

# AGENDA REPORT

## Meeting of the San Marcos Planning Commission

**MEETING DATE:** November 5, 2012  
**SUBJECT:** North County Wine Company  
**CASE:** CUP 12-892

### Recommendation

Conditionally approve the use of live entertainment at an existing wine shop with a wine tasting bar through a Major Conditional Use Permit (CUP).

### Background

The Planning Commission hearing was originally scheduled for October 1, 2012, but the applicant had requested a "continuance" for additional time to review the conditions of approval. As a result, the applicant no longer proposes the expansion of the outdoor patio area, but will conduct the proposed live entertainment within the existing patio area.

### Introduction

The project site is currently developed with a 1,275 square foot wine shop with a 725 square foot outdoor patio, and an unrelated storage yard for recreational vehicles (RVs) (operated by the property owner) on 4.52 acres. The wine shop and its parking lot occupy approximately 0.28 acres at the northeast corner of the property along San Marcos Boulevard. The project proposes to provide live entertainment for the wine shop customers. No comments from the public were received.

### Discussion

The subject site is zoned Specific Plan Area (SPA) under the San Marcos Creek Specific Plan. The existing wine shop with wine tasting is considered a legal non-conforming use and building. Per the specific plan, approval of a Major Conditional Use Permit is required to allow for on-premises alcoholic beverage sales and live entertainment within the plan area. The existing business is primarily a wine shop with retail sales of bottled wine which includes a wine tasting bar and outdoor seating within a patio area for customers to try different wines. The applicant proposes live entertainment consisting of 1 to 3 person bands playing music, such as jazz, blues, and soft rock. Live music would occur three (3) nights per week and Sunday afternoons. The CUP conditions the live music events to comply with the



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General Plan's noise level limits which the applicant/operator will be required to monitor. If noise complaints are received from residents within the vicinity, the applicant will be required to modify entertainment operations to eliminate nuisance complaints. Operational standards for the live entertainment are conditioned in the resolution such as hours of operation, size of bands, compliance with Alcohol Beverage Control (ABC) regulations, etc. The entertainment will be ancillary to the wine shop. As a separate request to ABC, the applicant will propose a modification of its ABC license to allow for on-premise beer sales, in addition to its current wine sales.

Prior to reliance on this Conditional Use Permit, the project will be required to install an additional restroom facility and stripe a path of travel for disabled access from the public sidewalk to the entry of the establishment in accordance with ADA requirements.

Per the parking requirements of the specific plan, the proposed use requires a minimum of eleven (11) parking spaces for customer and employee parking. Three (3) of the existing parking spaces (1, 10, & 11), as shown on the site plan, do not comply with the location requirements of the Parking Ordinance, and will need to be relocated on site. Said spaces will be required to be relocated to the decomposite gravel area to the west of the existing parking lot. This area will be required to be paved with asphalt, including the westerly driveway entry, and striped for the relocated spaces. As an alternative, parking may be provided, on an interim basis, on the adjacent nursery property immediately to the east. If the applicant pursues this option, a letter from the adjacent property owner shall be submitted to the City allowing for the shared parking for a two (2) year period. The applicant has indicated that the adjacent property owner is agreeable to allow for the parking on an interim basis. Adequate shared parking can be provided without impacting the nursery parking when the hours of operation overlap on Sunday afternoons. In the evenings, the nursery is closed, so there will be no parking impacts when live entertainment occurs at the wine shop. After the 2-year interim period, the applicant proposes to install the required spaces on site as conditioned.

