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Public Comments



STAG'S LEAP WINE CELLARS

5766 Silverado Trail • Napa, California 94558

707-944-2020 FAX 707-257-7501

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Planning Commission Mtg.

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Agenda Item #

9A

Napa County Planning, Building
& Environmental Services

Planning Commission Chairperson Heather Phillips
Napa County Conservation, Development & Planning Department
1195 Third Street
Napa, CA 94559

June 2, 2015

Subject: Use Permit Major Modification No. P13-00356-MOD, and Variance No. P13-00357-VAR

Dear Chairperson Phillips:

Stag's Leap Wine Cellars is scheduled for a hearing before your Planning Commission Public Hearing tomorrow, Wednesday, June 3, for approval of our Use Permit Major Modification. The matter is Agenda Item 9A.

At this time Stag's Leap Wine Cellars requests that you open the public hearing on our matter and immediately consider and grant our request for a continuance of the hearing of our application until the October 7, 2015 Planning Commission meeting. Stag's Leap Wine Cellars requests this continuance so that we can better analyze the visitation and marketing components of our application as they relate to Stag's Leap Wine Cellars pre-WDO visitation approvals and County staff's interpretations regarding the same. We believe the appropriate level of analysis of these issues must be completed, with further dialogue with County staff through the analytical process, in order for the Planning Commission, County staff and Stag's Leap Wine Cellars to have an effective hearing on the merits of our application.

We appreciate your assistance with this request for a continuation. If you have any questions, or if staff has any questions, please contact me directly or contact our representative, Mr. Jeff Redding at (707) 255-7375.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Brian D. Jones', written in a cursive style.

Brian D. Jones
Operations Manager
Stags Leap Wine Cellars

Cc: Shaveta Sharma, Planner; Jeff Redding, AICP



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Napa County Planning, Building
& Environmental Services

June 1, 2015

Planning Commission
County of Napa
1195 Third Street
Napa, CA 94559

RE: Agenda Item #9A: Stag's Leap Wine Cellars

Dear Chair Phillips and Fellow Commissioners:

I am puzzled by the discrepancy in the documentation in regards to the hours allocated to various private tastings with food.

The document entitled "Existing and Proposed Marketing Program" clearly delineates the times for promotional tastings with lunch [11-3:30] and dinner [6-10pm]. The seminars and additional large private events run from 11am-10pm. But in the conditions of approval, all marketing events have a 10am – 10pm time of day.

I'm not sure if this is intentional or an oversight? How can the County hope to enforce these conditions if all events have the potential to exist between 10am and 10pm? Is this winery turning into a restaurant that is open 12 hours per day?

I do hope you are able to clarify this at Wednesday's hearing.

Thanks and regards,

Eve Kahn, Chair
Get a Grip on Growth
PO Box 805
Napa, CA 94559

Sharma, Shaveta

From: Eve Kahn <evekahn@juno.com>
Sent: Monday, June 01, 2015 7:43 PM
To: Sharma, Shaveta
Subject: Stag's Leap Winery
Attachments: Letter to County PC 2 re Stag's Leap Winery.docx

Shaveta - submitting attached letter for Wed's hearing. Thanks, Eve Kahn

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November 16, 2015

VIA EMAIL: David.Morrison@countyofnapa.orgDavid Morrison, Planning Director
Planning, Building and Environmental Services
1195 Third Street, Room 210
Napa, CA 94559**VIA EMAIL: John.McDowell@countyofnapa.org**Mr. John McDowell, Deputy Planning Director
Planning, Building and Environmental Services
1195 Third Street, Room 210
Napa CA 94559**Re: Stag's Leap Wine Cellars (Stag's Leap) Use Permit Major Modification #P13-00356-MOD and Variance #P13-00357-VAR (the "Modification")**

Gentlemen:

Prior to the issuance of the staff report for the Modification, Stag's Leap and its representatives were advised by County staff that the Staff had prepared draft Conditions of Approval seeking to limit visitation to a maximum of 300 persons per day and a maximum of 700 persons per week. This was shocking in that the Modification sought only to update Stag's Leap's approved marketing program and to replace two antiquated production buildings with a state-of-the-art winemaking facility. The Modification sought no adjustments to Stag's Leap's existing visitation levels—levels that are legally vested with Stag's Leap. Furthermore, Stag's Leap is a pre-Winery Definition Ordinance ("pre-WDO") winery with public tours and tastings rights granted in 1985. These historically-established, 'grandfathered' public visitation rights have properly remained un-modified and un-limited to this point, except as to its winery facility capacities.

