

3-23-16 PC  
GA

**Frost, Melissa**

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**Subject:** FW: Unsafe and unsightly conditions on SR 128 in Rutherford

**From:** Barbara Fetherston [mailto:bfetherston1@me.com]  
**Sent:** Wednesday, March 23, 2016 8:04 AM  
**To:** Cahill, Kelli  
**Cc:** Dillon, Diane  
**Subject:** Unsafe and unsightly conditions on SR 128 in Rutherford

Members of Napa County Planning Commission:

Re: Pending Use Permit Modifications for Caymus Vineyards, Frog's Leap Winery and Frank Family Vineyards on SR 128 in Rutherford

Residents' Concerns about Road Traffic and Safety.

I join other residents who are concerned about the unsafe and unsightly conditions on SR 128 in Rutherford. The three pending winery permits on this highway should be evaluated with consideration of the transportation and traffic conditions that surround their locations. State Route 128 is also known as Rutherford Road and Conn Creek Road in this vicinity. It is a rural, two-lane regional arterial roadway with 10.5 foot wide lanes, no paved shoulders, and serves as a crossroad between SR 29 and Silverado Trail. The posted speed limits vary from 30 to 45 miles per hour depending on location and road conditions. Speeding is a chronic problem in this corridor and residents have personally funded the installation of two electronic speed detection signs on Rutherford Road to reduce speeding and improve safety. Other Rutherford residents have proposed safety improvement projects at the intersection of SR 29 and SR 128, including a roundabout proposal. Residents have also proposed a redesign of the triangular intersection in front of Caymus Vineyards to improve its safety and appearance. The proposals required much time and effort to prepare but were not implemented although there is very strong support for improvement projects on this roadway.

As a concerned resident, I have recently worked with the Napa County Sheriff's Department and Caltrans to removed unsightly piles of illegally dumped items, including: bowling balls, appliances, household and electronic goods, dirt, rocks, and large concrete pillars near the intersection of SR 128 and Silverado Trail. Today a Caltrans crew will remove a mile-long pile of slash left along Conn Creek and SR 128. It is a three-man crew using a front-loader, trucks, and trailer to clear the litter, slash, and construction debris dumped on the roadside. Caltrans has been very responsive to my calls and emails. Caltrans is the responsible agency for the condition of this roadway and right of way (ROW). If you are in the vicinity, please take time to thank the Caltrans crew for their assistance in keeping SR 128 a safe and scenic highway.

Caltrans' Needs Assessment for SR 128

In a document titled, "California 128 Transportation Concept Report" dated 4/4/2013, ([http://www.dot.ca.gov/dist4/systemplanning/docs/tcr/SR-128\\_FINAL\\_TCR\\_RB\\_4-15-13.pdf](http://www.dot.ca.gov/dist4/systemplanning/docs/tcr/SR-128_FINAL_TCR_RB_4-15-13.pdf)) Caltrans has identified 3 locations on SR 128 in Rutherford that need safety and operational improvements. One is the triangle intersection in front of Caymus Vineyards where Conn Creek Road and SR 128 intersect. The second is where SR 128 and SR 29 intersect. And, the third is where SR 128 intersects with Silverado Trail. On page 4, the report states:

"Operational and safety issues will need to be addressed at the following intersections with SR 128: Petrified Forest Road, Conn Creek Road, Tubbs Lane, and SR 29 in Rutherford; also two intersections with the Silverado Trail, and access to Dry Creek Rancheria (DCR) at the Bureau of Indian Affairs (BIA) Highway 93 intersection. Some projects to improve conditions at these locations are already programmed; others are in the early planning stages. Bicycle and pedestrian access improvements should be accomplished consistent with local plans, existing land uses, and in coordination with local agencies."

Please note that the report is three years old and nothing has yet been implemented with regard to the needed improvements that Caltrans has identified. Caltrans has posted two large yellow signs at the intersection of SR 29 and SR 128 that warn, "Tractor-Semis Over 30 feet Kingpin to Rear Axle Not Advised" for the next 19 miles on California 128 East. The warning does not seem to be working to discourage trucks from this route. The Caltrans report goes on to mention that, "Over 28 percent of the vehicles on this segment are trucks. Because of the many wineries in the area, the truck percentages are higher in the part of the segment that spans the valley between SR 29 and the Silverado Trail. Here SR 128 is a California Legal Advisory Route, a truck route classification that limits overall length to a maximum of 75 feet."

There are seven wineries on the segment of SR 128 between SR 29 and Silverado Trail; if approved Frank Family Vineyards would be the eighth. The total annual wine produced by those 8 wineries is +/- 4,735,000 gallons. The Napa County Traffic Information/Trip Generation Sheet provides a formula for estimating the truck traffic required for that cumulative level of wine production at 18,845 trips, excluding the crush period. During crush, wineries can require over 100 truck trips per day. In the Caymus application, the traffic report states that when producing 1,800,000 gallons of wine it is estimated that during crush truck trips will increase by 122 per day. Beaulieu Vineyards, located in this corridor, is also permitted to produce the same amount of wine and daily truck trips during crush. At crush, those two wineries alone could contribute an additional 244 truck trips per day to the general traffic. Another winery in this corridor, Elizabeth Spencer, is not listed on the Public winery database maintained by Napa County so her statistics are not included in the totals mentioned here. As a result, the truck traffic data is underestimated and provided as guesstimates of actual traffic levels. When local winery traffic is added to the general and regional traffic, one gets a sense of the roadway usage and the importance of implementing safety measures and improvements. Bicycles, pedestrians, equestrians, families, service providers, tourists, tasting room visitors, agricultural workers on slow-moving farm equipment, the ever-present blue potties, motorcycles, motorhomes, boats on trailers, and emergency-response vehicles etc. must co-exist in a safe and sane manner with semi-trucks and trailers making freight deliveries and pick-ups.

The roads through Rutherford receive heavy use but few repairs. This has been recognized by residents, Caltrans, and the Napa County General Plan. The road conditions and concerns identified in this email, state and county agency meetings and reports illustrate some of the environmental constraints on expanding winery production, hours of operations, and visitation in this corridor. I hope the Planning Commission and Board of Supervisors will consider this information when planning, permitting, and designing future projects in Rutherford. Each of the three pending permits requests approval for large-scale construction projects. The concomitant construction traffic will contribute additional wear and tear on a road with significant issues that need to be addressed as soon as possible. This is a can that should not be kicked down the road any longer.

Thank you for your consideration.

March 23 2016  
geoffellsworth@yahoo.com

I BELIEVE THE APAC RECOMMENDATIONS  
DO HAVE THE POTENTIAL FOR A DIRECT  
PHYSICAL CHANGE IN THE ENVIRONMENT  
AND THAT CEQA IS APPLICABLE AND  
THE RECOMMENDATIONS  
MUST BE LOOKED AT THROUGH AN  
ENVIRONMENTAL IMPACT REPORT,

I ALSO BELIEVE THAT THEY MAY  
ALLOW FOR FURTHER COMMERCIAL  
INTENSIFICATION OF OUR AGRICULTURAL  
GROWING LANDS AND ZONING, CONTRARY  
TO THE INTENT OF THE NAPA COUNTY  
AGRICULTURAL PRESERVE, AND WITH  
THAT SHOULD <sup>BE</sup> PUT TO A MEASURE  
P VOTE OF THE PEOPLE.

AS THE 2010 WDO CHANGES  
SHOULD HAVE BEEN

AND AS THE 2008 CHANGES  
TO THE DEFINITION OF WORD  
AGRICULTURE SHOULD HAVE BEEN

I WAS TALKING TO A GUY YESTERDAY WHO'S BEEN A WINEMAKER IN NAPA COUNTY FOR 25 YEARS AT SOME PRETTY WELL KNOWN WINERIES AND HE HAD NO IDEA ~~FOR~~ THE DEFINITION OF AGRICULTURE WAS CHANGED IN 2008. EXAMPLES LIKE THAT HELP CONFIRM MY <sup>ASSERTION</sup> ~~ARGUMENT~~ THAT THE COMMUNITY WAS LEFT OUT OF THAT MAJOR, MAJOR, MAJOR DECISION <sup>THAT RE-PURPOSED THE ENTIRE COUNTY ZONING</sup> CHANGE IN 2008 AND WE CANNOT CONTINUE DOWN THIS ROAD WITH THE APAC RECOMMENDATIONS. THE PUBLIC VOICE AND VOTE MUST BE HEARD ON THESE ISSUES.

SO I BELIEVE THAT THE DEFINITION OF AGRICULTURE ITEM IN THE APAC RECOMMENDATIONS NEEDS TO RE-VERT TO THE PRE 2008 DEFINITION AND BE CONSISTENT WITH THE FARM BUREAU REGARDING KEEPING MARKETING AS ANCILLARY AND SUBSIDIARY TO ACTUAL FARMING AND GROWING.

I'm ~~going to~~ comment on ~~the~~ <sup>↑ FEW</sup> OF THE ITEMS.

~~Firstly~~ ALSO THE SMALL WINERY STREAMLING OF APPROVAL I BELIEVE THIS IS A DIRECT PATH TO INCREMENTAL COMMERCIAL INTENSIFICATION OF THE AG PRESERVE.

THEY MAY COME IN SMALL BUT AS WE'VE SEEN WITH MAJOR MODIFICATIONS THEY CAN GROW AND GROW AND BRING COMMERCIAL INTENSIFICATION TO OUR RURAL AREAS AND ZONING.

A ~~SECOND~~ ANOTHER POINT REGARDS THE PATH TO COMPLIANCE.

THE FIRST THING THAT NEEDS TO BE ACKNOWLEDGED IS THAT ~~THE~~ EXCEEDING USE PERMITS IS NOT A VICTIMLESS VIOLATION. EXCESSES IN PRODUCTION & VISITATION EXPOSE THE COMMUNITY TO EXTRA CHEMICALS, POLLUTION, ROAD DANGER AND SEVERE NUISANCE TO THOSE INVESTED IN THE EXISTING ZONING.

EXCESSES ALSO ENCRONCH ON OUR COMMON SHARED SUCH AS WATER,

MY MOTHER <sup>FOR EXAMPLE</sup> SUFFERS FROM PARKINSONS DISEASE, COULD THIS BE RELATED TO EXCESS <sup>WINE BUSINESS</sup> A CHEMICAL USE? AS A WINE BUSINESS FAMILY WE ACCEPT A

ROADS AND public services

CERTAIN AMOUNT OF CHEMICAL USE, BUT WHAT WE ACCEPT IS THAT LEVEL APPROVED IN THE USE PERMIT, THAT WHICH IS OVER EXCEEDS THE MITIGATIONS AND THE IMPACTS ACCEPTED BY THE COMMUNITY WITH THE INITIAL ~~AND~~ APPROVAL.

So BY IMPLEMENTING THE APAC COMPLIANCE  
RECOMMENDATION THESE IMPACTS ~~ARE~~ TO  
OUR COMMUNITY ARE IGNORED

geoffellsworth  
@yahoo.com (5)

I'LL USE THE ANALOGY OF SOMEONE  
BEATING THEIR SPOUSE. IN THIS SCENARIO  
"WE SAY <sup>HEY</sup> YOU'RE BEATING YOUR SPOUSE,  
THAT'S ILLEGAL.

AND WE WANT YOU TO BE A LAW ABIDING  
CITIZEN.

SO WHAT WE'RE GOING TO DO IS  
CHANGE THE LAW SO THAT  
BATTERING ~~YOUR SPOUSE~~ IS LEGAL.  
AND THEN YOU'LL BE IN COMPLIANCE  
WITH THE LAW."

BUT THAT DOES NOT ADDRESS THE FUNDAMENTAL  
INCORRECT  
BEHAVIOUR OR IMPACTS OF THE ABUSE

IT'S JUST A TRICK OF LANGUAGE  
AND WE CANNOT MOVE FORWARD WITH THE  
APAC RECOMMENDATIONS UNTIL WE  
ADDRESS THE IMPACTS OF THE BEHAVIOUR  
V.  
REAL

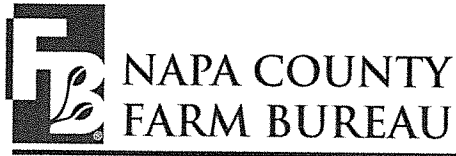
geoff@swarth  
@yahoo.com

AM ALSO UNHAPPY WITH  
I ALSO ~~BELIEVE~~ THE LATEST ROUND  
OF CHANGES <sup>TO THE APAC RECOMMENDATIONS</sup> THAT I UNDERSTAND  
CAME ABOUT AFTER PRIVATE MEETINGS  
WITH INDUSTRY GROUPS AND THIS ~~#~~  
I BELIEVE COMPROMISES THE CORRECT  
PUBLIC PROCESS.



MAR 23 2016

Agenda Item # 9A



Napa County Farm Bureau, 811 Jefferson Street, Napa, CA 94559 707-224-5403

March 23, 2016

Napa County Planning Commission

Chair Basayne and Commissioners;

re: Caymus Use Permit Modification No. P12-00221-UP and Development Agreement

Napa County Farm Bureau's mission is "...to ensure the proper political, social, and economic climate for the continuation of a strong, viable, and sustainable agricultural economy". To that end we support our agricultural preservation regulations and the Winery Definition Ordinance.

We have several concerns re: this project.

- 1) We request a continuance. Agendas and docs were not available to the public until late on Friday, March 18. This does not allow enough time for adequate review and input on a complicated project.
- 2) We are concerned that the current Caymus Use Permit Modification No. P12-00221-UP and Development Agreement present a violation of the provisions for modification of pre-WDO winery use permits and current county code 18.16.020 (I) by seeking to have recognized "pre-1990 marketing events".

Caymus Vineyards winery is a "pre-WDO" winery and has operated in Napa County since 1972. Caymus first obtained a use permit in 1988, which requested only "Public wine tasting" and did not include marketing events or a marketing plan. No subsequent modification has included request for approval of either.

However, the Development Agreement (p. 9) provides recognition of Caymus' pre-WDO marketing levels, "... including: (a) up to two (2) winery dinners per month with up to fifty (50) people, catered food service; (b) one wine auction event per year with up to one hundred (100) people, catered food service; (c) one harvest event per year with up to two hundred and fifty (250) people, catered food service; (d) up to three (3) winery lunches per month with up to fifty (50) people, catered food service; (e) up to two Friends of the Winery events with up to five hundred (500) people, catered food service; ...".

While these marketing activities may be approved as part of the Use Permit Modification request, they cannot be recognized as pre-WDO marketing rights because no such rights existed at the time. They are not permitted in the original use permit nor any subsequent modifications, as required by the WDO, nor has Caymus sought to have them approved via a certificate of conformity as provided in the WDO for existing wineries that began operating before 1974 "...and whose activities were lawful when established and have not been abandoned." Ord. No 947, § 2.

The Winery Definition Ordinance § 3 provides clear protection for the **legally-established rights of wineries** which were established after July 31, 1974:

The Board finds that wineries that were established after July 31, 1974, **after securing the required use permit, and whose activities were lawful when established** are an integral part

of the Napa Valley economy. One of the purposes of enacting Sections 12202(i) and 12231(i) is to **recognize the legal existence of such wineries and to permit their continued right to operate within the conditions of their approved use permits**; provided, however, that **any expansion above and beyond that allowed by the approved use permit may only be permitted upon securing a modification of said use permit** in accordance with the provisions of this ordinance.

Appendix F of the 1990 WDO FEIR presents a full legal discussion re: the ability to grandfather only those activities that were lawful at their inception, ie: established by a valid use permit or, for pre-1974 uses, secured by certificate of conformity.

The 1987-88 Grand Jury General Government Committee report on Land Use makes very clear that prior to the WDO, Napa County zoning did not allow such marketing activities at wineries, therefore, if Caymus engaged in them without benefit of use permit approval, they cannot now be "recognized" as they were not legal uses at their inception.

