

November 20, 2015

Ms. Wendie McDonald
Licensing Representative
Dept. of Alcoholic Beverage Control
50 D Street, Room 130
Santa Rosa, CA 95404
(by U.S. mail and email to SRO.Direct@abc.ca.gov)

Re: Pending License Number 02-556152

Dear Ms. McDonald,

I am in receipt of your letter dated October 7, 2015 pertaining to the ABC license application for Triumph Beverage Company (license number 02-556152). Thank you for getting back to me.

As to your letter, I have several questions and concerns. First, I must respectfully disagree with your comment that “many of the protest concerns that were raised are not controlled by the Department of Alcoholic Beverage Control.” Under the Constitution of the State of California, Article XX, §22, “the Department of Alcoholic Beverage Control . . . shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be *contrary to public welfare* or morals”

All of the concerns raised in my protest deal with the public welfare of all residents and visitors of the Soda Canyon Road community. Specifically, my concerns relate to traffic, fire, and the overall safety of all current users of the road, which are well within the broad definition of public welfare. Any increase in traffic caused by the granting of a winery license to Triumph Beverage Company, LLC (Applicant) will contribute to existing dangers on the road. As mentioned in my original protest, Soda Canyon Road is a remote, very steep, unlit, narrow, two-lane road (and at some points one and a half lanes), with no shoulders, and innumerable blind curves. Importantly, there is only one entrance and exit in the event of a fire or other catastrophe. There have been significant numbers of accidents and fires on the road over the years that have seriously endangered the life and safety of all residents and users of the road. In fact, from January 2007 to April 2015, there were 116 reported incidents by CalFire, broken down as 40 medical emergencies, 13 residential fires, 16 wildland fires, 9 traffic collisions, 1 smoke check, 3 hazmat incidents, and 25 “no-description” incidents.¹ Regarding CHP incidents, from January 2013 to April 2015, there were 15 reported² accidents by the CHP.³

¹I am happy to provide a summary or the full reports of these CalFire incidents upon request.

²I say reported because a significant number of accidents that occur on the road go UN-reported. As an example, a car in June 2015 was found in a ditch near the north end of my property and had been completely abandoned.

³I am happy to provide a summary or the full reports of these CHP incidents upon request.

As a specific example of a recent accident responded to by CHP, there was a semi-truck visiting one of the larger vineyards at the end of Soda Canyon Road that overturned in September 2014 and ***blocked all ingress and egress*** for all residents living above the accident, which occurred around the 2500 block, ***for more than 5 hours***. When the first tow truck arrived to remove the wreckage, the semi-truck was so large and heavy, that the tow truck almost went off the edge of the cliff (there are NO side rails along the steepest portion of the road, which all employees/visitors to Applicant's property must utilize). A second tow truck then had to be called in to rescue the first tow truck, and then finally remove the semi-truck. Had the truck started a brush fire,⁴ which has happened on this road,⁵ all residents and visitors living above the accident would literally have been trapped without an escape route.

The location of the Applicant's winery site is at the very end of the 6.75-mile-long Soda Canyon Road, ***the final ¼ of a mile of which has no lines/lane dividers because it is slightly more than a one-lane road – it is not fit for commercial traffic***. This location means that all trucks and other operational equipment will have to travel the entire length of the road, and could similarly overturn and potentially start a fire, trapping all residents, as I have just described. Alternatively, an overturned truck could block an emergency vehicle responding to a medical emergency at one of the houses on the road. There are several retirees on the road who are requiring increasing medical attention, and the granting of this license could significantly affect response times to such incidents. Accordingly, I respectfully disagree that the issues I have raised are outside the jurisdiction of your department. In fact, I believe that fire, traffic, and safety of residents are the exact type of "public welfare" issues that the Department must consider when approving these types of applications that control alcoholic beverages, not simply DUIs that have occurred in the immediate vicinity of the location.

