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FILED  
5/15/2023 3:16 PM  
Clerk of the Napa Superior Court  
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9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF NAPA**

11 NAPA COUNTY and THE PEOPLE OF THE  
STATE OF CALIFORNIA ex. rel. THOMAS  
12 ZELENY, as Interim Napa County Counsel,

13 Plaintiffs,

14 v.

15 HOOPES FAMILY WINERY PARTNERS, LP,  
HOOPES VINEYARD, LLC, LINDSAY BLAIR  
16 HOOPES, and DOES 1 through 10 inclusive,

17 Defendants

CASE NO. 22CV001262

**SECOND AMENDED CROSS-  
COMPLAINT FOR *MONELL* CLAIM,  
FEDERAL AND STATE FIRST  
AMENDMENT, DUE PROCESS AND  
EQUAL PROTECTION VIOLATIONS,  
AND DECLARATORY RELIEF (U.S.  
Const. I, VIX, Cal. Const. art. 1, § 7, 42  
U.S.C. § 1983, Cal. Civ. Code § 52.1)**

18  
19 HOOPES FAMILY WINERY PARTNERS, LP,  
a California limited partnership and HOOPES  
20 VINEYARD, LLC, a California limited liability  
company,

21 Cross-Complainants

22 v.

23 NAPA COUNTY, DAVID MORRISON, in his  
24 official and individual capacity, AKENYA  
ROBINSON-WEBB, in her official and  
25 individual capacities, and ROES 1 through 10  
inclusive,

26 Cross-Defendants  
27  
28

1 Defendants and Cross-Complainants HOOPEs FAMILY WINERY PARTNERS, LP,  
2 (“HFWP”) a California limited partnership and HOOPEs VINEYARD, LLC, (“HV”) a California  
3 limited liability company (collectively, “Hoopes”), bring the instant Cross-Complaint against  
4 Cross-Defendants NAPA COUNTY (“the County”), DAVID MORRISON, in his official and  
5 individual capacities, and AKENYA ROBINSON-WEBB, in her official and individual capacities,  
6 and allege, upon information and belief, as follows:

7 **INTRODUCTION**

8 1. Napa County has engaged in a pattern and practice of misapplying state and  
9 county laws to compel Hoopes to comply with rules that do not exist, are not lawful,  
10 constitutional, or valid, and of which neither they nor the public had any notice. Further, the  
11 County has a practice of claiming violations for conduct that is entirely lawful on the face of its  
12 published rules and regulations. Tellingly, while the County filed this action alleging non-existent  
13 violations of law, it never proceeded in the manner required by law to give notice of the violation,  
14 nor provided an administrative forum to address specific complaints. If there were a basis for  
15 claiming a violation, the County could and should have proceeded that way. It did not because its  
16 goal is not to obtain compliance with code but rather to interpret the code however the County  
17 chooses and without notice.

18 2. Hoopes responds with this Cross-Complaint to put an end to the abuse,  
19 harassment, and overreach in which the County seeks to apply something—albeit not the law—to  
20 coerce loss of fundamental property and liberty rights.

21 3. Hoopes purchased a small winery property *with existing entitlements* at great  
22 expense. Through this Cross-Complaint Hoopes seeks relief from this Court to continue its lawful  
23 operation.

24 4. Hoopes contends, for the reasons detailed below, their lawful operation includes  
25 on site consumption and marketing of wine as afforded under the law. At the heart of the  
26 controversy is whether Napa County can render valueless a lawful, operating business – a winery  
27 – from doing what a winery does through arbitrary, vague, and unintelligible rules, leaving no  
28 room for compliance.



1 zoning, maintaining public records relating to permits and enforcement actions, establishing code  
2 enforcement operations, policies and procedures, observing code enforcement priorities, selecting  
3 appropriate code enforcement procedures, and hiring, training and supervising code enforcement  
4 officers.

5 11. Cross-Defendant DAVID MORRISON (“Mr. Morrison”) is an individual  
6 employed by Defendant, the County. Mr. Morrison was the DIRECTOR of PBES and ultimate  
7 supervisor of all code enforcement staff and zoning enforcement for the majority of time relevant  
8 in this case. Mr. Morrison initiated, oversaw or otherwise supervised code enforcement actions  
9 relating to the aggrieved parties and, if department policy was adhered to, elected to initiate  
10 litigation in lieu of pursuing alternative administrative procedures.

11 12. Mr. Morrison remains employed by Defendant the County, but now serves as the  
12 County Chief Executive Officer. Mr. Morrison has authority over the continued litigation of this  
13 matter and expenditure of County funds related hereto.

14 13. Cross-Defendant AKENYA ROBINSON-WEBB (“Ms. Robinson-Webb”) is an  
15 individual employed as a Code Enforcement Supervisor with the County. Hoopes is informed and  
16 believes that Ms. Robinson-Webb, as one of her primary job functions, trained, supervised, or  
17 recklessly failed to train and supervise the work completed by code enforcement officers in this  
18 case. Ms. Robinson-Webb approved or recklessly failed to review the use of evidentiary materials  
19 submitted for litigation in this case. Ms. Robinson-Webb was personally aware, or intentionally  
20 and recklessly ignorant to, the contents of all County policies and procedures, and the contents  
21 and material misrepresentations of County documents created in connection with and for use in  
22 this case, including documents submitted to the Court.

23 14. Hoopes is ignorant of the true names and capacities, whether individual, corporate,  
24 associate, employee, agent, or other, of Cross-Defendants ROES 1 through 10, inclusive, and  
25 therefore, sues them by fictitious names. Hoopes will seek leave to amend this Cross-Complaint  
26 to allege their true names and capacities when it ascertains them.

27 15. Hoopes is informed and believes, and thereon alleges, that at all times mentioned  
28 in this Cross-Complaint, each of the Cross-Defendants was the agent, servant, and/or employee of

1 each of the remaining Cross-Defendants. In doing the things alleged here, they were acting in the  
2 course and scope of their agency or employment, under color of state law, and therefore, all  
3 Cross-Defendants are in some manner liable or responsible for damages.

#### 4 GENERAL ALLEGATIONS

5 16. On March 6, 1984, the then-owners of the real property located at 6204  
6 Washington Street (“the Property”) in Napa obtained a Small Winery Use Permit Exemption from  
7 Napa County (the “1984 Small Winery Use Permit Exemption”) and began operating a winery. A  
8 true and correct copy of the 1984 Small Winery Use Permit Exception is attached and  
9 incorporated herein as (**Exhibit A.**)

10 17. The Property is located in the Napa County Agricultural Preserve District and  
11 consists of a small vineyard and winery on eight acres.

12 18. The winery at the Property is older than other wineries in the neighborhood. After  
13 it began operating in 1984, other wineries opened nearby. The Property is now located 400 feet  
14 from Bell Wine Cellars (<https://www.bellwine.com/>) and 750 feet from Mira Winery  
15 (<https://miranapa.com/>). Both Bell Wine Cellars and Mira Winery are much larger wineries that  
16 offer tours, tastings, and large-scale events.

17 19. Napa County issued Small Winery Use Permit Exemptions before it adopted its  
18 1990 Winery Definition Ordinance. (Napa County Ord. No. 947, Jan.23, 1990, hereinafter,  
19 “WDO”.)

20 20. At the time the WDO was enacted, various “uses” and “accessory uses” of  
21 wineries, now-regulated, yet lawful, as to *new* winery developments, were common and not  
22 regulated, including “tours and tastings” and “marketing of wine.” These definitions and  
23 regulations were created in the first instance through enactment of the WDO in 1990.

24 21. Continued operation of small winery use permit exemptions was codified under  
25 the WDO to “recognize the legal existence of such operational small wineries” previously  
26 operating as exemptions, and whose “activities were lawful when established and have not been  
27 abandoned.” Small wineries use permit exemptions were grandfathered under the WDO are an  
28 “integral part of the Napa Valley economy.” Ord. 947, §§ 4, 5, 8, 9 10.

1           22.     Napa County Code section 18.16.020(H) allows wineries with a small winery use  
2 permit exemptions in existence prior to 1990 to operate as a winery, including any “related  
3 accessory uses and structures,” without a use permit. So long as the wineries have continuously  
4 operated, they can continue winery operations without a use permit, including uses and accessory  
5 uses of wineries. (Ord. 947, NCC §§ 18.16.020; 18.16.030, 18.08.040 subd. (H), 18.104.040.).

6           23.     Hoopes is informed and believes there are currently only thirty-two (32) wineries  
7 in Napa County lawfully operating with small winery use permit exemptions. Hoopes is informed  
8 and believes that there are substantially fewer small winery permit exemptions today than existed  
9 upon enactment of the WDO.

10          24.     Hoopes is informed and believes that other wineries that pre-date the WDO  
11 operate in the AP district with all “uses” and “accessory uses” authorized by 18.16.020.

12          25.     Hoopes is informed and believes that despite the County’s position that small  
13 winery exemptions are categorically prohibited from accessory winery uses, such as “tastings”  
14 and “events of a public nature,” the County knows this is untrue and uniquely targets Hoopes to  
15 prohibit uses the County endorses and allows at other similarly situated small winery exemptions.

16          26.     Since at least March 6, 1984, the successive owners of the subject Property have  
17 continuously operated a vineyard and winery. Beginning in at least 1984, Hoopes is informed and  
18 believes that the prior owners allowed the public to come to the property, consume wine on the  
19 property, picnic, sample wine, and engaged retail sales of wine-related and other items. These  
20 “uses” were lawful at the time the exemption issued, remain lawful uses, and were not regulated  
21 until after enactment of the WDO.

22          27.     On August 15, 2017, HFWP purchased the Property with the understanding that it  
23 had the 1984 Small Winery Use Permit Exemption allowing wine production, onsite retail sales  
24 of wine and other products, onsite consumption of wine, and all winery “uses” and “accessory  
25 uses” as defined in NCC §§ 18.16.020 and 18.08.040.

26          28.     The Hoopes family has lived in Napa since 1983. The family has grown grapes  
27 (first for other wineries, then, for their own HV) in Napa County for nearly four decades. The  
28 Hoopes family is not engaged in any other industry; rather, the family’s primary economic lifeline

1 is Hoopes Vineyard, LLC and the winery. Multiple generations of Hoopes family members have  
2 devoted themselves to building HV. They live in Napa and send their children to school in Napa  
3 County. All generations call Napa County their primary home. Few stand to benefit more from  
4 preservation of the agricultural integrity of Napa than members of the Hoopes family.

5 29. The Hoopes family was the first family to finance a winery through the Small  
6 Business Administration in Napa. This came after nearly seven years of being outbid by various  
7 corporations and monied investors on dozens of properties. Hoopes owned vineyards in Napa but  
8 needed a way to make direct-to-consumer sales to make its business sustainable.

