

1 **BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO**

2 A RESOLUTION OF THE SAN BENITO COUNTY )  
3 BOARD OF SUPERVISORS AMENDING THE )  
4 GENERAL PLAN LAND USE ELEMENT AND MAP, )  
5 TO AMEND THE LAND USE DESIGNATION OF )  
6 APPROXIMATELY 58.9 ACRES OF PROPERTY )  
7 LOCATED ON SANTA ANA VALLEY ROAD )  
8 (DEL CURTO) AND APPROXIMATELY 73.18 )  
9 ACRES OF PROPERTY LOCATED ON CIENEGA )  
10 ROAD (CALERA WINE) TO THE AGRICULTURAL )  
11 PRODUCTIVE ZONING DISTRICT, AS REQUESTED )  
12 UNDER GENERAL PLAN AMENDMENT 08-38 (DEL )  
13 CURTO) AND GENERAL PLAN AMENDMENT 08-39 )  
14 (CALERA WINE), AND AMENDING THE LAND USE )  
15 DESIGNATION OF APPROXIMATELY 3.28 ACRES )  
16 OF PROPERTY LOCATED ON FALLON ROAD )  
17 (RODRIGUEZ) TO THE HEAVY INDUSTRIAL )  
18 ZONING DISTRICT, AS REQUESTED UNDER )  
19 GENERAL PLAN AMENDMENT 09-40 (RODRIGUEZ) )  
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RESOLUTION NO. 2009-65

23 **WHEREAS**, Darin Del Curto requested an amendment of the General Plan Land Use  
24 designation of an approximately 58.9-acre parcel located on Santa Ana Valley Road, as shown in  
25 Exhibit A attached hereto and incorporated herein by reference, from the Agricultural Rangeland  
26 (AR) to the Agricultural Productive (AP) general plan designation (GPA 08-38); and

27 **WHEREAS**, Josh Jensen of Calera Wine Co. requested an amendment of the General Plan Land  
28 Use designation of an approximately 73.18-acre parcel located on Cienega Road, as shown in  
Exhibit B attached hereto and incorporated herein by reference, from the Agricultural Rangeland  
(AR) to the Agricultural Productive (AP) general plan designation (GPA 08-39); and

29 **WHEREAS**, Ruben Rodriguez requested an amendment of the General Plan Land Use  
30 designation of an approximately 3.28-acre parcel located on Fallon Road, as shown in Exhibit C  
31 attached hereto and incorporated herein by reference, from the Agricultural Productive (AP)  
32 general plan designation to the Heavy Industrial (M-2) general plan designation (GPA 09-40);  
33 and

34 **WHEREAS**, Planning staff prepared and circulated Initial Studies and Mitigated Negative  
35 Declarations regarding each of the applications, prepared recommended findings and conditions  
36 of approval, and scheduled public hearings before the Planning Commission; and

37 **WHEREAS**, the Planning Commission conducted public hearings regarding each of the  
38 applications, and adopted resolutions, reflecting its recommendations to the Board of Supervisors  
regarding each of the applications; and

39 **WHEREAS**, the County is limited to four amendments of its General Plan Land Use Element  
40 and Map per year, under Government Code section 65358(b); and

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2 **WHEREAS**, the County desired to combine the proposed amendments of the General Plan  
3 designations of the three separate parcels into a single amendment of the County's General Plan  
4 Land Use Element and Map; and

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6 **WHEREAS**, the Board of Supervisors held a single public hearing regarding General Plan  
7 Amendment Numbers 08-38, 08-39 and 09-40; and

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9 **WHEREAS**, following the public hearing, the Board of Supervisors considered the proposed  
10 amendment of the General Plan Land Use Element and Map.

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12 **NOW THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of San  
13 Benito that, based on the entire record of proceedings before the Planning Commission, the  
14 Board of Supervisors, and all public comment provided, it hereby makes the following findings  
15 regarding General Plan Amendment 08-38 (Del Curto), regarding a proposed amendment of the  
16 General Plan Land Use designation of property located on Santa Ana Valley Road from  
17 Agricultural Rangeland (AR) to Agricultural Productive (AP):

- 18 1. an Initial Study and proposed Mitigated Negative Declaration were prepared and  
19 circulated from April 2, 2009 through May 1, 2009, in compliance with the provisions of  
20 the California Environmental Quality Act, the State CEQA Guidelines, and the San  
21 Benito County Implementing Procedures for the California Environmental Quality Act;
- 22 2. on June 3, 2009, the San Benito County Planning Commission held a duly noticed public  
23 hearing and considered the merits of the application for GPA 08-38, along with the Initial  
24 Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
25 Program, together with all comments received from the public review process;
- 26 3. the Planning Commission heard and received all oral and written testimony and evidence  
27 that was made, presented, or filed, and all persons present at the hearings were given an  
28 opportunity to hear and be heard with respect to any matter related to the application, and  
at the conclusion of public testimony, the Planning Commission closed the public hearing  
and considered the merits of the application;
4. the Planning Commission adopted Resolution #2009-05, recommending that the Board of  
Supervisors adopt the Mitigated Negative Declaration, Mitigation Monitoring and  
Reporting Program, and approve General Plan Amendment 08-38;
5. the matter was set for public hearing before the Board of Supervisors and the  
administrative record was forwarded and made available to the Board of Supervisors;
6. on July 7, 2009, the Board of Supervisors held a duly noticed public hearing and  
considered the merits of the application for GPA 08-38, along with the Initial  
Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
Program, together with all comments received from the public review process;

