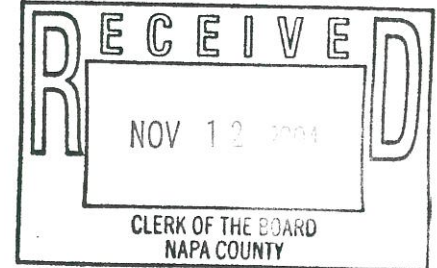




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November 12, 2004



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**Via Hand Delivery**

The Honorable Mark Luce,  
Chairman of the Napa County Board of Supervisors  
Members of the Napa County Board of Supervisors  
1195 Third Street  
Napa, CA 94558

Re: Howell Mountain Mutual Water Company, Inc. Appeal to Outpost Wines,  
True Vineyard, LLC - Use Permit Modification Request #P04-0180-MOD Approval

Dear Chairman Luce and Supervisors:

We represent Frank and Kathy Dotzler, owners of Outpost Wines, True Vineyard, LLC ("Outpost") which is the subject of the above referenced appeal. On August 18, 2004, the Napa County Planning Commission unanimously approved, in a 5-0 vote, a use permit modification for the winery owned by Outpost located at 2075 Summit Lake Drive, Angwin. The use permit modification request allows Outpost to increase their production from 20,000 to 30,000 gallons a year, which includes improving the physical layout of the existing winery with new structural development and construction of a specifically designed pressure distribution wastewater system. On August 31, 2004, Duane Dice, an independent consultant for Howell Mountain Mutual Water Company, Inc. ("HMMWC"), filed an appeal of this approval.

At the August 18, 2004 Planning Commission hearing on this application, Mr. Dice had an opportunity to express his concerns regarding the 10,000 gallon a year increase in production. Mr. Dice stated that he was representing the HMMWC. Mr. Dice specifically noted that the HMMWC had no problems with the reconfiguration of the winery or the volume of guests resulting in increased traffic in the area. His only concern was the affect of the increased gallonage capacity on the local watershed. Both the Planning Commission and staff responded to Mr. Dice with a detailed explanation as to how the County had carefully analyzed this issue. The Planning Commission unanimously felt that the relevant agencies and staff had more than adequately addressed these concerns and provided the appropriate conditions to warrant approval of the project.

- Walter J. Fogarty, Jr.
- David W. Meyers
- Francis J. Collin, Jr.
- Charles H. Dickenson
- Paul G. Carey
- Richard P. Mendelson
- Cathy A. Roche
- James W. Terry
- Katherine Ohlandt
- Stan D. Blyth
- Linda Emerson
- Herbert M. Rowland, Jr.
- Thomas F. Carey
- Matthew J. Eisenberg
- Kevin W. Teague
- Michael J. Holman
- Karen Kruse Fontanella
- Amber D. Passno
- Deborah E. Quick
- Megan Ferrigan Healy
- J. Robert Anglin, Jr.

Of Counsel  
Joseph G. Peatman

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Howard G. Dickenson  
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While it is difficult to ascertain from the lack of specific information set forth in the appeal, Mr. Dice appears to be concerned about the impact of the increased production at Outpost on the watershed and the increased traffic caused by the expansion (despite his verbal assurance at the hearing that this was not an issue). Napa County Code Section 2.88.050 provides that a filed Notice of Appeal must include all factual or legal determinations made by the approving authority that are being appealed by the appellant and that any determinations not identified in the Notice of Appeal are thereby waived by the applicant. In addition, as mandated in writing by the Clerk of the Board, Mr. Dice and Outpost were instructed that all additional information to be considered must be submitted by November 12, 2004. At this time, we are not aware of any additional information submitted by Mr. Dice. Accordingly, we understand that, subsequent to this date, any additional information submitted relating this appeal will not be considered. Under County regulations, we are required to limit the information we present to the specific issues raised in the Notice of Appeal. We will therefore limit our comments to the two general issues raised.

