

“ | ”

Public Comments Received  
After April 1, 2026  
Planning Commission Hearing

To: Emily Hedge, Planner III Napa County  
From: Stephanie O'Brien, Napa Resident  
Date: May 18, 2026  
Re: P19-00121 Hagafen Cellars Winery Use Permit Major Modification  
CC: Supervisor Joelle Gallagher, District 1  
Planning Department

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Dear Emily,

Please add the attached public comment and supporting materials to the administrative record for the Hagafen Winery appeal.

### **Introduction and Purpose of Comment**

My primary concerns are water, wildlife, and quality of life in Napa County, including traffic and noise. In these areas, I expect the County to maintain high standards, consistent with practices I have seen in other comparable settings: high tourist activity and sensitive environmental resources. I have serious concerns that this project has not been properly analyzed or mitigated in these areas, and I expect the County to address these issues through its public facing CEQA Exemption Memo.

My intention is not to police CEQA procedures or debate formatting. My purpose is to protect Napa County's environment from future harm. CEQA is simply the lens through which I evaluate these issues because it is structured, transparent, and grounded in defined rules.

As a long + full time resident of Napa Valley for more than 50 years, I am familiar with this site and the environmental conditions in this portion of the valley. Although I am not a CEQA expert, I am submitting this comment as a long-time resident who has reviewed the publicly available project materials and the 1998 record in detail, and my analysis is based solely on those documents.

### **Request for Remand to Reestablish the CEQA Basis**

I am formally requesting that this project be remanded back to the planning department for a CEQA basis review and update the current CEQA Exemption Memo with that analysis.

Below are my findings to support this request.

### **The CEQA Exemption Memo Does Not Identify or Support the CEQA Basis**

To claim a baseline to support an exemption, the underlying CEQA basis must be accurate and supported by substantial evidence.

Prior PBES Director David Morrison's memo to the Napa County Board of Supervisors, (12/12/19) states:

*“Simply, an agency's decision rejecting the existence of an exception to a categorical exemption is much more defensible if the agency makes explicit findings that no unusual circumstances exist and that, regardless, there exists no reasonable possibility the activity in question will have a significant impact.”*

I understand the Director was referring to the Common Sense Exemption when he wrote this. However, his statement reflects CEQA's broader requirement: an exemption is only defensible when the agency identifies the basis and evaluates and rejects the exceptions. In this case, the CEQA Exemption Memo does not identify the CEQA basis, does not evaluate the exceptions, and does not include the explicit findings that CEQA requires. As a result, the memo does not meet the standard articulated in the Director's own CEQA guidance, and the Findings cannot rely on it.

For the County to rely on Class 1 and Class 4 categorical exemptions, it must take the 1998 CEQA basis and evaluate the physical and operational changes that have occurred through 2026.

One of the changes in the County's own documents is a groundwater recharge deficit. If the recharge deficit is an existing physical condition, then it is part of the baseline. The 1998 Initial Study never identified this deficit as part of the environmental setting. I understand water is discussed in the memo under Public Trust, but my concern is not where it is documented, rather the issue is that the CEQA basis relies on a baseline that never included the groundwater recharge deficit (in the 1998 Initial Study, the deficit was never mentioned)

Without an accurate baseline, the CEQA basis is incomplete.

## **The 1998/99 Hearing Demonstrates Gaps in the Original CEQA Review**

**There is substantial evidence in the hearing that the CEQA basis requires review.** The Planning Commission held a hearing to approve the Negative Declaration, and the transcript is part of the PBES record. The transcript shows that Commissioners repeatedly confused CEQA environmental impacts with road safety issues, treated Public Works' operational flexibility as a substitute for CEQA analysis, and relied on pre 1990 Small Winery practices rather than evaluating environmental effects on water, wildlife, or quality of life. These patterns reflect the CEQA understanding of that era, not negligence, but they resulted in a Negative Declaration that did not fully evaluate impacts or identify appropriate mitigation.

**Physical changes to the site were also not analyzed.** The parcel is long and narrow (approximately 11 acres), and roughly 2 acres were removed from vineyards used to construct

the winery, tasting room, roads, and landscaping. While the prior vineyard use was considered “agriculture” and therefore not evaluated under CEQA (and it was 30 years old), the conversion of 2 acres from natural agricultural land to buildings, roads and landscaping is a physical change that CEQA requires to be analyzed. A vineyard baseline is not a winery baseline. The 1998 Initial Study did not evaluate these physical conditions or identify mitigation measures that could have been implemented at the time.

**The Initial Study did not incorporate the environmental effects of the left turn lane.** CEQA required this analysis even in 1998. Because the current CEQA Exemption Memo relies on the 1998 baseline, the completeness of the original CEQA analysis is directly relevant. The transcript includes a clear exchange illustrating the issue between Attorney Steven Buehl and Chairperson Jim King:

Mr. Buehl, states (pg. 74-75):

*“It’s also true that under CEQA that if you were told that the mitigation measure itself creates environmental impacts, then the environmental impacts of that nature have to be assessed and have to be mitigated if that’s creating further adverse environmental impacts. So those things can’t be done down the road someplace.”*

And

*“It should be given weight now. And deferred mitigation is not proper proceeding under CEQA”.*

Chairperson Jim King Responds:

*“I guess I want to state that in the public record we just heard Public Works and staff say that they do have that flexibility”*

This exchange is one example of a broader pattern in the transcript: CEQA responsibilities were misunderstood, and safety considerations were repeatedly substituted for environmental analysis.

**The Commission’s approach reflected the “small winery” mindset of the time.** In 1998/99, small winery projects rarely received detailed CEQA reviews, and EIRs were almost never prepared for wineries. Commissioner Tony Holzhauer’s comments confirm this context: he noted that in eight years on the Commission, he had seen almost no winery EIRs and that wineries under 20,000 gallons had historically been approved “automatically” without hearings. This was the prevailing framework of the era, not a lack of diligence.

Commission member Tony Holzhauer, states (pg. 131-132):

*“To have an EIR, a total full-blown EIR on of—other than I think maybe in the eight years that I have been on this Commission, that we have had maybe three EIRs that are done, were done. I haven’t seen one on a winery, that I can recall, maybe there were. But we have talked about wineries. They go – most of the ones that come up are half a*



*million to over well over a million gallons and we have never required an EIR on those. A 20,000 gallon winery before the, when was it '91, was a permitted use without going through any hearing. It was just – you were automatically allowed to have that on a parcel smaller than this. Now with the winery definition, every winery that comes in front has to come in and get a use permit. That's why we are going through this at this time. The number of visitors is not really that significant. The big events that come that could pile people up on the road turning in certainly is a problem. And I think that's what we are wrestling with at this time."*

**Operational intensity was also not evaluated.** County planner Wyntress Balcher stated (pg. 5) that the applicant proposed an “aggressive marketing plan,” including an increase from zero visitation to 25 visitors per day, five or six days per week. In Napa County, “marketing” refers to physical onsite events and visitation. An increase in the frequency or intensity of onsite activity is a physical change that CEQA must evaluate. The Initial Study did not analyze visitation, events, circulation on a long narrow parcel, the operational impacts of people on the site, or production. A vineyard baseline reduces some CEQA concerns, but it does not eliminate the need to analyze the operational impacts of a winery. Although the site had been planted in vineyard for decades, the Initial Study did not include any evaluation of the biological setting or consider whether the introduction of year round winery and hospitality operations could impact wildlife or habitat. As a result, the CEQA baseline for intensity was never established.

