



Planning Commission Mtg.

Planning, Building & Environmental Services

MAY 04 2016

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

Agenda Item # 9A

David Morrison  
Director

A Tradition of Stewardship  
A Commitment to Service

## MEMORANDUM

|  |  |
|--|--|
| To: Wyntress Balcher, Planning Division                              | From: Jeannette Doss, Engineering and Conservation Division <i>JD</i>  |
| Date: <del>December 11, 2015</del><br><i>Revision April 28, 2016</i> | Re: Canard Vineyard Winery<br>Use Permit - Engineering CoA<br>1016 Dunaweal Lane, Calistoga, CA<br>P15-00249 APN 020-150-027 |

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

*To establish a new 10,000 gallon per year winery with three full-time employess; convert the ground floor of an existing two-story residential storage building into a 925 square foot winery; construct a new 1,280 square foot crush pad; construct a 800 square foot cover; and construct four new onsite parking spaces. The application also includes a visitation and marketing plan that would allow for daily tours and tasting by appointment only with a maximum of 10 visitors per day; four marketing events per year with a maximum of 75 guests per event; and two wine auction events per year with a maximum of 100 guests per event.*

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

### EXISTING CONDITIONS:

1. Napa County parcel 020-150-027 is located at the intersection of Silverado Trail and Dunaweal Lane.
2. The existing parcel is approximately 24.69 acres.
3. Site is currently developed with a residence and associated accessory structures.

### RECOMMENDED CONDITIONS:

#### PARKING:

1. Any parking proposed by the applicant or required by the Planning Commission as a condition of this permit must conform to the requirements of the latest edition of the Napa County Road and Street Standards.

**NEW PRIVATE ACCESS ROADS AND DRIVEWAYS:**

2. All roadway construction associated with this application shall conform to the current Road and Street Standards of Napa County at the time of permit submittal and accepted construction and inspection practices.
3. Structural section of all drive isles shall be calculated by a licensed Civil or Geotechnical Engineer to hold a minimum H2O loading and shall conform to the procedures contained in Chapter 600 of the State of California Department of Transportation Design Manual or approved equivalent
4. *All driveway access to the public right of way must conform to the latest edition of the Napa County Road and Street Standards (Page 63, Detail P-2). (Revision April 28, 2016)*
5. All roadway construction shall be permitted and completed prior to issuance of the proposed winery facilities occupancy.
6. The applicant must obtain an encroachment permit prior to any work performed within the Napa County Right-of-Way.
7. The applicant must obtain an encroachment permit from the California Department of Transportation for any work performed within the State Right-of-Way.

**SITE IMPROVEMENTS:**

8. All on site civil improvements proposed, including but not limited to, the excavation, fill, general grading, drainage, curb, gutter, surface drainage, storm drainage, parking, and drive isles, shall be constructed according to plans prepared by a registered civil engineer, which will be reviewed and approved by this office prior to the commencement of any on site land preparation or construction. Plans shall be submitted with the building and/or grading permit documents at the time of permit application. A plan check fee will apply.
9. Proposed drainage for the development shall be shown on the improvement plans and shall be accomplished to avoid the diversion or concentration of storm water runoff onto adjacent properties. Plan shall also indicate the path and changes in runoff.
10. Grading and drainage improvements shall be constructed according to the latest "Napa County Road and Street Standards" and the California Building Code. Specifically, all cuts and fills slopes shall be setback to meet the latest CBC.
11. If excess material is generated that cannot be used onsite, the Owner shall furnish to the Napa County Planning, Building and Environmental Services Department evidence that the Owner has entered into agreements with the property owners of the site involved and has obtained the permits, licenses and clearances prior to commencing any off-hauling operations.

**OTHER RECOMMENDATIONS:**

12. Prior to the issuance of any grading or building permit, or the signing of improvement plans, the permittee and County shall survey and document the condition of the nearest County roads before construction begins, and then reevaluate conditions at the end of construction. Prior to Occupancy of any buildings or commencement of any use, the permittee shall be responsible for repair of any pavement degraded due to its construction vehicles.

**CONSTRUCTION STORMWATER REQUIREMENTS:**

13. Any Project that requires a building or grading permit shall complete a Project Guidance for Stormwater Compliance checklist and shall submit this form to the Napa County Planning, Building and Environmental Services Department for review.
14. All earth disturbing activities shall include measures to prevent erosion, sediment, and waste materials from leaving the site and entering waterways both during and after construction in conformance with the Napa County Stormwater Ordinance 1240 and the latest adopted state regulations. Best Management Practices (BMPs) shall also be implemented to minimize dust at all times.
15. Any construction activity that equals or exceeds one acre of total disturbed area shall prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the regulations of California Regional Water Quality Control Board (SRWQCB) and shall file a Notice of Intent (NOI) prior to commencement of any construction activity. The completed SWPPP shall be submitted to the Napa County Planning, Building and Environmental Services Department for review.
16. All hazardous materials stored and used on-site during construction that could cause water pollution (e.g. motor oil, cleaning chemicals, paints, concrete, etc.) shall be stored and used in a manner that will not cause pollution, with secondary containment provided. Such storage areas shall be regularly cleaned to remove litter and debris. Any spills shall be promptly cleaned up and appropriate authorities notified.
17. All trash enclosures must be covered and protected from rain, roof, and surface drainage.
18. The property owner shall inform all individuals, who will take part in the construction process, of these requirements.

**POST-CONSTRUCTION RUNOFF MANAGEMENT REQUIREMENTS:**

19. The proposed development is categorized as a Regulated Project under Napa County's BASMAA Post-Construction Manual. Regulated Projects are proposed developments that create or replace 5,000 sf or more of impervious surface and shall meet the following requirements:
  - a. Route runoff to Bioretention or other facilities sized and designed according to the criteria in Chapter 4, Napa County's BASMAA Post-Construction Manual.
  - b. Identify potential sources of pollutants and implement corresponding source control measures in Appendix A of the Napa County's BASMAA Post-Construction Manual.
  - c. Provide ongoing maintenance of Bioretention facilities.
  - d. Prepare and submit the Stormwater Control Plan for a Regulated Project per Chapter 3, Napa County's BASMAA Post-Construction Manual, at the time development permits are applied for. A template may be found in Appendix D.
20. Provide concrete stamping, or equivalent, of all stormwater conveyance system inlets and catch basins within the project area with prohibitive language (e.g., "No Dumping – Drains to Napa River"). Signage shall identify the receiving water the drain discharges to and include a message in Spanish.
21. All roofs, gutters, and/or downspouts made of copper or other unprotected metals shall discharge to landscaping or other pervious surface designed and maintained appropriately to prevent soil erosion.
22. Prior to final occupancy the property owner must legally record an "Implementation and Maintenance Agreement" approved by the PBES Department Engineering Division to ensure all post-construction structures (i.e. Treatment Control BMPs, and Diversion Systems) on the property remain functional and operational for the indefinite duration of the developed site.
23. Each year the entity responsible for maintenance is required to complete an annual report that includes copies of completed inspection and maintenance checklists to document that maintenance activities were conducted during the previous year. The annual report shall be retained for a period of at least five years and made available upon request by the County.

