

# LAW OFFICE OF MARC CHYTILO

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ENVIRONMENTAL LAW

March 9, 2016

County of Santa Barbara  
Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101

*By email to [sbcob@co.santa-barbara.ca.us](mailto:sbcob@co.santa-barbara.ca.us)  
and by hand delivery*

RE: Field Appeal of the Santa Rosa Road Tier II Winery Development Plan and Mitigated Negative Declaration – Agricultural Compatibility

Dear Chair Adam and Members of the Board,

This office represents Appellant Bob Field in this matter, a concerned resident of the Santa Ynez Valley. Mr. Field appealed the Planning Commission's approval of the Santa Rosa Road Tier II Winery Development Plan ("Project") because the Mitigated Negative Declaration ("MND") and other evidence the Planning Commission relied on contained numerous material flaws and omissions that precluded informed decisionmaking. This office, and Mr. Field, will be submitting letters later this week in advance of the Friday noon deadline (which will include a traffic engineer's peer review of the Stantec traffic study), however this letter is provided in advance to allow staff the opportunity to respond to a new issue we identified with respect to the *type* of events allowed at the Winery.

The Project approved by the Planning Commission allows 6 special events and 24 private organized gatherings. Although the Project Description provides that "[t]he special events would be held to promote operations at the winery", there is no enforceable language requiring that the events, as well as the organized gatherings, be inherently related to wine production. As explained below, an express limitation on the type of events and gatherings allowed at the Winery is required to find the Project consistent with its agricultural zoning and Williamson Act Contract, and to avoid associated significant impacts to agriculture.

The Project site is zoned AG-II-100, and is under Williamson Act Contract (No. 97-AP-009). Although the Project was considered by APAC on January 3, 2014, the discussion focused on vineyard planting and production required for consistency with Uniform Rule 2.2.1.B and to our knowledge the issue of whether events allowed at the winery are consistent with the Uniform Rules and Williamson Act was not even discussed. (*See* APAC Minutes, 1/3/14<sup>1</sup>; *see also* FMND p. 11.) Recent developments however have brought the question of whether non-agricultural uses such as special events are a compatible use on Williamson Act contracted

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<sup>1</sup>available at [http://www.sbcountyplanning.org/PDF/boards/ag\\_preserve/01-03-2014/1-3-14%20Min.pdf](http://www.sbcountyplanning.org/PDF/boards/ag_preserve/01-03-2014/1-3-14%20Min.pdf)

parcels to the fore. These developments include the Department of Conservation's August 14, 2014 determination (made in the context of San Joaquin County's proposed amendment to its winery ordinance) that winery events "are not typically considered to be compatible with contracted land", and that for special events to be considered a "compatible use" on Williamson Act contracted lands, "it must be shown that these uses and facilities would be inherently related to the site's existing agricultural operation (e.g., wine tasting facilities); and the number of attendees does not abuse the Williamson Act's leniency in allowing counties to determine the permanent or temporary human population in the agricultural area (GC §51220.5)." (DOC Letter, August 14, 2014, attached hereto as Exhibit 1). While the DOC's comments are directed at San Joaquin County's proposed amendment to its winery ordinance, they are directly relevant to special events held at wineries on Williamson Act contracted parcels throughout the state.

Locally, APAC recently considered whether a non-agricultural use (Short Term Rentals ("STRs")) supportive of the primary agricultural use in terms of revenue is consistent with the requirement in the Uniform Rules (and Williamson Act) that any such use must be incidental to the principal agricultural use of the land. APAC voted unanimously on February 5, 2016 that Short Term Rentals are not a compatible use on contracted lands including because, as explained in a subsequent letter from APAC to the County Planning Commission dated February 8, 2016 "a commercial, non-agricultural use such as STRs can result in temporary increases in population and agriculture/urban conflicts impacting onsite and adjacent agricultural operations." (APAC Letter, February 8, 2016, attached hereto as Exhibit 2). In addition, APAC expressed concern about potential impacts of allowing STRs on non-contracted agricultural lands because they "can be very lucrative and the potential economic return could be an incentive for landowners to non-renew their agricultural preserve contracts to pursue this use on non-contracted lands."