## **The 1998 Baseline Is Incomplete and Cannot Support a 2026 Exemption**

Historical practice does not satisfy CEQA today. Through a 2026 lens, the 1998 Initial Study did not evaluate:

- the groundwater recharge deficit documented in the County's own records,
- the conversion of 2 acres of agricultural land to buildings and roads,
- the environmental effects of the left turn lane, or
- the impacts associated with people, production on the property.

While the Initial Study includes limited reference to traffic, parking, water availability, noise (and septic through consultant report) it does not contain the baseline environmental setting or the full range of impact analysis required for a discretionary winery project. The pattern of analysis is consistent with the Small Winery Exemption framework rather than a complete CEQA review.

Because the County now relies on the 1998 ND + Initial Study as the CEQA basis for a 2026 exemption, the omissions in the original analysis must be addressed. The CEQA basis must be reevaluated and reestablished using current CEQA standards. A categorical exemption cannot rely on a baseline that did not analyze these conditions.

## **A 1998 ND/Initial Study Is Functionally Equivalent to a Small Winery Exemption Today**

A 1998 Negative Declaration supported by a brief Initial Study is, in practical environmental terms, the functional equivalent of a Small Winery Exemption under today's CEQA standards. The 1998 Initial Study and the meeting transcript show that key physical and operational changes were never evaluated under CEQA.

In effect, the CEQA standard applied to Hagafen in 1998 is materially similar to the CEQA standard currently being litigated/appealed in the Small Winery Exemption case, where the absence of CEQA review has resulted in the county spending over \$2 million in attorney fees and statutory penalties exceeding \$1 million + a permanent injunction barring visitation to the owner. The difference is that Hagafen has a 1998 ND/IS on paper, but the level of analysis is comparable to a ministerial exemption by today's standards.

## **Residents Absorb the Impacts When CEQA Is Treated as Flexible**

Napa County treats some impacts as fixed and non-negotiable, while treating others as discretionary. The Conditions of Approval require the access road to be widened to meet current Road and Street Standards. These standards are tied to life and safety and cannot be waived. In contrast, impacts that residents experience most directly: water, wildlife, traffic, and noise, are treated as flexible. Both categories of impacts meaningfully affect the community, yet they are regulated very differently.

As a long-time resident, I understand and accept that vineyards reduce habitat and use water resources. The community accepts this because vineyards are quiet most of the year and do not generate large-scale traffic. But when winery and hospitality uses are introduced, the land use pattern fundamentally changes. The developed footprint in this project is comparable to a medium sized big box store, and like any commercial footprint, the County must address all associated impacts. If not, residents are left with absorbing the cumulative effects while the benefits flow elsewhere.

## **Summary and Request for Action**

CEQA is the only tool residents have to ensure that environmental burdens are not shifted onto them without analysis. For these reasons, the County must reestablish a clear and accurate CEQA basis, I am therefore requesting that this project be remanded back to the planning department for a CEQA basis review and update the current CEQA Exemption Memo with that analysis.

**Attachments:**

Excerpts from 1998/99 Hearing Transcript (pp. 5, 74-75, 131-132). The full 1998 hearing transcript is available in the PBES APN online Database, APN 039-130-002

Excerpts from 1998 Initial Study (selected pages referenced in memo). The full 1998 Initial Study is available in the PBES APN online Database, APN 039-130-002

Memo from David Morrison, PBES Director to the Board of Supervisors, December 12, 2019, full document attached

CEQA Categorical Exemption Memorandum, February 20, 2026, Full Document Attached

1 provide adequate screening of lighting, any glare, any  
2 outdoor storage and to help reduce noises which may result  
3 from winery activities.

4 In addition, the Condition has proposed to  
5 ensure that any outdoor storage is screened from view of  
6 adjacent property utilizing a barrier consisting of fencing  
7 and/or dense landscaping.

8 The applicant has proposed an aggressive  
9 marketing plan estimating large numbers of visitors at 24  
10 various events. They are expecting on average less than  
11 100 persons attending but a maximum of 150 at six of the  
12 events. Staff is recommending limiting the Marketing Plan  
13 relative to the number of visitors attending each event  
14 more in line with other wineries of similar size.

15 The recommendation is to limit the 24  
16 marketing events to a maximum of 75 persons or less, except  
17 two holiday events allowing 100 persons. Although 22  
18 on-site parking spaces are proposed, additional parking can  
19 be provided on the access driveways and the concrete slab  
20 area located at the rear of the winery. Therefore,  
21 adequate parking can be provided on-site for the larger  
22 marketing activities.

23 Since this is a new winery, 75 percent of the  
24 annual production must be produced from Napa County grapes,  
25 including the grapes of the maximum four custom producers

1 parcel of about seven acres which is I believe on one of  
2 our other maps, but not on this map, that's served by that  
3 driveway. We have Mr. Nielsen's driveway here. We have  
4 the driveway here where the parcel -- another parcel is  
5 just south of that. So we have a number of driveways in a  
6 very short span of space.

7 We have like zero feet here with 500, 600.  
8 Within about a 1,000 foot space we have 19 different  
9 parcels that are accessing the trail. I think that's your  
10 connection. Those driveways are being impacted by this  
11 left-turn lane.

12 It's also true that under CEQA that if you  
13 were told that the mitigation measure itself creates  
14 environmental impacts, then the environmental impacts of  
15 that nature have to be assessed and have to be mitigated if  
16 that's creating further adverse environmental impacts. So  
17 those things can't be done down the road someplace.

18 I appreciate Commissioner King's desire to  
19 have some flexibility down the road. But I'm very  
20 concerned that if those aren't studied now and if  
21 alternatives aren't brought to you and mitigation measure  
22 alternatives now, that you are not going to be able to deal  
23 with this later when a standard gets put in place that  
24 apparently the Department of Public Works may not interpret  
25 that flexibly.



1 I'm concerned about the language in  
2 Mr. Berkholtz's memorandum to Miss Balcher November 20th,  
3 1998, where he states, Public Works does not have the  
4 authority to require installation of two-way left-turn lane  
5 to serve adjacent properties just prior to this use permit  
6 as recommended by the traffic study.

7 I'm concerned that there's an institutional  
8 view on the part of Public Works that they don't have that  
9 flexibility. And I'm concerned that that won't be an  
10 alternative that will be given adequate weight down the  
11 road.

12 It should be given weight now. And deferred  
13 mitigation is not a proper proceeding under CEQA. That's  
14 why I think that further studies of this issue should be  
15 undertaken. It should be brought to the Commission before  
16 the Commission acts on this application.

17 CHAIRPERSON KING: I guess I want to state that in  
18 the public record we just heard Public Works and staff say  
19 that they do have that flexibility.

20 So I understand your concern, but it is on  
21 public record which carries some weight that they do. And  
22 we are willing to accept that statement from them as far as  
23 that goes. But that doesn't mean we are not listening or  
24 hearing.

25 STEPHEN BUEHL: I appreciate that.

1 winery.

2           Until we change that, they have every right in  
3 the world to have a winery on that property, and all we can  
4 do is impose certain conditions to try to make that a  
5 little better for the neighbors. And that of course is  
6 what we are trying to do here and we have done since 10:30  
7 this morning. We are still in the process of doing it.

8           We do appreciate the comments that everyone  
9 makes and -- but we want you to know it's not just a cut  
10 and dry you can do this, you can't do this. There has to  
11 be some compromise, unless you change the zoning of this  
12 area and the uses are permitted on this.

13           To have an EIR, a total full-blown EIR on  
14 something like this is not practical. I don't know of --  
15 other than I think maybe in the eight years that I have  
16 been on this Commission that we have had maybe three EIRs  
17 that are done, that were done.

18           I haven't seen one on a winery, that I can  
19 recall, maybe there were. But we have talked about  
20 wineries. They go -- most of the ones that come up are  
21 half a million to over well over a million gallons and we  
22 have never required an EIR on those.