The Napa County General Plan at the time defined agriculture as "*...the production of food and fiber, the growing of crops, produce and feed and the raising of livestock and animals.*" (Grand Jury, p.38). The '87-'88 Grand Jury also identified winery promotional/marketing activities such as urban uses and "**...a threat to the permanent preservation of agricultural soil and are illegal as defined by the current Napa County General Plan.**" (Grand Jury, p 38-39)

Until the WDO, the only activities legally permitted at wineries were "*...the crushing of grapes, the fermenting and processing of grape juice, or the aging, processing and storage of wines. ... on-site disposal of winery waste generated on site, bottling of wine, the warehousing of wine, plus related office and laboratory activities as accessory uses. ...retail and wholesale activities conducted within the winery shall be limited to wines produced on site or wines produced by the winery at other locations.*" Sec. 12047. (Ord. 629, 3-22-80) (Grand Jury, p. 40)

Current County Code is very also very specific that only those uses authorized by use permit or modification of use permit issued prior to the WDO "*shall be permitted*" unless modified by subsequent use permit.

Napa County Code §18.16.020 (I)

**Wineries and related accessory uses which have been authorized by use permit** and used in a manner set forth in Section 18.124.080 or any predecessor section; provided, that **no expansion of uses or structures beyond those which were authorized by use permit or modification of a use permit issued prior to the effective date of the ordinance codified in this section shall be permitted** except as may be authorized by a subsequent use permit issued pursuant to this title;

Caymus' original use permit #U-438788 was processed and approved in 1988 - just as the Grand Jury report, stating relevant conditions at the time, was released. The report is, therefore, directly applicable. No such rights existed pre-WDO and no such rights are in the Caymus original use permit or subsequent modifications.

Approval of the requested marketing plan as "recognition of pre-1990 marketing events" will set a precedent for recognition of pre-1990 uses that were not legal at their inception and will dangerously undermine the protections carefully crafted by the WDO and current land use regulations.

This does not preclude Caymus from being granted a marketing plan. Any marketing plan is appropriately approved as part of the Use Permit Modification No. P12-00221-UP, but not as recognition of pre-WDO rights.

3) Caymus Use Permit Modification No. P12-00221-UP seeks visitation daily until 8:30 pm. This is a dangerous precedent which violates the intent of the WDO and the Ag Preserve.

The original Agricultural Preserve partnership, which is the cornerstone of our success, is based on unincorporated ag lands remaining in agriculture while housing and urban uses are concentrated in the cities. In exchange for assuming the burden of housing, commercial and retail uses are not allowed on ag lands, but are reserved for the cities.

For this reason, the WDO FEIR recommended that public tours and tastings end at 2:30 pm so as not to conflict with city businesses. Hospitality, particularly with food service as now permitted at wineries, is a direct threat to the restaurants and bars that legally operate within urban centers. To extend winery hospitality into the evening hours puts wineries in direct competition with those businesses which are critical to the economic success of our partners in the cities and must not be allowed.

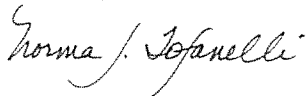
4) Accessory use, if properly calculated, is 64.9% and a violation of the WDO and current county code.

The Ag Preserve and WDO are about USE of the land. The WDO specifically limits accessory use so that it remains "incidental and subordinate."

It is disingenuous at best to pretend that the 27,000 square feet of outdoor areas, whether permeable or impermeable, are not for hospitality/accessory use. They are specifically designed and identified for this purpose (on-premises consumption: AB 2004, Evans "picnic bill") and must be counted as such.

We appreciate your time spent on these very serious WDO-related issues.

Sincerely,



Norma J. Tofanelli  
President

Attachments:

1987-88 Grand Jury, General Government Committee, Land Use

Napa County WDO FEIR 60: Appendix F Memo From County Counsel Regarding DWDO

Shute, Mihaly & Weinberger LLP letter to Napa County Board of Supervisors, June 8, 2015



APPENDIX F

MEMO FROM COUNTY COUNSEL REGARDING DWDO

# INTER-OFFICE MEMO



TO: Board of Supervisors  
FROM: Robert Westmeyer, County Counsel  
RE: What is a Winery Ordinance -- General Plan Amendments  
DATE: Nov. 13, 1989

OUR FILE NO. 180.031

The current definition of a winery provides in part that existing wineries are given eighteen months to establish by use permit certain uses to be denied to all new wineries. The uses consist of public tours and tastings, public promotional activities, picnic areas for winery guests, and the display and sale of wine-related items bearing the winery's name, logo or Napa Valley appellations (hereafter "eighteen-month uses"). The Board has requested that this office provide it with an analysis as to whether or not this approach is lawful. You will find attached a memorandum to the Board of Supervisors from Margaret Woodbury regarding this subject (see pages 2 and 3 of the memo). The conclusion of the memo is that such a procedure is not lawful because it violates that portion of the federal constitution which requires that all parties be treated equally under the law.

It is possible for the Board to allow all wineries to engage in the "eighteen-month uses" through the use permit process since this does not treat new and old wineries differently. Alternatively, the Board could permit no one to apply for such "eighteen-month uses". If the Board permits no one to apply for "eighteen-month uses", no additional General Plan language is needed. If, on the other hand, the Board wishes to allow both existing and new wineries to apply for the "eighteen-month uses", additional General Plan language will be required to enable a finding of General Plan consistency to be made.

You will also note that it is the recommendation of this office that Sections 12202(g)(5)(iii) and 12232(g)(5)(iii) also be deleted since they will adversely affect the ability of the County to defend the seventy-five percent rule.

The draft EIR contains some language that might be interpreted as meaning that the EIR consultant believes that tours and tastings are not consistent with the existing General Plan. If that is the case, I do not agree with the consultant's conclusion and believe that current language exists in the General Plan that authorizes

tours and tastings as well as the rest of the activities identified in the What is a Winery ordinance. However, the General Plan language admittedly is somewhat general in nature and therefore subject to varying interpretations. Therefore, revising the General Plan language to clarify those ambiguities is desirable since public hearings need to be held on the ordinance anyway. I have asked the Planning Director to provide the Board with possible changes to the text of the Land Use Element of the Napa County General Plan which, in his view, will clarify that all of the activities that will be permitted in the Definition of a Winery ordinance are also permitted by the General Plan (excepting the "eighteen-month uses" described above).

The remaining issue involving Mr. Peatman's request that has not been withdrawn relates to small wineries. The Board may wish to consider whether it wishes to amend the What is a Winery ordinance to continue to allow small wineries as permitted uses. If this is the Board's direction, it is recommended that the Board direct the Planning Department to review existing small winery standards and to prepare any necessary revisions (such as minimum lot size, separation between wineries, etc.) to ensure that future small wineries are consistent with the intent of the Winery Definition. Note that the proposed language within the ordinance limits wineries to ten-acre parcels, using 75% Napa County grapes. If it does not do so, more likely than not all small wineries will become legal nonconforming uses upon adoption of the ordinance.

RW:plg

S:1240

# INTER-OFFICE MEMO



DATE: October 16, 1989

TO: Board of Supervisors  
FROM: Margaret L. Woodbury, Chief Deputy County Counsel  
RE: Proposed Winery Definition Ordinance -- Legal Issues

Based upon a review of the proposed winery definition ordinance and research into the legal issues raised by its provisions, it is my opinion that the following portions of the proposed ordinance are most likely to stimulate legal challenge based upon federal or state constitutional or statutory issues. In this memorandum, the relevant text of each provision of concern is summarized, followed by a brief summation of the legal problems, and an assessment of the likelihood of successful legal challenge. Legal problems arising from environmental concerns are not addressed.

1. Unrestricted Retail Sales of Wine-Based Products of 14% or Greater Alcohol Content: §§12202(g)(5)(iii) and 12232(g)(5)(iii)

Summary of Provisions. These two subparagraphs (iii) would allow in the AP and AW zoning districts with a use permit the retail sale of brandy, port, sherry or other wine or wine-based product with an alcohol content of 14% or more produced by or for the winery irrespective of the place where the product is manufactured or the county of origin of the grapes from which the wine or wine-based product was made. By contrast, subparagraphs (i) and (ii) of these same provisions permit retail sales of wine with a use permit in these two zones only if the products soled are fermented, refermented or bottled at the winery or, if produced by or for the winery elsewhere, are made from grapes grown in Napa County.

Summary of Legal Issues.

- a. U.S. Constitution, Article XIV, clause 2 ("No state shall...deny to any person within its jurisdiction the equal protection of the laws")
- b. Calif. Constitution, Article 1, §7(a) ("A person may not be...denied equal protection of the laws...")
- c. Calif. Constitution, Article 1, §7(b) ("A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens...")

Assessment of Likelihood of Successful Legal Challenge. The likelihood of successful legal challenge on all or a combination of the above grounds is high. Although the proposed regulation is merely an "economic" regulation as opposed to one affecting "fundamental rights", it can still withstand legal challenge on any of the above constitutional grounds only if its bears some rational relationship to a conceivable and legitimate state purpose [*Hibernia Bank v. State Board of Equalization*, (1st District, 1985) 166 Cal.App.3d 393]; 62 Ops. Cal. Atty. Gen. 180 (1979)]. Since the County has adequate commercially-



zoned acreage where generic or non-locale specific winegrape products can be sold successfully, the sole justification for permitting retail sales of wine under (i) or (ii) on agriculturally-zoned land is the demonstrable marketing tie-in between premium wine products and the site, either specific or by appellation, of production of the source material. With the fall of generic wine prices in recent years and the continuing high price of County agricultural land it is becoming increasingly the case that premium winegrape production provides one of the few remaining economically-viable agricultural uses of the County's agriculturally-zoned land. This marketing advantage thus promotes continued use of agricultural lands within the County for agricultural purposes. Such promotion is legitimate since the preservation of agricultural land is a declared interest of the State of California (Williamson Act, Government Code §51220). However, this tie-in does not exist where the product is neither made locally nor utilizes local agricultural products, so there does not appear to be any rational relationship between (iii) and any legitimate state purpose.

2. Allowing Existing Wineries 18 Months to Establish by Use Permit Certain Uses to be Denied Immediately to all New Wineries: §§ 12202(i), 12232(k)

Summary of Provisions. These two provisions grandfather-in public tours, public promotional activities, winery guest picnic areas, and display and sale of wine-related items with the winery or appellation logo in AP and AW zoning districts if engaged in by existing wineries who established those uses either before the uses were prohibited or by obtaining authorization pursuant to use permit during a time when permitted by local ordinances. By doing so these provisions recognize the legal nonconforming status of these prior uses (although not calling it by that name) and confer upon that status protection from the usual "phase-out" rules of the County's present regulations pertaining to legal non-conforming uses. Granting such protection from involuntary loss of legal status is probably within the leeway which the courts permit local agencies when dealing with regulation of legal nonconforming uses.

The problem is with the second half of the first sentence of both provisions. This would give all existing wineries which have not heretofore legally engaged in these uses 18 months to request and be granted use permits for these uses, even though identical new wineries would not be entitled to request authorization for such uses. Since these uses would not exist at the time of adoption of the winery definition ordinance, they would never qualify as legal nonconforming uses.

Summary of Legal Issues.

- a. See (a), (b), and (c), in (1), above.
- b. Government Code section 65852 (all zoning regulations "shall be uniform for each class or kind of building or use of land throughout each zone...")
- c. 15 USCA §2 (Sherman Anti-Trust Act): (It is a felony to

"monopolize, or attempt to monopolize or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States or with foreign nations..")

Assessment of Likelihood of Successful Legal Challenge. The likelihood of successful legal challenge on the basis of the constitutional grounds set forth in (a), above, to this difference in the treatment of existing wineries who have not presently established on a legal basis any of these public accessory uses and new wineries which will not be permitted to engage in these uses is extremely high. While the courts grant counties and cities wide leeway as to existing uses due to constitutional constraints because immediate abolition of all or part of a viable non-nuisance businesses may give rise to claims of inverse condemnation under the federal and state constitutions, no such differential protection can be granted to uses established illegally or not yet established at all.

In addition, this provision may well be successfully challenged under (b), above, since state law does not permit local agencies to adopt discriminatory rules for the same types of future uses (wineries) on essentially similar properties within the same zoning districts.

While this provision certainly would promote monopolization of these public use activities by existing wineries as opposed to new wineries, successful challenge under §2 of the Sherman Anti-Trust Act is unlikely unless the County adopts this provision with statements such as "this is what the industry wants, we should not change what the industry wants, this is to protect existing businesses and discourage new businesses, etc.". This is because §2 requires a conspiracy between the regulating county and the regulated (and benefitted) industry which then results in monopolization of economic activities. Mere unilateral adoption by a governmental entity of a regulation which has monopolistic results within the regulated industry will not give rise to a §2 violation (Fisher v. Berkeley, 475 U.S. 260 (1986))

3. Restricting Winery Production Capacity Expansions to Projects Utilizing at least 75% Napa County-Grown Grapes: §§12419; 12423

Summary of Provisions. While the application of these two provisions to the various types of wineries is rather complicated, the basic idea (§12419) is that whenever an existing winery expands beyond its presently authorized or legally-established capacity or beyond its present "winery development area", the expansion capacity must obtain no less than 75% of its winegrape source material from grapes grown within Napa County. The winery development area is defined as 120% of the presently-developed area of an existing winery or 15 acres, whichever is greater (§12423).

Summary of Legal Issues.

- a. (a), (b), and (c) of (1), above.
- b. (b) and (c) of (2), above.
- c. U.S. Constitution, Article I, §8 ("The Congress shall Power...to

regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"--and, by implication, the states cannot do so unless expressly permitted by the Congress)

- d. U.S. Constitution, Article 1, §10 ("No State shall...pass any... Law impairing the obligation of Contracts")
- e. U.S. Constitution, Article 4, §2 ("The Citizens of each State shall be entitled to the Privileges and Immunities of Citizens in the several States.")
- f. 15 USCA §1 (Sherman Anti-Trust Act ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is declared to be illegal...")

Assessment of Likelihood of Successful Legal Challenge. Despite the long list of issues raised by this proposal, it is actually the most likely of the three areas to withstand legal challenge, particularly if "winery development area" is limited to existing developed areas, eliminating the 20% unrestricted expansion area for existing wineries. Without this modification of §12423, the state law against non-uniform regulations within a given zone might support on its own a successful challenge to this provision.

The reason for this optimism is that there appears at least in concept to be a rational relationship between the 75% rule and the promotion of the preservation of Napa County agricultural land. This is because of such land is primarily used for premium winegrape production and that type of product is highly dependent both for actual quality and consumer acceptance upon its identification with the geographically-unique production areas of its source material. This rational relationship may be sufficient to overcome the equal protection arguments and, combined with the rather minimal effect on interstate commerce (there is by nature of the product very little interstate importation of grapes for this premium market), may overcome the privileges and immunities arguments since the latter comes into play only when local regulations will have a profound effect on interstate harmony [72 Ops. Cal. Atty. Gen. 86 (1989)].

This minimal effect and the inherent geographic identification of the County's premium product may also overcome arguments based upon the Commerce Clause, especially since the federal and state governments have already recognized the special area-specific nature of these products through their various appellation regulations. A good discussion of this is contained in a legal opinion in the possession of our office which was prepared by the legal firm of Townsend & Townsend.

Section 1 of the Sherman Anti-Trust Act applies to local agencies only if the activities regulated are not ones in which the relevant State has expressed an interest in state or local control (Community Communications Company v. City of Boulder 455 U.S.40 (1982) and the many subsequent cases which expanded on the state action concept). However, in this instance, the proposed rule promotes in a rational way the preservation of agricultural

lands, a purpose which the Legislature of the State of California has declared to be of paramount importance in the preface to the Williamson Act and the state planning agency has found to be of such importance in the CEQA Guidelines, that it has listed (Appendix G, §y) impairment of agricultural lands as a significant adverse environmental impact which must be considered whenever a local agency is considering approval of a discretionary permit. For this reason, challenge to this provision based solely on §2 is unlikely to be successful.

