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NAPA CO. CONSERVATION  
DEVELOPMENT & PLANNING DEPT.

November 5, 2008

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**VIA E-MAIL AND FEDERAL EXPRESS**

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Re: Laird Use Permit (#P07-00587-MOD-MAJ)  
Request for Revocation of Use Permit

Dear Ms. Gitelman, Mr. McDowell and Ms. Anderson:

This letter, on behalf of Phillip Lamoreaux, Morgan L. Morgan, Dorothy Wurz, Jane and Franco Vianello, and Jill and Sam Levy (collectively referred to as the "Oak Knoll Neighbors"), requests that the Planning Commission schedule a public hearing on November 19, or as soon as possible thereafter, and provide notice of the same, to consider revocation of Use Permit #P07-00587-MOD-MAJ issued to the Kenneth & Gail Laird Trust/Laird Family Estate Winery ("Laird") on March 5, 2008. In addition, the Oak Knoll Neighbors request that at the same hearing, the Commission examine Use Permit #99506-UP to determine whether Laird has complied with requirements regarding the color of the existing barrel storage warehouse.

The Oak Knoll Neighbors' request is made pursuant to County Code section 18.124.120, which provides that the Planning Commission shall hold a public hearing to consider the revocation of any previously approved use permit if it deems it appropriate. The notice of such a hearing shall identify the time, date and place of the hearing, the reasons for the hearing, and generally describe the factual basis upon which it has been determined that the use permit was obtained by fraud or misrepresentation or one or more conditions of the use permit alleged to have been violated. See County Code section 18.124.120.A.

The Oak Knoll Neighbors, consisting of property owners living on or near West Oak Knoll Road along the Laird winery's northern border, assert that Use Permit # P07-00587-MOD-MAJ was obtained by Laird through fraud or misrepresentation. Specifically, Laird falsely represented that it had discussed its application to expand capacity and construct a second 30,000 square foot barrel storage warehouse with the adjacent property owners and that no concerns

were voiced by such owners. That statement, attributed to Laird in the County's staff report for the project, is categorically untrue. Additionally, the Oak Knoll Neighbors assert that Laird has failed to comply with the terms of Use Permit #99506-UP issued over seven years ago in terms of the requirement that the color of the barrel storage warehouse walls be a neutral gray color.

## **I. Facts**

### **1. The Winery**

The Laird Winery was approved in 1998 (Use Permit #97526-UP, known as Bayview Cellars) as a 450,000 gallon winery, production facility (including storage, office space, kitchen, sales area, employee-related facilities), alternating proprietors and marketing activities. Leading up to the approval, representatives from Laird met with adjacent property owners to explain the appearance, location and design of the winery buildings. Features of this design include placement of the winery away from the nearest neighbors, construction of the winery partially below grade, using a copper-patina roof color to blend in with the surrounds, and extensive landscaping in order to lessen impacts on the nearest neighbors living along West Oak Knoll Road. (Staff Report for January 1, 2001 Planning Commission meeting at 1, attached as Exhibit A.) In utilizing such design features, Laird obtained the active support of the adjacent owners in gaining County approval.

During these meetings, Laird never expressed to the neighbors any intent or future plans to construct any on-site barrel storage warehouse facilities or other processing facilities.

### **2. First Barrel Storage Facility**

In 2000, Laird applied for approval of Use Permit #99506-UP (then known as Bayview/Merryvale) to allow for a 650,000 gallon winery (a nearly 50 percent increase), alternating proprietors and custom crush, an approximately 23,000 square foot barrel storage warehouse, additional parking spaces and five part-time employees. The barrel storage facility was proposed to the west of the winery structure and oriented in a north-south direction with approximately 100 feet of building frontage facing West Oak Knoll. In connection with that permit, Laird did not consult with the adjacent neighbors before seeking approval. At least some of the adjacent property owners, including Mr. Lamoreaux, objected to the warehouse and submitted written statements to the County in opposition. At the time, Mr. Lamoreaux also personally communicated his objections to partners at Dickenson Peatman & Fogarty who had represented the Lamoreaux family for over 30 years, and who was also representing Laird in connection with Use Permit #99506-UP.

In January 2001, the Planning Commission approved Use Permit #99506-UP, including the barrel storage warehouse, and it was constructed thereafter.<sup>1</sup> The January 17, 2001 staff report stated that the barrel storage building would use similar building colors to blend in with the existing winery building (Exhibit A at p. 2), and that sides of the barrel storage warehouse would be painted a “neutral gray color” (Exhibit A at p. 7), and that samples of the colors to be used would be presented to the Planning Department before building permits were issued. However, the sides of the barrel storage warehouse were painted white, creating a stark contrast with natural greens and brown hues of the surrounding landscape, as well as the grey color of the winery itself.

### 3. Second Barrel Storage Facility

In 2007, Laird submitted a new proposal to again expand the winery (increasing capacity to 900,000 gallons per year), and add a second barrel storage warehouse facility of 30,000 square feet, a loading dock, roof canopies and concrete work areas. The proposed warehouse was oriented at the northwest corner of, and perpendicular to, the existing warehouse meaning the neighboring property owners to the north would be faced with a 300-foot long, 36-foot tall warehouse. Laird performed no outreach to the neighboring property owners as to any aspect of the proposed facility, including its location, orientation, or how its impact on their property could be lessened. In fact, Laird failed to mention any of his development plans despite the fact that Ken Laird was in communication with neighbors at the time about other issues unrelated to the winery operations.

While some of the Oak Knoll Neighbors received notice of the March 5, 2008 Planning Commission hearing to consider Laird’s proposal, it is undisputed that the County failed to provide any mailed notice to Mr. Lamoreaux (whose opposition to the first barrel storage warehouse was known) as required under the County Code and Government Code. (See footnote 3, below.)

In advance of the March 5, 2008 hearing, the Planning Department issued a staff report regarding the Project. Specifically, the staff report stated: **“The applicant has discussed the proposal with their adjacent property owners and no concerns have been voiced.”** See March 5, 2008 Planning Commission Staff Report at page 2 (attached hereto as Exhibit B). In fact, no representatives of Laird ever contacted any of the Oak Knoll Neighbors prior to submitting the application or prior to the public hearing.

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<sup>1</sup> In June 2002, the Planning Department administratively approved Laird’s application for #02193-minor MOD for a canopy to be constructed over an existing concrete area.

Before and during the hearing, Laird, who had at least five representatives present, did nothing to correct the misrepresentations contained in the staff report. At the hearing, Planning Department staff mentioned that there had been no comments from the neighbors. In addition, according to the audio recording of the hearing, one of the Planning Commissioners noted that “none [of the neighbors] are here so they are not expressing any real concern.” Again, Laird’s representatives remained silent and did nothing to correct the misconception that the neighbors had been consulted and supported the application. The Planning Commission approved the application, identified as Use Permit # P07-00587-MOD-MAJ.

In fact, the Oak Knoll Neighbors all object to Use Permit # P07-00587-MOD-MAJ and are particularly troubled by the false assertion used to obtain it, namely that Laird representatives discussed the proposal with adjacent owners and that they voiced no concerns. Collectively, the Oak Knoll Neighbors have owned their properties for over 120 years. While many are now elderly, each of the Oak Knoll Neighbors cares deeply about their property rights and values, the rural character of their neighborhood and quiet enjoyment of their homes. Each has strong concerns with the size and location of the second barrel storage warehouse and are deeply disturbed the false representation that Laird had “discussed” the proposal, and that “no concerns have been voiced” regarding the Laird application.

The Oak Knoll Neighbors assert that Laird, not wanting to deal with objections from neighbors, deliberately made the false statements reflected in the staff report regarding the consultation and approval of the application by the neighboring property owners, and/or perpetuated this misrepresentation by failing to correct Planning Department staff’s and the Planning Commission’s misconception that the neighbors supported the application despite ample opportunity to do so.

## **II. Legal Argument**

### **1. Fraud and Misrepresentation**

Under County Code Section 18.124.120.C.1., the Commission may revoke or suspend a use permit, or alter the conditions of approval thereof, if the Commission finds that “approval of the use permit was obtained by fraud or misrepresentations.” Under California law, fraud and misrepresentation, also referred to as “deceit,” is defined as either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead

for want of communication of that fact; or,  
4. A promise, made without any intention of performing it.

Civil Code § 1710; see also Civil Code § 1572.

Here, in connection with Use Permit #P07-00587-MOD-MAJ, Laird's actions clearly rise to the level of fraud or misrepresentation. Laird perpetuated a falsehood by stating that its representatives had discussed the permit proposal with adjacent property owners and that no concerns were voiced by those owners. It is undisputed that this never occurred and that such a statement is false. Further, despite ample opportunity, Laird did nothing to correct this statement when it appeared in the staff report and remained silent on the issue during the hearing, even though a Commissioner noted that since none of the neighbors were in attendance that they did not have any real concerns. By not correcting the false statement, Laird suppressed the true facts and misled the Commission — leaving it with the misimpression that the neighbors were informed of and supported Laird's proposal when the opposite was true.<sup>2</sup>

The Oak Knoll Neighbors do not oppose agriculture (many have agricultural uses on their properties) and realize that agricultural use is highly valued in the County. However, truthfulness in connection with pursuing and obtaining use permits is critically important, clearly a paramount concern of the County, and should be treated seriously. Of the five grounds listed for revocation of a use permit in section 18.124.120.C, "fraud or misrepresentations" is listed first. The applicant for a use permit has a clear duty to provide accurate and correct information, and the failure to do so in an effort to obtain approval taints the public process and deprives the County of meaningful consideration of permit applications.

For these reasons, the Oak Knoll Neighbors respectfully request that Use Permit P07-00587-MOD-MAJ, be revoked pursuant to 18.124.120.<sup>3</sup>

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<sup>2</sup> Presumably, Cathy Roche, a Dickenson Peatman partner who attended the hearing on behalf of Laird, was aware of Mr. Lamoreaux's past objections to the first barrel storage warehouse.