These two letters constitute substantial evidence of a conflict between the Winery events the Project allows and the Uniform Rules and Williamson Act. (*See The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928-930; *see also Friends of the Old Trees v. Department of Forestry & Fire Protection* (1997) 52 Cal.App.4th 1383, 1397-1399). This in turn is substantial evidence supporting a fair argument that the Project will result in significant impacts to agriculture and land use pursuant to the County's thresholds of significance (*see* FMND p. 11 ("Will the proposal . . . conflict with agricultural preserve programs?) and p. 33 ("Will the proposal . . . [c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project . . . adopted for the purpose of avoiding or mitigating an environmental effect?"), and grounds for requiring an EIR. (*See Pocket Protectors*, 124 Cal.App.4th at 930.) **While CEQA clearly requires preparation of an EIR in this circumstance, the Appellant would be willing to see the issue resolved now with additional language added to the Project Description specifying that the purpose of commercial events and gatherings shall be limited to the "Marketing of Wine" (defined below) produced on the premises, thereby avoiding the potentially significant impacts.**

Specifically, we propose that the following be added to the Project Description (Condition 1):

[Special Events] The purpose and activity of Winery Special Events (except Charitable events) shall be limited to the “Marketing of Wine” produced on the premises. The “Marketing of wine” means the education and development of customers, potential customers, and members of the trade with respect to wine produced on the premises and any content unrelated to wine must be strictly limited. Examples of events which are for the Marketing of wine include winemaker dinners, wine and food pairings, events associated with Vintners’ Festivals, and other wine-centered gatherings; examples of events which are not Marketing of wine include weddings, other private parties or gatherings, festivals, concerts and other entertainment-focused activities.

[Private Organized Gatherings] The purpose and activity of Private Organized Gatherings (except private non-commercial gatherings of the owner) shall be limited to the “Marketing of Wine” produced on the premises (see Winery Special Events, above).

The term “Marketing of Wine” derives from Napa County’s Ordinance Code, where it applies to wineries permitted in the Agricultural Preserve (AP) and Agricultural Watershed (AW) zoning districts.<sup>2</sup> The legal principles and authority that led Napa to this language and the DOC to their concern over San Joaquin County’s winery ordinance apply with vigor to Santa Barbara County and define the parameters of compatible activities on Williamson Act contracted lands.

Without this express limitation, Santa Rosa Winery could host events that are not related to the wine they produce, including weddings and entertainment focused activities. As described by the DOC in the above referenced and attached letter, “the expansion of winery facilities in this manner becomes akin to an event center, which is more appropriate for noncontracted land or urban land.” (See Exhibit 1). This in turn creates the incentive, as discussed by APAC in the STR context, for landowners to non-renew their agricultural preserve contracts to pursue more lucrative non-agricultural uses. (See Exhibit 2.)

Adding the above limitation on the type of events is wholly reasonable as it is consistent with the Applicant’s stated intentions and merely adds enforceable language to bolster the existing Project Description’s statement that “[t]he special events would be held to promote operations at the winery”. More importantly however it is necessary to avoid either approving a Project with a legally vulnerable MND, or expending the time and cost in preparing an EIR. Accordingly, we respectfully request that the Board modify the proposed Conditions of approval to include the above limitation of events and gatherings to the “Marketing of Wine”.

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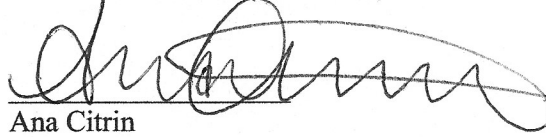
<sup>2</sup>See

[https://www.municode.com/library/ca/napa\\_county/codes/code\\_of\\_ordinances?nodeId=TIT18ZO\\_CH18.08DE\\_18.08.370MAWI](https://www.municode.com/library/ca/napa_county/codes/code_of_ordinances?nodeId=TIT18ZO_CH18.08DE_18.08.370MAWI)

Chair Adam and Board of Supervisors  
March 9, 2016  
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Sincerely,

LAW OFFICE OF MARC CHYTILO

A handwritten signature in black ink, appearing to read 'Ana Citrin', written over a horizontal line.