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#### **Attachment(s)**

Adopting Resolution

- A- Vicinity Map
- B- Aerial Photo
- C- Requested Entitlement
- D- Site & Project Characteristics



Prepared by:

Norm Pedersen  
Norm Pedersen  
Associate Planner

Reviewed by:

Mike Edwards  
Mike Edwards  
Public Works Director/City Engineer

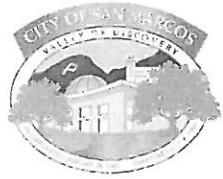
Reviewed by:

Jerry Backoff  
Jerry Backoff  
Planning Division Director

Approved by:

Charlie Schaffer  
Charlie Schaffer  
Development Services Director

AGENDA ITEM NO. 2



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ATTACHMENT A

Vicinity Map

AGENDA ITEM NO. 2

# Vicinity Map





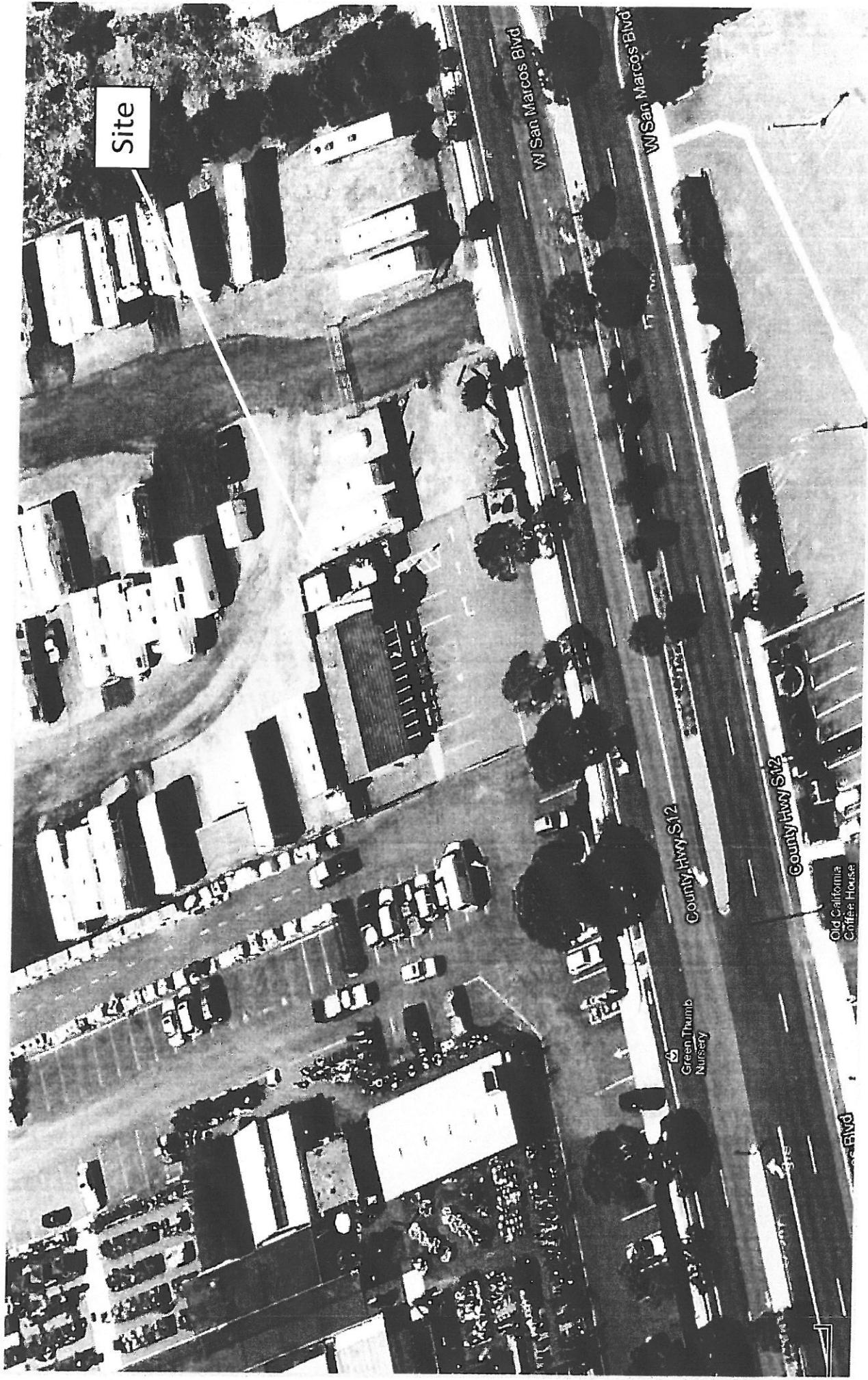
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ATTACHMENT B