County staff's attempt to place maximums on visitation through its draft Conditions of Approval caused Stag's Leap to request a continuance to further evaluate its rights as to its pre-WDO and post-WDO visitation prior to returning to the Planning Commission regarding the current Modification. This memorandum explains why staff's limitations are legally incorrect and should be stricken from the Conditions of Approval for the Modification so that it can properly proceed to hearing.

Stag's Leap Public Visitation Rights as a Pre-WDO Winery

According to Ordinance #947 ("the WDO"), sections 10 and 13, wineries and accessory uses and structures that legally existed prior to July 31, 1974 are considered legal, **conforming**

uses [emphasis added]. Conforming uses, unless otherwise limited by a specific condition of approval, are limited only by infrastructure capacity or specific county regulations protecting the health, safety, and general welfare of the County. 1974 is a benchmark year since prior to 1974, wineries were permitted by right. After July 31, 1974, use permits were required to establish new wineries or expansions to existing wineries established prior to this date. Despite the requirements for a use permit, no specific development standards or ordinance codes effected the operation or intensity of wineries was adopted until 1990 with the adoption of the WDO. Even with the adoption of the WDO, no specific standards, other than the capacity of infrastructure limited the extent of tours and tastings for either pre-WDO or post-WDO wineries.

Stag's Leap was constructed in 1971 prior to use permits being required for new wineries. Production capacity was expanded to 60,000 gallons in the 1970's pursuant to permit #U-487273. A production increase and the addition of public tastings at the winery were approved in 1985 pursuant to permit #U-468485. Other permits were issued in 1979, 1988, 1991 and 2004. The 2004 Use Permit nos. U-468485, U-487273 (modification #4), 03469-MOD and 03648-VAR (collectively, the "2004 Permit") authorized the construction of a new visitors center, and the relocation of the public tasting room approved in 1985. The 2004 Permit also authorized private tours and tasting by appointment within the new visitors center. A state of the art wastewater system was installed adequate to handle pre-existing public tastings as well as the anticipated visitors for tastings by appointment. No permit issued either before 1991 or after 1991 included a condition specifically limiting the number of public visitors or visitors by appointment.

The California Law of Vested Rights

The principle of vested rights in California is based on a specific governmental action such as a zoning ordinance or conditional use permit. At the heart of the vested rights concept is the doctrine of equitable estoppel. Courts have long accepted that at some point in the development process the expenditures and dedications made by a developer in good faith reliance on initial governmental approvals estop the government from creating regulations that will impair the developer's operational investment.

The California Supreme Court applied the equitable estoppel doctrine in *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 793, 795. *Avco* is generally regarded as the leading authority on vested rights, holding:

It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he relied. (*Avco, supra*, 17 Cal.3d at p. 791.)

Based on the County's issuance of the 2004 Permit, which Stag's Leap relied upon, Stag's Leap acquired vested rights to operate its winery without a limit on visitation, subject of course to pre-existing facility capacity under the County regulations protecting the health, safety, and general welfare of the County. (See Napa County Code § 18.144.040.)

Stag's Leaps' Vested Rights for Visitation under the 2004 Permit

As noted above, Stag's Leap is a pre-WDO winery and began operations prior to 1974. Since public tours and tastings were originally granted to Stag's Leap in 1985, the only time that the winery sought to modify the winery with respect to tours and tastings was in 2003-2004 with the filing of the application for permit #'s 03469-UP MOD and 03468-VAR. This modification proposed to relocate the existing public tasting room to a new, stand-alone visitor center. The County issued SLWC the 2004 Permit in March 2004; it limited the size of the public tasting area within the new visitor center to the size of the then-existing tasting room, but imposed no terms limiting visitation [emphasis added]. This was apparent from the application and the conditions of approval for the 2004 Permit. It was also consistent with Stag's Leap's previous permit approvals as a pre-WDO winery with a right to public tastings.

The 2004 Permit application provided that Stag's Leap would host up to 300 persons per day on its busiest day, with an average of 700 visitors per week, all of which was based on the size of the facilities to be developed pursuant to the application, without distinguishing public tastings and post-WDO by-appointment-only tours and tastings. The only limitation as between public tasting and tasting "by appointment" was condition #3 of that permit which required in part that the public tasting area be physically separated from the private tasting areas. No condition limited the extent of either public or private tastings, except as the building or fire codes may require.

