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COUNTY OF NAPA
BOARD OF SUPERVISORS

August 11, 2017

Via E-Mail and U.S. Mail

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Re: Pattern and Practice of Failing to Comply with the California
Environmental Quality Act regarding Winery Project Approvals

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

This firm represents *Alliance for Responsible Governance* ("The Alliance"), whose members are strong supporters of the sustainable economic growth of Napa County within the context of the agricultural protections embraced by the citizens of Napa County and codified within the County's General Plan. The Alliance is deeply concerned about the environmental impacts of numerous new and expanded winery projects the County has permitted in recent years and the subsequent impact on Napa County's future. These impacts are compounded by the fact that the County has engaged in a pattern and practice of approving winery projects without conducting a legally adequate environmental review under the California Environmental Quality Act ("CEQA").

Since 2013, the County has approved over 90 winery permits, including new wineries and winery expansions with major production and visitation increases. This firm reviewed all of the applications from 2013 to late 2016 and their supporting environmental review documents. As a general matter, the County processed these applications with inadequate environmental review, approving the projects based on categorical exemptions and negative declarations. Only two applications have required the preparation of an environmental impact report—the Hall Winery Distillery Building Demolition in 2014 and the Yountville Hill Winery in 2016.

The County's insufficient environmental review of these winery applications has resulted in repeated violations of CEQA and a consistent failure to disclose and effectively mitigate the projects' environmental impacts—which continue to compound over time, as more and more projects are approved without legally adequate CEQA review. In our review of the County's approvals of winery permits since 2013, we have identified many violations of CEQA, and offer the following examples of the violations below.

1. Improper Use of Categorical Exemptions.

Since 2013, the County has found at least 19 out of 68 permit applications to be wholly exempt from CEQA review, despite the fact that many of those projects did not satisfy the requirements for categorical exemptions. CEQA allows lead agencies to find certain projects "categorically exempt" from environmental review if the class of project has been determined not to have a significant effect on the environment. Pub. Resources Code § 21084; Cal. Code Regs., tit. 14 ("CEQA Guidelines") § 15300. These categorical exemptions must be strictly construed, "in order to afford the fullest possible environmental protection." *Save Our Schools v. Barstow Unified School Dist. Bd. of Education* (2015) 240 Cal.App.4th 128, 140. Further, a project is not categorically exempt if certain exceptions apply, such as "when the cumulative impact of successive projects of the same type in the same place, over time is significant." CEQA Guidelines § 15300.2(b). The County routinely violates these narrow restrictions on the use of categorical exemptions.

For example, the County's approval of a categorical exemption for a "major modification" to a use permit for Robert Keenan Winery violated the County's own Guidelines for granting an exemption from CEQA. That permit authorized the winery to hold annually six marketing events with up to 30 people, twelve marketing events with up to 35 people, two marketing events with up to 75 people, and one marketing event with up to 300 people. These permitted uses far exceed the limits of the County's Class 3 categorical exemption for small wineries, which allows only for permitting of up to ten marketing events with up to 30 people and one marketing event with up to 100 people annually without CEQA review. But the County ignored its own guidelines, approving and permitting this major modification without performing the required environmental review.

In 2016, the County approved a major modification to the Caymus Vineyards use permit under a categorical exemption. The County concluded that the substantial road modifications, changes in production levels, and building demolition

were categorically exempt from CEQA. But the County's CEQA memorandum fails to mention that the major modification to the permit includes allowing up to 450 visitors per day—or 164,250 visitors per year—which is more than triple the highest number of visitors the winery had historically accommodated (50,727 in 2014). This increase in visitors to the winery will have significant environmental impacts including, but not limited to, traffic and noise, which the County completely ignored it when it approved a categorical exemption.

Further, categorical exemptions are not applicable where “the cumulative impact of successive projects of the same type in the same place, over time is significant.” CEQA Guidelines, § 15300.2(b). For example, the County approved the Melka Winery in 2015 under a categorical exemption, despite the fact that it permitted yet another winery with visitors, truck traffic, and marketing events on Silverado Trail—a road that already supports a large number of wineries and experiences substantial traffic on weekends. Although new wineries along this road are bound to add to its already overburdened condition, the County's environmental documents do not evaluate or mitigate the combined effect of these projects along with existing traffic, particularly weekend traffic. Each new or expanded winery may, alone, seem to add only a little traffic and noise, but cumulatively, the impact is great. By approving projects under categorical exemptions in this manner, the County is violating CEQA and denying the public and decision makers critical information about their actual environmental impacts.

To date, 93 new and expanded wineries have been approved by the County since 2013, representing a total increase in combined visitation of 1,003,492 visitors per year and in winery surface area of 1,028,127 square feet.

