equipment, but use "brick and mortar" wineries to provide these  
193 services under contract. Use permits for wineries, however, "go with the land" and  
194 must include the production total for both their own wine and the wine of any  
195 custom crushing that the winery performs for virtual wineries.

196 Another source of uncertainty is that wineries that were established before July 31,  
197 1974, do not require a use permit unless they have applied for a permit to expand.  
198 Wineries in commercial areas not subject to agricultural land use zoning are also  
199 not included. These wineries are not included in the County database. The Federal

200 Alcohol, Trade and Tax Bureau, (TTB) which taxes the alcohol content produced  
201 by all wineries reported that there were 603 wineries in Napa County in 2014.  
202 (There are other estimates of the number of wineries from the State Alcohol  
203 Beverage Control Board and the Napa Valley Vintners membership and the  
204 planning staff has estimated that the number of wineries with separate labels and  
205 addresses could be as high as 1,260.) These differences in winery count between  
206 the County database, the TTB, and the other organizations are apparently due to  
207 the following:

- 208       ▪ Virtual wineries are not included in the County database.
- 209       ▪ Wineries in the County's municipalities have their own land use-zoning  
210       requirements and are not included in the County database.
- 211       ▪ Wineries in commercial or industrial zoned districts are not under  
212       agriculture land use zoning and would not be included in the County winery  
213       database.

214 The Planning Department is in the process of developing a more comprehensive  
215 winery database.

216 A number of consultants who support the wineries in applying for and obtaining  
217 use permits were interviewed and were very informative in evaluating the  
218 application process from the standpoint of the wineries in cost, time, and  
219 effectiveness. In their view, the time required to apply for and receive a permit has  
220 increased significantly. Since the applicant bears the cost, it has grown  
221 considerably more expensive to obtain a permit.

222 Although there has been public concern expressed in the public media about the  
223 impact of winery expansion in the City of Napa and other County municipalities,  
224 this investigation did not review the winery use permit and audit process for these  
225 municipalities

226 The number of wineries and the production of wines is growing. According to data  
227 published by the Planning Department for the seven-year period ending in 2014,  
228 there was an average of 18 new use permits issued each year, of which an average  
229 of eight are for new wineries. These use permits authorized an average production  
230 of approximately 180,000 gallons of additional wine per year. The attendant  
231 number of visitors is also growing. The new use permits for this period also  
232 authorized an average of about 28,000 additional visitors each year for tasting  
233 rooms and an average of 3,700 visitors for marketing events. It should be noted  
234 that all wineries do not necessarily produce the amount of wine allowed or have as  
235 many visitors as specified by their use permit.

236

237 **WINERY AUDITS**

238 The Code Enforcement staff is part of the Planning Department and is responsible  
239 for auditing winery compliance with their use permit requirements. Approximately  
240 30% of one code enforcement staff member's time has been devoted to winery  
241 audits.

242 The Planning Commissioners directed the Planning Department to initiate an  
243 annual "spot" audit of winery production in 2005. The Planning Commission began  
244 the production review by randomly selecting 20 wineries by blind draw. Prior to  
245 2009, only six wineries from the original 20 selected were audited, but since 2009  
246 all of the 20 wineries selected have been reviewed.

247 In 2010, the Planning Department broadened the scope of the audits and began  
248 reviewing tours and tastings log books and marketing events for all wineries drawn  
249 in the audit. The audit determined how the information was recorded and whether  
250 they were in compliance with the use permit conditions regarding visitations.  
251 Goods for sale in the tasting rooms were reviewed to determine if they met the  
252 definition in the WDO to allow only the sale of "winery related items."

253 Beginning in 2011, grape sourcing data were reviewed for each winery to  
254 determine if they were in compliance with the 75% Napa County grape  
255 requirement for Napa Valley wineries subject to the WDO. This information is  
256 available since all California wineries are required to submit grape sourcing  
257 information to the State of California's Department of Food and Agriculture.  
258 Information on winery production may also be checked against the data from the  
259 Federal Alcohol and Tobacco Tax and Trade Bureau, (TTB), which taxes the  
260 production of alcohol.

261 Winery audits are performed on a seven-year cycle such that if a winery is deemed  
262 to be in compliance it will not be subject to another audit for at least seven years.  
263 Wineries that are not in compliance are audited again the following year.  
264 However at this rate of 20 winery audits per year out of the County's database of  
265 approximately 467 wineries, it will take decades before all wineries have been  
266 audited and are audited again.

267 Winery audits review the following activities:

268 Is wine production within the limits of the use permit?

269 Is grape sourcing compliant with the 75% Napa County grapes requirement?

270 Are the number of tours and tasting events within permit requirements?

271 Are the number of marketing events within the permit limits?

272 Are all the products for retail sale wine related?

273 Winery audits do not review the following:

274 Water usage, which is vital to wine production, and wastewater treatment.

275 The accessory uses of facilities to determine if they meet the 40% or less  
276 square footage requirement of the area of the production facilities.

277 Penalties for non-compliance have been on a case-by-case basis and depend on the  
278 nature of the infraction, but have included monetary penalties and orders to limit or  
279 cease production. Generally, if the non-compliance is minor, such as a small  
280 overage in production for one year, the winery is allowed to continue its operations  
281 but is audited the following year to ensure that it is in compliance.

282 The planning and code enforcement personnel were forthcoming in addressing our  
283 inquiries. Audit reports were available upon request and the audits for 2011 -2013  
284 were reviewed. These reports provided hard data on the compliance of the audited  
285 wineries with their use permit requirements. For these audit years, the number of  
286 wineries that were out of compliance on one or more of the activities audited grew  
287 from 29% in 2011 to 40% in 2013. The non-compliant wineries were not  
288 specifically identified in the audit reports because the reports contain proprietary  
289 market information.

## 290 **FINDINGS**

291 F1. The code compliance audit does not review or inspect the following:

292 Water usage and wastewater treatment, which are essential to the production  
293 of wine.

294 The accessory uses of facilities to determine if they meet the 40% or less  
295 square footage requirement of the area of the production facilities.

296 F2. In the audit years 2011-2013, the number of wineries that were out of  
297 compliance on one of more activities audited varied from 29% to 40%. The  
298 names of the non-compliant wineries are not released to the public.

299 F3. The County's ability to expand the audit program is limited because only 30%  
300 of one code enforcement inspector has been devoted to winery audits. An  
301 additional inspector was hired in January 2015, but will have other code  
302 enforcement duties besides winery compliance inspections.

303 F4. Penalties or restriction of wineries' activities for non-compliance is  
304 determined by county officials. Since the penalties are decided on a case-by-  
305 case basis, wineries have no way of knowing the cost of code infractions.

306 F5. The lack of specificity in the winery database for actual production quantities  
307 makes it extremely difficult to determine if the growth of wineries is in  
308 conformance with the General Plan. The Planning Department is developing  
309 a more extensive winery database.

