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**Planning, Building & Environmental Services**

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**Brian D. Bordona**  
Director

## MEMORANDUM

To: Planning Commission	From: Michael Parker, Planning Manager
Date: April 26, 2024	Re: Agenda Item 8.D. WILLIAM COLE WINERY (WILLIAM BALLENTINE JR. AND JANE SORENSEN TR) / USE PERMIT MAJOR MODIFICATION NO. P19-00101 - MOD & VARIANCE P19-00441-VAR

Staff received a comment letter from Water Audit California on Tuesday, April 16, 2024 at 2:23 PM.

Staff has provided responses to each of WAC's comments, and for ease of reference and convenience, staff responses are embedded directly into the letter attached to this memo.

To view the original letter, see attachment N.



April 16, 2024 County of Napa  
Planning Commission

## **WATER AUDIT CALIFORNIA**

**A PUBLIC BENEFIT CORPORATION**

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RE: Planning Commission Agenda April 17, 2024  
A. WILLIAM COLE WINERY (WILLIAM BALLENTINE JR. AND JANE SORENSON TR) /  
USE PERMIT MAJOR MODIFICATION NO. P19-00101 - MOD & VARIANCE P19-  
00441-VAR

Water Audit California comments on the above captioned application as follows:

1. There is no checklist as part of the application packet. See PBES *Revised Use Permit-Major Modification Application (Winery Uses) Checklist of Required Application Materials*. Note also a Checklist of Technical Studies is "required unless waived at or following pre-App Review Mtg." No waiver is included.

**County Response to Comment #1:** The Application packet includes a checklist which is designed to provide guidance to the application preparer in assembling the necessary reports, studies and documents that are required for the County to commence review of a proposed project. The determination of which technical studies are needed is determined by Staff (i.e. completeness determination letter) and dependent upon the specifics of each project. As identified in the staff report Staff determine the application to be complete on February 8, 2024.

2. Current Projects folder contains 13 files; the folder submitted to CEQA for agency review contains four files. *Prima facie* full comment was not sought from the regulatory agencies for the project which is under review. Specifically, and without limitation, the project has not been presented for review to the State Water Resources Control Board, Regional Water Quality Control Board, Departments of Fire or Forestry, and most importantly, the City of St. Helena. (CalFire comment cited later appears to have been surreptitious and random. Reference is made in the subject Application to future stormwater improvements, indicating the need for review, but review was not sought. Note: Napa County ordinance 16.28.100 (C)(3)(a) and (d): Reduction of pollutants in stormwater. "...undertake the measures set forth below to reduce the risk of illicit discharge and/or pollutant discharge. C. Development and Construction Projects. 3. Stormwater Control Plans and Other Requirements (a)...applicant shall implement conditions of approval that reduce stormwater pollutant discharges... (d). Implementation of an approved SCP and submittal of an approved Stormwater Facilities Operation and Maintenance Plan by the applicant shall be a condition precedent to the issuance of a building permit, use permit or construction permit for a project subject to this section.

**County Response to Comment #2:** The 13 available documents on the Current Projects Planning Website correspond to the documents attached to or referenced in the Staff Report prepared for Planning Commission hearing, on April 17, 2024. One document is the draft Staff Report with the accompanying Attachments, including the CEQA Initial Study/Negative Declaration (IS/ND). CalFire and the newly staffed Fire Marshall's office review all discretionary development projects like wineries, and provide comments typically in the form of a memorandum conditions of approval. The application was sent directly to CalFire for review at the same time the application was sent for review to all other internal County Divisions. CalFire issued memorandum of conditions, dated October 10, 2020, with their recommended conditions of approval which is attached as Attachment B to the Staff Report.

The County did not circulate the IS/ND to the City of St. Helena as there are no proposed changes to the existing domestic residential water services that are provided by the City. The proposed winery project and the existing vineyard rely on two existing wells of which the City has no permitting or regulatory authority.

Furthermore, comments were received from both Caltrans and the State Water Resources Control Board (Waterboard) providing guidance to the applicant to ensure any permitting or notification requirements are met. The comment letters were provided to the applicant's team and to the Planning Commission for the hearing on April 17, 2024 (see Attachment M to the Staff Report).

