



Planning Division

**PLANNING COMMISSION
STAFF REPORT**

TO: Planning Commission

FROM: Linda Windsor, Associate Planner

DATE: May 7, 2009

SUBJECT: Planning and Zoning Permit No. 08-510-15 (Major Modification to Special Use Permit No. 03-500-29 for Alcohol Use), Herzog Wine Cellars, Located at 3201 Camino del Sol.

- 1) **Recommendation:** That the Planning Commission approve Planning and Zoning Permit No. 08-510-06 for a major modification to a special use permit for alcohol, subject to certain findings and conditions.
- 2) **Project Description and Applicant:** A request to upgrade an existing special use permit from On-sale Beer and Wine for a Bona Fide Public Eating Place (ABC License Type 41), to On-sale General (beer, wine and spirits) for a Bona Fide Public Eating Place (ABC License Type 47) within the café, first floor conference room and wine tasting area at an existing winery, located at 3201 Camino del Sol. Filed by designated Attorney in Fact Jacy Basile, Controller, Herzog Wine Cellars, 3201 Camino del Sol, Oxnard, CA 93036.
- 3) **Existing & Surrounding Land Uses:** The subject site is the current location of Herzog Wine Cellars.

Project Site	M1PD (Light Industrial Planned Development)	ILGT (Industrial: Light)	Winery with ancillary uses
North	M1PD	ILGT	Trucking distribution center
South	M1PD	ILGT	Light Industrial, warehousing
East	M1PD	ILGT	RR tracks, Light Industrial
West	M1PD	ILGT	Vacant

- 4) **Background Information:** In 2003, the applicant submitted an application for a zone text amendment that would allow the proposed wine bottling facility as a permitted use in the M1PD zone, and Special Use Permit No. 03-500-29 for alcohol uses to support the winery, wine tasting and a café on the site. The Planning Commission approved the special use permit recommended approval of the zone text amendment on December 18, 2003, and the

City Council approved the zone text amendment and upheld the Planning Commission's approval of the special use permit on January 6, 2004. The special use permit allowed the applicant to apply for two types of ABC licenses: Type 2 for the winery, including manufacturing, bottling, storage, wine tasting, and retail sales of wine; Type 41 for a café, with on-site sales of beer and wine. The special use permit did not include approval of the building and other site improvements to house the alcohol-related uses, and required that the applicant obtain a development design review permit to allow for this construction, consistent with the McGinnes Ranch Specific Plan.

The Planning Manager approved DDR No. 03-200-5 on February 19, 2004, which allowed construction of the 76,915 square foot winery building, with spaces for an ancillary café, wine tasting room/gift shop, administrative offices and conference rooms, consistent with the approved special use permit. Several minor modification requests have been approved related to this property, including final floor plan for the café/wine tasting area, a canopy covering the outdoor patio, and a walled enclosure (related to upgraded water treatment for the facility) in the rear (north side) of the building.

Special conditions are included in the original special use permit (PZ No. 03-500-29) approval related to the winery operations, wine tasting and café operations. This major modification includes additional conditions for the proposed upgraded alcohol use, and new conditions clarifying the separation between the two alcohol permits, which will be applied to the subject site. The major modification will supersede the previous Special Use Permit approval resolution.

5) Environmental Determination: In accordance with Section 15061(b) (3) of the California Environmental Quality Act (CEQA) Guidelines (the "General Rule" exemption), the proposed project is not subject to environmental review. This exemption states that when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the project is not subject to the California Environmental Quality Act. This proposed upgrade in the alcohol sales use for the existing facility does not increase the intensity, modify the operations, or change the land uses on the project site, and therefore would not create a significant effect on the environment. Staff recommends that Planning Commission accept the Notice of Exemption (see Attachment C).

6) Analysis:

a) General Discussion: Beer and wine with meals have been sold since the café (Tierra Sur) opened in 2006, under an ABC Type 41 License. The café occasionally serves beer and wine with meals on the winery's patio area for special events and in the first floor conference rooms for private events. The requested modification would allow an upgrade of on-site alcohol sales (from Type 41 to Type 47) on the property within the areas of the property where food is served. Since 2005, the winery has offered wine tasting in the wine tasting room (under the Type 2 license for the winery). The applicant proposes no changes to the existing Type 2 license, and two types of ABC licenses (Types 2 and 47) would continue to exist on the subject site.

The major modification is a request to allow service of distilled spirits (in addition to beer and wine) within the following areas:

Name of area	Size (sq ft)
Tierra Sur (café)	4,514
First floor conference room	592
Wine tasting room/gift shop	1642
TOTAL	6,748

The café and tasting room are in the southwest corner of the building, on the first floor, the first floor conference room is near the front of the building, near the entrance to the wine tasting area.

The café and wine tasting room are open 8 A.M. to 9 P.M. on Monday through Thursday, 8 A.M. to 4:30 P.M. on Friday, and noon to 3 P.M. on Sunday. The café, first floor conference room and the tasting room, including the patio, have a capacity for 240 customers. The manufacturing and administrative portions of the facility generally operate Monday through Friday, 8 A.M. to 5 P.M.

No other changes to the winery building and its permitted uses, either physical or operational, are proposed as part of this application. The winery operations occupy the majority of the property (70,167 square feet, or 91%, of the entire 76,915 square foot building), with the café and wine tasting use clearly ancillary.

The winery operates its manufacturing, distribution and bottling facility under an ABC Type 2 License (for wineries). The Type 2 license allows on-site consumption of alcoholic beverages for "tasting" products manufactured on-site and also permits the sale of alcoholic beverages (such as bottles of wine) for off-site consumption. This type of license allows the winery to sell only alcoholic beverages they actually produce or that they have produced for them, and the tasting portions are strictly regulated.

As noted above, the previously approved special use permit resolution includes both the on-site alcohol sales and the winery's uses. The winery's alcohol use (manufacturing, bottling, fermenting, and storage of wine) is a permitted use in this zone. The modification's resolution applies to the on-site alcohol use as well as the winery use, superseding the conditions in the existing alcohol special use permit resolution.

- b) General Plan Consistency:** The land use map of the General Plan designates the subject parcel for *Light Industrial* development, which includes manufacturing uses where the principal activity occurs within a building, but also permits incidental light outdoor assembly, fabrication and storage. Wholesale and retail sales of large commodities related to warehousing or service uses on site may also be permitted. The underlying zoning designation of M1PD (Light Manufacturing, Planned Development) is consistent with the *Light Industrial* General Plan land use designation. As noted above,

the Planning Commission approved a special use permit to allow the wine tasting and café portion of this project. In approving the DDR for the building project, the Planning Manager determined that the project complies with the applicable portions of the Zoning Ordinance and the General Plan.

