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APR 21 2008
10:00 AM
FRED BARBER

April 21, 2008

To: Melanie Heckel, Assistant Planning Director

From: Fred Barber

Subject: Wine Ordinance, Negative Declaration

Message: The latest draft of the proposed wine ordinance apparently reflects changes suggested by the planning commission. Review of this proposal discloses that protections for land owners on private roads, previously recommended by the planning and public works departments in earlier versions, were removed. As a result, the use of a negative declaration as the appropriate CEQA document may be questionable.

Specifically, as now proposed, Section 17.56.330 D2 Access Standards, a project must still meet access standards set by the local fire agency, but the language goes on to say that those standards may be modified and alternative designs selected. The people who can modify and approve said alternative access designs, however, are not identified. Modifications of access standards by non-professionals (not desirable) can affect public safety and lead to serious environmental impacts.

The current zoning ordinance already has a lawful procedure for modifying standards. It's called an Administrative Review Permit (ARP). While public road access usually doesn't involve other owners; access over a private road definitely does. Your earlier wine ordinance drafts proposed the ARP as the method of choice for approving wineries on private roads. The ARP does not necessitate a public hearing, but it does require notice by mail to surrounding owners. It also mandates review by "appropriate" county staff members. When access is over a private road professionals in the public works department have been, and should be, called upon to give their comments.

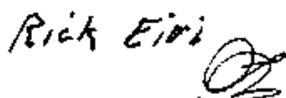
Our home, which lies in a Rural Residential Area set forth in the Placer County General Plan (it's in a "Farm" zone) abuts a winery operated by neighbor Charlie Green. Our place, Charlie's winery, and three other homes are all served from Mount Vernon Road by a one-lane, 10 foot wide private road approximately 760 feet long through a fairly heavily wooded area. If a 20' wide road were required for wineries, as earlier suggested by a fire official, an environmental impact would occur and an EIR might be required because somewhere between 40 and 50 trees over 6" in diameter would have to be removed just so Charlie could have on-site sales and wine tasting at his operation. If, however, an ARP were required it could be used to lawfully modify road requirements, allow wine tasting and sales, without widening the existing road. Public works department recommendations concerning safety, roadway capacity and traffic generation could be used make widening unnecessary.

Alternatively, and in closer conformity with the County General Plan, you might amend the heading of the second table in proposed Section 17.56.330 C to read: "Residential Districts (Rural Residential Districts of the County General Plan or Residential Agricultural and Residential Forest only)"


Fred Barber

Cc Jim Holmes, Supervisor

Charlie Green


Rick Eiri

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ATTACHMENT B

Roger & Irene Smith

6755 Wells Avenue
Loomis, CA 95650
(916)652-5685

April 22, 2008

Placer County
Community Development Resource Agency
3091 County Center Rive, Suite 190
Auburn, CA 95603

Subject: Winery Ordinance Environmental Impacts

In reviewing the Negative Declaration (ND) for the new Winery Ordinance we noticed the following deficiencies:

1. AIR QUALITY

Dust generated by additional traffic (if access road is unpaved) is not addressed in the ND.

Mitigation: require a dust-free road surface (chip seal may suffice)

2. BIOLOGICAL RESOURCES

A secondary, but major impact of a permissive winery ordinance is the likely construction of more vineyards, with extensive impact on wildlife habitat, water quality (both surface water and well water due to pesticide use), soil erosion and the "natural" aesthetics of our rural areas. The ND should address this.

Mitigation: Ensure that all new vineyards are subject to full environmental review as part of County approval. This should include the assessment of impacts on neighbors' wells. Closely control and monitor pesticide use on all vineyards.

3. NOISE

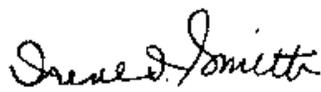
Noise impacts are understated in the ND - especially if there are nearby neighbors (say within 1000') of a winery.

Mitigation: Limit the days and hours of operation of the machinery.
Also limit the operation of the tasting room, and the types of activities allowed (e.g. no amplified music; limits on crowd size).

