

**APPEAL TO THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA**

Submit to: Clerk of the Board
County Administration Building
105 E. Anapamu Sreet, Suite 407
Santa Barbara, CA 93101

RE: Project Title SANTA ROSA ROAD WINSLEY
Case Number 15APL-00000-00010
Tract/ APN Number 083-170-015
Date of action taken by Planning Commission, Zoning Administrator, or Surveyor 9/30/15

I hereby appeal the APPROVAL W/ CONDITIONS of the PLANNING COMMISSION (COUNTY)
(approval/ approval with conditions/ or denial) (Planning Commission/ Zoning Administrator/ or County Surveyor)

Please state specifically wherein the decision of the Planning Commission, Zoning Administrator, or Surveyor is not in accord with the purposes of the appropriate zoning ordinance (one of either Articles I, II, III, or IV), or wherein it is claimed that there was an error or an abuse of discretion by the Planning Commission, Zoning Administrator, or Surveyor. {References: Article I, 21-71.4; Article II 35-182.3, 2; Article III 25-327.2, 2; Article IV 35-475.3, 2}

Attach additional documentation, or state below the reason(s) for this appeal.

Project visitation is excessive for the site due to: *"lack of a fair and impartial hearing"* (materially misleading information and omissions by Staff), an EIR is required because substantial evidence of a fair argument was presented, and the record does not support the Findings for a Project of this magnitude.

Specific conditions being appealed are:
PARKING, SPECIAL EVENTS, ORGANIZED GATHERINGS,
SETBACKS

Name of Appellant (please print): BOB FIELD

Address: 5475 HAPPY CANYON ROAD
(Street, Apt #)
SANTA YNEZ CA 93460
(City/ State/ Zip Code) (Telephone)

Appellant is (check one): Applicant Agent for Applicant Third Party Agent for Third Party

Fee \$ 648.26 {Fees are set annually by the Board of Supervisors. For current fees or breakdown, contact Planning & Development or Clerk of the Board. Check should be made payable "County of Santa Barbara".}

Signature: R.B. Field Date: Oct 8, 2015

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Hearing set for: _____ Date Received: _____ By: _____ File No. _____

REASON OF GROUNDS FOR THE APPEAL
Santa Rosa Road Winery; APL-00000-00010
October 8, 2015

FIRST: The reasons for this Appeal *are not* any criticism of the Planning Commission or any individual Commissioner. Given what information was presented — and was not presented — to the Commission they did better than might be expected.

In briefest summary, the grounds for this Appeal are: 1) Project visitation is excessive for the site, 2) there was a “lack of a fair and impartial hearing”, 3) the MND should have been rejected, and an EIR required, because substantial evidence of a fair argument of significant impacts was presented, and 4) the record does not support the Findings for a Project of this magnitude. Each of these is expanded, below.

1) Project visitation is excessive for the site

Given the actual and specific circumstances of this Project and its location, the amount of visitor-serving activity contained in the PC-approved Project Description is excessive and the Conditions to control it are inadequate.

a) As approved, the number of wine tasting visitors allowed is *unlimited*, both at one time and cumulatively. Despite the facts that a primary assumption of the environmental analysis is the number of visitors, and the primary PC decisions were based on this factor, it did not become a Condition of the Project and therefore there are no enforceable limits. Repeated experience has taught that by not limiting the size of the parking area — both with physical restraints and with an enforceable Condition — very large numbers of cars (e.g. hundreds) can and will park on these large winery premises.

b) The number of events is excessive given the reasonably foreseeable number of wineries on Santa Rosa Road (very conservatively at least ten), and the reasonable assumption that each winery will demand at least as many events as others have been granted. Therefore, the 30 events total that were granted to this Project can reasonably be expected to result in at least 300 events per year on Santa Rosa Road. Even with the imposed Condition of no more than 4 events in any single month, the arithmetic is that the readily foreseeable cumulative impact will be 10 events every weekend on this substandard road that already has a 2X expected accident rate.

c) The number of attendees allowed at events is excessive for similar reasons, above.

