

# EL PASO



# COUNTY

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Planning Commission  
Jim Egbert, Chair**

**FROM: Len Kendall, Planner I  
Gilbert LaForce, PE Engineer II  
Craig Dossey, Executive Director**

**RE: Project File #: AL-17-027  
Project Name: Nelson Winery as Agritainment  
Parcel No.: 52190-00-032**

<b>OWNER:</b>	<b>REPRESENTATIVE:</b>
Ben and Lisa Nelson 11340 Black Forest Rd. Colorado Springs, CO 80908	Ben Nelson 11340 Black Forest Rd. Colorado Springs, CO 80908

**Commissioner District: 1**

<b>Planning Commission Hearing Date:</b>	<b>2/20/2018</b>
<b>Board of County Commissioners Hearing Date</b>	<b>3/13/2018</b>

## EXECUTIVE SUMMARY

A request by Ben and Lisa Nelson for approval of a special use to operate a winery as agritainment on a 9.77-acre property where 35-acres is required in the RR-5 (Residential Rural) zoning district. The parcel is located on Black Forest Road approximately 800-feet south of the intersection with Burgess Road. The parcel is located within the Timbered Area (subarea 1) of the Black Forest Preservation Plan (1987).

The applicant is proposing to use existing structures for a winery/vineyard on the 9.77-acre property. Agritainment is an allowed use in the RR-5 zoning district with a 35-acre minimum parcel size. Section 5.2.5.E, Agritainment, Other Applicable Standards, of the El Paso County Land Development Code (2017) states, "any proposed agritainment use which does not comply with the provisions of this section shall require special use

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approval.” The subject parcel is 9.77 acres thereby triggering the special use requirement.

#### **A. REQUEST/WAIVERS/AUTHORIZATION**

**Request:** A request by Ben and Lisa Nelson for approval of a special use to operate a winery as agritainment on a 9.77-acre property where 35-acres is required.

**Waiver(s):** There are no waivers associated with this application.

**Authorization to Sign:** There are no documents associated with this application that require signing.

#### **B. PLANNING COMMISSION SUMMARY**

**Request Heard:**

**Recommendation:**

**Waiver Recommendation:**

**Vote:**

**Vote Rationale:**

**Summary of Hearing:**

**Legal Notice:**

#### **C. APPROVAL CRITERIA**

Pursuant to Section 5.3.2.C of the Land Development Code, the Board of County Commissioners may consider the following criteria in approving a special use:

- The special use is generally consistent with the applicable Master Plan;
- The special use will generally be in harmony with the character of the neighborhood, and will generally be compatible with the existing and allowable land uses in the surrounding area;
- The impact of the special use does not overburden or exceed the capacity of public facilities and services, or, in the alternative, the special use application demonstrates that it will provide adequate public facilities in a timely and efficient manner;
- The special use will not create unmitigated traffic congestion or traffic hazards on the surrounding area, and has adequate, legal access;
- The special use will comply with all applicable local, state, and federal laws and regulations regarding air, water, light, or noise pollution;
- The special use will not otherwise be detrimental to the public health, safety and welfare of the present or future residents of El Paso County; and/or

- The special use conforms or will conform to all other applicable County rules, regulations or ordinances.

**D. LOCATION**

North:	CC (Commercial Community)	Retail
South:	RR-5 (Residential Rural)	Single-family residential
East:	R-4 (Planned Development)	Retail
West:	RR-5 (Residential Rural)	Single-family residential

**E. BACKGROUND**

The property is located on the west side of Black Forest Road approximately 600 feet south of the Burgess Road intersection. The property was originally zoned A-4 (Agricultural) on September 21, 1965. Subsequent nomenclature changes have resulted in a name change to RR-5 (Residential Rural). The property consists of a single-family dwelling (1940), an accessory structure (1980), a garage structure to be demolished, and two sheds (1940). The 9.77-acre property is currently zoned RR-5 (Residential Rural) and is deemed conforming for the following reasons: 1) a single family residence is an allowed use in the RR-5 zoning district; 2) the parcel was created prior to subdivision regulations (March 13, 1951); and 3) the lot area exceeds the minimum RR-5 zoning district lot size of 5-acres. There was a previous application to rezone the property from RR-5 to CC (Commercial Community) (CC-07-003). The request failed to progress to a hearing before either the Planning Commission or the Board of County Commissioners.

