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Fennemore Letter
Public Comment Received after
the March 18, 2026 Hearing

March 17, 2026

Planning Commission
Napa County
1195 Third Street, Third Floor
Napa, CA 94559

**Re: Planning Commission Meeting – March 17, 2026 – Item No. 8.A
Objections to Use permit Major Modification #P19-00121-MOD
Hagafen Cellars – 4160 Silverado Trail**

Dear Chair Brunzell and other Commissioners:

We represent Mrs. Ariane Matschullat and Weathervane Ranch, LLC, owners of property adjacent to Hagafen Cellars, the applicant in the above-mentioned matter. Mrs. Matschullat resides at 4176 Silverado Trail (APN 039-130-001), which is contiguous to the northern boundary line of the Hagafen Cellars. Weathervane Ranch owners APN 039-130-003, which is contiguous to the eastern boundary of the Hagafen Cellars

Our clients oppose Hagafen’s major modification application to its use permit that requires the winery to operate under specific conditions of approval (“**Application**”). The Application is at odds with an essential purpose of the Code Compliance Program adopted by the Napa County Board of Supervisors (the “**Board**”) by Board Resolution No. 2018-164 (the “**Board Resolution**”). The Code Compliance Program is not intended to grant new and expanded entitlements if the applicants have willfully exceeded the limits of their conditions of approval.¹ That is the case here.

¹ The initial Board hearing on the proposed Code Compliance Program was held on November 12, 2017. PBES Director Morrison’s Board Agenda Letter for that hearing explained the proposed bifurcation/decoupling concept. As set forth in that Agenda Letter, any permit application received before a set deadline (which eventually was designated as March 29, 2019) “that includes requests to both remedy existing violations and to expand existing entitlements would be ‘decoupled’ and subject to a two-step process. The first step would be the processing and a decision on those portions of the application that remedy existing violations. Once all outstanding violations have been addressed to the County’s satisfaction, then and only then would the second step begin of processing and considering the requests for expanded entitlements.”

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Moreover, the Application cannot be considered by the Planning Commission until the County evaluates its potential environmental impacts as required by CEQA. That has yet to be done.

I. INTRODUCTION

Ordinances passed by the Board and reinforced by the Board Resolutions establishing the Code Compliance Program clearly express the Board's intention that expansion of entitlements unauthorized by a subsequent permit are not acceptable. *Napa County Code Section 18.16.020(I); Board Resolution No. 2018-164 § 1(a)(iv)*. The Napa County Code sets forth in unequivocal language that “no expansion of uses” is permitted without express authorization. *Napa County Code § 18.16.020(I)*.

Napa County's Code Compliance Program seeks to remedy persistent ongoing failures of landowners to abide by their conditional use permits, while at the same time acknowledging that violations sometimes unintentionally arise from landowners' ignorance or misunderstanding of their use permits' conditions of approval.² At the same time, the Board recognized that bad actors exist and must be dealt with. During the hearings leading up to the adoption of the Board Resolution, it was noted that some winery owners were knowingly violating their permit. As stated by Supervisor Wagenknecht at the September 12, 2017, Board Meeting, “not all violations are equal and that is very clear.”

During its two decades of operation, Hagafen Cellars has demonstrated a conscious disregard for compliance with the Conditions of Approval of its winery use permit. Other than applying for amnesty in March 2019 under the County's Code Compliance Program, the Applicant has shown no sincere interest in altering its ongoing course of behavior. The Applicant has continued to violate the conditions of approval of its winery use permit and exceed the limitations imposed by those conditions.

Despite the violations, Staff recommends approval allowing the violations to become “permitted.” And even worse, Staff declared these violations (which result in the

² For example, Section 1(b) of the Board Resolution allows property owners who are unsure whether they are in compliance with their current conditions of approval “to voluntarily initiate a review by the County to determine the extent of their existing entitlements and/or permissible uses of their property.” Section 1(b) also provides property owners a right to appeal an unfavorable decision by the PBES Director to the Board. Should such an appeal be unsuccessful, the deadline for submitting an Application under the Code Compliance Program is extended for an amount of time equal to the time required to process the status determination application (not to exceed 120 days).

