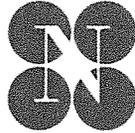


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Previous Public Comments – August 3,
2016

Napa Valley Vintners & Winegrowers of Napa County



napa valley vintners



WINEGROWERS
of napa county

July 20, 2016

Mr. David Morrison, Director
Ms. Charlene Gallina, Supervising Planner
Planning, Building & Environmental Services Department
1195 Third Street, #210
Napa, CA 94559

Re: Updated Standard Conditions of Approval for Wineries

Dear Mr. Morrison:

Napa Valley Vintners ("NVV") and Winegrowers of Napa County ("Winegrowers") jointly submit these comments on the proposed update to the standard conditions of approval for wineries. NVV is a non-profit trade association with over 500 vintner members whose mission is to promote, protect, and enhance the Napa Valley appellation. NVV members strive to consistently produce wines of the highest quality, to provide environmental leadership, and to care for the extraordinary place they call home. Winegrowers is a non-profit trade association of vintner and grower members whose principal mission is to promote and preserve sustainable agriculture as the highest and best use of the natural resources of Napa County while protecting the ability of wineries and grape growers to grow grapes and produce and market wine.

We embrace and endorse the County's stated goals for updating the conditions of approval. This undertaking will standardize the language of winery use permit conditions, ensure consistency and clarity, and avoid duplication. This will be achieved by consolidating all of the conditions, mitigation measures, and agency comments that apply to a given winery in one place, including any conditions from prior use permits and major modifications that remain in effect. Putting all the active conditions, mitigation measures, and agency comments in one document will help to avoid ambiguities and uncertainties on the part of the County and the wineries about the applicable provisions and facilitate compliance and enforcement.

While sharing the County's goals, we offer the following substantive comments and changes:

1. Avoid repetitive conditions. Given that the stated purposes of the proposed standard conditions are to ensure consistency and clarity and avoid duplication, the Planning, Building & Environmental Services Department ("PBES") should eliminate repetitive conditions. For example, there is no reason to have a condition stating that a building permit is required prior to construction. All of the conditions listed in 4.1 will likely be duplicated in the comments from the Building Division in 2.3, and even if they are not, the use permit does not authorize construction without a building permit.
2. Ensure that future changes to the conditions of approval are made by the Board of Supervisors. We have compared the proposed standard conditions of approval for wineries to the previous conditions adopted by the Board of Supervisors in December 2012 and, before that, in 2011.

For ease of reference, the newly proposed conditions, along with the 2012 and 2011 conditions, are attached in Appendix A. The conditions from 2012 and 2011 are redlined to show changes from the then existing conditions. Napa County staff did not provide a redlined document of the newly proposed conditions showing the changes from 2012 due to the numerous changes at various points in time. We believe the standard conditions, once adopted by the Board of Supervisors, should only be changed by the Board of Supervisors. The sole exception to this rule should be for minor changes that are expressly delegated by the Board to PBES staff.

3. Groundwater Managements-Wells (Condition 8.9). This condition should not apply in areas of the county with adequate groundwater supplies. The 2012 condition (13(A)) focused on “changed circumstances or significant new information [that] provide substantial evidence that the groundwater system referenced in the use permit would significantly affect the groundwater basin.” In the new condition, any water use over the level set forth in the use permit constitutes a material breach of the permit (8.9(c)), must be reported to the County (8.9(d)), and quick fixes must be put into effect. Additionally, groundwater monitoring “shall” rather than “may” be required. Finally, the arbitrary standard of 10% is proposed for over-use, so that if a winery uses 5.6 acre feet of water in a year instead of its permitted 5.0 acre feet, its permit may be scheduled for a Planning Commission hearing by the PBES Director within 60 days of reporting the over-use (8.9(d)). These provisions are not appropriate unless there is proven groundwater overdraft. Moreover, in 2015 the mandatory water Availability Analysis (WAA) was revised to address areas of the County that are experiencing overdraft. We also question why environmental review is required where a new water source is replacing an existing source and there is no net increase in water usage due to the new source.
4. Retail Sales (8.1). The last paragraph of condition 8.1 provides that, for post-Winery Definition Ordinance (“WDO”) wineries, retail sales are limited to persons who visit the winery by appointment or who attend marketing events; drop-in retail sales are prohibited. This is not what the WDO provides and would be a major change requiring an amendment to the WDO. The WDO allows retail sales as a “use in connection with a winery” (County Code Section 18.16.030(G)(5)(c) for wineries in the Agricultural Preserve and 18.20.030(I)(5)(c) for wineries in the Agricultural Watershed zoning districts). There is no stated limitation for retail sales by appointment or otherwise, as is the case for “tours and tastings” (Section 18.08.620) and “marketing of wine” (Section 18.08.370). In fact, past-WDO wineries have been allowed to conduct drop-in retail sales unless their use permits explicitly provide otherwise.
5. Auction Napa Valley Events (8.3(d)). NVV agrees with County staff that Auction Napa Valley (“ANV”) events need not be included in the participating winery’s marketing plan because they are covered by ANV’s Category 5 Temporary Permit. Condition 8.3(d) should make this clear. In the past, some wineries were asked to include ANV events in their use permits, and others were told not to do so. We suggest that any winery whose use permit includes an ANV event be allowed to use that authorized marketing event for any other marketing or charitable event.
6. Marketing (8.3). We recommend deleting “type of event” and instead requesting the total number of events, frequency, number of persons, and time of day. Condition 8.3(d) should refer to Board of Supervisors Resolution 2010-48 that provides examples of allowed marketing events. Additionally, we request that the County allow wineries a quiet cleanup period from 10 to 11 p.m. after approved marketing events.

7. ADA (4.1(c)). This condition is unnecessary because use permit holders must comply with applicable laws regardless of whether they are cited in a use permit condition. In some instances, the use permit requirements will exceed those of the Americans with Disabilities Act (“ADA”). Additionally, not all building areas have to be accessible whereas the wording of this condition implies that everything on the property and at the site must be accessible. The condition also focuses only on accessibility, whereas the ADA includes other requirements such as improvements to assist persons who are hearing or sight impaired. If any reference to the ADA is included, it should state simply that the project will comply with all applicable ADA requirements. More broadly, the conditions of approval should refer to applicable laws rather than restate or summarize them. However, theFor example, there is no need to recite the eight BAAQMD best management practices in condition 5.1(c).
8. Landscaping (4.3(c)). The 2:1 oak tree replacement should allow plantings on other appropriate property(-ies) in the County with the approval of the Planning Director if replacing them on-site is not feasible or practical, such as planting that necessitates the removal of vines.
9. Air Quality (5.1(c)). This condition lists eight new items from the Bay Area Air Quality Management District’s Best Management Practices and makes them mandatory, stating that the “permittee shall comply with BAAQMD Basic Construction Best Management Practices.” However, not all of the conditions may apply or be necessary all the time such as making someone water surfaces twice a day.
10. Temporary Occupancy (6.1). While it would require an amendment to County Code Section 15.08.070(B) (limiting Temporary Occupancy permit to no more than 180 days), there should be provisions for extensions of time, particularly in instances where the project is required to obtain some other permit for the project from a state agency such as Caltrans, and the approval process exceeds 180 days. The tolling period for use permits in Section 18.124.090 has this language, and it should be included here.

The 2012 condition on Temporary and Final Occupancy includes the following wording that has been proposed for deletion in the new condition: “Marketing and/or Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions where extenuating circumstances exist and are subject to review and approval by the County Building Official, County Fire Marshall and the Director of Planning, Building and Environmental Services.” That language has been replaced by the following: “TCOs shall not be used for the occupancy of hospitality buildings.” We prefer the existing condition.

11. Residence or Non-Winery Structures (8.5). The first sentence should be revised to clarify that some residences or non-winery structures have been legally converted to winery-related uses. Insert the following at the beginning of the first sentence: “Unless specifically authorized by use permit,…”
12. Compliance Review (8.7). The first sentence should read “Permittee shall obtain and maintain all permits and licenses from the California Department of Alcoholic Beverage Control (ABC), United States Alcohol and Tobacco Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) that are required to produce and sell wine. The word “loses” in the second sentence has no clear meaning; the phrases “suspended or revoked” and “reinstated” are more appropriate.

13. Storm Water Control (5.1.d). The requirement to comply with the County's Post-Construction Runoff Management Requirements has been imposed upon winery use permit modifications that do not involve any construction-related activities. The County should clarify that, in the absence of any new construction, there is no legal nexus to require applicants to comply with this program.
14. Archaeological Finding (5.2). We suggest that the first paragraph of this condition be revised as follows:
In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional archaeologist to analyze the artifacts encountered and to determine if additional measures are required—recommended. After receiving recommendations from the qualified archaeologist and seeking input from the permittee, the PBES Director or his or her designee shall determine the feasibility of such recommendations, and particularly any recommended avoidance measures, in light of factors such as costs, logistics, technological and environmental considerations, and the extent to which avoidance is consistent with the objectives of the project.
15. Construction Noise (5.3). We suggest that this condition be revised as follows:
Construction noise shall be minimized to the greatest extent ~~practical~~ feasible under State and local safety laws, consistent with construction noise levels permitted by the General Plan Community Character Element and the County Noise Ordinance. Construction equipment muffling and hours of operation shall be in compliance with County Code Chapter 8.16. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur daily between the hours of 8:00 AM to 5:00 PM.
16. Application to Modifications (9.3). It is unclear whether the new standard conditions of approval will be applied to modifications of existing winery use permits. There could be vested rights or nexus issues, but each situation would have to be analyzed under its own facts. We recommend the inclusion of a caveat, at the very beginning of the list of standard conditions, stating that not all the standard conditions will apply in all instances, and applicants are welcome to raise nexus, rough proportionality, and vested rights issues where the applicants believe they apply.

Thank you for the opportunity to comment. We will be present at the Planning Commission hearing to present these comments and to answer any questions that you or the Commissioners might have.

Sincerely,



Emma Swain
Board Chair, Napa Valley Vintners



Chris Indelicato
President, Winegrowers of Napa County

Attachment: Appendix A

APPENDIX A

2016-Proposed

(WINERY APPLICATIONS)

PLANNING COMMISSION HEARING – (DATE)
CONDITIONS OF APPROVAL

(Project Name)
(Application Number(s) PXX-XXXX)
(Project Address)
(APN #XXX-XXX-XXX)

1.0 PROJECT SCOPE

This Permit encompasses and shall be limited to: OR
[If applicable, insert the following for Modifications: This Permit encompasses and replaces the terms of Use Permit (and/or Use Permit Modification) _____ and shall be limited to:]

1.1 [If applicable, insert detailed Variance request description including how much encroachment is granted e.g., 400 feet into 600 foot setback] Approval of a Variance to allow a _____ to encroach _____ feet into the required _____ foot setback from _____.

1.2 [If applicable, insert other detailed request description, such as Road Modification, Tentative Parcel Map, or Viewshed.]

1.3 Approval of a Use Permit for a new _____ gallon per year winery [or Approval to modify an existing _____ gallon per year winery previously approved under _____] [IDENTIFY ALL APPLICABLE USE PERMIT/MODIFICATION PERMIT NUMBERS] to allow the following:

[Provide a detailed description of proposed winery components]

- a. Construction Activities (buildings, crush pad, caves, etc.) [Denote square feet what purpose it serves (accessory/production)];
- b. Conversion Activities [Denote square feet and what purpose it serves (accessory/production)];
- c. Demolition Activities;
- d. Visitation, tours and tastings, and a marketing plan set forth in Condition of Approval (COA) 8.2 below;
- e. On-premises consumption of wine as set forth in COA 8.3 below;
- f. Hours of operation (winery operation and/or visitation);
- g. Maximum number of employees;
- h. Number of parking spaces;
- i. Installation of a waste water system;
- j. Installation of water system [Specify type e.g., Community];
- k. Temporary and/or final location of cave spoils;
- l. Off-site improvements (such as roads, and turn lanes);
- m. Extent of driveway/new road improvements; and
- n. Installation of fire suppression and other type of water tank(s) [Denote number, size and location]

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 permittee 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 permit modification process.