<sup>3</sup> As County Counsel and Planning Department Staff have previously acknowledged, it is undisputed that one of the adjacent owners, Mr. Lamoreaux, was not notified of the application and hearing regarding Use Permit P07-00587-MOD-MAJ as required under the County Code and California Government Code. While County Counsel had repeatedly indicated that it would set a hearing to rescind the permit due to this lack of notice, it recently opted to hold the permit in "abeyance" until a hearing on Laird's new application could be considered, and would be rescinded if Laird's new application is approved. As explained in the attached letter (Exhibit C) to County Counsel, there is no justification for the County's continued delay in rescinding permit P07-00587-MOD-MAJ on the basis of a new application being submitted, nor is there any

## **2. Noncompliance with Use Permit #99506**

In addition, the Oak Knoll Neighbors assert that Laird has – for over seven years – failed to abide by the findings for Use Permit #99506 relating to the color of the first barrel storage warehouse. Under County Code Section 18.124.120.C.2, a use permit may be revoked or suspended, or the conditions thereof modified, if the Commission finds that “a person making use of the use permit is violating or has violated any conditions thereof.” The staff report for the January 17, 2001 Planning Commission hearing stated that the barrel storage building would use similar building colors to blend in with the existing winery building (at p. 2), and included findings that the sides of the barrel storage warehouse would be painted a “neutral gray color” (at p. 7). In fact, the sides of the barrel storage warehouse are white, not gray, and clash with the surrounding landscape as well as the winery building itself. The Oak Knoll Neighbors believe that the requirements explained in the staff report be enforced and the Laird paint the building an appropriate color.

Unfortunately, this is not the first instance in which Laird’s compliance with its use permit has been question. At least twice before, Laird has violated the terms of its approval. In February 2003, the Planning Commission determined that the nighttime lighting was not in compliance with the use permit issued for the original winery. (See Minutes of February 5, 2003 Planning Commission meeting, Agenda Item 12, attached as Exhibit D.) In addition, the staff report for Use Permit #99506-MOD, noted that Laird had constructed 14 unauthorized parking spaces (above the 18 originally approved) at the winery *after* the Planning Department’s final inspection of the winery in March 2000. (Exhibit A (1/17/01 staff report at 2).) In addition, the County sent two letters in May 1999 regarding earthwork being done without the required grading permit. (Planning Commission Staff Report for February 5, 2003 meeting at p. 5, attached as Exhibit E.)

For these reasons, the Planning Commission should require Laird to paint the first barrel storage warehouse a neutral gray color as specified in the findings contained in the staff report, or a color that more appropriately blends in with the surrounding landscape.

## **III. Revocation Should Be Considered Before Laird’s New Application**

The Oak Knoll Neighbors are aware that Laird is in the midst of processing a new application (for which a public hearing date has not yet been set) for a new, larger barrel storage

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justification for linking the rescission with the consideration of a new proposal. The reasons for our position will not be repeated here but are set forth in the attached letter sent to County Counsel and incorporated herein by this reference.

warehouse, rather than pursuing the warehouse approved as part of Use Permit # P07-00587-MOD-MAJ. The Oak Knoll Neighbors request that this revocation request be considered by the Commission first, before the new application. An applicant who has possibly committed fraud or misrepresentation in connection with obtaining a permit should not be allowed to supersede or to moot the allegations by simply agreeing to withdraw or suspend the prior approval. Moving forward with a new application would be particularly improper considering that the penalty for revocation is that no application for a use permit for the same or substantially the same use at the same site shall be filed within one year from the date of denial or revocation. County Code § 18.124.120.F. Had Laird been truthful in connection with the approval of Use Permit # P07-00587-MOD-MAJ, revocation would be unnecessary, but Laird should not avoid the consequences of such actions by merely applying for a similar project.

#### IV. Conclusion

For the reasons stated herein, the Oak Knoll Neighbors respectfully request at the Planning Commission revoke Use Permit #P07-00587-MOD-MAJ and apply the provisions of County Code section 18.124.120.F barring any new application for one year, and require Laird to comply with the staff report findings for Use Permit #99506 regarding the color of the existing barrel storage warehouse.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

TAW:taw  
Attachments

cc: Mary Doyle, Principal Planner (via email)  
Phil Lamoreaux  
Morgan L. Morgan  
Jane and Franco Vianello  
Dorothy Wurz  
Jill and Sam Levy  
Ken Miller

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## **EXHIBIT A**



**NAPA COUNTY  
CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT**

**USE PERMITS**

**DEPARTMENT REPORT AND RECOMMENDATION**

**Meeting of January 17, 2000  
Agenda Item: #11**

**APPLICATION DATA:**

**APPLICANT:**            **Laird Family Estate, LLC**  
                                 **Use Permit #99506-UP**            **Filed: 06--08--00**

**REQUEST FOR:**        Approval to:

1.        increase the annual production capacity of the existing winery from 450,000 gallons to 650,000 gallons.
2.        construct a new ±23,000 square foot barrel storage warehouse.
3.        expand custom production activities at the winery by increasing the authorized number of secondary alternating proprietors from 4 to 15, *and* allow for 15 custom contract customers.
4.        increase the number of part-time employees during crush and bottling from 12 to 17.
5.        increase the number of *staff* parking spaces at the facility from 22 to 31 spaces.

**LOCATION:**            On a 40.06-acre parcel located west of Solano Ave, approximately 50 feet north of its intersection with Oak Knoll Ave. within an AP (Agricultural Preserve) zoning district. 5055 Solano Avenue, Napa (APN: 35-031-031)

**FINDINGS:**

**BACKGROUND:**

1.        **Prior Use Permits/Existing winery.** On August 20, 1998 the Napa County Conservation, Development and Planning Commission approved Use Permit #97526-UP to establish a new ±64, 000 square foot wine production facility ("Bayview Cellars") with a production capacity of 450,000 gallons (refer to Attachment 2, Conditions of Approval for Use Permit #97526-UP). The winery has been constructed and is in operation. Because of the high visibility of the site and proximity to Highway 29, the winery was designed to be unobtrusive and aesthetically pleasing. Specific design features of the winery include a sub-grade production area to minimize building mass, a berm planted with grapevines surrounding the base of the structure, use of earth-tone and neutral colors on the exterior, and a distinctive hipped roof that blends with surrounding natural land forms.
2.        **Increase Production Capacity.** The existing use permit (#97526-UP) allows for an annual production of 450,000 gallons per year, with a maximum of 300,000 gallons per year to be crushed and fermented at the winery, and an additional 150,000 gallons to be imported, cellared and bottled. The current proposal seeks to increase annual production to 650,000 gallons per year (a net increase of 200,000 gallons per year), allowing up to 500,000 gallons to be crushed and fermented at the winery, with no change in the current amount of 150,000 gallons from import.

3. **New Barrel Storage Warehouse.** The project includes construction of a ±23,000 square foot (100 feet by 225 feet), pre-engineered metal barrel storage warehouse. The new building will be located behind (west of) the existing winery complex to reduce visual impacts to the greatest extent possible [see Attachment 5(a), Overall Site Plan]. The structure will have a hipped roof and will use similar building colors to blend in with the existing winery building [see Attachment 5(c) color rendering of structure]. The existing drive located around the winery will provide access to the proposed structure. The entrance to the warehouse, forklift ramp and 2 truck loading/unloading docks will be located on the east side of the warehouse, directly across from the entrance to the subgrade production area located at the rear (west side) of the existing winery. A road extension, with a hammerhead turnaround, is proposed along the north side of the structure for fire truck access.
4. **Increase Number of Employees.** The applicant proposes to increase the number of part-time employees *during crush and bottling* from 12 to 17. In addition, seven employees, primarily winemakers related to the proposed increase in number of alternating proprietors, are proposed. It is anticipated that each winemaker will come to the facility an average of 1 to 2 times per week.
5. **Expand Custom Production Activities.**
  - a. **Alternating Proprietors.**
    - 1) **Existing.** The existing use permit (#97526-UP) authorizes one “primary alternating proprietor” that can account for up to 225,000 gallons of the approved total annual winery production (450,000 gallons) *and* four “secondary alternating proprietors” that can produce up to 120,000 gallons of the approved total winery production.
    - 2) **Proposed.** The applicant has requested to increase the authorized number of *secondary* alternating proprietors from 4 to 15. There will remain one host winery (Laird Family Estate) and one primary alternating proprietor (currently Merryvale Vineyards) who account for the majority of the production at the facility. Up to 500,000 gallons of the requested 650,000 gallon annual production capacity is proposed to be devoted to activities by alternating proprietors
  - b. **Custom Crush Activities.** The applicant has requested approval for 15 custom contract customers at the winery. 150,000 gallons of the requested 650,000 gallon annual production capacity is proposed to be devoted to activities by custom crush producers.
6. **Parking.**
  - a. **Unauthorized Increase in Guest Parking.** Condition of Approval No. 8 of the original use permit required a parking plan be submittal to the Conservation, Development and Planning Department for review and approval. The approved landscape and parking plan (approved 3/10/99) authorized a total of 18 guest parking spaces. Since the Planning Department’s final inspection of the winery, conducted on March 3, 2000, 14 additional guest parking spaces have been located on the south side of the winery building in area designated on site plans as a “Turnout/Loading Zone.”
  - b. **Increase Employee Parking.** The approved parking plan for Use Permit #97526-UP authorizes 22 employee parking spaces. The proposal includes reconfiguring the existing parking plan and increasing the amount of *employee* parking from 22 to 31 spaces. A new parking area is proposed in front of (east of) the proposed barrel warehouse to accommodate staff parking.
7. **Landscaping.** Landscaping includes planting olive trees on the south and east sides of the proposed building to provide screening of the portions of the warehouse visible from the southeast and Highway 29 [see Attachment 5(a), Overall Site Plan]. Also, deciduous trees are proposed within the new parking

area located adjacent to the barrel warehouse. The open area east of the structure and north of the new parking lot will be replanted with grapevines.

