**BEFORE THE BOARD OF SUPERVISORS**

**OF NAPA COUNTY**

In the Matter of:

|  |  |
| --- | --- |
| An Appeal by Beckstoffer Vineyards, Frank Leeds, and Kelleen Sullivan to a decision by the Planning Commission on March 15, 2017 to approve the Raymond-Ticen Ranch Winery application for a Use Permit Major Modification (No. P15-00307-MOD) to allow: (1) addition of the Ticen Ranch property, located at 1584 St. Helena Highway, into Raymond Winery operations, with conversion of the Ticen Ranch residence and barn into winery visitation and administration space; (2) extension of winery operating hours until 11:00 p.m. during harvest (August through November) and visitation hours until 6:30 p.m. year round; (3) allowance for on-site consumption of wine in specified areas on the properties; and (4) allowance for up to half of Raymond Winery’s currently permitted, annual marketing events to be held outdoors. The project also includes modifications to the development of the Raymond Winery and Ticen Ranch parcels that include a new access driveway to the Raymond Winery from St. Helena Highway and across the Ticen Ranch parcel, as well as construction of a vineyard viewing platform, 61 new parking stalls between the two existing parcels, improvements to the existing sanitary wastewater treatment system, and installation of a new, 30,000-gallon tank for storage of water for fire suppression purposes. The project also legitimized an existing, noncompliant number of employees (90 full-time, part-time and seasonal) and additional site modifications and conversions of building use that are already in place but that were completed without benefit of County permit approvals. The properties are located at 849 Zinfandel Lane and 1584 St. Helena Highway, St. Helena, California (APNs 030-270-013 and 030-270-012, respectively). | **RESOLUTION NO. 2017-173****FINDINGS OF FACT AND DECISION ON APPEAL** |

WHEREAS, on September 15, 2015, Tom Blackwood on behalf of Raymond Vineyards (Applicant) submitted an application for Use Permit Major Modification No. P15-00307-MOD to allow: (1) addition of the Ticen Ranch property, located at 1584 St. Helena Highway, into Raymond Winery operations, with conversion of the Ticen Ranch residence and barn into winery visitation and administration space; (2) extension of winery operating hours until 11:00 p.m. during harvest (August through November) and visitation hours until 6:30 p.m. year round; (3) allowance for on-site consumption of wine in specified areas on the properties (Business & Professions Code 23358, 23390 and 23396.5); and (4) allowance for up to half of Raymond Winery’s currently permitted, annual marketing events to be held outdoors. The request includes modifications to the development of the Raymond Winery and Ticen Ranch parcels that include eventual merger of the two parcels and a new access driveway to the Raymond Winery from St. Helena Highway and across the Ticen Ranch parcel, as well as construction of a vineyard viewing platform, pet dog comfort station, 61 new parking stalls between the two existing parcels, improvements to the existing sanitary wastewater treatment system, and installation of two, 10,000-gallon, water storage tanks. The application also includes requests to legitimize an existing, noncompliant number of employees (90 full-time, part-time and seasonal) and additional site modifications and conversions of building use that are already in place but that were completed without benefit of County permit approvals (the Project or Raymond-Ticen Ranch Winery);

WHEREAS, resubmittal applications were provided on February 16, 2016; November 8, 2016; and March 7, 2017. The application was determined to be complete on December 8, 2016;

WHEREAS, the Project site is located at 849 Zinfandel Lane and 1584 St. Helena Highway, St. Helena, California (Assessor’s Parcel Nos. 030-270-013 and 030-270-012, respectively). The parcels are under common ownership, have a General Plan land use designation of Agricultural Resource (AR) and are located in the Agricultural Preserve (AP) District;

WHEREAS, after a preliminary review of the Project, the Planning, Building and Environmental Services (PBES) Department determined that the Project might result in a significant environmental effect and therefore required preparation of an Initial Study consistent with the requirements of the California Environmental Quality Act (CEQA) to determine if the Project may have a significant effect on the environment;

WHEREAS, based upon the Initial Study and CEQA review, the PBES Department prepared a Revised MND (MND) for the Project. The MND was released for public review on December 16, 2016, for a 30-day public comment period ending on January 17, 2017;

WHEREAS, a duly noticed public hearing was scheduled on the Project before the Napa County Planning Commission (the Planning Commission or Commission) for January 18, 2017. At that meeting, the Commission opened the public hearing on the Project, with testimony limited to: (1) a request by the Applicant to continue the hearing to February 1, 2017; and (2) consideration of a request by the law firm Shute, Mihaly & Weinberger on behalf of Beckstoffer Vineyards, to extend the comment period on the MND for an additional 30 days from the date of posting the MND on the County website (which occurred on December 23, 2016). The Planning Commission extended the public comment period on the MND to for a total of 39 days, until January 23, 2017 and continued the public hearing on the Project to February 1, 2017, as requested by the Applicant;

WHEREAS, in response to comments that had been received on the MND before the comment period was extended by the Commission, Staff made minor clarifications to the MND to correct parking counts and amplify some of the analysis. None of the revisions resulted in new or more significant impacts or other substantive changes that would require recirculating the document. The original MND and revised MND are hereafter referred to as the Revised MND;

WHEREAS, on February 1, 2017, at the continued public hearing, the Planning Commission heard and considered evidence regarding the Project including, but not limited to, Applicant’s potential re-alignment of the planned access driveway from State Route 29 onto the Ticen Ranch parcel. This re-alignment was provided in response to concerns raised by the Leeds (owners of property on the opposite side of State Route 29 in the vicinity of Ticen Ranch) regarding potential vehicle movement conflicts resulting from alignment of the Ticen Ranch driveway opposite the private road just south of Whitehall Lane. After hearing all testimony, the Commission continued the public hearing on the Project to March 15, 2017, due to receiving extensive public comment and documents a short time before the hearing;

WHEREAS, on March 15, 2017, at the continued public hearing and after considering additional public testimony and all evidence submitted, the Planning Commission closed the public hearing, deliberated, and voted (3:2 – AYES: Basayne, Gill, Scott; NOES: Cottrell, Gallagher) to approve modification to Use Permit Major Modification No. P15-00307-MOD for the Raymond Winery subject to the recommended conditions of approval;

WHEREAS, on March 28, 2017, subsequent to the Commission’s decision and within the prescribed period, Appellant Beckstoffer Vineyards, Appellant Frank Leeds, and Appellant Kelleen Sullivan (together Appellants) submitted a timely Notice of Intent to Appeal the Planning Commission’s decision to approve the Project and subsequently filed a timely Appeal Packet on April 11, 2017 (collectively the Appeal). The Appeal Packet specified the grounds on which the Appellants’ Appeal is based, and are set forth with more particularity herein[[1]](#footnote-1);

 WHEREAS, in accordance with Napa County Code (NCC) Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for June 20, 2017, a date at least fifteen but no more than ninety days from the date of submittal of the Appeal;

 WHEREAS, on June 20, 2017, at a duly noticed public hearing on the Appeal, at the Appellants’, Applicant’s and Staff’s request, the Board continued the hearing on the Appeal to August 15, 2017, a date agreed upon by all parties. No testimony was taken on June 20, 2017;

 WHEREAS, on August 15, 2017, at a duly noticed continued public hearing on the Appeal, the Board heard and considered all evidence and testimony regarding the Appeal; the Board closed the public hearing and adopted a motion of intent to: (1) reject each of the grounds of the Appeal and deny the Appeal in its entirety; (2) adopt the Revised MND and Mitigation, Monitoring and Reporting Program for the Project; (3) uphold the Planning Commission’s approval of the Project; and (4) approve the Raymond Winery Project subject to the Updated Conditions of Approval, including Applicant’s voluntary local grape sourcing condition of approval;

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 October 10, 2017;

WHEREAS, on October 10, 2017, a proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

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 October 10, 2017, and interested persons having been given an opportunity to address the Board regarding the 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. Napa County Code Section 2.88.090 (B) provides that if the hearing before the approving authority was recorded electronically or by a certified court reporter 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 have been presented at the time of the decision appealed from was made but was not. Here, the Planning Commission proceedings were recorded electronically and transcripts of the Planning Commission proceedings were provided to the Board.

B. On June 2, 2017, Appellants submitted a “good cause” request that the Board hear the Project de novo and exercise its independent judgment. Pursuant to the County’s appeals ordinance (NCC Section 2.88.090 (A)), in hearing the appeal, the Board must exercise its independent judgment in determining whether the decision appealed was correct. While the Board will consider and review the record that was before the Planning Commission, in conducting its review of the Project, the Board independently takes a “fresh look” at the facts and renders a decision based on its independent judgment. The Board is not bound by and does not give deference to the Planning Commission’s decision. Since all parties agreed on this matter and since it is consistent with the conduct and procedures set forth in the County’s appeals ordinance, there was no need for the Chair to issue a good cause determination. Likewise, since neither party submitted a timely “good cause” request to augment the Planning Commission record with new evidence, it was determined that no new evidence would be allowed or considered by the Board in connection with the Appeal.

C. On July 14, 2017, Applicant submitted supplemental information, which included a diagram of a hypothetical Ticen Ranch winery site plan (the Ticen Ranch Diagram). The Ticen Ranch diagram was not part of the administrative record before the Planning Commission and was not submitted by June 2, 2017, to the Chair for a “good cause” determination. Therefore, on August 15, 2017, at the Appeal hearing, Applicant’s counsel requested that the Board find “good cause” to supplement the record with the Ticen Ranch Diagram. After hearing opposing argument from Appellants’ counsel, the Board voted and denied Applicant’s “good cause” request and excluded the Ticen Ranch Diagram from the administrative record.

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

 The Board hereby makes the following findings of fact and conclusions of law in regards to each of the grounds for appeal as stated by Appellants in the Appeal[[2]](#footnote-2):

**A. First Ground of Appeal.**

 **Appellants’ Position:** Appellants assert that the previously unauthorized improvements violate the Winery Definition Ordinance (WDO) because they transformed the winery into a hospitality facility with no corresponding increase in wine production using Napa grapes. Appellants claim that the WDO’s 75 percent Napa grapes rule aims to ensure that any expansion beyond an existing winery development area is accompanied by an increase in use of Napa grapes. Appellants contend that allowing Raymond Winery to increase marketing activities without increasing wine production undermines the purpose of the WDO. According to Appellants, the changes requested by Applicant would not have been approved if Raymond Vineyards had complied with the law and sought County approval prior to expanding.

 **Findings and Decision:** The Board finds and determines as follows:

There is no authority in the NCC or General Plan in support of Appellants’ position that the Project violates the WDO because the Winery’s expansion will not increase the market for Napa grapes and that the purpose of the WDO is undermined by allowing marketing expansion without also increasing wine production. The County has no rules, policies or regulations that *require* an applicant to increase production capacity when making a request to increase hospitality spaces. The 75 percent Napa fruit requirement is triggered when wine is produced “as a result of the expansion.” (See NCC 18.104.250 (C)(2).) The Project is not proposing any increase in production as a result of the expanded hospitality areas nor is Applicant required to do so under the WDO.

Appellants opine that the requested use permit modification would not have been approved if it had been pursued proactively in 2009 (when the property changed ownership to the current winery operator) rather than retroactively now. Use permits and modifications thereto require discretion of the decision-making body; and whether any prior membership of the Planning Commission would have made the necessary findings to approve or to deny the request is purely a matter of speculation and irrelevant. However, the proposed modification complies with the provisions of the WDO regardless of whether the application was submitted now or back in 2009. [[3]](#footnote-3) Specifically, the Project:

(1) Includes an accessory to production ratio that does not exceed 40 percent. Under Raymond Winery’s current entitlements, the accessory to production ratio is approximately 17 percent. With the site modifications requested, the accessory to production ratio across both the Ticen Ranch and Raymond sites would be 32 percent and would remain below the 40 percent maximum allowed in NCC Section 18.104.200.

(2) Would result in winery coverage of approximately 12.1 acres across both the Raymond Winery and Ticen Ranch sites, where a maximum of 15 acres of coverage is allowed on the combined 86.2 acres of both sites.

(3) Would comply with all setback requirements. More specifically, on the Raymond Vineyard parcel, winery building setbacks would be 1,400 feet from the centerline of Zinfandel Lane (where 600 or more feet are required under NCC Section 18.104.230); and 1,300 feet from the rear property line, 20 feet from the east side property line, and 85 feet from the west side property line, where 20 or more feet is the required setback from each respective property line (NCC Section 18.104.010). On the Ticen Ranch parcel, the residence proposed to be converted to winery accessory use would have a setback of approximately 375 feet from the centerline of State Route 29, where 300 feet is the minimum setback for existing historic structures as allowed by NCC Section 18.104.235. Other building setbacks on the Ticen Ranch parcel would remain 600 feet from the rear property line, 425 feet from the north side property line, and 375 feet from the south side property line, where 20 or more feet is the required setback from each respective property line.

(4) Would result in the continued operation of a winery on a single parcel with a combined acreage of approximately 86 acres, where the minimum parcel size for a winery established prior to 1991 is one acre per NCC Section 18.104.240(B).

Based on the above analysis of the Project’s consistency with the WDO requirements, it is likely, though purely hypothetical, that Staff would have made a recommendation for approval to the Planning Commission had the Project come forward in 2009.

To further demonstrate the Applicant’s commitment to the WDO, at the Appeal hearing Applicant voluntarily agreed to a condition of approval on the Project that at least 75% of the grapes grown on the Ticen-Ranch parcel would be processed and used to make the Winery’s wine. The Board accepted Applicant’s commitment in concept and directed Staff to draft a new condition of approval reflective of the Board’s intent. Updated COA No. 4.20 (f) reflects the Applicant’s commitment to source at least 75% of the grapes from the Ticen-Ranch parcel. Like all other use permit conditions of approval, once adopted the conditions run with the land and are binding on all subsequent owners of the Winery.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the First Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**B. Second Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that the proposed outdoor picnic areas and Biodynamic Garden were improperly excluded from the accessory use calculation and that in B Cellars and Titus Vineyards, the Commission included outdoor terraced spaces in the accessory use calculations.

 **Findings and Decision:** The Board finds and determines as follows:

Regarding the calculation of outdoor accessory areas, since adoption of the WDO, the County’s practice has been that outdoor areas used for visitation and/or tasting are not counted in the calculation of accessory use area to wine production space. NCC Section 18.08.020 defines accessory uses as: “Unless provided otherwise in this title, accessory uses may be conducted in the primary structure or in structures other than the primary structure.” The section goes on to say: “Structures constituting an accessory use that are related to a winery are further limited to the extent provided by NCC Section 18.104.200.” In both cases, accessory uses are only addressed insofar as they are conducted within structures. Outdoor accessory uses are not restricted.

NCC Section 18.104.200 states: “The maximum square footage of structures used for accessory uses that are related to a winery shall not exceed forty percent of the area of the production facility. “Production facility” for the purpose of this section means crushing, fermenting, bottling, bulk and bottle storage, shipping, receiving, laboratory, equipment storage and maintenance facilities, but shall not include wastewater treatment or disposal areas which cannot be used for agricultural purposes.” Although accessory uses are not defined in this section, it is noted that outdoor uses not located within a structure (e.g., wastewater treatment and disposal areas) are not included as part of production facilities for purposes of calculation the ratio. This has been interpreted to also apply to accessory structures not located within a structure.

During Planning Commission review of the B Cellars Use Permit on March 6, 2013, and the Titus Vineyard Use Permit and Variance on May 7, 2014, questions were raised as to whether or not outdoor visitation areas should be included in the accessory use calculations. These questions were raised because outdoor visitation areas were denoted on the project plans as accessory use; consequently, both the project application and the Staff Report prepared for the item had included their square footage in the accessory to production ratio calculation (Titus Vineyard was listed at 31 percent and B Cellars was shown at 36.7 percent, both including the outdoor areas). Staff responded that the outdoor areas did not need to be included in the calculation pursuant to the WDO and Staff further noted that with or without this square footage, both of those projects still fell below the 40 percent maximum requirement.