23           A 20,000 gallon winery before the, when was it  
24 '91, was a permitted use without going through any hearing.  
25 It was just -- you were automatically allowed to have that

1 on a parcel smaller than this.

2 Now, with the winery definition, every winery  
3 that comes in front has to come in and get a use permit.  
4 That's why we are going through this at this time.

5 The number of visitors is not really that  
6 significant. The big events that come that could pile  
7 people up on the road turning in certainly is a problem.  
8 And I think that's what we are wrestling with at this time.  
9 How can we reduce that traffic problem to get these people  
10 in and get the people out. And I think you'll certainly  
11 have some thoughts on that as we go on.

12 That's -- the water is another question that  
13 came up. And certainly we're in an area, the  
14 Western United States, is in many places other than along  
15 the coast are semi-deserts. We have lots of problems. The  
16 gentlemen that worked on Hetch Hetchy certainly understands  
17 that.

18 We have gone through our process of phase one  
19 water uses for a winery and found that that's as far as we  
20 need to go because the winery probably doesn't use an awful  
21 lot of water. A single-family residence uses something  
22 like three-quarters of an acre foot of water per year. So  
23 one of your real problems in the area would be with all of  
24 the houses using a lot of water.

25 So there -- I don't think the addition of this



## IMPACT DISCUSSION

The project proposes to establish a new winery on Silverado Trail, operating 5 days per week, with five (5) full-time employees, two (2) part-time employees, approximately 15 visitors/day expected, 1.6 deliveries/day, and an increase during harvest and bottling, when there are five (5) additional full-time employees. Proposed marketing would occur an average of two (2) per month, expecting no more than 150 persons at any event.

### ECOSYSTEM (endangered plant)

A habitat for a plant designated as Federally Endangered (also California Native Plant Society designation), *Lasthenia conjugens* (Contra Costa Goldfields), has been identified north of the subject property. The applicant has indicated that property has been under vineyard cultivation around thirty years. Therefore, the occurrence of the endangered plant on the property would not be expected and no adverse environmental impact would be expected to result from this project.

### TRAFFIC (safety and congestion)

The proposal will result in an increase in weekly traffic generators, roughly 57.2 trips, from employees, grape delivery, glass delivery, case good shipping, occasional marketing activities etc. Silverado Trail is a well-traveled road and has a relatively high speed limit (55 mph). Sight distances are very good from the access driveway, well over 100 feet. The average daily traffic count for Silverado Trail just south of the Oak Knoll Avenue, north of the project site, is 5,241; south of the project site, the average daily traffic count, measured south of Soda Canyon Road, is 5,527, south of the project site. New turning activities which will occur may result in traffic delays and will expose new site users to the risk of traffic accidents. The construction of a left turn lane to allow users of the driveway a safe waiting area would help reduce the increased risk of traffic safety and to reduce possible traffic congestion impacts to a level of insignificance.

### COMMERCIAL RESOURCES

The 12.23 acre parcel is currently cultivated in 11± acres of vineyards. There will be some removal of approximately two acres of older vineyard to construct the winery and new access road. This amount of removal is not significant in relation to the amount of acres in vines in Napa County which total approximately 36,000 acres.

### MITIGATION MEASURES:

- ☐ None Required
- ☒ Identified By This Study - Unadopted (see attached Draft Project Revision Statement)
- ☐ Included By Applicant As Part of Project (see attached Project Revision Statement)
- ☐ Recommended For Inclusion As Part of Public Project (see attached Recommended Mitigation Measure List)

**BASIS OF CONCLUSIONS:**

The conclusions and recommendations contained herein are professional opinions derived in accordance with current standards of professional practice. They are based on a review of the Napa County Environmental Sensitivity Maps, the other sources of information listed in the file, and the comments received, conversations with knowledgeable individuals; the preparer's personal knowledge of the area; and, where necessary, a visit to the site. For further information, see the Environmental Background Information Form contained in the permanent file on this project.

**AGENCY STAFF PARTICIPATING IN THE INITIAL STUDY:**

|                         |                      |                               |
|-------------------------|----------------------|-------------------------------|
| Resource Evaluation:    | <u>W.C. Balcher</u>  | Date: <u>January 20, 1998</u> |
| Site Review:            | <u>W. C. Balcher</u> | Date: <u>January 20, 1998</u> |
| Planning/Zoning Review: | <u>W. C. Balcher</u> | Date: <u>January 20, 1998</u> |

**PRELIMINARY DETERMINATION:**

☐ No reasonable possibility of environmental effect has been identified, and a Negative Declaration should be prepared.

☒ A Negative Declaration cannot be prepared unless all identified impacts are reduced to a level of insignificance or avoided.

DATE: January 20, 1998

BY:   
Wynntress Chatman Balcher, Planner

III

**Background Information**

Page 2

**\*Runoff (Impact 6 & 9)**

**Watershed**

designation: \_\_\_\_\_

size (acres): \_\_\_\_\_

**Percentage Change in Downstream Flows:**

(see runoff/erosion calculation sheet when attached)

\_\_\_\_\_

**\*Erosion/Sedimentation/Water Quality (Impact 7, 8, 10, 11 & 12)**

**Watershed**

designation \_\_\_\_\_

erosion hazard \_\_\_\_\_

size (acres) \_\_\_\_\_

**Percentage Increase In Sediment Delivered To Drainageway**

(see runoff/erosion calculation sheet when attached)

construction: \_\_\_\_\_

permanent: \_\_\_\_\_

**\*Air Quality (Impact 13, 14, 15 & 16)**

Traffic Generated (trips/day): \_\_\_\_\_ Average Trip Length (miles/trip): \_\_\_\_\_

VMT Increase (miles/day): \_\_\_\_\_ Existing VMT In Airshed: \_\_\_\_\_

Percentage Increase In Pollutants Released In Airshed: \_\_\_\_\_

**On-site Air Pollution Levels**

(see air quality calculation sheets when attached)

CO (1 hr): \_\_\_\_\_ ppm CO (8 hr): \_\_\_\_\_ ppm HC (3 hr): \_\_\_\_\_ ppm TSP (24 hr): \_\_\_\_\_ ug/m<sup>3</sup>

Proportion of Remaining Uncommitted Capacity To Hazardous Off-site Air Pollution Levels Employed (see air quality calculation sheet when attached)

**Roadway:**

CO (1 hr): \_\_\_\_\_

CO (8 hr): \_\_\_\_\_

HC (3 hr): \_\_\_\_\_

TSP (24 hr): \_\_\_\_\_



Commercial Resources (Impact 50 & 51)

☐ On-site/Nearby Aggregate/Rock Product/Mineral Resource Site  
(% site - material(name)) \_\_\_\_\_

Amount of Prime Cropland/Grazing Land Potentially Removed From Production  
(acres): \_\_\_\_\_

Total Amount of Prime Cropland/Grazing land In County  
(acres): \_\_\_\_\_

Percentage Loss in Prime Cropland/Grazing Land: \_\_\_\_\_

Other

SOURCE OF ENVIRONMENTAL SETTING INFORMATION:

Except as otherwise indicated, the source of the setting information specified above is (a) the Napa County Environmental Sensitivity Mapping Program; (b) a review of the 1968 1:12,000 scale aerial photos of the site; (c) the comments received; (d) conversations with knowledgeable individuals (see notes below); (e) the preparer's personal knowledge of the area; and (f) where necessary, a site visit (see notes below).

