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L. Anderson, CC
N. Galambos, PW
Appellant

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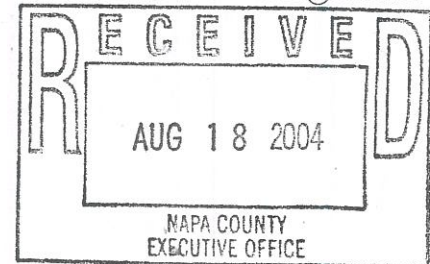
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August 18, 2004

Napa County Board of Supervisors
Napa County Clerk of the Board's Office
1195 Third Street, Room 310
Napa, CA 94559



Re: Harrison Vineyards Winery
Dan Wojtkowiak Appeal of Planning Commission Approval of Harrison Vineyards
Winery Use Permit Modification Request-03383-MOD
CEQA Status: Mitigated Negative Declaration Prepared

Dear Members of the Board:

I represent applicant Harrison Vineyards ("Harrison") in connection with the pending appeal by Dan Wojtkowiak ("Appellant") to the Board of Supervisors of the Napa County Conservation, Development and Planning Commission's June 2, 2004 approval (the "Approval") of Harrison's use permit modification application (the "Application"). The Approval authorized (1) an increase in production capacity from 7,200 to 15,000 gallons per year, (2) conversion of an existing 2,877 square foot olive oil facility to winery storage and office space (and relinquishment of olive oil production), (3) public tours and tasting by appointment with 30 persons per week, (4) a marketing plan with a maximum of 40 persons per event and two wine auction events with a maximum of 40 persons per event, (5) addition of retail wine sales, (6) six additional parking spaces for a total of 10 spaces; and (7) related road improvements to Highway 128.

Appellant challenges the Approval solely on the ground that the Phase One Water Study is flawed, but **not** because its calculations of the water usage demands for the Harrison project are inaccurate. Rather, Appellant "believes" that the water sources that supply those uses on the Harrison property supposedly are inadequate and claims that such asserted water supply problem should have impacted the Planning Commission's analysis of the Harrison project's water **demands**. Appellant has presented no credible evidence to controvert the Planning Commission's determination, supported by substantial evidence, that Harrison's water usage demands fall well within the County's established threshold for water extraction for the area encompassed by the Project, or any evidence that Appellant, who lives 200 feet from the Harrison property, would in any way be adversely affected by the Harrisons' water usage.

The Appeal should be dismissed. Harrison's estimated water usage, even with the proposed expansion of winery production capacity, more than meets the Planning Commission's Phase One water study threshold levels. Appellant's bald assertion that Harrison may not be able to meet its water needs from water sources on the Harrison property is both irrelevant to the Project Approval and also is not supported by any, let alone substantial evidence presented to the Planning Commission or to the Board. Although not necessary to the Board's decision, Harrison has always been able to meet its water usage needs from available water sources and storage. The Board should uphold Staff's determination that no further water analysis is required.

I. Description of The Property and Available Water Sources.

The Harrison property is a 44.85-acre parcel located on the east side of Sage Canyon Road/Highway 128, approximately ¼ mile from the intersection with Chiles-Pope Valley Road, and is zoned AW. Approximately 17.5 acres of the property are planted in vineyards, and one-acre is devoted to a producing olive orchard. The property includes a main residence, guest cottage, winery and olive oil production facility that, by the Application, will be converted to winery office and storage space, and olive oil production eliminated. There also is an on-site, 1.5 acre-foot storage reservoir, an approximately 30,000-gallon cistern and two cement 8000-gallon water storage tanks, for additional storage, which can be fed into the reservoir. Attached as Exhibit A is a Plot Plan for the Property submitted in connection with Harrison's use permit application.

Water sources for the Harrison property consist of two wells and an on-site spring. One well, drilled in the mid-1990s, is located approximately 200 feet from the guest cottage, and serves the cottage and the Harrison reservoir. A second, smaller well, drilled in 1989, is located approximately 20 feet from, and feeds into a community water tank that Harrison shares with the Allen and Bryant Family Vineyards properties. Originally, the Harrison property was part of a larger parcel that was subdivided into three properties, one owned by Harrison, and the other two, by Ron and Gloria Allen and Bryant Family Vineyards. The spring, which has existed prior to the Harrison ownership (and which Harrison believes has existed since the 1950s), covered the entire parcel, and after subdivision, by private water use agreement, also serves the same three properties. The spring also feeds into the three-user community water tank. The water allocated to Harrison from the community water tank feeds into a cistern which is used for: (a) potable water for the office and residence, (b) winery production, and (c) irrigation (which is either directly from the cistern or fed into the reservoir first). Pursuant to the private water use agreement, Harrison is entitled to extract water 13 hours per day at 20 gallons per minute. Harrison has cross-piped everything so it can irrigate from the reservoir or cistern. Similarly, it has the ability to refill the reservoir from the cistern and the cottage well. Appellant, whose property is located 200 feet from the Harrison property at higher elevation, is not a party to the private water use agreement between Harrison, the Allens and Bryant Family Vineyards, and has no rights with respect to any of the water produced on the Harrison property.

