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**Sent by Electronic & U.S. Mail**

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Re: Napa County Code Enforcement Action Against Raymond Vineyards

Dear Chairs and Members of the Board of Supervisors and Planning Commission:

This firm represents Beckstoffer Vineyards in matters related to the repeated, flagrant, and longstanding violations of Napa County land use regulations by Raymond Vineyards ("Raymond"). Over the past four years, Raymond has profited tremendously from its unlawful actions, to the detriment of the County's law-abiding residents and business. Thus far, however, the County has all but ignored these violations.

Accordingly, and on behalf of Beckstoffer Vineyards, we urge the County to take prompt and effective enforcement action against Raymond. As detailed below, **first**, the County should "Red Tag" and require Raymond to remove the unauthorized improvements it made to convert over 10,000 square feet of office and production space into four accessory hospitality and tasting rooms. **Second**, the County should deny any request to authorize these uses "after-the-fact" for a period of time equal to the number of years that Raymond has used these facilities illegally.

Acting upon this request does not require the County to address direct-to-consumer activity, visitation, or other difficult policy issues that the County has been

wrestling with. Instead, my clients simply ask that the County enforce its own existing rules, as has been requested by numerous Napa organizations and individuals.

There has been much discussion about “after-the-fact” approval of unauthorized winery improvements and if they would have been allowed had the requesting winery sought use permit approval at the time the improvements were implemented or even under current rules. County policy, as stated in the original Winery Definition Ordinance (“WDO”), requires that an “accessory” use must be clearly incidental, subordinate, and related to the primary “agricultural” use and cannot change the character of that primary use.

In 2009, new owners purchased Raymond Vineyards from the Raymond family. The Raymond facility was, at that time, a traditional winery production facility. We understand that, in 2011, the new owners made the unauthorized improvements. In 2012, at a Napa County Planning Commission meeting, Jeff Redding, consultant to Raymond, stated that, in light of the unauthorized improvements, the winery was now serving a “hospitality function.” Thus, by their own admission, Raymond’s new owners changed the basic character of the facility with the 2011 improvements. They did so without requesting a use permit. Had they requested such a permit in 2011, the County would have had to deny it, because the WDO did not authorize conversion of wineries into hospitality facilities. That same prohibition applies today. Thus, these unauthorized improvements should be “red tagged” and removed.

We recognize that Raymond is not the only winery that has violated County regulations or permit requirements. We are also aware that, on at least two recent occasions where the County considered requests for other “after-the-fact” winery permits, some of you expressed concern that it might be excessively punitive to require wineries to remove unpermitted uses.

However, there is nothing punitive or unfair about the County simply requiring a property owner to comply with the law or preventing those who violate the law from unjustly enriching themselves at the public’s expense. Nor is there any valid claim that doing so would deprive Raymond of equal protection under the law. This is particularly so given the seriousness of Raymond’s violations, which are neither isolated incidents nor minor mistakes. To the contrary, it appears that, following their purchase of the facility in 2009, Raymond’s new owners made a series of deliberate decisions not to follow those rules—and to see if they could get away with it.

Our client finds the County’s failure to take enforcement action against Raymond especially troubling because, two years ago, when his business endeavored to

construct much-needed farm-worker housing without securing all needed permits, the County promptly “red-tagged” the unit and stopped all construction until permits were obtained.

The County clearly has the legal authority to take similar action against Raymond. We respectfully submit that it also has an obligation to do so, not only as a matter of fundamental fairness and equal treatment of our clients, but also as a matter of sound public policy and basic good government.

At the very least, if County leaders are not willing to take such enforcement action against Raymond, they should publicly explain why it is appropriate to red-tag much needed farm-worker housing, but somehow not appropriate to take similar action against Raymond. Concerned residents, business owners, and other similarly situated wineries can then take appropriate action in response.

Taking enforcement action against Raymond alone, however, is not enough. The Napa County Grand Jury, leading voices in the County’s agricultural community, and the Board’s own Agricultural Protection Advisory Committee (“APAC”) have posed similar questions as our clients and also come to the same conclusion: The County’s failure to enforce its existing laws is encouraging some property owners to take the law into their own hands and determine which County rules to comply with, and which to ignore.

Accordingly, in addition to taking prompt enforcement action against Raymond, the County should also establish a clear and firm time-table for developing and implementing the enforcement measures recommended by APAC, the Napa County Grand Jury, and the Wine Industry Task Force.