- c) **Upgrade of Alcoholic Beverage Use for On-site Consumption:** The applicant has filed an application with the State Department of Alcoholic Beverage Control (ABC) to change their Type 41 License to a Type 47 License pending City of Oxnard approval of this major modification to the existing special use permit. The Type 47 License (On-sale Beer, Wine and Spirits – Eating Place) allows alcohol sales in conjunction with a bona fide eating establishment (such as a café).
- d) **Police Department Review:** The Police Department reviewed the proposed alcohol use as required by City Council Resolution No. 11,896 for sale of alcoholic beverages. The Police Department's report (Attachment D) provides information regarding the number of incidents of police response, whether there is a presumption of undue concentration of establishments selling alcoholic beverages and whether approval of the coastal development permit is likely to significantly aggravate policing problems.
- i) **Special Considerations for Two ABC Licenses:** The applicant's original intent in applying for this modification was to upgrade only the café's alcohol use and expand this upgraded alcohol use to the patio. However, the ABC has stringent restrictions about not allowing uses from the two types of licenses to co-mingle, which would occur if persons in the café (Type 47 area) were to visit the tasting room or walk upstairs to the viewing area above the wine barrel area, and the bottling area (currently ABC Type 2 licensed areas). This co-mingling of the alcohol uses could cause monitoring complications for ABC and the Police Department, so the Police Department and the applicant worked together to reach a workable solution that would be easier to monitor while meeting the applicant's goals. The solution was to designate the tasting room, café and patio area as the Type 47 (on-site alcohol sales) areas, while the upstairs area and all other areas of the winery would remain as the Type 2 (winery) areas (see attached floor plan). Distilled spirits would be prohibited in the Type 2 areas.
- ii) **Concentration of Alcohol Sales:** There is one similar use within 350 feet of the site (Pacific Beverage, a wholesale distributor of beer and wine) and another alcohol use within 1000 feet (Kysela Imports Wholesale Distributor and Off-Sale Retail sales of beer, wine and spirits). There is no issue of undue concentration in this area.
- iii) **Crime Statistics Review:** For comparison purposes, the Police Department calculates the average number of part I and II crimes that occur per reporting district (grid) during a selected 12-month period. The average city-wide, per grid base number of Part I and II crimes is currently 117.

The average number of Part I and II crimes in the applicant's reporting district and all other districts within 1000 feet of the applicant is 42 during the same 12-month time period. This is 64% lower than the average crime rate citywide. The Police Department responded to the subject site 5 times in the last 12 months, and none of the incidents were disturbance related. The numbers of disturbance-related incidents that list alcohol as a contributing factor and all other disturbance calls were far below the citywide average.

For reference, the category of part I crimes include: murder, rape, robbery, theft, burglary, auto theft, assault, and arson. Part II crimes include: vandalism, weapons possession, sex offenses, drug abuse violations, driving under the influence, liquor laws, drunkenness, and disorderly conduct

- iv) **Additional Police Input:** The Police Department has no serious concerns about upgrading the alcohol use in this particular area.

As noted above, the Police Department worked extensively with the applicant to balance the applicant's vision for the business with the requirement of not co-mingling the two types of alcohol licenses. Special conditions were recommended by the Police Department to assure this separation, including posting signs at the bottom of the stairway, while allowing customers to walk freely from the cafe to the gift shop and tasting areas without violating ABC regulations. These conditions are included in the attached resolution.

The Police Department will contact the Responsible Alcohol Policy Action Coalition (RAPAC) so that they may provide comments at the Planning Commission hearing if they so desire.

- v) **Conclusion:** The statistical analysis shows the area to have a crime rate that is 64% lower than the city-wide average. The Police Department does not consider this area to be a policing problem.

Even though the area in which alcoholic beverages will be served is larger than previously, and will add distilled spirits, the changes allow the business to more easily comply with state and local regulations. The Police Department does not see the increase in size for the Type 47 privileges as significantly increasing the risk of Police problems since the use is essentially the same as the existing use and the floor plan is appropriately laid out for this use.

The Police Department's experience is that the proposed license (Type 47 – Bona Fide Eating Establishment), when properly regulated through conditions imposed by the Planning Commission, does not normally aggravate policing issues, as long as the establishment complies with these regulations and operates responsibly. The Police Department's standard and special recommended operating conditions have been incorporated into the attached Planning Commission resolution.

7) Community Workshop: This project is not within a neighborhood or adjacent to any neighborhoods, and therefore was not reviewed at a Community Workshop.

Appeal Procedure: In accordance with Section 16-545 of the City Code, the Planning Commission's action may be appealed to the City Council within 18 days after the decision date. Appeal forms may be obtained from the City Clerk and must be submitted with the appropriate fees before the end of the appeal period.

Attachments:

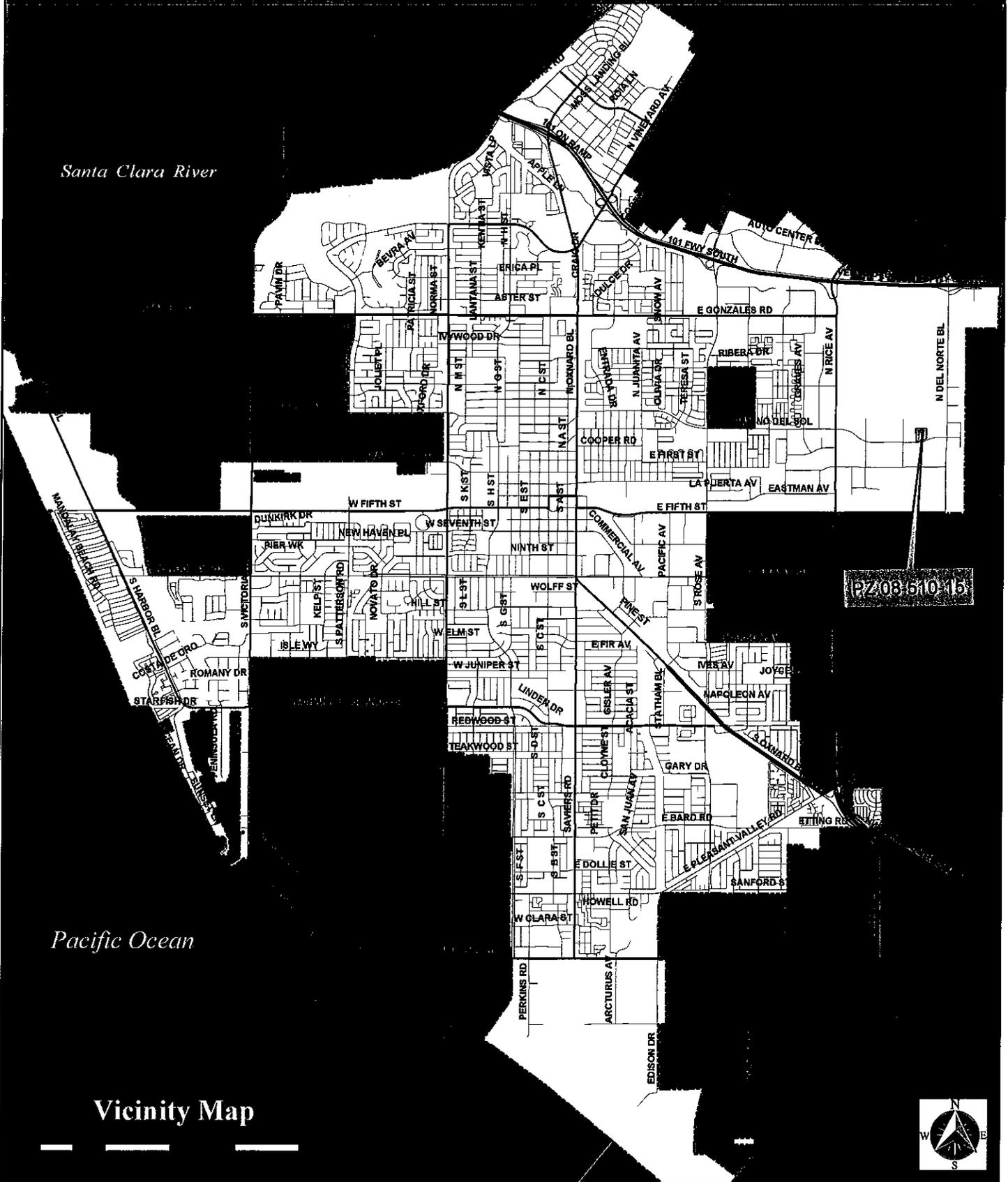
- A. Maps (Vicinity, General Plan, Zoning)
- B. Reduced Project Plans
- C. Notice of Exemption
- D. Police Report
- E. Resolution