2) Lack of a fair and impartial hearing

County Staff (P&D and Public Works) exhibited a pattern of: a) omission of material information, b) presentation of false and/or misleading information, and c) failure to correct false and/or misleading statements by the Applicant. These do not appear to be random errors and omissions because in every case these failures favored the Applicant. The consequence was that the Planning Commission’s ability to make objective decisions based upon facts was significantly compromised.

a) *OMISSIONS OF MATERIAL INFORMATION INCLUDE:*

> Despite years of pleas from the public for the County to responsibly consider the safety risks, once again the well-known and well-documented effects of alcohol impairment on driving were omitted from the traffic study, the Staff Report, the Staff presentations, and Staff responses to the Appellant's comments. It is common knowledge that there are serious implications, and the warning is printed on every bottle of wine. Even after expert studies and data were put on the record by the Appellant, Staff completely ignored the issues and did not respond in any way. At this point, these material omissions appear to be willful.

> In the Winery Ordinance Update DEIR, collision history on the roads (including Santa Rosa Road) was one of only two traffic-related issues deemed worthy of study. However, for the Santa Rosa Road Winery no consideration of collision history on Santa Rosa Road was presented by Staff. Nor was any data-based response provided by Applicant or Staff to CHP data put in the record by Appellant that shows a 2x expected collision rate — the response from agents of the applicant and Staff was just unsupported denial of any problems.

> Numerous reasonably foreseeable Projects that would add traffic to Santa Rosa Road were omitted from the Cumulative Impacts analysis. Most notable is the Hilt Winery which is in process at this time. Even though the Appellant brought this up as a reasonably foreseeable project, even though the Applicant's attorney is also an agent for the Hilt Winery, and even though a P&D Staff member who had previously attended a County hearing on the Hilt Winery was present at the PC hearing, no one from Staff offered any comment in response.

> In response to the Appellant's issue that quality of life issues were not adequately analyzed, Staff presented the counter-argument that some sections of the analysis did look at quality of life issues. This response is a half-truth: several enumerated quality of life issues were omitted from analysis, and this Staff reply omits that fact.

b) *FALSE AND/OR MISLEADING INFORMATION PRESENTED INCLUDES:*

> Public Works Staff repeatedly asserted that they saw no problems with the substandard and hazardous Santa Rosa Road, yet required the minimum safe standards for the Project's driveway to be 24 feet wide with 2 foot improved shoulders — while not one inch of the 16 mile long Santa Rosa Road is close to meeting that standard.

> Public Works Staff repeatedly asserted that they saw no problems with the substandard and hazardous Santa Rosa Road, yet in their 2012 study and report on collisions on "wine country roads" (including Santa Rosa Road) this same PW Staff attributed the 30% higher alcohol-involved collision rate in the SYV to the "nature of the rural roadways". The excerpt:

- Collisions involving alcohol are 14.7% of total collisions in the Santa Ynez Valley area with the countywide percentage being 11.4%. This higher rate can be attributed to the nature of the rural roadways with higher speeds, less lighting, and no curbing.

> Public Works Staff enthusiastically praised the quality of the Pennfield & Smith (P&S) traffic study, which is riddled with material errors and omissions.

> in response to Appellant's request that the wine tasting parking be limited to specified and improved parking spaces, P&D Staff instantly killed consideration of the request by saying "not sure that it had ever been done" and "not sure what purpose it would serve". This may be attributable to a recollection failure, but several discussions have been had with this Staff member on the history of this Condition (approved by the BOS in the Vincent Winery case) and that the purpose is to close the biggest loophole in the Winery Ordinance that enables totally unlimited numbers of wine tasting visitors and traffic.

c) FAILURES TO CORRECT FALSE AND/OR MISLEADING STATEMENTS BY THE APPLICANT INCLUDE:

> In response to significant collision data put on the record by the Appellant, the Applicant's traffic expert testified that he did not have access to the data and that the speaker was not a Traffic Engineer. This transparent attempt to discredit the testimony should have been corrected by Staff: first, it is public data available on the CHP website and every traffic engineer has knowledge of and access to this data, second, the law is that the Appellant did not have to be a traffic engineer to enter SWITRS data into the record, and third, the Appellant is an expert in data analysis, the only requirement for analyzing these data. The public and the PC should not have been left with the materially incorrect feeling that this significant data was questionable and could be disregarded.