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

If you have any questions regarding the above items please contact Jeannette Doss at 259-8179.



*Calistoga Chamber  
of Commerce*

April 28, 2016

To: Napa County Planning Commission  
From: Calistoga Chamber of Commerce & Visitor Bureau  
Regarding: Canard Vineyard Use Permit Request

Dear Commissioners,

I am writing to you in regard to a request by Canard Vineyard for a Use Permit so that they can produce their wine which will include use of their estate fruit, and to increase their visitation allowance correspondingly.

Canard Vineyard is a long time member in good standing of the Calistoga Chamber of Commerce and is a strong contributor to the overall Calistoga experience that we share with visitors from around the world. We believe Canard has contributed meaningfully to the quality and vibrancy of economic development in the Calistoga area since they opened and will continue to do so in the future.

As good stewards of the land and as a local business held in high regard and a supporter of the community in many ways, the Calistoga Chamber of Commerce would like to support their application and ask that you approve their Use Permit request.

Sincerely,

Chris Canning  
Executive Director  
Calistoga Chamber of Commerce & Visitor Bureau



**RESOLUTION NO. 2010-48**

**A RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, ESTABLISHING INTERPRETIVE GUIDANCE ON MARKETING ACTIVITIES FOR WINERIES**

**WHEREAS**, wineries were established shortly after the planting of vineyards in Napa County and have been an important component of Napa County agriculture since the nineteenth century; and

**WHEREAS**, wineries have historically engaged in accessory uses in order to market and sell wine directly to consumers in addition to sales through other channels; and

**WHEREAS**, the County adopted a Winery Definition Ordinance in 1990 with the intent of defining uses that are permitted in association with wineries; and

**WHEREAS**, the resulting sections of Napa County Code have ensured that wineries approved since adoption of the Winery Definition Ordinance have remained agricultural processing facilities with accessory uses, such as tours and tastings, marketing of wine, office, and retail sales; and

**WHEREAS**, such uses would be deemed inappropriate in agricultural areas and therefore not permitted unless they remain incidental and subordinate to the primary use of a winery as an agricultural processing facility; and

**WHEREAS**, since adoption of the Winery Definition Ordinance, the County has relied on the ordinance in granting use permits and use permit modifications, and has attempted to implement provisions of the ordinance consistently and fairly; and

**WHEREAS**, the County, existing winery operators, and applicants seeking approval to construct new wineries all benefit from a common understanding of the requirements and restrictions added to Napa County Code with adoption of the Winery Definition Ordinance; and

**WHEREAS**, the County is now considering adoption of an ordinance clarifying the definition of "Marketing of Wine" and other sections of Napa County Code first adopted as the Winery Definition Ordinance in 1990; and

**WHEREAS**, the County wishes to complement the proposed ordinance with a resolution of Board policy providing interpretive guidance; and

**WHEREAS**, the interpretive guidance provided herein is intended to improve the quality of winery applications and compliance with winery requirements, and may be amended or supplemented by Board of Supervisors Resolution from time to time,

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Napa as follows:

1. The Interpretive Guidance provided in Exhibit "A" reflects the Board's interpretation of winery-related sections of the zoning ordinance; and
2. The zoning ordinance shall control in the event of any conflict between the ordinance and this Resolution and/or Exhibit "A."
3. This Resolution shall take effect at the same time as the concurrent ordinance clarifying the definition of "Marketing of Wine" and other sections of Napa County Code.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of the Board held on the 11th day of May, 2010, by the following vote:

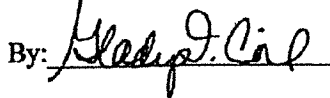
AYES: SUPERVISORS WAGENKNECHT, CALDWELL and DILLON

NOES: SUPERVISORS LUCE and DODD

ABSENT: SUPERVISORS NONE

  
DIANE DILLON, Chair  
Napa County Board of Supervisors

ATTEST: GLADYS I COIL  
Clerk of the Board of Supervisors

By: 


|   |   |
|---|---|
| <p>APPROVED AS TO FORM<br/>Office of County Counsel</p> <p>By: <u>Laura J. Anderson (by e-signature)</u><br/>Deputy County Counsel</p> <p>Date: <u>April 23, 2010</u></p> | <p>APPROVED BY THE BOARD OF SUPERVISORS</p> <p>Date: May 11, 2010</p> <p>Processed by: </p> |
|---|---|



Exhibit A  
Interpretative Guidance

I. Events Permitted as part of "Marketing of Wine"

Since the adoption of the Winery Definition Ordinance in 1990, Napa County Code has allowed activities for the education and development of customers and potential customers at wineries under the definition of "marketing of wine." Cultural and social events that are unrelated to education and development are explicitly not permitted, while cultural and social events that are directly related to education and development have always been allowed. Business events are similar to cultural and social events, in that they are only permitted as part of "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of an approved marketing plan that in its totality is "clearly incidental, related and subordinate to the primary operation of the winery as a production facility" (Sections 18.16.030(G)(5) and 18.20.030 (I)(5)).

The following are some examples of marketing events, including cultural and social events that the County considers directly related to education and development of consumers. These events fall within the definition of "marketing of wine." In each case, the example describes the intent of the event, the wine-related content, and the non-wine related content.

