



**COUNTY OF PLACER**  
**Community Development/Resource Agency**

Michael J. Johnson, AICP  
Agency Director

**PLANNING**  
**SERVICES DIVISION**

Paul Thompson, Deputy Director

**MEMORANDUM**

**TO:** Honorable Board of Supervisors

**FROM:** Michael Johnson, AICP  
Agency Director

**DATE:** March 12, 2013

**SUBJECT: WISE VILLA WINERY COMMUNITY CENTER (PMPB 20120092)  
THIRD-PARTY APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF A  
MINOR USE PERMIT AND ADOPTION OF A MITIGATED NEGATIVE  
DECLARATION**

**ACTION REQUESTED**

1. Conduct a Public Hearing to consider a third-party appeal filed by Carol Rubin (on behalf of Save Placer Farmlands), Marilyn Jasper (on behalf of Sierra Club and Public Interest Coalition), and Mike Giles (on behalf of Neighborhood Rescue Group).
2. Deny the third-party appeal filed by Carol Rubin (Save Placer Farmlands), Marilyn Jasper (Sierra Club and Public Interest Coalition), and Mike Giles (Neighborhood Rescue Group).
3. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Program for the Wise Villa Winery Community Center project.
4. Uphold the Planning Commission's decision to approve a Minor Use Permit to allow for the operation of a Community Center at the Wise Villa Winery, based upon the findings set forth in the staff report.

There is no net County cost associated with these actions.

**BACKGROUND/PROJECT PROPOSAL**

The approximately 20-acre subject property is developed with an operational winery, including 15 acres of vineyards and an associated tasting room for the public. The applicant resides on-site in a single-family dwelling. The applicant is requesting approval of a Minor Use Permit to allow for the hosting of groups of up to 50 people four times per week for agricultural, vineyard or wine/food pairing educational events, and to host larger events (51 to 100 people) twice per month within the existing tasting room and winery facilities. Per the applicant's description, and the Planning Commission's recommended Condition of Approval, all events held at the site will have an agricultural or wine/food educational component.

During wine pairing dinners and larger events, the applicant proposes to have a chef prepare meals in the tasting room kitchen, although a caterer may supply food at some events. The applicant proposes public hours of 10:00 a.m. to 8:30 p.m., seven days a week and throughout the year, with clean-up activities by staff allowed until 10:00 p.m.. Wine tasting hours are currently 11:00 a.m. to 5:00 p.m., Wednesday through Sunday. Smaller events could occur on any day, from 10 a.m. through 8:30 p.m., up to four times per week. As proposed by the applicant, larger events would generally be scheduled between 6:00 p.m. and 8:30 p.m., after traffic from wine tasting has dispersed. The maximum number of people allowed for events at any given time is 100, regardless of which activity is occurring. During the larger events, up to six workers may be employed. The applicant has stated that the larger events would take place primarily in the tasting room, as well as the front portion of the winery. The outdoor patio area may also be utilized for sitting for those people who choose to be outside.

All amplified music would be held inside the tasting room; no outdoor amplified music is proposed. Additionally, a Condition of Approval approved by the Planning Commission restricts all amplified sound to indoor areas. A public well and separate septic system have already been constructed for the tasting room, and the facilities are adequately sized to accommodate groups of up to 100 people. Other than the paving of the existing graveled entry and the existing parking lot area, and a small amount of grading and paving required for the encroachment onto Wise Road, no other construction is proposed with this Project.

The Project was presented at a Zoning Administrator hearing on May 17, 2012, but was deemed incomplete by the Zoning Administrator, pending successful completion of further environmental review. On June 11, 2012, the applicant submitted an Environmental Questionnaire, and later submitted further analyses on noise and traffic. After receiving all of the required information, staff subsequently prepared an Initial Study, which lead to the preparation of a Mitigated Negative Declaration.

On June 12, 2012, the Planning Director issued a Planning Director's Determination regarding Community Centers. As set forth in Section 17.58.120(D) of the Placer County Code (Referral to Planning Commission), the Planning Director has the authority to refer a Minor Use Permit to the Planning Commission for a public hearing when it is deemed necessary because of unique or unusual circumstances. Due to concerns raised related to Community Centers within the County, the Planning Director concluded that it was appropriate that the Planning Commission should act as the decision-making body on "Community Center" uses.

#### Agricultural Commission

On September 10, 2012, the Project was heard by the Agricultural Commission as an Action Item. After a staff presentation and after hearing public comment, the Commission unanimously voted to recommend approval of the proposed Minor Use Permit and Variance to the Placer County Planning Commission based upon specific site conditions, and based upon the promotion of the on-site winery operation. The Agricultural Commission also determined that the Minor Use Permit and resulting activities would not have a negative impact on local agriculture.

#### Rural Lincoln Municipal Advisory Council

On September 17, 2012, the Project was presented before the Rural Lincoln Municipal Advisory Council as an Action Item. After a staff presentation and after hearing extensive public comment, the Council voted four to one to recommend approval of the proposed Minor Use Permit and Variance to the Placer County Planning Commission. Joyce Bachman, the only Council member not to recommend approval, did not state specific reasons for her vote against the Project.

#### Planning Commission Hearing (December 20, 2012)

The Wise Villa Winery Community Center project was considered by the Planning Commission at its December 20, 2012 meeting. At that hearing, the Commission received a presentation from staff and heard comments from the applicant and 20 members of the public, speaking both for and against the

Project. Those speaking against the Project expressed concerns about the Project's traffic, noise and lighting impacts, as well as the perceived lack of sufficient code enforcement availability and the definition of "Community Centers".

