North County Watch

Looking Out Today For Tomorrow

November 22, 2006

Environmental Division of the Department of Planning and Building
County Government Center
San Luis Obispo, CA 93408

Re: Request for Review of a Proposed Negative Declaration
Environmental Determination No. ED05-400
Heart Hill Vineyards Conditional Use Permit DRC2004-00275
Dated November 9, 2006

North County Watch is a local non-profit, non-partisan organization committed to balanced and responsible development in and around the northern portion of San Luis Obispo County. Its purpose is to promote economic and environmental policies that maintain and enhance the uniqueness of our community.

North County Watch is supportive of agriculture and the wine industry as an extremely important part of the economy of San Luis Obispo County, particularly the northern portion of the county. Support for agriculture, ag tourism and the wine industry also includes support for sound environmental planning and to help ensure sustainable practices in agriculture.

Our support for the wine industry is tempered by the need for each winery facility to be in scale and not alter the character of the area in which it is to be located and to operate within the constraints of the available resources. North County Watch cannot support a negative declaration for a project which results in a significant impact on the environment.

North County Watch is submitting a Request for Review of a Proposed Mitigated Negative Declaration for the subject project. This Request for Review is also being filed on behalf of the neighboring landowners and wineries, including Eric Jensen, Carl Bowker, Joe Barton, and Bob Hartenbarger. These families, as well as many other residents and family-owned wineries in the area, have submitted passionate letters to SLO Planning explaining their concerns with the project and its impact on the aesthetics and resources of the area.

The initial evaluation of this project made by the County of San Luis Obispo is inadequate. A Mitigated Negative Declaration is not appropriate for this project. California Public Resources Code, Section 21080(d) states that "if there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared". The proposed project may have a significant effect on the environment, therefore, an environmental impact report should be prepared for this project.

Some of our concerns with the Initial Study / Environmental Analysis are discussed in this letter. Due to the time constraints and the fact that we just received the requested photocopies of the project files on November 20, 2006, we reserve our right to present additional information during the public review period.

As discussed below, this project may result in significant effects on the environment that have not been mitigated in the following categories: aesthetics, agriculture, noise, transportation/circulation, wastewater, and water. In addition, some of these impacts will be cumulatively significant. Each category of concern from the Initial Study Checklist is discussed below.

Project Description

The project description does not adequately describe the proposed facility, and therefore, does not inform the public of the potential impacts of the proposed facility. For instance, the project description does not indicate the production capacity of the winery. This information is provided in the wastewater section as “the winery is proposed to produce 15,000 to 50,000 cases of wine annually”.

Although the winery is described as producing 15,000 to 50,000 cases of wine annually, there should be a restriction in the Conditional Use Permit to ensure that the production limit is not exceeded.

Inconsistent descriptions of the project are provided in various sections of the environmental document. The water usage is described in the wastewater section as “resulting in a peak water demand of up to 2,800 gallons per day during the crushing season”. However, the water section of the document states that “implementation of the project would require the use a [sic] maximum of approximately 6,300 gallons per day, on average, during the peak months of July through December”.

Since the size and scale of the proposed winery facility is so much larger than average, one is left to wonder whether the long range plan is to expand the processing capacity far beyond the stated 50,000 case per year limit. In fact, according to the notes of the pre-application meeting, the applicant discussed

Phase I of the winery as 30,000 to 40,000 cases per year and Phase II as being a total of 70,000+ cases per year.

If the applicant has future expansion plans as documented in the project file, the entire project (Phase I and II) should be addressed in the environmental document. The environmental document needs to be revised to analyze a consistent case production number, since the volumes analyzed differ throughout the document. If the facility is to be limited to producing 40,000, 45,000 or 50,000 cases per year, the production needs to be limited to that amount on the Conditional Use Permit.

Aesthetics

The proposed facility would have a profound effect on the aesthetics of this area. Existing wineries are small, family-owned operations. This proposed project has the potential to set a precedent which would change the feel of the area forever.

The environmental document states that "the retail-commercial aspect of this project will contribute to a general degradation of the pastoral agricultural aesthetic of the area. The production winery will introduce an industrial-agricultural visual component into the area. The unavoidable noticeability of the project when seen in conjunction with other existing and proposed commercial winery projects in the area would result in negative affect on the rural character of the Highway 46 corridor and cumulative short and long-term adverse visual impacts."