## 310 **RECOMMENDATIONS**

311 R1. By January 1, 2016, the Planning Department to increase the number of yearly  
312 winery code enforcement audits from the current rate of 20 audits per year so  
313 that every winery would be audited at least every five years or at such  
314 intervals that the Planning Commissioners or County Supervisors deem to be  
315 appropriate.

316 R2. By June 30, 2016, the Planning Department and the Planning Commissioners  
317 to develop a process for monitoring and inspecting winery water treatment  
318 and disposal. A plan for monitoring water usage should also be implemented.

319 R3. By January 1, 2016, the Planning Department to make the inspection reports  
320 of non-compliant wineries more transparent to the public in much the same  
321 fashion as health code violations of restaurants are reported.

322 R4. By June 30, 2016, the county Board of Supervisors and the Planning  
323 Commissioners to determine whether the WDO as written provides the  
324 regulatory framework necessary to maintain a winery industry that is  
325 consistent with the Agriculture Preserve Ordinance.

326 R5. By June 30, 2016, the Planning Commissioners to establish and publish a  
327 range of penalties and/or operating restrictions for non-compliance infractions  
328 of use permit requirements. Such action should encourage wineries to be  
329 more cognizant of the cost of non-compliance.

## 330 **REQUEST FOR RESPONSES**

331 Pursuant to Penal Code section 933.05, the Grand Jury requests responses as  
332 follows:

333     ▪ Napa County Board of Supervisors R1, R2, R3, R4, R5

334 

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that 335 reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who 336 provides information to the Grand Jury.
--



## McDowell, John

---

**From:** McDowell, John  
**Sent:** Monday, October 19, 2015 12:04 PM  
**To:** Balcher, Wyntress; Frost, Melissa  
**Cc:** Anderson, Laura; Gallina, Charlene; Apallas, Chris  
**Subject:** RE: Girard Winery, Use Permit P14-00053

Planning Commission Mtg.

OCT 21 2015

Agenda Item # 9A

What I just sent if the final version of sent from the commenter, and I enlarged the embedded letter so that it is viewable.

---

**From:** McDowell, John  
**Sent:** Monday, October 19, 2015 12:03 PM  
**To:** Balcher, Wyntress; Frost, Melissa  
**Cc:** Anderson, Laura; Gallina, Charlene; Apallas, Chris  
**Subject:** RE: Girard Winery, Use Permit P14-00053

Correspondence on Girard.

---

**From:** California Fisheries & Water Unlimited [<mailto:calfisheriesandwaterunlimited@gmail.com>]  
**Sent:** Monday, October 19, 2015 10:47 AM  
**To:** McDowell, John  
**Subject:** Girard Winery, Use Permit P14-00053

---

**From:** California Fisheries & Water Unlimited [<mailto:calfisheriesandwaterunlimited@gmail.com>]  
**Sent:** Monday, October 19, 2015 10:17 AM  
**To:** McDowell, John  
**Subject:** Girard Winery, Use Permit P14-00053

Mr. John McDowell  
Deputy Planning Director

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

Re: Girard Winery, Use Permit P14-00053

Mr. McDowell, Planning Commissioners;

Please place the attached document of the San Francisco Bay Regional Water Quality Control Board to the City of Calistoga of September 21, 2015, "Conditional Offer to Settle Violations of National Pollutant Discharge Elimination System (NPDES) Permit CA0037966", of the Dunaweal Wastewater Treatment Plant located at 1100 Dunaweal Lane, Calistoga, Napa County, into the administrative record for Girard Winery, Use Permit P14-00053. It provides further evidence of continuing problems at the municipal facility which is in close proximity to the Napa River, Simmons Canyon Creek (tributary to the Napa River), and the proposed Girard Winery project. Please note that many of the violations cited in this document were reported following the Cease and Desist Order issued by this same regulatory agency on November 12, 2014.

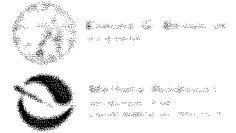


CF&WU continues to urge denial of Use Permit P14-00053 and recommends preparation of an EIR for this controversial project which has the potential to adversely impact the Northern Napa River and/or its tributaries.

Thank you,

Christina Aranguren  
California Fisheries & Water Unlimited

The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.



**San Francisco Bay Regional Water Quality Control Board**

September 21, 2015  
CW- 212750 (FA)  
Regulatory Measure ID: 402862

City of Calistoga  
Attention: Mr. Michael Kim, Manager  
414 Washington Street  
Calistoga, CA 94515

**Subject:** Conditional Offer to Settle Violations of National Pollutant Discharge Elimination System (NPDES) Permit CA0037966 (Order R2-2010-0104)

**Facility:** Dunawear Wastewater Treatment Plant located at 1100 Dunawear Lane, Calistoga, Napa County

Dear Mr. Kim:

This letter notifies the City of Calistoga (City) of alleged violations of permit effluent limitations requirements, and provides the City the opportunity to settle the violations through payment of \$12,000 in mandatory minimum penalties pursuant to Water Code sections 13385 and 13385.1. Please reply by October 21, 2015.

**NOTICE OF VIOLATION**

The Assistant Executive Officer alleges that the City has violated requirements identified in the attached Exhibit A. The City has the opportunity to address the alleged violations as discussed below.

**STATUTORY LIABILITY**

Water Code sections 13385(h) and 13385(i) require the assessment of a mandatory minimum penalty of \$3,000 for specified serious and other effluent limit violations. For the purposes of subdivision (h) of section 13385, failure to file a discharge monitoring report required pursuant to Water Code section 13383 for each complete period of 30 days following the deadline for submitting the report constitutes a serious violation. The City is also subject to discretionary administrative civil liabilities of up to \$10,000 for each day in which the violation occurs, plus \$10 for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Regional Water Board or the State Water Board (collectively "the Water Boards"), beginning

with the date that the violations first occurred<sup>1</sup>. The formal enforcement action the Water Boards use to assess such liability is an administrative civil liability complaint followed by a public hearing, although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to \$25,000 per violation. In addition, the Superior Court may assess up to \$25 per gallon discharged but not cleaned up in excess of 1,000 gallons.

#### CONDITIONAL OFFER TO SETTLE

The City can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the attached Exhibit A by accepting this conditional offer (offer). Details of this offer are described below, as well as in the "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (hereinafter "Acceptance and Waiver") enclosed herewith.

This offer does not address liability for any violation that is not specifically identified in the attached Exhibit A.

#### OPTIONS FOR RESPONSE TO OFFER

If the City accepts this offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (Acceptance and Waiver) on or before the reply date specified in the first paragraph of this letter. Note that when we receive the Acceptance and Waiver, this notice and offer will become a proposed settlement and part of the Regional Water Board files that are available to the public. The Acceptance and Waiver will then be posted for a 30-day public notice period. Based on comments received, the Executive Officer will decide whether to accept this proposed settlement. If acceptable, the Executive Officer will counter-sign the Acceptance and Waiver and an invoice will be sent to you for payment.