After deliberations, the Planning Commission unanimously adopted a motion to adopt the Mitigated Negative Declaration, approve the Minor Use Permit for the Wise Villa Winery Community Center, and approve the Variance to the roadway surfacing requirement for the overflow parking area, including all conditions (with a modification to Condition 42), the CEQA findings and all other findings contained in the staff report. Condition 42 was changed as follows: "This Minor Use Permit is valid for two (2) years and shall expire on December 30, 2014 unless approval of a modification of this permit is granted by the Planning Commission prior to the expiration date."

In reaching this decision, the Planning Commission found that:

1. The Project is consistent with the applicable policies and requirements of the Placer County General Plan;
2. The operation of the Project would not be detrimental to the health, safety, peace, comfort and general welfare of people residing in the neighborhood of the proposed use;
3. The Project would be consistent with the character of the immediate area surrounding the project site;
4. The Project would not generate a volume of traffic beyond the design capacity of all roads providing access to the Project; and that
5. The Mitigated Negative Declaration is complete, adequate and in full compliance with CEQA.

### **THIRD PARTY APPEAL**

On December 28, 2012, Carol Rubin, Marilyn Jasper, and Mike Giles submitted a joint appeal (Attachment B) of the Planning Commission's decision to approve the Minor Use Permit and the adoption of the Mitigated Negative Declaration. Primary issues identified in the appeal include the perceived traffic and noise impacts, as well as land use conflicts, and the opinion that the Project requires further environmental review in the form of an Environmental Impact Report. Other policy issue concerns included the "Community Center" definition, and a perceived lack of code enforcement. It should be noted that the appeal does not include nor address the Commission's grant of the Variance to the surfacing requirement. Therefore, the approval of the Variance stands and is not addressed in this staff report. To assure a thorough analysis of each issue identified in the appeal, specific responses are provided below.

#### **Letter of Appeal – Carol Rubin, Representing Save Placer Farmlands**

The appellant provided her "Reasons for Appeal" with the appeal form and then submitted additional documentation discussing the same topics on January 22, 2013. In both documents, the appellant asserts that the Planning Commission's approval of the Project must be overturned. Her reasons and staff's responses to the issues raised are outlined below.

#### **Intent of Placer County General Plan and Farm Zoning**

The appellant asserts that the Project contradicts the intent of the Placer County General Plan and Farm zoning because the activities the applicant proposes to conduct "...are those normally conducted by a restaurant/bar".

**Staff Response:** Unlike a restaurant or bar, which is open to the general public anytime the business is open, proposed events would be by invitation only, and would be limited both as to the number of events and the number of people allowed at the events. Additionally, it is important to note that a "restaurant" or "bar" is not part of the applicant's proposed use. Rather, the applicant proposes events to promote the wine produced by his vineyard, which is already an established use. As set forth in the County's General Plan, Policy 7.A.10, "The County shall facilitate agricultural production by allowing agricultural service uses (i.e., commercial and industrial uses) to locate in agriculturally-designated

areas if they relate to the primary agricultural activity in the area.” The Planning Commission concluded that proposed Community Center use will enhance the existing winery operation by providing the applicant the opportunity to host wine/food and other agriculturally-related events.

The site is zoned Farm, with a combining minimum lot area of ten acres. According to the Placer County Zoning Code, the intent of the Farm zone district is to provide areas for the conduct of commercial agricultural operations that can also accommodate necessary services to support agricultural uses, together with residential land uses. As proposed, the Project would support the existing winery operation. Further, Community Centers are a use that is allowed within the Farm (F) zone district with the approval of a Minor Use Permit. While the Zoning Ordinance does not stipulate that approval of a Community Center be dependent upon an Agricultural component, the applicant’s stated intent is to host agriculturally-related events where the public can become more educated on wine/food pairings and the wine industry in general. A Condition of Approval was approved by the Planning Commission to mandate this connection to agriculture. Based upon this information, the Planning Commission concluded that the Project meets the intent of both the Placer County General Plan and the Zoning Ordinance.

#### Noise Impacts

The appellant asserts that traffic from the Project will create significant noise for residents along the route. The Placer County Noise Ordinance establishes hourly noise exposure limits for transportation noise sources at the property lines (Sections 9.36.010 through 9.36.250 of the Placer County Code).

Staff Response: The noise study prepared by Bollard Acoustical Consultants, Inc. for this specific Project determined that noise generated during events on site, including on-site traffic circulation and parking, will comply with the Placer County noise standards at the Project property lines and nearest existing residences. The Noise Study (Attachment G) describes in detail the methodology utilized to determine the noise levels anticipated by the proposed Project. An event simulation and noise measurement survey was conducted at the Project site on August 1, 2012. Sound level measurements for a worst-case scenario were taken in eight locations along the property lines, and levels were found to be either audible but faint, likely inaudible or inaudible, depending on the location point. In no instance did the sound levels exceed the thresholds established in the Placer County Noise Ordinance. The Mitigated Negative Declaration concluded that based on this study and implementation of mitigation, that the Project’s noise impacts are less than significant. The appellant provides no technical evidence to refute that conclusion.

#### Traffic Impacts

The appellant asserts that the location of the Project will impose a traffic burden upon a peaceful rural neighborhood by impacting local roadways.

Staff Response: The Project site directly accesses Wise Road, a rural arterial public highway. A traffic impact assessment was prepared for the Project by KD Anderson and Associates on September 13, 2012. A subsequent Response to Comments letter was also prepared, dated November 5, 2012, and was included with the Planning Commission staff report. As stated in the Traffic Impact Assessment, all roads on each route to the winery are in generally good condition, and no safety issues were identified. The traffic consultant determined that no significant impacts related to Levels of Service were found for either Wise Road or Fowler Road. Additionally, Fowler Road, Fruitvale Road, Garden Bar Road, McCourtney Road, and Wise Road were analyzed for design speed, pavement width, existing issues, as well as wayfinding, and impacts to these roadways were determined to be less than significant. The Project will include improvements to the existing encroachment onto Wise Road, the prohibition of on-street parking on Wise Road, and the requirement that gates are to be left open during business hours.