8. **Increase Number of Deliveries.** The average number of deliveries/pickups *per week* at the facility is anticipated to increase from 16 to 20. The number of deliveries/pickups *on the busiest day* is anticipated to increase from 6 to 10.
9. **Tasting.**
  - a. **Existing.** The existing use permit limits tasting of wines *in the designated tasting area* to wines produced by Laird Family Estate and the primary alternating proprietor licensed to operate at the facility (Merryvale Vineyards). Wines produced by the four secondary alternating proprietors licensed to operate at the site can be offered for tasting to members of the wine trade only in an area other than the designated tasting room. All tasting must occur between the hours of 10a.m. and 6p.m. (refer to Condition of Approval No. 1(e), Use Permit #97526-UP).
  - b. **Proposed.** In addition to what is currently permitted, the applicant requests that wines produced by all 15 secondary alternating proprietors and the 15 proposed custom contract customers be offered for tasting to members of the wine trade only in an area other than the designated tasting room.
10. **No Change to Authorized Retail Sale of Wine.** The existing use permit limits retail sale of wine to only wine fermented and bottled by Laird Family Estate and/or the primary alternating proprietor licensed to operate at the facility (refer to Attachment 2, Condition of Approval No. 1(g), Use Permit #97526-UP). No changes related to retail sale of wine at the facility are proposed.
11. **No Change to Authorized Tours.** The existing use permit authorizes Laird Family Estate Winery and/or the primary alternating proprietor licensed to operate at the site (Merryvale Vineyards) to conduct private tours for members of the wine trade and consumers by appointment only (refer to Attachment 2, Condition of Approval No. 1(f), Use Permit #97526-UP). No changes are proposed.
12. **Administrative Offices.** Laird Family Estate and the primary alternating proprietor are permitted to have administrative offices at the facility. The proposal would not increase the number of administrative offices at the facility.
13. **No Change to Marketing Plan.** No changes from the previously approved marketing plan are proposed (refer to Attachment 2, Condition of Approval No. 1(h) for Use Permit #97526-UP).
14. The proposal will not change and/or increase the days and hours of operation, number of work shifts or number of full-time employees. The anticipated number of visitors is not expected to increase.
15. Comments and recommendations from other agencies and County departments are attached.

#### **ENVIRONMENTAL ANALYSIS:**

16. Allowing additional alternating proprietors and custom contract clients to locate at the facility consolidates uses and reduces the need to construct numerous other smaller facilities at other locations that may have more environmental constraints.
17. 18 mitigation measures were incorporated into the original winery project (#97526-UP) to ensure that the project would not generate any significant impacts in the areas of Hydrology, Water Quality, Air Quality, Noise, Aesthetics, and Traffic. The existing mitigation measures will be incorporated into the proposed expansion and will remain in effect.

18. Staff has prepared an Initial Study (attached) to assess the potential environmental impacts of the proposed project. Its findings are as follows:
  - a. Primary potential impacts associated with the project are in the areas of aesthetics, air quality, and noise. The proposed project could produce significant adverse effects on the environment through increased noise levels during construction, dust generation, and intrusive nighttime lighting.
  - b. All of the identified potential impacts can be eliminated or reduced to less than significant levels through implementation of 4 mitigation measures. The applicant has agreed to incorporate these mitigation measures into the project (see the signed Project Revision Statement appended to the attached Draft Negative Declaration).
  - c. There is no evidence that the project, with the mitigation measures incorporated, will have a significant adverse effect on the environment, either individually or cumulatively. The project will not have an adverse effect on wildlife resources as defined in Section 711.2 of the Fish and Game Code. A negative declaration has been prepared for consideration.

#### **PLANNING AND ZONING ANALYSIS:**

19. **Use of barrel storage building.** The proposed barrel storage building is necessary for the requested increase in production capacity of the winery. Recommendations include limiting use of the structure to storing wine produced on-site only.
20. **Tasting.** The applicant has requested that wines produced by all 15 secondary alternating proprietors *and* the 15 proposed custom contract customers be offered for tasting to members of the wine trade in an area other than the designated tasting room. The County normally prohibits custom contract customers from offering wine tasting at host facilities. State and Federal licenses do not permit the host winery to offer another owner's bottled product for tasting, and custom contract producers maintain no license to allow tasting at the production facility. Alternating proprietors, however, are licensed to offer tasting at the host facility. Recommendations include prohibiting on-site tasting of wines produced by custom contract customers.
21. **Employee Parking.** The applicant proposes to increase the number of *employee* parking spaces at the facility from 22 to 31 spaces. Under the current proposal, the number of employees working at the facility will total 47 employees, comprised of 15 full-time employees, 8 regular part-time employees, 17 part-time employees during crush/bottling, and 7 employees related to alternating proprietors. The proposed amount of employee parking is reasonable considering the number employees that will work at the facility.
22. **Unauthorized Increase in Guest Parking.** Condition of Approval No. 8 of the original use permit required a parking plan be submitted to the Conservation, Development and Planning Department for review and approval. The approved landscape and parking plan (approved 3/10/99) authorized a total of 18 guest parking spaces. Since the Planning Department's final inspection of the winery, conducted on March 3, 2000, 14 additional guest parking spaces have been located on the south side of the winery building in area designated on site plans as a "Turnout/Loading Zone." Based on the anticipated number of visitors on the busiest day (200), which is not supposed to change as a result of the proposed expansion, only 19 guest parking spaces are necessary according to the calculation outlined below. Additional guest parking beyond 19 spaces is excessive and not warranted by the anticipated number of visitors. Recommendations have been included requiring that 13 of the 32 existing guest parking spaces be removed, thereby reducing the number of guest parking spaces to 19.

$\frac{200 \text{ visitors/busiest day}}{2.6 \text{ persons/auto}} = 77 \text{ autos/busiest day}$

number of autos during peak hour = 25% of number of autos/busiest day

$0.25 \times 77 \text{ autos/busiest day} = 19 \text{ autos}$

23. **Proposed Landscaping.** Proposed landscaping includes planting olive trees on the south and east sides of the new barrel storage building. The proposed olive trees are consistent with the use of olive trees around the existing winery. Olive trees, which are evergreen and grow to height of 25-30 feet at maturity, will provide effective screening of the more obvious views of the southern and eastern walls of the barrel storage warehouse, most notably from the southeast, including Highway 29. Recommendations have been included, requiring that the proposed olive trees be the equivalent size of the olive trees that were planted as part of the original winery project.

24. **Findings.** The following findings must be made in order to approve the use permit:

- a. The Commission has the power to issue a use permit under the zoning regulations in effect as applied to the property.

*Analysis: The subject property (APN 035-031-031) is located in an AP (Agricultural Preserve) zoning district. Pursuant to Section 18.16.030(F, G, H) of the Napa County Code, wineries and uses in connection with and/or accessory to a winery, are permitted within the Agricultural Preserve zoning district upon grant of a use permit. Section 18.124.010 of the Napa County Code provides that a use permit may be granted by the Planning Commission.*

- b. The procedural requirements for a Use Permit set forth in Title 18 of the Napa County Code (zoning regulations) have been met.

*Analysis: The application has been processed in compliance with the procedural requirements of the Napa County Code.*

- c. The grant of the Use Permit, as conditioned, will not adversely effect the public health, safety or welfare of the people of Napa County.

*Analysis: An Initial Study was prepared for the project. No significant threats to the public health, safety or welfare of the people of Napa County were identified. In addition, all aspects of the project will conform to regulatory standards of County departments and State and/or Federal agencies having jurisdiction over the project. Accordance with these standards will ensure that the project will not adversely effect the public health, safety or welfare of the people of Napa County.*

- d. The proposed use complies with applicable provisions of the Napa County Code and is consistent with the policies and standards of the Napa County General Plan and any applicable specific plan.

**Analysis:**

***Napa County Code – Zoning District Regulations***

***Permitted Use:*** The subject property (APN 035-031-031) is located in an AP (Agricultural Preserve) zoning district. Pursuant to §18.16.030(F, G, H) of the Napa County Code, wineries and uses in connection with and/or accessory to a winery, including aging, processing and storage of wine in bulk, are permitted within the Agricultural Preserve zoning district upon grant of a use permit.

Minimum Parcel Size: §18.104.240(B) permits wineries on AP and AW zoned parcels with a minimum acreage of ten acres if established after adoption of Ordinance 947. The existing winery and proposed barrel warehouse are located on a 40.06 parcel.

Total Winery Coverage: Pursuant to §18.104.220 of the Napa County Code, the maximum coverage of new or expanded wineries is 25% of the existing parcel or fifteen acres, whichever is less. The subject parcel is 40.06 acres, resulting in a maximum winery coverage area of 10.02 acres. Under the current proposal, the total coverage of the winery would be 228,917 square feet, or 5.3 acres (13.1% of the total parcel acreage). The proposed total winery coverage is well below the maximum allowed.

Accessory Structures: Pursuant to §18.104.200 of the Napa County Code, the maximum square footage of structures used for accessory uses that are related to a winery can not exceed 40% of the area of the production facility. Under the current proposal the total square footage of the production facility will be 155,657 square feet (including the 1.5-acre wastewater pond). The total square footage of accessory structures is 3,000 square feet, or approximately 2% of the production facility area. The square footage of accessory structures is well below the maximum allowed.

Setback from Roadways: § 18.104.230(A)(2) requires wineries, and structures containing accessory uses, to be setback a minimum of 300 feet from collector county roads. The proposed barrel warehouse is located 1,000 feet west of Solano Ave.

Grape Source: The existing winery was established after adoption of Ordinance 947, and therefore at least 75% of the grapes used to make the winery's still wine must be grown within Napa County. The applicant has submitted a signed Initial Statement of Grape Source certifying that the proposed winery expansion will utilize 75% grapes from Napa County in accordance with the requirements of §18.104.250(B).

Marketing: The request does not propose to alter the marketing plan previously approved for the winery under Use Permit #97526-UP.

Height: The maximum building height for all zoning districts within the County is 35 feet. The barrel storage building has a height of 34-feet (measured from grade to peak of roof).