**F. ANALYSIS**

**1. Land Development Code Analysis**

Agritainment is defined as “ongoing or seasonal events and/or activities, whether for remuneration or not, of an agricultural nature that are offered to the public for the purpose of recreation, entertainment, and/or education.” Agritainment is an allowed use in the RR-5 zoning district with a minimum parcel size of 35 acres. Since the subject property is only 9.77-acres, the only option by which the applicant can obtain authorization to use the property as a winery comes via Section 5.2.5.E, Agritainment, Other Applicable Standards, of the Land Development Code, which states, “any proposed agritainment use which does not comply with the provisions of this section shall require special use approval.”

**2. Zoning Compliance**

Due to the fact that the proposed agritainment use does not meet the required 35-acre minimum lot area, approval of a special use is required in order to authorize the winery use on the subject property.

### 3. Policy Plan Analysis

The El Paso County Policy Plan (1998) has a dual purpose; it serves as a guiding document concerning broader land use planning issues, and provides a framework to tie together the more detailed sub-area elements of the County master plan. Relevant policies are as follows:

**Goal 5.1** - Maintain a land use environment which encourages quality economic development that is compatible with surrounding land uses.

**Policy 5.1.11** - Encourage the retention of agricultural land based businesses by protecting their operational integrity and promoting compatible adjoining land uses.

**Policy 6.1.3** - Encourage new development which is contiguous and compatible with previously developed areas in terms of factors such as density, land use, and access.

**Goal 6.5** - Encourage the preservation of agricultural uses as an important contributor to the economy and land use character of the County

**Policy 6.5.1** - Allow for the location of limited supporting commercial uses at locations convenient to serve the needs of rural County residents provided that the requisite level of services are available or will be available in a timely fashion.

The proposed winery would be a unique economic opportunity that is compatible with the surrounding uses in the area, which include a café, a liquor store, and a post office/retail center in one of the commercial nodes of Black Forest. The property is contiguous to the CC (Commercial Community) and RR-5 (Residential Rural) zoning districts and could provide a land use intensity transition between some of the existing rural residential and the commercial land uses. Most wineries are a mixture of agriculture and commercial uses. It is important to note that the rear portion of the property, which is approximately six (6) acres, is not part of this application. There are no additional structures proposed.

### 4. Small Area Plan Analysis

The property is within the Black Forest Preservation Plan (1987). Relevant goals and policies are as follows:

**Goal 4.A:** Allow for limited commercial development which supports and enhances the Black Forest Planning Area.

**Policy 4.1** – Restrict new commercial uses within the forested and low density residential areas to existing or proposed commercial nodes as defined in the approved Land Use Scenario and Concept Plan. Within these areas infill should be encouraged rather than expansion. Strip commercial development is not desired.

**Goal 8.A:** Protect the integrity of the natural systems in the Black Forest.

**Policy 8.1** – Preserve and enhance the natural environment and wildlife of the planning area.

Within the Black Forest Preservation Plan there are 11 subareas. The subject property is located within Planning Unit 1, Timbered Area. Relevant descriptions and analysis of the Timbered Area is as follows:

**P. 89-** “Uses in this unit will be limited to low density residential or open space with the exception of the “community center” at the intersection of Shoup and Black Forest Roads and the commercial node at the intersection of Burgess and Black Forest Roads”.

Map 11, Visual Unit Boundaries, of the Plan identifies the area within which the subject property is located as being within one of the existing commercial nodes within Black Forest. Some of the language within the Plan (p. 50-52) seems to encourage small scale commercial activities in the existing commercial nodes, particularly in the Timber Area Planning Unit. Page 91 of the Plan goes on to state the following:

“New commercial and community uses within these centers should be contiguous to existing uses and should be of a scale and character which are consistent with the existing pattern of development and with current zoning. “

The parcel directly adjacent to the north of the subject parcel is split zoned between RR-5 (Residential Rural) and CC (Commercial Community) with the portion fronting Black Forest Road being commercially zoned. An existing café is located in the commercially zoned portion. Further to the north there are multiple retail shops located with a single structure. Across Black Forest Road there is a retail center anchored with a U.S. Post Office on a parcel that is zoned R-4 (Obsolete - Planned Development District).

The agritainment use is proposed to be operated on approximately the front four (4) acres of the subject property, which is also where all the existing structures are located. No additional structures are being proposed with this application. The remaining portion of the property, which is approximately 6 acres, is proposed to remain forested.