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intensification of the winery use) exempt from environmental review under CEQA. We ask the Commission not to approve these violations.

II. RELEVANT COUNTY CODE SECTIONS AND CODE COMPLIANCE PROGRAM PROVISIONS

In the AP district in Napa County “no expansion of [winery] uses or structures beyond those which were authorized by a use permit . . . shall be permitted except as may be authorized by a subsequent use permit issued pursuant to [the provisions of Title 18 (Zoning) of the Napa County Code].” *Napa County Code Section 18.16.020(I)*. The Board expressly intended that “significant [permit] violations” which include “visitation and marketing in excess of approved limits,” along with “wine production in excess of approved limits” –are to be remedied and distinguished from proposed expansions. *Board Resolution No. 2018-164 § 1(a)(iv)*.

In assessing an application under the Code Compliance Program, the PBES staff report is required to “clearly distinguish between portions of a proposed project that are necessary to remedy existing significant violations, and those portions of a proposed project that would expand beyond current levels of operation.” *Board Resolution § 1(a)(iv)*. “Visitation or marketing in excess of approved limits” is defined in Board Resolution § 1(a)(iv) as a significant violation.

III. THE OPERATIVE CONDITIONS OF APPROVAL

Hagafen Cellars use permit conditions of approval (Use Permit Modification #99477-MOD; the “**Operative COAs**”) were established in June 2000 pursuant to a settlement agreement that resolved litigation challenging the initial conditions of approval from 1999 (Use Permit #97219).

The only changes to the Operative COAs since June 2000 were the result of a Very Minor Modification (P18-00081) that was approved by the Zoning Administrator in 2018 (the “**Very Minor Modification**”). (The Very Minor Modification application was in itself a violation of the Operative COAs, as discussed below in this letter.

And now, the Applicant seeks to modify the Operative COAs to further intensify the uses at the winery and specifically increase the number of visitors allowed, and expand operational and retail hours, despite the many violations of these conditions and others.

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IV. OVERVIEW OF THE VIOLATIONS

As set forth in below, it appears that the visitation and marketing events taking place at Hagafen Cellars have for many years exceeded the approved limits of the Operative COAs and constitute significant violations under the Code Compliance Program. Accordingly, those violations must be decoupled from the portions of the Application that would expand beyond current levels of operation, and the PBES staff's recommendations for dealing with those violations must be considered separately by the Planning Commission.

The initial Board meeting that resulted in the Board Resolution adopting the Code Compliance Program took place on September 12, 2017. From the outset, a significant policy theme emerged. As Supervisor Wagenknecht stated at that hearing, "there are some that are clearly gaming the community for a long time." Supervisor Wagenknecht added that he "would like to have [such violations] internally decoupled."

To support this policy, the Board established that violations must be addressed before requests for expanded uses are considered. As Supervisor Gregory stated at the Board Meeting on December 4, 2018, "[t]his isn't changing the way we do status determinations. This isn't even changing parts of how the compliance program works. This is simply putting an end to considering compliance problems without serious penalty." At that same meeting, PBES Director Morrison also directly addressed this point:

"There have been concerns that there are too many loopholes for non-compliant wineries. There are no loopholes. Either landowners with violations come in to the County to voluntarily comply by the deadline, or they're required to immediately comply after the deadline. In either case, they are required to comply. It's that simple. There's comments and concerns that non-compliant wineries receive preferential treatment. Projects that have violations may be subject to fines and penalties as well as repayment of staff costs. Decisions on projects would require a separate set of recommendations and decisions for those portions of the project that deal with violations. . . . The process does not give any preference to violating landowners."