FIELD CHECK (Optional):

Date: \_\_\_\_\_  
By: \_\_\_\_\_

On-site Improvements & Vegetation: \_\_\_\_\_

Surrounding Land Uses: \_\_\_\_\_

Views: \_\_\_\_\_

Site Distance: \_\_\_\_\_

Other: \_\_\_\_\_

# Employees

5 x 3.2  
2 x 2

16 trips  
14 trips (7 trips peak hr)

5 x 2 trips/day 10 trips

## Visitors

25 visitors/day ÷ 26 visitors/autos

= 9.6 autos x 2 trips/autos =

19.2 trips (11 trips peak hr)

## Winery

50,000 gallons

grapes  
materials  
cask goods

76 trips/yr or 2 trips/day  
76 trips/yr or 29 trips/day  
40 trips/yr or 16 trips/day

52 trips/day - max (crush +  
30 trips/day - peak visitation)  
18 peak hr - typical

20-45  
9-51  
30.80

# NOISE

## Winery During Crush

> 50 dBA at 140' (grape dumping operation - noisiest activity)  
 at 500'  $65 \text{ dBA} - 12 \text{ dBA} = 53 \text{ dBA}$

## Approximate Intermittent Level

### Traffic

winery access road (230')

3 truck trips/day  
 5 employees  
 25 visitors/day

5 employees  $\times$  4 trips/day = 20 trips/day

25 visitors/day  $\div$  2.6 persons/auto  $\times$  2 trips/auto = 19 trips/day

6 truck trips/day

45 trips/day non-harvest

65 trips/day harvest

10 trips/employee

1 truck trip peak hr  
 11 visitor trips

21 autos/hr  
 1 truck/hr

traffic-vehicles: 35 dBA

- trucks: 41 dBA

$\leq 42 \text{ dBA}$  winery traffic

Silverado Trail (650') = 5697 trips/day  
 1% trucks  $\rightarrow$  57 trucks/day  $\rightarrow$  4 trucks/hr

365 trips peak hr  
 4 trucks/hr

traffic-vehicles  $46\frac{1}{2} \text{ dBA}$   
 trucks 39 dBA

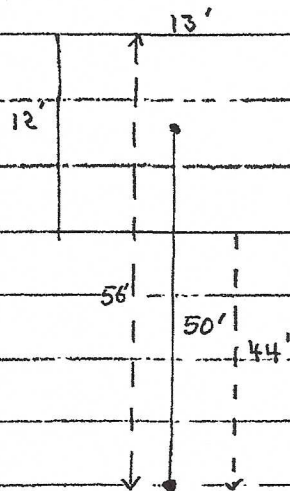
$\geq 47\frac{1}{2} \text{ dBA}$

$48\frac{1}{2} \text{ dBA} + \leq 1 \text{ dBA}$

standard 55 dBA



# Marketing Events - Crowd Noise (150 people)



40 1/2 dBA at 56' (ie 55 - 14 1/2 dBA)

55 dBA at 10'  $\Rightarrow$  41 1/2 dBA at 50' (ie 55 - 13 1/2 dBA)

42 dBA at 44' (ie 55 - 13 dBA)

|                 | 56'        | 50'    | 44'    |
|-----------------|------------|--------|--------|
| 1 pair          | 40 1/2 dBA | 41 1/2 | 42     |
| 2 pair (+3)     | 43 1/2     |        |        |
| 3 pair (+1 3/4) | 45 1/4     |        |        |
| 4 pair (+1 1/4) | 46 1/2     |        |        |
| 5 pair (+1)     | 47 1/2     |        |        |
| 6 pair (+3/4)   | 48 1/4     |        |        |
| 7 pair (+3/4)   | 49         | 50     | 50 1/2 |

$$\underbrace{49 + 49 + 49}_{53 3/4} + \underbrace{50 + 50 + 50 + 50 + 50 + 50 + 50}_{57 3/4} + \underbrace{50 1/2 + 50 1/2 + 50 1/2}_{55 1/4}$$

$$57 1/2$$

60 3/4 dBA at 50'  $\Rightarrow$  39 dBA at 500'

ENVIRONMENTAL ASSESSMENT

BACKGROUND INFORMATION

ENVIRONMENTAL DETERMINATION

- ☐ Not Subject to CEQA - \_\_\_\_\_
- ☐ Statutorily Exempt - \_\_\_\_\_
- ☐ Categorically Exempt - Class \_\_\_\_\_
- ☐ Negative Declaration
- ☐ Mitigated Negative Declaration
- ☐ Focused EIR
- ☐ Full EIR
- ☐ \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_ INITIAL STUDY #: \_\_\_\_\_

PROJECT INFORMATION (Optional):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

| square ft. | occupants | visitors | occupant load | bedrooms |            |
|------------|-----------|----------|---------------|----------|------------|
| _____      | _____     | _____    | _____         | _____    | existing   |
| _____      | _____     | _____    | _____         | _____    | base case  |
| _____      | _____     | _____    | _____         | _____    | proposed   |
| _____      | _____     | _____    | _____         | _____    | difference |

Aerial Photos: \_\_\_\_\_

\_\_\_\_\_

ENVIRONMENTALLY SENSITIVE AREA EVALUATION (Selected Categorical Exemptions Only):

- |     |     |                                                                                                                                                                                                                                       |
|-----|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| YES | NO  | (Geology)                                                                                                                                                                                                                             |
| ___ | ___ | 1. Exposure of new site users to substantial life and/or property hazards from geologic processes (eg., severe settlement, sliding, faulting, intense seismically induced ground shaking, seismically-induced ground failures, etc.). |
| ___ | ___ | 2. Exposure of existing area occupants to substantially increased life and/or property hazards from geologic processes.                                                                                                               |
|     |     | (Hydrology)                                                                                                                                                                                                                           |
| ___ | ___ | 5. Exposure of new site users to substantial life and/or property hazards from flooding (eg., stream flooding, tsunamis, seiches, dam or levee failure, etc.).                                                                        |
| ___ | ___ | 6. Exposure of existing area occupants to substantially increased life and/or property hazards from flooding.                                                                                                                         |



RECEIVED

NOV 10 1997

NAPA CO. CONSERVATION  
DEVELOPMENT & PLANNING DEPT.

# Water Availability Analysis

## 4160 Silverado Trail, AP#39-130-02

I hereby submit the following reconnaissance report for the property listed above. This parcel consists of 12.23 acres located on the east side of Silverado Trail, approximately 1/2 mile north of Soda Canyon Road. A site map showing this parcel and neighboring parcels is included with this report. The source of water on this property is an agricultural well, location indicated on map, producing 20 gpm (well test attached).

This report is being submitted in order to obtain a use permit to establish a winery producing 50,000 gallons (20,000 cases) of wine per year. Water demand for the winery is concentrated in the late summer/early fall months of August, September, and October and is estimated by the Department of Environmental Health at 1.5 times the annual wine production or in this case 75000 gallons. Peak flow during the harvest is calculated at 75000 divided by 60 days or 1250 gallons per day (125 gallons per 10 hour work day which equals 2 gpm).