1. A winery invites 250 members of their wine club to the winery for a special harvest musical event. Catered food is served, the previous year's vintage is tasted from the barrel, and a string quartet performs.
2. Every year on December 5, a winery throws a Repeal Party for 100 invited distributors, wine shop owners, restaurant owners, and wine writers. No presentations are made, winemaking is not formally discussed, no food is served, but copious amounts of wine are consumed.
3. On Arbor Day, a winery owner invites 15 of her closest friends (many, but not all, of whom are regular purchasers of her wine) to a special luncheon event. Guests assemble around a heritage oak, various smoked and wood-grilled foods are served; the event culminates in the opening of the winery's ultra rare Arbor Day Cuvee, a cabernet sauvignon that has been aged for three years in untoasted oak barrels.

Examples of cultural and social events that are not permitted include weddings, wedding rehearsals, anniversary parties, and similar events where the education and development of consumers is subordinate to non-wine-related content.

The following are some examples of business events that the County considers directly related to education and development of consumers, and therefore fall within the

definition of "marketing of wine." In each case, the example describes the intent of the event, the wine-related content, and the non-wine related content.

1. A three hour (total) tour of the winery and private tasting event is provided for employees of a national bank. Half of the event is taken up by the regional bank manager delivering a speech addressing business prospects for the coming year.
2. The COO of a Rutherford winery leads a tour of the facility's state of the art energy efficiency and wastewater recycling programs and hosts a round table discussion about green house gas reduction efforts in the County which includes County staff, Sacramento lawmakers, and local business leaders. The afternoon ends with a wine and cheese reception featuring the winery's biodynamically certified wines.
3. A half-day corporate retreat for a San Rafael-based software firm's 35-member account management group. From 10 to 1 they enjoy a tour of the cellars, a tasting, and a winemaker-hosted blending lab. From 1 to 2 there is a buffet luncheon featuring estate-produced wines; over lunch the group discusses the technical aspects of the firm's new 3D rendering tool.

Examples of business events that are not permitted include non-winery related staff meetings, conferences, shareholder meetings, and similar events where the education and development of consumers is subordinate to non-wine-related content.

The above examples are provided for guidance only. They are not intended to constitute an exhaustive list of all cultural, social, or business marketing events which are either consistent with or inconsistent with the "marketing of wine."

Under no circumstances may winery facilities be rented out to third parties as venues for parties, meetings, or events the way that restaurants or hotels might rent their banquet halls or meeting rooms.

## II. Conversion of Existing Structures:

To discourage property owners from constructing residences and barns with the express intent of converting them to wineries, the County does not generally support use permit proposals seeking to convert existing buildings to winery use if the buildings have been constructed or substantially modified within the last 5-7 years.

## III. The Appropriate Intensity of Marketing Programs:

To ensure that the intensity of winery activities is appropriately scaled, the County considers the remoteness of the location and the amount of wine to be produced at a facility when reviewing use permit proposals, and endeavors to ensure a direct relationship between access constraints and on-site marketing and visitation programs.

IV. Annual "Spot" Audits:

The Conservation, Development and Planning Department's code enforcement program is generally complaint-driven; however the Department and the Planning Commission will continue their practice of encouraging compliance with winery production volumes by annually auditing a random sample of permitted wineries, using data provided by the wineries to State and federal agencies. As staffing allows, the annual "spot" audit may be expanded to consider compliance with winery visitation and marketing programs using data collected by the wineries in conformance with their conditions of approval.

V. Temporary Certificates of Occupancy:

The Building Department will continue their practice of allowing new wineries to produce wine after a temporary certificate of occupancy (TCO) has been granted, and to prohibit wineries from opening to the public for tours and tasting or for marketing events until they have a final certificate of occupancy. TCOs are generally not to be used to allow production of wine for more than one year.

*Last Amended: May 11, 2010*



**Frost, Melissa**

---

**Subject:** FW: Correspondence received for item 9A on tomorrow's agenda.

**From:** Frost, Melissa  
**Sent:** Tuesday, May 03, 2016 5:06 PM  
**To:** Anne Cottrell; 'Heather Phillips'; 'Jeri Gill '; 'Mike Basayne'; 'Terry Scott'  
**Cc:** Morrison, David; Anderson, Laura; McDowell, John; Gallina, Charlene; Balcher, Wyntress  
**Subject:** Correspondence received for item 9A on tomorrow's agenda.

Commissioners:

Planning Commission Mtg.

Attached is correspondence received for item 9A on tomorrow's agenda.

MAY 04 2016

Brown Act Communication - Please do not reply all

Agenda Item # 9A

Melissa Frost

Napa County  
Planning, Building & Environmental Services  
707.299.1380

---

**From:** Balcher, Wyntress  
**Sent:** Tuesday, May 03, 2016 4:58 PM  
**To:** Frost, Melissa  
**Subject:** FW: Please forward to Planning Commission

Received from applicant

---

**From:** Thomas Falcon [<mailto:tfalcon@safaritecpark.com>]  
**Sent:** Tuesday, May 03, 2016 4:38 PM  
**To:** Balcher, Wyntress  
**Subject:** FW: Please forward to Planning Commission

A friend of Rich and Carolyn that is also a friend of mine wrote this to support them but couldn't figure out how to send it to the Commission members. Can you just add it to the file?

**Subject:** Please forward to Planning Commission

Dear Planning Commission,

I am writing you in support of the application of CANARD VINEYARD WINERY - RICHARD AND CAROLYN CZAPLESKI - USE PERMIT #P15-00249.

I own and operate a small family winery in Napa, similar in size to what the Czapleskis are proposing. I have known Rich and Candy for a number of years and in my opinion, they have shown themselves to be excellent stewards of the land. Furthermore, I believe that small estate wineries bring diversity and protect our valley from being overly commercialized by large corporate tourist venues. The applicants are long time Napa Valley residents and live and work on the property. Candy is certified as a Master Gardener.

**It is my understanding that the proposed project will primarily use the fruit produced on the site and will not import any grapes or juice from outside of Napa Valley.  
Most small wineries must have the opportunity to sell directly to the public in order to be financially viable.**

**Sincerely,**

**Patrick Elliott-Smith  
Elan Vineyards**

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

**Frost, Melissa**

---

**Subject:** FW: Correspondence received for item 9A

From: Frost, Melissa

Sent: Tuesday, May 03, 2016 5:02 PM

To: Anne Cottrell; 'Heather Phillips'; Jeri Gill '; 'Mike Basayne'; 'Terry Scott'

Cc: Morrison, David; McDowell, John; Anderson, Laura; Gallina, Charlene; Balcher, Wyntress

Subject: Correspondence received for item 9A

Commissioners:

Attached is correspondence received for item 9A on tomorrow's agenda.

