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**Public Comments Submitted Before  
April 20, 2016**



11/30/2015

Miles MacDonnell  
Round Pond Estate  
PO Box 556  
Rutherford, CA 94573

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Napa County Planning, Building  
& Environmental Services

Chairman Heather Phillips  
Department of Planning, Building, and Environmental Services  
County of Napa  
1195 Third Street  
Napa, California 94559

**Dear Chairman Phillips:**

This letter is to indicate our support for the use permit modification application currently under review for Frog's Leap Winery in Rutherford.

We have been growers and residents in Rutherford since 1982 and have shared a property line with Frog's Leap Winery since 2001. My family, my sister's family, and my parents all live on the property and consider Frog's Leap to be a great neighbor.

We have reviewed their project and support the proposed changes to their use permit, including the increased visitation and marketing event requests. It is also worth noting that we believe the commercial kitchen where Frog's Leap would be able to produce items such as jams and jellies, as well as host occasional instructional classes, is a great way to demonstrate the agricultural diversity and heritage of this valley.

John Williams and Frog's Leap Winery have been fantastic neighbors and great examples for both visitors and locals alike, and continue to be leaders in finding ways to preserve Napa Valley for generations to come. It is imperative that the county continue to support the needs of small, family run businesses such as Frog's Leap.

Sincerely,

Miles MacDonnell  
Owner  
Round Pond Estate

Cc: John McDowell, Charlene Gallina, Shaveta Sharma

SHUTE MIHALY  
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Attorney  
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December 23, 2015

Via E-Mail and U.S. Mail

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

Attn: John McDowell, Deputy Planning Director  
[John.McDowell@countyofnapa.org](mailto:John.McDowell@countyofnapa.org)

Re: Frog's Leap Winery, Use Permit Major Modification # P14-00054

Dear Commissioners:

On behalf of Nancy Hammonds and Charlotte Blank, we submit these comments on the Initial Study/proposed Negative Declaration ("IS") for the proposed Frog's Leap Winery Use Permit ("Project"). The Project would entail a substantial increase in visitor-serving commercial uses at the winery. Frog's Leap's current use permit limits tastings to 350 visitors per week (with a maximum of 50 visitors per day) and marketing events to three events per month with an average of 25 visitors per event, or 900 visitors per year. As the IS recognizes, Frog's Leap's current uses already exceed this permitted level. IS at 1. But the applicant is requesting approval of even greater visitor-serving uses, increasing weekly tastings limits by more than threefold to 1,100 visitors per week, and allowing for an additional 5,740 visitors each year for marketing events, as well as an undefined number of visitors for the annual Auction Napa Valley event.

As should be expected from such a large increase in visitors to the winery, substantial evidence shows that the Project could have numerous potentially significant impacts on the environment. Accordingly, and as a matter of law, the Planning Commission would violate the California Environmental Quality Act, Pub. Res. Code § 21000 et seq. ("CEQA"), if it adopts the proposed Negative Declaration and approves the Project without first requiring the preparation of an environmental impact report ("EIR"). As discussed below, the IS neither accurately identifies nor analyzes the project-specific and cumulative environmental impacts that will accompany the Project. The

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document therefore lacks the necessary evidence to support its conclusion that the Project will not have adverse transportation, public safety, noise, and water supply impacts.

In addition to these CEQA deficiencies, the Project likely violates the Winery Definition Ordinance (“WDO”) and is inconsistent with significant provisions of the Napa County General Plan designed to preserve the rural and agricultural character of Napa. Thus, approval of the Project would not just violate CEQA, but would also violate California Planning and Zoning Law, Gov’t Code § 65000 et seq.

As you know, the County has been processing and approving an exceptionally high number of use permits for new or expanded wineries throughout Napa Valley. Like this Project, a great number of these permits propose significant expansions of tourist-serving commercial uses. At the same time, many wineries have been hosting largescale tourism events in violation of their use permits. Such violations have gone largely unenforced by the County. The result has been a substantial increase in tourism across Napa that not only undermines the agriculture-centered land use goals embodied by the WDO, the General Plan, and Measure P, but also creates significant cumulative environmental impacts that the County must analyze and mitigate. Without further information and analysis of the Project’s likely impacts, the Commission cannot legally approve the Project. Consequently, the Commission should deny the application before it.