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2 7. the Board of Supervisors heard and received all oral and written testimony and evidence  
3 that was made, presented or filed, and all persons present at the hearings were given the  
4 opportunity to hear and be heard with respect to any matter related to the application, and  
at the conclusion of the public testimony, the Planning Commission closed the public  
hearing and considered the merits of the application;

5 8. **CEQA Finding 1:** That the Initial Study/Mitigated Negative Declaration for GPA 08-38  
6 has been prepared in compliance with the provisions of the California Environmental  
7 Quality Act, the State CEQA Guidelines and the San Benito County Implementing  
Procedures for the California Environmental Quality Act.

8 *Evidence: The relevant documents used in the preparation of the Initial Study and*  
9 *Mitigated Negative Declaration are filed in the project record located at the San*  
10 *Benito County Planning Department in file numbers GPA 08-38 and ZC 08-166.*  
11 *Public review of the Initial Study was conducted from April 2, 2009 to May 1, 2009.*  
12 *The Notice of Availability of the Mitigated Negative Declaration was mailed to*  
*interested parties and to property owners within 300 feet of the project site and*  
*posted at two public locations in the County (the Planning and Building Department*  
*and the Recorder's office).*

13 9. **CEQA Finding 2:** That the Board of Supervisors has considered the Mitigated Negative  
14 Declaration together with all comments received from the public review process.

15 *Evidence: The Planning Commission and Board of Supervisors considered all*  
16 *evidence, including any written and oral comments and responses from the public*  
*hearings on June 3, 2009 and July 7, 2009 regarding this project.*

17 10. **CEQA Finding 3:** The Mitigated Negative Declaration reflects the independent  
18 judgment of the Board of Supervisors.

19 *Evidence: The San Benito County Planning Department prepared the Initial*  
20 *Study/Mitigated Negative Declaration. The Planning Commission considered and*  
21 *reviewed the Initial Study/Mitigated Negative Declaration and considered public*  
22 *comments and supplemental information prior to making its recommendation to the*  
23 *Board of Supervisors to adopt the Mitigated Negative Declaration. The Board of*  
24 *Supervisors considered and reviewed the Initial Study/Mitigated Negative*  
*Declaration and considered public comments, staff's and the Planning Commission's*  
*recommendations, and supplemental information prior to making its decision to*  
*adopt the Mitigated Negative Declaration.*

25 11. **CEQA Finding 4:** That the Board of Supervisors has found that there is no substantial  
26 evidence that the proposed project will have a significant effect on the environment.

27 *Evidence: After consideration of the Initial Study/Mitigated Negative Declaration,*  
28 *the Planning Commission found and recommended that the Board of Supervisors find*  
*that the project as proposed, with the adoption of the Mitigation Measures and*

1 conditions of approval, could not have a significant effect on the environment. After  
2 consideration of the Initial Study/Mitigated Negative Declaration, as well as public  
3 comments and staff's and the Planning Commission's recommendations, the Board of  
4 Supervisors found that the project as proposed, with the adoption of the Mitigation  
Measures and conditions of approval, could not have a significant effect on the  
environment.

- 5 12. **General Plan Amendment Finding:** That the approval of the General Plan Amendment  
6 is deemed to be in the public's interest.

7 **Evidence:** *The General Plan Amendment will not substantially increase the*  
8 *population and would better harmonize this property's General Plan designation with*  
9 *the General Plan designations of neighboring parcels to the West and directly North*  
10 *(neighboring parcels zoned AP). Further, given current site conditions, the property*  
11 *better reflects the Agricultural Productive Designation as described in the General*  
12 *Plan's Land Use Element. Namely, the property is served by a collector road, is*  
13 *productive farmland, is not remote or isolated, is not substantially*  
14 *constrained/environmentally sensitive, has a moderate fire rating, and is in close*  
15 *proximity to utility services. The proposed AP designation of the property would*  
16 *conform to all General Plan Policies and it will allow for planning design that is*  
17 *consistent with current General Plan Policies.*

18 **BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that,  
19 based on the entire record of proceedings before the Planning Commission, the Board of  
20 Supervisors, and all public comment provided, it hereby makes the following findings regarding  
21 General Plan Amendment 08-39 (Calera Wine Co.), regarding a proposed amendment of the  
22 General Plan Land Use designation of property located on Cienega Road from Agricultural  
23 Rangeland (AR) to Agricultural Productive (AP):

