

**BEFORE THE BOARD OF SUPERVISORS  
OF NAPA COUNTY**

In the Matter of:

An Appeal by Eric Titus – Lee E. Titus and Sons Vineyard and an appeal filed by Ginny Simms to a decision by the Planning Commission on March 4, 2015 to approve the Melka Winery application for a use permit (P14-00208-UP) and variance (P14-00209-VAR) to establish a new 10,000 gallons per year winery with 1) daily tours and tastings for five persons maximum per weekday and seven persons maximum per day on weekends and a maximum of 30 persons per week by appointment only; 2) conversion of an existing 2,309 square foot barn to winery uses; 3) construction of a new 2,675 square foot building with a 500 square foot open breezeway; 4) construction of an 875 square foot covered crush pad; 5) on premises consumption in the hospitality building of wines produced on site in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 (also known as AB 2004 (Evans Bill)); 6) two 30 person marketing events annually; 7) one 100 person auction event annually; 8) connection to an existing domestic wastewater treatment and disposal system; 9) a hold and haul system for process wastewater; 10) a 20,000 gallon water storage tank and pump house; 11) an improved 20 foot driveway access in accordance with Napa County Road and Street Standards; 12) construction of seven parking spaces; and 13) five or fewer employees. A variance was also approved to encroach 435 feet into the required 600 foot setback from Silverado Trail. The 10.68 acre project site is located approximately 200 feet north of Deer Park Road and within the Agricultural Watershed (AW) Zoning District at 2900 Silverado Trail, St. Helena (APN: 021-352-041).

**RESOLUTION NO. 2015- \_\_\_\_**

**FINDINGS OF FACT AND  
DECISION ON APPEAL**

WHEREAS, on June 16, 2014, Cherie and Philippe Melka (Applicant or Melka) submitted an application for a use permit and variance to the Napa County Planning, Building and Environmental Services Department (the PBES Department) to establish a new 10,000 gallons per year winery with 1) daily tours and tastings for five persons maximum per weekday and seven persons maximum per day on weekends and a maximum of 30 persons per week by appointment only; 2) conversion of an existing 2,309 square foot barn to winery uses; 3) construction of a new 2,675 square foot building with a 500 square foot open breezeway; 4) construction of an 875 square foot covered crush pad; 5) on premises consumption in the hospitality building of wines produced on site in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5 (also

known as AB 2004 (Evans Bill)); 6) two 30 person marketing events annually; 7) one 100 person auction event annually; 8) connection to an existing domestic wastewater treatment and disposal system; 9) a hold and haul system for process wastewater; 10) a 20,000 gallon water storage tank and pump house; 11) an improved 20 foot driveway access in accordance with Napa County Road and Street Standards; 12) construction of seven parking spaces; and 13) one full-time and one part-time employee. A variance was also requested to allow a new building to encroach 435 feet into the required 600 foot setback from Silverado Trail (the use permit and variance combined will be referred to as the Project or the Melka Winery);

WHEREAS, the 10.68 acre Project site is located approximately 200 feet north of Deer Park Road and within the Agricultural Watershed (AW) Zoning District at 2900 Silverado Trail, St. Helena (APN: 021-352-041) (the Project Site);

WHEREAS, after a preliminary review of the Project, the PBES Department determined that the Project was categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15301 [See Class 1 (“Existing Facilities”)]; Section 15303 [See Class 3 (“New Construction or Conversion of Small Structures”)]; and Section 15304 [See Class 4 (“Minor Alterations to Land”)];

WHEREAS, a public hearing on the Project before the Planning Commission (the Commission) was scheduled for February 18, 2015;

WHEREAS, on February 18, 2015, the Commission conducted a duly noticed public hearing at which time they heard and considered evidence and testimony from PBES Department staff, the Applicant, members of the Applicant’s team and other interested members of the public;

WHEREAS, following conclusion of the public hearing on February 18, 2015, and in reliance upon the entire record and evidence submitted, the Commission voted unanimously, with Chair Phillips absent, to adopt the categorical exemptions and to tentatively approve the use permit (P14-00208-UP) and variance (P14-00209-VAR) and to continue the matter to March 4, 2015 for final action due to the absence of Chair Phillips;

WHEREAS, at the continued public hearing on March 4, 2015, the Commission heard and considered additional evidence and testimony from PBES Department staff, the Applicant, members of the Applicant’s team and other interested members of the public;

WHEREAS, following conclusion of the public hearing on March 4, 2015, and in reliance upon the entire record and evidence submitted, the Commission voted 4-1 to adopt the Categorical Exemptions and to approve the Melka Winery use permit (P14-00208-UP) and variance (P14-00209-VAR);

