

MEIBEYER LAW GROUP



TRUSTED COUNSEL TO THE WINE INDUSTRY

June 1, 2012

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VIA E-MAIL

Mayor Gingles, Vice-Mayor Dunsford &
Councilmembers Canning, Kraus & Slusser
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Re: Brian Arden Winery

Mayor Gingles, Vice-Mayor Dunsford &
Councilmembers Canning, Kraus & Slusser:

At your April 17th hearing the Council unanimously concluded that the size and scale of the Brian Arden Winery was much too large for a critical Entry Corridor parcel, particularly when Joe Briggs had only been allowed to construct an 8,000 square foot winery next door. Mindful of the potential hardship it would cause if the project was delayed unnecessarily, the Council generously offered the applicant an opportunity to redesign the project to be more comparable to the type of winery permitted next door.

The Council encouraged the applicant and the neighbors to attempt to work together. In fact Councilmember Canning expressly urged the neighbors to work in good faith with the applicant and not to attempt to sabotage those efforts. In the interest of starting that process I sent an e-mail to the applicant's attorney and City staff on April 23rd, offering to meet at any time, and offering some suggestions on how the project could be redesigned to address the Aubert family's concerns (copy attached). Despite further overtures from us to the applicant and the staff, we were NEVER approached by the applicant about either the winery redesign, or the storm water drainage issues that remain. Rather, the applicant has resubmitted a winery application that is minimally changed from the prior application (in fact, 589 square feet of the reduction in size claimed on the revised plans merely reflect the applicant's intentional omission of square footages that were counted in its earlier plans, but are mysteriously omitted in the revised plans for features that still are included in the project).

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Attached here are charts that compare the “New Brian Arden Winery” with the project rejected by the Council, as well as a comparison between the revised plans and the Aubert Winery square footage. As shown on those charts, the Brian Arden Winery is still 81% larger than what Joe Briggs was allowed to construct on the adjacent parcel. Moreover, the winery footprint remained exactly the same, the winery was not moved even one foot away from the Silverado Trail, or reduced in depth to eliminate the massing that will be seen by every car traveling by the winery as depicted in the 3D video Karen Jensen Roberts’ office prepared and presented to the Council. Even the lion’s share of the 637 square footage reduction in size that has actually occurred between the plan rejected by the Council, and the new plan, results from eliminating the floor of a portion of a storage room that was located on the Office level of the winery, so there has been no actual reduction in size of the Hospitality component of this project. The modest reduction in height of the winery will have little impact on its visual allure to passing vehicles, particularly when it is still located so close to the road due to the scale of its footprint.

As we have discussed several times, this winery project has been suspicious from the very beginning – it has far too much square footage devoted to Hospitality activities for the claimed 40 to 60 visitors per day. There is actually room for about 24 seats in the admitted Hospitality sections, not counting the additional seats in the Private Dining Room that is designated as a 10 person “conference room” (for a winery with four employees) that has movable partitions to open the dining room to the outside decking. Besides the 2,677 sf of Hospitality space on the Lower Level, there are an additional 1,739 sf of Porches and Patios for customer viewing and wine tasting. We do not believe the applicant has acted in good faith in responding to the Council’s direction to truly reduce the size of the project. If it truly were confident it had made substantial progress in mitigating the imposing nature of this project the applicant would have installed story poles, as the Council clearly indicated it wanted, to show everyone what the true impact would be. The fact that it did not install that visual proof establishes to us that the applicant is fully aware of the continuing over-sized scale of the winery.

Nor has the applicant made any good faith effort to work with its neighbor, or to truly rethink the project. Rather, it just “tinkered around the edges” in an effort to play “development poker” --- making an outrageous bluff with a token effort, while hoping that the Council will fold so that it can move forward with the project as it has always wanted and intended.

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Meanwhile, the applicant's storm water drainage plans **still** propose to leave in place the disturbance of ground that has created a barrier that prevents storm water from spreading into the Luvisi vineyard as historically occurred, and was intended for the Briggs Winery in the plans prepared by Doug Sterk. I've attached, once again, Mr. Sterk's letter, which expressly disputes the claims of the applicant's engineer (and City staff) that a "berm" preexisted the construction of the water line in the City's easement and that historical flows have always gone southward into the Aubert property. As expressly noted by Mr. Sterk: "No part of the project was designed to direct or impede water coming from APN 011-050-030 [i.e. Brian Arden] from entering APN 011-050-031 [Aubert]. There was no water naturally passing in that direction." I've also enclosed Joe Briggs' letter, who noted: "At the same time, it was determined that the surface water flow from Mt. Washington South, across the driveway easement would not be affected by the new winery construction, and would be best left as it was naturally, flowing onto the Luvisi Vineyard at the properties border. Because of this, the grading and drainage plan spelled out keeping the driveway flat, and without berms or other impediments to the natural surface flow." There is ample fair argument that there remains a continuing potential for harm to the Auberts if the project's drainage is not revised. Under CEQA, that issue cannot be ignored, and the Auberts will be forced to raise that issue in court if the project goes forward on this basis.