Alternative locations for 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 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES

Project conditions of approval include all of the following County Divisions, Departments and Agencies' 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:

- 2.1 Engineering Services Division as stated in their Memorandum dated _____.
- 2.2 Environmental Health Division as stated in their Memorandum dated _____.
- 2.3 Building Division as stated in their Memorandum dated _____.
- 2.4 Department of Public Works as stated in their Memorandum dated _____.
- 2.5 Fire Department as stated in their Inter-Office Memo dated _____.
- 2.6 [NOTE OTHER AGENCY(IES)] as stated in their letter dated _____.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the permit.

3.0 PAYMENT OF FEES AS PREREQUISITE FOR ISSUANCE OF PERMITS

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full.

4.0 PRIOR TO ISSUANCE OF A GRADING PERMIT AND/OR BUILDING PERMIT

Permittee shall comply with the following with the submittal of a Grading and/or Building Permit Application:

4.1 BUILDING DIVISION – GENERAL CONDITIONS

Please contact the Building Division with any questions regarding the following:

- 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 check and building inspections, and associated development impact fees established by County Ordinance or Resolution shall be paid prior to issuance of a building permit.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a "J" number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.
- c. The site and associated buildings shall be accessible to persons with disabilities. This shall include, but not limited be to, a van accessible parking stall, accessible path of travel from the parking stall to all buildings and areas on the site that are available to employees and the public.

4.2 LIGHTING

- a. All exterior lighting, including landscape lighting, shall be shielded and directed downward; located as low to the ground as possible; the minimum necessary for security, safety, or operations; on timers; and shall incorporate the use of motion detection sensors to the greatest extent practical. All lighting shall be shielded or placed such that it does not shine directly on adjacent properties or impact vehicles on adjacent streets. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Lighting utilized during harvest activities is not subject to this requirement.
- a. Two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the California Building Code.

4.3 LANDSCAPING – PLAN SUBMITTAL

- a. Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the building permit application package for the Planning Division's review and approval prior to the issuance of any building permit associated with this Permit. The

plan shall be prepared pursuant to the Water Efficient Landscape Ordinance (WELO) requirements in effect at the time of building permit application submittal, as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.

- b. Plant materials shall be purchased locally when practical, and, to the greatest extent possible, the plant materials shall be the same native plants found in Napa County. The Agricultural Commissioner's office shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.
- c. No trees greater than 6" diameter at breast height shall be removed, except for those identified on the submitted site plan. Any Oak trees removed as a result of the project shall be replaced at a 2:1 ratio on the project site and shown on the landscaping plans for the Planning Division's review and approval. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.
- d. Evergreen screening shall be installed between the industrial portions of the operation (e.g., tanks, crushing area, parking area, etc.) and any off-site residence from which these areas can be viewed.

4.4 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

4.5 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.
- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and County Code Chapter 18.106) shall be placed underground or be made virtually invisible from the subject roadway.

- c. Exterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the County Code.

4.6 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the enclosure requirements provided during permit process and shall be included in the building permit submittal. The designated area shall remain available and be properly maintained for its intended use.

4.7 ADDRESSING

All project site addresses shall be determined by the PBES Director, and be reviewed and approved by the United States Post Office. The PBES Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

4.8 AFFORDABLE HOUSING FEE

The permittee shall pay the Napa County Affordable Housing Mitigation Fee in accordance with the requirements of County Code Chapter 18.107.

4.9 **(INSERT IF APPLICABLE) HISTORIC RESOURCES**

All permitted work performed on any historic resources shall follow the latest edition of the Secretary of Interior's standard for Historic Preservation and Guidelines for Treatment of Historic Properties (Standards). Written verification that such work meets the Standards shall be submitted by a qualified historic architect for review and approval by the PBES Department prior to issuance of any grading or building permit.

4.10 **(INSERT IF APPLICABLE) DEMOLITION ACTIVITIES**

- a. Final demolition plans of the _____ **(Description of buildings/utilities to be removed)** shall be submitted for building permit issuance. A site plan prepared by a qualified professional shall denote streams, stream setbacks, existing and proposed improvements and slopes. No new construction or earthmoving activities that have not been proposed or approved within established stream setbacks as part of this permit unless specifically enumerated in COA 1.0 (Scope), above. As determined by the PBES Director or designee, temporary construction fencing shall be placed at the stream setback line to prevent unauthorized encroachments. If applicable, a "J" number from the BAAQMD shall also be provided at the time the permittee applies for a demolition permit.
- b. A landscape plan for the demolition area (existing residential and accessory structures) shall be submitted showing how the area will be restored back to

its natural vegetation state to the extent feasible. Said landscape plan shall be approved by the PBES Director or designee prior to installation.

4.11 **(INSERT IF APPLICABLE) VIEWSHED – EXECUTION OF USE RESTRICTION**
The property owner shall execute and record in the county recorder's office a use restriction, in a form approved by County Counsel, requiring _____
[SPECIFY APPLICABLE DESCRIPTION - building exteriors, water tanks, and existing and proposed covering vegetation, as well as any equivalent level of replacement vegetation] to be maintained by the owner or the owner's successor so as to maintain conformance with County Code Section 18.106.050(C).

4.12 **(INSERT IF APPLICABLE) MITIGATION MEASURES**
The permittee shall comply with all mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project, inclusive of the following:

a. [Insert measure]
Method of Monitoring:
Responsible Agency(ies):

b. [insert measure]
Method of Monitoring:
Responsible Agency(ies):

4.13 **(INSERT IF APPLICABLE) PARCEL CHANGE REQUIREMENTS**

a. **PARCEL MERGER**

The _____ parcels shall be combined prior to the issuance of building permits.

b. **LOT LINE ADJUSTMENTS**

The lot line adjustment (_____ Permit Number) shall be recorded prior to the issuance of building permits.

c. **EASEMENTS**

Required easements shall be recorded prior to issuance of building permits.

4.14 **(INSERT IF APPLICABLE) OTHER CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL**

5.0 **PROJECT CONSTRUCTION**

Permittee shall comply with the following during project construction:

5.1 **SITE IMPROVEMENT**

Please contact Engineering Services with any questions regarding the following:

- a. **GRADING & SPOILS**
All grading and spoils generated by construction of the project facilities shall be managed per Engineering Services direction. All spoils piles shall be removed prior to issuance of a Final Certificate of Occupancy.
- b. **DUST CONTROL**
Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.
- c. **AIR QUALITY**
During all construction activities the permittee shall comply with the BAAQMD Basic Construction Best Management Practices, as provided in Table 8-1, May 2011 Updated CEQA Guidelines:
1. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The BAAQMD's phone number shall also be visible.
 2. All exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) shall be watered two times per day.
 3. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 4. All visible mud or dirt tracked out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 5. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 6. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 7. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Clear signage shall be provided for construction workers at all access points.
 8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. Any portable engines greater than 50 horsepower or associated

equipment operated within the BAAQMD's jurisdiction needs either a California Air Resources Board (ARB) registration Portable Equipment Registration Program (PERP) or a BAAQMD permit. For general information regarding the certified visible emissions evaluator or the registration program, visit the ARB FAQ http://www.arb.ca.gov/portable/perp/perpfaq_04-16-15.pdf or the PERP website <http://www.arb.ca.gov/portable/portable.htm>.

d. **STORM WATER CONTROL**

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the State Regional Water Quality Control Board.

5.2 **ARCHEOLOGICAL FINDING**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during project development, all work in the vicinity must be, by law, halted, and the Napa County Coroner informed, so that the Coroner can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the nearest tribal relatives as determined by the State Native American Heritage Commission shall be contacted by the permittee to obtain recommendations for treating or removal of such remains, including grave goods, with appropriate dignity, as required under Public Resources Code Section 5097.98.

5.3 **CONSTRUCTION NOISE**

Construction noise shall be minimized to the greatest extent practical and allowable under State and local safety laws. Construction equipment muffling and hours of operation shall be in compliance with County Code Chapter 8.16. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur daily between the hours of 8:00 AM to 5:00 PM.

5.4 **(INSERT IF APPLICABLE) CONSTRUCTION MITIGATION MEASURES**

The permittee shall comply with all mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project, inclusive of the following:

- a. [Insert measure]

Method of Monitoring:
Responsible Agency(ies):

b. [insert measure]
Method of Monitoring:
Responsible Agency(ies):

5.5 **(INSERT IF APPLICABLE) OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL**

6.0 **PRIOR TO AUTHORIZATION OF A TEMPORARY CERTIFICATE OF OCCUPANCY**
Permittee shall comply with the following before a Temporary Certificate of Occupancy (TCO) is granted:

6.1 **TEMPORARY OCCUPANCY**

A TCO may be granted pursuant to County Code Section 15.08.070(B) to allow commencement of production activities prior to completion of all project improvements. All life and safety conditions shall be addressed prior to issuance of a TCO by the County Building Official. TCOs shall not be used for the occupancy of hospitality buildings and shall not exceed the maximum time allowed by the Napa County Code Section 15.08.070(B) which is 180 days. In special circumstances, Departments and/or Agencies with jurisdiction over the project are authorized as part of the TCO process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

7.0 **PRIOR TO THE ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY**
Permittee shall comply with the following before a Final Certificate of Occupancy is granted:

7.1 **FINAL OCCUPANCY**

All project improvements, including compliance with applicable codes, conditions, and requirements of all Departments and Agencies with jurisdiction over the project, shall be completed prior to issuance of a Final Certificate of Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence.

7.2 **SIGNS**

Prior to installation of any winery identification or directional signs, detailed plans, including elevations, materials, color, and lighting, shall be submitted to the PBES Department for administrative review and approval. Administrative review and approval is not required if the signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this Permit approval. All signs shall meet the design standards as set forth in County Code Chapter 18.116. At least one sign placed and sized at the property entrance in a manner to inform the public must legibly post the words "Tours and Tastings by Prior Appointment Only". The only off-site signs allowed shall be in conformance with the County Code Chapter 18.116. Temporary off-site signage, such as "A-Frame" signs are prohibited under County Code Section 18.116.065(E). **[Pre-WDO signs to be addressed specifically for each project.]**

7.3 GATE/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Napa County Fire Department to assure that it is designed to allow large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at all times. If the gate is part of an entry structure an additional permit shall be required according to the County Code and in accordance with the Napa County Roads and Street Standards. A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed, and approved as part of this Permit approval.

7.4 LANDSCAPING

Landscaping shall be completed prior to issuance of a Final Certificate of Occupancy, and shall be permanently maintained in accordance with the landscaping plan.

7.5 (INSERT IF APPLICABLE) ROAD OR TRAFFIC IMPROVEMENT REQUIREMENTS

The permittee shall construct _____ prior to the issuance of a Final Certificate of Occupancy by the Building Division. The design of the _____ shall be submitted to the Public Works Department for review and approval. The _____ shall be designed in substantial conformance with the submitted site plan, and other submittal materials and shall comply with all requirements of the County Code and Napa County Road and Street Standards.

7.6 (INSERT IF APPLICABLE) DEMOLITION ACTIVITIES

Prior to the issuance of a Final Certificate of Occupancy for the winery, all demolition activities associated with the _____ (Description of structures) shall be completed, landscaping installed, and debris cleared from the subject parcel.

7.7 (INSERT IF APPLICABLE) MITIGATION MEASURES APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY

The permittee shall comply with all mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project, inclusive of the following:

a. [Insert measure]
Method of Monitoring:
Responsible Agency(ies):

b. [insert measure]
Method of Monitoring:
Responsible Agency(ies):

7.8 (INSERT IF APPLICABLE) OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY

8.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

8.1 GENERAL PROVISIONS

Consistent with County Code Section 18.16.030, tours and tastings and marketing may occur at a winery only where such activities are accessory and "clearly incidental, related, and subordinate to the primary operation of the winery as a production facility."