- 24 1. an Initial Study and proposed Mitigated Negative Declaration were prepared and  
25 circulated from April 9, 2009 through April 28, 2009, in compliance with the provisions  
26 of the California Environmental Quality Act, the State CEQA Guidelines, and the San  
27 Benito County Implementing Procedures for the California Environmental Quality Act;  
28 2. on May 6, 2009, the San Benito County Planning Commission held a duly noticed public  
hearing and considered the merits of the application for GPA 08-39, along with the Initial  
Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
Program, together with all comments received from the public review process;  
3. the Planning Commission heard and received all oral and written testimony and evidence  
that was made, presented, or filed, and all persons present at the hearings were given an  
opportunity to hear and be heard with respect to any matter related to the application, and  
at the conclusion of public testimony, the Planning Commission closed the public hearing  
and considered the merits of the application;

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4. the Planning Commission adopted Resolution #2009-04, recommending that the Board of  
Supervisors adopt the Mitigated Negative Declaration, Mitigation Monitoring and  
Reporting Program, and approve General Plan Amendment 08-39;
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5. the matter was set for public hearing before the Board of Supervisors and the  
administrative record was forwarded and made available to the Board of Supervisors;
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6. on July 7, 2009, the Board of Supervisors held a duly noticed public hearing and  
considered the merits of the application for GPA 08-39, along with the Initial  
Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
Program, together with all comments received from the public review process;
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7. the Board of Supervisors heard and received all oral and written testimony and evidence  
that was made, presented or filed, and all persons present at the hearings were given the  
opportunity to hear and be heard with respect to any matter related to the application, and  
at the conclusion of the public testimony, the Planning Commission closed the public  
hearing and considered the merits of the application;
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8. **CEQA Finding 1:** That the Initial Study/Mitigated Negative Declaration for GPA 08-39  
has been prepared in compliance with the provisions of the California Environmental  
Quality Act, the State CEQA Guidelines and the San Benito County Implementing  
Procedures for the California Environmental Quality Act.

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*Evidence: The relevant documents used in the preparation of the Initial Study and  
Mitigated Negative Declaration are filed in the project record located at the San  
Benito County Planning Department in file numbers GPA 08-39 and ZC 08-166.  
Public review of the Initial Study was conducted from April 9, 2009 to April 28, 2009.  
The Notice of Availability of the Mitigated Negative Declaration was mailed to  
interested parties and to property owners within 300 feet of the project site and  
posted at two public locations in the County (the Planning and Building Department  
and the Recorder's office). Comments were received by San Benito Engineering,  
requesting a change to Mitigation Measure #3. The additional review of Mitigation  
Measure three resulted in the revision of this Mitigation Measure to state the  
following: Prior to any construction in areas of the property listed under landslide  
hazard area four (4), a site specific geo-technical report shall be completed by a  
qualified registered engineer addressing this issue. The Planning Director and  
Building Official shall review the geo-technical report and approve the proposed  
building site at his/her discretion.*

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9. **CEQA Finding 2:** That the Board of Supervisors has considered the Mitigated Negative  
Declaration together with all comments received from the public review process.

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*Evidence: The Planning Commission and Board of Supervisors considered all  
evidence, including any written and oral comments and responses from the public  
hearings on May 6, 2009 and July 7, 2009 regarding this project.*

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10. **CEQA Finding 3:** The Mitigated Negative Declaration reflects the independent judgment of the Board of Supervisors.

*Evidence: The San Benito County Planning Department prepared the Initial Study/Mitigated Negative Declaration. The Planning Commission considered and reviewed the Initial Study/Mitigated Negative Declaration and considered public comments and supplemental information prior to making its recommendation to the Board of Supervisors to adopt the Mitigated Negative Declaration. The Board of Supervisors considered and reviewed the Initial Study/Mitigated Negative Declaration and considered public comments, staff's and the Planning Commission's recommendations, and supplemental information prior to making its decision to adopt the Mitigated Negative Declaration*

11. **CEQA Finding 4:** That the Board of Supervisors has found that there is no substantial evidence that the proposed project will have a significant effect on the environment.

*Evidence: After consideration of the Initial Study/Mitigated Negative Declaration, the Planning Commission found and recommended that the Board of Supervisors find that the project as proposed, with the adoption of the Mitigation Measures and conditions of approval, could not have a significant effect on the environment. After consideration of the Initial Study/Mitigated Negative Declaration, as well as public comments and staff's and the Planning Commission's recommendations, the Board of Supervisors found that the project as proposed, with the adoption of the Mitigation Measures and conditions of approval, could not have a significant effect on the environment..*

12. **CEQA Finding 5:** That the Board of Supervisors has found that the original Mitigation Measure 3 is undesirable as currently written, in that a more precisely written Mitigation Measure will provide the same protection/mitigation while allowing consideration of areas which may be safe for construction, and the Board of Supervisors further finds that the revised Mitigation Measure 3 is equivalent or more effective in mitigating significant effects on the environment to a less than significant level and will not cause any potentially significant effects on the environment.

