

LAW OFFICE OF MARC CHYTILO

ENVIRONMENTAL LAW

November 18, 2016

Santa Barbara County Planning Commission
123 E. Anapamu Street
Santa Barbara, CA 93101

*By hand delivery and by email to
sbcob@co.santa-barbara.ca.us*

RE: Winery Ordinance Update – November 22nd Special Hearing Item #2

Dear Chair Adam and Supervisors,

This office represents Ballard Canyon Preservation, residents of Happy Canyon, and other Santa Ynez Valley residents who seek to protect the rural character of the Santa Ynez Valley, and the safety and quality of life on its rural roadways. Our clients and most residents support grape growers and wine producers as a vital part of the fabric of the Santa Ynez Valley, but all have witnessed the problems associated with uncontrolled growth over the last decades. We view the proposed Winery Ordinance as a reasoned method to regulate the growth, in size, number and operations, of the wine industry in this community. Like any industry, many members would rather there were no controls, or ineffectual ones, yet that will only create greater problems in the future. The proposed ordinance contains a well defined and reasonable set of standards for this industry, and as such, we endorse its adoption by your Board.

The Santa Barbara Vintners (SBCVA) organized a large turn out at your Board's November 1st hearing, with most speakers urging the Board to throw out the ordinance and start over by forming a Task Force to draft a different set of regulations more favorable to the wine and events industries. Yet, after the Board admonished SBCVA that it would not throw out the ordinance but would consider some "tweaks", SBCVA's most recent letter, provided on November 17, again urges wholesale revision to the Ordinance. This request to essentially start over comes at the tail end of a protracted public process, during which the County solicited and reviewed input from SBCVA, wine and events industry representatives, individual wine makers, winery neighbors, community organizations, and the public at large, and drafted an ordinance that takes all that input into account.

The draft Ordinance before your Board was not the product of a defective *process*. Instead, the industry is unhappy with the *outcome* of that process because they seek less restrictive, more industry favorable regulations than the Planning Commission was willing to recommend. Indeed the SBCVA letter (p. 15) admits that the suggestions it contains "have been brought to the Planning Commission, and have been mentioned hundreds of times at various hearings and meetings over these past five years." While SBCVA is correct that vintners are the experts on their own industry, it is not sound planning to allow industry to draft the ordinances that govern it. Moreover, many of the SBCVA's concerns are based on a misunderstanding of existing requirements, which we hope Staff will clarify.

The SBCVA letter and public testimony exhibits a fundamental misunderstanding of how the County's existing and proposed zoning ordinance applies to existing facilities, including its many exemptions for routine agricultural practices and maintenance such as for like-kind roof replacement, installation of fire sprinklers or insulation, restoration of native wildlife habitat, etc. It is black letter law that a newly adopted ordinance is prospective only unless expressly retrospective, which is not the case here.

SBCVA suggests they need a roadmap in order to comply with the ordinance. No other industry needs a cookbook, and in our experience, County staff has always clearly advised applicants of the relevant process, and there are many professional planners to assist applicants. SBCVA wants a unique appeal process, suggesting they are entitled to different procedures than other County landowners. They selectively cite Ag Element policies, omitting the clear requirement that the County consider the environmental impacts of an expansion of an existing agricultural operation.

SBCVA's objections conflate agricultural production with event activities. The County must guard against allowing agricultural lands to become event venues. Past use of wineries for unpermitted commercial concerts, weekly weddings, cage fights and commercial events have established the need for enhanced controls. Allowing excessive and premature wine tasting and special events at wine growing and production facilities invites an elevation of unrelated commercial uses over site-specific agricultural uses, and induces inconsistent levels of commercial activity in rural areas. Most of SBCVA's objections are rhetorical, based on misunderstanding of how zoning works, the significance of impacts of uncontrolled commercial activity on surrounding rural communities, and the effect of wineries on the economic viability of surrounding agricultural operations and the Williamson Act program. Instead of listening to concerns and finding a suitable way to integrate winery growth with surrounding land uses, as is the goal of the Ordinance, the wine industry has responded by simply turning up the volume of their mis-informed and mis-guided objections. It is highly unlikely, given the tone and nature of the SBCVA's late hit to this year long process, that a task force has any reasonable probability of success, and as a result, we do not support this suggestion.

While their voices may not have been well represented at the last hearing, most Santa Ynez Valley residents desire reasonable limitations on the wine industry in order to preserve the rural character of the Valley consistent with vision for the future developed by local residents and articulated in The Valley Blueprint and the Santa Ynez Valley Community Plan. Many of these residents have followed the Winery Ordinance Update process, but feel uncomfortable publically voicing concerns that the wine industry might perceive as adverse to their interests. The concerns of local residents must not be subsumed by demands by the industry.

We urge that the Board not overhaul the draft Ordinance currently before you. That said, there are some minor modifications to the Ordinance that may be appropriate and achievable at the Board level without triggering a need to recirculate the EIR or return to the Planning Commission for review. Specifically, there are two specific changes that we proposed in writing in advance of your

November 1st hearing, which we hope the Board will include to ensure the Ordinance is consistent with APAC's direction and includes protection for rural roadways currently lacking due to the FEIR's focus on mitigating impacts in the inner-rural area. These two changes are described in our letter dated October 27, 2016, and repeated below.

Most of the changes requested in SBCVA's letter are not minor, and would significantly increase the impacts of winery development on the environment. As made clear in the EIR and throughout the process, limitations on visitation, parking, tasting room size, type of events, and planted acreage requirements are necessary to reduce significant impacts under CEQA, to achieve the goals of the Ordinance Update, and to achieve consistency with the County's Uniform Rules and the Williamson Act. We urge the Board to retain Staff's very well thought out and crafted standards that relate to the scaling of winery size to the parcel size, and the scaling of the amount and type of activities to the parcel size, help achieve a primary goal of the Update which was to reduce friction between wineries and their rural neighbors both during permitting and during post-approval operations. We request that this high quality work be preserved, and that the Board does not give in to ill-considered industry pressures to weaken these standards.