Brown Act Communication - Pleas do not reply all

Melissa Frost

Napa County

Planning, Building & Environmental Services

707.299.1380

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

From: Balcher, Wyntress

Sent: Tuesday, May 03, 2016 4:14 PM

To: 'Norma Tofanelli'

Subject: RE: Canard

Hi Norma,

I have received your e-mail and will forward your comment to the Commission and our Engineering Division.

Wyntress Balcher, Planner  
Planning, Building, Environmental Services  
1195 Third Street Suite 210  
Napa, CA 94559  
D. 707. 299.1351  
F. 707. 299.4094

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

From: Norma Tofanelli [<mailto:keepnvap@sonic.net>]  
Sent: Tuesday, May 03, 2016 4:02 PM  
To: Balcher, Wyntress  
Subject: Re: Canard

Thanks for the info - I was looking at the preliminary Grading Plan - but I do not believe there is existing drainage at that location. It is not visible - I have been out checking.

There is county drainage on the S side of Dunaweal from Silverado Trail down along our hill property adjacent to 1001 but no drainage where indicated on your map.

We do not agree to, nor approve, any new or increased drainage from this project onto our property.

thank you - Norma

On May 3, 2016, at 3:41 PM, Balcher, Wyntress wrote:

> Hi Norma,

> Attached is an enlarged copy of a portion of the preliminary Grading Plan from the application. The drainage pipe is existing and located within the right-of way. The proposed extension is to accommodate the new paved taper on their property from the road that they are required to put in.

>



> I hope this answers your question.

>

> Wyntress Balcher, Planner

> Planning, Building, Environmental Services

> 1195 Third Street Suite 210

> Napa, CA 94559

> D. 707. 299.1351

> F. 707. 299.4094

>

>

> -----Original Message-----

> From: Norma Tofanelli [<mailto:keepnvap@sonic.net>]

> Sent: Tuesday, May 03, 2016 2:11 PM

> To: Balcher, Wyntress

> Subject: re: Canard

>

> Hi. Wyntress -

>

> re: Graphics packet, p 10:

> I'd like clarification of what appears to be a new drain pipe under Dunaweal from the Canard property into ours at 1001 Dunaweal.

>

> We have not been contacted and do not approve any new drainage into our property.

>

> Please clarify - thanks, Norma

>

>

>

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

> <drainage pipe of concern to Tofanelli.pdf>

3 May 2016

MAY 04 2016

Agenda Item # 9A

Napa County Planning Commission  
Chair Basayne and Commissioners  
1195 Third Street, Suite 210  
Napa, California 94559

re: Use Permit #P15-00249: Canard

My family has been growing grapes in Calistoga since my grandfather, Sebastian DiGiulio, purchased our property at 1001 Dunaweal Lane in 1929. We are a farming family - one of the few left in the valley who actually farms, and lives on, our own land. My 91-year-old mother is in the vineyard every day - weather permitting. My brother is the vineyard manager and I assist in the field as well as office. We do not oppose wineries - our livelihood depends upon them.

The Tofanelli family, however, does have concerns regarding noise, water, traffic, hours of visitation, archeological resources, conversion of existing structures and the ultimate conduct of this business.

**1) Noise: We request a condition of approval that prohibits any outdoor amplified music.**

Applicants have a history of disregard for the law and for the privacy and property of their neighbors. Late night parties with motorcycle and tractor races as well as loud cars racing through the vineyard and peeling recklessly from the driveway have long been endured by neighbors.

While the staff report acknowledges that this permit results from over 3-years of code enforcement efforts that ultimately required court action, it does not provide sufficient information about the violations and you really should review the file. The property owners were found in egregious violation of county code. For several years, they advertised and conducted illegal tours and tastings, dinners, parties and even Millionaire's Concierge helicopter tours (*documented by Napa County Sheriff's office*).

There is no reason to believe that their conduct will change with the construction of a winery. Winery events will only provide more opportunity to create more noise and any outdoor amplified music must be prohibited.

**2) Water:** We question the county's reliance on the weary, unproven formula for "water availability threshold" of 1 acre foot per acre of land. While much of the county, and Napa city, is grappling with the problem of water being trucked to increasingly unsustainable projects, staff appears unaware of water trucking in the Dunaweal area and again assures there is plenty of water. One acre foot of water for each acre of land can supposedly be continuously extracted with no harm. GRAC and Ludorff Scalmanini do not provide data to support that assumption. Indeed, they state there is insufficient data to assume anything and, instead, identify the Calistoga area as "High Priority" for study because it is particularly data deficient.

Another small winery, Venge Vineyards (8,000 cases), less than a mile away, was approved in 2009, also with assurances of ample water - from 4 wells. The 12-acre parcel had a small vineyard and private residence but needed 4 wells to survive. Neighbors were told their water concerns were baseless. One acre foot of water for every acre of land? Venge was built in 2010 and now trucks water in regularly. At least one Venge neighbor now also has to truck in water periodically.

Apparently unknown to the county, (*although we have repeatedly submitted this data*) is that Clos Pegase has also recently trucked in water. In 2012-13 water trucks regularly chugged up the hill to the storage tank near the residence.

The problem in our area is that the alluvium capable of storing water is very thin, geothermal waters with vineyard-killing boron are very close to the surface and the hills are so fissured from volcanic activity it is unclear how much water received in the eastern hills actually recharges here.

I incorporate by reference two well maps as originally submitted with public comments for the Pavitt and Fisher wineries in our area. The original map was created and submitted to the county in 1987. The data is from well logs, neighbor well records and county files. The second map was updated in December 2008 and submitted at the Pavitt hearings.

The maps show that 3 major wells have gone dry since the original documentation. Cuvaision and Clos Pegase wineries regularly tank water in. Another neighbor tanked water in for about 15 years until she finally bought the property across the Trail for its good well and has a county permit to pipe the water under the Trail to her house.

The original map data was considered so accurate that it was cited in the 1989

Winery Definition Ordinance FEIR by Senior Environmental Health Specialist Jill Pahl as evidence of resource overdraft in our area. She requested that the area be studied and that water use by wineries in the area be monitored and limited. This was in 1989. No studies have been conducted; no monitoring or limitations imposed and our wells are going dry.