9 30. Hoopes searched for an entitled property so that it could lawfully make direct  
10 sales. Hoopes did not have endless years or budget to navigate a new use permit process with a  
11 largely undefined scope.

12 31. Hoopes would not have purchased the Property if it had not had a use permit or  
13 small winery use permit exemption allowing wine production, retail sales, and onsite  
14 consumption of wine.

15 32. In 2017, Hoopes obtained financing. In 2018 and 2019, Hoopes invested nearly  
16 \$1,000,000.00 in remodeling the winery, mainly to adopt current building codes and address  
17 deferred maintenance. Hoopes applied for and received permits from Napa County for the  
18 renovation. Among the upgrades, Hoopes submitted all required structural and civil engineering  
19 studies and tests to Napa County; provided septic system studies; engaged specialists for traffic  
20 studies; installed three bathrooms compliant with the Americans with Disabilities Act (“ADA”);  
21 paved the driveway; added handicapped parking; installed custom flood gates; upgraded the  
22 electrical system; replaced the roof; removed the nonconforming/unpermitted kitchen and  
23 residence in the office; built engineered stairs; re-applied for and installed solar panels; and made  
24 ADA improvements along the exterior.

25 33. On June 5, 2019, at 11:30 a.m., Ms. Hoopes met with David Morrison, the then  
26 Director of PBES, to discuss what the 1984 Small Winery Use Permit Exemption allows in terms  
27 of consumption on site. During the meeting, Mr. Morrison confirmed the “retail sales” approved  
28 on the 1984 Small Winery Use Permit Exemption encompassed consumption on site and

1 “tastings” if customers were not charged fees to taste “small amounts of wine.” Mr. Morrison  
2 clarified small amounts of wine could be poured for “tasting,” but not for a fee. He said the  
3 County’s primary enforcement concern relating to tours and tastings was that a winery with a  
4 retail sales permit, like Hoopes, could sell bottles of wine and provide samples to encourage  
5 purchase, but not charge for the tasting of the wine itself.

6 34. Hoopes relied on Mr. Morrison’s statements, complied with them, and continued  
7 to invest in the Hoopes Vineyard and winery. Hoopes complied with Mr. Morrison’s statements  
8 to avoid conflict and comport with Mr. Morrison’s definition, but not as an admission that  
9 Hoopes believed Mr. Morrison was correct in interpreting the entitled uses of the Property.

10 35. On October 30, 2019, Hoopes Vineyard, LLC obtained a Type 02 Winegrower  
11 license; a Type 17 Beer and Wine Wholesaler license; and a Type 20 Off Sale Beer and Wine  
12 license from the California Department of Alcoholic Beverage Control (“ABC”) for the  
13 Property.<sup>1</sup>

14 36. Hoopes and its contractors worked with Napa County officials to obtain a  
15 certificate of occupancy for the property at 6204 Washington Street. The County delayed issuance  
16 due to claimed challenges in the aftermath of the 2017 wildfires. Eventually, Napa County issued  
17 a certificate of occupancy in 2020 to Hoopes Vineyard. HV complied with every PBES request  
18 throughout the remodel-permit process.

19 37. Shortly thereafter, the Code Compliance Division of the Napa County Department  
20 of PBES sent a Notice of “Apparent Violation” for ambiguous accusations of, *inter alia*, “tours  
21 and tastings” without providing factual support. The Property had not been operational for even  
22 one month.

23 38. Although Napa County issued two notices of *apparent* violation to Hoopes, it  
24 never adjudicated the alleged violations. It never issued a citation or held an administrative  
25 hearing to hear testimony, consider evidence, or make findings. Hoopes requested compliance  
26 with the administrative procedure but was denied. As a result, Hoopes never had the opportunity

27 \_\_\_\_\_  
28 <sup>1</sup> Hoopes had previously operated in crush-facilities, under businesses licenses in the HV name, but associated with different properties.



1 to formally dispute discrete charges or challenge any findings by way of administrative appeal *or*  
2 court challenge (*i.e.*, administrative mandamus), nor was it able to defend its lawful use.

3 39. As a result, Hoopes is excused from complying with the Government Tort Claims  
4 Act (also known as the California Tort Claims Act): Napa County made compliance impossible  
5 by their affirmative acts, *inter alia*, 1) failing to establish a claims process and/or 2) making  
6 compliance with the administrative complaint process impracticable, 3) and/or by  
7 prohibiting/preventing access to the administrative process. (*Ard v. County of Contra Costa*  
8 (2001) 93 Cal.App.4th 339, 347.) Hoopes provided notice of the disputed facts, legal entitlements  
9 of the property, and requested the opportunity to be heard. Hoopes further requested an  
10 administrative ruling to enable mandamus. The County did not reply and failed to comply with  
11 the administrative process or make it available to Hoopes. The County, director of PBES, and  
12 County Counsel all received notice of the request, but declined to respond, answer, or advise why  
13 Hoopes' claims were legally inadequate, and instead pursued litigation.

14 40. Communications with the County also, in the alternative, substantially complied  
15 with government claims requirements: the various letters to County officials created "readily  
16 discernable" notice to the government entity, specific to the subject property entitlements, that  
17 asserted a compensable claim if the County did not recognize the entitlements. (*Green vs. State*  
18 *Center Community College Dist.* (1995) 34 Cal.App.4th 1348, 1358; *City of San Jose v. Superior*  
19 *Court* (1974) 12 Cal.3d 447, 456-57.) On its face, the County's failure to acknowledge existing  
20 entitlements of a property, and pursue claims absent a legal basis, would be actionable and  
21 compensable.

22 41. Further, futility exempts Hoopes from exhaustion of the administrative remedies  
23 doctrine. (*McKee v. Bell-Carter Olive Co.* (1986) 186 Cal.App.3d 1230, 1245.) Hoopes  
24 requested the opportunity to pursue an administrative remedy, and present evidence and a  
25 defense, but the County failed to reply and refused to pursue administrative procedures or make  
26 them available to Hoopes. (See, e.g., *Felkay v. City of Santa Barbara* (2021) 62 Cal.App.5th 30,  
27 40-41.) The County, director of PBES, and County Counsel all received notice of the request, but  
28 declined to answer.

1           42.     In addition, Hoopes prohibited from applying for any permit, including uses and  
2 accessory uses available to other wineries in the AP, if application were required, for  
3 unadjudicated “violations” carried out without a hearing, evidentiary determination, right to  
4 appeal, or a formal finding that Hoopes did not qualify to apply for those uses or accessory uses.

5           43.     Hoopes timely replied to all notices and communications.

6           44.     In the County’s declaration submitted in this matter, Kelli Cahill stated: “As of the  
7 date of this Declaration, Defendants have not taken any steps to correct any of the code violations  
8 or nuisances.” At the time of alleging this statement under oath, Ms. Cahill, and her supervisors,  
9 David Morrison and Akenya Robinson-Webb, as well as counsel for Napa County, knew that the  
10 statement was false, misleading, and inaccurate but did not correct it.

11          45.     The County regularly failed to reply to Hoopes’ emails, requests for clarification,  
12 and actions taken in good faith to avoid litigation with the County.

13          46.     The County induced good faith reliance that the County would provide a path to  
14 resolution but proceeded to a lawsuit without notice or changed circumstances.

15          47.     The County represented that it would provide an opportunity to be heard and  
16 provide evidence in defense to a neutral adjudicator pursuant to published administrative  
17 procedures. The County did not follow this procedure prior to initiating litigation against Hoopes.

18          48.     Hoopes relied on these statements in continuing to make adjustments, modify  
19 buildings, business practices, and abate lawful behavior to appease county officials, even absent  
20 legal authority requiring same, to find a resolution short of litigation.

21          49.     In fact, Hoopes met with County officials, corresponded with the County, and sent  
22 photographic evidence of compliance. Hoopes invited County Counsel to the winery to inspect  
23 the premises. County Counsel declined. To date, Hoopes has not been afforded an opportunity to  
24 request a hearing or present evidence in its defense.

25          50.     The County had multiple options to undertake less abusive procedures and courses  
26 of action to resolve this dispute but instead elected to pursue legal action not warranted under the  
27 circumstances, and in conflict with the interests of public interest or welfare.

28

1 51. The County was not motivated to “gain compliance,” and did not exhaust efforts to  
2 obtain voluntary compliance as ordered by published PBES department policies.

3 52. The policy undertaken at David Morrison’s request, and under his leadership and  
4 direction, was motivated by unique animus to Hoopes, and in conflict with written procedures.

5 53. The County filed a preliminary injunction in this matter and in so doing, offered  
6 evidence it knew to be false and misleading to gain judicial action, but has not corrected it.

7 54. The County filed causes of action and alleged facts that represent lawful conduct  
8 on its face; thus, the allegation were knowingly frivolous and without legal merit.

9 55. The County has not voluntarily corrected false or misleading statements offered in  
10 support of the lawsuit or requested judicial action.

11 56. The County has continued to prosecute their action despite the Court’s finding that  
12 the County lacks sufficient evidence to prevail on the merits and knowing they do not have  
13 probable cause for any violations of law on the part of Hoopes.

14 **FIRST CAUSE OF ACTION**

15 **(Due Process Violation of the Fourteenth Amendment of the U.S. Constitution and**  
16 **California Constitution – Against all Defendants – Cal. Const. Art. 1, § 7, Cal. Civ. Code**  
17 **§ 52.1, U.S. Const., I, XIV, 42 U.S.C. § 1983)**

18 57. Hoopes re-alleges and incorporates by reference all above paragraphs.

19 58. Section 1983 claims are not subject to claim procedures under the California  
20 Claims Act. “[T]he California remedy of recourse to the Tort Claims Act need not be first sought  
21 before a plaintiff is free to invoke the Civil Rights Act.” (*Williams v. Horvath* (1976) 16 Cal.3d  
22 834, 842.)

23 59. Local governmental entities can be sued directly under § 1983 for monetary,  
24 declaratory, or injunctive relief where the allegedly unconstitutional action implements or  
25 executes a policy statement, ordinance, regulation, or decision officially adopted; or was  
26 committed pursuant to a governmental custom. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th  
27 1112.)  
28

1           60.     “[A]n action for specific relief does not lose its exempt status solely because  
2 incidental money damages are sought.” (*Snipes v. City of Bakersfield* (1983) 145 Cal.App.3d  
3 861, 870.)