**I. The Project Violates CEQA, and the Project’s Potentially Significant Impacts Prohibit the County from Approving the Project Without First Preparing an EIR.**

**A. Legal Standard**

It is well settled that CEQA establishes a “low threshold” for initial preparation of an EIR, especially in the face of conflicting assertions concerning the possible effects of a proposed project. *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903, 928 (2005). CEQA provides that a lead agency may issue a negative declaration and avoid preparing an EIR only if “[t]here is no substantial evidence, in light of the whole record before the lead agency, that the Project may have a significant effect on the environment.” CEQA § 21080(c)(1). A lead agency may adopt a negative declaration only when all potentially significant impacts of a project will be avoided or reduced to insignificance. Pub. Res. Code § 21080(c)(2); Guidelines § 15070(b).<sup>1</sup> A negative

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<sup>1</sup> The CEQA Guidelines, 14 Cal. Code Regs. § 15000 et seq., are referred to as “Guidelines.”

declaration will also be set aside if its conclusions are not based on substantial evidence in the record. *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 311 (1988).

An initial study must provide the factual and analytic basis for an agency's determination that no significant impact will result from the project. Guidelines § 15063(d)(3). An agency must prepare an EIR whenever it is presented with a "fair argument" that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 75 (1974); Guidelines § 15064(f)(1). Where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. Guidelines § 15064(f)(1); *Stanislaus Audubon Soc'y v. County of Stanislaus*, 33 Cal. App. 4th 144, 150-51 (1995).

Further, where the agency fails to study an entire area of environmental impacts, deficiencies in the record "enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 311 (1988). In marginal cases, where it is not clear whether there is substantial evidence that a project may have a significant impact and there is a disagreement among experts over the significance of the effect on the environment, the agency "shall treat the effect as significant" and prepare an EIR. Guidelines § 15064(g); *City of Carmel-by-the-Sea v. Board of Supervisors*, 183 Cal. App. 3d 229, 245 (1986).

Given this standard, an EIR is required for this Project.<sup>2</sup> The County cannot approve this use permit until it prepares a legally-adequate EIR, as CEQA requires.

**B. The IS's Transportation Analysis Is Inadequate, and There Is a Fair Argument that the Project May Have Significant Transportation Impacts.**

With winery expansions and increasing tourism in recent years, County residents have noticed significantly worsening traffic conditions in Napa Valley, especially on Silverado Trail and SR 29. The primary entrance to the Project site is 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, has observed increasing traffic volumes on the road as more vehicles use it to bypass heavy traffic on

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<sup>2</sup> Although it is our legal opinion that the County must prepare an EIR for this Project, if the County decides to rely on the IS, but modifies the Project or adopts mitigation measures, it must, at the very least, recirculate the IS for further public review and comment. Guidelines § 15073.5.

Silverado Trail or SR 29. But despite observations of negative traffic conditions immediately surrounding the Project site, the IS relies on a legally inadequate transportation analysis to conclude that the substantial proposed expansion would not result in any traffic impacts.

First, the IS does not establish a proper baseline to evaluate the Project's impacts during the highest volume traffic season. The applicant's December 14, 2015 Focused Traffic Analysis ("Traffic Report"), on which the IS relies, did not evaluate existing traffic conditions near the Project site during the harvest and crush season, when traffic volumes in the County reach their highest. Traffic Report at 4. Instead, the applicant relied on seasonal Caltrans to data for a single segment of SR 128 in front of the Project site to project that traffic volumes on SR 128 and Silverado Trail would increase by 9% during this season.

This attempt to extrapolate baseline conditions during harvest from limited data is flawed. The seasonal increase on SR 128 provides no information about how traffic volumes change on the more heavily-used Silverado Trail and SR 29 during harvest season. The IS and Traffic Report cannot simply assume that the percentage traffic increase on these main County thoroughfares will be the same as the increase in traffic for smaller arterials like SR 128. Moreover, a simple percentage increase does not account for the change in traffic character during harvest, when an increased number of large agricultural equipment and trucks hauling grapes are on the roadways. These slow-moving vehicles make frequent stops and can further exacerbate traffic conditions during the County's peak traffic season.

Without a study of traffic conditions during harvest season, the IS completely fails to evaluate Project impacts against the heaviest traffic periods in the County. This failure to establish a proper baseline is fatal to any purported analysis of transportation impacts. "Without a determination and description of the existing physical conditions . . . at the start of the environmental review process, [the IS] cannot provide a meaningful assessment of the environmental impacts of the proposed project." *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal. App. 4th 99, 119 (2001).