Second, I do recognize that this site has previously been licensed as a winery. In fact, I believe that the last time this particular location sought out a winery license was in 1999 as the Astrale e Terra winery. However, simply because the site was approved as a winery approximately 16 years ago, does not mean that it should be marked for automatic approval at this time. Circumstances have changed dramatically in terms of increased traffic, wildfire danger, and other safety issues as described above, and unfortunately there have been ZERO upgrades to the road since before 1999.⁶ This is a very important consideration in light of the Department's finding with regard to granting a license to Astrale e Terra in 1999. I have had the opportunity to review the adopted order in that case (File 02-344164; Reg 98045225) and point out the following "Determination of Issues" by the reviewing court in that matter:

- (1) the "[e]vidence established that increased traffic on Soda Canyon Road would interfere with the quiet enjoyment of nearby residences."

⁴Note the July-August 2015 Wragg Fire, which burned 8,051 acres from July 22, 2015 to August 5, 2015, as reported by CalFire, and is located just on the other side of Atlas Peak (the location of Soda Canyon Road) near Lake Berryessa, was reported by the Napa Valley Register to have been started by vehicle exhaust that ignited a brush fire (see *Vehicle Exhaust Blamed for 8,000-acre Wragg Fire*, Napa Valley Register, August 14, 2015)

⁵In 2005, a car crashed into the side of the mountain near the 2400 block and started a brush fire that quickly burned approximately 40 acres before CalFire was, very fortunately, able to put it out before it caused more damage.

⁶According to a resident whose family has lived on the road since the 1950s, there have been no upgrades to the road since the early 1980s.

- (2) The “[e]vidence established that increased traffic on Soda Canyon Road would aggravate a traffic problem on a problematic roadway which serves Applicant, nearby residents and two other vineyards.”

Based on these two issues, the reviewing court found that the “issuance of the applied-for license would be contrary to public welfare or morals.” The court did go on to state that because the Applicant’s “primary present purpose in seeking a winegrower license [was] to enable Applicant to sell the wine it has produced and wine which it intends to produce,” the court indicated that the protests would be sustained *if* the Applicant petitioned the Department for a conditional license containing the following conditions:

- (1) “No winetasting or tasting by appointment shall be permitted at this location.”
- (2) “No retail sales of alcoholic beverages to walk-in customers shall be permitted at this location.”

I highlight these determinations, which were made for the previous winery *in the exact same location as Applicant*, for several reasons. First, the granting of this license to Triumph will interfere with the quiet enjoyment of nearby residences in 2015-2016 and beyond, as it did in 1999, because it will bring increased visitors (workers or otherwise), noise, and light pollution to the community due to winery operations (it is my understanding that Applicant plans to expand production to beyond that of the previous owner).

Second, the Department found in 1999 that Soda Canyon Road was a “problematic roadway” and the granting of the license at that time would “aggravate” the existing traffic problem. It has been 16 years since that decision, and as a vineyard and homeowner on Soda Canyon Road since 1997, I can assure you that the road conditions and traffic have become dramatically worse since the Department determined Soda Canyon was a “problematic roadway” in 1999. In fact, since 1999, an additional 747 acres of vineyards have been planted on Soda Canyon Road, bringing the current total number of vineyard acres on Soda Canyon Road to 2,075 acres. As mentioned in my first letter, my family owns and operates approximately 20 acres of vineyards very close to Applicant’s property. Based on a conversation with our vineyard manager, and a review of our monthly invoices, there are approximately 400 annual visits by vineyard workers to farm our small ranch. This is an average of 20 worker visits per acre over the course of a year. Doing some simple math, if 747 acres of vineyards have been added to Soda Canyon Road since 1999, that means vineyards on Soda Canyon Road have seen an increase of approximately 14,940, or 15,000 for simplicity’s sake, worker visits on an annual basis, since 1999. And this is a conservative estimate because of the ancillary visits by companies and grape transports it takes to run these additional vineyards. On top of the increased traffic due to more vineyard activity, the County of Napa has irresponsibly approved permits for 4 other winery operations – Roy Estate, The Caves at Soda Canyon (a compilation of four different wineries), V12, and Relic – on Soda Canyon Road since 1999. The combined visitors from these four wineries totals 16,600 visitors per year.