Taken together, these policy directions indicate a desire to deal firmly with the bad actors of the wine industry, in order to rein in the behavior of some winery owners who knowingly exceed their existing use permit conditions of approval and hope not to get caught, in contrast to those winery owners who do the right thing by applying to the County

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in advance for approval of proposed expansions in use. Hagafen Cellars is a clear example of the former type of winery owner.

V. EXISTING SIGNIFICANT VIOLATIONS BY HAGAFEN CELLARS

A. Violations of Operative COA No. 2.

Operative COA No. 2 states in part as follows:

“A maximum of twelve (12) event/year are allowed, which includes any events authorized pursuant to the Temporary Event Ordinance and shall not exceed four (4) hours in length. Except for the ‘harvest’ event and events as may specifically be authorized pursuant to the Temporary Event Ordinance, no picnicking, outdoor dining, or outdoor wine tasting shall be permitted and no outside marketing activities shall involve amplified music. All events shall cease by 10:00 PM (including cleanup) except the events specified above as ending at 10:00 PM shall complete cleanup by 11:00 PM.”

Neighbors have observed numerous events at the winery over the years that appear inconsistent with the permitted limits. The County’s temporary event permit records show only 13 such permits issued between 2004 and 2014, suggesting that additional events occurred without the required permits.³ The logical conclusion is that many marketing events have been held at Hagafen Cellars since 2000 in violation of the Operative COAs.

Operative COA No. 2 further states as follows:

The individuals on the attached mailing notice list shall be provided with written notice, a minimum of ten (10) days, in advance of any and all of the twelve (12) events that can occur each year.

The Applicant has been in continual violation of this provision. Our clients have never received such written notices from Hagafen Cellars nor, based on the clients’ conversations with a number of their neighbors whose names are also on the mailing notice list, neither have those neighbors received the required notices.

³ In 2004, 2 temporary event permits were issued, followed by 2 in 2005, 1 in 2006, 2 in 2007, 2 in 2008, 2 in 2009, 1 in 2010, and 1 in 2014, for a total of 13 temporary event permits.

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B. Violations of Operative COAs No. 3(a) and No. 8.

Operative COA No. 3(a) states in part as follows:

Tours of the winery and/ or tasting of wine **shall be by appointment only . . . and shall be limited to** members of the wine trade, persons invited by the winery who have pre-established business or personal relationships with the winery or its owners, **and persons who have made unsolicited prior appointments for tours or tastings.**” (Bold added.)

Operative COA No. 8 states in part as follows:

“A sign specifying the hours and days of tours and tastings and retail sales complying with all applicable County ordinances regarding signing shall be posted along Silverado Trail.”

Hagafen Cellars initially complied with the signage requirements by placing metal plaques on each of the two entry structures flanking the driveway entrance from Silverado Trail. As required, the signs read “Tours and Tastings by Prior Appointment Only.”

Sometime thereafter, however, Hagafen Cellars removed the required signage. The gradual way in which Hagafen Cellars went about this removal is emblematic of the Applicant’s pattern of behavior. Photos taken over the years (see **Exhibit A**) reveal the following sequence of changes.

Sometime thereafter, the signs were removed by Hagafen Cellars in violation of Operative COA No. 8 and never replaced. Foliage was positioned by the Applicant in front of the left entry structure in an attempt to disguise the absence of the required signage on that entry structure.

Next, an electrical transformer was positioned in front of the left entry structure to make the empty space where the sign used to be less obvious.

More recently, two new plaques were placed on the two front entry structures where the required signs were initially placed in 2000. However, instead of reading as required by Operative COA No. 8, the new signs simply read “Hagafen Cellars.” In addition, for a period of time during the summer of 2021, a two-sided sandwich-board type sign was placed near the front of the right entry structure. The sign read “OPEN New Releases” without any mention that tours and tastings are by prior appointment only.