The sorry state of Simmons Creek provides ample evidence of cumulative impacts on the sustainability of our water supplies. Simmons Creek borders the subject property as well as my mother's home, and used to be our swimming hole - the water flowed clean and clear all year; waist-deep - perfect for hot, summer days. Due to excess development and pumping upstream, Simmons Creek is now a pathetic imitation of itself. There is barely a flow for most of the summer and it dries in the fall.

**3) Traffic:** Any increase to traffic is always of concern. W-Trans' study notes that the impacts of the addition of the project traffic to cumulative projections for 2030 will contribute to degraded service levels at the Dunaweal intersections at the Silverado Trail (LOS E) and at SR 29 (LOS F). While the study considers LOS E and F to be acceptable, most motorists who are forced to wait in line do not. It is ludicrous to keep adding "insignificant" amounts to a cumulative total that is projected to result in failed traffic conditions.

Traffic that may seem theoretically insignificant in a study paid for by the applicant has a way of growing in reality. The ability to conduct tours and tastings by appointment is just such a theoretic limitation and is a valley joke. Wineries throughout the valley, and in my area specifically, regularly flaunt this provision. They simply put out sandwich-board signs declaring "OPEN TODAY" or "SPECIAL CASE SALE TODAY ONLY" or various other slogans. Who effectively monitors these appointments?

**4) Hours of visitation:** Hours of visitation should end at 4 pm. Our Ag Preserve is dependent upon a partnership between the cities and County - both have agreed through mutually supportive General Plans that urban development belongs in the cities so that the unique soils of the unincorporated area can be reserved for agriculture. Overwhelming voter approval of Measure P to extend Measure J ag protections is proof that the Ag Preserve is still paramount to Napa County residents. The constant expansion of urban uses (*food service, extended hours for tastings, events*) erodes the basic partnership by sucking business out of the cities into the County and weakens ag protections. Hours of visitation must not be extended as this cuts into the bar and restaurant businesses that have

legally located in our cities.

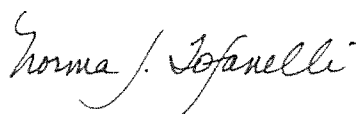
**5) Archeological resource protection:** The classification of this project as a Categorical Exemption Class 3, ignores the potential presence of archeological resources. This area is a recorded historic site for a local Native American settlement. A major burial ground was identified at the Calistoga Wastewater Treatment Plant about 1/4 mile from this property, during its construction. This is a proven major settlement area. Our property at 1001 Dunaweal contains a work area - it is littered with obsidian chards from the chipping of arrowheads. Precautions should be taken to preserve any such areas on the Canard site.

**6) Conversion of Existing Structures:** As the "barn" was constructed in 2013 after code enforcement began, it appears that it was constructed with the intent to convert to a winery in violation of Resolution 2010-48. However, it will serve no purpose to deny its use and thereby require more loss of productive ag lands.

**7) Permit review:** Because the property owners have a proven track record of disregard for the law, we request that this permit be conditioned with an annual review of operations, including events and impacts to the area. This is not unusual and is a condition imposed on Pavitt Winery, for example. This allows an official venue for neighbors' concerns to be addressed based on the reality of the winery's practice instead of the theoretical conjecture depended upon in the permit process.

I have been active in protecting ag lands for over 25 years. I attended every single WDO hearing, have provided testimony at many other public hearings and participated in the APAC process. I've been here many times before.

Code violators should not be rewarded. To do so makes a mockery of the rule of law and weakens societal order. Yet we all know, staff, commissioners and public, that there is not one word of testimony, not one bit of evidence that the public can submit that will cause you to deny or even impose meaningful conditions on any winery permit in Napa County. It is foolish to hope otherwise.



Norma J. Tofanelli  
1001 Dunaweal Lane • Calistoga

## Balcher, Wyntriss

**From:** Thomas Falcon <tfalcon@safaritecpark.com>  
**Sent:** Wednesday, May 04, 2016 7:59 AM  
**To:** Balcher, Wyntriss  
**Subject:** FW: comment to County from Norma

Planning Commission Mtg.

MAY 04 2016

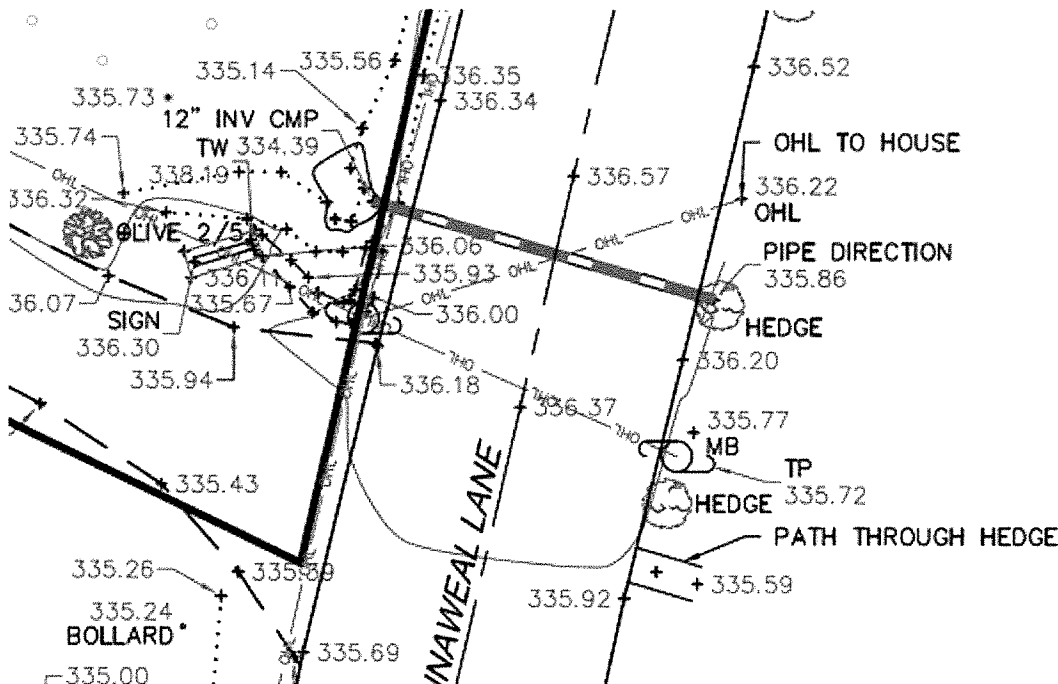
Agenda Item # 9A

Wyntriss, here is the official answer to Norma's complaint.