2. Improper Project Baseline.

The County routinely includes ongoing unpermitted uses and activities in the baseline analysis when assessing a potential project's impacts. Over the period from 2013 to 2016, at least 10 of the 68 permit applications that the County received were from wineries who were operating illegally. Unpermitted activities include marketing related visitation in excess of permitted levels, holding unpermitted marketing events, making unauthorized changes to use of rooms, unpermitted facilities development, and exceeding permitted production levels. The County has routinely embraced these illegal activities within the baseline analysis for the project applications, thereby allowing the environmental impacts of the unpermitted use to evade environmental review.

For example, the County established unpermitted visitation levels as the baseline from which to evaluate the environmental effects of the Frog's Leap Winery expansion in 2016. That use permit modification allowed an almost 300 percent increase in visitation—from a maximum 350 visitors per week to a maximum 1,100 visitors per week, plus an added 5,740 visitors per year for marketing events. Before this 2016 application, Frog Leap Winery's prior use permit modification had allowed up to 350 visitors per week and 36 annual events. Yet, instead of analyzing the environmental impact of the substantial increase in permitted visitation, the County compared the newly permitted visitation and marketing to the winery's ongoing illegal operations, an estimated 800 visitors per week and 189 annual marketing events. This improper baseline obscured the true environmental impacts of the approvals and produced a misleading environmental review.

In 2015, the County approved a negative declaration for the Reverie Winery based on an environmental analysis that relied on existing, unpermitted uses for the baseline. Reverie's existing use permit allowed only 20 visitors per week and six small events per year. A use permit modification was approved by the Planning Commission for a tenfold increase in visitors—to 200 per week—along with up to 18 larger marketing events per year. Despite the negative declaration's determination that these new visitation levels would cause a notable increase in traffic and water use, the County concluded no significant impact would occur because the project would not cause a change from the existing impacts of the winery's unpermitted activities, which already included an expanded 4,710 square-foot cave, increased production, the additional marketing events, and approximately 200 visitors per week.

The County is currently processing a major use permit modification for Raymond Vineyards, which illegally began expanding its visitor-serving facilities and marketing activities shortly after the current owners purchased the operation in 2009. Although these violations include converting uses to private tasting rooms, unpermitted construction of several outbuildings, and the addition of 64 more employees than allowed under their current use permit, the County is relying on these unpermitted activities as the baseline to conduct environmental review.

The County's repeated use of illegally expanded operations as the baseline to review permits to legalize, or even expand beyond, those operations is fundamentally misleading to the public, and obfuscates the environmental impacts of permitting the expanded uses, as opposed to enforcing compliance with existing permits, ordinances, and regulations, and requiring wineries to return to lower, permitted levels before seeking to expand. *See Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57

Cal.4th 439, 447 (agencies should not use existing conditions baseline if it would be misleading). By repeatedly comparing the impacts of expanded operations to unpermitted levels, the County has undermined the core purpose of CEQA: to inform decisionmakers and the public of projects' environmental impacts. Further, the County's decision to allow these once-illegal uses to continue and to be permitted has real consequences for the future because the new use permits establish a level of use that the owner is entitled to and that cannot be easily modified. Before the County approves such uses, it must evaluate their impacts and adopt measures to reduce them. In the absence of such an analysis and mitigation, the County will lose the opportunity to avoid the real impacts of newly permitted operations.

3. Failure to Adequately Evaluate Traffic Impacts.

One of the most prominent impacts of new and expanded wineries is the impact on traffic. The County's current practice is to rely on traffic "studies" with very narrow study areas. Traffic studies need to evaluate not just the direct resultant impacts on traffic due to increases in visitation and marketing events, but consider all traffic generated by a proposed project — cumulative hospitality employment, seasonal occurrences, as well as service and support for winery operations (UPS, deliveries, etc.).

The County's analysis of traffic impacts suffers from several flaws.

1. The County relies on an arbitrary one percent (1%) threshold to determine whether a given project will have significant traffic impacts. Under the County's theory, any project below this one percent (1%) threshold will not have a significant traffic impact. This assumption ignores small increases for particular projects can have significant consequences due to the nature and location of the project—such as a new winery located on a particularly narrow road. The County's threshold also ignores the cumulative effect of many smaller projects that, taken together, do have significant effects.
2. The County's evaluation of individual projects' traffic impacts lacks the necessary rigor to provide an accurate assessment of the project's traffic impacts once it is approved and implemented. In some cases, such as the Kenzo and McVikar Vineyards permit approvals, just one unscheduled trip a day during specific times—for example, a UPS delivery—would cause the approved projects to exceed the

designated one percent (1%) threshold. Yet, in both cases, the County found the traffic impacts would not be significant.