> In response to the Appellant's complaint that the traffic study had been done at the most inappropriate and misleading time possible (a single weekday in February) P&S dismissed it by saying sometimes that is how the schedule works out — omitted by P&S is that it was February 2014, and that they had plenty of time to study summer weekend traffic. Staff should have corrected the record by informing the public and PC of this fact (and Staff should not have accepted these data for the MND).

> Also on the point of the date of the traffic study, P&S stated that it "probably would be considered slightly off peak". Staff should have corrected the misimpression given by this spin, and pointed out that it was materially off peak, and may have been the worst time possible.

> P&S stated that Public Works Staff has studied the issue and found that the collision history on Santa Rosa Road was "below average". Staff remained silent, but should have either commented that the actual data show collisions to be twice expected (as put into the record by the Appellant) or shown any data they have that is different. Staff's non-response left significant misinformation stand.

> P&S stated that simultaneous wine tasting and events is not allowed by Ordinance — this is false and misleading and Staff should have corrected the record. Plus, the issue is not whether there will be both at the same time, but rather how many additional vehicles will be on the road in a given day.

> P&S stated that this “only represented a 30% increase in wine tasting traffic”. Staff should have corrected this misleading statement by pointing out that his comment was only true with regard to this single winery, but that the cumulative impacts of the many foreseeable wineries would result (as the Appellant had demonstrated) in traffic volumes several times the current rate. Further, given that the Appellant clearly stated that this was a quality of life issue (including pointing to the Thresholds example of increased traffic in quiet neighborhoods (not exceeding traffic thresholds), an increase of 30% would have a significant impact.

> The attorney for the Applicant tried to divert the Commissions attention from the Vincent Winery as a useful precedent by materially misrepresenting: a) that a winery was not applied for and that the wine was to be made offsite, b) that it was an event center masquerading as a winery, and c) that the LOS at the intersection was LOS D. The facts are that it was always to be a winery of virtually the same size as the Applicant’s, the number of events applied for was only 20% of what the Applicant requested, and the LOS at the intersection was LOS B. Staff should have corrected the facts and not let the materially wrong impression stand.

> The attorney for the Applicant stated that Organized Gatherings are not shown in the Ordinance, and that other wineries (e.g. Lafond) were allowed to have unlimited numbers of gatherings of less than 80 attendees. His premise is true, his conclusion is materially false. If land uses are not listed or shown in the LUDC, then they are not allowed (Section 35.20.030.A. 2); however, P&D has determined that with approved permits wineries may conduct commercial Organized Gatherings of less than 80 attendees. P&D Staff should have corrected this materially wrong and significantly misleading assertion.

CONCLUSION: with these omissions of material information, and in the presence of these materially misleading statements — all of which favored the Applicant — there was no way that the Appellant received a fair and impartial hearing.

3) MND should have been rejected, and an EIR required

The MND should have been rejected and an EIR should have been required because members of the public introduced substantial evidence supporting a fair argument that the Project may result in significant environmental impacts that were not disclosed, analyzed, or mitigated in the MND.

For more specifics, please see the attached Memo from counsel for this Appellant regarding the fatal problems with the MND.

4) Record does not support the Findings

Based upon the record and the failures of the MND, Findings 2.1.3 and 2.1.5 could not be made.

> Re Finding 2.1.3. *Streets and highways will be adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.*

— The “type of traffic” generated by the proposed use is impaired drivers not familiar with the road. For years now Staff has been evading discussion of the safety issues raised by the facts associated impaired drivers. (A new evasion technique has appeared: a parenthetical definition of the type of traffic being added to be “cars and trucks”!)