Tours and tastings and marketing (defined below) may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant. (County Code Section 18.08.620 - Tours and Tastings)

Retail sales shall be limited to only those persons visiting by appointment or attending marketing events. No drop-in retail sales shall be permitted.

[Statement Applies to Post WDO Wineries Only]

8.2 TOURS AND TASTINGS/VISITATION

Tours and tastings shall be by appointment only and shall be limited to the following:

- a. Frequency: X days per week, Monday through Sunday **[or otherwise specified]**
- b. Maximum number of persons per day: X
- c. Maximum number of persons per week: X
- d. Hours of visitation: X to X
- e. 5 The maximum annual visitation shall be limited to _____ persons including the guests of the _____ marketing events permitted in COA No. 8.2 below.
- f. **Insert any special conditions related to tours and tastings**

"Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings. To the maximum extent feasible, scheduling of visitors shall not occur during peak travel times (**State applicable hours based upon traffic impact study**).

Tours and Tastings shall be limited to those wines set forth in the County Code Sections 18.16.030(G)(5)(c) - AP Zoning and 18.20.030(I)(5)(c) AW Zoning.

A log book (or similar record) shall be maintained to document the number of visitors to the winery (for either tours and tastings or marketing events), and the date of the visits. This record of visitors shall be made available to the PBES Department upon request.

8.3 MARKETING

Marketing events shall be limited to the following:

- a. Type of Event:
 1. Frequency: X times per year or month or week
 2. Maximum number of persons: XX **[no averages]**
 3. Time of Day: **[Permittee requests, Planning Commission decides – typically 11:00 AM to 10:00 PM]**

- b. **[List other events here as requested.]**
 Type of Event:
 1. Frequency: X times per year or month or week
 2. Maximum Number of persons: XX **[no averages]**
 3. Time of Day: **[Permittee requests, Planning Commission decides – typically 11:00 AM to 10:00 PM]**

- c. **[List other events here as requested.]**
 Type of Event:
 1. Frequency: X times per year or month or week
 2. Maximum Number of persons: XX **[no averages]**
 3. Time of Day: **[Permittee requests, Planning Commission decides – typically 11:00 AM to 10:00 PM]**

- d. **Insert any special conditions related to marketing events**

“Marketing of wine” means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to the County Code Chapters 18.16 and 18.20. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as “marketing of wine” if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery’s use permit. To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of cost recovery, and any business content unrelated to wine must be limited.

Careful consideration shall be given to the intent of the event, the proportion of the business event’s non-wine-related content, and the intensity of the overall marketing plan. (County Code Section 18.08.370 - Marketing of Wine)

All activity, including cleanup, shall cease by _____ PM. If any event is held which will exceed the available on-site parking, the permittee shall prepare an

event-specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

[INCORPORATE THIS SECTION ONLY IF PROPOSING CHANGES TO PRE-WDO VISITATION & MARKETING.] RECOGNITION OF PRE-WDO MARKETING AND VISITATION

Existing Public Tours & Tastings:

Frequency:

Maximum number of persons per day:

Maximum number of persons per week:

Hours of operation:

Existing Marketing Program: **[Describe if they have one]**

Marketing events are limited to the following:

Type of event:

Frequency:

Number of persons:

Time of Day:

8.4 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 _____ **[Identify the location]**. 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 COAs 8.1 and 8.2 above.

8.5 RESIDENCE OR NON-WINERY STRUCTURES

The existing _____ **[SPECIFY TYPE: single-family residence, second unit, guest house, or other non-winery structures]** shall not be used for commercial purposes or in conjunction with the operation and/or visitation/marketing program for the winery. If the residence is rented, it shall only be rented out for periods of 30 days or more, pursuant to County Code Section 18.104.410, Transient Commercial Occupancies of Dwelling Units Prohibited.

8.6 GRAPE SOURCE

At least 75% of the grapes used to make the winery's wine shall be grown within Napa County. **(ADD THE FOLLOWING STATEMENT IF A PRE-WDO WINERY:** ; provided that this requirement does not apply to the winery's original _____ gallons of production that were approved prior to the adoption of the Winery Definition Ordinance.) The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the annual production is from Napa County grapes. The report shall recognize the Agricultural Commissioner's format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the PBES

Department upon request, but shall be considered proprietary information and not available to the public.

8.7 COMPLIANCE REVIEW

Permittee shall obtain and maintain all permits (use permits and modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC), United States Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) Grape Crush Inquiry data, all of which are required to produce and sell wine. In the event permittee loses the required ABC or TTB permits and licenses (or the permits and licenses are revoked), permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are re-established.

Visitation log books, visitor reports, custom crush client records, and any additional documentation determined by Staff to be necessary to evaluate compliance may be requested by the County for any code compliance. The permittee (and their successors) shall be required to participate fully in the winery code compliance review process.

8.8 RENTAL/LEASING

No winery facilities, or portions thereof including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons or entities producing and/or storing wine at the winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this Permit or pursuant to the Temporary Events Ordinance (County Code Chapter 5.36).

8.9 GROUND WATER MANAGEMENT – WELLS

Please contact the Planning Division with any questions regarding the following:

- a. The permittee shall (at the permittee's expense) maintain data regarding monthly well monitoring and the total annual groundwater pumped. Such data shall include water extraction volumes and static well levels of the well. All monitoring shall commence within six months of the issuance of this Permit, or immediately upon commencement of the expansion authorized by this Permit, whichever occurs first, and shall be submitted not later than January 31st every calendar year thereafter and available upon the County's request at any other time.

Water usage shall be minimized by use of best available control technology and best water management conservation practices.

- b. No new on-site or off-site water sources (other than those evaluated or approved as part of this Permit) proposed to be used for the winery, including but not limited to wells, imported water, new or existing ponds/reservoir(s) or other surface water impoundments, to serve the winery, shall be allowed without additional environmental review, if necessary, and may be subject to a modification to this permit. A new Water Availability Analysis shall be required prior to approval of any new water source(s) on the property.

- c. Permittee shall limit groundwater use for the winery to _____ acre-ft. per year. Any exceedance of this amount in a calendar year is a material breach of this permit.
- d. If water use for the winery from the well exceeds _____ acre-ft. per year in a calendar year by 10% or more (a significant exceedance), the permittee shall both immediately notify the County and cease any activity causing the exceedance, shall begin daily well monitoring, and shall promptly prepare a report to be submitted to the PBES Director regarding the reasons for the significant exceedance and the measures immediately taken and to be taken to bring the significant exceedance into compliance with this condition.

The PBES Director may set this Permit for a revocation or modification hearing before the Planning Commission within 60 calendar days of discovery of the significant exceedance for possible modification, revocation, or suspension.

- e. If the water use for the winery from the well exceeds _____ acre-ft. in a calendar year by less than 10%, the permittee shall notify the County, and promptly provide a report of the following:
 - 1. water volume used;
 - 2. the reason for exceedance;
 - 3. the plan the winery has for reducing water use so as not to exceed the allocation the following year; and
 - 4. other information that may be affecting water use.

If after two calendar years of reporting the monitoring shows that the annual water allocation identified above continues to be exceeded by less than 10%, the PBES Director shall schedule the Permit for review by this Planning Commission and possible modification, revocation or suspension.

- f. The permittee shall be required to include the well in the County's Groundwater Monitoring program upon the County's request.

8.10 AMPLIFIED MUSIC

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings. Please contact Environmental Health with any questions.

8.11 TRAFFIC

To the maximum extent feasible, scheduling of reoccurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times (_____ weekdays; _____ Saturdays; and _____ Sundays). All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

8.12 PARKING

The location of and visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and approved marketing events. In no case shall parking impede emergency vehicle access or public roads.

8.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES

Please contact the Building Division with any questions regarding the following:

In accordance with the California Building Code, no change shall be made in the use or occupancy of an existing building unless the building is made to comply with the requirements of the California Building Code for a new building.

8.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES

Please contact the Fire Department with any questions regarding the following:

The permittee and/or designee shall obtain a tent permit from the Fire Department for any temporary structures utilized for authorized marketing events set forth in COA 8.3 above.

8.15 (INSERT IF APPLICABLE) NAPA COUNTY MOSQUITO ABATEMENT PROGRAM

The installation, operation and maintenance of the _____ [Identify applicable large water feature such as ponds, reservoirs, and fountains, etc.] shall be in conformance with the Napa County Mosquito Abatement District's program for eliminating mosquito sources and managing mosquito-breeding areas in order to reduce mosquitoes to a tolerable and healthful level.

8.16 (INSERT IF APPLICABLE) OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT

9.0 MISCELLANEOUS

9.1 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

9.2 MONITORING COSTS

All Staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the owner. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction

compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the permittee's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation hearings in accordance with County Code Section 18.124.120.

9.3 **[OPTIONAL TO BE USED ONLY IF A MAJOR MODIFICATION] PREVIOUS CONDITIONS**

The permittee shall comply with the following previous conditions of approval, including revisions where so indicated, for the winery use. Original language to remain is shown unchanged, original language to be removed is shown in strikethrough, and proposed language is underlined:

- a. **[Carry over previous applicable non-construction and/or operational conditions. Reference Use Permit and/or Modification number, as well as, applicable condition number, and provide a brief explanation of any proposed changes to the condition.]**

WINERY APPLICATIONS

PLANNING COMMISSION HEARING – (Date)
EXHIBIT B – CONDITIONS OF APPROVAL

(Project Name)
(Application Number(s) PXX-XXXX)
(Project Address)
(APN XXX-XXX-XXX)

1. SCOPE

The permit shall be limited to:

A. (If applicable, insert Detailed Variance Request Description)

B. (Insert Detailed Use Permit Request Description)

- 1. Wine production of no more than XX,XXX gallons per year (consistent with the Napa County Winery Production Process);
- 2. Construction of XXXX square foot (of what) to (serve what purpose) including:
 - a. X square foot loading area
 - b. X square foot crush pad
 - c. X Square foot caves (Type X) for XXX
- 3. Describe existing improvements to be included in winery (loading area/patio, conversion of house, etc.);
- 4. Demolition of X;
- 5. Hours of operation for the winery shall be limited to XX AM to XX PM (except during crush); (If applicable, describe other activity hours of operation)
- 6. Visitation, Tours and Tasting, and Marketing Plan as described below;
- 7. Number of employees; (Per application request)
- 8. Waste water system description;
- 9. Temporary and final location of cave spoil**;
- 10. Off-site improvements (such as roads, and turn lanes);
- 11. Describe any road standards modification;
- 12.11. X parking spaces;
- 13.12. Extent of driveway/new road improvements;
- 14.13. Installation of fire water tank(s) suppression located X**; and
- 15.14. (If Requested) On-premise wine consumption consistent with Assembly Bill 2004 (Evans) in X location.

C. (If applicable, insert Other Detailed Request Description [Road Modification/Tentative Parcel Map])

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. 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 by the approved in accordance with Section 18.124.130 of the Napa County Code 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 Conservation, Development and Planning

51 | Planning, Building, and Environmental Services, when such alternative locations do not
52 | change the overall concept, and do not conflict with any environmental mitigation
53 | measures or conditions of approval.

54 |
55 | **2. PROJECT SPECIFIC CONDITIONS**

56 | Should any of the Project Specific Conditions below conflict with any of the other,
57 | standard conditions included in this document, the Project Specific Conditions shall
58 | supersede and control.

59 |
60 | **(Two Types: Staff recommended prior to meeting or conditions added by Commission at**
61 | **hearing.**

62 |
63 | **Examples:**

- 64 | A. Planting X number of sized replacement trees located X for loss of y.
65 | B. One (1) year compliance review.
66 | C. Tours and tastings not occurring on same day as specific/all marketing events.
67 | D. Provision of contact information to neighbors
68 | E. Specific improvements necessary to comply with Title 24 accessibility
69 | requirements.