General Plan: The proposed use is consistent with the Agricultural Policies of the General Plan (2-22 through 2-24) and standards of the Agricultural Resource land use classification.

Permitted Use: The parcel is classified Agricultural Resource by the Napa County General Plan. The intent of the Agricultural Resource land use classification is to identify "the fertile valley and foothill areas of Napa County in which agricultural is and should continue to be the predominant land use..." The Napa County General Plan states that agriculture and the processing of agricultural products, which includes wineries, are permitted as a "General Use" on lands classified Agricultural Resource [Land Use Element, Section 3(F)(8)].

Aesthetics: Agricultural Policy 3.13 of the Napa County General Plan (page 2-24) requires that wineries and related activities "should be designed to convey the attractiveness associated with existing Napa Valley wineries." The proposed barrel storage building is a ±23,000 square foot rectangular, pre-engineered metal structure, with a height of 34 feet (measured from grade to top of roof). The structure will be visible, most notably from the southeast, and to northbound traffic on Solano Avenue, and State Highway 29.

The structure has been located and designed with a number of features to be aesthetically pleasing and promote compatibility with the existing winery (see Attachment 5):

- *The structure is located  $\pm 1,000$  feet west of Solano Ave and is sited behind the existing winery building to reduce visual impacts to the greatest extent possible. The winery will partially block views of the proposed barrel storage warehouse.*
- *The metal panels comprising the walls are flat and textured (not corrugated or ribbed metal panels) and will be painted a neutral gray color, giving the appearance of concrete from a distance. The color will repeat the use of gray (concrete) on the existing winery building.*
- *The north, south and west exterior walls of the building have battered columns (thicker at bottom, tapered at top). The columns, spaced at intervals of 25 feet along the sides of the structure, will break up the mass of the building.*
- *The metal roof is hipped and overhangs the structure. The roof will be a brown color, similar to the current color of the roof of the existing winery building.*
- *The mass of the structure will be broken by shadows cast by the 4-foot roof overhang and structural columns.*
- *Landscaping includes planting olive trees in appropriate locations to screen the most visible angles of the structure (see discussion of Landscaping).*

*The aesthetic aspect of the proposed barrel storage warehouse, including architectural design elements and compatibility with the existing winery, is found to be consistent with the General Plan.*

- e. The proposed use does not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under section 13.15.070 or 13.15.080 of the Napa County Code.

*Analysis: The project is not located within the Milliken-Sarco-Tulocay groundwater deficient basin. The Department of Public Works reviewed the Phase One Water Availability Analysis prepared for the project and found that the estimated water demand for the project is below the established threshold for the property.*

## RECOMMENDATION:

### ENVIRONMENTAL:

1. Find that the Planning Commission has read and considered the Negative Declaration prior to taking action on said negative declaration and the proposed project.
2. Find that the Negative Declaration is based on independent judgement by the Planning Commission.
3. Adopt the Negative Declaration (including the Project Revision Statement with 4 signed Mitigation Measures).

### PLANNING:

4. **APPROVAL** of Use Permit #99506-UP with Findings and subject to the attached Conditions of Approval:

**PROPOSED  
CONDITIONS OF APPROVAL**

**Agenda Item #  
CDPC Meeting Date: January 17, 2001  
Use Permit #99506-UP (Laird Family Estate Winery Expansion)**

1. This Use Permit shall be limited to the following:
  - a. Increase the annual winery production capacity of the winery from 450,000 gallons to 650,000 gallons per year, with no change in the 150,000 gallons per year authorized to be imported, cellared and bottled at the facility.
  - b. Increase the number of secondary alternating proprietors authorized at the winery from 4 to 15. The primary alternating proprietor *and* secondary alternating proprietors are authorized to use up to 500,000 gallons of the total winery production.
  - c. Permission for 15 custom contract customers at the winery, authorized to use up to 150,000 gallons of the total annual winery production.
  - d. Construction of a 23,000 square foot barrel storage warehouse.
  - e. Increase the number of *employee* parking spaces from 22 to 31 spaces.
  - f. Increase the number of part-time employees during crush/bottling from 12 to 17.

The project, including the design, location and use of the proposed barrel storage warehouse shall substantially conform with the specifications contained in the application and related materials, including the site plans and floor plans received by Napa County on January 9, 2001. The application along with all related material shall be considered as integral elements of this entitlement, and compliance therewith shall be mandatory. Any expansion or changes in use, or project changes which are necessitated by the requirement of other departments or agencies, are subject to further County approval.

2. All conditions of Use Permit #97526-UP that are not in conflict with conditions contained herein shall remain in force and effect.
3. The permittee shall comply with the 4 Mitigation Measures contained in the Project Revision Statement signed on December 21, 2000.
4. None of the secondary alternating proprietors and custom contract clients authorized at the winery are permitted to have administrative offices on-site.
5. Only wine produced on-site can be stored in the barrel storage warehouse.
6. Tasting of wines in the designated tasting area is limited to only those wines produced by Laird Family Estate Winery and the primary alternating proprietor licensed to operate at the facility (Merryvale Vineyards). Wines produced by the secondary alternating proprietors licensed to operate at the site may be offered for tasting to members of the wine trade only in an area other than the designated tasting room. All tasting shall be conducted between the hours of 10a.m. and 6p.m. Wine produced by the custom contract customers authorized to operate at the facility can not be offered for tasting on-site.



7. Laird Family Estate Winery and/or the primary alternating proprietor licensed to operate at the site (Merryvale Vineyards) are permitted to conduct private tours for members of the wine trade and consumers by appointment only. Tours shall be conducted between the hours of 10a.m. and 6p.m. No tours shall be offered by the secondary alternating proprietors or custom contract clients licensed to operate at the facility.
8. Retail sales of wines is limited to only those wines fermented and bottled by Laird Family Estate and/or the primary alternating proprietor licensed to operate at the facility (Merryvale Vineyards). Retail sale of wine shall only occur in the designated tasting and sales area. No retail sales of wine produced by the secondary alternating proprietors or custom contract clients licensed to operate at the site shall be allowed.
9. Prior to issuance of any building permit for construction of the barrel storage warehouse, the permittee shall submit three copies of a detailed landscaping and parking plan to the Conservation, Development and Planning Department for review and approval. The plan shall indicate the names, size and locations of plant materials, method of maintenance and the location of all off-street parking spaces. Parking shall be limited to a maximum of 19 guest parking spaces and 31 employee parking spaces (49 parking spaces total). The area designated as a "Turnout/Loading Zone" on the site plans that is currently being used for unauthorized guest parking, shall be returned to its original purpose with installation of some sort of physical barrier to prevent continued use for guest parking. Olive trees utilized for screening the barrel warehouse shall be field-grown olives, equivalent in size to the olive trees that were planted as part of the original winery project. All landscaping and parking shall be completed prior to final occupancy of the barrel storage warehouse. Landscaping shall be permanently maintained in accordance with the approved landscape plan.
10. The area in front of (east) the barrel storage facility and north of the parking area shall be planted with grapevines.
11. Samples of the colors to be used on the barrel storage warehouse shall be submitted to the CDPD for review and approval prior to issuance of any building permit.
12. Prior to issuance of any building permit for construction of the barrel storage warehouse, a detailed Lighting Plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for review and approval by the Conservation, Development and Planning Department. No floodlighting of the building is permitted. Light fixtures shall be located as low to the ground as possible, and shall be the minimum necessary for security, safety or operations. The only outdoor lighting present after dark, except during crush, shall be low-level security lighting. Shields shall be included on all new exterior lighting installed to direct the illumination produced downward.
13. The permittee shall comply with all building codes, zoning standards and requirements of County departments and various Agencies including but not limited to written comments from:
  - a. Building Inspection Division dated June 22, 2000.
  - b. County Fire Department dated June 27, 2000.
  - c. Regional Water Quality Control Board dated July 19, 2000.
  - d. Department of Public Works dated October 25, 2000.
  - e. Department of Environmental Management dated August 7, 2000.
14. Seventy-five percent (75%) of the 200,000-gallon increase in annual wine production at the winery, including wine produced by the alternating proprietors and custom contract customers operating at the facility, shall be made from Napa County grapes. The winery owner shall report to the Planning Department by January 30<sup>th</sup> of each year the source of grapes for the previous calendar year. Said report shall list the tons of grapes obtained from each Assessor's Parcel within the County, along with the total tons of grapes utilized. This report is proprietary and shall not be made available to the public. A

separate statement for the public record indicating the overall percentage of Napa County grapes utilized shall be provided with the report.

15. All staff costs associated with monitoring compliance with these conditions and project revisions shall be borne by the applicant and/or property owner, other than those costs related to investigation of complaints of non-compliance which are determined to be unfounded. Costs shall be as established by Resolution #95-77 or as such Resolution may be amended from time to time.

## **EXHIBIT B**



HILLARY GITELMAN  
Director

# COUNTY of NAPA

CONSERVATION, DEVELOPMENT AND PLANNING

**DATE OF HEARING:** March 5, 2008

**AGENDA ITEM # 12**

**SUMMARY FOR:** CONSERVATION, DEVELOPMENT & PLANNING COMMISSION

**PROJECT:** Laird Family Estates Winery, Use Permit # P07-00587-MOD-MAJOR

**LOCATION:** The project site is located on a 40.06-acre parcel on the west side of Solano Avenue, approximately 700 feet north of its intersection with Oak Knoll Avenue at SR 29 within an Agricultural Preserve (AP) zoning district (Assessor's Parcel Number 035-031-031) 5055 Solano Avenue, Napa.

**PROJECT REQUEST:**

**Use Permit:** Approval of a major modification to Use Permit Nos. 97526-UP through 02193-UP to: (1) increase by 250,000 gallons the winery's maximum total production capacity from the existing 650,000 gallons per year to 900,000 gallons per year; (2) construction of a new 30,000 sq ft production building; (3) removal of the condition of approval regarding alternating proprietor/custom crush clients; (4) installation of a 1,684 square foot roof cover for the new outdoor 1,260 sq ft loading dock; (5) installation of a 3,240 square foot roof cover over the existing loading dock; and (6) construction of a new 1,144 square foot covered outdoor work area adjacent to the existing loading dock. No other changes including employees, visitors, marketing, hours/days of operations, etc. are being requested.