**Evidence:** Section 21080(f) of CEQA states:

*(f) As a result of the public review process for a Mitigated Negative Declaration, including administrative decisions and public hearings, the lead agency may conclude that certain Mitigation Measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those Mitigation Measures and substitute for them other Mitigation Measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new Mitigation Measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new*

1 Mitigation Measures shall not constitute an action or circumstance requiring  
2 recirculation of the Mitigated Negative Declaration.

3 Mitigation Measure 3 has been revised to state the following: Prior to any  
4 construction in areas of the property listed under landslide hazard area four (4), a  
5 site specific geo-technical report shall be completed by a qualified registered  
6 engineer addressing this issue. The Planning Director and Building Official shall  
7 review the geo-technical report and approve the proposed building site at his/her  
8 discretion. The original Mitigation Measure 3 is undesirable as being unduly  
9 burdensome in prohibiting all building in areas that could be established, through a  
geotechnical report, as being appropriate building sites. The revised Mitigation  
Measure 3 is a more precisely written Mitigation Measure that will provide the same  
mitigation/protection against landslide hazards, while allowing consideration of areas  
which may be proved to be safe for construction.

- 10 13. **General Plan Amendment Finding:** That the approval of the General Plan Amendment  
11 is deemed to be in the public's interest.

12 **Evidence:** *The General Plan Amendment will not substantially increase the*  
13 *population and would better harmonize this property's AP General Plan designation*  
14 *with the size and intensity of use of neighboring parcels, a majority of which are*  
15 *currently legal non-conforming parcels ranging from .6 acres to 14.76 acres in size, in*  
16 *mixed agricultural and residential uses, and particularly with the AP designated parcels to*  
17 *the South. Further, given current site conditions, the property better reflects the*  
18 *Agricultural Productive Designation as described in the General Plan's Land Use*  
19 *Element. Namely, the property is served by a collector road, is considered productive*  
20 *farmland, is not remote or isolated, is not substantially constrained/environmentally*  
21 *sensitive, is within a moderate fire rating, and is in close proximity to utility services.*  
22 *The proposed AP designation of the property would conform to all General Plan*  
23 *Policies and it will allow for planning design that is consistent with current General*  
24 *Plan Policies.*

25 **BE IT FURTHER-RESOLVED** by the Board of Supervisors of the County of San Benito that,  
26 based on the entire record of proceedings before the Planning Commission, the Board of  
27 Supervisors, and all public comment provided, it hereby makes the following findings regarding  
28 General Plan Amendment 09-40 (Ruben Rodriguez), regarding a proposed amendment of the  
General Plan Land Use designation of property located on Fallon Road from Agricultural  
Productive (AP) to Heavy Industrial (M-2):

1. an Initial Study and proposed Mitigated Negative Declaration were prepared and  
circulated from May 15, 2009 through June 15, 2009, in compliance with the provisions  
of the California Environmental Quality Act, the State CEQA Guidelines, and the San  
Benito County Implementing Procedures for the California Environmental Quality Act;
2. on June 17, 2009, the San Benito County Planning Commission held a duly noticed  
public hearing and considered the merits of the application for GPA 09-40, along with the

1 Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
2 Program, together with all comments received from the public review process;

3 3. the Planning Commission heard and received all oral and written testimony and evidence  
4 that was made, presented, or filed, and all persons present at the hearings were given an  
5 opportunity to hear and be heard with respect to any matter related to the application, and  
at the conclusion of public testimony, the Planning Commission closed the public hearing  
and considered the merits of the application;

6 4. the Planning Commission adopted Resolution #2009-03, recommending that the Board of  
7 Supervisors adopt the Mitigated Negative Declaration, Mitigation Monitoring and  
Reporting Program, and approve General Plan Amendment 09-40;

8 5. the matter was set for public hearing before the Board of Supervisors and the  
9 administrative record was forwarded and made available to the Board of Supervisors;

10 6. on July 7, 2009, the Board of Supervisors held a duly noticed public hearing and  
11 considered the merits of the application for GPA 09-40, along with the Initial  
12 Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
Program, together with all comments received from the public review process;

13 7. the Board of Supervisors heard and received all oral and written testimony and evidence  
14 that was made, presented or filed, and all persons present at the hearings were given the  
15 opportunity to hear and be heard with respect to any matter related to the application, and  
at the conclusion of the public testimony, the Planning Commission closed the public  
hearing and considered the merits of the application;

16 8. **CEQA Finding 1:** That the Initial Study/Mitigated Negative Declaration for GPA 09-40  
17 has been prepared in compliance with the provisions of the California Environmental  
18 Quality Act, the State CEQA Guidelines and the San Benito County Implementing  
Procedures for the California Environmental Quality Act.

19 **Evidence:** *The relevant documents used in the preparation of the Initial Study and*  
20 *Mitigated Negative Declaration are filed in the project record located at the San*  
21 *Benito County Planning Department in file numbers GPA 09-40 & ZC 06-148. Public*  
22 *review of the Initial Study was conducted from May 15, 2009 to June 15, 2009. The*  
23 *Notice of Availability of the Mitigated Negative Declaration was mailed to interested*  
24 *parties and to property owners within 300 feet of the project site and posted at two*  
25 *public locations in the County (the Planning and Building Department and the*  
26 *Recorder's office). Comments were received as a result of the Initial Study*  
27 *Circulation. These comments did not require any changes in the existing Mitigation*  
28 *Measures.*



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9. **CEQA Finding 2:** That the Board of Supervisors has considered the Mitigated Negative Declaration together with all comments received from the public review process.

