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Planning, Building & Environmental Services

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Director

September 1, 2017

Shute, Mihaly & Weinberger
396 Hayes Street
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Re: Response to your Letter Concerning the Pattern and Practice of CEQA by Napa County
with Regards to Winery Permit Approvals

Dear Ms. Ellison Folk and Mr. Robert "Perl" Perlmutter:

Thank you for your letter dated August 11, 2017 providing the concerns of your client, Alliance for Responsible Governance, regarding the processing of winery development permits in the County of Napa. Before we provide a more detailed response to your concerns, it is important to establish clarity on the process by which development applications are evaluated in the County of Napa. Your letter does not fully acknowledge the approved 2008 General Plan and Certified Final Environmental Impact Report (FEIR), nor does it fully acknowledge the role these two community-based documents play in the evaluation of development requests. As such, it is important to understand that development applications must find consistency with the General Plan and must utilize the environmental analysis contained in the FEIR in order to "tier-off" of the conclusions reached in the FEIR. Specifically, the Preferred Plan, selected as the final plan for the 2008 General Plan, identified the following partial list of Significant and Unavoidable Impacts for which Statements of Overriding Considerations were made:

- A. A total of 39 roadway segments will operate at a deficient level of service;
- B. Disproportionate impacts to Biotic Communities will occur in some localized areas of the County, despite the application of mitigation measures to preserve, protect and enhance Biotic resources;
- C. Project-generated traffic noise will increase despite implementation of mitigation measures and policies to reduce project traffic and traffic related noise;
- D. roadway improvement noise increases related to noise-sensitive uses despite implementation of mitigation measures given conditions such as roadway access, cost, terrain, and the needs of the local property owner;
- E. despite mitigation measures related to the reduction of air quality impacts, air quality impacts related to: air quality regulations; project emissions; and, greenhouse gas emissions;
- F. despite mitigation measures related to increased safety: seismic impacts; landslides; subsidence and settling.

The FEIR and the Statements of Overriding Considerations are based on an approved General Plan that estimates development between 2005 and 2030 of, among other land uses, between 10,000 and 12,500 additional acres of vineyard development and 225 new wineries. To date, 46.7% of the life of the General Plan has passed. During that time, the County has approved 107 new wineries, or 47.6% of the 225 estimated in the General Plan EIR. Furthermore, the

General Plan EIR estimated that at least 50% of the new wineries approved would be for production of 50,000 gallons annually or less. The number of the 107 new wineries approved over the past 11 years that have production of 50,000 gallons or less is actually 83%. To date, the County has permitted 4,321 acres of new vineyards, or 43.2% of the 10,000 acres estimated in the General Plan EIR. These numbers all indicate a high level of reliability in the EIR's development forecast.

Given the projected level of growth of new vineyards and new wineries, the depth and breadth of environmental analysis on new winery and vineyard projects has been consistent with the expectations and requirements of California Environmental Quality Act (CEQA), the County of Napa General Plan and the requirements of the Napa County Code. In addition, the new wineries approved based on consistency with the 2008 General Plan and FEIR gain benefit from the environmental findings reached in the FEIR as said projects are implementing the intended uses.

CEQA and Approval Procedure

In responding to the overall theme of your August 11th letter, I strongly believe that the County of Napa continues to provide extensive opportunities for public participation in the development review process. Each discretionary land use decision made by the Zoning Administrator, Planning Commission and Board of Supervisors is conducted as a publicly noticed hearing where verbal and written testimony is entertained by the decision-making body prior to rendering a decision. Specific examples include:

- A. It is not uncommon for the administrative record for appeal hearings before the Board of Supervisors to run thousands of pages of materials submitted by the applicant and the public.
- B. Three years ago, the Board of Supervisors directed staff to expand the required noticing of public hearings from the State required minimum of 300-feet, to 1,000 feet from the subject property boundary.
- C. The public comment period for projects involving EIRs in recent years has been expanded by the Planning Commission from the 45-day State required minimum to 60 days for the Yountville Hill winery, 90 days for the Syar Mining and Reclamation Plan Amendment, and to over 120 days for the Walt Ranch Erosion Control Plan.
- D. In 2015, the Board of Supervisors formed an Agricultural Protection Advisory Committee (APAC), to provide recommendations on how to improve the regulation and development review of wineries. APAC was made up of 17 members, including representatives from the community, cities, and environmental organizations.

These are all examples of where the County regularly goes above and beyond what is required, to seek out and consider the public's perspective on land use issues.

