



The Anthem Winery Project

Comments to the Napa County Planning Commission
02/03/20
Napa, CA

The Napa Sierra Club would like to address an important aspect of the Climate Crisis in Napa in regards to the expansion of Anthem Winery. Projects like these do not take into account the fragility of the various watersheds within Napa.

Lawrence Livermore Labs just published a groundbreaking report saying that emission reductions won't be enough to bring California down to net zero emissions. CA needs to remove 125 Million tons of CO2/year by 2045 to meet its net zero emissions goal. (That's about 25% of California's current emissions.) They are proposing a 20% Natural Sequestration in trees and soil of natural and working lands. Clearly, projects like what Anthem Winery has in mind, the further cutting within oak woodlands and the natural oak savanna will not help us to reach this goal.

The Sierra Club takes a global and long-term view of Climate Action. Deforestation is the second biggest driver of climate change. Environmental damage—and progress—unfolds acre by acre, and tree by tree. We ask your assistance in helping our county reach climate action goals project by project, acre by acre. Insist that climate consideration are part of any applications.

Thank you.

Sincerely,

Nick Cheranich

Political Chair, for the Napa Sierra Group

PAUL K. ROWE
3109 DRY CREEK ROAD
NAPA, CA 94558
e-mail: PKRowe@WLRK.com

February 4, 2020

Via Email and Federal Express

Napa County Planning Commission
1195 Third Street, Second Floor
Napa, CA 94559

Re: Julie and Justin Arbuckle
3454-56 Redwood Road/3123 Dry Creek Road
APN 035-470-046 & 035-460-038
Napa County Planning Department Application No. P13-00320
Application of Anthem Winery (February 5, 2020 Hearing)

Dear Commissioners:

Thank you for the opportunity to comment on the Anthem application. I am the owner of a 17-acre property adjacent to the two parcels that make up the Anthem property, and I submit this letter in opposition to the current version of Anthem's application. I appeared in person, and spoke against the version then under consideration, at the Commission's prior hearing in October 2018. Unfortunately, due to prior commitments, I am unable to appear in person at this hearing. I have retained Kevin Block, Esq. to represent me in connection with the hearing and future potential litigation.

The staff has described the CRSS and other engineering issues presented by Anthem's application as involving proposed exceptions that are "*unique and unmatched* when compared to other exception requests in Napa County." This characterization is doubly true, given the fact that the Engineering Division was only able to reach its favorable conclusion based on the Division's decision to ignore, at least for purposes of this hearing, the legal obstacles to the access and egress plans submitted by Anthem.

These legal obstacles exist because Anthem relies on the use of two easements over my property to support its request for numerous exceptions to County Road and Street Standards. Anthem is required to provide turnouts at two points along the proposed access road to and from Dry Creek Road; two of these turnouts are located on easements over my property (one on the downhill side of the proposed narrow one-lane bridge, and one where the flagpole road meets Dry Creek Road). The problem is that these easements may not be used, legally, for the purposes Anthem needs them for.

Rather than address the issues created by Anthem's claim that it can use the easements, the Engineering Division stated "*if easement language restricts improvements being made to the*

roadway and/or to the proposed gate location and the qualifying language of the conditions cannot be met, Napa County would not be able to support the design and a building permit would not be issued until the qualifying language of the [easement] condition can be met.” The staff’s recommendation relies on the reasoning of the Engineering Division report.

Respectfully, the Engineering Division’s approach is an insufficient basis for the project to proceed. It makes little sense to approve the current application when there exists an issue which would cause the County to *not* “support the design” and deny “a building permit.”

Rather than setting up litigation against the applicants and possibly the County, the responsible course of action is for the Commission and County to squarely address the problem now, and to state plainly that neither the one-lane bridge nor the turnout adjacent to Dry Creek Road can be approved unless Anthem reaches agreement with me concerning the easements.

To give you further detail, there are two easements over my property that impact access from Dry Creek Road to and from the Anthem site. The Upper Easement, the approximate location of which is identified in Exhibit A attached to this letter, is located some 60 feet downhill from the bridge which the winery proposes to install. The Lower Easement, identified in Exhibit B, sits at the base of the “flagpole” road where it meets Dry Creek Road.

Anthem’s proposed use of the easements is barred by two things: (1) the language creating both easements limits them to residential use; and (2) the easements are for the exclusive benefit of only *one* of the two Anthem parcels, and may *not* be used for the benefit of activities on the other Anthem parcel, which is where the winery will be located.