4           61.     A citizen may hold a municipality liable if the citizen’s constitutional rights were  
5 violated as a result of an official policy or custom. (*See, Monell v. Dep’t of Social Serv.*  
6 (1978) 436 U.S. 658, 694 [holding that a municipality or local government may be held liable for  
7 constitutional violations under 42 U.S.C. § 1983.] 42 U.S.C. § 1983 (“Section 1983”) further  
8 provides that “[e]very person who, under color of any **statute, ordinance, regulation**, custom, or  
9 usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to  
10 the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall  
11 be liable to the party injured in an action at law.” Enforcement of ordinances that are unlawful,  
12 void, or against the public welfare are just a few examples of official acts that satisfy the *Monell*  
13 requirement.

14           62.     An individual acting under color of state law, inclusive of Mr. Morrison and  
15 Ms. Robinson-Webb, are individually liable for federal and state due process violations. (*See,*  
16 *e.g., Hafer v. Melo* (1991) 502 U.S. 21.)

17           63.     The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution  
18 provides that no state may “deprive any person of life, liberty, or property without due process of  
19 law.” (U.S. Const. amend. XIV, § 1.) The Due Process Clause “provides heightened protection  
20 against government interference with certain fundamental rights and liberty interests.”  
21 *Washington v. Glucksberg* (1997) 521 U.S. 702, 720. The Fourteenth Amendment has been  
22 construed to provide rights to both substantive and procedural due process.

23           64.     “Procedural due process requires that before a person is deprived of his life, liberty  
24 or property he must be given notice of the proceeding against him, he must be given an  
25 opportunity to defend himself, and the propriety of the deprivation must be resolved in a manner  
26 consistent with essential fairness.” (*Gray v. Whitmore* (1971) 17 Cal.App.3d 1, 21, citations  
27 omitted.)

28

1           65.     Similarly, the California Constitution also provides that “[a] person may not be  
2 deprived of life, liberty, or property of due process of law.” (Cal. Const. Art. 1, § 7.) Violations  
3 of Constitutional rights can be enforced against state actors for damages under the Bane Act. (Cal.  
4 Civ. Code § 52.1.)

5           66.     Substantive due process prohibits the government from depriving an individual of  
6 life, liberty or property without a sufficient purpose. A law that is not sufficiently related to a  
7 legitimate government purpose is invalid because it is not law, but rather unlawful government  
8 coercion masquerading as law.

9           67.     Enactment and enforcement of a void ordinance is unlawful. A municipal  
10 government may not enforce a void ordinance. In enacting or attempting to enforce void laws,  
11 Cross-Defendants have violated Hoopes’ federal and state due process rights.

12           68.     There is no legitimate government purpose in prohibiting small wineries, vested  
13 pursuant to the small winery exemption, such as Hoopes, from engaging in “uses” and “accessory  
14 uses” permitted to other wineries established prior to, concurrent with, and subsequent to,  
15 Hoopes. An ordinance granting small winery exemptions, such as Hoopes, fewer uses within the  
16 same zone for the same class, “winery,” is legally arbitrary. It is also a violation of state law  
17 regarding zoning uniformity. Any similar law, custom, or policy is void.

18           69.     There is no legitimate purpose in allowing some pre-WDO wineries, but not  
19 others, within the same zoning district, to engage in tours and tastings or marketing of wine. Any  
20 similar law, custom, or policy is void.

21           70.     Enforcement and/or enactment of an unconstitutional ordinance is unlawful. A  
22 municipal government may not enforce an unconstitutional ordinance. Cross-Defendant the  
23 County, in enacting or attempting to enforce unconstitutional laws, has violated Hoopes’ due  
24 process rights. For example, the County’s enactment or continued application of vague laws  
25 relating to “onsite consumption” and “tours and tastings” violates due process. Unconstitutional  
26 vagueness implicates dual concerns of fair notice of the line between lawful and unlawful  
27 conduct, and sufficiently explicit statutory limitations on the discretion of officials to avoid  
28 arbitrary and discriminatory enforcement. (*In re Scarpetti* (1981) 124 Cal.App.3d 434, 441.) The

1 County’s attempt to prohibit conduct that the code does not properly define, or beyond statutory  
2 description, renders the ordinance unconstitutionally vague. For example, the County’s attempt to  
3 ostensibly prohibit “onsite consumption” as a “tasting” demonstrates a material notice issue or a  
4 policy to prohibit conduct not prohibited by the statute. Both are violations of due process.

5 71. No ordinance establishes that wineries may not charge fees to picnic on site or set  
6 minimum purchase quantities and/or minimums. An attempt to prohibit this conduct is ultra vires  
7 and void.

8 72. As set forth below, the County’s actions deliberately and intentionally targeted  
9 Hoopes to interfere with Hoopes’ business, contrary to Hoopes’ statutory exemptions, (*see*, Cal.  
10 Bus. & Prof. Code, § 23790; *see, also*, Napa County Code, §§ 18.32.010, 18.16.020, subd. H) and  
11 violate the procedural protections of the Due Process Clause.

12 73. The County’s actions deliberately and intentionally attempted to prohibit lawful  
13 conduct through unconstitutional and/or void laws, in violation of due process.

14 74. The County’s actions deliberately and intentionally attempted to prohibited lawful  
15 conduct that was not prohibited by any law, in violation of due process.

16 75. The County’s actions deliberately and intentionally attempted to prohibit conduct  
17 that the County had stated was lawful, in violation of due process.

18 76. The County’s actions deliberately and intentionally attempted to proscribe conduct  
19 permitted pursuant to vested property rights, in violation of due process.

20 77. For example, California Business and Professions Code, section 23790 allows  
21 licensed businesses in place prior to municipal zoning laws to continue exercising their vested  
22 rights. It states in relevant part:

23 No retail license shall be issued for any premises which are located  
24 in any territory where the exercise of the rights and privileges  
25 conferred by the license is contrary to a valid zoning ordinance of  
26 any county or city. **Premises which had been used in the exercise  
of those rights and privileges at a time prior to the effective date  
of the zoning ordinance may continue operation under the  
following conditions:**

27 (a) The *premises retain the same type of retail liquor license* within  
28 a license classification.

1 (b) The licensed *premises are operated continuously* without  
2 substantial CHANGE in mode or character of operation.

3 (*Ibid.*, emphasis added.) Hoopes maintains vested rights that the County attempts to unlawfully  
4 restrain or eliminate, including, *inter alia*, retail sales of wine and onsite consumption thereof.  
5 Unlawful elimination of vested property rights is a due process violation.

6 78. Similarly, Napa County Code, § 18.32.010 (“Section 18.32.010”), titled “Legal  
7 Nonconformities—Definition,” provides as follows:

8 Within the zoning districts established by this title, as it may be  
9 amended, there exist lots, structures and uses which were legal prior  
10 to the effective date of the provisions codified in this title or future  
11 amendments thereof, but which would be prohibited, regulated or  
12 restricted by the terms of such provisions on the effective date  
13 thereof. Such lots, structures and uses are herein called “legal  
14 nonconformities.” *Legal nonconformities may be continued  
15 notwithstanding the prohibition, regulation or restriction of those  
16 provisions subject to the provisions of this chapter or, in the case of  
17 signs, the provisions of Chapter 18.116.*

14 (*Ibid.*, emphasis added.) The Hoopes’ Property qualifies as a “legal nonconformity” under  
15 Section 18.32.010 entitled to all “uses” and “accessory uses” granted to existing wineries upon  
16 adoption of the WDO. Any attempt to abate those rights, as the County attempts here, is a violation  
17 of due process. Property entitlements are property interests.

18 79. Napa County enacted Code section 18.08.600, titled “Small Winery,” after  
19 Hoopes’ predecessor-in-interest acquired the 1984 Small Winery Use Permit Exemption. It states  
20 the following:

21 “Small winery” means an existing winery with a maximum annual  
22 production capacity of twenty thousand gallons of wine that meets  
23 the following conditions:

- 23 A. A small winery shall be located on a parcel of land four acres  
24 or larger in size.  
25 B. Small winery buildings and related facilities shall not be  
26 located in any county-designated environmentally-sensitive  
27 area.  
28 C. *A small winery does not conduct public tours, provide wine  
29 tastings,<sup>2</sup> sell wine-related items or hold social events of a*

27 <sup>2</sup> As discussed below, California law defines a “wine tasting” as a “presentation of samples of one  
28 or more wines, representing one or more wineries or industry labels, to a group of consumers *for  
the purpose of acquainting the tasters with the characteristics of the wine or wines tasted.*”

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*public nature.*  
D. A small winery shall meet all requirements of the county’s  
Design Criteria for Small Winery.

(*Ibid.*, emphasis added.) The definition of “small winery” does not state that “small wineries” are prohibited from the “use” and “accessory uses” that are granted to other “wineries.” The definition of “small winery” also cannot be the complete definition of all small winery uses and accessory uses. For example, the definition says nothing about winery *operations*, such as fermenting, bottling, or crushing. There is no veritable dispute that small wineries can conduct these “uses.” The small winery exemption issued to the property in 1984 clearly, on its face, and by necessary legal operation, has more “uses” than those enumerated under the definition of “small winery.” Small wineries are “wineries” by NCC definition. Not all “small wineries” are exemptions per the above definition. Exemptions are not the only “small wineries.” The operation and force of law of the above ordinance is vague. It cannot be legally read to articulate the full scope of small winery exemption uses or uses authorized at Hoopes. Because it is unintelligible, it is void. It is also being used to prohibit lawful conduct. (See, e.g., NCC § 18.08.040 [definition of agriculture includes sales and marketing at small winery exemptions].)

80. Where the definition of “small winery” is interpreted to restrict uses to Hoopes inconsistent with other wineries in the same zone and also established prior to 1990, the interpretation is legally void as inconsistent with due process, equal protection, and state law requiring zoning uniformity. Enforcement of void laws violates due process.

81. Small winery exemptions, including Hoopes’ predecessors in interest, engaged in uses *not* prohibited prior to 1990. These uses, zoned as permissible uses and accessory uses for wineries, became vested rights for pre-WDO wineries; they were not defined, prohibited and/or regulated prior to enactment of the WDO, and only regulated *new* winery-developments without vested entitlements. Any attempt to now revoke or diminish these vested rights without compensation or notice is a violation of due process.

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(Cal. Code Regs., tit. 4, § 53, emphasis added.) NCC does not define the conduct of “tasting” beyond relation to “with” or “without” prior appointment.



1           82.     Mr. Morrison also advised that Hoopes, specifically, could sell bottles of wine and  
2 provide samples to encourage purchase, but not charge for the tasting of the wine itself. This  
3 conduct did not constitute a “tasting.” David Morrison admitted this conduct was lawful or  
4 created reliance that it was. Mr. Morrison now attempts to prohibit this conduct through his own  
5 actions and code enforcement staff. Enforcement inconsistent with reliance on government  
6 declaration of legal conduct is a violation of due process.