In contrast, the circumstances raised in the letter occurred some time ago. Using the opportunity now to reference actions taken 2-5 years ago as actions that are inconsistent with CEQA, the County General Plan and/or the County Code is inappropriate as it is not the proper time to express concerns about such decisions. Citing these past decisions, although convenient to support an argument that "too much has been approved", fails to recognize that the approvals are squarely within the projected growth of the County of Napa General Plan and FEIR, are consistent with the standards of the County of Napa Code, and were determined not to create significant adverse environmental impacts.

Similarly, the implication that because the County has only required two EIRs since 2013, environmental review has therefore been inadequate is misleading. First, the County has required EIRs for many projects including the Syar Mining and Reclamation Plan Amendment, Walt Ranch Erosion Control Plan, Palmaz helipad Use Permit, Napa County Jail, Napa Pipe Specific Plan, and others. More importantly, the number of EIRs is irrelevant to the quality of environmental review. According to the Governor's Office of Planning and Research (OPR), from 2006 to 2016 – the timeframe of the current County General Plan – 112,880 CEQA documents were submitted to the State Clearinghouse. Of those documents, only 5,014 or 4.4% were EIRs. By this logic, one might assume that 96% of the CEQA documents produced throughout the State of California over the past decade have also been inadequate.

Response to August 11, 2017 Letter

The County of Napa has evaluated the points made in your letter and has the following specific responses:

1. Categorical Exemptions

As you point out, the County is authorized by the State of California to implement the California Environmental Quality Act (CEQA). As such, the County follows the "CEQA Guidelines" for preparing environmental documents, including the determination that a given project is either exempt from the evaluation requirements of CEQA or is subject to said requirements whereby an Initial Study is prepared.

The County of Napa has adopted specific Categorical Exemptions to augment those provided by the State of California. The exemptions provided for under Napa County's Local Procedures for Implemented the CEQA, however, are not the only ones available to support approval of a project. There are several Categorical and/or Ministerial Exemptions that can apply to any given project, including the General Rule (Section 15061(b)(3)) that states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. As your review of the Keenan Winery (2013) should have indicated, the CEQA exemption for this project relied on Class I and Class 4 Categorical Exemptions under CEQA and did not rely on the Local Procedures exemption.

With regards to the Caymus Winery (2016), the increase in visitation was clearly described in the staff report, and by reference in the Development Agreement, both of which were made publicly available at the time of the Board of Supervisors' consideration. It was not cited in the CEQA memorandum, as it was not relevant to the facts of the County's determination. Finally, as relates to the Melka Winery (2015), a proposal for placing a new winery along the Silverado Trail (one with only 7 tasting room visitors per week), does not automatically create a presumption that there is a potentially significant environmental impact. Using this standard would also require preparation of an EIR every time a new residence or addition was proposed along the Silverado Trail. This is a broad-based and provocative assertion that was not supported by any substantive evidence presented within your letter.

The examples you provide were all examined by County Staff, publicly notice, and properly approved according to the County of Napa and State of California public meeting requirements. The time to argue a potential cumulative impact associated with one or more of the projects was during the public review period, not several years later. In addition, as noted above, the projects you note are all consistent with the County of Napa 2008 General Plan and FEIR which projects winery growth.

2. Improper Project Baseline

The County disagrees with your assertions that the CEQA baseline is being improperly established. The following are only a shortlist of the cases that directly support CEQA Guidelines Section 15152. Environmental Setting which states under Section (a): “An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparing is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.”

Riverwatch v. County of San Diego (1999) 76 Cal.App.4th 1428 [91 Cal.Rptr.2d 322]
Banning Ranch Conservancy v. City of Newport Beach (2012) 211 CA4th 1209
Citizens for East Shore Parks v. State Lands Com. (2011) 202 Cal. App. 4th 549
Center for Biological Diversity v. Department of Fish & Wildlife, 234 Cal. App. 4th 214

As regularly supported in the above court cases, the desire to look back to an indeterminate timeline associated with a given project is not required by CEQA.

3. Failure to Properly Evaluate Traffic Impacts

There are six points raised in the August 11th letter, all of which suggest either an arbitrary approach to traffic analysis or a lack of depth or “rigor” to traffic analysis on winery development applications. The comments ignore the fact that winery growth, and the traffic generated by winery growth, was fully analyzed and disclosed in the County of Napa 2008 General Plan and FEIR. The arguments further state that project impacts occur from visitation, marketing and harvest, and assert that each project is adding a cumulative impact to Napa County that is not being recognized. The County submittal requirements include Traffic Impact Studies with full, broad scopes to ensure project related traffic is appropriately analyzed and disclosed to the public through the hearing process. It is not an accurate statement that data is not being collected or evaluated on the full measure of project related traffic as is required by the General Plan and CEQA. In addition, the mitigation measures required of some projects which include the use of shuttles and other traffic reduction measures, are taken directly from the 2008 General Plan and FEIR.