An alternative calculation to determine water use is given in the book, Winery Utilities, by David Storm as follows:

|                                            |                                          |
|--------------------------------------------|------------------------------------------|
| Winery production                          | 20,000 cases                             |
| Annual water use from historical water use | 25 gallons/case X 20000 = 500000 gallons |
| Water use for maximum month of September   | 500000 X 12% = 60000 gallons             |
| Use per day of 26 day work month           | 2308 gallons                             |
| Use per 10 hour work day                   | 231 gallons                              |
| Average peak flow                          | 231/60 = 3.8gpm                          |

1  
5.6  
5.4  
11.0

The property is planted to vineyard, approximately 5.6 acres of 30 year old Pinot Noir and 5.4 acres of non-bearing Cabernet Sauvignon. The drip irrigation system is computerized and operates during the night hours to maximize the efficiency of irrigation and energy costs. A calculation of water used for irrigation is as follows:

5.6 acres Pinot Noir @ 454 vines /acre drip irrigated with .5 gallons/vine/hour= 1271 gal/hour. A typical irrigation season is about 12-14 weeks pre-harvest during the months of May, June, July, and August and 4-6 weeks post-harvest during the months of October and November for a total of 20 weeks of 28 hours/week for a total irrigation water used for these 5.6 acres of 711,872 gallons or 2.18 acre-ft. (280 gals/vine)

5.4 acres Cabernet Sauvignon @ 871 vines /acre drip irrigated with .5 gallons/vine/hour= 2352 gals/hour. A typical irrigation season as outlined above is about 20 weeks of 28 hours/week for a total irrigation water used for these 6 acres of 1,316,952 gallons or 4.03 acre-ft. (280 gals/vine)

Therefore the total water used for vineyard irrigation is presently about 6.2 acre-ft, less than the typical water use for vineyards of 11 acre-ft (1 acre-ft per acre).

October 24, 1997

Hagafen 1998 Initial Study Excerpts

A conversion of the property to include a winery will result in a loss of approximately 2 acres of older vineyard for a gain of .8 acre-ft. Using the information supplied in the Staff Report of the Department of Public Works, a winery producing 50,000 gallons of wine and its landscaping will need about 1.32 acre-ft. This calculation is very similar to the earlier calculation indicating 500,000 gallons required to produce 20,000 cases of wine annually. Therefore the total water to be used will increase slightly to 6.72 acre-ft for the entire parcel. This total falls well below the projected water demand for 9 acres of vineyard plus a 50,000 gallon winery, approximately 10.32 acre-ft as estimate in your Staff Report.

Additionally, the acceptable water usage as given in the Staff Report is well above the water demand of this valley floor property. Therefore, based on the above calculations, I do not believe that the construction of a winery on this property will have any adverse effects on the well of this property or the surrounding properties.

I will appreciate your consideration and comments.

Sincerely,



Ernie Weir

*October 24, 1997*





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**Planning, Building & Environmental Services**

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**David Morrison**  
Director

## MEMORANDUM

|       |                                                                              |       |                                                             |
|-------|------------------------------------------------------------------------------|-------|-------------------------------------------------------------|
| To:   | Napa County Board of Supervisors                                             | From: | David Morrison, PBES Director<br>John McDowell, Supervising |
| Date: | December 12, 2019                                                            |       |                                                             |
| Re:   | CEQA Memorandum for Renewable Energy Systems Zoning Ordinance Text Amendment |       |                                                             |

### **I. INTRODUCTION AND SUMMARY OF CONCLUSIONS**

The County is considering Zoning Ordinance updates to repeal the expired Small Wind Energy Systems Chapter (Chapter 18.117 of the Napa County Code) and replace it with a Renewable Energy Systems Chapter. This update implements Action Item 9.C of the Napa County Strategic Plan (2019-2022).

After careful review, the PBES Department has concluded that the County of Napa's proposed Zoning Ordinance updates are exempt from environmental review under the California Environmental Quality Act ("CEQA;" Pub. Res. Code, § 21000 et seq) and the CEQA Guidelines (14 CCR, § 15000 et seq). Given that these updates consist of ordinances that assure the maintenance, restoration, or enhancement of natural resources and the environment, their adoption falls within categorical exemptions under the CEQA Guidelines, as well as the general rule exempting activities where it can be seen with certainty the activities in question will not have a significant effect on the environment.

In particular, the ordinance updates are exempt as falling within Class 7 and Class 8 Exemptions, and some of the updates, in addition, fall within Class 4 and Class 5 Exemptions, as codified at Title 14, California Code of Regulations, sections 15304, 15305, 15307 and 15308. Further, no exception to these exemptions would apply.

The available evidence shows the proposed regulations are also exempt under the "Common Sense" Exemption set forth in Title 14, California Code of Regulations, Section 15061(b)(3).

### **II. APPLICABLE EXEMPTIONS AND POTENTIAL EXCEPTIONS, GENERALLY**

**Requirements of Class 4, Class 5, Class 7, Class 8, and Common Sense Exemptions.** The language of the pertinent exemptions are included below:

- **Class 4 Exemption.** This exemption covers “minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes.” (14 CCR, § 15304.) A non-exclusive list of examples includes certain grading activities, filling activities, alterations that improve habitat for fish or wildlife, and fuel management to reduce fire risks. (*Id.*)
- **Class 5 Exemption.** This exemption covers “minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density.” (14 CCR, § 15305.)
- **Class 7 Exemption.** This exemption covers “actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. Examples include, but are not limited to, wildlife preservation activities of the State Department of Fish and Game. Construction activities are not included in this exemption.” (14 CCR, § 15307.)
- **Class 8 Exemption.** This exemption covers “actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.” (14 CCR, § 15308.)
- **Common Sense Exemption.** The CEQA Guidelines include an exemption based on “the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.” (14 CCR, § 15061(b)(3); see *Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n* (2007) 41 Cal.4th 372.) Under this exemption, an agency can find a project is exempt from environmental review if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (14 CCR, § 15061(b)(3).)

The Class 4, Class 5, Class 7 and Class 8 Exemptions are premised on a finding by the California Secretary for Natural Resources that the classes of projects covered by them do not have a significant effect on the environment. The exemptions, however, are not absolute. Although a project might otherwise be eligible for a categorical exemption, these exemptions must be denied if (1) significant cumulative impacts from projects of the same type will result; and (2) there is a reasonable possibility of a significant impact on the environment due to unusual circumstances. (14 CCR, § 15300.2(b)&(c).) In addition, the Class 4 and Class 5 Exemptions cannot apply if the activity in question falls within a particularly sensitive environment, meaning an environment where there exists an “environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.” (14 CCR, § 15300.2(a).)

Agency's finding that a particular proposed project falls within one of the exempt classes necessarily includes an implied finding that the project has no significant effect on the environment and that no exception to the exemption applies. (*Save the Plastic Bag Coal. v. City & Cty. of San Francisco* (2013) 222 Cal. App. 4th 863, 873–74; *Association for Protection of Env't'l Values v. City of Ukiah* (1991) 2 Cal.App. 4th 720, 731.) However, where an agency does not make express findings, and relies on implied findings

regarding the inapplicability of exceptions, and project opponents file a legal challenge, a court's ability to affirm the agency's decision is constrained with respect to the "unusual circumstances" exception. With implied determinations, a court cannot discern whether (1) the agency determined no unusual circumstances existed, or (2) whether the agency determined unusual circumstances existed, but there was no reasonable possibility of a significant impact due to those circumstances. (*Respect Life South San Francisco v. City of South San Francisco (Planned Parenthood Mar Monte, Inc., Real Party In Interest)* (2017) 15 Cal.App.5th 449.) This makes a difference because the determination of whether unusual circumstances exist is subject to the highly deferential "substantial evidence standard," under which a court will defer to the agency's decision if it is supported by substantial evidence, whereas the determination about whether there exists a reasonable possibility of a significant impact is subject to the non-deferential "fair argument" test, under which a court will find for project opponents if they show there is a fair argument of a reasonable possibility the activity will have a significant environmental impact. (*Id.*) In the absence of direction, a court must analyze the implied finding as if made on the narrowest possible grounds, and can uphold the categorical exemption against the unusual circumstances challenge only if (1) it finds the record contains no substantial evidence that could support a finding of unusual circumstances – a determination courts will likely be reluctant to make due to the broad discretion vested in the local agency to determine this "essentially factual" issue – or (2) it *assumes* the existence of unusual circumstances, but finds the record is devoid of substantial evidence supporting a fair argument of a reasonable possibility that any purported unusual circumstances identified by the challenger will have a significant environmental effect.