In its deliberations, the Planning Commission concluded that the Mitigated Negative Declaration prepared for the Project adequately addressed traffic issues and agreed with the determination that

impacts from traffic were determined to be less than significant. The appellant provides no technical evidence to refute the Planning Commission's conclusions.

#### Policy Issues

The remainder of the appellant's appeal and supplemental information discusses issues that are policy matters for consideration by the Board of Supervisors, and include the appellant's opinion that a new definition and objective criteria need to be created for "Community Centers", that the "Community Center" use needs to be linked to an agricultural use, and that current code enforcement is inadequate to monitor new event facilities or those already established in Placer County.

Staff Response: The appellant and other members of the public raised these same issues during the Planning Commission hearing. Section 17.04.030 (Definitions) of the Placer County Zoning Ordinance defines "Community Centers" as a "multipurpose meeting and recreational facilities typically consisting of one or more meeting or multipurpose rooms, kitchen and/or outdoor barbecue facilities, that are available for use by various groups for such activities as meetings, parties, weddings, receptions, dances, etc. Includes grange halls." Staff concluded that the Project falls within the Community Center definition, and has processed the Project through the County's Minor Use Permit procedure accordingly.

In its decision to approve the Project, the Planning Commission concluded the current use permit process enables staff, the Planning Commission and the Board of Supervisors to analyze and judge each individual request on its own merits and identify and impose conditions of approval based upon the unique characteristics of a project site and surrounding area. Additionally, the Planning Director has directed that all applications requesting a "community center" be heard by the Planning Commission, which allows for a thorough vetting of public issues and concerns.

Although Community Centers aren't required to have an Agricultural component, this particular Project is integrally linked to the on-site winery operation. The applicant has stated in public forums that his expressed intent is to host agriculturally-related events where the public can become more educated on wine/food pairings and the wine industry in general. To that effect, Condition of Approval 3 was added which requires all events to have an agricultural or wine/food educational component.

Code enforcement for properties and uses within the unincorporated area of the County consists of Placer County Code Enforcement staff, who enforce the conditions of approval of use permits, and the Sheriff's Office, who respond to noise issues on weekends and after hours. Article 17.62 (Code Compliance and Enforcement) of the Zoning Code contains a detailed process for code compliance, and if necessary, revocation of an approved use permit. It should be noted that neither the Flower Farm nor the Newcastle Wedding Gardens, two existing community centers which have been in operation for several years, have had code enforcement complaints filed against them for noise, traffic or other use permit violations since their use permits were approved. The Placer County Code Enforcement staff has also not received any code violation complaints about Wise Villa Winery since it started business approximately seven years ago.

#### **Letter of Appeal – Marilyn Jasper, Representing the Sierra Club and the Public Interest Coalition**

In her letter dated December 28, 2012, Ms. Jasper contends that there is a lack of guidelines for Community Centers, perceived procedural errors by the Planning Commission and necessity for an environmental impact report. Her reasons and staff's responses are highlighted below.

#### Lack of Guidelines

Ms. Jasper's concerns are primarily related to the policy issues on whether or not Community Centers should be allowed in the Farm and agricultural zones, whether Community Centers can be "for profit" and a request to halt processing of all such applications until the policy issues are addressed by the Board.

Staff Response: As stated in the above response to a concern raised by Ms. Ruben, the project falls under the definition of a "Community Center", and Community Centers are an allowed use within the Farm zone district, with approval of a Minor Use Permit. According to the Placer County Zoning Code, the intent of the Farm zone district is to provide areas for the conduct of *commercial* agricultural operations that can also accommodate necessary services to support agricultural uses, together with residential land uses. As proposed, the Project would support the existing winery operation. In addition, staff disagrees there are no guidelines. The Zoning Ordinance provides standards and requirements for Community Centers, including parking and setback requirements. In addition, as previously discussed in this report, the current use permit process enables staff, the Planning Commission and the Board of Supervisors to analyze and judge each individual request on its own merits and identify and impose conditions of approval based upon the unique characteristics of a project site and surrounding area.

Misleading or Lack of Information to the Planning Commission

The appellant claims that the Planning Commission's vote to approve the use permit is an unacceptable action because it ignores all the concerns and issues that citizens raised. Further, the appellant claims that the Planning Commission based its approval on misleading information and/or a lack of information.

Staff Response: Staff disagrees with the appellants claim that there was either misleading or a lack of information to the Planning Commission. The Planning Commission conducted a lengthy public hearing during which the Commission heard from staff, the applicant and considered public testimony from 20 members of the public, who were either in favor or against the Project. The Commission spent a considerable period of time deliberating on this matter and weighing the evidence and testimony presented. The Commission's decision included findings in support of approval and adoption of conditions of approval to address the concerns of the public including parking, noise, traffic and hours of operation.

Planning Commission Vote for a Two-Year Approval is De facto Non-Decision

The appellant states that the Planning Commission's two-year approval of the Minor Use Permit is a "non-decision."

Staff Response: Staff disagrees with this assertion. The Planning Commission has the authority to limit the term of a use permit based upon evidence presented to it, as well as site-specific conditions. This limitation does not constitute a "non-decision" but rather a decision to amend this Condition of Approval as part of the overall project approval. The two-year term requires the applicant to request a modification of the use permit, should he wish to extend the use, prior to the expiration date. Any modification would require a public hearing before the Planning Commission. At that time, the Planning Commission, as well as the public, would have the opportunity to review the Project again to determine if the applicant had complied with the conditions of approval. If the Board wishes to revisit the two-year approval and instead grant an approval with the standard use permit term (two years to exercise permit, no expiration date to permit), the Board may do so, as the Board hearing for the Wise Villa Winery Community Center project is a de novo hearing.