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Prepared by: <u>LJW</u> LJW
Approved by: <u>SM</u> SM

Vicinity Map

Santa Clara River



PZ08-510-15

Pacific Ocean

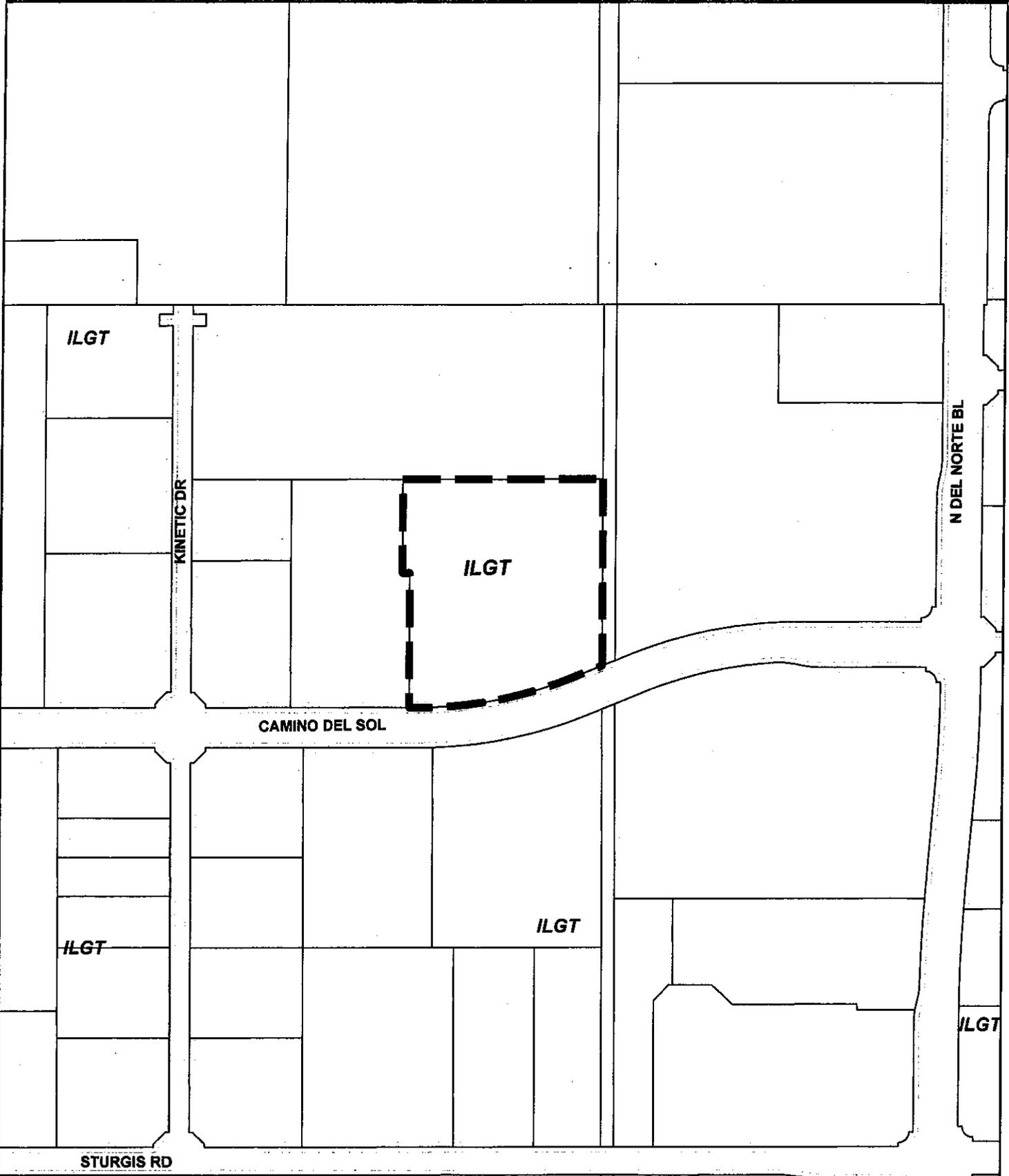
Vicinity Map



Oxnard Planning
April 16, 2009

PZ 08-510-15
Location: 3201 Camino Del Sol
APN: 216015146
Herzog Wine Cellars

General Plan Map

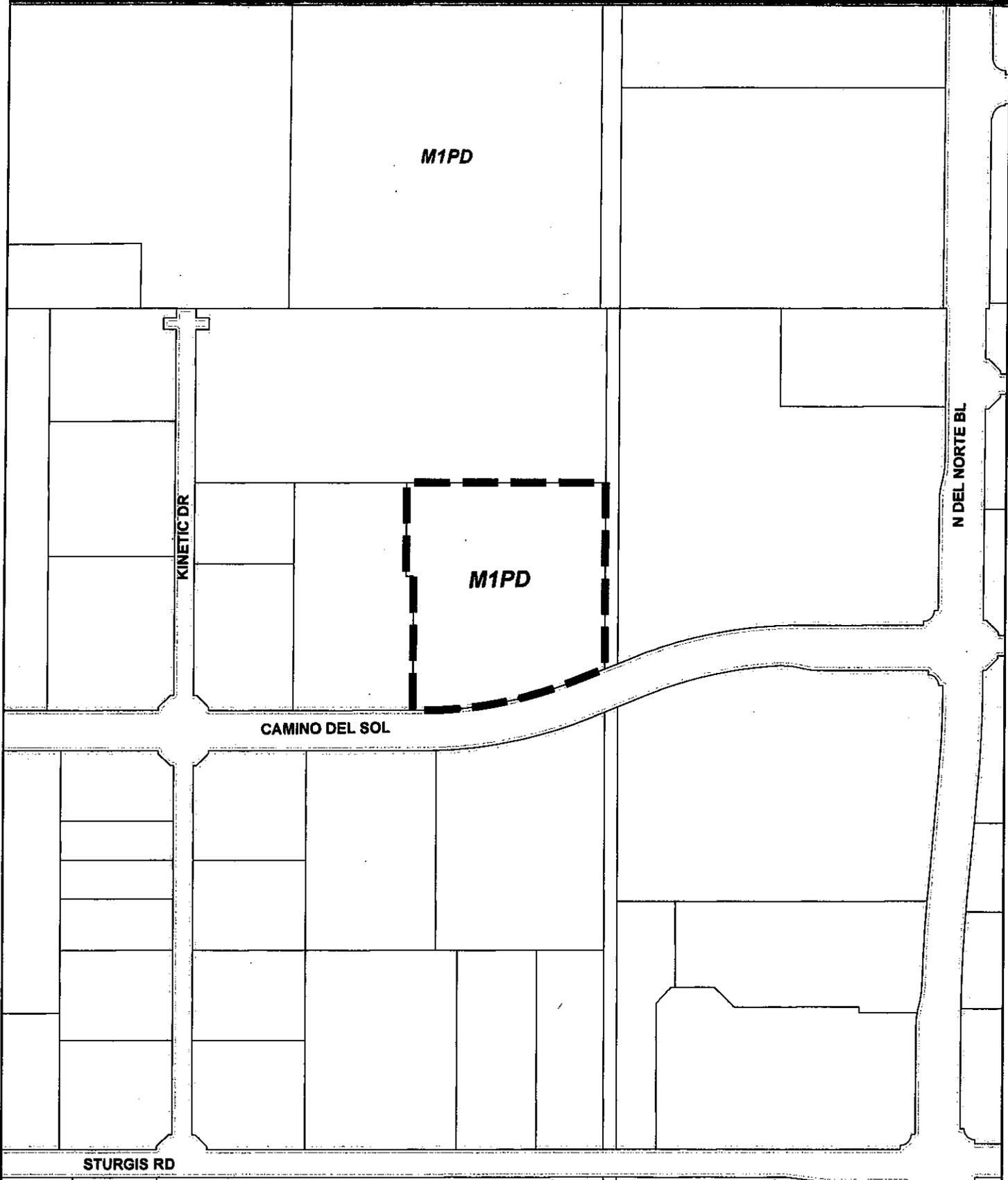


PZ 08-510-15
Location: 3201 Camino Del Sol
APN: 216015146
Herzog Wine Cellars

0 75 150 300 450 600 Feet