The current application envisions use of the Upper Easement for an emergency turnout that will permit outgoing traffic to exit the roadway and allow emergency vehicles to pass. The bridge the winery proposes to install is a single-lane or one-way bridge. State fire regulations mandate turnouts on both ends of such a bridge. While Anthem can create a turnout on its own property uphill from the bridge, it cannot create one downhill from the bridge using my property.

The proposed use of the Upper Easement for an emergency pull out clearly exceeds the permissible scope of the easement, because the turnout is intended for use (a) by the winery parcel and (b) for non-residential winery traffic. That is a clear violation of my property rights and the County may not condition approval of this project on a use which is legally prohibited.

Beyond the legal issues, use of the Upper Easement as a turnout will not work as practical matter. The winery has consistently misrepresented the width of the easement as 40 feet. The easement deed, however, was amended in 1996, reducing its width from 40 feet to a width coextensive with the existing driveway, which varies from 10-15 feet as shown in Exhibit A. This narrow easement is located approximately 60 feet downhill from the bridge. One can easily imagine a scenario where vehicles get stuck in this 60-foot long “no man’s land” between the easement and the bridge, requiring them back up over the bridge and use the turnout on the other side, or necessitating a fire truck backing downhill far enough for oncoming vehicles to reach the turnout.

Similar problems confront the winery's proposed use of the Lower Easement, which is to use the Lower Easement as a "turnout area on each side of the gate" (memorandum from Patrick Ryan to Don Barrella, dated June 14, 2018, page 2 of 5). The road plans submitted by the winery do not, so far as I can see, show a turnout area on both sides of the gate; and it is not possible to create such turnout areas given the configuration of the Lower Easement. In any event, use of the Lower Easement even for one turnout on one side of the gate violates the terms of the easements as set forth above.

Moreover, part of the basis for the Engineering Division's conclusion is that Anthem made "good faith" efforts to resolve the easement issue with me. My response is: Never happened. Apparently, the Division has taken Anthem's own uncorroborated word as the basis for concluding that Anthem had shown "good faith." Given that my easement rights have been described in writing to the Commission four times since 2016, I was surprised to learn—only two business days ago—that the County appears ready to proceed without ever having sought to corroborate Anthem's representation that it made "good faith" proposals to me.

I am still willing under certain circumstances to modify the Upper and Lower Easements, to allow access to and from the proposed winery to be safe. I am not interested in being paid to alter the easements. My motivation is to help protect the safety of visitors, something I am quite conscious of, given the fact that the current residents at my home are my parents, who were burned out of their Canyon Drive home and escaped the fire with only a few moments to spare.

I believe it would be helpful for the Commission—before taking any further action on this application—to arrange for the County and its counsel to try to obtain a deeper understanding of the easement issue than I can provide in this letter. Mr. Block has advised me on the easement issues for several years, and is willing and available as a resource to decision-makers reviewing these issues; to date, the staff seems to have relied on Anthem's self-interested representations.

I will not repeat all the other problems with the Anthem application that are not unique to me. These have been well-documented in materials submitted by the Dry Creek Road Alliance, and I join in those objections.

Very truly yours,

A handwritten signature in black ink that reads "Paul K. Rowe". The signature is written in a cursive style with a large initial "P".

Paul K. Rowe

From: [Patricia Damery](#)
To: [Barrella, Donald](#); [Morrison, David](#)
Subject: Anthem Bridge Project
Date: Tuesday, February 4, 2020 7:41:31 AM
Attachments: [Anthem Winery Bridge Review Podlech 1.31.20.pdf](#)

Dear Planning Commissioners,

As I have said, we are in the process of working with NRCS and RCD on the area of the Class II stream which the proposed Anthem bridge will span, as well as the deepening gully on our property line with the Arbuckles near our home. We received notice yesterday from Evelyn Denzin of NRCD that representatives from two regulatory agencies, CA Dept. Fish & Game and State Water Resources Control Board, will be visiting three Napa sites planning work on creeks and streams, ours one of them, on March 17. We retained aquatic ecologist Mike Podlech. to do further study on the Class II stream and I attach that study.

We continue to research the cause of the increased drainage from the Anthem parcel below our goat barn, and this visit from these agencies is part of that study. The presence of the south Napa earthquake fault and the observed earth movement by USGS brings serious questions about further soil disturbance with tree cutting and deep ripping of the soils. Dr. Brooks studies of water calculations (also submitted by Dr. Brooks) also question if there is enough water to even serve e a 30K winery and also irrigate vines beyond 6 or 7 acres. Perhaps any new planted vines need to be completely dependent on groundwater.