7           83.     Section 18.16.020, titled “Uses Allowed Without A Use Permit,” which was  
8 enacted after Hoopes’ predecessor-in-interest acquired the 1984 Small Winery Use Permit  
9 Exemption, provides in relevant part:

10                   The following uses shall be allowed in all AP districts without use  
11                   permits:

12                   A. Agriculture; . . .

13                   H. Small wineries which were issued a certificate of exemption  
14                   prior to the date of adoption of the ordinance codified in this  
15                   section, and used the certificate in the manner set forth in Section  
16                   18.124.080<sup>3</sup> before the effective date of the ordinance codified in  
17                   this section in conformance with the applicable certificate of  
18                   exemption. Section 18.08.600 of this code, and any resolution  
19                   adopted pursuant thereto . . .

20           Because Hoopes’s Property is a small winery, which was issued a certificate of exemption  
21 prior to the date Section 18.16.020(H) was adopted, Hoopes could continue its use on the Property  
22 without securing additional use permits.

23           84.     Section 18.16.020(H) does not specify what uses small wineries may make of their  
24 exemptions, nor does it exempt small winery exemptions from the general class of “winery”  
25 applicable to all other pre-WDO and post-WDO wineries in the AP zoning district.

26           85.     The “uses” and “accessory uses” permitted to *all* “wineries” pursuant to NCC  
27 § 18.16.030(g), (h) include uses that the County attempts to prohibit as to Hoopes. Per NCC  
28 § 18.104.040, accessory uses derive from primary uses, **without need for further application**,  
and all wineries are granted the uses enumerated in 18.16.030(g), (h) without any express

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<sup>3</sup> Section 18.124.080 addresses the automatic expiration of use permits.

1 exception or exemption. These uses and accessory uses apply to Hoopes' winery, as they must to  
2 all existing wineries.

3 86. Section 18.16.020(H) references a requirement for compliance with  
4 section 18.08.600; yet, many exemptions referred to in Section 18.16.020(H) granted property  
5 owners rights to conduct public tours, provide wine tastings, sell wine-related items, and hold  
6 social events of a public nature—uses which the county states Section 18.08.600 does not allow.  
7 There are material inconsistencies between the exemptions, Section 18.08.600 and  
8 Section 18.32.010.

9 87. Napa County Code, section 18.104.255 attempts to reconcile some material  
10 inconsistencies between Napa County Code, section 18.08.620 (Tours and Tastings) and the  
11 exemptions. It permits wineries with exemptions to continue tours and tastings so long as they  
12 have (1) continuously offered tours and tastings since at least December 31, 2000, and (2) made  
13 at least 10% of their facility's annual approved production capacity in at least one year before  
14 December 31, 2001.

15 88. The County's actions deliberately and intentionally attempted to proscribe lawful  
16 conduct through use of false evidence, manifesting in judicial deception, in violation of due  
17 process.

18 89. The County's use of unjustified enforcement procedures was an abuse of  
19 discretion, in violation of due process.

20 90. The County's continued prosecution without sufficient evidence, probable cause,  
21 and/or a good faith belief that the County can prevail on a trial on the merits violates due process.

22 91. "An 'as applied' challenge is a claim that the operation of a statute is  
23 unconstitutional in a particular case, while a 'facial' challenge alleges the statute may rarely or  
24 never be constitutionally applied." (*Wal-Mart Stores, Inc. v. City of Turlock* (E.D. Cal. 2006) 483  
25 F. Supp. 2d 987, 996.) "When faced with a claim that application of a statute renders it  
26 unconstitutional, a court must analyze the statute as applied to the particular case, *i.e.*, how it  
27 operates in practice against the particular litigant and under the facts of the instant case, not  
28 hypothetical facts in other situations." (*Wal-Mart*, 483 F.Supp.3d at 996-97, *citing* 16

1 C.J.S. *Constitutional Law* § 187.) “An as-applied challenge claims the government’s conduct as  
2 permitted by a statute violated the defendant’s rights, but [t]he violation is specific to the facts of  
3 the defendant’s case, and the statute is flawed only to the extent it permitted the government to act  
4 in that case.” (*Ibid.*, citing Orrin S. Kerr, *Congress, the Courts, and New Technologies: A*  
5 *Response to Professor Solove*, 74 *Fordham L. Rev.* 779, 787 n.50 (2005).)

6 92. In the present case, the Napa County ordinances and county code sections, as  
7 applied by the County, deprive Hoopes of Hoopes’ constitutional rights under the First and  
8 Fourteenth Amendments of the U.S. Constitution as well as Hoopes’ rights under the California  
9 Constitution. These rights include the right to vested property entitlements, and the right to  
10 operate a lawful business.

11 93. All of these rights, and more, are implicated by Napa County’s enforcement of the  
12 void and/or unconstitutional ordinances involved in this action, as well as by the County’s attempt  
13 to abate conduct not prohibited by any ordinance.

14 94. No Napa County Code addresses the material inconsistencies between  
15 Section 18.16.020(H) and the exemptions as to sales of wine-related items and social events of a  
16 public nature.

17 95. The portion of Section 18.16.020(H) that states “and used the certificate in the  
18 manner set forth in Section 18.124.080 before the effective date of the ordinance codified in this  
19 section in conformance with the applicable certificate of exemption, section 18.08.600(C) of this  
20 code, and any resolution adopted pursuant thereto” is unconstitutionally vague. Hoopes does not  
21 understand this rule, which is objectively unintelligible.

22 96. On its face and as applied, Section 18.16.020(H) violates the Due Process Clause  
23 of the California and U.S. Constitutions. (Cal. Const. Art. 1, § 7 and Art. IV, § 16; U.S. Const.  
24 Amend. XIV.)

25 97. In addition, Napa County Code section 18.08.600(C) is unconstitutionally vague  
26 because it does not explain what converts lawful consumption of wine into an unlawful “tasting.”  
27 Napa County Code section 18.08.620 defines “Tours and Tastings” as “tours of the winery and/or  
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1 tastings of wine, where such tours and tastings are limited to persons who have made unsolicited  
2 prior appointments for tours or tastings . . .”

3 98. The County has stated that “tastings” of wine, in terms of samples, are lawful.

4 99. The County has also conceded that Hoopes has lawful onsite “retail” permission.

5 100. California Business and Professions Code, section 23358, subdivision (a),  
6 commonly called the “Picnic Bill,” allows wineries with a Type 02 Winegrower’s license, like  
7 Hoopes, to sell bottles of wine to consumers for consumption on the winegrowers’ premises.  
8 Section 23358, subdivision (e) further provides that counties exercising land use regulatory  
9 authority can restrict, but not eliminate, the onsite retail sale and consumption privileges. Insofar  
10 as Napa states that 18.08.620 conflicts with this law, and prohibits onsite consumption as a  
11 “tasting,” it is void as preempted.

12 101. Further, the County’s attempted prohibition of onsite consumption of retail  
13 purchases of wine at small winery exemptions, including Hoopes, under the pretext that this  
14 consumption is a “tasting,” or an otherwise prohibited commercial use, is void and unenforceable.  
15 It is a lawful use, generally, but also acknowledged as lawful specific to Hoopes’ exemption.

16 102. California Business and Professions Code, section 23356.1 further authorizes  
17 licensed winegrowers to conduct wine tastings of wine produced for, or bottled by, or produced  
18 and packaged for, the winegrower. The wine tastings can be on or off the winegrower’s licensed  
19 premises. California law defines a “wine tasting” as a “presentation of samples of one or more  
20 wines, representing one or more wineries or industry labels, to a group of consumers *for the*  
21 *purpose of acquainting the tasters with the characteristics of the wine or wines tasted.*” (Cal.  
22 Code Regs., tit. 4, § 53, emphasis added.)

23 103. Onsite consumption and tasting cannot be clearly or meaningfully distinguished by  
24 winery operators to provide sufficient notice of what conduct violates the ordinance, if anything.

25 104. On its face and as applied, Napa County Code, section 18.08.600(C) violates the  
26 Due Process Clause of the California and U.S. Constitutions because it attempts to prohibit lawful  
27 conduct expressly authorized by state law. (Cal. Const. Art. 1, § 7 and Art. IV, § 16; U.S. Const.  
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1 Amend. XIV.) It also violates uniformity in zoning, equal protection, and is unconstitutionally  
2 vague. As an invalid law, enforcement is a violation of due process.

3 105. “Although zoning officials have broad discretion, they may not act unreasonably  
4 or arbitrarily.” (*Scarpetti, supra*, 124 Cal.App.3d at 441; see also *Carlin v. City of Palm Springs*  
5 (1971) 14 Cal.App.3d 706, 715.) Prohibiting uses and accessory uses that are lawful, deemed  
6 economically critical, and granted to all other wineries without statutory limitation, is arbitrary.

7 106. Government Code section 65852, states that all zoning regulations “shall be  
8 uniform for each class or kind of... use of land throughout each zone...” The County’s  
9 ordinances, regulations and/or policies declaring or attempting to establish distinct “uses” and  
10 “accessory uses” between existing wineries are void under state law.

11 107. NCC section 18.08.620, if read and enforced as prohibiting “tours and tastings” is  
12 void as to small winery exemptions, including Hoopes, because it would prohibit conduct made  
13 lawful pursuant to vested property rights granted upon enactment of the WDO.

14 108. NCC section 18.08.370, if used to prohibit “marketing of wine” at Hoopes violates  
15 the First Amendment, equal protection, and is thus unconstitutional and void.

16 109. In failing to respond to inquiries about what, if anything, remained outstanding  
17 with permits – for example, a flood permit that only the PBES can issue -- the County and PBES  
18 created an inability to comply with the law, in violation of due process.

19 110. Prohibiting Hoopes from seeking “compliance” or applying for any use permits or  
20 modifications of permits without a hearing or finding that any violation occurred, is a violation of  
21 procedural due process.

22 111. In refusing to acknowledge lawful compliance as to issues raised in the Complaint,  
23 the County has misled the Court, in violation of due process.

24 112. The County created an expectation that good faith efforts by Hoopes would result  
25 in the County’s resolution by way of the administrative process, including an opportunity to be  
26 heard, submit evidence in defense, present to a neutral arbiter, or appeal any unfavorable  
27 determinations. Despite County assurances that they would follow a specific procedure, they did  
28 not do so. In so doing, the County violated procedural due process.

1           113. The County did not make a good faith effort to “gain compliance” or find a  
2 resolution short of litigation. In failing to exhaust the County policy to operate in good faith, and  
3 seek voluntary compliance, the County violated their procedures and created reliance on a  
4 procedure they did not follow, in violation of procedural due process.