General Plan Map





.PZ 08-510-15
Location: 3201 Camino Del Sol
APN: 216015146
Herzog Wine Cellars

0 62.5 125 250 375 500 Feet

Zone Map



PARCEL C

98-211401 O.R.
NOT A PART

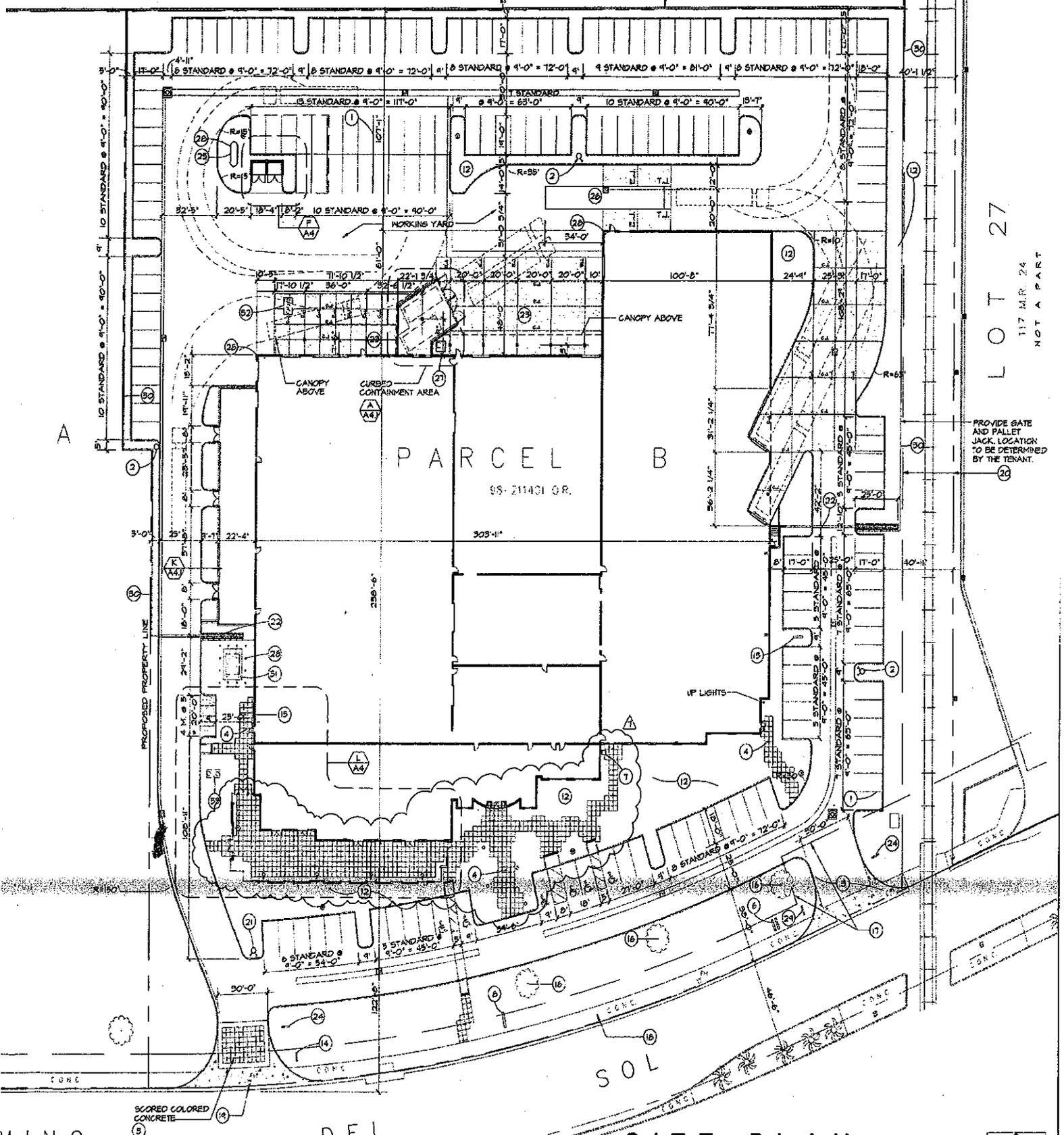
EXSTNS HALL

LOT 27
117 M.R. 24
NOT A PART

PROVIDE GATE
AND PALLET
JACK LOCATION
TO BE DETERMINED
BY THE TENANT.

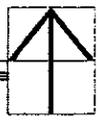
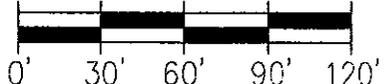
PARCEL B

98-211431 O.R.
305'-4"



SITE PLAN

SCALE: 1"=30'-0"