Aerial Photo

AGENDA ITEM NO. 2

# Aerial Photo





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**ATTACHMENT C**  
**Requested Entitlements**

- Major Conditional Use Permit to allow for an outdoor patio expansion to accommodate live entertainment at an existing wine shop with on-premises alcoholic beverage sales in the San Marcos Creek Specific Plan Area (SPA).



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## ATTACHMENT D

### Site & Project Characteristics

<u>Property</u>	Existing <u>Land use</u>	<u>Zoning</u>	General Plan <u>Designation</u>
Subject	Wine bar/shop & RV storage	SPA	Specific Plan Area (SPA)
North	Retail	MU1	Mixed-Use 1
South	Vacant	SPA	Specific Plan Area (SPA)
East	Plant nursery	SPA	Specific Plan Area (SPA)
West	Vacant	SPA	Specific Plan Area (SPA)

Flood Hazard Zone	<u>      </u> yes	<u>x</u> no
Resource Conserv. Area	<u>      </u> yes	<u>x</u> no
Sewers	<u>x</u> yes	<u>      </u> no
Septic	<u>      </u> yes	<u>x</u> no
Water	<u>x</u> yes	<u>      </u> no
Gen. Plan Conformance	<u>x*</u> yes	<u>      </u> no
Land Use Compatibility	<u>x*</u> yes	<u>      </u> no

\* with approval of CUP

RESOLUTION PC 12-4314

A RESOLUTION OF THE CITY OF SAN MARCOS PLANNING  
COMMISSION APPROVING A CONDITIONAL USE PERMIT  
TO ALLOW FOR LIVE ENTERTAINMENT AT AN EXISTING  
WINE SHOP WITH ON-PREMISES ALCOHOLIC BEVERAGE  
SALES IN THE SAN MARCOS CREEK SPECIFIC PLAN AREA  
(SPA)

CUP 12-892  
North County Wine Company

WHEREAS, on June 29, 2012 an application was received from North County Wine Company requesting a Conditional Use Permit to allow for live entertainment at an existing legal non-conforming wine shop with on-premises alcoholic beverage sales at 1099 W. San Marcos Boulevard in the San Marcos Creek Specific Plan Area (SPA), more particularly described as:

Lot 3 in Block 73 of Map No. 806, Rancho Los Vallecitos de San  
Marcos  
Assessor's Parcel Number: 221-051-26

WHEREAS, the Development Services Department did study said request and does recommend approval of requested use; and

WHEREAS, the required public hearing was continued from October 1, 2012; and

WHEREAS, the required public hearing held on November 5, 2012 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission did find the project Categorically Exempt pursuant to Section 15301 Class 1, in that this is an existing facility with no expansion, of the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. The granting of the Conditional Use Permit will not adversely affect the implementation of the General Plan for the Business & Industrial District or the San Marcos Creek Specific Plan Area in that the proposed live entertainment is compatible with the surrounding General Plan land use designation, "Specific Plan Area"; is consistent with the San Marcos Creek Specific Plan and Old California Restaurant Row in that live entertainment and on-premises alcoholic beverage sales are allowed within the plan area upon issuance of a major Conditional Use Permit; and helps to promote a variety of commercial activities within the area.
2. The granting of the Conditional Use Permit will not be materially detrimental to the public health, safety and welfare or injurious to property or improvements in that the

proposed outdoor live entertainment will comply with the General Plan's noise level limits at the property lines; live entertainment operations will be required to be modified if noise complaints are received; the existing legal non-conforming building and outdoor patio are not proposed to be expanded; will meet Federal and State requirements for disabled access; and the site will provide adequate parking and access per the San Marcos Creek Specific Plan requirements.