We hope these deficiencies will be addressed and that proper mitigation measures will be included in the new Ordinance.

Thank you.

Sincerely,

Roger & Irene Smith

From: Ernie Jay
To: Placer County Environmental Coordination Services;
Subject: Winery Ordinance Comments
Date: Monday, April 21, 2008 3:21:20 PM

To: Placer County Planning:

Please accept these comments. A signed copy will be sent via USPS, but we want to make certain they are received by Wednesday's deadline.

Thank you,
Ernie Jay

(sent via email) April 18, 2008
Community Development Resource Agency
Planning Department
3091 County Center Dr.
Auburn, CA 95603

RE: Negative Declaration--Winery Ordinance

In making our comments on this proposal, we respectfully submit that (1) the zoning amendment is ill advised for many reasons, environmental and otherwise; (2) an Environmental Impact Report (EIR) must be prepared; (3) the current ordinances and General Plan regarding "Agricultural Processing" and "Roadside Stands" are being misconstrued and/or actually violated with this zoning amendment. We submit that the zoning amendment creates a de facto restaurant/bar use which should be unacceptable in residential or agricultural (ag) zones.

EIR is Required

The threshold for requiring an EIR for any discretionary action is only that any aspect of the project "**may**" have a significant effect on the environment. Court decisions have declared several Negative Declarations (Neg Dec) to be invalid, due to the remaining **potential** for the project to have a significant adverse effect on the environment.

The Placer County General Plan EIR states that an EIR is required when necessary to examine project-specific effects which are peculiar to the project. Clearly, this zoning amendment is inconsistent with the existing zoning, and the effects or impacts from this zoning amendment meet the criteria for requiring the preparation of an EIR.

In addition, CEQA states: "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts." Since it can be fairly argued that this zoning amendment project could result in potentially significant environmental impacts, an EIR must be prepared [CEQA Guidelines, Section 15064].

Inadequacy of the Mitigated Neg Dec

A major premise of the push to approve this zoning amendment is anchored in streamlining the process. However, expediency at the expense of environmental degradation or public health and safety is a poor bargain. Obviously, to enforce the ordinance change, audits will have to be performed. From what public taxpayer funding source will the auditing expenses be taken from? Or is this to be a “self regulating” or self-auditing process, akin to “trust me” enforcement? Without proper auditing, the potential for abuse and resulting environmental impacts on residential neighborhoods are significant (or may be significant).

It is admitted that the streamlining of the process will probably result in more wineries and more wine tasting facilities. This is a cumulative impact with far reaching significance that is not addressed. “Mom and Pop” or “boutique” operations must be sustainable within currently zoning designations. Otherwise, they weaken the intent of ordinances and encourage operations that provide tax write offs, losses, and other negative economic impacts to the community. This Neg Dec should analyze the economic impacts on the county of such a liberal streamlining of the county’s ordinance.

Item I—Aesthetics: Light sources will indeed be a potential problem. It is irrelevant (as well as incorrect) to predict that the scale of the wine industry in Placer county is anticipated to remain relatively small. (If it’s so small, then how is the proposed ordinance change justified?). This amendment would allow the smallest of wineries without any, or minimal, vineyard acreage to create tasting rooms. Thus the anticipated light source from many more wineries is significant. The premise that a lack of vineyard acreage will curtail winery growth and new light sources is false. It is much more likely to anticipate that every winery will (not just “may”) have security lighting, which has very severe and significant impacts on night lighting. To cite daytime public use as the criteria for lack of lighting impacts misses the entire point of new light source impacts. We request that an EIR be prepared.