70 |
71 | F. Evans Consumption

72 | Consistent with Assembly Bill 2004 (Evans) and the Planning, Building, and
73 | Environmental Services Director's July 17, 2008 memo, "Assembly Bill 2004
74 | (Evans) & the Sale of Wine for Consumption On-Premises," on-premise
75 | consumption may occur solely in (*identify location*). Any and all visitation
76 | associated with on-premise consumption shall be subject to the (*identify*
77 | *number*) person maximum daily tours and tastings visitation limitation and/or
78 | applicable limitations of permittee's marketing plan.

- 79 |
80 | G. The installation, operation and maintenance of the (*Identify*
81 | *applicable large water feature such as ponds, reservoirs, and fountains,*
82 | *etc.*) shall be in conformance with the Napa County Mosquito Abatement
83 | District's program for eliminating mosquito sources and managing mosquito-
84 | breeding areas in order to reduce mosquitoes to a tolerable and healthful level.

85 |
86 | H. Mitigation Measures:

87 | The permittee shall comply with all mitigation measures identified in the adopted
88 | Initial Study/Mitigated Negative Declaration and Project Revision
89 | Statement/Mitigation Monitoring and Reporting Program prepared for the project,
90 | inclusive of the following:

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92 | 1.

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94 | Method of Monitoring:

95 | RESPONSIBLE AGENCY(IES) –

96 |
97 | I. Milliken Sarco Tulocay Ground Water Deficient Area:

98 | Require permittee to connect to recycled water line at such point it becomes
99 | available to the property (*Staff to evaluate applicability on a case-by-case*
100 | *basis.*)

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-Or-

No project specific conditions were adopted with this project. *(Delete if project has specific conditions)*

3. **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, ~~including, but not limited to:~~ Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- A. ~~Department of Public Works Engineering Services Division~~ as stated in their Memorandum dated _____.
- B. ~~Department of Environmental Management Health Division~~ as stated in their Memorandum dated _____.
- C. ~~Building Inspection Division~~ as stated in their Memorandum dated _____.
- D. ~~Department of Public Works~~ as stated in their Memorandum dated _____.
- E. ~~Fire Department~~ as stated in their Inter-Office Memo dated _____.
- D.F. INOTE OTHER AGENCY(IES)] as stated in their letter dated _____.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the approved use permit.

4. **VISITATION**

Consistent with Sections 18.16.030 and 18.20.030 of the Napa County Code, marketing and tours and tastings may occur at a winery only where such activities are accessory and "clearly incidental, related, and subordinate to the primary operation of the winery as a production facility." Marketing and/or Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions where extenuating circumstances exist and are subject to review and approval by the County Building Official, County Fire Marshal, and the Director of Planning, Building and Environmental Services.

Permittee shall obtain and maintain all permits and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB) required to produce and sell wine, including minimum levels of crush and fermentation. In the event permittee loses required ABC and/or TTB permits and licenses, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are re-established.

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A log book (or similar record) shall be maintained which documents the number of visitors to the winery (be they tours and tastings or marketing event visitors), and the dates of their visit. This record of visitors shall be made available to the Planning, Building and Environmental Services Department upon request.

A. TOURS AND TASTING

Tours and tastings are limited to the following:

1. Frequency: X days per week, Monday through Sunday (or otherwise specified)
2. Maximum number of persons per day:
3. Maximum number of persons per week:
4. TimeHours of operation:

"Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings.

(INSERT THE FOLLOWING ONLY IF PROPOSED BY THE APPLICANT AND EVALUATED BY ENVIRONMENTAL HEALTH)

Tours and tastings may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant. (Ord. 1340, 2010; Ord. 947 § 9 (part), 1990; prior code § 12070).

Start and finish time of tours and tastings shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM, and shall be limited to those wines set forth in Napa County Code _____. ***(Cite Applicable Section for Parcel Zoning – 18.16.03(G)(5)(c) – AP Zoning; 18.20.030(H)(5)(c) – AW Zoning)***

B. MARKETING

Marketing events are limited to the following:

1. Type of Event:
2. Frequency: X times per year
3. Number of persons: XX maximum
4. Time of Day: ***(Applicant requests, Planning Commission decides – typically 11:00 am to 10:00 pm)***
5. ***List other events here as needed.***
6. Participation in Auction Napa Valley ***(Yes or No and not specific as to type of events)***

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on

200 a retail basis pursuant to Chapters 18.16 and 18.20 of the Napa County Code.
201 Marketing of wine may include cultural and social events directly related to the
202 education and development of customers and potential customers provided such
203 events are clearly incidental, related and subordinate to the primary use of the
204 winery. Marketing of wine may include food service, including food and wine
205 pairings, where all such food service is provided without charge except to the
206 extent of cost recovery.

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208 Business events are similar to cultural and social events, in that they will only be
209 considered as "marketing of wine" if they are directly related to the education and
210 development of customers and potential customers of the winery and are part of
211 a marketing plan approved as part of the winery's use permit. Marketing plans in
212 their totality must remain "clearly incidental, related and subordinate to the
213 primary operation of the winery as a production facility" (subsection (G)(5) of
214 Sections 18.16.030 and subsection (I)(5) of 18.20.030 of the Napa County
215 Code). To be considered directly related to the education and development of
216 customers or potential customers of the winery, business events must be
217 conducted at no charge except to the extent of recovery of variable costs, and
218 any business content unrelated to wine must be limited. Careful consideration
219 shall be given to the intent of the event, the proportion of the business event's
220 non-wine-related content, and the intensity of the overall marketing plan. (Ord.
221 1340, 2010; Ord. 1104 § 11, 1996; Ord. 947 § 9 (part), 1990; prior code §
222 12071).

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224 All activity, including cleanup, shall cease by 10:00 PM. Start and finish time of
225 activities shall be scheduled to minimize vehicles arriving or leaving between
226 4:00 PM and 6:00 PM. If any event is held which will exceed the available on-
227 site parking, the applicant shall have prepared an event specific parking plan
228 which may include, but not be limited to, valet service or off-site parking and
229 shuttle service to the winery.

230
231 **5. GRAPE SOURCE**

232 At least 75% of the grapes used to make the winery's wine shall be grown within the
233 County of Napa. The permittee shall keep records of annual production documenting the
234 source of grapes to verify that 75% of the annual production is from Napa County
235 grapes. The report shall recognize the Agriculture Commission's format for County of
236 origin of grapes and juice used in the Winery Production Process. The report shall be
237 provided to the ~~Conservation, Development, and Planning~~ Planning, Building &
238 Environmental Services Department upon request, but shall be considered proprietary
239 information not available to the public.

240
241 **6. RENTAL/LEASING**

242 No winery facilities, or portions thereof, including, without limitation, any kitchens, barrel
243 storage areas, or warehousing space, shall be rented, leased, or used by entities other
244 than persons producing and/or storing wine at the on-site winery, such as alternating
245 proprietors and custom producers, except as may be specifically authorized in this use
246 permit or pursuant to the Temporary Events Ordinance (N.C.C. Napa County Code
247 Chapter 5.36).

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7. **SIGNS**

Prior to installation of any winery identification or directional signs, detailed plans, including elevations, materials, color, and lighting, shall be submitted to the Planning, Building, and Environmental Services Department for administrative review and approval. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this use permit approval. All signs shall meet the design standards as set forth in Chapter 18.116 of the Napa County Code. At least one sign placed and sized in a manner to inform the public must legibly include wording stating "Tours and Tasting by Prior Appointment Only".

8. **LIGHTING**

All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations, and shall incorporate the use of motion detection sensors to the greatest extent practical. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Lighting utilized during harvest activities is not subject to this requirement.

Prior to issuance of any building permit pursuant to this approval, two copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the Uniform California Building Code (UCBC).

9. **LANDSCAPING**

Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the Building Permit application package for the Planning Division's review and approval prior to the issuance of any building permit associated with this approval. The plan shall be prepared pursuant to the County's Water Efficient Landscape Ordinance (WELO), as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.

Plant materials shall be purchased locally when practical. The Agricultural Commissioner's office (707-253-4357) shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.

No trees greater than 6" DBH shall be removed, except for those identified on the submitted site plan. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.

Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and off-site residence that can view these areas.

298 Landscaping shall be completed prior to final occupancy, and shall be permanently
299 maintained in accordance with the landscaping plan.

300
301 **10. OUTDOOR STORAGE/SCREENING/UTILITIES**

302 All outdoor storage of winery equipment shall be screened from the view of adjacent
303 properties by a visual barrier consisting of fencing or dense landscaping. No item in
304 storage is to exceed the height of the screening. Water and fuel tanks, and similar
305 structures, shall be screened to the extent practical so as to not be visible from public
306 roads and adjacent parcels.

307
308 New utility lines required for this project that are visible from any designated scenic
309 transportation route (see ~~Chapter 7~~Community Character Element of the General Plan
310 and Chapter 18.106 of the ~~Napa County Zoning Ordinance Code~~) shall be placed
311 underground or in an equivalent manner be made virtually invisible from the subject
312 roadway.

313
314 **11. COLORS**

315 The colors used for the roof, exterior walls and built landscaping features of the winery
316 shall be limited to earth tones that will blend the facility into the colors of the surrounding
317 site specific vegetation and the applicant shall obtain the written approval of the
318 ~~Conservation, Development, and Planning~~Planning, Building & Environmental Services
319 Department prior to painting the building. Highly reflective surfaces are prohibited.

320
321 **12. SITE IMPROVEMENTS AND PUBLIC WORKS**ENGINEERING SERVICES-SPECIFIC
322 **CONDITIONS**

323 Please contact (707) 253-43544417 with any questions regarding the following.

324
325 **A. GRADING AND SPOILS**

326 All grading and spoils generated by construction of the project facilities, including
327 ~~cave spoils~~, shall be managed of ~~per Public Works~~Engineering Services
328 direction. All spoils piles shall be removed prior to final occupancy.

329
330 **B. TRAFFIC**

331 Reoccurring and scheduled vehicle trips to and from the site for employees,
332 deliveries, and visitors ~~will~~shall not occur during peak (4-6 PM) travel times to the
333 maximum extent possible. All road improvements on private property required
334 per the ~~Department of Public Works~~Engineering Services shall be maintained in
335 good working condition and in accordance with the Napa County Roads and
336 Streets Standards.

337
338 **C. DUST CONTROL**

339 Water and/or dust palliatives shall be applied in sufficient quantities during
340 grading and other ground disturbing activities on-site to minimize the amount of
341 dust produced. Outdoor construction activities shall not occur during windy
342 periods.

343
344 **D. STORM WATER CONTROL**

345 The permittee shall comply with all construction and post-construction storm
346 water pollution prevention protocols as required by the County Public Works

347 | Department ~~Engineering Services Division~~, and the California Regional Water
348 | Quality Control Board (SRWQCB).

349 |
350 | **E. PARKING**

351 | The location of employee and visitor parking and truck loading zone areas shall
352 | be identified along with proposed circulation and traffic control signage (if any).

353 |
354 | Parking shall be limited to approved parking spaces only and shall not occur
355 | along access or public roads or in other locations except during harvest activities
356 | and approved marketing events. In no case shall parking impede emergency
357 | vehicle access or public roads. If any event is held which will exceed the
358 | available on-site parking, the permittee shall prepare an event-specific parking
359 | plan which may include but, shall not necessarily be limited to, valet service or
360 | off-site parking and shuttle service to the winery.

361 |
362 | **F. GATES/ENTRY STRUCTURES**

363 | Any gate installed at the winery entrance shall be reviewed by the ~~Conservation,~~
364 | ~~Development and Planning, Building & Environmental Services~~ Department,
365 | ~~Public Works~~ Department and the Napa County Fire Department to assure that it
366 | is designed to allow large vehicles, such as motorhomes, to turn around if the
367 | gate is closed without backing into the public roadway, and that fire suppression
368 | access is available at all times. If the gate is part of an entry structure an
369 | additional permit shall be required according to the Napa County Code and in
370 | accordance with the Napa County Roads and Street Standards. A separate
371 | entry structure permit is not required if the entry structure is consistent with entry
372 | structure plans submitted, reviewed, and approved as part of this use permit
373 | approval.