Thus, even without the addition of another winery operation in the form of Triumph Beverage Company, which I understand will be larger than the previous winery at the Applicant’s location, Soda Canyon Road residents have, or will see an **increase of at least 31,600 visitors since 1999**

when the Department of Alcoholic Beverage Control determined that Soda Canyon was a “problematic roadway.” And, importantly, *there have been no improvements/upgrades to the road since the early 1980s, nor are there any future plans for road improvements.* The granting of a Type 02 license allowing Triumph Beverage Company, LLC to conduct any additional winery operations will further impact existing traffic, fire, medical, and other safety issues on Soda Canyon Road, all of which is contrary to the public welfare of the community and is therefore well within the Department’s jurisdiction.

Third, as indicated in the *Astrale e Terra* decision, the owner(s) of Triumph could join in a “cooperative venture” with another winery on the Napa Valley floor to pursue the owner’s goal of having a winery in Napa Valley. I should point out that my family and I were faced with a similar decision in 1997 when we purchased our property near the Applicant’s site and were seeking to start a winery. Due specifically to the dangerous and remote nature of the road, we, along with our business partners, chose to only plant vineyards at our property atop Soda Canyon Road, and have the winery location on the Napa Valley floor (we were able to find a location for production near St. Helena). I share all of this to ensure you that we are not nasty neighbors who are totally against the wine industry. To the contrary, we have been, and continue to be, part of the wine industry since the 1970s (my father learned to make wine from Joe Heitz of Heitz Cellars and has been making wine since 1976), and as a part of that industry, I, we, are doing our very best to respectfully point out to the Department of the Alcoholic and Beverage Control that this is *not* a typical situation that calls for a quick approval of yet another winery in Napa Valley. Instead, this is a situation that requires very careful consideration by the Department, especially due to the fact that granting the Applicant’s sought after license will undoubtedly increase the chances of additional accidents on the road, potential deaths, wildfires and other disasters, all of which are well within the definition of the public welfare.

With all of this in mind, I would appreciate clarification and elaboration on several items:

- (1) Your letter dated October 7, 2015 suggests that tours and tastings at this location are prohibited by the County of Napa, but does not mention anything about the Department’s prior findings on the same location that also prohibits tours, tastings, and retail sales. What effect does the 1999 *Astrale e Terra* decision have on the Triumph’s application with the Department of Alcoholic Beverage Control?
- (2) Do you have the permit information for this location (*Astrale e Terra* or Triumph) from the County of Napa? If so, can you please provide it to me?
- (3) Do the Department’s findings in the 1999 *Astrale e Terra* decision, and restrictions placed thereon, carry over to the current Applicant? If not, will any restrictions be placed on the Applicant’s Type 02 license by the Department, regardless of the County’s permit?
- (4) If the Applicant is granted a Type 02 license with the same (or similar) restrictions that were placed on *Astrale e Terra*, can the Applicant return to either/both the County of Napa, and later the Department of Alcoholic Beverage Control, to remove the restrictions with regard to tours, tastings, and retail sales at the subject premises?

- (5) In light of the serious and legitimate concerns I have raised, what are the next steps for the Department in terms of denying or granting the Type 02 license sought by the applicant?
- (6) What are the next steps that need to be carried out by me and any other Protestants if the Department recommends approval and we would like a public hearing on the issuance of this license?

Thank you in advance for your response and for your continued efforts in this matter. Please do not hesitate to let me know of any questions, or if I can provide you with any of the traffic, fire, and other incident information on Soda Canyon Road that I have discussed above. I look forward to our continued communications

Sincere Regards,

A handwritten signature in black ink, appearing to read 'A. G. Arger', with a long horizontal flourish extending to the right.

Anthony G. Arger
3030 Soda Canyon Road
Napa, CA 94558