Item II—Agricultural Resource: No one is opposed to legitimate agricultural operations. However, it is erroneous to conclude that the zoning amendment will result in an expansion of agricultural production in Placer County when, indeed, the opposite may be true. To be beneficial to agriculture, the grapes must be grown in Placer County; however, this amendment allows grapes from outside the county to be used. Thus, it may NOT have either a beneficial effect OR expansion effect on Placer County agriculture production. In fact, it may be detrimental to the existing vineyards should grape “dumping” from another regions occur. To claim that the Winery Ordinance will implement several General Plan policies that encourage agricultural production is to hide behind General Plan policies that

are not rigorously followed in the county. The County may play lip service to supporting agriculture and right-to-farm activities, but it strongly supports conversion of ag lands to development. The ag community is remarkably silent when this occurs. Thus, the actions of the County do not support a dedication to ag operation, and cannot be used to justify wine tasting as a legitimate ag activity.

III—Air Quality: We respectfully disagree with the conclusion in this Mitigated Neg Dec that emissions would not impact air quality. Whether it is a fire place in a wine tasting room, a diesel tourist bus, or auto emissions from customers on private residential lanes, there WILL be increased air pollution. Anyone who grows organic produce knows full well the potential hazards of pollution of crops from auto emissions near roadways. This impact must be analyzed and mitigated; please do so in an EIR.

We also disagree with the statement that vineyards that provide grapes for the wineries do not produce substantial pollutants. With chemical spraying, fertilizers, herbicides, pesticides, etc., vineyards are widely recognized as one of the most ecologically damaging ag activities. To rely in part on the state and federal regulations and enforcement with their reduced staff and increasing budgetary cuts, is to provide no guarantees or even likelihood of compliance. To rely on the county (even before its upcoming cutbacks) to enforce any regulations is unrealistic; the county cannot fulfill its obligations now. The health of neighbors should not be subjected to such a gamble. Please prepare a full EIR to cover this potentially severe impact.

To rely on the Regional Water Quality Control Board to monitor waste disposal is not a reasonable position or satisfactory mitigation. That agency is notoriously overwhelmed and understaffed and cannot begin to adjudicate the thousands of complaints it receives, let alone its backlog. It simply cannot “address any improper waste disposal methods.” Also, CEQA does not allow mitigation in the form of “Let them (another agency) do it.” Please prepare a full EIR to cover this potentially severe impact.

IV—Biological Resources: We respectfully disagree that the proposed Winery Ordinance in and of itself would not impact oak woodlands. By making it easier to conduct tastings and promotional events, one can reasonably conclude that more wineries will be created, along with vineyards, either on the property or off. Thus, as has been observed in the past, oaks will most likely be removed as they have in numerous instances where wineries have been created in the past. To put the onus of enforcement on the Placer County Tree Ordinance (which is the laughing stock of most tree ordinance specialists, and, except for a few local ineffective ordinances, tops the list as useless and meaningless) or on enforcement of Fish and Game regulations is unacceptable. Neither of these can/will provide adequate protection, mitigation, or avoidance of significant impacts. Mitigation IS

necessary and must be specifically spelled out, as is an EIR.

To conclude that because wineries are dispersed in the landscape that they would have no potential for blocking wildlife migration corridors is erroneous. One only has to see vineyards with netting (devastating to birds), wire fencing, and other measures that have been utilized to stop wildlife. More vineyards will bring additional impacts to important wildlife corridors and to predators, especially as their increasingly narrowed and segmented corridors force them into proximity of unnatural habitat (i.e., neighborhoods, school yards, playgrounds, etc.). Please do an in-depth analysis of the impacts this ordinance amendment will have on wildlife corridors.

Until the Placer County Conservation Plan is either adopted or abandoned, no zoning amendments should be considered. To do so would be to jeopardize and/or undermine potential options that might be needed in the future. The PCCP is the true test of the County's dedication to ag operations; let's see just how dedicated the county is before we allow retail operations in residential neighborhoods.

VII—Hazards and Hazardous Materials: It is a given that the zoning amendment will result in more wineries. This will result in more vineyards (even if grapes and/or bottled wines are brought in from outside Placer County). With the additional vineyards will come additional exposure to hazardous materials—air, soil, or water born. To our knowledge, there is no enforcement of the incorrect (or illegal) use of hazardous materials until or unless there is an unfortunate incident. To date, inappropriate use of hazardous materials is a self-regulating activity which means enforcement is practically non-existent. For example, no one has studied the impacts to ground water of chemical residue seepage, but we do know Placer County creeks and air are becoming more polluted. More analyses, as well as stricter, not looser, ordinances are called for. Please conduct a thorough analysis of wineries and concomitant vineyard impacts and prepare an EIR.