Each of the concerns described regarding the County’s approach to evaluating traffic impacts are individually and specifically addressed as follows:

- A. The description of the County’s CEQA threshold for determining significant traffic impacts is simply inaccurate. In the letter, it states that: “...any project below this one percent (1%) threshold will not have a significant traffic impact.” The Transportation Impact Study (TIS) Guidelines were adopted by PBES in 2015 for use in evaluating the traffic impacts of development projects. The Guidelines clearly indicate that for Arterials: “A project would cause a significant impact requiring mitigation if: (1) An arterial segment operates at LOS A, B, C or D during the selected peak hours without Project trips, and deteriorates to LOS E or F with the addition of Project trips; **OR** (2) An arterial segment operates at LOS E or F during the selected peak hours without Project trips, and the addition of Project trips increases the total segment volume by one percent or more.” So a project can add less than one percent of the contribution to total trips within an arterial segment, and still be found to have a potentially significant impact.

- B. The letter indicates that even one unscheduled trip for the Kenzo or McVikar Wineries would cause the projects to exceed the 1% threshold, but that the impacts were instead found not to be significant by the County. This is simply not true. The Initial Study for the Kenzo Winery determined that up to four trips would be added to the weekday peak hour, and up to six trips would be added to the weekend peak hour. This is far more than the theoretical one trip cited in your August 11, 2017, letter. However, for both weekday and weekend peak hours, the added trips increased total segment trips by only 0.001 percent. Nevertheless, the conditions of approval for the Kenzo Winery included restrictions that suspended tours and tastings when marketing events are held, and that prohibited new marketing events from being held during peak hours. With regards to the McVikar Winery, it was approved under a Class 3 Exemption, under the Napa County Local Procedures for Implementing the CEQA. This exemption may be applied to wineries that meet specific criteria, including that the proposed use would not generate more than 40 vehicle trips per day, including no more than 5 peak hour trips. A traffic study prepared for the project indicated that the winery expansion would generate less than 13 daily trips and less than 5 peak hour trips, thus qualifying for the exemption.
- C. The General Plan EIR relied upon traffic modeling provided by the Metropolitan Transportation Commission (MTC), which provides a comprehensive and integrated analysis of traffic patterns throughout the Bay Area region. MTC analyzes future economic trends and inter-regional traffic. To allege that visitation, marketing, and tourism-related traffic impacts were not analyzed is a significant misunderstanding of transportation modeling.
- D. The statement that the County "...neglects to analyze the significance of heightened traffic during the harvest season..." is untrue. The (TIS) Guidelines specifically looks at seasonal factors. For peak period turning movement counts, applicants are directed to: "Consult with the County to determine if adjustments are necessary to account for seasonal variation in traffic volumes." Seasonal factors are also addressed when calculating employee trip generation rates – additional employees and associated traffic trips are assumed to occur during crush and bottling activities.
- E. The General Plan EIR did find noise associated with increased traffic levels to be a Significant and Unavoidable Impact for all alternatives. However, it is an oversimplification to imply that the increased traffic noise is solely due to development in the unincorporated area. As was shown in the Napa Valley Transportation Authority (NVTa) behavioral study and other models, the majority of future traffic increases is due to growth within the cities and commuters travelling between Solano and Sonoma Counties. Should Highway 37 become a toll road in the future, the volume of traffic travelling through Napa County is expected to increase further. CEQA requires that projects be evaluated for their proportional contribution to environmental effects, with a clear nexus to any mitigations imposed, not that they be held accountable for the whole of society's impacts.

Please review the General Plan EIR. Carbon monoxide levels associated with increased traffic were determined to be a Less Than Significant impact.

- F. As noted throughout this letter, the County has substantially expanded its code compliance efforts, including the enforcement of mitigation measures, where applicable. It is difficult to respond to broad allegations. If there are specific reports of violations, please forward them to my office so that we can promptly and effectively respond.

4. Reliance on Inadequate Mitigation and “De Facto” Mitigation of Noise Impacts

The statements in this section presume that all wineries will violate the Napa County Noise Ordinance. This approach is not supported in CEQA or the normal course of project review. The purpose of CEQA is not to be a deterrent to projects, but to ensure that identifiable and measureable significant environmental impacts do not occur as a result of a project. If a project is shown to have a potentially significant noise impact that would violate the County Noise Ordinance or adversely impact adjacent sensitive receptors, the County has routinely required noise attenuation improvements and monitoring to reduce the noise impact to less than significant.