Unenforceable and Meaningless Conditions of Approval

The appellant asserts that the Conditions of Approval established for this use permit are unenforceable and meaningless because many of the terms within the mitigation measures contained in the Initial Study use the verb "may" instead of "shall".

Staff Response: Staff has concluded this assertion is completely without merit; all of the mitigation measures within the Initial Study utilize the verbs "shall" or "will" in discussing mitigations. Additionally, all of the Conditions of Approval for the Minor Use Permit use the verbs "shall" or "will".

County Responses to Comments Submitted on MND

The appellant contends that the Project requires the preparation of an Environmental Impact Report in order to adequately analyze the potential environmental impacts of the Project. The appellant acknowledges in her letter that the County responded to her comments submitted on the Mitigated Negative Declaration (Please refer to "Response to Comments" Included within Attachment E.) She, however, disagrees with those responses.

Staff Response: A disagreement does not constitute substantial evidence of a deficiency in either the environmental analysis performed for this Project or with the responses to comments. Consistent with the requirements of the California Environmental Quality Act, a Mitigated Negative Declaration (Attachment F) was prepared for the proposed Project. Environmental issues discussed in the environmental document include: Aesthetics, Air Quality, Biological Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality and Transportation and Traffic. The Mitigated Negative Declaration concluded that with the implementation of mitigation measures, including an ending time of 8:30 p.m. for public events, the requirement for any amplified speech or music to be limited to indoor areas, the requirement for all lighting to be Dark Sky-compliant and the limited number of larger events, the impacts of the proposed Project when compared to the already-functioning winery and tasting room business were less than significant. On this basis, the County, as Lead Agency, concluded the preparation of an Environmental Impact Report was not required.

In its deliberations, the Planning Commission concluded that the Mitigated Negative Declaration prepared for the Project adequately addressed all potential environmental impacts, and that there was no substantial evidence in the record as a whole that the Project would have a significant effect on the environment. As will be discussed below, nothing the appellant raises in her appeal, nor anything presented by the law firm of Shute, Mihaly & Weinberger, LLP in support of that appeal, presents substantial evidence to support a fair argument that significant impacts may occur that were not already considered, analyzed and/or mitigated in the Project's Mitigated Negative Declaration. Therefore, staff finds no evidentiary basis to change its recommendation regarding the adequacy of the Mitigated Negative Declaration prepared and circulated for this Project.

**Letter of Appeal – Shute, Mihaly & Weinberger LLP, Representing the Public Interest Coalition and the Sierra Club Placer Group**

On January 25, 2013, the law firm of Shute, Mihaly & Weinberger submitted comments in support of the Public Interest Coalition and Sierra Club appeal. Staff has reviewed and responds as follows to the contentions raised in this letter regarding the adequacy of the Mitigated Negative Declaration prepared for this Project.

Community Center Zoning Designation

The appellants state that the County's Community Center zoning designation is inappropriate for the private commercial events proposed by this Project, and that the Project should not be approved until the Community Center land use designation "...can be more clearly defined and the County establishes clear guidance requiring this and other similar projects to undergo environmental review in compliance with "CEQA".

Staff Response: The appellant incorrectly states that Community Centers are a zoning designation. In fact, Community Centers are not a zoning designation, but are an allowed use within the Farm zone district, with the approval of a Minor Use Permit. Each Minor Use Permit request is reviewed and evaluated on a site-specific basis.

The Planning Commission's decision took into consideration not only the applicant's proposal, but also the concerns raised by the public. As a result, a robust and thorough analysis of the Project was provided, and concerns associated with the Community Center use in this application were addressed.

### Thresholds for the Preparation of an Environmental Impact Report

The appellants assert that an Environmental Impact Report (EIR) should have been prepared for this Project, because “[a]n EIR is required whenever substantial evidence in the administrative record supports a “fair argument” that significant impacts may occur, even if other substantial evidence supports the opposite conclusion”.

Staff Response: This is a correct statement of the law. However, none of the appellants have submitted such evidence. While appellants have expressed concerns and fears related to the Project, it is well established that complaints, fears and suspicions about a project’s potential environmental impact do not constitute substantial evidence. *Bowman v. City of Berkeley* (2004) 122 Cal.App.4<sup>th</sup> 572, 588-90.

This Project underwent a thorough environmental review in compliance with CEQA. All potential environmental impacts were analyzed, and the Mitigated Negative Declaration prepared for the Project determined that with the implementation of mitigation measures, all potential environmental impacts were reduced to less than significant; therefore, an EIR was not required. The Mitigated Negative Declaration was found to be adequate by the Planning Commission and was subsequently adopted on December 20, 2012.

### The Mitigated Negative Declaration Violates CEQA

The appellants maintain that the Mitigated Negative Declaration does not contain the facts and analysis required in order for the County and the public to make an informed decision. Staff disagrees and addresses each topic raised by appellants separately.

### Agricultural Lands

The appellants claim that the Mitigated Negative Declaration failed to adequately analyze the Project’s impacts on agricultural lands, because the appellants believe that the Project would “unquestionably facilitate development of non-agricultural, commercial uses in a rural area and may set a precedent for conversion of agricultural land to commercial uses countywide”.

Staff Response: The appellants provide no evidence to substantiate this statement. As noted above, fears and suspicions do not constitute substantial evidence. Nor is there any evidence, based on the existing agricultural uses of the applicant’s property, that the proposed community center will impact the existing agricultural use.