**OWNER:** Kenneth and Gail Laird

**APPLICANT / REPRESENTATIVE:** Kenneth Laird/Michael Witek, DP&F

**ZONING:** Agricultural Preserve District (AP)

**GENERAL PLAN DESIGNATION:** Agriculture, Watershed and Open Space (AWOS)

**PARCEL/SITE AREA:** The parcel is 40.06 acres. The proposed project modifications are within the parcel's existing winery development area.

**HISTORY/BACKGROUND:** The property is an entirely built environment with the existing Laird Winery and associated structures including crush pad, tanks, winery wastewater system with a 1.5 acre pond, parking area, landscaping, entrance/signage and a 30± acre vineyard. Activities occurring on site are those associated with the winery including crush, fermentation, bottling, case and barrel storage and harvesting of the existing vineyard. The parcel has direct access off of Solano Avenue approximately 700 ft north of its intersection with Oak Knoll Avenue at SR 29. There are acceleration and deceleration tapers at the existing winery entrance on Solano Avenue. There is a fully actuated traffic signal and a dedicated left turn lane off of northbound SR 29 at its intersection with Oak Knoll Avenue. (see figure 1)

The following is a chronological summary of use permit activities associated with the parcel:

- August 1998, Commission approved Use permit #97526-UP (known as Bayview Cellars) for a 450,000 gallon winery, production facility (including storage, office space, kitchen, sales area, employee related facilities), alternating proprietors, marketing activities.
- January 2001, Commission approved Use permit #99506-UP (known as Bayview/Merryvale) to allow for 650,000 gallon winery, alternating proprietors and custom crush, construction of barrel storage warehouse, additional 9 parking spaces, and 5 part time employees.
- June 2002, the Department administratively approved #02193-minor MOD for a canopy over an existing concrete area.

In the immediate vicinity with access on to Solano Avenue as well as the signalized intersection at Oak Knoll and SR 29 is Newlan Vineyard (#01093-UP for 72,000 gallon winery, by appointment only tours and tastings).

The applicant has discussed the proposal with their adjacent property owners and no concerns have been voiced.

**STAFF RECOMMENDATION:** Adopt the Negative Declaration and **APPROVE** Use Permit #P07-00587-UP based on Findings 6-10 and subject to the attached conditions of approval.

**NAPA COUNTY CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT  
PLANNING COMMISSION  
USE PERMIT # P07-00587-UP-MOD-Major**

**DEPARTMENT REPORT AND RECOMMENDATION**

**Meeting of March 5, 2008**

**APPLICANT/OWNER:** Kenneth and Gail Laird

**PLANNER ASSIGNED:** Mary Doyle, Principal Planner

**FILED:** August 13, 2007

**PROJECT DESCRIPTION:** A Use Permit to expand Laird Family Estates Winery, as specified below.

**PRODUCTION CAPACITY:** Increase production by 250,000 gallons to bring the winery's maximum total production capacity to 900,000 gallons per year from the existing 650,000 gallons per year (Use Permits #97526-UP through #02193-UP).

**TOTAL SQ. FT. OF WINERY:** The total area of the winery will be 258,917 sq ft with this modification.

**HOURS OF OPERATION:** No change from existing 7am-6 pm (during crush 6 am-11 pm)

**# OF MARKETING EVENTS/YEAR:** No change to existing marketing plan (approved in #97526-UP & #99506-MOD)

**# OF EMPLOYEES (F/T AND/OR P/T):** No change in the number of employees (47 total employees).

**PARKING:** No change to the existing on-site parking spaces (50 spaces).

**LOCATION:** Located on a 40.06 acre parcel on the west side of Solano Avenue; approximately 700 feet north of its intersection with Oak Knoll Avenue at Highway 29 within an Agricultural Preserve (AP) zoning district (Assessor's Parcel Number 035-031-031) 5055 Solano Avenue, Napa.

**FINDINGS**

**BACKGROUND INFORMATION / DETAILS OF REQUEST:**

1. The applicant is requesting to increase the winery's maximum total production capacity to 900,000 gallons per year from the existing 650,000 gallons per year; construct a new 30,000 sq ft production building; remove the prior condition of approval regarding alternating proprietor/custom crush clients; install a 1,684 square foot roof cover for the new outdoor 1,260 sq ft loading dock; install a 3240 square foot roof cover over the existing loading dock; and construction of a new 1,144 square foot covered outdoor work area adjacent to the existing loading dock. No other changes are being requested. The new production building will be at attached to the existing barrel storage building at its northwest corner. The new production building will be at a right angle to the existing barrel storage building. No other changes to the winery structures or operations are requested. Topography of the subject parcel area is relative flat (less than 5% slope). The existing winery structure is setback approximately 600 feet from Solano Avenue. The existing barrel storage building is setback approximately 1000 feet from Solano Avenue. (see fig 2, 3)

On the surrounding adjacent properties are vineyards, rural residential and other wineries. The closest off-site residence is approximately 50 feet north of the parcel boundary or approximately 700 feet from the project site. (see fig 1)

The proposed project will not change the existing views of the winery for those traveling on Solano Avenue. The views from adjacent properties would be similar to what currently exists on the parcel, the existing Laird winery structures and entrance on Solano Avenue and the surrounding vineyards.

Access to the proposed project is via the existing winery entrance directly off of Solano Avenue. There are no changes proposed to the existing entrance.

From information provided by the applicant the anticipated traffic for the proposed project only increases to approximately 5 additional deliveries during crush due to the increase in production as there are no changes to the marketing plan or number of employees. Harvest/crush grape deliveries generally occur in the early in the morning out of peak period or late in the evening when the temperature is cool. Cool temperatures allow the harvested grapes to retain their quality.

The project as proposed would not be considered to have significant effects.

## 2. ADJACENT LAND-USE/ZONING/ACREAGE

Direction	Land Use	Zoning	Acreage
North	Agricultural, rural residential	AP	44 acres
South	Agricultural, rural residential (City of Napa, trailer park)	AP	25 acres
East	Agricultural, rural residential	AP	43 acres
West	Solano Avenue, SR 29	AP	NA

- Details of the proposal are contained in the attached supplemental information sheet and accompanying application materials.
- Comments and recommendations from various County departments are attached.

### ENVIRONMENTAL ANALYSIS:

- A Negative Declaration has been prepared pursuant to the State CEQA Guidelines. The public review period for the Negative Declaration occurred from February 14, 2008 to March 5, 2008.

### PLANNING & ZONING ANALYSIS:

The following findings must be made in order to approve the Use Permit request:

- The Commission has the power to issue a Use Permit under the Zoning Regulations in effect as applied to the property.

**Analysis:** The project is consistent with the AP, Agricultural Preserve zoning district regulations that apply to this property which permit winery operations with use permit approval. A winery (as defined in (Section 18.08.640) and uses in connection with a winery (Section 18.16.030 (F) & (G)) are permitted in an AP zoned district with an approved use permit. Provisions required under The

Winery Definition Ordinance (ORD. 947, 1990) and Napa County Code (zoning regulations as amended) can be met.

7. The procedural requirements for a Use Permit set forth in Chapter 18.124 of the Napa County Code (zoning regulations) have been met.

**Analysis:** The use permit application has been filed and notice and public hearing requirements have been met. The hearing notice was posted on February 14, 2008 and copies were forwarded to property owners within 300-feet of the subject parcel.

8. The grant of the Use Permit, as conditioned, will not adversely affect the public health, safety or welfare of the County of Napa.

**Analysis:** Granting the Use Permit for the winery, as proposed and conditioned, will not affect the health, safety or welfare of the County. Various County departments have reviewed the project and commented regarding water, waste water, building permits, and fire protection. The Environmental Management Department stated that adequate private water and wastewater treatment systems can be provided on-site. Conditions are recommended which will incorporate these comments into the project to assure the protection of the public health and safety.

9. The proposed use complies with applicable provisions of the Napa County Code and is consistent with the policies and standards of the Napa County General Plan.

**Analysis:** Compliance with the Zoning Ordinance:

Provision	Required	Proposed
Height	< 35 feet	34 feet
Setbacks Winery Building	Front 600' Side > 20 Rear > 20	± 985' from Solano Avenue ± 408' (south side), 491' (north side) ± 156'
Parking	As conditioned	No change to the existing parking
Site Coverage	<10 acres or 25% of the parcel size	Approximately 6 acres with this mod
Lot Size	10 acre minimum	Existing 40.06-acre
Accessory winery uses	<40% of production facility	2.5%
Grape Source	>75%	Submitted & conditioned
Marketing	N/A	No change to the existing plan

According to County Code Section 18.104.230.2.B, (Wineries located in open space areas-Setbacks.), "... any winery existing on the date of adoption of the ordinance (1990) may expand within the minimum setback .....if the expansion is placed no closer .....than the nearest point of the existing structure to which the expansion is attached." The proposed winery addition meets all current setbacks.

According to County Code Section 18.110.010, (Off-Street Parking and Loading Facilities, Purpose), "... The parking standards in this section do not apply to agricultural and winery uses." The Planning Commission, in its discretion, can establish the required number of parking spaces. No changes to the existing 50 parking spaces for the winery. There will be an increase of one loading dock.



The project is not subject to Chapter 18.106.030(A) of the Napa County Code, (Viewshed Protection Ordinance, General Provisions) since the proposed winery structure located on slopes less than 15% and there is no change to the existing winery structures.

