

January 10, 2020

Planning Commission Mtg.

JAN 22 REC'D 2020

Agenda Item # 7A

**VIA EMAIL: [Kelli.Cahill@countyofnapa.org](mailto:Kelli.Cahill@countyofnapa.org) AND U.S. MAIL**

Ms. Kelli Cahill  
Code Compliance Officer  
County of Napa Planning Department  
1195 Third Street, Suite 210  
Napa, CA 94559

**Re: LOCATION: 270 Kreuzer Lane, Napa, CA;  
APN 045-310-055-000 CE19-00992**

Dear Ms. Cahill:

This letter is in response to the Amended Information and Notice Regarding Apparent Code Violation, dated November 12, 2019, concerning the above-referenced property. Please find both the reported or apparent violations and responses to each below.

**REPORTED OR APPARENT CODE VIOLATION:**

*An annual marketing event was held at the winery that did not adhere to the conditions of approval outlined in Use Permit #03318. The report stated that the vent <sic> was held over two days on September 13 and 14th in areas outdoors with amplified music. Neighboring property owners were not informed of the event 60 days prior to the event as required.*

**RESPONSE:** We acknowledge and apologize for this oversight. The referenced event is held every year at this same time and has been characterized as a Temporary Event; in prior years it has been permitted as such by the County. Unfortunately in this instance the winery's employee assigned to apply for the permit and act as the Neighbor Liaison failed to either submit the appropriate application to the County or contact the neighbors located at APNs 045-310-045 and 045-310-047. As a result of this incident the responsible employee regrettably had to be terminated, and the responsibilities have been reassigned with oversight by the winery's new CEO to ensure compliance with all Temporary Event and Use Permit conditions.

**VIOLATION DESCRIPTIONS AND RESPONSES:**

- **VIOLATION DESCRIPTION:** *Winery equipment related to crush have been observed outside the cave, with signs stating "Slow Work Zone Ahead." Use Permit No. 03318 does not permit winery related activities outside the caves.*

**RESPONSE:** The winery has purchased a new crusher that allows for crushing to occur within the cave. Grapes must be received at the mouth of the cave portal but will be processed inside the cave moving forward. The referenced sign is to ensure that

vehicles are aware of the presence of workers in the vicinity of the cave portal and will remain in place for safety purposes. Further, the pending use permit modification requests approval to install a crush pad cover at the cave portal and to allow harvest activities on the pad immediately outside the cave portal to facilitate agricultural processing on site.

- **VIOLATION DESCRIPTION:** *Any of the 13 allowed marketing events require a minimum of 60 days prior notice to owners of assessor parcel nos. 045-310-045 and 045-310-047.*

**RESPONSE:** We acknowledge that advanced notice is required for certain events and will be provided moving forward; however the notice requirement as stated in the violation description is incorrect. Use Permit 03318-UP Condition of Approval #1, Bullet Point #5, only requires 60 days advanced notice to owners of assessor parcel nos. 045-310-045 and 045-310-047 "for the two release events and one wine auction event. For all other marketing events prior notice will be provided ... within a reasonable time after the events are scheduled..."

- **VIOLATION DESCRIPTION:** *Other than marketing events, reports have indicated that the maximum number of visitors to the site on any day (whether visiting or for retail sales or for tours and/or tastings) <sic> shall not exceed eight (8) people per day or forty (40) people per week has been exceeded with some regularity.*

**RESPONSE:** A use permit modification application was submitted in 2017 for the purposes of updating the winery's use permit. The County subsequently adopted its Compliance Program allowing wineries to submit applications to update use permits to bring their permits into parody with their business needs/actual operational levels. That policy also allows those wineries to continue their current operations until such time that the Planning Commission makes a decision on the use permit modification. We believe it would be inappropriate to treat a winery that acted voluntarily in advance of this policy in such a way that puts it at an economic disadvantage to those wineries that only came forward after the County set a firm deadline for applications.