## **5. Other Master Plan Elements**

The El Paso County Wildlife Descriptors Map (1996), adopted as an element of the El Paso County master plan, shows development of this area as having low potential impact to wildlife.

The Master Plan for Mineral Extraction (1996) does not identify deposits in the area of the subject property. A mineral rights certification was prepared by the applicant indicating that there are no separate mineral rights owners on the real property.

## **G. PHYSICAL SITE CHARACTERISTICS**

### **1. Hazards**

No physical hazards were identified in the review of this special use request.

### **2. Wildlife**

The El Paso County Wildlife Descriptors Map (1996), adopted as an element of the El Paso County master plan, shows development of this area as having low potential impact to wildlife.

### **3. Floodplain**

Per FEMA Flood Insurance Rate Map panel number 08041C0530F, the property is located in Zone X, areas determined to be outside the 500-year flood.

### **4. Drainage And Erosion**

The property is located within the Kettle Creek drainage basin (FOMO3000), which is an unstudied basin. No drainage or bridge fees are assessed with special use requests. A drainage report was not required since the proposed renovation of the existing structures is not anticipated to have a significant drainage impact to the adjoining properties or the public stormwater system.

### **5. Transportation**

The property is accessed via three existing driveways along Black Forest Road. The required site development plan shall depict removal of the middle driveway. Section 6.2.5.C.2.iii of the Code requires paving of the first 50 feet of each of the remaining driveways.

Black Forest Road is identified in the 2060 Corridor Preservation Plan, which is included in the 2040 Major Transportation Corridor Plan (2016). The Plan identifies that right-of-way along this corridor should be preserved and development setbacks should be required to respond to potential development and growth as it occurs. Therefore, a right-of-way preservation line of 60-feet from the property line shall be identified on the subsequent site development plan application in accordance with the Corridor Preservation Plan of the 2016 Major Transportation Corridors Plan. The right-of-way preservation will effectively restrict development from encroaching into the corridor in order to accommodate needed future road expansions. Staff is

recommending a condition of approval that requires the preservation line to be graphically depicted on the associated site development plan.

A traffic impact study was not required and the County road impact fee does not apply to this request because the special use is not expected to generate 100 more daily vehicle trips than the property would be expected to generate without the special use request.

## **H. SERVICES**

### **1. Water**

Water is supplied to this parcel via a private well. The applicant will need to show proof of water rights during the site development plan phase of this application.

### **2. Sanitation**

The subject property is served by an onsite wastewater treatment system (OWTS). The special use site plan depicts an area on the property that is planned for a new system. The applicant shall provide evidence of permitting for any new OWTS as a supporting document to the site development plan application.

### **3. Emergency Services**

Emergency and fire protection services are provided by Black Forest Fire Protection District.

### **4. Utilities**

Electrical service is provided by Mountain View Electric Association and natural gas service is provided by Black Hills Energy.

### **5. Metropolitan Districts**

The property is not located within a metropolitan district.

### **6. Parks/Trails**

No park fees or land dedication in lieu fees are required with this application.

### **7. Schools**

No school fees or land dedication in lieu fees are required with this application.

## **I. APPLICABLE RESOLUTIONS**

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Disapproval        Page 40

## **J. STATUS OF MAJOR ISSUES**

There are no major issues with this application.

## **K. CONDITIONS AND NOTATIONS**

Should the Planning Commission and Board of County Commissioners find that the request meets the criteria for approval outlined in 5.3.2 (Special Use) of the El Paso County Land Development Code (2016), staff recommends the following conditions and notations:

### **CONDITIONS**

1. Approval is limited to the use, as discussed and depicted in the applicant's letter of intent and site plan drawings.
2. The applicant must apply for and receive approval of a site development plan for the proposed agritainment use in order to comply with the development standards of Chapter 6 of the Land Development Code.
3. The applicant shall provide evidence of permitting for any new onsite wastewater treatment system, as depicted on the special use site plan, as a supporting document to the site development plan application.
4. A corridor preservation line must be shown on the site development plan at a distance of 60 feet from existing property line along Black Forest Road in accordance with the 2040 MTCP.
5. Applicant must obtain the appropriate liquor license from the State of Colorado pertaining to the winery use.