NOW, THEREFORE, the Planning Commission resolves as follows:

- A. The foregoing recitals are true and correct.
- B. The Conditional Use Permit is approved per the submitted site and floor plans (existing 1,275 square feet building and 725 square feet outdoor patio), and shall not be expanded unless a modification to this permit is approved.
- C. The Conditional Use Permit is approved subject to compliance with the following conditions:
  - 1. The site plan shall be modified as follows:
    - a. The proposed use requires a total of eleven (11) parking spaces, including one (1) disabled parking space. Standard parking spaces shall have minimum dimensions of nine (9) feet wide by eighteen (18) feet long. Parking spaces shall be clearly identified on site by striping.
    - b. The existing parking spaces 1, 10, and 11 shall be relocated in order to provide a minimum twenty-four (24) feet wide driveway aisle for adequate back-up distance for parking spaces and accommodate fire truck turning movements, and provide minimum twenty (20) feet throat stacking at the driveway entry. Said parking spaces shall be relocated to the decomposite gravel (DG) area of the parking lot which shall then be asphalt paved, including the westerly driveway entry. As an alternative, parking spaces 1, 10, and 11 may be provided on the nursery property (APN: 221-051-36) immediately to the east upon submittal of a notarized letter from the adjacent property owner agreeing to the shared parking. If said alternative is acted upon by the applicant, then "No Parking" signs shall be installed within the DG area of the parking lot on site in order to maintain a minimum twenty-four (24) feet wide driveway aisle free and clear of obstruction.
    - c. Wheel stops shall be shown for any parking spaces that may be installed along the northern property line in order to prevent parked vehicles from overhanging into the public right-of-way.
    - d. ADA path of travel shall be shown from the public sidewalk to the building entry. Vehicle driveway entries cannot be used for the path of travel from the public right-of-way.

- e. Floor space (i.e.: retail store, wine bar, restrooms, office, etc.) shall be identified on floor plan of the building.
- f. Floor plan shall show an additional restroom for the establishment in accordance with occupancy requirements of the California Plumbing Code.
- g. A seating layout within the outdoor patio area shall be included on the site plan. Seating capacity for the outdoor patio area is not approved. Occupancy load shall be approved by the Building Official at time of building permit review per the California Building Code and availability of parking.

2. Prior to submittal for building permit or reliance on this Conditional Use Permit, whichever comes first, the site plan shall be submitted as a digital file along with this resolution as the title page. This title page shall include the statement "I(we), \_\_\_\_\_, the applicant/owner(s) or the applicant/owner's representative, have read, understand and agree to the conditions of Resolution PC 12-4312." Immediately following this statement shall appear a signature block for the owner or the owner's representative which shall be signed. Signature blocks for the Project Planner and the Project Civil Engineer shall also appear on this title page. The revised site plan shall be approved by the City prior to any building permit submittal.

3. Tenant improvements for an additional restroom, installation of additional parking spaces, ADA improvements, etc. shall require issuance of a building permit.

4. Prior to issuance of any building permits, the following conditions shall be complied with:

- a. New buildings and remodeled structures shall be designed to conform to the latest design standards adopted by the State of California in the California Building Code, Part 2, Title 24, California Code of Regulations.
- b. Building plans and instruments of service submitted with a building permit application shall be signed and sealed by a California licensed design professional as required by the State Business and Professions Code.
- c. The City of San Marcos is located in Seismic Design Category "D". Buildings and structures shall be designed to adequately transmit the dynamic lateral forces in accordance with the requirements of the latest adopted California Building Code.
- d. Occupancy shall comply with all applicable fire safety requirements as required by the latest adopted Building and Fire codes.
- e. The storage, use or handling of hazardous, toxic or flammable materials shall be clearly indicated on all floor plans submitted for a building permit. Materials shall be identified in accordance with Health and Safety Code

Section 25101.