The problem is greater than just this omission: County Staff and P&S provide nothing more to the decision makers and the public than their personal conclusion that this Finding can be made, and provide no data or analysis for decision makers or the public to consider.

— Also, the Finding explicitly and clearly is forward looking, yet all analysis is backwards looking. This flawed analysis makes the fatal logical error of concluding that because history is OK (in this case add the logical error that this is a false assumption), the future will be OK while completely omitting consideration of significant changes.

> Re Finding 2.1.5. *The proposed project will not be detrimental to the comfort, convenience, general welfare, health, and safety of the neighborhood and will not be incompatible with the surrounding area.*

— The staff analysis presented in the Findings presented to the PC fails to support this Finding because it completely omits any discussion of traffic safety issues and completely omits discussion of quality of life impacts. No basis for this Finding is provided, and evidence on the record refutes it.

— The omitted and misrepresented facts that the type of traffic to be added (impaired drivers very significantly more likely to be involved in accidents) to a road already at 2x normal collision rates undermines the ability to make this Finding.

— END —



Bob Field
5475 Happy Canyon Road
Santa Ynez, CA 93460

MEMORANDUM
LAW OFFICE OF MARC CHYTILO

TO: BOB FIELD
FROM: ANA CITRIN
SUBJECT: SANTA ROSA ROAD WINERY MND
DATE: OCTOBER 8, 2015

You've asked me to analyze the legal adequacy of the Mitigated Negative Declaration (MND) for the Santa Rosa Road Winery Project. I've reviewed the MND, the Planning Commission hearing (9/30/15) and public comments posted on the County's website. My preliminary assessment is as follows:

Legal Analysis of the Santa Rosa Road Winery MND:

CEQA sets a low threshold for requiring an EIR instead of an ND or MND. (*See League for Protection v. City of Oakland* (1997) 52 Cal. App. 4th 896, 904-905; Pub. Res. Code § 21151.) Specifically CEQA requires an EIR whenever substantial evidence supports a fair argument that the project *may* have a significant environmental impact. (*Id.*) Contrary substantial evidence showing no significant impact is insufficient to avoid EIR preparation. (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 310.) Moreover, the failure to study an area of possible environmental impact has the effect of enlarging the scope of fair argument by "lending a logical plausibility to a wider range of inferences" from the limited evidence in the record. (*Id.* at p. 311.)

"Substantial evidence . . . means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384 (a).) "Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument." (*Pocket Protectors*, 124 Cal.App.4th 903, 928, citing *Ocean View Estates v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402.) The Second District Court of Appeal previously determined that statements from area residents about the unsafe condition of the roadway and conflicts between vehicles and equestrians and pedestrians constitute substantial evidence requiring an EIR. (*Mejia v. City of Los Angeles* (2005) 130 Cal. App. 4th 322, 340-341.)

The record for the Santa Rosa Road Winery Project clearly includes substantial evidence supporting a fair argument that the Project may significantly impact the environment. Additionally members of the public have identified significant errors and omissions in the MND,

which “enlarge the scope of fair argument” (*see Sundstrom*, 202 Cal. App. 3d at 311) and additional flaws that are fatal to the MND.

The following substantial evidence in the record (and related errors and omissions) supports a fair argument that the Project may result in significant impacts and accordingly that an EIR is required:

- Testimony of area residents familiar with Santa Rosa Road as well as photographic evidence showing that Santa Rosa Road has significant safety hazards including narrow width and lack of shoulders, and documenting existing conflicts between vehicles and the farm equipment, cyclists, and pedestrians (including moms with strollers) on Santa Rosa Road. Testimony of this type constitutes substantial evidence supporting a fair argument that the Project will result in significant traffic impacts, including under County Environmental Threshold C (Project adds traffic to a roadway that has design features (e.g narrow width . . .) 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 heavy pedestrian or recreational use, etc.) that will become safety problems with the addition of project or cumulative traffic.” (*See Mejia*, 130 Cal. App. 4th at 340-341.)
- Studies from UC San Diego and NHTSA reports establishing that drivers having consumed the equivalent of one wine-tasting flight are “impaired” and 46% more likely to be involved in an accident. This increased traffic hazard resulting from the type of traffic generated by the Project is not addressed in the MND, enlarging the scope of fair argument around this issue (*see Sundstrom*, 202 Cal. App. 3d at 311.)
- SWITRS data showing that the actual collision rate on Santa Rosa Road is 2X the average for the type of road. This demonstrates that conditions on Santa Rosa Road are already hazardous and that the addition of impaired drivers from the Project and from cumulative winery development in the area will result in significant traffic safety impacts.
- The baseline data used to establish the traffic baseline does not accurately portray the existing conditions on Santa Rosa Road, because traffic counts were taken on a Tuesday in February. There is substantial evidence in the record establishing that visitation to wineries is lowest during the winter months and early in the week, bolstering evidence in the record showing potentially significant impacts to traffic (*see Sundstrom*, 202 Cal. App. 3d at 311.) Additionally, inadequate data supporting the environmental baseline is grounds for invalidating a CEQA document. (*See e.g. Save Our Peninsula v. County of Monterey* (2001) 87 Cal.App.4th 99, 128.)
- A new winery of approximately 22,253 square feet is currently proposed at 3270 Santa Rosa Road and was considered by CBAR on 9/11/15 (<http://www.sbcountyplanning.org/PDF/boards/cbar/09-11-2015/9-11->

15%20cbar%20agenda.pdf). It is reasonably foreseeable that this new winery (the “Hilt Winery”) will propose wine tasting and events, contributing to cumulative impacts to traffic and land use. Additionally the Winery Ordinance DEIR anticipates 35% growth in wineries in the Santa Rosa Road area (Santa Rita Hills AVA), further adding to cumulative impacts of winery development in the area.

- According to the MND and traffic report, the available corner sight distance from the project driveway to the east is 660’ and to the west, 770’. These distances fails to meet the “decision sight distance” standards established in the Highway Design Manual to “allow drivers time for decisions without making last minute erratic maneuvers” (<http://www.dot.ca.gov/hq/oppd/hdm/pdf/english/chp0200.pdf>.) Specifically, decision sight distance for a 55mph roadway such as Santa Rosa Road is 865’, and accordingly the Project does not comply with this standard designed to ensure roadway safety. The conflict with this safety standard contributes to the substantial evidence supporting a fair argument that the Project will have significant traffic safety impacts. (*See Pocket Protectors*, 124 Cal.App.4th at 930.)
- The Project fails to comply with applicable setback requirements applicable to wineries with public wine tasting and special events, designed to ensure compatibility with surrounding land uses (MND pp. 35-36.) Conflicts with these setback requirements constitute substantial evidence supporting a fair argument that the Project will have significant land use impacts. (*See* CEQA Guidelines App. G § IX (b); *Pocket Protectors*, 124 Cal.App.4th at 930.)
- The Project would include the relocation of a livestock scale and two Danish cisterns that qualify as a Place of Historical Merit under the County significance criteria, with the cisterns also qualifying for listing on the California Register of Historical Resources. The CEQA guidelines establish that relocation of these historical resources or alteration of their immediate surroundings may constitute a significant environmental impact. (CEQA Guidelines § 15064.5 (b)(1).) The MND does not describe where these resources would be relocated to, and fails to include any mitigation measures to ensure that the relocation is performed consistent with the Secretary of the Interior’s Standards as required (*see* CEQA Guidelines § 15064.5 (b)(3 and 4)), and accordingly there is a reasonable possibility that the Project will result in significant impacts to historical resources.

Because this substantial evidence exists in the record and supports a fair argument that the Project may result in significant environmental impacts, the County must prepare an EIR whether or not other record evidence supports a conclusion that the Project will not result in potentially significant impacts. (*See Sundstrom*, 202 Cal. App. 3d at 310.)