Simply, an agency's decision rejecting the existence of an exception to a categorical exemption is much more defensible if the agency makes explicit findings that no unusual circumstances exist and that, regardless, there exists no reasonable possibility the activity in question will have a significant impact. Accordingly, we have set forth below evidence the County can consider in finding the proposed ordinance updates have no significant effect on the environment, and are exempt from CEQA.

Findings are also of significant benefit when an agency seeks to apply the Common Sense Exemption to a project. In essence, the application of this exemption is to be decided based on whether record evidence supports the exemption, and the agency has the burden of demonstrating the exemption applies. (*Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 386, 388.) The agency need not engage in detailed or extensive fact-finding to make this determination, but there must be substantial evidence in the record to support it. (*Id.* at 388, quoting *Napa County Bd. of Supervisors* (2001) 91 Cal. App.4th 342, 369.) What must comprise this evidence may vary, and depends on a multitude of factors, including the nature of the project, the directness or indirectness of the contemplated impact, and the ability to forecast the actual effects the project will have on the physical environment. (*Id.*) To this end, we have included findings below that can assist the County in supporting use of the Common Sense Exemption.

### III. EVIDENCE SUPPORTING APPLICABILITY OF EXEMPTIONS

#### **Qualification of ordinance updates for Class 4, Class 5, Class 7, Class 8, and Common Sense**

**Exemptions.** The prohibition of an activity that creates "environmental problems" constitutes an action 4 to assure "protection of the environment." (*Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 476.) Each of the proposed ordinance updates, as explained below, confers the benefit of additional protections

for natural resources and the environment, and it can be seen with certainty that there is no possibility the regulations in question may have a significant effect on the environment. A full description of these ordinance updates is included in the December 17, 2019 Board of Supervisors Agenda Report, and the complete text of the proposed ordinance updates is included in the proposed ordinance included as an attachment to this Agenda Report. These and other materials accompanying the proposed ordinance updates are incorporated herein by reference.

What follows are general summaries of each of the proposed updates contained in the Renewable Energy Systems Ordinance; the full details are incorporated herein by reference, and each of the analyses below extend to the full breadth of the proposed amendments.

- **Repeal of Small Wind Energy Systems Regulations** – In 2002, the State passed legislation mandating that "small wind energy systems" be allowed within all cities and counties. These systems consisted of a wind turbine mounted on a single tower, and were intended to supply power to onsite land uses (as opposed to utility-scale windfarms). Napa County incorporated these requirements into zoning under Chapter 18.117. Consistent with State law, the ordinance included a 2017 sunset provision. The currently proposed action will repeal this antiquated code language, which automatically expired on January 1, 2017, and replace it with the new renewable energy systems standards. Repeal of expired ordinance requirements has no potential to result in a change to the environment, and in itself does not meet the definition of a project pursuant CEQA Guidelines (14 CCR, § 15378).
- **Accessory Use Renewable Energy Systems** – This ordinance codifies current administrative practices allowing homes, businesses, and agricultural uses to install solar systems to offset the power needs of the onsite uses. For many years, the County has issued building permits for solar systems under existing regulations allowing for accessory uses (Definitions Chapter 18.08, and Additional Development Standards Chapter 18.104), and under Article III of Chapter 15.14 (Small Residential Rooftop Solar Energy Systems) of the Building Code which applies to small residential rooftop applications (Government Code section 65850.5 commonly known as the Solar Rights Act). The proposed ordinance will set ministerial design criteria for accessory solar systems that do not qualify for processing under Article III of Chapter 15.14 , and will define the extent of use that qualifies as an accessory use including:
  - o Allows accessory renewable energy systems by right, requiring only a building permit for projects that meet prescribed standards.
  - o Limits accessory renewable energy systems to not exceed 125% of the onsite power needs.
  - o Differentiates accessory renewable energy systems from commercial energy facilities, by precluding by-right accessory systems from being oversized to sell power into the grid.
  - o Subjects accessory systems to the requirements of the Conservation Regulations (Chapter 18.108), floodway protection requirements, and avoids conflicts with septic systems.
  - o Presently, the ordinance only establishes solar systems as allowed accessory renewable energy systems, but new or emerging technologies can be included in future updates.



Codifying existing administrative practices will not result in a direct or indirect change to the environment. Under the provisions of County Code Section 18.08.020, Accessory Uses, the County has allowed and will continue to allow solar power generation as an accessory use in conjunction with the primary land uses allowed by general zoning regulations. A key element of an accessory use is that it clearly subordinate to the primary land use. Examples of other accessory uses include outbuildings, utility connections, driveways, recreation structures (i.e. – swimming pool, playground equipment for a residence), trash enclosures, mechanical equipment areas, etc.

The purpose of codifying existing practices for accessory solar systems is to apply a set of clear, uniform and objective standards to ensure that solar systems function in a manner that is clearly subordinate to the primary use, and otherwise limited in scope. The objective standards identify that solar systems must comply with existing County Code requirements including conservation regulations, flood protection, and public health. The new regulations also ensure that systems are not over built exceeding the onsite power generation needs of the existing primary use. The object standards of these regulations will ensure that future accessory solar regulations do not impact sensitive environments, avoid protected species and habitat, comply with water course protection requirements, and comply with the terms of approval of the primary land use.

- **Commercial Renewable Energy Facilities** – The ordinance defines and establishes design criteria for commercial renewable energy facilities, which are power generating facilities that sell power to a utility provider through a PPA. These uses can be a standalone facility, or they can occur in concert with other development such as a large solar array on an industrial warehouse property that produces more energy that is required for on-site needs. These uses are not considered public utilities or governmental uses, and such projects would be subject to discretionary use permit approval through the Planning Commission, and include the following:
  - o Commercial facilities are excluded from residential and agricultural zoning districts. Facilities are directed to industrial, commercial, public facility zoning districts.
  - o Applies comprehensive development criteria including Conservation Regulations (Chapter 18.108), flood protection, setbacks from existing residential uses, viewshed protection.
  - o Commercial facilities include solar and bioenergy, and other new or emerging technologies can be included in future updates.
  - o Allows commercial facilities to collocate on developed industrial sites without a use permit provided the commercial solar proposal is consistent with the use permit for the existing development.

Under current zoning regulations, granting of a discretionary use permit is possible for power generation facilities as “other public utilities” pursuant to County Code Section 18.120.010(b)(8). There are no development standards for other public utility uses, and there is no definition of that use within existing County Code. This ordinance will define, clarify and limit the types of uses that can qualify for processing of a use permit for power

generation. The ordinance will define and limit power generation facilities to renewable energy facilities only, and subject those uses to development requirements that protect the environment, ensure public health, safety and welfare. Presently, other public utility uses are allowed with a use permit within any zoning district. This ordinance will limit the use to renewable energy production with grant of a use permit, and exclude the use for all residential and agricultural zoning district. As such, the ordinance reduces the areas where power generation facilities can be located, and establishes that power generation facilities must comply with certain development standards for protection of the public and environment. Projects occurring as a result of the ordinance will be subject to discretionary use permit review, and thus are subject to CEQA.

- **Public Utility Exception Revision** –The ordinance updates Exceptions Chapter 18.120 clarifying that public utilities are only those uses which are exempted from local zoning regulations under State Law, and therefore not subject to a use permit. Presently the Exceptions Chapter lists “other public utility uses” as a use requiring a use permit in any zoning district.