3. The County repeatedly evades its legal obligation under CEQA to look at the cumulative impacts of its multiple project approvals in favor of consistently deferring this analysis to the EIR supporting the 2008 General Plan. However, the 2008 General Plan EIR's cumulative traffic impact analysis did not adequately address the impacts of winery-related traffic. The 2008 General Plan EIR analyzed only the peak PM traffic, excluding traffic impacts related to winery visitation, marketing, tourism-related traffic and related employment. Because the 2008 General Plan EIR did not analyze this traffic impact, CEQA requires that each individual project's environmental analysis do so.

For example, the 2013 B Cellars Winery Negative Declaration relies on the General Plan EIR for its analysis of "cumulative traffic increases and service level changes" from winery expansion. However, because the General Plan EIR does not encompass impacts from visitation and marketing traffic—which is nearly half of the regular traffic generated by B Cellars—the County could not rely on it to substitute for an analysis of the specific contributions to cumulative traffic impacts of B-Cellars' expansion. Thus, this—and every other winery approval that permitted marketing events and visitation while tiering off of the General Plan EIR for its cumulative traffic analysis—relied on an inadequate cumulative traffic analyses, in violation of CEQA.

This improper reliance on the 2008 General Plan EIR continues unabated to this day. On March 15, 2017, the Planning Commission considered Raymond Vineyards' application to expand its use permit—legalizing the winery's current, unpermitted uses and expanding other uses. The negative declaration for this project improperly relied on the General Plan EIR to define cumulative conditions for traffic and to determine whether the project's contributions to traffic impacts would be significant enough to require mitigation. Notwithstanding the deficient negative declaration and improper reliance on the General Plan EIR, the County's approval of Raymond Vineyards' application is yet another

example of a project that escaped proper CEQA review of its full traffic impacts.

4. Many of the winery projects' CEQA analyses failed to consider all aspects of traffic impacts, improperly narrowing the scope of analysis and failing to disclose all impacts as CEQA requires. Specifically, the County neglects to analyze the significance of heightened traffic during the harvest season from increased production, grape transport, and visitation. This omission is highlighted by the fact that Napa County's Supplemental Application for Winery Use form requires applicants to report crush-related traffic information—but in most cases the County's environmental analyses does nothing with that information.
5. The County's environmental analyses ignore secondary traffic impacts. None of the CEQA documents or staff reports between 2013 and 2016 make any mention of noise impacts from traffic. This is despite the fact that the General Plan EIR identified noise from traffic as a potential environmental impact from development in Napa County. The failure to adequately assess traffic impacts could also make it difficult for the County to adequately assess cumulative air quality impacts.
6. The County frequently relies on mitigation measures, such as off-site shuttle programs or conditions on the scheduling of marketing events and employee shifts to lessen traffic impacts. However, the County does not evaluate the environmental impacts of these measures such as the traffic impacts from visitors driving themselves to the shuttle sites. Moreover, the County fails to ensure that these measures are monitored and enforced. For this reason CEQA prohibits agencies from relying on mitigation measures to avoid full CEQA review that "subverts the purposes of CEQA" (*Lotus v. Dep't of Trans.* (2014) 223 Cal.App.4th 645,658) and amounts to an "end run" around the governing standards (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster, et al.* (1997) 52 Cal.App.4th, 1165, 1201).

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

The County repeatedly violates CEQA by relying on inadequate mitigation that does not reduce the projects’ impacts to insignificance. For example, the County requires compliance with Napa County’s noise ordinances as mitigation. However, as California courts have recognized, regulatory compliance alone does not ensure that a project’s impacts will be less than significant. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716.

This is particularly true in Napa County where wineries repeatedly violate the terms of their permits, hosting more marketing events than authorized, playing amplified music, and conducting events late into the night. Even if requiring compliance with an ordinance alone was adequate under CEQA, such a requirement is only as good as the program of enforcement that accompanies it. 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.

* * *

Alliance for Responsible Governance is looking to the County to apply its own rules and process all applications in accordance with current County code and CEQA. By neglecting to adhere to CEQA’s requirements, Napa County has failed to inform the public and decision makers of the projects’ environmental impacts; and it has failed to ensure that these impacts are adequately mitigated.

Alliance for Responsible Governance urges the County to remedy its flawed procedures promptly. Additionally, the County should ensure that all project applications are subject to proper environmental review without the use of exemptions, perform a current baseline assessment of all wineries and their current activities, and implement policies for heightened permit enforcement.

Alliance for Responsible Governance hopes to resolve these issues with the County in a timely and amicable fashion. However, if the County does not take appropriate steps to properly consider all CEQA impacts associated with new and expanded winery project applications, the *Alliance for Responsible Governance* reserves its right to ensure that the environmental impacts of new or expanded wineries are analyzed and mitigated as required by CEQA.

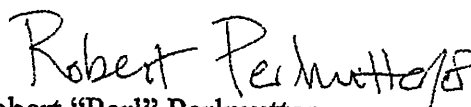
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Very truly yours,

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