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Conservation Development and Planning

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Hillary Gitelman
Director

November 23, 2010

Ron NicholSEN, Proprietor and Owner
On behalf of Susanna Rogers Kelham Trust
dba: Kelham Vineyards Winery
360 Zinfadel Lane
St. Helena, CA 94574

Permit Application № P10-00177 UP, Kelham Winery Use Permit Modification

Dear Mr. NicholSEN,

Please be advised that Use Permit Application № P10-00177 were **APPROVED** by the Napa County Conservation, Development, and Planning Commission (hereinafter "Commission") on November 17, 2010, subject to the attached final (as revised condition number 22 at the hearing) conditions of approval, Napa County departmental comments, and all applicable Napa County regulations. In approving the above application, the Commission adopted the negative declaration on file with the Conservation, Development, and Planning Department.

This permit becomes effective immediately unless an appeal is filed with the Napa County Board of Supervisors consistent with Chapter 2.88 of the Napa County Code, including payment of applicable fees. You have the right to appeal the conditions of approval and you will be notified should an appeal be filed by another. You are hereby further notified that the ninety day period, established by California Government Code §66020(d)(1), in which to protest the imposition of any fees, dedications, reservations, or other exactions which may have been adopted as conditions of approval has commenced.

Pursuant to Napa County Code §18.124.080, the approved use permit modification must be activated within two (2) years of the approval date, or it will automatically expire and become void. This letter serves as the only notice you will receive regarding the expiration of your permit.

If you have any questions about this letter please feel free to contact me at 707.299-1377 or via email at Kirsty.shelton@countyofnapa.org.

Please note that this approval is for the allowed *use* (Planning) for the subject buildings and that you are still obligated to follow up with both the Building and the Code Enforcement Departments to ensure adequate activity is performed to bring the subject buildings to conformance. The allowed use becomes legal upon **final** building permit approval of the subject buildings/structures. I would encourage you to set up an appointment with David Giudice and Ben Reynolds to determine the timing of acquiring final occupancy of all of the buildings and structures.

Best regards,

Kirsty L. Shelton
Planner

Attached: adopted conditions of approval and Departmental requirements

Copied: Jessica Jordon (Planning Supervisor), Jeffrey Redding, Mary Burklow PO Box 100 St. Helena, CA 94574, J. Tuteur (Assessor), Drew Lander (DPW), David Giudice (Code Enforcement), Ben Reynolds (Plans Examiner), L. St. Claire (CDPD), FILE

EXHIBIT B
-Revised at the November 17, 2010 hearing-

CONDITIONS OF APPROVAL
KELHAM VINEYARDS USE PERMIT MODIFICATION
P10-00177-MOD
APN: 030-260-029

1. **SCOPE:** This use permit shall be limited to the following:

Approval of a major modification to Use Permit # 98372-UP to

- 1) convert an existing 1,576 sq. ft. residence to be used for wine tasting, sales, and marketing;
- 2) include a 1,254 sq. ft. outdoor trellised area for wine tasting, marketing, and on-site wine consumption as per AB 2004 (Evans);
- 3) planting of (6) 15-gallon evergreen trees as shown on the site plan.

Any expansion or changes in use shall be in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.

The permittee shall comply with all previous conditions of approval for all previous Use Permits and Modifications, 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 all earlier ones

2. **MARKETING:** Marketing events shall be revised as follows:

- a. Promotional Tastings with Meals
Frequency: 6 times per year
Number of persons: 80 maximum

Marketing plans in their totality must remain "clearly incidental, related and subordinate to the primary operation of the winery as a production facility" (subsection (G)(5) of Sections 18.16.030 and subsection (I)(5) of 18.20.030 of the Napa County Code). To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of recovery of variable costs, and any business content unrelated to wine must be limited. Careful consideration shall be given to the intent of the event, the proportion of the business event's non-wine-related content, and the intensity of the overall marketing plan. (Ord. 1340, 2010: Ord. 1104 § 11, 1996: Ord. 947 § 9 (part), 1990: prior code § 12071).

All activity, including cleanup, shall cease by 10:00 PM. Start and finish time of activities shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM.

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. Prior to the issuance of a building permit, the permittee shall submit a marketing event parking management plan for the review and approval of the Planning Director. There shall be no daily visitations and/or tours during the same time as the marketing events.