- f. Tenants are required to obtain written permission from the building owner, or owner's agent, prior to obtaining a building permit from the city. Per San Marcos Municipal Code Chapter 17.08.030 Section 105.10, the tenant must obtain written permission from the building or property owner that the applicant is authorized to proceed with the proposed construction.
- g. The proposed development shall comply with Federal Law, Americans with Disabilities Act ("ADA-90"), and State Law, California Code of Regulations, Title 24, for accessibility standards for the disabled.
- h. The proposed new development is subject to approval by the Vallecitos Water District and all applicable fees and charges shall be paid to the District prior to permit issuance.
- i. Building address and suite number shall be clearly labeled for day and night-time emergency responses. In addition, adequate lighting shall be provided to deter potential criminal activities (i.e.: vehicle burglaries, prowlers, loitering, etc.).
- j. A separate permit shall be required for any new signage. Wall signs shall be limited to individual channel letters and logos. Modification or expansion of the existing monument sign shall require issuance of sign permit. Temporary or portable signs (i.e.: feather banners, A-frames, T-frames, etc.) are prohibited. Signs and banners shall not be placed on the fence enclosing the outdoor seating area.
- k. The project shall comply with all applicable standards for the proposed use of the Urban Runoff Management Program adopted by the City of San Marcos.
- l. If parking is proposed on the adjacent nursery property (APN: 221-051-36), then the applicant shall obtain an agreement with the property owner(s) of the nursery to allow customers and/or employees of the wine shop to park in the nursery parking lot. The applicant shall submit the notarized letter to the Planning Division prior to reliance on this Conditional Use Permit. The letter shall stipulate a minimum of three (3) parking spaces but may be increased if both parties agree, and if parking demand requires additional spaces. Said spaces shall not impact the required number of parking spaces for the nursery per the parking requirements of the San Marcos Creek Specific Plan.
- m. The shared parking agreement shall have a maximum duration of two (2) years. At the end of the 2-year agreement, it is the applicant's responsibility to contact the Planning Division with an alternative parking plan to accommodate the off-site parking spaces on the subject property prior to termination of the parking agreement. Said parking plan must be approved by the Planning Division, and include asphalt paving of the decomposite

gravel area and the westerly driveway entry; a minimum twenty-four (24) wide driveway aisle; and striping of parking spaces with minimum dimensions of nine (9) feet wide by eighteen (18) feet long. In the event the agreement is terminated prior to the 2-year expiration, the applicant shall be responsible to install at that time the required parking spaces as described.

5. During the construction phase, the following conditions shall be complied with:
  - a. All construction operations authorized by building permits, including the delivery, setup, and use of equipment shall be conducted on premises during the hours of 7:00 AM to 6:00 PM on Monday through Friday, and on Saturday between 8:00 AM and 5:00 PM. No work shall be conducted on Sundays or holidays observed by the City of San Marcos. Failure to comply will result in the issuance of STOP WORK NOTICES, REVOCATION OF PERMITS and the issuance of citations as appropriate. Citations for hours of work violations require a mandatory court appearance in North County Superior Court.
  - b. During construction the owner/developer/contractor shall implement and maintain the storm water pollution prevention measures as required on the approved plans. Violations of the City's Storm Water Management Ordinance will result in Stop Work Orders, Notices of Violation and citations. Work on the project may be delayed until the City determines that the project is in compliance with the storm water requirements.
6. Prior to reliance on this Conditional Use Permit, the following conditions shall be complied with:
  - a. The additional restroom facility shall be installed per the approved tenant improvements.
  - b. The applicant/operator shall obtain ABC approval for modification of the establishment's ABC License to allow for live entertainment and on-premises beer sales.
  - c. The additional parking spaces shall be installed on site per the approved site plan, or a shared parking agreement shall be established with the adjacent nursery property and "No Parking" signs installed within the DG area of the parking lot on site.
  - d. Additional shrubs and ground cover shall be installed along the landscape frontage on San Marcos Boulevard where existing plant material is sparse and no longer exists.
  - e. The proposed development shall satisfy the conditions of approval prior to occupancy. The owner/developer/contractor shall obtain approval from all City departments and other agencies before requesting a Certificate of

Occupancy ("C of O") from the Development Services Department.

