

LAW OFFICES OF

## CARTER MOMSEN PC

305 N. MAIN STREET  
POST OFFICE BOX 1709  
UKIAH, CALIFORNIA 95482

JARED G. CARTER  
BRIAN C. CARTER  
BRIAN S. MOMSEN  
ALEXANDER C. RICH  
COLIN W. MORROW

PHONE: (707) 462-6694  
FAX: (707) 462-7839  
E-MAIL: [bcarter@pacific.net](mailto:bcarter@pacific.net)  
WEBSITE: [www.cartermomsen.com](http://www.cartermomsen.com)

October 21, 2019

### VIA HAND DELIVERY

Clerk of the Board of Supervisors  
County of Mendocino  
501 Low Gap Road  
Ukiah, CA, 95482

Re: Hopland Fire Protection District; Vintage Wine Estates  
Comments Re Proposed Fire Protection Mitigation Fee And  
Capital Fire Facilities And Equipment Plan

Dear Supervisors:

This law firm represents Vintage Wine Estates ("VWE").  
Thank you for the opportunity for VWE to provide comments on the  
above-referenced matter.

VWE owns and operates a winery at 13300 Buckman Drive east  
of Hopland (formerly owned by McDowell Valley Vineyards). In  
2017 and 2018, VWE added additional tank storage capacity at its  
Hopland property ("**Facility**"). VWE is presently trying to add  
additional storage capacity, and intends in the coming months or  
years to construct substantial other improvements at the  
Facility.

The Hopland Fire Protection District ("**HFPD**") imposed  
development fees upon VWE in connection with VWE's 2017/2018  
storage expansion, and HFPD evidently intends to impose further  
development fees on VWE in connection with its current and future  
expansion projects. If HFPD's fee study is adopted, VWE will  
have to pay several tens of thousands of dollars to HFPD as a  
condition precedent to VWE's expansion and development of the  
Facility.

HFPD's proposed 'mitigation' fees clearly violate California  
law. In 1987, California adopted Health & Safety Code Section  
13916(a), which states in relevant part that "A district board  
shall not charge a fee on new construction or development for the  
construction of public improvements or facilities or the  
acquisition of equipment." As discussed in the letter this firm  
sent to HFPD's Chief Mitch Franklin on March 18, 2018 (copy

attached, with attachments) on VWE's behalf, fire district financing is addressed at length in the Fire Protection District Law of 1987, Health & Safety Code §§ 13800, et seq. Chapter 7 of that Act (H&S Code §§ 13890 - 13906) deals with District "Finance", including County property taxes (§ 13896), borrowing/debt (§ 13897), grants/gifts (§ 13898), and tax assessments (§ 13899). Fees financing fire districts must be "computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes." Health & Safety Code Section 13899. HFPD's fee, in contrast, would be imposed on one developer at a time, in connection with individual applications for building permits. And the proceeds would be used to purchase equipment and/or facilities.

This County's ordinance (Ord. No. 4175, adopted 2006, referenced in HFPD's fee nexus study) allowing mitigation fees does not change the result. A "county . . . may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Cal. Const., Art. XI, § 7. However, a "conflict exists if the local legislation . . . contradicts . . . an area fully occupied by general law. . . . Local legislation is contradictory to general law when it is inimical thereto. . . . A local ordinance is preempted by a state statute only to the extent that the two conflict." Rental Housing Ass'n of Northern Alameda County v. City of Oakland (2009) 171 Cal.App.4th 741, 752 (citations and quotations omitted). See also Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897 (quoted in Rental Housing, above). County's ordinance, on its face, contradicts Health & Safety Code § 13916(a). This ordinance and HFPD's proposed mitigation fee are preempted by Health & Safety Code Section 13916(a).<sup>1</sup>

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<sup>1</sup> There is no California law that authorizes a fire district to impose developer fees; the Mitigation Fee Act itself (Government Code, Sections 66000, et seq.) contains no such authorization. See Cal. Atty. General Opinion No. 90-502, 73 Op. Atty. Gen. Cal 229 ("We find no language in Section 66001 which grants authority to any public agency to impose fees upon a development project."; the Mitigation Fee Act "assumes the preexistence of authority from sources outside" the statute); compare Education Code § 17620(a)(1) ("school district is authorized to levy a fee . . . against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities . . . .").