In permitting this visitation, the Planning Commission required Stag's Leap to construct infrastructure to accommodate uses approved in 2004 Permit including a new visitor entrance, a 105 space parking facility, a left turn lane in Silverado Trail, a new water and a wastewater system with capacity consistent with the wastewater feasibility study submitted by Summit Engineering. This domestic waste system was designed and constructed to adequately handle up to 80 employees, 300 visitors per day and up to 60 marketing events on the winery's busiest days. It is this wastewater system that currently operates at the Stag's Leap and presently accommodates the approved winery visitation.

Stag's Leap relied on the 2004 Permit and in 2014 completed construction of a state-of-the-art, multi-million dollar visitor center to accommodate *both* its public tasting visitors and its "by appointment" visitors. In fact, as staff is aware, the visitor center has separate tasting facilities for the public tasting visitors and "by appointment" visitors as required by condition #3 of the 2004 permit. As you can see from the attached "by appointment" visitor spreadsheet,

since opening its new visitor center in the fall of 2014, Stag's Leap has seen a marked increase in "by appointment" visitors – as was planned for.

Applicability of the California Environmental Quality Act

Projects subject to discretionary review are subject to review under CEQA. If an impact is significant or potentially significant pursuant to the thresholds of significance established in CEQA, measures to reduce those impacts to a less than significant level are required. A CEQA analysis was conducted as part of Stag's Leap's application in 2004 to construct a new visitor center, relocate the existing, pre-WDO public tasting room and to establish additional areas for tasting by appointment. The CEQA document prepared to support the 2004 Permit approval was adopted by the Planning Commission as part of its March 2004 action. This represents the baseline condition to be used for subsequent CEQA review.

The Modification does not propose any changes to either the public or private visitation levels. No changes to either production or employee levels are proposed. The only change with the potential environmental impacts is a change to the approved marketing program. In discussion with staff, Stag's Leap has agreed to retain the same number of annual attendees, while modifying the number of events and the number of persons at each event. All marketing events would be held during off-peak hours. These changes to the winery's operation represent a change to the baseline conditions evaluated in 2004; subsequent CEQA analysis is limited to these modifications

Legal Conclusion

All of the elements of equitable estoppel supporting the vested rights of Stag's Leap to its existing visitation levels are present in this situation: (1) a definitive approval of a winery permit by the County with knowledge of the intended use by that winery and with knowledge of the WDO; and (2) reliance in the form of substantial expenditure and significant work on the ground for more than 10 years, all incurred and undertaken for the purpose of hosting the current level of visitors. Stag's Leap's visitation levels, both pre- and post-WDO are only limited by the Fire Code capacity of the visitor center, and the other facility capacities discussed above.

Next Steps

Upon evaluation of the issues raised by the staff prior to the May 2015 Planning Commission hearing that would have infringed its vested rights, Stag's Leap and its representatives now believe the draft conditions of approval prepared were too form-bound and did not reflect Stag's Leap's pre-WDO rights and vested rights from the 2004 Permit. Staff was, perhaps, time constrained with the series of use permits and use permit modifications coming to the Planning Commission in relentless succession in the Spring of 2015. Any future conditions for the pending Modification regarding visitation should be customized by staff to state that the visitation levels set forth in the 2004 Permit remain unaltered and applicable. This type of

David Morrison / John McDowell
November 16, 2015
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condition of approval would also not require any CEQA related changes to the initial study and negative declaration already prepared for the Modification. Doing so now, in advance of the next hearing on the Modification is requested by Stag's Leap.

On behalf of Stag's Leap, thank you for your attention to this matter. We are prepared to meet with you about this at your convenience as we believe a meeting to discuss the issues addressed in this letter would benefit us all.

Sincerely,

DICKENSON, PEATMAN & FOGARTY



Scott Greenwood-Meinert

cc: Eric Lent (General Counsel, St. Michelle Wine Estates, LTD., Stag's Leap Wine Cellars)
Martin Johnson (Senior Vice President, General Manager, Stag's Leap Wine Cellars)
Brian Jones (Operations Manager, Stag's Leap Wine Cellars)
Jeff Redding, AICP, Stag's Leap Wine Cellars RepresentativeSS
Laura Anderson (Deputy County Counsel)