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Given the above sequence of events, it strains credulity to believe that the Applicant has been strictly complying with the prior-appointment provisions of the Operative COAs.

Hagafen Cellars should be required to restore the required signage to both the left and right entry structures, and to comply fully with the prior-appointment provisions of the Operative COAs. The Applicant should further be required to verify its compliance by maintaining detailed records and providing them to the County on an ongoing basis.

C. Violation of Setback Requirements of Operative COA No. 14.

Operative COA No. 14 states in part as follows:

All required aboveground water storage tanks . . . shall be screened from views of adjacent properties by a visual barrier consisting of fencing and/or dense landscaping.

There is presently no screening of either the aboveground water tank shown in the initial drawings, or the second aboveground water tank that appears to have been added later.

D. Violation of Operative COA No. 17.

Operative COA No. 17 states in part as follows:

All facilities of the winery, including offices, shall be for the exclusive use of the on-site winery. No overnight accommodations are permitted.

Photos taken by a County inspector during a code violation inspection of the interior of the winery show a bed situated on the second floor of the winery. It is obvious from these photos that the winery building was being used for overnight accommodations in violation of Operative COA No. 17. On April 23, 2019, during an inspection that identified certain health and safety issues, the County inspector observed this violation and ordered the Applicant to cease such prohibited uses.

Our clients request that the Planning Commission direct County Inspectors to perform unannounced spot inspections of the Winery facilities from time to time to ensure that such prohibited uses have not been resumed by the Applicant.

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VI. OTHER USE PERMIT VIOLATIONS

A. Misuse of the Very Minor Modification Process.

There has been only one modification of the Hagafen Use Permit since 2000. It was initiated by Hagafen Cellars' March 6, 2018, "Request for very Minor/Minor Modification."

The Applicant's request "to serve wine to our visitors in our existing outdoor trellis areas . . . including picnicking" disingenuously failed to mention that Operative COA No. 2 expressly prohibits "picnicking, outdoor dining, or outdoor wine tasting" except for "the 'harvest' event and any events as may specifically be authorized pursuant to the Temporary Event Ordinance."

The Applicant's request was misleading and resulted in the County's approval of an expansion of uses in violation of the express provisions of Operative COA No. 2, which limitations have been in place since June 2000.

The Applicant attempted to justify its request for outdoor consumption of wine in the patio area by referring to a 2009 amendment to California Business & Professions ("B&P") Code Section 23358 allowing "on-premises consumption of wine produced on-site and purchased from the winery." But the 2009 amendment did not change the fact that language in Operative COA No. 2 prohibits outdoor wine tasting (as well as picnicking and outdoor dining) except for the harvest event and events specifically authorized pursuant to the Temporary Event Ordinance. As a result, on-premises consumption of Hagafen Cellars' wine produced on the premises is extremely limited, as are picnicking and outdoor dining.

It is clear that Hagafen Cellars has chosen to ignore some of the strict requirements imposed by Operative COA No. 2. But the Very Minor Modification Conditions of Approval neither supersede nor eliminate the limitations set forth in Operative COA Section 2. Subdivision (e) of B&P Code Section 23358 expressly so provides: "Nothing in this section [23358] . . . is intended to alter, diminish, replace, or eliminate the authority of a county, city, or city and county from exercising land use regulatory authority by law to the extent the authority may restrict, but not eliminate, privileges afforded by [Section 23358]." The amendment to B&P Code Section 23358 that was made as a result of Assembly Bill 2004 allowing "on-premises consumption of wine produced on-site and purchased from the winery" did not change the fact that Operative COA No. 2 PROHIBITS outdoor wine tasting (as well as picnicking and outdoor dining) except for the harvest event and events specifically authorized pursuant to the Temporary Event Ordinance.

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The Zoning Administrator's approval of this portion of the Very Minor Modification should never have occurred without reference being made to the continuing applicability of the limitations set forth in Operative COA No. 2. The Very Minor Modification should be modified by the Planning Commission to make it abundantly clear that those limitations remain in full force and effect.