According to the environmental document, the visual analysis considered Hwy. 46, and only briefly discusses the impact on Anderson Road. "As seen from Anderson Road, along the building's frontage the winery would dominate views to the west and would block visibility of much of the adjacent hillside to the west"; and "the structure would appear out-of-scale with the generally smaller wineries of the area" are statements used in the environmental document. The environmental document also states that "visibility of the production winery building roof and exterior walls would increase noticeability of the project and would adversely affect the rural visual character as seen from Highway 46 and Anderson Road. In addition the project would silhouette into the skyline and would appear out-of-scale as seen from Anderson Road, resulting in a direct long-term significant impact."

The visibility of lighting from Anderson Road has not been analyzed. Instead of just a restriction on neon lighting, the signage should not be internally lighted. Night lighting should shielded from view from Highway 46, Anderson Road and the nearby wineries and residences.

Although screen planting with evergreen trees is proposed, the type of tree is not specified. Trees will take decades to develop into appropriate landscape

screens. The trees should fit in with the existing plantings in the area, since the neighboring wineries have worked to create uniform landscaping along Anderson Road.

Publication entitled "Typical Winery Issues and Information Questions, Niner Wine Estates" states that pomace will be kept on site, composted and returned to the vineyards. Where will the composting take place? How will the compost piles be aerated? What measures are in place for fly and vector control? How will odors be controlled?

The visual impact analysis did not take into account the visual impact of the wastewater ponds and the composting facility.

The impact on Aesthetics will be significant. This impact will also be cumulatively significant.

Agriculture

SLO County Agriculture and Open Space Element Policy 6 (AGP6) allows limited visitor serving and incidental retail use in agricultural areas. Both AGP6 and Title 22 of the Land Use Ordinance require that a tasting room be clearly incidental, related and subordinate to the primary operation of the winery as a production facility. Even with the proposed changes, the hospitality center (particularly the lounge, kitchen and associated storage area) does not meet this criteria and is inconsistent with AGP6 and Title 22.

The project site is currently under a Williamson Act contract, and is subject to both the Williamson Act and Assembly Bill 1492 (Laird). AB 1492 adds Section 51250 to the Government Code. AB 1492 requires that any development on property subject to Williamson Act contract must be incidental to the primary use of the land for agricultural purposes and in compliance with local uniform rules or ordinances. A use is incidental when it is required for or is part of the agricultural use. Development of non-complying or incompatible uses on contracted land could result in significant impacts to agricultural resources/operations.

The April 12, 2006 letter from the SLO Ag Department states that a winery with an estimated production of 50,000 cases was approved at approximately 27,000 square feet versus the proposed 71,000 plus square feet (actually 70,950 + 4,525 + 19,610 square feet = 95,085 square feet) of this proposed facility. The size of the winery and the notes in the file indicates that an even much larger case production is being considered.

Since only one quarter of the winery's Phase I processing capacity (200 to 300 tons of grapes) will be produced from the property at full production, the winery is certainly not incidental to the agricultural use on this property. If Phase II of this project is implemented, the property may produce less than 15% of the

production capacity of the winery. This winery is clearly not incidental to the agricultural use of this property.

Another question was posed in the April 12, 2006 letter from the SLO Ag Department, as follows: "As with the project site, several adjacent and nearby properties are also under [Williamson Act] contract. Are there adequate water resources to consider the proposed winery a compatible use for contracted lands?" This question has not been answered.

In their August 31, 2006 letter, the SLO Ag Department indicates that they are still concerned about the appropriateness of the proposed kitchen facilities, lounge, excessive parking, and the amount of area dedicated to administration space within the winery structure. The Ag Department states that such accessory uses may not be consistent with AB 1492.

Buildings are proposed for this project which will total over 106,000 square feet.

The impact on agriculture is significant. Since this project would set a precedent for the area, the impact on agriculture is also cumulatively significant.

Noise

Noise impact from the wine processing facility on the residences on Anderson Road has not been analyzed. The environmental document contains the statement: "many of the older residences in the area have been converted to tasting rooms in association with adjacent wineries. Based on the location of the project site and existing surrounding uses, no significant noise impacts related to the proposed winery production facility would occur. " This is not correct.

The statement in the environmental document that "surrounding uses consist of other winery facilities and agricultural operations, which are not considered noise sensitive land uses" is not correct. The environmental document does not address the residences, which are noise sensitive land uses. In fact, there are seven homes in the immediate vicinity of the proposed production winery.