In 2015 and 2016, this very topic was re-evaluated in depth by the Agricultural Preservation Advisory Committee (APAC), and then duly considered by both the Planning Commission and Board of Supervisors. Although the APAC recommended amending the County Code to include outdoor hospitality areas in the production/accessory ratio, the Board confirmed the long-standing County practice of excluding outdoor visitation areas in the accessory to production calculation. Instead, the Board directed staff to include outdoor hospitality areas in the calculation of the production/accessory ratio as a part of the staff report, but for informational purposes only and not to be considered as a part of the decision. The Project complies with the WDO and NCC Section 18.104.200 as proposed and as approved.

All appropriate accessory areas were considered in making the calculation. The accessory to production ratio has been determined to be 32 percent, which does not exceed the amount of accessory use space allowed by the NCC. Appellants correctly note that the area of structures housing accessory uses is limited to 40 percent of the areas dedicated to wine production but incorrectly assert that outdoor areas, which by definition are not “structures,” should be considered within the calculation.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Second Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**C. Third Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that the Project would install a new winery on the Ticen Ranch parcel, which violates that parcel’s zoning. Merging the parcels does not eliminate this conflict because the WDO prohibits multiple wineries on a single parcel. The expansion will change Ticen Ranch from residential to hospitality.

 **Findings and Decision:** The Board finds and determines as follows:

Raymond Winery is located in the Agricultural Preserve (AP) zoning district. Parcels in the AP zoning district may only host wine tours, tastings, and other marketing activities if these activities are “accessory” to wine production. (See NCC Section 18.16.030(H).) An accessory use must be clearly incidental, related and subordinate to the primary agricultural use and cannot change the character of that primary use. (See NCC Section 18.08.020.)

Appellants assert that a new winery (what they refer to as the “Ticen Winery”) would be constructed on the Ticen Ranch parcel. The assertion is not supported by the record.[[4]](#footnote-4) The Project would maintain the bulk of the Winery operations including wine production, primary tasting room, barrel storage, crush pad, wastewater ponds, wells, parking and related facilities on the existing Raymond Vineyard and Cellars parcel (the Raymond Vineyard parcel). Some limited accessory uses consisting of winery offices, a VIP tasting room, a catering kitchen and a demonstration space would occur on what is now the Ticen Ranch parcel. These uses would all be accessory to the Raymond production facility. There are no production facilities such as tanks, barrel or bottle storage, laboratories, shipping/receiving or crush pad areas proposed inside of or adjacent to any building on the Ticen Ranch parcel that would suggest or in any way support Appellants’ unfounded assertion that a separate wine production facility would be built on that property. Appellants have exaggerated the facts in their argument that the accessory uses proposed for the Ticen Ranch parcel equates to a wine production facility; simply calling the accessory uses, the “Ticen Winery” does not make it a winery.

The Board concurs with Appellants that the establishment of a stand-alone tasting room or winery offices on a parcel in the AP zoning district is prohibited unless those uses are accessory to a wine production facility, farm management, or other land use that is otherwise allowed by the parcel’s zoning. (See NCC Sections 18.16.020 and 18.16.030.) The Project includes merger of the Ticen Ranch and Raymond Vineyard parcels into a single parcel. Thus, the exclusively accessory uses proposed on the Ticen Ranch portion of the 86.2-acre merged parcel would be subordinate and ancillary to the Winery currently operating on the Raymond Vineyard parcel.

While it is true that the predominant use of the Ticen Ranch house would change from residential to winery hospitality use that change of use does not equate to construction of a new winery. With merger of the parcels, the Ticen Ranch house would become accessory space/use to the Raymond Winery. There is no standard in the WDO or the NCC specifying a maximum allowed distance between wine production and winery accessory spaces. The only requirement is that there can only be one winery (and by implication its concomitant accessory uses) per parcel. (NCC Section 18.108.240.)

Per the Updated Conditions of Approval (COA) imposed on the Project, the Applicant will be required to undertake “voluntary merger” of the parcels before receiving a final inspection of the Ticen Ranch house or barn or establishing any accessory use on the Ticen Ranch parcel, whichever occurs first. (See Updated COA No. 6.15(g).) That process is governed by NCC Chapter 17.51 and among other things, requires that the involved parcels are contiguous and held in common ownership[[5]](#footnote-5) and that upon merger, no conforming structures will become non-conforming. Because the future merged parcel is zoned AP, requiring a 40-acre minimum parcel size, it is possible (though purely speculative) that at some point in the future two 40-acre parcels could be created. However, any such subdivision would be reviewed and approved by the County only if all requirements were met and no non-conforming uses/structures were created as a result of subdividing.

Assuming arguendo that, in the future, an application were submitted to subdivide the merged 86.2-acre parcel back to its previous configuration, the existence of a winery tasting room and winery offices would be non-conforming with the AP zoning district. This nonconformity would preclude approval of the subdivision because the hospitality and office spaces in the Ticen Ranch buildings would essentially become accessory uses to nothing and not supportive of a primary use. The accessory tasting room, offices and agricultural experience building would have either to be removed, expanded to include on-site production facilities pursuant to an approved Use Permit, or converted to a use allowed pursuant to the AP zoning district.

The Board further finds that without merger of the parcels, the Ticen Ranch parcel could be developed with a stand-alone winery and related infrastructure, which could result in the removal of up to approximately five acres of existing vineyard to accommodate such development within the maximum winery coverage allowed under NCC Section 18.104.220. Merger of the two parcels maintains the existing vineyard and preserves agriculture.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Third Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**D. Fourth Ground of Appeal.**

 **Appellants’ Position:** Appellants claim that the Project undermines agriculture because it intensifies commercial and tourist-serving uses while dramatically reducing the area devoted to wine production by 50 percent, from the existing 243,900 square feet of production facilities to only 121,133 square feet.

 **Findings and Decision:** The Board finds and determines as follows:

The Project would reduce the area devoted to wine production by approximately three percent not 50 percent as asserted by Appellants. The building plans show that the Raymond Winery currently has approximately 118,000 square feet of space dedicated to wine production uses, which will be reduced to approximately 116,000 square feet. This nominal reduction of approximately 2,000 square feet equates to approximately two percent, is well below 50 percent and cannot reasonably be considered a “dramatic reduction” as asserted by Appellants.

The area dedicated to accessory uses (hospitality and administrative space) would increase under the approved Project from approximately 20,500 square feet to over 36,500 square feet. (See February 1, 2017, Planning Commission Agenda Report, page 5.) NCC Section 18.104.200 states that the square footage for structures used for accessory uses related to a winery shall not exceed 40 percent of the area of the production facility. “Production areas” are defined as the crushing, fermenting, bottling, bulk and bottle storage, shipping, receiving, laboratory, equipment storage and maintenance facilities. The intent of Section 18.104.200, is to ensure that a winery’s accessory uses remain subordinate (e.g., secondary) to agriculture and agricultural processing activities by limiting the area the accessory uses may occupy to less than half of that area used for wine production. After conversion of the existing production area to accessory uses, the Project would result in an accessory to production ratio of 32 percent, which is below the maximum 40 percent ratio established by the NCC.

The Raymond Winery is currently entitled to produce 750,000 gallons of wine per year.[[6]](#footnote-6) In reviewing the Applicant’s request, the Planning Commission also reviewed comparative data of six other wineries: William Hill Winery, Reata Winery, Laird Family Estates (post-WDO); and Conn Creek Winery, Mumm Napa Valley, Artesa Winery (pre-WDO) with similar annual wine production allowances (700,000 to 900,000 gallons) as the Raymond Winery. Data included areas of buildings associated with each winery, all of which offered tours and tastings to the public or by appointment. While the data was not so detailed as to differentiate production versus accessory uses, wineries in this production range have permitted cave and/or building sizes that range from 30,000 to 150,000 square feet. The production area associated with the Raymond Winery is 116,000 square feet, and the total building area associated with the Project (approximately 151,000 square feet) was not drastically out of the range of wineries with comparable production entitlements. Two of the wineries (Conn Creek Winery and Reata/Kirkland Ranch Winery) conduct tours and tastings and produce wine with building areas of fewer than 60,000 square feet, so that a definitive conclusion cannot be drawn that approving a reduced production area would have the effect of impairing the quantity of wine that the Winery could produce under the Project.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fourth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**E. Fifth Ground of Appeal.**

 **Appellants’ Position:** Appellants assert that the Project is inconsistent with the General Plan and specifically, Agricultural Preservation and Land Use (AG/LU) Goal AG/LU-1, which requires the County to preserve existing agricultural land uses and plan for agriculture; Policy AG/LU-4, which requires the County to reserve agricultural lands for agricultural use; and Policy AG/LU-9, which requires the County to evaluate projects for their potential impacts on farmlands and avoid conversion where feasible. The new access road would result in the loss of 2.2 acres of prime agricultural land and would only serve hospitality purposes; not agriculture. The Planning Commission abused its discretion in finding the Project consistent with County Code and the General Plan because a feasible alternative to the new driveway exists which would not convert farmland.

 **Findings and Decision:** The Board finds and determines that:

The Napa County Board of Supervisors is the local government body charged by law with interpreting the County’s land use policies and rendering the final determination on a project’s consistency or lack thereof with those land use policies.[[7]](#footnote-7) Further, the Board has significant discretion in interpreting the County’s land use policies. The courts’ review of a county’s interpretation of its general plan policies is highly deferential because “policies in a general plan reflect a range of competing interests” which the agency’s decision-making body “must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purpose.” [[8]](#footnote-8)

The rule of general plan consistency is that the project must at least be *compatible with* the objectives and policies of the general plan.[[9]](#footnote-9) “[S]tate law does not require perfect conformity between a proposed project and the applicable general plan” for a site, or an exact match between the project and the applicable general plan. [Citations.] Instead, a finding of consistency requires only that the proposed project be ‘*compatible* with the objectives, policies, general land uses, and programs specified in’ the applicable plan. [Citation.] “The courts have interpreted this provision as requiring that a project be ‘in agreement or harmony with’ the terms of the applicable plan, not in rigid conformity with every detail thereof.”[[10]](#footnote-10) To reiterate, the essential question is “whether the project is compatible with, and does not frustrate, the general plan’s goals and policies.”[[11]](#footnote-11)

Judicial review of consistency findings is highly deferential to the local agency.[[12]](#footnote-12) “[C]ourts accord great deference to a local governmental agency’s determination of consistency with its own general plan, recognizing that ‘the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes. [Citations.] A reviewing court’s role “is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.” [Citation.]’”[[13]](#footnote-13)

Since adoption of the WDO in 1990, the County has defined wineries as an agricultural land use. Wineries are considered an agricultural land use, and permissible in agricultural areas, because they are a necessary component to facilitating the conversion of grapes (a crop) into wine (an agricultural product). The WDO contains a complex set of strict development constraints to ensure that wine production, from crops grown in Napa County, is the primary land use occurring at a winery (also known as “production”). General Plan Policy AG/LU-1 states that agriculture and related activities are the primary land uses in Napa County. Policy AG/LU-2 defines “agriculture” to include the production of agricultural products “and related marketing, sales and *other accessory uses* (emphasis added).” In support of these policies, NCC Section 18.08.040(H) defines “agriculture” as including the following, but only upon grant of a use permit pursuant to Section 18.124.010, or unless previously issued a small winery certificate of exemption pursuant to subsection (H) of Section 18.16.020 and subsection (I) of Section 18.20.020, or legal existence as a winery prior to July 31, 1974 as provided in subsection (G) of Section 18.16.020 and subsection (H) of Section 18.20.020:

1. Production and processing of agricultural products, including agricultural processing facilities; and

2. Marketing, sales, and other accessory uses that are related, incidental and subordinate to the main agricultural processing use.

The definition of “agriculture” contained in the County’s General Plan and zoning regulations belies Appellants’ argument that Raymond Winery’s accessory offices, tasting room, catering kitchen and related uses are not accessory to agriculture. The Planning Commission found the Project consistent with the County’s General Plan overall and, in particular, 13 specific goals and policies including those that promote agriculture, use of renewable energy sources and preservation of historic structures.[[14]](#footnote-14)

Appellants are correct that General Plan Policy AG/LU-9 discourages the County from converting farmland to non-agricultural uses, where feasible, and if infeasible, preservation of one acre of farmland for each acre that is converted to non-agricultural use is required. However, contrary to Appellants’ assertions, Policy AG/LU-9 is *not* applicable to this Project because winery offices, tasting rooms, and infrastructure improvements such as access roads and wastewater disposal areas that serve a winery are considered accessory or supporting agricultural uses under the County’s General Plan and zoning regulations. This interpretation was expressly articulated by the Board of Supervisors as part of the 2008 General Plan Update and the General Plan Update Draft Environmental Impact Report, which adopted the farmland conversion mitigation measure that established Policy AG/LU-9. The General Plan Update Draft EIR states that the:

“[c]ontinued expansion of agricultural operations could involve the use of farmland by supporting uses and facilities (e.g., winery sites may consist of up to 15 acres of impervious surfaces under NCC Section 18.104.220). However, these potential uses of farmland are not considered significant since *these supporting uses are* *locally* *considered* “*agriculture*” and are intensively regulated (in terms of size, intensity, etc.)” (Emphasis added.) (See General Plan Update DEIR, pg. 4.1-23.)

In Napa County, the removal of vineyard to accommodate a new access driveway is not a conversion of farmland to a non-agricultural use, and therefore, Policy AG/LU-9 is not triggered. It is merely replacing one form of agriculture (vineyard) with another form of agriculture (accessory infrastructure supporting the winery). Wineries and uses accessory thereto are conditionally permitted uses that are consistent with the agricultural land use designation of the property. (General Plan Policies AG/LU-2 and AG/LU-21.) The new access road is subordinate to and would serve the Winery which is and would remain the primary permitted use of the merged property.

As further discussed above in the Findings and Decision to the First, Second, Third and Fourth Grounds of Appeal, the Project is also consistent with provisions of the WDO that are intended to preserve agricultural lands by allowing tasting rooms and paved roads in conjunction with wineries; provided, that all elements of the winery (excluding farm management uses) do cover not more than 25 percent of the parcel area or 15 acres, whichever is less. (See NCC Section 18.104.220.) This limitation ensures that crop production or the raising of livestock remains the predominant use of the parcel. The Raymond –Ticen Ranch Winery, including the new access road, would have a winery coverage area of just over 12 acres or approximately 14 percent on the approximately 86-acre merged parcels and thus would be compliant with the County’s maximum coverage requirement.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fifth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**F. Sixth Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that the Project is inconsistent with General Plan noise policies and specifically Community Character (CC) Policy CC-38 which provides exterior noise level standards for maximum noise levels that are not to be exceeded more than 30 minutes in each hour. Noise measurements taken by Appellants’ noise consultant, The Papadimos Group, at the Napa Gras Event held by the Raymond Winery on February 24, 2017, demonstrate that noise levels from vehicular traffic and music exceeded County standards (Appellants’ Noise Report). The Project includes similar outdoor events as well as expanded marketing facilities and amenities that will increase the potential for such events. These documented noise violations constitute substantial evidence of the Project’s likely noise impacts, and therefore, the Planning Commission abused its discretion in finding the Project will not adversely affect public health, safety, and welfare.

 **Findings and Decision:** The Board finds and determines that:

Since 1991, the Raymond Winery has been entitled to host daily events for up to 10 people, twice-weekly events for 10 to 30 people, and twice-monthly events for 30 to 100 people. The Project would not change the number of events, their frequency or the number of attendees. It would simply allow up to half of these marketing events (or approximately 246 events annually) to occur outdoors in the following three areas: (1) the existing lawn and pool areas near the existing residence on the Raymond Vineyard parcel; (2) the existing biodynamic garden area on the Raymond Vineyard parcel; and (3) the landscaped picnic area on the east side of the residential building on the Ticen Ranch parcel. The nearest off-site residence to the Raymond Winery is located approximately 500 feet northeast from the lawn and pool area, the closest of the three outdoor venues. The events would span three to four hour increments, with no event beginning before 10:00 a.m. or ending later than 10:00 p.m. The use of amplified music is prohibited.