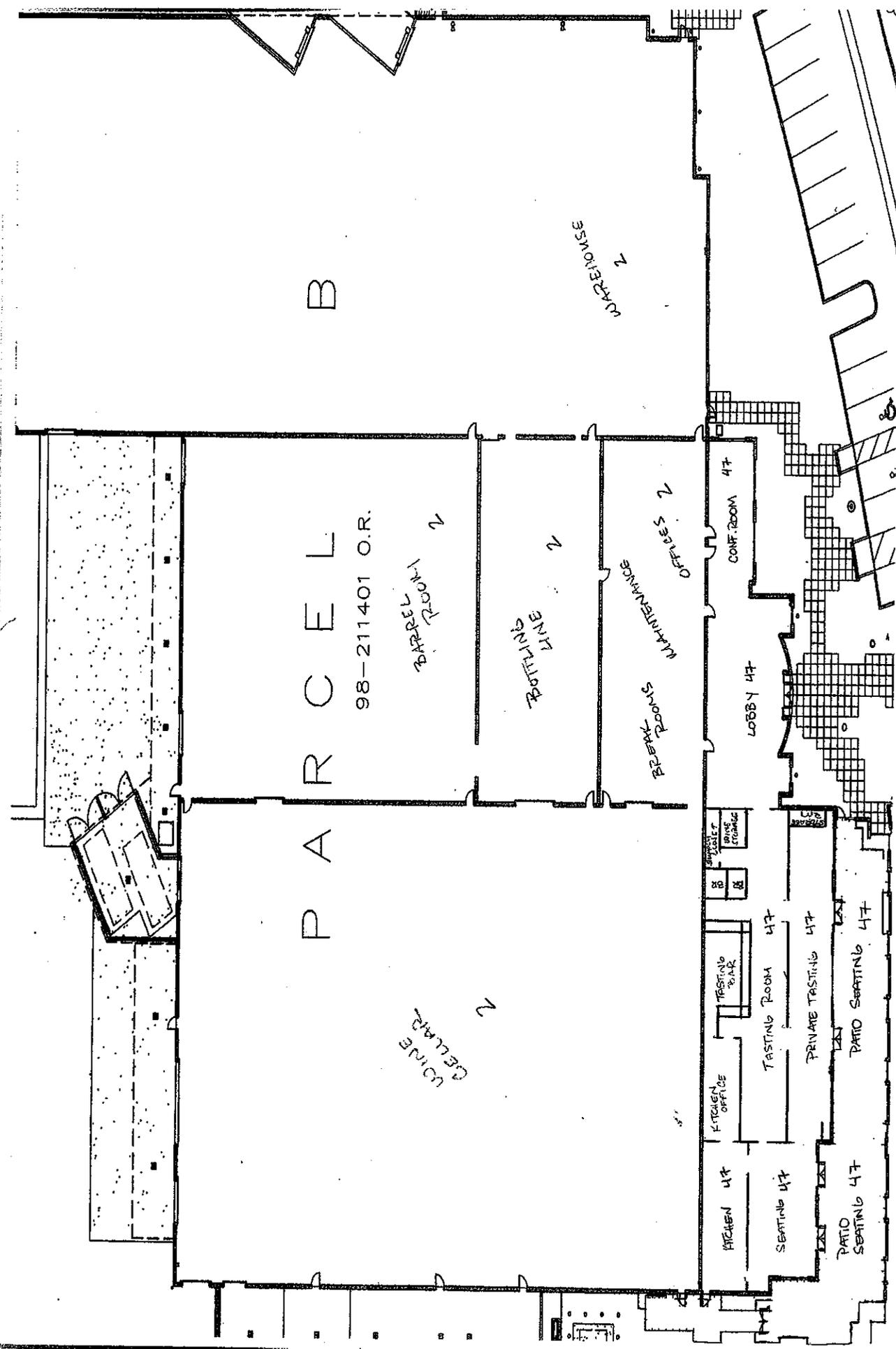


NORTH

MINO

DEL

SOL



B

WORKSPACE 2

PARCEL

98-211401 O.R.

CINE CELLAR 2

BARREL ROOM 2

LATTICE ANNE 2

BREAK ROOMS

MAINTENANCE

OFFICES 2

CONF. ROOM 47

LOBBY 47

WATER DRAIN STORAGE

KITCHEN OFFICE

TESTING ROOM

PRIVATE TASTING 47

PATIO SEATING 47

KITCHEN 47

SEATING 47

PATIO SEATING 47



NOTICE OF EXEMPTION

Project Description:

PLANNING AND ZONING PERMIT NO. 08-510-15 (Special Use Permit) a request to add on-site sales of general alcohol (ABC License Type 47) to the existing on-site beer and wine sales within the café, conference room and wine tasting room at an existing winery, located at 3201 Camino del Sol (APN 216-0-151-465), within the McGinnes Ranch Business Park Specific Plan area. The proposed project is exempt from environmental review under Section 15301 of the CEQA Guidelines. . Filed by designated Attorney in Fact Jacy Basile, Controller, Herzog Wine Cellars, 3201 Camino del Sol, Oxnard, CA 93036

Finding:

The Planning Division of the Development Services Department of the City of Oxnard has reviewed the above proposed project and found it to be exempt from the provisions of the California Environmental Quality Act (CEQA).

- Ministerial Project
- Categorical Exemption
- Statutory Exemption
- Emergency Project
- Quick Disapproval [CEQA Guidelines, 14 Cal. Code of Regs. 15270]
- No Possibility of Significant Effect [CEQA Guidelines, 14 Cal. Code of Regs. 15061(b)(3)]

Supporting Reasons: In accordance with the California Environmental Quality Act Guidelines and Section 15061(b)(3) of the California Code of Regulations, when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, these projects may be found to be exempt from the requirements of CEQA. This proposal consists of modifying the alcohol sales for an existing hotel, involving no physical changes to the project. Therefore, staff has determined that there is no substantial evidence that the project may have a significant effect on the environment.

(Date)

Susan L. Martin, AICP
Planning Division Manager



Police Department

John Crombach, Police Chief

Date: April 2, 2009

To: Linda Windsor, Associate Planner

From: Cliff Waer, Senior Alcohol Compliance Officer

Subject: 3201 Camino Del Sol (Herzog Winery – Tierra Sur) **PZ 08-510-15**

Site Information:

The proposed site is located at 3201 Camino Del Sol where there is an existing winery (Herzog) and a cafe that sells beer and wine (Tierra Sur). The winery operation involves the use of the majority of the property and is licensed as a California Department of Alcoholic Beverage Control (ABC) license Type-02 (Winery). This license type allows for on-site consumption of alcoholic beverages for the purposes of “tasting” the products offered and also permits the sale of alcoholic beverages for off-site consumption. Additionally, this type of license only allows the winery to sell alcoholic beverages they actually produce or that they have produced for them and the tasting sizes are very small (typically one-ounce).

The cafe occupies a much smaller area and is currently situated along the southwest corner of the structure. This portion of the building is licensed as a Type-41 which permits the sale of beer and wine with food for consumption on the premises. While the two uses (winery and cafe) operate in the same building and are interconnected, California ABC regulations prohibit the cross-contamination of the license privileges. In other words, an open glass of wine purchased in the cafe may not be carried into the adjoining tasting room which is currently licensed as a Type-02. Conversely, a glass of wine being sampled in the tasting area may not be taken into the cafe. This regulation has created some conflict with the intended use and is difficult to adequately monitor.

The applicant is requesting to upgrade the existing cafe license Type-41 (Beer and Wine) to one that also allows for the sale of distilled spirits (Type-47). In addition to the upgrade, part of the proposed changes will address the cross-contamination conflict by licensing the entire tasting area and cafe as a Type-47.

Alcohol outlets located within 350 feet of the establishment include:

BUSINESS NAME	LOCATION	LICENSE TYPE	LICENSE TITLE	LICENSE DESC.	ALCOHOL ALLOWED
1. Pacific Beverage	401 Del Norte	Type-09	Distributor	Wholesale Distributor	Beer and Wine

Alcohol outlets located within 350 feet of the establishment include:

BUSINESS NAME	LOCATION	LICENSE TYPE	LICENSE TITLE	LICENSE DESC.	ALCOHOL ALLOWED
1. Kysela Imports	701 Del Norte #155	Type-17 Type-09 Type-20 Type-18	Distributor Importer B/W Off-Sale Beer and Wine Spirits Whsle.	Wholesale Distributor plus Off-Sale retail privileges	Beer, Wine and Spirits

Crime Statistic Review:

For comparison purposes the Police Department calculates the average number of part I and II crimes that occur per reporting district (grid) during a selected 12-month period. The average city-wide, per grid base number of Part I and II crimes is currently 117.

The average number of Part I and II crimes in the *applicant's* reporting district and all other districts within 1000 feet of the applicant is 42 during the same 12-month time period. This is approximately 64% lower than the average crime rate citywide. The Police Department responded to the location a total of 5 times in the last 12-months with none of the incidents being disturbance-related. The number of incidents that listed alcohol as a contributing factor and all other disturbance calls were far below the citywide average.

