

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

922A



**FROM:** County Counsel and Transportation and Land Management Agency

**SUBMITTAL DATE:**  
August 20, 2015

**SUBJECT:** Introduction and Adoption of Ordinance No. 348.4806, an Ordinance Repealing Ordinance No. 348.4773 which Revised Section 18.8 Nonconforming Structures and Uses under Ordinance No. 348; All Districts; [\$0].

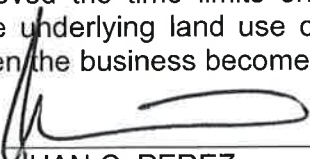
**RECOMMENDED MOTION:** That the Board of Supervisors introduce and adopt on successive weeks and waive further reading of Ordinance No. 348.4806 to repeal Ordinance No. 348.4773, which revised Section 18.8 Nonconforming Structures and Uses under Ordinance No. 348 pursuant to an executed settlement agreement in Protect Wine Country v. County of Riverside (RIC 1407608).

**BACKGROUND:**

**Summary**

On July 1, 2014, the Board of Supervisors adopted Ordinance No. 348.4773 amending Ordinance No. 348 to revise Section 18.8 Nonconforming Structures and Use under Riverside County Ordinance 348. Ordinance No. 348.4773 removed the time limits on how long a business could continue to operate (amortization period) when the underlying land use or zone classification is changed from the original zone classification in place when the business become operational. For example, prior to adoption of


(continued next page)

  
JUAN C. PEREZ  
Director of TLMA

  
GREGORY P. PRIAMOS  
County Counsel

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
<b>COST</b>	\$ N/A	\$ N/A	\$ N/A	\$ N/A	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
<b>NET COUNTY COST</b>	\$ N/A	\$ N/A	\$ N/A	\$ N/A	
<b>SOURCE OF FUNDS:</b> N/A				<b>Budget Adjustment:</b> No	
				<b>For Fiscal Year:</b> N/A	

**C.E.O. RECOMMENDATION:** APPROVE

BY:   
Alex Gann

County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: Item 16-1, 7/1/14 | District: All | Agenda Number:

**3-33**

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA  
FORM 11: Adopting Ordinance No. 348.4806, an Ordinance Repealing Ordinance No. 348.4773  
which Revised Section 18.8 Nonconforming Structures and Uses under Ordinance No. 348; All  
Districts; [\$0].**

**DATE: August 20, 2015**

**PAGE: 2 of 3**

**BACKGROUND:**

**Summary (continued)**

Ordinance No. 348.4773, general commercial uses had a one year amortization, and up to 10 years of additional time extensions, from the time that the underlying zone classification changed. Thus, upon expiration of the amortization period, the business would need to process a new entitlement to come into compliance with the new zoning requirements or in some cases would have to discontinue the use if no longer allowed under the current zone even though it was previously allowed under the prior zone. Other changes incorporated through Ordinance No. 348.4773 allowed for a streamlined legal non-conforming use verification process and an extension of the timeframe that a use may discontinue and still maintain its legal non-conforming status (increased from one year to two years). This zoning ordinance revision was made in the spirit of making Riverside County more "Business Friendly" by providing a mechanism to keep existing legal non-conforming, uses such as businesses, in operation without requiring new entitlements after expiration of the applicable amortization period.

Upon adoption of Ordinance No. 348.4773 by the Board, a Notice of Exemption pursuant to the California Environmental Quality Act (CEQA) was filed and posted with the County Clerk. Thereafter, a Writ of Mandate in *Protect Wine Country v. County of Riverside* (RIC 1407608), challenging the Notice of Exemption was filed with the Court on August 5, 2014 asserting violations of CEQA related to the use of the exemption process for the approval of Ordinance No. 348.4773. The parties subsequently entered into a Settlement Agreement and Release of the lawsuit, which included a condition to repeal Ordinance No. 348.4773.

There have been some recent news articles concerning the Board's potential repeal of this ordinance amendment and how it would affect a church use, which was related to the *Protect Wine Country* legal challenge. As a result, it is necessary to provide further clarification as to what regulations will be in effect once Ordinance No. 348.4773 is repealed. Please see the discussion below under impact on citizens and businesses. Additionally, it should be noted specifically that churches are not a use with an amortization period. This remains the case even if Ordinance No. 348.4773 is repealed. Thus, if a church becomes a legal non-conforming use, it may continue indefinitely and may be expanded a maximum of 25% on the same parcel of land from the time the use was deemed non-conforming.