The Revised MND’s determination that noise from the outdoor events would be less than significant was supported by a recent acoustical study prepared by a licensed acoustical engineer for the Bell Winery use permit modification, which involved factually similar circumstances as the Raymond Winery. The Bell Winery noise study was relied upon because: (1) it utilized actual (not predicted) noise measurements taken during a marketing event that occurred at the Bell Winery; (2) the size of the monitored event, which was attended by 85 people, was comparable to the size of Raymond Winery’s largest marketing event of 100 people; and (3) the setting of the Bell Winery, and most particularly its distance to residences and its distance from State Route 29, a “line” source of noise, is similar to that of the Raymond Winery (1,900 feet from State Route 29 for Bell Winery and 1,750 fee from State Route 29 for Raymond Winery).

With respect to outdoor noise sources, in the case of the Bell Winery project, the nearest residence is approximately 200 feet east of the winery’s outdoor crush pad. In the Raymond Winery project, the nearest residence is approximately 500 feet northeast of the location of the outdoor marketing activities proposed to occur near the pool on the Raymond parcel. According to the Revised MND, it is anticipated that exterior noise at the nearest off-site residence on Wheeler Lane would be 44 decibels for half of the event with an average of 48 decibels which is between two and six decibels below the County’s noise standards of 50 decibels during 50 percent of daytime hours. The closest residence to the outdoor events proposed on the Ticen Ranch parcel is approximately 700 feet to the west on the opposite side of State Route 29 and therefore, would not be subject to exceedances of the County noise standards from Winery marketing events. (See Revised MND, pgs. 28-30.)

During the final public hearing before the Planning Commission, Appellants’ Noise Report was submitted regarding noise impacts resulting from a temporary event (Napa Gras) that had occurred at the Raymond Winery on February 24, 2017. Temporary events are separately permitted, with specific regulatory requirements, and are not covered under the existing Use Permit. Appellants’ Noise Report asserted that the Napa Gras event had caused exceedances of the County’s noise ordinance, particularly after 10:00 p.m. when the acceptable noise threshold drops to 45 decibels (measured for at least 30 minutes in any hour). The noise exceedances were attributed to vehicular traffic into and out of the Raymond Winery and music from the event. Appellants’ Noise Study did not address any of the marketing activities approved under the Use Permit for the Winery, just this single temporary event held at the Winery.

While Appellants’ Noise Report alleges exceedances of the noise ordinance with respect to a particular event, it lacks relevance for purposes of concluding that significantly smaller events authorized as part of Raymond Winery’s marketing plan will exceed permitted noise levels. Appellants’ Noise Report did not identify the number of persons in attendance at the event, but according to the Napa Gras temporary event permit, the maximum allowed attendance was 600 people. That is six times the number of people that would be permitted to attend the largest of Raymond Winery’s permitted marketing events. Thus while Appellants’ Noise Report may be of anecdotal interest, the evidence of noise exceedances would only be relevant to future temporary or marketing event applications with attendance of similar magnitude. The reported noise violations from a single temporary event with approximately 600 people in attendance does not adequately demonstrate that all or even some of the outdoor marketing activities at Raymond Winery would result in a potential noise impact. No outdoor amplified music is allowed with the marketing activities.

Argument, speculation, inaccurate information, unsubstantiated opinion, or social or economic impacts unrelated to physical changes to the environment do not constitute substantial evidence.[[15]](#footnote-15) An argument that a project may have a significant environmental effect must be based on relevant evidence sufficient to support that conclusion. An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts.[[16]](#footnote-16) Because Appellants’ Noise Report evaluated noise impacts associated with a significantly larger event than what is proposed by the Project, the study lacks an adequate factual foundation and does not rise to the level of substantial evidence demonstrating that approximately 246 marketing events per year with up to 100 persons maximum may result in noise impacts. A lead agency need not accept expert testimony that lacks an adequate factual foundation.[[17]](#footnote-17)

The Revised MND’s finding that the Project would not result in potentially significant noise impacts is supported by substantial and relevant evidence. Furthermore, the issuance of a temporary event permit is an administrative action of the Zoning Administrator and falls outside the scope of the requested use permit modification upon which the Planning Commission was tasked to take action. See also Findings and Determination to the Seventh Ground of Appeal.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Sixth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**G. Seventh Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that Raymond Winery’s temporary events violate the WDO because temporary events conducted at Raymond are a foreseeable, ongoing component of Raymond Winery’s marketing plan, which cause the marketing activities to cross the line from being incidental and subordinate to becoming the primary use. The temporary events generate significant traffic and noise and shift the primary focus of the facility from winemaking (an accessory use to agriculture) to hospitality (an accessory use to winemaking).

 **Findings and Decision:** The Board finds and determines that:

The issuance of a temporary event permit[[18]](#footnote-18) is an administrative action of the Zoning Administrator governed by NCC Chapter 5.36 and falls outside the scope of the use permit modification that was before the Planning Commission. Appellants appear to contend that temporary events and marketing activities are synonymous and lump them together and refer to them collectively as marketing events. See also Findings and Determination to the Sixth Ground of Appeal.

Contrary to Appellants’ assertions, there are important and legally significant differences between temporary events and marketing events. These activities are governed by different standards, held for different purposes, subject to different permitting processes and have different decision-makers. Temporary events are expressive activities within the ambit of the First Amendment of the United States Constitution and Sections 2, 3 and 4 of Article 1 of the California Constitution. Temporary Event Permits are administrative (ministerial) permits that are issued by the PBES Director upon compliance with the criteria applicable to a particular type of event. Unlike temporary events, winery-marketing events are defined as activities for the education and development of customers and potential customers at wineries.[[19]](#footnote-19) Marketing activities are components of a winery’s discretionary use permit and are carefully evaluated by the Planning Commission to ensure that they are related to the education and development of winery customers.

Related activities that are similar in nature and that serve the same purpose are separate projects (as opposed to a single project) if they are independently considered for approval and one activity is not a foreseeable consequence of the other.[[20]](#footnote-20) The California Supreme Court has ruled that a lead agency must analyze possible future expansion or other action related to a project that is “a reasonably foreseeable consequence” of the project and the future action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. “Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.”[[21]](#footnote-21)

The exception to this rule is for activities that are determined to be speculative or uncertain. This is the case with the activities undertaken through temporary event permits. These temporary events are not “linked” to the underlying project in that the Raymond Winery may hold such events regardless of whether the Project is approved.[[22]](#footnote-22) Further, temporary events which may occur in the future would require “prophecy” on the part of the County in order to assess potential impacts in the Project CEQA document. This kind of oracular ability was expressly rejected by the *Laurel Heights* court. In *Berkeley Keep Jets over the Bay Com.,* the court held that projects identified in an airport’s long-range plan did not have to be included in the EIR because they were not being proposed for approval, they were not necessary elements of the projects proposed for approval, and they were not shown to be foreseeable consequences of that development. This rationale applies to the temporary events at the Raymond Winery. They are not proposed, are not necessary elements of, or “linked” to, the Project, and have not been shown to be foreseeable consequences of the Project.

The evidence of “reasonable foreseeability” of the temporary events offered by Appellants is simply the word “annual” noted next to the events described in two license applications made by Applicant. The Applicant may apply for myriad temporary events, as few as 60 days before the occurrence of the event. Despite the potential for doing so, the Applicant has only obtained nine temporary events since 2012. This equates to an average of 1.5 temporary permits per year, on average. Consequently, this would clearly require a sizeable dose of speculation by the County to assess the number of events for which the Applicant may apply for in the future, in addition to their size, scope, timing, etc. The temporary events are simply not a consequence of the proposed Project and thus were not required to be evaluated in the Project’s Revised MND.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Seventh Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**H. Eighth Ground of Appeal.**

 **Appellants’ Position:** Appellants claim that the County used an incorrect baseline which inflates existing conditions and underestimates Project-related impacts. According to appellants, the Revised MND erroneously relied on the maximum levels of production and visitation permitted under the existing use permit, rather than the actual existing levels of production and visitation which Appellant asserts appear to be significantly lower than permitted levels. The permitted winery production levels and permitted visitor levels were used as baseline conditions without providing any verifiable information on the current, actual level of production and number of visitors.

 **Findings and Decision:** The Board finds and determines that:

The determination whether a project may have a significant effect on the environment requires that the lead agency determine whether it might result in “a substantial, or potentially substantial, adverse change in the environment.” (Public Resources Code Section 21068.) In environmental analyses, comparison of the proposed project against a baseline condition highlights the potential environmental impacts resulting from the proposed project. In the case of Applicant’s use permit modification, the Revised MND properly relied on the “permitted” wine production levels and number of visitors as baseline conditions because changes to production and visitation were *not* part of the Project scope. The maximum entitled activity was provided for the background discussion purposes of Raymond Winery’s existing operations and entitlements; not for the purpose of conducting a CEQA impact analysis.

The above facts are distinguishable from cases cited by Appellants which prohibit the use of hypothetical allowable development authorized under existing permits as the baseline. In the *Communities for a Better Environment[[23]](#footnote-23)* case, Conoco sought to produce ultralow sulfur diesel fuel at their refinery which would require substantially increasing operation of the refinery’s existing cogeneration plant and four boilers. The Air Quality District determined the increased use would result in increased NOx emissions; however, the District did not consider these increases to be part of the diesel project because they did not exceed the maximum rate of heat production allowed under existing permits. Here, the Winery’s project is not proposing any increased use of winemaking equipment or increased production and similarly not requesting an increase in permitted visitation. While the Conoco diesel project specifically required an increased use of refinery equipment which apparently would result in increased emissions, the Winery’s project simply does not include a production or visitation increase component and therefore application of the baseline rule articulated in *Communities for a Better Environment* is incongruous.

The Winery’s allowed visitation and wine production were previously analyzed in the initial study and Revised MND that accompanied the use permit modification approved by the Planning Commission in 1991. (See Use Permit No. U-89-46.) The current use permit modification would not change those entitled numbers in any way. Thus, there is no increment, either upward or downward, in visitation or production levels that needed to be analyzed as part of the Project. If an EIR or negative declaration was completed for an existing permit, plan or use, any change to the project is proposed, any further CEQA review is limited to the incremental impacts of the proposed changes.[[24]](#footnote-24) The proposed changes to the Raymond Winery primarily relate to operational changes and legitimatization of unpermitted employees and structures. They are unrelated to visitation or production levels.

The Board notes that Appellants are asserting that two different baselines should have been used. Appellants advocate that the current existing levels should have been used as the baseline for annual production and visitation but not in other areas of the analysis. For traffic, noise and water use, Appellants assert that the permitted or entitled level should have been used as the baseline. The existing conditions referenced in the Revised MND are representative of the Winery’s typical operations (recognizing its daily, seasonal and annual variations dependent on weather) within the parameters of its approved entitlements. Under its current entitlements, Raymond Winery is allowed to produce 750,000 gallons of wine per year (averaged over three years) and to host up to 400 visitors per day.[[25]](#footnote-25) Information provided by the Applicant indicated that Raymond Winery’s wine production and visitation numbers are within and in some instances up to the maximum permitted levels allowed by the Winery’s approved use permit.[[26]](#footnote-26)

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Eighth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**I. Ninth Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that the Revised MND improperly included existing, unlawful conditions in the baseline for certain activities when it was required to use legally permitted existing conditions as the baseline as opposed to unlawful existing conditions. Use of unlawful existing conditions creates an incentive for wineries to expand without permits and seek the County’s blessing after the fact.

 **Findings and Decision:** The Board finds and determines as follows:

Courts have consistently stated that CEQA is not a code enforcement mechanism and that the proper baseline, even if as a direct result of illegal activity, is the existing conditions of the site. “Environmental impacts should be examined in light of the environment as it exists when a project is approved, and any illegal activities affecting the baseline environmental condition are best addressed by enforcement agencies.”[[27]](#footnote-27) While Appellants’ point about incentivizing bad behavior is well taken, were the County to use a hypothetical “pre-violation” baseline, it would itself violate the clear, almost black-letter line of cases which prohibit making such a comparison. “In the absence of more detailed guidance either from the Legislature or the Resources Secretary, we believe a more prudent method of dealing with alleged prior illegality is to rely in the first instance on direct enforcement by the agencies charged with the responsibility of doing so…”[[28]](#footnote-28)

The County is committed to its code enforcement program and it is through this process that violations such as the ones at issue here may be remedied. The County has a long-standing policy and practice of working to gain voluntary compliance from residents and landowners. Violations that may threaten public health or safety or that may cause significant environmental damage are given the highest priority. However, each case is unique, and the methods for achieving compliance are varied. The Planning Commission’s decision to approve the Project was in no small part based on the County’s desire for the Applicant to achieve compliance with the County’s zoning regulations and prior use permit conditions. As is common for code compliance cases, the conditions of approval adopted by the Planning Commission incorporate strict timelines for correction of outstanding violations, such as the construction of the unbuilt left-turn lane on Zinfandel Lane and submittal of building permit applications for structures and interior occupancy changes built without benefit of County permits. (See Updated COA Nos. 4.13 and 6.15.) The conditions of approval also prohibit expansion of the Winery’s accessory operations until the Applicant has corrected the outstanding violations. (See Updated COA No. 6.15(f))

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Ninth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**J. Tenth Ground of Appeal.**

 **Appellants’ Position:** Appellants claim that the Revised MND improperly includes existing, unlawful conditions in the baseline for certain activities. These unlawful expansions have resulted in impacts to the Project site and adjacent areas that were never evaluated under CEQA. The Planning Commission erred in relying on unpermitted uses as the baseline for evaluating impacts.

 **Findings and Decision:** The Board finds and determines as follows:

Appellants inconsistently assert that using the “existing” condition as the baseline is appropriate for wine production and visitation levels, but that the “permitted” condition should be used as the baseline in other instances, such as in the analysis of traffic impacts from employees. As explained below, various elements of the requested use permit modification were compared against the “permitted” condition because that comparison generally provided a more conservative analysis of the Project’s impacts. See also Findings and Determination to the Eighth and Ninth Grounds of Appeal.

The traffic section of the Revised MND used the “permitted” number of employees (26) rather than the “existing” condition (90) as the baseline measurement. This comparison better represents the potential impacts of the additional winery employees that the Applicant requested to be recognized under the use permit modification application. If the existing condition of 90 employees had been used, there would have been no change and a finding of no impact of the Project. Instead, the Crane Traffic Study disclosed the potential traffic impacts resulting from the increased employees as if the Applicant had pursued the modification before increasing employment. (See Crane Traffic Study, page 1.) This approach made clear the potential minimal impact resulting from the past violation.

The analyses of air quality and greenhouse gas emissions are similarly conservative, discussing the potential impacts of the Project compared to the “permitted” condition (i.e., removing the unpermitted accessory use areas from the baseline). This approach was used to inform decision-makers about the potential impacts of the Project by accounting for proposed, unbuilt additions, as well as, those elements of the Winery’s expansion that occurred without permits. A comparison of the Project solely against existing conditions would have resulted in a determination of “no impact” with respect to the built but unpermitted winery accessory spaces, and would have significantly underestimated the full impact of the proposal. This would have misled the public and would have resulted in the Commission basing its decision on inaccurate and incomplete analysis.

The groundwater use, vehicle trip emissions, and wastewater treatment emissions generated by the unpermitted employees was also calculated using the “permitted” baseline (maximum of 26 employees), again, because this approach represents the more conservative analysis of the potential impacts resulting from the requested use permit modification and the increase in employees.

The analysis of potential noise impacts also uses the “permitted” allowances as the baseline, as this baseline also represents the existing condition with respect to marketing events conducted under the approved use permit occurring indoors. See also Findings and Determination to the Eighth and Ninth Grounds of Appeal.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Tenth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**K. Eleventh Ground of Appeal.**

 **Appellants’ Position:** Appellants assert that the County’s traffic analysis is unfounded because it relies on an incorrect baseline using activities associated with unpermitted marketing facilities. According to Appellants, Applicant’s “no new visitors” premise is inconsistent with the record because the Project includes significant additions to the operation’s visitor-serving facilities and marketing plan.

