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BEFORE THE  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
OF THE STATE OF CALIFORNIA

Hearing and Legal Unit  
Dept. of Alcoholic Beverage Control  
SACRAMENTO

IN THE MATTER OF THE PROTESTS OF:

FILE: 02-344164

REG: 98045225

LICENSE TYPE: 02

PAGES: 170

REPORTER: Sims & Sims

**PROPOSED DECISION**

  
AGAINST THE ISSUANCE OF  
A WINEGROWER LICENSE TO:

Soda Canyon Real Estate Investments, Inc.  
Astrale e Terra  
3148 Soda Canyon Road  
Napa, CA 94558

This matter was heard by Michael B. Dorais, Chief Administrative Law Judge, Department of Alcoholic Beverage Control, Administrative Hearing Office, at Napa, California, on January 21, 1999, at 10:00 a.m.

Nicholas Loehr, Staff Counsel, represented the Department of Alcoholic Beverage Control (hereinafter "Department").

Applicant corporation Soda Canyon Real Estate Investments, Inc., (hereinafter "Applicant") was represented by Gerald Vanoli, Attorney at Law, and President of Applicant. Also present were C. Paul Johnson, Applicant's Chief Executive Officer, and Applicant's Secretary-Treasurer, Lorraine Vanoli.

Protestants Fletcher Benton, Joseph A. Schreuder and Rebecca Snyder were present. Protestant Roberta Benton was not present but was represented by Malcolm E. McLorg, Attorney at Law. Fletcher Benton was also represented by Mr. McLorg.

Evidence was received, the record was closed and the matter was submitted. The Administrative Law Judge now finds, determines and orders as follows:

## FINDINGS OF FACT

### I

Applicant has applied for a Type 02 winegrower license, pursuant to California Business and Professions Code Section 23356. This license permits the sale of wine and authorizes winetastings on or off the winegrower's premises.

### II

The issues raised by the Protestants, and the issues to be determined, are whether granting of the applied-for Type 02 winegrower license will be contrary to public welfare and morals by reason of Article XX, Section 22, of the Constitution of the State of California and Section 23958 of the Business and Professions Code, in that:

1. Normal operation of the license will interfere with the quiet enjoyment by nearby residents of their property .
2. Issuance of the license will create or aggravate a dangerous road condition.
3. Applicant is not equipped to service the public.
4. Bulk wine or grape juice may be transported to the proposed licensed premises.

### III

Applicant's premises is a building and parking lot in a vineyard located in a rural area in Napa County. The vineyard is about three-tenths of a mile from Soda Canyon Road which is a country road that leads from the Silverado Trail, a major thoroughfare in Napa County, to where it dead-ends at Atlas Peak Winery, one of two wineries currently licensed by the Department on Soda Canyon Road. While the Atlas Peak Winery is a large undertaking, Applicant's vineyard is relatively small and qualifies under Napa County's "small winery permit exemption".

Applicant's driveway begins approximately 7.5 miles from the point Soda Canyon Road connects to Silverado Trail. During most of that distance, Soda Canyon Road is a narrow two lane paved road with numerous curves and without paved shoulders. The last four-tenths of a mile before the Applicant's driveway is reached, the road is much narrower and can accommodate only one vehicle at a time.

Applicant's vineyard presently has one building measuring 25 x 35 feet and a bottling pad 25 x 10 feet. The building is refrigerated for use in fermentation and production of bulk wine. Applicant intends to produce wine from 22 to 24 acres on its vineyard.

Applicant intends to bring in a crusher and store in bulk the product derived from four types of grapes being grown at the vineyard. Applicant plans to bring two to four barrels of wine to the vineyard to make its varietals and intends to produce about 20,000 gallons of wine annually. Currently, the wine stored in bulk is in a warehouse near St. Helena.

#### IV

There are no residences within 100 feet of Applicant's premises.

#### V

There are no Department consideration points such as schools or public playgrounds within 600 feet of Applicant's premises, or churches or hospitals within the immediate vicinity.

#### VI

Department Investigator Jason Cvitanov contacted the Napa County Development Department, which is the local planning agency in the area where the premises is located and learned from Director Bob Nelson that Applicant's vineyard was exercising a valid use permit from Napa County.

#### VII

Joseph Schreuder resides at 2882 Soda Canyon Road and shares 65 feet of common property line with Applicant. Mr. Schreuder has resided at this location for 42 years and has observed changes in the area during that period. When he moved to Soda Canyon Road in April 1957, the area along the road was entirely residential, except for a sheep ranch where Atlas Peak Winery is now located.

While describing traffic on Soda Canyon Road, Mr. Schreuder provided the pickup times (7:00 a.m., 7:20 a.m. and varies) for three school buses serving local students attending high school, elementary school and special education classes, as well as the return bus times (noon, 2:30 p.m. and 4:00 p.m.). To turn around to drive back down Soda Canyon Road, these school buses utilize a wide spot in the road about where the two lane road becomes the one lane portion before Applicant's driveway is reached.

Mr. Schreuder has observed a significant increase in traffic on Soda Canyon Road due to operation of the vineyards.