Second, the IS does not establish proper thresholds of significance for determining whether traffic from the Project will result in significant impacts to the intersections it analyzes. The document merely recites the CEQA Appendix G checklist, which, among other things, requires the County to determine whether additional traffic is "substantial in relation to the existing traffic load or capacity of the street system." IS at 25. But the IS never offers a specific numerical threshold to determine whether the new traffic from the site will be "substantial." CEQA recognizes that "the significance of an activity may vary

with the setting.” Guidelines § 15064(b). Without establishing how many new daily trips would constitute a significant traffic impact, it is impossible for the public and County decision makers to know whether the Project’s traffic impact will be significant.

Third, the IS’s traffic analysis contains an improperly narrow study area, again rendering it incapable of evaluating all of the Project’s potential traffic impacts. The IS only considers potential impacts at three intersections on Conn Creek Road (SR 128)—Silverado Trail, the Frog’s Leap driveway, and Rutherford Road. By focusing only on these three intersections, the IS ignores the Project’s contribution to traffic congestion at other nearby intersections, most notably the intersection of SR 29 and Rutherford Road (SR 128). As noted above, cars frequently travel over the SR 128 sections of Conn Creek Road and Rutherford Road to connect between Silverado Trail and SR 29. Yet the IS never considers impacts to the SR 29/Rutherford Road intersection. This oversight is especially glaring considering that applicant’s own Traffic Report acknowledges that the majority of weekend and weekday trips from the winery currently travel south on Conn Creek Road toward Rutherford Road and SR 29. Traffic Report at 12. This data suggests that Project traffic is more likely to impact the Rutherford Road/SR 29 intersection than the Conn Creek Road/Silverado Trail intersection, which the IS purports to evaluate.

Significantly, a volunteer fire station is located at the Rutherford Road/SR 29 intersection. *Id.* at 3. Thus, the Project’s increase in traffic at this intersection could also impair emergency response times in the area. For this reason as well, it is critical that the County’s environmental analysis consider the Project’s impacts to additional intersections in the immediate vicinity of the Project.

Fourth, the IS and the Traffic Report neglect to account for the traffic impacts from increased marketing events even though the applicant is proposing to host up to 500 people for a single event. IS at 25. Even this number excludes additional staff and traffic from catering and valet services that will be used for marketing events. *See id.* at 17, 26. The Traffic Report dismisses traffic increases from these events by claiming that they are “usually” held outside of peak traffic hours. Traffic Report at 21. Yet nothing prohibits the applicant from holding marketing events during Saturday afternoons or other peak traffic periods. Without such a use restriction that is a legally-binding, the traffic analysis cannot assume that marketing events will occur outside of peak hours.

Indeed, the applicant also proposes to use the site as a venue for the annual Auction Napa Valley. IS at 2. But the applicant’s Traffic Report and the IS completely ignore increased traffic from this multi-day event. The County must also evaluate the potential impacts that event traffic will have on the transportation system surrounding the Project site.

Fifth, even with this faulty analysis, the IS acknowledges that traffic conditions near the Project site are already poor. The intersection of Silverado Trail and Conn Creek Road currently operates at LOS E—the second worst traffic rating—and is projected to worsen to LOS F by 2030. IS at 25-26. The Project’s contribution to these substandard and worsening traffic conditions is likely a significant cumulative transportation impact that must be evaluated in an EIR and properly mitigated. *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 721 (1990) .

Finally, the County’s own assessment of the Project’s traffic impacts indicates that there will be a significant impact at the intersection of Conn Creek Road and the winery’s main entrance. To mitigate that impact, the County’s Road and Street Standards require the installation of a left-turn pocket on the northbound section of Conn Creek Road at this intersection. Memorandum from Paul Wilkinson to Shaveta Sharma, dated January 20, 2015. As alternative mitigation, the applicant has proposed to expand the shoulder across from the winery entrance. IS at 26. Yet even though Project traffic would violate the County’s Road and Street Standards without a new left turn lane or other adequate mitigation, the IS fails to acknowledge this significant traffic impact.