 **Findings and Decision:** The Board finds and determines as follows:

The “permitted” condition is used as the baseline with respect to the Revised MND’s discussions of visitation and marketing event attendance because there are no changes proposed or requested to those elements of the Winery’s operation. Thus, they are not within the scope of the Project. It would be inappropriate and speculative to presume that the Applicant would exceed the Winery’s permitted visitation levels just because the guest parking and hospitality facilities have been expanded. Per the conditions of approval, Raymond Winery is limited to 200 public visitors per day (1,400 maximum per week) and 200 by-appointment visitors per day (1,400 maximum per week). (See Updated COA No. 4.2.) Raymond Winery is also authorized to hold marketing events daily for up to 10 people; two times per week for up to 30 people; and two times per month for up to 100 people. (See Updated COA No. 4.3.) Applicant did not request nor did the Planning Commission’s approval of the Project authorize an increase or change to the visitation or marketing levels. See also Findings and Determination to the Eighth, Ninth and Tenth Grounds of Appeal.

The Planning Commission heard and considered testimony from Applicant’s team that these expanded visitor-serving facilities are intended to be part of Raymond Winery’s existing hospitality operations and not for purposes of increasing permitted visitation levels. Applicant’s Director of Retail Operations Tom Blackwood testified that the additional tasting room was driven by Raymond Winery’s focus on guest experience and the desire to provide visitors with a sit-down, guided, tasting experience and that the tasting room on the Ticen Ranch parcel would be by-appointment for VIP and trade visitors. Mr. Blackwood further testified that the Ticen Ranch tasting room would just be another location for dispersing current or planned visitation. Applicant’s planning consultant and representative, Donna Oldford, explained that the expanded parking is needed because private by-appointment tours have changed since Raymond Winery’s inception and are now longer, more personal and overlap with the parking required for larger marketing events.[[29]](#footnote-29)

Staff initially did not support the request for 50 additional parking stalls on the Raymond Vineyard parcel because of concerns that it was inconsistent with General Plan Circulation Element Policy CIR-23, which discourages unnecessary or excessive parking. Staff questioned the need for the additional parking because there was no corresponding increase in visitation or marketing activities; tasting room visitors would be split between the tasting rooms on the Raymond Vineyard parcel and on the Ticen Ranch parcel thus reducing the parking demand on the Raymond Vineyard parcel; and by expanding visitation two and half hours per day, daily visitors would have a larger span of time to visit the Winery.

Prior to the March 15, 2017 Planning Commission hearing the Applicant’s representative submitted additional justification for the increase in guest parking. Applicant’s representative explained that the Winery’s visitor experience differs from those of the past, and that the typical tasting is two to three times longer than when the Winery’s hospitality facilities were approved more than two decades ago in the 1990s. With the longer duration in tours and tastings, visitors remain on the property for longer periods of time, and there is more overlap between groups of guests, which increases the competition for limited parking. Applicant’s representative further testified before the Planning Commission that private tours (e.g., by appointment) are longer and more-in depth. The Applicant is not trying to find a way to fit more people in but rather to solve an existing parking problem.[[30]](#footnote-30)

Appellants contend that the indirect consequence of approving increased winery hospitality space is an increase in visitation above the limits in the approved use permit. However, there is no evidence in the record to support this unfounded assertion. The change in visitor experience as explained by Applicant’s representative provides a logical and less nefarious explanation for the requested changes to visitor facilities and hours. In other words, keeping the number of daily visitors constant but extending the duration of their stay on-site, adding hospitality space, and expanding guest parking facilities and visitation hours are all reasonable and logical justifications to support the requested modification to the approved use permit. Furthermore, Updated COA No. 4.2 requires the Applicant to maintain a logbook of all visitors to the Raymond Winery and to provide this record of visitors to the County upon request. Therefore, the County can monitor visitation levels to ensure Raymond Winery is not exceeding the levels authorized by its use permit.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Eleventh Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**L. Twelfth Ground of Appeal.**

 **Appellants’ Position:** Appellants claim that baseline defects permeate the Revised MND and render inadequate its analysis of a host of impacts including traffic, air quality, greenhouse gas (GHG) emissions, water supply and wastewater, and noise. Therefore, the Commission abused its discretion in approving the document.

 **Findings and Decision:** The Board finds and determines as follows:

Appellants have baldly asserted that the Revised MND is inadequate in traffic, air quality, GHG emissions, water supply and wastewater yet failed to articulate or explain the basis for these assertions. See also Findings and Determination to the Tenth, Twelfth and Sixteenth Grounds of Appeal (traffic), Tenth and Twelfth Grounds of Appeal (air quality, GHG emissions, water supply and wastewater) and Sixth and Tenth Grounds of Appeal (noise). Complaints, fears, and suspicions about a project’s potential environmental impact likewise do not constitute substantial evidence.[[31]](#footnote-31)

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the TwelfthGround of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**M. Thirteenth Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that the County must prepare an EIR because there is a fair argument that the Project will cause numerous significant impacts, including noise, land use, traffic, hydrology and water quality, and wildlife impacts. The Commission’s failure to require an EIR was an abuse of discretion.

 **Findings and Decision:** The Board finds and determines as follows:

A lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project’s potential environmental impacts, although individually limited, are cumulatively considerable.[[32]](#footnote-32) “Cumulatively considerable” means that the incremental effects of a project are significant when viewed in connection with the effect of past projects, other current projects, and probable future projects.[[33]](#footnote-33) To assess whether a cumulative effect triggers the need for an EIR, the lead agency must answer two questions: whether the cumulative impact itself may be significant and whether the project’s incremental contribution to that effect would be “cumulatively considerable.”[[34]](#footnote-34) A project’s impacts must be found cumulatively considerable if its incremental effects are significant when viewed within the context of the effects of past, current, and probable future projects.[[35]](#footnote-35) The existence of significant cumulative impacts caused by other projects is not, standing alone, evidence that the project’s impact is cumulatively considerable.[[36]](#footnote-36) It must be shown that the project will directly contribute in a significant way to an environmental impact for the impact to be characterized as a project-related cumulative impact.[[37]](#footnote-37)

The Planning Commission properly and thoroughly evaluated the Project’s incremental contribution to traffic, noise, land use, traffic, hydrology, and water quality, and wildlife impacts and determined that its contribution would not be cumulatively considerable. Appellants offered no credible evidence that the Project would have a cumulatively considerable contribution to noise, land use, traffic, hydrology and water quality, and wildlife impacts.

Regarding noise impacts, Appellants have provided no explanation as to how allowing half of Raymond Winery’s existing marketing events to occur outdoors may incrementally increase in noise levels and result in a cumulative noise impact. See also Findings and Determination to the Sixth and Tenth Grounds of Appeal.

Regarding land use, Appellants have failed to articulate how the Project may incrementally affect land use and result in a cumulatively considerable land use impact. Removal of vineyards for construction of a private roadway across the merged parcels was not determined to be a significant land use inconsistency. See also Findings and Determination to the Fifth Ground of Appeal.

Regarding traffic, Appellants have offered no evidence as to how the additional 64 employees create a cumulatively considerable contribution to a cumulative traffic impact. The Crane Traffic Study submitted with the Project application includes a brief discussion of cumulative traffic impacts in its analysis of the Project in the long-term (year 2030) horizon. (See Crane Traffic Study, pages 23-25.) Appellants claim that the cumulative traffic impact analysis should have included a list of projects in the vicinity of the proposed Raymond-Ticen Ranch Winery. The cumulative traffic analysis in the Crane Traffic Study utilized General Plan projections in lieu of a list of specific projects in the vicinity of the Raymond and Ticen Ranch parcels; and this is an acceptable approach under CEQA Guidelines Section 15130.

The Planning Commission properly considered the potential for traffic impacts from the Project within the overarching context of forecasted local and regional growth evaluated in the 2008 General Plan and the supporting General Plan Program EIR. These documents found that: (a) additional growth in Napa County would result in significant increases in traffic volumes on the overall county road network; and (b) regional population and job growth would result in significant increases in traffic volumes on the county road network, even if all growth in Napa County ceased. In adopting the 2008 General Plan, the Board of Supervisors properly considered the effects of local and regional growth on the health, safety and welfare of the County, and ultimately determined that additional winery and vineyard development was acceptable within the General Plan’s planning period (2008-2030). The scale and scope of this Project falls within the overall level of development contemplated and analyzed within the General Plan, and it is within this context that the Planning Commission considered the Project. See also Findings and Determination to the Tenth and Sixteenth Grounds of Appeal.

Regarding hydrology, Applicant’s engineer prepared a groundwater analysis consistent with the County’s Water Availability Analysis Guidelines (the County’s WAA Guidelines). The County’s WAA Guidelines were developed by licensed hydrogeologists in conjunction with the Groundwater Resources Advisory Committee and adopted by the County after an extensive multi-year study and analysis of groundwater resources conducted throughout Napa County. Because the subject property is located on the Valley Floor, pursuant to the County’s WAA, a Tier 1 “Water Availability Analysis for Raymond Vineyards dated September 15, 2015 (Revised January 26, 2016)” was prepared by Summit Engineering (the Summit WAA) which evaluated potential groundwater impacts and estimated groundwater use associated with the Project. In an effort to provide full disclosure of groundwater impacts and usage, the Revised MND and Summit WAA evaluated groundwater use under three scenarios: the use permit entitlement with 26 employees (89.9 acre-feet per year (af/yr)); the existing use which included the unpermitted additional 64 employees (90.7 af/yr); and the proposed Project, which included legitimization of the 64 unpermitted employees for a total of 90 employees (90.8 af/yr).

Both the Revised MND and Summit WAA noted that no increase in visitation or production was proposed from the existing 400 visitor maximum per day and 750,000 gallons of wine. The Summit WAA concluded that the additional 64 unpermitted employees would increase the Winery’s annual water use by 0.90 af/yr over the existing entitlement for a total usage of 90.8 af/yr of groundwater which is below the County’s WAA Guidelines for Valley Floor Parcels of one-acre foot per year per acre of property. The Winery has a fair share allocation of 113.4 acre feet per year of groundwater based on the combined acreage of the Winery’s three parcels, and thus, no impacts would occur. Appellants have offered no evidence that contradicts the Summit WAA, which contains a site-specific and Project specific analysis of groundwater usage and impacts. Appellants’ reliance on Winery Grand Jury Reports which discusses in general the County’s need for groundwater monitoring on a County-wide basis is unrelated to the Project and does not articulate how the Raymond –Ticen Ranch Winery would create an impact on groundwater resources.

The Revised MND references reports on Napa County’s recent efforts to characterize and monitor groundwater levels in the County and notes that “[m]ost wells elsewhere within the Napa Valley Floor with a sufficient record indicate that groundwater levels are more affected by climatic conditions, are within historical levels, and seem to recover from dry periods during subsequent wet or normal periods.” (See Revised MND pages 23-24.) This characterization of groundwater levels in most of the Napa Valley Floor, including the north/St. Helena area where the Project is located, is further supported in the “Comprehensive Groundwater Monitoring Program: 2016 Annual Report and CASGEM Update” (2016 Annual Report), presented to the Board of Supervisors on April 18, 2017. The 2016 Annual Report, describing the same well referenced in the Appellants’ comments, notes that groundwater measured at the well has “remained relatively stable although somewhat susceptible to dry years.” (See 2016 Annual Report, page 34.) Referencing a very dry year in 1977, the 2016 Annual Report notes that spring season groundwater levels were measured at over 26 feet below ground surface (bgs) but also notes that groundwater levels in more recent years were 18.1 feet bgs and 12.7 feet bgs (in 2014 and 2015, respectively, and both dry years) and was most recently as high as 7.2 feet bgs in January 2017 (with above average precipitation). Thus, with an increase of less than one acre-foot of water per year associated with the employment increase of the Project, the conclusions of the Revised MND remain valid, and groundwater would not be significantly impacted by the Project.

Regarding water quality, an evaluation of erosion and stormwater impacts was performed by licensed engineer Summit Engineering in the report entitled “Wastewater Feasibility Study for Raymond Vineyards dated September 1, 2015 and Revised January 15, 2016” (the Summit Wastewater Study). This in turn was reviewed by County engineering staff and was found to meet County and State standards. Testimony or reports by experts supporting a finding that a project’s impacts will be insignificant constitutes substantial evidence supporting the agency’s conclusions.[[38]](#footnote-38) The studies and expert testimony referenced herein all provide substantial evidence that the Planning Commission appropriately and adequately considered the effects of the Project.

As to wildlife impacts, the Revised MND identified potential impacts to bat species and recommended mitigation measures that establish minimum performance and reporting criteria based on conservatively assuming the presence of two California bat species of concern. Appellants have not articulated how or why the mitigation is improper, inadequate or would otherwise result in adverse impacts to bat or other biological species. A mitigated negative declaration cannot be attacked successfully on the theory that the conditions will not be enforced; compliance with the conditions will be presumed. When a court reviews a mitigated negative declaration, “the focus must be the use as approved, and not the feared or anticipated abuse.”[[39]](#footnote-39)

Unsupported conclusions do not rise to the level of substantial evidence and do not support the unsubstantiated conclusion that a cumulative impact may occur. Appellants have not made a “fair argument” that the operational changes proposed at the Raymond Winery may have significant environmental effects. The vast majority of materials submitted by the Appellants, both during the Planning Commission hearings and now on appeal, pertain to existing conditions without a direct or indirect link of how the Project influences or exacerbates those existing conditions. An argument that a project may have a significant environmental effect must be based on relevant evidence sufficient to support that conclusion. An EIR is not required if there is no substantial evidence in the record showing the project may cause significant adverse impacts.[[40]](#footnote-40)

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**N. Fourteenth Ground of Appeal.**

 **Appellants’ Position:** Appellants assert that the Revised MND failed to adequately analyze the Project’s significant water quality impacts and specifically the larger problem of runoff from upstream of the access drive, which will be captured in a swale and concentrated into culverts which could erode a channel downstream from the road.

 **Findings and Decision:** The Board finds and determines that:

Water quality and drainage impacts were thoroughly reviewed and analyzed in the Revised MND and Summit Stormwater Report. The proposed storm drain system incorporates long overland flows across gently sloping areas on-site, landscaped bioretention facilities to capture, treat and hydromodify runoff from structures, and roadside swales to control and convey excess runoff from vineyard areas. Each of these areas is depicted on the Project plans, sheets UP6 and UP7, which were available online on the County PBES Department Project website before, during and since the public review period on the Revised MND.

The stormwater improvements were designed and prepared by a licensed engineer in accordance with applicable State and County standards, including the Phase II MS4 Municipal General Permit adopted by the County (NCC Chapter 16.28). Under these standards, any runoff from new or reconstructed impervious areas (such as roadways) must be treated and managed prior to discharge off-site, in order to ensure reduction in pollutants and a “no net increase” in the quantity of runoff leaving the site.

As designed, the proposed storm drainage improvements would maintain the historic drainage pattern of the site, which includes discharge of excess runoff from the vineyards into an existing culvert near the southern property line of the Raymond Vineyards parcel. Runoff from the proposed new access road would sheet flow off of the road surface into the vineyards to the east and south of the roadway alignment. Excess discharge from the vineyards north and west of the access road would be conveyed via a roadside swale to a proposed point of discharge near the southern corner of the Raymond Vineyard parcel. In accordance with the Bay Area Stormwater Management Agencies Post-Construction Manual, incorporated by reference into the County’s Stormwater Quality Ordinance (NCC Chapter 16.28), the point of discharge into the culvert along the Raymond Vineyard parcel’s southern property line would include a velocity dissipation device to decrease the intensity of peak flows at the point of discharge and reduce the potential for erosion in the culvert.