**I. Raymond has a long history of significant use permit violations.**

Raymond has been operating in Napa County since 1973. The governing permit for the winery is the 1991 Raymond Vineyards Winery Use Permit, File No. U-98-46 (“1991 Use Permit”). We understand that, in 2009, Jean-Charles Boisset purchased Raymond Vineyards, subject to the 1991 Use Permit.

The Napa County Code (Code) expressly prohibits “expansion of uses or structures beyond those which were authorized by a use permit,” unless those expansions are authorized by a subsequent use permit. *See* Code § 12201(i). Any winery seeking to expand its uses or structures must first apply for, and receive, a major modification of its use permit. Code § 18.124.130(A). If the County approves the application and issues the

modified use permit, the winery owner must also obtain a certificate of occupancy which, once granted, authorizes the permitted activities to commence. *See* Cal Code Regs. tit. 24, §§ 3408.1-3408.2.

Despite these clear requirements, and without first obtaining a use permit modification, Raymond made extensive interior improvements to its facilities in 2011. Perhaps most disturbingly, Raymond converted approximately 10,679 square feet of office and production space into accessory hospitality and tasting rooms with themed names, including what Raymond currently refers to as the Rutherford Room, Library Room, Barrel Cellar, Crystal Cellar, Saddle Room, and Red Room (“Interior Improvements”).

Raymond also made several unauthorized exterior improvements to the subject property, including adding an outdoor visitation area, several outbuildings for the Theater of Nature Walk, and the Frenchie Winery structure used for visitors’ pets. Collectively, these unauthorized improvements fundamentally changed the character of the entire facility.

In July 2011, Raymond applied *post hoc* for a major modification of the 1991 Use Permit to authorize these new improvements after-the-fact. It later submitted revised applications in December 2011, May 2012, and February 2014. We understand that Raymond then withdrew this application a year later. In late October 2015, our client received a “courtesy notice” from County staff that Raymond had submitted a new application for an even more extensive major modification to its use permit. *See* Major Modification to Use Permit Application #P15-00307—MOD.

The County has considered Raymond’s applications intermittently since late 2011. However, to our knowledge, while County staff has implicitly acknowledged the need for appropriate enforcement action, the County has not actually taken any such action. Nor has the County approved any of the requested permit modifications.

For instance, in July 2014, staff observed that “[t]he property owner is likely incurring substantial potential liability by allowing customers and employees into areas that have no grant of beneficial occupancy for the use occurring, and likely do not comply with [other applicable codes]. . . . [A]llowing customers into the ‘Red Room,’ ‘JCB Lounge,’ and other areas where no building permits have been authorized *needs to be remedied as soon as possible.*” Planning Commission Board Agenda Letter re Raymond Vineyards Use Permit Modification #P11-00156 (July 16, 2014) at p. 8 (emphasis added).

A month later, staff wrote that if Raymond’ “after the fact” permit were denied, Raymond “*would need to revert tasting areas and site improvements to that shown in the 1991 permit.*” See Napa County Planning Commission Board Agenda Letter re Raymond Vineyards Use Permit Modification #P11-00156 (Aug. 20, 2014) at p. 3 (noting that, “[i]f the [Planning] Commission were to deny the request [for permit modification], the result would simply be that the facility . . . would need to revert tasting areas and site improvements to that shown in the 1991 permit”) (emphasis added).

Despite these acknowledgments, County staff ultimately recommended that the Planning Commission *approve* Raymond’s request for an after-the-fact permits. In the end, however, the County failed either to take any appropriate enforcement action or to grant the requested permits. As a result of the County’s inaction—and notwithstanding Raymond’s failure to first obtain the required permit modification and certificate of occupancy—Raymond has continued to utilize its unauthorized Interior Improvements for tastings and hospitality events since 2011. Raymond has also continued to use its unauthorized exterior improvements for hospitality purposes.

## **II. The County should take prompt enforcement action against Raymond.**

Given Raymond’s cavalier pursuit of unpermitted expansions and uses, the County should not simply ignore these violations while it processes Raymond’s most recent after-the-fact permit application. Instead, the County should take prompt and effective enforcement action against Raymond.

Raymond has no legal right to utilize its unauthorized interior and exterior improvements for hospitality purposes that are not authorized by its existing use permit. Moreover, there is no compelling reason for allowing Raymond to do so, particularly given the scope and scale of its violations.