Courts have found that this approach violates CEQA. An agency may not include mitigation measures as part of the project when determining whether it may have a significant effect on the environment. *Lotus v. Department of Transportation*, 223 Cal. App. 4th 645, 665 (2014) . Instead, the agency must first determine whether the project will have a significant effect on the environment and then identify and adopt feasible mitigation measures that will reduce the impacts of the project below a level of significance. CEQA requires this approach for two reasons. First, acknowledging potentially significant impacts obligates an agency to adopt definite and enforceable mitigation through a mitigation monitoring and reporting program. Guidelines § 15097. Second, agencies must consider secondary impacts associated with adopted mitigation measures. *Id.* § 15126.4(a)(1)(D). This latter requirement is especially important here, since construction on the eastern shoulder of Conn Creek Road could impact large heritage oak trees that grow along the road.

But based on the record before the Commission, it is impossible to know what mitigation the County will require for this intersection. The IS does not commit to any particular mitigation, observing that the department of public works *may* grant an exception to the left turn lane requirement. IS at 26. Section 3(G) of the County’s Road and Street Standards grants the Director of Public Works the discretion to approve the proposed exception, but staff has indicated that this determination will not be made until *after* the Commission’s hearing on the Project. Thus, the public and the Commission are left in the dark about the mitigation that will be required for this impact. Without this



information, the IS is incapable of assessing whether the mitigation will be adequate to reduce the Project's intersection impact, much less what secondary impacts that the required mitigation might create.

**C. The IS's Analysis of Traffic Hazards Is Inadequate, and There Is a Fair Argument that the Project May Have Significant Safety-Related Impacts.**

CEQA requires that agencies evaluate a project's potential to create traffic-related hazards. Guidelines, Appendix G § XVI(d); *see City of Maywood v. Los Angeles Unified School Dist.*, 208 Cal. App. 4th 362, 393 (2012). Despite this requirement, the IS's discussion of such hazards is entirely cursory. It focuses only on installation of a new turn lane or shoulder widening next to the Frog's Leap Winery entrance. It never considers whether adding the Project's traffic to the narrow, two lane Conn Creek Road itself will create a significant cumulative safety impact.

The added traffic from wine tasting and marketing events is especially worrisome given the frequency of drunk driving incidents in wine country.<sup>3</sup> In fact, in the past weekend alone, there were two serious drunk driving incidents 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 incident involved a drunk driver veering off the road and crashing into a rock wall on the Caymus Vineyards property. With increased traffic from the Project and other nearby winery expansions, these dangerous incidents will become even more frequent. The IS must evaluate this serious public safety concern. It cannot simply ignore it.

**D. The IS's Noise Analysis Is Inadequate, and There Is a Fair Argument That Noise Impacts Would Be Significant.**

A particularly glaring inadequacy of the IS is its analysis of the Project's noise impacts. Although construction and operation of the Project is all but certain to result in a significant increase in noise levels, the IS makes no attempt to quantify these impacts. Instead it provides a generic overview, simply stating the obvious: that noise could create additional impacts and that these impacts would be less than significant. IS at 20-21. To conclude as the IS does that an impact is less than significant, the analysis must be

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<sup>3</sup> *See* NBC Bay Area, *Drunk Driving In Wine Country* (available at <http://www.nbcbayarea.com/investigations/WINE-COUNTRY-DUI-INVESTIGATION-151467295.html>)

supported with substantial evidence. Substantial evidence consists of “facts, a reasonable presumption predicated on fact, or expert opinion supported by fact,” not “argument, speculation, unsubstantiated opinion or narrative.” Pub. Res. Code § 21080(e)(1)-(2). Once again, the IS fails on many levels.

First, the IS provides no information about the Project’s environmental setting, other than to state that the nearest residences are located about 600 feet away. IS at 21. This contravenes CEQA’s requirements for environmental documents, which “must include a description of the physical environmental conditions in the vicinity of the project.” Guidelines § 15125(a). Moreover, the significance of an impact may vary with the setting. While increased noise levels may not be significant in an urban area, they may be extraordinarily burdensome in a rural area. Here, without any information on the area’s acoustical setting, including existing ambient noise levels, the impact analysis in the IS quickly becomes meaningless.

Nor does the IS identify the standard or threshold of significance for determining a significant noise impact.<sup>4</sup> Instead, it appears to assume that because the County’s Noise Ordinance regulates noise events between 10 p.m. and 7 a.m., there will be no significant impact. IS at 21. Thus, the IS entirely fails to consider that Project-related construction and event noise might impact nearby properties during other hours. The failure to establish an adequate noise threshold of significance is critical. Without a threshold, there is no means by which to determine whether impacts would or would not be significant. Since the requirement to provide mitigation is triggered by the identification of a significant impact, the IS’s failure to identify all of the Project’s significant impacts also results in a failure to mitigate these impacts.