We recognize that the Council hesitated when it was faced with an actual denial of the project and it very thoughtfully offered the applicant an opportunity redesign the winery. But, as has been true throughout this process, the applicant is relentless in its effort to get the project approved the way it wants it to be, and has made no legitimate effort to respond to the Council, or to the neighbors. Under the circumstances, if the applicant is unable to move forward with the project it has only itself to blame – as it had ample opportunity to design the project to have far less impact while still being able to make it a business success. We urge the Council to take the difficult step and recognize that this project is not appropriate for this sensitive property. Given the continuing problems with the drainage plan, and the applicants' unwillingness to make appropriate adjustments, the Council has been given no choice but to formally deny the applicant's request.

Very truly yours,



Charles W. Meibeyer

Subj: **Re: Brian Arden Winery Matter**
Date: 4/23/2012 11:08:51 A.M. Pacific Daylight Time
From: Meibeyerlaw@aol.com
To: Meibeyerlaw@aol.com, kmacnab@ci.calistoga.ca.us, elundquist@ci.calistoga.ca.us
CC: rspitler@ci.calistoga.ca.us, dtakasugi@ci.calistoga.ca.us, jamesroselaw@sbcglobal.net

Dear Ken and Erik:

The City Council clearly wants the applicant and the neighbors to work together toward finding a mutually agreeable project, which we are prepared to do. We haven't, as yet, been contacted by the applicant, or its representative, but they may be spending some time considering alternatives regarding project revisions. I am copying Mr. Rose on this e-mail to make sure he is aware of our concerns, and our desire to have further discussions regarding this project.

There are certain issues we want to make sure that the applicant and the staff consider when deciding on revisions to the project. Although there was some hesitation by Mr. Canning regarding moving the parking area to the area between the winery and the Silverado Trail, the Auberts place high importance on having an adjustment in the location of the parking area because the current location has adverse visual, noise, and lighting impacts on their tasting room.

In light of the fact that the project will need to be reduced about 7,500 square feet in size, along with a reduction of approximately 8,000 sf in impervious and compacted surfaces, to be comparable in size to what was allowed at the August Briggs winery, we believe there should be ample room to locate the parking area (which we would suggest also be limited to eight spaces as was required for August Briggs) further to the west in the vicinity of a smaller winery building in a location that is not in close proximity to the Aubert winery. The Auberts further ask that the relocated winery building be moved sufficiently to the west to minimize its visual impact on the Silverado Trail as well as the viewshed from the Auberts tasting room.

We also ask that the landscaping plan be given special attention to also minimize visual impacts on the Auberts' property (while providing increased screening of the Brian Arden Winery from the Silverado Trail). In that regard we note that not only were the Auberts never provided any revised plans or proposed changes regarding the drainage plan beyond what they received prior to the Planning Commission hearing, they also have never received copies of the landscaping plan that was displayed at the City Council hearing. We did note, from a cursory review of the landscaping plan at the April 17th hearing, that it appeared that the landscaping plan could be quite obtrusive because the trees and foliage not only blocked the view of the Brian Arden facilities, but they actually created a tall and wide visual barrier. With the reduced size of the buildings and hardscape, and the relocation of those facilities away from the Auberts, we want to ensure that any landscaping in the area of their property enhances their scenic views rather than obscures them, and is the most efficient possible screening.

We would like to ask that we be provided at least a digital copy of that landscaping plan, and any other submittals (whether landscaping, design, or drainage plans) that might be received from the applicant at the earliest opportunity, so that we will have the opportunity to review them in a prompt fashion in light of the applicant's desire to move forward promptly.

The drainage plan remains a critical concern to the Auberts. We believe everyone now recognizes the flows from the Brian Arden property have to travel in an easterly direction toward the Luvisi property, without obstruction. Mr. Luvisi has indicated he has some ideas about possible alternative drainage arrangements. We are supportive of any plan that addresses everyone's concerns, but we feel it is most important on the need to have assurance that any revised plan will not only be

designed and constructed, but also continuously maintained, to ensure that water does not become impeded in any manner that would cause it to be diverted onto the Aubert property. We therefore would like to ask that the City Engineer, the Brian Arden engineers, Bartelt Engineering, as well as Mr. Luvisi and Mr. Helmer, if possible, arrange for a joint meeting as soon as there is direction on the new winery plans to discuss the most appropriate changes to the drainage plan.