**From:** Joel Dickerson [mailto:joel@madrone.engineering]  
**Sent:** Tuesday, May 3, 2016 9:40 PM  
**To:** Thomas Falcon <tfalcon@safaritecpark.com>  
**Cc:** Rich Czapleski <rich@canardvineyard.com>; Carolyn Czapleski <carolyn@canardvineyard.com>  
**Subject:** Re: comment to County from Norma

Hi Thom and all,

Thanks for forwarding. Wyntriss called me earlier today to discuss this, and I thought the issue was closed. The survey shows an existing 12" corrugated metal pipe passing drainage from the northwest side of Dunaweal to the southeast side, just northeast of the existing Canard driveway.



I have not looked at this pipe in the field, and the survey does not show an outfall, so I actually have no idea where it outfalls. Sounds like Norma doesn't know where this pipe outfalls either. Do Rich and Carolyn know anything about this? I will plan to swing by the property early in the morning to try to figure out what the existing condition really is.

The answers to Norma's objection, however, are pretty easy.

#1) All stormwater from the house (and proposed winery) area drains from northeast to southwest, continuing into the Canard vineyard on the north side of the hill. None of this stormwater comes toward Dunaweal.





#2) The proposed driveway widening does not alter existing stormwater drainage patterns.

#3) The project design complies with current stormwater regulations (BASMAA), which are very stringent, and includes construction of a bioretention facility near the intersection of the Canard driveway and Dunaweal Lane. This bioretention facility will slow, filter, retain, and treat driveway stormwater prior to allowing it to continue on its natural drainage path toward Dunaweal Lane and the existing 12" drainage pipe.

See you guys tomorrow.

Joel

**Joel Dickerson, P.E.**

Madrone Engineering

1485 Main Street, Suite 302

St. Helena, CA 94574

(707) 302-6280

[www.madrone.engineering](http://www.madrone.engineering)



MAY 04 2016

Agenda Item # 9A

May 4, 2016

Napa County Planning Commission  
Chair Basayne and Commissioners  
1195 Third Street, Suite 210  
Napa, California 94559

re: Use Permit #P15-00249: Canard

Some comments on the completeness of this application, attention to detail and the ability of the Napa County Administration to provide adequate direction to the Applicant for the execution of their Use Permit and adequate documents for public review.

**The previous enforcement activities of the Napa County Administration are not clear nor presented in documents for the public to review. The attached quote is from the 5/4/16 Staff Report.**

**Code Compliance History: CE12-00412**

There is a record of a Code Compliance Violation which has been resolved. A code compliance Notice of Violation was issued to the applicants on September 18, 2012, based upon an investigation of a complaint that wine tasting and winery events were occurring on the applicant's property. The investigator found a website for Canard Vineyard, the applicant's brand, offering wine tastings and food experiences on the project property. The violation was referred to the County District Attorney's office, and on April 6, 2016, a Final Judgment Pursuant to Stipulation was activities, including but not limited to wine tasting and/or special events without a proper use permit. Civil penalties and cost were also issued.

The Final Judgment Pursuant to Stipulation is not included in the project documents for the public to review and understand how the Napa County Administration is achieving their Mission and Goals defined in the General Plan.

Note that it took 3.5 years to settle this enforcement case and the Use Permit Application was delayed until the Final Judgment Pursuant to Stipulation was completed. The applicant has not show a willingness to quickly complete this enforcement process, and this forebodes ill will in the future for Use Permit Compliance.

County Council should explain these issues to the public and demonstrate how future compliance to the new Use Permit will be handled.

**Hours of Operations for Tour & Tasting/Marketing Events should end at 4:30, not 6pm. Allowing these events to continue late is not in keeping with the Agricultural and Residential neighbors and residents.**

Tours & Tasting/Marketing Events – The applicant is proposing tours and tastings “By Appointment Only” which occur on a daily basis up to a maximum of 10 visitors per day (or 70 per week) from 10:00 AM to 6:00 PM daily.

The Events should showcase the winery, not disturb the neighbors. Late closing should not be allowed in the guise of traffic offsets and reduction, as it does not promote the health and safety of the neighborhood.

**The Ban on Temporary Events should be a prominent part of the Use Permit and the Conditions of Approval.**

The CEQA documents lists NO temporary Events. All other literature referring to NO temporary events cites the Project Description supplied by the Applicants, but document is not included in the Documents presented to the Planning Commission. This is a major omission that will affect future enforcement of the USE Permit. The NO Temporary events clause should be listed in the Conditions of Approval, yet it is not listed. No Temp events is listed in the Staff Report, page 7, first PP, but again, nothing in the conditions of approval. This is a major loophole in NC's ability to enforce their approval. Why is this hidden???

**The Applicant has modified the original project application requesting eight annual marketing events, with a maximum number of thirty guests. The county should grant this increase only after the Applicant has demonstrated compliance with the lesser numbers, over an extended period of time, minimum 2 years with annual compliance review by the Planning Commission.**

Based on the enforcement history of this Applicant, the Napa County Administration should be cautious in the granting of additional marketing guests and events. The Applicant should be required to demonstrate their ability to adhere to all conditions required by the Administration and the Use Permit before granting any increases in visitation and marketing events.

**Special Species are not adequately discussed and reviewed the Project Documents. Napa County and Wildlife Research Associated provided incomplete analysis and documents on this subject.**

**PARCEL REPORT:**

Special Species: Potential Special Species may occur in this general area, please contact the Planning, Building, & Environmental Services Dept. for details\*

Spotted Owls: Potential Spotted Owls may occur in this general area, please contact the Planning, Building, & Environmental Services Dept. for details\*

Special Species are listed in the Parcel Report, see above. But this is not mentioned in the Staff Report nor the Biological Survey (which listed a section of Special Status Animal Species) So why no discussion from the staff (Building, & Environmental Services Dept. for details) or Wildlife Research Associates who did the report.

These discrepancies in this Use Permit Application and the Napa County Documents provided to the public are woefully inadequate in providing the public with an accurate description of the events to take place on the parcel and the ability of the Napa County Administration to manage compliance by the property owner.

The Planning Commission should require further clarification to these discrepancies and continue the application to a future date when all documents and public records are complete.