As discussed above, because this provision may have some mildly monopolistic effects in favor of existing wineries, §2 of the Sherman Anti-Trust Act may be a problem, but only if the 20% expansion area is not deleted and that action is explained with the sort of statements indicative of county-industry collusion described in (2), above. Without this provision, the rule would apply evenly to all owners within the zone except those grandfathered-in as to existing legal capacity for independent constitutional reasons (to avoid inverse condemnation) and it is unlikely that anyone could, under these circumstances, show either a significant monopolistic effect or intent to create such an effect on either a local or interstate basis.

Finally, the constitutional prohibition against the local adoption of laws or regulations which impair existing contracts should not by itself support a successful legal challenge. While it is common in the industry for wineries to enter into long-term contracts with growers for grapes, it is unlikely that a court would feel particularly sympathetic towards persons who entered into purely speculative contracts to buy grapes in future years for production capacity for which they had not obtained discretionary approval at the time of execution of the contracts. Since the proposed ordinance grandfathers-in all legally-authorized or legally-established capacity, the 75% rule would not impair any long-term contracts supplying only that capacity.

*Margaret L. Woodbury*

GENERAL GOVERNMENT COMMITTEE

LAND USE

BACKGROUND:

Napa County has been characterized as a unique and fragile geophysical environment possessing special conditions of soil, water and climate favoring the raising and production of quality agricultural crops and produce. "Napa County's 513,000 acres of land and water consist mostly of mountain ridges and narrow valleys stretching across the County on a northerly-southerly axis."\* Scarcely one third is level enough for conventional development. For these reasons "Napa County still retains much of its rural character and agricultural productivity."

In 1954-55, Napa County adopted the Napa County General Plan. The establishment of the Napa Valley Agricultural Preserve in 1968 was a bold and visionary step toward permanent preservation of Napa Valley soil for agricultural use. At a time when agricultural land in the seven-county Bay Area was being displaced at the rate of 24,000 acres per year, the Ag

\*Unless otherwise noted, all quotes are from the Napa County General Plan.

Preserve placed 25,000 acres of valley floor agricultural land under protective agricultural zoning. The Ag Preserve served to halt urban sprawl, and created the promise that valley soil would forever serve agricultural purposes and preserve the rural character and quality of Valley life. In 1973-75 the land use, conservation and open space elements of the General Plan were adopted, and they were revised in 1982-83.

As required by State laws, the General Plan defines and delineates the management of Napa County's physical resources. The plan is "in a sense a constitution for the county's future," ... "a program for the protection and development of the unincorporated area of Napa County" . . . "a guide which enables citizens to anticipate the County's reaction to individual development programs or projects." And "While the plan is flexible it is nevertheless legally binding; development proposals such as land subdivisions and use permits must, by State law, be considered in the light of its contents." Subordinate ordinances and regulations must conform to and support the General Plan.

The essence of the General Plan is to: "ensure the long term protection and integrity of those areas identified in the General Plan as agricultural, open-space and undevelopable . . . (as well as to) stimulate the development of those areas in the General Plan for residential, commercial, and industrial (uses)." In short, the intent of the Plan is to: "PRESERVE AGRICULTURE, and CONCENTRATE URBAN USES IN EXISTING URBAN AREAS."

In its intent to preserve agriculture, the General Plan is explicit, repetitive, and direct regarding the distinction and separation between agricultural and urban functions and use.

Webster's Dictionary defines agriculture as "the science and art of farming; tillage; the cultivation of the ground for the purpose of producing vegetables, and fruits; the art of preparing the soil, saving and planting seeds, caring for the plants and harvesting the crops. In a broad sense the word includes gardening, or horticulture, and also the raising of livestock."

The Napa County General Plan defines that: "AGRICULTURE WILL BE CONSIDERED THE PRODUCTION OF FOOD AND FIBER, THE GROWING OF CROPS, PRODUCE AND FEED AND THE RAISING OF LIVESTOCK AND ANIMALS."

The Plan defines Urbanizing to include "the subdivision, use or development of any parcel of land that is not needed for the agricultural use of that parcel," for "THE IMPACTS OF URBANIZATION ARE FOR ALL PRACTICAL PURPOSES IRREVERSIBLE. PRODUCTIVE FARMLAND AND URBANIZATION ARE NOT COMPATIBLE."

FINDING:

In recent years there has been an increase in the number of commercial, promotional, cultural, and entertainment activities occurring in wineries and other facilities located on agriculturally zoned land outside of city limits. These activities include concerts, cooking classes, art shows, benefits, and non-agricultural meetings and seminars. These activities are urban uses and by definition are not needed for the "production of food and fiber, the growing of crops, produce and feed and the raising of livestock and animals."

The increase in these urban activities underscores the growth of wineries and other facilities as cultural and community centers, and raises

questions as to their urbanizing influence when they are located outside of cities and towns or industrial parks. The movement of people from populated urban areas to less populated rural areas opposes the major intent of the Plan and creates problems of traffic, sanitation, and other services, and requires solutions associated with the urban environment.

The occurrence of these activities is a threat to the permanent preservation of agricultural soil and are illegal as defined by the current Napa County General Plan.

The Board of Supervisors, Planning Commission, Conservation, Development and Planning Department, and the County Counsel's Office have not consistently coordinated their efforts to prevent the occurrence of activities on Ag zoned land which violate the General Plan.

The Board of Supervisors, Planning Commission, Conservation, Development and Planning Department, and County Counsel's Office are legally bound to uphold and enforce conformance with the General Plan.

RECOMMENDATION:

In order to protect, in fact, its unique and fragile agricultural soil and watershed resource, the Napa County Board of Supervisors, the Napa County Planning Commission, the Conservation, Development and Planning Department, and the Napa County Counsel's Office must:

1. Support and enforce the intent, content and specific goals of the General Plan.
2. Confine urban uses to urban areas.
3. Direct an examination of existing ordinances and use permit procedures.



4. Repeal or amend ordinances which do not conform to and support the General Plan.

5. Cooperate to ensure inter-department review of land use recommendations prior to Board of Supervisors' approval.

FINDING:

The Webster's Dictionary definition of a winery is "a place where wine is made."

The current process of redefining a winery is the third time in the 1980's that the issue of "what is a winery" has been raised. By General Plan definition, wineries are an industrial use. They are allowed on agriculturally zoned land as agricultural processing facilities. The current Napa County zoning ordinance definition of a winery states:

"Winery"

"Winery" means a building or portion thereof used for the crushing of grapes, the fermenting and processing of grape juice, or the aging, processing and storage of wines. It may include on-site disposal of winery waste generated on the site, bottling of wine, the warehousing and shipping of wine, plus related office and laboratory activities as accessory uses. Retail and wholesale activities conducted within the winery shall be limited to wines produced on the site or wines produced by the winery at other locations. Sec. 12047.  
(Ord. 629, 3-11-80)

The proliferation of non-conforming and accessory uses, and the participation of the Board of Supervisors, the Planning Commission, and the Conservation and Planning Department in the current further redefinition of a winery appears to accede to the very commercial and urbanizing pressures the County General Plan has committed to avoid and keep separate from agriculturally zoned land.

The danger is that each redefinition allows a new level of commer-

cial, cultural, or promotional activity occurring on Agricultural Preserve or Agricultural Watershed land which in turn establishes precedent and legal foundation for expanding future non-agricultural uses.

The allowance of an industrial use on agricultural land has created urbanizing influences not confined to urban areas. The containment of urban uses in urban areas depends upon strict government enforcement as well as private industry cooperation and willingness to support the General Plan.

Failure to enforce the General Plan can only lead to the erosion and ultimate demise of the Ag Preserve because the uniqueness and international reputation of the Napa Valley will continue to invite development and activities conducive to further blurring of the agricultural/industrial and urban separations.

RECOMMENDATION:

In order for Napa County to maintain an Agricultural Preserve, the continuing process of redefining a winery based upon non-conforming accessory uses should cease.

Further, the Board of Supervisors, Planning Commission, and the Conservation, Development and Planning Department should consider the placement of future primary and secondary industrial and commercial uses in the County's industrial or commercial zoned developments.

FINDING:

\_\_\_\_\_ "The General Plan is a policy document for the entire community and it may only be amended in the public interest." "The Plan should only be amended when the ...County, with the support of a broad consensus, determines a change is necessary." (State of California General Plan Guidelines, 1987, p. 63)

RECOMMENDATION:

In the absence of the demonstration of such a broad consensus for a change in the General Plan, the County should not accommodate continuing requests for non-conforming uses on agriculturally zoned land.

1987-88 GRAND JURY  
GENERAL GOVERNMENT COMMITTEE

Jack Jensen DDS      William Blanchfield  
Jack Jensen, DDS, Chairman      William Blanchfield

David C. Dunlap      Hope Lugo  
David Dunlap      Hope Lugo

Elissa Miller      Barbara M. Pacey  
Elissa Miller      Barbara M. Pacey

Angela Pieper      Ron Rhyno  
Angela Pieper      Ron Rhyno

GENERAL GOVERNMENT

LAND USE

MINORITY REPORT

BACKGROUND

This minority report is made to augment the committee's report on land use. It is offered as an alternative which should be considered because of the age of the General Plan's Land Use Element and the controversy surrounding it.

FINDING:

The Land Use Element of the General Plan has not been changed substantially since 1972. Applications for amendments to the General Plan occurring more than twice a year indicate basic changes are needed in its content. Sixteen such amendments are pending at this time in Napa County. This vacillation by the County creates uncertainty for applicants and can be very costly.

"The State Office of Planning and Research in its General Plan guidelines (1987 edition) and most communities in California recommend a five year review process. The intent of the Napa County General Plan is to limit major reviews to every 10 years. In today's rapidly changing

society, this will likely lead to numerous requests for individual amendments which may prove difficult to handle on a piecemeal basis."

(p. 114 Zucker Report July 1987)

RECOMMENDATION:

Rather than continuing the practice of numerous amendments which the County has allowed and cognizant of the fact that many inconsistencies in the General Plan and Zoning Ordinance exist, the Committee minority report strongly recommends that the County undertake a comprehensive revision of the General Plan. This process should begin immediately and a full time consultant should be hired to expedite the review. Public meetings in all areas of the County would give citizens the opportunity to voice their opinions as to present values, attitudes and goals. After the required public hearings at the Commission and the Board levels a new General Plan would be adopted by majority resolution. This would be the "constitution" that would govern the County for the next five to ten years.


FINDING:

"There are inconsistencies between the General Plan and Zoning Ordinances both of which are in need of updating." (p. 22 Zucker Report July 1987)

RECOMMENDATION:

If Napa County chooses to continue allowing urban uses on agriculture lands then changes need to be made in the General Plan so that all similar applications are treated equally.

If Napa County determines to uphold the General Plan as adopted in 1973-75 and revised in 1982-83 then commercial (urban related) activities should, henceforth, be denied. Ordinances which do not conform to the General Plan should be repealed or amended.

  
\_\_\_\_\_  
Angela Pieper





**Frost, Melissa**

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**Subject:** FW: Napa County Farm Bureau letter re: Caymus  
**Attachments:** NCFB Caymus 160323 draft2FINAL.pdf; WDO FEIR\_90\_Legal copy.pdf; 87-88 Grand Jury copy.pdf

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**From:** McDowell, John  
**Sent:** Wednesday, March 23, 2016 7:51 AM  
**To:** 'Terry Scott'; 'napacommissioner@yahoo.com'; Heather Phillips; 'Jeri Gill'; 'Anne Cottrell'  
**Cc:** Morrison, David; Anderson, Laura; Gallina, Charlene; Frost, Melissa  
**Subject:** FW: Napa County Farm Bureau letter re: Caymus

Brown Act Communication for the Caymus item on today's agenda. Copies will be distributed at the meeting.

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**From:** Norma Tofanelli [<mailto:keepnvap@sonic.net>]  
**Sent:** Wednesday, March 23, 2016 7:12 AM  
**To:** McDowell, John; Frost, Melissa  
**Cc:** Cio Perez; Sandy Elles  
**Subject:** Napa County Farm Bureau letter re: Caymus

Please provide the attached letter and documents to Planning Commissioners for today's Caymus hearing.

Thank you - Norma

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Planning Commission Mtg.

MAR 23 2016

Agenda Item # 9A

ELLISON FOLK  
Attorney  
folk@smwlaw.com

March 22, 2016

Via E-Mail and U.S. Mail

Members of the Planning Commission  
Napa County  
1195 Third Street, Suite 210  
Napa, California 94559  
Attn: Kelli Cahill  
[kelli.cahill@countyofnapa.org](mailto:kelli.cahill@countyofnapa.org)

Re: Caymus Vineyards – Use Permit Major Modification No. P12-00221 and  
Development Agreement

Dear Commissioners:

On behalf of Nancy Hammonds and Charlotte Blank, we submit these comments on the proposed Use Permit Major Modification and Development Agreement for Caymus Vineyards (“Project”). We are concerned that the County’s Board Agenda Letter presents a substantially incomplete picture of this Project. Rather than maintain existing tasting and other tourism uses at Caymus, the Project would allow Caymus to expand these uses by well over threefold, as well as significantly extend operation and visitation hours at the winery. As should be expected from such large increases in accessory uses at the winery, the Project will create significant environmental impacts. Most notably, the Project will exacerbate existing traffic and safety problems on Conn Creek Road and SR 128 in the immediate vicinity of the Project site. Accordingly, and as a matter of law, the County would violate the California Environmental Quality Act, Pub. Res. Code § 21000 et seq. (“CEQA”) if it approves the Project without first conducting environmental review. Additionally, the proposed significant expansion of visitor-serving uses at Caymus violate the County’s Winery Definition Ordinance and should not be approved.

**I. Because There Has Been Inadequate Time for the Public to Review the Caymus Project, the Planning Commission Should Continue Its Hearing.**

When staff presented this Project to the Board of Supervisors in February, the supporting documents were limited to a short board agenda letter (roughly three pages of text) and three small exhibits. A month later, the materials that the applicant and staff are

using to support the Project have expanded substantially to roughly 350 pages of documents. The County did not make these documents available to the public until late in the day on Friday March 18, even though many of these documents have been available since last August, if not earlier. See Exhibit A (County's email notice). This late release has left the public with little more than two business days to review the proposed use permit modification, development agreement, and numerous associated documents.

A continuance is particularly called for here because Project documents were not provided in response to earlier inquiries by the public. For example, on December 9, 2015, our office requested all documents supporting the Caymus application. See Exhibit B. Yet many critical documents—including a memorandum from the applicant's attorney purporting to substantiate existing uses at the Caymus winery—were not produced. See Agenda Packet, Attachment H, Farella Braun + Martel Memorandum (August 10, 2015). Regardless of whether this omission was simply an oversight, the matter should be continued so that the public may fully review the Project documents and understand the scope of the proposed Project.

## II. The Project Involves Substantial Increases In Uses at the Caymus Site that Require Environmental Analysis.

The Board Agenda Letter does not accurately describe the Project's scope. It claims that "[n]o increase in the existing . . . number of visitors, or marketing events is requested." Agenda Letter at 2. The materials contained in the Agenda Packet undermine this assertion.

First, the proposed use permit modification would allow Caymus to host 450 visitors per day, every day, or up to 164,250 visitors per year for tours and tastings (this number excludes marketing events). Agenda Packet, Attachment B, Conditions of Approval at 4. This represents a substantial increase over current visitation levels at Caymus. The applicant's own documents show that in its largest recent visitation year, 2014, only 50,727 people visited the Caymus tasting room. Agenda Packet, Attachment H, Caymus Vineyards Retail Room Guest Count. That is less than a third of the amount requested in the use permit. On a monthly basis, 2014 visitation fluctuated between 1,946 and 7,835 visitors. In contrast, the use permit would allow Caymus to host up to 13,950 visitors per month.

County counsel asserts that the County should use *existing* conditions to evaluate the project's potential environmental impacts. See Agenda Packet, Attachment F at 2. We believe that allowing unpermitted uses to form the baseline for evaluating project impacts

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<sup>1</sup> The number of visitors in 2013 was even lower: 31,790 total.

creates an incentive to violate the law and is not consistent with the fundamental purpose of CEQA. *See Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439 (agencies should use existing conditions baseline unless it would provide a misleading impression of the project's impacts). Nonetheless, even accepting the recommendation of County counsel to use existing conditions, the County has not done so here. The California Supreme Court has held that agencies cannot use hypothetically allowable development under previous ordinances or operating permits as a baseline for environmental review. *See Communities for a Better Env't v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 320-22 (cited in the County's "CEQA Memorandum"). Here, the County should follow the legal authority that it cites and, at a minimum, evaluate the Caymus proposal against existing visitation levels.