Given the failure to describe the existing noise environment and to establish thresholds of significance, it comes as no surprise that the IS fails to identify the noise levels that would accompany construction of the Project. In fact, the document, never even attempts to predict noise levels during each phase of construction on nearby receivers. As the attached table shows, construction-related equipment and operations can be extraordinarily loud. A typical noise level for a jackhammer, for example, is upwards of 96 decibels, while loaders, backhoes and bulldozers can generate noise upwards of 85 decibels. *See* OSHA Construction-Related Noise levels, attached as Exhibit 1. The

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<sup>4</sup> The IS does refer to the Napa County Noise Ordinance, explaining that it sets a maximum permissible sound level for rural residences as 45 dB between the hours of 10 p.m. and 7 a.m. (at 21), but the IS fails to demonstrate that the Project will even meet these evening noise standards.

County must analyze how construction of the Project will impact noise levels in the vicinity.

Operational noise from the winery can also be quite intrusive. Noise from the winery's marketing events, in particular, such as vehicular traffic, truck traffic, buses and amplified sound could be particularly burdensome to the Project's neighbors, yet the IS provides no analysis of these impacts. Instead, the IS suggests that impacts will be less than significant because marketing events already occur at Frog's Leap Winery, and the County does not have a record of noise complaints associated with these events. First, it is improper to rely solely on noise complaints to evaluate the Project's potential noise impacts. Receptors who are impacted by existing event noise levels might never file an official complaint. Moreover, the IS must actually analyze the noise caused by the substantial increase in the size of marketing events that the applicant is requesting—from a current average of 75 people per event to events that will host up to 500 people. IS at 1-2. Before it can lawfully conclude that the Project's noise impacts are insignificant, the IS must analyze and, if necessary, mitigate the noise associated with these increased marketing events.

**E. The IS's Water Supply Analysis Is Inadequate.**

The IS admits that California is in the middle of an extreme, multiyear drought, which lead Governor Brown to declare a drought emergency in January 2014 and the State Water Resources Control Board to impose mandatory water restrictions on California's municipalities in 2015. IS at 15. But the IS makes no attempt to determine how these drought conditions have impacted groundwater supply near the Project site. Instead, the IS mechanically relies on a pre-drought groundwater assessment that the County completed in February 2011. Thus, the IS fails to establish baseline water conditions near the Project site, as CEQA requires.

With this study, the County has established a 1 acre-foot-per-year (afy) water use allocation for each acre of agricultural production in Napa Valley. The IS makes no attempt to show that this 1 afy per acre threshold is appropriate to evaluate groundwater impacts near the Project site. In fact, in light of California's extreme drought and the IS's further acknowledgment that "Groundwater availability, recharge, storage and yield is not consistent across the County," the IS lacks evidence to support its use of this threshold to evaluate impacts at the Project site. *See Center for Biological Diversity v. California Dept. of Fish and Wildlife* 195 Cal. Rptr. 3d 247 (2015) (substantial evidence must show that general impact thresholds are appropriate when applied to a specific project). Without a local assessment of groundwater conditions in the Project area, it is impossible for the public and County decisionmakers to know whether the Project's proposed

increase in water usage, or even the winery's existing water usage, is sustainable. This incomplete analysis further defeats CEQA's core informational requirements. *Laurel Heights Improvement Ass'n v. Regents of University of California* 6 Cal. 4th 1112, 1123 (1993).

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

**A. The Project Is Inconsistent with 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 use 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 and maximum square footage 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.,* Napa County Code ("NCC") § 18.08.370; 18.16.030(G)(5); 18.08.020. In addition, the WDO places an absolute numerical cap of the square footage of structures that may be "used for accessory uses." *See* NCC § 18.104.200 ("The maximum square footage of structures used for accessory uses that are related to a winery shall not exceed forty percent of the area of the production facility.").