### **NOTATIONS**

1. Special use approval includes conditions of approval and the accompanying site plan. No substantial expansion, enlargement, intensification or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or special use conditions/standards are being violated, preceded by notice and public hearing.
3. If the special use is discontinued or abandoned for two (2) years or longer, the special use shall be deemed abandoned and of no further force and effect.

## **L. PUBLIC COMMENT AND NOTICE**

The Planning and Community Development Department notified seven (7) adjoining property owners on November 20, 2017, for the Planning Commission hearing. Responses will be provided at the hearing.

**M. ATTACHMENTS**

Vicinity Map

Letter of Intent

Site Plan

# El Paso County Parcel Information

File Name:

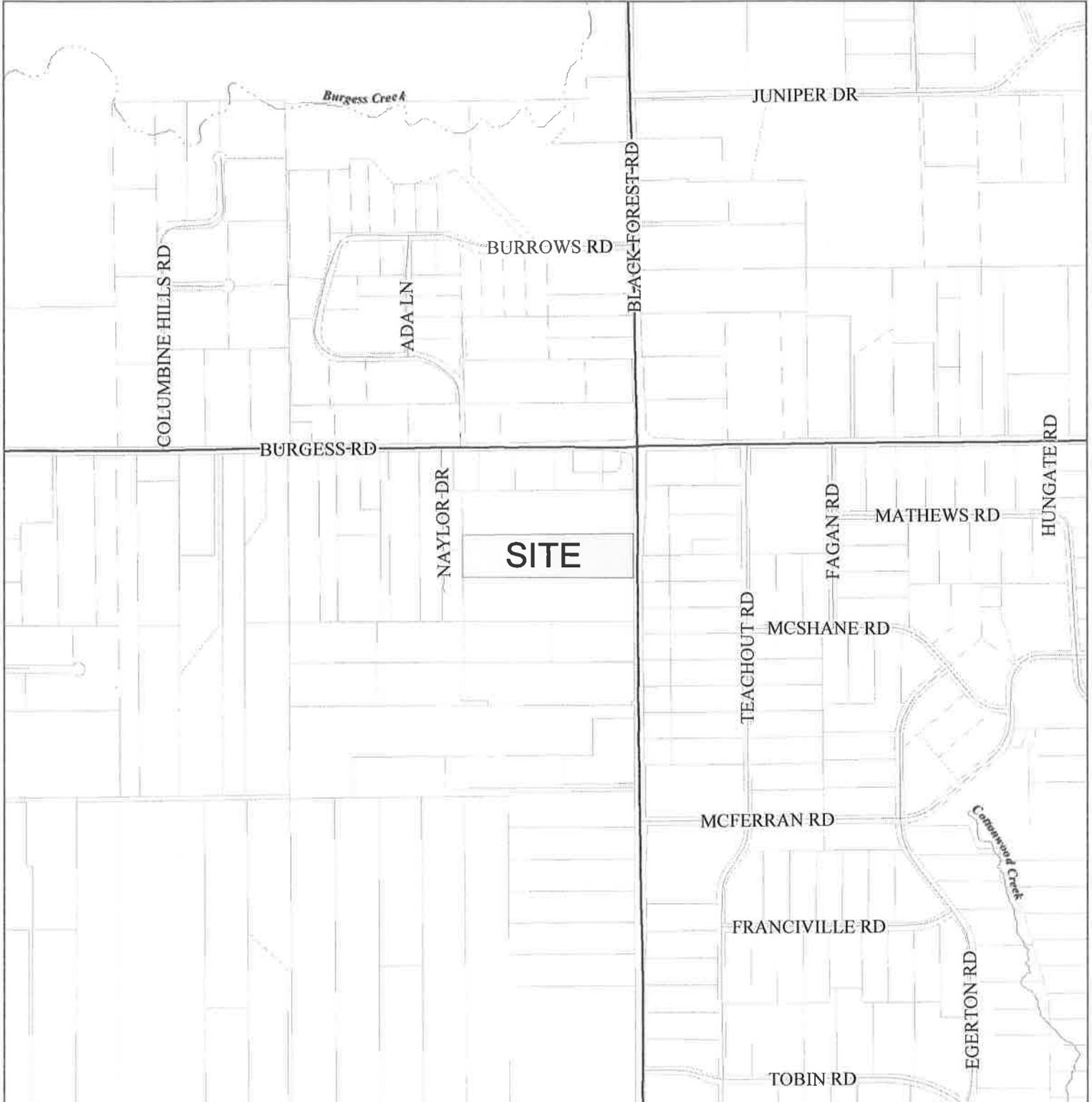
PARCEL	NAME
5219000032	NELSON LISA M

Zone Map No.:

ADDRESS	CITY	STATE
11340 BLACK FOREST RD	COLORADO SPRINGS	CO

ZIP	ZIPLUS
80908	3990

Date:



Please report any parcel discrepancies to:  
 El Paso County Assessor  
 1675 W. Garden of the Gods Rd  
 Colorado Springs, CO 80907  
 (719) 520-6600



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# Latigo Winery, LLC

Ben Nelson  
Latigo Winery, LLC  
11340 Black Forest Rd.  
Colorado Springs, CO 80908

October 30, 2017

## **Owner/Applicants**

Ben Nelson & Lisa Nelson  
11340 Black Forest Rd.  
Colorado Springs, CO 80908  
719.229.0235

Daniel Kupferer, PLS  
Land Development Consultants  
3898 Mainland Rd.  
Colorado Springs, CO 80909  
719.528.6133

## **Size, Zoning and Legal Description**

9.77 acres, RR-5  
Schedule No: 5219000032  
N2S2NE4NE4 EX RD SEC 19-12-65

## **Letter of Intent**

Ben Nelson and Lisa Nelson are the owners of the property at 11340 Black Forest Rd. Colorado Springs, CO 80908. We are requesting a special use permit to allow for 9.77 acres to be used for Agritainment use where 35 acres is required under county regulations. The Agritainment use would allow for a small family winery and a 1 acre vineyard. The property is located southwest of the intersection of Black Forest Rd. and Burgess Rd. which lies within one of two commercial nodes in Black Forest. Historically, the property has been used as a single family residence as well as small businesses consisting of Real Estate and Insurance agents. Our intent is to renovate a portion of the existing buildings to accommodate a winery and tasting room.

The property sits on 9.77 acres and consists of a log home, 4 stall barn, 4 port garage and 2 out buildings. The main site of the winery and tasting room will take place in the barn, which will be renovated to meet these needs. The outbuilding to the south of the log home will be renovated as well to be used as a barrel aging room for some of the wine. The 4 port garage will be removed to make room for parking and the outbuilding to the west of the barn will be left alone. The log home, for the time being will remain as the family residence. As business increases, it is expected that the log home will be renovated to accommodate expansion which would allow for small special events and

limited food offerings. At that point, a new family residence will be built on the western half of the property. Approximately 1 acre of land, 200 feet west of the log home and barn will be used for grape vines. The property currently has 3 driveways, we will reduce that down to two driveways. The northern most driveway will remain and become the main access for the winery. The southern most driveway will remain as well and become the main access for the residence. The middle driveway will be removed.

The property has one domestic exempt well on site. We are currently going through the water courts for an augmentation to that well, which would allow for the use of a winery and vineyard. However, in the event the augmentation is denied, water will then be supplied by the Park Forest Water District. The anticipated water use for the winery and vineyard combined is estimated at an average of 40,000 gallons per year. This number includes all vine irrigation and water use inside the winery and tasting room. An engineered designed onsite wastewater management system that is approved by the El Paso County Health will be used for wastewater from the winery.

Latigo Winery will offer tastings of wine that is produced from grapes that are grown on site as well as from grapes sourced from other regions of the country. It is our intent to offer a family friendly, entertainment and educational experience. We will offer daily winery tours of the facility and vineyard. We will explain in depth and walk them through the life cycle of grapes as they go from buds, to actual grapes, to being harvested for fermentation, to aging in barrels and finally being bottled for consumption. When harvest season arrives, we will encourage the community to join us as we pick the grapes from the vines and help sort and crush them in preparation for fermentation. Tasting hours for Latigo Winery are expected to be 11-6pm Wednesday to Sunday and also by appointment.

We do not expect significant increase in traffic due to the majority of our customers coming from the surrounding community. The estimated daily vehicle trip count will average 20 cars with the most being 50 cars on special event weekend days.

Our goal as a small family winery is not to significantly impact the area but to harmoniously join the existing businesses and residences of Black Forest and we will use the Black Forest Preservation Plan as guidance in doing so.

Thank you for your consideration,

Ben Nelson