Moreover, the County must evaluate the Project's environmental impacts by comparing existing visitation levels to the *maximum* potential permitted use. Courts have consistently held that an agency must examine a project's full *potential* to affect the environment, even if that level of activity may not ultimately materialize. *Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 279-82. The applicant had previously represented to staff and the Board of Supervisors that visitation levels would be limited to current daily averages. *See* Agenda Packet, Attachment H, Letter from Farella Braun + Martel (October 19, 2015) at 5 (claiming the project would "Use existing conditions (=208 weekday and 312 weekend" for average visitors). But the proposed conditions of approval contain no limitations to maintain average visitation levels. Thus, CEQA requires the County to evaluate the environmental impacts of allowing Caymus to increase its tours and tastings to 450 people each day of the year.

The Project's proposed "Marketing Program" and 2016 production levels suffer from an even more fundamental flaw—there is absolutely no evidence supporting these claimed uses at Caymus. Instead, the Agenda Packet merely contains unsubstantiated asserted use levels from the applicant and staff. Caymus has provided some documents asserting that it occasionally had large events on specific days in the past, but there is no documentation of an *existing* Marketing Program at the annual levels asserted in the Agenda Letter. *See* Agenda Letter at 5-6. Similarly, while the development agreement and an anticipated second amendment to the stipulated judgement between Caymus and the County would purportedly allow Caymus to produce 1.8 million gallons of wine in 2016, there is no evidence that Caymus is currently producing wine at these volumes.<sup>2</sup>

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<sup>2</sup> Moreover, it is unlawful for the County to permit this 1.8 million production level through a development agreement and stipulated judgment. Napa County Code ("NCC") § 18.124.130; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 182.

CEQA requires agencies to substantiate their assertions about a project's scope and impacts. See *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 228 (citing CEQA Guidelines § 15064).<sup>3</sup> Bald assertions lacking factual support, like those offered for Caymus's supposedly "existing" Marketing Program and production levels, do not meet this requirement. *Id.* For example, the Agenda Packet lacks any information about the existing visitor and production-related traffic that Caymus currently generates. See Exhibit C (letter from MRO Engineers). Without this information, it is impossible to evaluate the full scope of the Project's impacts to already-poor safety and traffic conditions near the Caymus property. *Id.*; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal. App. 4th 99, 119.

Finally, the proposed increase in tourist activities at Caymus is compounded by the proposal to extend operating and visitation hours at the winery. Caymus is seeking to expand operating hours from 7 a.m.–5 p.m. (current) to 5 a.m.–8 p.m. (proposed) and visitation hours from 9:30 a.m.–4:30 p.m. (current) to 9:30 a.m.–8:30 p.m. (proposed). Agenda Letter at 6. These extended operating hours would lead to environmental impacts even if the winery was not seeking to substantially expand the number of visitors at the winery. The expanded operation and visitation hours will permit noise from the winery in the early morning and late evening. The evening tastings and tours are even more problematic as they will lead to a daily "happy hour" environment at Caymus and will add more (often intoxicated) drivers to the area roads during the evening commute and into the night. For all of these reasons, the County must consider the full scope of the proposed Project and its foreseeable impacts on the environment and surrounding community.

### III. The Project Will Create Foreseeable Environmental Impacts and Hazards that Require Environmental Review.

It is beyond dispute that permitting Caymus to increase its visitation and operations to the levels requested would create impacts on the environment and the surrounding community. Most significant among these are public safety and traffic impacts on Conn Creek Road and SR 128.

As the Commission knows, winery expansions and large tourism increases in recent years have significantly worsened traffic conditions throughout Napa Valley, especially on Silverado Trail and SR 29. The primary entrance to the Project site is

<sup>3</sup> The CEQA Guidelines, 14 Cal. Code Regs. § 15000 *et seq.*, are referred to as "Guidelines."

located on the two-lane Conn Creek Road (SR 128), which serves an arterial connector between SR 29 and Silverado Trail. Ms. Hammonds, who owns property on Conn Creek Road adjacent to the Project site, has observed significant increases in traffic volumes on the road as more vehicles use it to bypass heavy traffic on Silverado Trail or SR 29. The applicant's own traffic analysis confirms this observation. It shows that the SR 128-SR 29 intersection and the SR 128-Silverado Trail intersection already operate at substandard levels. Agenda Packet, Attachment K at 9.

Much of the existing traffic on Conn Creek Road/SR 128 is associated with wine tasting and marketing events at nearby wineries. These tourism activities have created significant safety concerns on this narrow, two-lane roadway. Drunk driving incidents are an unfortunately frequent occurrence in wine country.<sup>4</sup> Conn Creek Road is already burdened by a high level of drivers traveling under the influence of alcohol. As we previously informed the Board of Supervisors, in a single January 2016 weekend, two serious drunk driving incidents occurred on the segment of Conn Creek Road between Silverado Trail and Rutherford Road. *See Exhibit D* (letter to the Napa County Board of Supervisors). One incident involved a drunk driver hitting a telephone pole and fence and then crossing over Conn Creek Road and crashing into a vineyard. The other involved a drunk driver veering off the road and crashing into a rock wall on the Caymus property. Permitting Caymus to expand its tasting and marketing events will only exacerbate the increasingly poor and dangerous traffic conditions on Conn Creek Road.

Further worsening these poor conditions is the substantial risk of car-truck conflicts on this narrow section of Conn Creek Road/SR 128. The large number of wineries in the area have substantially increased truck traffic on SR 128 in front of Caymus site. According to Caltrans, trucks comprise *over 28 percent* of traffic on this segment of SR 128. *Exhibit C*. The County must evaluate how traffic associated with the Project's visitation increases will interact with the high volume of truck traffic surrounding Caymus.

Moreover, poor traffic and safety conditions will further worsen with the proposed large-scale expansion of visitors at Frog's Leap Winery as well as construction of the proposed Frank Family Vineyards. *See Exhibit E* (Frog's Leap and Frank Family proposals). Both of these winery sites are also located on SR 128/Conn Creek Road. Frank Family would be less than a mile from Caymus; Frog's Leap is roughly 1,500 feet away. Before it can approve this Project, the County must assess the cumulative impacts

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<sup>4</sup> *See NBC Bay Area, Drunk Driving In Wine Country* (available at <http://www.nbcbayarea.com/investigations/WINE-COUNTRY-DUI-INVESTIGATION-151467295.html>).

of Caymus's proposed use expansions along with new and increased uses at nearby wineries. Collectively, these Projects will undoubtedly increase traffic and safety concerns near the Project site. Indeed, County staff has acknowledged that "[t]his [Caymus] project generates a substantial amount of traffic" and should require road improvements to mitigate that traffic impact. Agenda Packet, Attachment D, Memorandum from Rick Marshall, Deputy Director of Public Works (March 14, 2016). The County must therefore conduct a comprehensive, cumulative analysis of the winery expansions' impacts on both the surrounding roadways and the larger environment.

**IV. It Is Unlawful to Approve this Project Under a Categorical Exemption.**

As should be expected from a proposal with large foreseeable public safety and other environmental impacts, this Project does not qualify for a categorical exemption under CEQA. Courts have consistently found that agencies must construe CEQA's "[categorical] exemptions narrowly in order to afford the fullest possible environmental protection. *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 (citing *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1193; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966; *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 842). Similarly, categorical exemptions only apply if "the whole of the [proposed] action" falls within the terms of an exemption. *Association for a Cleaner Environment v. Rosemead Community College Dist.* (2004) 116 Cal.App.4th 629, 640. Together, "[t]hese rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review." *Save Our Carmel River*, 141 Cal.App.4th at 697.

In claiming that this Project qualifies for a CEQA exemption, staff's CEQA Memo ignores this controlling authority and fails to consider the whole of the action that the proposed use permit would authorize. *See* Agenda Packet, Attachment F. Instead the Memo incorrectly claims that the Project qualifies for Class 1 and Class 2 categorical exemptions. *See* CEQA Guidelines §§ 15301-02. This assertion is clearly erroneous; neither Class 1 nor Class 2 exemptions cover the Caymus proposal.

*Class 1 Categorical Exemption* – This exemption is limited to actions related to "existing public or private structures . . . involving negligible or no expansion of use." CEQA Guidelines § 15301. As discussed, the large-scale expansion in visitors, marketing events, and wine production, as well as the proposed increase in tasting hours and hours of operation, represent a significant expansion of uses at the Caymus property. These uses do not fall within the narrowly-constructed terms of the Class 1 exemption. Moreover, even if Caymus were not seeking to significantly expand uses at the winery, the Project would not qualify for a Class 1 exemption because it involves both demolition activities



and construction of *new* facilities, not merely modification of existing facilities. In particular, over the two proposed phases of its Project, Caymus seeks to construct a massive 8,205 square foot greenhouse, as well as demolish five existing buildings and other structures in the creek setback. *See* Agenda Letter at 1-2. None of these actions qualify for a Class 1 exemption.

*Class 2 Categorical Exemption* – This exemption only applies to:

*replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.*

CEQA Guidelines § 15301. Again, neither the proposal to substantially expand uses at Caymus, nor the Project's numerous demolition activities, satisfy this exemption because they do not involve "replacement or reconstruction of existing structures and facilities." The proposed 8,205 square foot greenhouse also falls outside the terms of a Class 2 exemption. This greenhouse would be located on the site of the existing "Wagner family house" (Building B9), a substantially smaller structure that is not currently used as a greenhouse. *See* Agenda Packet, Attachment P at p.7. In fact, the Agenda Packet does not identify an existing greenhouse anywhere on Caymus's property. Because this large greenhouse is new to the Caymus facility and is not replacing an existing structure with "substantially the same purpose and capacity," the Project does not qualify for a Class 2 exemption.

The County's CEQA Memo misconstrues the scope of the Class 2 exemption by parroting the applicant's reliance on *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827 to argue that the Project is exempt because it satisfies the exemptions "same site requirement." *See* Agenda Packet, Attachment F at 3. *Dehne* involved a project to modernize an existing cement plant to comply with new regulatory standards and reduce environmental impacts. *See id.* at 831-33. The cement plant did not change locations and the modernized facility retained the same purpose and capacity as the original plant. *Id.* at 838-39. In contrast, here, the expanded visitation and production levels, new Project uses including the proposed greenhouse, and numerous demolition activities do not involve replacement of existing structures with new structures that have "substantially the same purpose and capacity." CEQA Guidelines § 15301. By relying on a Class 2 (or Class 1) exemption for this Project, the County will violate courts' repeated admonition not to unreasonably expand CEQA exemptions beyond their express terms. *County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th at 966.

Finally, we note that the proposed conditions of approval contain numerous measures intended to reduce or minimize the environmental and safety impacts of the Project. For example, the conditions require road improvements to reduce traffic impacts associated with the Project. Agenda Packet, Attachment B at 3-4; Attachment D Memorandum from Rick Marshall, Deputy Director of Public Works (March 14, 2016). These conditions also require Caymus to comply with the Bay Area Air Quality Management District's air quality standards to mitigate the Project's air quality emissions during construction. See Agenda Packet, Attachment B at 8. And the conditions impose measures to address groundwater and noise impacts from the Project. See Agenda Packet, Attachment B at 9.

If a project includes mitigation measures like these, an agency may not approve the project on the basis of a categorical exemption. See *Salmon Protection and Watershed Network v. County of Marin* (2005) 125 Cal.App.4th 1098, 1107. The basis for this rule is straightforward—if a project requires mitigation to avoid or minimize environmental effects, then that mitigation must be subject to scrutiny by the public through the process that CEQA provides. *Id.* The County's imposition of these mitigation efforts further shows that relying on a categorical exemption for the Project violates CEQA.

#### V. The Project Violates the Winery Definition Ordinance.

The Winery Definition Ordinance ("WDO") contains several statements of legislative intent directly relevant to this Project. These include a declaration that the ordinance must be interpreted to achieve the goal of protecting agriculture and open space uses as the primary land use in the Agricultural Preserve, and to "prohibit" the use of agricultural land for non-agricultural purposes "except to the extent expressly permitted" by the General Plan and County ordinances. See WDO, § 6.

Significantly, the WDO restricts the scope of "accessory uses" such as "marketing of wine" and "tours and tastings." All such accessory uses, "in their totality[,] must remain *clearly incidental*, related and *subordinate* to the primary operation of the winery as a production facility." See, e.g., NCC §§ 18.08.370, 18.16.030(G)(5), 18.08.020 (emphasis added).

The Project contravenes the WDO by elevating nonagricultural uses over agricultural uses. The substantial increase in tours, tastings, and marketing events is not "clearly incidental, related and subordinate" to the Project's primary operation as a winery. Rather, largescale expansion of these nonagricultural uses is the Project's core purpose.

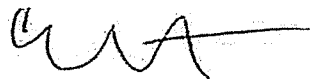
Caymus's status as a pre-WDO winery does not remove its obligation to comply with the WDO. When it was adopted, the WDO permitted wineries with existing use permits to maintain accessory uses only at the levels expressly "authorized by use permit." NCC § 18.20.020(J). These accessory uses may not be expanded beyond those levels unless authorized by a subsequent use permit. *Id.* Here, the applicant's existing use permit (from 1988) does not authorize 450 daily visitors to Caymus, much less the proposed multi-event Marketing Program. Indeed, application materials associated with the 1988 permit show that the applicant only intended to increase visitation levels from 50 to 75 visitors per day.<sup>5</sup> Agenda Letter at 8. Thus, the Project's proposed visitation and marketing levels constitute a substantial increase in accessory uses over what is currently permitted for the Caymus property and violates the WDO. Therefore, the Project cannot be approved unless it is modified to substantially reduce the amount of accessory uses.

## VI. Conclusion

For all of these reasons, the County cannot approve this Project as proposed. The proposed accessory uses at Caymus violate the standards set forth in the WDO. Additionally, using a categorical exemption for the Project is a clear violation of CEQA and exposes the County to liability. The Commission should therefore instruct staff to require a modification of the Project that complies with the WDO and to conduct legally-adequate environmental review before the Commission makes a recommendation for the proposed Project.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

cc: Nancy Hammonds  
Exhibits Attached

768225.2

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<sup>5</sup> Staff claims that a 1989 "wastewater system permit" somehow authorized Caymus to host 450 visitors a day. *See* Agenda Letter at 8. This contention is expressly contrary to the terms of the WDO, which only permitted wineries to maintain pre-WDO uses "authorized by *use permit*." NCC § 18.20.020(J); *see also* § 18.124.130. The fact that a winery obtained a wastewater permit far in excess of its pre-WDO needs cannot be used to create a loophole in the WDO's clear requirements.

**EXHIBIT A**

---

**From:** Frost, Melissa <Melissa.Gray@countyofnapa.org>  
**Sent:** Friday, March 18, 2016 2:49 PM  
**Subject:** Napa County Planning Commission Agenda Notification

The Napa County Planning Commission Special Meeting Agenda  
For  
*March 23, 2016 is now available*

You can access the link below, which will take you to the page where the individual agendas and minutes are listed.

[http://napa.granicus.com/ViewPublisher.php?view\\_id=21](http://napa.granicus.com/ViewPublisher.php?view_id=21)

*Melissa Frost*

Administrative Clerk  
Napa County  
Planning, Building & Environmental Services  
707.299.1380

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**EXHIBIT B**

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**From:** Ellison Folk  
**Sent:** Wednesday, December 09, 2015 2:46 PM  
**To:** Charlene.Gallina@countyofnapa.org  
**Subject:** Caymus Winery

Charlene,

This firm represents Nancy Hammonds on matters related to the proposed expansion of the Caymus Winery. Can you please send me copies of the project application, any environmental review documents, staff reports, and correspondence between the applicant and the County? I looked on-line and only see the project statement and engineering plans. Electronic copies are fine.