Best Regards,

Gary Margadant  
VISION 2050  
4042 Mount Veeder Road  
Napa CA 94558



## Gallina, Charlene

---

**From:** Gary Margadant <gsmargadant@gmail.com>  
**Sent:** Wednesday, May 04, 2016 8:19 AM  
**To:** Anne Cottrell; Gallina, Charlene; Heather Phillips; Jeri Gill; McDowell, John; Frost, Melissa; Michael Basayne; Sharma, Shaveta; Terry Scott  
**Subject:** Comments for Canard Winery Application before the Planning Commission  
**Attachments:** V2050 Comments 5 4 16.docx

John

The attached comments are offered for review and discussion.

*Gary Margadant*

Vision 2050

H 707.257.3351

C 707.291.0361





**PLANNING COMMISSION HEARING – MAY 4, 2016  
EXHIBIT B – CONDITIONS OF APPROVAL**

***Canard Vineyards Winery Use Permit Application  
P15-00249  
1016 Duaweal Lane, Calistoga, CA 94515  
(APN #020-150-027)***

**1.0 SCOPE**

This permit encompasses and shall be limited to:

- 1.1 Approval of a Use Permit for a new 10,000 gallon per year Winery to allow the following:
- a. Wine production of no more than 10,000 gallons per year;
  - b. Conversion of a 925 sq.ft. portion of an existing ±1850 residential barn/storage building to include:
    - 1. ±750 sq. ft. barrel storage;
    - 2. ±68 sq. ft. office;
    - 3. ± 65 sq. ft. tasting area;
    - 4. ± 92 sq. ft. restroom;
  - c. Construction of an 800 sq. ft. covered crush pad;
  - d. Construction of a 1,280 sq. ft. covered pad for fermentation and storage tanks, equipment, and receiving area;
  - e. Hours of operation for the winery shall be limited to (except during harvest):
    - 1. Monday-Sunday 7:00 am – 6:00 pm (production)
    - 2. Monday - 10:00 am – 6:00 pm (visitation);
  - f. Visitation, tours and tastings, and marketing plans as set forth in Condition of Approval (COA) 4.0 below;
  - g. Maximum number of employees: 3 weekdays; one weekends;
  - h. Installation of a sub-surface drip engineered wastewater system;
  - i. Four parking spaces;
  - j. Increase width of existing driveway to 20 feet and install paving;
  - k. Installation of 10,000 gallon fire water tank(s) suppression located adjacent to existing water tank.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the applicant to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or changes in use shall be approved in accordance with County Code Section 18.124.130 and may be subject to the Use Permit modification process.

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



**2.0 PROJECT SPECIFIC CONDITIONS**

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

**2.1 On-Premises Consumption**

In accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 and the PBES Director's July 17, 2008 memo, "Assembly Bill 2004 (Evans) and the Sale of Wine for Consumption On-Premises," on-premises consumption of wine produced on-site and purchased from the winery may occur solely in the tasting room and the 460 sq.ft. outdoor tasting area adjacent to the winery as specified in the application. Any and all visitation associated with on-premises consumption shall be subject to the maximum per person weekday and weekend daily tours and tastings visitation limitation and/or applicable limitations of permittee's marketing plan set forth in Condition 4.0 below.

**2.2 Existing Residence Restriction**

The existing single-family residence, personal wine cellar, and the residential use located on the second story of the winery are classified for residential purposes only and cannot be used for commercial purposes or in conjunction with the operation and/or visitation/marketing program for the winery. If the residence is rented, the residence shall only be rented out for periods of 30 days or more, pursuant to Napa County Code Section 18.104.410, Transient Commercial Occupancies of Dwelling Units Prohibited.

**2.3 Temporary Events as authorized by Napa County Code Section 5.36 are not permitted at this facility.**

**3.0 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES**

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

**3.1 Engineering Services Division as stated in their Memorandum dated December 11, 2015.**

**3.2 Environmental Health Division as stated in their Memorandum dated February 4, 2016.**

**3.3 Department of Public Works as stated in their Memorandums dated August 11, 2015 and January 7, 2016.**

**3.4 Fire Department as stated in their Inter-Office Memo dated April 13, 2016.**

**3.5 Building Division as stated in the following conditions of approval:**

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code or any State or local amendment adopted thereto, and all fees associated with plan



MAY 04 2016

Agenda Item # 9A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

GARY LIEBERSTEIN  
District Attorney, County of Napa  
By: Bridget Stewart (SBN 166860)  
Deputy District Attorney  
931 Parkway Mall  
Napa, CA 94559  
Tel: (707) 253-4211  
Fax: (707) 253-4041

Attorney for Plaintiff

**ENDORSED**

APR -8. 2016

CLERK OF THE NAPA SUPERIOR COURT  
By: F. HUSS  
Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF NAPA

|   |   |                         |
|---|---|-------------------------|
| THE PEOPLE OF THE STATE OF CALIFORNIA,        | ) | NSC No. 16 CV 000189    |
|   | ) |                         |
| Plaintiff,                                    | ) | [PROPOSED]              |
| vs.   | ) | FINAL JUDGMENT PURSUANT |
|   | ) | TO STIPULATION          |
| CANARD VINEYARD, LLC, a California Limited    | ) |                         |
| Liability Company, RICHARD CZAPLESKI,         | ) |                         |
| Individually and as Managing Member of CANARD | ) |                         |
| VINEYARD, LLC, and CAROLYN CZPALESKI,         | ) |                         |
| Individually and as a Member of CANARD        | ) |                         |
| VINEYARD, LLC,                                | ) |                         |
|   | ) |                         |
| Defendants.                                   | ) |                         |

Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA (hereinafter "Plaintiff" or the "PEOPLE"), appear by and through its attorneys authorized to act on the behalf of the PEOPLE, GARY LIEBERSTEIN, District Attorney of the County of Napa, by BRIDGET STEWART, Deputy District Attorney, and Defendants, CANARD VINEYARD, LLC, a California Limited Liability Company, RICHARD CZAPLESKI, Individually and as Managing Member of CANARD VINEYARD, LLC, and CAROLYN CZAPLESKI, Individually and as a Member of CANARD VINEYARD, LLC, appear through their attorneys, Kasowitz, Benson, Torres & Friedman, by MARCUS TOPELL and LYN AGRE.