- f. Any change in occupancy in an existing building shall be approved by the City Building Official as required by the latest adopted California Building Code. A new Certificate of Occupancy will be issued after the City has inspected and approves the new use. Buildings or structures shall not be used or occupied until the appropriate City departments and agencies have accepted or approved the buildings for occupancy. A Certificate of Occupancy ("C of O") shall not be issued until the conditions of approval for the proposed development have been satisfied.
7. The proposed use shall comply with the following operational standards:
  - a. Entertainment events shall be ancillary to the primary use of the business as a wine shop with a wine tasting bar. Entertainment events shall be limited to the outdoor patio area only.
  - b. Seating for the on-premise alcoholic beverage sales shall be located within the outdoor patio area. Any seating within the building shall be limited to the bar stools at the bar. Primary use of building floor space shall be as a retail store (wine shop).
  - c. Entertainment events shall be limited to 1 to 3 person bands playing jazz, blues, or soft rock. Any other form of entertainment is unauthorized and shall be prohibited. Examples of unauthorized entertainment include, but not limited to, wet t-shirt contests, bikini contests, fashion/lingerie shows, casino night themes, burlesque dancers, lap dancers, strippers or any form of adult entertainment.
  - d. No dancing shall be permitted on the premises.
  - e. Entertainment events shall be limited to three (3) nights per week between the hours of 6:00 p.m. and 10:00 p.m., and Sunday afternoons between the hours of 2 p.m. and 6 p.m.
  - f. The applicant/operator shall not charge a fee to enter the premises which includes, but not limited to, advanced ticket sales for any entertainment event or a cover charge.
  - g. Entertainment events shall be conducted whereas not to become a noise nuisance to neighboring uses. Maximum sound levels shall not exceed 60 decibels at the property lines of the establishment. It shall be the responsibility of the applicant/operator to monitor onsite noise levels during entertainment events. If complaints are received by the City, even if the 60 decibel level is being maintained, the applicant shall be required to take immediate corrective action to respond to such complaints as deemed necessary by the Planning Division Director including, but not limited to,

restricting amplified music, reducing hours of entertainment, changing type of music, etc.

- h. An owner or manager shall be on site during all entertainment activities.
- i. All entertainers, staff members, and patrons shall be clothed at all times so that no anatomical areas, as specified per the City Municipal Code, are visible.
- j. All personnel, including management, are prohibited from consuming alcoholic beverages while on duty.
- k. No one under the age of 21, including entertainers, shall be served alcoholic beverages.
- l. No one under the age 21, including entertainers, shall be allowed on site after 10:00 p.m. unless accompanied by a parent or guardian.
- m. A minimum of one (1) security guard shall be required during any entertainment events. Security personnel shall be easily identifiable.
- n. The applicant/operator shall be responsible for compliance with all applicable State of California Department of Alcoholic Beverage Control (ABC) rules and regulations. If any ABC regulations/terms/conditions for the proposed use are more restrictive than those contained within this Conditional Use Permit, then those more restrictive ABC regulations/terms/conditions shall take precedence. All ABC license conditions are incorporated herein.
- o. On-premises alcoholic beverage sales shall be limited to wine and beer sales per an approved ABC License.
- p. All employees who serve alcohol or check identification shall attend the Alcohol Beverage Control (ABC) LEAD Training or Responsible Beverage Sales & Service (RBSS) Training every two (2) years as required by City Ordinance No. 2009-1318. Confirmation of program participation shall be kept on file and made available upon request.
- q. The maximum occupancy for the building and outdoor patio area shall not be exceeded at any time. The Occupancy Load sign shall be posted at all times for the building and the outdoor patio area.
- r. Exit doors shall not be blocked at any time.
- s. "In and Out" privileges shall be prohibited during entertainment events. No patron shall be allowed re-entry after leaving the establishment.