Also, can you please add me to any notice list for the project and also let me know if any hearings on this matter have been scheduled.

Thank you.

Ellison

Ellison Folk  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102-4421  
415/552-7272 x230  
415/552-5816  
[www.smwlaw.com](http://www.smwlaw.com)



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**EXHIBIT C**



**M R O**  
**ENGINEERS**  
660 Auburn Folsom Rd.  
Suite 201B  
Auburn, California  
95603  
PHONE (916) 783-3838  
FAX (916) 783-5003

February 24, 2016

Mr. Edward Schexnayder  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, California 94102

Subject: *Review of Focused Traffic Analysis  
Proposed Caymus Winery Use Permit Modifications  
Napa County, California*

Dear Mr. Schexnayder:

As requested, MRO Engineers, Inc., (MRO) has reviewed the focused traffic analysis completed with respect to the proposed Use Permit modifications at Caymus Winery on Conn Creek Road (State Route 128) in Napa County, California. The focused traffic study for the proposed project was prepared by W-Trans, and was documented in a letter report dated October 16, 2015.

**Background**

According to various sources, Caymus Vineyards has been involved in a dispute with Napa County regarding violations of the company's County-approved Use Permit. To resolve this dispute, on August 3, 2015, an application for a Use Permit Modification was filed with Napa County. Subsequent to a determination by County staff that the application would qualify for a Categorical Exemption from the California Environmental Quality Act (CEQA), representatives of Caymus submitted the above-referenced focused traffic study to the County.

The traffic study was submitted to Napa County on October 19, 2015. In a transmittal letter accompanying the study and various other materials, Ms. Katherine Philippakis of Farella Braun + Martel provided a Reduced Project Description. In addition to other actions, Phase 2 of the proposed project would include the following:

*b) Increase of annual production by 550,000 gallons, for a total maximum annual production of 660,000 gallons per year . . .*

The focused traffic study similarly states that the proposed project would:

*. . . increase annual production on a permanent basis by 550,000 gallons, for a total maximum ongoing annual production of 660,000 gallons per year. Caymus does not request an increase in existing employees, parking spaces, number of visitors, or marketing events.*

**Focused Traffic Study Review**

Based on our review of the W-Trans traffic study, we have several comments and questions that need to be resolved prior to Napa County approval of the requested Use Permit modifications.

1. **Traffic Study Baseline** – The traffic study consists primarily of a comparison of the volume of traffic generated by Caymus Winery under existing and proposed conditions. The “proposed” condition reflects a production level of 660,000 gallons per year, which is consistent with the project description referenced above. The existing condition addressed in the traffic study,

however, represents a production level of 1,800,000 gallons per year; this differs from the Reduced Project Description summarized above, which indicates that the current production level is 110,000 gallons per year.

To accurately reflect the incremental impacts of the requested Use Permit modifications, the traffic study should provide a comparison of roadway operations under (a) the actual, verifiable existing production level at the time the project application was submitted to Napa County, and (b) the proposed production level. Although the proposed condition is well-defined in the Use Permit Modification application, the actual existing production level is unknown. Without knowing the true current production level, it is impossible to judge whether the W-Trans traffic study accurately assesses the impacts of the proposed modifications.

2. **Truck Traffic** – Certain operations at Caymus Winery generate substantial volumes of truck traffic. This is particularly true during the harvest/crush periods. Trucks have an inordinate adverse effect on traffic operations and safety, due to their size and operating characteristics, particularly with regard to slower acceleration, longer braking distances, and the need for greater separation between vehicles.

The Napa County "Winery Traffic Information/Trip Generation Sheet," which served as the basis for much of the information presented in the W-Trans traffic study, includes consideration of truck traffic for Crush Saturday conditions. According to the Winery Traffic Information/Trip Generation Sheets for both existing and proposed conditions, which are presented as attachments to the W-Trans letter report, 122 daily truck trips will be generated on a Crush Saturday during both time frames. This is based on the assumption that the average annual quantity of "grapes on-haul" will be the same, regardless of production level. It seems unlikely that this value would be the same for production of either 660,000 gallons per year or 1,800,000 gallons per year.

Moreover, the *California State Route 128 Transportation Concept Report* (Caltrans District 4, April 2013) includes information concerning the volume of truck traffic on Conn Creek Road. With regard to "Segment D" of SR 128 (which includes the section of Conn Creek Road north of Rutherford Road, adjacent to Caymus Winery), page 15 of that document states:

*Over 28 percent of the vehicles on this segment are trucks. Because of the many wineries in the area, the truck percentages are higher in the part of the segment that spans the valley between SR 29 and the Silverado Trail [i.e., Rutherford Road and Conn Creek Road in the vicinity of Caymus Winery].*

In short, the traffic study ignores the safety and operational effects of trucks on Conn Creek Road and other nearby roads. As noted above, Caltrans data indicate that over 28 percent of the traffic on State Route 128 adjacent to the project site consists of heavy trucks. During the crush period, this percentage is certain to be higher. Despite this, the traffic study includes no discussion or analysis of auto-truck conflicts and the potential safety issues associated with mixing automobile traffic (including tourists) with a considerable amount of heavy-vehicle traffic.

3. **Number of Visitors** – One of the key factors in determining the trip generation of a winery in Napa County is the number of visitors that will be attracted to the site. This is particularly true for estimating traffic for a "typical Saturday." The Caymus Winery focused traffic study incorporates certain visitation assumptions. As with the truck traffic assumptions discussed above, the number of winery visitors is shown to be the same, regardless of production level.

**M R O**

**ENGINEERS**

*Mr. Edward Schexnayder*

*February 24, 2016*

*Page 3*

However, no evidence is presented to confirm the validity of these visitation numbers. Without such evidence, it is not possible to determine whether the trip generation calculations are accurate.

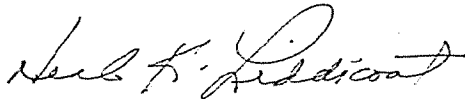
#### **CONCLUSION**

Our review of the focused traffic analysis prepared in connection with the proposed Caymus Winery Use Permit Modification project in Napa County, California revealed several issues affecting the validity of the conclusions presented in that document. These issues must be resolved prior to Napa County approval of the requested Use Permit modifications.

We hope this information is useful. If you have questions concerning anything presented here, please feel free to contact me at (916) 783-3838.

Sincerely,

**MRO ENGINEERS, INC.**



Neal K. Liddicoat, P.E.  
Traffic Engineering Manager

760265.1

**EXHIBIT D**

SHUTE MIHALY  
WEINBERGER LLP

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

ELLISON FOLK  
Attorney  
folk@smwlaw.com

February 8, 2016

Via E-Mail

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

Attn:  
Gladys Coil, Clerk of the Board of Supervisors  
[Gladys.Coil@countyofnapa.org](mailto:Gladys.Coil@countyofnapa.org)  
John McDowell, Deputy Planning Director  
[John.McDowell@countyofnapa.org](mailto:John.McDowell@countyofnapa.org)

Re: Proposed Development Agreement and Use Permit for Caymus Vineyards

Dear Chair of the Board:

This firm represents Nancy Hammonds and Charlotte Blank on matters related to operations at the Caymus Vineyards winery. As the Board knows, Caymus has been violating its use permit for years. These unlawful activities have included building unpermitted structures on the Caymus property as well as producing wine in excess of Caymus's permitted level (110,000 gallons per year) by more than tenfold.

The County is now considering a new use permit and proposed development agreement that would allow Caymus to significantly reconfigure structures on its property as well as increase its wine production to 660,000 gallons per year. We understand that the County does not plan to analyze or mitigate the environmental impacts that will accompany the facility modifications and proposed large-scale increases in permitted uses at Caymus Vineyards. The California Environmental Quality Act, Pub. Res. Code § 21000 et seq. ("CEQA"), however, requires the County to consider and mitigate the environmental impacts from approving projects like Caymus's proposal. Thus, allowing Caymus's construction and use expansion without first conducting environmental review is both inappropriate and unlawful.

In its recent enforcement action against Caymus Vineyards, the County correctly recognized that Caymus's unpermitted activities have caused substantial harm to Napa's community and its environment, which are discussed in more detail below. However, these impacts are not set in stone and it should not be a foregone conclusion that these adverse conditions will persist absent the County's action to make them legal. In fact, Caymus has no legal right to continue with excessive wine production, especially where it negatively impacts the surrounding community.

First, excessive noise and traffic will result from approving the currently unlawful wine production and accessory uses. For instance, Conn Creek Road, which provides access to Caymus, already suffers from a significant growth in traffic following increases in wine production, winery events, and tastings from wineries located on or near the road. At the same time, more vehicles are using Conn Creek Road to bypass heavy traffic on Silverado Trail and SR 29. Tastings and winery events, like those held at Caymus Vineyards, contribute to this traffic problem by increasing the number of drunk drivers on Napa's roads. In fact, in a single weekend last month, two serious drunk driving incidents occurred on the segment of Conn Creek Road between Silverado Trail and Rutherford Road. One incident involved a drunk driver hitting a telephone pole and fence and then crossing over Conn Creek Road and crashing into a vineyard. The other involved a drunk driver veering off the road and crashing into a rock wall on the Caymus property. Permitting Caymus to expand its tasting facilities and increase production at its winery will only serve to exacerbate increasingly poor and dangerous traffic conditions on Conn Creek Road. CEQA requires an analysis of the extent that unpermitted production levels and other uses at Caymus contribute to such substandard and dangerous traffic conditions before the County may grant a use permit to Caymus.

Additionally, noise impacts can be especially burdensome in rural locations like the area surrounding Caymus Vineyards. Construction and demolition activities, as well as wine production and onsite winery events can generate very loud noise levels. Notably here, Caymus is proposing to significantly alter its facilities by demolishing six buildings, constructing new interior driveways and parking spaces, erecting a new 8,200 square-foot greenhouse, as well as constructing other improvements on the property. See Staff Report at 3. All of these activities will foreseeably increase noise generated on Caymus's property and will impact nearby residents.

Despite the foreseeable environmental impacts associated with approving a use permit and development agreement for Caymus, we understand that Caymus has suggested that its project would qualify for exemptions from CEQA. This is incorrect. First, the significant increase in permitted wine production at Caymus will be accompanied by traffic and noise impacts and, consequently, does not qualify for a

CEQA exemption. *See* 14 Cal. Code Regs. § 15300 et seq. Nor do Caymus's proposals to demolish six existing buildings, construct new interior driveways and parking, or construct a largescale greenhouse fall within the terms of any of CEQA's categorical exemptions. *See id.* Even if some of these activities did qualify for a CEQA exemption individually, collectively they do not. *See Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1340, 1346-48 (agencies must consider the whole of the action in determining whether a project qualifies for a categorical exemption). Thus, the County must prepare a CEQA-compliant negative declaration or environmental impact report to fully consider the environmental impacts of these activities, and mitigate them where necessary.

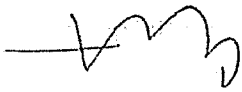
It appears that Caymus is further attempting to avoid legally-required environmental review by presenting its application as a "Reduced Project" compared to existing winery activities. *See* Staff Report, Exhibit B. The County should reject Caymus's attempt to gain from its illegal conduct by labelling its proposed increase in permitted uses as a reduction in actual uses. The County must use CEQA's environmental review process to fully evaluate the impacts caused by the increase in permitted production levels that Caymus proposes. *See Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445 (authorizing the use of alternative baselines when an existing-conditions analysis would deprive the lead agency and the public of information about a project's impacts). Without such analysis, the County will not be sufficiently informed to require measures that are necessary to mitigate the environmental impacts that have resulted from Caymus's years of unlawful activities.

Finally, the staff report notes that Caymus is proposing to amend its judgment with the County to allow Caymus to produce 800,000 gallons of wine in 2017. Staff Report at 3. The proposed amended judgment appears to improperly circumvent the County's process for modifying use permits. The County's code requires that "modifications to an approved use permit *shall be processed in the same manner and in compliance with the procedures set forth herein for use permits.*" Napa County Code § 18.124.130. The code does not allow the County to alter permitted uses through litigation settlements. In fact, doing so would be illegal. *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 182 (agencies may not use settlement agreements to avoid their legally mandated zoning processes).

For all of these reasons, the County should not amend the Caymus judgment, enter into a development agreement, or approve a use permit for Caymus Vineyards until it has fully considered and mitigated the environmental impacts from Caymus's proposed project.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

cc: Nancy Hammonds

754375.3



**EXHIBIT E**





A Tradition of Stewardship  
A Commitment to Service

Planning, Building and Environmental Services

1195 Third Street, 2<sup>nd</sup> Floor  
Napa, CA 94559  
[www.countyofnapa.org](http://www.countyofnapa.org)

Main: (707) 253-4417  
Fax: (707) 253-4336

David Morrison  
Director

## NEW PROJECT SUBMITTAL COURTESY NOTICE

**DATE:** February 1, 2016

**SUBJECT:** Frank Family Vineyards – Rutherford Winery, Use Permit (UP) Application #P13-00371  
8895 Conn Creek Road (Assessor's Parcel No. 030-120-016 and portion of 030-120-017)

The Napa County Board of Supervisors, Planning Commission, and the public have expressed a desire for County Staff to provide early notification of certain discretionary permits beginning 2015.

On October 22, 2013, the Napa County Planning Division received Application #P13-00371 – UP, a request for a Use Permit to construct an approximately 82,000 square foot winery building and operate a winery with an annual production of up to 475,000 of wine per year and up to 50 visitors per day. On December 31, 2015, the Planning Division received an amended proposal for Application #P13-00371 – UP. The current proposal includes the same production and visitation as proposed in October 2013, and now also includes AB 2004 on-site wine consumption and a marketing program consisting of up to two events per week, with up to 12 guests per event. If all pending requests are approved, the proposed winery would operate on an approximately 62-acre property located at 8895 Conn Creek Road, in the AP (Agricultural Preserve) District of unincorporated Napa County.

The Planning Division has commenced review and processing of the application referenced above. Generally, applications of this nature take approximately six to 12 months to process. During that time, County Staff will work with the applicant on documenting and analyzing the project's potential to result in environmental impacts, as well as evaluating the project for consistency with the County General Plan and applicable ordinances. Once County Staff has completed review, the proposal will be scheduled for a public hearing before the Planning Commission. If you have received this courtesy notice by direct mail from County Staff, you will be included in the mailing of the formal notice of public hearing to consider this application.

Additional information about this proposed Use Permit is available for review at the Planning, Building and Environmental Services Department located on the second floor of the County Administration Building, 1195 Third Street, Napa. Information can also be viewed online at the Planning Division's current projects webpage: <http://www.countyofnapa.org/cdpdprojects/>

Public comments are welcome at any point in the process. The formal public notice will delineate a public comment period in advance of the hearing. Depending on the scope of the project and type of supporting environmental document prepared, the formal comment period prior to the hearing date will be 10, 20, 30, or 45 days.

If you have any questions regarding the application or the process, please contact Dana Ayers, Planner III, by telephone at (707) 253-4388 or by e-mail [dana.ayers@countyofnapa.org](mailto:dana.ayers@countyofnapa.org).





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file No P14-000421

Napa County  
Napa County Planning Building  
Conservation, Development, and Planning Department  
1195 Third Street, Suite 210, Napa, California, 94559 phone (707) 253-4417  
web www.countyofnapa.org/cdp/ email cdp@countyofnapa.org

Use Permit Application

To be completed by Planning staff...

Application Type: \_\_\_\_\_

Date Submitted: \_\_\_\_\_ Resubmittal(s): \_\_\_\_\_ Date Complete: \_\_\_\_\_

Request: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*Application Fee Deposit: \$ \_\_\_\_\_ Receipt No. \_\_\_\_\_ Received by: \_\_\_\_\_ Date: \_\_\_\_\_

To be completed by applicant...

\*Total Fees will be based on actual time and materials

Project Name: Frogs Leap Winery Agricultural Processing Facility

Assessor's Parcel No: 030-090-033 Existing Parcel Size: 38.92 +/- ac.