VII—Hydrology & Water Quality: Please see above.

To address water quality standards with the provision for potable water is problematic on many levels. First, it isn't just the well on the winery property that may be impacted; neighboring wells may be using the same groundwater table. Second, who is going to keep count of the on-site population in a 60-day period? The owners? Again, self-regulating is unacceptable when economic resources are at stake. Third, bottled water is now known to have health consequences that were unknown even last year. New disclosures are resulting in many citizens abandoning their bottled water. Bottled water is not an acceptable provision for potable water for a winery.

Another concern is with the contamination of the groundwater that will be a direct result from increased chemicals from increased winery activities. In many rural areas with septic systems, contamination of groundwater is, or may be, a reality,

as it has been in other areas. By the time the damage is recognized, it is too late. We submit that the Placer County Environmental Health Division, facing cutbacks along with other County agencies, is in no position to be inspecting and reviewing sewage flows. This is a critical issue that can literally mean life or death for citizens. This potentially severe impact must be analyzed more in an EIR.

IX—Land Use & Planning: It is disingenuous to claim that the Winery Ordinance will have no impact on land uses or divide existing communities. If one winery is successful, the next step will be expansion, followed by a bed and breakfast, then a full scale restaurant, and on to a hotel. The growth-inducing activities associated with a winery belong in commercial or industrial zoned districts, and not in residential/ag zoned districts. This Winery Ordinance merely exacerbates an already intolerable impact.

A 4.6 acre minimum for a winery is hardly a viable size and should not qualify as an ag operation. It could qualify as an ag operation for the growing of some grapes, but not with the creeping additions of winery, wine tasting, and whatever is coming next. The statement, “Wineries and accessory uses like wine tasting are elements of commercial agricultural operations and are therefore appropriate and compatible uses” is an insult to legitimate ag operations. Is there a point at which the expansion of “accessory uses” is defined? Is it ever curtailed? Or will it be an ever increasing nuisance to communities and neighbors who have the misfortune of having one of these in their neighborhood? Will these wineries stop at wine tasting? What about crackers and cheese? Will they then make their own cheese complete with confined animal feeding operations for dairy cows? How about another building to make the crackers. Commercial ag is working with the land; these accessory or value added operations make a mockery of, and a disservice to, legitimate commercial ag operations. Please do not foist this egregious amended ordinance on any Placer County neighborhoods. Analyze all impacts for full public review.

It is a gross understatement to claim that “The Winery Ordinance may encourage the establishment of additional wineries and vineyards...” It will become an ag tax shelter for some and a nuisance for others. To imply that neighborhood compatibility issues will not impact adjacent residences is pure speculation.

Deterioration of property values WILL be the norm. People live on private, one-lane driveways for privacy. In most rural areas, on private roads, there are no public roadway services. Neighbors move to the rural areas in part for the privacy. To open a winery is bad enough; but to open a wine tasting facility is abominable to anyone living on a private road. Contrary to what is stated in the Mitigated Neg Dec, property values WILL deteriorate.

XI—Noise: To claim that the Winery Ordinance will not result in exposure to excess noise levels is indicative of the lack of analysis in this proposal. There may

be all of the noise factors associated with public traffic: horn honking, strangers “peeling” out, mufflers, etc. To imply that County’s Noise Ordinance will suffice as regulation is a joke. Just research the degree of satisfaction from County residents who have complained about noise ordinance violations (neighborhood) and see the level of non-compliance and NON-resolution. It is almost impossible to define and enforce the County’s noise ordinance unless one has tens of thousands of dollars to pursue the matter in court. This type of impact will force neighbors into litigation, where the burden does not belong. It should be the County’s responsibility to NOT create this nightmare in the first place.