**Analysis:** Compliance with the General Plan:

- The goals established by the County General Plan are to plan for agriculture and related activities as the primary land use in Napa County and to concentrate urban uses in the County's existing cities and urban areas. The County will enact and enforce regulations that will retain agriculture as a major source of income and employment in Napa County. The Winery Definition Ordinance (WDO) was established to protect agriculture and open space and to regulate winery development and expansion in a manner that avoids potential negative environmental effects. The proposal is consistent with the General Plan.
- Agricultural policy 3.11 of the County General Plan recognizes wineries, and any use clearly accessory to the winery, as agriculture. The Land Use Standards of the General Plan, subsection 3(F)(8.b), list the processing of agricultural products as one of the general uses recognized by the AWOS (Agriculture, Watershed and Open Space) land use designation. The proposed project provides for the continuation of agriculture as the predominant land use and is consistent with the General Plan.
- The General Plan allows wineries in agriculturally designated areas.

10. That the proposed use would not require a new water system or improvement causing significant adverse effects, either individually or cumulatively, on the affected groundwater basin in Napa County, unless that use would satisfy any of the other criteria specified for approval or waiver of a groundwater permit under Sections 13.15.070 or 13.15.080 of this code.

**Analysis:** Minimum thresholds for water use have been established by the Department of Public Works using reports by the U.S. Geological Survey (USGS). These reports are the result of water resources investigations performed by the USGS in cooperation with the Napa County Flood Control and Water Conservation District. Any project which reduces water usage or any water usage which is at or below the established threshold is assumed not to have a significant effect on the affected groundwater levels. Based on Phase I Water Availability Analysis, the 40.06 acre parcel has a water availability calculation of 40-acre feet/year (af/yr). Existing water usage on the subject parcel is approximately 13.60 af/yr. The proposed winery expansion is anticipated to use approximately 4.68 af/yr, resulting in an annual water demand for the parcel to be approximately 18.28 af/yr. Based on these figures (as reviewed by the County Public Works Department) the project would be below the established threshold for groundwater use on the parcel and will not result in substantial depletion of groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater level.

**PLANNING RECOMMENDATION:**

**ENVIRONMENTAL**

1. Find that the Planning Commission has read and considered the Negative Declaration prior to taking action on said Negative Declaration and the proposed project.
2. Find that the Negative Declaration is based on independent judgment by the Planning Commission.
3. Find that the Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act.
4. Find that there is no substantial evidence that the project will have a significant effect on the environment.
5. Find that the Secretary of the Planning Commission is the custodian of the records of the proceedings on which this decision is based. The records are located at the Napa County Conservation, Development & Planning Department, 1195 Third Street, Room 210, Napa, California.
6. Find that considering the record as a whole, there is no evidence before the agency that the proposed project will have potential for an adverse effect on wildlife resources or the habitat upon which the wildlife depends.
7. Adopt the Negative Declaration.

#### PLANNING

1. **ADOPT** the Negative Declaration and **APPROVE** Use Permit # P07-00587-MOD-Major based on findings 6-10 and subject to the attached conditions of approval.

## CONDITIONS OF APPROVAL

### Laird Family Estate Winery

#### USE PERMIT # P07-00587-MOD-Major

**1. SCOPE:** The permit shall be limited to:

- Wine production of no more than 900,000 gallons per year (consistent with the Napa County Winery Production Process),
- Construction of a 30,000 square foot production building,
- Construction of a 1,260 sq ft loading dock,
- Construction of a 1,684 square foot roof cover over the loading dock;
- Construction of a new 1,144 square foot covered outdoor work area adjacent to the existing loading dock,
- Installation of a 3,240 square foot roof cover over the existing open loading dock,
- Removal of prior condition of approval regarding alternating proprietor/custom crush clients (approved under #97526-UP & #99506-UP) and
- Assessor's Parcel Number: 035-031-031

The winery shall be designed in substantial conformance with the submitted site plans, elevations drawings, and other submittal materials and shall comply with all requirements of the Napa County Code. It is the responsibility of the applicant 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 changes in use shall be by the approved Use Permit modification process in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit process.

**2. GRAPE SOURCE:**

At least 75% of the grapes used to make the winery's wine shall be grown within the County of Napa. The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the production is from Napa County grapes. The report shall recognize the Agriculture Commission's format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the Conservation, Development and Planning Department upon request, but shall be considered proprietary information not available to the public. (Grape source statement has been signed)

**3. LIGHTING:**

Any exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, and shall be the minimum necessary for security, safety, or operations and shall incorporate the use of motion detection sensors to the greatest extent practical. 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. Prior to issuance of any building permit for construction of the winery, 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 Department review and approval. All lighting shall comply with Uniform Building Code (UBC).

#### 4. LANDSCAPING/PARKING:

Two (2) copies of a detailed landscaping plan, including parking details, shall be submitted for review and approval prior to issuance of building permits. The plan shall indicate the names and locations of all plant materials to be used along with the method of maintenance. The landscape plan shall be compatible with the existing Laird Winery north facing view so as to provide visual interest to the production building massing. Plant materials shall be purchased locally when practical. The Agricultural Commissioner's office (707-253-4357) shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.

Parking shall not occur along access roads or in other locations except during harvest/crush. In no case shall parking impede emergency vehicle access or public roads.

Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and off-site residences that can view these areas. Parking shall be limited to approved parking spaces only and shall not occur along access roads or in other locations except during harvest or approved marketing events. In no case shall parking impede emergency vehicle access or public roads. If any event is held which will exceed the available on-site parking, the applicant shall arrange for off-site parking and shuttle service to the winery.

#### 5. OUTDOOR STORAGE/SCREENING/UTILITIES:

All outdoor storage of winery equipment shall be screened from the view of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No item in storage is to 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.

New utility lines required for this project that are visible from any designated scenic transportation route (see Chapter 7 of the General Plan and Chapter 18.106 of the Napa County Code for designated roads) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

#### 6. RENTAL/LEASING:

No winery facilities, nor portions thereof, including but not limited to offices, kitchens, barrel storage areas, and warehousing space, shall be rented, leased, nor used by entities other than the on-site winery itself, except as may be specifically authorized in this use permit or pursuant to the Temporary Events Ordinance (Section 5.36.010).

#### 7. COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES:

The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Departments and Agencies, including but not limited to:

Department of Environmental Management as stated in the comment memo dated August 27, 2007;  
Department of Public Works as stated in the comment memo dated February 19, 2008;  
County Fire Department as stated in the comment memo dated September 25, 2007; and  
Building Division as stated in the comment memo dated August 16, 2007.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Departments and Agencies shall be determined by those Departments or Agencies. The inability to substantially comply with the requirements of other County Departments and Agencies may result in the need to modify the approved use permit.

#### **8. SPOILS:**

All grading and spoils generated by construction of the project facilities, including cave spoils, shall be disposed of per Public Works direction. All spoils piles shall be removed prior to occupancy.

#### **9. WELLS:**

The permittee may be required (at the permittee's expense) to provide well monitoring data if the Director of Environmental Management determines that water usage at the winery is affecting, or would potentially affect groundwater supplies or nearby wells. Data requested could include, but may not be limited to, water extraction volumes and static well levels. If applicant is unable to secure monitoring access to neighboring wells, onsite monitoring wells may need to be established to gage potential impacts on the groundwater resource utilized for the project proposed. Water usage shall be minimized by use of best available control technology and best water management conservation practices. 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 director of environmental management shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the Napa County Groundwater Ordinance and protect public health, safety, and welfare. That recommendation shall not become final unless and until the director has provided notice and the opportunity for hearing in compliance with the county code section 13.15.070.G-K.

#### **10. NOISE:**

Construction noise shall be minimized to the maximum extent practical and allowable under State and local safety laws. Construction equipment muffling and hours of operation shall be in compliance with County Code Chapter 8.16. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site. If project terrain or access road condition 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 between the hours of 8 AM to 5 PM. Exterior winery equipment shall be enclosed or muffled and maintained so as not to create a noise disturbance in accordance with the Code. There shall be no amplified sound system or amplified music utilized outside of approved, enclosed winery buildings.

#### **11. 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. Construction activities shall not occur during windy periods.

#### **12. 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 and the applicant shall obtain written approval by the Conservation,

Development and Planning Department prior to painting the building. Highly reflective surfaces shall be prohibited.

### **13. 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 Planning Department will be contacted for further guidance, which will likely include the requirement for the applicant to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required. If human remains are encountered during the development, all work in the vicinity must be, by law, halted, and the Napa County Coroner informed, so that he 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 nearest tribal relatives as determined by the State Native American Heritage Commission would be contacted to obtain recommendations for treating or removal of such remains, including grave goods, with appropriate dignity, as required under Public Resources Code Section 5097.98.

### **14. TRAFFIC**

Reoccurring and scheduled vehicle trips to and from the site for employees and deliveries will not occur during peak (4:00 PM – 6:00 PM) travel times to the maximum extent possible. All road improvements on private property required per the Department of Public Works shall be maintained in good working condition.

### **15. STORM WATER CONTROL:**

For any construction activity that results in disturbance of greater than one acre of total land area, permittee shall file a Notice of Intent with the California Regional Water Quality Control Board (SRWQCB) prior to any grading or construction activity. All hazardous materials stored and used on-site that could cause water pollution (e.g. motor oil, cleaning chemicals, paints, etc.) shall be stored and used in a manner that will not cause pollution, with secondary containment provided. Such storage areas shall be regularly cleaned to remove litter and debris. Any spills shall be promptly cleaned up and appropriate authorities notified. Parking lots shall be designed to drain through grassy swales, buffer strips, or sand filters prior to any discharge from the impervious surface into a watercourse. If any discharge of concentrated surface waters is proposed in the any "Waters of the State," the permittee shall consult with and secure any necessary permits from the State Regional Water Quality Control Board. All trash enclosures must be covered and protected from rain, roof, and surface drainage.

### **16. INDEMNIFICATION:**

An indemnification agreement, in the form attached hereto, shall be signed and returned to the County within twenty (20) days of the granting of this approval. (Has been signed)

### **17. AFFORDABLE HOUSING MITIGATION:**

Prior to County issuance of a building permit, the applicant shall pay the Napa County Affordable Housing Mitigation Fee in accordance with the requirements of County Code Chapter 15.60 or as may be amended by the Board of Supervisors.

