



CLOS PEPE VINEYARDS AND ESTATE WINES

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Board of Supervisors Meeting November 1, 2016

RE: Proposed Winery Ordinance

Comments by Stephen Pepe

Vice President EconAlliance and

Co-owner of Clos Pepe Vineyards

THE PROPOSED WINERY ORDINANCE IS UNCONSTITUTIONAL.

The Equal Protection Clause of the 14th Amendment to the U. S. Constitution provides the government shall not: “deny to any person within its jurisdiction the equal protection of the laws.”

The judiciary permits governmental actions that discriminate between citizens only when such discrimination has a rationale basis. Neither the Staff Report nor the EIR provides any facts or analysis justifying the discrimination against agricultural land merely because it has a winery.

The major uses of agricultural land in the county are cattle and horse ranches, vineyards, orchards, hoop tunnels, row crops and wineries.

Agricultural land without a winery can have an unlimited number of special events with a maximum of 300 attendees. The Proposed Winery Ordinance prohibits special events at Tiers A&B wineries and Tier C can only have twelve special events with a maximum attendance of 200.

Agricultural land without a winery can have up to 300 consumers, conduct cooking classes and provide farm to table meals. The Proposed Winery Ordinance prohibits Tier A wineries from having more than 20 consumers, and neither cooking classes nor winemaker meals are permitted. The Proposed Winery Ordinance prohibits cooking classes at Tier B wineries and limits Tier B wineries to four winemaker meals per year.

The Proposed Winery Ordinance's discrimination against agricultural land with wineries cannot be justified based on infra structure. Agricultural land with a winery will have paved roads, dedicated parking spaces and bathrooms. Cattle and horse ranches, vineyards, orchards, hoop tunnel and row crop agricultural land will not have paved roads, dedicated parking spaces or bathrooms.

The presence of visitors at wineries does not provide a rational basis for discriminating against agricultural land with a winery because agricultural land without a winery also has visitors. There is nothing in the Staff Report or the EIR which provides any basis, let alone a rational basis, for discriminating against agricultural land with a winery.

EVEN IF THE PROPOSED WINERY ORDINANCE WERE FOUND TO BE CONSTITUTIONAL, THERE IS NO SUPPORT IN THE EIR FOR APPLYING THE PROPOSED WINERY ORDINANCE TO AREAS OTHER THAN THE INNER RURAL AREA WHERE AGI AND AGII PARCELS ARE INTERMIXED.

The EIR presents no facts or analysis as to why the Proposed Winery Ordinance should be applied county-wide. In fact, without explanation, the EIR states the Proposed Winery Ordinance will not apply to Montecito. Thus, the EIR admits the Proposed Winery Ordinance can be applied to only

parts of the county. Similarly, the EIR presents no facts or analysis as to why the Proposed Winery Ordinance should not be restricted to the Inner Rural Area or east of Hwy 101 where AGI parcels are intermixed with AGII Parcels.

The EIR presents by its analysis and methodology the following facts justifying restricting the Proposed Winery Ordinance to the Inner Rural Area:

3.11-5 Street segments with accident issues are all east of Hwy 101;

3.11-6 For the traffic study 24 roads out of 34 roads are from east of Hwy 101 and

Table 7-1 Of the 18 comments by individuals, 17 individuals are east of Hwy 101- only 1 west of Hwy 101 (Santa Rosa Rd).

It cannot be claimed that restricting the Proposed Winery Ordinance to the Inner Rural Area or east of Hwy 101 where the AGI parcels are mixed with AGII parcels is an issue being raised at the last minute. At the very first public meeting for the Proposed Winery Ordinance in Buellton the question was asked over and over again what was the problem with the existing Winery Ordinance. The Staff's response, without elaboration, was they had received complaints about wineries. At a subsequent public meeting the Staff was asked to produce the complaints. At a following public meeting the Staff produced a list of a dozen or so complaints about wineries. Only one complaint was west of Hwy 101. It was about a tasting room on Santa Rosa Road without a winery. The Staff has known from the outset that the support for the Proposed Winery Ordinance has been from the Inner Rural Area where AGI parcels are mixed with AGII parcels. That is why the Staff held no public meetings in Lompoc, only one in Santa Maria and three east of Hwy 101 in the Santa Ynez Valley. The Staff has chosen to ignore restricting the Proposed Winery Ordinance to the Inner Rural Area. That is why neither the Staff Report nor the EIR uses as an alternative applying the

Proposed Winery Ordinance to the Inner Rural Area where AGI parcels are mixed with AGII parcels. Instead the EIR sets up the straw man of “No Project Alternative” so it can be easily dismissed by citing the projected winery growth. As noted below the projected winery growth analysis is fatally flawed. The conclusion would be entirely different if the Alternative was not “No Project” but rather “The Project in the Inner Rural Area Only.” The Staff should be directed to provide this analysis so an informed decision can be made.