If the City contests some but not all of the violations identified in the attached Exhibit A, the City may elect to reserve the right to address the contested matters and resolve any uncontested violations through the payment of the mandatory minimum penalty for each uncontested violation. If the City chooses this option, please communicate with the Regional Water Board staff contact identified below to discuss the mechanism for memorializing that election on or before the reply date specified in the first paragraph of this letter.

To contest any of the violations alleged in the attached Exhibit A, please identify the specific violation and the basis for the challenge (factual error, affirmative defense, etc.) on or before the

---

<sup>1</sup> Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal. App. 4th 29, 48, 3 Writ. Cal. Procedure (4th ed. 1996) Actions, §405(7), p. 510.) Additionally, the State Water Resources Control Board had determined that the equitable doctrine of laches does not apply to mandatory minimum penalties. (State Water Board Order Nos. 2011-0053, 2011-0054, 2011-0055, 2011-0099.)

date specified in the first paragraph of this letter. Regional Water Board staff will evaluate the contested violation and take one of two actions:

- 1) Determine that the violation warrants dismissal and dismiss the alleged violation in the California Integrated Water Quality System (CIWQS) database, take no further action against the City for the alleged violation, and notify the City of that determination; or
- 2) Determine that the alleged violation is meritorious and notify the City of that determination. The City will then have 30 days from the date of the determination to accept settlement for those violations through mandatory minimum penalties. If the City chooses not to accept, or makes no reply to the determination, the City should expect to be contacted regarding formal enforcement action for the contested violations. In a formal enforcement action, information received by Regional Water Board staff during a formal investigation and assessment of the violation, as well as the staff costs associated with pursuing additional enforcement, may increase the liability amount beyond that which is set forth in this conditional offer.

#### CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Regional Water Board to publish and allow the public at least 30 days to comment on any settlement of an enforcement action addressing NPDES permit violations (Title 40 of Code of Federal Regulation section 123.27(d)(2)(iii)). Upon receipt of the City's Acceptance and Waiver, Regional Water Board staff will publish a notice of the proposed settlement of the violations.

If we receive no comments within the 30-day period and there are no new material facts available to the Regional Water Board, the Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code section 13385 and/or 13385.1.

If, however, significant comments are received in opposition to the proposed settlement, this offer may be withdrawn. In that case, the City's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the alleged violations will be addressed in a formal liability assessment proceeding. At the liability assessment hearing the City will be free to make arguments as to any of the alleged violations, and the City's agreement to accept this conditional offer will not in any way be binding or used as evidence against the City. The City will be provided with further information on the liability assessment proceeding.

In the event that the Executive Officer executes the Acceptance and Waiver, payment of the assessed amount shall be due within 30 calendar days after the Regional Water Board Executive Officer's execution. In accordance with Water Code section 13385(n)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to Water Code sections 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement

Account. Failure to pay the penalty within the required time period may subject the City to further liability.

Should you have any questions regarding this matter, please contact Farhad Azimzadeh of my staff at (510) 622-2310 or [farhad.azimzadeh@waterboards.ca.gov](mailto:farhad.azimzadeh@waterboards.ca.gov). If you need to fax a copy of the signed waiver, you may send it to the attention of Farhad Azimzadeh at (510) 622-2460.

Sincerely,



Thomas E. Murnley  
Assistant Executive Officer

Enclosures: (1) Acceptance and Waiver  
(2) Exhibit A - Notice of Violation

ORDER NO. R2-20XX-1XXX  
ACCEPTANCE OF CONDITIONAL RESOLUTION  
AND WAIVER OF RIGHT TO HEARING

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Regional Water Quality Control Board (Regional Water Board), the City of Calistoga (City) hereby accepts the conditional offer to settle alleged violations through payment of mandatory minimum penalties (Conditional Offer) and waives the right to a hearing before the Regional Water Board to dispute the allegations of violations and attached hereto as Exhibit A and incorporated herein by reference.

The City agrees that the attached Exhibit A shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. The City agrees to pay the penalties authorized by Water Code sections 13385 and 13385.1, which shall be deemed payment in full of any civil liability pursuant to the Water Code section 13385 that otherwise might be assessed for the violations described in the attached Exhibit A. The City understands that this Acceptance and Waiver waives its right to contest the allegations in Exhibit A and the amount of civil liability for such violations.

The City understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in the attached Exhibit A.

Upon execution by the City, the Acceptance and Waiver shall be returned to:

California Regional Water Quality Control Board, San Francisco Bay Region  
NPDES Enforcement Section, Regulatory Measure ID No. 402862  
Attention: Farhad Azimzadeh  
1515 Clay Street, Suite 1400  
Oakland, California 94612

The City understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to execution by the Executive Officer of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period which causes the Executive Officer of the Regional Water Board to reject the settlement amount, the Executive Officer will execute the Acceptance and Waiver. Resolution of these violations by the Regional Water Board will preclude State Water Board action for these same violations.

The City understands that if significant comments are received in opposition to the Conditional Offer, the offer may be withdrawn. In that circumstance, the City will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability

hearing, the City understands that this Acceptance and Waiver executed by the City will be treated as a settlement communication and will not be used as evidence in that hearing.

The City understands that once the Acceptance and Waiver is executed by the Executive Officer of the Regional Water Board, payment of the amount in full no later than 30 days after the date of the Executive Officer's signature is a condition of this Acceptance and Waiver. In accordance with Water Code sections 13385(n)(1) and 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. The payment must be submitted to the State Water Resources Control Board in accordance with an invoice for payment.

I hereby affirm that I am duly authorized to act on behalf of and to bind the City in the making and giving of this Acceptance and Waiver.

.....

City of Calistoga

By:   
(Signed Name)

9.22.15  
(Date)

Richard Spitzer  
(Printed or typed name)

City Manager  
(Title)

Note: Please return the signed Acceptance and Waiver with Exhibit A, together.

.....

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

By: \_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

Regulatory Measure ID: 402862

**EXHIBIT A  
Notice of Violation**

Dunawear Wastewater Treatment Plant located at  
1100 Dunawear Lane, Calistoga, Napa County

The following table lists alleged permit(s) violation(s) for which the City is subject to civil liabilities pursuant to Water Code sections 13385 and 13385.1. The table shows mandatory minimum penalty (MMP) for the violation(s), and descriptions of the abbreviations that appear in the table.