We recognize the applicant will want to have this matter heard by the City Council as soon as possible. We believe that the most efficient method to ensure that occurs will be an open process with as much communication as possible.

Chuck Meibeyer

Chuck Meibeyer
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MEIBEYER LAW GROUP


Trusted Counsel to the Wine Industry

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In a message dated 4/13/2012 3:55:09 P.M. Pacific Daylight Time, Meibeyerlaw@aol.com writes:

Mayor Gingles, Vice-Mayor Dunsford & Councilmembers Slusser, Krause, and Canning:

Mark and Teresa Aubert are submitting these additional materials regarding the Brian Arden Winery matter on Tuesday night's Council agenda. Please contact me if you have any questions about the enclosed materials.

Chuck Meibeyer

Chuck Meibeyer
Meibeyer Law Group

Friday, June 01, 2012 AOL: Meibeyerlaw

COMPARISON CHART
BRIAN ARDEN OLD AND NEW

SQUARE FOOTAGE

Brian Arden Winery 4-17-12

Brian Arden Winery 5-29-12

Production:

Production:

Tank room 4,000
Mezzanine 759*
Crush Pad 3,500**

Tank room 4,000
Mezzanine 759*
Crush Pad 3,500**

Subtotal: 8,259

Subtotal: 8,259

Accessory:

Accessory:

Hospitality - 1st Floor 3,129
Hospitality - 2nd Floor 2,482
Roof Decks 216***
Porches & Patios 1,406*****

Hospitality - 1st Floor 2,677
Hospitality - 2nd Floor 1,943
Roof Decks 240****
Porches & Patios 1,739*****

Subtotal: 7,233

Subtotal: 6,599

Total: 15,492

Total: 14,858 *****

* New Brian Arden plans claim reduction in size of Mezzanine to 410 sf even though NO CHANGE! occurred in the plans for the Production Building. Applicant therefore understated size by 349 square feet.

** Brian Arden's plans continue to omit the 3,500 Covered Crush Pad. No changes were made to the Crush Pad so the 3,500 sf has been added back in to reflect true size of project.

*** Originally used 216 sf for Roof Decks because Staff Report calculated as such, even though Brian Arden correctly reported 360 sf.

**** New application has eliminated one of three roof decks, but two roof decks at 240 square feet remain. That square footage omitted by Applicant has been added back into total. .

***** Staff Report calculated Porches and Patios at 1,406. Applicant chose to report only 1200 sf. The correct number has been utilized.

***** Applicant's own calculations show an extra 373 sf which is equivalent to the areas removed from the First Floor of the "Operations Building", which were the "Private Selection and Foyer" and the pantry for the "Kitchen" which have been converted to new covered porches. Because Applicant's calculation of the new size of Porches was based on the erroneous 1200 sf size, the true size of the Porches is 1,779 total square footage. It is clear that the covered porches will be used for hospitality related activity, we can easily foresee seating in benches or chairs for customers to use for tasting activities.

***** As a result, taking into account the corrections noted above, rather than a reduction of 1,327 sf in size shown on the plans, the Applicant really only reduced total square footage 634 sf because it misstated the square footage of the Mezzanine and Catwalks, and omitted entirely the remaining 240 sf of Roof Decks. The actual reduction equals 120 sf for elimination of one Roof Deck, and an approximate reduction of 514 by converting a portion of the Storage area to Break room and then merely eliminating the floor over a portion of the First Floor Hospitality Area (as well as a modest reduction because one wing of building was reduced from 22' to 21' in width). The square footage removed was a storage area on the upper (Office) level of the winery, not from the lower (Hospitality) level. In any event, it did not make the winery building any smaller.

COMPARISON CHART
BRIAN ARDEN NEW VERSUS AUBERT

SQUARE FOOTAGE

Brian Arden Winery 5-29-12

Aubert Winery

Production:

Tank room 4,000
Mezzanine 759
Crush Pad 3,500

Subtotal: 8,259

Accessory:

Hospitality - 1st Floor 2,677
Hospitality - 2nd Floor 1,943
Roof Decks 240
Porches & Patios 1,739

Subtotal: 6,599

Total: 14,858

Production:

Barrel, Tank & Crush: 6,000
Lean-to Storage 200

Subtotal: 6,200

Accessory:

Offices and Bathrooms: 1,574
Tasting Room: 400

Subtotal: 1,974

Total: 8,174

Despite request that Applicant adjust size of the project to be of comparable scale to what was allowed to be constructed on the Aubert/Briggs property, the project is still 6,689! sf larger than the Aubert Winery, or 81% larger!