The Summit Wastewater Study and grading and drainage plans were reviewed by Staff of the County’s Engineering Division to confirm compliance with the State and County standards referenced above. Engineering Division Staff recommended approval of the Project, subject to conditions, which were imposed by the Planning Commission. (See Updated COA Nos. 4.18(b) and 6.1(c).) A report submitted by the Appellants’ hydrologic consultant, Tom Meyers, asserted that the Project would have significant water quality impacts but did not assert that the drainage improvements would not meet standards of design adopted by the County to protect public welfare and ensure minimal environmental effects. Nor have Appellants provided any credible evidence or rationale as to why the erosion design measures would be inadequate.

A condition requiring compliance with another agency’s environmental regulations or standards is a reasonable mitigation measure when the lead agency has “meaningful information” that would reasonably justify “an expectation of compliance” and when compliance would avoid significant impacts.[[41]](#footnote-41) Mitigation measures, such as requiring engineering department approval of drainage facilities or flood control and water district approval of grading plans, are appropriate when these approvals or plans are subject to performance standards such as those typically found in applicable ordinances, rules, and standards.[[42]](#footnote-42) As described above, the drainage facilities were designed in accordance with State and County standards, which standards have been adopted to ensure protection of public health, safety and welfare.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fourteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**O. Fifteenth Ground of Appeal.**

 **Appellants’ Position:** Appellants assert that the Revised MND failed to adequately analyze the Project’s significant hydrology impacts and specifically failed to address Appellants’ concern about the low infiltration rate of soils on-site and that the expanded leach line may cause significant seepage of wastewater to downstream locations. The Revised MND fails to include any information on existing wells or analyze the impacts from the expanded leach fields.

 **Findings and Decision:** The Board finds and determines as follows:

Appellants are incorrect. While the Revised MND acknowledges that there are limitations in use of septic systems in the on-site soils, it also notes that such limitations can be overcome with certain design elements of the system, such as expansion of the leachfield or inclusion of pre-treatment of effluent prior to discharge to the septic system dispersal field.

The Summit Wastewater Study (incorporated by reference in the Revised MND) provides a detailed description of the proposed wastewater treatment system, which consists of three main components: (1) settling tanks with effluent filter; (2) a pre-treatment system with flow meters; and (3) a subsurface drip field system with drip tubing for disposal of flows in the vineyard area south of the winery building. The settling tanks would provide initial treatment of wastewater discharged to the system, primarily removing solids from the effluent. The Orenco pre-treatment system specified in the Summit Wastewater Study would provide additional treatment of the wastewater, to a secondary level, before discharging the high quality effluent to the leachfield where additional treatment would occur in the soil. (For reference, wastewater treated to a tertiary level is considered acceptable for discharge to surface water systems such as wetlands.)

County regulations require a minimum of three feet of vertical clearance between leachlines and the limiting layer (such as heavy clay, rock or groundwater) in a septic system. This distance has been determined to be the minimum necessary to treat water that has received only primary treatment in a septic tank. However, lesser vertical clearance of two feet is permitted when the wastewater is pre-treated prior to discharge to the leachfield, as is proposed with the Project. Appellants’ comments neglect to acknowledge the supplemental pre-treatment that is proposed by the Applicant, instead implying that wastewater discharged from the Winery would be of a much lower quality than what is proposed to occur.

In addition to neglecting to acknowledge pre-treatment features incorporated into the system design, Appellants’ comments also ignore that the character of the soil extends to the depth of the test pits done during the site evaluation (and possibly deeper). The Summit Wastewater Study conservatively identified a limiting depth of 36 inches below ground surface (bgs), the point at which mottling (evidence of water, potentially groundwater or surface water absorbed into the soil) was first observed (See Summit Wastewater Study, page 5). However, the site evaluation report included in the Summit Wastewater Study also identified consistent soil composition to depths of 41 to 54 inches, indicating potential for vertical movement of secondarily treated effluent beyond 36 inches bgs. Combined with the approximate seven-foot depth to groundwater, and with the closest well located over 600 feet away from the proposed leachfield, the design of the proposed wastewater system meets County standards and does not have the effect of contaminating groundwater. As an additional precaution for septic systems with pre-treatment facilities, the County requires: (a) the permittee or the permittee’s contractor to install monitoring wells within a 25-foot perimeter around the leachfield (substantially within the property boundaries and over 500 feet from the nearest well); and (b) the permittee’s certified service provider to monitor, maintain/clean, repair and submit twice a year to the County a report on the system’s performance. County staff also accompanies the service provider on the system inspection at least once every two years. These monitoring and reporting requirements are intended to detect issues of effluent quality in the soil, effect repair of potential system problems, and prevent contamination of groundwater. (See also Findings and Determination to the Twelfth Ground of Appeal.)

The wastewater treatment system improvements were designed in accordance with applicable State and County standards and were reviewed by Staff of the County’s Environmental Health Division to confirm compliance. Environmental Health Division Staff recommended approval of the Project, subject to conditions which were imposed by the Planning Commission. (See Updated COA Nos. 4.18(a) and 6.1(a).) Reports submitted by the Appellants’ hydrologic consultant, Tom Meyers, asserted that the Project would have significant environmental impacts but did not suggest that the wastewater improvements would not meet standards of design adopted by the County to protect public welfare and ensure minimal environmental effects. Likewise, Appellants’ hydrologic consultant did not assert that impacts would result even if the system is designed to County standards nor did he assert that the wastewater design is inadequate. A mitigated negative declaration cannot be attacked successfully on the theory that the conditions will not be enforced; compliance with the conditions will be presumed. When a court reviews a mitigated negative declaration, “the focus must be the use as approved, and not the feared or anticipated abuse.”[[43]](#footnote-43) See also Findings and Determination to the Thirteenth and Fourteenth Grounds of Appeal.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fifteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**P. Sixteenth Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that the Revised MND failed to adequately analyze the Project’s significant traffic impacts and ignored the daily increase in winery visitors. The Raymond Winery Use Permit Application states the number of visitors on an average day will double from 200 to 400. The trip generation used in the traffic analysis understates both Project-related peak hour traffic and impacts to the area roadways.

 **Findings and Decision:** The Board finds and determines that:

Contrary to Appellants’ assertions, the Project does *not* propose or authorize an increase in winery visitation. The Appellant’s assertion is based on the possibility that a violation may occur in the future should the expanded facilities be used to accommodate an increased number of visitors. This assertion is speculative and is outside the scope of CEQA analysis. Since 1991, the Raymond Winery has been authorized to have a maximum of 400 visitors per day. The Revised MND specifically acknowledged that “the overall number of visitor trips would not change with the requested modification, as the Project proponent requests no change to the winery’s permitted number of daily and marketing event visitors; however, the number of visitors traveling on Zinfandel Lane would decrease as visitors to the winery would have the ability and be encouraged to use State Route 29 to access both the Ticen Ranch and Raymond [Vineyards] properties.” (See Revised MND, pg. 32.) See also Findings and Determination to the Eighth, Ninth and Tenth Grounds of Appeal.

Under their existing use permit, Raymond Winery may host up to 400 visitors per day. Information provided to the County from the Applicant indicated that Raymond Winery’s visitation numbers are within this maximum permitted allowance. As noted in the Project application materials and in testimony from Applicant’s team, visitation varies between 200 and 400 visitors per day, with higher numbers attributed to the typical weekend day.[[44]](#footnote-44) The visitation levels were previously analyzed in the Revised MND that accompanied the use permit modification approved by the Planning Commission in 1991 (Use Permit U-89-46) which approved up to 400 visitors per day. The Project does not propose any change to the entitled visitation numbers, and thus, there is no increment in visitation, either upward or downward, that needed to be analyzed in the Revised MND for the Project.

As there is no request to change visitation or production numbers, the increased vehicle trips associated with the Project are attributed to the requested recognition of the 64-employee increase. As noted in the Findings and Determination to the Tenth Ground of Appeal, the traffic impact analysis of the Project (including the Crane Traffic Study, see page 1) used the “permitted” number of employees (26) rather than the “existing” condition (90) as the baseline measurement. This comparison better represents the potential impacts of the additional, unpermitted winery employees that the Applicant requested to be recognized under the use permit modification application. Thus, the trip generation numbers used in the environmental analysis are reflective of the requests encompassed within the Project.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Sixteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**Q Seventeenth Ground of Appeal.**

 **Appellants’ Position:** Appellants claim that the Revised MND failed to adequately analyze the safety effects of trucks on State Route 29 and the potential safety issues of auto-truck conflicts and mixing automobile traffic (including wine-tasting tourists) with heavy-vehicle traffic.

 **Findings and Decision:** The Board finds and determines as follows:

There is no known safety issue caused by the combination of trucks and passenger cars on the same road facility. All vehicular facilities on the property and connecting to State Route 29 have been designed in compliance with the Napa County Road and Street Standards and thus, are capable of accommodating both passenger and heavy truck traffic.

The Crane Traffic Study and follow up memorandum evaluated sight line adequacy at both the existing driveway at Zinfandel Lane, as well as, the proposed new driveway at State Route 29 on the Ticen Ranch parcel. (See Crane Traffic Study, page 25.) The Crane Traffic Study states that drivers making turns from State Route 29 would have sight distances of 700 to 800 feet and concludes that these existing sight distances are adequate to accommodate safe turn movements of vehicles from the roadways, without regard to vehicle type (passenger vehicle or truck). (See Crane “Traffic Impact Report dated August 26, 2016” page 25; and February 28, 2017, memorandum from Mark Crane, pg. 3.) The traffic analyses were reviewed by County Public Works Staff and were found to be acceptable.[[45]](#footnote-45)

Based on existing vehicle speeds of 40 to 60 miles per hour on State Route 29, drivers making the turning movement would be able to see an approaching vehicle for eight to 12 seconds. The two-way left-turn lane recently built by Caltrans on State Route 29, as well as, the exclusive left-turn pocket that the Applicant was conditioned to construct on Zinfandel Lane would provide sheltered areas for left-turning vehicles to wait safely outside of the way of through-traffic on each respective road.

The Crane Traffic Study also evaluated the Project’s existing connection to the public road network via the proposed connection at the improved driveway between Ticen Ranch and State Route 29. At maximum observed speeds of 60 miles per hour, a vehicle would need at least 580 feet of stopping distance to avoid a collision with a vehicle exiting the proposed private driveway. Existing sight distances of 700 to 800 feet, as referenced above, would provide adequate stopping distance in accordance with Caltrans’ Highway Design Manual. The shift of the Ticen Ranch driveway southward, as proposed by the Applicant in response to concerns raised by the Leeds, would offset the turning movements of winery visitor vehicles from the turning movements of vineyard maintenance vehicles that use the private road currently located opposite the existing Ticen Ranch driveway.

The Crane Traffic Study along with the peer review by County Traffic Engineer Marshall provides substantial evidence to support the Planning Commission’s finding that the Project would not result in significant traffic impacts.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the SeventeenthGround of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**R. Eighteenth Ground of Appeal.**

 **Appellants’ Position:** Appellants contend that the Revised MND failed to adequately analyze the Project’s contribution to cumulative impacts.

 **Findings and Decision:** The Board finds and determines as follows:

A lead agency must find that a project may have a significant effect on the environment and must therefore require an EIR if the project’s potential environmental impacts, although individually limited, are cumulatively considerable.[[46]](#footnote-46) “Cumulatively considerable” means that the incremental effects of a project are significant when viewed in connection with the effect of past projects, other current projects, and probable future projects.[[47]](#footnote-47) To assess whether a cumulative effect triggers the need for an EIR, the lead agency must answer two questions: whether the cumulative impact itself may be significant and whether the project’s incremental contribution to that effect would be “cumulatively considerable.”[[48]](#footnote-48) A project’s impacts must be found cumulatively considerable if its incremental effects are significant when viewed within the context of the effects of past, current, and probable future projects. [[49]](#footnote-49) The existence of significant cumulative impacts caused by other projects is not, standing alone, evidence that the project’s impact is cumulatively considerable.[[50]](#footnote-50) It must be shown that the project will contribute to an environmental impact for the impact to be characterized as a project-related cumulative impact.[[51]](#footnote-51) As further explained in Findings and Determination to the Twelfth Ground of Appeal, the Revised MND properly and adequately evaluated the Project’s cumulative impacts.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Eighteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**S. Nineteenth Ground of Appeal.**

 **Appellants’ Position:** Appellants claim that Applicant failed to comply with and implement a traffic mitigation measure from the Raymond Winery’s 1991 Use Permit which required installation of a westbound left-turn lane when traffic on Zinfandel Lane exceeds 2,000 trips per day (ADT). Applicant’s own traffic report[[52]](#footnote-52) shows in 2013 ADT at 3,512 per day, yet the improvements were never installed.

 **Findings and Decision:** The Board finds and determines as follows:

Appellants are correct that the Winery operators failed to comply with the previously-adopted mitigation measure requiring a left-turn lane on Zinfandel Lane.

The traffic study submitted by the Applicant identified the left-turn lane as a component of the Project improvements. (See Crane Traffic Study, page 26.) The Planning Commission imposed a specific condition of approval that requires the Applicant (permittee) to install the turn lane in a timely manner, as follows: (1) the permittee shall submit to the County Public Works Department an application for encroachment permit and a design plan for the left-turn lane, within 90 days of the date of the decision on the use permit modification request; (2) the permittee shall commence construction of the roadway improvement within 30 days of receiving the encroachment permit from Public Works; and (3) the Chief Building Official shall withhold any Final Certificate of Occupancy for any structure on the Raymond Vineyard and Cellars parcel, until completion of the left-turn lane on Zinfandel Lane. (See Updated COA No. 6.15(b).)

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Nineteenth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**T. Twentieth Ground of Appeal.**

 **Appellants’ Position:** Appellants assert that the Revised MND erroneously states that the Project would result in less than a half an acre of vineyard whereas the Staff Report discloses that the revised access driveway will actually require removal of more than two acres of vineyard. This additional loss of agricultural land constitutes a substantial revision of the Revised MND triggering recirculation of the document.

 **Findings and Decision:** The Board finds and determines as follows:

The Board acknowledges that the amount of vineyard that was initially disclosed to be removed was revised upward. However, the slight increase is not substantial and does not trigger recirculation. The Revised MND states that there is an estimated half-acre of vineyard removal necessary for construction of the parking lot and viewing platform on the Raymond Vineyard parcel. (See Revised MND, page 19.) The Planning Commission March 15, 2017 Staff Report indicates a higher number, closer to two acres, of vineyard area would be removed on bothparcels, for the parking lot, viewing platform and access road.[[53]](#footnote-53)

The increase in vineyard removal resulted from additional vines that would be removed due to realignment of the access road on the Ticen Ranch parcel to accommodate the neighbors’ (Leeds) concerns. During a recent vineyard replant on the Ticen Ranch parcel, the Applicant maintained an unplanted area in their desired alignment of the proposed access road. In response to concerns raised by the Leeds, the Applicant presented an alternative alignment that shifted the driveway at State Route 29 further to the south and the overall alignment of the road further to the north, thus necessitating removal of vineyards on the Ticen Ranch parcel that were not anticipated during the initial analysis of the Project.

The increase in vineyard removal from the revised road alignment would consequently result in corresponding reductions in air quality and greenhouse gas emissions from vineyard maintenance activities and demands for groundwater extraction for irrigation, thus reducing the potential environmental impacts of the Project, if the unplanted area of the original alignment remains unplanted. If replanting of the original alignment occurs, the total vineyard reduction would be roughly equal to the half an acre that was identified in the Revised MND.

Once a negative declaration has been circulated, it need not be recirculated for another round of review and comment unless it is “substantially revised” after the public notice of the first circulation period has been given.[[54]](#footnote-54) The addition of new information that clarifies, amplifies, or makes insignificant modifications to a negative declaration does not require recirculation.[[55]](#footnote-55) Here, the slight increase in vineyard removal was not a new significant effect nor did it require a new mitigation measure and therefore the Revised MND was not required to be recirculated.

 **Conclusions:**

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twentieth Ground of Appeal and upholds the Planning Commission’s adoption of the Revised MND and approval of the Project.