No.	CIWQS Violation ID No.	Violation or Effluent Limitation Description	Date of Occurrence or Monitoring Report Due Date	Effluent Limit or Data Monitoring Report Received	Effluent Results Reported (Percent a Pollutant is over an Effluent Limitation) or Number of Days and Months a Discharge Monitoring Report Overdue	Type of Violation	Water Code Section 13385(a) and/or (b) Required MMP
1	964957	Ammonia Total Monthly Average at E-1 (ppm)	2/12/2014	25	28 (12 percent)	C1	
2	966992	Ammonia Total Monthly Average at E-2 (ppm)	2/12/2014	25	29 (16 percent)	C2	
3	967205	Ammonia Total Monthly Average at E-1 (ppm)	3/11/2014	25	29 (16 percent)	C3	
4	975817	Ammonia Total Monthly Average at E-2 (ppm)	3/11/2014	25	30 (20 percent)	- C3, S	\$3,000
5	981578	Discharge/effluent flow daily Maximum (mg/l)	12/16/2014	90	11 (12 percent)	C3, S	\$3,000
6	981577	Discharge/effluent flow Monthly Average (mg/l)	12/16/2014	49	11 (24 percent)	C2, S	\$3,000
7	987076	Discharge/effluent flow daily Maximum (mg/l)	1/6/2015	90	9.5 (6 percent)	C3	
8	987077	Discharge/effluent flow Monthly Average (mg/l)	1/7/2015	49	9.5 (94 percent)	- C3, S	\$3,000
Total							\$12,000
<p>Legend for Table:            CIWQS = California Integrated Water Quality System database used by the Water Board to manage violation and enforcement activities.            Violation ID = identification number assigned to a permit violation in CIWQS.            C = Count - The number that follows represents the number of occurrences in the past 180 days, including this violation. A count greater than three (- C3) means that a penalty under Water Code section 13385.1 applies.            S = Serious, which means that a penalty under Water Code section 13385.1 applies when an effluent limitation is exceeded 83 percent or more for a Group I pollutant or 20 percent or more for a Group II pollutant.</p> <p align="right">Regulatory Monitor ID: R02662            Place ID: 112750            WTRD No. 2-28-000001</p>							

CONFIDENTIALITY NOTICE: This email message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and/or exempt from disclosure under



OCT 21 2015

Agenda Item #

9A

21 October 2015

Napa County Planning Commission  
Chair Heather Phillips and Commissioners

re: Girard and Clos Pegase

Clos Pegase, a little bizarre - it's like "déjà vu all over again". Been here, done this.

Once Clos Pegase began operation about 30 years ago, we told you they were violating their use permit, conducting weddings, private parties and concerts (Kool and the Gang, Boz Skaggs). We called the sheriff when drunks shouted into the microphones at midnite. When the sheriff told us he was powerless to deal with wineries, we called our supervisor. My mom used to call Mel Varrelman at midnite - if she couldn't sleep, neither should he. But we were ignored. We finally stopped calling and you allowed the former owner to operate Clos Pegase as an event center, with dinners in the caves and frequent weddings.

Déjà vu all over again. Last December we provided evidence that the new owners had launched an aggressive marketing plan that was centered on activities that violate the Clos Pegase use permit: weddings, private parties and plans to develop the private residence into "a new event space". This time you listened and opened a code enforcement case to investigate. We applaud the county's new attitude that prompted that action.

However, we are unsure of the results. Once a code enforcement investigation begins, secrecy controls. No information is given. The party who files the complaint is not even advised of the outcome. So, when illegal activities resume, neighbors assume the county has "blessed" the violators and the game goes on.

While this investigation was ongoing, Clos Pegase continued to advertise and conduct illegal activities. The sheriff was summoned twice when late-night parties were shouting and screaming in the parking lot while waiting for buses after the party. "Yoga in the Vineyards" advertised throughout May. Then came "Puppies & Pinot." Floral arranging in June. And weddings.

At some point, Clos Pegase conceded the weddings and removed them from their advertising. But, they continued to advertise on their website "...anniversaries, rehearsal dinners, birthdays, holiday parties, private parties and more..." Until

last Friday. (see attached Compliance correspondence)

The last few days of compliance communication are concerning, see attached.

- Thurs, 10/15: 12:41 pm I emailed Linda re: status of code case (*web site still advertised illegal events at that time*)
- 1:12 reply from Linda: case closed, resolved - no details
- 1:23 pm I email for clarification - what events are/are not permitted?
- 1:56 pm Linda emails: case reopened, still advertising events
- Fri, 10/16: mid afternoon, website changed, event ads removed
- Mon, 10/19: 10:26 am Linda emails: "...Clos Pegase has made efforts to comply..."
- unless revealed at the hearing, we still don't know what Clos Pegase can and cannot do

Why is Clos Pegase compliance important at this Girard hearing? Because Clos Pegase and Girard are two faces of the same coin, symbiotically connected via water and waste water pipes; both owned by Vintage Wine Estates.

Was the use permit reviewed as part of due diligence before the multi-million dollar purchase? Maybe, maybe not - maybe the new owners are victims of the former owner's salesmanship.

We believe the Clos Pegase use permit clearly does not allow any marketing events. Yet, the new owners undertook expensive remodeling and marketing to provide for such illegal events. They not only conducted these activities in the past but continued to do so while under investigation. In fact, they continued to advertise illegal events after the case was "resolved" and "closed."

Advertising for these illegal activities was hastily removed from their website just last Friday afternoon - AFTER the enforcement case was reopened and just in time for this hearing. (*However, event advertising continues at other internet sites.*)

So, what events, if any, are permitted at Clos Pegase? Napa County relies on the public to be the "eyes and ears" of code enforcement. If the public does not fully understand what is permitted and what is not, how can it fulfill this role?

What assurance does the public have that the activities will, in fact, cease? Even if not openly advertised? The former owner did not formally advertise all the illegal activities yet managed to sell quite a few over the years.

Staff's chart of "Wineries Within One Mile of APC 020-150-107" shows Clos Pegase is allowed "0" marketing events. But it also indicates that Castello di Amorosa is allowed "0" marketing events and we all know that one or two take place there "occasionally".

Permitted and actual marketing events at Clos Pegase are unclear. CEQA mandates that you not only consider the impacts of the current Girard project under review, but also the cumulative impacts of past and probable future projects. Clos Pegase can apply for a use permit modification this very afternoon for extensive marketing. You must not only consider what they are permitted to do now, and because of the history, you must also consider what they may continue to do even if not permitted, and if it is probable that they will add marketing in the future.

Because you have no real numbers to deal with and this is a unique property that has been in gross violation for decades and the current owners have also been in violation since the property changed hands, you cannot meet CEQA's requirements for cumulative impact analysis.

We, therefore, believe this is an appropriate case for a "time out" of 3 years. During that "probationary" period, Clos Pegase must operate completely within its use permit, with consistent county monitoring. Not until they prove they can and will operate within their permit should they be allowed to apply for the new Girard winery or any modification of their own use permit.

Thank you,



Norma J. Tofanelli  
for the Tofanelli Family

**From:** "St. Claire, Linda" <LINDA.STCLAIRE@countyofnapa.org>  
**Subject:** RE: Clos Pegase code enforcement  
**Date:** October 19, 2015 10:26:07 AM PDT  
**To:** "Norma Tofanelli" <keepnvap@sonic.net>, "Balcher, Wyntress" <Wyntress.Balcher@countyofnapa.org>  
**Cc:** "McDowell, John" <John.McDowell@countyofnapa.org>, Robert Perl Perlmutter <perlmutter@smwlaw.com>

---

Norma,

Upon further investigation, I have determined that Clos Pegase has made efforts to comply with Napa County Code. Their website is clear of any events, and the remaining violations were cleared some time ago.