COMPARISON CHART
BRIAN ARDEN & AUBERT WINERIES

COVERAGE

<u>: Brian Arden Winery</u>		<u>Aubert Winery</u>
New Impervious Surface	24,070*	Building **
Building Roof, Concrete & Paving		7,200
		Trash Lean-To
		200
		Driveway &
		Parking
		15,700
New Compacted Surfacing	5,990	
Gravel Parking, Walks, Yards		
Total:	<u>30,060</u>	<u>22,100</u>

Ratio: Brian Arden to Aubert Winery: 1.36 (36% larger)

*Staff report shows 14.81% coverage, but omits all impervious surface other than buildings, breezeway and decking. Instead, figures utilized here are based on report from Applicant's engineer, Cassayre Engineering, as detailed in Drainage & Detention Narrative Revised 11/16/11 (First Page Attached For Reference)

** The Aubert Winery site's coverage is much easier to calculate than the Brian Arden Winery. Using a 1" = 40' scale on the full-size drawings we calculated a total of 22,100 square feet of impervious surface on a mostly rectangular shaped building-site, but also including the "lean-to bump out" on the south edge, and the parking area on the west edge. The only hardscape not included was a small amount of the access road at the entrance, just as Cassayre Engineering deleted the 6,860 sf of "existing paved road". If the road improvements were to be included for each parcel then the ratio for the Brian Arden property would be substantially higher.

RECEIVED
 NOV 22 2011
 BY: *bw*

Drainage & Detention Narrative (Revised 11-16-11)

The total watershed from this parcel and its contributing neighbor is approximately 3.75 ac. The watershed is composed of wooded steep hillside together with relatively flat grassland. Nearly one-third (the northerly sector of the site) of the runoff bypasses the building area and flows northeasterly toward Silverado Tr., and is relatively unaffected by this project since the hillside is not graded, and the grassland will be converted to no-till vineyard.

1.9 ac. of the 2.25 ac. parcel will be altered. The following is a breakdown of the resulting site surfacing:

Existing paved road to Briggs Winery	6,860 sq. ft.	7%
NEW IMPERVIOUS SURFACING		
Building Roof, Concrete & Paving	24,070 sq. ft.	25%
NEW COMPACTED SURFACING		
Gravel Parking, Walks, Yards	5,990 sq. ft.	6%

Compacted and/or impervious surfaces are less than 40% of the site. The remainder will be primarily non-till grass covered vineyard and landscaping. For this reason, a rational coefficient of 0.6 was chosen for the overall site for determining detention requirements.

The developed winery area, however (0.878 ac.), will be altered by grading, paving, buildings porous surfaces, landscaping etc. A rational coefficient of 0.7 was chosen due to a more intense coverage.

Detention calculations were divided into two segments. The first considers the 1.9 ac. that is altered from pre to post development. The peak discharge prior to development is 1.08 cubic ft./sec (cfs), while the post discharge is 5.07 cfs. This yields a demand for at least 2100 cubic ft. of detention capacity. A packet is attached that includes site mapping, drainage characteristics, flow calculations and detention volumes.

The second segment considers the 1.06 ac. hillside above the winery and its effect on the winery site below. The runoff from the hillside above is intercepted and collected by a concrete gutter and inlets. It is then piped independently of the winery runoff and split in two directions. One part (approximately 1/3) is directed northerly toward Silverado Trail. The remainder is piped to a drainage dissipater. Since this hillside runoff is piped, the flow will be much faster than the original overland flow. Additional detention is needed to mitigate this faster rate. The detention calculations yield a demand for an additional 600 cubic ft. detention capacity. A packet is attached that includes site mapping, drainage characteristics, flow calculations and detention volumes.

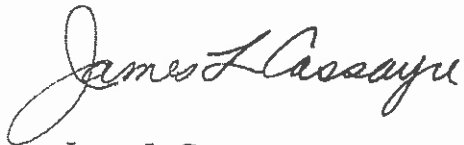
Combining the two detention volumes, at least 2,700 cubic feet of detention space is needed.

This project proposes a detention basin having an area of approximately 6,500 sq. ft. and slightly more than 2ft. deep, yielding a volume of approximately 13,000 cubic ft. It is completely filled with 3 inch ballast rock. Based on testing performed by RGH Geotechnical, 3 inch ballast rock has a void space of 3.7 gallons per cubic ft. This void space provides approximately 6,400 cubic ft. of detention capacity, and exceeds the required detention volume. A drawing is included in this packet, and notes are applied to show direction of flows and how the basin function. A cross section through the detention basin appears on Sheet #6 (Section 3) of the engineering plans submitted as part of the use permit.