374 |
375 | **13. ENVIRONMENTAL MANAGEMENT ~~HEALTH~~-SPECIFIC CONDITIONS**

376 | Please contact (707) 253-4351 ~~4471~~ with any questions regarding the following.

377 |
378 | **A. WELLS**

379 | The permittee may be required (at the permittee's expense) to provide well
380 | monitoring data if the Director of ~~Environmental Management~~ Planning, Building
381 | and Environmental Services determines that water usage at the winery is
382 | affecting, or would potentially affect, groundwater supplies or nearby wells. Data
383 | requested could include, but would not necessarily be limited to, water extraction
384 | volumes and static well levels. If the applicant is unable to secure monitoring
385 | access to neighboring wells, onsite monitoring wells may need to be established
386 | to gauge potential impacts on the groundwater resource utilized for the project
387 | proposed. Water usage shall be minimized by use of best available control
388 | technology and best water management conservation practices.

389 |
390 | In the event that changed circumstances or significant new information provide
391 | substantial evidence that the groundwater system referenced in the use permit
392 | would significantly affect the groundwater basin, the Director of ~~Environmental~~
393 | ~~Management~~ Planning, Building and Environmental Services shall be authorized
394 | to recommend additional reasonable conditions on the permittee, or revocation of
395 | this permit, as necessary to meet the requirements of the Napa County
396 | Groundwater Ordinance and protect public health, safety, and welfare. That

397 recommendation shall not become final unless and until the Director of
398 Environmental Management has provided notice and the opportunity for hearing
399 in compliance with the Napa County Code §13.15.070 (G-K).
400

401 **B. NOISE**

402 Construction noise shall be minimized to the greatest extent practical and
403 allowable under State and local safety laws. Construction equipment muffling
404 and hours of operation shall be in compliance with Napa County Code Chapter
405 8.16. Equipment shall be shut down when not in use. Construction equipment
406 shall normally be staged, loaded, and unloaded on the project site. If project
407 terrain or access road conditions require construction equipment to be staged,
408 loaded, or unloaded off the project site (such as on a neighboring road or at the
409 base of a hill), such activities shall only occur between the hours of 8 AM to 5
410 PM. Exterior winery equipment shall be enclosed or muffled and maintained so
411 as not to create a noise disturbance in accordance with the Napa County Code.
412 There shall be no amplified sound system or amplified music utilized outside of
413 approved, enclosed, winery buildings.
414

415 **14. ARCHEOLOGICAL FINDING**

416 In the event that archeological artifacts or human remains are discovered during
417 construction, work shall cease in a 50-foot radius surrounding the area of discovery. The
418 permittee shall contact the Conservation, Development, and Planning, Building and
419 Environmental Services Department for further guidance, which will likely include the
420 requirement for the permittee to hire a qualified professional to analyze the artifacts
421 encountered and to determine if additional measures are required.
422

423 If human remains are encountered during the development, all work in the vicinity must
424 be, by law, halted, and the Napa County Coroner informed, so that he can determine if
425 an investigation of the cause of death is required, and if the remains are of Native
426 American origin. If the remains are of Native American origin, the nearest tribal relatives
427 as determined by the State Native American Heritage Commission would be contacted
428 to obtain recommendations for treating or removal of such remains, including grave
429 goods, with appropriate dignity, as required under Public Resources Code Section
430 5097.98.
431

432 **15. ADDRESSING**

433 All project site addresses shall be determined by the Conservation, Development, and
434 Planning, Building and Environmental Services Director, and be reviewed and approved
435 by the United States Post Office, prior to issuance of any building permit. The
436 Conservation, Development, and Planning Director reserves the right to issue or re-issue
437 an appropriate situs address at the time of issuance of any building permit to ensure
438 proper identification and sequencing of numbers. For multi-tenant or multiple structure
439 projects, this includes building permits for later building modifications or tenant
440 improvements.
441

442 **16. INDEMNIFICATION**

443 An indemnification agreement, in the form attached hereto, if an indemnification
444 agreement has not already been signed and submitted, one shall be signed and
445 returned to the County within twenty (20) days of the granting of this approval using the
446 Planning, Building and Environmental Services Department's standard form.

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17. **AFFORDABLE HOUSING MITIGATION**

Prior to County issuance of a building permit, the applicant shall pay the Napa County Affordable Housing Mitigation Fee in accordance with the requirements of Napa County Code Chapter 15.6018.107 or as may be amended by the Board of Supervisors.

18. **PREVIOUS CONDITIONS**

~~As applicable, the~~ permittee shall comply with any previous conditions of approval for the winery use except as they may be explicitly modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control and supersede earlier ones.

19. **MONITORING COSTS**

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until grant of final occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

~~The Conservation, Development, and Planning Commission~~ may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Commission at some time in the future, the Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation hearings in accordance with §18.124.120 of the Napa County Code.

20. **TEMPORARY AND FINAL OCCUPANCY**

All project improvements, including compliance with applicable codes, conditions, and requirements of all departments and agencies with jurisdiction over the project, shall be completed prior to granting of a Certificate of Final Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence. The County Building Official is authorized to grant a Temporary Certificate of Occupancy to allow specified limited use of the project, such as commencement of production activities, prior to completion of all project improvements. Marketing and/or Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions where extenuating circumstances exists and are subject to review and approval by the County Building Official, County Fire Marshal, and the Director of Planning, Building and Environmental Services. In special circumstances, departments and/or agencies with jurisdiction over the project are authorized as part of the Temporary Certificate of Occupancy process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements. Consistent with Board of Supervisors

496 Resolution № 2010-48, "Temporary Certificates of Occupancy are generally not to be
497 used to allow production of wine for more than one year."
498

499 ~~21. MITIGATION MEASURES(S)~~

500 ~~The permittee shall comply with all mitigation measures identified in the adopted Initial~~
501 ~~Study/Mitigated Negative Declaration and Mitigated Monitoring and Reporting Program~~
502 ~~prepared for the project. (INSERT MITIGATION MEASURES/MMRP FOLLOWING~~
503 ~~THIS CONDITION)~~

2011



A Tradition of Stewardship
A Commitment to Service

Conservation, Development and Planning

Planning Commission Hearing [date]
Exhibit A: Conditions of Use Permit Approval
[project name] & [# xx-xxxx]
Address & APN: # [xxx-xxx-xxx]

1. SCOPE

The permit shall be limited to

- Wine production of no more than XX,XXX gallons per year (consistent with the Napa County Winery Production Process)
- Construction of a XXXX square foot (of what) to (serve what purpose), including: (INFO TAKEN DIRECTLY FROM APPLICATION FORM)
 - X square foot loading area
 - X square foot crush pad
 - X square foot caves (Type X) for xxx
- Describe existing improvements to be included in winery (loading area/patio, conversion of house, etc) ;
- Demolition of X
- Hours of operation for the winery shall be limited to XX AM to XX PM (except during crush) (INFO TAKEN FROM APPLICATION FORM);
- Visitation, Tours and Tasting, and Marketing Plan as described below;
- Number of employees (TAKEN FROM APPLICATION FORM);
- Waste water system description;
- Temporary and final location of cave spoils;**
- Off-site improvements (such as roads, and turn lanes);
- Describe any road standards modification;
- X parking spaces;
- Extent of driveway/new road improvements;
- Installation of fire water tank(s) suppression located X;**
- (IF REQUESTED) On-premisewine consumption consistent with Assembly Bill 2004 (Evans) in X location;

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. It is the responsibility of the permittee 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 by the approved in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.

** Alternate locations for cave spoils and fire suppression tanks are permitted, subject to review and approval by the Director of Conservation, Development and Planning, when such alternative locations do not change the overall concept, and do not conflict with any environmental mitigation measures or conditions of approval.

2. PROJECT SPECIFIC CONDITIONS

No project specific conditions were adopted with this project (DELETE IF PROJECT HAS SPECIFIC CONDITIONS)

Two Types: A) staff recommended prior to meeting; B) Conditions added by Commission at hearing;

Examples:

Planting of x number of x sized replacement trees located x for loss of y.

1 year compliance review

Tours and tastings not occurring on same day as specific/all marketing events

Provision of contact information to neighbors

Specific improvements necessary to comply with Title 24 accessibility requirements

3. COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES

Project conditions of approval include all of the following County Department and Agency requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Departments and Agencies at time of submittal and may be subject to change, including but not limited to: Department of Environmental Management as stated in their letter of XXX XX, 200X (attached as pages xxx) Department of Public Works as stated in their letter of XXX XX, 200X (attached as pages xxx) County Fire Department as stated in their letter of XXX XX, 200X (attached as pages xxx) Building Division as stated in their letter of XXX XX, 200X (attached as pages xxx) INCLUDE ANY OTHER AGENCY CONDITIONS LETTERS (NOT COMMENT LETTERS) (attached as pages xxx)

The determination as to whether or not the permittee has substantially complied with the requirements of other County Departments and Agencies shall be determined by those Departments or Agencies. The inability to substantially comply with the requirements of other County Departments and Agencies may result in the need to modify the approved use permit.

4. VISITATION

Consistent with Sections 18.16.030 and 18.20.030 of the Napa County Code, marketing and tours and tastings may occur at a winery only where such activities are accessory and "clearly incidental, related, and subordinate to the primary operation of the winery as a production facility." Marketing, Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions can be requested due to extenuating circumstances and are subject to review and approval by the County Building Official, County Fire Marshal, and the Director of Conservation, Development and Planning.

Permittee shall obtain and maintain all permits and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB) required to produce and sell wine, including minimum levels of crush and fermentation. In the event permittee loses required ABC and/or TTB permits and licenses, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are re-established.

A log book (or similar record) shall be maintained which documents the number of visitors to the winery (be they tours and tastings or marketing event visitors), and the dates of their visit. This record of visitors shall be made available to the Department upon request.

A. TOURS AND TASTING

Tours and tastings are limited to the following:

Frequency: X days per week, Monday through Sunday (or otherwise specified)

Maximum number of persons per day:

Maximum number of persons per week:

Time of operation:

"Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointment for tours or tastings. Tours and tastings may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant. (Ord 1340 §2, Sec. 18.08.062) (FOOD PAIRING ONLY ALLOWED IF PROPOSED BY APPLICANT AND EVALUATED/CONDITIONED BY ENVIRONMENTAL MANAGEMENT AS PART OF USE PERMIT)members of the wine trade, persons invited by a winery who have pre-established business or personal relationships with the winery or its owners, and persons who have made unsolicited prior appointments for tours or tastings. (Ord. 947 § 9 (part), 1990: prior code § 12070).

Start and finish time of tours and tastings shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM, and shall be limited to those wines set forth in Napa County Code Sec. 18.16.030(G)(5)(c). CODE CITATION FOR AP ZONING OR REPLACE WITH: 18.20.030(H)(5)(c). CODE CITATION FOR AW ZONING

B. MARKETING

Marketing events are limited to the following:

- a. Type of Event:
Frequency: X times per year
Number of persons: XX maximum
Time of Day: (applicant requests, Planning Commission decides – typically 11:00 AM to 10:00 PM)
- b. List other events here as needed
- c. Participation in Auction Napa Valley (YES or NO and NOT SPECIFIC AS TO TYPE OF EVENTS)

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20 of the Napa County Code. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery's use permit. Marketing plans in their totality must remain "clearly incidental, related and subordinate to the primary operation of the winery as a production facility" (subsection (G)(5) of Sections 18.16.030 and subsection (I)(5) of 18.20.030 of the Napa County Code). To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of recovery of variable costs, and any business content unrelated to wine must be limited. Careful consideration shall be given to the intent of the event, the proportion of the business event's non-wine-related content, and the intensity of the overall marketing plan. (Ord. 1340, 2010: Ord. 1104 § 11, 1995: Ord. 947 § 9 (part), 1990: prior code § 12071).