Ana Citrin  
Marc Chytilo

Exhibit 1: DOC Letter, August 14, 2014

Exhibit 2: APAC Letter, February 8, 2016

CC: Nicole Lieu, Planner



# DEPARTMENT OF CONSERVATION

*Managing California's Working Lands*

## DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEB SITE [conservation.ca.gov](http://conservation.ca.gov)

August 14, 2014

**Via Email [mhatef@sjgov.org](mailto:mhatef@sjgov.org)**

Ms. Mo Hatef  
San Joaquin County  
Community Development Department  
1810 East Hazelton Avenue  
Stockton, CA 95205

PA-1400149 (TA) - PROPOSED REVISIONS TO THE WINERY SECTION OF THE DEVELOPMENT TITLE (CHAPTER 9-1075), SAN JOAQUIN COUNTY- SCH # 2014072076

Dear Ms. Hatef:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. The Division has reviewed the subject project and offers the following comments and recommendations.

### PROJECT DESCRIPTION

The project is an amendment to the Winery Section of San Joaquin County's (County) Development Title (Chapter 9-1075). The changes include minor edits, clarifications, and changes to address issues not initially considered. These changes include, but are not limited to, additions of definitions for "Accessory Winery Event" and "Industry Event," amendments to the definition of "Marketing Event," and the addition of regulations specific to these events.

### DIVISION COMMENTS

The Williamson Act enables local governments to enter into 10- and 20-year contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or compatible uses. California Government Code (GC) §51230 enables local governments to enter into Williamson Act contracts, which have an initial term of

10 years. Section 51296 enables local governments to enter into Farmland Security Zone (FSZ) contracts, which have an initial term of 20 years. Both types of contracts are entered into between private landowners and the County. In return, restricted parcels are assessed for property tax purposes at a rate consistent with their actual agricultural and/or open space use, as opposed to potential market value. Because the Williamson Act provides a preferential tax assessment on contracted land in exchange for limiting the land to agricultural uses, any use other than the agricultural or open space use for which the property was placed under contract must be found to be compatible.

Per Government Code §51206,

*The department may research, publish, and disseminate information regarding the policies, purposes, procedures, administration, and implementation of [the Williamson Act]. This section shall be liberally construed to permit the department to advise any interested person or entity regarding [the Williamson Act].*

The proposed amendments to the Winery Section of the County's Development Title have the potential to expand the allowable uses on Williamson Act contracted land, however, it appears the County has not fully considered the requirements of the Williamson Act statute (Government Code §51200 et seq.). Specifically, the County's definitions of the types of events and associated regulations that have the potential to be held on land under contract, and the compatibility of such uses with the Act.

#### COMPATIBLE USES

An agricultural use is the use of the land for the purpose of producing an agricultural commodity for commercial purposes (GC §51201(a)). Government Code §51201(e) defines a compatible use as:

*"any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. 'Compatible use' includes agricultural use, recreational use or open-space use unless the board or council finds after notice and hearing that the use is not compatible with the agricultural, recreational, or open-space use to which the land is restricted by contract pursuant to this chapter."*

An example of a compatible use under the Williamson Act would be a winery/tasting room on property where the primary agricultural use is a vineyard. A board of supervisors or city council may allow compatible uses consistent with the principles of compatibility as outlined in GC §51238.1. Although statute provides latitude for non-agricultural uses to be considered compatible, this latitude has never been so great as to allow local governments to "make uses that are not inherently related to, or beneficial

*to, the agricultural or open space character of contracted land permissible under the compatible use provisions of the Williamson Act.”<sup>1</sup>*

Government Code §51238.1 states:

(a) *Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:*

(1) *The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.*

(2) *The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.*

(3) *The use will not result in the significant removal of adjacent contracted land from agricultural or open space use.*

*In evaluating compatibility a board or council shall consider the impacts on noncontracted lands in the agricultural preserve or preserves...*

In addition to GC §51238.1 the board or council must also consider all relevant sections of the Williamson Act, including GC §51220.5 which states:

*The Legislature finds and declares that agricultural operations are often hindered or impaired by uses which increase the density of the permanent or temporary human population of the agricultural area. For this reason, cities and counties shall determine the types of uses to be deemed “compatible uses” in a manner which recognizes that a permanent or temporary population increase often hinders or impairs agricultural operations.*

The Division supports activities of an agribusiness venture on land under a Williamson Act contract as long as the facilities and activities support and promote the agricultural commodity being grown on the premises. However, it must be shown that these uses and facilities would be inherently related to the site’s existing agricultural operation (e.g., wine tasting facilities); and the number of attendees does not abuse the Williamson Act’s leniency in allowing counties to determine the permanent or temporary human population of the agricultural area (GC §51220.5). This section was written to protect agricultural lands from uses that can hinder or impair agricultural operations and as such should not be taken lightly. Activities that claim to promote products grown on site should be validated by being shown that their attributes are unique enough to justify the

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<sup>1</sup> SB 985, Chapter 1018, Statutes of 1999, Section 1(i).

tax benefits meant for agricultural production, as opposed to a use that could occur on non-contracted or urban lands. The events, as described in the proposed amendment, will increase the temporary population of the site multiple times throughout the year, which can hinder agricultural operations on- and off-site.

The County has approved past projects making the findings required in GC §51238.1 (Principles of compatibility) by asserting that events that promote wine produced on-site are consistent with statute and therefore compatible. As noted earlier, the latitude provided to counties and cities to determine compatibility has never been so great as to allow jurisdictions to determine uses not inherently related to, or beneficial to, the agricultural or open-space character of the contracted land permissible as a compatible use.

While the Department has typically found tasting rooms to be similar in nature to stands selling produce grown on-site, and therefore compatible; the marketing events, accessory winery events, and industry events, as proposed, are not consistent. These events bring large numbers of people into an agricultural area multiple times per year, thus increasing the temporary population of that area. For example, a single winery on a parcel 10 acres or larger in size could have up to 20 Marketing Events per year with up to 300 people per event. This equates to a temporary increase in population of up to 6,000 people per year per winery. This does not account for the potential increase in population associated with any Accessory Winery Events or Industry Events for which a winery may receive approval. The proposed changes to the Winery Ordinance do not address the total number of Accessory Winery Events or Industry Events or the total number of people allowed at those events. Presumably, those numbers would be evaluated on an individual basis at the time a Marketing Events Use Permit is evaluated.

The expansion of winery facilities in this manner becomes akin to an event center, which is more appropriate for noncontracted land or urban land. Because the Williamson Act which provides tax benefits in exchange for devoting land to agriculture or open space, the types and scale of the proposed events, and their associated facilities, are not consistent with the Act's intent.

The state courts have recognized that the purpose of the Williamson Act is to protect agriculture and open space by extending tax benefits to those who voluntarily subject their land to "enforceable restriction," making the land eligible for taxation based on the agricultural use value rather than market value. Lax compatibility findings would defeat the intent of the Legislature to reduce the taxes on agricultural land in return for long term binding commitments on the land restricting the use to open space and agriculture.

It may also be worth noting that events such as these, that bring large numbers of people into a rural area, often times result in neighborhood complaints. Pursuant to GC §51251, not only does the county or city have the authority to enforce any contract but statute also provides for the enforcement of contracts by landowners. *"An owner of land may bring any action in court to enforce a contract on land whose exterior boundary is within one mile of his land. An owner of land under contract may bring any action in court to enforce a contract on land located within the same county or city."*



## DEPARTMENT RECOMMENDATIONS AND CONCLUSIONS

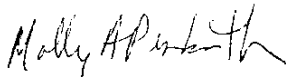
It is recommended that the ordinance include language that would make it clear that accessory winery events, industry events, and marketing events proposed for Williamson Act contracted land must be found to be compatible with the Williamson Act, specifically GC § 51238.1 and GC §51220.5. Because such uses are not typically considered to be compatible with contracted land, it is recommended owners of land currently subject to a Williamson Act contract that want to have events and associated facilities on their property file for nonrenewal for the portion of the property where the events and associated facilities would be located. It is preferred the landowner wait for the contract to expire via nonrenewal prior to the County considering such a use. However, the landowner may choose to submit a petition for cancellation or partial cancellation in order to terminate the contract (or portion of the contract) prior to its expiration via nonrenewal.