*Evidence: The Planning Commission and Board of Supervisors considered all evidence, including any written and oral comments and responses from the public hearings on June 17, 2009 and July 7, 2009 regarding this project.*

10. **CEQA Finding 3:** The Mitigated Negative Declaration reflects the independent judgment of the Board of Supervisors.

*Evidence: The San Benito County Planning Department prepared the Initial Study/Mitigated Negative Declaration. The Planning Commission considered and reviewed the Initial Study/Mitigated Negative Declaration and considered public comments and supplemental information prior to making its recommendation to the Board of Supervisors to adopt the Mitigated Negative Declaration. The Board of Supervisors considered and reviewed the Initial Study/Mitigated Negative Declaration and considered public comments, staff's and the Planning Commission's recommendations, and supplemental information prior to making its decision to adopt the Mitigated Negative Declaration.*

11. **CEQA Finding 4:** That the Board of Supervisors has found that there is no substantial evidence that the proposed project will have a significant effect on the environment.

*Evidence: After consideration of the Initial Study/Mitigated Negative Declaration, the Planning Commission found and recommended that the Board of Supervisors find that the project as proposed, with the adoption of the Mitigation Measures and conditions of approval, could not have a significant effect on the environment. After consideration of the Initial Study/Mitigated Negative Declaration, as well as public comments and staff's and the Planning Commission's recommendations, the Board of Supervisors found that the project as proposed, with the adoption of the Mitigation Measures and conditions of approval, could not have a significant effect on the environment.*

12. **CEQA Finding 5:** That the Board of Supervisors has found that the original Mitigation Measure 18 is undesirable as currently written in that it contained a typographical error in stating "no left turn" signs would be placed at two locations on the project site, instead of requiring "no right turn" signs at the designated locations, and that a correctly written Mitigation Measure will provide better protection/mitigation of traffic hazards posed by vehicles making right turns at those locations, and the Board of Supervisors further finds that the revised Mitigation Measure 18 is equivalent or more effective in mitigating significant effects on the environment to a less than significant level and will not cause any potentially significant effects on the environment.

*Evidence: Section 21080(f) of CEQA states:*

*(f) As a result of the public review process for a Mitigated Negative Declaration, including administrative decisions and public hearings, the lead agency may*

1 conclude that certain Mitigation Measures identified pursuant to paragraph (2) of  
2 subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the  
3 lead agency, prior to approving the project, may delete those Mitigation Measures  
4 and substitute for them other Mitigation Measures that the lead agency finds, after  
5 holding a public hearing on the matter, are equivalent or more effective in mitigating  
6 significant effects on the environment to a less than significant level and that do not  
7 cause any potentially significant effect on the environment. If those new Mitigation  
8 Measures are made conditions of project approval or are otherwise made part of the  
9 project approval, the deletion of the former measures and the substitution of the new  
10 Mitigation Measures shall not constitute an action or circumstance requiring  
11 recirculation of the Mitigated Negative Declaration.

12 Mitigation Measure 18 has been revised to change the "no left turn" restriction to a  
13 "no right turn" restriction. Staff discovered that the intention of the redline  
14 documents provided by Public Works Staff was to require all vehicles to make left  
15 turns when leaving the property, in order to ensure that traffic impacts off Fairview  
16 Road are mitigated as intended in the CEQA evaluation.

17 Mitigation Measure 18 has been revised to state the following: In order to increase  
18 safety measures "No Right Turn" signs shall be placed at two locations:

- 19 a. Within the subject property at the proposed upgraded driveway exit (R42); and  
20 b. On the far site of Fallon Road in the line site of drivers leaving the project site (R16).

- 21 13. **CEQA Finding 6:** That the Board of Supervisors has found that the original Mitigation  
22 Measure 22 is undesirable as currently written, because it is considered unsafe to widen  
23 only an isolated portion of Fallon Road, and that a more precisely written Mitigation  
24 Measure will provide improvements to Fallon Road at such time as the widening of  
25 Fallon Road occurs or is deemed necessary by the Public Works Department, and the  
26 Board of Supervisors further finds that the revised Mitigation Measure 22 is safer, is  
27 equivalent or more effective in mitigating significant effects on the environment to a less  
28 than significant level and will not cause any potentially significant effects on the  
environment.