Conceptually, the detention basin receives site runoff at three separate locations, two from drop inlets, and one from roof water that is stored in tanks. Water is introduced into the ballast rock basin and will rise until it reaches the overflow level at the two drop inlets. When capacity is reached the runoff will be directed to vegetated swales or filtered, cobble swales. The detention basin has a bottom drain, but is constricted and permits only low exit flows. The drawing in the packet, together with the applied notes, show the direction of flows.

In addition, there are two 8,500 gallon water tanks that will receive runoff from the winery roof. They have not been included as part of the design detention, even though they can reduce the runoff from the project area.

All the site drainage and the contributing drainage from the hillside above returns to the original route, crosses the existing paved road and travels southerly along the eastern boundary.



James L. Cassayre RCE 17552
expires 6-30-13

City of Calistoga
1232 Washington St.
Calistoga, CA 94515

13 March 2012

Re: August Briggs Winery (APN 011-050-031)

In 2003 I prepared the site grading and drainage drawings for the August Briggs Winery on Silverado Trail. The plans were prepared based upon a site survey that I performed for the undeveloped property in 2002. That survey showed that the natural drainage of the property sloped away from Mt. Washington in a south-easterly direction toward the "Luvisi" property. The survey extended approximately 30 feet into the front parcel (APN 011-050-030). It indicated that the topography there was consistent with the "Briggs" property. The surface runoff from the front property did not drain across the Briggs property.

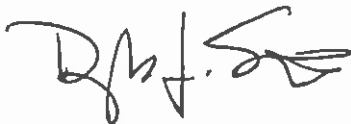
The site plans were prepared to allow the natural surface flow to continue in the area of the access driveway from Silverado Trail. The access driveway was designed without a center crown and sloped down from the "upslope" side toward the Luvisi property. The surface of the driveway was designed to be flush with the existing ground so as to not impede any natural water flow. No "downslope" water-carrying swale was included in the design to pull the water away from the Luvisi property, nor was any berm built along the driveway to prevent water from entering the Luvisi property.

A curb was placed at the edge of the Briggs property along the Briggs/Luvisi property line (in the vicinity of the winery). This was done to collect and direct the extra surface drainage produced by the new construction and hardscape away from the Luvisi property. Therefore, the Luvisi property would not see any impact from the new construction. The curb was not put there to direct or contain water from any other property.

No part of the project was designed to direct or impede water coming from APN 011-050-030 from entering APN 011-050-031. There was no water naturally passing in that direction.

My plans for the construction of the August Briggs Winery are on file with the City of Calistoga. Please contact me if you have any questions regarding this letter.

Sincerely,



Douglas Sterk, P.E.
USAED-J
Box 92
APO, AP 96338

3/13/12

To: City of Calistoga

From: Joe Briggs

RE: August Briggs Winery Surface Water Drainage

I understand there are some questions as to the surface water drainage at and around the former August Briggs Winery at 333 Silverado Trail in Calistoga.

In 2003, I had Doug Sterk , PE prepare a site survey of the winery property, as well as some of the surrounding area. This survey was to help prepare a grading and drainage plan for the future winery. What the survey found was that the natural flow of surface water from Mt. Washington migrated south and slightly east across the driveway easement and winery property to the Luvisi Property which borders the winery & easement to the south.

It was determined that the new winery construction would create extra, faster flowing surface water. To mitigate this flow, a plan was designed to channel this water away from the winery property with a curb at the Luvisi-Briggs property line starting approx. 30 feet in front of the winery building to approximately 30' behind the winery building. The water then flowed onto the Luvisi Property (with their permission) via a swale, then into the existing Luvisi-Frediani drainage ditch (again with their permission) on down to the river. As part of the plan, we were required (with the help of Curtis Helmer) to improve, at our expense an existing crossing of the drainage channel down-stream by the City of Calistoga's maintenance yard (at the end of Washington St.).

At the same time, it was determined that the surface water flow from Mt. Washington south, across the drive way easement would not be affected by the new winery construction, and would be best left as it was naturally, flowing onto the Luvisi Vineyard at the properties border. Because of this, the grading and drainage plan spelled out keeping the driveway flat, and without berms or other impediments to the natural surface flow.

Following construction, I operated and maintained the winery property for seven years before selling it. Over the seven years I observed the real time function of the surface water drainage plan, it worked just as designed and stated. If you have questions, feel free to call any time.

All the Best!



Joe (707-688-7363)