The applicant has planted approximately 15 acres of vineyards on the 20-acre property, and has established an operating winery on the premises. In fact, levels of agricultural productivity have significantly increased on the site since the applicant purchase the property. The proposed use of the existing tasting room as a community center will not cause a reduction in the use of the vineyards. Further, the uses proposed by the applicant are agriculturally-related, and would directly support his winery business. The Farm Bureau representative and the U.C. Farm Advisor both have publically supported this Project. The Agricultural Commission, after reviewing the details of the Project and listening to the comments from interested citizens, determined that the Minor Use Permit and resulting activities would not have a negative impact on local agriculture, and unanimously recommended approval of the Project.

The appellants contend that the proposed use will result in the “loss of arable soils to pavement and non-agricultural uses.” The community center use is proposed within the *existing* wine tasting room. The only additional on-site paving that will occur will be to the *existing* driveway and *existing* parking area which are currently covered in base rock. Moreover, it cannot be argued that the existing driveway constitutes “arable soils” that would have been used for growing of crops. It has been used as a driveway since the vineyard was established. Therefore, staff finds the appellants’ argument regarding loss of agricultural lands to be without merit.

### Water Quality

The appellants state that the Mitigated Negative Declaration fails to identify specific Best Management Practices (BMP's) and that this constitutes deferred mitigation.

Staff Response: The County disagrees with this assertion, as Mitigation Measures (MM) VI.1 and MM IX.2 are based on established construction (temporary) and post-construction (permanent) BMP's which are identified and referenced in the California Stormwater Quality Association (CASQA) Stormwater Best Management Practice Handbooks. These handbooks provide detailed information on each BMP, including: the targeted constituents, design and sizing guidelines, removal efficiency, and maintenance requirements.

Reliance on established regulations such as these BMPs is not deferred mitigation, and conditions requiring compliance with environmental regulations, ordinances or other standards are commonly imposed in mitigated negative declarations and are recognized by the courts as permissible mitigation. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4<sup>th</sup> 1359, 1396; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1356; *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 429 n1.

### Groundwater Supply and Quality

The appellants claim that the Mitigated Negative Declaration fails to adequately analyze the Project's impacts on groundwater supply and quality because it did not analyze impacts to existing wells and did not address impacts to groundwater resulting from the use of an on-site septic system.

Staff Response: As was discussed within the "Hydrology and Water Quality" section of the staff report to the Planning Commission, the Environmental Health Services Department determined that the Project would not deplete existing groundwater supplies. The existing vineyards utilize Nevada Irrigation District water, and will not contribute to well water usage. The proposed maximum water usage from the winery and community center during days with large events is 990 gallons per day, which is just three percent of the total on-site well production per day. Due to the fact that the water usage is only three percent of the gallon-per-day production by the water well, the maximum use (large events) of the community center is limited to twice a month (24 days a year) and the 990 gallons per day of water usage is residential-like, Environmental Health Staff determined that the Project will not substantially impact groundwater supplies and, as such, the impact is considered to be less than significant.

The Project's use of an on-site sewage disposal system is not expected to impact groundwater quality. Soils testing was completed on the property to define an area for an initial septic system and a 100 percent repair area. Both the initial and 100 percent repair area meet the minimum requirements for on-site sewage disposal per the Placer County On-Site Sewage Disposal Ordinance (Placer County Code Article 8.24). As part of the site evaluation process, the type of soil in the sewage disposal area is reviewed, the percolation rate is determined, adequate separation to groundwater is reviewed and the required setbacks are maintained. Additionally, the soils testing is completed by a qualified sewage disposal consultant with oversight by Placer County Environmental Health Staff. The on-site sewage disposal system for the proposed Project has been installed under permit and has been inspected by Environmental Health Services. Since the on-site sewage disposal area for the Project has been designed and installed under the required ordinance, the on-site sewage disposal system will not substantially impact groundwater quality and as such, this impact is considered to be less than significant.

It should also be noted that the documents submitted by Shute, Mihaly et al. in support of its challenges to the on-site sewage disposal analysis are on their face inapplicable to this Project. The document entitled "Effects of Septic Systems on Ground Water Quality – Baxter, Minnesota" states the following: "Caution should be exercised when applying the results for Baxter to other areas. The Baxter area may not be typical of many unsewered areas in *Minnesota*." (Emphasis added.) If this study is not even

typical of other areas in Minnesota, staff seriously doubts its application to California. Nor can a "Septic System Failure" study in Indiana be considered applicable to California, particularly considering this study is expressly related to Indiana soil conditions.

Project Consistency with Land Use Plans and Regulations

The appellants assert that the Project conflicts with General Plan policies, specifically, 1.H.1, 1.H.2, 7.A.1, 7.A.3, and 7.A.10.

Staff Response: Policy 1.H.1 of the Placer County General Plan states that the County shall maintain agriculturally-designated areas for agricultural uses and direct urban uses to designated urban growth areas and/or cities, and Policy 1.H.2 states that the County shall seek to ensure that new development and public works projects do not encourage expansion of urban uses into designated agricultural areas. Staff asserts that the Project does meet the intent of these policies. The applicant has planted 15 acres of vineyards on the 20-acre site, and the proposed events will support the on-site agricultural winery operation. The Agricultural Commission determined that the proposed use of the existing winery facilities as a Community Center would not have a negative impact on local agriculture, and unanimously supported the Project. The U.C. Farm Advisor and Farm Bureau Representative also have publically supported this Project.

