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January 11, 2020

By email only to david.morrison@countyofnapa.org and  
charlene.gallina@countyofnapa.org

Napa County Planning Commission  
Chair Dave Whitmer  
Vice Chair Andrew Mazotti  
Commissioner Anne Cottrell  
Commissioner Joelle Gallagher  
Commissioner Jeri Hansen  
1195 Third Street  
Napa, CA 94559

Re: Scarlett Winery Use Permit Application P16-0428-UP

Chair Whitmer, Vice-chair Mazotti and Commissioners Cottrell, Gallagher and Hansen:

I am writing on behalf of my client, Wendy Green DeWald, and her family, the owners of the property located at 1070 Ponti Road. My clients share a boundary with the applicant's property, and the proposed winery location is but a short distance from that common boundary.

To begin, I want to emphasize the unique character of Ponti Road. I am pretty sure one would be hard-pressed to find another dead-end road on the valley floor without a winery. The quiet agricultural character of this neighborhood is precisely what has attracted most of the property owners, including my client. We understand the primacy of agricultural use under the County's General Plan, and we know that the County's definition of agriculture includes wine production, as well as marketing, sales and other accessory uses (so long as they remain incidental and subordinate to the primary, agricultural use) but we also understand that wineries are not permitted by right; rather, they are a conditional use allowed only upon your discretionary approval of a use permit. We believe that consideration of the unique character of Ponti Road is an important part of the appropriate exercise of your discretion, and hope that you will agree.

I note with some dismay that the applicant, in his summary of a meeting with the neighbors held on November 20, suggests that the proposed winery will be invisible from my client's residence, as the applicant reports being unable to see my client's home from the proposed driveway. I am not sure about the visibility of the Green residence from the proposed winery driveway, but I can state with certainty that if the applicant were as tall as the proposed winery, he would have had no difficulty whatsoever seeing the Green residence, just as my client and her family will have no difficulty seeing the proposed winery from their home. Given that the applicant's parcel is 48 acres in area, my client finds it especially distressing that the proposed winery location is a mere 40 feet from their common boundary. Despite repeated requests for documentation in support of the

project engineer's assertion that soil conditions dictate the location of the winery, we have received nothing. Actual noise levels for the proposed winery may or may not be within the limits established by the County, but it is clear the peaceful soundscape enjoyed by my client will be changed forever.

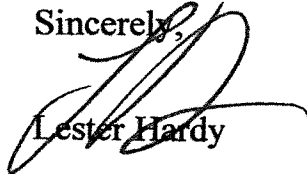
I am also troubled by the staff response to comments regarding Ponti Road. In Attachment "D" to the January 15 agenda letter for this project (Supplemental Technical Information), we are informed by Public Works Director Steven Lederer that "[t]he County has authority over the road from pavement edge to edge, but not beyond that." In Attachment "C", in the section on Ponti Road, staff goes on to say that "[t]he unpaved portion [of the road... is not] in the County's right of way and [is] solely the responsibility of the adjacent property owners" and that "[a]ny tree replacement/maintenance, or parking for residential purposes, winery or agricultural operations would require permission from the adjacent property owner." Yet staff goes on to conclude that Ponti Road in its current width [which is the limit of the County right of way] and unpaved shoulders [which are located on private property] can safely accommodate traffic during an emergency. In other words, after making it perfectly clear that the County has no authority over the areas described as "unpaved shoulders", for the simple reason that they are on private property and beyond the limits of the County's right of way, staff concludes that Ponti Road can safely accommodate traffic during an emergency if vehicles use the private property on which staff has already told us no one can park without the property owner's permission. To put it very directly, this looks to me like something I can only describe as a back-door "taking", in the Fifth Amendment sense of the word.

What makes this analysis look even worse is the implicit assumption that the narrowness of the pavement is only a concern during emergencies, and that the kind of traffic associated with vineyards, residences and wineries, in the absence of a fire truck, will have no difficulty staying on the pavement. This is not true. As stated by the applicant's civil engineer in his letter to Charlene Gallina dated November 20, Ponti Road varies in width from 13.5 feet to 17 feet, with an average width of approximately 15 feet. Large vehicles, including both semi-trailers and fire trucks, are approximately 8 feet wide, and sometimes a bit wider. At 8 feet in width, if one allows 6 inches of clearance from the edge of pavement on one side and 6 inches from oncoming traffic on the other, a large vehicle will effectively occupy 9 feet of pavement. Thus, on much of Ponti Road, two large vehicles driving in opposite directions will not both be able to stay on the pavement, and, given that the typical SUV is 6 feet wide or more, if one assumes 12 inches of space between the crossing vehicles, in many parts of the road an SUV and a large truck going in opposite directions cannot pass without one or the other going off the pavement. In fact, on the narrowest portions of Ponti Road, even if one such vehicle is within one inch of the edge of pavement, and there is only one inch of clearance between them, the wheels on the other vehicle will be off the road. Taking these facts into account, it appears that staff's conclusion that traffic can operate safely on Ponti Road can only be true if one assumes that the adjacent properties owners have dedicated, and the County accepted, an easement for the "unpaved shoulders" on either side of the road, or that they have otherwise acquiesced to the taking of such an easement. Neither is true, with the result that staff's conclusion cannot withstand scrutiny. Ponti Road, in its current configuration as a public road, *which does not include any shoulders*, cannot possibly safely accommodate the traffic one must analyze in connection with the subject project.

The neighbors to this project have two primary concerns: the location of the proposed winery and the access from Ponti Road. To date, the applicant has expressed little or no willingness to make changes responsive to either, insisting, so far as one can tell, that the proposed winery location is the only one that works, and that access from Silverado Trail

is too expensive. In the years just before the WDO was adopted, when the wine industry was roiled by the demand from the Farm Bureau and the Grapegrowers for a 75% grape source requirement, many thought the battle over the County's winery policies was a conflict between growers and vintners. That may have been true in certain respects, but the conflict that has animated the debate for decades has really been the conflict between wineries and residents, which has only intensified over the years. I first came to the Napa Valley to make wine, not to practice law, and I agree whole-heartedly with the view that a healthy wine industry is essential to Napa County agriculture, but after more than thirty years' engagement in land use policy matters, I am just as convinced that for the County's landmark agricultural preservation policies to succeed, a balance must be struck between the interests and concerns of winery applicants and the interests and concerns of their neighbors. The application before you now does not strike that balance, and will not unless you insist.

Sincerely,



Lester Hardy

## Gallina, Charlene

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**From:** Lester Hardy <lester@lfhardy.com>  
**Sent:** Tuesday, January 14, 2020 6:31 AM  
**To:** Morrison, David; Gallina, Charlene  
**Cc:** ltrainhardy@yahoo.com  
**Subject:** Letter to Planning Commission re Scarlett Winery Use Permit Application  
**Attachments:** Letter to Planning Commission 1-14-2020.pdf

Good morning David and Charlene,

Please see and distribute the attached letter. I am available today before 9am and between noon and 2pm if there is anything you would like to discuss. Please send any correspondence received since the agenda packet was prepared to both this address and the yahoo address.

Thank you.

Best,

Lester

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