**18. PREVIOUS CONDITIONS:** (for Modifications only)

The permittee shall comply with all previous conditions of approval for Use Permit (#97526-UP through #02193-UP), except as modified by this action. To the extent there is a conflict between previous conditions of approval and these conditions of approval, these conditions shall control and supersede earlier ones.

**19. 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 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. Costs shall be as established by Board Resolution in accordance with the hourly consulting rate established at the time of the monitoring. Violations of conditions of approval or mitigations measures caused by the permittee's contractors, employees, and guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of compliance deficiencies 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 it is so warranted, to commence revocation hearings in accordance with section 18.124.120 of the County Code.

**20. TEMPORARY AND FINAL OCCUPANCY:**

All project improvements, including compliance with all applicable codes, conditions and requirements from all departments and agencies with jurisdiction over the project, shall be completed prior to granting of a Certificate of Final Occupancy by the County Building Official, which, upon granting, authorizes all use permit activities to commence. The County Building Official is authorized to grant a Temporary Certificate of Occupancy to allow specified limited use of the project, such as commencement of production activities, prior to completion of all project improvements. Marketing, Tours and Tastings are not typically authorized until grant of Final Occupancy, but exceptions can be requested due to extenuating circumstances and are subject to review and approval by the County Building Official and the Director of Conservation, Development and Planning. In special circumstances, departments and/or agencies with jurisdiction over the project are authorized as part of the Temporary Certificate of Occupancy process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

## **EXHIBIT C**





**Morgan Miller Blair**  
A LAW CORPORATION

1331 NORTH CALIFORNIA BOULEVARD, SUITE 200 WALNUT CREEK, CALIFORNIA 94596-4544  
925.937.3600 925.943.1106 FAX www.mmlaw.com

TODD A. WILLIAMS  
(925) 979-3352  
twilliams@mmlaw.com

September 25, 2008

**VIA E-MAIL**

Laura Anderson  
Deputy County Counsel  
County of Napa  
County Administration Building  
1195 Third Street, Room 301  
Napa, CA 94559

Re: Laird Use Permit  
Our File No. 10797-001

---

Dear Laura:

This letter follows up on your email dated September 19, as well as my letter dated September 16 (both attached hereto). On behalf of Mr. Lamoreaux, we want to voice our objection to the procedure set out in your email of September 19. We believe this procedure is not equitable, nor does it comply with the law.

Specifically, you indicated that the County intends to hold Use Permit Modification Request (#P07-00587-MOD-MAJ) (the "Permit")<sup>1</sup> (approved in March) "in abeyance" while the Laird winery submits, processes and seeks approval of a new permit for a barrel storage warehouse along the lines of that proposed previously with a "slight reconfiguration to the shape of the building and additional landscaping." If the new permit is approved, you indicated that it would include a condition of approval that the prior Permit would be rescinded. We strongly object to this proposed procedure.

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<sup>1</sup> Specifically, the Permit sought to modify Use Permit # 97526-UP through # 02193-UP to: (1) increase the maximum total production capacity from 650,000 to 900,000 gallons per year; (2) construct a new 30,000 square foot production building; (3) removal of the condition of approval regarding alternating proprietor/custom crush clients; (4) install a 1,684 square foot roof cover for the new 1,260 square foot loading dock; (5) install a 3,240 square foot roof cover over the existing loading dock; and (6) construct a new 1,144 square foot covered outdoor work area adjacent to the existing loading dock.

In addition, this morning Mike Witek called me on behalf of Laird and indicated, contrary to your email, that in fact Laird will be seeking approval of a use permit for a significantly larger warehouse similar to that proposed earlier this summer, but later withdrawn. I was surprised to learn that Laird had decided to submit a different proposal than the one it apparently discussed with you just last week.

First, as to our objections to the proposed procedure, the County's decision regarding process appears to be the result of threats of legal action by Laird. By the County bending to such threats, the process going forward will be tainted. Under the current plan, the actions of staff and the County decision-makers will all be improperly influenced by the looming threat that if Laird's permit application is not approved, Laird would then sue the County if it tries to rescind the Permit. Laird should not have the benefit of leverage over the County stemming from a permit granted in violation of due process.

As pointed out in two previous letters, in light of the County's failure to provide actual notice to Mr. Lamoreaux as required under the County Code, Government Code and CEQA, the County must rescind the Permit, and the negative declaration adopted in connection therewith, issued on March 5, 2008. We believe the County should follow the law and correct the due process error now, not impermissibly tie it to Laird's new application.

Second, we do not see how a condition of approval, which typically obliges the applicant to do something, can rescind the Permit. The proper procedure is for the County to take a separate action to rescind the Permit; it is not in Laird's hands to do so, nor can Laird request that approval of his new proposal "void" the currently invalidly approved Permit. After rescission has occurred, and presuming Laird resubmits a use permit application, the County should provide the required notice, including to the neighboring properties, prepare and circulate an appropriate environmental document pursuant to CEQA, and schedule a public hearing on the matter.

Last, the County's proposed process represents a continuing violation of Mr. Lamoreaux's due process rights. The County Counsel's office and staff have – for months – consistently taken the position that the permit should and would be rescinded, but only held off such action to see if the parties could reach a settlement agreement. Those discussions have met an impasse, therefore, there is no further justification for the County's failure to rescind the permit at the next opportunity, i.e., at the October 1, 2008 meeting of the Planning Commission.

We realize that Laird may object to the County's rescission of the Permit, but Laird can hardly complain about an error that it perpetuated by not informing the County that – contrary to the statement contained in the Planning Commission staff report preceding the March approval – Laird had not contacted the neighboring property owners, nor had such owners indicated that they did not have objections to the project.

Thank you for your continued attention to this matter and for addressing these concerns.  
If you have any questions, please do not hesitate to contact me.

Very truly yours,

MORGAN MILLER BLAIR

A handwritten signature in black ink, appearing to read "Todd Williams", written in a cursive style.

TODD A. WILLIAMS

TAW:taw  
Attachments

cc: Phil Lamoreaux  
Morgan Morgan  
Kathy Smith  
Jane Vianello  
Dorothy Wurz  
Ken Miller

**Todd Williams**

---

**From:** Anderson, Laura [LANDERS1@co.napa.ca.us]  
**Sent:** Friday, September 19, 2008 2:22 PM  
**To:** Todd Williams; Michael P. Witek  
**Cc:** Ken Miller; McDowell, John; Tom Carey  
**Subject:** Laird Use Permit

Todd and Mike:

This email confirms my discussions with both of you today regarding how the County intends to proceed with Laird Use Permit P07-00587-MOD-MAJ and the related Negative Declaration and also supersedes the email I sent on Tuesday, September 16<sup>th</sup>. I apologize for the confusion but as you know the County is trying its best to achieve an outcome that will be acceptable to both sides, satisfy due process requirements and avoid litigation.

It is the County's understanding that by October 1, 2008, Ken Laird will file a new application to modify the Laird winery use permit as that permit existed prior to March 5, 2008. The new application will be assigned a new permit number and will encompass all of the items requested in the prior March modification (P07-00587-MOD-MAJ) that is the subject of the noticing issue and will also likely include a slight reconfiguration to the shape of the building and additional landscaping. The new use permit modification will also include a request that the Planning Commission void the prior March modification (P07-00587-MOD-MAJ) upon approval of the new modification request. The prior March modification (P07-00587-MOD-MAJ) will be held in abeyance and not acted upon or rescinded while the County processes the new modification request and prepares and circulates a new CEQA document. Assuming application materials are timely submitted to the County, staff expects to have the new use permit modification request heard by the Planning Commission at its November 19<sup>th</sup> meeting. Notice of the meeting and of the availability of the CEQA document will be provided to neighbors and interested parties in accordance with applicable County Code requirements and CEQA Guidelines. At the Commission hearing, Mr. Lamoreaux and any other neighbor or interested party will have an opportunity to appear and comment on the new modification and CEQA document. Upon conclusion of the public hearing, if the Commission approves the new modification a condition of approval will state that the new modification supersedes and replaces P07-00587-MOD-MAJ and voids modification P07-00587-MOD-MAJ. If the Commission denies the new modification, the County will proceed with rescission of the prior March modification and both sides will be notified of when that action will be before the Commission. Regardless of whether the Planning Commission approves or denies the new application, both parties will have been given notice and an opportunity to appear and comment on the new application and will have the right to appeal the Commission's decision on the new modification to the Board of Supervisors. The County believes that this approach will satisfy due process requirements by giving Mr. Lamoreaux and the neighbors a full and fair opportunity to comment on the winery modification while also providing the Lairds with expedited processing of their application.

Please feel free to contact me if you have any questions.

Regards,  
Laura Anderson  
Deputy County Counsel

9/25/2008



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TODD A. WILLIAMS  
(925) 979-3352  
twilliams@mmblaw.com

September 16, 2008

**VIA E-MAIL**

Laura Anderson  
Deputy County Counsel  
County of Napa  
County Administration Building  
1195 Third Street, Room 301  
Napa, CA 94559

Re: Laird Use Permit  
Our File No. 10797-001

Dear Laura:

In light of the impasse in the discussions between the Laird Winery ("Laird") and Mr. Lamoreaux regarding the neighbors' concerns over Use Permit Modification Request (#P07-00587-MOD-MAJ) (the "Permit"),<sup>1</sup> I wanted to provide our perspective on the proper procedure going forward.

As discussed previously, in light of the County's failure to provide actual notice to Mr. Lamoreaux as required under the County Code and Government Code, the County must rescind the Permit approval and the negative declaration adopted in connection therewith that occurred on or about March 5, 2008. We suggest that the County take such action as soon as possible, and no later than the October 1, 2008 meeting of the Planning Commission.

After rescission has occurred, and presuming Laird resubmits a use permit application, the County should provide the required notice, including to the neighboring properties, prepare

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<sup>1</sup> Specifically, the Permit sought to modify Use Permit # 97526-UP through # 02193-UP to:  
(1) increase the maximum total production capacity from 650,000 to 900,000 gallons per year;  
(2) construct a new 30,000 square foot production building; (3) removal of the condition of approval regarding alternating proprietor/custom crush clients; (4) install a 1,684 square foot roof cover for the new 1,260 square foot loading dock; (5) install a 3,240 square foot roof cover over the existing loading dock; and (6) construct a new 1,144 square foot covered outdoor work area adjacent to the existing loading dock.

and circulate an appropriate environmental document pursuant to CEQA, and schedule a public hearing on the matter.