IT IS UNCONSTITUTIONAL TO PROHIBIT CHARITY, RELIGIOUS AND ADVOCACY FUNDRAISERS AT TIER A & B WINERIES.

The First Amendment to the U.S. Constitution provides:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The judiciary has held that the Equal Protection Clause of the 14th Amendment applies the First Amendment to the actions of state governments and their political subdivisions including counties. The judiciary has held First Amendment rights are not unfettered and the government may regulate the time, place and manner of their exercise. Neither the Staff Report nor the EIR provide any facts or analysis to justify banning First Amendment fundraisers or meetings at Tier A & B. The fact that such events could be held as long as they did not exceed 80 attendees is a distinction without a difference because agricultural land without a winery can have such events with more than 80 attendees.

THE STAFF REPORT AND EIR IGNORE THE RESOLUTIONS PASSED BY THE INCORPORATED CITIES OF BUELLTON, LOMPOC AND SOLVANG NOT TO COUNT CHARITY FUNDRAISERS AS SPECIAL EVENTS.

In 2011 CASA's annual North County fund raiser was scheduled for Bridlewood Winery. To promote this event CASA mailed invitations, distributed posters announcing the event, sold tickets and arranged for suppliers. Then 10 days before the event an anonymous complaint was filed with Planning & Development contending the CASA fundraiser was a special event and exceeded Bridlewood's special event limit. For the first time Planning & Development held that charitable events at wineries were special events. CASA was then required to accomplish in ten days the logistical nightmare of notifying its attendees and suppliers and moving its fundraiser to Sunstone Winery.

Because of the CASA event, some in the charitable community and the incorporated cities in the Santa Ynez and Lompoc Valleys became concerned by the CASA precedent. The incorporated cities know that charity fundraisers at the county wineries not only supply needed funds for the cities' libraries, senior centers, food banks etc., but they also attract visitors which generates city bed tax revenue and sales tax revenue. The cities also recognized that if county wineries were forced to count charity events as one of their special events they would naturally be reluctant to be the venue for charity fund raisers. The charities know that a fundraiser at a winery is a much better draw than a hotel ballroom. Enough public comment was generated at public meetings about charity events that the Staff added two stakeholder meetings with the charity community.

In the spring of 2012, after noticed public hearings which were attended by many charities and others, the City Councils of Buellton (3-2), Lompoc (5-0) and Solvang (3-1) voted 11-3 for a Resolution requesting the county not to count charity fundraisers at county wineries as special events. The Santa Ynez and Lompoc Valleys have approximately 82,000 residents, 52,000 of whom live in the three cities of Buellton, Lompoc and Solvang.

Each City Council Clerk sent a conformed copy of the Resolution to the County's Chief Executive and some cities also sent a copy to the Board of Supervisors.

The cities' charity fundraiser Resolutions have been raised in several public meetings. Yet for reasons known only to Staff, the Resolutions are neither included in the Proposed Winery Ordinance's Documents, nor in the Staff Report or EIR.

THE EIR'S PROJECTION OF WINERY GROWTH (ATTACHMENT E) IS A FRAUD – SOMEBODY IS COOKING THE BOOKS

The base document (Attachment E) used for the Winery Growth analysis in EIR (2.42), is fiction and not grounded in reality. Attachment E is titled "Approved Winery Data" and alleges that there are 64 approved wineries in the county. Number 16 lists Clos Pepe as having a winery approved in 2006. This is incorrect. Our winery is in the City of Lompoc. In 2006 we did apply for a winery permit and then abandoned the project.

Number 64 on Attachment E is land belonging to our neighbors across Highway 246, Huber Cellars, whose winery with a tasting room was "approved" in 1986. This is also false. After being unsustainable as a family Apple orchard, the Hubers planted grapevines. In 1986 they applied for a permit to convert their Apple processing building to a winery. Even though the county had permitted the building, it denied the Huber's application because the proposed winery building was too close to the western property line. This is one of the many examples of how AG land with a winery is disfavored and discriminated against. The property to the west of Huber was and is a 300 acre row crop farm and the farm's owner did not object; nevertheless, the county still denied the Huber's application. How the EIR could count as an "approved" winery with a tasting room one whose application they earlier denied is a mystery.

Of the remaining Attachment E 62 "approved" wineries, 10 are listed as "Permitted by the County, but non-operational." One is from 1995-- 21

years ago and two are from 2005 -- 11 years ago. So the 64 “approved” wineries are really only 52. To be a winery, one has to be licensed by the Federal TTB. A winery must produce wine at least every other year. Failure to do so will result in the TTB’s revocation of the winery’s license. There is no such thing as a “non-operational winery.”