**Evidence:** Section 21080(f) of CEQA states:

(f) As a result of the public review process for a Mitigated Negative Declaration,  
including administrative decisions and public hearings, the lead agency may  
conclude that certain Mitigation Measures identified pursuant to paragraph (2) of  
subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the  
lead agency, prior to approving the project, may delete those Mitigation Measures  
and substitute for them other Mitigation Measures that the lead agency finds, after  
holding a public hearing on the matter, are equivalent or more effective in mitigating  
significant effects on the environment to a less than significant level and that do not  
cause any potentially significant effect on the environment. If those new Mitigation  
Measures are made conditions of project approval or are otherwise made part of the  
project approval, the deletion of the former measures and the substitution of the new  
Mitigation Measures shall not constitute an action or circumstance requiring  
recirculation of the Mitigated Negative Declaration.

1 Mitigation Measure 22 has been revised to state that prior to operation of the  
2 business onsite, the applicant shall enter into a deferred improvement agreement for  
3 half-road improvements along the property frontage of Fallon Road. Staff discovered  
4 that Public Works Staff deemed the widening of an isolated portion of Fallon Road at  
5 the present time, prior to the widening of Fallon Road, to create a more dangerous  
6 condition, and that Public Works Staff's intention was to have the applicant enter into  
7 a deferred improvement agreement until such a time that Fallon Road is widened or  
8 that it is deemed safe by the Public Works Department to construct the frontage  
9 improvements.

Mitigation Measure 22 has been revised to state the following: Prior to operation of  
any business onsite the owner shall enter into a deferred improvement agreement for  
half-road improvements (to rural standards), along the property frontage of Fallon  
Road (1/2-width of 56 feet AC on 66 feet AB to rural standard).

- 10 14. **General Plan Amendment Finding:** That the approval of the General Plan Amendment  
11 is deemed to be in the public's interest.

12 **Evidence:** The General Plan Amendment will not substantially increase the  
13 population and would better harmonize the property's historical agricultural  
14 industrial uses, providing opportunities for increased industrial uses in the area. The  
15 General Plan Amendment has the potential to provide for further industrial uses on-  
16 site. Industrial sites are highly limited within the unincorporated County. Such sites  
17 serve a valuable function to the community and provide for jobs. Historically, the  
18 project site has been used for Agricultural Industrial uses, which is not a current  
19 Zoning or General Plan designation, but has been considered to be an industrial use.  
20 Given current site conditions, the property better reflects the Industrial Land Use  
21 Designation as described in the General Plan's Land Use Element. Namely, the  
22 property is served by a collector road, the majority of the site is listed as Urban and  
23 Built-up Land by the Farmland Mapping and Monitoring Program, is not remote or  
24 isolated, is not substantially constrained/environmentally sensitive, and is in close  
25 proximity to utility-services. The proposed M-2 designation of the property would  
26 conform to all General Plan Policies and it will allow for planning design that is  
27 consistent with current General Plan Policies. The site is surrounded by properties  
28 bearing the AP General Plan and Zoning designations and would create an isolated  
industrial lot within an AP zone. However, this project is unlikely to result in future  
proposals for General Plan Amendments and Zone Change Petitions because it is the  
only parcel in the area (along Fallon Road) that is or has been used as an industrial  
site and the surrounding parcels have been historically used for Prime Agricultural  
Farming. The surrounding properties (minus the house directly next door to this site)  
are listed as Prime Farmland in the 2007 Farmland Mapping and Monitoring  
Program. This General Plan Amendment will complete the need for further  
adjustments in this area.

**BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that,  
based on the entire record of proceedings before the Planning Commission and the Board of

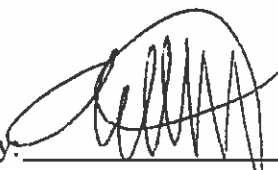
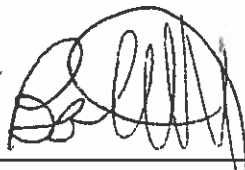
Supervisors, it does hereby adopt the Mitigated Negative Declarations and the Mitigation Monitoring and Reporting Programs for General Plan Amendments 08-38 (Del Curto), 08-39 (Calera Wine Co.) and 09-40 (Rodriguez); and

**BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of San Benito that, based on the entire record of proceedings before the Planning Commission and the Board of Supervisors, it does hereby approve the following amendments to the General Plan Land Use Element and Map:

1. the land use designation of an approximately 58.9-acre parcel located on Santa Ana Valley Road, as shown in Exhibit A, is hereby amended from Agricultural Rangeland (AR) to Agricultural Productive (AP), as proposed in application No. GPA 08-38;
2. the land use designation of an approximately 73.18-acre parcel located on Cienega Road, as shown in Exhibit B, is hereby amended from Agricultural Rangeland (AR) to Agricultural Productive (AP), as proposed in application No. GPA 08-39; and
3. the land use designation of an approximately 3.28-acre parcel located on Fallon Road, as shown in Exhibit C, is hereby amended from Agricultural Productive (AP) to Heavy Industrial (M-2), as proposed in application No. GPA 09-40.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO, STATE OF CALIFORNIA, AT THE MEETING OF SAID BOARD ON THIS 7<sup>th</sup> DAY OF JULY, 2009 BY THE FOLLOWING VOTE:

AYES:	SUPERVISORS:	<i>Monaco, Barrios, De La Cruz</i>
NOES:	SUPERVISORS:	<i>Loe, Botelho</i>
ABSENT:	SUPERVISORS:	<i>none</i>
ABSTAIN:	SUPERVISORS:	<i>none</i>

By:    
Anthony Botelho, Chair  
San Benito County Board of Supervisors

ATTEST:  
Linda Churchill, Clerk of the Board

APPROVED AS TO LEGAL FORM:  
San Benito County Counsel's Office

By:  By:  7/1/09  
Shirley L. Murphy, Deputy County Counsel





**SAN BENITO ENGINEERING**

1 **BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO**

2 AN ORDINANCE OF THE SAN BENITO )  
3 COUNTY BOARD OF SUPERVISORS TO )  
4 REZONE THE PARCEL DESCRIBED )  
5 HEREIN TO THE AGRICULTURAL )  
6 PRODUCTIVE (AP) ZONING DISTRICT )  
7 (DEL CURTO - ZC 08-166) )

ORDINANCE NO. 840

8 The Board of Supervisors of the County of San Benito, State of California does ordain as  
9 follows:

10 All property described and/or shown in Exhibit A, attached hereto and incorporated herein by  
11 reference, is hereby designated to be Agricultural Productive (AP) as set forth in the San Benito  
12 County Code, Title 25 (Zoning Ordinance No. 479, as amended), Chapter 25.07 (Agricultural  
13 Districts), Article II (Agricultural Productive District), commencing with Section 25.07.020.

14 All property described and shown in Exhibit A shall be subject to the conditions of approval as  
15 set forth in the staff report presented to the Board of Supervisors on July 7, 2009 and as adopted  
16 by the Board of Supervisors, which conditions are summarized in Exhibit B, attached hereto and  
17 incorporated herein by reference.

18 This Ordinance shall take effect and be in full force and effect (30) days after its passage and  
19 before expiration of fifteen (15) days after passage of this Ordinance, it shall be published once  
20 with the names of the members of the Board of Supervisors voting for and against the Ordinance  
21 in a newspaper of general circulation published in the County of San Benito, State of California.

22 The foregoing Ordinance was passed and adopted by the Board of Supervisors of the County of  
23 San Benito, State of California, at the regular meeting of said Board held on the 7<sup>th</sup> day of July,  
24 2009, by the following vote:

25 AYES: Supervisor(s): Monaco, Barrios, de la Cruz  
26 NOES: Supervisor(s): Loe, Botelho  
27 ABSENT: Supervisor(s): none  
28 ABSTAINING: Supervisor(s): none

By: 

Anthony Botelho, Chair

29 ATTEST:  
30 Linda Churchill  
31 Clerk of the Board of Supervisors

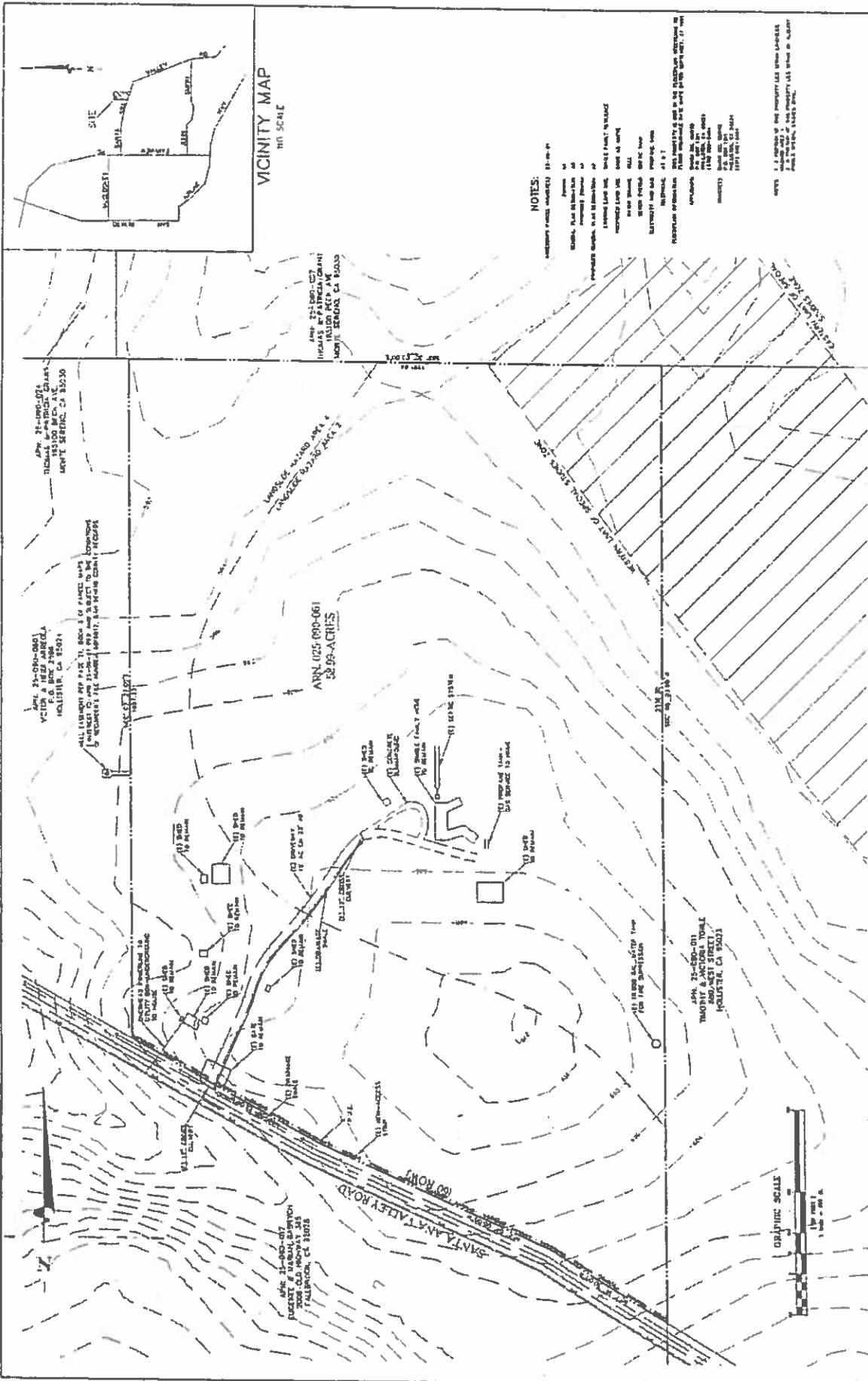
APPROVED AS TO LEGAL FORM:  
San Benito County Counsel's Office