- **VIOLATION DESCRIPTION:** *We have received a report that visitors to the winery stay beyond 4:00pm, to as late as 6:30pm.*

**RESPONSE:** See response above.

- **VIOLATION DESCRIPTION:** *There are currently five (5) winery signs on and offsite that do not state that the winery is open to the public with prior appointment only. Additionally, there is no record of permit for any signs.*

**RESPONSE:** The signs have been in place since shortly after the winery was approved in 2005, and were not identified as a violation in the County's compliance inspection on February 6, 2018. All items identified at the 2018 compliance inspection were addressed to the satisfaction of the County, including the approval of a landscape plan to provide

additional screening of the winery from the Menzel's property, including planting of additional oak trees, installation of mesh screening of mechanical equipment and cave ventilation ducts. An appropriate sign plan will be submitted to the County for administrative review and approval as soon as feasible following the decision on the pending use permit modification application so that any necessary changes to signage can be addressed at one time.

- **VIOLATION DESCRIPTION:** *Review of aerial photographs indicate that outdoor storage winery equipment on an adjacent parcel have not been adequately screened as required by Use Permit No. 03318 Condition of Approval No. 9.*

**RESPONSE:** Winery equipment is stored at the winery on the winery parcel. Only agricultural equipment is stored on the adjacent vineyard parcel. Such equipment is related to the vineyard operations, such as grape bins used for harvesting grapes from the vineyard, tractors, and farming implements. This equipment is generally not visible from adjacent properties and, even if it were, is not "winery equipment" and thus not subject to Condition of Approval No. 9. Related to the source of this purported violation, please see attached for your information a Cease and Desist letter sent to Mr. Menzel's attorney, Denis Shanagher, in response to him trespassing and harassing the winery's employees at the vineyard parcel.

- **VIOLATION DESCRIPTION:** *Exterior winery equipment is not enclosed or muffled to prevent noise disturbance to neighbor properties.*

**RESPONSE:** All winery equipment is in fact enclosed and muffled to the extent feasible and in conformance with County Code and the noise ordinance. Nevertheless, the winery has instituted noise reduction measures to reduce even further the already very low noise levels. These include fan repair and sound reduction measures, use of Acoustifence and QuietFiber, and sound proofing of cave ventilation ducts. Additional offers made by the winery to hire a sound consultant to measure the noise at the Menzel residence to evaluate the issue and recommend improvements have not been accepted.

- **VIOLATION DESCRIPTION:** *There shall be no amplified music sound system or amplified music utilized outside of approved, <sic> enclosed winery buildings unless a special permit to that effect has been secured through the County.*

**RESPONSE:** See response above regarding Temporary Event permit oversight.

**CORRECTIONS REQUIRED AND DEADLINE TO CORRECT:**

1. *Please contact me within ten (10) calendar days of the date of this letter (November 22, 2019) to confirm your receipt of this correspondence and to discuss your options to comply with the code.*

**RESPONSE:** Kellie Cahill was contacted within ten days of receipt of the correspondence.

2. *Please provide a total number of marketing events held at the winery to-date for the year 2019, including the total number of guests/visitors per event.*

**RESPONSE:** Marketing events for 2019: Please note that in 2019 the winery did not hold any marketing events and instead only held the following Temporary Events:

- September 13 and 14: Harvest Moon Friday, 66 people and Saturday, 70 people, Temporary Event permit in past years, failed to submit application in 2019, will do so moving forward.
- November 27: Film Festival non-profit under their Temporary Event permit, 27 people (gave notice October 17th).

3. *Please provide complete visitation logs for the winery to-date for the year 2019.*

**RESPONSE:** Such records were provided to Wyntress Balcher in response to request from neighbors prior to receipt of this letter.