The EIR then uses the false base number of 64 “approved” wineries over a period of years (Appendix D) to make its projection of two wineries per year for the next 20 years for 40 new wineries (EIR 2.5). This false base number of 40 new wineries is then used to calculate other aspects of the EIR such as Air Quality (3.3), Water (3.8), Noise (3.10), Traffic (3.11) and Utilities (3.12).

THE EIR ANALYSIS IS FLAWED BECAUSE IT HAS THREE DIFFERENT FIGURES FOR THE NUMBER OF WINERIES IN THE SANTA YNEZ VALLEY AVA-- THAT IS 27, 30 &33.

The EIR justifies its conclusions by projecting winery growth for the next 20 years. However, this analysis is flawed because the EIR uses three different numbers for the number of wineries in the Santa Ynez AVA.

Table 3.2-2 - the number of wineries in the Santa Ynez AVA is listed as 27. Also troubling is the fact that this table’s number of wineries does not add up. It should be 67 reduced to 64, not 60 increased to 64;

3.2-15 states that the Santa Ynez Valley AVA’s 30 wineries will increase to 40, yet chart 3.2-2 states Santa Ynez Valley AVA has 27 wineries, not 30;

3.2-3 Santa Ynez Valley AVA -- 4th line down states “2 Errors! Reference source not found.”

The reference source not found is for table 3.2 which lists the existing wineries. These numbers form the basis for the projected growth analysis.

The 2nd Paragraph of 3.2-3 first line states the Santa Ynez Valley AVA has 33 wineries. This is after striking out 37. While Table 3.2-2 -- states there are 27 wineries in Santa Ynez Valley AVA.

So which is the correct number of wineries in the Santa Ynez Valley AVA, 27 or 30 or 33 or perhaps the deleted 37? The difference between 27 and 30 wineries is an error of 11.1%, between 30 and 33 the error is 10% and between 27 and 33 the error is 22%. These are not insignificant errors.

How can you trust the EIR when its numbers do not add up? The only sensible solution is to return the EIR to Staff and have them and their consultant get the numbers right and document their calculations.

THE EIR PROJECTS A MAJOR INCREASE IN THE TRIP NUMBERS WHICH ARE NEITHER EXPLAINED NOR SUPPORTED BY APPENDIX F-1 -- THE FINAL TRAFFIC ANALYSIS.

The EIR in 3.3-16 increases the weekday trips from 466 to 3,147 (+ 675 %) and increases the weekend trips from 700 to 4,727 (+ 675%). The EIR contains no explanation for this 675% increase in the trip numbers. These trip numbers are the basis for the Air Quality and Greenhouse Gas Emissions analysis. Appendix F-1 the Final Traffic Analysis dated March 25, 2016 by Linscott, Law & Greenspan Engineers, in the Executive Summary page i (page 325 of the 501 page appendix) states the weekday trips are 466 and the weekend trips are 700.

This is another reason to return the EIR to the Staff and its consultants to get the numbers right.

SMALL FAMILY WINERIES NEED DIRECT CONSUMER SALES

The Proposed Winery Ordinance presents the following policy decision -- Does the county want small family wineries? To succeed small family wineries need direct to consumer (DTC) sales.

Why are DTC sales essential for a small family winery to survive? Because the consolidation we have seen among banks, drug stores, grocery stores, hardware stores, clothing stores and shoe stores has come to the wine industry.

In 1995 there were 1,800 US wineries (950 in CA) and 3,000 distributors – 1 ½ distributors for each winery

In 2015 there were 8,600 US wineries (4,000+ in CA) and 675 distributors – 2,325 distributors went out of business leaving 1 distributor for each 12 wineries

In 2015 four distributors sold 60% of the wine

Today there are 6 California based Distributors

Presently, supermarkets sell 30% of the wine

Small family wineries typically produce about 5,000 cases. One spouse handles the wine making and the other the back office paperwork – tax filings, wine club, etc. In the beginning one them usually kept their day job to provide income for living until the brand is established and the winery has a positive cash flow i.e. 5-10 years.

Once a small family winery is making excellent wine the real challenge is how to sell it. There are no funds to hire a sales staff. As the above numbers indicate, the distributors and supermarkets are interested in thousands of cases not hundreds. The only option is DTC sales. A small family winery could open a tasting room in Lompoc, Los Olivos or Solvang. The challenge there is how to staff it and to distinguish itself from the other

40+ tasting rooms. The best solution is to have consumers visit the winery, hear the family's story and "kick the tires."

CONCLUSION

The Proposed Winery Ordinance should be denied because it is unconstitutional. In any event, the fatally flawed EIR does not permit the enactment of this ordinance.