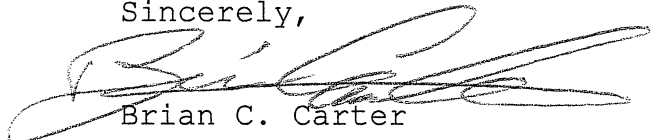
HFPD's fee nexus study is also defective for failing to establish a reasonable relationship between proposed development and the allegedly increased need for fire fighting equipment. Expanding tank storage or building a warehouse is not reasonably shown to increase HFPD's need for firefighting equipment or facilities. "[F]acility fees are justified only to the extent that they are limited to the cost of increased services made necessary by virtue of the development." Boatworks, LLC v. City of Alameda (2019) 35 Cal.App.5th 290, 298 (quoting Shapell Industries, Inc. v. Governing Board (1991) 1 Cal.App.4th 218, 234-35). Developer fees cannot be imposed to address historical defects and deficiencies not caused by the contemplated new development. Here, HFPD has not shown a reasonable relationship or connection between development and the need for firefighting equipment and facilities. The fee nexus study and mitigation fee should therefore be rejected.

HFPD has for years been wanting a new (or newer) fire engine. Its proposed fire mitigation fee is a developer fee, and it would impose substantial costs upon (and thus deter) new development to pay expenses that by law must be shared by all taxpayers within the District's boundaries. California wisely decided, decades ago, to not give fire districts the ability to deter development by imposing fees as a condition to that development. HFPD and this County cannot lawfully disregard this law.

VWE will happily pay its fair share of the cost of a new or newer engine for HFPD, but VWE cannot be required to pay large and illegal fees to solve long-standing problems that must be addressed and resolved by all of the taxpayers in the district. VWE hopes not to have to resort to litigation to protect its rights, but the magnitude of HFPD's fees may render that necessary if this Board does not carefully review and apply California law in this matter.

VWE respectfully requests that the Board reject HFPD's fee nexus study and the resulting mitigation/developer fees.

Sincerely,



Brian C. Carter

Enclosure (March 18, 2018 letter to M. Franklin)

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305 N. MAIN STREET  
POST OFFICE BOX 1709  
UKIAH, CALIFORNIA 95482

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March 18, 2018

**VIA FIRST CLASS AND CERTIFIED U.S. MAIL**

Board of Directors  
Fire Chief Mitch Franklin  
Hopland Fire Protection District  
P.O. Box 463  
Hopland, CA, 95449

Re: Vintage Wine Estates; HFPD \$250,000 Demand For Approval  
Of Wine Tank Construction Plans

Dear Sirs:

This law firm represents Vintage Wine Estates ("VWE").

We are advised that at its meeting on Thursday, March 15, 2018, the Hopland Fire Protection District ("HFPD") board of directors ("Board") heard objections by VWE to the \$250,000 demand ("Demand") contained in Fire Chief Mitch Franklin's February 22, 2018, letter to VWE, and voted to leave that Demand in place despite VWE's objections (including VWE's March 12, 2018, letter to the Board; copy enclosed).

HFPD's and the Board's actions violate California law, specifically including Cal. Health & Safety Code § 13916(a) (copy enclosed). That statute expressly states that "A district board shall not charge a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment." Chief Franklin's February 22, 2018, letter ("Letter") states that the demanded \$250,000 will be used "to purchase . . . equipment", including "a Type 1 Rescue-Engine", that HFPD allegedly will need because of VWE's construction of its wine "tank farm". The Demand violates the express prohibition in Cal. Health & Safety Code § 13916(a).

We are also advised that in 2017 HFPD required VWE to pay HFPD a \$43,000 fee in exchange for HFPD's approval of VWE's plans for a new warehouse, and that HFPD has in recent years imposed similar, substantial fees on construction projects by other businesses and/or landowners in HFPD's district.