WHEREAS, on March 18, 2015 adjacent property owner Eric Titus (Appellant Titus) submitted a timely Notice of Intent to Appeal and subsequently filed an Appeal Packet on April 1,

2015 (Titus Appeal). The Appeal Packet specified the grounds on which Appellant Titus was basing the appeal, and are set forth with more particularity therein;<sup>1</sup>

WHEREAS, on March 13, 2015 concerned citizen Ginny Simms (Appellant Simms) submitted a timely Notice of Intent to Appeal and subsequently filed an Appeal Packet on March 27, 2015 (Simms Appeal). The Appeal Packet specified the grounds on which Appellant Simms was basing the appeal, and are set forth with more particularity therein;<sup>2</sup>

WHEREAS, in accordance with Napa County Code<sup>3</sup> Section 2.88.080(A), a hearing on both Appeals was scheduled before the Board of Supervisors (the Board) for June 2, 2015, a date at least fifteen but no more than ninety days from the date of submittal of the Appeals;

WHEREAS, the Appeals were consolidated and scheduled for the same date and time in order to maximize efficiency and avoid duplication and redundancy;

WHEREAS, on June 2, 2015, at a duly noticed public hearing on the Appeals, the Board heard and considered all of the evidence and testimony regarding the Titus Appeal first and then moved to the Simms Appeal. After considering all of the evidence presented and in the record, the Board closed the public hearing and adopted a motion of intent to: (1) grant the first and second grounds of appeal and deny the third ground of appeal with respect to the Titus Appeal; and (2) uphold the Planning Commission's approval of the project subject to the modified conditions of approval. A motion of intent to grant the Simms Appeal was made, however, because of a tie vote on the motion, there was no action taken with respect to the Simms Appeal.

WHEREAS, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on July 14, 2015;

WHEREAS, this proposed Resolution containing the Findings of Fact and Decision on Appeal having been presented to Appellants Titus and Simms and to Applicant for review and comment prior to the Board meeting on July 14, 2015;

WHEREAS, Applicant and Appellants Titus and Simms were provided an opportunity to submit comments on the proposed Resolution;

WHEREAS, Appellant Titus offered comments and some of the comments were incorporated to provide additional clarity and refinement;

[WHEREAS, at the regular meeting of the Board on July 14, 2015, members of the Board and Applicant's representatives both requested additional edits to the Findings of Fact and Modified Conditions of Approval and the Board continued the item to July 21, 2015;](#)

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<sup>1</sup> The complete Appeal Packet is on file with the Clerk of the Board of Supervisors.

<sup>2</sup> The complete Appeal Packet is on file with the Clerk of the Board of Supervisors.

<sup>3</sup> All further code references are to the Napa County Code unless otherwise specified.

WHEREAS, this proposed Resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on July 21~~14~~4, 2015, and interested persons having been given an opportunity to address the Board regarding this proposed Resolution;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors finds, determines, concludes and decides as follows:

**Section 1. Recitals.**

The Board hereby finds and determines that the foregoing recitals are true and correct.

**Section 2. Conduct of Appeal.**

A. Section 2.88.090(B) provides that if the hearing before the approving authority was recorded electronically then upon request by the appellant or any interested party and upon a showing of good cause, the Board may permit additional evidence to be presented which could not have been presented at the time of the decision appealed from. (See Section 2.88.090(B).) Here, the Commission proceedings were recorded electronically and transcripts of the Commission proceedings were provided to the Board.

B. On June 2, 2015, after considering requests to consider newly submitted information from Appellant Titus and Appellant Simms and Staff, the Board found that “good cause” existed to allow the additional evidence that was not presented to the Commission, but decided it would not conduct the hearing de novo.

**Section 3. Findings of Fact and Conclusions of Law on Appeal Regarding This Appeal.**

The Board hereby makes the following findings of fact and conclusions of law with regard to each of the grounds for appeal as stated by Appellant Titus in his Appeal.

**A. First Ground of Appeal.**

**Appellant’s Position:** Appellant Titus contends that the Melka Winery should contribute to the construction of a left turn lane from Silverado Trail into the Project Site.

**Findings and Decision:**

1. The Board concurs with Appellant Titus that a left turn lane should be required as a condition of approval for the Melka Winery.

Left turn lane warrant thresholds are set forth in Section 17 of the Napa County Road and Street Standards. Left turn lanes are required on discretionary projects based on public road average daily trips (ADT) and the project driveway ADT of the proposed use. Private Road or

Driveway ADT is the total average daily traffic utilizing the facility. In this case, the traffic analysis presented to the Commission prepared by the Applicant's traffic engineer estimated that the Project would generate 10 ADT for the winery use based on one full-time and one part-time employee, and identified the current near term ADT on Silverado Trail as 6,783. Based on the left turn lane graph (page 21 of the Road and Street Standards), a project driveway generating approximately 22 ADT or greater would require the installation of a left turn lane or equivalent improvements. Applicant's traffic engineer prepared a traffic report that estimated ADTs below the 22 threshold. Public Works Staff relied on the information submitted and initially did not recommend that the Commission impose a left turn lane requirement as a condition of approval.