**Section 4. CEQA Determination.**

A. The Board has received and reviewed the Revised MND pursuant to the provisions of CEQA and of Napa County’s Local Procedures for Implementing CEQA, and finds that:

1. Prior to taking action on the Revised MND and the Project, the Board read and considered said Revised MND.

2. The Revised MND is based on independent judgment exercised by the Board.

3. The Revised MND was prepared and considered in accordance with the requirements of CEQA.

4. Considering the record as whole, there is no substantial evidence that the Project as mitigated will have a significant effect on the environment.

5. The Clerk of the Board of Supervisors is the custodian of the records of the proceedings on which this decision is based. Records are located at the Napa County Planning, Building, and Environmental Services Department, 1195 Third Street, Second Floor, Napa, CA.

B. The Board adopts the Revised MND and Mitigation Monitoring and Reporting Program prepared for the Project and finds according to the Revised MND, if mitigation measures are not included, the proposed Project would have potentially significant effects in the following area: biological resources and tribal cultural resources. The Project is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

**Section 5. 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 6. Summary of Decision.**

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

 A. Denies the Appeal in its entirety;

 B. Adopts the Revised MND and Mitigation Monitoring and Reporting Program prepared for the Project;

 C. Upholds the Planning Commission’s approval of the Project; and

 D. Approves Use Permit No. P15-00307-MOD subject to the Updated Conditions of Approval recommended by Staff and the Condition volunteered by the Applicant attached as Exhibit “A.”

**Section 7. Effective Date.**

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

**Section 8. 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 Board of Supervisors of the County of Napa, State of California, at a regular meeting of said Board held on the 24th day of October, 2017, by the following vote:

 AYES: SUPERVISORS PEDROZA, GREGORY and RAMOS

 NOES: SUPERVISORS DILLON and WAGENKNECHT

 ABSENT: SUPERVISORS NONE

 ABSTAIN: SUPERVISORS NONE

NAPA COUNTY, a political subdivision of

the State of California

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BELIA RAMOS, Chair of the

Board of Supervisors

|  |  |  |
| --- | --- | --- |
| APPROVED AS TO FORMOffice of County CounselBy: *Laura J. Anderson* Deputy County CounselDate: September 1, 2017  | APPROVED BY THE NAPA COUNTYBOARD OF SUPERVISORSDate: October 24, 2017Processed By:  Deputy Clerk of the Board | ATTEST: GLADYS I. COILClerk of the Board of SupervisorsBy: |

Attachment:

* Exhibit “A” - Updated COA

Exhibit A

UPDATED CONDITIONS OF APPROVAL

**BOARD OF SUPERVISORS APPEAL HEARING – OCTOBER 10, 2017**

**CONDITIONS OF APPROVAL**

**Raymond – Ticen Ranch Winery**

**Use Permit Major Modification Application Number P15-00307 – MOD**

**849 Zinfandel Lane and 1584 St. Helena Highway, St. Helena, California**

**Assessor’s Parcel Nos. (APNs) 030-270-013 and 020-270-012**

This permit encompasses and shall be limited to the project commonly known as Raymond-Ticen Ranch Winery, located at 849 Zinfandel Lane and 1584 St. Helena Highway, St. Helena. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. 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.

Where conditions are not applicable or relevant to this project, they shall be noted as “Reserved” and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

**PART I**

1. **PROJECT SCOPE**

This permit encompasses and replaces the terms of approval of all use permits previously approved for Raymond Vineyard and Cellars Winery (Use Permit Nos. 677475 and 498384, Major Modification Nos. U-89-46 and 95257, and Very Minor Modification Nos. P07-00829 and P10-00093), and shall be limited to:

* 1. Approval of an exception to the winery setback requirement for a historical building (County Code Section 18.104.235) at 1584 St. Helena Highway/State Route 29, in order to allow establishment of accessory tasting room and administrative office space in an existing, 19th century, 2,676 square foot residential structure to be converted to winery use, and which structure is located 267 feet into the required 600-foot setback from the centerline of State Route 29.
	2. Approval to modify an existing, 750,000-gallon per year winery to allow the following:
1. Raymond Vineyard and Cellar Parcel (APN 030-270-013) Site Improvements:
	* 1. Construction of a 4,635 square foot addition to Raymond Winery’s existing Building A, with the addition to house offices, restrooms, storage and utility areas, a staging kitchen and retail wine shop;
		2. Conversion of approximately 4,775 square feet of area within Building A from production to accessory (hospitality) use, including installation of a commercial kitchen allowing on-site preparation of food to be served to the public, for a total of approximately 18,940 square feet of accessory area and 14,980 square feet of production area in Building A;
		3. Conversion of an existing, 875 square foot residential pool house to winery accessory (visitor tasting) space;
		4. Removal of an existing, unfenced swimming pool and replacement of the swimming pool with a shallower, maximum seven-inch deep reflecting pool to be incorporated into the winery’s outdoor marketing event space;
		5. Installation of a 480 square foot, standalone modular kitchen unit (for cooking demonstration purposes only, not for preparation of food for public consumption) and an approximately 261 square foot herbarium;
		6. Construction of animal shelter structures that include an approximately 515 square foot farm animal house and an approximately 524 square foot dog shelter for pets of winery visitors;
		7. Construction of an approximately 1,910 square foot, uncovered, vineyard viewing platform (830 square foot platform deck, plus 1,080 square foot of stairs and accessible ramp) adjacent to the existing visitor parking lot, with a platform deck height of four feet above grade and a three-foot tall railing;
		8. An area for art installations at the existing Zinfandel Lane entrance to the winery, and in the lawn and biodynamic garden areas where outdoor marketing events are proposed to occur; and
		9. Installation of various utility improvements, a new 30,000-gallon potable water storage tank, upgrades to the existing sanitary wastewater treatment system and installation of a new, 12,000-gallon septic tank;
		10. Existing improvements consisting of:
2. A 23,587 square foot wine production building (Building B);
3. A 17,353 square foot, covered barrel work area attached to Building B;
4. A 43,074 square foot production, bottling, shipping/receiving and cellar building (Building C), of which approximately 8,325 gross square feet are used for accessory offices (in accordance with Very Minor Modification P10-00093);
5. A 17,644 square foot, uncovered crush pad adjacent to existing winery Building A;
6. Various ancillary agricultural use structures that include an 854 square foot pump house, a 2,532 square foot vineyard equipment storage building, a 1,155 square foot covered vineyard maintenance work area, and a 1,441 square foot, weight scale house and weight scale;
7. A 45-stall visitor parking lot; and
8. An existing single-family residence to be retained on-site and maintained as residential use;
	* 1. Up to 147 on-site parking stalls; and
		2. Construction of a 20-foot wide, asphalt-paved access roadway connecting the existing visitor parking lot to the new access roadway on the Ticen Ranch parcel, described in Condition of Approval (COA) No. 1.2.b.2, below.
9. Ticen Ranch Parcel (APN 030-270-012) Site Improvements:
10. Conversion of the existing, approximately 2,600 square foot single-family residential and 1,130 square foot barn structures on the property from residential and agricultural to winery accessory (hospitality and administrative office) space;
11. Construction of an improved driveway onto the Ticen Ranch property at the site’s existing driveway from State Route 29, and construction of a 20-foot wide, asphalt-paved roadway between the driveway and the eastern property line of the site;
12. Demolition of an existing, vacant garage with accessory apartment residence located east of the single-family residential structure;
13. Installation of ornamental landscaping, a biodynamic garden, and an 11-stall visitor and employee parking lot; and
14. Establishment of area for proposed art installations at the State Route 29 entrance to the winery and in the garden area where outdoor marketing events are proposed to occur;
15. Winery hours of operation between 6:00 a.m. and 11:00 p.m. during the months of August through November, and between 6:00 a.m. and 6:00 p.m. during the months of December through July;
16. Visitation, tours and tastings, and marketing plans as set forth in COA Nos. 4.0 through 4.3, below;
17. Food service with tours and wine tastings;
18. Allowance for up to half of the marketing events to occur outdoors, in the existing lawn and pool areas near the residence on the Raymond parcel, in the existing biodynamic garden area on the Raymond parcel, and in the proposed landscaped picnic area on the east side of the residence on the Ticen Ranch parcel (rescinds a portion of condition 12 of Use Permit U-89-46);
19. On-premises consumption of wine purchased on the property as set forth in COA No. 4.4, below;
20. Up to 90 employees (70 full-time, 10 part-time and 10 part-time harvest employees); and
21. Off-site improvements consisting of installation of a left-turn pocket on Zinfandel Lane at Wheeler Lane.

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 change in winery use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process.

2.0 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.

**3.0 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 property owner or permittee. 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 a compliance deficiency 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 so warranted, to commence revocation proceedings in accordance with the County Code.

**PART II**

**4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT**

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

4.1 GENERAL PROVISIONS

Consistent with the County Code, 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 (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.

Retail sales of wine shall be permitted as set forth in the County Code.

* 1. TOURS AND TASTINGS/VISITATION

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

1. Frequency: Daily
2. Maximum number of persons per day: 200 by-appointment
3. Maximum number of persons per week: 1,400
4. Hours of operation: 10:00 a.m. to 6:30 p.m., daily

“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 (weekdays between 8:00 a.m. and 9:00 a.m. and between 3:00 p.m. and 4:00 p.m., and weekend days between 3:15 p.m. and 4:15 p.m.)

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 dates of the visits. This record of visitors shall be made available to the Planning, Building and Environmental Services (PBES) Department upon request.

* 1. MARKETING

Marketing events shall be limited to the following:

a. Type of Event:

1. Frequency: Daily

2. Number of persons: 10 maximum

3. Time of Day: Between 11:00 a.m. and 10:00 p.m.

1. Midday events start no earlier than 11:00 a.m. and end no later than 2:30 p.m.;
2. Afternoon events start no later than 3:00 p.m. and end no earlier than 6:30 p.m.; and
3. Evening events start no earlier than 6:30 p.m. and end no later than 10:00 p.m.

b. Type of Event:

1. Frequency: Two times per week

2. Number of persons: 30 maximum

3. Time of Day: Between 11:00 a.m. and 10:00 p.m.

1. Midday events start no earlier than 11:00 a.m. and end no later than 2:30 p.m.;
2. Afternoon events start no later than 3:00 p.m. and end no earlier than 6:30 p.m.; and
3. Evening events start no earlier than 6:30 p.m. and end no later than 10:00 p.m.

c. Type of Event:

1. Frequency: Two times per month

2. Number of persons: 100 maximum

3. Time of Day: Between 11:00 a.m. and 10:00 p.m.

1. Midday events start no earlier than 11:00 a.m. and end no later than 2:30 p.m.;
2. Afternoon events start no later than 3:00 p.m. and end no earlier than 6:30 p.m.; and
3. Evening events start no earlier than 6:30 p.m. and end no later than 10:00 p.m.

"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. 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).

All marketing event activity, excluding quiet clean-up, shall cease by 10:00 p.m. 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.

Auction Napa Valley (ANV) events need not be included in a participating winery’s marketing plan because they are covered by ANV’s Category 5 Temporary Permit. The winery may utilize any ANV event authorized in this permit for another charitable event of similar size.

RECOGNITION OF PRE-WDO MARKETING AND VISITATION

Existing: Public Tours & Tastings

Frequency: Daily

Maximum number of persons per day: 200

Maximum number of persons per week: 1,400

Hours of operation: 10:00 a.m. to 6:30 p.m., daily

Location(s): Approximately 865 square foot tasting rooms on the ground floor of the Ticen Ranch house, and 830 square foot Tasting Room, 264 square foot Library, 1,283 square foot Crystal Cellar, and connecting entry and hallways in Raymond Vineyard and Cellars Building A.

4.4 ON-PREMISES CONSUMPTION

In accordance with State law and the PBES Director’s July 17, 2008 memo, “Assembly Bill 2004 (Evans) & 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 existing lawn and shallow pool areas near the existing single-family residence on the Raymond parcel, in the existing biodynamic garden area on the Raymond parcel, and in the proposed landscaped picnic area on the east side of the residential building on the Ticen Ranch parcel, as specified in the application. 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 COA Nos. 4.2 and 4.3 above.

* 1. RESIDENCE OR NON-WINERY STRUCTURES

Unless specifically authorized by this permit or a previously approved permit, the existing single-family residence east of the winery building on the Raymond Vineyard and Cellars parcelis classified for residential purposes only and 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 for periods of 30 days or more, pursuant to the County Code.

* 1. GRAPE SOURCE **[RESERVED]**

4.7 COMPLIANCE REVIEW

Permittee shall obtain and maintain all permits (use permits and modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC) and 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 the required ABC and/or TTB permits and/or licenses are suspended or revoked, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are reinstated.

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.

* 1. 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 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).

4.9 GROUND WATER MANAGEMENT - WELLS

This condition is implemented jointly by the Public Works and PBES Departments:

The permittee shall be required (at the permittee’s expense) to record well monitoring data (specifically, static water level no less than quarterly, and the volume of water no less than monthly). Such data will be provided to the County, if the PBES Director determines that substantial evidence1[[56]](#footnote-56) indicates that water usage at the winery is affecting, or would potentially affect, groundwater supplies or nearby wells. If data indicates the need for additional monitoring, and if the applicant is unable to secure monitoring access to neighboring wells, onsite monitoring wells may need to be established to gauge potential impacts on the groundwater resource utilized for the project. Water usage shall be minimized by use of best available control technology and best water management conservation practices.

In order to support the County’s groundwater monitoring program, well monitoring data as discussed above will be provided to the County if the Director of Public Works determines that such data could be useful in supporting the County’s groundwater monitoring program. The project well will be made available for inclusion in the groundwater monitoring network if the Director of Public Works determines that the well could be useful in supporting the program.

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 PBES Director shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the County Code and to protect public health, safety, and welfare.

4.10 AMPLIFIED MUSIC

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

4.11 TRAFFIC **[RESERVED]**

4.12 PARKING **[RESERVED]**

 4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES

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

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

4.14 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 allowed per COA No. 4.3 above.

4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM

The installation, operation and maintenance of the reflecting pond in place of the existing swimming pool west of the single-family residence on the Raymond parcel 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.

4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS

* + - 1. All lighting shall be permanently maintained in accordance with the lighting and building plans approved by the County. Lighting utilized during harvest activities is exempt from this requirement.

b. All landscaping and outdoor screening, storage, and utility structures shall be permanently maintained in accordance with the landscaping and building plans approved by the County. No stored items shall exceed the height of the screening. Exterior winery equipment shall be maintained so as to not create a noise disturbance or exceed noise thresholds in the County Code.

c. 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 prior to any change in paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.

d. Designated trash enclosure areas shall be made available and properly maintained for intended use.

 4.17 NO TEMPORARY SIGNS

Temporary off-site signage, such as “A-Frame” signs, is prohibited.

4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies’ requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

1. Environmental Health Division operational conditions as stated in their Memorandum dated March 21, 2016.
2. Engineering Division operational conditions as stated in their Memorandum dated January 24, 2017.

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 this permit.

* 1. OPERATIONAL MITIGATION MEASURES **[RESERVED]**

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT

* + - * 1. Staggered Employee Work Schedules

Employee work schedules shall be staggered throughout the day as a transportation system management measure, with no fewer than 28 production employees with shift ends at 2:30 p.m. or earlier, and no fewer than 17 hospitality employees with shift ends at 6:00 p.m. or later. This condition rescinds and replaces Project Revision Statement, Item No. 16, of Use Permit U-89-46.

* + - * 1. Minimization of Peak Hour Vehicle Trips

Except as allowed for certain employees as described the above, scheduling of recurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times (weekdays between 8:00 a.m. and 9:00 a.m. and between 3:00 p.m. and 4:00 p.m., and weekend days between 3:15 p.m. and 4:15 p.m.) All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Road and Street Standards.

* + - * 1. Limitation on Use of Dog Run

The 524 square foot dog shelter for pets of winery visitors, labeled as the “Frenchie Dog Run” on Sheet A1.11 of the use permit plans, shall not be used for temporary keeping of more than four dogs at any time, unless the permittee has obtained and maintained appropriate permits as required by Chapter 6.08 of the County Code.