Site Address/Location: 8815 Conn Creek Road Rutherford, California 94573  
No. Street City State Zip

Primary Contact:  Owner  Applicant  Representative (attorney, engineer, consulting planner, etc.)

Property Owner: Frog's Leap Winery

Mailing Address: P.O. Box 189 Rutherford, California 94573  
No. Street City State Zip

Telephone No: (707) 963 - 4704 E-Mail: jonah@frogsleap.com

Applicant (if other than property owner): Jonah Beer

Mailing Address: P.O. Box 189 Rutherford, California 94573  
No. Street City State Zip

Telephone No: (707) 963 - 4704 E-Mail: jonah@frogsleap.com

Representative (if applicable): Jeffrey Redding

Mailing Address: 2423 Renfrew Street Napa, California 94558  
No. Street City State Zip

Telephone No: (707) 255 - 7375 E-Mail: jreddingaicp@comcast.net

Use Permit Information Sheet

Use

Narrative description of the proposed use (please attach additional sheets as necessary):

Frogs Leap Winery (FLW) is proposing to construct a 2902 s.f. combined agricultural processing facility (APC) and tasting room on its 38.92 +/- acre parcel on Conn Creek Road. An attached 145 s.f. rest room and an 845 s.f. porch is also proposed. The new APC would process fruit from the winery's 2+ acre orchard located on the property. The APC and related infrastructure has been designed to process up to 200 lbs. of fruit per day which would be converted to fruit preserves, butters and jams. These products would be for sale in the winery's retail room and on-line. Solid waste generated in the production process would be composted and applied on the on-site garden and orchard. The APC building would also include the winery's tasting room currently located within the existing administration building. The existing porch within the admin building would remain available for tasting with the remaining square footage devoted to office and some production uses. FLW is also requesting an increase in the number of employees, its approved daily and weekly visitors and marketing events as outlined in the attached application. No change in the approved annual wine production (i.e. 240,000 gallons) is proposed as part of this application. The proposed project, including the proposed uses of the administration building is described in more detail on the attached plans prepared by Forrest Architects, dated \_\_\_\_\_ and incorporated by reference.

What, if any, additional licenses or approvals will be required to allow the use?

District \_\_\_\_\_  
State Department of Food and Agriculture \_\_\_\_\_  
Regional \_\_\_\_\_  
Federal \_\_\_\_\_

Improvements

Narrative description of the proposed on-site and off-site improvements (please attach additional sheets as necessary):

The on-and off-site improvements are summarized below and shown on the attached plans prepared by Forrest Architects:

- 1. Construct new APC, attached restroom and porch
- 2. Upgrade water and wastewater treatment and disposal systems
- 3. Install water storage tanks and required fire suppression systems
- 4. Remove existing modular trailer
- 5. Use of portable toilets for larger marketing events

Improvements, cont.

Total on-site parking spaces: 20;18(E/V) existing 44 /24(E/V) proposed  
Loading areas: 1 existing No change proposed

Fire Resistivity (check one; if not checked, Fire Marshal will assume Type V – non rated):

Type I FR  Type II 1 Hr  Type II N (non-rated)  Type III 1 Hr  Type III N  
 Type IV H.T. (Heavy Timber)  Type V 1 Hr.  Type V (non-rated)  
*(for reference, please see the latest version of the California Building Code)*

Is the project located in an Urban/Wildland Interface area?  Yes  No

Total land area to be disturbed by project (include structures, roads, septic areas, landscaping, etc): 0.32 +/- (13,900 s.f.) acres

Employment and Hours of Operation

Days of operation: Sunday--Saturday existing No change proposed  
Hours of operation: 8:30a.m.--4:30p.m. existing 8:30a.m.--6:00p.m. proposed  
Anticipated number of employee shifts: 1 existing No change proposed  
Anticipated shift hours: 8:00a.m.--4:30p.m. existing 8:00a.m.--6:00p.m. proposed

Maximum Number of on-site employees:

10 or fewer  11-24  25 or greater (specify number) 35

Alternately, you may identify a specific number of on-site employees:

other (specify number) \_\_\_\_\_

Certification and Indemnification

Applicant certifies that all the information contained in this application, including all information required in the Checklist of Required Application Materials and any supplemental information including, but not limited to, the information sheet, water supply/waste disposal information sheet, site plan, floor plan, building elevations, water supply/waste disposal system site plan and toxic materials list, is complete and accurate to the best of his/her knowledge. Applicant and property owner hereby authorize such investigations including access to County Assessor's Records as are deemed necessary by the County Planning Division for preparation of reports related to this application, including the right of access to the property involved.

Pursuant to Chapter 130 of the Napa County Code, as part of the application for a discretionary land use project approval for the project identified below, Applicant agrees to defend, indemnify, release and hold harmless Napa County, its agents, officers, attorneys, employees, departments, boards and commissions (hereafter collectively "County") from any claim, action or proceeding (hereafter collectively "proceeding") brought against County, the purpose of which is to attack, set aside, void or annul the discretionary project approval of the County, or an action relating to this project required by any such proceeding to be taken to comply with the California Environmental Quality Act by County, or both. This indemnification shall include, but not be limited to damages awarded against the County, if any, and cost of suit, attorneys' fees, and other liabilities and expenses incurred in connection with such proceeding that relate to this discretionary approval or an action related to this project taken to comply with CEQA whether incurred by the Applicant, the County, and/or the parties initiating or bringing such proceeding. Applicant further agrees to indemnify the County for all of County's costs, attorneys' fees, and damages, which the County incurs in enforcing this indemnification agreement.

Applicant further agrees, as a condition of project approval, to defend, indemnify and hold harmless the County for all costs incurred in additional investigation of or study of, or for supplementing, redrafting, revising, or amending any document (such as an EIR, negative declaration, specific plan, or general plan amendment) if made necessary by said proceeding and if the Applicant desires to pursue securing approvals which are conditioned on the approval of such documents.

In the event any such proceeding is brought, County shall promptly notify the Applicant of the proceeding, and County shall cooperate fully in the defense. If County fails to promptly notify the Applicant of the proceeding, or if County fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The County shall retain the right to participate in the defense of the proceeding if it bears its own attorneys' fees and costs, and defends the action in good faith. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.

<u>John T. Williams</u>	<u>John T. Williams</u>
Print Name Signature of Applicant (if different)	Print Name Signature of Property Owner
<u>1.27.14</u>	<u>1.27.14</u>
Date	Date
<u>John T. Williams</u>	<u>John T. Williams</u>
Signature of Applicant	Signature of Property Owner



## Supplemental Application for Winery Uses

### Operations

Please indicate whether the activity or uses below are already legally **EXISTING**, whether they exist and are proposed to be **EXPANDED** as part of this application, whether they are **NEWLY PROPOSED** as part of this application, or whether they are neither existing nor proposed (**NONE**).

Retail Wine Sales	<input checked="" type="checkbox"/> Existing	<input type="checkbox"/> Expanded	<input type="checkbox"/> Newly Proposed	<input type="checkbox"/> None
Tours and Tasting- Open to the Public	<input type="checkbox"/> Existing			
Tours and Tasting- By Appointment	<input type="checkbox"/> Existing	<input checked="" type="checkbox"/> Expanded	<input type="checkbox"/> Newly Proposed	<input type="checkbox"/> None
Food at Tours and Tastings	<input type="checkbox"/> Existing	<input checked="" type="checkbox"/> Expanded	<input type="checkbox"/> Newly Proposed	<input type="checkbox"/> None
Marketing Events*	<input type="checkbox"/> Existing	<input checked="" type="checkbox"/> Expanded	<input type="checkbox"/> Newly Proposed	<input type="checkbox"/> None
Food at Marketing Events	<input type="checkbox"/> Existing	<input type="checkbox"/> Expanded	<input type="checkbox"/> Newly Proposed	<input type="checkbox"/> None
Will food be prepared...	<input type="checkbox"/> On-Site?	<input checked="" type="checkbox"/> Catered?		
Public display of art or wine-related items	<input type="checkbox"/> Existing	<input type="checkbox"/> Expanded	<input type="checkbox"/> Newly Proposed	<input checked="" type="checkbox"/> None

\* For reference please see definition of "Marketing," at Napa County Code §18.08.370 - <http://library.municode.com/index.aspx?clientId=16513>

### Production Capacity \*

Please identify the winery's...

**Existing** production capacity: 240,000 gal/y Per permit No: 93397-UP Permit date: 1994  
 Current maximum **actual** production: 165,000 gal/y For what year? 2013  
**Proposed** production capacity: No change gal/y

\* For this section, please see "Winery Production Process," at page 11.

### Visitation and Hours of Operation

Please identify the winery's...

Maximum daily tours and tastings visitation: 50 (approved) existing 125(WD)/300(WE) proposed  
 Average daily tours and tastings visitation<sup>1</sup>: 116 existing 125 proposed  
 Visitation hours (e.g. M-Sa, 10am-4pm): 8:00a.m.--4:30p.m. existing 10:0a.m.--6:00p.m. proposed  
 Non-harvest Production hours<sup>2</sup>: 7:00am--10:00pm existing No change proposed

<sup>1</sup> Average daily visitation is requested primarily for purposes of environmental review and will not, as a general rule, provide a basis for any condition of approval limiting allowed winery visitation.

<sup>2</sup> It is assumed that wineries will operate up to 24 hours per day during crush.

**Grape Origin**  
All new wineries and any existing (pre-WDO) winery expanding beyond its winery development area must comply with the 75% rule and complete the attached "Initial Statement of Grape Source". See Napa County Code §18.104.250 (B) & (C).

**Marketing Program**

Please describe the winery's proposed marketing program. Include event type, maximum attendance, food service details, etc. Differentiate between existing and proposed activities. (Attach additional sheets as necessary.)

**Approved Marketing Plan**  
Frequency: Three (3) events/month  
Attendees: Twenty Five (25)/event

- Proposed Addition to Marketing Plan**
- a. Frequency: Weekly  
Attendees: Twenty (20) maximum
  - b. Frequency: Monthly  
Attendees: 150 maximum
  - c. Frequency: Quarterly  
Attendees: 500 maximum
  - d. Participation in Wine Auction

All marketing events will be catered and occur during off-peak periods.

**Food Service**

Please describe the nature of any proposed food service including type of food, frequency of service, whether prepared on site or not, kitchen equipment, eating facilities, etc. Please differentiate between existing and proposed food service. (Attach additional sheets as necessary.)

Food will be served at all marketing events. Food will be prepared on site for all events with 20 or fewer attendees. Food for larger events (>20) will be catered.

## Winery Coverage and Accessory/Production Ratio

**Winery Development Area.** Consistent with the definition at "a.," at page 11 and with the marked-up site plans included in your submittal, please indicate your proposed winery development area. If the facility already exists, please differentiate between existing and proposed.

Existing	<u>63,807 +/-</u> sq. ft.	<u>1.46</u> acres
Proposed	<u>66,709 +/-</u> sq. ft.	<u>1.53</u> acres

**Winery Coverage.** Consistent with the definition at "b.," at page 11 and with the marked-up site plans included in your submittal, please indicate your proposed winery coverage (maximum 25% of parcel or 15 acres, whichever is less).

<u>115,058</u> sq. ft.	<u>2.64</u> acres	<u>6.8</u> % of parcel
------------------------	-------------------	------------------------

**Production Facility.** Consistent with the definition at "c.," at page 11 and the marked-up floor plans included in your submittal, please indicate your proposed production square footage. If the facility already exists, please differentiate between existing and proposed.

Existing	<u>39,995</u> sq. ft.	Proposed	<u>39,306</u> sq. ft.
----------	-----------------------	----------	-----------------------

**Accessory Use.** Consistent with the definition at "d.," at page 11 and the marked-up floor plans included in your submittal, please indicate your proposed accessory square footage. If the facility already exists, please differentiate between existing and proposed. (maximum = 40% of the production facility)

Existing	<u>9,934</u> sq. ft.	<u>26</u> % of production facility
Proposed	<u>11,850</u> sq. ft.	<u>30</u> % of production facility

## Caves and Crushpads

If new or expanded caves are proposed please indicate which of the following best describes the public accessibility of the cave space:

- None -- no visitors/tours/events (Class I)
  Guided Tours Only (Class II)
  Public Access (Class III)
  Marketing Events and/or Temporary Events (Class III)

Please identify the winery's...

Cave area	Existing: <u>None</u> sq. ft.	Proposed: <u>None</u> sq. ft.
Covered crush pad area	Existing: <u>5,895</u> sq. ft.	Proposed: <u>No change</u> sq. ft.
Uncovered crush pad area	Existing: <u>2,167(uncovered work area)</u> sq. ft.	Proposed: <u>No change</u> sq. ft.

**Water Supply/Waste Disposal Information Sheet**

**Water Supply**

Please attach completed Phase I Analysis sheet.

Proposed source of water (e.g., spring, well, mutual water company, city, district, etc.):  
 Domestic Well  
 Emergency Well

Name of proposed water supplier (if water company, city, district):  
 N/A  
 N/A

Is annexation needed?  
 No  
 Yes

Current water use: gallons per day (gal/d)  
 12,900  
 0

Current water source:  
 Well  
 Well

Anticipated future water demand: gal/d  
 14,700  
 0

Water availability (in gallons/minute): gal/m  
 150  
 200+

Capacity of water storage system: gal  
 0  
 40,000

Type of emergency water storage facility if applicable (e.g., tank, reservoir, swimming pool, etc.):  
 Tanks (4 @ 10,000 gallons each)

**Liquid Waste**

Please attach Septic Feasibility Report

Type of waste:  
 Domestic sewage  
 Other process waste

Disposal method (e.g., on-site septic system, on-site ponds, community system, district, etc.):  
 on-site septic  
 off-site pond

Name of disposal agency (if sewage district, city, community system):  
 N/A  
 N/A

Is annexation needed?  
 No  
 Yes

Current waste flows (peak flow): gal/d  
 785  
 6,000 (est.)

Anticipated future waste flows (peak flow): gal/d  
 1,755 (est.)  
 6,000 (est.)

Future waste disposal design capacity: gal/d  
 1,755 (est.)  
 6,000

**Solid Waste and Recycling Storage and Disposal**

Please include location and size of solid waste and recycling storage area on site plans in accordance with the guidelines available at [www.countyofhnpa.org/dem](http://www.countyofhnpa.org/dem).

**Hazardous and/or Toxic Materials**

If your facility generates hazardous waste or stores hazardous materials above threshold planning quantities (55 gallons liquid, 500 pounds solid or 200 cubic feet of compressed gas) then a hazardous materials business plan and/or a hazardous waste generator permit will be required.

**Grading Spoils Disposal**

Where will grading spoils be disposed of?

(e.g., on-site, landfill, etc. If off-site, please indicate where off-site):

TBD at time of construction; off-site at approved site only

## Winery Traffic Information / Trip Generation Sheet

### Traffic during a Typical Weekday

Number of FT employees: \_\_\_\_\_ x 3.05 one-way trips per employee = \_\_\_\_\_ daily trips.

Number of PT employees: \_\_\_\_\_ x 1.90 one-way trips per employee = \_\_\_\_\_ daily trips.

Average number of weekday visitors: \_\_\_\_\_ / 2.6 visitors per vehicle x 2 one-way trips = \_\_\_\_\_ daily trips.

Gallons of production: \_\_\_\_\_ / 1,000 x .009 truck trips daily<sup>3</sup> x 2 one-way trips = \_\_\_\_\_ daily trips.

**Total** = \_\_\_\_\_ daily trips.

(No of FT employees) + (No of PT employees/2) + (sum of visitor and truck trips x .38) = \_\_\_\_\_ PM peak trips.

### Traffic during a Typical Saturday

Number of FT employees (on Saturdays): \_\_\_\_\_ x 3.05 one-way trips per employee = \_\_\_\_\_ daily trips.

Number of PT employees (on Saturdays): \_\_\_\_\_ x 1.90 one-way trips per employee = \_\_\_\_\_ daily trips.