To couch excessive noise levels as somehow excusable due to their being “temporary” and no more than six per year is unacceptable. Can I run a red light as long as it’s on an infrequent basis? The existing rules have been created for the benefit of everyone—the common good. This ordinance unravels that concept and is being created for the benefit of a few at the expense of neighbors.

Although we may have missed it, we see no discussion or analysis of the noise emanating from the wine tasting public/potential customers. Please explain the omission of this potentially severe impact. Many wine tasters in Napa and Sonoma Counties do not stop at one winery for one or two tastes. Instead, they start at one and “make the rounds.” As cars drive into private lanes, residents will not know if the occupants are just starting out, or have been steadily imbibing for hours. Even slightly intoxicated adults can be oblivious to their own vociferous speech levels. As recently reported, some Napa and Sonoma County wine tasting facilities are banning large groups due to unruliness; we can only assume this includes a noise element as well. Please address in an EIR.

XIII—Public Services: Common sense dictates that the General Plan did not address public service impacts of wine tasting. Is it assumed or anticipated that the sheriff will never be called to a wine tasting establishment (rowdiness, altercation, etc.)? How will the ABC limit of the number and size of the wine samples provided to the public be enforced? (Assuming someone has been to four or five tasting rooms, will the limits be cumulative? At the fifth stop, how will the tasting limits be relative?) Because the roads are private, how will violations be enforced (law enforcement normally must witness violations)? Because the county does not own/maintain the private roadways, how can the county pass an ordinance allowing the public full use of the private drives? Please analyze the public services impacts in an EIR and circulate for full public review.

XV—Transportation and Traffic: The Winery Ordinance requires that the primary purpose of each winery is to process wine grapes grown on the winery property or on other local agricultural lands. As vague as the words “primary purpose” are, the activity should be limited to processing wine grapes because of the potential impacts created by the amended zoning ordinance. It is irrelevant that there is

currently only limited vineyard acreage; it is reasonable to assume (with the stated County's "encouragement") that more wineries and/or wine tasting facilities will be created. Thus, County roadway levels of service may be affected, but more importantly, pedestrian, bicyclist, and residents in the neighborhoods will have their safety compromised. CEQA requires full disclosure, but we see no roadway standards for wine tasting facilities as described in the Winery Ordinance. What will be the road widths, pavement requirements, setbacks, etc.? If paved roads are not required, how will dust be mitigated? Please incorporate roadway requirements and address and discuss them in an EIR.

For the Winery Ordinance to NOT address parking is unacceptable. When a facility becomes full on a private drive, the impacts to the neighbors is severely significant. Property damage, blocked roadways and driveways become a nuisance and may result in calls to the sheriff for "tow aways," accident, hit-and-run reports, etc. (which places more response time burdens on already overtaxed law enforcement agencies). Please provide an enforceable parking lot requirement and analysis in an EIR.

Many neighborhoods have "Neighborhood Watch" groups—neighbors who have agreed to watch out for each other's safety. The effectiveness, if not the entire concept of the Neighborhood Watch program, will be rendered useless with this winery ordinance amendment. Otherwise, strangers, slowly creeping along the private drive (or racing along) will simply go unreported since it could be someone headed for, or leaving, the winery. Neighborhood safety will be impacted and a sense of community will be lost. Please address in an EIR.

Other Considerations for NOT Adopting a Wine Ordinance Zone

Amendment

The Right to Farm. This concept brings with it responsibility. Everyone supports farming and ag operations as long as they are legitimate, not a tax sham, nor pose an unacceptable nuisance to a community. Right to Farm was never intended to allow retail establishments to set up shop in residential or res/ag neighborhoods, let alone put on six promotional events per year. Ag proponents complain about development infringing on Right to Farm. This wine ordinance amendment creates the problem in reverse: The Right to Live in Peace in established rural/ag areas being infringed upon by nuisance wine tasting facilities. This winery ordinance amendment is nothing more than a shield for hobby vintners and "boutiques" to circumvent the intention of laws and/or to take unfair advantage in the marketplace.