5           114. To date, the County has not corrected the record or withdrawn the false evidence.

6           115. Continued prosecution absent probable cause is a violation of due process.

7           116. As to David Morrison and Ms. Robinson-Webb, as individuals:

8           a. Abused their enforcement discretion in pursuing the actions in this case  
9 through active or indifferent oversight of the code enforcement actions undertaken in this case.

10 (*See, e.g., Beames v. City of Visalia* (2019) 43 Cal.App.5th 741.)

11           b. Violated Hoopes’ due process by endorsing, permitting, being indifferent  
12 to, or requiring use of unconstitutional or void ordinances to lawful conduct.

13           c. Acted, or failed to act, in a manner that was deliberately indifferent to  
14 Hoopes’ due process and equal protection rights relating to their lawful business operation and  
15 vested property rights.

16           d. Did not have a rational basis for the difference in treatment.

17           e. Were motivated by malicious and bad faith intent.

18           f. Abused their enforcement discretion by deviating from procedures Hoopes  
19 was advised would occur. Code enforcement officers, with Mr. Morrison in copy, made  
20 assurances that Napa County would proceed by way of their published procedure and/or provide  
21 an opportunity to be heard, contest and provide evidence, and appeal adverse finding. These  
22 procedures were never complied with or provided for.

23           g. Mr. Morrison individually created reasonable reliance on interpretation of  
24 local ordinances that authorized conduct he later encouraged, endorsed, or permitted enforcement  
25 against.

26           h. Violated Hoopes’ due process by failing to train code enforcement staff relating,  
27 inter alia, lawful interpretation of local ordinances, property entitlements of small winery  
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1 exemptions, and/or code enforcement policies and procedures communicated, and thus binding,  
2 on code enforcement staff.

3 i. Violated Hoopes’ due process rights by supplying false evidence that Mr.  
4 David Morrison and Ms. Akenya Robinson-Webb knew, or should have known, was misleading  
5 to the Board of Supervisors to encourage enforcement actions against the interest of the public  
6 welfare.

7 j. Violated Hoopes’ due process by knowingly allowing subordinates to  
8 submit false evidence to the prosecution to create judicial deception and never correcting the  
9 record.

10 k. Violated Hoopes’ due process rights by prohibiting compliance, if it were  
11 required, without a hearing, neutral arbitrator, or opportunity to appeal.

12 **SECOND CAUSE OF ACTION**  
13 **(Declaratory Relief—Against All Defendants)**

14 117. Hoopes re-alleges and incorporates by reference all above paragraphs.

15 118. This Court has jurisdiction to hear a case seeking declaratory or injunctive relief  
16 against a governmental entity. (*See, e.g., Ex parte Young* (1908) 209 U.S. 123, 148 [holding that  
17 the lower court had jurisdiction to issue declaratory relief and “enjoin the railroad company from  
18 putting them in force, and that it also had power, while the inquiry was pending, to grant a  
19 temporary injunction to the same effect”]; *see, also, Moore v. Urquhart* (9th Cir. 2018) 899 F.3d  
20 1094, 1103 [noting that “Plaintiffs would be required to proceed under 42 U.S.C. § 1983 if they  
21 sought to recover money damages[, b]ut they are seeking only declaratory and injunctive relief  
22 against the Sheriff in his official capacity—a declaration that § 375 is facially unconstitutional,”  
23 so “[t]o obtain that relief, plaintiffs do not need a statutory cause of action” but rather “can rely on  
24 the judge-made cause of action recognized in *Ex parte Young* (1908)209 U.S. 123 , which permits  
25 courts of equity to enjoin enforcement of state statutes that violate the Constitution”]; *Koala v.*  
26 *Khosla* (9th Cir. 2019) 931 F.3d 887, 895 [“In determining whether the doctrine of *Ex parte*  
27 *Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward  
28 inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief

1 properly characterized as prospective.”], internal quotations omitted; *Jamul Action Comm. v.*  
2 *Simermeyer* (9th Cir. 2020) 974 F.3d 984, 994, *cert. denied sub nom. Comm. v. Simermeyer*  
3 (Oct. 4, 2021) 211 L. Ed. 2d 17, *reh'g denied sub nom. Jamul Action Comm. v. Simermeyer*  
4 (Dec. 6, 2021) 211 L. Ed. 2d 391 [“For *Ex parte Young* to apply, a plaintiff must point to  
5 threatened or ongoing unlawful conduct by a particular governmental officer. The doctrine does  
6 not allow a plaintiff to circumvent sovereign immunity by naming some arbitrarily chosen  
7 governmental officer or an officer with only general responsibility for governmental policy.”].)

8 119. The 1984 Small Winery Use Permit Exemption entitles Hoopes to produce up to  
9 20,000 gallons of wine, operate a winery business, make onsite retail sales without limitation, and  
10 engage in primary and accessory uses of the vineyard and winery consistent with all wineries in  
11 the AP.

12 120. All licensed wineries, including Hoopes, can engage in accessory uses of their  
13 properties. Napa County Code § 18.104.040 states that “[u]ses allowed without a use permit or  
14 uses permitted upon grant of a use permit shall include any accessory use.”

15 121. Napa County Code § 18.08.020 defines “Accessory Use” as follows:

16 *[A]ny use subordinate to the main use and customarily a part*  
17 *thereof.* An accessory use must be clearly incidental, related and  
18 subordinate to the main use, reasonably compatible with the other  
19 principal uses in the zoning district and with the intent of the  
20 zoning district, and cannot change the character of the main use.  
21 Unless provided otherwise in this title, accessory uses may be  
22 conducted in the primary structure or in structures other than the  
23 primary structure. Where the zoning regulations applicable to a  
zoning district specifically identify the accessory uses which are  
permitted in conjunction with a primary use in that zoning district,  
no other accessory uses in conjunction with the primary use will be  
permitted in that zoning district. Structures constituting an  
accessory use that are related to a winery are further limited to the  
extent provided by Section 18.104.200.

24 (*Ibid*, emphasis added.)

25 122. Hoopes is informed and believes that Napa County considered tours and tastings  
26 and marketing of wine lawful uses not prohibited or regulated through use permits when it issued  
27 the 1984 Small Winery Use Exemption Permit.

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1           123. Hoopes is informed and believes that uses and accessory uses regulated for the  
2 first time upon adoption of the WDO were grandfathered/vested to small winery permit  
3 exemptions.

4           124. Actual controversies now exist, as described below. Hoopes respectfully requests  
5 that the Court issue these declaratory judgments.

6           a. An actual controversy exists as to the scope of Hoopes' rights under the  
7 1984 Small Winery Use Permit Exemption, including whether customers can consume wine on  
8 the property. Hoopes respectfully requests that the Court issue a declaratory judgment about the  
9 scope of its rights under the 1984 Small Winery Use Permit Exemption.

10           b. If the Court determines Napa County Code § 18.16.020(H) does apply to  
11 Hoopes, then an actual controversy now exists as to whether Napa County Code § 18.16.020(H)  
12 is unconstitutionally vague and ambiguous. Hoopes respectfully requests that the Court issue a  
13 declaratory judgment finding Napa County Code § 18.16.020(H) violates the substantive Due  
14 Process guarantees of the California and US Constitutions.

15           c. An actual controversy exists as to whether Napa County Code  
16 § 18.08.600(C) is valid, or how it operates at law, post enactment of the WDO. Hoopes  
17 respectfully requests that the Court issue a declaratory judgment finding Napa County Code  
18 § 18.08.600(C) does not apply to Hoopes or, in the alternative, that it violates state law requiring  
19 uniformity of zoning, is inconsistent with the provision permitting tours and tastings, and does not  
20 lawfully prohibit statutory uses and accessory uses of other wineries, in the same zone, as to  
21 Hoopes.

22           d. If the Court determines Napa County Code § 18.08.600(C) does apply to  
23 Hoopes, then an actual controversy as to whether it is unconstitutionally vague and ambiguous as  
24 to "wine tasting" and "events of a public nature." Hoopes respectfully requests that the Court  
25 issue a declaratory judgment finding Napa County Code § 18.08.600(C) violates the substantive  
26 Due Process guarantees of the California and US Constitutions.

27           e. If the Court determines Napa County Code § 18.08.600(C) does apply to  
28 Hoopes, then an actual controversy as to whether it is preempted by California Business and

1 Professions Code sections 23356.1, 23358 and 23790. Hoopes respectfully requests that the Court  
2 issue a declaratory judgment finding Napa County Code § 18.08.600(C) is preempted by State  
3 law.

4 f. An actual controversy exists as to the scope of Hoopes' constitutional  
5 rights to speak about, advertise and market its business. Hoopes respectfully requests that the  
6 Court issue a declaratory judgment finding the County violated its constitutional rights to  
7 Freedom of Speech.

8 g. An actual controversy exists as to whether various ordinances used by the  
9 County to prohibit conduct are constitutional, preempted, or void as vague. Hoopes respectfully  
10 requests this Court to determine the legality of all ordinances underlying the notices of apparent  
11 violation in this matter, and advise how they govern winery operations of wineries predating  
12 enactment thereof.

13 h. An actual controversy exists as to whether the actions by Napa County  
14 described herein amount to ultra vires acts, including Napa County's demands that Hoopes cease  
15 allowing retail customers to consume wine on the premises. Hoopes respectfully requests that the  
16 Court issue a declaratory judgment finding these acts to be ultra vires, and thus void and  
17 unenforceable.

18 **THIRD CAUSE OF ACTION**  
19 **(Violation of Equal Protection Clauses of California and US Constitution – Against All**  
20 **Defendants – Cal. Civ. Code § 52.1, Cal. Const. art 1, § 7, 42 U.S.C. § 1983)**

21 125. Hoopes re-alleges and incorporates by reference all above paragraphs.

22 126. The U.S. Constitution, Article XIV, clause 2, states that no “state shall ... deny  
23 any person within its jurisdiction the equal protection of the laws.” Due to the Supremacy  
24 Clause, noncompliance with the Government Tort Claims Act is not a procedural bar. *See,*  
25 *Williams v. Horvath* (1976) 16 Cal.3d 834, 842.

26 127. The California Constitution, Article 1, § 7(a) states “a person may not be ...  
27 denied equal protection of the laws.”

28 128. The California Constitution, Article 1, § 7(b) states that a citizen or class of  
citizens may not be granted privileges or immunities not granted on the same terms to all citizens.”

1           129. The Bane Act prohibits individuals operating under color of state law from  
2 threatening, intimidating, or coercing interference with the exercise or enjoyment by any  
3 individual rights secured by the California Constitution or laws of the United States. Cal. Civ.  
4 Code § 52.1, 52.)