2. After the Commission hearing and after the Titus Appeal was filed, Public Works re-evaluated the Project's ADT and the Department's earlier determination that a left turn lane was not warranted. Public Works Deputy Director Rick Marshall determined that existing trips from the existing residence and second unit had not been accounted for in the total trips to the Project driveway by Applicant's traffic engineer. Additional information submitted by Mr. Marshall on May 14, 2015 indicates that a left-turn lane should be required. The Board agrees with Deputy Director Marshall's analysis that total ADTs generated by the Project and two residences is at least 30 and thus exceeds the threshold for installing a left turn lane.

3. Applicant's attorney represented during the hearing that the Project was intentionally designed to avoid a left hand turn lane, and that as long as the Applicant owned the property, the County could be assured that both Mr. and Mrs. Melka would be living on the property and operating the proposed winery. As such, the Applicant specifically sought only one full-time and one part-time additional employee, in Applicant's view, to prevent the Project from triggering the turn lane requirement. However, PBES Deputy Director John McDowell informed the Board that the PBES Department's standard practice is to consider owner/operators as part of a project's total employees. Additionally, he testified that the PBES Department has found that overly-refined employee counts fail to capture actual trips coming from other sources such as bottling trucks, catering services, maintenance services, etc. Therefore, the PBES Department considers and evaluates all smaller wineries as having "10 or fewer" employees so as to more accurately reflect a project's impacts. The Commission ultimately approved the Project and allowed five or fewer employees and the Board finds that five employees is the appropriate number from which to calculate ADTs for the Project.

4. Notwithstanding argument from Applicant's counsel that the Project would generate only 10 ADT, the Commission's approval allowed five full-time employees, as opposed to the one full-time employee and one part-time employee as analyzed by Applicant's traffic engineer. The Board finds that because the Project is permitted with five full-time employees generating approximately 19.28 ADTs, and because the residence and existing second unit each generate 10 ADTs, the Project would generate at least 39.28 ADTs. That amount is above the 22 ADT threshold and therefore requires a left turn lane.

5. The Board further finds, based on information submitted by Mr. Marshall, that appropriate access may be provided to the Project with striping changes and minor additional

widening to augment the previously approved Titus project left turn lane. This would satisfy the County's requirement for the Applicant to provide a left turn lane.

**Conclusions:**

For the foregoing reasons, the Board grants the first ground of appeal and modifies the Commission's approval of the Project by adding a new condition of approval requiring construction of a left turn lane on Silverado Trail as set forth in Exhibit "A."

**B. Second Ground of Appeal.**

**Appellant's Position:** Appellant Titus asserts that in assessing the total traffic generated by the Project, the Commission did not properly account for those aspects of the Project that the staff report stated were reasonably foreseeable under CEQA. In particular, Appellant Titus claims that the Melka Winery would exceed the County's threshold for requiring a left turn lane based on the amount of visitation and employees plus the reasonably foreseeable traffic.

**Findings and Decision:**

1. The Board concurs with Appellant Titus that the Project would exceed the minimum threshold for requiring a left turn lane as discussed above.

2. As discussed in the First Ground of Appeal incorporated here by reference, Appellant Titus's contention is correct that the ADT at the Melka Winery driveway was understated because Applicant's traffic analysis failed to account for the trips generated from the existing residence and second unit. The Board finds the two units have a combined ADT of 20 and the Winery will have an ADT of approximately 19.28. As such, the proposed Project (19.28 ADT) plus existing conditions (20 ADT) results in at least 39.28 which triggers the requirement for left turn lane improvements.

**Conclusions:**

For the foregoing reasons, the Board grants the second ground of appeal and modifies the Commission's approval of the Project by adding a new condition of approval requiring construction of a left turn lane on Silverado Trail as set forth in Exhibit "A."

**C. Third Ground of Appeal.**

**Appellant's Position:** Appellant Titus contends that the Melka Winery should be responsible for one-third of the potential daily trips generated and Titus Winery would be responsible for two-thirds. Both parties should contribute equitably to the cost of the left turn lane.