We note that, despite calling for the prompt remedying of Raymond’s violations, some prior staff assessments have appeared to offer excuses for Raymond’s actions. See Planning Commission Board Agenda Letter re Raymond Vineyards Use Permit Modification #P11-00156, July 16, 2014, p. 2-3 (asserting that “expansion of both by-appointment interior tasting rooms and outdoor visitation areas have been somewhat common at many other pre-WDO facilities, and appear to be necessary for the businesses to stay current with market trends”). That agenda letter went on to compare Raymond’s Interior Improvements to a similar expansion at the Marini Winery, which had “no code violations and ha[d] yet to implement the approved changes to their permit.” *Id.* at p. 3.

However, this comparison of the Raymond and Martini expansions takes exactly the wrong approach to winery enforcement issues and highlights the problems that result from doing so. While Raymond and Martini may have had similar reasons for seeking expansion, their approaches differed at a fundamental level: *Martini proceeded legally*, first seeking a use permit modification and then altering its winery uses accordingly only after it obtained the required permit. *Raymond proceeded unlawfully*, first making substantial unpermitted and unauthorized changes to its facility, and only later seeking permission for those improvements after-the-fact. Because the approach taken by these two wineries is not the same, the County's treatment of the two wineries must not be the same.

As Justice Frankfurter long ago explained in an analogous context, “[i]f one man can be allowed to determine for himself what is law, every man can. That [leads to] chaos . . . .” *United States v. United Mine Workers*, 330 U.S. 258, 312 (1947). If law-breakers receive the same treatment for their unpermitted activities as do winery owners who seek all required permits before undertaking those activities, what incentive to property owners have to comply with the County's permitting process? Why does the County have a Code if it is not willing to enforce its requirements?

As noted above, my clients are not alone in posing these questions. In recent months, the Napa County Grand Jury, leading voices in the County's agricultural community, and the Board's own Agricultural Protection Advisory Committee (“APAC”) have posed similar questions and also come to the same conclusion: The County's failure to enforce its existing laws is encouraging some property owners to take the law into their own hands and determine which County rules to comply with, and which to ignore.

Now is the time to put a stop to that behavior. Failure to do so will only lead to more of the chaos predicted by Justice Frankfurter, more violations by businesses that seek an advantage from ignoring the law, and more voices calling for the County to enforce its laws.

In short, taking effective enforcement action against Raymond is legal, proper, and fair, and it will send a clear message to Raymond and other similarly situated parties that they must comply with the County's laws. To that end, my client requests that the County require Raymond to remove all of the unauthorized Interior Improvements on the property and to restore these areas to the uses shown and authorized on the 1991 Use Permit. *See* Code §§ 18.144.030, 18.144.040.

In light of Raymond's sustained history of permit violations and the unfair advantages resulting from them, the County should also reject Raymond's current major

modification use permit application and not approve any future such applications for a period equal to the time of unpermitted activity (i.e., not less than four (4) years).

**III. The County should also commit to a firm time-table for developing and implementing an effective enforcement protocol.**

Taking enforcement action against Raymond alone, however, is not enough. As documented by the Grand Jury and APAC reports, the County presently lacks sufficient mechanisms even to detect many Code violations, and its current level of winery audits and enforcement staffing is insufficient.

APAC strongly encouraged County officials to “[b]e consistent in the interpretation, application and enforcement of all use permits.” *See* APAC, Final Report, Recommendations to the Planning Commission, Aug. 24, 2015, p. 4. APAC further urged the County to strengthen its permitting process, explaining that “[a]llowing wineries to continue to violate permit requirements while pursuing permit modifications to come into compliance creates an unfair business advantage, allows operators to continue to impact health and safety and/or the environment, and establishes a CEQA baseline that reduces the need for mitigation of potential environmental impacts.” *Id.* at p. 10.

The Napa Valley Grapegrowers, the Napa Valley Vintners and Winegrowers made similar requests and recommendations at the joint Planning Commission and Supervisors meeting held on March 10, 2015. Their “Statement of Purpose,” paragraph 4 states: “County enforcement of restrictions contained in the WDO and winery use permits is currently inadequate. In this environment, any code changes relaxing restrictions on wineries’ activities may serve to encourage further expansion of disallowed activities. For any recommended changes to be effective, the County must implement an effective enforcement plan.” Numerous individuals and other organizations have asked this at various County meetings and in letters to the editor to local newspapers.

Accordingly, the County should also establish a clear and firm time-table for developing and implementing these and other similar enforcement measures recommended by APAC, the Napa County Grand Jury, and the Wine Industry Task Force. This will also send a clear message that the County will treat similarly situated wineries—both those who choose to comply with the law, and those who choose to violate it—in an equal fashion.

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Thank you for your attention in this matter.

Very truly yours,

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