5           130. Government Code section 65852, states that all zoning regulations “shall be  
6 uniform for each class or kind of... use of land throughout each zone...”

7           131. Rezoning, as occurred upon enactment of the WDO, placed all existing winery  
8 parcels within a category of uses, wineries, and within the same zone, the agricultural preserve,  
9 subject to the same zoning regulations. (*See, e.g., Neighbors in Support of Appropriate Land Use*  
10 *v. County of Tuolumne* (2007) 157 Cal. App. 4th 997, 1009-1010.)

11           132. NCC § 18.104.040 states that uses allowed without a use permit or use permitted  
12 upon grant of a use permit “shall include any accessory use.”

13           133. NCC § 18.16.020 states that wineries established without a use permit prior to  
14 July 31, 1974 (subd. (g)), small wineries issued a certificate of exemption prior to 1990  
15 (subd. (h)), and wineries and related accessory uses that have been authorized by a use permit  
16 (subd. (i)) are permitted to operate in the agricultural preserve without a use permit.

17           134. NCC § 18.08.640 defines “winery” as an agricultural processing facility used for  
18 the fermenting of grape juice into wine. This definition was adopted pursuant to the WDO in  
19 1990. Small winery exemptions, pre-1974 wineries established without a use permit, and wineries  
20 adopted before and after 1990 with a use permit, are all classified as “wineries” under NCC  
21 § 18.08.640.<sup>4</sup>

22           135. NCC § 18.16.030(g) states that the following uses are permitted in connection with  
23 a “winery” as defined in section 18.08.640: (1) crushing of grapes, (2) on-site aboveground  
24 disposal of wastewater, (3) aging, processing, and storage of wine, (4) bottling and storage of  
25 bulk wine and shipping and receiving of bulk and bottled wine, provided the wine bottled or  
26 received does not exceed the permitted production capacity, (5) **any or all of the following uses:**  
27 (a) office and laboratory uses, (b) marketing of wine, (c) retail sale of wine.

28 <sup>4</sup> Prior to 1990, and enactment of the WDO, winery was defined pursuant to Napa Ord. 629, enacted 3-11-1980.

1           136. NCC § 18.16.030(h) states that all accessory uses are “included” through primary  
2 “use” designation. There is no legislative authority to require a separate application to “add”  
3 accessory uses that are included in the primary “use” of a particular public use within a zoning  
4 district. Accessory uses “shall” be included with the primary use under NCC § 18.104.040.

5           137. The following “accessory uses” are allowed at a winery: (1) tours and tastings and  
6 (2) sale of wine related products.

7           138. Defendant the County violates the Equal Protection provisions of the state and  
8 federal constitutions when it proscribes different “uses” and “accessory uses” to land zoned as a  
9 “winery,” in the same zone, and operating as a winery before the definition of “winery” was  
10 adopted in 1990.

11           139. Defendant the County was informed upon adoption of the WDO by then-County  
12 Counsel that tours and tastings, picnicking, marketing of wine, and any other use or accessory use  
13 *not prohibited* prior to adoption of the WDO, but *allowed* as a public “use” and “accessory uses”  
14 of a “winery” under the new WDO definition of “winery,” would be “grandfathered in” to all  
15 existing wineries, including small winery exemptions, whether or not they were obtained by use  
16 permit or simply through establish use prior to regulation.

17           140. Hoopes is informed and believes that the “uses” of “tours and tastings” and  
18 “marketing of wine,” *inter alia*, were not defined “uses” prior to adoption of the WDO and  
19 existed in practice at all or nearly all wineries prior to regulation.

20           141. Prior to adopting the WDO, Cross-Defendant the County knew that it could not  
21 prohibit any existing winery, including small winery exemptions, to apply for “uses” that would  
22 be lawful winery “uses” or “accessory” for all “wineries” upon adoption of the WDO. This lawful  
23 conduct could only be regulated as to *new* conditional winery use permits post-dating the WDO.

24           142. Cross-Defendant the County’s official policy that small winery exemptions,  
25 including Hoopes, must apply for a “new” permit to avail of “uses” and “accessory uses” that  
26 were granted to all pre-WDO wineries upon adoption of the WDO, violates Napa County’s  
27 Ordinance 18.104.040, state zoning laws, and provides some pre-WDO wineries with privileges  
28

1 denied to Hoopes, in violation of the Equal Protection provisions of the state and federal  
2 constitutions.

3 143. Napa County Ordinance 18.08.600(C), on its face and as applied, violates the  
4 Equal Protection clause of the California and US Constitutions. (Cal. Const. Art. 1, §7 and  
5 Art. IV, § 16; US Const. Amend. XIV.)

6 a. Napa County Ordinance 18.08.600(C), on its face and as applied, creates at  
7 least two classes of licensed wineries: small wineries and other wineries.

8 b. Napa County Ordinance 18.08.600(C), on its face and as applied,  
9 disadvantages small wineries by prohibiting them from engaging in tours, wine tastings, sales of  
10 wine-related items and hosting of public events.

11 c. Napa County Ordinance 18.16.020(H), on its face and as applied, violates  
12 the Equal Protection clause of the California and US Constitutions. (Cal. Const. Art. 1, § 7 and  
13 Art. IV, § 16; US Const. Amend. XIV.)

14 d. Napa County Ordinance 18.16.020(H), on its face and as applied, creates at  
15 least two classes of licensed small wineries: small wineries with use permits and wineries with  
16 small winery use permit exemptions.

17 e. Napa County Ordinance 18.16.020(H), on its face and as applied,  
18 disadvantages wineries with small winery use permit exemptions.

19 144. Napa County Ordinance 18.16.030(G), on its face and as applied, violates the  
20 Equal Protection clause of the California and US Constitutions. (Cal. Const. Art. 1, § 7 and  
21 Art. IV, § 16; US Const. Amend. XIV.)

22 a. Napa County Ordinance 18.16.030(G) allows wineries with a use permit to  
23 engage in “marketing of wine” as the term is defined in Napa County Ordinance 18.08.620<sup>5</sup>, but

24 <sup>5</sup> Napa County Ordinance 18.08.620 provides: “Marketing of wine” means “any activity of a  
25 winery which is conducted at the winery on a prearranged basis for the education and  
26 development of customers and potential customers with respect to wine which can be sold at the  
27 winery on a retail basis pursuant to Chapters 18.16 and 18.20. Marketing of wine may include  
28 cultural and social events directly related to the education and development of customers and  
potential customers provided such events are clearly incidental, related and subordinate to the  
primary use of the winery. Marketing of wine may include food service, including food and wine  
pairings, where all such food service is provided without charge except to the extent of cost  
recovery. Business events are similar to cultural and social events, in that they will only be

1 does not state whether wineries with exemptions may market wine.

2           b.       Napa County Ordinance 18.16.030(G), on its face and as applied, creates at  
3 least two classes of licensed small wineries: wineries with use permits and wineries with small  
4 winery use permit exemptions.

5           145.    Napa County Ordinance 18.16.030(G), on its face and as applied, disadvantages  
6 wineries with small winery use permit exemptions.

7           146.    By ordering Hoopes not to “market” its licensed wine business, Napa County  
8 singled out Hoopes, penalized it and treated it differently from other similarly situated wineries.  
9 Hoopes has a fundamental, vested right to speak and publish statements about its wine and  
10 winery.

11          147.    By ordering Hoopes not to make retail sales, Napa County singled out Hoopes,  
12 penalized it and treated it differently from other similarly situated wineries. Hoopes has a  
13 fundamental, vested right to make retail sales. The owners of the property at 6204 Washington  
14 Street in Napa, California have operated a winery with a retail store since at least March 6, 1984.

15          148.    By stating repeatedly in the Notices of Apparent Violation that Hoopes could not  
16 apply for an additional use permit or modification for one year, the County singled out Hoopes,  
17 penalized it and treated it differently than other similarly situated wineries, even though Napa  
18 County never actually issued any citations to Hoopes or found it in violation of any statute. Napa  
19 County only issued notices of *apparent* violation; it never held an evidentiary hearing.

20          149.    The County has singled out Hoopes to be specifically isolated from its speech, due  
21 process and equal protection rights.

22  
23 \_\_\_\_\_  
24 considered as ‘marketing of wine’ if they are directly related to the education and development of  
25 customers and potential customers of the winery and are part of a marketing plan approved as part  
26 of the winery's use permit. Marketing plans in their totality must remain ‘clearly incidental,  
27 related and subordinate to the primary operation of the winery as a production facility’  
28 (subsection (G)(5) of Sections 18.16.030 and subsection (I)(5) of 18.20.030). To be considered  
directly related to the education and development of customers or potential customers of the  
winery, business events must be conducted at no charge except to the extent of recovery of  
variable costs, and any business content unrelated to wine must be limited. Careful consideration  
shall be given to the intent of the event, the proportion of the business event's non-wine-related  
content, and the intensity of the overall marketing plan.”

1 150. The County has no rational basis for singling Hoopes out for lawful uses of its  
2 properly licensed winery commonly enjoyed by similarly situated wineries; or for denying it  
3 access to application procedures generally available others.

4 151. Requiring application by some wineries, including Hoopes, for a “new” winery  
5 permit, despite vested rights to operate as a “winery,” in order to gain equal or equivalent “uses”  
6 and “accessory uses” entitled to other existing wineries established at the same time or  
7 subsequent to would constitute unjustifiable discrimination as to Hoopes and other small winery  
8 exemptions.

9 152. As described herein, the County’s actions were not reasonably necessary to  
10 achieve a legitimate government purpose.

11 153. Cross-Defendants David Morrison and Ms. Akenya Robinson-Webb, as director  
12 and code enforcement supervisor, knew, or should have known, that their conduct, and that of  
13 their supervisees, was unconstitutional, void, and otherwise violated due process and equal  
14 protection.

15 154. Cross-Defendants David Morrison and Ms. Akenya Robinson-Webb acted in bad  
16 faith and with unique animus to Hoopes and to injure Hoopes.

17 155. Cross-Defendants violated and continue to violate the Equal Protection Clauses of  
18 the California and U.S. Constitutions. (Cal. Const. Art. 1, § 7 and Art. IV, § 16; U.S. Const.  
19 Amend. XIV.)

20 **PRAYER FOR RELIEF**

21 Wherefore, Hoopes prays for judgment as follows:

22 1. That Plaintiffs take nothing by way of their Complaint; the Complaint be  
23 dismissed with prejudice; and judgment be entered in Hoopes’ favor on all claims.

24 2. That judgment on this Cross-Complaint be entered in Hoopes’ favor on all claims.

25 3. That Hoopes be awarded compensatory damages on the Cross-Complaint in  
26 accordance with proof at the time of trial.