1 (hereinafter the "Subject Property"), for any commercial use, including, but not limited to, wine  
2 tasting and/or special events, unlawful under the "AP – Agricultural Preserve District" Napa  
3 County Code Chapter 18.16 and/or Napa County Code Chapter 18.12 without proper use  
4 permits. Commercial Use is defined pursuant to Napa County Code § 18.08.170.

5 (B) Making or disseminating, either directly or indirectly, any statement(s), by  
6 way of advertising, concerning the Subject Property offered as a site for wine tastings or special  
7 events when such use is contrary to the regulations for the zoning district in which the real  
8 property is located.

9 (C) Failing to abide by the specific terms and provisions of the California  
10 Department of Alcoholic Beverage Control license #547519, as currently worded or as modified  
11 or amended in the future, and/or contrary to the terms of any other use permit, use permit  
12 modification, administrative use permit or variance that Defendants might obtain in the future.

13 (D) Engaging in any activity that would violate any provisions of the Napa County  
14 Code Chapter 5.36, conducting temporary events.

## 15 PENALTIES AND ENFORCEMENT

### 16 MONETARY PROVISIONS

#### 17 Civil Penalties and Costs

18 4. Defendants shall pay, pursuant to Business & Professions Code § 17206, a civil penalty  
19 in the amount of Fifty-Six Thousand and 00/100 Dollars (\$56,000.00) (Twenty Thousand and  
20 00/100 Dollars (\$20,000.00) of which will be stayed pursuant to paragraph 6 herein below) and  
21 the remainder of Thirty-Six Thousand and 00/100 Dollars (\$36,000.00) plus investigative costs of  
22 One Thousand Two Hundred Forty-Eight and 00/100 Dollars (\$1,248.00) shall be due and  
23 payable as follows:

24 (A) That portion of the civil penalty which is not stayed pursuant to paragraph 6  
25 herein below, in the sum of Thirty-Six Thousand and 00/100 Dollars (\$36,000.00) shall be  
26 payable in twelve (12) consecutive monthly payments of Three Thousand and 00/100 Dollars  
27 (\$3,000.00) beginning on June 1, 2016, and continuing on the 1<sup>st</sup> day of each calendar month  
28 thereafter. Each payment shall be in the form of a cashier's check or money order made payable

1. to the Napa County District Attorney's Office, will reference the Napa County District Attorney's  
2 Office case number of DACV00975-01 and shall be delivered to the Napa County District  
3 Attorney's Office at 931 Parkway Mall, Napa, CA 94559 -- Attn: Bridget Stewart, Deputy  
4 District Attorney; and

5 (B) One Thousand Two Hundred Forty-Eight and 00/100 Dollars (\$1,248.00)  
6 representing investigative costs shall be payable in the form of a cashier's check or money order  
7 made payable to the Napa County Department of Planning, Building and Environmental Services,  
8 will reference the Napa County District Attorney's Office case number of DACV00975-01 and  
9 shall be delivered within thirty (30) days of entry of this Final Judgment to the Napa County  
10 District Attorney's Office at 931 Parkway Mall, Napa, CA 94559 -- Attn: Bridget Stewart.

11 Restitution

12 5. The parties having so stipulated, the Court hereby finds that it is impractical and  
13 impossible to identify or to provide direct restitution to consumers who participated in any wine  
14 tastings or other special events at the Subject Property, as more specifically described in the  
15 Complaint; and the Court further finds that other forms of direct restitution are too impractical,  
16 costly, and would far exceed any benefit to individual consumers. Thus, Defendants shall pay  
17 restitution under the doctrine of *cy pres* pursuant to Business & Professions Code §§ 17203 and  
18 17535 in the sum of Thirty-Six Thousand and 00/100 Dollars (\$36,000.00). This *cy pres*  
19 restitution shall be payable as follows:

20 (A) The *cy pres* restitution shall be paid within thirty (30) days of entry of this  
21 Final Judgment;

22 (B) Payment of the *cy pres* restitution set forth in 5.(A) herein above shall be in the  
23 form of two separate cashier's checks or money orders with the payment amounts equally divided  
24 in the sum of Eighteen Thousand and 00/100 Dollars (\$18,000.00) and shall be payable to: 1) the  
25 Napa County Wildlife Commission; and 2) the Napa County Regional Park and Open Space  
26 District; will reference the Napa County District Attorney's Office case number of DACV00975-  
27

28



1 01 and shall be delivered to the Napa County District Attorney's Office at 931 Parkway Mall,  
2 Napa, CA 94559 – Attn: Bridget Stewart, Deputy District Attorney.

3 6. The remainder of the civil penalty (as set forth in paragraph 4 herein above) in the sum  
4 of Twenty Thousand and 00/100 Dollars (\$20,000.00) shall be stayed but will become due and  
5 payable if either of the following occurs:

6 (A) Defendants, or any of them, fail to timely make any payments required by  
7 Paragraphs 4 and/or 5, or any of them, of this Final Judgment. Upon such event, this amount,  
8 along with all other amounts due as set forth in this Judgment, shall become due and payable and  
9 shall accrue interest at a rate of ten percent (10%) per annum from the date of this Judgment until  
10 paid in full;

11 (B) Upon the finding, either by way of agreement or adjudication, Defendants, or  
12 any of them, willfully violated any of the provisions of Paragraphs 3 of this Final Judgment. Upon  
13 such finding, Defendants shall immediately pay this amount, along with all other amounts due as  
14 set forth in this Judgment, and along with any other sum the Court may award for the violation,  
15 and this total sum shall accrue interest, from the date of the finding that a violation occurred, at a  
16 rate of ten percent (10%) per annum, until paid in full;

17 7. Except as otherwise expressly provided herein, each party shall bear its own attorney's  
18 fees and costs.

19 8. The language used for the obligations set forth in this Final Judgment are solely for the  
20 purposes of settlement and compromise and are in no way intended to be an alteration of  
21 California law in any other action. If an ambiguity arises regarding any provisions of this Final  
22 Judgment that requires interpretation, there is no presumption that documents should be  
23 interpreted against any party. The presumption set forth in Civil Code § 1654 is not applicable.

24 9. The failure of Plaintiff to enforce any provision of this Final Judgment shall neither be  
25 deemed a waiver of such provision, nor shall it in anyway affect the validity of this Final  
26 Judgment. The failure of the Plaintiff to enforce any provision shall not preclude it from later  
27 enforcing the same or other provisions of this Final Judgment.  
28