All activity, including cleanup, shall cease by 10:00 PM. Start and finish time of activities shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM. If any event is held which will exceed the available on-site parking, the applicant shall have prepare an event specific parking plan which may include but not be limited to valet service or off-site parking and shuttle service to the winery.

2.5. GRAPE SOURCE

At least 75% of the grapes used to make the winery's wine shall be grown within the County of Napa. The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the production is from Napa County grapes. The report shall recognize the Agriculture Commission's format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the Conservation, Development and Planning Department upon request, but shall be considered proprietary information not available to the public.

3.6. RENTAL/LEASING

No winery facilities, nor portions thereof, including but not limited to offices, kitchens, barrel storage areas, and warehousing space, shall be rented, leased, nor used by entities other than persons producing and/or storing wine at the on-site winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this use permit or pursuant to the Temporary Events Ordinance (Chapter 5.36).

4.7. SIGNS

Prior to installation of any winery identification or directional signs, detailed site plans and sign design plans, including locations, elevations, materials, color, and lighting, shall be submitted to the Planning Department for administrative review and approval. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this use permit approval. All signs shall meet the design standards as set forth in Chapter 18.116 of the County Code. At least one sign placed and sized in a manner to inform the public must legibly and visibly include wording stating "Tours and Tasting by Prior Appointment Only".

5.8. LIGHTING

All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, and shall be the minimum necessary for security, safety, or operations and shall incorporate the use of motion detection sensors to the greatest extent practical. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-intensity light standards. Prior to issuance of any building permit for construction of the winery, two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Department review and approval. All lighting shall comply with Uniform Building Code (UBC).

6.9. LANDSCAPING/PARKING:

Two (2) copies of a detailed landscaping and irrigation plan, including parking details, shall be submitted for review and approval prior to issuance of building permits. The plan shall be prepared pursuant to the County's Water Efficient Landscape Ordinance (WELO), as applicable, and shall indicate the names and location of all plant materials to be used along with the method of maintenance.

Plant materials shall be purchased locally when practical. The Agricultural Commissioner's office (707-253-4357) shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.

No trees greater than 6" DBH shall be removed, except for those identified on the submitted site plan. Any trees that are removed shall be replaced elsewhere on the property on a 2 for 1 basis of equivalent caliper. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.

~~Replaced trees shall be identified on the landscaping plan. Trees to be retained shall be protected during construction.~~

Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and off-site residences that can view these areas.

Landscaping shall be completed prior to final occupancy, and shall be permanently maintained in accordance with the landscaping plan.

7.10. OUTDOOR STORAGE/SCREENING/UTILITIES

All outdoor storage of winery equipment shall be screened from the view of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No item in storage is to exceed the height of the screening. Water and fuel tanks, and similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.

New utility lines required for this project that are visible from any designated scenic transportation route (see Chapter 7 of the General Plan and Chapter 18.106 of the Napa County Zoning Ordinance for designated roads) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

8.11. COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation and the applicant shall obtain written approval by the Conservation, Development and Planning Department prior to painting the building. Highly reflective surfaces shall be prohibited.

12. SITE IMPROVEMENTS AND PUBLIC WORKS DEPARTMENT

Contact (707) 253-4351

a. GRADING AND SPOILS

All grading and spoils generated by construction of the project facilities, including cave spoils, shall be disposed of ~~managed~~ per Public Works direction. All spoils piles shall be removed prior to final occupancy.

a.b. TRAFFIC

Reoccurring and scheduled vehicle trips to and from the site for employees, deliveries, and visitors will not occur during peak (4-6 PM) travel times to the maximum extent possible. All road improvements on private property required per the Department of Public Works shall be maintained in good working condition.

b.c. DUST CONTROL

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur during windy periods.

e.d. STORM WATER CONTROL

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by County Public Works Department and the California Regional Water Quality Control Board (SRWQCB).

~~For any construction activity that results in disturbance of greater than one acre of total land area, permittee shall file a Notice of Intent with the California Regional Water Quality Control Board (SRWQCB) prior to any grading or construction activity. All hazardous materials stored and used on-site that could cause water pollution (e.g. motor oil, cleaning chemicals, paints, 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. Parking lots shall be designed to drain through grassy swales, buffer strips, or sand filters prior to any discharge from the impervious surface into a watercourse. If any discharge of concentrated surface waters is proposed in the any "Waters of the State," the permittee shall consult with and secure any necessary permits from the State Regional Water Quality Control Board. All trash enclosures must be covered and protected from rain, roof, and surface drainage.~~

e.e. PARKING

The location of employee and visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and approved marketing events. In no case shall parking impede emergency vehicle access or public roads. If any event is held which will exceed the available on-site parking, the ~~applicant~~ permittee shall ~~have~~ prepare an event specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

e.f. GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the Conservation, Development and Planning Department, Public Works Department and the Napa County Fire Department to assure that it is designed to allow large vehicles, such as motor homes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at all times. If the gate is part of an entry structure an additional permit shall be required according to the County Code, A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed and approved as part of this use permit approval.

f.g. STREAM SETBACKS (do not include if project has no relationship to streams)

Final plans submitted for building permit issuance shall include a site plan prepared by a qualified professional showing all streams, stream setbacks, existing and proposed improvements and slopes. No new construction or earthmoving activities have been proposed or approved within established stream setbacks as part of this application unless specifically enumerated in Section 1 (Scope), above. As determined by the Director of Conservation, Development and Planning, temporary construction fencing shall be placed at the stream setback line to prevent unauthorized encroachments.

13. ENVIRONMENTAL MANAGEMENT DEPARTMENT SPECIFIC COMMENTS

Contact (707) 253-4351

a. WELLS

The permittee may be required (at the permittee's expense) to provide well monitoring data if it the Director of Environmental Management determines that water usage at the winery is affecting, or would potentially affect groundwater supplies or nearby wells. Data requested could include, but may not be limited to, water extraction volumes and static well levels. If applicant is unable to secure monitoring access to neighboring wells, onsite monitoring wells may need to be established to gage potential impacts on the groundwater resource utilized for the project proposed. Water usage shall be minimized by use of best available control technology and best water management conservation practices. In the event that changed circumstances or significant new information provide substantial evidence that the groundwater system referenced in the use permit would significantly affect the groundwater basin, the director of environmental management shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety, and welfare. That recommendation shall not become final unless and until the director has provided notice and the opportunity for hearing in compliance with the CountyCode section 13.15.070.G-K.

b. NOISE

Construction noise shall be minimized to the maximum extent practical and allowable under State and local safety laws. Construction equipment muffling and hours of operation shall be in compliance with County Code Chapter 8.16. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site. If project terrain or access road condition require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur between the hours of 8 AM to 5 PM. Exterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the Code. There shall be no amplified sound system or amplified music utilized outside of approved, enclosed winery buildings.

9-14. ARCHEOLOGICAL FINDING

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the Conservation, Development and Planning Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required. If human remains are encountered during the development, all work in the vicinity must be, by law, halted, and the Napa County Coroner informed, so that he can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the nearest tribal relatives as determined by the State Native American Heritage Commission would be contacted to obtain recommendations for treating or removal of such remains, including grave goods, with appropriate dignity, as required under Public Resources Code Section 5097.98.

10-15. ADDRESSING

All project site addresses shall be determined by the Conservation, Development and Planning Director, and reviewed and approved by the U.S. Post Office, prior to issuance of any building permit. The Conservation, Development and Planning Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

11-16. INDEMNIFICATION

An indemnification agreement, in the form attached hereto, shall be signed and returned to the County within twenty (20) days of the granting of this approval.

12.17. AFFORDABLE HOUSING MITIGATION

Prior to County issuance of a building permit, the applicant shall pay the Napa County Affordable Housing Mitigation Fee in accordance with the requirements of County Code Chapter 15.60 or as may be amended by the Board of Supervisors.

13.18. PREVIOUS CONDITIONS (for Modifications only)

The permittee shall comply with all previous conditions of approval for Use Permit (insert number), except as modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control and supersede earlier ones.

14.19. MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged. Costs shall be as established by Board Resolution in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until grant of final occupancy. ~~(\$125.00/hour as of July, 2006).~~ Violations of conditions of approval or mitigations measures caused by the permittee's contractors, employees, and guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if it is so warranted, to commence revocation hearings in accordance with section 18.124.120 of the County Code.

15.20. TEMPORARY AND FINAL OCCUPANCY

All project improvements, including compliance with all applicable codes, conditions and requirements from all departments and agencies with jurisdiction over the project, shall be completed prior to granting of a Certificate of Final Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence. The County Building Official is authorized to grant a Temporary Certificate of Occupancy to allow specified limited use of the project, such as commencement of production activities, prior to completion of all project improvements. ~~Marketing, Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions can be requested due to extenuating circumstances and are subject to review and approval by the County Building Official, County Fire Marshal, and the Director of Conservation, Development and Planning.~~ In special circumstances, departments and/or agencies with jurisdiction over the project are authorized as part of the Temporary Certificate of Occupancy process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

15.21. MITIGATION MEASURE(S)

The permittee shall comply with all mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project.

INSERT MITIGATION MONITORING AND REPORTING PROGRAM FOLLOW THIS CONDITION

Public Comment - Bernadette Brooks

Gallina, Charlene

From: Walt Brooks <brooksvineyard@sbcglobal.net>
Sent: Monday, July 11, 2016 9:16 PM
To: Gallina, Charlene
Cc: Gary Margadant
Subject: Re: Fwd: Napa County Development Process - Standard Conditions of Approval Update for Discretionary Projects

Hi Charlene,

Sorry I forgot to add two more items:

- If there are other pre-existing illegal and non-compliant structures or issues with a parcel that are not remedied by the new permit request then those need to be resolved before the new permit can be issued.
- If there are pending legal actions by Napa County on the requestor or business owner then that needs to be resolved before the new permit can be issued.

Thanks,
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From: Walt Brooks <brooksvineyard@sbcglobal.net>
To: Charlene Gallina <charlene.gallina@countyofnapa.org>
Cc: Gary Margadant <gsmargadant@gmail.com>
Sent: Monday, July 11, 2016 9:12 PM
Subject: Re: Fwd: Napa County Development Process - Standard Conditions of Approval Update for Discretionary Projects

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On Wed, Jun 22, 2016 at 6:27 PM, Gallina, Charlene <Charlene.Gallina@countyofnapa.org> wrote:

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Please review and provide comment by July 6th if you want me to incorporate your comments into our staff report to the Commission or at least prior to July 14th. If we go on July 20th, I will need comments by July 12th to incorporate into the July 20th staff report. Please note that I will get back to you by July 1st on which meeting we will take this item.

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6. Prior to Authorization of a Temporary Certificate of Occupancy
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Proposed wording of the Standard Conditions have been modified to standardize language, ensure consistency and clarity, and to avoid any duplication. Furthermore, Staff has standardize project specific conditions that have been applied to projects over the years, and have added conditions from the Building Division and Fire Department to provide more information regarding the permitting process and expectations when applying for such permits.

As for any significant changes, staff has renamed the "Well" condition to "Ground Water Management – Wells" and updated its language to address the County's Water Availability Analysis (WAA) Policy adopted by the Board of Supervisors on May 13, 2014. Lastly, Staff is proposing a condition and procedure that would carry over previous non-construction and/or operational conditions of approval for Major Modification applications only at this time.

If you have any questions, comments or suggested changes, please contact me or John McDowell.

Best Regards,

Charlene Gallina
Supervising Planner
Napa County Planning, Building, & Environmental Services Department
(707) 299-1355

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Public Comment - Napa Vision 2050

AUG 03 2016

Agenda Item # 10A



Mission: To Promote the Health, Welfare and Safety of our Community by Advocating for Responsible Planning to Insure Sustainability of the Finite Resources of Napa County
A Better Plan. A Better Future.