Linda

Linda St. Claire  
Code Enforcement Officer - Planner III  
Planning, Building & Environmental Services  
1195 Third Street, Second Floor  
Napa, CA 94559  
www.countyofnapa.org  
(707) 299-1348  
Fax: (707) 299-4270

-----Original Message-----

**From:** Norma Tofanelli [mailto:keepnvap@sonic.net]  
**Sent:** Thursday, October 15, 2015 12:41 PM  
**To:** St. Claire, Linda  
**Cc:** McDowell, John; Robert Perl Perlmutter  
**Subject:** Clos Pegase code enforcement

Hi, Linda -

Can you advise of the current status of the Clos Pegase code enforcement case?  
Has it been resolved or is it ongoing?

Thank you,  
Norma

CONFIDENTIALITY NOTICE: This email message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, and/or exempt from

**From:** "St. Claire, Linda" <LINDA.STCLAIRE@countyofnapa.org>  
**Subject:** RE: Clos Pegase code enforcement  
**Date:** October 15, 2015 1:56:12 PM PDT  
**To:** "Norma Tofanelli" <keepnvap@sonic.net>  
**Cc:** "McDowell, John" <John.McDowell@countyofnapa.org>, "Robert Perl Perlmutter" <perlmutter@smwlaw.com>

---

Norma,

I had previously indicated that the case was closed and resolved. Upon further investigation, it appears they continue to advertise events. I have re-opened the case and will continue my investigation.

Best,

Linda

Linda St. Claire  
Code Enforcement Officer - Planner III  
Planning, Building & Environmental Services  
1195 Third Street, Second Floor  
Napa, CA 94559  
www.countyofnapa.org  
(707) 299-1348  
Fax: (707) 299-4270

-----Original Message-----

From: Norma Tofanelli [mailto:keepnvap@sonic.net]  
Sent: Thursday, October 15, 2015 1:23 PM  
To: St. Claire, Linda  
Cc: McDowell, John; Robert Perl Perlmutter  
Subject: Re: Clos Pegase code enforcement

Hi, Linda -  
Thank you for prompt reply.

Can you clarify, now that the case is closed, just what activities they agreed to cease (which specifically) and what they are allowed to do ongoing?

ie: Puppies and Pinot?

Yoga in vineyards?  
Use of private residence as special event center?  
Food and wine pairings?  
Special events of any kind?  
Marketing events of any kind?

Clear understanding of what their permit allows will benefit all as we move forward.

thanks - Norma

On Oct 15, 2015, at 1:12 PM, St. Claire, Linda wrote:

Hello Norma,

Thanks for your email. Clos Pegase has agreed to cease the activities that were included in the code enforcement case. I have closed the case and consider it resolved.

Best regards,

Linda

Linda St. Claire  
Code Enforcement Officer - Planner III Planning, Building &  
Environmental Services  
1195 Third Street, Second Floor  
Napa, CA 94559  
[www.countyofnapa.org](http://www.countyofnapa.org)  
(707) 299-1348  
Fax: (707) 299-4270

-----Original Message-----

From: Norma Tofanelli [mailto:[keepnvap@sonic.net](mailto:keepnvap@sonic.net)]  
Sent: Thursday, October 15, 2015 12:41 PM  
To: St. Claire, Linda  
Cc: McDowell, John; Robert Perl Perlmutter  
Subject: Clos Pegase code enforcement

Hi, Linda -

Can you advise of the current status of the Clos Pegase code enforcement case?  
Has it been resolved or is it ongoing?

Thank you,

Norma

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

**Gallina, Charlene**

---

**From:** McDowell, John  
**Sent:** Wednesday, October 21, 2015 8:00 AM  
**To:** Frost, Melissa  
**Cc:** Gallina, Charlene; Anderson, Laura; Apallas, Chris; Morrison, David  
**Subject:** FW: Girard additional comments  
**Attachments:** Girard\_151021\_Tof.pdf

-----Original Message-----

**From:** Norma Tofanelli [mailto:keepnvap@sonic.net]  
**Sent:** Wednesday, October 21, 2015 5:38 AM  
**To:** Balcher, Wyntress  
**Cc:** McDowell, John; Pat Roney  
**Subject:** Girard additional comments

Planning Commission Mtg.

OCT 21 2015

Agenda Item # 9A

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



20 October 2015

Napa County Planning Commission  
Chair Heather Phillips and Commissioners

*re: Girard Use Permit Conditions of Approval - addition of fencing*

The Tofanelli family requests that a condition of approval be added that mandates adequate fencing between the public portions of Girard and the property of Tofanelli.

Incidents of trespass, vandalism and theft are increasing and have reached levels that are no longer acceptable. We have had grapevines sawed off at ground level and stolen for table bases; thieves fill trunks with grapes. Fruit trees are raided. We have annual theft of our walnuts - a crop that we still sell, probably one of the last farms still harvesting walnuts for sale. We've had equipment stolen and our farm house vandalized. Cyclists use our port-a-potty. Tourists wander through our barns and cycle through our vineyards. This can no longer be tolerated.

In self-defense, we are in process of designing a plan to fence our property along Dunaweal to "fence in" our crops. (*We will soon be presenting to planners*).

The common area between our properties (*used as common turn space and vineyard road by both properties*) provides too-easy access for thieves. By providing increased public access, Girard Winery will invite increased intrusion, vandalism and theft into the area.

In the interest of both parties, we must close off this access road. If the fence runs along the mutual property line, we will have to pull out 183 vines - some over 85 years old. Girard may also have to pull additional vines. This is not the way to preserve agricultural lands.

Therefore, we propose a partial fence that will "fence in" the winery and its public portions. We provide 2 initial options. If creatively designed (*ie: living fence*), such a fence can be an attractive part of the winery landscaping and not impede working access to their vineyards.

We continue to give permission to Girard/Clos Pegase for use of our portion of the common avenue/turn space, as we traditionally have to prior property owners/vineyard managers.

We request that the fence be mandated as a condition of approval. Past experience proves that conditions of approval are often not completed (*ie*: left turn lane at Raymond, the roof at the notorious Pavitt winery, etc). We, therefore, request a condition that mandates completion of the fence before grant of the Certificate of Occupancy.

Thank you,

Norma J. Tofanelli  
for the Tofanelli Family

cc: Pat Roney, Vintage Wine Estates  
Wyntress Balcher, County Planner  
Pauline Tofanelli  
Vince Tofanelli

Attached: Fence plan diagram

**Gallina, Charlene**

---

**From:** McDowell, John  
**Sent:** Wednesday, October 21, 2015 8:00 AM  
**To:** Frost, Melissa  
**Cc:** Gallina, Charlene; Anderson, Laura; Apallas, Chris; Morrison, David  
**Subject:** FW: Girard\_Request for additional condition of approval  
**Attachments:** Fence .pdf

-----Original Message-----

**From:** Norma Tofanelli [<mailto:keepnvap@sonic.net>]  
**Sent:** Wednesday, October 21, 2015 1:13 AM  
**To:** Balcher, Wyntress  
**Cc:** McDowell, John; Pat Roney  
**Subject:** Girard\_Request for additional condition of approval

Planning Commission Mtg.