For reference, the category of part I crimes include: murder, rape, robbery, theft, burglary, auto theft, assault, and arson. Part II crimes include: vandalism, weapons possession, other sex offenses, drug abuse violations, driving under the influence, liquor laws, drunkenness, and disorderly conduct.

Police Department Input:

The Beat Coordinator for the area surrounding the proposed site had no significant concerns regarding the proposed use. He said the crime rate in the area is very low and the majority of reported incidents tend to be property crimes that are generally minor in nature. There has been a recent surge in commercial burglaries to several of the industrial businesses throughout the area but that issue should not be aggravated by the proposed use.

The Police Department has worked extensively with the applicant to refine the proposed changes in order to balance the applicant's vision for the business while addressing the technicalities and idiosyncrasies of having the two license types in the same structure (Type-02 and Type-47). The problem mentioned above is that the two uses can not intermix which creates a complicated and difficult situation to monitor. The floor plan of the two businesses is situated to invite guests who may be visiting the cafe to stroll through the tasting area where there are also gifts and wine-related accessories. There is also an upstairs viewing area that overlooks the barrel room and wine cellar. The initial intent was to only upgrade the cafe license and expand the use to allow consumption on the enclosed patio. Ultimately, it was decided that the problems of cross-contamination could be minimized if the area for the Type-47 was increased to also include the tasting area, patio and downstairs conference rooms. This would allow customers to roam freely from the dining area to the gift shop and tasting areas with no violation of ABC regulations and will be much easier for staff to monitor. The upstairs area and all other areas used for the winery operations will maintain the Type-02 status where distilled spirits would be prohibited.

Community Input:

There was no community input provided to the Police Department for this use. The Responsible Alcohol Policy Action Coalition (RAPAC) will be contacted by the Police Department prior to the Planning Commission hearing so they may provide any comments at the hearing if necessary. When the Permit was granted in 2003, members of the community expressed some caution about the tasting area and the ability to serve free samples but were ultimately not opposed to the use.

Conclusion:

The statistical analysis shows the area to have a crime rate that is approximately 64% lower than the city-wide average and is not considered a policing problem. Disturbance calls and those involving alcohol are well below citywide average and the police have responded to the current site only five times in the last year with none being disturbance calls. While the proposed use will add distilled spirits and significantly increase the size of the area where it is permitted to serve alcoholic beverages, the changes also eliminate an existing conflict and allow the business to more easily remain in compliance with state and local regulations. The overall increase in size for the Type-47 privileges should not significantly increase the risks of experiencing problems as the site is uniquely suited for such a use and the proposed use is not substantially different from the current operation.

The Police Departments experience is that the proposed license (Type 47 - Bona fide eating establishment), when properly regulated through conditions imposed by the Planning Commission, does not normally aggravate policing issues as long as the establishment complies with these regulations and operates responsibly. Listed below are the Police Department's recommended operating conditions for the Planning Commission Resolution.

Police Standard Operating Conditions

- 1) Permittee and all sellers or servers of alcoholic beverages shall complete a course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
- 2) Permittee and all general managers, managers or policy makers shall complete a course in the Responsible Alcohol Policy Program (available through the Oxnard Police Department) within 12 months of license granting and/or date of employment. (PD)
- 3) Sales of alcoholic beverages (other than for "tasting" per ABC license Type-02 guidelines) shall be incidental to the sale of food. It shall not be considered a violation of this condition if customers are served alcoholic beverages in any lounge, bar or staging area and who are waiting to be seated for the service of food. Employees shall make a good faith effort to ensure that all customers being served alcoholic beverages are also on the premises for the purpose of consuming food items. (PD)
- 4) When security personnel are present or required, Permittee shall maintain accurate records of all security personnel on the premise at any given time and make those available to the police upon demand. These records shall, at a minimum, provide the name, date of birth, copies of security guard credentials or license and any other permits or certifications related to security work. This would include copies of permits for weapons or other tools the guard may be authorized to carry. Security personnel shall remain in compliance with updated training related to their work as set forth by any existing or future state and/or local regulations.
- 5) The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
- 6) The premises shall be equipped with an adequate number of seats to accommodate all customers. There shall be no service areas, other than those designated as tasting areas, which are designed or used as a standing area only or as a combined standing and seating area.
- 7) The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. Permittee shall at all times maintain records which reflect

separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department upon demand. (PL/PD)

- 8) Permittee shall comply with the provisions of Section 23038 of the Business and Professions Code and acknowledges that incidental, sporadic, or infrequent sales of meals or a mere offering of meals without actual sales shall not be deemed sufficient to consider the premises in compliance with the aforementioned section.(PL/PD)
- 9) The premises shall be equipped and maintained in good faith as a bonafide Bona fide eating establishment and shall possess, in operative condition, such conveniences for cooking and storage of foods such as stoves, ovens, broilers, refrigeration or other devices, as well as pots, pans or containers which can be used for cooking or heating foods on the type heating device employed. (PL/PD)
- 10) The premises shall possess the necessary utensils, table service, and the condiment dispensers with which to serve meals to the public.(PL/PD)
- 11) The use of any amplifying system or device shall not be audible outside the premise nor shall it be disruptive to neighboring businesses. (PD)
- 12) There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. The display of official business names or logos that have alcoholic beverages included in them is permitted (PL/PD)
- 13) Sales of alcohol shall not occur between the hours of 1:00 a.m. and 6:00 a.m. (PL/PD)
- 14) Alcoholic beverages shall not be offered at significantly reduced prices (typically more than 25%) that are meant to encourage greater consumption of alcohol such as during "happy hour" type promotions. Permittee shall not develop any promotional activity that is designed to encourage excessive drinking of alcoholic beverages. Promoting a "happy hour" or other event that offers reduced prices on food or other non-alcoholic items shall not be considered a violation of this condition and are actually encouraged. (PD)
- 15) Alcoholic beverages shall be served in standard sizes, not greater than 32 oz., that are consistent with the industry and shall not be served by the pitcher, "bucket" or similar high capacity amounts.
- 16) In the areas surrounding the business, not otherwise licensed by the Department of Alcoholic Beverage Control allowing the service of alcohol, Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
- 17) If alcoholic beverages are to be sold and consumed in any patio area, the patio must be properly licensed through the City of Oxnard and the Department of Alcoholic Beverage

- Control and the entire patio shall be adequately enclosed to the satisfaction of the Police Chief. Low or excessively wide spaced fencing will not be considered sufficient. (PD)
- 18) Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". (PD)
 - 19) Employees shall not be allowed to consume alcoholic beverages at any time during their shift or at any time within eight (8) hours prior to the beginning of their shift. (PD)
 - 20) Permittee shall not create any bar, lounge or other area in which the exclusive use would be the service of alcoholic beverages. Food shall be made available in all areas where customers are seated. An area designated for customers who are waiting to be seated at a food service table shall not be considered a violation of this condition as long as the area is not used primarily for the service of alcohol. (PD)
 - 21) The subject Alcoholic Beverage Control License shall not be exchanged for any other type of Alcoholic Beverage Control License without review and approval by the Police Chief or his designee, Planning Commission or City Council. (PD)
 - 22) Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined in the Oxnard City Code, Police Department may initiate Planning Commission review the existing SUP and apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
 - 23) Any graffiti painted or marked upon the premises or on any adjacent area under the control of Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
 - 24) Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which Permittee has reasonable control. (PL/PD)
 - 25) The area surrounding premises under the reasonable control of Permittee (including the rear of the business) shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons in or about the area. (PL/PD)
 - 26) No new pay phone on the exterior of the premises shall be allowed and any pay phones installed inside shall be blocked from incoming calls. (PL/PD)
 - 27) Permittee shall regularly police the area under Permittee's control in an effort to prevent the loitering of persons about the premises. (PL/PD)
 - 28) Permittee shall establish cash handling procedures to reduce the likelihood of robberies and thefts. (PD)

