

EXHIBIT B: CONDITIONS OF APPROVAL

PLANNING COMMISSION HEARING MARCH 21, 2012

ENVY WINES, LLC / MARK CARTER
USE PERMIT MAJOR MODIFICATION # P11-00163-MOD
1170 TUBBS LAND, CALISTOGA
APN: 017-210-027

1. SCOPE

This Use Permit Major Modification approves modification of Use Permit # 01074-UP to allow:

- An increase in annual production from 20,000 gallons/year to 50,000 gallons/year;
- Construction of a new 3,500 square foot barrel storage building with approximately 1,360 square feet of covered walkway on three sides;
- Addition of 699 square feet of covered crush pad area;
- Expansion of the marketing plan by adding daily wine and food pairings (catered food only) and new monthly marketing events with 75 people, as amended and described below in the Visitation, Tours and Tasting, and Marketing Plan;
- On-premise wine consumption consistent with Assembly Bill 2004 (Evans) outside the winery building entrance;
- Project phasing in two phases to allow; 1) the new barrel storage building to proceed immediately following Use Permit Modification approval with no increase in production to take place until the building is completed; and 2) required access road widening and installation of expanded waste-water treatment and processing facilities for increased production to be completed prior to issuance of a Certificate of Occupancy for the new barrel storage building.
- Hours of operation for the winery shall be limited to 7:00 AM to 5:00 PM (except during crush);
- Two full-time and two part-time employees; and
- Nine on-site parking spaces.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or changes in use shall be by the approved in accordance with Section 18.124.130 of the Napa County Code and may be subject to the Use Permit modification process.

2. PROJECT SPECIFIC CONDITIONS

- A. Landscape screening shall be provided along both the east and south sides of the new barrel storage building, in addition to that shown on attached Sheet # L-10, Existing and Proposed Landscape Plan, Jerry Gregori Architect (refer to Condition # 9).
- B. Tours and tastings shall not occur on the same day as marketing events.

3. COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES

Project conditions of approval include all of the following County Department and Agency requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Departments and Agencies at time of submittal and may be subject to change, including but not limited to:

- A. Department of Environmental Management as stated in their letter of January 11, 2012 (attached as pages 11-12);
- B. Department of Public Works as stated in their letter of July 12, 2011 and February 7, 2012 (attached as pages 13-17);
- C. County Fire Marshal as stated in their letter of June 27, 2011 (attached as pages 18-20);
- D. City of Calistoga as stated in their letter of August 21, 2009 (attached as page 21).

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.

4. VISITATION

Consistent with Sections 18.16.030 and 18.20.030 of the Napa County Code, marketing and tours and tastings may occur at a winery only where such activities are accessory and "clearly incidental, related, and subordinate to the primary operation of the winery as a production facility."

Permittee shall obtain and maintain all permits and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB) required to produce and sell wine, including minimum levels of crush and fermentation. In the event permittee loses required ABC and/or TTB permits and licenses, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are re-established.

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

A. TOURS AND TASTING

Tours and tastings are limited to the following:

Frequency: Seven days per week, Monday - Sunday, by appointment only

Maximum number of persons per day: Eight (8)

Maximum number of persons per week: Fifty-six (56)

Time of operation: 10:00 AM – 5:00 PM, Daily

"Tours and tastings" means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointment for tours or tastings. Tours and tastings may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant. (Ord 1340 §2, Sec. 18.08.062)

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).

B. MARKETING

Marketing events are limited to the following:

- a. Type of Event: Food and Wine Pairings
Frequency: Daily
Number of persons: 8 persons
Time of Day: 10:00 AM – 5:00 PM
- b. Type of Event: Private Promotional Tastings and Meals (small event)
Frequency: 12 times per year (monthly)
Number of persons: 30 maximum
Time of Day: 11:00 AM – 10:00 PM
- c. Type of Event: Private Promotional Tastings and Meals (medium event)
Frequency: 12 times per year (monthly)
Number of persons: 75 maximum
Time of Day: 11:00 AM to 10:00 PM
- d. Type of Event: Release Events
Frequency: 2 times per year
Number of persons: 100 maximum
Time of Day: 11:00 AM to 10:00 PM
- e. Participation in Auction Napa Valley.

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20 of the Napa County Code. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery's use permit. 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 have prepare an event specific parking plan which may include but not be limited to valet service or off-site parking and shuttle service to the winery.

5. 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.

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

7. SIGNS

Prior to installation of any winery identification or directional signs, detailed site plans and sign design plans, including locations, 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".

8. 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 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).

9. LANDSCAPING

Two (2) copies of a detailed landscaping and irrigation plan, including parking details, shall be submitted for review and approval prior to issuance of building permits. **The plan shall be prepared pursuant to the County's Water Efficient Landscape Ordinance (WELO), as applicable, and shall indicate the names and location 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.

No trees greater than 6" diameter at breast height shall be removed, except for those identified on the submitted site plan. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.

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.

Landscaping shall be completed prior to final occupancy, and shall be permanently maintained in accordance with the landscaping plan.

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 7 of the General Plan and 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. **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.

12. **SITE IMPROVEMENTS AND PUBLIC WORKS DEPARTMENT** - Contact (707) 253-4351

A. GRADING AND SPOILS

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

B. TRAFFIC

Reoccurring and scheduled vehicle trips to and from the site for employees, deliveries, and visitors 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.

C. 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.

D. STORM WATER CONTROL

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by County Public Works Department and the California Regional Water Quality Control Board (SRWQCB).

E. PARKING

The location of employee and visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities and 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 permittee shall prepare an event specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery.

F. 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 motor homes, 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.

13. **ENVIRONMENTAL MANAGEMENT DEPARTMENT SPECIFIC COMMENTS - Contact (707) 253-4351**

A. 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 CountyCode section 13.15.070.G-K.

B. 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.

14. **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.

15. ADDRESSING

All project site addresses shall be determined by the Conservation, Development and Planning Director, and reviewed and approved by the U.S. Post Office, prior to issuance of any building permit. The Conservation, Development and Planning Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

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.

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

The permittee shall comply with all previous conditions of approval for Use Permits # 01074-UP, # P09-00288-MODMJR and Williamson Act Agricultural Preserve Contract # P09-00436-AGK 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 and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until grant of final occupancy. 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. 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.