August 2, 2016

Charlene Gallina, Supervising Planner
Planning, Building & Environmental Services Department
1195 Third Street
Napa CA 94559

Re: Adoption of 2016 Standard Conditions of Approval, Item 10A, Napa County Planning Commission, August 3, 2016

Dear Ms. Gallina:

Napa Vision 2050 submits these comments on the proposed update to the standard conditions of approval for Wineries, Specific Plan Area- non Winery Applications and Other Project Non-Residential/Residential Applications. NV 2050 is a non-profit community association whose mission is to Promote the Health, Welfare and Safety of our Community by Admocating for Responsible Planning to Insure Sustainability of the Finite Resources of Napa County: **A Better Plan. A Better Future.**

We fully endorse the County's goals and proposals for updating the conditions of approval and we congratulate the planning staff for their work on clarity and transparency of the streamlined conditions and the triggering of project milestones and providing ease of use by contractors, engineers, the permittee, property owners, County Staff, Napa County Residents and Neighbors to the projects.

These new tools provide the Napa County PBES Staff and Enforcement group with the tools they need to cull out the oulandish before everyone becomes too invested in the outcome. These are not hard and fast rules to limit development, rather they are transparent compliance guidelines of workable conditions that trigger project milestones that all observers can understand and appreciate. Conditions of Approval are Project agreements between the permittee and the Napa County PBES staff, and they should be honored by all participants and observers.

Bernadette Brooks, in her email comments has provided excellent questions of guidance for the PBES Staff and Planning Commission and their rigorous analysis should be considered in the wording of the final draft to the Planning Commission on August 17, 2016.

Storm Water Control is vital to the project long term sustainability and compliance with the Water Board requirements in maintaining and acceptable TMDL rating for the rivers and tributaries inside the Napa Valley. A main project objective should be the protection and viability of the waterways and maintenance of Fish Friendly Farming objectives that provide clear, clean drinking water to the Municipal Reservoirs of Napa City, Yountville, Saint Helena, American Canyon and Calistoga. The Residents and youth within these municipal limits depend on this water for their Health, Welfare and Safety. The project objectives should never be placed ahead of these goals.

Thank you for the opportunity to comment.

Gary Margadant
Napa Vision 2050

Attachments:

Bernadette Brooks Comments via email.
Wine Industry Enforcement Letter March 3, 2015
2014-2015 Grand Jury Wineries Following the Rules
Napa Valley Register 8/28/2015 Grand Jury Forman Letter to the Editor
Unfair Competition in the Wine Industry

Napa County Development Process - Standard Conditions of Approval Update for Discretionary Projects

5 messages

Gallina, Charlene <Charlene.Gallina@countyofnapa.org>

Wed, Jun 22, 2016 at 6:27 PM

To: "Gallina, Charlene" <Charlene.Gallina@countyofnapa.org>

Cc: "McDowell, John" <John.McDowell@countyofnapa.org>, "Morrison, David" <David.Morrison@countyofnapa.org>

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3 attachments

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Gary Margadant <gsmargadant@gmail.com>

Wed, Jun 22, 2016 at 9:35 PM

To: Gary Margadant <gsmargadant@gmail.com>

Bcc: Bernadette & Walt Brooks <brooksvineyard@sbcglobal.net>, Bill Hocker <bill@wmhocker.org>, Carol Kunze <carol@tuleyome.org>, Charlotte Helen Williams <cdevorak@sonic.net>, Chris Malan <cmalan1earth@gmail.com>, Christina Aranguren <calfisheriestandwaterunlimited@gmail.com>, Christina Benz <christinabenz@gmail.com>, Cynthia Grupp <cfgrupp@gmail.com>, Daniel Mufson <NapaVision2050@gmail.com>, David R Heitzman <savecircleoaks@gmail.com>, Diane Dame Shepp <diane.dame.shepp@gmail.com>, Donald & Patricia Harms-Damery <pdamery@patriciadamery.com>, Eve Kahn <evekahn@juno.com>, Geoff Ellsworth <geoffellsworth@yahoo.com>, George Caloyannidis <calti@comcast.net>, Ginna Beharry <ginna.beharry@sbcglobal.net>, Jim Wilson <jplaudatosi@gmail.com>, John Harrington <john@harringtoninvestments.com>, Julia Winiarski <108julia@gmail.com>, Kathy L Felch <kfelch@adkinsfelch.com>, Kellie Anderson <kelliegato@gmail.com>, Mary Ann Moffitt <mamoffitt4@gmail.com>, Mike Hackett <mhackett54@gmail.com>, Nancy Tamarisk <napaquail@gmail.com>, Richard A Cannon <cannon_richard@hotmail.com>, Richard Nieman <rniemann@sonic.net>, Dorian Greenow <dorian.greenow@me.com>, Evangeline James <ejames@pollockandjames.com>, Harris Nussbaum <nussbaum@napanet.net>, Leslie Stewart <ls@napa.us>, Russ Wilsey <russ@purityinc.com>, Tony McClimans <tlimclimans@gmail.com>

Team of Extraordinary Talent This is a huge change in the Conditions of Approval that David M telescoped at the last PC/BOS meeting. In my view, he is trying to change the COA to include Milestones that require, over time a reorganization and emphasis of compliance before the Use Permit is Finalized. The COA will not wait until the end, rather it will be a integral part of the compliance regime to gain final approval of the Use Permit. If the COA items are not completed as required, then the Use Permit can be denied. Please look at the three versions and comment back. David wants support, so be generous. Charlene, David et al, are proposing a special meeting of the PC on July 14 (Thursday) or a following regular meeting on July 20, Wednesday, when Mountain Peak Vineyard is due to be considered. PUSH and VOTE for the SPECIAL meeting on this subject, we want the exclusivity.

Which of the 3 versions do you prefer? I have not read them and decided on a preference. I will forward my response.

If your brain is about to explode, lets meet for coffee.

Gary

Gary Margadant
Napa Vision 2050
H 707.257.3351
C 707.291.0361
[Quoted text hidden]

Tittel/Caloyannidis <calti@comcast.net>

Thu, Jun 23, 2016 at 9:27 AM

To: Gary Margadant <gsmargadant@gmail.com>

Cc: C/ 2050 Charlotte Williams <cdevorak@sonic.net>, C/ 2050 Cynthia Grupp <cfgrupp@gmail.com>, C/ 2050 Dan Mufson <dan@apotherx.com>, C/ 2050 David Heitzman <napaguitar@gmail.com>, C/ 2050 Diane Shepp <protectruralnapa@gmail.com>, C/ 2050 Eve Kahn <evekahn@yahoo.com>, C/ 2050 Geoff Ellsworth <geoffellsworth@yahoo.com>, C/ 2050 Ginna Beharry <ginna.beharry@sbcglobal.net>, C/ 2050 Jim Wilson <jplaudatosi@gmail.com>, C/ 2050 Julia Winiarski <108julia@gmail.com>, C/ 2050 Kathy Felch <kfelch@adkinsfelchllp.com>, C/ 2050 Mike Hackett <mhackett54@gmail.com>, C/ 2050 Patricia Damery <pdamery@patriciadamery.com>, C/ 2050 Richard Cannon <cannon_richard@hotmail.com>, C/ 2050 Tina Aranguren <calfsheriesandwaterunlimited@gmail.com>

Dear Gary,

We need to convene a NV 2050 meeting to discuss how we will proceed with this. It may have genuine benefits or it may be a smokescreen.

George

From: Gary Margadant [mailto:gsmargadant@gmail.com]

Sent: Wednesday, June 22, 2016 9:36 PM

To: Gary Margadant

Subject: Fwd: Napa County Development Process - Standard Conditions of Approval Update for Discretionary Projects

[Quoted text hidden]

Walt Brooks <brooksvineyard@sbcglobal.net>

Mon, Jul 11, 2016 at 9:12 PM

Reply-To: Walt Brooks <brooksvineyard@sbcglobal.net>

To: Charlene Gallina <charlene.gallina@countyofnapa.org>

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Bernie

Unfair Competition in the Wine Industry

7/30/2016

by

Nell Clement,

Jessica Nall

| Farella Braun + Martel LLP

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FARELLA
BRAUN + MARTEL LLP

Published in the July-August 2016 issue of *Vineyard & Winery Management*

California counties are increasingly using California's Unfair Competition Law (UCL) to bring government enforcement actions against local businesses for myriad reasons. California's UCL is extremely broad, encompassing unlawful, fraudulent or even unfair business practices. UCL cases can often result in large fines and costs — as well as reputational damage from negative publicity.

Local district attorney and county counsel offices in winemaking regions are increasingly using the UCL to bring cases against wine industry businesses. These cases have addressed a wide range of conduct, from minor county code violations to alleged serious health and safety risks.

UCL cases filed against wineries and vineyards have included allegations of grading and vegetation removal outside of the erosion control plan approved by the county. In one case, this resulted in a total cost to the winery of \$20,000. Another case involved allegations of a winery letting paid guests stay on its property in violation of local zoning ordinances, resulting in a total cost to the winery of more than \$30,000. A third case involved allegations of a winery doing construction on its property, including building a wine cave without proper permitting, resulting in a total cost to the winery of \$85,000. Other cases involving fish and game violations on winery property have also resulted in five-figure settlements. These costs only represent the amounts paid to settle the case. They don't include the costs to the businesses in attorney's fees (which can be high) or the reputational costs due to negative publicity resulting from the lawsuits.

Scope of California's UCL

Codified in Sections 17200 and 17500 of the California Business & Professions Code, California's UCL is essentially a consumer protection law, providing government entities and private citizens the ability to bring lawsuits against businesses for practices that are alleged to harm consumers. It's one of the

broadest, if not the broadest, consumer protection laws in the country — and it includes expansive definitions, creating potential liability for a wide range of business conduct.

The UCL prohibits four types of wrongful conduct by businesses: unlawful business acts or practices; unfair business acts or practices; fraudulent business acts or practices; and unfair, deceptive, untrue or misleading advertising.

Under the UCL, an “unlawful” business act or practice is one that violates any law, be it federal, state, local, statutory or court-made. The UCL borrows violations of other laws and treats them as unlawful practices that are independently actionable. For example, “unlawful” UCL cases have been brought based on county code violations, zoning ordinances, building and housing code violations, and environmental statutes, such as the California Fish & Game Code.

“Unfair” under the UCL is intentionally broad to allow law enforcement agencies maximum discretion to take action against new schemes to defraud consumers that may not yet violate any law. The California courts have disagreed on one definition of “unfair” and have held a wide variety of practices to be “unfair” under the UCL. Examples include a car rental company concealing a refueling service charge, even though charging such a fee itself was legal; an insurance company’s use of a polygraph test to deny insurance; and intentionally placing unenforceable terms in consumer contracts.

A business act or practice is “fraudulent” under the UCL if members of the public are likely to be deceived by that act or practice. “Fraudulent” under the UCL is broader than common law fraud because UCL liability doesn’t require intent, reliance, damages or even actual deception — rather, the mere likelihood of deception is sufficient.

Government Enforcement

UCL government enforcement actions can be brought by a number of law enforcement officials, including the California Attorney General, county district attorneys, county counsel and city attorneys. Given this broad and potentially overlapping number of law enforcement officials who can investigate and prosecute UCL actions, there’s an unfair competition database allowing for coordination between agencies. In addition to civil discovery methods that may apply to private UCL actions, law enforcement officials can use administrative subpoenas and other investigative techniques — such as wiretap surveillance — in UCL investigations and actions.

For both government enforcement and private actions, the standard of proof in UCL actions is preponderance of the evidence. The preponderance of the evidence standard is relatively low and is met if the plaintiff (whether the government or a private litigant) shows that it’s more likely than not that the defendant engaged in a business act or practice that violates the UCL.

Successful government UCL enforcement actions have a number of potential remedies, including injunctions, requiring cessation of the violative practice or act, and restitution or reimbursement for victims’ losses due to violative conduct.

Additionally, the government can seek civil monetary penalties and investigation costs. The maximum allowable civil monetary penalty under the UCL is \$2,500 per violation. This may not sound like much, but calculation of the number of violations can increase the fine exponentially. For example, in many counties,

each day on which a violation of the county code is in existence is considered a separate and distinct violation for penalty purposes.