During late July or August the wells on the Harrison property produce less, but the wells have always continued to produce. During the time of Harrison's ownership of the property, these wells have never run totally dry, and Harrison has not had to use the 16,000 gallons stored in the two cement tanks. Harrison's water and storage sources have always been sufficient for its needs, and at times Harrison has had more water than it can use.

II. Harrison's Prior Use Permits and Water Availability Analyses Fully Complied with the County's Established Phase One Water Analysis Standards.

Harrison's use permit history demonstrates that the water usage on the Harrison property has consistently been determined to fall well below the established County threshold for water extraction for properties similarly situated.

The Harrison property originally received a small winery use permit exemption on June 7, 1988 to establish a 20,000-gallon per year winery using an existing 2,877 square foot garage structure. On November 15, 1989, the Planning Commission approved a use permit (U-89-12) to use 250 square feet of the residence on the property for records and bookkeeping. On February 17, 1993, the Planning Commission approved Use Permit 92163-UP for a 7,200 gallon per year winery, replacing the small winery exemption, with a 2,500 square foot cave for barrel storage and a 2,000 square foot crush pad at the cave's entrance. On November 1, 1995, the Planning Commission approved Use Permit 95028-MOD, authorizing Harrison to establish an olive oil production facility for the processing of olives grown on the property, with a maximum 3,500 gallons per year production capacity, and conversion of the existing garage into an olive oil production facility. The 1995 permit expired on November 16, 1996, without having been used. On December 15, 1999 the Planning Commission approved Use Permit 99084-MOD, again authorizing Harrison to establish an olive oil production facility with the same capacity.

Initial studies and Phase One water studies were performed in connection with these prior permit applications, in accordance with the Planning Commission Policy on Water Availability Analysis adopted on February 27, 1991, establishing water-consumption threshold levels for use permit applications for use by staff in evaluating the availability of groundwater and the effects of pumping projected water demands of proposed facilities on neighboring wells. The Planning Commission thresholds were established after consultation with an independent water resources consultant, and resulted in establishment of parcel location allowable usage factors and guidelines for estimating water usage based on the type of use (e.g., residential, winery, vineyards, etc). Pursuant to the Planning Commission's policy, an applicant that has submitted a water study describing the probable water uses of its project and the water demands relative to such uses based on the Planning Commission guidelines is not required to conduct further (Phase 2) studies if the Planning Commission determines that its proposed water usage analysis is accurate and meets the County's established threshold levels.

Harrison's prior use permit applications met these thresholds. Under the guidelines, the Harrison property is designated as "mountain" or "hillside" property, with a parcel location factor of 0.5 acre feet per year, and is not located in an area deemed by the County to be "groundwater deficient". Applying the relevant location factor and water usage guidelines for both the 1993 and 1999 use permits, staff concluded that Harrison's water usage analysis demonstrated that the proposed water uses for the project were well below the threshold that would necessitate a Phase Two water study, and that no further environmental analysis of water issues was required. See Department of Public Works letter to Planning Commission dated November 3, 1992 and Initial Study dated January 22, 1993 for Planning Commission meeting of February 17, 1993; Initial Study dated September 11, 1995 for Planning Commission Meeting of November 1, 1995; Staff Report for Planning Commission Meeting of December 15, 1999. Accordingly, the Planning Commission approved the prior Harrison use permits without requiring any further water study, and Negative Declarations were prepared in each instance.

III. Harrison's Water Uses As Reflected in the Present Application Is Substantially Identical to Uses Approved in Prior Applications and Fall Well Within The County's Phase One Water Threshold Levels.