**Impact on Citizens and Businesses**

The repeal of Ordinance No. 348.4773 will eliminate the ability for structures and uses that have been determined as legal nonconforming uses to continue indefinitely. The repeal of Ordinance No. 348.4773 returns the amortization periods that previously existed under Section 18.8 of Ordinance No. 348. These periods were and will be as follows: (1) unimproved property – 1 year; (2) improved with structures, the replacement of which would not require a building permit – 3 years; (3) outdoor advertising – 5 years; (4) general commercial uses – 1 year; (5) general manufacturing uses – 40 years; (6) kennels and catteries – 20 years; (7) commercial agriculture operations: a. dairy farms – 30 years; b. goat, sheep and other small animal farms – 10 years; c. hog ranches – 10 years; d. horse ranches – 20 years; e. menageries – 5 years; f. pen fed cattle operations – 30 years; g. poultry – 20 years; and h. rabbits – 10 years; (8) noncommercial agriculture operations: a. goats, sheep and other small animals – 3 years; b. hogs – 3 years; c. horses and cattle – 3 years; d. menageries – 3 years; e. poultry – 3 years; rabbits – 3 years; crowing fowl – 18 months; and (9) parolee-probationer home – 1 year.

As a result of the repeal of Ordinance No. 348.4773, businesses may incur additional processing costs to allow the business to continue past the amortization period or they may be required in some cases to discontinue the use altogether. TLMA will work with County Counsel to explore alternative options to address this issue.

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA  
FORM 11: Adopting Ordinance No. 348.4806, an Ordinance Repealing Ordinance No. 348.4773  
which Revised Section 18.8 Nonconforming Structures and Uses under Ordinance No. 348; All  
Districts; [\$0].  
DATE: August 20, 2015  
PAGE: 3 of 3**

**SUPPLEMENTAL:**

**Additional Fiscal Information**

N/A

**Contract History and Price Reasonableness**

N/A

**ATTACHMENTS:**

**ATTACHMENT A. ORDINANCE NO. 348.4806 AN ORDINANCE OF THE COUNTY OF  
RIVERSIDE AMENDING ORDINANCE NO. 348.4773**

**ATTACHMENT B. SETTLEMENT AGREEMENT AND RELEASE**

KWB: nlr

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ATTACHMENT – “A”

1 ORDINANCE NO. 348.4806

2 AN ORDINANCE OF THE COUNTY OF RIVERSIDE

3 AMENDING ORDINANCE NO. 348.4773

4  
5 The Board of Supervisors of the County of Riverside ordains as follows:

6 Section 1. Ordinance No. 348.4773 amending Section 18.8 of Ordinance No. 348  
7 pertaining to Nonconforming Structures and Uses is repealed in its entirety.

8 Section 2. This ordinance shall take effect thirty (30) days after its adoption.

9 BOARD OF SUPERVISORS OF THE COUNTY  
10 OF RIVERSIDE, STATE OF CALIFORNIA

11 By: \_\_\_\_\_  
12 Chairman

12 ATTEST:  
13 KECIA HARPER-IHEM  
14 CLERK OF THE BOARD

15 By: \_\_\_\_\_  
16 Deputy

17  
18 (SEAL)

19  
20  
21 APPROVED AS TO FORM

22 \_\_\_\_\_, 2015

23  
24 By: \_\_\_\_\_  
25 KARIN WATTS-BAZAN  
26 Principal Deputy County Counsel

ATTACHMENT – “B”

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") dated and made effective as of December 16, 2014, is entered into by, between, and among PROTECT WINE COUNTRY, an unincorporated association ("PWC"), and the COUNTY OF RIVERSIDE ("County"). PWC and County will be referred to as "Parties" and each individually as a "Party." It is the intent of the Parties that this Agreement shall establish the terms of a full and complete settlement of all claims raised in *Protect Wine Country v. County of Riverside*, Case No. RIC 1407608 (the "Action"). The terms of this Agreement are intended to be the limit of the Parties' obligations.

### I. RECITALS

- A. On July 1, 2014, the County Board of Supervisors adopted Ordinance No. 348.4773, which (i) revised Section 18.8, "Nonconforming Structures and Uses," of Ordinance No. 348 to eliminate all time limits on how long a legal structure or use can continue (amortization period), once the County changed the underlying zoning designation so that the structure now conflicts with the requirements for the zone; and (ii) revised definitions related to Nonconforming Structures and Uses found in Sections 21.52 and 21.53 of Ordinance No. 348. The County Board of Supervisors found Ordinance No. 348.4773 exempt from the California Environmental Quality Act ("CEQA") (Pub. Res. Code §§ 21000 *et seq.*) pursuant to State CEQA Guidelines section 15061 (b)(3).
- B. On August 5, 2014, PWC filed a Petition for Writ of Mandate against the County asserting alleged violations of CEQA arising out of and related to the approval of Ordinance No. 348.4773. County disputes such allegations and contends the County fully complied with CEQA in connection with its approval of Ordinance No. 348.4773.
- C. The Parties have agreed to use this Agreement to achieve a full and complete resolution of all claims related to the Action and/or asserted against the County that have been asserted or that could be asserted by PWC in the Action.