The ISND was submitted to the State Clearinghouse SCH No. 2024030466 for review by the following agencies:

California Air Resources Board (ARB), California Department of Fish and Wildlife, Northern and Eureka Region 1 (CDFW), California Department of Forestry and Fire Protection (CalFire), California

Department of Parks and Recreation, California Department of Transportation, District 4 (DOT), California Department of Water Resources (DWR), California Highway Patrol (CHP), California Native American Heritage Commission (NAHC), California Natural Resources Agency, California Regional Water Quality Control Board, San Francisco Bay Region 2 (RWQCB), California State Lands Commission (SLC), Department of Toxic Substances Control, Office of Historic Preservation, State Water Resources Control Board, Division of Drinking Water, State Water Resources Control Board, Division of Water Quality

3. Water for the project is represented to be supplied by a “will serve” letter from the City of St. Helena. (See: County of Napa PC 20240417 Agenda Packet 7A. William Cole Winery att B. COA PDF Page 61 Enviro Health Memo "4. alternatively, a will serve letter from CSH may be submitted showing project served by permitted water system." No such letter is attached; in fact, only a *request* for a will serve letter is part of the packet. The existing water supply agreement with CSH states that it is for fire suppression only.

The county is aware of this omission. See 2019 P19-00101 Application Status Letter that found the application was INCOMPLETE in part because of the Environmental Health Services comment: “Because the total number of users (combined employees, visitors and residents and/or the total number of employees and residents) proposed exceeds 25 on a peak day, the water supply and related components serving this facility will have to comply with the California Safe Drinking Water Act and related Laws. If the existing water sources will not meet the construction requirements for a regulated water system, a new well (source) may have to be developed. Please review the enclosed information and prepare the required water system feasibility report as outlined in the enclosed handout.”

**County Response to Comment #3:** Water for the project is from existing groundwater well(s) as identified in the project description, the staff report, the Initial Study/Negative Declaration (IS/ND), and supporting Water Availability Analysis prepared by Richard C. Slade & Associates. Water from the City of St. Helena serves the existing residence, pool, and is used for irrigation, none of which are part of the proposed project. In response to the 2019 Application Completeness Letter, application and supplemental documents were submitted and reviewed by Environmental Health and determined to be complete to approve with conditions of approval outlined in the memorandum, dated November 27, 2023. The Environmental Health memo includes Condition #4 which was included to ensure compliance with the California Safe Drinking Water Act and Related Laws, including the notification deadlines for submittal of a technical report to the State Resources Control Board, which was reiterated in a comment letter provided by the Waterboard on April 5, 2024. The EH memo also states that Division has no objections to approval of the application subject to the conditions recommended in the memo.

4. The project area is claimed to be 5.72 acres, but the permit application states the area to be 5.12 acres, with the water availability analysis keyed to the larger number.

**County Response to Comment #4:** The 5.72 acres identified in the application packet (on Page 1 of Attachment E) was verified using GIS data provided by the Assessor's office. The parcel size of 5.72 acres was consistently used in the staff report, the IS/ND, and the Water Availability Analysis.

5. There is no traffic study. There is an existing center lane on Highway 29 that is approximately 1,082 feet (0.20 miles), extending 855 feet from the driveway north and 221 feet to the south before becoming a left turn lane from Highway 29 onto Deer Park Road. The center lanes currently serve the shared driveway to the subject project and Morlet, as well as Markham Vineyard, Ballentine Vineyards and Faust functioning as both left turn lane and deceleration lane.

The center lanes currently serve the shared driveway to the subject project and Morlet, as well as Markham Vineyard, Ballentine Vineyards and Faust functioning as both left turn lane and deceleration lane. Caltrans has commented "Please provide floodplain analysis report including potential impacts on existing adjacent properties;" ... "The driveway and road approach will require a Caltrans-issued encroachment permit;" and ... "... submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans; ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans..."

There has been no consideration of the cumulative impact. We note **the 2002 staff report comment** by Mr. Lederer "The improvement of the project driveway and potential installation of a left-hand turn lane at some later date will improve ingress and egress for existing traffic at this site." Respectfully, the later date should be *now*.

**County Response to Comment #5:** The Department of Public Works Traffic Engineer reviewed and approved the project without conditions as commented in the County's Accela Database, that "*Dual left turn lanes are provided on St. Helena Highway/SR 128. Net trips increase are not more than 40 daily trips. No COA establish on this Use Permit Application.*" Since Public Works did not have any recommended conditions of approval for the project and because the project is below the threshold for preparation of a traffic study, no traffic study was required nor was a memorandum from Public Works found to be necessary.

6. The well pumping data from an eight-hour test is inadequate.

**County Response to Comment #6:** The Water Availability Analysis (WAA) – Guidance Document adopted May 12, 2015, by the Board of Supervisors states on Page 9 that potential interference between wells can be determined based on information including, if available, constant rate aquifer test data for tests conducted for a minimum of 8 hours. The well pump test complied with the testing criteria.

7. Note CalFire comment re the proposed change in occupancy to create a second floor tasting room, and the absence of reference to this “proposed change” in the Agenda Packet, reflecting the difference between the CEQA reviewed documents and the documents submitted at the time of hearing.