3. **TOURS AND TASTING:**

- a. Tours and tastings shall be limited to a maximum of 20 persons/day with a maximum of 140 persons/week.

"Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to members of the wine trade, persons invited by a winery who have pre-established business or personal relationships with the winery or its owners, and persons who have made unsolicited prior appointments for tours or tastings. (Ord. 947 § 9 (part), 1990: prior code § 12070).

Start and finish time of tours and tastings shall be scheduled to minimize vehicles arriving or leaving between 4:00 PM and 6:00 PM, and shall be limited to those wines set forth in Napa County Code Sec. 18.16.030(G)(5)(c).

A log book (or similar record) shall be maintained which documents the number of visitors to the winery, and the dates of their visit. This record of visitors shall be made available to the Department upon request.

4. **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.**

5. **SIGNS:**

Prior to installation of any winery identification or directional signs, detailed plans, including elevations, materials, color, and lighting, shall be submitted to the Planning Department for administrative review and approval. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this use permit approval. All signs shall meet the design standards as set forth in Chapter 18.116 of the County Code. At least one sign placed and sized in a manner to inform the public must legibly and visibly include wording stating "Tours and Tasting by Prior Appointment Only" at the entrance of the property where the winery is located.

6. **GATES/ENTRY STRUCTURES:**

Any gate installed at the winery entrance shall be reviewed by the Conservation, Development and Planning Department, Public Works Department and the Napa County Fire Department to assure that it is designed to allow large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at all times. If the gate is part of an entry structure an additional permit shall be required according to the County Code, A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed and approved as part of this use permit approval.

7. **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 new barrel building, 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).

8. **LANDSCAPING**

Landscaping: Two (2) copies of a detailed landscaping plan that complies with the adopted County Water Efficient Landscaping Ordinance (WELO), including parking details, size of trees, shall be submitted for review and approval prior to issuance of building permits for Phase One. The plan shall indicate the names and locations of all plant materials to be used along with the method of maintenance. **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.**

Landscaping and parking shall be completed prior to occupancy of Phase One (or temporary occupancy), and shall be permanently maintained in accordance with the landscaping plan. No trees greater than 6" DBH shall be removed, except for those identified on the submitted site plan. Any trees that are removed shall be replaced elsewhere on the property on a 2 for 1 basis of equivalent caliper. Replaced trees shall be identified on the landscaping plan. Trees to be retained shall be protected during construction.

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.

The landscaping plan shall also show the species type, size, quantity and growth rate of the screening materials selected. The plan shall show how the selected trees will provide a permanent screen of 50% of these areas for the off-site residences within 5 years of installation and 100% screening within 10 years.

9. **PARKING**

The location of employee and visitor parking, weekly marketing event parking, fire truck access, and truck loading zone areas shall be identified along with proposed circulation and traffic control signage for review and approval by the County Public Works and Fire Department prior to the release of any building permit.

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.

10. **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 18.106 of the Napa County Zoning Ordinance for designated roads) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.

11. **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 persons producing and/or storing wine at the on-site winery, except as may be specifically authorized in this use permit or pursuant to the Temporary Events Ordinance (Chapter 5.36).

12. **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:

Fire Department Requirements

The Fire Department as stated in their memo (attached).

Public Works Department Requirements

The Public Works Department as stated in their revised memo of November 5, 2010 (attached).

Environmental Management Department Requirements

The Department of Environmental Management as stated in their revised memo of November 8, 2010 (attached).

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.

13. GRADING AND 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 or approved on a permanent basis prior to occupancy of Phase One.

14. WELLS:

The permittee may be required (at the permittee's expense) to provide well monitoring data if it 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.

15. 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.**

16. **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 final occupancy of the cave portals. Highly reflective surfaces shall be prohibited.

17. **DUST CONTROL:**

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur during windy periods.

18. **ARCHEOLOGICAL FINDING:**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the Conservation, Development and Planning Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during 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.

19. **TRAFFIC:**

Reoccurring and scheduled vehicle trips to and from the site for employees, deliveries, and visitors will not occur during peak (4-6 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.

20. **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.

21. **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.

22. **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.

In addition, the following compliance condition was added in the hearing:

The Planning Commission shall review the winery operation for compliance after 12 months; the schedule for any subsequent review to be determined by the Commission at its discretion.

23. **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.