This component of the ordinance directly relates to the previous provisions noted above. The term “other public utilities” will be eliminated from the County Code. Consequently, power generation facilities will only be permissible if they meet the requirements for commercial renewable power generations facilities, or if they are exempt from County review under State Law as a bona fide public utility or government agency (in which case CEQA compliance would be the responsibility of the State agency overseeing the project, or the government entity conducting the project).

- **Emergency Power Generators** – Since the 2017 wildfires there has been a significant increase in the number of property owners seeking building permits for permanent emergency power generators at their homes, businesses, or agricultural uses. The County has issued these permits under existing code provisions for accessory uses (Definitions Chapter 18.08, and Additional Zoning Regulations Chapter 18.104), but has otherwise relied on uncoded administrative practices in absence specific language in the Zoning Code. This ordinance identifies that emergency power generators are allowed as an accessory use in all zoning districts provided that they are designed to meet onsite power needs (not sell power into the grid), and are subject to County Code requirements for noise, setbacks and environmental compliance.

In the same manner as applicable to accessory renewable energy systems, the purpose of codifying existing practices for emergency power generators is to apply a set clear of uniform and objective standards to ensure that emergency generators function in a manner that is clearly subordinate to the primary use, and otherwise limited in scope.

#### IV. NO EXCEPTIONS TO EXEMPTIONS WOULD APPLY

**The ordinance updates would not have any significant, adverse effects on the environment, and none of the CEQA Guidelines’ exceptions apply.** The Class 4, Class 5, Class 7, Class 8 have exceptions, and do not apply, where (1) significant cumulative impacts from projects of the same type will result; or (2)

there is a reasonable possibility of a significant impact on the environment due to unusual circumstances. (14 CCR, § 15300.2(b) & (c).) In addition, Class 4 and Class 5 Exemptions cannot apply where the activity in question is ordinarily insignificant, but would be located in a particularly sensitive environment and thus have the potential for a significant impact. (14 CCR, § 15300.2(a).)

With respect to cumulative impacts, the ordinance updates are Countywide regulations that govern all unincorporated lands. There are no similar regulations being proposed in the County, including within its five incorporated municipalities that would cumulate with the proposed project. With respect to possible significant environmental impacts due to unusual circumstances, substantial evidence exists to support a finding that no unusual circumstances exist, and such a finding would be given deference if challenged.

## **V. FACTS SUPPORTING USE OF THE COMMON SENSE EXEMPTION**

In support of the Common Sense Exemption's applicability, and to address concerns by various stakeholders in the community, we have considered impacts of the ordinance updates on agricultural and residential lands. Again, the Common Sense Exemption applies if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (14 CCR, § 15061(b)(3).)



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**Brian D. Bordona**  
Director

|       |                     |       |                                                                                                                                                                                |
|-------|---------------------|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| To:   | Planning Commission | From: | Emily Hedge, Planner III                                                                                                                                                       |
| Date: | February 20, 2026   | Re:   | P19-00121 Hagafen Cellars Winery<br>Use Permit Major Modification<br>Categorical Exemption Determination<br>4160 Silverado Trail, Napa<br>Assessor's Parcel Number 039-130-002 |

Background

Pursuant to Section 303 of Napa County's Local Procedures for Implementing the California Quality Act (CEQA), the Planning Division has prepared this environmental evaluation for the proposed Hagafen Cellars Major Modification Application (File No. P19-00121).

CEQA Baseline

The general rule under CEQA is that the environmental baseline must reflect the physical conditions existing at the time the environmental analysis begins, even if the current condition includes unauthorized and even environmentally harmful conditions that never received, and, as a result of being incorporated into the baseline, may never receive environmental review (CEQA Guidelines Section 15125). How present conditions come to exist may interest enforcement agencies, but that is irrelevant to CEQA baseline determinations. A long line of appellate cases hold that the actual environmental conditions existing at the time of CEQA analysis is the proper baseline, even when the actual conditions are in violation of current regulatory provisions or were not subject to previous CEQA (*Center for Biological Diversity v. California Department of Fish & Wildlife* (2105) 234 Cal. App. 4<sup>th</sup> 214).

This application was submitted to participate in the County's Code Compliance Program (Compliance Program) as described in Resolution No. 2018-164 adopted by the Napa County Board of Supervisors on December 4, 2018. Under the Compliance Program, property owners could apply for a modification to their permit to voluntarily remedy existing violations and could continue to operate at existing (unpermitted) levels while the application was being processed. For applicants who were unclear as to the scope of their existing entitlements, the Compliance Program also allowed property owners to first submit a request for a Status Determination to document their existing property rights and then to participate in the Compliance Program if it was determined they were out of compliance. The Program had a submittal deadline of March 29, 2019, at 2:00 p.m. for submittal of either an application for a modification to an existing permit or a request for a Status Determination. Going forward, any applicants operating out of compliance with their use permit will be required to operate within their



entitled operations for one year to “reset” the CEQA baseline before their application will be considered by the Planning Commission. This “reset” allows the CEQA baseline to be the authorized/permitted, not unpermitted levels of operations.

On March 27, 2019, the applicant submitted a Major Modification P19-00121, meeting the Compliance Program’s submittal deadline. Because the Major Modification was submitted prior to the submittal deadline, the winery’s existing, unpermitted operations were used as the environmental baseline for the CEQA analysis consistent with the CEQA Guidelines and caselaw.

### The Project

The Napa County Planning Division has received a request for a Use Permit Major Modification for Hagafen Cellars winery, established under Use Permit No. 97219-UP, for a 50,000 gallon per year winery with by-appointment tastings. This application was submitted under the Compliance Program and requests the following:

1. Components Necessary to Remedy Existing Violations (Based on 2018 records):
  - a. Recognition of days of operation Monday through Sunday. The winery is currently authorized for operations Monday through Friday and Sunday;
  - b. Recognition of a maximum of 60 visitors per day with a maximum of 311 visitors per week, not to exceed an annual total of 9,719 visitors. The winery is currently authorized for 25 visitors per day (six days per week) with up to 150 visitors per week for an annual total of 7,825 visitors;
  - c. Recognition of retail sales occurring Monday through Sunday. The winery is currently permitted for retail sales Monday through Thursday and Sunday;
  - d. Recognition of use of an approximately 720-square-foot storage room in the winery building. The room was not delineated on the original winery Use Permit plans;
  - e. Widening the existing driveway to meet Napa County Road and Street Standards;
  - f. Revise COA No. 2 of Permit No. 99477 to remove the requirement for mailing notice of events to identified individuals;
  - g. Revise COA No. 3 of Permit No. 99477 to remove the requirement for submitting an annual report of daily visitation counts;
  - h. Remove COA No.15 of Permit No. 99477 requiring submittal of an annual report of grape source data;
  - i. Remove COA No.16 of Permit No. 99477 requiring submittal of an annual statement certifying compliance with grape sourcing requirements; and
  - j. Revise COA No. 21 of Permit No. 99477 to remove the requirement for submitting an annual report of the number of gallons of wine produced during the year.

### Existing Setting

The project is located at 4160 Silverado Trail, Napa, approximately one half (1/2) mile north of the intersection of Silverado Trail and Soda Canyon Road. The property is zoned Agricultural Preserve (AP) and is designated Agricultural Resource (AR) by the Napa County General Plan.

The property is accessed via a driveway off Silverado Trail, which runs along the entirety of the western property line. The property is currently developed with an approximately 4,500 square-foot

winery building, an approximately 360 square foot tasting room building, a covered outdoor work area, an uncovered outdoor work area, and associated site improvements including driveway, parking areas, and wastewater system. There are approximately 10 acres of vineyards and a single-family residence. Properties in the vicinity of the project site include vineyards, undeveloped parcels, and residences. Many parcels to the east suffered damage to residences and structures in the 2017 Atlas fire.