- t. The parking lot of the premises shall be equipped with lighting of a sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
- u. The applicant/operator shall not maintain or construct any type of enclosed room intended for use by entertainers or customers for any purpose, except for restroom facilities.
- v. The applicant/operator shall not use the services of paid promoters at any time.
- w. Any incident requiring security measures (reactive intervention or mediation) by on-site staff shall be immediately reported to the Sheriff's Department. All onsite staff shall cooperate, aide and assist the Sheriff's Department in the collection of information regarding any incident requiring a response.
- x. Excessive or severe incidents, as determined by the City of San Marcos, Sheriff's Department, or ABC, may result in mandatory training classes, imposition of additional restrictive conditions, or modification or revocation of this Conditional Use Permit.

- 8. All trees and landscaping shall be maintained in a healthy, thriving manner. If any trees/landscaping should die or become diseased, the trees/landscaping shall be replaced in like quantities and sizes in order to provide the same landscaping and screening value.
- 9. Trash dumpsters shall be kept within the existing enclosures on site, and the gates shall remain closed to screen the dumpsters from view. When not in use, dumpster lids shall remain closed in order to prevent rainfall from entering the dumpsters, in compliance with the City's Storm Water Management requirements.
- 10. The applicant shall be responsible for compliance with all relevant portions of the City of San Marcos Municipal Code.
- 11. Use of the site shall be conducted so as not to become obnoxious by reason of parking impacts, noise, odor, refuse or maintenance of grounds and in such a manner as will not detrimentally affect adjoining properties and uses, and City services.
- 12. To the extent feasible and as permitted by law, developers and contractors are requested to first consider the use of San Marcos businesses for any supplies, materials, services, and equipment needed, and the hiring of local residents in order to stimulate the San Marcos economy to the greatest extent possible.
- 13. Any future expansion or modification of the wine shop business shall require a modification to CUP 12-892. The Conditional Use Permit application must be submitted for review and approval by the Development Services Department prior to the issuance of any building permits.

14. Any new construction, alteration, improvement, or modification to the existing building requires the issuance of a building permit and compliance with the minimum code requirements of the latest adopted California Building Code.
15. The Planning Division shall have the right, but not obligated, to inspect the premises annually to ensure compliance with all conditions of the use permit approval. If the Planning Division determines that compliance is not being achieved, then a public hearing shall be scheduled for possible use permit modification or revocation.
16. This Conditional Use Permit shall expire on November 5, 2017. Any request for permit extension shall be applied for by the permittee no later than thirty (30) days prior to the expiration date.
17. This Conditional Use Permit shall become null and void if not acted upon within twelve (12) months of the adoption of this resolution, or the approved use ceases to operate at the subject property for a period more than twelve (12) months.
18. To the extent feasible and as permitted by law, developers and contractors are requested to first consider the use of San Marcos businesses for any supplies, materials, services, and equipment needed, and the hiring of local residents in order to stimulate the San Marcos economy to the greatest extent possible.
19. To the extent permitted by law, the Applicant shall defend and hold the City of San Marcos ("City"), its agents and employees harmless from liability from: (i) any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permits arising from the project as defined in the conditions of approval, or issuance of grading or building permits; (ii) any damages, liability and/or claim of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of the Applicant or its contractors, subcontractors, agents, employees or other persons acting on Applicant's behalf which relate to the project; and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project. Applicant further agrees that such indemnification and hold harmless shall include all defense related fees and costs associated with the defense of City by counsel selected by the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project, but shall survive in perpetuity.

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, State of California, at a regular meeting thereof, this 5<sup>th</sup> day of November, 2012, by the following roll call vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

APPROVED:

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Dean Nelson, Chairman  
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

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Lisa Kiss, Office Specialist III  
SAN MARCOS CITY PLANNING COMMISSION