32 By: Linda Churchill

33 Date: July 7, 2009

34 By: Shirley L. Murphy  
35 Shirley L. Murphy, Deputy County Counsel  
36 Date: July 1, 2009





**SAN BENTO ENGINEERING  
& SURVEYING, INC.**

FOURTH OF MAY 1867  
PARCEL 2, BOOK 9  
PARCEL MAPS. PAGE 21

**DARIN DEL CURTO**

[illegible]

COOPER COUNTY  
MISSOURI

**Ordinance No. 840, Exhibit B**  
**ZC 08-166 (Del Curto)**

**Standard Conditions:**

1. **Hold Harmless:** Upon written notice by the County, the permittee shall defend, indemnify and hold harmless San Benito County and its agents, officers and employees from any claim, action or proceeding against San Benito County or its agents, officers or employees to attack, set aside, void or annul the approval of this Zone Change and associated General Plan Amendment and any applicable proceedings. San Benito County reserves the right to prepare its own defense. [Planning]
2. **Notice of Determination (Fish & Game Fees):** The applicant/developer/owner shall file the Notice of Determination, provided by the County Planning Department, with the County Clerk within five (5) days of approval of the Zone Change Petition. Department of Fish and Game fee (\$2,043– Fish & Game Code section 711.4(d)) must be submitted with the filing. A copy of the filed notice shall be submitted to the County Planning Department. Should the Notice not be filed and the fee not paid within five (5) days, the application is subject to action described in Public Resource Code section 21167 and the project is not operative, vested, or final until the Notice is filed and the fee is paid (Public Resources Code section 21089(b)). [Planning]
3. **Habitat Conservation Plan Impact Fees:** The applicant/owner shall pay their portion of the Habitat fee as stated in San Benito County Ordinance 541. The total sum of the Habitat Conservation fee will be \$600. [Planning, Department of Fish and Game] [Mitigation Measure #1]

**Planning Conditions:**

4. **Mitigation Monitoring:** Prior to final approval, the applicant/owner, County Counsel and the Planning Director shall agree to and sign the Mitigation Monitoring Program form(s).
5. **Cultural Resources:** Any property owner who, at anytime in the preparation for or process of excavation or otherwise disturbing the ground, discovers any human remains of any age, or any significant artifact or other evidence of an archeological site shall:
  - a. Cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains.
  - b. Arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of not less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals.
  - c. Notify the sheriff-coroner of the discovery if human and/or questionable remains have been discovered. The Planning Department Director shall also be notified.
  - d. Subject to the legal process, grant all duly authorized representatives of the coroner and the Planning Department Director permission to enter onto the property and to take all actions consistent with Title 19, Chapter 19.05 of the San Benito County Code and consistent with Section 7050.5 of the Health and Human Safety Code and Chapter 10 (commencing with

Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code. [Planning]  
[Mitigation Measure #2]

6. **Future Permits:** The applicant(s)/Owner(s), at the time of development would have to apply for a grading permit application (if grading exceeds 50 cubic yards), a use permit (if the items are listed as a condition use within the zoning restrictions) or any other planning/building related application as they apply to the specific project request. These planning/building applications shall be required to evaluate the air quality impacts to the specific proposed project(s) and how to mitigate for these potential impacts. Future development would also require the full compliance to the California Fire Code and Policy 37 of the General Plan's Open Space and Conservation Element. This shall be further evaluated through the CEQA review process. [Planning]