The only difference in Harrison's proposed water usage as set forth in the present use permit modification application from prior applications is the proposed expansion from 7,200 to 15,000 gallons annual winery production capacity. At the same time, Harrison will eliminate the existing olive oil production on the property, resulting in a corresponding contemporaneous reduction in demand. All other water uses remain the same as before. In effect, Harrison is "trading" winery for olive oil production use. This is a de minimis, if any, change in water usage. Even with the proposed winery production, Harrison's Phase One water study estimated water usage at only 6.65 acre-feet per year, compared with the County Phase One water extraction threshold of 22.43 acre feet per year (44.85 acres times 0.5 acre-feet per year). Harrison's water usage estimate projected annual use for the Harrison winery process, residence, guest cottage, vineyards and olive orchards, falls far below the threshold, as follows:

Project Uses	Estimated Use Rate (County)	Projected Water Use
Winery Process	0.15 x 100k gals wine @2.15 ac.ft. /100k gals wine	0.25 ac-ft
Residence	0.5 ac-ft/yr	0.5 ac-ft
Guest Cottage	0.1 ac-ft/yr (cottage); 0.4 ac-ft for second unit	0.5 ac-ft
Vineyards	17.5 acres@ 0.25 ac-ft/yr	4.4 ac-ft
Olive Orchards	1 acre@ 1.0 ac-ft/yr	<u>1.0 ac-ft</u>
Total Projected Usage		6.65 ac-ft

On December 5, 2003, following its review of the Harrison Phase One Water Study, Public Works concluded that the estimated water demand for the property, 6.65 Acre-feet/year, is well below the established threshold of 22.43 acre-feet/year for the property, that the projected water use should not have a significant impact on static water levels of neighboring wells, and that no further analysis is necessary.

IV. Appellant Has Failed To Present Any Credible Evidence That Harrison's Phase One Water Usage calculations Are Inaccurate, or That Appellant Will Suffer Any Adverse Effect From Harrison's Proposed Water Usage.

Appellant has failed to present any credible evidence, let alone substantial evidence to substantiate Appellant's bald assertion that Harrison does not meet the County's established Phase One threshold for water uses in connection with the Application, or that Harrison will not have water available to it to meet its water needs. Appellant presented no written evidence for consideration by the Commission, only his verbal expression of concern that the Harrison water sources may not be adequate to meet its projected water needs, and that the supposed water availability shortage could have some undefined effect on Appellant's property. Appellant did not either before the Planning commission or in this appeal challenge the accuracy of Harrison's water usage estimates, or demonstrate any provable nexus between alleged Harrison well production deficiencies and harm to Appellant's own property. On that basis alone, his appeal should be denied.

Appellant's speculation that Harrison lacks sufficient water to meet its needs, in addition to being immaterial to the water extraction threshold requirements, is wrong. Harrison representative Robert Leslie testified before the Planning commission that Harrison has always had sufficient water to meet its aggregate water usage needs, from the two wells, on-site spring and existing on-site reservoir and storage tanks. Even assuming the accuracy of Appellant's assertion that the Harrison wells produce less in summer months at nine, instead of the projected 10 gallons per minute, such reduction is insignificant, and is no evidence of a generalized water shortage in the affected area. There are many potential reasons for well decline, including mechanical issues, well age and other factors. If the Harrison wells should continue to decline, Harrison has the option of drilling additional wells to address future potential water declines. The decision to drill additional wells, if any, is not a CEQA issue; the County does not require that Harrison use these wells. Speculation about any such eventuality also is entirely unnecessary, since Harrison demonstrated to the Planning Commission that it has an independent on-site water source, a spring, that together with the two wells produce ample water for all Harrison project uses, and excess capacity in some instances. Finally, there simply is no legal basis to require Harrison to draw water only from the existing wells and not the spring, as Appellant requests, and regarding which Appellant has no legal rights or standing.

The Planning Commission's Approval of Staff's recommendation that no further water analyses are required was proper, as was the Planning Commission's approval of the use permit with the incorporated conditions of approval. Harrison accordingly requests that the Appeal be dismissed. We will be pleased to answer any further questions of the Board at the August 31, 2004 appeal hearing.