The Project documents provide incomplete descriptions of the square footage that Frog's Leap will utilize for accessory uses if the Project is approved. The application asserts that with the Project, the square footage assigned to accessory uses will be roughly 30 percent of the square footage used for production (11,850 and 39,306 square feet, respectively). Application at 12. But neither the application nor the IS provides a detailed description of which areas of the site are currently used for accessory uses compared to commercial uses. For example, the applicant is proposing to add an 845 square foot porch to the Project site, which already has an "existing porch with the admin building [that] would remain available for tasting . . ." *Id.* at 6. Drawings of the site also show a small "orchard" located in the middle of the winery compound that contains interior paths and a fountain. All of these areas would be available for tasting and marketing uses, but it is impossible to determine whether they have been included in the

accessory use calculation.<sup>5</sup> Without further information about the nature and location of accessory uses on the Project site, it is impossible for the Commission to find that the proposed expansion in accessory uses complies with the WDO.

Moreover, even if the Project sufficiently reduces accessory areas to comply with the letter of the WDO, the Project contravenes the intent expressed in the WDO by elevating nonagricultural uses over agricultural uses. The accessory, tourism-focused uses of the Project are not “clearly incidental, related and subordinate” to the Project’s primary operation as a winery. Rather, the largescale expansion of these nonagricultural uses is the Project’s core purpose. Therefore, the Project cannot be approved unless it is modified to substantially reduce the amount of accessory uses at the Project site.

**B. The Project is Inconsistent with the County’s General Plan.**

Contrary to the IS’s conclusions, the Project is not consistent with the Napa County General Plan. In particular, the Project is inconsistent with the Plan’s Agricultural Preservation and Land Use requirements including: Goals AG/LU-1, AG/LU-3, AG/LU-4, the Agricultural Resources (“AR”) designation on the General Plan’s Land Use Map, and Economic Development Policy E-1. The purpose of these goals and policies, and of the AR designation, is to preserve and promote the existing agricultural land uses on agriculturally designated lands and to support the economic viability of agriculture, including the necessary industries that support agriculture.

Although the IS provides almost no analysis, it appears that its finding that the Project is consistent with the General Plan is predicated on its determination that the Project’s accessory uses comply with the WDO and “would allow for the continuation of agriculture as a dominant land use within the County.” *Id.* at 15. As demonstrated above, however, the Project’s visitor-serving uses do not comply with the WDO and do not qualify as permissible accessory uses. These uses are not necessary to support the economic vitality of agriculture and will, if anything, undermine the continued economic vitality of agriculture by allowing and encouraging excessive reliance on tourism.

Perhaps even more importantly, these uses are clearly inconsistent with the intent of the General Plan’s Agricultural Resources designation. As County voters reaffirmed in approving Measure P in 2008, “agriculture is and should continue to be the predominant

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<sup>5</sup> Notably, the Planning Commission calculated accessory use square footage in two actions concerning the B Cellars and Titus Vineyards projects, by counting outdoor terraced spaces as part of the percentage of the project used for accessory uses. The County should treat the present Project in the same manner.

Members of the Planning Commission  
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land use, where uses incompatible with agriculture should be precluded . . . .” In short, the proposed vast expansion of marketing events and daily tasting are commercial uses, not agricultural ones. Accordingly, they are inconsistent with the General Plan and may not lawfully be approved.

**III. Conclusion**

For all of these reasons, the Commission should deny the proposed Project.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Ellison Folk

cc: Nancy Hammonds

Attachment

734923.3

# **EXHIBIT**

**1**

	<b>DECIBEL - dB(A)</b>	<b>EQUIPMENT</b>
<b>Double protection recommended above 105 dB(A)</b>	112	Pile driver
	110	Air arcing gouging
	108	Impact wrench
	107	Bulldozer - no muffle
	102-104	Air grinder
	102	Crane - uninsulated cab
	101-103	Bulldozer - no cab
	97	Chipping concrete
	96	Circular saw and hammering
	96	Jack hammer
	96	Quick-cut saw
	95	Masonry saw
	94	Compactor - no cab
<b>Hearing protection recommended above 85 dB(A)</b>	90	Crane - insulated cab
	87	Loader/backhoe - insulated cab
	86	Grinder
	85-90	Welding machine
	85	Bulldozer - insulated cab
	60-70	Speaking voice

**Table 1: Some typical noise levels found on construction sites**





**Piña Vineyard Management, LLC.**

Vineyard Management/Custom Farming  
P.O. Box 373 Oakville, CA 94562-0373  
(707) 944-2229 Fax (707) 963-3345

County of Napa  
Planning, Building & Environmental Services Dept.  
Attention: Shaveta Sharma

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JAN 11 2016  
P28  
Napa County Planning, Building  
& Environmental Services

Frogs Leap Winery Modification # P14-00054

To whom it may concern:

I have been in the Farming business in Napa for over 50 years. I have seen many new and expanded projects pass through the County planning and Building dept. I have never seen one as well thought out and planned with low impact and enhancement of Agriculture.