#### Past Approvals:

On December 2, 1998, the Planning Commission approved Use Permit #97219-UP to establish a 50,000 gallon per year winery with by-appointment visitation and a marketing plan. Development included an approximately 6,800 square foot winery, consisting of a 4,500 s.f. main winery building with an attached, covered outdoor work area, an approximately 360 s.f. tasting room building, and an uncovered work area.

The use permit approval and the conditions of approval requiring a left turn lane were individually appealed by a neighbor. On March 23, 1999, the Board of Supervisors heard the appeal regarding the use permit and denied the appeal, upholding the Planning Commission's approval of the use permit, subject to revised conditions of approval. Following the Board's decision, the neighbor filed a petition with the Napa Superior Court and then appealed the Court's decision to the Court of Appeals. At that time the owner, neighbor, and County ultimately reached a Stipulation for Settlement. On May 9, 2000, the Board of Supervisors ratified the Stipulation. The provisions of the Stipulation were to be incorporated into the project record through the approval of a use permit modification.

On June 16, 2000, the Zoning Administrator approved minor modification #99477-MOD, which incorporated the provisions of the Stipulation into the formal record of the Planning Department, revising the previously approved Conditions of Approval of Use Permit #97219-UP. Upon approval of the modification the court case and appeals were withdrawn.

On May 10, 2018, the Director approved very minor modification P18-00081-VMM to allow reconstruction of the outdoor trellises that were destroyed in a wildfire, replacement of landscaping destroyed in a wildfire, on-premises consumption, and removal of previous conditions of approval related to custom crush.

Level of Operations - The applicant is not requesting expansions to the levels of current operations, based on the 2018 records. The winery is currently authorized for 25 visitors per day (six days per week) with up to 150 visitors per week for an annual total of 7,825 visitors. The request for recognition of visitation levels is a maximum of 60 visitors per day with a maximum of 311 visitors per week, not to exceed an annual total of 9,719 visitors. The original Use Permit approved winery operations on Monday through Friday and on Sunday (not open on Saturday), with retail sales available Monday through Thursday and Sunday (not available on Friday and Saturday). The request for recognition is to permit the winery to operate and offer retail sales Monday through Sunday. There are no requested changes to the authorized levels of production, employees, or marketing events. Therefore, the project would not result in additional traffic trips, generation of more wastewater, or use of additional groundwater.

An approximately 720-square foot room within the winery building was not delineated on the original winery Use Permit plans, so it wasn't included in the areas for use by the winery. The applicant requests to continue to utilize this space for storage. The storage room is existing, so no new construction would occur. The continued use of the room would not expand the current level of operation.

The operational components of the project would not exceed the environmental baseline (2018 operations) as determined for the analysis under CEQA, and therefore continued operations would not result in an environmental impact.

Physical Improvements - The proposed physical improvements are limited to an expansion of the existing driveway. The driveway will be widened by approximately 4 feet along the main entry, requiring removal of existing olive trees and potentially vineyard rows adjacent to the driveway. Minor expansions to portions of the driveway that loops around the winery building will meet standards for safe access for employees, visitors, and emergency vehicles. The improvements will occur on areas of the site that have previously been disturbed by landscaping, vineyards, and grading for winery development.

Revisions to Existing Conditions – The request to modify conditions of approval removes the requirement for annual reporting of daily visitation counts, grape source data, and production, and the requirement to notice a specific list of individuals prior to winery events. Removal of reporting requirements would not result in an environmental impact.

#### CEQA Exemption Criteria and Analysis

Article 19 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA Guidelines) establishes a list of classes of projects that are categorically exempt from the provisions of CEQA. Based on the proposed project as described above, the project meets the criteria for eligibility as Categorically Exemption from CEQA under the following Classes: Class 1 ("Existing Facilities") and Class 4 ("Minor Alterations to Land") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15301 and §15304.

Under CEQA Guidelines Section 15300.2, Categorical Exemption Class 4 cannot be used if the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. According to the County's resource maps, there are no scenic resources, hazardous waste sites, or historic resources identified on the site.

As noted above, the Use Permit Major Modification application requests recognition of existing days of operation, existing days allowing retail sales, and levels of visitation, that have been occurring beyond their current entitlements. No intensification of these activities is requested as part of this application. Additionally, there are no requested changes to the authorized levels of production, employees, or marketing events. Therefore, the project would not result in additional traffic trips, generation of more wastewater, use of additional groundwater, or use or consumption of additional resources.

Additionally, the application requests continued use of the existing 720-square foot storage room within the winery building. No new construction or physical improvements are required for continued use. The request to remove reporting requirements is not an action that would result in environmental impacts.

The proposed improvements to the existing driveway are required to comply with the Napa County Road and Street Standards. The improvements will occur on areas of the site with less than 10 percent slopes that have previously been disturbed through planting landscaping and vineyards and grading for winery development of the driveway loop around the winery building and outdoor work areas.

Based on the proposed locations of physical improvements, the project would not result in substantial effects to officially mapped or designated environmentally sensitive areas or resources. No grading would occur in a waterway, in any wetland, in any officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazards such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist. The project will not have a cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, and will not cause substantial adverse change in the significance of a historical resource. Based on the information provided above, the Major Modification application request meets the criteria for eligibility as Categorically Exempt from CEQA under Classes 1 and 4.

### Public Trust

The public trust doctrine (Doctrine) requires the state and its legal subdivisions to “consider,” give “due regard,” and “take the public trust into account” when considering actions that may adversely affect a navigable waterway. (Environmental Law Foundation v. State Water Resources Control Bd.; San Francisco Baykeeper, Inc. v. State Lands Com.) There is no “procedural matrix” governing how an agency should consider public trust uses. (Citizens for East Shore Parks v. State Lands Com.) Rather, the level of analysis “begins and ends with whether the challenged activity harms a navigable waterway and thereby violates the public trust.” (Environmental Law Foundation, 26 Cal.App.5th at p. 403.). As demonstrated in the Environmental Law Foundation vs State Water Resources Control Board Third District Appellate Court Case, that arose in the context of a lawsuit over Siskiyou County’s obligation in administering groundwater well permits and management program with respect to Scott River, a navigable waterway (considered a public trust resource), the court affirmed that the public trust doctrine is relevant to extractions of groundwater that adversely impact a navigable waterway and that Counties are obligated to consider the doctrine, irrespective of the enactment of the Sustainable Groundwater Management Act (SGMA).

On January 10, 2024, Napa County released a Tier III Water Availability Analysis guidance memorandum, providing guidance for complying with Public Trust. A Tier III review or equivalent analysis is the County’s adopted method for complying with its duties under the Doctrine. The project Water Availability Analysis (WAA), dated December 4, 2025, by O’Connor Environmental Inc., includes a Tier III equivalent analysis for potential impacts to Soda Creek. The project hydrogeologist

concludes that the project well meets the standards specified in the County's WAA Guidance document to demonstrate that continued use of the well at existing operations would be expected to preclude significant adverse effects on surface waters. The operational pumping rate of the project well shall be reduced and restricted to no more than 17 gallons per minute (where no limitation previously existed). Additionally, a ground water management condition of approval will be included with imposed metering on the project well, monitoring and reporting of groundwater use (at the County's request), and the County's ability to recommend additional measures or revoke the use permit in the future if substantial evidence exists that the Project substantially affects the groundwater basin. These project components and conditions of approval provide even greater protection, further reduce any alleged harm, and align with the requirements of the 2024 Water Memo. The County has satisfied its duty.