OCT 21 2015

Agenda Item # 9A

Hi, Wyntress,

Attached please find our proposal for a fence component to be added to the conditions of approval.  
Please provide copies to the Commission and public.

Thank you, Norma

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

21 October 2015

Napa County Planning Commission  
Chair Heather Phillips and Commissioners

*re:* Girard #P14-00053

1) Building height: 45' tall is out of character with the surrounding area of open vineyards and vintage farm buildings. Such height will obscure beautiful down-valley views. Visitors come to Napa Valley for the "scenic, open vistas" which are rapidly being filled in by wineries and berms.

2) Tours and tasting until 6 pm: The trend to extend visitation into evening hours competes with business that belongs in restaurants and bars inside our cities, threatening the essential partnership created by our Ag Preserve which mandates that commercial/retail activities belong in urban centers.

The erosion of this critical partnership ultimately leads to "Damage to the long-term viability of agriculture in Napa County through continued intensification of non-agricultural activities in the agricultural portions of the County" as noted in the 1990 WDO FEIR. In order to protect agricultural lands and reduce traffic, that FEIR proposed mitigations which include "Close visitor facilities at all new/expanded wineries to the general public by 2:30 PM on Fridays, Saturdays, and Sundays and by 3:30 PM on all other days." We are treading dangerous ground by continually extending hours of visitation in competition with our city partners.

3) Accessory use areas: It is hypocritical not to include the "covered veranda" and the "winery garden" in accessory use calculation. These are obviously designed for public hospitality use - the architect even included tables and chairs in the veranda schematic. All of these areas are removed forever from production agriculture - contrary to the very essence and intent of the Ag Preserve and WDO. When honestly calculated, the accessory use exceeds 40%.

4) Night time lighting: Final lighting must be carefully monitored. This is a rural area where a crisp night time sky with incredible stars are still visible. ANY lighting adds to the cumulative impacts which will ultimately dim the view of night time skies.

5) Dust control: This is critical. Over the years, we have experienced increasing insect damage to our vines along the Girard/Clos Pegase shared vineyard avenue

space. We farm organically. Our neighbors traditionally have not. Employees of vineyard management companies often do not respect the warning "Dust is harmful to grapes" and speed down avenues and rows, raising excessive dust which settles on our vines, providing perfect breeding ground for mites. We cannot afford any increase in the current levels of damage to our vines.

6) Water: Based on our long history of dry farming in this area, we remain concerned about water impacts from the addition of another 200,000 gallon winery. Long-term experience contradicts county assurances that groundwater on the valley floor is not declining. We have experienced first-hand the impacts of this decline. Up until about the 1980s, we did not have to irrigate new plantings. Now, we must temporarily irrigate, by hand, for the first 1-2 years.

We ask that you carefully consider these aspects before moving forward today.

Thank you,

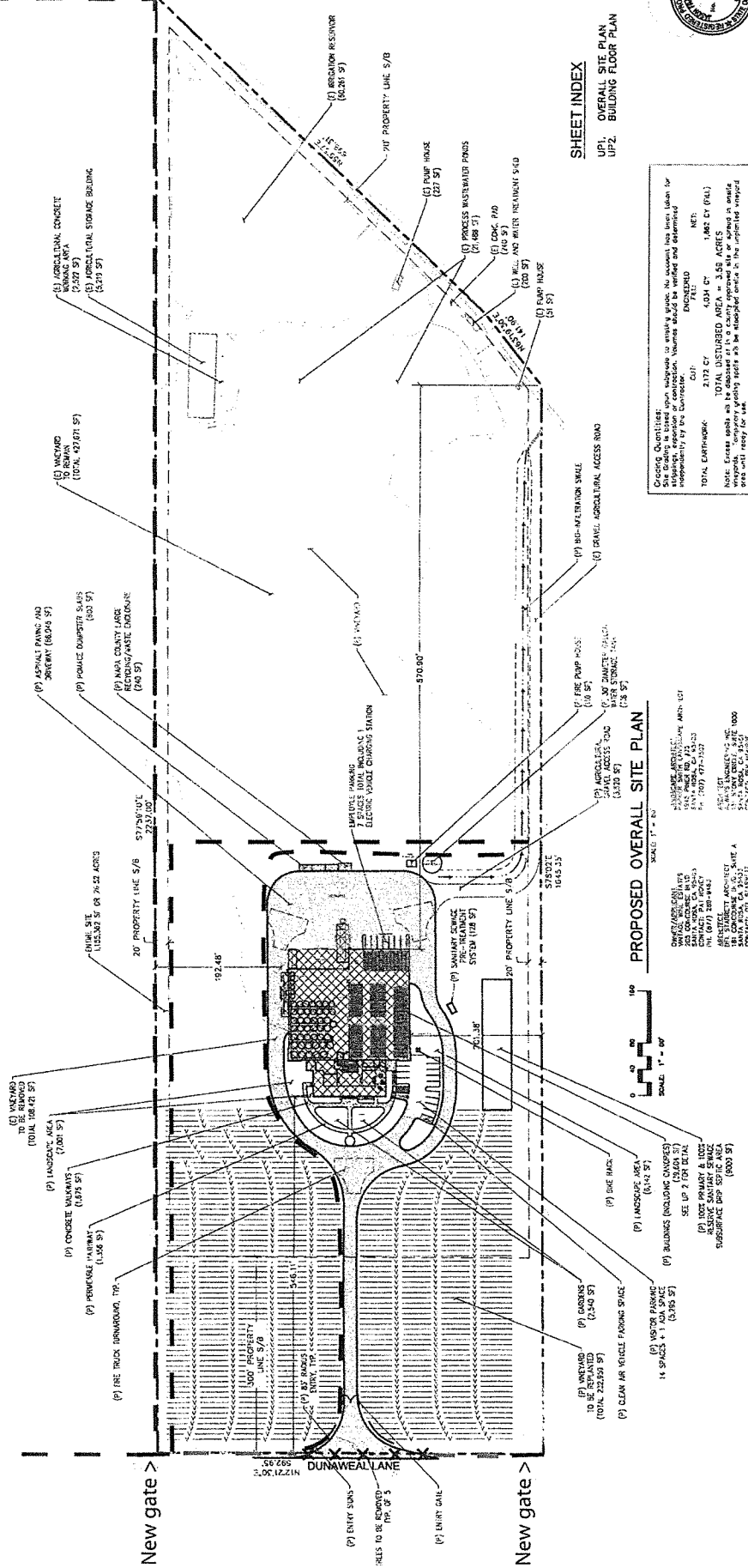
Norma J. Tofanelli for the Tofanelli Family

cc: Pat Roney, Vintage Wine Estates  
Wyntress Balcher, County Planner  
Pauline Tofanelli  
Vince Tofanelli

lands of Tofanelli

New gate >

> New gate



PROPOSED OVERALL SITE PLAN

DATE: 11-17-2014  
 SHEET INDEX  
 UP1, BUILDING FLOOR PLAN

Grading Quantities: See schedule to verify. Values are subject to change. Items shown for preliminary or estimated quantities only. Final quantities shall be verified and determined independently by the Contractor.  
 TOTAL EXCAVATION: 2,171 CY  
 TOTAL FILL: 4,512 CY  
 TOTAL DISTURBED AREA: 3.85 ACRES  
 Note: Erosion control shall be installed at the existing proposed site or adjacent to existing site within 15 days of completion of construction. Erosion control shall be maintained until the completed project area will be ready for use.