## **Findings and Decision:**

The Board finds it has no legal basis to require Applicant to contribute towards the cost of Appellant Titus's left turn lane installation costs. The requirement for Titus to install a left turn lane is separate and arises out of the Titus Winery Project. Appellant Titus is responsible for its improvement costs and Applicant shall be responsible for their improvement. The County does not have a cost sharing policy or program in place. However, the Board encourages the two parties to voluntarily work together to share in the cost of making the required ~~satisfy their permit conditions and encourages the parties to contribute equitably for purposes of making the~~ improvements.

## **Conclusions:**

For the foregoing reasons, the Board denies the third ground of appeal and upholds the Commission's approval of the Project subject to the modified conditions of approval attached as Exhibit "A".

### **D.——Topanga Findings.**

~~1.——The Board heard testimony regarding the applicability of the California Supreme Court holding in Topanga to the Commission's action. In Topanga Assn. for a Scenic Cmty. v. Cnty. of Los Angeles, (1974) 11 Cal. 3d 506, the California Supreme Court, in the context of reviewing a local agency's approval of a variance, determined that administrative agencies must "express their grounds for decision so that reviewing courts can intelligently examine the validity of administrative action." (Id., at 522.) The Court indicated that findings were necessary in order to enable the parties to the agency proceeding to determine whether and on what basis they should seek review. The Court stated, "We further conclude that implicit in [C.C.P.] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (Id., at 515.)~~

~~2.——The Board, in making these findings, has "bridged the analytic gap" between the evidence presented during the public hearing on the Titus Appeal and its decision with respect to the appeal. As such, the Board has satisfied the rule set forth in the Topanga case.~~

## **Section 4. Findings of Fact and Conclusions of Law on Appeal Re Simms Appeal.**

After hearing and considering all evidence related to the Simms Appeal, Supervisor Wagenknecht moved to grant the Simms Appeal and Supervisor Caldwell seconded that motion. The vote on the Simms Appeal ended in a tie (2-2) vote. No findings of fact and conclusions of law are therefore required as the tie vote resulted in no action being taken. Supervisors Dillon and Pedroza did not support the motion. Because the Appeal hearing is quasi-judicial, County Counsel opined ~~that the tie would be the same as no action on the matter and the result is~~ that the decision of the Commission to approve the Project stands because of the tie vote.

**Section 5. CEQA Determination.**

The Board finds that the Project is Categorically Exempt, pursuant to California Environmental Quality Act (“CEQA”), Section 15301 [See Class 1 (“Existing Facilities”)]; Section 15303 [See Class 3 (“New Construction or Conversion of Small Structures”)]; and Section 15304 [See Class 4 (“Minor Alterations to Land”)], which may be found in the guidelines for the implementation of the CEQA. The Project Site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

**Section 6. Substantial Evidence.**

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

**Section 7. Summary of Decision.**

Based on the foregoing facts, findings, and determinations, the Board of Supervisors hereby:

- A. Adopts the findings of facts and rationales as set forth in this Resolution;
- B. Grants the first and second grounds of appeal and denies third ground of appeal with respect to the Titus Appeal;
- C. Makes no findings or decision with respect to the Simms Appeal;
- D. Modifies the conditions of approval adopted by the Commission as shown on the redlined version of the modified conditions of approval attached as Exhibit “A;”
- E. Finds that the modified conditions of approval shown attached as Exhibit “A” are both necessary and well justified; and
- F. Upholds the Commission’s approval of Use Permit No. P14-00208-UP and Variance P14-00209-VAR subject to the modified clean version of the conditions of approval attached as Exhibit “B” and incorporated here by reference.

**Section 8. Effective Date.**

This resolution shall take effect in accordance with the provisions of Section 2.88.090.

**Section 9. Judicial Challenge.**

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.



**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the Napa County Board of Supervisors, State of California, at a regular meeting of said Board held on the \_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES: SUPERVISORS \_\_\_\_\_

NOES: SUPERVISORS \_\_\_\_\_

ABSENT: SUPERVISORS \_\_\_\_\_

ABSTAIN: SUPERVISORS \_\_\_\_\_

\_\_\_\_\_  
 DIANE DILLON, Chair  
 Napa County Board of Supervisors

<p>APPROVED AS TO FORM          Office of County Counsel</p> <p>By: <u>Chris R.Y. Apallas, Deputy</u>          County Counsel</p> <p>Date: <u>July 15<del>8</del>, 2015</u></p>	<p>APPROVED BY THE NAPA          COUNTY          BOARD OF SUPERVISORS</p> <p>Date: _____          Processed By: _____          _____          Deputy Clerk of the Board</p>	<p>ATTEST: GLADYS I. COIL          Clerk of the Board of Supervisors</p> <p>By: _____</p>
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Attachments:

- Exhibit "A" - Conditions of Approval (redlined)
- Exhibit "B" - Conditions of Approval (clean)