Policies 7.A.1 and 7.A.3 state that the County shall protect agriculturally-designated areas from conversion to non-agricultural uses and shall encourage continued, and where possible, increased agricultural activities on lands suited to agricultural uses. It is the County's assertion that the proposed Project adheres to these policies. Specifically, since the applicant purchased the property, he has increased agricultural production on the site from what it was prior to his purchase. Additionally, the activities proposed by the applicant, and as provided within the Conditions of Approval, are to be agriculturally-related.

As was stated earlier in the response to Carol Rubin's appeal, the County's General Plan, Policy 7.A.10, states that "The County shall facilitate agricultural production by allowing agricultural service uses (i.e., commercial and industrial uses) to locate in agriculturally-designated areas if they relate to the primary agricultural activity in the area." The Planning Commission concluded that proposed Community Center use will enhance the existing winery operation by providing the applicant the opportunity to host wine/food and other agriculturally-related events. The site is zoned Farm, with a combining minimum lot area of ten acres. According to the Placer County Zoning Code, the intent of the Farm zone district is to provide areas for the conduct of commercial agricultural operations that can also accommodate necessary services to support agricultural uses, together with residential land uses. In its approval of the Project, the Planning Commission determined that the Project is consistent with applicable policies and requirements of the Placer County General Plan.

Consistency with County Policies Protecting Agriculture and Scenic Resources

The appellants infer that the Project does not meet the intent of the General Plan and Zoning Code with regards to the protection of agricultural lands.

Staff Response: The Project would not result in the loss or conversion of Farmland, as the applicant will continue to utilize the property for the growing of wine grapes and as an active winery. The only "construction" proposed with this Project is the paving of approximately 0.6 acres including the existing gravel driveway, existing gravel parking area, and the minimal grading and paving associated with improving the driveway access encroachment from Wise Villa Road, as the Project will utilize the existing facilities on site. As was stated earlier, the uses proposed by the applicant are agriculturally-related, and would directly support the existing winery business. To ensure that events held at the site are agriculturally-related, a Condition of Approval was placed upon the Project which requires all events to have an agricultural or wine/food educational component. The Farm Bureau representative, U.C.

Farm Advisor, and the Agricultural Commission have all stated their support for this Project at public meetings.

#### Sight Distance Concerns

The appeal states that the Project is inconsistent with County Standards for sight distance when looking to the west.

Staff Response: The County Plate R-17 design is based on the corner sight distance, which provides sight distance to allow adequate time for a waiting vehicle to either cross all lanes or turn left or right, without requiring through traffic to radically alter their speed. The minimum stopping sight distance is the distance required by the driver of a vehicle traveling at a given speed, to bring the vehicle to a stop after an object on the road becomes visible.

The distance proposed by the Project is less than the corner sight distance, but greater than the stopping sight distance. The provision of increased stopping sight distance satisfies County Plate R-17 note #4 which states: "Where restrictive conditions do not allow compliance with the specified requirements, the engineer may approve a reduction of the corner sight distance to no less than the minimum stopping sight distance as outlined in the Caltrans Highway Design Manual." Per this requirement, the Director of Public Works approved the reduction, due to the restrictive location of an existing utility pole. Accordingly, the proposed project is consistent with County standards for sight distance.

#### Community Center Designation

The appellants state that the Project is inconsistent with the "Community Center" definition in the Zoning Ordinance, and the intent of the Farm zone district.

Staff Response: The Planning Commission discussed at length the current Community Center definition and deliberated extensively as to the appropriateness of this use for this particular project. As discussed previously, the Commission acknowledged that changes in zoning code definitions is a policy consideration for the Board. The Commission approved the Minor Use Permit for this Project as a Community Center based on the evidence, discussion and reports before it, concluded that the proposed Community Center use was appropriate for this particular project and location and was consistent with the General Plan and Zoning.

#### Cumulative Impacts

The appellants state that the Mitigated Negative Declaration fails to consider the cumulative effect of granting multiple Minor Use Permits to wineries and other farmlands County-wide.

Staff Response: The appellants cite the two other applications for community centers, Rock Hill Winery and Gold Hill Gardens. It should be noted that the Gold Hill Gardens' request for a community center was denied by the Planning Commission and is on appeal to this Board. The appellants also cite to the Orchard at Penryn project as a project that should have been analyzed within the cumulative impacts section of the present Project's CEQA document. The Orchard at Penryn is a residential project on real property zoned for that use in the Penryn Area. There is no conceivable link between the Orchard project's impacts to the present Project. Finally, the appellants state generically that "[t]he cumulative effects of the events allowed under this Project combined with the effects of the events allowed under the previously approved provisions for wineries and the effects of the aforementioned projects [Rock Hill, Gold Hill Gardens and Orchard at Penryn] all must be evaluated in an EIR. These development projects and others before the County, together with the present Project, would have a cumulatively significant impact on the County's rapidly diminishing agricultural resources."

These statements do not constitute substantial evidence of cumulative impacts. The mere existence or awareness of other projects or sites does not mean that any of these qualifies as a "probable future

project” for purposes of inclusion in a cumulative impact analysis. Neither does the mere mention of such projects or sites mean that the County is obligated under CEQA to include these in the cumulative analysis for a particular project. Unless a particular site or project qualifies as a “probable future project”, there is no legal obligation to expand a cumulative analysis to include these. “[M]ere awareness of proposed [projects] . . . does not necessarily require the inclusion of those proposed projects in the EIR.” *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1127. A future project under environmental review is only a “probable future project” if there is evidence that “the proposed project is both probable and sufficiently certain to allow for meaningful cumulative impacts analysis.” *City of Maywood v. Los Angeles Unified School Dist.*, (2012) 208 Cal.App.4th 362, 399. With respect to the Project, cumulative impacts of the proposed Gold Hill Gardens project (including the proposed but denied community center component) and the current Wise Villa project were analyzed in the Mitigated Negative Declaration, in particular, potential traffic impacts. The Rock Hill Winery project is located over nine miles away from the Wise Villa project, and staff concluded that the proposed Rock Hill Winery community center would add no incremental contribution whatsoever to the potential impacts identified for the Wise Villa project.