- 29) Permittee shall install a video surveillance system that shall be maintained at a reasonable industry standard and shall, at a minimum, monitor the entrances and exits, any centralized point of sale and areas immediately surrounding the exterior of the business. (PD)
- 30) Permittee shall install height gauges at all exit doors prior to final inspection. (PD)
- 31) Prior to issuance of Certificate of Occupancy, Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion. (PD)
- 32) Permittee shall bolt down all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)
- 33) Permittee shall have drop-safes installed or implement other safe cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50). (PD)
- 34) Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
- 35) If the project property is already occupied or use has already been initiated, Permittee shall comply with all conditions of this permit within 30 days of approval thereof. (PL/B, PL-9)
- 36) A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

Police Special Conditions

- 1) Displays or storage of alcoholic beverages shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy or unobstructed path to any entry or exit. (PD)
- 2) During all hours of retail sales, the showroom containing alcoholic beverages shall be adequately monitored by employees and the sales area shall not be left unattended. Buzzers, bells or other sounding or warning devices that alert employees when a customer has entered the business shall not be considered a replacement for adequate monitoring and visual observation of the retail area. (PD)
- 3) No alcohol shall be offered to customers completely free of charge. A nominal fee that is consistent with the industry standard shall be charged for all wine tasting or sampling. At

the discretion of the Permittee, the fees may be refunded or credited to the customer as long as the customer purchases bottled wine for off-site consumption at the time of the tasting. Customers that are members of "wine clubs" or who are participating in other promotional programs that require the customers to purchase a predetermined amount of product throughout the year may, at Permittee's discretion, have the fee waived. Permittee shall keep accurate records of those persons participating in such promotional programs and make them available to the Police Department upon demand. (PD)

- 4) It shall not be a violation of any condition above that prohibits the consumption of alcohol by on-duty employees as long as the consumption is for the purposes of quality control only and the sample size is consistent with industry standards (typically one ounce). At no time shall any employee become impaired or intoxicated while working. (PD)
- 5) Permittee shall install signage at both the top and bottom of the staircase near the foyer on the southeast corner of the building stating in effect that "alcohol is prohibited beyond this point". Permittee shall, in fact, not allow alcohol that is purchased in any area licensed as an ABC Ttpe-47 to be carried into any other portion of the facility. (PD)
- 6) Permittee shall post prominent signs near each of the exits (including the patio) indicating that it is unlawful to remove alcohol from the premises and that violators may be cited.
- 7) Any emergency exit gate/door on the patios shall not be used as a means of access or egress by patrons to and from the licensed premises and, other than during emergencies or for handicapped access per ADA guidelines, shall be kept closed at all times. The gate shall close automatically and be equipped with an audible sounding device to alert employees when it has been opened. Adequate signs shall be posted near the gate stating it is an emergency exit or handicapped access only and that an alarm will sound if opened.
- 8) There shall not be any outdoor or patio bar (portable or otherwise) where alcoholic beverages are stored or served.

RESOLUTION NO. 2009 -08-510-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. PZ 08-510-15 (MAJOR MODIFICATION TO SPECIAL USE PERMIT NO 03-500-29), TO ALLOW UPGRADE OF AN EXISTING SPECIAL USE PERMIT FROM ON-SALE BEER AND WINE FOR A BONA FIDE PUBLIC EATING PLACE (ABC LICENSE TYPE 41) TO ON-SALE GENERAL ALCOHOL (BEER, WINE AND SPIRITS) FOR A BONA FIDE PUBLIC EATING PLACE (ABC LICENSE TYPE 47) AT THE EXISTING HERZOG WINE CELLARS, LOCATED AT 3201 CAMINO DEL SOL (APN 216-0-151-465), SUBJECT TO CERTAIN FINDINGS AND CONDITIONS. FILED BY DESIGNATED ATTORNEY IN FACT JACY BASILE, CONTROLLER, HERZOG WINE CELLARS, 3201 CAMINO DEL SOL, OXNARD, CA 93036.

WHEREAS, the Planning Commission of the City of Oxnard has considered an application for Planning and Zoning Permit No. PZ 08-510-15, filed by Jacy Basile, Herzog Wine Cellars, in accordance with Section 16-530 through 16-553 of the Oxnard City Code and City Council Resolution No. 11,896; and

WHEREAS, the Planning Division has determined that the proposed project is not subject to environmental review pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations, because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and

WHEREAS, the Planning Commission finds, after due study, deliberation and public hearing, that the following circumstances exist:

1. The proposed use is in conformance with the General Plan and other adopted policies of the City of Oxnard.
2. The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.
3. The site for the proposed use is adequate in size and shape to accommodate the setbacks, parking, landscaping, and other City standards except as may be specifically excepted by the special findings and conditions of this resolution.
4. The site for the proposed use will be served by streets and highways adequate in width and structure to carry the kind and quantity of traffic such use will generate.
5. The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.

6. The proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages on-site consumption within 1000 feet of the subject location.
7. The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied.

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit or live in this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby approves this permit subject to the following conditions. The decision of the Planning Commission is final unless appealed in accordance with the provisions of Section 16-545 of the Oxnard City Code.

**STANDARD CONDITIONS OF APPROVAL
FOR LAND USE PERMITS**

Note: The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition; Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Public Works, Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, *G-1*).
2. This resolution supersedes Planning Commission Resolution No. 2003-117, for Special Use Permit No. 03-500-29.
3. This permit is granted for the plans dated April 20, 2009, (“the plans”) on file with the Planning Division. The project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning

and Environmental Services Manager ("Planning Manager") or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of alcohol use. A major modification shall be required for substantial changes in such use. (PL, G-2)

4. This permit shall automatically be null and void 12 months from the date of issuance, unless Developer has received from the State Department of Alcoholic Beverage Control an upgraded on-site alcoholic beverage license (Type 47) for the project property. (PL)
5. By commencing any activity related to the project or using any structure authorized by this permit, Developer accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
6. Developer agrees, as a condition of adoption of this resolution, at Developer's own expense, to indemnify, defend and hold harmless the City and its agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of the resolution or any condition attached thereto or any proceedings, acts or determinations taken, done or made prior to the approval of such resolution that were part of the approval process. Developer's commencement of construction or operations pursuant to the resolution shall be deemed to be an acceptance of all conditions thereof. (CA, G-6)
7. Developer shall complete the "Notice of Land Use Restrictions and Conditions" form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Developer shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)
8. If Developer, owner or tenant fails to comply with any of the conditions of this permit, the Developer, owner or tenant shall be subject to a civil fine pursuant to the City Code. (CA, G-14)

STANDARD POLICE CONDITIONS

9. Permittee and all sellers or servers of alcoholic beverages shall complete a course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
10. Permittee and all general managers, managers or policy makers shall complete a course in the Responsible Alcohol Policy Program (available through the Oxnard Police Department) within 12 months of license granting and/or date of employment. (PD)
11. Sales of alcoholic beverages (other than for "tasting" per ABC license Type-02 guidelines) shall be incidental to the sale of food. It shall not be considered a violation of this condition if customers are served alcoholic beverages in any lounge, bar or staging area and who are

waiting to be seated for the service of food. Employees shall make a good faith effort to ensure that all customers being served alcoholic beverages are also on the premises for the purpose of consuming food items. (PD)