The ability to obtain civil monetary penalties, especially in such large amounts, provides a powerful incentive for law enforcement agencies to bring UCL cases, because any penalty paid goes directly to the agency that investigated and prosecuted the action. UCL cases provide an alternate way to fill the agency's coffers at a time when budget cuts and lack of funding plague many law enforcement agencies.

How to Avoid Becoming a Target

Because UCL liability is so broad in scope and can apply to such a wide range of conduct (including minor county code violations), these investigations and cases may be difficult to avoid. However, there are actions a business owner can take in an attempt to avoid a UCL investigation or government enforcement action.

Know and comply with state and local ordinances, including county permitting, building and zoning requirements. These ordinances and the requirements pursuant to them can be complicated, and dealing with state and county agencies can be frustratingly slow. However, the risk of noncompliance, given the UCL penalties and costs, can be enormous. Consider hiring a consultant or advisor to help navigate state and local ordinance issues.

Supervise and educate employees about compliance with state and local ordinances. Businesses can and will likely be held vicariously liable for any conduct of their employees who are considered to be acting within the scope of their employment. An employee is considered to be acting within the scope of his or her employment if the conduct is reasonably related to the tasks the employee was hired to perform or the employee's conduct was reasonably foreseeable in light of the employer's business or the employee's job responsibilities. Consider educating employees as well about potential government investigative tactics such as issuance of subpoenas, questioning by government investigators, and even "sting operations" in which government enforcers may misrepresent their identities in an attempt to ferret out code violations. Don't assume independent contractors will take responsibility for getting necessary and required permits. **As the business owner, you are ultimately responsible for making sure your business and the property on which it operates are in compliance with state and county ordinances and laws.** Ask to see all the authorized permits and necessary certificates — don't just take your independent contractors at their word.

Be nice to your neighbors. A significant portion of UCL investigations begin with a neighbor complaint to a state, county or local agency. If there are issues with your business' neighbors, try to address and resolve them directly.

What to Do If Targeted

There are several steps you should take to mitigate the potential damage to your business if you're the target of a UCL investigation.

Engage counsel to act on your behalf. Counsel experienced in defending UCL actions and negotiating with the investigating agency can help formulate and execute a strategy to resolve the investigation or case with the best possible outcome for your business — financially and reputationally.

Don't make any statements to investigating agencies without consulting with your counsel. Any statements you or your employees make directly to agencies investigating a UCL case can be used against you in that case and can potentially get your business in more trouble, especially if the investigating agency thinks the statements are false or misleading in any way. An attorney can talk to the investigating agency and negotiate on your business' behalf without creating statements that bind or can be attributable to your business.

Counsel will also be able to advise you in responding to government agency requests, including administrative subpoenas. Although not necessarily tied to a filed lawsuit, administrative subpoenas should be treated like any formal civil discovery request, with responses stating and preserving all objections and potential privileges.

Remember that cooperation is valuable. Demonstrating to an investigating agency that you're willing to cooperate and work with the agency to resolve UCL issues can go a long way in resolving an investigation before it becomes a lawsuit or, if a lawsuit is already filed, resolving the case outside of court. Out-of-court resolutions often involve the government agency agreeing to take a much-reduced civil penalty to resolve the case than could be sought in a court judgment. As soon as you learn about a UCL investigation or lawsuit affecting your business, have your counsel consider the benefits of cooperation. If those benefits weigh in your business' favor, engage with the investigating agency on the topic of cooperation as soon as possible.

With its broad applicability and low standard of proof, the UCL provides a powerful tool for government entities to enforce state and local ordinances and to obtain civil penalties for their often underfunded agencies. The best practices to avoid UCL investigations and lawsuits is to be vigilant about state and local ordinance compliance as well as potential investigations and to supervise and educate your employees to do the same.

Napa Valley Register

Wine industry should work for transparency

AUGUST 28, 2015 7:00 PM • ROSS WORKMAN

The discussion of what rules wineries should live with regarding production and visitation limits is complicated. But some salient factors seem self-evident. The rules should be obeyed. The forthright policy of the Napa Valley Vintners Association is hard to argue with. They say wineries should comply with their use permits or other regulations and, if they cannot or don't want to comply, they should seek to have them amended. Agreement that the rules should be obeyed is a good place to start. Nobody seems to be willing to disagree, at least not publicly. Secondly, the rules frequently appear to have not been obeyed. The county's audit of winery compliance has been anything but transparent. The terms of winery use permits are not visible to the public on the county's website. The small sample of 20 wineries per year that have been audited have not been publicly named. But we do know that in recent years up to 40 percent of them have been found to not comply. No instances of 100 percent compliance in any recent audits have been reported. Third, some of the rules would appear to involve factors easy to measure. Volume of wine production and number of visitors and events look like objective facts. And they are facts the wineries certainly must know. Wine production is taxed by the federal government, so there have to be auditable production numbers readily available. Almost every winery charges visitors for tastings, and it is doubtful they often host events without a charge. So the business records of the wineries contain the data from which they should be able easily to extract the numbers to show whether they are complying with limitations on visitors and events. Fourth, compliance with rules can be expected to improve if there are consequences for non-compliance. It seems to work very effectively with health department regulations of restaurants that can be shut down for non-compliance. And shutting down is almost never required because the publication of a failure to comply pressures an immediate response. But the names of non-compliant wineries are kept secret from the public.

Publishing the names of non-compliant wineries would seem a modest, but beneficial, consequence of failure to comply. Similarly, requiring full compliance with existing rules before accepting an application to change the rules would seem to encourage compliance, without an undue burden. And, in extreme cases, a temporary suspension of visitation rights would get any winery's attention and not be a death sentence. As to the permitting of additional new wineries, there also appear to be a few unarguable facts. Is there any doubt that existing wineries in Napa Valley have the present installed capacity to process 100 percent of the wine grapes produced in the valley? On the contrary, the regulatory problem seems to be in preventing Napa Valley wineries from unduly relying on grapes from non-Napa sources. So incremental wineries are not necessary to preserve and enhance Napa Valley agriculture. They are proposed and built for other commercial reasons than protecting local agriculture. Those commercial reasons are certainly legal, but we should be clear that the incremental wineries are commercial enterprises, not agricultural industry protectors. They are wine marketing outlets and event center enterprises first, and unnecessary processors of Napa Valley grapes second.

As to traffic problems, the argument is made that the visitors to a new winery will not be incremental drivers on Napa roads; they will be drivers who would be here anyway to visit other wineries if the new winery were not built. The traffic problem, we are told, is not new visitors the new winery brings into the valley; the problem is created by people already living and working here.

That does, however, conveniently overlook the obvious fact that the new winery/event center will create incremental jobs for people working there and also for people providing services to the enterprise. Those new jobs will be filled, at the margin, by new travelers on Napa roads, apart from the visitors who come to the winery. And, it is clear that, given the cost of housing here, many of those incremental employees will come from outside the valley and will add to traffic congestion as they go to and from work. It is not possible for added commerce of a staffed and operating new winery to occur without an impact on traffic. Failing to recognize that is disingenuous sleight of hand.

I am not personally opposed to wineries. Since moving to Napa 20 years ago, I have

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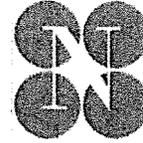
worked part-time in a number of wineries. I believe the wine industry is well served by complying with existing rules, as the Napa Valley Vintners Association recommends, and by openly embracing changes in the way wineries relate to the county.

The industry has a great store of well-deserved goodwill and can best continue to enjoy the widespread public support that it has by working to open up public visibility of its operations. Sunshine will inoculate against uninformed criticism and, perhaps, unwanted new regulation.

Workman lives in Napa. He served as the foreman of the 2014-15 Napa County grand jury, though the views expressed here are his own.



WINEGROWERS
of napa county



napa valley vintners

March 3, 2015

Supervisor Diane Dillon
Planning Commissioner Heather Phillips
Napa County Administration Building
1195 Third Street
Napa, Ca 94559

Dear Chairwoman Dillon and Chairwoman Phillips,

We the undersigned Presidents offer our collective perspective on issues currently under discussion at the County and within our community at large.

The Napa Valley Grapegrowers, the Winegrowers of Napa County, and the Napa Valley Vintners encourage the County to exhibit leadership in navigating the complexity of these issues and in defining the future vision of Napa. Napa County has carefully enacted comprehensive policies and regulations in place to protect our resources and ensure a strong future. We encourage the County to enforce these regulations and follow through on its General Plan policies. We believe that unrealistic winery applications, shored up by the excessive use of variances, should be denied. We do not favor or encourage a moratorium. Strict oversight of existing procedures, paired with fewer creative solutions to non-conforming parcels, will go a long way toward diminishing community and industry concerns. We further request continued attention be paid to the enforcement of food and wine pairing accessory use at wineries.

There has been much discussion of establishing guidelines or using a 'conceptual matrix' when balancing parcel size or acreage with production and visitation. We formally offer our assistance in helping the Planning Department establish these guidelines with an eye to sensible and sustainable development. In addition, we are willing to meet with any community groups, organizations or municipalities to broaden our mutual understanding. We are not suggesting hard and fast rules to limit development, but merely a sincere effort to cull out the outlandish before everyone becomes too invested in the outcome.

We sincerely appreciate your leadership in these complex discussions. Opposition to all development is not the answer. We commit to continuing our support of Napa County leadership, to ensure the preservation of Napa's Agricultural Preserve and along with that, the Napa brand which we all hold dear.

Sincerely,

Steven P. Moulds
Napa Valley
Grapegrowers

Tony LeBlanc
Winegrowers
of Napa County

David R. Duncan
Napa Valley Vintners



**NAPA COUNTY GRAND JURY
2014-2015**

MAY 12, 2015

FINAL REPORT

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

1 ARE NAPA COUNTY WINERIES FOLLOWING THE RULES?

2 SUMMARY

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

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

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

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

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

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

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

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

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

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

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

67

68 **GLOSSARY**

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

71 General Plan: Napa County General Plan of 2007

72 TTB: Federal Alcohol and Tobacco Tax and Trade Bureau

73 WDO: Collective term for the Winery Definition Ordinances

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

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

78 **BACKGROUND**

79 **AGRICULTURE PRESERVE OF NAPA COUNTY**

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

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

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

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

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

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

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

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

130

131 **WINERY USE PERMITS**

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

144 **METHODOLOGY**

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

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

162

163 **DISCUSSION**

164 **USE PERMITS**

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

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

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

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

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

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

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

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

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

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

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

236

237 **WINERY AUDITS**

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

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

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

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

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

267 Winery audits review the following activities:

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

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

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

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

272 Are all the products for retail sale wine related?

273 Winery audits do not review the following:

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

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

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

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

290 **FINDINGS**

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

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

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

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

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

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

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

310 **RECOMMENDATIONS**

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

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

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

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

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

330 **REQUEST FOR RESPONSES**

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

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

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

Gallina, Charlene

From: Gary Margadant <gsmargadant@gmail.com>
Sent: Tuesday, August 02, 2016 9:44 PM
To: Gallina, Charlene; Anne Cottrell; Heather Phillips; Jeri Gill; McDowell, John; Frost, Melissa; Michael Basayne; Terry Scott
Subject: Planning Commission - Revised Conditions of Approval and Code Enforcement Aug 3, 2016
Attachments: NVR 082815 Wine Ind Transparency.txt; Ind Ltr Enf 3 3 15.pdf; Bernadette Comments.docx; Unfair Competition in the Wine Industry.docx; 14-15 GJ Wineries Following the Rules (1).pdf; V2050 Commnt Ltr.docx

Charlene Gallina

Please include the following documents into the Record for Item 10A, **ADOPTION OF THE 2016 STANDARD CONDITIONS OF APPROVAL**

Please see the V2050 Comment Letter as a start.

Best Regards, Gary

Gary Margadant
Napa Vision 2050