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Fire Chief Mitch Franklin  
Hopland Fire Protection District  
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VWE appreciates and respects the services that HFPD provides; these services are "critical to the public peace, health, and safety of the state." Health & Safety Code § 13801. VWE also appreciates that these services cost money. Health & Safety Code § 13916(a) is part of the Fire Protection District Law of 1987, Health & Safety Code §§ 13800, et seq. ("**1987 Statute**"), which discusses various means by which fire districts are authorized to raise revenue.

Chapter 7 (H&S Code §§ 13890 - 13906) of the 1987 Statute deals with District "Finance", including County property taxes (§ 13896), borrowing/debt (§ 13897), grants/gifts (§ 13898), and tax assessments (§ 13899). Section 13899 expressly states that "All taxes and assessments levied under this chapter shall be computed and entered on the county assessment roll and collected at the same time and in the same manner as other county taxes." This effectively requires all residents and businesses in the District to pay for HFPD's general services.

Chapter 8 (§§ 13910 - 13919) of the 1987 Statute deals with "Alternative Revenues", and contemplates voter approved special taxes (§ 13911), Mello-Roos special taxes (§ 13912), other special tax levies (§ 13913; "However, the tax shall not require a higher rate of payment or other measure of tax on the part of new construction than on the part of other real property"), and other means (§§ 13914-15). Section 13916 deals with "Fees for services or costs", and calls for the adoption of a fee schedule, which HFPD has done.<sup>1</sup> This section imposes reasonable fees upon consumers of the district's resources, but it also, as noted above, expressly prohibits impact fees on new construction. The 1987 Statute, in other words, addresses various lawful methods by which fire districts can raise revenues, but explicitly prohibits - at least twice - a district's imposition of special fees/assessments/taxes upon new construction.

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<sup>1</sup> At the March 15, 2018, Board meeting, HFPD produced a resolution from September 21, 2017, that expressly refers to § 13916 and HFPD's adoption of a fee schedule pursuant to that statute. The fee schedule does not purport to authorize imposition of fees, much less a \$250,000 fee, on new construction.

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Here, however, HFPD is attempting to impose a \$250,000 assessment/fee upon VWE alone, without reference to the fee HFPD charges (pursuant to its own schedule) for plan review. The \$250,000 Demand is not being "collected at the same time and in the same manner as other county taxes" as is required by H&S Code § 13899, and does not amount to a fee for plan review/approval pursuant to HFPD's fee schedule. The Demand is also expressly stated to be in response to the alleged "impact" (Chief Franklin Feb. 22 letter, 3<sup>rd</sup> paragraph) of VWE's contemplated wine tank construction project, and the fee is stated to be for the purpose of the "acquisition of equipment". The Demand violates H&S Code § 13916(a)'s dual prohibition against (i) "fee[s] on new construction or development", which fees are (ii) for "the acquisition of equipment." In sum, the Demand, like the \$43,000 fee HFPD imposed on VWE in 2017, clearly violates the 1987 Statute.<sup>2</sup>

VWE has no intention of acquiescing in HFPD's unlawful actions. For all of the above reasons, and for the reasons stated in VWE's March 12, 2018, letter to the Board, VWE hereby demands that HFPD immediately rescind the Demand and approve VWE's plans.<sup>3</sup>

If HFPD fails or refuses to do so within ten (10) calendar days of the date of this letter, VWE will promptly file a lawsuit in Mendocino County Superior Court for declaratory relief and other remedies, and will seek a preliminary injunction requiring HFPD to rescind the Demand and approve VWE's plans. VWE will in that lawsuit also seek a refund of the \$43,000 fee that VWE paid to HFPD in 2017 in response to HFPD's unlawful demand, plus interest.

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<sup>2</sup> VWE expresses no view herein as to the validity of the various fees HFPD has imposed in recent years upon other construction projects in the District; that is a matter between HFPD and the affected persons. We do note, however, that the payment under protest requirement and short statute of limitations in the Mitigation Fee Act, California Government Code §§ 66000, et seq., would not appear to apply to such payments since the fees in question were not lawfully imposed pursuant to that Act.