Amplified noise from 30 events will impact the neighborhood. The ambience of the existing boutique wineries will be impacted due to the amplified noise, the increased truck traffic, and the processing facilities. No analysis has been done on the noise impacts to the nearly residences. The area is composed of a series of canyons and hillsides. Sound will carry at a great distance from the facility up and down the canyons. The noise analysis needs to evaluate the impact on residences throughout this area, beyond Anderson Road.

Publication entitled "Typical Winery Issues and Information Questions, Niner Wine Estates" states that "all production activities except receiving of fruit and crushing, destemming and pressing shall generally occur indoors". The noise

impact from these activities (crushing, destemming, and pressing) must be analyzed.

The impact on noise may be significant and may be cumulatively significant.

Transportation / Circulation

Anderson Road is a narrow, paved county road. This road was recently paved, largely paid for by the existing neighbors. In order to accommodate the additional truck traffic (delivering fruit, delivering supplies – glassware, corks, foils, yeast, hoses, catwalks, crushers, pumps, filters, etc., shipping out wine to distributors and to other wine purchasers – many small quantity shipments, construction traffic, etc.), Anderson Road may need to be widened to accommodate the truck traffic. The impact of additional traffic, particularly trucks, on Anderson Road needs to be analyzed.

The analysis of truck traffic has assumed that the trucks would probably arrive in the morning. However, the fruit will probably arrive by truck in the afternoon after a day of harvest, assuming the fruit is hand-harvested. Since the facility is proposing to use sorting tables, one can assume that the fruit will be hand-picked.

The safety of the intersection of Anderson Road and Highway 46 has not been taken into account. County Planning needs to look beyond the standard traffic models, and the calculations of LOS, and examine the safety impacts at this intersection and along Anderson Road.

The impact on transportation may be significant and may be cumulative significant.

Wastewater

Inadequate analysis has been provided to determine whether odors from the wastewater ponds will impact the neighboring properties. From the site diagrams, the ponds appear to be very close to the neighboring winery's tasting room. The impact of these ponds on the nearby wineries and residences needs to be analyzed. Also, an offsite discharge from the ponds into the creek which runs across the neighboring properties should be analyzed. Offensive odors from such a discharge would have a great economic impact on the nearby wineries and tasting rooms.

Winery wastewater can contain various contaminants of concern, particularly salts that are not removed by biological degradation. The potential groundwater impacts from the wastewater ponds need to be analyzed.

Where will the storm water from the pomace handling/composting area and from the outdoor crushing, destemming and pressing operations be sent to? Where will the washdown from the pomace handling/composting area be sent to?

The impact of the wastewater generated by the facility may be significant.

Water

Water usage data for the facility is inconsistent and appears to be greatly underestimated.

In the wastewater section, the environmental document states that "the winery is proposed to produce 15,000 to 50,000 cases of wine annually, resulting in a peak water demand of up to 2,800 gallons per day during the crushing season". However, in the water section, the document states that "implementation of the project would require the use a maximum of approximately 6,300 gallons per day, on average, during the peak months of July through December." Further the traffic section lists the peak production period for the winery as September through November. The true water demand, particularly the peak water demand, needs to be determined.

The August 9, 2006 letter from Niner to the SLO Ag Department states that the they expect the winery to use less than the industry norm of 16 gallons of water per case of wine produced annually. This statement conflicts with the groundwater report prepared by Cleath & Associates, dated August 18, 2006, which states that the industry average is 10.2 gallons per case. Due to the extremely limited water resources, best water management practices should be required from the applicant.

Since the industry average is in the range of 10 to 12 gallons of water per case of wine produced, the average water usage should be approximately 500,000 to 600,000 gallons during the year. Therefore, the water usage for the winery may be on the order of 5,600 to 6,700 gallons per day during the crushing season, if the crush takes place over a 90 day period. However, harvest timing is dependent upon the weather and the response of the ripening fruit to the weather conditions. Many years, the fruit ripens within a short window of time. If the harvest season and thus, the crush season, is compressed to 60 days for example, the daily peak water usage at the winery may range from 8,300 to 10,000 gallons per day.

How much water will be utilized in the pomace handling and composting operation? Will other materials be added to the compost?