We do not believe it is procedurally appropriate to schedule both the rescission and the reconsideration of the Permit for the same hearing. The rescission should happen now, followed by consideration of a new permit application if and when one is filed.

Here, it would be unusual and improper to give notice of both the rescission and approval of the same negative declaration and permit application for the same meeting. Our strong concern is that the Planning Commission would view both actions as mere technical formalities, rather than considering the permit application and accompanying environmental document on a clean slate and with the benefit of the public comment that is sure to be offered. The court of appeal has recently rejected procedures that do not further the state's policy and the Legislature's intent that the public be involved in the planning process and are "afforded the opportunity to respond to clearly defined alternative objectives, policies and actions." *Environmental Defense Project of Sierra County v. County of Sierra*, 158 Cal. App. 4<sup>th</sup> 877, 893 (2008) (citing Gov't Code § 65033 and striking down notice procedure used in a so-called "streamlined zoning process").

Also, a dual action could lead to needlessly complicated results. For instance, there is a possibility that the applicant or the neighbors would appeal the Commission's decision to rescind (or not rescind) the Permit to the Board of Supervisors. That appeal would need to be heard before an application for the same project is considered by the Planning Commission, since the resolution of the appeal could moot the need for such an entitlement. In other words, those getting notice of the meeting would not know, until the meeting itself, whether the Planning Commission would actually consider the issuance of the Permit.

Such a procedure is unnecessary and would save little to no time. In any event, before any new or renewed application is considered, proper notice of an appropriate environmental document and the permit would need to be given. As far as I know, Laird has not formally resubmitted its application, so, at this point, it is not clear what proposal the Planning Commission would be considering. What is clear is that the Permit and Negative Declaration should be rescinded to rectify the notice issue as set forth in a letter submitted to the County in May when Mr. Lamoreaux first became aware that the Permit had been approved.

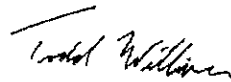
Rescission of the Permit and negative declaration followed by a later hearing on the application would not be prejudicial to Laird. Since the original approval in March, Laird has applied and withdrawn an application to modify the Permit, has not submitted building plans, has dragged its feet on scheduling and attending meetings to resolve this issue, and has been slow to respond to proposals made by the neighbors. Much of the responsibility for the current situation is a direct result of the absence of any outreach performed by Laird in advance of the hearing on the Permit, including its failure to correct the staff report's statement that Laird had contacted the

neighbors and that there were no objections to the Permit – both of which we now know to be false.

Thank you for your continued attention to this matter and for addressing the concerns raised herein. If you have any questions, please do not hesitate to contact me.

Very truly yours,

MORGAN MILLER BLAIR



TODD A. WILLIAMS

TAW:taw

cc: Phil Lamoreaux  
Morgan Morgan  
Kathy Smith  
Jane Vianello  
Dorothy Wurz  
Ken Miller

## **EXHIBIT D**



MINUTES OF THE MEETING OF THE  
CONSERVATION, DEVELOPMENT AND PLANNING COMMISSION  
COUNTY OF NAPA

February 5, 2003

1. Call to Order.  
**THE CONSERVATION, DEVELOPMENT AND PLANNING COMMISSION OF THE COUNTY OF NAPA MET IN REGULAR SESSION, WEDNESDAY, FEBRUARY 5, 2003, AT 10:34 A.M.**
2. Roll Call.  
**THE FOLLOWING MEMBERS WERE PRESENT: CHAIRPERSON DAVID GRAVES, COMMISSIONERS BOB FIDDAMAN, LARRY SCHOENKE, TERRY SCOTT AND JIM KING.**
3. Citizen Comments and Recommendations.  
**NANCY CELIENO REQUESTED CLARIFICATION ON THE ORDER OF THE MEETING.**
4. Approval of Minutes.  
**NONE**
5. Agenda Review.  
**STAFF RECOMMENDS ITEM 7 – DEL DOTTO WINERY/ERICKSON PROPERTIES, INC. USE PERMIT REQUEST #02082-UP BE CONTINUED TO FEBRUARY 19, 2003.**

Public Hearings

6. Items to be decided without additional testimony.  
**(SEE ITEM 7)**
7. **Del Dotto Winery / Erickson Properties, Inc. - Use Permit Request #02082-UP**  
California Environmental Quality Act (CEQA) Status: Mitigated Negative Declaration Prepared. According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: traffic, historic resources, and aesthetics.

12. **Laird Family Estate (Winery) Existing Use Permit # 97526-UP**

The Planning Department requests the Commission to review the actual lighting at the Laird facility and determine whether it satisfies the exterior lighting condition of Approval of the Winery Use Permit. (Assessor's Parcel #035-031-031) 5055 Solano Avenue, Napa.  
**PUBLIC HEARING HELD – TESTIMONY PRESENTED**

**THE COMMISSION DETERMINED THAT THE BUILDING LIGHTS AND TREE LIGHTS ARE NOT IN COMPLIANCE WITH CONDITIONS AS PRESENTED AND AUTHORIZED STAFF TAKE ACTION TO HAVE THESE PARTICULAR LIGHTS DIRECTED DOWNWARD AND CLOSE TO THE GROUND WITH AN ABSOLUTE COMPLIANCE DATE OF MARCH 31, 2003.**

**LS-DG-JK-TS-BF**

**N**

Other Business

13. **City Referrals.**  
**NONE**14. **Recommend to the Board of Supervisors that Larry Schoenke be the appointee to the Napa County Wildlife Commission.**  
**COMMISSIONER KING NOMINATED COMMISSIONER SCHOENKE TO BE APPOINTED TO THE NAPA COUNTY WILDLIFE COMMISSION.**  
**JK-BF-TS-DG**

**COMMISSIONER SCHOENKE DECLINED THE NOMINATION DUE TO TIME CONSTRAINTS.**

**COMMISSIONER KING RESCINDED HIS MOTION.**

**CHAIRMAN GRAVES COMMENTED THAT HE WOULD BE HAPPY TO SERVE ON THE NAPA COUNTY WILDLIFE COMMISSION ONCE HIS TERM AS CHAIRMAN HAS CONCLUDED IN MARCH.**

**THIS ITEM WAS CONTINUED TO ALLOW FOR A NEW RECOMMENDATION.**

# **EXHIBIT E**



# NAPA COUNTY

DEVELOPMENT and

CONSERVATION,

PLANNING DEPARTMENT

Charles Wilson  
Director

1195 Third Street, Room 210 • Napa, CA 94559  
Telephone 707/253-4416 FAX 707/253-433

## MEMORANDUM

AGENDA ITEM #: 12  
MEETING DATE: 2-05-03

TO: CONSERVATION, DEVELOPMENT AND PLANNING COMMISSION

FROM: BUZZ KALKOWSKI, AICP, PLANNER II

SUBJECT: LAIRD FAMILY ESTATE (APPROVED 8/20/98 UNDER THE NAME OF  
BAYVIEW CELLARS / KENNETH LAIRD OPERATES UNDER THE NAME  
OF LAIRD FAMILY ESTATES)  
**ISSUE: CONDITION S APPROVAL / EXTERIOR LIGHTING**  
USE PERMIT #97526-UP APN 035-031-031

### BACKGROUND

The above use permit was approved on August 20, 1998. Condition #5 incorporates the 18 Mitigation Measures agreed to and signed by Kenneth Laird on August 10, 1998. The 18 Mitigation Measures revised the proposed winery to reduce impacts identified on the project's initial study to a level of less than significant. Without the mitigation measures a full environmental impact report would have been required prior to the use permit going to the Planning Commission. Condition #9 also requires a detailed lighting plan be submitted and approved prior to the issuance of a building permit for the proposed winery building.

The Laird Family winery nighttime lighting came to the County's attention during the summer of 2002. The conditions of approval and mitigation measures were reviewed for compliance. The Department made the determination that the upward directed lighting did not meet Mitigation Measures #15 and #16, and Condition #5.

### MITIGATION MEASURES

Mitigation Measures #15 and #16 read as follows:

15. The only outdoor lighting after dark, except during crush, shall be low-level security lighting.

## CHAPTER 18.124 USE PERMITS

### Section 18.124.060 Conditions for issuance.

The commission or board may issue a permit subject to conditions specifically set forth in the permit when the commission or board makes the findings prescribed in Section 18.124.070. Such conditions may include, without limitation, conditions governing the following matters:

- H. Exterior and interior lighting, particularly with reference to glare, traffic safety and compatibility with nearby properties and uses.

## CURRENT EXTERIOR LIGHTING CONDITION STANDARD

The following is the current standard lighting condition applied to all new winery projects.

### LIGHTING:

All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, and shall be the minimum necessary for security, safety, or operations and shall incorporate the use of motion detection sensors to the greatest extent practical. 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. Prior to issuance of any building permit for construction of the winery, two (2) copies of a separate detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Department review and approval.

## PREVIOUS COMPLIANCE ISSUES

The use permit modification staff report for #99506-MOD, item #8 Parking, reads as follows:

**Unauthorized Increase in Guest Parking.** Condition of Approval No. 8 of the original use permit required a parking plan be submitted to the Conservation, Development and Planning Department for review and approval. The approved landscape and parking plan (approved 3/10/99) authorized a total of 18 guest parking spaces. Since the Planning Department's final inspection of the winery, conducted on March 3, 2000, 14 additional guest parking spaces have been located on the south side of the winery building in area designated on the site plans as a "Turnout/Loading Zone."

A May 7, 1999 letter from Ken Johanson, then Napa County Public Works Director, addresses earthwork being done without the required grading permit. Another letter of the same date from Grant Taylor, Conservation, Development and Planning Department Code Compliance Officer, at that time, addresses the same issue.

## SUMMARY