As is further detailed below, the Mitigated Negative Declaration analyzed the cumulative impacts of the Wise Villa Winery Community Center Project and found that the impacts were less than significant.

The appeal states that the Mitigated Negative Declaration fails to adequately evaluate the Project’s cumulative traffic impacts because the study area was limited to Fowler Road. In the traffic study, several routes were identified. Guests arriving from the west could come from Interstate 80 to Sierra College Boulevard to State Route 193 to Fowler Road, then turn left onto Fruitvale Road and right onto Garden Bar Road and right onto Wise Road. Alternatively, guests could take State Route 65 or Sierra College Boulevard to the City of Lincoln, and follow McCourtney Road north to Wise Road. Guests arriving from the east could use State Route 193, then turn right on Fowler Road to reach the site. The primary local roads that are likely to be utilized were analyzed for design speed, pavement width, existing issues, as well as wayfinding. These roads include: Fowler Road, Fruitvale Road, Garden Bar Road, McCourtney Road, and Wise Road. Impacts to these roadways were determined to be less than significant. Additionally, the appeal asserts that a change from a Level of Service (LOS) B to a LOS C under cumulative Year 2025 conditions would be a significant impact to Fowler Road because it is projected to degrade from LOS B to LOS C. Per the Placer County General Plan, Policy 3.A.7., the County shall develop and manage its roadway system to maintain a minimum LOS C on rural, urban and suburban roadways. Therefore, the projected LOS for the Project is within the acceptable Placer County LOS threshold requirements and is not considered significant.

With regards to cumulative air quality impacts, the Placer County Air Pollution Control District (APCD) has established that the cumulative impact threshold for land use projects is ten pounds per day of Reactive Organic Gases (ROG) and Nitrous Oxides (NOx). The APCD recommends that any project which emits more than ten pounds per day should implement mitigation measures to reduce cumulative impacts. The APCD has noted that the general size of a project which would exceed the APCD’s cumulative threshold is a residential single-family subdivision of 40 households, or a retail urban area strip mall of 15,000 square feet. A preliminary air quality analysis, along with the above-noted project thresholds, indicated that the project would be well below the cumulative impact threshold of ten pounds per day established by the APCD, and therefore, no mitigation measures were necessary.

Potential impacts relating to wildfire hazards were determined to be less than significant by the CalFire staff who reviewed the Project. When a project is conditioned to supply fire service infrastructure (i.e., hydrants, water tanks), those facilities may be used by the Fire Department for any emergency on or off the project site. The capacity of the storage tanks onsite exceeds the required water storage requirement for the Project. Therefore, having a new available water source for firefighting in the area helps mitigate impacts of potential nearby roadside vegetation fires from additional vehicle traffic. The closest Fire Station is located at 1112 Wise Road, approximately 1.95 miles away from the Project site.

The proximity of the Fire Station would result in a response time of approximately two minutes, which is significantly lower than the County General Plan's required ten-minute response time for rural areas. CalFire personnel have determined that staffing levels and equipment are adequate to serve the Project, and that the water capacity on site is more than adequate to meet the needs of the Project.

In its adoption of the Mitigated Negative Declaration, the Planning Commission concluded that all of the potential cumulative impacts had been adequately reviewed and determined that any potential cumulative impacts of the Project were less than significant. Appellants have provided no evidence to refute that conclusion.

#### Growth-Inducing Impacts

The appellants assert that the Mitigated Negative Declaration failed to analyze growth-inducing impacts.

Staff Response: The Project will not result in a substantial population growth in the area, as no new homes are proposed with the Project, and the Project is not expected to result in a substantial amount of people moving to the area as a result of the Project. Therefore, the Project will not directly or indirectly induce population growth in the area.

#### Planning Commission Findings

The appellants maintain that the Planning Commission's Findings are not supported by substantial evidence because the appellants assert that the Project is inconsistent with the County's General Plan and Zoning Code, and because the Project is incompatible with the surrounding area because it would introduce increased wildfire risks and traffic hazards, and that the Project would not be consistent with the character of the immediate neighborhood because it would introduce a suburban/urban use and related traffic, light and noise to the area.

Staff Response: As discussed above, the Planning Commission determined that the Project is indeed consistent with the both the General Plan and Zoning Code, and further determined that the Mitigated Negative Declaration prepared for the Project adequately reviewed and analyzed all potential environmental impacts. The Planning Commission found that the Project would not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of people residing in the neighborhood of the Project, or be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the County, as all potential significant environmental impacts were reduced to less-than-significant with the implementation of the identified mitigation measures.

#### Letter of Appeal – Mike Giles, Representing the Neighborhood Rescue Group

In his appeal, Mr. Giles primarily discusses code enforcement concerns involving other wineries, presumably in an attempt to tie the activities of other wineries to this particular Project.

Staff Response: The appellant's comments relative to the actions of other wineries are noted. The one portion of his appeal which pertains to Wise Villa Winery does not discuss the proposed use permit, variance, or environmental review, but is related to an event which was previously held at the Wise Villa Winery which the appellant believed should have required approval of a Temporary Outdoor Event Permit. That event was not out of compliance, as the applicant was not required to obtain a Temporary Outdoor Event Permit due to the fact that it was an admission-free event and was therefore considered a private party. Since starting the winery seven years ago, there have been no Code Enforcement Violations issued against the Wise Villa Winery operation.