Average number of Saturday visitors: \_\_\_\_\_ / 2.8 visitors per vehicle x 2 one-way trips = \_\_\_\_\_ daily trips.

**Total** = \_\_\_\_\_ daily trips.

(No of FT employees) + (No of PT employees/2) + (visitor trips x .57) = \_\_\_\_\_ PM peak trips.

### Traffic during a Crush Saturday

Number of FT employees (during crush): \_\_\_\_\_ x 3.05 one-way trips per employee = \_\_\_\_\_ daily trips.

Number of PT employees (during crush): \_\_\_\_\_ x 1.90 one-way trips per employee = \_\_\_\_\_ daily trips.

Average number of Saturday visitors: \_\_\_\_\_ / 2.8 visitors per vehicle x 2 one-way trips = \_\_\_\_\_ daily trips.

Gallons of production: \_\_\_\_\_ / 1,000 x .009 truck trips daily x 2 one-way trips = \_\_\_\_\_ daily trips.

Avg. annual tons of grape on-haul: \_\_\_\_\_ / 144 truck trips daily<sup>4</sup> x 2 one-way trips = \_\_\_\_\_ daily trips.

**Total** = \_\_\_\_\_ daily trips.

### Largest Marketing Event- Additional Traffic

Number of event staff (largest event): \_\_\_\_\_ x 2 one-way trips per staff person = \_\_\_\_\_ trips.

Number of visitors (largest event): \_\_\_\_\_ / 2.8 visitors per vehicle x 2 one-way trips = \_\_\_\_\_ trips.

Number of special event truck trips (largest event): \_\_\_\_\_ x 2 one-way trips = \_\_\_\_\_ trips.

<sup>3</sup> Assumes 1.47 materials & supplies trips + 0.8 case goods trips per 1,000 gallons of production / 250 days per year (see *Traffic Information Sheet Addendum* for reference).

<sup>4</sup> Assumes 4 tons per trip / 36 crush days per year (see *Traffic Information Sheet Addendum* for reference).

# Checklist of Voluntary Greenhouse Gas Emission Reduction Measures

An addendum to the Entitlement Application and a supplement for Initial Studies as required by CEQA



A Tradition of Stewardship  
A Commitment to Service

PROJECT NAME	FRUGS LEAP WINERY
PROJECT ADDRESS	8815 CONN CREEK
APPLICANT	NED FORECAST, ARCHITECT
CONTACT INFO	mail@nedforecast.com 707.955.1570
email	
phone	

1 Have you designed to U.S.G.B.C.™ LEED™ or Build It Green™ standards?  
 yes  no  I don't know

2 Do you have an integrated design team?  
 If yes, please list:   If yes, please list:

### 3 SITE DESIGN

3.1 Does your design encourage community gathering and is it pedestrian friendly?

3.2 Are you building on existing disturbed areas?

3.3 Landscape Design

3.31 native plants?

3.32 drought tolerant plants?

3.33 Pierce Disease resistant planting?

3.34 Fire resistant planting?

3.35 Are you restoring open space and/or habitat?

3.36 Are you harvesting rain water on site?

3.37 planting large trees to act as carbon sinks?

3.38 using permeable paving materials for drive access and walking surfaces?

3.4 Does your parking lot include bicycle parking?

3.5 Do you have on-site waste water disposal?

3.6 Do you have post-construction stormwater on site detention/filtration methods designed?

3.7 Have you designed in harmony with existing natural features, such as preserving existing trees or rock outcroppings?

3.8 Does the project minimize the amount of site disturbance, such as minimizing grading and/or using the existing topography in the overall site design (such as cave design)?

3.9 Is the structure designed to take advantage of natural cooling and passive solar aspects?

### 4 ENERGY PRODUCTION & EFFICIENCY

4.1 Does your facility use energy produced on site?  
 If yes, please explain the size, location, and percentage of off-site:  
 1020 PANELS @ 135 KW = 80% CURRENT

4.2 Does the design include thermal mass within the walls and/or floors?

4.3 Do you intend to commission the performance of the building after it is built to ensure it performs as designed?

4.4 Will your plans for construction include:  
 4.41 High density insulation above Title 24 standards?

4.42 Zones for heating and cooling to provide for maximum efficiency?

4.43 Energy Star™ or ultra energy efficient appliances?

4.44 A "cool" (lightly colored or reflective) or a permeable/living roof?

4.45 Timer/time-outs installed on lights (such as the bathrooms)?

If yes, please explain:

### 5 WATER CONSERVATION

5.1 Does your landscape include high-efficiency irrigation?

5.2 Does your landscape use zero potable water irrigation?

5.3 Is your project in the vicinity to connect to the Napa Sanitation reclaimed water?

5.4 Will your facility use recycled water?  
 5.41 If no, will you prepare for it by pre-installing dual pipes and/or purple lines?

5.5 Will your plans for construction include:  
 5.51 a meter to track your water usage?

5.52 ultra water efficient fixtures and appliances?

5.53 a continuous hot water distribution method, such as an on-demand pump?

5.54 a timer to insure that the systems are run only at night/early morning?

6 MATERIAL RECYCLING

yes no I don't know

6.1 Are you using reclaimed materials? 

	X	
--	---	--

  
If yes, what and where: \_\_\_\_\_

6.2 Are you using recycled construction materials-  
6.21 finish materials? 

X		
---	--	--

  
6.22 aggregate/concrete road surfaces? 

--	--	--

  
6.23 fly ash/slag in foundation? 

--	--	--

6.3 Will your contractor be required to recycle and reuse construction materials as part of your contract? 

X		
---	--	--

6.4 Does your facility provide access to recycle-  
6.41 Kitchen recycling center? 

	X	
--	---	--

  
6.42 Recycling options at all trash cans? 

X		
---	--	--

  
6.43 Do you compost green waste? 

X		
---	--	--

  
6.44 Provide recycling options at special events? 

X		
---	--	--

7 NATURAL RESOURCES

7.1 Will you be using certified wood that is sustainably harvested in construction? 

X		
---	--	--

  
7.2 Will you be using regional (within 500 miles) building materials? 

X		
---	--	--

  
7.3 Will you be using rapidly renewable materials, such as bamboo? 

	X	
--	---	--

  
7.4 Will you apply optimal value engineering (studs & rafters at 24" on center framing)? 

	X	
--	---	--

  
7.5 Have you considered the life-cycle of the materials you chose? 

X		
---	--	--

8 INDOOR AIR QUALITY

8.1 Will you be using low or no emitting finish and construction materials indoors-  
8.11 Paint? 

X		
---	--	--

  
8.12 Adhesives and Sealants? 

X		
---	--	--

  
8.13 Flooring? 

X		
---	--	--

  
8.14 Framing systems? 

X		
---	--	--

  
8.15 Insulation? 

X		
---	--	--

  
8.2 Does the design allow for maximum ventilation? 

X		
---	--	--

  
8.3 Do you plan for a wood burning fireplace (US EPA Phase II certified)? 

X		
---	--	--

  
8.4 Does your design include dayliting, such as skylights? 

X		
---	--	--

9 TRANSPORTATION DEMAND MANAGEMENT

9.1 After your project is complete, will you offer your employees incentives to carpool, bike, or use transit? 

	X	
--	---	--

  
9.2 After your project is complete, will you allow your employees to telecommute or have alternative work schedules? 

	X	
--	---	--

  
9.3 Does your project include design features that encourage alternatives modes of transportation, such as preferred parking for carpooling, ridesharing, electric vehicles? 

	X	
--	---	--

  
secured bicycle parking, safe bicycle access? 

X	X	
---	---	--

  
loading zones for buses/large taxi services? 

	X	
--	---	--

  
9.4 How close is your facility to public transportation? TWO MILES

10 Are there any superior environmental/sustainable features of your project that should be noted?

NONE

11 What other studies or reports have you done as part of preparing this application?

- 1 \_\_\_\_\_
- 2 \_\_\_\_\_
- 3 \_\_\_\_\_
- 4 \_\_\_\_\_

12 If your project involves an addition or modification to an existing building, are you planning to improve energy conservation of existing space (such as insulation, new windows, HVAC, etc.)?

If yes, please describe: 

--	--	--

13 Once your facility is in operation, will you:

13.1 calculate your greenhouse gas emissions? 

	X	
--	---	--

  
13.2 implement a GHG reduction plan? 

	X	
--	---	--

  
13.3 have a written plan to reduce your vehicle miles traveled of your operations and employee's commute? 

	X	
--	---	--

14 Does your project provide for education of green/sustainable practices?

If yes, please describe: 

	X	
--	---	--

15 Any comments, suggestions, or questions in regards to the County's efforts to reduce greenhouse gases?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Form filed out by: \_\_\_\_\_

Please feel free to include additional sheets of paper as necessary.



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Project name & APN: \_\_\_\_\_  
 Project number if known: \_\_\_\_\_  
 Contact person: \_\_\_\_\_  
 Contact email & phone number: \_\_\_\_\_  
 Today's date: \_\_\_\_\_

### Voluntary Best Management Practices Checklist for Development Projects

Napa County General Plan Policy CON-65 (e) and Policy CON-67 (d) requires the consideration of Greenhouse Gas (GHG) emissions in the review of discretionary projects and to promote and encourage "green building" design. The below Best Management Practices (BMPs) reduce GHG emissions through energy and water conservation, waste reduction, efficient transportation, and land conservation. The voluntary checklist included here should be consulted early in the project and be considered for inclusion in new development. It is not intended, and likely not possible for all projects to adhere to all of the BMPs. Rather, these BMPs provide a portfolio of options from which a project could choose, taking into consideration cost, co-benefits, schedule, and project specific requirements. Please check the box for all BMPs that your project proposes to include and include a separate narrative if your project has special circumstances.

### Practices with Measurable GHG Reduction Potential

The following measures reduce GHG emissions and if needed can be calculated. They are placed in descending order based on the amount of emission reduction potential.

Already Plan	To Do	ID #	BMP Name
<input checked="" type="checkbox"/>	<input type="checkbox"/>	BMP-1	Generation of on-site renewable energy
<input type="checkbox"/>	<input type="checkbox"/>	BMP-2	Preservation of developable open space in a conservation easement

If a project team designs with alternative energy in mind at the conceptual stage it can be integrated into the design. For instance, the roof can be oriented, sized, and engineered to accommodate photovoltaic (PV) panels. If you intend to do this BMP, please indicate the location of the proposed PV panels on the building elevations or the location of the ground mounted PV array on the site plan. Please indicate the total annual energy demand and the total annual kilowatt hours produced or purchased and the potential percentage reduction of electrical consumption. Please contact staff or refer to the handout to calculate how much electrical energy your project may need.

1020 PV PANELS = 195 KW = 60% CURRENT

Please indicate the amount and location of developable land (i.e.: under 30% slope and not in creek setbacks or environmentally sensitive areas for vineyards) conserved in a permanent easement to prohibit future development.



Already Plan  
Doing To Do

- BMP-3 Habitat restoration or new vegetation (e.g. planting of additional trees over 1/2 acre)**

*Napa County is famous for its land stewardship and preservation. Restoring areas within the creek setback reduces erosion potential while planting areas that are currently hardscape (such as doing a bio-retention swale rather than underground storm drains) reduces storm water and helps the groundwater recharge. Planting trees can also increase the annual uptake of CO<sub>2</sub>e and add the County's carbon stock.*

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- BMP-4 Alternative fuel and electrical vehicles in fleet**

*The magnitude of GHG reductions achieved through implementation of this measure varies depending on the analysis year, equipment, and fuel type replaced.*

Number of total vehicles \_\_\_\_\_

Typical annual fuel consumption or VMT \_\_\_\_\_

Number of alternative fuel vehicles \_\_\_\_\_

Type of fuel/vehicle(s) \_\_\_\_\_

Potential annual fuel or VMT savings \_\_\_\_\_

- BMP-5 Exceed Title 24 energy efficiency standards: Build to CALGREEN Tier 2**

*The California Building Code update effective January 1, 2011 has new mandatory green building measures for all new construction and has been labeled CALGREEN. CALGREEN provides two voluntary higher levels labeled CALGREEN Tier I and CALGREEN Tier II. Each tier adds a further set of green building measures that go above and beyond the mandatory measures of the Code. In both tiers, buildings will use less energy than the current Title 24 California Energy Code. Tier I buildings achieve at least a 15% improvement and Tier 2 buildings are to achieve a 30% improvement. Both tiers require additional non-energy prerequisites, as well as a certain number of elective measures in each green building category (energy efficiency, water efficiency, resource conservation, indoor air quality and community).*

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- BMP-6 Vehicle Miles Traveled (VMT) reduction plan**

*Selecting this BMP states that the business operations intend to implement a VMT reduction plan reducing annual VMTs by at least 15%.*

Tick box(es) for what your Transportation Demand Management Plan will/does include:

- employee incentives  
 employee carpool or vanpool  
 priority parking for efficient transportation (hybrid vehicles, carpools, etc.)  
 bike riding incentives  
 bus transportation for large marketing events  
 Other: \_\_\_\_\_

Estimated annual VMT \_\_\_\_\_

Potential annual VMT saved \_\_\_\_\_

% Change \_\_\_\_\_

Already Plan To Do

BMP-7 Exceed Title 24 energy efficiency standards: Build to CALGREEN Tier 1  
See description below under BMP-5.

BMP-8 Solar hot water heating  
Solar water heating systems include storage tanks and solar collectors. There are two types of solar water heating systems: active, which have circulating pumps and controls, and passive, which don't. Both of them would still require additional heating to bring them to the temperature necessary for domestic purposes. They are commonly used to heat swimming pools.

BMP-9 Energy conserving lighting  
Lighting is approximately 25% of typical electrical consumption. This BMP recommends installing or replacing existing light bulbs with energy-efficient compact fluorescent (CF) bulbs or Light Emitting Diode (LED) for your most-used lights. Although they cost more initially, they save money in the long run by using only 1/4 the energy of an ordinary incandescent bulb and lasting 8-12 times longer. Typical payback from the initial purchase is about 18 months.

BMP-10 Energy Star Roof/Living Roof/Cool Roof  
Most roofs are dark-colored. In the heat of the full sun, the surface of a black roof can reach temperatures of 158 to 194 °F. Cool roofs, on the other hand, offer both immediate and long-term benefits including reduced building heat-gain and savings of up to 15% the annual air-conditioning energy use of a single-story building. A cool roof and a green roof are different in that the green roof provides living material to act as a both heat sink and thermal mass on the roof which provides both winter warming and summer cooling. A green (living) roof also reduces storm water runoff.

BMP-11 Bicycle Incentives  
Napa County Zoning Ordinance requires 1 bicycle rack per 20 parking spaces (\$18,110,040). Incentives that go beyond this requirement can include on-site lockers for employees, showers, and for visitor's items such as directional signs and information on biking in Napa. Be creative!

BMP-12 Bicycle route improvements  
Refer to the Napa County Bicycle Plan (NCPBA, December 2011) and note on the site plan the nearest bike routes. Please note proximity, access, and connection to existing and proposed bike lanes (Class I: Completely separated right-of-way; Class II: Striped bike lane; Class III: Signed Bike Routes). Indicate bike accessibility to project and any proposed improvements as part of the project on the site plan or describe below.