1. **Watershed**

It appears that Mr. Dice is concerned about the impact the increased winery capacity has on the watershed. The appellant states that the "winery expansion would directly and seriously impact the quality of water which will run off into the nearby HMMWC lakes". The conditions imposed by the approval of Outpost's application require that all outside work areas be designed so that waste, residue and other materials collected by rainwater or wash water are directed into a wastewater treatment system and not allowed to flow into the watershed. The pressure distribution wastewater system that will be used by Outpost will be located close to 2,000 feet away from the nearest water collection source. The proposed site of the new wastewater system far exceeds the clearance requirement under the Napa County Code, which requirements were instituted by the County to specifically address the type of concerns raised by HMMWC.

Despite the fact the Outpost wastewater system will be nearly 2000 feet away from any HMMWC lake and all wastewater, rain water and other wash water is collected in that wastewater system, Mr. Dice claims there are "objectionable water quality impact[s]" caused by an increase in the winery capacity. Mr. Dice claims these impacts "come primarily from natural nutrients, fertilizers and agricultural chemicals present in grape crush waste materials" and that "this impact may be exacerbated if the expanded winery facility uses grapes imported from outside the basin". The amount of fertilizers and agricultural chemicals on the grapes that will be harvested by the winery are insignificant and hardly measurable. Furthermore, the conditions imposed by the

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County Planning Commission, Napa County Conservation, Development & Planning Department, Napa County Department of Environmental Management and California Regional Water Quality Control Board are designed to address any such issues. Mr. Dice has presented no factual basis to his claim that grapes grown outside of the Howell Mountain drainage basin have any more nutrients or contaminants than grapes grown within the basin.

At the August 18, 2004 hearing, the Planning Commission pointed out to Mr. Dice that the conditions required by these State and local agencies are imposed on the applicant to specifically address the very issues Mr. Dice has raised here again in his appeal.

## 2. Traffic

Despite Mr. Dice's clear statement at the hearing that traffic was not an issue to HMMWC, the appeal states that HMMWC is concerned that the expanded project will generate "vehicle traffic that will create noise, dust and air emissions to the detriment of the community". As shown in the staff report, the total amount of traffic generated by the winery including traffic caused by the increased production is estimated to be 3-4 deliveries per week during the 4-6 week crush period, and 22 deliveries during the rest of the year. The amount of truck traffic generated solely by this permit is approximately one additional delivery per week during crush, and 7 additional deliveries during the rest of the year. The one additional part-time employee and six daily visitors would add a total of 8 new vehicle trips per day. By comparison, the average number of trips generated by one single family residence is 10 trips per day. The amount of noise, dust and air emissions generated by this small amount of traffic is insignificant, and the Negative Declaration properly determines that the project will not result in any significant traffic, noise or air quality impacts.

The appeal does not allege that the public hearing in front of the Planning Commission was unfair or partial, and does not allege that the Planning Commission abused its discretion in adopting the Negative Declaration and approving the use permit. Therefore, the only basis for the appeal is the alleged concern over water quality and traffic, both of which have been analyzed thoroughly by staff and have either been deemed insignificant or have been properly addressed through the conditions imposed by the approval.

As a final point, we would like to assert for the record that it is our position this appeal was improperly filed and is therefore invalid. Napa County Code Chapter 2.88 specifically requires that an appeal be filed in complete form by the proper appellant. Mr. Dice filed the appeal under the appellant name "Howell Mountain Mutual Water

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Company". Mr. Dice is neither an officer of HMMWC nor is he on the Board of Directors of HMMWC. When the appeal was filed Mr. Dice provided no written documentation from the Board of Directors of HMMWC authorizing him to file on its behalf. Under California law, since Mr. Dice is not an officer, director or employee of HMMWC, he would be precluded from filing corporate documents, lawsuits and even a small claims suit on behalf of the company under California Code Civil Procedure § 116.540(b) unless authorized to do so. The fact Mr. Dice filed his appeal without including written authorization from HMMWC deems the appeal invalid.

Thank you for your consideration.

Very truly yours,

DICKENSON, PEATMAN & FOGARTY

  
Cathy A. Roche

CAR:rm1

cc: Frank Dotzler