1. Requested Ordinance Changes

a. Revise Glossary Definition of Winery Special Event

The proposed definition of "Winery special event" recommended to you by staff is inconsistent with Ordinance language the Planning Commission carefully incorporated at APAC's direction to ensure that such events are compatible with agriculture. This material inconsistency can be addressed with a simple change to the definition:

Winery special event [definition]. An event of less than one day and occurring on the winery premises attended by more than the maximum number of winery visitors allowed in compliance with Table 4-16 (Winery Permit Requirements and Development Criteria) including ~~concerts with or without amplified sound, weddings, advertised events,~~ fund raising events, tours, cooking classes, etc. Winery special events shall be clearly secondary, subordinate and incidental to the primary agricultural uses of the property on which the winery special event occurs.

The specific reasons this change is necessary are explained in our October 28, 2016 letter and its attachments that include APAC's letter to the Planning Commission dated July 8, 2016, and communications from the Department of Conservation. Weddings, concerts and commercial events are not sufficiently linked to the marketing of wine, and offer the opportunity for wineries to serve as poorly regulated event venues that undermine and conflict with the Williamson Act. While the specific issue of the glossary definition was raised in public comment at the Planning Commission, it was not specifically discussed or rejected by the Commission.

b. Enhance Findings for Wineries on Rural Roadways

A second deficiency in the proposed Ordinance is that it includes no mechanism to limit the impacts of new wineries on rural roadways, including roadways such as Ballard and Happy Canyon Roads that have unusual physical characteristics and design features and which receive a mix of uses that are likely to become safety problems in the future as new wineries are approved. This omission is corrected by adding a Finding that additional analysis and potentially limitations on winery visitation, wine tasting, and events may be required to protect roadway safety and quality of life on roadways that meet specific criteria and which would be evaluated at the time of individual permit application.

[New development standard # 18] Rural Roadways. Wineries located on (or primarily accessed by) a roadway that: a) has one or more design features (e.g., narrow width, road-side ditches, sharp curves, poor sight distance, inadequate pavement structure); b) regularly experiences uses which would be incompatible with substantial increases in traffic (e.g., use by farm equipment, livestock, horseback riding, heavy pedestrian, bicycle or other recreational use); and c) has above expected collision rates, that may cause potential safety problems. For such wineries, the below Finding must be made prior to approval.

Finding: The Project includes reasonable limitations on winery visitation, wine tasting, and events, sufficient to ensure that the Project does not create a roadway safety problem. Examples of additional limitations that may be required where warranted on a case-by-case basis include reducing the number of winery visitors allowed on the winery premises, conducting wine tasting by appointment only, and requiring shuttling for special events.

The Planning Commission did discuss roadway safety and specifically discussed proposals for an Overlay for Ballard Canyon and Happy Canyon Roads, as well as several alternative proposals. We would support an Overlay for these roadways, however staff previously identified concerns with that approach, leading to use of an enhanced finding. The above proposal integrates feedback from Staff and the Planning Commission, and is considerably more flexible than the prior proposals. Specifically, including this new development standard does not require that the Board or other decisionmaker determine that any specific roadway is “unsafe” either now or in the future, but rather ensures that the required determination that roadways are “adequate and properly designed to carry the type and quantity of traffic generated by the proposed use” (see e.g. LUDC 35.82.080.E.1, Finding C) takes into account design features, mix of uses, and elevated collision rates, consistent with the County’s existing Traffic Thresholds of Significance¹). It is well within the Board’s

¹ “A significant traffic impact occurs when: . . . The project adds traffic to a roadway that has design features (e.g., narrow width, road-side ditches, sharp curves, poor sight distance, inadequate pavement structure) or receives use which would be incompatible with substantial increases in traffic (e.g., rural roads with use by farm equipment, livestock, horseback riding, or residential roads with

discretion to include this provision in the Ordinance as additional mitigation for the Project's adverse impact to traffic safety (Impact TRA-3) and the Project's significant impact to traffic quality of life (Impact TRA-2), as explained thoroughly in our October 28, 2016 letter. Additional legal and factual support is contained in our submittals to the Planning Commission dated 6/20/16, 8/1/16, 9/16/16.

2. Conclusion

We and our clients recognize the value and significance of the wine industry to our County and its communities. After 20 years of experience with the prior winery ordinance, it has become clear that some terms and standards were not adequately defined, and some new issues have arisen. The County's Winery Ordinance update has involved a robust public participation process, with considerable give and take throughout. The minor changes we suggest need to be adopted should not overshadow the many issues that have been successfully resolved. Addressing these two remaining issues as we suggest will give the Revised Winery Ordinance both the clear standards and discretionary flexibility needed for the industry to continue its success while ensuring the safety and well being of both residents and visitors to Santa Barbara County's spectacular wine country for the next two decades and beyond.

Sincerely,

LAW OFFICE OF MARC CHYTILO

Ana Citrin

heavy pedestrian or recreational use) that would become potential safety problems with the addition of project or cumulative traffic.” (FEIR p. 3.11-4.)

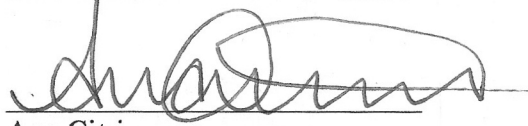
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A handwritten signature in black ink, appearing to read 'Ana Citrin', written over a horizontal line.

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