Sincerely,



Brien F. McMahon

Cc: Harrison Vineyards

EXHIBIT A

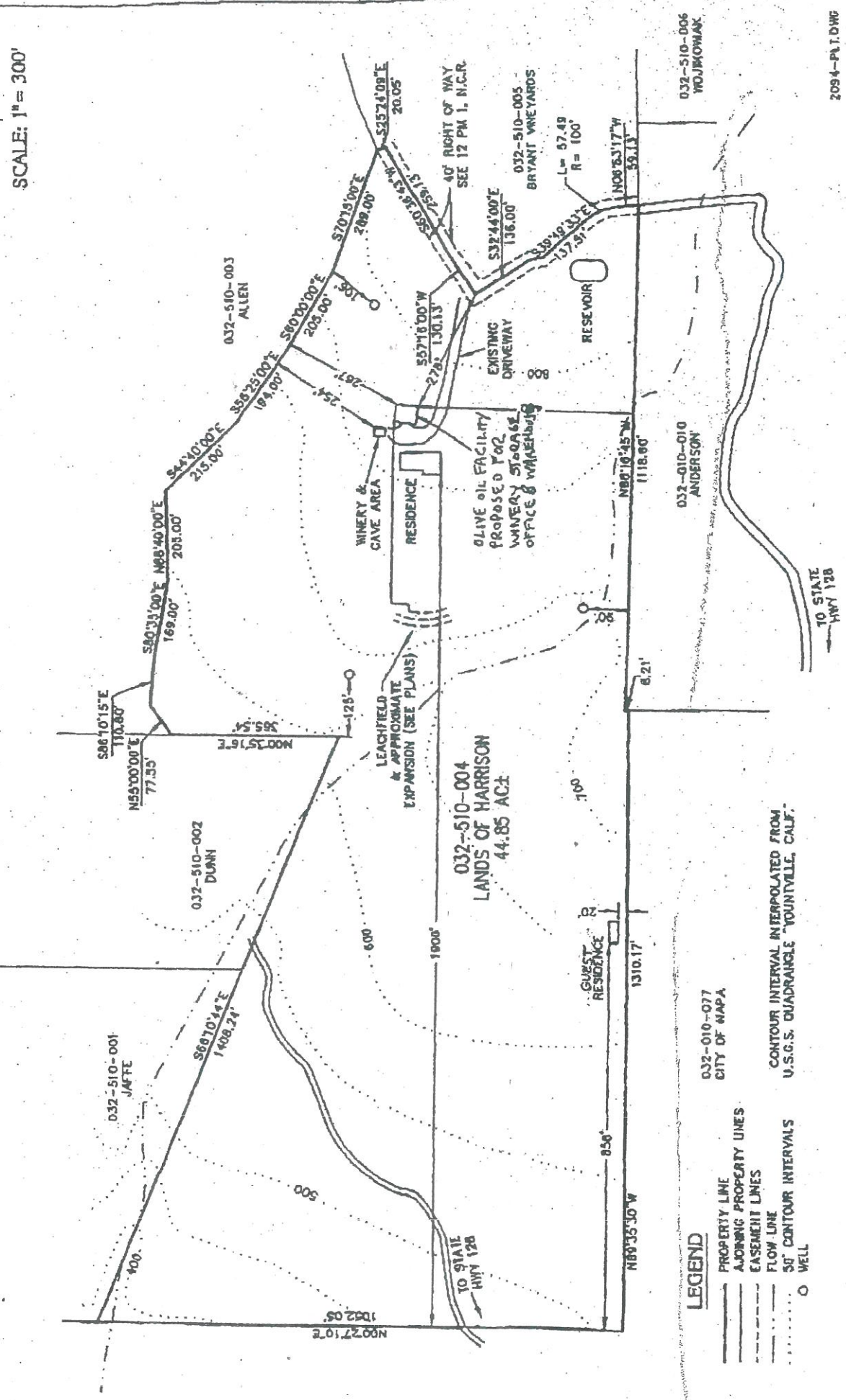
PLOT PLAN FOR THE LANDS OF HARRISON

N.C.A.P.N. 032-510-004
COUNTY OF NAPA STATE OF CALIFORNIA

IMPORTANT:
THIS PLAT IS NOT A SURVEY.
IT IS FURNISHED FOR YOUR CONVENIENCE
TO LOCATE THE SUBJECT PROPERTY
IN RELATION TO ADJOINING LANDS.
NO WARRANTIES, EXPRESS OR IMPLIED,
ARE MADE BY THE SURVEYOR AS TO THE
ACCURACY OF THE FIELD SURVEY OR
THE RESULTS THEREOF. A FIELD SURVEY
SHOULD BE PERFORMED PRIOR TO ANY
CONSTRUCTION, DEMOLITION, CONVEYANCE
OR TRANSACTION.

BY
ALBION SURVEYS, INC.
ST. HELENA, CALIFORNIA


AUGUST 16, 1989



- LEGEND**
- PROPERTY LINE
 - ADJOINING PROPERTY LINES
 - EASEMENT LINES
 - FLOW LINE
 - 50' CONTOUR INTERVALS
 - WELL
- 032-010-077
CITY OF NAPA
- CONTOUR INTERVAL INTERPOLATED FROM
U.S.G.S. QUADRANGLE "YOUNTVILLE, CALF."

2094-PLT.DWG