- Fence along Dunaweal
- Option 1 Fence
- Option 2 Fence

**Gallina, Charlene**

---

**From:** McDowell, John  
**Sent:** Wednesday, October 21, 2015 8:01 AM  
**To:** Frost, Melissa  
**Cc:** Gallina, Charlene; Anderson, Laura; Apallas, Chris; Morrison, David  
**Subject:** FW: Girard\_Please add to Planning record  
**Attachments:** Ltr. to Napa County re Clos Pegase Winery Weddings.DOC

-----Original Message-----

**From:** Norma Tofanelli [<mailto:keepnvap@sonic.net>]  
**Sent:** Wednesday, October 21, 2015 12:28 AM  
**To:** Balcher, Wyntress  
**Cc:** McDowell, John  
**Subject:** Girard\_Please add to Planning record

Planning Commission Mtg.

OCT 21 2015

Agenda Item # 9A

Please add the attached letter re: Clos Pegase code compliance to the Planning Commission record.  
The letter was addressed to the Board of Supervisors and may not have been included for Planning Commissioners.

Thank you, Norma

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

11, 11/2/10 00:00:00 00:00:00 00:00:00 00:00:00  
00:00:00 00:00:00 00:00:00 00:00:00  
00:00:00 00:00:00 00:00:00 00:00:00

00:00:00 00:00:00 00:00:00 00:00:00  
00:00:00 00:00:00 00:00:00 00:00:00  
00:00:00 00:00:00 00:00:00 00:00:00

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

Robert “Perl” Perlmutter

Attachments

663883.5

**Gallina, Charlene**

---

OCT 21 2015

**From:** McDowell, John  
**Sent:** Wednesday, October 21, 2015 8:01 AM  
**To:** Frost, Melissa  
**Cc:** Gallina, Charlene; Anderson, Laura; Apallas, Chris; Morrison, David  
**Subject:** FW: UP P14-00053  
**Attachments:** GIRARD - PLANING COMMISSION TESTIMONY.doc; TRAFFIC LOG.doc

Agenda Item # 914

---

**From:** Tittel/Caloyannidis [<mailto:calti@comcast.net>]  
**Sent:** Tuesday, October 20, 2015 7:37 PM  
**To:** Morrison, David; McDowell, John; [wyntress.belcher@countyofnapa.org](mailto:wyntress.belcher@countyofnapa.org)  
**Subject:** UP P14-00053

To the Napa County Planning Commission:

I am sorry not being able to attend due to an unforeseen emergency. Please accept my attached additional comments.

Sincerely,

**George Caloyannidis**

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

# **GIRARD WINERY USE PERMIT APPLICATION P14-00053**

## **PLANNING COMMISSION HEARING COMMENT**

October 21, 2015

By George Caloyannidis, Calistoga

Honorable Commissioners:

These are additional comments to my ones dated August 10, 2015.

I will limit them on the various County Policies, Use Permit Standards, CEQA Mandatory Findings and Case Law which this use permit, if approved and following a variety of previous ones which this Commission and the County Supervisors have been consistently ignoring when approving projects which specifically increase traffic:

### **A . GENERAL PLAN POLICY CIR - 116:**

"The County will seek to maintain arterial Level of Service "D" or better on all county roadways".

### **B. ORDINANCE CHAPTER 18.04.010 - FINDINGS:**

F. "Further, this Board deems it necessary, for the purpose of promoting the health, safety and general welfare of the county, to revise the existing ordinance...in accordance with the General Plan and the following objectives:

1. To lessen congestion on roads and highways.
4. To promote health, safety and general welfare".

### **C. CASE LAW ON USE PERMIT REQUIREMENTS:**

Upton v. Gray, 1969: "The proposed use is in the best interest of public convenience and necessity and will not be contrary to the public health, morals or welfare"

And O'Hagen v. Board of Zoning Appeals, 1971: "That such use would be essential or desirable to the public convenience or welfare or be detrimental to the public health, safety, morals or welfare".

### **D. CEQA REQUIREMENTS:**

Mandatory Findings:

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

### **E. THIS PROJECT AS IT RELATES TO THE ABOVE:**

The W-Trans traffic study is tailored to fit the project, conveniently ignoring its own findings on the Silver Rose on the Silverado Trail and Calistoga Hills resort on Hwy 29, both within 1 and 2 miles to the north, a CEQA mandatory finding. Together W-Trans had projected that they will generate 2,900 daily vehicle trips (dvt).

The intersection at Hwy 29 and Lincoln Avenue in Calistoga, only one mile away, has such a dismal level of service, that the City's Final EIR projected that the 930 of the 1,400 additional dvt generated by the Calistoga Hills resort is impossible to mitigate. Master Response #4 of that FEIR recommended that the City accept an in lieu fee of \$ 267,795.00 because the impact is "beyond the developer's ability

to mitigate". The City had to invoke "Overriding Considerations" before it was legally able to accept such a fee.

While the City of Calistoga was able to justify this unmitigatable condition by citing the imminent threat of bankruptcy, this avenue is not available to the County.

Today, even before either of these resorts have come on line, that intersection is at level "E" and "F" during several hours of the day; a far cry from the General Plan level "D". The congestion on Hwy 29, stretches from Dunaweal Lane all the way to Petrified Forest Road.

On Friday, October 16 at 4:15 pm I drove that stretch of the Hwy, covering its 2 miles in an unacceptable 22 minutes. No one can argue that this is in the interest of the public convenience and welfare. As this travel time becomes worse, drivers will opt to use Dunaweal Lane to Silverado Trail and back to Tubs Lane (something many do already) so as to circumvent that bottle neck.

Neither the 2,900 vdt of the two resorts, nor the ones you consider adding through this application have come on line and considered in the traffic report as required by CEQA Mandatory Findings.

#### **F. TRANSPORTATION DEMAND PROGRAM:**

At this point in time, this program is anything but credible. Visitations between 10:00 am and 6:00 pm can no longer claim to account for any mitigation as traffic congestion throughout the valley begins as early as 5:30 am, a time when the tens of thousands of wine business and hospitality industry low-paid commuters form a continuous chain entering the valley from Solano county.