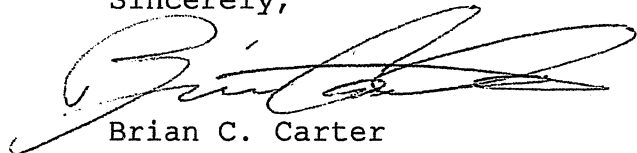
<sup>3</sup> Chief Franklin's Feb. 22 letter states [1<sup>st</sup> paragraph] that HFPD "approves this project".

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Fire Chief Mitch Franklin  
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We encourage HFPD to promptly obtain legal advice in this matter, and we are providing a copy of this letter to County Counsel Kit Elliott, Esq., and Interim Director Ignacio Gonzalez of the County's Dept. Of Planning & Building Services. While Chief Franklin's Feb. 22 letter states that the "County is in complete support of [HFPD] having jurisdiction", we doubt that County Counsel has been asked to pass on the legality of HFPD's Demand. It is in all parties' interest that HFPD become aware of and abide by the legal prohibition against its imposition of fees/assessment upon new development and construction. This will place HFPD's finances upon a firmer legal foundation.

Thank you for your anticipated cooperation. Please direct all communications on this matter to this law office absent further notice to the contrary.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian C. Carter", with a stylized, flowing script.

Brian C. Carter

Enclosure (VWE March 12, 2018, letter to Board; H&S Code § 13916)  
cc: (via hand delivery, w/enclosures) Kit Elliott, Esq.,  
Mendocino County Counsel  
(via first class U.S. mail, w/enclosures) Ignacio Gonzalez,  
Interim Director, Mendocino County Dept. Of Planning & Building  
Services, 860 N. Bush Street, Ukiah

 Lexis Advance<sup>®</sup>  
Research





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Document: Cal Health & Saf Code § 13916  Actions ▾

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Deering's California Codes are current through Chapter 3 of the 2018 Regular Session.

Deering's California Codes Annotated   **HEALTH AND SAFETY CODE**   Division 12 Fires and Fire Protection   **Part 2.7 Fire Protection District Law of 1987**   **Chapter 8 Alternative Revenues**

**§ 13916. Schedule of fees covering cost of services and enforcement of regulations; Notice; Meeting**

(a) A district board may charge a fee to cover the cost of any service which the district provides or the cost of enforcing any regulation for which the fee is charged. No fee shall exceed the costs reasonably borne by the district in providing the service or enforcing the regulation for which the fee is charged. ~~A district board shall not charge a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment.~~

(b) The district board shall adopt an ordinance establishing a schedule of fees. Before either approving an increase in an existing fee or initially imposing a new fee, the district board shall publish notice of its intention to establish a schedule of fees pursuant to Section 6066 of the Government Code. The notice shall state the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by subdivision (d) is available.

(c) The district board shall mail the notice of the meeting at least 14 days before the meeting to any interested party who has filed a written request with the district board for mailed notice of the meeting on new or increased fees. Any written request for mailed notice is valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notice shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending these notices based on the estimated cost of providing that service.

(d) At least 10 days before the meeting, the district board shall make available to the public, data indicating the amount of cost, or estimated cost, required to provide the service or the cost of enforcing any regulation for which the fee is charged and the revenue sources anticipated to provide the service or the cost of enforcing any regulation, including general fund revenues.

(e) Any costs incurred by a district in conducting the meeting required by this section may be recovered from fees charged for the service or the cost of enforcing any regulation which were the subject of the meeting.

(f) At the meeting, the district board shall hear and consider any objections or protests to the proposed schedule of fees.

**History**

Added Stats 1987 ch 1013 § 11.

**Annotations****Notes****Former Sections:**Former H & S C § 13916, similar to present H & S C § 13903, was added Stats 1961 ch 565 § 1 and repealed Stats 1987 ch 1013 § 10.**State Notes****Research References & Practice Aids****Hierarchy Notes:**



VWE  
VINTAGE WINE ESTATES

March 12, 2018

Dear Sirs,

I am the President and owner of Vintage Wine Estates (VWE). This letter is submitted for purposes of our meeting with the Hopland Fire Protection District ("HFPD") board of directors ("Board") on March 15, 2018. VWE appreciates being afforded the opportunity to discuss this matter.