* + - * 1. Restriction of Use of Access Road – Signage

Use of the private access road on the Ticen Ranch and Raymond Winery parcels shall be limited to guests, employees and contractors hired by the winery operators. To discourage through traffic of vehicles not associated with the winery operation, and to prevent unintentional use of vineyard lanes by any other than vineyard maintenance vehicles, the permittee shall install signage advising drivers of the private use of the road and prohibition on through traffic. Directional signage shall also be installed at the southeastern bend of the access road to navigate drivers toward the winery’s tasting rooms and away from unpaved vineyard lanes. Signage may be decorative in design but must include lettering of adequate size to be readable by drivers and must be printed with reflective paint or other means so as to be visible at night. The permittee shall submit plans for all directional signage proposed to be installed on-site, and the plans shall be subject to approval by the PBES Department before the permittee installs the signs.

* + - * 1. Parking and Loading Areas

The location of 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. In no case shall parking impede emergency vehicle access or public roads.

* + - * 1. Estate Grape Processing Requirement

At least 75 percent of the grapes grown on the Ticen-Ranch parcel (APN No. 030-270-12) shall be processed at the winery and used to make the Winery’s wine averaged over any three consecutive year reference period (“Three Year Grape Source Average”). “Three Year Grape Source Average” shall be the percentage of grapes used for the winery’s then-current production year and the two years immediately preceding such year, divided by three (3). The permittee shall keep records documenting the annual source of grapes and annual winery production to verify that at least 75 percent of the Ticen-Ranch parcel grapes over the Three Year Grape Source Average is used in the winery production. The records shall be provided to the PBES Department by March 31st of each calendar year, but shall be considered proprietary information and not available to the public. Information that is not proprietary shall be made available to the public as allowed by law.

4.21 PREVIOUS CONDITIONS

The permittee shall comply with the following previous conditions of approval for the winery use as consolidated into the attached document as Exhibit A. To the extent there is a conflict between a previous condition of approval identified in the attached document and these conditions, the more stringent condition shall control.

**PART III**

**5.0 PREREQUISITE FOR ISSUANCE OF PERMITS**

5.1 PAYMENT OF FEES

 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. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

**6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES**

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS

The attached 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:

1. Environmental Health Division plan review / construction / preoccupancy conditions as stated in their Memorandum dated March 21, 2016.
2. Fire Department plan review / construction / preoccupancy conditions as stated in their Inter-Office Memorandum dated January 18, 2017.
3. Engineering Services Division plan review / construction / preoccupancy conditions as stated in their Memorandum dated January 24, 2017.
4. Public Works plan review / construction / pre-occupancy conditions as stated in their Memoranda dated November 2, 2016, and March 8, 2017.

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.

 6.2 BUILDING DIVISION – GENERAL CONDITIONS

a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.

* + - 1. 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. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

* 1. LIGHTING – PLAN SUBMITTAL

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 CBC.

b. 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; 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 exempt from this requirement.

 6.4 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 Use Permit. The plan shall be prepared pursuant to the County’s Water Efficient Landscape Ordinance (Chapter 18.118 of the County Code) 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-inch 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 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.

 6.5 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.

 6.6 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 the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

 6.7 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 minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

* 1. 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.

 6.9 HISTORIC RESOURCES

All permitted work performed on any historic resources shall follow the latest edition of the Secretary of the Interior’s Standards 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.

6.10 DEMOLITION ACTIVITIES **[RESERVED]**

 6.11 VIEWSHED – EXECUTION OF USE RESTRICTION **[RESERVED]**

6.12 PERMIT PREREQUISITE MITIGATION MEASURES

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

a. Mitigation Measure BIO-1:

A qualified wildlife biologist knowledgeable in bat biology and behavior shall conduct a survey in order to determine presence or absence of bats and bat roosts in the garage building proposed to be demolished on the Ticen Ranch parcel. The survey shall include both day and night monitoring within a minimum, 24-hour period and shall be conducted in summer, during months of peak bat activity (June 1 through August 31).

The biologist shall compile the findings of the survey, along with the biologist’s resume or statement of qualifications, into a report that shall be submitted to the Napa County Planning Division for the Planning Division’s review and approval. If the biologist finds that bats or roosts are present in the garage building and determines that the roosts support special-status bat species, then the biologist’s report shall include a program for removal of the bat population from the structure. The program shall, at a minimum, identify: a) installation of artificial roosts on the property, of adequate number and size to support the estimated population of the roosts as observed by the biologist, with the artificial roosts installed no fewer than 15 days prior to commencement of the eviction process; b) location(s) for placement of artificial roosts on the property, with consideration given to identifying locations proximate to the garage building and that would minimize potential impacts of construction noise on any relocated bat populations; and c) a method to progressively secure the garage building as a means to humanely evict the bat population from the structure, with the eviction process to be completed no more than 30 days prior to demolition of the structure

Eviction of the bats shall be scheduled so as not to occur during bat breeding/maternity roosting (approximately April 15 through August 31) or when bats are in torpor (approximately October 15 through March 1) of any year. The process of humane eviction and installation of the artificial roosts shall be overseen by the biologist.

The biologist’s survey shall remain valid for up to one year from the last date of the survey. If the garage building is not demolished within one year of the latest date of survey of the structure, then the biologist shall conduct a new survey prior to demolition of the structure, following the procedure outlined in the above paragraphs.

Method of Monitoring:

The biologist conducting the bat survey shall compile the findings of the survey into a written report. The biologist or the permittee shall, immediately upon completion of the report, transmit the report to the Napa County Planning Division for the Planning Division’s review and approval. No permit to demolish the garage building on the Ticen Ranch parcel shall be issued to the permittee until the Planning Division has approved of the report and either: a) the results of the survey are negative with respect to presence of special-status bat species, and the report confirms that no further action is required; or b) the results of the survey are positive, and the permittee has submitted evidence satisfactory to the Planning Division that the permittee has completed the process of humane eviction and installation of artificial roosts for the observed bat population.

Responsible Agency:

Napa County Planning, Building & Environmental Services Department

b. Mitigation Measure TCR-1:

Prior to commencement of construction of project improvements on the Ticen Ranch parcel, the permittee shall coordinate with one or more representatives of a California Native American tribe that is traditionally and culturally affiliated with the project area pursuant to Public Resources Code Section 21080.3.1. Pre-construction coordination shall, at a minimum, include the following:

1. Submittal of copies of grading plans to the tribal representative, concurrently with submittal of the grading permit application to the PBES Department.
2. Training of construction field crews, by a tribal representative, of the potential for presence of Native American resources on the property, the potential types of resources that could be found on-site, and the procedures to follow in the event of discovery of such resources.
3. Presence of a tribal representative on-site during survey/marking and initial rough grading of improvements (vehicular access roads and parking stalls) on the Ticen Ranch parcel.

Method of Monitoring:

Prior to submittal of the first grading or building permit application, the permittee shall contact Planning staff of PBES to obtain contact information for the California Native American tribes that are traditionally and culturally affiliated with the project area pursuant to Public Resources Code section 21080.3.1, and whose agents requested consultation with the County during the process of review of the requested use permit modification. Concurrently with submittal of the grading application for Ticen Ranch parcel improvements to Engineering and Building staff of PBES, the permittee shall submit confirmation of submittal of the grading plans to the tribal representative previously identified. If the permittee neglects to submit such confirmation to PBES, then Planning staff of PBES will convey a copy of the plans to the tribal representative upon receipt of the grading permit application.

Prior to issuance of the grading permit, the permittee shall submit to Planning staff of PBES confirmation of pre-construction training of construction field crews about potential presence of Native American resources on the project site and the correct procedures to follow in the event of discovery of such resources. Confirmation shall be in the form of a written letter or certification from the tribal representative conducting the training.

No fewer than 10 days prior to commencement of grading, the permittee shall concurrently contact the tribal representative and Planning staff of PBES in writing, receipt confirmed, to advise of the start date of project grading and to invite the representative and staff member to be present during survey of and initial rough grading of the site improvements.

Responsible Agency:

Napa County Planning, Building & Environmental Services Department

 6.13 PARCEL CHANGE REQUIREMENTS

 The permittee shall comply with the following requirements:

a. PARCEL MERGER **[RESERVED]**

b. LOT LINE ADJUSTMENTS **[RESERVED]**

 c. EASEMENTS **[RESERVED]**

 6.14 FINAL MAPS **[RESERVED]**

 a. COUNTY SURVEYOR **[RESERVED]**

b. CONDITIONS, COVENANTS AND RESTRICTIONS (CC&Rs) **[RESERVED]**

 6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING

PROCESS

* + - * 1. Demolition Activities

Final demolition plans of the Raymond residence swimming pool and the Ticen Ranch garage buildingshall 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 are allowed within established stream setbacks unless specifically approved as part of this permit in COA No. 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.

A landscape plan or restoration plan for the demolition area (existing residential and accessory structure) shall be submitted showing how the area will be replanted with an edible and ornamental plant garden in accordance with the preliminary use permit plans. The landscape plan shall be approved by the PBES Director or designee prior to installation.

* + - * 1. Ticen Ranch Driveway Improvement and New Winery Access Road

Prior to issuance of a building permit for any improvement on the Ticen Ranch property, or within 180 days of the date of this approval, whichever occurs first, the permittee shall obtain: 1) an encroachment permit from the California Department of Transportation (Caltrans); and 2) a grading permit from the County PBES Department, for the construction of the on-site access road and the improved driveway onto the property from State Route 29. The location of driveway onto the Ticen Ranch property from State Route 29 shall be one of the two locations identified on the project plans, and shall be subject to final approval by Caltrans. The permittee shall be responsible for ensuring completion of the construction of the improved driveway and access road connecting the Ticen Ranch parcel to the Raymond Vineyard and Cellars parcel, within 180 days of the date of receipt of the encroachment permit from Caltrans or the grading permit from the County, whichever occurs later.

The PBES Director or the Director’s designee may extend either timeline specified in this COA 6.15.a, upon showing of good cause by the permittee. Any request for extension of time must be submitted in writing by the permittee and received by the PBES Director before the end of the timelines specified herein, as those timelines may be extended by the PBES Director.

* + - * 1. Caltrans Encroachment Permit

Work or traffic control related to improvement of the driveway at State Route 29, and that encroaches into the State right-of-way, requires an encroachment permit issued by Caltrans. Prior to commencement of work related to the driveway at State Route 29, the permittee shall submit a completed encroachment permit application, environmental documentation, and five sets of plans clearly indicating State right-of-way to the following address: Attn: District Office Chief, Office of Permits, California Department of Transportation, District 4, P.O. Box 23660, Oakland, California 94624-0660. Traffic-related mitigation measures shall be incorporated into the construction plans prior to the encroachment permit process. The permittee may refer to the following website for more information: <http://www.dot.ca.gov/hq/traffops/developserv/permits>

* + - * 1. Removal of Swimming Pool

Within 10 days of the date of this approval, the permittee shall submit to the PBES Department an application for building permit to remove the unfenced swimming pool on the Raymond Vineyard and Cellars parcel. The permittee shall drain and demolish the swimming pool and replace it with a maximum seven-inch deep water or planted at-grade landscape feature, within 30 days of the date of receipt of the building permit.

* + - * 1. Building Code Compliance

Within 30 days of the date of this approval, the permittee shall meet with the County Building Official (CBO) or the CBO’s designee, in order to identify all corrective measures necessary and a timeline to achieve compliance with Building Code, Fire Code and Title 24 Accessibility requirements for all buildings on the Raymond Vineyard and Cellars parcel. In identifying necessary corrective measures, priority shall be given to those measures necessary to protect the safety of winery visitors and employees. The permittee may request a code compliance site inspection from the CBO or the CBO’s designee, in order to facilitate the effort of identifying the corrective measures necessary to achieve such compliance.

Within 45 days of the date of that meeting between the permittee and CBO, the permittee shall submit to the Building Division of the PBES Department an application for building permit for the code compliance requirements for winery Building A and the JCB Lounge on the Raymond parcel, in order to correct items of non-compliance with Building Code, Fire Code and Title 24 Accessibility requirements. Upon receiving a building permit for the work, the permittee shall complete construction within 45 days of building permit issuance.

Consistent with County Code Section 15.04.070, the CBO may extend the 45-day periods specified in this COA No. 6.15.e, taking into consideration the severity of the code violation with respect to public safety, or other factors that the CBO determines are reasonable. Any request for extension of time must be submitted in writing by the permittee and received by the CBO before the end of the timelines specified herein, as those timelines may be extended by the CBO.

* + - * 1. Correction of Violations Prior to Certain Modified Winery Operations and New Construction

The permittee shall remedy, to the satisfaction of the PBES Director, all matters of compliance as generally referenced in COA Nos. 6.15.d and 6.15.e, prior to conducting any outdoor marketing event, commencing with on-premises consumption of wine (COA No. 4.4) or receiving a building permit for the vineyard viewing platform or Building A additions summarized in COA Nos. 1.2.a.1 and 1.2.a.7.

* + - * 1. Merger of Parcels

The permittee shall submit an application to merge the Raymond Vineyard and Cellars parcel (APN 030-270-013) with the Ticen Ranch parcel (APN 030-270-012), within than 10 days after submitting a building permit to establish winery accessory use area in the Ticen Ranch house and barn structures. PBES staff shall conduct no final inspection of the Ticen Ranch house or barn, and the permittee shall not establish any winery accessory use (tours and tastings, marketing events, or administrative offices) on the Ticen Ranch property, prior to completion and recordation of the merger of the parcels.

**7.0 PROJECT CONSTRUCTION**

 Permittee shall comply with the following during project construction:

 7.1 **SITE IMPROVEMENTS**

Please contact Engineering Services with any questions regarding the following.

a. GRADING AND SPOILS

All grading and spoils generated by construction of the project facilities shall be managed per Engineering Services direction. Alternative locations for spoils are permitted, subject to review and approval by 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.

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 miles per hour.

 c. AIR QUALITY

During all construction activities the permittee shall comply with the most current version of BAAQMD Basic Construction Best Management Practices including but not limited to the following, as applicable:

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. Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) two times per day.

3. Cover all haul trucks transporting soil, sand, or other loose material off-site.

4. Remove all visible mud or dirt traced onto adjacent public roads by 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 off equipment when not in use or reducing the maximum idling time to five (5) minutes (as required by State 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 shall have 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/perpfact_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 California Regional Water Quality Control Board.

* 1. 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 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 permittee shall comply with the requirements of Public Resources Code Section 5097.98.

* 1. CONSTRUCTION NOISE

Construction noise shall be minimized to the greatest extent practical and 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 the County Code. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site, if at all practicable. 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 a.m. to 5:00 p.m.

* 1. CONSTRUCTION MITIGATION MEASURES **[RESERVED]**

7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL **[RESERVED]**

**8.0 TEMPORARY CERTIFICATE OF OCCUPANCY - PREREQUISITES**

A Temporary Certificate of Occupancy (TCO) may be granted pursuant to the County Code to allow the commencement of production activities prior to completion of all project improvements. Permittee shall comply with the following before a TCO is granted:

 8.1 TEMPORARY OCCUPANCY

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 County Code which is 180 days. 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.

**9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES**

Permittee shall comply with the following before a Final Certificate of Occupancy is granted by the County Building Official, which upon granting, authorizes all use permit activities to commence.

9.1 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.

9.2 SIGNS **[RESERVED]**

* 1. GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Fire Department to assure that the design allows 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 pursuant 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.

 9.4 LANDSCAPING

Landscaping shall be installed in accordance with the approved landscaping plan.

 9.5 ROAD OR TRAFFIC IMPROVEMENT REQUIREMENTS **[RESERVED]**

 9.6 DEMOLITION ACTIVITIES

All demolition activities associated with the Raymond residence swimming pool and Ticen Ranch garage building shall be completed, landscaping installed, and debris cleared from the subject parcel.