#### **CONCLUSION**

In its analysis of the issues raised by the appellants, staff could find no validity in any of the assertions raised in the appeal. The majority of the issues raised are the same issues that were considered by the Planning Commission at its December 20, 2012 meeting. The Planning Commission, after conducting a

public hearing and considering the testimony of the applicant and public, concluded that the Project is consistent with the goals and policies in the Placer County General Plan, determined that the Project is appropriate for the subject property and the surrounding area, and that the Mitigated Negative Declaration that was prepared for the Project adequately addressed environmental issues that would result from the implementation of the Project. The Planning Commission subsequently took action to approve the Minor Use Permit and Variance for a two-year period, and adopted the Mitigated Negative Declaration. The appellants have not presented any evidence or facts to cause staff to revise its recommendations or analysis.

## **RECOMMENDATION**

Staff recommends that the Board of Supervisors take the following action:

1. Deny the third-party appeal filed by Carol Rubin (on behalf of Save Placer Farmlands), Marilyn Jasper (on behalf of Sierra Club and Public Interest Coalition), and Mike Giles (on behalf of Neighborhood Rescue Group).
2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Report for the Wise Villa Winery Community Center project based on the following findings:
  - A. The Mitigated Negative Declaration for the Wise Villa Winery Community Center project has been prepared as required by law. With the incorporation of all mitigation measures, the Project is not expected to cause any significant adverse impacts.
  - B. No evidence has been presented by appellants to support a fair argument that significant impacts may occur as a result of approval of the Project. Therefore there is no legal basis to require an Environmental Impact Report for the Wise Villa Winery Community Center project.
  - C. Based on all the testimony, documents and evidence presented during the hearing, the Board concludes that the analysis presented in the Mitigated Negative Declaration remains adequate and complete and in full compliance with CEQA.
  - D. There is no substantial evidence in the record as a whole that the Project as mitigated will have a significant effect on the environment.
  - E. The Mitigated Negative Declaration as adopted for the Project reflects the independent judgment and analysis of Placer County which has exercised overall control and direction of its preparation.
  - F. The mitigation monitoring program prepared for the Project is approved and adopted (Attachment F).
  - G. The custodian of records for the Project is the Placer County Planning Director, 3091 County Center Drive, Suite 140, Auburn CA, 95603.
3. Reaffirm the Planning Commission's approval of a Minor Use Permit to allow for the operation of a Community Center at the Wise Villa Winery, subject to the Recommended Conditions of Approval for the Project attached to the staff report as Attachment C and based on the following findings:
  - A. The proposed uses are consistent with all applicable provisions of Chapter 17 of the Placer County Zoning Ordinance. The current zoning is Farm and the proposed Community Center use is a permitted use in this zone with the approval of a Minor Use Permit.

- B. The proposed Project is consistent with the all applicable provisions of other chapters of the County Code including road improvement standards, well and septic requirements.
- C. The proposed use is consistent with applicable policies and requirements of the Placer County General Plan, including policies 1.H.1, 1.H.2, 7.A.1, 7.A.3, and 7.A.10 related to Agricultural activities. Specifically, 15 acres of the 20 acre site are already developed with vineyards. The property owner currently operates a winery with an existing tasting room on the site. The proposed use of the tasting room for a Community Center will not remove viable agricultural land from production. Only 0.6 acres will be graded and paved for ingress/egress and parking, a good portion of which already functioned as the driveway to the winery. Thus no additional arable soils will be removed from agricultural production as a result of the proposed Project. The proposed use of the tasting room as an event center is expressly limited to those events which will promote the existing agricultural/winery use. Thus the proposed project will enable the winery owner to promote interest in viticulture and the wines produced by Wise Villa, which will in turn hope to promote the continued financial viability of this site for agricultural use.
- D. The establishment, maintenance or operation of the proposed Community Center use will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of people residing or working in the neighborhood of the proposed use, nor will it be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the County. The Project has been conditioned to include: limitations on the hours of operation, the number of events allowed per year; a set maximum number of patrons allowed per day; prohibition of outside amplified music and prohibition of off-site parking. The Project conditions of approval also incorporate and implement all mitigation measures identified in Mitigated Negative Declaration to ensure that any potential noise, traffic and visual impacts are reduced to less-than-significant.
- E. The proposed use is consistent with the character of the immediate neighborhood and will not be contrary to its orderly development. The site consists of 15 acres of vineyards and an existing winery and tasting room. The proposed use will utilize the existing tasting room. Thus the site will remain dominated by the vineyard and winery uses, an agricultural use that is compatible with the character of the surrounding area.
- F. The proposed use will not generate a volume of traffic beyond the design capacity of all roads providing access to the parcel.

**ATTACHMENTS:**

- Attachment A: Vicinity and Site Plan
- Attachment B: Appeal from and Carol Rubin, Marilyn Jasper and Mike Giles
- Attachment C: Recommended Conditions of Approval
- Attachment D: December 20, 2012 Planning Commission Staff Report
- Attachment E: Response to Comment Letters
- Attachment F: Mitigated Negative Declaration - Mitigation Monitoring Program
- Attachment G: Noise Study
- Attachment H: Traffic Letter from Consultant

- cc: Carol Rubin, Marilyn Jasper and Mike Giles – Appellants  
 Wise Villa Winery – Grover Lee – Applicant/Property Owner  
 S. Joshua Rogers, Esq. – Attorney for Applicant/Property Owner  
 Karin Schwab – County Counsel  
 Michael Johnson – Community Development/Resources Agency Director  
 Paul Thompson – Deputy Director, Planning Services  
 Sarah Gillmore – Engineering and Surveying Department  
 Laura Rath – Environmental Health Services  
 Bob Eicholtz – CalFire