As you know, VWE desires to construct and install on its Hopland property (13300 Buckman Drive, Hwy 175, Hopland) wine storage tanks with a capacity of 2.6 million gallons ("Project"). We applied to the Mendocino County Department of Planning & Building Services ("Department") for a building permit for the Project. The Department advised us that we need HFPD's approval of our plans for the Project ("Plans").

We submitted the Plans to HFPD the week of January 22, 2018. We received in response a letter from HFPD dated February 22, 2018, in which HFPD approved the plans without technical comment, but subject to the "condition" that VWE provide HFPD with the "tools, equipment and funding necessary to support" a "potential increase in emergency calls due to increased number of employees and employee traffic" and the "additional impact of semi-truck traffic thru" HFPD's district. The letter proceeded to demand that VWE pay \$250,000 to HFPD for a Type 1 Rescue-Engine and related items ("Demand"). The February 22, 2018, letter further states that HFPD "has met with" the Department regarding the Project, and that the Department "is in complete support of the authority having jurisdiction (Hopland Fire Protection District)".

HFPD's February 22, 2018, letter (i) does not disclose the statutory or other authorization for HFPD's imposition of the \$250,000 fee ("Authority"), (ii) does not reference any study ("Study") that has been conducted by or for HFPD regarding the likely impact of future development in HFPD's district, (iii) does not identify or refer to any resolution by HFPD's Board ("Resolution") adopting and implementing an impact/development fee based upon the Study, and (iv) does not disclose how HFPD calculated, in accordance with the Authority, Study and/or Resolution, the \$250,000 Demand. All that is apparent is that HFPD had no comments on the Plans themselves, but wants VWE to buy HFPD a new Fire-Rescue Engine in exchange for HFPD's approval of the Plans.

VWE contacted the Department with respect to HFPD's Demand, and was told that the Department had referred the matter to the State Fire Marshall for comment. We have been unable to determine whether the Fire Marshall has responded to date.

205 Concourse Blvd., Santa Rosa, CA 95403 • 877.289.9463 • [www.vintagewineestates.com](http://www.vintagewineestates.com)

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Contrary to the assertion in HFPD's February 22, 2018 letter, the Project (which only involves the 2.6 million gallon Phase 1 of a 2-phase, 4.3 million gallon project) will not increase the amount of truck traffic to and from VWE's property; the Project is likely to change the timing of that truck traffic by eliminating the need for wine to be delivered just before it is to be bottled. The increased storage capacity resulting from the Project will allow for deliveries further in advance of the scheduled bottling. Therefore, if the Project changes the truck traffic at all, it is likely to reduce or eliminate periods of concentrated truck traffic to and from VWE's property. This would reduce rather than increase the demands on HFPD's resources.

VWE objects to the \$250,000 Demand on several grounds. While VWE appreciates as much as does any community member the service that HFPD provides, HFPD cannot and has not lawfully imposed the Demand upon VWE. While development impact fees can validly be imposed upon development that creates increased demands upon governmental facilities and services, the Mitigation Fee Act, California Government Code §§ 66000, et seq., was passed "in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects." Warmington Old Town Associates v. Tustin Unified School District (2002) 101 Cal.App.4th 840, 857 (quoting Ehrlich v. City of Culver City (1996) 12 Cal.4th 854, 864).

"[F]acilities fees are justified only to the extent that they are limited to the cost of increased services made necessary by virtue of the development". Shapell Industries, Inc. v. Governing Board (1991) 1 Cal.App.4th 218, 234-35. "[D]evelopers who are expected to cause or aggravate overcrowding are required to mitigate it, others are not." Garrick Development Co. v. Hayward Unified School District (1992) 3 Cal.App.4th 320, 338 (quoting Candid Enterprises, Inc. v. Grossmont Union High School District (1985) 39 Cal.3d 878, 891).