Patricia Damery
Donald Harms

Mike Podlech
Aquatic Ecologist
4474 Cortez Drive
Soquel, CA 95073
mpodlech@sbcglobal.net

memorandum

date: January 31, 2020
to: Kevin P. Block, Block & Block LLP
from: Mike Podlech, Aquatic Ecologist
subject: Review of Proposed Drainage Crossing Option 2 of the Anthem Winery Major Modification Use Permit (P14-00320-MOD)

Overview

At the request of Block & Block LLP, I have reviewed the Initial Study Checklist for the *Anthem Winery, Major Modification Use Permit #P14-00320-MOD including Viewshed Application, Variance #P14-00321-VAR, Agricultural Erosion Control Plan #P14-00322-ECPA, and a Road Exception*, prepared by the County of Napa (County). I also reviewed the June 2018 design drawings for the project, prepared by RSA+, and the October 2017 *Biological Resources Assessment* for the project, prepared by FirstCarbon Solutions. The focus of my review was limited to the “Drainage Crossing Option 2” component of the project, which consists of the proposed construction of a 60-foot prefabricated bridge across an ephemeral drainage feature. As presented in the Initial Study Checklist, the County has made a determination that the drainage channel at the location of the proposed bridge construction does not meet the definition of a “stream” under Section 18.108.030 of the County’s Code of Ordinances, and that this project component is therefore exempt from applicable conservation regulations. Based on the findings of my review and two site visits, it is my professional opinion that this determination is incorrect.

Qualifications

I have been an independent consulting aquatic ecologist/fisheries biologist based in Santa Cruz, California, since 2007. Prior to becoming an independent consultant, I was employed as senior aquatic ecologist at Environmental Science Associates, a leading environmental science and planning firm based in San Francisco, for over 10 years. I have over 25 years of experience in sensitive aquatic resource assessments, watershed management, stream and estuarine restoration, impact analyses, and compliance monitoring. In addition to conducting applied research projects related to anadromous fisheries, I have authored impact analyses for numerous large CEQA/NEPA review documents and regularly engage in formal and informal agency consultations under Section 7 of the Endangered Species Act (ESA), including the preparation of Biological Assessments (BA) and Action Specific Implementation Plans (ASIP). Particularly pertinent to my review of the Anthem Winery Project is my extensive

experience in conducting stream classification assessments in accordance with various regulatory guidelines, as well as analyzing impacts of bridge construction or replacement projects. Over the past decade, I have conducted dozens of stream classification assessments pursuant to guidelines provided in the State Water Resources Control Board (SWRCB) *Policy for Maintaining Instream Flows in Northern California Coastal Streams* (Policy) Sections A.1.4 and A.1.6. In 2018, I conducted such an assessment of the subject drainage (Podlech, 2018) for the SWRCB's processing of a Small Irrigation Use water right registration for the neighboring property owners.

Results of Review

Initial Study Checklist and Biological Resources Assessment

Section 18.108.030 of the County's Code of Ordinances defines a "stream" to mean any of the following:

1. A watercourse designated by a solid line or dash and three dots symbol on the largest scale of the United States Geological Survey maps most recently published, or any replacement to that symbol;
2. Any watercourse which has a well-defined channel with a depth greater than four feet and banks steeper than 3:1 and contains hydrophilic vegetation, riparian vegetation or woody vegetation including tree species greater than ten feet in height; and
3. Those watercourses listed in Resolution No. 94-19 and incorporated herein by reference.

The drainage channel to be crossed by the proposed bridge is not a blue-line watercourse on United States Geological Survey maps and is not listed in Resolution No. 94-19. With regard to definition #2 above, the Biological Resources section of the County's Initial Study checklist (p. 14) for the Anthem Winery project states the following:

"Regarding [sic] the proposed clear span bridge would be located just below the existing driveway and an associated culvert. While the drainage course the bridge will span contains some features consistent with a defined stream, such as trees greater than ten feet in height and hydrophilic vegetation, this drainage course does not have a well-defined channel with a depth of four feet and banks steeper than 3:1. Therefore, this drainage course is not considered a riparian area or county definitional stream."

In its biological resources assessment of the Anthem Winery project site, FirstCarbon Solutions identify the subject drainage as an ephemeral stream. The assessment does not describe the physical or biological characteristics of the drainage, but provides a photograph in Appendix A. The assessment concludes that the project, "as currently engineered", would not affect the streambed or bank of this feature and therefore does not require federal Clean Water Act sections 401 and 404 permits, but that the proposed removal of trees within the bed and banks of the ephemeral stream requires a Lake or Streambed Alteration Agreement (LSAA) with California Department of Fish and Wildlife.