B. Traffic and Parking Impacts.

Visitation, retail sales and marketing events in excess of approved limits of the Applicant's Operative COAs will have an environmental impact on the amount of traffic generated by visitors to Hagafen Cellars and cast doubt on whether the number of onsite parking spaces are adequate for this increase. Staff asserts the increase in visitors (seeking to allow an additional 1,894 visitors/year), along with the increase in operational hours and retail sales (seeking to operate 7 days/week) will not possibly cause *any* new significant environmental impacts, even on traffic. But Staff provides no data to support this assertion. The only assertion made is that these increases in use are exempt from CEQA because there is no possibility that they may cause an impact (addressed further below).

We request that Staff take a closer look at this issue. During the Board's hearings leading up to the adoption of the Board Resolution, the Board repeatedly stressed that key considerations of the Code Compliance Program include safety concerns. Increased levels of traffic directly caused by increased visitation and marketing events in excess of the permitted amounts directly raise such safety concerns here. Given the narrow two-lane roads that dominate the Napa Valley, it is logical to infer that visitations in excess of winery use permit conditions of approval increase automobile traffic and raise serious safety issues.

Chicken Coop Using Boundary Fence as Part of the Enclosure.

The above-referenced County staff inspection of April 23, 2019, also identified a health and safety issue regarding the use of an extension cord at the north side of the winery in violation of 2016 California Fire Code ("CFC") section 605.5.⁴ County staff directed the Applicant to discontinue using the extension cord. If the Applicant has not already done so, the Applicant should be required to do so now.

⁴ **605.5 Extension cords.** Extension cords and flexible cords shall not be a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings or floors, or under doors or floor coverings, nor shall such cords be subject to environmental damage or physical impact. Extension cords shall be used only with portable appliances.

VII. THE COUNTY MAY NOT USE ONGOING PERMIT VIOLATIONS AS THE ENVIRONMENTAL BASELINE UNDER CEQA

A. The CEQA Baseline Must Reflect Lawfully Authorized Operations.

CEQA requires that environmental impacts be measured against the existing environmental setting, which normally reflects the physical conditions at the time environmental review begins. (CEQA Guidelines §15125(a).) However, courts have made clear that the baseline must be reasonable and supported by substantial evidence, and agencies may not adopt a baseline that distorts the environmental analysis or masks project impacts. The California Supreme Court has held that the baseline must represent “the real conditions on the ground” in a manner that allows meaningful analysis of environmental change. (Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 322–328.)

Where existing operations exceed legally authorized levels, using those unlawful operations as the baseline improperly hide the environmental impacts of the proposed project. In such cases, courts have required agencies to use a baseline that reflects lawfully permitted operations rather than ongoing violations.

B. The Proposed “Recognition” of Existing Activities Would Legalize Ongoing Violations.

Hagafen Cellar’s application seeks approval of activities that exceed the limits established in the Operative COAs, including:

Category	Current Permit	Proposed Recognition
Days of operation	Mon–Fri, Sun	Mon–Sun
Retail sales	Mon–Thu, Sun	Mon–Sun
Visitors/day	25	60
Visitors/week	150	311

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Category	Current Permit	Proposed Recognition
Annual visitors	7,825	9,719

The winery also seeks approval for:

- use of a previously unapproved 720-square-foot storage room
- removal of monitoring and reporting conditions
- removal of notice requirements to affected neighbors

Importantly, these expanded activities were already occurring in violation of the existing permit prior to the filing of the application. These unauthorized activities cannot be “recognized” as the existing condition, which would then become the CEQA baseline.

C. Using the Violation-Based Baseline Would Improperly Mask Environmental Impacts.

If the County adopts the unlawful operations as the baseline, the CEQA analysis will show little or no environmental change, even though the project substantially expands the intensity of use beyond what was approved.