27 4. That the Court issue a temporary restraining order and a preliminary and  
28 permanent injunction enjoining Plaintiffs and Cross-Defendants from taking further action to

1 interfere with Hoopes' rights under the 1984 Small Winery Use Permit Exemption to sell wine  
2 and allow guests to consume wine.

3 5. That Hoopes be awarded its attorneys' fees, costs, and interest pursuant to 42  
4 U.S.C. sections 1983 and 1988 along with other relevant statutes, including California Code of  
5 Civil Procedure, section 1021.5, given this is a matter of substantial public interest.

6 6. That the Court issue punitive damages based on David Morrison and  
7 Ms. Robinson-Webb's malicious intent to deprive Hoopes of due process and vested property  
8 rights, as evidenced by unequal treatment and discriminatory animus to Hoopes as a class of one,  
9 pursuant to 42 U.S.C. section 1988 and Cal. Civ. Code §§ 52.1 and 52.

10 7. That the Court issue a Declaratory Judgment, determining:

11 a. The scope of Hoopes' rights under the 1984 Small Winery Use Permit  
12 Exception, including a judgment that (1) Hoopes can sell wine to consumers and (2) Hoopes'  
13 consumers can drink those bottles of wine on the Property;

14 b. All uses and accessory uses of wineries permitted under the NCC apply  
15 uniformly to Hoopes as grandfathered uses to the small winery exemption;

16 c. Napa County Code, section 18.16.020(H) violates the substantive Due  
17 Process guarantees of the California and U.S. Constitutions;

18 d. Napa County Code, section 18.08.600(C) does not apply to Hoopes;

19 e. Napa County Code, section 18.08.600(C) violates the Due Process Clause  
20 of the California and U.S. Constitutions;

21 f. Napa County Code, section 18.08.600(C) is preempted by state law;

22 g. Napa County violated Hoopes' constitutional rights to freedom of speech.

23 h. Napa County's demands that Hoopes cease (1) selling wine, (2) marketing  
24 its wine, and (3) allowing retail customers to consume wine on the premises were ultra vires acts,  
25 and thus, void and unenforceable.  
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8. That Hoopes be awarded such other relief as the Court deems just and proper.

DATED: May 15, 2023

BUCHALTER  
A Professional Corporation

By:   
KATHARINE H. FALACE  
Attorneys for Defendants and Cross-  
Complainants HOOPES FAMILY WINERY  
PARTNERS, LP, HOOPES VINEYARD LLC  
and LINDSAY BLAIR HOOPES

# **EXHIBIT A**



subject to compliance with  
all existing requirements

960 sq expansion  
approved 7/25/86

FOR COUNTY  
USE ONLY

YES NO

Building Features: (Wood, stucco or rock facing required on any non-historic structures).

FLOOR AREA: EXISTING STRUCTURES 0 SQ. FT. NEW CONSTRUCTION 960 SQ. FT.

TYPE OF CONSTRUCTION: Wood Frame

TYPE OF EXTERIOR WALL FACING: Wood

TYPE OF ROOF: Wood Frame

MAX. HEIGHT (FT.): EXISTING STRUCTURES 0 PROPOSED STRUCTURES 24'  
(Height 35')

COMPLIANCE WITH THE U.S. SECRETARY OF INTERIOR'S  
"STANDARDS FOR REHABILITATION" AND ASSOCIATED  
"GUIDELINES FOR REHABILITATING HISTORIC STRUCTURES" NA x YES NO

EXISTING STRUCTURES OR IMPROVEMENTS TO BE REMOVED: NO

TYPE OF SHIELDS TO BE INSTALLED  
ON EXTERIOR LIGHTS: Deflecting Shields

WIDTH OF FIRE CLEAR ZONE AROUND WINERY TO BE MAINTAINED:  
(Not less than 100 ft. is located with County designated high fire risk  
area). 100 FT.

METHOD OF DOMESTIC WASTE DISPOSAL: SEPTIC

METHOD OF INDUSTRIAL WASTE DISPOSAL: SEPTIC

Site Characteristics:

PARCEL ACREAGE: (Not less than 4 AC.) 8 ACRES

ZONING DISTRICT INVOLVED: (AW, AP, and WR ONLY) AP

WINERY COMPLEX SETBACK FROM CENTERLINE OF NEAREST PUBLIC ROAD:  
(Not less than 400 ft. Silverado Trail and State Highways or  
200 ft. other public roads). 1600 FT.

ROAD FRONTAGE SEPARATION BETWEEN PROPOSED WINERY:  
(Not less than 2,000 ft. with 1,000 ft. corridor). Not Applicable FT.

DISTANCE BETWEEN PROPOSED WINERY & NEAREST OFF-SITE RESIDENCE:  
(Not less than 500 ft.) 520 FT.

MINIMUM DISTANCE BETWEEN THE PROPOSED WINERY COMPLEX INCLUDING  
SEWAGE SYSTEM AND ACCESS ROAD AND THE TOP OF THE BANK OF THE  
ORDINARY HIGH WATER CHANNEL OF THE NEAREST RIVER OR STREAM  
NOT COVERED BY COUNTY FLOOD PLAIN MANAGEMENT ORDINANCE.  
(Not less than 50 ft.) 500 FT.

NAME OF NEAREST RIVER OR STREAM: HOPPER CREEK

YES	NO
✓	
✓	
✓	
✓	
✓	
✓	
✓	

FOR COUNTY  
USE ONLY

YES NO

4. Access and Parking:

PUBLIC ROAD FOR ACCESS TO WINERY: Private Rd. east of Washington Street

(Small wineries requiring access by means of the following roadways shall not be eligible for use permit exemption.

- (1) State Highway Route 29 between Yountville and St. Helena (Lodi Lane) and all dead-end roads extending from that section of highway;
- (2) State Highway 121 west of the City of Napa;
- (3) American Canyon Road west of Flosden Road;
- (4) Flosden Road).

PARKING SPACES: EXISTING SPACES: 0

PROPOSED SPACES: 3

5. Building Site Requirements:

MONTH DURING WHICH WINERY CONSTRUCTION RELATED GROUND DISTURBING ACTIVITIES WILL OCCUR:

(April through October ONLY unless catch basin installed).

April 1984

NUMBER OF DEBRIS CATCH BASINS TO BE INSTALLED:

N/A

TYPE OF EROSION CONTROL MEASURES INSTALLED TO DISCHARGE ALL CONCENTRATED RUN-OFF AT NON-EROSIVE VELOCITIES:

Not Applicable

TYPE OF GRASS MIXTURE TO BE USED IN AREAS DISTURBED BY WINERY CONSTRUCTION:

N/A

DATE BY WHICH DISTURBED AREAS WILL BE RESEDED:

N/A

Landscaping Requirements:

a. INDICATE ON THE PLOT PLAN THE NAMES AND LOCATIONS OF THE PLANT MATERIALS TO BE PLANTED TO SCREEN WINERY STRUCTURES, PARKING LOTS, AND OUTDOOR WORK AND STORAGE AREAS FROM VIEW FROM SURROUNDING PROPERTIES AND ROADWAYS.

b. PROPOSED METHOD OF LANDSCAPE MAINTENANCE: Existing Vineyard

NAPA COUNTY  
USE ONLY  
YES NO

Environmental Considerations:

1. DOES THE PROPOSED SMALL WINERY BUILDING OR RELATED FACILITIES LIE WITHIN AN "ENVIRONMENTALLY SENSITIVE AREA":

No a. A DESIGNATED ~~FLOODPLAIN~~ (Floodplain) *Requires Floodproofing. Floodway touches eastern end of property.*

No b. A RECOGNIZED ACTIVE EARTHQUAKE FAULT ZONE *Touches western end of property?*

No c. AN AREA THREATENED BY LANDSLIDES

No d. THE EXTENDED CLEAR ZONE OF A HELIPORT OR AIRPORT

No e. AN ARCHAEOLOGICALLY SENSITIVE AREA (*nearby*)

No f. THE HABITAT AREA OF A RARE AND/OR ENDANGERED PLANT OR ANIMAL

2. DOES THE PROPOSED SMALL WINERY LIE WITHIN:

No a. A HIGH FIRE RISK HAZARD AREA

No b. A RECOGNIZED HISTORIC STRUCTURE

<u>    </u>	<u>X</u>
<u>X</u>	<u>    </u>
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<u>    </u>	<u>X</u>

CERTIFY THAT THE ABOVE STATEMENTS ARE CORRECT AND THAT THE PLANS SUBMITTED ARE ACCURATE:

*[Signature]*  
SIGNATURE OF APPLICANT

*NMC - NORD COLEMAN*  
*[Signature]*  
SIGNATURE OF PROPERTY OWNER  
(if different from applicant)

2/25/84 198\_\_ DATE DATE 198\_\_

FOR COUNTY USE ONLY

DATE FILED: 3/2/84 ACCEPTABLE PLOT PLAN SUBMITTED: X YES      NO

FILE NO:                      TOPOGRAPHIC SITE LOCATION MAP SUBMITTED: X YES      NO

RECEIVED BY: J. J. E. Crandall

SMALL WINERY USE PERMIT EXEMPTION NO.: \_\_\_\_\_

FINDINGS

ASSESSOR'S PARCEL NO. (S): 36-110-13

THIS APPLICATION DOES QUALIFY FOR A SMALL WINERY USE PERMIT EXEMPTION  
does/does not

BY: Timothy E. Crandall  
Conservation, Development and  
Department

DATE: 3/6/84

*Failure to active this application within one year of the Planning Department determination shall invalidate this application and a new application will be required.*