12. When security personnel are present or required, Permittee shall maintain accurate records of all security personnel on the premise at any given time and make those available to the police upon demand. These records shall, at a minimum, provide the name, date of birth, copies of security guard credentials or license and any other permits or certifications related to security work. This would include copies of permits for weapons or other tools the guard may be authorized to carry. Security personnel shall remain in compliance with updated training related to their work as set forth by any existing or future state and/or local regulations.
13. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
14. The premises shall be equipped with an adequate number of seats to accommodate all customers. There shall be no service areas, other than those designated as tasting areas, which are designed or used as a standing area only or as a combined standing and seating area. (PD)
15. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. Permittee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department upon demand. (PL/PD)
16. Permittee shall comply with the provisions of Section 23038 of the Business and Professions Code and acknowledges that incidental, sporadic, or infrequent sales of meals or a mere offering of meals without actual sales shall not be deemed sufficient to consider the premises in compliance with the aforementioned section.(PL/PD)
17. The premises shall be equipped and maintained in good faith as a bonafide restaurant and shall possess, in operative condition, such conveniences for cooking and storage of foods such as stoves, ovens, broilers, refrigeration or other devices, as well as pots, pans or containers which can be used for cooking or heating foods on the type heating device employed. (PL/PD)

18. The premises shall possess the necessary utensils, table service, and the condiment dispensers with which to serve meals to the public.(PL/PD)
19. The use of any amplifying system or device shall not be audible outside the premise nor shall it be disruptive to neighboring businesses. (PD)
20. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. The display of official business names or logos that have alcoholic beverages included in them is permitted (PL/PD)
21. Sales of alcohol shall not occur between the hours of 1:00 a.m. and 6:00 a.m. (PL/PD)
22. Alcoholic beverages shall not be offered at significantly reduced prices (typically more than 25%) that are meant to encourage greater consumption of alcohol such as during “happy hour” type promotions. Permittee shall not develop any promotional activity that is designed to encourage excessive drinking of alcoholic beverages. Promoting a “happy hour” or other event that offers reduced prices on food or other non-alcoholic items shall not be considered a violation of this condition and are actually encouraged. (PD)
23. Alcoholic beverages shall be served in standard sizes, not greater than 32 oz., that are consistent with the industry and shall not be served by the pitcher, “bucket” or similar high capacity amounts.
24. In the areas surrounding the business, not otherwise licensed by the Department of Alcoholic Beverage Control allowing the service of alcohol, Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee’s reasonable control. (PD)
25. If alcoholic beverages are to be sold and consumed in any patio area, the patio must be properly licensed through the City of Oxnard and the Department of Alcoholic Beverage Control and the entire patio shall be adequately enclosed to the satisfaction of the Police Chief. Low or excessively wide spaced fencing will not be considered sufficient. (PD)
26. Prominent signs shall be posted stating, in effect, “No persons under 21 will be served alcoholic beverages” and “Valid ID is required to purchase alcoholic beverages”. (PD)
27. Employees shall not be allowed to consume alcoholic beverages at any time during their shift or at any time within eight (8) hours prior to the beginning of their shift. (PD)
28. Permittee shall not create any bar, lounge or other area in which the exclusive use would be the service of alcoholic beverages. Food shall be made available in all areas where customers are seated. An area designated for customers who are waiting to be seated at a

food service table shall not be considered a violation of this condition as long as the area is not used primarily for the service of alcohol. (PD)

29. The subject Alcoholic Beverage Control License shall not be exchanged for any other type of Alcoholic Beverage Control License without review and approval by the Police Chief or his designee, Planning Commission or City Council. (PD)
30. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined in the Oxnard City Code, Police Department may initiate Planning Commission review the existing SUP and apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
31. Any graffiti painted or marked upon the premises or on any adjacent area under the control of Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
32. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which Permittee has reasonable control. (PL/PD)
33. The area surrounding premises under the reasonable control of Permittee (including the rear of the business) shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons in or about the area. (PL/PD)
34. No new pay phone on the exterior of the premises shall be allowed and any pay phones installed inside shall be blocked from incoming calls. (PL/PD)
35. Permittee shall regularly police the area under Permittee's control in an effort to prevent the loitering of persons about the premises. (PL/PD)
36. Permittee shall establish cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
37. Permittee shall install a video surveillance system that shall be maintained at a reasonable industry standard and shall, at a minimum, monitor the entrances and exits, any centralized point of sale and areas immediately surrounding the exterior of the business. (PD)
38. Permittee shall install height gauges at all exit doors prior to final inspection. (PD)
39. Prior to issuance of Certificate of Occupancy, Permittee shall install an electronic intrusion detection system that detects portal openings, glass break, and interior motion. (PD)
40. Permittee shall bolt down all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. (PD)

41. Permittee shall have drop-safes installed or implement other safe cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50). (PD)
42. Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
43. If the project property is already occupied or use has already been initiated, Permittee shall comply with all conditions of this permit within 30 days of approval thereof. (PL/B, PL-9)
44. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

POLICE SPECIAL CONDITIONS

45. Displays or storage of alcoholic beverages shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy or unobstructed path to any entry or exit. (PD)
46. During all hours of retail sales, the showroom containing alcoholic beverages shall be adequately monitored by employees and the sales area shall not be left unattended. Buzzers, bells or other sounding or warning devices that alert employees when a customer has entered the business shall not be considered a replacement for adequate monitoring and visual observation of the retail area. (PD)
47. No alcohol shall be offered to customers completely free of charge. A nominal fee that is consistent with the industry standard shall be charged for all wine tasting or sampling. At the discretion of the Permittee, the fees may be refunded or credited to the customer as long as the customer purchases bottled wine for off-site consumption at the time of the tasting. Customers that are members of "wine clubs" or who are participating in other promotional programs that require the customers to purchase a predetermined amount of product throughout the year may, at Permittee's discretion, have the fee waived. Permittee shall keep accurate records of those persons participating in such promotional programs and make them available to the Police Department upon demand. (PD)
48. It shall not be a violation of any condition above that prohibits the consumption of alcohol by on-duty employees as long as the consumption is for the purposes of quality control only and the sample size is consistent with industry standards (typically one ounce). At no time shall any employee become impaired or intoxicated while working. (PD)
49. Permittee shall install signage at both the top and bottom of the staircase near the foyer on the southeast corner of the building stating in effect that "alcohol is prohibited beyond this point". Permittee shall, in fact, not allow alcohol that is purchased in any area licensed as an ABC Tpe-47 to be carried into any other portion of the facility. (PD)

50. Permittee shall post prominent signs near each of the exits (including the patio) indicating that it is unlawful to remove alcohol from the premises and that violators may be cited.
51. Any emergency exit gate/door on the patios shall not be used as a means of access or egress by patrons to and from the licensed premises and, other than during emergencies or for handicapped access per ADA guidelines, shall be kept closed at all times. The gate shall close automatically and be equipped with an audible sounding device to alert employees when it has been opened. Adequate signs shall be posted near the gate stating it is an emergency exit or handicapped access only and that an alarm will sound if opened.
52. There shall not be any outdoor or patio bar (portable or otherwise) where alcoholic beverages are stored or served.

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 7th day of May, 2009, by the following vote:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioner:

Deirdre Frank, Chair

ATTEST: _____
Susan L. Martin, Secretary