The Niner Wine Estates website (http://www.ninerwine.com/team_niners.php) describes "extensive gardens" and olive trees at the Heart Hill facility, however, the project description fails to mention any landscaping at the facility beyond the

required screening. Additionally, the August 9, 2006 letter from Niner to the SLO Ag Department mentions their olives, edible organic gardens and heirloom fruits and vegetables. At the pre-application meeting, the applicant apparently discussed planting commercial lavender. All of these plantings would result in additional water usage that is not accounted for. Also, the water usage by the demonstration kitchen, the second kitchen, the lounge, and the necessary restroom facilities to service up to 500 guests has not been analyzed.

Testing of the water wells was performed during July of this year. July is the beginning of the irrigation season, and therefore, may not represent the true impact on the groundwater reservoir after pumping has taken place through the season. Also, 2006 follows two of the wettest years in recent time. Therefore, the water levels will probably be significantly lower during a dry year. The pumping and recovery characteristics of the wells will change in a drier year.

Water usage after implementation of Phase II of the proposed project must also be analyzed.

Water chemistry that is presented in Cleath's groundwater report shows very similar water characteristics between the wells. Were the water samples taken at the same time. Why was the Jensen well water not analyzed? The graphical data is not refined enough to establish that the water in the wells differ. Insufficient data was provided to conclude that the underground reservoirs are separate.

Cleath's groundwater report states that the onsite wells had minimum use. The wells initially produced water with low hardness and excellent water quality overall. Subsequent testing, however, had results which were much more typical of this area. With additional use, will the water chemistry be consistent with the surrounding wells and show the water is in fact the same.

A pump test was run on the West well for 2 days and the water dropped below the level of the uppermost producing fracture zone. An additional four hour test was run, which showed impacts on neighboring wells. Yet the project proposes to run the subject well for 3 hours per day, every day. The continual drawdown could have significant cumulative impacts on nearby wells.

When the well interference test was run, only three of the twelve wells in the immediate area of the facility were operating. Therefore, the cumulative impacts on the reservoir(s) was not fully evaluated.

Why were interference tests not run on the other two onsite wells? With the tremendous drawdown in the East well during the pump test (160 ft. in 33 minutes), it appears that this well could have significant impact on surrounding water supplies. The impact from operation of the East well and the Anderson well needs to be evaluated.

In Cleath's groundwater report, the statement is made that the water levels in the Anderson Road well also lowered slightly during the test (0.1 ft), probably due from the Bowker irrigation well pumpage. However, the report previously stated that the Bowker well is deeper and the well is physically located upgradient of the Anderson Road well. So why would this deeper well be drawing water away from a downgradient well (i.e. why is the water flowing uphill?). Could the impact actually be from the West well?

According to the neighbors, the Clevenger's well went dry during the well test. This fact was not reported in the environmental document. Also, an email was submitted by the Latchfords, which is not mentioned in the environmental document. This email states that their main water well, which is rated at 96 gpm, dropped to approximately 10 to 12 gpm, only two-thirds of the way into the irrigation season during 2004, an average rainfall year. As stated before, the well tests were conducted at the beginning of the irrigation season and may not represent the real potential impacts to the surrounding wells.

Because the issue of water availability is so critically important to the existence of the current vineyards, wineries, and residences, the groundwater resource must be fully understood. We ask that the County conduct an appropriate review of the groundwater situation for this project.

No information is provided on the size or capacity of the water storage reservoir.

The drainage study did not address storm water runoff from the wastewater pond area or the composting area or from the vineyard during construction and before the cover crop is established. If the wastewater ponds overflow or are inundated during a storm, the fluid would flow offsite onto the neighboring properties.

The impact on water is significant. This impact is also cumulatively significant.

<u>Cumulative impacts</u>

The impact on aesthetics, agriculture, transportation/circulation, noise and water from this project may be cumulatively significant.

<u>Conclusion</u>

The Environmental Analysis contains numerous inconsistencies and conflicting data. Many of the issues need to be reanalyzed using current and accurate information regarding the project.

This project may result in significant effects on the environment that have not been mitigated in the following categories: aesthetics, agriculture, transportation/ circulation, noise, wastewater, and water. The project may also result in

cumulative impacts on aesthetics, agriculture, transportation/circulation, noise and water.

A Mitigated Negative Declaration is not appropriate for this project. California Public Resources Code, Section 21080(d) states that "if there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared". The proposed project may have a significant effect on the environment, therefore, an environmental impact report should be prepared for this project. In particular, an Environmental Impact Report will allow analysis of alternatives to the proposed project which would have less impacts on the environment.