### II. TERMS

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, all Parties agree to the terms and concepts set forth below.

#### A. The County's Obligations.

- 1. The County shall rescind the approvals of Ordinance No. 348.4773.
- 2. Within ten (10) business days of the Court's dismissal of the Action, with prejudice, County shall pay to Johnson & Sedlack, as counsel for PWC, the sum of \$5,000.00 as payment for reasonable attorneys' fees and costs. Johnson & Sedlack shall provide County with its taxpayer identification number as a condition to the payment. Except

12-9-14  
A.3

for this payment, each Party shall bear its own costs of suit, including attorneys' fees, incurred in the Action.

**B. PWC's Obligations.**

1. Dismissal with Prejudice. The Parties agree that PWC shall file a request for dismissal, with prejudice, of the Action in its entirety, within ten (10) business days of the execution of this Agreement.

**C. General Releases.**

1. Except as set forth in this Agreement, PWC releases County and their respective owners, affiliates, members, commissioners, officers, employees, agents and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that PWC have had or have as of the effective date of this Agreement arising out of, or connected to, the Action and Ordinance No. 348.4773, whether known, unknown or suspected.
2. Except as set forth in this Agreement, County releases PWC and their respective owners, affiliates, members, commissioners, officers, employees, agents and attorneys from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that County have had or have as of the effective date of this Agreement arising out of, or connected to, the Action and Ordinance No. 348.4773, whether known, unknown or suspected.

- D. Limits.** This Agreement shall not be construed as creating any right or benefit substantive or procedural, enforceable at law or in equity, by any Party against the County, or any of its governmental agencies, departments, political subdivisions or any other public entities other than those set forth herein.

- E. Notices.** Any notice, request, or communication required to be given to the Parties under this Agreement shall be given in writing and shall be personally delivered or mailed by prepared registered or certified mail to the addresses below:

If to County of Riverside:

Gregory Priamos, Esq.  
Aaron C. Gettis, Esq.  
Office of Riverside, County Counsel  
3960 Orange Street, Suite 500  
Riverside, California 92501



If to Protect Wine Country:

Johnson & Sedlack  
Attorneys at Law  
26785 Camino Seco  
Temecula, California 92590  
Attn: Raymond W. Johnson, Esq.

- F. Entire Agreement.** The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties or representations made by any of the Parties or by any representative of any of the parties, other than those which are expressly contained within this Agreement. This Agreement, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.
- G. California Civil Code Section 1542.** Upon the Effective Date, as that term is defined below, each of the Parties has read and has otherwise been informed of the meaning of Section 1542 of the California Civil Code, and has consulted with its respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. Each of the Parties hereby expressly waives the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

MA

County's Initials

  
PWC's Initials

- H. Amendments and Modifications.** This Agreement may only be amended or modified through a writing executed by all the Parties.
- I. Settlement, No Admissions by Parties.** Each of the Parties acknowledges that this Agreement relates to the avoidance of litigation and the preclusion of actions described above. The Parties, therefore, agree that this Agreement is not to be treated or construed at any time or in any manner whatsoever, as an admission by any Party that any of the allegations in Case No. RIC 1407608 has merit.
- J. Choice of Law and Choice of Forum.** This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws

of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Riverside.

- K. Damages.** The Parties agree (i) that the performance of the obligations of this Agreement are paramount, (ii) that, in the event of a breach, monetary damages will provide inadequate relief, and (iii) that each may seek equitable relief to enforce such obligations.
- L. Attorneys' Fees.** In the event that additional litigation is filed, seeking enforcement of this Agreement or alleging breach of this Agreement, the prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing Party or Parties.
- M. Authorized Signatory.** Each Party represents and warrants to each other Party that its signature to this Agreement has the Authority to bind the Party, and this Agreement does in fact bind the Party.
- N. Effective Date.** This Agreement is effective as of the effective date written in the first paragraph.
- O. Counterparts.** This Agreement may be executed in counterparts and when so executed by the Parties, shall become binding upon them and each such counterpart will be an original document.

2-10-15  
Date

Marion Ashley  
for the County of Riverside

by Marion Ashley, Chairman Board of Supervisors

12-16-14  
Date


Raymond Falkner  
for Protect Wine Country

by Raymond Falkner

ATTEST:  
KECIA HARPER-HEM, Clerk  
BY [Signature]  
DEPUTY

Approved as to form by:

12/14/2014  
Date

  
Raymond W. Johnson, Counsel for  
Protect Wine Country

2-10-2015  
Date

  
Aaron C. Gettis, County Counsel  
for the County of Riverside