Design Drawings

I reviewed the June 5, 2018 *Anthem Winery Driveway Entry Option 2 Plans* prepared by RSA+. Sheet 3A of the plans depicts the road alignment for station 75+75 through station 81+20, including the proposed bridge crossing. The topographic contours in the plan view drawing (top of page) clearly show two individual drainage features upstream (south) of the bridge combining into a single drainage beneath and downstream (north) of the bridge. As

such, the drawings confirm the location of the bridge as being the same as a site I assessed in February 2018 for a SWRCB stream classification assessment (see below).

A profile view of the bridge site is provided at the bottom of Sheet 3A. The profile of the existing grade at the site of the bridge clearly depicts two individual channels. Based on the elevations provided on the vertical axis of the profile drawing, the bottom of the western channel is at an approximate elevation of 271 ft while the approximate elevations of the top of the two adjacent banks are at 276 ft and 277 ft. As such, the surveyed depth of the western channel at the site of the proposed bridge is approximately 5 ft, exceeding the 4 ft minimum depth requirement of the County’s definition of a “stream”. Moreover, the profile view shows that the two channels have well-defined (i.e., with clear breaks in slope) with approximately 1:1 slopes, thereby exceeding the County’s minimum slope requirement of 3:1.

Field Assessments

I conducted an assessment of the subject drainage on February 2, 2018 and prepared a stream classification report summarizing my findings for the SWRCB’s processing of a Small Irrigation Use water right registration for the operation of an existing diversion weir located approximately 50 ft downstream of the site of the proposed bridge construction. In that report, I classified the channel at the location of the proposed winery bridge as “a borderline Class II watercourse, with channel characteristics expected to transition to Class III conditions within a few hundred feet upstream of the weir.” The report, available from the property owners for whom it was prepared, contains my detailed observation and analysis supporting that classification.

Note that SWRCB defines a Class II watercourse as containing “seasonal or year-round habitat exists for aquatic non-fish vertebrates and/or aquatic benthic macroinvertebrates (BMI)” and a Class III watercourse as “an intermittent or ephemeral stream exists that has a defined channel with a defined bank (slope break) that shows evidence of periodic scour and sediment transport.” Photo 7 referenced in the above excerpt provides a direct view of the proposed bridge crossing site.



Photo 7. Confluence of two headwater channels approximately 50 ft upstream of weir.

At the request of Block & Block LLP, I re-visited the site on January 28, 2020 to verify my prior observations as well as the channel characteristics depicted in the RSA+ design drawings. Overall conditions in 2020 were largely similar to documented 2018 conditions, although qualitatively, the western channel appeared to have experienced additional scour between 2018 and 2020. Photographs presented and annotated at the end of this letter clearly show that the channel at the site of the proposed bridge construction is (a) well-defined, (b) exceeds 4 ft in depth, and (c) contains banks steeper than 3:1.

Summary and Conclusion

County staff have determined that the drainage to be crossed with a prefabricated bridge under Option 2 of the Anthem Winery project does not meet its definition of a stream because it lacks a well-defined channel with a depth greater than four feet and banks steeper than 3:1. However, based on the June 2018 RSA+ engineering drawings, my own 2018 assessment related to a neighbor's water right registration, and my own re-evaluation of channel conditions in January 2020, the drainage in question does indeed meet all three of these County criteria. Moreover, the 2017 FirstCarbon Solutions biological assessment of the project site concludes that the construction of the proposed bridge at this location would require a Lake and Streambed Alteration Agreement from the California Department of Fish and Game. While the assessment notes that federal Clean Water Act permits are *not* required, the provided justification is that the proposed project does not include fill below the Ordinary High Water (OHW) marks of this ephemeral stream, but notes that such permits may be required if project designs change. Similarly, my 2018 stream classification report concludes that at the proposed bridge, the drainage transitions from a Class II to a Class III watercourse, thereby meeting the State Water Resource Control Board's definition of a stream under its jurisdiction.

I have over 25 years of professional experience working on freshwater resource issues with federal, State, and local agencies, and I cannot think of another regulatory arena in which this feature would not be considered a stream subject to applicable conservation measures.



Photo 1. Looking southeast at site of proposed bridge from downstream.



Photo 2. Looking southeast at site of proposed bridge from downstream. The photo clearly shows the two drainages combining into one at this location, consistent with design drawings on Sheet 3A. Note the clearly defined and near-vertical banks. The moss-covered, double-trunked bay tree growing within the bank of the scoured western channel is also depicted Photo 3 below.



Photo 3. Close-up of trunk of bay tree depicted in Photo 2 above. As seen on the stadia rod, the top of bank exceeds 4 ft.