Measured against the Operative COAs, the proposed project represents a substantial increase in activity:

- 140% increase in daily visitation (25 → 60 visitors)
- 107% increase in weekly visitation (150 → 311 visitors)
- Expanded operations to seven days per week
- Expanded retail operations

These changes have clear potential to increase:

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- traffic on local rural roads
- noise and activity levels
- parking demand
- visitor-related impacts on neighboring residential properties

Using the unlawful operational level as the baseline would erase these impacts from the CEQA analysis, contrary to CEQA's fundamental purpose of informing decision-makers and the public of environmental consequences.

Given that the proposal would increase annual visitation, expand operating days, and intensify retail activity, it is self-evident that additional vehicle trips will be generated. Increased traffic volumes and parking demand are reasonably foreseeable consequences of increased visitation. At a minimum, these changes raise a fair argument that the project may result in environmental impacts related to traffic and parking thereby requiring CEQA review.

D. CEQA Does Not Allow Applicants to Benefit from Their Own Permit Violations.

Courts have cautioned that CEQA cannot be used to retroactively legitimize unlawful activities. If agencies were permitted to adopt violation-based baselines, project applicants could:

1. expand operations beyond permit limits
2. create a new "existing condition"
3. seek approval based on that condition

Such an approach would reward noncompliance and undermine both CEQA and local permitting enforcement. The California Supreme Court in *Communities for a Better Environment* emphasized that baselines cannot be manipulated in ways that obscure the project's true environmental impacts.

Similarly, courts have held that agencies must avoid baselines that artificially minimize environmental change. (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351.)

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E. Removal of Monitoring Conditions Further Undermines Environmental Oversight.

The project also proposes removal of several permit conditions that currently ensure monitoring and transparency, including requirements for:

- annual visitation reports
- grape sourcing reports
- annual wine production reporting
- notice to affected neighbors

These conditions serve an important role in ensuring compliance with the winery's approved operational limits. Eliminating these monitoring requirements while simultaneously expanding operations would reduce the County's ability to verify compliance and detect environmental impacts. This reduction in oversight raises additional concerns under CEQA, which requires enforceable mitigation measures and monitoring programs. (Public Resources Code §21081.6.)

For these reasons, the Commission must:

1. Reject the proposed baseline based on existing unauthorized operations.
2. Use the winery's permitted operational limits under Use Permit No. 99477 as the CEQA baseline.
3. Conduct a full environmental analysis of the impacts associated with the proposed expansion of visitation, retail operations, and facility use.

Only by using the legally permitted operational level as the baseline can the County ensure that CEQA review accurately discloses the environmental impacts of the proposed project.

VII. CONCLUSION

The Applicant seeks to portray itself as a small, family-owned winery whose activities in violation of its conditions of approval should be excused and forgiven by the

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County. But to do so would require the County to condone the Applicant's numerous violations of its Conditions of Approval over the past 20-plus years.

That is precisely the sort of behavior the Code Compliance Program is designed to correct rather than reward. To excuse such behavior by the Applicant would do a great disservice to the other winery owners who have sought County approval in advance when they wished to exceed their existing gallonage limitations or the existing visitation and marketing limits of their current use permits.

As Supervisor Wagenknecht observed in 2017 during the Board's sessions leading up to the adoption of the Code Compliance Program, the Program is composed of two parts: a violation process and an expansion process. That should be the path the Planning Commission follows here.

Hagafen Cellars should be required to strictly comply with its existing Conditions of Approval and to demonstrate over a meaningful period of time *such as two years* that it has done so before being allowed to submit any new applications to the County for modification or expansion of its existing Conditions of Approval.

At a minimum, the Commission should require the winery to demonstrate sustained compliance with its existing permit conditions before considering any expansion of its operational limits.

Sincerely,

FENNEMORE LLP



Patricia E. Curtin

PCUR

cc: Emily Hedge, Planner III
Clients

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