"Farming" and/or "agriculture" are words that imply working on the land, in the dirt, and are embraced by the public. Phony ag activities that become either nuisance activities, or "holding patterns until development arrives" (Williamson Act), are turning the public against traditional agricultural operations. Ag should

mean growing the grapes. It's a stretch to take it to the level of processing (winery), but the barn door was left open on that one. Now we have the "farm loaders" moving in, trying to capitalize on an ordinance and laws that were not meant for them at all.

Selling Placer County produce is allowed on the property or on the frontage public road if it is at the site of the production. This wine ordinance throws all stipulations out the window by (1) allowing grapes grown elsewhere to be processed and (2) allowing wine from other sources to be sold. This creates a deplorable situation not only in unsuspecting res/ag zoned areas but also in turning the public against ag operations.

Nuisance Complaints. The county should plan on increased calls for services and/or complaints from neighbors. A recent LA TIMES article tells the truth about the "booze hounds" who show up at these tasting counters, "throwing up in the shrubbery, shouting, singing, flinging off garments...." Some wineries in Napa have put out signs, "No limos."

California's vehicle codes (speeding, driving without license, drunk driving, etc.) are not enforceable on private drives; yet Placer vintners want to turn their private one-lane shared easement driveways into commercial roadways, open to the public under a right-to-farm smokescreen. Neighbors and pets will never know what hit them when the "had been drinking" (HBD) crowd appears; it won't be pretty.

Disingenuous Cause and Effect Claim. The ag activity is in the growing of the grapes. For vineyard owners to claim they need to process the grapes, and now need to allow tasting on the premises to sell the bottles is using the same logic that an automobile body shop must encourage accidents to stay in business. **No public agency should be encouraging the economic advantage of one segment of the population over another** (vintners over homeowners in this case). The grape growers know what they are getting into. The demise of a 5 acre vineyard and winery is a blip on the economic ag screen; if they are not making a good product, no amount of tasting is going to take them out of the red.

No ordinance should be amended to accommodate an operation that is unsustainable in the first place. When will cattle, sheep, or hog operations demand ordinance changes to create shops to sell leather jackets; to create restaurants to sell veal scaloppini, filet mignon, or medallions of lamb? Will the county change its noise ordinance to promote ear plug sales? Will the County pass an ordinance next to allow people whose homes are being foreclosed to start half-way houses for (fill in the blank) in order to make money to maybe head off the foreclosure? It is NOT, and never should be, a government's role to favor one commercial industry over another. Where does the madness end?

Alternatives:

As some wineries have already discovered, many retail establishments now have a "Local Wine" section in their grocery aisles. This is where serious and legitimate local vintners who have a worthwhile product can/will sell their wines. In addition, a number of very large wine retailers ("wine superstores") are opening their doors in Placer County, thus providing another venue for wine sales.

Wine tasting can/should be held either in cooperative venues, such as the current Farmers' Markets. If, in the wildest stretch of the ordinance, wine tasting was to be allowed, it should be from public-road-accessible venues ONLY. If a vintner wants to have tasting and not impact any neighbors on a private drive, then it must be from public road access or public venues. This ordinance creates an unreasonable situation where the vintner on the rural private drive will always know when their privacy will/will not be violated; they will simply keep the gates shut. However, neighbors will have to guess constantly as to who the passersby are.

With a little capitalistic ingenuity, there should be plenty of reasonable opportunities for wine tasting activities that will NOT impact neighborhoods and residential areas. Otherwise, the neighbors (and the County) are subsidizing unsustainable operations (that should stick to grape growing and get out of the winery business) at a great cost—the loss of their rural ambiance.

The Winery Ordinance zoning amendment is an unacceptable project that must not be implemented. If anything, ag regulations, ordinances and rulings need to be stiffened to stop the wholesale denigration of what once were respectable ag operations.

Cordially,

Ernie Jay
P.O. Box 7167
Auburn, CA 95604

Going green? [See the top 12 foods to eat organic.](#)