4. *Please ensure that all tour and tastings be complete by 4pm, and all wine sales complete by 4:30pm as outlined in Condition of Approval No. 2.*

**RESPONSE:** We acknowledge this condition of approval but note that a use permit modification application was submitted in 2017 for the purposes of updating the winery's use permit. The County's Compliance Program allows wineries that have submitted conforming applications prior to March 29, 2019 to update use permits to bring their permits into parity with their business needs and actual operational levels, and to continue their current operations until such time that the Planning Commission makes a decision on the use permit modification, absent health and safety or significant pre-existing violations. We believe it would be unfair and inappropriate to treat a winery that acted voluntarily in advance of the adoption of the Compliance Program in such a way that puts it at an economic disadvantage to those wineries that only came forward after the County set a firm deadline for applications.

5. *To date, this department has not received a permit for any offsite or onsite winery signs, of which there are 5. Please submit a complete site plan map identifying the location of all winery signs, including photographs, size, dimension, and heights.*

**RESPONSE:** A sign plan will be submitted to the County for administrative review and approval as soon as feasible.

6. *Please provide a detailed plan for screening storage of equipment on adjacent parcel 045-310-055, as to create a visual barrier consisting of fencing or dense landscaping as required under Condition of Approval No. 9.*

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**RESPONSE:** The referenced equipment is agricultural equipment, not winery related, and therefore not subject to Condition of Approval No. 9.

*7. Prior to any event, including those with amplified music or amplified sound system that will take place outdoors, you will need to apply for a Temporary Event Permit a minimum of 60 days prior to the event. Please note that only upon issuance of that permit will outdoor events be permitted on site. Furthermore, any event currently scheduled on or before January 11, 2020 will need to be cancelled as they do not meet the minimum 60 days required to obtain the necessary permits.*

**RESPONSE:** All such events will comply with the Temporary Event Permit requirements.

Sincerely,

DICKENSON, PEATMAN & FOGARTY

A handwritten signature in cursive script, appearing to read 'T Adams', written in dark ink.

Thomas Adams

TSA:bab

Enclosure

October 23, 2019

Denis F. Shanagher  
Duane Morris LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105-1127

**Re: Cease and Desist Trespassing and Recording**

Dear Mr. Shanagher:

We write on behalf of our client Caldwell Vineyard regarding your client, Peter Menzel, entering onto Caldwell Vineyard's property, located at 270 Kreuzer Lane, Napa, California. While Caldwell Vineyard has regularly welcomed its neighbors to walk through its vineyards and to enjoy the Caldwells' hospitality, we must regrettably ask Mr. Menzel to cease and desist from entry upon the Caldwell Vineyard property.

Mr. Menzel's entry onto the Caldwell Vineyard property with the intent to take photographs of the winery and its activities is not and has never been invited nor authorized. We further understand that Mr. Menzel has entered upon the Caldwell Vineyard property with the intent to, and has, interfered with Caldwell Vineyard business, including that Mr. Menzel has harassed Caldwell Vineyard employees.

As such, we must unfortunately provide Mr. Menzel with notice that effective immediately, no entry by him upon the Caldwell Vineyard property is permitted at any time or for any reason, and that any such entry shall constitute trespassing. Should Mr. Menzel wish to enter the property in the future, he should contact me in advance for permission to do so. If he enters into the property without further authorization in the future, we may be forced to take legal action against him.

Further, we have been informed that Mr. Menzel, in concert with other neighbors, has installed a video surveillance system on the Toth's property that observes activities on the private portion of Kreuzer Lane. This video recording constitutes an invasion of privacy of Caldwell Vineyard's employees and visitors, and serves no legitimate security or other personal interest in protecting the private property on which it is located. It serves solely to record activity located on other private property, and as such its sole purpose is in spying on the activities of others on private property in direct contravention of their right to privacy. Calif. Const. Art. 1, § 1. Such recording of private vehicles on the private roadway must cease immediately.

Denis F. Shanagher  
October 23, 2019  
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If you or Mr. Menzel are at all unclear about the boundaries of the Caldwell Vineyard property, or otherwise have any questions about this notice, please do not hesitate to contact me directly.

Sincerely,

DICKENSON, PEATMAN & FOGARTY



Joshua S. Devore