**County Response to Comment #7:** The application does not propose changes to the existing winery or relocating the tasting room to the 2<sup>nd</sup> floor which has been a residence since at least some point in the 1930 and will remain residential use only.

8. The present pending decision to approve a variance for the barn built within the highway setback is wholly inconsistent with the decade made over two decades ago to *deny* the variance. Staff Report claims the winery setback from road variance was included with the original use permit approved in 2002, but in fact a variance was not sought for in the 2002 use permit. *A 2000 Permit (not the 2002 permit) that did seek a use permit a variance to build within the winery road setback, but the variance was denied.* Staff findings in 2002 were “13.(2). ...However, in this case sufficient buildable area exists for construction of facilities that conform to the setback requirements... 13. (3) the property contains a building that has been used as a residence... Approval of setback variance is not necessary to preserve these uses”

In short, the applicant is seeking to ratify its express violation of a prior decision by simply ignoring the decision when applying for a building permit, and then omitting the earlier decision from the record submitted herein. This is a subterfuge which should not be tolerated. See the 2019 Application Status Letter at page 2 “To discourage property owners from constructing residences and barns with the express intent of converting them to wineries, the County does not generally support use permit proposals seeking to convert existing buildings to winery use if the buildings have been constructed or substantially modified within the last 5 years (i.e. from 2019)”

**County Response to Comment #8:** In 1999, the County Code was amended to include a new Section 18.104.235 to allow historical wineries or structures containing accessory uses to be located within a minimum of 300 feet from a state highway, Silverado Trail, or any arterial county roads if the structures meet four required findings (Ordinance No. 1153). The existing winery/residence structure met all findings under Section 18.104.235 and therefore a variance was not required at the time the property owner reapplied for a winery Use Permit in 2002.

9. A cultural/architectural resources survey is listed in the packet being reviewed but is not attached. See 2002 Project Revision Statement at PDF 74 “All site work, including rehabilitation, restoration, and re-use of the exterior of the historic structure shall comply with The Secretary of Interiors Standards for the Treatment of Historic Properties and Guidelines for Preserving, Restoring, and Reconstructing Historic Buildings. An independent, certified Historic Architect

shall review and certify the plans prior to issue of building permits.” See also EDR 2019 Application Status Letter At page 1 “9. Cultural Resources Study: ...under Assembly Bill 52, preparation of a Cultural Resources Study is required”

**County Response to Comment #9:** The current winery request was submitted in 2019, including a Cultural Resource Study. The study was reviewed and referenced as part of the CEQA review, included as Attachment D and available at the State Clearinghouse under No. SCH 2024030466. It should be noted that all Cultural Resources Studies including any assessments on architectural resources are treated as confidential in order to protect their location and identified artifacts or significant architectural building features from potential public disruption or destruction. Generally, staff will include a description of the resource in the environmental documentation and staff report and only available for review to specific state agencies if requested.

10. There is no: (1) adjoining property owners list (2) associated Assessor’s parcel book pages; (3) USGS I Survey Quadrangle per Checklist Requirement; (4) grape source statement; (5) storm drainage plan. Without explanation, the Graphics provided are facially distinct from those provided in 2002.

**County Response to Comment #10:**

Items #1 through #3): information regarding property owners within 1,000 feet of the proposed project, Assessor parcel book pages, and the USGS Survey Quadrangle were included in the project file and available for public review but it is not included as part of the Planning Commission packet of materials for a project.

Item #4) The Initial Statement of Grape Source was included in the application packet as well as the Staff Report on page 12. Letters of commitment from grape suppliers and supporting documents may be required prior to issuance of a building permit.

Item #5) The plans illustrate the existing Storm Drainage Plan, with no additional improvements requested. Additionally, pursuant to County Code Section 16.28.100, which outlines requirements for a stormwater control plan and references the Bay Area Stormwater Management Agency Association (BASMAA). Based on the guidelines, a stormwater control plan would be required if a project were to create 2,500 to 5,000 square feet of new or additional impervious surface area. The subject project proposes to create less than 800 additional square feet of impervious surface area (as shown on the plans); therefore, no stormwater control plan was required as part of the application submittal.

Item #6) The Graphics were prepared by Albion Survey in 2002 and updated in 2019 to document the minimal change to the site conditions in the last 17 years.

For the foregoing reasons, Water Audit California submits that the subject Major Use Modification

Permit be rejected.

Respectfully,

A handwritten signature in blue ink, appearing to be 'WM', with a long horizontal flourish extending to the right.

William McKinnon  
General Counsel  
Water Audit California