 9.7 GRADING SPOILS

All spoils shall be removed in accordance with the approved grading permit and/or building permit.

* 1. MITIGATION MEASURES APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY **[RESERVED]**

9.9 OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY

Left-Turn Lane

The permittee shall be responsible for construction of a left-turn lane on Zinfandel Lane prior to the Issuance of Final Certificate of Occupancy by the Building Division for any structure on the Raymond Vineyard and Cellars parcel. Within 90 days of the date of this approval, the permittee shall submit to the Public Works Department an application for encroachment permit and a design plan for the left turn lane. The permittee shall commence construction of the left turn lane within 30 days of the date of receipt of the encroachment permit and Public Works’ approval of the design plan for the left turn lane. The left turn lane 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.

The PBES Director or the Director’s designee may extend either timeline specified in this COA 9.9a, upon showing of good cause by the permittee. Any request for extension of time must be submitted in writing by the permittee and received by the PBES Director before the end of the timelines specified herein, as those timelines may be extended by the PBES Director.

Installation of Bicycle Racks

The permittee shall install racks for secure parking for a minimum of 10 bicycles on-site, with racks for no fewer than two bicycles located on the Ticen Ranch parcel, in accordance with County Code Section 18.110.040. Racks shall be placed proximate to employee and visitor parking lots on the properties and shall be installed prior to issuance of a Final Certificate of Occupancy.

Signs

Detailed plans, including elevations, materials, color and lighting for any winery identification or directional signs shall be submitted to the PBES Department for administrative review and approval prior to installation. 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 County Code Chapter 18.116. Any off-site signs allowed shall be in conformance with the County Code.

**Exhibit A**

**Previous Conditions of Winery Use Permit Approval**

**Raymond-Ticen Ranch Winery**

**(P15-00307 – MOD, COA No. 4.21)**

1. PARKING (U-89-46, Condition No. 6, updated as indicated to reflect new winery access road)

Visitor parking areas shall be clearly delineated. ~~Access to the service roads west of the visitor parking area and south of the visitor parking lot driveway shall be restricted to winery and emergency personnel (including the owner, resident and visitors to the residence).~~ Parking control signs acceptable to the ~~Planning~~ PBES Director shall be installed to indicate “No parking” areas and “Winery Personnel Only” areas. Location and sign specifications shall be included on the required landscape plan.

1. GRAPE SOURCE (U-89-46, Condition No. 10)

The ~~applicant~~ permittee shall report to the Department on an annual basis the source of ~~his~~ the permittee’s grapes, verifying that 75 percent of the annual production over 250,000 gallons is from Napa County grapes. The report shall include the grape tonnage and the Assessor’s Parcel Number(s) where grown. Such report shall be proprietary and not available to the public.

1. RETAIL SALES (U-89-46, Condition No. 12, updated as indicated)

Retail sales shall be limited to wine fermented or re-fermented and bottled at the winery, and wine produced by or for the winery from grapes grown in Napa County and wine glasses sold only in conjunction with tasting and those pre-existing uses specifically authorized by any approved Certificate of Legal Non-Conformity issued pursuant to Section ~~12856~~ 18.132.050 of the Napa County Code. No picnicking or outdoor wine tasting shall be permitted, except that wine purchased on the property may be consumed on-site in those areas designated and described in COA No. 4.4, above, and up to half of the annual marketing events may occur outdoors in those areas designated and described in COA 1.2.f, above.

1. PRODUCTION CAPACITY (U-89-46, Condition No. 14, updated as indicated)

The production capacity of the winery shall not exceed 750,000 gallons per year as averaged over any consecutive three-year period. In any given year, production shall not exceed 900,000 gallons. The ~~applicant~~ permittee shall report to the ~~Planning~~ PBES Department each year the number of gallons produced during the year.

1. FOOD SERVICE (U-89-46, Condition No. 16)

All food serviced outlined in the Marketing Plan described in COA No. 4.3, above, shall be provided without charge except to the extent of cost recovery.

1. COINCIDENCE OF MARKETING EVENTS AND TOURS/TASTINGS (U-89-46, Condition No. 18)

All meeting and food service activities outlined in the Marketing Plan ~~(Exhibit A)~~ (COA 4.3, above), for groups of 80 or more persons, shall be conducted during the hours when the tour and visitors’ center is closed. If the public parking lot is fully occupied by such an activity, irrespective of the number of invitees, the tour and visitor center shall be closed and a publicly-visible signed posted to that effect.

1. ON-SITE PARKING (U-89-46, Project Revision Statement, Item No. 11, updated as indicated)

Parking of vehicles along Wheeler Lane or outside the ~~75~~ 158 improved parking spaces present shall be prohibited except during crush, when seasonal employees may park outside improved parking areas. Readily perceivable “No Parking” signs shall be installed and maintain as necessary in other areas where people might park, including but not limited to along the edges of the driveways to the expanded winery.

1. RESTRICTION OF USE OF ON-SITE PARKING (U-89-46, Project Revision Statement, Item No. 12)

Access to the property shall be denied at the intersection of the winery driveway with Zinfandel Lane when the improved parking areas provided on-site are full. A sign readily and easily readable by the passing motoring public on Zinfandel Lane indicating that the winery parking lot is full shall be placed at said intersection.

1. MARKETING EVENTS DURING PEAK HOUR OF TRAFFIC (U-89-46, Project Revision Statement, Item No. 14)

No dinners, festivals or other marketing events shall be held at the expanded winery that begin or end during peak travel periods (between 4:00 p.m. and 6:30 p.m.)

1. RESTRICTION ON DISPLAYS (U-89-46, Project Revision Statement, Item No. 15)

The fact that the subject winery has displays of art or items of historical, enological or viticultural significance, or other special attractions shall not be promoted nor advertised. This prohibition shall apply to any promotional literature or brochures the winery publishes or advertisements in trade or general circulation publications it places.

1. CARPOOLING ENCOURAGED (U-89-46, Project Revision Statement, Item No. 17)

Winery employees shall be encouraged to carpool to the greatest extent practical.

1. TRANSPORTATION OF BARRELS OFF-SITE PROHIBITED (U-89-46, Project Revision Statement, Item No. 19, updated as indicated)

~~Upon completion of the construction of the proposed wine production facility, t~~There shall be no transport of filled wine barrels between the winery and any off-site storage or aging facilities during peak hours of traffic (weekdays between 8:00 a.m. and 9:00 a.m. and between 3:00 p.m. and 4:00 p.m., and weekend days between 3:15 p.m. and 4:15 p.m.) or between the hours of 11:00 p.m. and 7:00 a.m.

1. The complete Appeal Packet is on file with the Clerk of the Board of Supervisors. [↑](#footnote-ref-1)
2. This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the actual Appeal dated April 11, 2017. [↑](#footnote-ref-2)
3. See February 1, 2017, Planning Commission Staff Report. [↑](#footnote-ref-3)
4. It has been the understanding of Staff through written correspondence with Applicant’s representative Donna Oldford that the intent of the winery operators is to change the facility name to “Raymond-Ticen Ranch Winery” upon approval of the use permit modification. This further supports the position that the property will be comprised of a single winery with multiple supporting accessory uses. [↑](#footnote-ref-4)
5. See Government Code section 66499.20.3. [↑](#footnote-ref-5)
6. Averaged over any consecutive three-year period, with production in any year not to exceed 900,000 gallons of wine. [↑](#footnote-ref-6)
7. *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 668. [↑](#footnote-ref-7)
8. *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, 816. [↑](#footnote-ref-8)
9. *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 717–718 (*Sequoyah Hills*); *Friends of Lagoon Valley, supra*, 154 Cal.App.4th at p. 817. [↑](#footnote-ref-9)
10. *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678 (*San Franciscans*). [↑](#footnote-ref-10)
11. *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 378. [↑](#footnote-ref-11)
12. *Friends of Lagoon Valley, supra*, 154 Cal.App.4th at p. 816. [↑](#footnote-ref-12)
13. *San Franciscans, supra*, 102 Cal.App.4th at pp. 677–678, quoting *Save Our Peninsula, supra*, 87 Cal.App.4th at p. 142; *Naraghi Lakes Neighborhood Preservation Assn. v. City of Modesto*, 1 Cal. App. 5th 9, 17-19. [↑](#footnote-ref-13)
14. See Planning Commission February 1, 2017 Staff Report, Attachment “A” – Recommended Findings. [↑](#footnote-ref-14)
15. Public Resources Code Section 21080(e), 21082.2(c). [↑](#footnote-ref-15)
16. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. [↑](#footnote-ref-16)
17. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1422 (letter from engineering professor about groundwater and erosion impacts was not substantial evidence because it lacked an adequate foundation of specific information about the project). [↑](#footnote-ref-17)
18. “Temporary event” or “event” means any festival, fair, show, showcase, house or garden design tour, concert, dance, rally, parade, demonstration or competition of creative athletic form, or any other gathering or assemblage of individuals for the purpose of observing or engaging in expressive activities within the ambit of the First Amendment of the United States Constitution and Sections 2, 3 and 4 of Article 1 of the California Constitution, including, but not limited to, music, dance, theater, speech, athletics, or any other visual, audio, or tactile arts or combination thereof, including incidental retail sales of the products of such activities, as long as such sales are not advertised off-site; which is held at any place other than a highway as defined in Section 10.24.010 of this code, a permanent building or installation constructed and primarily used for the purpose of conducting such activity or one similar thereto, property owned or leased by the state of California, or property owned or leased by a public school district for use as a public school site, and to which the public is invited or admitted with or without the payment of an admission charge. (See NCC 5.36.010.) [↑](#footnote-ref-18)
19. See Board of Supervisors Resolution No. 2010-48, Establishing Interpretive Guidance on Marketing Activities. [↑](#footnote-ref-19)
20. *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690 (city’s agreements with two water districts for assignments of rights to Central Valley Project water were separate projects because the assignments were independent of each other and were approved by separate irrigations districts). [↑](#footnote-ref-20)
21. *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396. [↑](#footnote-ref-21)
22. *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1362. “The record reveals that the various runway projects are not similarly “linked” to the ADP either functionally or as part of the Port's concrete planning objectives for the airport.” [↑](#footnote-ref-22)
23. *Communities for a Better Environment v. South Coast Air Quality Management Dist*., (2010) 48 Cal.4th 310. [↑](#footnote-ref-23)
24. See CEQA Guidelines Section 15162; *Abatti v. Imperial Irrig. Dist.* (2012) 205 Cal.App.4th 650, 676. [↑](#footnote-ref-24)
25. Because Raymond Winery is pre-WDO winery, 200 of the visitors may be “drop in” without an appointment and 200 of the visitors are by appointment only. [↑](#footnote-ref-25)
26. As noted in the application materials, production in recent years was as little as 450,000 gallons of wine in 2016 but was at the maximum level in 2010 at 750,000 gallons. The application materials also note daily variations in visitation between 200 and 400 visitors per day. (See Use Permit Application, pages 9 and 15, attached to February 1, 2017, Planning Commission Staff Report.) [↑](#footnote-ref-26)
27. [*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1233.](https://advance.lexis.com/api/document/collection/cases/id/5782-24N1-F04B-N2BG-00000-00?page=1233&reporter=3062&context=1000516) [↑](#footnote-ref-27)
28. [*Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453.](https://advance.lexis.com/api/document/collection/cases/id/3Y5F-5000-0039-418D-00000-00?page=1453&reporter=3062&context=1000516) [↑](#footnote-ref-28)
29. See Planning Commission Meeting March 15, 2017 Transcript, pg. 24:12-27; pg. 19:4-11. [↑](#footnote-ref-29)
30. See Planning Commission Meeting February 1, 2017, Transcript, pg. 23:21-28. [↑](#footnote-ref-30)
31. Joshua Tree Downtown Bus. Alliance v. County of San Bernardino, 1 Cal.App.5th 677, 690; Lucas Valley Homeowners Ass'n v. County of Marin (1991) 233 Cal.App.3d 130 (expressions of generalized concerns and fears about traffic and parking impacts, and anecdotal statements about parking problems at another facility, are not substantial evidence); Leonoff v. Monterey County Bd. of Supervisors (1990) 222 Cal.App.3d 1337 (opponents' subjective concerns and unsubstantiated opinions about dangerous traffic conditions are not substantial evidence); Perley v. Board of Supervisors (1982) 137 Cal.App.3d 424 (neighbors' unsubstantiated fears and concerns about project's impacts lacked objective basis for challenge and did not constitute substantial evidence.) [↑](#footnote-ref-31)
32. Public Resources Code Section 21083(b); 14 Cal Code Regs Sections 15064(h)(l), 15065(a)(3). [↑](#footnote-ref-32)
33. Public Resources Code Section 21083(b)(2); 14 Cal Code Regs Sections 15064(h)(l), 15065(a)(3); *San Bernardino Valley Audubon Soc'y v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 398 (EIR required for habitat conservation plan in part because initial study did not adequately explain why cumulative adverse effects to endangered species would not occur). [↑](#footnote-ref-33)
34. 14 Cal Code Regs Section 15064(h)(l). [↑](#footnote-ref-34)
35. 14 Cal Code Regs Sections 15064(h)(l), 15065(a)(3). *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 622 (citing this text). [↑](#footnote-ref-35)
36. 14 Cal Code Regs Section 15064(h)(4). [↑](#footnote-ref-36)
37. *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690 (citing this text). [↑](#footnote-ref-37)
38. 14 Cal. Code Regs Section 15063(a)(3). [↑](#footnote-ref-38)
39. *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal.App.3d 130, 164. [↑](#footnote-ref-39)
40. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. [↑](#footnote-ref-40)
41. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308. [↑](#footnote-ref-41)
42. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1395. [↑](#footnote-ref-42)
43. *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 Cal.App.3d 130, 164. [↑](#footnote-ref-43)
44. See Use Permit Application, pages 9 and 15, attached to the February 1, 2017, Planning Commission Staff Report; Planning Commission Meeting February 1, 2017, Transcript pages 30-33. [↑](#footnote-ref-44)
45. See November 2, 2016, and March 8, 2017, memoranda included with Attachment B to March 15, 2017, Planning Commission Staff Report. [↑](#footnote-ref-45)
46. Public Resources Code Section 21083(b); 14 Cal Code Regs Sections 15064(h)(l), 15065(a)(3). [↑](#footnote-ref-46)
47. Public Resources Code Section 21083(b)(2); 14 Cal Code Regs Sections 15064(h)(l), 15065(a)(3); *San Bernardino Valley Audubon Soc'y v. Metropolitan Water Dist.* (1999) 71 Cal.App.4th 382, 398 (EIR required for habitat conservation plan in part because initial study did not adequately explain why cumulative adverse effects to endangered species would not occur). [↑](#footnote-ref-47)
48. 14 Cal Code Regs Section 15064(h)(l). [↑](#footnote-ref-48)
49. 14 Cal Code Regs Sections 15064(h)(l), 15065(a)(3). *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 622 (citing this text). [↑](#footnote-ref-49)
50. 14 Cal Code Regs Section 15064(h)(4). [↑](#footnote-ref-50)
51. *Sierra Club v. West Side Irrig. Dist.* (2005) 128 Cal.App.4th 690 (citing this text). [↑](#footnote-ref-51)
52. See Omni Means Report prepared for the Raymond Winery (2014). [↑](#footnote-ref-52)
53. See Planning Commission Meeting, March 15, 2017 Staff Report, page 7. [↑](#footnote-ref-53)
54. See 14 Cal Code Regs Section 15073.5(a). [↑](#footnote-ref-54)
55. See 14 Cal Code Regs Section 15073.5(c)(4). [↑](#footnote-ref-55)
56. 1 Substantial evidence is defined by case law as evidence that is of ponderable legal significance, reasonable in nature, credible and of solid value. The following constitute substantial evidence: facts, reasonable assumptions predicated on facts; and expert opinions supported by facts. Argument, speculation, unsubstantiated opinion or narrative, or clearly inaccurate or erroneous information do not constitute substantial evidence. [↑](#footnote-ref-56)