Application of the requirement that wineries abide by the Napa County Noise Ordinance is a standard requirement of all uses within the County of Napa. Although there could be criticism that code enforcement could be more stringent for some locations within the County, the County operates on a complaint basis and responds to each complaint received as expeditiously as possible.

Your assertion is unfounded that: “As the grand jury found in 2015, Napa County’s oversight of wineries is almost non-existent, and therefore insufficient to insure compliance with CEQA.” This sentence is found nowhere in the Grand Jury report. A search of the report quickly shows that it does not include the words “insufficient” or “non-existent.” This depiction of the Grand Jury’s conclusions is without basis and misleading. Here is what the report did say: “The Grand Jury also concluded that the code enforcement staff is doing a professional job in its audit and compliance function in so far as their limited resources permit.” The August 11, 2017, letter neglects to reference the recommendations made by the Grand Jury with regards to code enforcement:

- A. Increase the number of yearly annual winery audits: The Board of Supervisors will be considering later this year an ordinance that would require every winery to annually report their production and grape source compliance to the County.
- B. Monitor winery wastewater treatment and water usage: The County has tentatively adopted a Local Agency Management Plan (LAMP), which provides greater regulation of all private wastewater disposal systems, per State requirements. In addition, the Board of Supervisors adopted requirements for wineries to prepare a Water Availability Analysis, where appropriate, which includes monitoring of water levels and usage.
- C. Make inspection reports of non-compliant wineries more transparent: In response to direction by both the Board of Supervisors and the Planning Commission, staff reports regarding proposed new use permits clearly delineate the compliance history of pending projects, as well as the status of efforts to correct violations.
- D. Determine whether the Winery Definition Ordinance provides an adequate regulatory framework: The Board of Supervisors appointed the Agricultural Preservation Advisory Committee (APAC), as part of a year-long effort to review and improve winery regulations. Implementation of the APAC recommendations is ongoing.
- E. Establish a range of penalties and operating restrictions for non-compliance. Last year, the County adopted a standard formula for calculating penalties associated with permit non-compliance. The Board of Supervisors has also been conducting a

series of workshops to provide staff with specific direction regarding future code enforcement, including clearer and more effective operating restrictions for use permits that are not in compliance.

In addition to adopting the Grand Jury recommendations, Napa County has undertaken a comprehensive program to expand and enhance code compliance. These efforts include:

- A. Increased the number of code compliance staff from 3 to 6;
- B. Created code compliance as a separate division within PBES;
- C. Adopted a new Code Compliance Manual and standard forms;
- D. All compliance staff obtained certification by the California Association of Code Enforcement Officers;
- E. Expanded the role of the Code Compliance Division to include conservation, engineering, and environmental health;
- F. Held annual workshops with the Board of Supervisors on the status of code compliance efforts and development of new goals;
- G. Adopted an ordinance to allow for the recordation of Notices of Violation and Citations;
- H. Standardized the formula for calculating civil penalties for conservation and zoning violations;
- I. Held four community clean-up events in unincorporated neighborhoods;
- J. Trained compliance staff in safety and provided protective equipment; and
- K. Directed staff to develop a phased, voluntary compliance program, along with self-reporting annual monitoring.
- L. Directed staff on August 12, 2017, to staff to further step up enforcement efforts.

In summary, the letter appears to base its argument on two contradictory positions: (1) the number of violations associated with wineries is increasing; and (2) the County's code compliance efforts are ineffectual. However, this raises the question: how are violations coming to the attention of the Alliance for Responsible Governance without an active and vigorous County code enforcement effort bringing them to the public's attention?

Conclusion

With regard to your final comments, the County of Napa will continue to implement the established CEQA review procedures it has in place and will continue to examine how to improve the process for maximum public participation and interaction. The County is currently examining the application submittal requirements, including ensuring a complete checklist of required information is provided for Traffic Impact Studies. We believe that making it very clear what information is necessary in application will also assist those interested in understanding the details of an application; thus allowing for better communication between the County, the public, the applicant and the decision-makers.

The issues addressed in this letter and serious matters that deserve a meaningful and open discussion. In this case, that dialogue is prevented by the anonymity of the Alliance for Responsible Growth. Communicating through letters and attorneys is not a productive process. I encourage your clients to contact me directly, so that we can meet face-to-face and have a substantive exchange of views regarding land use and the future of the the Napa Valley.

Respectfully,



David Morrison, Director