To ensure that agencies do not impose upon developers fees the burden of which should be shared/paid by the entire community, the Mitigation Fee Act requires (Govt. Code § 66001) that:

"(a) In any action establishing . . . or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:

- (1) Identify the purpose of the fee;
- (2) Identify the use to which the fee is to be put...;
- (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and
- (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed."

In making these determinations, the local agency must consider the specific type of development project in question to be able to decide whether a reasonable relationship has been established. Warmington Old Town Associates v. Tustin Unified School Dist. (2002) 101 Cal.App.4th 840, 860 (finding no relationship because school district only analyzed new housing developments and not replacement housing in the redevelopment context).

Government Code § 66017 requires that any fee a local agency seeks to impose as a condition for approval of a project must be adopted with notice and a public hearing as described in Govt. Code § 66016. VWE requests that HFPD disclose whether such a process was followed in this case, and if so when such proceedings occurred and what advance notices were given with respect to those proceedings. VWE did not receive any such notice with respect to the instant fee or the large fee HFPD imposed upon VWE last year on a different project.

In adopting such a fee program, the local agency is also required to make the showings required under Govt. Code § 66001 (above). VWE requests that HFPD disclose the documents, if any, that HFPD relied upon in making the showings required by that statute.

In Home Builders Assn. Of Tulare/Kings Counties, Inc. v. City of Lemoore (2010) 185 Cal.App.4th 554, the city went through the required formal study, notice and hearings for adopting development fees, but a fee the City imposed upon a home builder for fire equipment was invalidated because "the new development [would] not burden the current facilities. The Colgan Report's proposal to reimburse the City for its prior general fund money investments is not authorized by the Mitigation Fee Act. Rather, such a fee would constitute general revenue to the City in violation of section 66008, and therefore is invalid." 185 Cal.App.4th at 572.

In this instance, VWE is not building homes or any commercial buildings; rather, VWE is adding wine storage capacity to a winery and bottling facility. The new storage will improve rather than worsen any truck traffic issues. HFPD has no apparent problems with the technical aspects of the Plans. VWE did not receive any advance notice of HFPD's intention to adopt a development fee program, and VWE did not receive any advance notice of (or opportunity to comment in advance upon) HFPD's intention of imposing a fee upon VWE as a condition to approval of the Plans for the Project.

In fact, it is not apparent that HFPD went through any formal proceeding in adopting the fee it now seeks to impose. HFPD's February 22 letter/Demand does not refer to the statutory or other authority for HFPD's imposition of the fee, the study or other information upon which HFPD relied in adopting the fee program, the date upon which HFPD adopted which the fee program, or the method by which HFPD calculated the fee it is now demanding from VWE. Rather, HFPD simply demands that VWE buy HFPD a new, \$250,000 Fire-Rescue Engine as a condition to making improvements to VWE's facilities that will enable VWE to operate more efficiently and economically. HFPD's Demand is premised on the inaccurate conclusion that the Project will cause an increase in semi-truck traffic in HFPD's District, and upon a "potential increase in emergency due to increased number of employees and employee traffic", which potential is unsupported by any apparent study or other evidence.

Given HFPD's apparent failure to comply with the Mitigation Fee Act and other California law with respect to the demanded \$250,000 fee, VWE requests that HFPD rescind that Demand and approve the Plans. If the Demand is not immediately rescinded, VWE requests that HFPD immediately advise the County that the Plans are approved, so VWE can promptly proceed with constructing the Project, subject to our continued discussions of and efforts to resolve the Demand.

If HFPD declines this request, VWE will either (i) pay the fee under protest and immediately initiate a lawsuit for a full refund and other remedies (including as to the fee paid by VWE last year, if appropriate), or (ii) decline to proceed with the project until the matter has been resolved administratively, including at the State Fire Marshall's office.

Thank you for your consideration and anticipated cooperation. I will be happy to answer any questions you may have at the March 15 meeting.

Sincerely,

A handwritten signature in black ink, appearing to be 'Pat Roney', written in a cursive style.

Pat Roney  
President  
Vintage Wine Estates