Cancellation of a contract is an option under limited circumstances and conditions as set forth in Government Code §51280 et seq. There must be substantial evidence that awaiting the normal termination of the contract would fail to serve the purpose that purports to justify the cancellation. Cancellation, if approved, would eliminate any conflicts with the Williamson Act. The Division has prepared a Cancellation Advice Paper for guidance regarding the cancellation process. It can be found online at:

[http://www.conservation.ca.gov/dlrp/lca/basic\\_contract\\_provisions/Documents/Cancellation%20Advice%20Paper%20Final\\_02\\_14\\_13.pdf](http://www.conservation.ca.gov/dlrp/lca/basic_contract_provisions/Documents/Cancellation%20Advice%20Paper%20Final_02_14_13.pdf)

Thank you for giving us the opportunity to comment on the County's proposed revisions to the Winery Section of the Development Title (Chapter 9-1075). We request copies of any subsequent notices or staff reports as well as the Board of Supervisors findings, including supporting documentation. If you have any questions regarding our comments, please contact Heather Anderson, Environmental Planner at (916)324-0869 or via email at [Heather.Anderson@conservation.ca.gov](mailto:Heather.Anderson@conservation.ca.gov).

Sincerely,



Molly A Penberth, Manager  
Division of Land Resource Protection  
Conservation Support Unit

cc: State Clearinghouse  
San Joaquin County Farm Bureau

# COUNTY OF SANTA BARBARA

**Debbie Trupe**  
Chair



123 E. Anapamu St.  
Santa Barbara, CA 93101  
Telephone: (805) 568-2000

## AGRICULTURAL PRESERVE ADVISORY COMMITTEE

February 8, 2016

Santa Barbara County Planning Commission  
123 East Anapamu Street  
Santa Barbara, CA 93101

Re: Short Term Rentals on Agricultural Preserve Contracted Land

On February 5, 2016, the Agricultural Preserve Advisory Committee (APAC) unanimously voted that Short Term Rentals (STRs) are not a compatible use on contracted lands according to the *Santa Barbara County Uniform Rules for Agricultural Preserves and Farmland Security Zones* (Uniform Rules). Land enrolled in the Agricultural Preserve Program must be principally used for commercial agriculture, and compatible activities should be supportive to that agriculture. The APAC is concerned that a commercial, non-agricultural use such as STRs can result in temporary increases in population and agriculture/urban conflicts impacting on-site and adjacent agricultural operations. Additional concerns include the lack of enforcement to monitor and enforce potential restrictions (e.g. limiting the number of rental days and owner requirements to be on the premises during the rental period) to ensure the short term rental remains incidental to the principal agricultural use of the land.

The APAC is also concerned about potential impacts of allowing STRs on non-contracted agricultural lands. STRs can be very lucrative and the potential economic return could be an incentive for landowners to non-renew their agricultural preserve contracts to pursue this use on non-contracted lands.

The APAC recognizes that opportunities exist for additional revenue streams that could be supportive of the primary agricultural use of the land. If the County Planning Commission is interested in new agri-tourism lodging uses on agricultural land, the APAC recommends the County consider these uses as part of the Gaviota Coast Plan and Agricultural Permit Streamlining projects instead of in isolation as part of STR ordinance.

The Gaviota Coast Plan Agricultural Tiered Permit Structure and Agricultural Permit Streamlining project are two planning efforts which would broaden and expand allowable uses

**EXHIBIT 2**

(both agricultural support and non-agricultural uses) on agricultural land. Both projects propose a new agri-tourism lodging opportunity to allow a small-scale guest ranch/farmstay to encourage overnight stays on farms and ranches where agricultural production is the primary source of income.

Truly yours,



Debbie Trupe, Chair,  
Agricultural Preserve Advisory Committee

Cc: Agricultural Preserve Advisory Committee members

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