Already Doing    Plan To Do

- BMP-13 Connection to recycled water**

*Recycled water has been further treated and disinfected to provide a non-potable (non-drinking water) water supply. Using recycled water for irrigation in place of potable or groundwater helps conserve water resources.*

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- BMP-14 Install Water Efficient fixtures**

*WaterSense, a partnership program by the U.S. Environmental Protection Agency administers the review of products and services that have earned the WaterSense label. Products have been certified to be at least 20 percent more efficient without sacrificing performance. By checking this box you intend to install water efficient fixtures or fixtures that conserve water by 20%.*

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- BMP-15 Low-impact development (LID)**

*LID is an approach to land development (or re-development) that works with nature to manage storm water as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat storm water as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bioretention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed. Please indicate on the site or landscape plan how your project is designed in this way.*

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- BMP-16 Water efficient landscape**

*If your project is a residential development proposing in excess of 5,000 sq. ft. or a commercial development proposing in excess of 2,500 sq. ft. The project will be required to comply with the Water Efficient Landscape Ordinance (WELO).*

*Please check the box if you will be complying with WELO or If your project is smaller than the minimum requirement and you are still proposing drought tolerant, zeroscape, native plantings, zoned irrigation or other water efficient landscape.*

*DRY FARM VINE YARDS*

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- BMP-17 Recycle 75% of all waste**

*Did you know that the County of Napa will provide recycling collectors for the interior of your business at no additional charge? With single stream recycling it is really easy and convenient to meet this goal. To qualify for this BMP, your business will have to be aggressive, proactive and purchase with this goal in mind.*

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Refer to <http://www.ridethevine.com/wine> and indicate on the site plan the closest bus stop/route. Please indicate if the site is accessed by transit or by a local shuttle. Provide an explanation of any incentives for visitors and employees to use public transit. Incentives can include bus passes, informational hand outs, construction of a bus shelter, transportation from bus stop, etc.

BMP-22 Public Transit Accessibility

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As plug-in hybrid electric vehicles (EV) and battery electric vehicle ownership is expanding, there is a growing need for widely distributed accessible charging stations. Please indicate on the site plan where the station will be.

BMP-21 Electrical Vehicle Charging Station(s)

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Well-placed trees can help keep your building cool in summer. If you choose a deciduous tree after the leaves drop in autumn, sunlight will warm your building through south and west-facing windows during the colder months. Well-designed landscaping can reduce cooling costs by 20%. Trees deliver more than energy and cost savings; they are important carbon sinks. Select varieties that require minimal care and water, and can withstand local weather extremes. Fruit or nut trees that produce in your area are great choices, providing you with local food as well as shade. Please use the site or landscape plan to indicate where trees are proposed and which species you are using.

BMP-20 Planting of shade trees within 40 feet of the south side of the building elevation

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Environmentally Preferable Purchasing (EPP) or Sustainable Purchasing refers to the procurement of products and services that have a reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. By selecting this BMP, you agree to have an EPP on file for your employees to abide by.

BMP-19 Implement a sustainable purchasing and shipping programs

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The Napa County food composting program is for any business large or small that generates food scraps and compostable, including restaurants, hotels, wineries, assisted living facilities, grocery stores, schools, manufacturers, cafeterias, coffee shops, etc. All food scraps (including meat & dairy) as well as soiled paper and other compostable - see <http://www.naparecycling.com/foodcomposting> for more details.

BMP-18 Compost 75% food and garden material

Already Plan  
Doing To Do

Already Plan  
Doing To Do

BMP-23

Site Design that is oriented and designed to optimize conditions for natural heating, cooling, and day lighting of interior spaces, and to maximize winter sun exposure; such as a cave. The amount of energy a cave saves is dependent on the type of soil, the microclimate, and the user's request for temperature control. Inherently a cave or a building buried into the ground saves energy because the ground is a consistent temperature and it reduces the amount of heating and cooling required. On the same concept, a building that is oriented to have southern exposure for winter warmth and shading for summer cooling with an east-west cross breeze will naturally heat, cool, and ventilate the structure without using energy. Please check this box if your design includes a cave or exceptional site design that takes into consideration the natural topography and sitting. Be prepared to explain your approach and estimated energy savings.

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BMP-24 Limit the amount of grading and tree removal

Limiting the amount of earth disturbance reduces the amount of CO2 released from the soil and mechanical equipment. This BMP is for a project design that either proposes a project within an already disturbed area proposing development that follows the natural contours of the land, and that doesn't require substantial grading or tree removal.

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BMP-25 Will this project be designed and built so that it could qualify for LEED?

BMP-25 (a)

LEED™ Silver (check box BMP-25 and this one)

BMP-25 (b)

LEED™ Gold (check box BMP-25, BMP-25 (a), and this box)

BMP-25 (c)

LEED™ Platinum (check all 4 boxes)

## Practices with Un-Measured GHG Reduction Potential

BMP-26 Are you, or do you intend to become a Certified Green Business or certified as a "Napa Green Winery"?

As part of the Bay Area Green Business Program, the Napa County Green Business Program is a free, voluntary program that allows businesses to demonstrate the care for the environment by going above and beyond business as usual and implementing environmentally friendly business practices. For more information check out the Napa County Green Business and Winery Program at [www.countyofnapa.org](http://www.countyofnapa.org).

BMP-27 Are you, or do you intend to become a Certified "Napa Green Land"?

Napa Green Land, fish friendly farming, is a voluntary, comprehensive, "best practices" program for vineyards. Napa Valley vintners and growers develop farm-specific plans tailored to protect and enhance the ecological quality of the region, or create production facility programs that reduce energy and water use, waste and pollution. By selecting this measure either you are certified or you are in the process of certification.

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Comments and Suggestions on this form?

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BMP-34 Are you doing anything that deserves acknowledgement that isn't listed above?

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BMP-33 Are you participating in any of the above BMPs at a 'Parent' or outside location?

*By selecting this BMP, you agree not to burn the material pruned on site.*

BMP-32 Retain biomass removed via pruning and thinning by chipping the material and reusing it rather than burning on-site

*Cover crops reduce erosion and the amount of tilling which is required, which releases carbon into the environment.*

BMP-31 Use 70-80% cover crop

*This BMP can be performed in many ways. One way is to simply put up signs reminding employees to do simple things such as keeping the thermostat at a consistent temperature or turning the lights off after you leave a room. If the project proposes alternative energy or sustainable winegrowing, this BMP could include explaining those business practices to staff and visitors.*

BMP-30 Education to staff and visitors on sustainable practices

*There are many intrinsic benefits of locally grown food, for instance reducing the transportation emissions, employing full time farm workers, and improving local access to fresh fruits and vegetables.*

BMP-29 Local food production

*There are a lot of materials in the market that are made from recycled content. By ticking this box, you are committing to use post-consumer products in your construction and your ongoing operations.*

BMP-28 Use of recycled materials

Already Plan  
Doing To Do



A Tradition of Stewardship  
A Commitment to Service

Department of Public Works

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Napa, CA 94559-3092  
www.co.napa.ca.us/publicworks

Main: (707) 253-4351  
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Donald G. Ridenhour, P.E.  
Director

## WATER AVAILABILITY ANALYSIS - PHASE ONE STUDY

**Introduction:** As an applicant for a permit with Napa County, It has been determined that Chapter 13.15 of the Napa County Code is applicable to approval of your permit. One step of the permit process is to adequately evaluate the amount of water your project will use and the potential impact your application might have on the static groundwater levels within your neighborhood. The public works department requires that a Phase 1 Water Availability Analysis (WAA) be included with your application. The purpose of this form is to assist you in the preparation of this analysis. You may present the analysis in an alternative form so long as it substantially includes the information required below. Please include any calculations you may have to support your estimates.

The reason for the WAA is for you, the applicant, to inform us, to the best of your ability, what changes in water use will occur on your property as a result of an approval of your permit application. By examining the attached guidelines and filling in the blanks, you will provide the information we require to evaluate potential impacts to static water levels of neighboring wells.

**Step #1:**

Provide a map and site plan of your parcel(s). The map should be an 8-1/2"x11" reproduction of a USGS quad sheet (1:24,000 scale) with your parcel outlined on the map. Include on the map the nearest neighboring well. The site plan should be an 8-1/2"x11" site plan of your parcel(s) with the locations of all structures, gardens, vineyards, etc in which well water will be used. If more than one water source is available, indicate the interconnecting piping from the subject well to the areas of use. Attach these two sheets to your application. If multiple parcels are involved, clearly show the parcels from which the fair share calculation will be based and properly identify the assessor's parcel numbers for these parcels. Identify all existing or proposed wells

**Step #2:** Determine total parcel acreage and water allotment factor. If your project spans multiple parcels, please fill a separate form for each parcel.

Determine the allowable water allotment for your parcels:

**Parcel Location Factors**

The allowable allotment of water is based on the location of your parcel. There are 3 different location classifications. Valley floor areas include all locations that are within the Napa Valley, Pope Valley and Carneros Region, except for areas specified as groundwater deficient areas. Groundwater deficient areas are areas that have been determined by the public works department as having a history of problems with groundwater. All other areas are classified as Mountain Areas.

Please underline your location classification below (Public Works can assist you in determining your classification if necessary):

Valley Floor	1.0 acre feet per acre per year
Mountain Areas	0.5 acre feet per acre per year
MST Groundwater Deficient Area	0.3 acre feet per acre per year

Assessor's Parcel Number(s)	Parcel Size (A)	Parcel Location Factor (B)	Allowable Water Allotment (A) X (B)
030-090-033	38.9± ac	1.0 af/yr	38.9 af/yr

Step #3:

Using the guidelines in Attachment A, tabulate the existing and projected future water usage on the parcel(s) in acre-feet per year (af/yr). Transfer the information from the guidelines to the table below.

EXISTING USE:		PROPOSED USE:	
Residential	N/A af/yr	Residential	N/A af/yr
Farm Labor Dwelling	N/A af/yr	Farm Labor Dwelling	N/A af/yr
Winery	14.4 af/yr	Winery	16.0 af/yr
Commercial	N/A af/yr	Commercial (Ag Processing Center)	0.004 af/yr
Vineyard*	N/A af/yr	Vineyard* (Center)	N/A af/yr
Other Agriculture	af/yr	Other Agriculture	af/yr
Landscaping	af/yr	Landscaping	af/yr
Other Usage (List Separately):		Other Usage (List Separately):	
		Add Emp (15)	15 af/yr
		Add Vstrs (105)	35 af/yr
		Add Evt Gsts	11 af/yr
<b>TOTAL:</b>	<b>14.4 af/yr</b>	<b>TOTAL:</b>	<b>16.61 af/yr</b>

Step #4:

Provide any other information that may be significant to this analysis. For example, any calculations supporting your estimates, well test information including draw down over time, historical water data, visual observations of water levels, well drilling information, changes in neighboring land uses, the usage of other water sources such as city water or reservoirs, the timing of the development, etc. Use additional sheets if necessary.

Is the proposed use less than the existing usage?  Yes  No  Equal

TOTAL: 14.4 af/yr 4.7M gallons  
 TOTAL: 16.61 af/yr 5.4M gallons

-Estimated Well Yield = 150 gpm per well completion report.  
 -Vineyard area totals approximately 32 acres and is dry farmed and frost protection water is provided by a pond on an adjacent property that is filled with winery process wastewater and rainfall (no groundwater demand).  
 -Existing Winery: Includes all existing uses (landscape and orchard irrigation, winery domestic & process) and is based on water meter readings for the year 2013 provided by Frog's Leap. 2013 wine production was reported by Frog's Leap to be 165,000 gallons (use permit allows 240,000 gallons).  
 -Proposed Winery use is increased by 2.15 ac-ft/100k gallons x (240k-165k gallons) to account for future production at full permit level.  
 -Proposed Ag Processing Center is Based on 250 batches x 5 gallons per batch (per Frog's Leap)  
 See below for description of Additional Employees and Additional Visitors:

**Conclusion:** Congratulations! Just sign the form and you are done! Public works staff will now compare your projected future water usage with a threshold of use as determined for your parcel's size, location, topography, rainfall, soil types, historical water data for your area, and other hydrogeologic information. Should that evaluation result in a determination that your project may adversely impact neighboring water resources, a phase 2 water use analysis may be required. You will be advised of such a decision.

Signature: Mark M. [Signature]  
 Exp. 12/31/14  
 No. 67435



Phone: (707) 320-4968

Date: 1/28/2014

Continued from above: The proposed use permit includes a phase 2 water use analysis for 35 employees. These additional 15 employees represent an estimated water demand of 0.35 acre-feet/year per the estimated water use guidelines below. The proposed use permit also includes an increase from 20 visitors per day to an average of 125 visitors per day. This results in a total of up to 50,325 additional visitors per year compared to existing permitted conditions. Assuming a conservative 3 gallons of water used per visitor per Napa County wastewater generation standards this represents an estimated 0.35 acre-feet/year. The proposed additional marketing events result in up to 1,040 event guests with meals prepared onsite and up to 3,800 event guests with catered meals. Using 15 gallons and 5 gallons of water used for events with meals prepared onsite and catered, respectively, per Napa County wastewater generation standards this represents an estimated 0.11 acre-feet/year.



**NAPA COUNTY UNIFIED PROGRAM CONSOLIDATED FORM  
FACILITY INFORMATION  
BUSINESS ACTIVITIES**

Page 1 of

**I. FACILITY IDENTIFICATION**

FACILITY ID # (Agency Use Only)		EPA ID # (Hazardous Waste Only)	
BUSINESS NAME (Same as Facility Name of DBA-Doing Business As)	Frogs Leap Winery		
BUSINESS SITE ADDRESS	4815 Corn Creek Rd.		
BUSINESS SITE CITY	104	CA	ZIP CODE 94562
CONTACT NAME	106	PHONE	943 4704

**II. ACTIVITIES DECLARATION**

**NOTE: If you check YES to any part of this list, please submit the Business Owner/Operator Identification page.**

Does your facility...	If Yes, please complete these pages of the UPCF....
<b>A. HAZARDOUS MATERIALS</b> Have on site (for any purpose) at any one time, hazardous materials at or above 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet for compressed gases (include liquids in ASTs and USTs); or the applicable Federal threshold quantity for an extremely hazardous substance specified in 40 CFR Part 355, Appendix A or B; or handle radiological materials in quantities for which an emergency plan is required pursuant to 10 CFR Parts 30, 40 or 70?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 4 HAZARDOUS MATERIALS INVENTORY - CHEMICAL DESCRIPTION
<b>B. REGULATED SUBSTANCES</b> Have Regulated Substances stored onsite in quantities greater than the threshold quantities established by the California Accidental Release prevention Program (CalARP)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 4a Coordinate with your local agency responsible for CalARP.
<b>C. UNDERGROUND STORAGE TANKS (USTs)</b> Own or operate underground storage tanks?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 5 UST FACILITY (Formerly SWRCB Form A) UST TANK (one page per tank) (Formerly Form B)
<b>D. ABOVE GROUND PETROLEUM STORAGE</b> Own or operate ASTs above these thresholds: Store greater than 1,320 gallons of petroleum products (new or used) in aboveground tanks or containers.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 8 NO FORM REQUIRED TO CUPAs
<b>E. HAZARDOUS WASTE</b> Generate hazardous waste?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 9 EPA ID NUMBER -- provide at the top of this page
Recycle more than 100 kg/month of excluded or exempted recyclable materials (per HSC 25143.2)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 10 RECYCLABLE MATERIALS REPORT (one per recycler)
Treat hazardous waste on-site?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 11 ON-SITE HAZARDOUS WASTE TREATMENT - FACILITY ON-SITE HAZARDOUS WASTE TREATMENT - UNIT (one page per unit)
Treatment subject to financial assurance requirements (for Permit by Rule and Conditional Authorization)?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 12 CERTIFICATION OF FINANCIAL ASSURANCE
Consolidate hazardous waste generated at a remote site?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 13 REMOTE WASTE / CONSOLIDATION SITE ANNUAL NOTIFICATION
Need to report the closure/removal of a tank that was classified as hazardous waste and cleaned on-site?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 14 HAZARDOUS WASTE TANK CLOSURE CERTIFICATION
Generate in any single calendar month 1,000 kilograms (kg) (2,200 pounds) or more of federal RCRA hazardous waste, or generate in any single calendar month, or accumulate at any time, 1 kg (2.2 pounds) of RCRA acute hazardous waste; or generate or accumulate at any time more than 100 kg (220 pounds) of spill cleanup materials contaminated with RCRA acute hazardous waste.	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 14a Obtain federal EPA ID Number, file Biennial Report (EPA Form 8700-13A/B), and satisfy requirements for RCRA Large Quantity Generator.
Household Hazardous Waste (HHW) Collection site?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 14b See CUPA for required forms.

**F. LOCAL REQUIREMENTS**

(You may also be required to provide additional information by your CUPA or local agency.)

UPCF Rev. (12/2007)