cc: BUILDING INSPECTION DEPARTMENT

**RECEIVED**  
MAR 2 - 1984

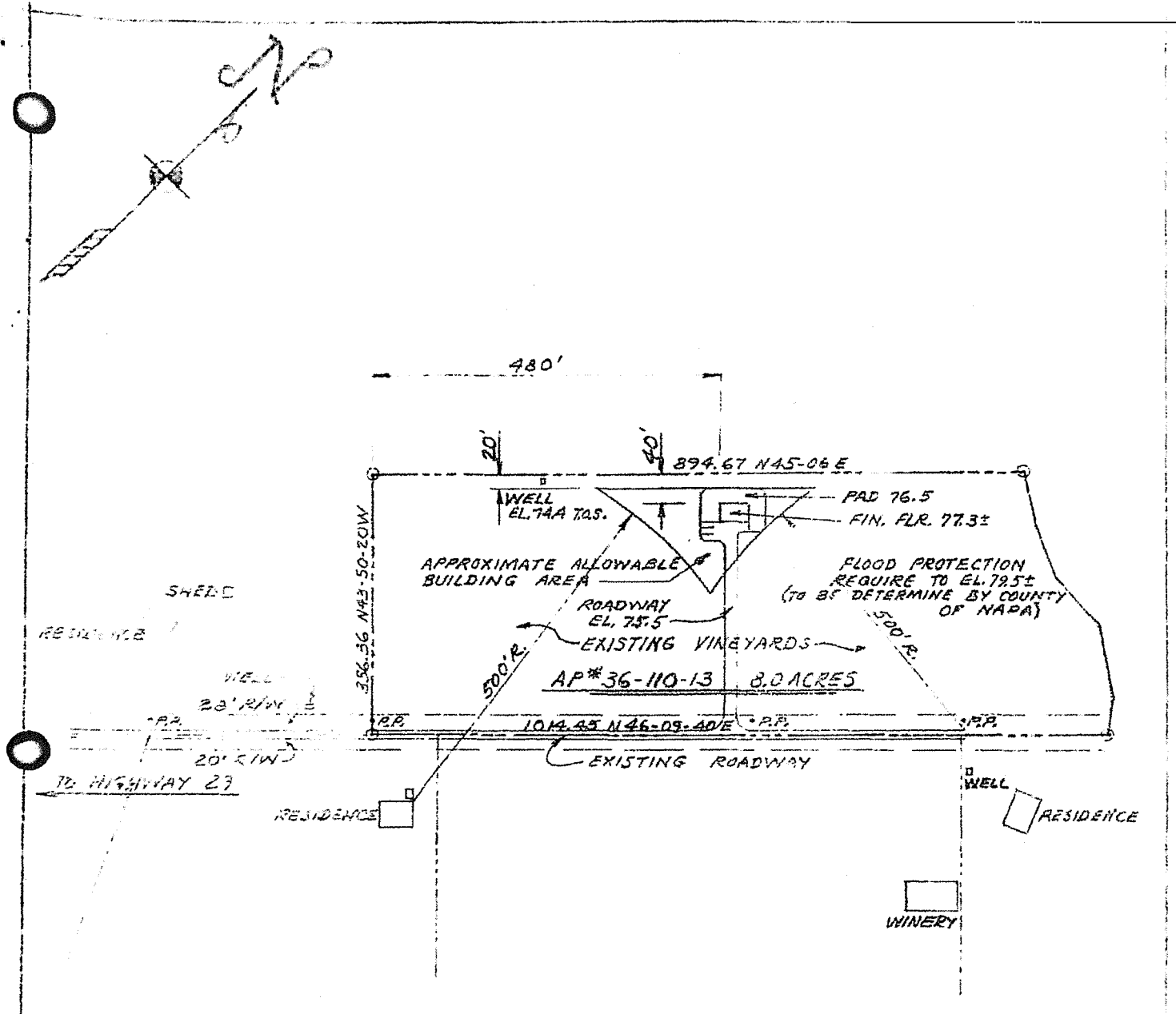
Napa County Conservation,  
Development & Planning Department

NAPA COUNTY  
CONSERVATION, DEVELOPMENT AND PLANNING DEPARTMENT  
1195 Third Street, Room 210  
Napa, California 94559  
(707) 253-4416

The following additional information shall be required to support a request for a small winery use permit exemption:

- 1) An accurate, scaled plot plan showing:
  - a) The location of the proposed winery buildings, parking areas, outdoor storage and work areas, sewage disposal systems and access roads on the subject parcel.
  - b) The distances specified in Section 3 of the Small Winery Use Permit Exemption Application.
  - c) The location of any debris catch basins or erosion control measures installed.
  - d) Landscaping requirements specified in Section 6 of the Small Winery Use Permit Exemption Application.
- 2) A front building elevation.
- 3) A topographic site location map indicating the location of the proposed winery building, access road, and sewage disposal system.





SITE PLAN

SCALE 1" = 200'

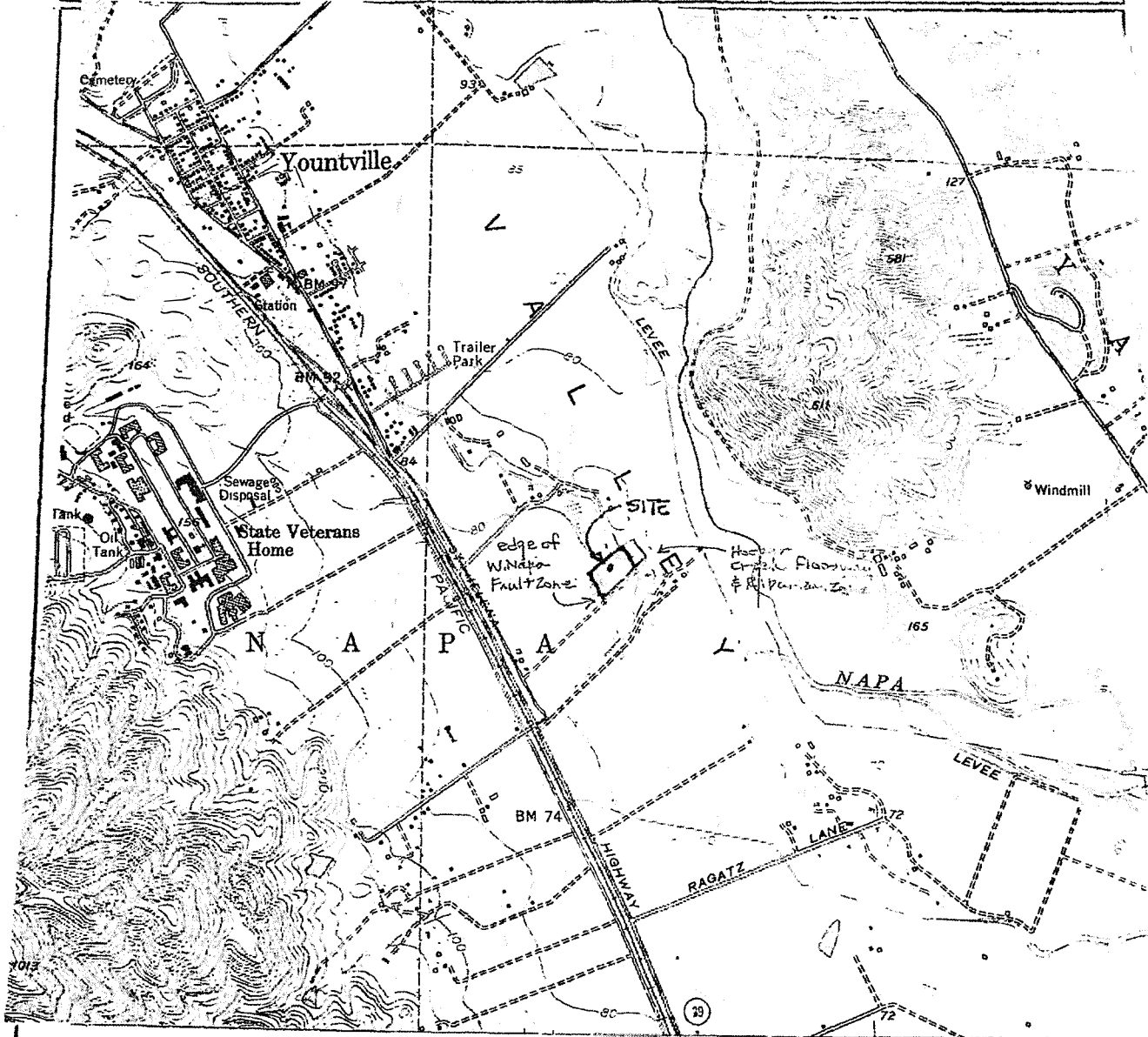

**fabricated metals, inc.**  
 2401 MERCED STREET - SAN LEANDRO, CALIFORNIA 94577

2-24-54

TOPOGRAPHIC SITE LOCATION INFORMATION

U.S. GEOLOGICAL SURVEY  
 QUADRANGLE TITLE: *Yountville*

FILE NO. \_\_\_\_\_



LEGEND

	Existing	Proposed
Parcel Boundary	-----	-----
Structure	▭	▭
Septic System	—●—	—●—
Well	○	○
Spring	—○—	—○—
Reservoir	—○—	—○—
Road	—	—
Parking Lot or Outdoor Storage Area	▭	▭

1 Napa County, et al. v. Hoopes Family Winery Partners, LP, et al.  
2 Napa County Superior Court Case No. 22CV001262

3 **PROOF OF SERVICE**

4 I am employed in the County of Napa, State of California. I am over the age of 18 and not  
5 a party to the within action. My business address is BUCHALTER, A Professional Corporation,  
6 1230 Pine Street, St. Helena, CA 94574.

7 On the date set forth below, I served the foregoing documents described as:

- 8 • **SECOND AMENDED CROSS-COMPLAINT FOR *MONELL* CLAIM,  
9 FEDERAL AND STATE FIRST AMENDMENT, DUE PROCESS AND EQUAL  
10 PROTECTION VIOLATIONS, AND DECLARATORY RELIEF (U.S.  
11 CONST. I, VIX, CAL. CONST. ART. 1, § 7, 42 U.S.C. § 1983, CAL. CIV. CODE  
12 § 52.1)**

13 on all other parties and/or their attorney(s) of record to this action as follows:

14 Office of the Napa County Counsel  
15 Sherri S. Kaiser  
16 Jason Dooley  
17 Erin Cossen  
18 1195 Third Street, Suite 301  
19 Napa, CA 94559

20 Email: [skaiser@countyofnapa.org](mailto:skaiser@countyofnapa.org)  
21 Email: [jason.dooley@countyofnapa.org](mailto:jason.dooley@countyofnapa.org)  
22 Email: [erin.cossen@countyofnapa.org](mailto:erin.cossen@countyofnapa.org)

23 **Attorneys for Plaintiffs NAPA COUNTY and  
24 THE PEOPLE OF THE STATE OF CALIFORNIA**

25 Arthur A. Hartinger  
26 Geoffrey Spellberg  
27 M. Abigail West  
28 Michael S. Cohen  
29 Nicholas Moore  
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32 San Francisco, CA 94104

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39 **Attorneys for Plaintiffs NAPA COUNTY and  
40 THE PEOPLE OF THE STATE OF CALIFORNIA**

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**BY EMAIL** On May 15, 2023, I caused the above-referenced document(s) to be sent in electronic PDF format as an attachment to an email addressed to the person(s) on whom such document(s) is/are to be served at the email address(es) shown above, as last given by that person(s) or as obtained from an internet website(s) relating to such person(s), and I did not receive an email response upon sending such email indicating that such email was not delivered.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on May 15, 2023, at Napa, California.



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JOLENE GLEFFE