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### VIII

Fletcher C. Benton owns property at 3398 Soda Canyon Road and shares a common boundary with Applicant. Mr. Benton bought five acres with a house at this location as a week-end retreat, but the peace and quiet envisioned when he purchased the property in 1970, when the area was residential and not heavily trafficked by persons working or visiting Atlas Peak Winery, has been adversely affected by reason of the commercial activity of vineyards.

### IX

Mrs. Rebecca Snyder has resided at 3399 Soda Canyon Road for 22 years. Mrs. Snyder stated Soda Canyon Road rises 1500 feet from the valley floor and in addition to being subject to frequent foggy conditions in the fall and spring, has many blind corners.

Mrs. Snyder testified that 13 homes are located on the one lane portion of Soda Canyon Road immediately before Applicant's driveway leads from the road.

Car traffic from vineyard workers has become a traffic problem and Mrs. Snyder considers the road is now dangerous. Mrs. Snyder is opposed to increasing car traffic by attracting visitors to a new winery.

### X

Muriel Hankins resides at 3354 Soda Canyon Road. Her home is located on that portion of the road which is one lane wide before Applicant's driveway.

During her 34 years of residence at this location, she has observed a significant increase in the number of vehicles using Soda Canyon Road since Atlas Peak Winery began operation. In addition to large trucks transporting wine barrels, the vineyard workers use the road and they drive faster than conditions permit. By her count one morning, twenty cars with vineyard workers passed her home on the way to Atlas Peak Winery.

### XI

C. Paul Johnson is a Napa County resident who is Chief Executive Officer for Applicant. Mr. Johnson testified that Applicant's vineyard is 66 acres, of which 24 acres are currently planted with Merlot and Cabernet grapes. Applicant's vineyard qualified for a Napa County "small winery exemption permit" which had been obtained by the vineyard's prior owner and still is in effect since Applicant's production does not exceed the local ordinance's limit of 20,000 gallons or 5,300 cases annually.

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Mr. Johnson stated Applicant has no intention to put in crushing equipment preferring to outsource such production work because that is more economical. Similarly in Mr. Johnson's view, public tasting is not an economical proposition, so Applicant does not intend to build a wine tasting room.

Mr. Johnson stated Applicant is seeking a winegrower license in order to be able to sell the wine produced from the vineyard.

## XII

Douglas Hill has been a vineyard manager for 18 years. In addition to managing Applicant's vineyard, he manages a number of other local vineyards. He testified that that vineyards result in increased traffic because large numbers of workers and trucks are required. However, he believes the impact on traffic due to a winery operation to be minimal by comparison.

## XIII

Gerald Vanoli is President of Applicant and also serves as Applicant's attorney. Mr. Vanoli presented evidence regarding traffic accidents on Soda Canyon Road. During the past five years, there have been three alcohol related single vehicle accidents and these occurred outside of business hours (i.e. before 6:00 a.m. or after 6:00 p.m.). In addition, there have been ten single vehicle accidents during business hours and one two-vehicle collision. One truck/trailer accident took place during this period.

Mr. Vanoli testified that Applicant does not intend to conduct wine tasting for the public except by appointment. Testimony indicated local law prohibits public winetasting or tour visits except by appointment. However, such limits may be subject to change and Mr. Vanoli indicated that Applicant did not want restrictive conditions on its license.

## DETERMINATION OF ISSUES

### I

Article XX, Section 22, of the Constitution of the State of California provides that the Department of Alcoholic Beverage Control has the power, in its discretion, to deny an application for an alcoholic beverage license if it determines for good cause that the granting of the license would be contrary to public welfare or morals.

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## II

Evidence established that increased traffic on Soda Canyon Road would interfere with the quiet enjoyment of nearby residences.

## III

Evidence 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.

## IV

Evidence did not establish any legal impediments to issuance of the applied-for license relating to the issues raised by Protestants regarding current lack of winetasting facilities on the proposed premises or the importation of wine or grape juice to Applicant's proposed premises.

## V

Pursuant to Determination of Issues II and III, issuance of the applied-for license would be contrary to public welfare or morals. However, it is recognized that Applicant's primary present purpose in seeking a winegrower license is to enable Applicant to sell the wine it has produced and wine which it intends to produce. In addition, Applicant may wish to operate either on its own or in a cooperative venture with winegrower licensees, a winetasting and sales operation under a duplicate winegrower license at a location away from the vineyard. Accordingly, it appears that conditions on the applied-for license could resolve the concerns of Protestants while not impeding Applicant's primary commercial objectives.

## ORDER

The protests are sustained, provided, however, if Applicant within 30 days of this Decision's effective date, petitions the Department for the issuance of a conditional license which contains all of those conditions set forth below, then the issuance of the license would not be contrary to public welfare and morals; the protests are overruled and the conditioned license shall issue.

The proposed conditions:

1. No winetasting or tasting by appointment shall be permitted at this location.

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CARLSON CALLADINE & PETER  
DEPT OF ABC HQ

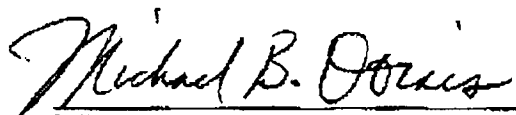
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2. No retail sales of alcoholic beverages to walk-in customers shall be permitted at this location.

Dated: January 25, 1999



Michael B. Dorais  
Michael B. Dorais  
Chief Administrative Law Judge