Frogs Leap has been a leader in environmental stewardship. Frogs Leap initiated the River Restoration project through the Rutherford Dust Society. As project Chair of the river restoration I had the full support of Frogs Leap for any meeting space, logistical and political assistance. John Williams has always been a great partner for any environmental cause.

I fully support the Ag central enhancement of the Frogs Leap Modification. How better can a winery increase sales with the little impact of this plan. This also maximizes tourists' presents in the most environmental friendly way possible.

The County should encourage all wineries to follow this Ag centric, employee friendly and environmental forward thinking plan.

Please approve this type of plan that boosts Agricultural in the future.

Davie Pina

Pina Vineyard Management  
Rutherford, California

FRANK FAMILY  
VINEYARDS

December 31, 2015

VIA E-MAIL ONLY

Ms. Shaveta Sharma  
Napa County Planning, Building &  
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JAN 12 2016  
Napa County Planning, Building  
& Environmental ServicesRe: Frog's Leap Winery Modification – P14-00100

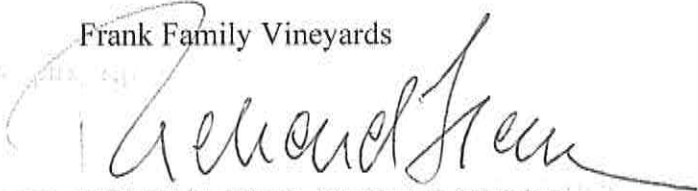
Ms. Sharma:

I am the Managing Member of Frank Family Vineyards, which owns approximately 80 acres close by this property on Conn Creek Road. I also own a residence and vineyards nearby on Silverado Trail. I have spoken with Mr. Williams, and have reviewed the proposed modification.

As a neighbor of this project, I enthusiastically support approval of this modification. Frog's Leap Winery has a decades long reputation for quality winemaking, and sensitivity to avoiding adverse impacts on the community. The requested marketing plan is not dissimilar to others approved for wineries of this size and scope, and is essential for the economic viability of wineries faced with distributor consolidation, and a competitive market place. John Williams is a tremendous advocate for the Napa Valley wine industry, and I am confident that he will operate this facility in a manner that will minimize impacts on this neighborhood.

I urge the Planning Commission to review this winery under current policies and standards, rather than to attempt to apply future, possibly more restrictive rules, that have not yet been adopted, and should not apply to an existing winery.

Frank Family Vineyards

  
Richard H. Frank, Managing Member



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CULTURAL RESOURCES

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March 24, 2016

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1195 Third Street, Suite 210  
Napa, CA 94559

RE: Frog's Leap Winery Project

Dear Ms. Sharma:

Thank you for your project notification letter dated, April 20, 2016, regarding cultural information on or near the proposed Frog's leap Winery Project, Napa, Napa County, CA. We appreciate your effort to contact us and wish to respond.

The Cultural Resources Department has reviewed the project and concluded that it is within the aboriginal territories of the Yocha Dehe Wintun Nation. Therefore, we have a cultural interest and authority in the proposed project area.

Based on the information provided, the Tribe has concerns that the project could impact undiscovered archaeological deposits. Additionally, Yocha Dehe Wintun Nation requests a site visit to the project area to evaluate our cultural concerns. Please provide our Cultural Resources Department with a project timeline, detailed project information and the latest cultural study for the proposed project.

Also, please contact the following individual to coordinate a date and time for the site visit.

Mr. Anthony Flores  
Cultural Resources Site Protection Manager  
Yocha Dehe Wintun Nation  
Office: (530) 796-3400, Email: [aflores@yochadehe-nsn.gov](mailto:aflores@yochadehe-nsn.gov)

Please refer to identification number YD-03212016-03 in any correspondences concerning this project.

Thank you for providing us with this notice and the opportunity to comment.

Sincerely,

James Kinter  
Tribal Secretary  
Tribal Historic Preservation Officer

Yocha Dehe Wintun Nation

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