Photo 4. Close-up of stadia rod depicted in Photo 3 above. Note vertical bank to the left of the stadia rod.



Photo 5. Clearly defined, steep banks in western channel.



Photo 6. Clearly defined, steep banks in eastern channel.

From: [Jeff Atlas](#)
To: [Barrella, Donald](#)
Subject: Re: Anthem Winery - reply to 1/21/20 memorandum
Date: Monday, February 3, 2020 5:59:24 PM

Don, here are photos showing no inter-visibility.

Jeff





Sent from my iPhone

On Feb 3, 2020, at 3:03 PM, Barrella, Donald <Donald.BARRELLA@countyofnapa.org> wrote:

Hi Jeff,

Thank you for following up. To confirm, is there supposed to be a photo included in your email? Also, your comments and questions will be added to the record and forwarded to the Commission for their consideration on this matter.

Don Barrella
707-299-1338

From: Jeff Atlas <jlasf@aol.com>
Sent: Monday, February 3, 2020 12:10 PM
To: Barrella, Donald <Donald.BARRELLA@countyofnapa.org>
Subject: Re: Anthem Winery - reply to 1/21/20 memorandum

Don, here is the text. (There is a photo from the hill showing that there is no intervisibility.)

To: Don Barrella
From: Jeff Atlas
Re: Anthem Winery - 1/21/20 Memorandum

The 1/21/20 memorandum about the proposed Anthem Winery road contains several inaccuracies. Paul Rowe, Kevin Block, and REAX Engineering will address some of these, but I have a few questions:

Paragraph 5: Saying the exceptions are “unique and unmatched” implies these same standards have been rejected in other cases and this road has an unprecedented number of exceptions.

Question: Has any other road application has ever contained as many exceptions?

Paragraph 6: The statement, "Line of sight is maintained for incoming and egressing vehicles through the flagpole section of the roadway," is false. There is no line of sight due to the steep grade, as shown in photo below.

Question: How was line of sight determined?

Paragraph 7: As REAX commented, the emergency ingress/egress plans are untested. PGE now cuts power during high fire risk times.

Question: Will this system work during power cuts or outages?

Paragraph 9: Mr. Rowe will address the comment, "...the approval did not consider easement restrictions as part of the request for exception to the standard gate width." These easements impact the safety of the main entrance. Firetrucks from the nearest firehouse on Trower must make a left turn into the driveway.

Question: If delayed while entering, won't a firetruck block BOTH lanes of Dry Creek Road because there is no Left Turn Lane? Wouldn't a designated Left Turn Lane make it safer?

Paragraph 10: The plan shows an easement area used as a turn-out on the East side of the bridge. This easement cannot be used, so there is no turn-out.

Question: Aren't turnouts required for both directions of a one-way bridge?

Paragraph 12: When Anthem purchased the defunct Jepson Winery, access to Redwood Road was already a permitted commercial road for a 30,000 gallon winery.

Question: Is that road still permitted for a 30K gallon winery?

Planning told Anthem they might need to replace the one-way bridge with a two-lane bridge, before they built it.

Question: Why is the one-way bridge cited as a factor?

There is a sharp dog-leg turn just off Redwood Road that makes access appear difficult.

Question: Is Planning aware the easement allows direct access and this turn can be eliminated?

Question: Did Anthem ever submit plans to improve this road?

Question: How was it determined to be "possibly infeasible" when Anthem never tried to improve it?

Question: Did Planning suggest the Dry Creek Road access before or after Anthem purchased the second parcel?

Thank you for your prompt reply.

Jeff Atlas
3173 Dry Creek Road
Napa, CA

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

From: Barrella, Donald <Donald.BARRELLA@countyofnapa.org>

To: Jeff Atlas <jlasf@aol.com>

Cc: Kevin Block <kb@winelawyers.com>; Paul K. Rowe <PKRowe@WLRK.com>

Sent: Mon, Feb 3, 2020 8:59 am

Subject: RE: Anthem Winery - reply to 1/21/20 memorandum

Hi Jeff,

For some reason I am not able to open your attachment. Could you please resend as a PDF.

Thank you,

Don Barrella
707-299-1338

From: Jeff Atlas <jjasf@aol.com>

Sent: Friday, January 31, 2020 8:18 PM

To: Barrella, Donald <Donald.BARRELLA@countyofnapa.org>

Cc: Kevin Block <kb@winelawyers.com>; Paul K. Rowe <PKRowe@WLRK.com>

Subject: Anthem Winery - reply to 1/21/20 memorandum

To: Don Barrella

From: Jeff Atlas

Re: Anthem Winery - reply to 1/21/20 Memorandum