Adding any more low paying jobs at these industries as far north as Calistoga, impacts traffic congestion as far south as American Canyon.

**G. SEE ATTACHED TRAFFIC LOG ON ROADS AROUND THE VALLEY:**

They show that traffic conditions have already entered the brink of a collapse. They do not in any way conform with the requirements under A, B, C, and D.

**H. THE DECEPTIVE CULTURE OF "LESS THAN SIGNIFICANT IMPACTS" PILED ON TOP OF EACH OTHER:**

Assessing traffic impacts of individual projects by casting a limited radius around them, ignores serious and quantifiable impacts on the general traffic patterns in the Napa Valley. This practice is deceptive and makes all of us suffer by degrading public convenience and welfare as the County's General Plan, its Ordinances, CEQA and the established legal precedent all Use Permits are required to honor and respect.

**The continued actions by this Commission and the Board of Supervisors which consciously contribute to the increase of congestion well beyond Level Service "D" on our roads from Calistoga to American Canyon, is subject to challenge unless it stops.**



**ATTACHMENT TO GIRARD WINERY PLANNING COMMISSION HEARING  
USE PERMIT P14-00053**

By George Caloyannidis

**TRAFFIC LOG OCTOBER 15 - 20, 2015**

**Experienced by Napa Valley residents going about their daily activities.**

Daniel Muffson, Vision 2050, Thursday, October 15, 2015

S/B From Soda Canyon Rd. to Hwy 80 at around 4:00 pm following the Silverado Trail: 45 minutes.

Christine Tittel, Calistoga, Thursday, October 15, 2015

S/B From Beringer Winery, St. Helena to Hwy 80 at 3:30 pm following Hwy 29: 1 hour : 45 minutes.

George David, St. Helena, Thursday, October 15, 2015

S/B From Pope Street, St. Helena to Hwy 80 at 4:30 pm following the Silverado Trail: 1 hour : 25 minutes.

George Caloyannidis, Calistoga, Friday, October 16, 2015, starting 3:45 pm.

N/B Pratt Avenue to Deer Park Road following the Silverado Trail, 1/2 mile: 7 minutes.

From Dunaweal Lane to Lincoln Avenue, Calistoga following Hwy 29, 1 mile: 10 minutes.

From Lincoln Avenue, Calistoga to Petrified Forest Rd. following Hwy 29, 1 mile: 12 minutes.

George Caloyannidis, Saturday, October 17, 2015.

N/B From Central Valley Builders, St. Helena to Madrone Ave. at 11:00 am following Hwy 29, 1 1/4 miles: 12 minutes.

George Caloyannidis, Tuesday, October 20, 2015.

S/B Following Hwy 29 to Hwy 80 at 5:30 am on the way to UCSF.

Witnesses an unbroken line of N/B cars from Hwy 80, all the way to St. Helena moving at a steady speed with distances between 1 and 2 cars between them. Normal S/B speed.

**We all know what N/B traffic from Zinfandel Lane to St. Helena from 7:00 to 10:00 am looks like**

## Gallina, Charlene

---

**From:** McDowell, John  
**Sent:** Wednesday, October 21, 2015 8:01 AM  
**To:** Frost, Melissa  
**Cc:** Gallina, Charlene; Anderson, Laura; Apallas, Chris; Morrison, David  
**Subject:** FW: Girard Winery before the Planning Commission  
**Attachments:** Mount Veeder Springs Winery Fact Sheet.docx

Planning Commission Mtg.

OCT 21 2015

Agenda Item # 9A

**From:** Gary Margadant [<mailto:gsmargadant@gmail.com>]  
**Sent:** Tuesday, October 20, 2015 11:51 PM  
**To:** Anne Cottrell; Bob Fiddaman; Heather Phillips; McDowell, John; Frost, Melissa; Michael Basayne; Sharma, Shaveta; Terry Scott; Jeri Gill  
**Subject:** Girard Winery before the Planning Commission

What is the Planning Commission and the Planning Department going to do when there is a failure of the Water Availability Analysis and the property cannot support the permitted use. Is there anything in the conditions of approval that protects the health and safety of residents and others on the property, and adjacent neighbors affected by this failure,

If the property runs out of water, will the conditions of approval provide a remedy?

The attached document describes a WAA failure on Partrick Road where the owners ran out of water and hauled in 700,000 gallons of water to irrigate their vineyard and supply their home with adequate water.

Very similar to the Carneros Inn.

Gary

**Gary Margadant**  
4042 Mount Veeder Road  
Napa CA 94558  
H 707.257.3351  
C 707.291.0361

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

October 3, 2015

What is Napa County to do when a Water Availability Analysis, a requirement for a Winery Permit or a Vineyard Erosion Control Plan, fails and the resources on the property cannot provide for the permitted use?

Should Napa County be in the business of granting vineyard permits, ECP's and WAA's to property owners and property that clearly cannot support the intended use with on site resources? Compare this problem with the Hold and Haul for winery waste water produced on property that is not disposed on site in a sanitary system. The county does not allow Hold and Haul to be used except in an emergency. What are the consequences for the property owner who operates a business on the property, unsupported by the ground or surface water available on the property as required by the WAA? Is this a declared emergency? What is Napa County going to do if this negative water balance continues in 2016 and beyond? Should Napa County then rescind the permit?

These people are not using the water for their Health and Safety to live in their home, Rather they are using the water to make up for the drought and their wells that cannot deliver enough water to their new vineyard. Napa City Residents cannot irrigate their yard, but they can irrigate their vineyard.

Should Napa City be in the business of supplying water to Agriculture outside of the city limits when this water is clearly not used for the health and safety of the property owners?? Should NBA permitted water be used outside the city limits? Napa City is under contract with the Napa County Flood Control and Water Conservation District (NCFCWCD), contract #1482, to abide by the NCFCWCD water permit #016483 (Application #A01754A) with the California Department of Water Resources. Why does NCFCWCD allow Napa City to sell water outside the water service area designated in the contract? This is a violation of the NCFCWCD water permit.

FACT SHEET: Hauling water from Napa City to Napa County Property

Mount Veeder Springs Winery  
1477 Partrick Road  
Napa County  
APN 050-030-025-000

06/25/2009  
1477 Partrick Road  
45.93 Acres  
Home: 8,629 sq ft  
Garage: 1403 sq ft  
Value: \$7,783,090.00  
Property Taxes: 2014 - \$83,407.60 (\$6,950.63/mo)  
Well Fargo Note: \$500,000.00

Owners:  
Mark A Pulido & Donna J Walker  
4897 El Nido  
PO Box 2084  
PO Box 1334  
Rancho Santa Fe CA 92067

ECP P13-00252

attached:

Photo of the Water Truck at the Napa City Hydrant on Partrick Road

Photo of the Water Meter Reading

Photo of the Water Meter Serial #

Water meter Reading



Meter Serial #

